

ITEM #10

PHED ITEMS **1-8**
February 6, 2006
Worksession

Committee members should bring last week's packet for reference.

MEMORANDUM

TO: Planning, Housing, and Economic Development Committee

FROM: *NA* Michael Faden, Senior Legislative Attorney
Ralph Wilson, Senior Legislative Analyst
Sonya Healy, Legislative Analyst

SUBJECT: **Worksession:**
Legislation to modify County development approval and implementation process
ZTA 05-20, Site Plans-Approval, Amendment and Enforcement
ZTA 05-19, Site Plan Enforcement
ZTA 05-17, Site Plan Enforcement
SRA 05-04, Site Plan Enforcement
Bill 35-05, Permitting Services-Site Plan Enforcement
ZTA 05-18, Hearing Examiner - Planning Board
SRA 05-06, Subdivision and Site Plans-Coordination with other agencies
SRA 05-05, Planning Board Actions-Enforcement

Council staff recommendations

Attached are revised versions of several of the listed items. They incorporate the amendments this Committee approved in concept during your worksessions on January 30-31 and February 2.

Council staff recommends that the Committee report the following (as revised for all but SRA 05-06) to the Council with a recommendation to enact each:

- **ZTA 05-20** (see 1-17), revising the site plan approval and amendment process;
- **ZTA 05-18** (see ©18-21), authorizing the Planning Board to assign site plan violation hearings to a hearing officer;
- **SRA 05-05** (see ©22-25), which clarifies the respective roles of the Planning Board and its staff in enforcement actions (and, as revised, incorporates part of **SRA 05-04**); and
- **SRA 05-06** (see ©26-30), which attempts to assure that the relevant County agencies submit recommendations on time when the Development Review Committee is considering proposed subdivision plans.

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Council staff recommends that the Committee hold the following for further action:

ZTA 05-19, Site Plan Enforcement (see ©31-35);

ZTA 05-17, Site Plan Enforcement (see ©36-40);

SRA 05-04, Site Plan Enforcement (see ©41-43);

Bill 35-05, Permitting Services-- Site Plan Enforcement (see ©44-45).

If the Committee wants to confirm at this point that primary **enforcement authority** for site plans will remain with the Planning Board, you could amend and report to the Council either of these ZTA's and the SRA. However, given the Committee recommendation that the Planning Board and Department of Permitting Services draft a memorandum of understanding on their respective inspection and enforcement roles vis-à-vis site plans, we think legislative action now would be premature. If the law ultimately needs to be amended to revise the duties and relationship of DPS and the Board, these items can serve as legislative vehicles.

Also, if the Committee agrees with DPS Director Hubbard that the zoning law should be amended now to require each single-family house (including most townhouses) to receive a **use and occupancy permit** (see discussion below), both of these ZTA's include that provision and either one could be amended to delete its other changes and sent to the Council.

Site plan process

ZTA 05-20 (see ©1-17) has been thoroughly revised to reflect Committee recommendations as well as valuable substantive and technical drafting comments from Planning staff members and attorneys, Council advisor Royce Hanson, Office of Zoning and Administrative Hearings Director Françoise Carrier, People's Counsel Martin Klauber, and Maryland-National Capital Building Industry Association attorney William Kominers. Needless to say, not all of them endorse every line of this draft.

Committee members might pay special attention to lines 5-17 and 142-167, which revises the Planning Board's site plan approval process. Council and Planning staffs extensively discussed this language since the last Committee worksession. In our view it achieves the goals of presenting an integrated site plan to the Board for decision while recognizing the practical difficulties of requiring all applicable drawings at that point. The Board's site plan action would be a resolution which contains all required findings of fact and conclusions of law as well as the other essential elements of the site plan.

Committee members also should review the site plan amendment process as redrafted in lines 291-366, and particularly lines 323-326, directing the Planning Board to adopt regulations, subject to Council disapproval, to define minor site plan amendments, and lines 327-345, which contains the notice requirements for proposed minor amendments.

