



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

MCPB
Item #8
01/24/08

DATE: January 14, 2008
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review Division *RK*
Ralph Wilson, Zoning Supervisor *RW*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendments
PURPOSE: To amend the Zoning Ordinance to clarify and update the applicability requirement of the recently approved Growth Policy on special exceptions and local map amendments

TEXT AMENDMENT: 07-17
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance
INTRODUCED BY: Council President Knapp
INTRODUCED DATE: December 11, 2007

PLANNING BOARD REVIEW: January 24, 2008
PUBLIC HEARING: January 29, 2008, 7:30 PM

STAFF RECOMMENDATION: Approval of ZTA 07-17, with the following modifications:

- Revise lines 16-20 to clarify that for special exceptions that require approval of a preliminary plan of subdivision, the Board of Appeals, in its review, must consider whether the public facilities and services will be adequate to serve the proposed development based on the Growth Policy standards in effect at the time the special exception application was submitted.
- Revise lines 53-57 to clarify that each application for a local map amendment must provide sufficient information to show that there is reasonable probability that public facilities and services will be found adequate to serve the proposed development under the Growth Policy in effect when the local map amendment application is submitted. As introduced, the language could be interpreted to require that the Adequate Public Facilities test be applied at the zoning stage. Staff does not believe this was the sponsor's intent.

BACKGROUND

ZTA 07-17 was introduced by Council President Knapp to clarify how the effective dates of the new Growth Policy affect public facility determinations for special exceptions and Local Map Amendments. The new Growth policy was adopted by the County Council on November 13, 2007 and applies to any application for a preliminary plan of subdivision filed on or after that date. Any preliminary plan application filed on or after January 1, 2007 that was not approved by the Planning Board before November 13, 2007 is also subject to the new Growth Policy.

The applicability of the new growth policy to special exceptions and Local Map Amendments was not addressed when the Growth policy was adopted. Currently, the law in effect at the time an application is decided is the law applied to the application, unless otherwise stated by the Council. Under this Court established standard, special exceptions and local map amendments filed and considered by the Planning Board under the old Growth Policy rules would be decided by the Board of Appeals or the District Council under the new Growth Policy rules. ZTA 07-17 addresses this issue by clarifying that applications filed and considered before November 15, 2007 will be decided by the Board of Appeals and District Council based on the Growth Policy standards in effect when the applications were filed. In this sense, applicants are assured that the same Growth Policy standards will be uniformly applied throughout the special exception and local map amendment stages (but a different standard may apply at preliminary plan review).

SECTION ANALYSIS

59-G-1.2. General Conditions

The core change proposed to the general conditions for grant of a special exception clarifies that for special exceptions that do not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals under the Growth Policy standards in effect when the special exception application was filed.

For those special exceptions that require approval of a preliminary plan of subdivision, the Planning Board determines the adequacy of public facilities when it considers the preliminary plan application. However, the ZTA as introduced does not clarify the adequate public facility standard that is to be applied by the Board of Appeals when these cases are considered.

Staff recommends that the ZTA be clarified to address this issue. Staff's revised language is provided below. Additions are double-underlined and in red. Deletions are indicated in double, boldface brackets.

- (a) A special exception may be granted when the Board[,] or the Hearing Examiner[, or the District Council, as the case may be,] finds from a preponderance of the evidence of record that the proposed use:

* * *

- (9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

[(i)] (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must [[review]] determine the adequacy of public facilities [must be determined by the Planning Board at the time of] in its subdivision review, and the Board of Appeals, in its review, must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted. In that case, [subdivision] approval of a preliminary plan of subdivision must be [included as] a condition of the special exception.

If the special exception does not require [[approval of]] a preliminary plan of subdivision, the Board of Appeals must [[decide]] determine the adequacy of public facilities [must be determined by the Board of Appeals] when it considers the special exception [is considered]. [The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.] In its review, the Board must consider whether the [[available]] public facilities and services will be adequate to serve the proposed

development under the Growth Policy standards in effect when the application was submitted.

[(ii)] (B) With regard to [findings relating to] public roads, the Board[,] or the Hearing Examiner[, or the District Council, as the case may be,] must further [determine] find that the [proposal] proposed development will not reduce the safety of vehicular or pedestrian traffic.

