



MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #9
7/23/09

DATE: July 20, 2009
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RK*
 Ralph Wilson, Zoning Supervisor
FROM: Greg Russ, Zoning Coordinator *GR*
 Cathy Conlon, Subdivision Supervisor *CC*
REVIEW TYPE: Subdivision Regulation Amendment
PURPOSE: Generally amend the Subdivision Regulations to resolve certain conflicts between departments and agencies concerning the conditions of the approval of a preliminary subdivision plan.

SUBDIVISION REGULATION AMENDMENT: 09-02
INTRODUCED BY: Councilmember Floreen
INTRODUCED DATE: June 23, 2009

PLANNING BOARD REVIEW: July 23, 2009
COUNCIL PUBLIC HEARING: July 28, 2009; 1:30pm

STAFF RECOMMENDATION Staff provides the following comments on SRA 09-02:

- Staff does not believe that the subject SRA should move forward at this time. Staff believes that the aim of the SRA is to ensure a more timely hearing of a development review application, but that this can be better done by streamlining the review process in other ways. For example, it is difficult to resolve conflicts when departments and agencies do not delegate decision-making authority to staff that attend the Subdivision Review Committee. In those cases where conflicts cannot be resolved at the Subdivision Review Committee stage, lead agency protocol, supplemented by the newly created County Executive's Strike Force, will allow conflicts to move up to the appropriate decision maker as necessary. Staff further believes that the SRA should not move forward at this time because it would exclude the public from participating in matters that were subject to the dispute resolution process envisioned by the SRA.
- If the County Council decides to approve the proposed legislation, staff recommends modifications to the proposed SRA to better reflect what we believe is a more realistic way to address the Council's intent.

BACKGROUND/ANALYSIS

Councilmember Floreen introduced SRA 09-02 in response to the 2008 Second Annual Report of the Montgomery County Citizen Advisory Committee to the Department of Permitting Services. The committee identified that resolving conflicts between departments and agencies in the development approval process was a continuing concern, and that the Development Authorization Process (DAP), created in 1992, was no longer effective. The intent of SRA 09-05 is to establish a procedure in the subdivision process to resolve conflicts between departments and agencies in an efficient manner.

Existing Requirements

Section 50-35 of the Subdivision Regulations (Chapter 50 of the Montgomery County Code) contains the procedure for approval of preliminary subdivision plans, including the requirement that the plans be referred to specific agencies that may have a direct interest in the installation or maintenance of facilities or services that will serve the proposed subdivision to obtain their recommendations concerning the plan prior to Planning Board action. The proposed amendment modifies subsections 50-35(c) and 50-35(f) of this procedure.

Subsection 50-35(c) requires the Board to establish a Subdivision Review Committee to facilitate plan review and reconcile any conflicting requirements by the different agencies that receive the plan. The committee must include agency representatives who have been delegated authority to speak for the agency by the appropriate agency head, and the agency comments and recommendations from these representatives must be considered by Planning Department staff in the preparation of its recommendations to the Board concerning the plan. This committee, now known as the Development Review Committee (DRC), is established and has been reviewing plans for many years.

Subsection 50-35(f) contains the requirements for the presentation of plans to the Planning Board for its review and action. These include: the timeframe in which the plan must be presented, the types of actions the Board may take, and the provision that no agency may require a substantial change to a plan following Board approval unless the change was required by the conditions of approval that were specified by the Board.

Analysis of Proposed Legislation

The proposed amendments would establish a procedure by which conflicts between the recommendations or requirements of the DRC participants could be resolved by the Directors of all the agencies or departments that are represented at the DRC. Under this procedure, if recommendations or requirements made at a DRC meeting conflict, and the conflict is not resolved by the agencies or departments involved within 30 days after the meeting at which it arose, the conflict must be submitted to the Department Directors. The Directors must meet and resolve the conflict within 30 days after it was submitted to them, and report their resolution to the Board within 5 days after the meeting. The amendment also allows the timeframe in which a plan must be presented to the Planning

Board to be extended to facilitate such a Directors meeting, and requires that the Directors' resolution of a conflict be made a condition of the Planning Board's approval and be binding on each department or agency that participates in the DRC. Finally, the amendment prohibits the Board from disapproving a plan because of dissatisfaction with the way in which a conflict has been resolved by the Directors.