Mr. Hanson continues to believe that several of the changes in **ZTA 05-20** are inadvisable, including allowing the Planning Director rather than the Board to approve some site plan amendments and giving the Council the authority to disapprove Planning Board regulations.

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Most specifically, he concludes that “consistent with” should not be replaced by “conforms to” in many places:

It is a great mistake to change the term “consistent” to “conform” in most instances. While there are some cases where the change is appropriate—as in requiring building permits to conform to site plans, it is most inappropriate, and invites litigation, higher and unnecessary front-end costs, etc., to require conformity rather than consistency with projects or development plans or schematics. If the new term had always been used and practice had established its meaning I would be less bothered, but by changing the term, any one interpreting the statute would be derelict in his/her duty not to conclude that the Council meant to require a more exact replication of the antecedent document, drawing, etc. than was required by the old term. As I see it, this change in terms eliminates the prospect of the Board ever approving a site plan that is “not inconsistent with” a less fully defined project plan. This change will persuade applicants to perform unnecessary detailed work at the development plan stage to ensure that a later site plan cannot be challenged for failure to conform to it.

Council staff respects but does not agree with these conclusions. If changes are necessary in any preceding plan, they can be approved simultaneously with approval of a site plan. Most important, in our view “conforms to” is a more rigorous standard which, when applied, would lead to better staff reviews and less unintended variation between Planning Board documents.

Use and occupancy permit

At the end of the last Committee worksession, DPS Director Hubbard asked to Committee to specifically consider the issue of whether to require each single-family house (including most townhouses) to receive a use and occupancy permit, as proposed in ZTA 05-17 (see ©37-38) and ZTA 05-19 (see ©33-34). Currently only multi-family housing (and commercial buildings) require use and occupancy permits. Most area jurisdictions, including the City of Rockville, require use and occupancy permits for all types of housing.

At the public hearing Mr. Hubbard supported this change (see testimony, ©46). The only other speaker who addressed this issue in written testimony was Dan Wilhelm, speaking for the County Civic Federation, who said they “don’t see a need for it since a final inspection should ensure that the building meets County code requirements.” Planning staff members informally supported adding this requirement, but the Board has not taken an official position.

DPS staff advised that issuing use and occupancy permits for all housing would require 3 more inspectors and one permit technician, all fee-paid positions. The Committee could discuss this in the context of the fee regulation that follows this legislation on today’s agenda. Alternatively, especially if the Committee holds these ZTA’s for possible further action, the Committee could review this issue in the context of the FY07 operating budget, especially since DPS probably could not implement this change until July 1 or later.

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Zoning Text Amendment No: 05-20
Concerning: Site Plans – Approval,
Amendment and Enforcement
Draft No. & Date: 5 2-3-06
Introduced: November 29, 2005
Public Hearing: January 17, 2006
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

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:
Revising the process to approve, amend, and enforce site plans.

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

DIVISION 59-A-2 Definitions and interpretation
Section 59-A-2.1
DIVISION 59-D-3 Site Plan
Sections 59-D-3.0 through 59-D-3.8

*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.*

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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27 In [the zones] any zone identified in Article 59-C as requiring site plan
28 approval, [no] the Department must not issue a sediment control permit, [and no]
29 building permit, or use-and-occupancy permit for [the construction or use of] any
30 building or structure [may be issued];

- 31 (a) until the Planning Board approves a site plan [is approved], and
32 (b) unless [it is in accordance with an] the building or structure conforms
33 to the approved site plan.

34 The date a site plan is approved, for purposes of this Section, is the date that
35 the Planning Board Chair signs the approval resolution under Section 59-D-
36 3.4(f)(1).

