



**CITY OF ROCKVILLE
DEPARTMENT OF COMMUNITY PLANNING & DEVELOPMENT SERVICES
STAFF REPORT**

TO: Planning Commission

VIA: Jim Wasilak, AICP, Chief of Planning
Deane Mellander, Zoning Administrator

FROM: Joe Thompson, Planner II

DATE: April 30, 2010

SUBJECT: Zoning Text Amendment (ZTA) TXT2010-00226

RECOMMENDATION: Recommend approval of the proposed Zoning Text Amendment to the Mayor and Council.

REQUEST: The ZTA proposes to modify (1) the definition of Open Area; (2) the definition of Public Use Space; (3) Section 25.13.05, Development Standards; and (4) Section 25.17.01, Public Use Space (see Attachment A).

PREVIOUS RELATED ACTIONS: On March 15, 2010, the Mayor and Council unanimously voted to authorize the filing of the subject ZTA.

BACKGROUND: The public use space requirement and companion fee in lieu of public use space initially came about via the RORZOR process, and was ultimately adopted and codified into the Zoning Ordinance. During the Zoning Ordinance process, there was a general consensus that there needed to be some "public benefit" derived from Mixed-Use (MX) Zone development.

Recent public comment on the recommended fee in lieu of public use space resulted in criticism of the current across-the-board 20% public use space requirement. Speakers at the December 7, 2009, public hearing on this issue stated that the current 20% public use space requirement imposed a disincentive to develop and/or redevelop properties in the MX Zones and that the fee in lieu required as the alternative was onerous. As a

result of the public testimony, the Mayor and Council deferred action on the fee in lieu of public use space calculation and directed staff to reexamine the current public use space requirement. The Mayor and Council also directed staff to meet and work with the Chamber of Commerce prior to bringing back formal ZTA recommendations for authorization.

Staff agrees that there should be public use space required for most MX Zone development, but recommends that it be tailored to the intent of the respective MX zone, and in some cases, lot size. The underlying assumption during the RORZOR process was that all development would be built to the maximum density allowed. In practice, development density is more a reflection of the market absorption in the area and the types of uses in the project. As a result, having the 20% "one-size-fits-all" public use space requirement is not practical or desirable in many instances.

In this context, staff considered the following questions as a basis to guide the research for revising the public use space requirement:

- Should there be an open area requirement in all of the MX Zones?
- Should all open areas be public use space?
- Should there be an across-the-board public use space requirement?
- Should there be a general reduction in the public use space requirement?
- Should the public use space requirement be different based on project type? (e.g., retail, residential, industrial)
- Should the ZTA include a provision to allow open area and public use space recommendations in a Master Plan to be implemented without an additional ZTA?

In various meetings with the Chamber, they provided examples and construction related information to demonstrate why the current across-the-board public use space requirement is not conducive to development and/or redevelopment. The Chamber provided advice on the general questions outlined above and also suggested the following:

- The open area and public use space requirement should be tailored to lot size. Smaller lots would have a smaller requirement.

- Revise the definitions for open area and public use space to allow green roofs and stormwater management areas to be eligible.
- A few of the MX Zones should not be required to have any public use space because of their character and intent.

The Chamber also recommended additional modifications. These include items such as allowing internal building spaces to count as public use space, scaling the public use space requirement to the proposed density of a project, and tailoring public use space to the types of uses proposed.

Staff views these modifications as changes that would significantly alter the overall intent of the public use space requirement and, as such, would require further discussion and direction from Mayor and Council. These items may better be addressed within a master plan context.

ANALYSIS:

The proposed text amendment is included as Attachment A and shows how the suggested modifications would be implemented in the Zoning Ordinance. The rationale for the proposed revisions are described below and summarized in the development standards table shown on page A-2 of the attachment. Attachment B is a map showing the location of all MX Zones.

The proposed modifications would reduce, and, in some cases, eliminate the public use space requirement in certain MX Zones. There would still be a minimum open area requirement in each MX Zone, which would not have to be publicly accessible. Also, in cases where there are specific public use space recommendations in a master plan, those recommendations would take precedence.

The **Mixed-Use Transit District (MXTD)** Zone and **Mixed-Use Corridor District (MXCD)** Zone represent the highest-density development zones in the City. They are the most likely to generate mixed-use developments, mixing housing, office and retail uses. As such, these zones should provide at least some minimum amount of public use space, since they are the likeliest to have a public draw.