The laws, regulations and policies that apply to development in Montgomery County are admittedly very complex and often conflict. So it is not surprising that there are conflicts between the recommendations of the agencies and departments charged with applying these requirements as part of the DRC. It is important to remember that many factors other than an ability to get the parties to agree can slow down the resolution of many of these conflicts. Frequently, the agency or department that has authority over a decision is not able to make it in a timely manner because applicants are slow to provide necessary information, or are asking for waivers or exceptions that they haven't justified with enough background material. On some occasions, a decision by one agency creates a new conflict with the requirements of another agency, which necessitates further review by all well after the original DRC meeting. The process is also slowed because many of the representatives at the DRC meetings do not have authority to make decisions. Instead, they are present only to transmit the comments of the individual plan reviewer or the department review team, and therefore, it's almost guaranteed that, when areas of conflict are identified at a DRC meeting, the individuals present will not be able to work out a solution because they are required to take the matter back so it can be resolved by others in the department's chain of command.

Staff agrees that especially contentious issues between agencies or departments should be elevated to higher levels of authority for decision. Such a policy has long been in place for conflict resolution within the Planning Department, itself, and the County Executive's new strike force is designed to bring resolution to particularly contentious disputes among agencies. The proposed amendment codifies the strike force idea, however, it seems to go too far in that it creates a review timeframe that would elevate issues that may well be amenable to a solution before they have had a chance to be successfully resolved, and it significantly takes away the Planning Board's decision-making authority. And in taking away the Board's authority with respect to a matter addressed through the dispute resolution process, it precludes the public from providing input to the Board, and the Board considering such input in its decision. Finally, the proposed amendment fails to address the more common causes for delay which, in staff's opinion, should be the primary focus of any effort to improve the overall review process. Therefore, staff recommends modification to the language of the proposed amendment if the County Council chooses to approve it, and also, additional steps that we believe should be taken to improve other areas of the process.

Staff Recommended Modifications to SRA 09-02

The language of proposed subsection 50-35(c)(3) creates a requirement that any agency or department conflict that is not resolved after 30 days from the DRC meeting must be submitted to the Department Directors for resolution. Staff recommends that this

language be modified so that the 30 days is not measured from a DRC meeting, but rather, from any point in the review of an application when an applicant has provided sufficient information for agencies or departments to make the decision but the agencies or departments have not done so. This change addresses the fact that not all contentious issues arise at the DRC meeting, and the fact that some decisions are delayed by an applicants' failure to provide necessary information.

Proposed subsection 50-35(c)(6) requires that the Department Directors report their decision on a conflict resolution to the Planning Board within 5 days of their meeting, and subsection (c)(7) requires Planning staff to distribute that decision to all parties of record in the next 2 days. Staff recommends deletion of proposed subsection (c)(7) because it is unnecessary and expensive to send specific notice to the parties of record when the decision will become a part of the case file, and all information in the case files are part of the public record and readily available for review.

Finally, staff strongly recommends deletion of subsection 50-35(f)(2)(C) which requires that any resolution of a conflict by the Department Directors be made a condition of the Planning Board's approval, and the language in subsection 50-35(f)(3) that prohibits the Board from disapproving a plan because of any resolution of a conflict submitted by the Department Directors. Under the County Code, the Planning Board has authority to make final decisions in many instances and this language would supercede that authority. In matters on which the Planning Board has decision-making authority, the Department Directors' resolution of a conflict should be considered like all other staff recommendations concerning the case.