37 **59-D-3.1. Requirements.**

38 **59-D-3.1.1. Ownership; identity of applicant.**

- 39 (a) [The] Each proposed site plan must be filed with the Planning Board;
40 it]. A proposed site plan may cover all or any part of a lot or tract[,
41 and].
- 42 (b) An application for site plan approval may be filed only by one or
43 more persons with a financial, contractual, or proprietary interest in
44 the property where the development would be located.
- 45 (c) If any land or right-of-way is owned or controlled by the State, the
46 County, or another political subdivision or government entity,
47 including the Washington Metropolitan Area Transit Authority
48 ("WMATA"), a person who otherwise qualifies under subsection (b)
49 may apply for site plan approval for development on that land if the
50 application includes a final agency agreement or other written
51 authorization from the government entity authorizing the person to
52 include the public land or right-of-way in the application.

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53 (d) If a property is located entirely in an area designated as an urban
54 renewal area under Chapter 56, the landowner, a contract purchaser,
55 or another legal entity or individual holding a legal interest in the
56 land, in whole or in part, may file a site plan application that includes
57 any other property that is also located entirely in the same urban
58 renewal area.

59 **59-D-3.1.2. Conformity with previous actions.**

60 Each proposed site plan must meet the following requirements:

- 61 (a) If the land is classified in a zone that requires a development plan, the
62 site plan must [~~be consistent with~~] conform to the approved
63 development plan.
- 64 (b) If the site plan is for land classified under Section 59-H-2.5, [title
65 "Contents of Optional Method of Application-Local Map
66 Amendments,"] the site plan must [~~be consistent with~~] conform to
67 each binding element of the approved schematic development plan[,
68 development program,] [~~and each recorded covenant~~].
- 69 (c) If the site plan is for the optional method of development in a CBD
70 Zone, [it] the site plan must [~~be consistent with~~] conform to a project
71 plan approved under Division 59-D-2.
- 72 (d) If the site plan is for land classified in the MXN Zone, [it] the site plan
73 must [~~be consistent with~~] conform to a diagrammatic plan approved
74 [~~in accordance with~~] under Division D-4.
- 75 (e) If the site plan does not cover the entire lot or tract or the entire area
76 included in any [of the plans] plan cited in the preceding paragraphs,
77 [it] the site plan must show how it is related to and coordinated with
78 other site plans either approved, under consideration, or yet to be
79 submitted.

80 [(f) An overlay zone must specify the required elements of the site plan,
81 and the site plan must be consistent with all standards and regulations
82 of the overlay zone.]

83 **59-D-3.2. Contents of proposed site plan.**

84 [The] Each proposed site plan must include the following, with all [of the]
85 maps [being] drawn at a consistent scale:

86 **59-D-3.21. Subdivision plan information.**

87 The information required for the submission of a preliminary subdivision
88 plan], as set forth in] under Chapter 50. [An application for site plan approval
89 must be filed with the planning board by a person with a financial, contractual, or
90 proprietary interest in the property. If land or rights-of-way is owned or controlled
91 by the State of Maryland, the county, or other political subdivision, government
92 entity or agency, or the Washington Metropolitan Area Transit Authority
93 ("WMATA"), a person may file an application for the land if the application
94 includes an agency agreement or other written authorization from the government
95 entity, agency or WMATA authorizing the person to include the public land or
96 rights-of-way as part of the application. If a property lies entirely in an area
97 designated as an urban renewal area under Chapter 56 the landowner, contract
98 purchaser, a legal entity, or individual holding legal interest, whether in whole or
99 in part, may file a site plan application that may include any other property also
100 located entirely in the urban renewal area.]

101 * * *

102 **59-D-3.23. Proposed development.**

103 A plan of the proposed development, including ~~[[but not limited to]]~~ the
104 following information unless waived by the Planning Director at the time of
105 application as ~~[[being]]~~ unnecessary because of the limited scope of the proposal:

106 * * *

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107 (p) Verification that the applicant has posted notice on the property,
108 notified affected parties, and held a pre-submittal meeting with the
109 public, as required by Planning Board regulations which are subject to
110 District Council review and disapproval as if they were submitted
111 under method 2 of Section 2A-15.

