

CORRECTED

Ordinance No: 16-12
Zoning Text Amendment No: 07- 14
Concerning: Ripley/South Silver
Spring Overlay Zone – Development
Standards
Draft No. & Date: 4 – 9/17/07
Introduced: 9/25/07
Public Hearing: 10/30/2007; 1:30 p.m.
Adopted: 11/20/2007
Effective: 12/10/2007

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Ervin, Floreen, Leventhal, and Trachtenberg

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the definition of “radio and television broadcasting studio”,
- amend height standards in the Ripley/South Silver Spring Overlay zone,
- delete expired credit provisions, and
- generally amend provisions governing the Ripley/South Silver Spring Overlay zone.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-2	“DEFINITIONS AND INTERPRETATION”
Section 59-A-2.1	“Definitions”
DIVISION 59-C-18	“OVERLAY ZONES”
Section 59-C-18.20	“Ripley/South Silver Spring Overlay Zone”
Section 59-C-18.202	“Regulations”
Section 59-C-18.203	“Methods of development”
Section 59-C-18.204	“Density of development”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

Clerk’s Note: Typographical error corrected on line 57.

OPINION

Zoning Text Amendment (ZTA) 07-14, sponsored by Councilmembers Ervin, Floreen, Leventhal, and Trachtenberg, was introduced on September 25, 2007. The ZTA proposes to amend the definition of radio and television broadcast studio and to increase the height allowed for buildings on CBD-2 zoned properties in the Ripley/South Silver Spring Overlay Zone (Overlay Zone). ZTA 07-14 would also remove outdated provisions in the Overlay Zone.

The Council held a public hearing on October 30, 2007 to receive testimony on ZTA 07-14. The County Executive, represented by Gary Stith, recommended approval of ZTA 07-14. The Planning Board and Planning Board staff also recommended approval of ZTA 07-14 as introduced. The Planning Board, however, would not support any interpretation that would allow a combination of building and rooftop "structure" to exceed 200 feet.

The Planning, Housing, and Economic Development Committee held a worksession on November 5, 2007 to review the amendment. After careful review of the materials of record, the Committee recommended that ZTA 07-14. The Committee was persuaded that the additional height allowed by ZTA 07-14 would be appropriate for the CBD-2 portion of the Ripley/South Silver Spring Overlay Zone. In addition, ZTA 07-14 would appropriately amend the definition of radio and television broadcasting studio to reflect the distribution of signals by satellite dishes.

The Committee recognizes that the Silver Spring CBD Sector Plan recommends a maximum building height of 90 feet on Georgia Avenue with the ability to build 2 feet higher for every 1 foot back from Georgia Avenue. ZTA 07-14 does not change that guidance. Sites protected by the Master Plan of Historic Sites in the Overlay Zone will remain protected.

The District Council reviewed Zoning Text Amendment No. 07-14 at a worksession held on November 20, 2007. The District Council agreed with the recommendations of the Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 07-14 will be approved as introduced.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Division 59-A-2 is amended as follows:**

2 **DIVISION 59-C-2. DEFINITIONS AND INTERPRETATION.**

3 **59-A-2.1. Definitions.**

4 * * *

5 **Radio and television broadcasting studio:** A facility used [for the creation and
6 production of] to create or produce radio, television, [and] or other electronic
7 media programming. [This includes] A broadcasting studio may include studios,
8 stages, editing facilities, post-production facilities, and equipment for program
9 distribution and receipt via satellite, wire, or fiber optic cable. A radio and
10 television broadcasting studio does not include a tower at the same location as the
11 studio.

12 * * *

13 **Sec. 2. Division 59-C-18 is amended as follows:**

14 **DIVISION 59-C-18. OVERLAY ZONES.**

15 * * *

16 **59-C-18.20. Ripley/South Silver Spring Overlay Zone.**

17 * * *

18 **59-C-18.202. Regulations.**

19 * * *

20 (b) Development standards. The development standards are the same as
21 those in the underlying zones, except:

- 22 (1) Building height in the [Overlay Zone] overlay zone along
23 Newell Street and Eastern Avenue that confronts a residential
24 zone in the District of Columbia must not exceed a height of 45
25 feet. However, this building height may be increased to:
26 [(i)](A) a maximum of 90 feet for any building or portion of a
27 building that is set back at least 60 feet from the street[,

28 or as allowed in 59-C-18.204(b), Transfer of
29 Development Credits]; or
30 [(ii)] (B) a maximum of 125 feet for residential development
31 that is set back at least 100 feet from Eastern Avenue and
32 Newell Street[,] and [that] includes a public parking
33 garage constructed under a General Development
34 Agreement with [Montgomery] the County[, Maryland].

35 (2) The Planning Board may approve a maximum building height
36 of 200 feet in any CBD-2 zoned optional method of
37 development project that provides ground floor retail. Any
38 structure or device used to collect or radiate electromagnetic
39 waves, including a satellite dish, must not be included in
40 calculating building height under this paragraph.

