



Zoning Text Amendment (ZTA) No. 12-04, Site Plans-Surety

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Completed 3/1/12

Description

ZTA No. 12-04 proposes to allow developers to provide additional forms of surety to insure the completion of site plan elements; and to clarify the language to state that the surety being required by the Planning Board covers only certain certified site plan elements.

Summary

Staff recommends approval of ZTA 12-04, as introduced, to allow developers to provide additional forms of surety to insure the completion of site plan elements; and to clarify the language to state that the surety being required by the Planning Board covers only certain certified site plan elements. ZTA 12-04 as introduced reflects the language as requested by the Planning Board in its transmittal letter to the County Council dated February 2, 2012.

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, such as street trees and sidewalks, were completed. The Board recognized that it was in the public interest to make sure that funds would be available to ensure the completion of these site plan features in the event that the developer was unable to 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.

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.

ZTA 12-04 reflects the minor changes to Section 59-D-3.5(d) necessary to make it easier for developers to provide 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.

ATTACHMENTS

1. ZTA 12-04 as introduced

ATTACHMENT 1

Zoning Text Amendment No.: 12-04
Concerning: Site Plans - Surety
Draft No. & Date: 1 – 2/2/12
Introduced: February 14, 2012
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: District Council at the request of the Planning Board

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 surety 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 defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate that text is deleted from existing law by 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.

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

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

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