112 **59-D-3.3. [Reserved] Zoning certification.**

113 (a) If any part of the land included in the site plan is classified under a
114 zone that was applied [[under]] through a local map amendment
115 which included a development plan, schematic development plan, or
116 diagrammatic plan that the District Council approved, the applicant
117 must submit a sworn statement]], signed by the applicant or its
118 counsel,]] certifying that the site plan conforms to [[all binding
119 representations made to]] the plan approved by the District Council
120 during the local map amendment process]], including representations
121 about type of use, density, building height, floor area ratio, setbacks,
122 landscaping and parking, as well any other element on which the
123 District Council expressly relied in reaching its decision]].

124 (b) This certification does not relieve the Planning Board of its duty to
125 independently determine that the site plan [[is consistent with]]
126 conforms to any applicable development, diagrammatic, [[plan]] or
127 [[the binding elements of any applicable]] schematic development
128 plan.

129 **59-D-3.4. Action by Planning Board.**

130 (a) [A] The Planning Board]], or a hearing officer designated by the
131 Board,]] must hold a duly noticed public hearing [must be held by the
132 Planning Board] on each site plan application. The Planning Board
133 must [[approve, approve [subject to modifications] with amendments,

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134 or disapprove]] take final action on the proposed site plan not later
135 than 45 days after [receipt of the site plan] receiving the application,
136 unless the applicant agrees to extend the time for Board action. [[,
137 but]] However, [such action and notification is not required] the
138 Planning Board need not act before [the approval of] a preliminary
139 plan of subdivision involving the same property is approved. The
140 Planning Board [then] must notify the applicant and all other parties
141 of record in writing of its action.

142 (b) [[The site plan approved by the Planning Board must be a single
143 document which controls what the applicant may build on the
144 specified site. The Planning Board must specify all applicable
145 conditions and requirements in the approved site plan. When the site
146 plan is approved by the Planning Board, it must contain all applicable
147 data, maps, drawings, and other information. The Planning Board's
148 opinion (when an opinion is legally required) is part of the approved
149 site plan, has no separate legal effect, and must briefly describe the
150 Board's findings and conclusions. The approved site plan must not
151 incorporate any other document by reference.]]

152 The Planning Board must consider each recommended site plan after
153 holding the public hearing required under subsection (a), and at the
154 same or a later meeting must by resolution approve, approve with
155 conditions, or disapprove the proposed site plan. The Planning Board
156 resolution must contain:

- 157 (1) all necessary findings of fact and conclusions of law;
158 (2) all applicable conditions and requirements of site plan approval,
159 if the plan is approved; and
160 (3) all applicable data, maps, drawings and other information.

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161 The resolution may allow the applicant to submit any required
162 detailed engineered drawings at a later time. If the Planning Board
163 approves the site plan, the Planning Director or the Director's
164 designee must sign a certified site plan, including all drawings
165 submitted after the Planning Board's action, that conforms strictly to
166 the Board's approval resolution. The certified site plan must control
167 what the applicant may build on the specified site.

168 (c) In reaching its decision the Planning Board must [determine whether]
169 require that:

170 (1) the site plan [is consistent with] conforms to [[an approved]] a
171 development plan, schematic development plan, or
172 diagrammatic plan certified by the Hearing Examiner under
173 Section 59-D-1.64, or [[a]] an approved project plan for the
174 optional method of development, if required, unless the
175 Planning Board expressly modifies any element of the project
176 plan;

177 (2) the site plan meets all of the requirements of the zone in which
178 it is located, and where applicable [is consistent with] conforms
179 to an urban renewal plan approved under Chapter 56[.];

180 (3) the locations of [the] buildings and structures, [the] open
181 spaces, [the] landscaping, recreation facilities, and [the]
182 pedestrian and vehicular circulation systems are adequate, safe,
183 and efficient;

184 (4) each structure and use is compatible with other uses and other
185 site plans, and with existing and proposed adjacent
186 development; and

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187 (5) the site plan meets all applicable requirements of Chapter 22A
188 regarding forest conservation, [and] Chapter 19 regarding water
189 resource protection, and any other applicable law.