MXTD: 10% open area (15% open area if residential dwellings are provided); 10% public use space required.

MXCD: For sites < 20,000 sq. ft., 10% open area, of which 5% must be public use space. For sites 20,000 sq. ft or more, 15% open area, of which 10% must be public use space; the balance is open area for residents and occupants.

The **Mixed-Use Neighborhood Commercial (MXNC) Zone** is similar to MXTD and MXCD where the zone is applied to large sites. However, on small sites the impact of a public use space requirement on development is quantitatively greater.

MXNC - For sites < 20,000 sq. ft., 10% open area, with no public use space requirement. For sites 20,000 sq. ft or more, 10% open area, of which 5% must be public use space; the balance is open area for residents and occupants. Development including buildings taller than 45 ft. must provide 15% open area, of which 10% must be public use space per the new footnote #4 and additional proposed language in Section 25.13.05.b.2.(c).

The **Mixed-Use Employment (MXE) Zone** is generally applied to those areas of the City that had developed as campus-style office parks. In general, these sites have already provided a fair amount of open space around their projects. However, in large measure, these sites do not attract the public.

MXE - 20% open area, of which 5% must be public use space

The **Mixed-Use Business (MXB) Zone** was developed to cover those areas of the City that have a variety of small office, commercial and service industrial uses currently with the potential to redevelop with a mix of uses. Many of the properties in the MXB Zone are on North Stonestreet Avenue and are less than 20,000 square feet.

MXB - For sites < 20,000 sq. ft., 10% open area. For sites 20,000 sq. ft or more, 10% open area, of which 5% must be public use space.

The **Mixed-Use Commercial (MXC) Zone** was developed to be applied to small, neighborhood-serving commercial sites. While these sites do draw the public, for the most part the businesses are convenience-oriented, in-and-out facilities that do not hold the public at the location.

MXC - 10% open area

The **Mixed-Use Transition (MXT) Zone** is primarily intended to cover areas where former single unit detached dwellings have been converted to offices, or nonresidential

development has occurred at a similar scale to single family residential lots. Most of these sites retain much of their former residential character and as with the other zones that are primarily office uses, there is not much of a public draw.

MXT - 10% open area

Staff also recommends adding a new footnote to the Development Standards table to allow any specific open area and public use space recommendations in a master plan to take precedence.

The County is also reevaluating the amount and type of public use space that would be appropriate for their proposed Commercial/Residential (CR) Zone. They currently have a similar percentage requirement for "green area" in their standard commercial zones.

In addition, staff will reintroduce the fee in lieu of public use space calculation (see Attachment C) to the Mayor and Council for action after Discussion and Instruction. The fee in lieu of public use space was presented to the Planning Commission for discussion and recommendation to the Mayor and Council on January 28, 2009.

RECOMMENDATION:

Staff recommends approval of the ZTA for the reasons stated in this staff report.

Finally, staff recommends that the proportionate scale for expansions to existing development (previously approved by ZTA TXT2010-00224) be retained. The proposed text has been modified based on the revised percentage of public use space for each MX Zone as recommended in this staff report. The proportionate scale may need to be revised if the public use space percentages change as this ZTA goes through the review process.

PUBLIC OUTREACH: Notice of the proposed ZTA and the review schedule has been sent to all commercial property owners as well as all civic associations and homeowner's associations. In addition, staff met with the West End Civic Association (WECA).

Attachments:

- A. Proposed ZTA TXT2010-00226
- B. Map of MX Zones
- C. Mayor and Council Public Hearing Agenda Item from 12/7/09

March 24, 2010

ATTACHMENT TO APPLICATION
TO THE CITY OF ROCKVILLE FOR A
TEXT AMENDMENT TO THE ZONING ORDINANCE

Applicant: Mayor and Council of the City of Rockville

The applicant proposes to amend the zoning ordinance adopted on December 15, 2008, and with an effective date of March 16, 2009, by inserting and replacing the following text (underlining indicates text to be added; [brackets] indicate text to be deleted; * * * indicates text not affected by the proposed amendment). Further amendments may be made following citizen input, Planning Commission review and Mayor and Council review.

Amend Article 3 – Definitions; Terms of Measurement and Calculations, as follows:

25.03.02 – Words and Terms Defined

* * *

Open Area - An area of land associated with and located on the same tract of land as a major building or group of buildings providing light and air, scenic or recreational space, or other similar purpose.