41 [(2)] (3) Parking must not be allowed in the front yard of [properties]
42 any property fronting on Georgia Avenue [is prohibited].

43 [(3)] (4) The transfer of public use space to other properties [within]
44 in the [Overlay Zone] overlay zone is allowed, and must be
45 shown on an approved project plan or site plan for both the
46 property transferring the public use space and the property
47 receiving the public use space in accordance with Division 59-
48 D-2 and 59-D-3. The public use space may only be transferred
49 between property owners [in accordance with] under an
50 agreement [as] approved by the [Montgomery County]
51 Planning Board.

52 [(4)] (5) Costs associated with meeting the public use space offsite
53 may be shared by multiple property owners.

54 [(5) Transfer of development credits may occur between properties
55 within the overlay zone for Ripley/South Silver Spring.]

56 **59-C-18.203. Methods of [Development] development.**

57 (a) Standard method of development may be approved [in accordance
58 with] under the standards of the underlying zone [provisions].

59 [(1)] The public use space requirement may be transferred to other
60 properties [within] in this overlay zone if approved [by] in a site
61 plan [in accordance with] under Division 59-D-3.

62 [(2)] The transfer of development credits to other properties within
63 the overlay zone may be allowed with approval of a site plan in
64 accordance with Division 59-D-3.]

65 (b) Optional method of development may be approved [in accordance
66 with] under the standards of the underlying zone [Zone provisions]
67 except as modified by this overlay zone.

68 **59-C-18.204. Density of development.**

69 Development in the overlay zone may proceed under one of the following
70 options:

71 (a) Underlying zone standards. Except as [regulated] modified by this
72 overlay zone, development may proceed under the standards of the
73 underlying CBD Zone, in accordance with [the provisions of Sec.]
74 Section 59-C-6.23.

75 [(b)] Development credits. A development credit, in square feet of gross
76 floor area, may be established with the demolition of a building before
77 August 24, 2002 that exceeds the amount of floor area allowed under
78 the standard method of development in this Overlay Zone. A
79 development credit may be retained for purposes of reconstruction on
80 the property generating the development credit, or transferred and

81 used for new construction on any property in this Overlay Zone
82 provided the property to which any development credit is transferred
83 does not confront a one-family zone. Use of a development credit
84 either on property generating the development credit or on another
85 property using the development credit must be submitted before
86 August 24, 2007 and must be shown on either:

87 (1) a site plan approved under Division 59-D-3 for standard method
88 development of a property receiving a development credit. The
89 development credit must not exceed 50% of the FAR allowed
90 for the receiving property under the standard method of
91 development; or

92 (2) a project plan approved under Division 59-D-2. A project plan
93 may exceed the allowable maximum FAR of the underlying
94 zone.

95 (c) 100% of a development credit may be retained by the property
96 generating the development credit and may be utilized by the
97 generating property and other property shown with the generating
98 property on a project plan approved under Division 59-D.2.

99 (d) A development credit to be transferred must be established and
100 attached to a property only by means of documents, including an
101 easement and appropriate releases, in a recordable form approved by
102 the Planning Board. Any easement must:

103 (1) limit future construction of the property that transfers the
104 development credit to the amount of gross square feet of the
105 demolished building minus all development credits transferred;

106 (2) indicate the amount of development credit, in gross square feet
107 to be transferred;

- 108 (3) indicate the maximum gross square feet of future development
109 for the property that transfers the development credit, but no
110 less than the amount that could be constructed on the property
111 under the standard method of development; and
112 (4) be recorded in the land records of Montgomery County.]

113 [(e)] (b) Any building constructed [pursuant to] that satisfies a project plan
114 or site plan approved under this Section is a conforming structure and
115 may be repaired or reconstructed [in accordance with] under the
116 conditions of the approved project plan or site plan.

117 [(f)] (c) Any building for which a valid building permit was issued before
118 February 1, 2000 [approval of the Ripley/South Silver Spring Overlay
119 Zone Sectional Map Amendment,] is a conforming building and may
120 be altered, repaired, or reconstructed under the standards of the zone
121 in effect [at the time] when the building was constructed, except:

122 (1) If the building exceeds the standards of the underlying zone,
123 any alteration, repair, or reconstruction of the building must not
124 increase the gross floor area or the height of the building above
125 that which existed [as of the date of application of the
126 Ripley/South Silver Spring Overlay Zone] on February 1, 2000;
127 or

128 (2) If the building does not exceed the standards of the underlying
129 zone, any alteration, repair, or reconstruction of the building
130 must conform to the standards of the underlying zone, except as
131 may be further [regulated] modified by the Ripley/South Silver
132 Spring Overlay Zone.

133 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
134 Council adoption.

135

136 This is a correct copy of Council action.

137

138 *Linda M. Lauer*

139 Linda M. Lauer, Clerk of the Council