190 [(b)] (d) The Planning Board [shall] must not approve the proposed site plan
191 if it finds that the proposed development would not achieve a
192 maximum of compatibility, safety, efficiency and attractiveness]; and
193 the]. The fact that a proposed site plan [complies] may comply with
194 all [of the stated general regulations,] applicable development
195 standards or other specific requirements of the applicable zone [shall]
196 does not, by itself, [be deemed to] create a presumption that the
197 proposed site plan is, in fact, compatible with surrounding land uses
198 and, in itself, [shall] is not [be] sufficient to require [approval of] the
199 Planning Board to approve the proposed site plan.

200 (e) In the resolution approving a site plan, the Planning Board may
201 expressly designate:

202 (1) certain elements of the plan as [[binding]] essential elements
203 that must not be modified [[without]] except by a plan
204 amendment approved by the Planning Board under Section 59-
205 D-3.7; and

206 (2) other elements as guidelines that will have minimal effect on
207 the overall design, layout, quality, or intent of the plan, and
208 which may be modified by minor plan amendments under
209 Section 59-D-3.7[[c)(6)] unless the Planning Director
210 recommends that any specific modification be treated as a
211 major plan amendment.

212 [(c)] (f) [[Upon approval]] After final Planning Board action, the site plan
213 approval resolution must be:

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- 214 (1) Signed by the applicant agreeing to execute all the features and
215 requirements that are part of the site plan;
- 216 (2) Signed by the ~~[[Chairman of the]]~~ Planning Board Chair, or
217 ~~[his]~~ the Board's designee, certifying Planning Board approval
218 of the site plan; and
- 219 ~~[(3)]~~ (2) Forwarded to the Department for reference in issuing
220 building permits under Section 59-D-3.5.

221 ~~[(g)]~~ When a hearing officer is designated to conduct a hearing under this
222 Division, the officer must forward a written report, with a
223 recommendation for decision, to the Planning Board, including
224 findings of fact and conclusions of law where required or
225 appropriate.]]

226 59-D-3.5. Effect of site plan.

- 227 (a) In the case of any land in a zone requiring site plan approval[, as
228 provided in article 59-C,] or any special exception for which site plan
229 approval is a condition, [as provided in sections 59-A-4.22 and 59-G-
230 1.22(b),] the Planning Board must not approve a record plat [required
231 by chapter 50 of this Code, title "Subdivision of Land,"] ~~[[must not be~~
232 ~~approved]]~~ unless [it is in strict compliance] the plat strictly
233 [[complies with a]] conforms to the approved site plan ~~[[approved]]~~
234 [as provided by this division 59-D-3] ~~[[by the Planning Board]]~~.
- 235 (b) [No] A sediment control permit, building permit, or use-and-
236 occupancy permit [may] must not be issued unless [it is in strict
237 compliance] each strictly complies with an approved site plan.
- 238 (c) All [the] requirements and features that are part of the approved site
239 plan must be ~~[[executed]]~~ implemented [in accordance with] as
240 specified in the [applicant's] development program required by

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241 section 59-D-3.23(m), as modified by the Planning Board in the
242 approved site plan or at any later time.

243 (d) If any part of an approved site plan conflicts with any previously
244 approved project, urban renewal, or preliminary subdivision plan, the
245 site plan governs. [[In any conflict between 2 or more provisions of
246 an approved site plan, the most rigorous provision governs.]]