1. Open area ~~shall~~must, in general, be available for entry and use by the occupants of the building involved, but may include space so located and treated as to enhance the amenity of the development by providing landscaping features, screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness.
2. Open area may include, but not be limited to, lawns, decorative planting, sidewalks and walkways, and active and passive recreation areas, including children's playgrounds, fountains, swimming pools, rooftop recreation areas, wooded areas, and watercourses; but shall not include parking lots or vehicular surfaces, accessory buildings other than swimming pools, or areas of open space so located or so small or so circumscribed by buildings, parking, or drainage areas as to have no substantial value for the purposes stated in this paragraph.

* * *

Public Use Space - An open area associated with and located on the same tract of land as a principal building or group of buildings providing light and air, recreational space, or other similar purpose. Such open area must be accessible for use and enjoyment by the general public when provided in a residential, retail or mixed-use project, and may include space so located and treated as to enhance the amenity of the development by providing landscaping features, screening, or a general appearance of openness, and may include accessible portions of a stormwater management facility.

In addition, public use space may also consist of open areas recommended in an adopted master plan, including enhanced public walkways and off-site public improvements. Such public improvements do not include road improvements or other capital projects in the vicinity of the property. Internal landscaping within a parking facility, as required in Section 4.d of the Landscaping, Screening and Lighting Manual, does not constitute Public Use Space. Development consisting primarily of office and/or industrial uses may include space accessible to the public or the employees of the site for the purpose of satisfying the public use space requirement.

Amend Article 13, Mixed-Use Zones, as follows:

25.13.05 – Development Standards

* * *

b. Development Standards

1. The following table sets forth the development standards for each of the Mixed-Use Zones:

Zone	Maximum Height (in feet) ²	Open Area and Public Use Space ³		Public Right-of-way Abutting	Setbacks				Special Regulations
		Total Open Area Required	Public Use Space Required within Open Area		Side		Rear		
					Residential Land Abutting	Non-residential Land Abutting ¹	Residential Land Abutting	Non-residential Land Abutting	
MXTD	120	10% (15% if residential dwellings are provided)	10%	None	25' or height of building, whichever is greater	None. 10' min. if provided	25' or height of building, whichever is greater	None. 10' min. if provided	See Secs. 25.13.05.b.2(a) and 25.13.05.b.2(d)
MXCD	75	For sites <20,000 sq. ft. – 10%	5%	None	25' or height of building, whichever is greater	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	See Secs. 25.13.05.b.2(b) and 25.13.05.b.2(d)
		For sites 20,000 sq. ft. or more 15%	10%						
MXE	120	20%	5%	None required. 10' min. if provided	25' or ½ height of building, whichever is greater	None required. 10' min. if provided	25' or ½ height of building, whichever is greater	None required. 10' min. if provided	See Sec. 25.13.05.b.2(d)
MXB	55	For sites <20,000 sq. ft. – 10%	=	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	25' or ½ height of building, whichever is greater	None required. 10' min. if provided	
		For sites 20,000 sq. ft. or more 10%	5%						
MXNC	45 ⁴	For sites <20,000 sq. ft. – 10%	=	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	See Sec. 25.13.05.b.2(d)
		For sites 20,000 sq. ft. or more 10%	5%						
MXC	30	10%	=	10'	15'	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	
MXT	35	10%	=	10'	10'	None	20'	None required. 10' min. if provided	

¹Nonresidential Land Abutting Side Setback – This term also includes multi-unit residential uses with a height of 45 feet or greater.

²Height is subject to the provisions of Section 25.13.05.b.2, below.

³Where the applicable master plan makes specific recommendations on the provision of amenity area and public use space requirements, the master plan recommendations must take precedence.

⁴Open area and public use space requirements for development above 45 feet are shown in Sec. 25.13.05.b.2(c).

* * *

- (c) MXNC Zone – Building height may be increased up to 65 feet when found suitable in accordance with the Plan. If the Plan makes no other recommendation, development between 45 feet and 65 feet must provide 15 percent open area, of which 10 percent must be public use space.

Amend Article 17, Public Use Space, Landscaping and Screening, Utility Placement and Screening, Lighting, Sidewalks, and Shadows, follows:

25.17.01 – Public Use Space

* * *

- b. *General Requirements* – Where provided, such public use space must be accessible for use and enjoyment by the general public when provided in a residential, retail or mixed-use project. Development consisting primarily of office and/or industrial uses may provide an open area, as defined in Article 3, for the purpose of satisfying the public use space requirement. The Approving Authority may allow reasonable limitations on access to the public use space to meet safety or security concerns.

