



Request to File a Zoning Text Amendment

- Robert Kronenberg, Supervisor, Area 1, Robert.kronenberg@montgomeryplanning.org, 301-495-2187
- Rose Krasnow, Chief, Rose.Krasnow@montgomeryplanning.org, 301-495-4591

Completed: 01/19/2012

Description

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow developers to provide additional forms of surety to insure the completion of site plan elements; and
- clarify the language to state that the bond being required by the Planning Board covers only certain certified site plan elements.

Staff recommends that the Planning Board submit the proposed Zoning Text Amendment to Council for Introduction.

Analysis

Section 59-D-3.5(d) of the Montgomery County Zoning Code reads as follows:

The Planning Board may require the applicant to post a performance bond securing compliance with and full implementation of all features of the certified site plan in an amount set by the Planning Board. If a bond is required, the Department must not issue a sediment control permit, building permit, or use-and-occupancy permit until this bond is posted.

Although the Board has had the authority to require an applicant to post a performance bond to insure completion of features associated with a site plan for some time, it did not start imposing this requirement until a few years ago when, as the result of the economic downturn, a few developers began to walk away from projects before all of the required elements were completed. The Board recognized that it was in the public interest to insure that funds would be available to bring about the completion of these site plan features in the event that the developer was unable to do so. However, based on the language in the code, the required

surety had to be in the form of a “performance bond.” Several developers, as well as the Development Guaranty Group (DGG) of Montgomery County, an adjunct to the Maryland National Capital Building Industry Association, have found this requirement to be too restrictive and have requested that other forms of surety, such as revocable letters of credit or cash bonds, be deemed acceptable. It is important to point out that these other forms of surety are already accepted by other agencies involved in site plan review as well as by M-NCPPC with respect to bonding for forest conservation requirements. Therefore, staff is recommending that 59-D-3.5(d) be modified to add the underlined words below:

The Planning Board may require the applicant to post a performance bond or other form of surety approved by the Planning Board securing compliance with.....

Similarly, DGG pointed out that the current language in 59-D-3.5(d) says that the purpose of the required performance bond is “to secure compliance with and full implementation of **all** features of the certified site plan.” In fact, the Board has only been requiring the surety for certain features of a certified site plan, such as sidewalks and street trees. DGG was concerned that if a project was not completed, the surety agent might be found liable for numerous items shown on a site plan that were never intended to be covered by the bond. Therefore, staff is recommending that the language be further amended to include the underlined word below:

....securing compliance with and full implementation of specified features of the certified site plan....

These two minor changes to Section 59-D-3.5(d) should make it easier for developers to post the surety that is now required before a building permit can be issued. This, in turn, will facilitate the ability of projects to move forward in a timely manner. The proposed language is attached, as is a draft of the transmittal letter that would need to be sent to the County Council in the event that the Board approves staff’s recommendation.

Attachment 1: Proposed ZTA

Attachment 2: Draft Transmittal Letter



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

OFFICE OF THE CHAIRMAN

January 27, 2012

The Honorable Roger Berliner, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

Re: Planning Board Recommendation on Transmittal to County
Council for Introduction and Review of a small number of County
Code revisions to Chapter 59 pertaining to Planning Board
Bonding of Site Plan Elements

Dear Mr. Berliner and Councilmembers:

On January 26, 2012, in response to a request from the Development Guaranty Group (DGG) of Montgomery County, an adjunct to the Maryland National Capital Building Industry Association, the Planning Board recommended two minor changes to Section 59-D.3 of the Zoning Ordinance. Specifically, Section 59 –D-3.5(d) contains the following language:

The Planning Board may require the applicant to post a performance bond securing compliance with and full implementation of all features of the certified site plan in an amount set by the Planning Board. If a bond is required, the Department must not issue a sediment control permit, building permit, or use-and-occupancy permit until this bond is posted.

Despite having the ability to do so, the Planning Board did not start requiring such surety until a few years ago, when the economic downturn resulted in a number of developers walking away from a project before all of the required elements, such as street trees and sidewalks, were completed. The Board recognized that it was in the public interest to have funds available to ensure the completion of these features in the event that the developer was unable to do so. However, when the Board started requiring such surety, only a “performance bond” was deemed acceptable given the language in the code. Several developers requested that other forms of surety, such as a letter of credit, be deemed acceptable. Although the Planning Board is more than willing to accept other forms of surety, this cannot be done without a change to the language in the code. Specifically, the Board recommends that the code be modified to add the underlined words below:

The Planning Board may require the applicant to post a performance bond or other form of surety approved by the Planning Board

The Honorable Roger Berliner

January 27, 2012

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Similarly, DGG pointed out that the current language in 59-D-3.5(d) says that such a performance bond secures compliance with “all features of the certified site plan.” In fact, the Board has only been requiring the surety for certain features of a site plan. DGG was concerned that should an issue arise with respect to the completion of a project, the surety agent might be found liable for numerous items shown on a site plan that were never intended to be covered by the bond. Therefore, the Board is recommending that the language be amended to include the underlined word below:

securing compliance with and full implementation of specified features of the certified site plan....

These two minor changes to Section 59-D-3.5(d) should make it far easier for developers to provide the surety that is now required before a building permit can be obtained. Members of the Planning Board and Planning Department staff are available to assist the Council in the review of the proposed legislation necessary to implement our recommendations.

Sincerely,

Francoise Carrier

FC:rk

Attachments

cc: Planning Board
Rollin Stanley

Zoning Text Amendment No: 12-
Concerning:
Site Plans – bond requirements
Site Plans
Draft No. & Date: 1 1/26/12
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No:

**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:

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow developers to provide additional forms of surety bonds to insure the completion of site plan elements; and
- clarify the language to state that the bond being required by the Planning Board covers only certain certified site plan elements.

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

Division 59-D-3 “Site Plan”
Section 59-D-3.5 “Effect of Site Plan”

EXPLANATION:

Boldface indicates a heading or a feigned 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

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:

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Sec. 1. Division 59-D-3 is amended as follows:

DIVISION 59-D-3. SITE PLAN.

* * *

Sec. 59-D-3.5. Effect of site plan.

* * *

(d) The Planning Board may require the applicant to post a performance bond or other form of surety approved by the Planning Board securing compliance with and full implementation of specified features of the certified site plan in an amount set by the Planning Board. If a bond is required, the Department must not issue a sediment control permit, building permit, or use-and-occupancy permit until this bond is posted.

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council