247 (e) [A] The Planning Board may require the applicant to post a
248 performance bond securing compliance with and full [[execution]]
249 implementation of all features of the site plan [may be required to be
250 posted with the Planning Board] in an amount [established] set by the
251 Planning Board. [In such cases, no] If a bond is required, the
252 Department must not issue a sediment control permit, building permit,
253 or use-and-occupancy permit [may be issued] until this bond is
254 posted.

255 **59-D-3.6. Failure to comply.**

256 (a) If the Planning Board finds [[reason to conclude]], [[for any site plan
257 approved under this Section,]] on its own motion or after a complaint
258 is filed with the Planning Board or the Department, and after giving
259 due notice to the applicant, the complainant, and all parties previously
260 before the Board on this plan and holding a public hearing or
261 receiving a report of a public hearing held by a designated hearing
262 officer, that any [of the terms, conditions or restrictions upon which]
263 term, condition, or restriction in [[the]] [site] an approved site plan
264 [was approved are] is not being complied with, the Planning Board[[,
265 after due notice to the applicant and all other parties concerned and a
266 public hearing held by the Planning Board or a hearing officer
267 designated by the Board,]] may suspend or revoke [its approval of the]

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268 the site plan or approve a [plan of] compliance program which would
269 permit the applicant to take corrective action to comply with the site
270 plan, propose modifications to the site plan, or both.

271 (b) If at the end of the [term of the plan] effective period of the
272 compliance program approved by the Planning Board, the Planning
273 Board finds that the applicant has not taken sufficient corrective
274 action [has not taken place to cause compliance], the Planning Board
275 may without holding further hearings revoke [its approval of] the site
276 plan or take other action necessary to ensure compliance, including
277 imposing civil fines, penalties, stop work orders, and corrective orders
278 under Chapter 50. The Planning Board may [request and] obtain
279 investigations and reports as to compliance from appropriate County
280 or State agencies.

281 (c) [Upon decision by the Planning Board to revoke approval of] If the
282 Planning Board suspends or revokes a site plan, the Department must
283 immediately suspend any applicable building [permits and] permit or
284 use-and-occupancy [permits issued pursuant to a prior Planning Board
285 approval are hereby declared invalid] permit until the Planning Board
286 reinstates the site plan or approves a new site plan for the
287 development.

288 **59-D-3.7. Amendment of a site plan.**

289 [A major plan amendment or minor plan amendment is defined as set forth
290 in Sec. 59-D-2.6.]

291 (a) The owner of the property to which an approved site plan applies]],
292 the Director, or the Planning Director,]] may apply at any time for an
293 amendment to an approved site plan. Each application [[for an
294 amendment]] must show every proposed amendment, in a format

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295 approved by the Planning Board, on a copy of the approved site plan.
296 The amendment process required in this Section is the only way an
297 approved site plan may be changed.

298 (b) The Planning Board [[may]] must approve any proposed site plan
299 amendment other than a minor site plan amendment as defined under
300 subsection (c) after [[giving the applicant and any other affected
301 person an opportunity for]] holding a public hearing [[before the
302 Planning Board or a hearing officer designated by the Board]]. The
303 Planning Director, but not any other member of the Planning staff,
304 may approve a minor site plan amendment as provided in this Section.

305 [[c) A minor amendment is a site plan amendment that would only:
306 (1) increase or decrease the height, setback, or gross floor area of a
307 building by no more than 5 percent;
308 (2) increase or decrease the land area covered by a structure other
309 than a building by no more than 5 percent;
310 (3) redesign a parking or loading area in a way that does not
311 significantly affect any neighboring property;
312 (4) redesign a landscape plan in a way that does not alter basic
313 elements of the plan or significantly affect any public area or
314 neighboring property;
315 (5) approve any modification required by engineering necessity in
316 grading, utilities, stormwater management, or any similar plan
317 element, in a way that does not significantly affect any public
318 area or neighboring property; or
319 (6) modify any other plan element that the Planning Board, in
320 approving that site plan, designated as an element that will have

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321 minimal effect on the overall design, layout, quality, or intent of
322 the plan.]]

