



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

**MCPB**  
**Item # 13**  
**06/14/07**

**DATE:** June 11, 2007  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review Division *RK*  
Ralph Wilson, Acting Zoning Supervisor *RW*  
**FROM:** Greg Russ, Zoning Coordinator  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To exempt minor building permits from a finding of conformance to an approved site plan; establish a procedure and standards for the approval of minor site plan amendments by the Planning Director; and generally amend site plan approval procedures  
**TEXT AMENDMENT:** 07-05  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance  
**INTRODUCED BY:** Councilmembers Leventhal, Floreen, Knapp and Ervin  
**INTRODUCED DATE:** May 8, 2007  
**PLANNING BOARD REVIEW:** June 14, 2007  
**WORK SESSION:** June 18, 2007

**STAFF RECOMMENDATION:** Transmit comments to the County Council as follows:

- A process needs to be established that will allow minor changes to a site plan to be made without the Planning Board's approval because the current system is burdensome to staff, applicants and the public. As such, staff agrees with this objective of Zoning Text Amendment 07-05
- Staff, however, has a number of concerns with the ZTA in its current form. Many of these concerns rise from the lack of clarity as to the intent of the modifications proposed by the text amendment. In addition, staff would like to propose some additional modifications to the current law. All of these items are discussed under the Analysis Section below.

## **BACKGROUND AND PURPOSE OF THE TEXT AMENDMENT**

Zoning Text Amendment (ZTA) No. 05-20 was introduced on November 29, 2005 to revise the process for approving, amending and enforcing site plans. The intent was to respond to issues that the Office of Legislative Oversight noted in Office of Legislative Oversight Report #2006-3, *Fact-Finding Review of the Clarksburg Town Center Project*. Prior to the adoption of ZTA 05-20, staff had been able to make changes to site plans administratively. However, the events in Clarksburg made it clear that the public was often unaware of these changes, and, in some cases, these amendments were being reviewed by only one staff member, with little or no oversight, and were not being properly documented. As soon as this became known, the Planning Department initiated a process whereby all minor changes had to be noticed and had to be approved by the Planning Director. ZTA 05-20 changed this procedure again, so that all changes, no matter how minor, had to go before the Planning Board for approval. Since ZTA 05-20 went into effect, the Planning Board has voted on every change, no matter how small. In those instances where the change has been minor in nature, and no comments have been received during the 15 day comment period, the items have been approved through the consent agenda process.

According to the sponsors of ZTA 07-05, these changes have proven to be burdensome to the public. Development Review asserts that these changes have also proven burdensome to applicants and staff. To be able to make even very small changes, such as adding an additional lighting fixture in a parking lot or paving a small area around a storm drain, an applicant has to submit an application with the necessary number of drawings, pay the necessary fee, send notices, etc. Then the applicant has to wait for a staff report to be written, with a resolution, so that it can be placed on the Board's agenda. For some older projects, locating the original site plan has been difficult and time-consuming. For newer projects, some builders have made changes without first seeking permission because of the time delays involved. When they submit an amendment, it is for approval of the as-built condition. In addition, staff has had to spend considerable time preparing staff reports and resolutions for numerous minor changes, and the Board has had to review each one.

To address the aforementioned concerns, ZTA 07-05 proposes certain exemptions from a finding of site plan conformance for various items such as sediment control permits and building permits for the repair, replacement or minimal addition to existing structures. The ZTA further permits approval of site plan amendments by the Planning Director under limited circumstances. Staff certainly supports the latter, but has concerns about the specifics of the former.

## ANALYSIS

The analysis below discusses some of the major points of the legislation.

A new section 59-D-3.0.1.1 is proposed as follows:

**59-D-3.0.1.1 Permits and changes exempt from conforming to an approved site plan.**

In any zone identified in article 59-C as requiring site plan approval, the Department may, without a finding of conformance to an approved site plan, issue a sediment control permit or a building permit for any building or structure if the permit is for:

- (a) constructing an accessibility improvement;
- (b) repairing an existing structure;
- (c) replacing an existing structure with a structure that has the same function and is not more than 10% larger in height or area;
- (d) landscaping by a resident or a residents association; or
- (e) an addition to a paved surface that does not exceed 1,000 square feet by a resident or a residents association, if the site is not located in a special protection area.

This section authorizes DPS to issue sediment control permits or building permits, even if they are not in conformance with an approved site plan, for any of the reasons listed above. There is nothing in the language to imply that the Planning Department would even be notified of these changes, which could lead to Clarksburg-like problems when a citizen asks why the as-built condition does not match the site plan drawings. Moreover, each of these items is also subject to broad interpretation. For example, while a handicapped ramp may be viewed as a simple, acceptable change, certain major changes to structures have been proposed in the name of accessibility. In (c), replacing an existing structure with one 10% larger in height or area seems to go directly against the intent of the Board's approval, particularly given the recent emphasis on issues concerning height. The word "structure" is defined very broadly in the code and includes buildings, fences, telecommunication towers, signs, and so forth. A decision by DPS with respect to height could not only conflict with the intent of the Board but could also accidentally permit the height of a building to be increased beyond what is allowed in the zone. Likewise, (d) is also too broad. First, it implies that staff has authority over the landscaping that a resident may undertake on his/her own property, but that is not the case. Moreover, an addition to a paved surface of 1,000 feet or less is still significant, since it could impact the percentage of green space or a previously set limit on site imperviousness, could infringe into a conservation easement area, and so

forth. Staff is already well aware that DPS does issue sediment control permits that may conflict with a site plan, and this has caused concern to staff. Allowing DPS to issue building permits that may conflict with the site plan will only make this situation worse. It should be pointed out, moreover, that only DPS can issue building permits. We have always said that they have the authority to issue a permit even if we have recommended against doing so; however, they have consistently said in the past that they would not issue a permit unless we have made a finding that it conforms to the site plan.