Additional Staff Recommendations

In the early 1990's, the County Council, County Executive and the Planning Board also had concerns that the development review process had become too time consuming. To address the issue, the Council established a high level, interdepartmental committee composed of several key department heads that was charged with finding ways to streamline the process. The committee made ten specific recommendations that were published in the 1992 DAP *Implementation Report*. Among them was the recommendation for the clear assignment of responsibilities among reviewers, otherwise referred to as "lead agency" designation.

For several years, the participating DRC departments worked to implement the DAP recommendations and the steering committee continued to meet to track the progress being made. At that time, the consensus was that the process had improved. However, by early 2001, when Planning Department staff revisited the recommendations in a series of meetings with other DRC participants, they noted that some of the original problems were reoccurring. As a result of staffing changes, reorganizations and procedural changes in all the DRC-participant agencies, many were no longer operating under the ethic of the original recommendations. As recently as 2004, this problem was reconfirmed during the inter-agency discussions that occurred as part of the Planning Department's Management Improvement Program (MIP) study.

In staff's opinion, if the agencies and departments that participate in the DRC followed already existing lead-agency protocol and empowered their representatives to make decisions on their behalf, issues would be resolved more quickly. Therefore, we believe that an effort to revisit the tenets that were adopted as part of the 1992 *Implementation Report* would be a more meaningful way to address the current concerns about review times than the proposed amendment.

Moreover, Development Review staff is currently reexamining the review process in an effort to shorten it, provide greater certainty with respect to timing, and put in requirements that would prevent new issues from being raised late in the game. This streamlining effort, coupled with the zoning code rewrite, should go far in making the process a better one for all parties involved. Therefore, staff believes this SRA should be tabled until the streamlining effort has had a chance to achieve many of the same aims.

CC/GR

Attachments

1. Proposed SRA No. 09-02

ATTACHMENT 1

Ordinance No.:
Subdivision Regulation Amend. No.: 09-02
Concerning: Subdivision Review
Committee - Functions
Draft No. & Date: 3 - 6/19/09
Introduced: June 23, 2009
Public Hearing:
Adopted:
Effective:

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: Councilmember Floreen

An Amendment to the Subdivision Regulations to:

- (1) resolve certain conflicts between departments and agencies concerning the conditions of the approval of a preliminary subdivision plan; and,
- (2) generally revise the requirements for the approval of preliminary subdivision plan.

By amending:

Montgomery County Code
Chapter 50, Subdivision of Land
Section 50-35

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

2 **Sec. 1. Section 50-35(c) is amended as follows:**

3 **50-35. Preliminary subdivision plans-Approval procedure.**

4 * * *

(c) *Subdivision Review Committee.*

9 (1) The Board must establish a [subdivision review committee]
10 Subdivision Review Committee consisting of Planning
11 Department staff and staff of any County agency to which a
12 given plan has been referred, to meet with applicants and other
13 interested persons to facilitate agency review of the plan[,] or to
14 reconcile conflicting requirements by different agencies. Each
15 County agency to which a preliminary subdivision plan is
16 referred must designate a representative to the subdivision review
17 committee. For the purpose of plan review, the head of any
18 participating County agency must delegate authority to a
19 representative to speak for the agency.

20 After receiving the comment of each agency and any
21 recommendation from members of the [subdivision review
22 committee] Subdivision Review Committee, the Planning
23 Department staff must prepare its recommendation to the Board
24 with regard to public requirements for the subdivision, the
25 reconciliation of conflicting agency comments, and any other
26 issue regarding compliance with applicable law and regulations.