323 (c) The Planning Board must adopt regulations, subject to District
324 Council review and disapproval as if they were submitted under
325 method 2 of Section 2A-15, that define which site plan amendments
326 may be treated as minor amendments under this Section.

327 (d) [[Along with any other notice required by the Planning Board's rules
328 of procedure, the]] The applicant must post a conspicuous notice of
329 each proposed minor amendment within 3 days after filing the
330 application with the Planning Director at one or more places
331 [[designated]] and in a form and content approved by the Planning
332 Director. The applicant also must send written or electronic notice, in
333 a form and content approved by the Planning Director, within 3 days
334 after filing the application, to:

335 (1) each person who received notice of the hearing that the
336 Planning Board held before the site plan was approved;

337 (2) the owner and (if known or reasonably identifiable by the
338 applicant) any contract purchaser of each adjoining and
339 confronting property; and

340 (3) each registered civic organization in the area of the property, as
341 determined by the Planning Director.

342 If a recipient of notice under this subsection, or any other person who
343 lives within one mile of the affected property, has not filed a written
344 or electronic request for a public hearing [[is not filed]] within [[10]]
345 15 days after the notice is [[posted]] sent, the Planning Director may
346 act on the minor amendment without holding a hearing. [[The

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347 Planning Director must forward each minor amendment to the
348 Department immediately after approving it.]]

349 (e) Before approving a minor amendment, the Planning Director must
350 make any finding that the Planning Board would be required to make
351 if it reviewed the amendment. In approving a minor amendment, the
352 Planning Director must not waive any requirement of law (unless the
353 law otherwise allows the Planning Board to waive that requirement
354 [[to be waived]]) or modify any condition or requirement expressly
355 imposed by the Planning Board when it approved the site plan. The
356 Planning Director must forward each minor amendment to the
357 Department immediately after approving it.

358 (f) If the Planning Director declines to approve a minor amendment or
359 any [[affected]] person who is eligible to do so under subsection (d)
360 files a timely request for a public hearing, the Planning Director must
361 forward the amendment to the Planning Board for review under its
362 procedures for amendment approval unless the applicant withdraws
363 the amendment.

364 (g) The Planning Board Chair or the Board's designee must sign any
365 [[amendment to]] Board resolution that amends an approved site plan
366 [[that the Planning Board approves]]. The Chair must forward each
367 approved amendment to the Department immediately after signing it.

368 **59-D-3.8. Validity.**

369 (a) The [initiation date for commencing the validity] period during which
370 [time] a site plan [must be validated,] is effective [is] starts on the
371 later of:

372 (1) 30 days [from the date of mailing of the written opinion, as
373 such date is printed on the opinion] after the Planning Board

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374 Chair or a designee notifies the applicant and other parties that
375 the Chair or the Board's designee has signed the Board
376 resolution approving the plan; or

377 (2) [in the event] if an administrative appeal is timely noted by any
378 party who has standing [authorized] to [take an] appeal, the date
379 [upon which] when the court having final jurisdiction acts,
380 including the running of any further applicable appeal
381 [[periods]] period.

382 (b) The [validity] effective period of an approved site plan [is
383 conditionally tied to] depends on the expiration date of the underlying
384 approved preliminary plan. The site plan [will validate upon the
385 recordation of] takes effect when the final record plat is recorded for
386 all of the property [delineated on] covered by the approved
387 preliminary plan. Where phasing of development is [contemplated]
388 required, [validation of phases will be treated in the same manner]
389 each phase takes effect as provided in the preliminary plan. [Upon
390 recordation of] After the record plat is recorded, the approved site
391 plan [will] does not expire or require amendment [prior to the
392 issuance of] before a building permit is issued unless:

393 (1) the project's APFO approval expires; or

394 (2) changes to the applicable zoning map, [or] zoning text, or other
395 applicable laws or regulations require [a modification of] the
396 approved site plan to be modified.