A new subsection “d” is proposed for Section 59-D-3.7, “Amendment of a site plan, to reflect certain circumstances where the Planning Director could approve site plan amendments.” Below is the proposed language:

(d) The Planning Director may approve in writing any application for an amendment to a certified site plan, for which notice was provided under subsection (c), if the amendment:

(1) modifies one or more of the following elements of the approved site plan:

(i) a parking or loading area;

(ii) landscaping or a sidewalk, recreational area, public use space, or green area in a manner that does not alter basic elements of the plan;

(iii) grading, utilities, stormwater management, or any similar plan element; or

(iv) any other plan element that the Planning Board, in approving the site plan, designated as an element that will have a minimal affect on the overall design, layout, quality, or intent of the plan; and

(2) does not significantly affect any neighboring property; and

(3) satisfies each requirement of Section 59-D-3.4 (c).

Staff strongly believes that allowing the Planning Director to approve certain modifications to a site plan is imperative to accommodate site constraints and to facilitate small changes requested by developers, builders, HOAs and government agencies. Although it is difficult to define those elements or features of a plan that are acceptable for approval at the administrative level, the language used in the ZTA is acceptable except for the following recommended changes:

In 59-D-3.7 (d) the words in bold should be added: “The Planning Director may approve in writing any application for an amendment to a certified site plan, for which notice was provided under subsection c, **no significant opposition was received in response to that notice, and the changes meet the minimum requirements of the zone**, if the amendment:”

Under 59-D-3.7 (d) (1) (ii), change the wording to read: “landscaping **and lighting** or a sidewalk, recreation area, or green area in a manner that does not alter basic elements of the plan (the words public use space have been deleted because this is a fundamental finding of the Board.

Finally, staff would like to see this text amendment address a number of other issues. Several examples follow:

- 1) Maintenance: Apparently, HOAs have become fearful of undertaking ordinary maintenance without seeking the approval of site plan staff. Clearly, if a board-on-board fence is being replaced with one of like kind, no amendment is necessary. Painting also doesn't come under the purview of MNCPPC. However, when items that are shown on a site plan are changed, these need to be brought to the attention of Planning Staff for administrative or Board approval. It would be helpful if wording could be added to the ZTA that would define what is included in the concept of “maintenance” and makes it clear that maintenance items do not need MNCPPC approval. Alternatively, the ZTA could include the provisions that allow administrative approval to be granted for maintenance, with the specifics of what is included in the concept being covered by Planning Board regulations (the Development Review Manual).
- 2) Clarify whether site plans need to be amended when DPS or DPWT propose modifications to site plan features which are located in rights-of-way that they control.
- 3) Clarify whether the responsibility for the enforcement of certain site plan features should be extinguished at some point in time. Most notable in this regard are landscaping and recreation requirements. Planning Staff wants to ensure that adequate recreation facilities and landscaping are provided in any new development, but to have Planning Staff retain responsibility for changes to these features for all time does not seem to work to the advantage of anyone. Staff would recommend that builders be monitored to ensure that the correct landscaping and recreational facilities are provided at the time of construction of a project, but that staff would then continue to monitor these two aspects only for a period of five years, after which an HOA, condominium association, or other groups as appropriate, would assume complete responsibility.
- 4) Staff has discovered that numerous older site plans do not provide specific setbacks or detailed height standards. A process to allow the Planning Director to administratively approve the addition of such standards should be added.

- 5) If, at the time a project is being constructed, a builder decides to upgrade or improve certain features (i.e. landscaping, fences, benches), can these upgrades be noted in the file without the need to go through a major site plan amendment? This should be clarified in the ZTA.

Staff would also like to suggest one modification to the language in the existing law. Section 59-D-3.7 ( c) states that an applicant must post a conspicuous notice of each proposed amendment within 3 days after filing the application. Since an applicant doesn't get the plan number until a plan is submitted, and the plan number must appear on the sign, staff would propose that the language be amended to read that a conspicuous notice must be posted within **10** days after filing the application.

Finally, staff wants to point out that the introductory language to the text amendment states that one of its purposes is to "exempt minor building permits from a finding of conformance to an approved site plan." As far as we are aware, there is no delineation of building permits between major and minor. It would be better to say, "exempt certain building permits."

## **RECOMMENDATION**

Staff recommends that the council adopt ZTA 07-05 with the clarifications, changes and additions noted above.

### **Attachments**

1. Zoning Text Amendment No. 07-05