27 (3) If ~~[[any]]~~ after all necessary information from the applicant has
 been submitted and coordination between Subdivision Review
 Committee participants has occurred, but a recommendation or
 requirement of a County agency, State agency, or utility or other

28 Committee participant continues to conflict[[s]] with any other
29 recommendation or requirement or with any recommendation of
30 the Planning staff, and the conflict is not resolved within 30 days
31 after [[the Subdivision Review Committee meeting at which]] the
32 conflict arose, the Planning Director must submit the conflict
33 within 35 days after [[that Subdivision Review Committee
34 meeting]]identifying the conflict to a meeting of the Directors of
35 all County Departments [[which are represented at the
36 Subdivision Review Committee]]whose requirements or
37 recommendations are in conflict. The meeting must include the
38 Director of:

39 each appropriate County Department;

40 (B) the Planning Department; and

41 (C) if necessary to resolve the conflict, the Washington Suburban
42 Sanitary Commission.

43 The Planning staff must document each issue submitted to the
44 Department Directors in the record of the subdivision plan.

45 (5) The Department Directors must meet to resolve each conflict
46 within 30 days after the conflict was submitted to them.

47 The Department Directors must resolve each conflict and must
48 report their recommended resolution of the conflict to the
49 Planning Board by memorandum within 5 days after their
50 meeting.

51 (7) [[The Planning Staff must distribute the Department Directors'
52 report to the parties of record within 2 days after the Board
53 receives the report.]]

- 54 (d) *Road grade and road profile.* Before the Board finally approves a
55 preliminary plan, the subdivider must furnish road, and pedestrian path
56 grades and a street profile approved in preliminary form by the County
57 Department of Transportation.
- 58 (e) *Wells and septic systems.* Before the Board approves a plan for lots
59 with individual wells or septic systems, the plan must be approved by
60 the Department of Permitting Services.
- 61 (f) [*Presentation of plan to*] *Board action.* Every preliminary plan must be
62 presented to the Board for its review and action at the earliest regular
63 meeting after the Planning staff has completed its study and is ready to
64 make its recommendation, but not later than the first regular meeting
65 which occurs after 60 days after the Planning staff accepted the
66 application as complete. Any extension of time granted for review by
67 other agencies or for resolution of a conflict by the relevant Department
68 Directors must be added to the 60 days. The Board must take one of the
69 following actions:
- 70 (1) Approve, if the plan conforms to the purposes and other
71 requirements of this Chapter.
- 72 (2) Approve, with any conditions or modifications necessary to bring
73 the proposed development into compliance with all applicable
74 requirements.

75 If it approves a preliminary plan for a cluster or MPDU
76 optional method development, the Board may require that,
77 to resolve specific environmental or compatibility issues,
78 certain detached dwellings must not be included in an
79 application for a record plat until a site plan is approved

80 under Division 59-D-3, and as required in Sections 59-C-
81 1.521 and 59-C-1.63.

82 Any modification of a road or grades must be approved by
83 the County Department of Transportation.

84 (C) [[If the Board approves a preliminary plan that involves a
85 conflict which was resolved under subsection (c), the
86 resolution of the conflict must be made a condition of
87 approval and is binding on each participating department
88 or agency.]]

89 (3) Disapprove, if contrary to the purposes and other requirements of
90 these regulations. [, said] Any disapproval [to be by written
91 notice to the applicant stating the reasons therefor] must
92 [[specify]] state [[each]] the reasons in writing and be sent to the
93 applicant. [[The Board must not disapprove a plan because of
94 any resolution of a conflict submitted to it under subsection (c).]]

95 [Following approval of] After the Board approves a preliminary plan
96 [by the Board], [no] another agency [shall] must not require a
97 substantial change in the plan[,] other than [those] a change [[which]]
98 that [may be] is required by [conditions] a condition of approval
99 specified by the Board, [except upon amendment of] or as the Board
100 later amends the plan[, approved by the Board,] or [under procedures
101 for revocation of a plan as provided by] revokes its approval under
102 subsection (i) [of this section, title, "revocation of approval."].

103 *Approved:*

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105

106 Isiah Leggett, County Executive Date

107 *This is a correct copy of Council action.*

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110 Linda M. Lauer, Clerk of the Council Date