397 [The forgoing] This subsection does not preclude an applicant from
398 seeking an amendment to an approved site plan to address minor
399 changes to the applicable zoning map, zoning text, or other applicable

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400 laws or regulations. In [such instances] that case, the approved site
401 plan [will not be deemed to have expired] remains in effect.

402 (c) [Extensions.] If [an extension is approved for the] a preliminary
403 subdivision plan is extended, then the site plan [will] must remain
404 [valid to the extent that] in effect as long as the preliminary plan
405 remains [valid] in effect.

406 **Sec. 3. Effective Date.**

407 This ordinance takes effect on March 1, 2006. Sections 59-D-3.1, 59-D-3.2,
408 3.3, and 59-D-3.4, as amended by this ordinance, apply to any site plan that the
409 Planning Board approves on or after that date. Sections 59-D-3.0, 59-D-3.5, 59-D-
410 3.6, 59-D-3.7, and 59-D-3.8, as amended by this ordinance, apply to all site plans
411 approved at any time before or after that date.

412

413 This is a correct copy of Council action.

414

415

416 Linda M. Lauer, Clerk of the Council

Date

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Zoning Text Amendment No: 05-18
Concerning: Hearing Examiner-Planning Board
Draft No. & Date: 3 - 2/3/06
Introduced: November 1, 2005
Public Hearing: January 17, 2006
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: Councilmember Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- authorizing the Planning Board to assign a hearing examiner to conduct a public hearing on a violation of a Planning Board action; and
- generally amending provisions related to the Planning Board's authority to assign matters to a hearing examiner.

By adding the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

**[[DIVISION 59-A-5 "COMPLIANCE REQUIRED"
Section 59-A-5.8 "Planning Board-Assignment of a Hearing Examiner"]]**
Division 59-A-1, Purpose and Applicability
Section 59-A-1.3. Violations, penalties, and enforcement

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.*

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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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1 **[[Sec. 1. Division 59-A-5 is amended as follows:**

2 **DIVISION 59-A-5. COMPLIANCE REQUIRED.**

3 * * *

4 **59-A-5.8. Planning Board Public Hearing—Assignment of Hearing**
5 **Examiner.**

6 The Planning Board may assign a hearing examiner to conduct a public hearing and
7 provide a report and recommendation on a document noting a violation of a Planning
8 Board action including any terms, conditions, requirements, or other obligations or limits
9 made by the Planning Board under state law and Chapter 50 and Chapter 59 including any
10 regulation issued under state or County law.]]

11 **Sec. 1. Section 59-A-1.3 is amended as follows:**

12 **59-A-1.3. Violations, penalties, and enforcement.**

13 (a) ~~[[Violations]]~~ Any violation of this Chapter may be ~~[[punishable]]~~
14 punished as provided in State law.

15 (b) In addition to all other remedies provided by law, any violation of this
16 Chapter may, as an alternative, be punished by a civil fine ~~[[of]]~~ not
17 exceeding \$500~~[[.00]]~~ for each offense or ~~[[such]]~~ any lesser penalty
18 ~~[[as may be set]]~~ allowed by regulation adopted under method 2.
19 Each day a violation continues is a separate offense.

20 (c) The Planning Board may assign a hearing officer designated by the
21 Planning Board, including a Hearing Examiner from the Office of
22 Zoning and Administrative Hearings, to conduct a public hearing and
23 submit a report and recommendation on any alleged violation of this
24 Chapter or any other Planning Board Action as defined in Section 50-
25 41. The hearing officer must submit the required report and
26 recommendation to the Planning Board not later than 60 days after the

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27 hearing record closes, but the hearing officer may by order extend the
28 time to file the report.

29 **Sec. 2. Effective date.** This ordinance [[becomes effective 20 days after the
30 date of Council adoption]] takes effect on March 1, 2006.

31

32 This is a correct copy of Council action.

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35 _____
Linda M. Lauer, Clerk of the Council