- 1. Where development does not comply with the public use space requirement, the following regulations apply:

- (a) Building expansions or cumulative additions that exceed 50 percent and up to 100 percent of the existing gross floor area must provide a proportionate amount of public use space on site using [a factor of 0.2 times the percentage increase in gross floor area up to the required 20 percent public use space requirement (example: 75 percent increase in existing gross floor area x 0.2 = 15 percent public use space requirement)] the following calculation factors:

- i. For those zones where the public use space requirement is 10 percent, the calculation factor is 0.1 times the percentage increase in gross floor area up to the required 10 percent public use space requirement.

- ii. For those zones where the public use space requirement is 5 percent, the calculation factor is 0.05 times the percentage increase in gross floor area up to the required 5 percent public use space requirement.

- (b) Any building expansion or cumulative addition that exceeds 100 percent of the existing gross floor area must provide public use space as set forth in Section 25.13.05.b.1.

* * *

- d. *Fee in Lieu of Public Use Space Requirements*

- 1. The Approving Authority may approve the payment of a fee in lieu of some or all of the public use space requirement under any of the following circumstances:

- (a) The City could use the fee to provide and/or improve another more usable public space in the vicinity of the project; ~~or~~
 - (b) The site cannot realistically provide the required area for public use and meet all of the other City development standard requirements; or
 - (c) The applicable master plan makes specific recommendations on how and where public use space is to be provided on or in the vicinity of the site.
2. Any approved fee in lieu of the public use space requirement shall be paid in an amount set by resolution of Mayor and Council.
- e. *Exemption for Affordable Housing Projects or for Housing for Senior Adults and Persons with Disabilities.* The following are exempt from the public use space requirement: Projects that consist entirely of affordable dwelling units, defined as units designated for households with incomes at or below the area median income limits; and projects including housing for senior adults and persons with disabilities.

Legend
Mixed Zones

ZONE	Symbol
MX1	[Diagonal lines /]
MX2	[Diagonal lines \]
MX3	[Cross-hatch]
MX4	[Stippled]
MX5	[Dark gray]
MX6	[Black]



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Rockville Mixed-Use Zones

Community Planning and
 Development Services
 171 Maryland Avenue • Rockville, Maryland 20850-2364
 Phone: 301.455.6500 • Fax: 301.455.6513





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Mayor and Council

For the meeting on: December 7, 2009
Department: Community Planning and Development Services
Division: Planning
Responsible staff: Joe Thompson, Planner II
phone: (240) 314-8225
jthompson@rockvillemd.gov

Subject

Public hearing on the Fee in Lieu of Public Use Space requirement and companion Zoning Text Amendment (ZTA) TXT2010-00224, related to the administration of the Public Use Space requirement.

Recommendation

Conduct the public hearing on both items

Change in Law or Policy

When adopted, the text amendment will: (1) further refine acceptable forms of public use space in relation to different land uses, and (2) clarify the public use space requirement related to expansions of existing buildings. The resolution will establish the calculation for the new fee as required in subsection 25.17.01.d.2. of the Zoning Ordinance.

Discussion

PROPOSED FEE IN LIEU OF PUBLIC USE SPACE CALCULATION:

The fee in lieu calculation comprises the following two components:

Land Acquisition Contribution:

This component reflects the value of land that is subject to the fee in lieu. It is determined by multiplying the subject property's per square foot assessed land value by the square footage of required public use space.

Public Use Space Improvement:

This component reflects the cost of constructing public use space amenities, which is \$3.00 per square foot of the required public use space. The cost estimate is based on two recent Department of Recreation and Parks projects: Fallsgrove Park (Project 420-900-1B61) and Mattie J. T.

Stepanek Park (Project 420-900-3A60). The amenities associated with these park projects align with those that might be constructed within public use space, e.g., garden plots, gazebos, picnic areas, pathways, passive areas, wooded areas, landscaping, etc. The cost per square foot will be adjusted annually to reflect the increase or decrease in the Builder's Cost Index (BCI), as published by Engineering News Record, McGraw Hill Companies.

Example:

The following example is a pending development application on Research Place for which the applicant may request all or part of the public space to be provided by fee rather than providing it on site. This example illustrates how this fee would be calculated, if the applicant requests the full amount (20% of site) to be paid by fee. This example is meant only to illustrate the fee calculation, not to approve or deny the specific project details.

Assumptions:

- Most recent assessment of the land value = \$2,838,300
- Total site area = 5.4 acres or 236,530 square feet (SF)
- Public use space required by Zoning Ordinance (236,530 SF X 20%) = 47,306 SF

Land Acquisition Component:

\$2,838,300 – assessment of the land value

236,530 - total site area (in square feet) = \$12 - assessed land value per square foot

47,306 - square feet of required public use space (calculation in Assumptions)

x \$12 - assessed land value per square foot

\$ 567,672 – fee for land component

Improvement Component:

47,306 - square feet of required public use space (calculation in Assumptions)

x \$3 - public use space improvement cost

\$ 141,918 - fee for improvement component

Total:

\$567,672 – Land Acquisition Component

+ \$141,918 – Improvement Component

\$709,590 - fee in lieu

At the October 12 meeting, the Mayor and Council requested information on other jurisdictions' fee in lieu of public use space (or equivalent) calculations. That information has been provided as Attachment A.

Zoning Text Amendment (ZTA) TXT2010-00224:

The proposed amendment would provide more flexibility for the approving authority to utilize an "open area" for projects that are principally office and/or industrial use (see Attachment B). It also proposes to implement a proportional scale for expansions of existing development. In the staff report to the Planning Commission (see Attachment C), the staff recommended some minor modifications to the authorized language to more accurately convey the intent.

Mayor and Council History

Both items were presented to the Mayor and Council on October 12, 2009. The proposed fee in lieu of public use space calculation was presented as a discussion item and recommended to be scheduled for a public hearing. The proposed ZTA received authorization to be filed.

Public Notification and Engagement

Pursuant to State law, the joint public hearing was advertised two successive times in the Gazette newspaper on 11/25 and 12/2. In addition, notice was provided to all City civic associations, homeowner's associations, and other interested parties.

Boards and Commissions Review

Review of the Proposed Fee In Lieu of Public Use Space Calculation

An earlier draft of the fee in lieu calculation was reviewed by the Recreation and Parks Advisory Board on January 22, 2009, and the Planning Commission on January 28, 2009. The current draft has been refined since that time and incorporates most of their recommendations. Their comments and the staff's responses were presented to the Mayor and Council at the October 12, 2009 meeting.

Planning Commission Review of the Zoning Text Amendment (ZTA) TXT2010-00224

After reviewing the recommended language, the Planning Commission has recommended that the provision to allow an "open area" as an alternative to "public use space," be limited to development in the Mixed-Use Employment (MXE) Zone. The MXE Zone is primarily intended for office and light industrial uses that are not normally pedestrian-oriented outside of working hours. The Planning Commission's full recommendation is attached to this staff report as Attachment D.

The Planning Commission made the following two recommendations:

(1) Limit the proposed flexibility to provide an "open area" as an alternative to "public use space" only to projects within the Mixed-Use Employment (MXE) Zone and (2) encourage use of the fee in lieu of public use space for projects within the MXE Zone that are primarily industrial.

The second recommendation was to add the phrase "or cumulative additions" into the proposed subsection 25.17.01. (a) after the words "Building expansions..." This recommendation was initially suggested by the City Attorney during the discussion and ultimately incorporated into the recommendation.

As a result of the Planning Commission recommendations, the proposed modifications to the definition of public use space are no longer required.

Staff Response:

Staff supports the Planning Commission recommendations because they achieve most of the same objectives as the staff draft. Applying the proposed flexibility for office uses to the other MX districts can be reviewed at a later date as part of the Rockville Pike Plan.

Fiscal Impact

The fee in lieu of public use space has the potential to become a significant, but variable source of fee revenue. Staff recommends that fee in lieu revenue be collected in a special activities fund account. The expenditures would be restricted to providing and/or improving other public use space in the vicinity of the project. This recommendation is consistent with the recommendations from both the Planning Commission and the Recreation and Parks Advisory Board. There is no fiscal impact associated with the subject text amendment.

Next Steps

- Discussion and Instructions (D&I) - 1/11/10
- Introduction of Resolution & Ordinance - 1/25/10

A handwritten signature in black ink, appearing to read "Scott Ullery". The signature is fluid and cursive, with the first and last names being the most prominent.

Scott Ullery, City Manager
Approved on: 11/30/2009