* * *

59-2.4. Contents of standard method of application-Local map amendments

The text amendment as introduced proposes to modify the local map amendment submission requirements to include sufficient information to show that public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Currently, the traffic test generally applied at the time of rezoning is one of "reasonable probability" that the application, after considering existing and programmed roads, physical improvements or mitigating measures provided by the applicant, will not result in unacceptable weekday peak-hour levels of congestion. An applicant may be required to submit a traffic impact study at the time of rezoning for this purpose. Staff believes that the existing practice should not be substantively changed. Staff takes the position that an Adequate Public Facilities (APF) test is not necessary at the local map amendment stage since there are rigorous APF findings applied at subdivision review, and APF requirements for any particular application can change considerably between local map amendment review and subdivision review.

Staff's revised language is provided below. Additions are double-underlined and in red. Deletions are shown in double, boldface brackets.

[In case of] Each application for a local map amendment[, the application therefor shall be in such] must follow a form [as the district council may prescribe] prescribed by the District Council and [shall] must include [the following]:

* * *

- (f) Sufficient information to show that [[available]] there is a reasonable probability that public facilities and services will be found adequate at the time of subdivision to serve the proposed development under the Growth Policy standards in effect when the local map amendment application is submitted.

RECOMMENDATION

Staff recommends approval of Zoning Text Amendment 07-17 as modified by staff and included in Attachment 1.

Attachments

1. Zoning Text Amendment No. 07-17

ATTACHMENT 1

Ordinance No:
Zoning Text Amendment No: 07-17
Concerning: Growth Policy –
Special Exceptions and
Local Zoning Map Amendments
Draft No. & Date:
Introduced: December 11, 2007
Public Hearing: January 29, 2008
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: Council President Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- clarify and update the process for special exceptions to address certain adequate public facilities issues;
- require an application for a local zoning map amendment to address certain adequate public facilities issues; and
- update and generally amend the process for review of special exceptions and local zoning map amendments.

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

DIVISION 59-G-1. "Special Exceptions - Authority and Procedure"
Section 59-G-1.21. General conditions
DIVISION 59-H-2. Map Amendments – Applications
Section 59-H-2.4. Contents of standard method of application-Local map
DIVISION 59-H-5. Hearing Examiner
Section 59-H-5.11. The hearing
Section 59-H-5.12. The report
Section 59-H-5.3. Authority of hearing examiner

*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:

28 facilities [must be determined by the Board of Appeals]
29 when it considers the special exception [is considered].
30 [The adequacy of public facilities review must include
31 the Local Area Transportation Review and the Policy
32 Area Transportation Review, as required in the
33 applicable Annual Growth Policy.] In its review, the
34 Board of Appeals must consider whether the [[available]]
35 public facilities and services will be adequate to serve the
36 proposed development under the Growth Policy
37 standards in effect when the application was submitted.

38 [(ii)] (B) With regard to [findings relating to] public roads, the
39 Board[,] or the Hearing Examiner[, or the District
40 Council, as the case may be,] must further [determine]
41 find that the [proposal] proposed development will not
42 reduce the safety of vehicular or pedestrian traffic.

43 * * *

44 **Sec. 2. Division 59-H-2 Map Amendments – Applications is amended as**
45 **follows:**

46 * * *

47 **59-H-2.4. Contents of standard method of application-Local map**
48 **amendments.**

49 [In case of] Each application for a local map amendment[, the application
50 therefor shall be in such] must follow a form [as the district council may prescribe]
51 prescribed by the District Council and [shall] must include [the following]:

52 * * *

53 (f) Sufficient information to show that [[available]] there is a
54 reasonable probability that public facilities and services will be

55 found adequate at the time of subdivision to serve the proposed
56 development under the Growth Policy standards in effect when the
57 local map amendment application is submitted.

58 [(f)] (g) Such other relevant information as either the District Council or
59 the Hearing Examiner [determines to be] finds necessary to
60 evaluate the impact of a [particular application] proposed
61 development on public facilities[,] or existing or proposed
62 development [in the immediate area of] near the application.

63 * * *

64 **Sec. 3. Division 59-H-5. Hearing Examiner is amended as follows:**

65 **59-H-5.1. Duties of hearing examiner.**

66 **59-H-5.11. [The hearing] Hearing.**

67 The [hearing examiner shall] Hearing Examiner must conduct a public
68 [hearings in accordance with section] hearing under Section 59-H-4.4 on [all
69 applications] each application for a local zoning map [amendments] amendment
70 that is not otherwise reserved for hearing by the [district council] District Council.

71 **59-H-5.12. [The report] Report.**

72 (a) Within 45 days after [the closing of] the record on any application
73 closes, the [examiner shall] Hearing Examiner must forward to the
74 [district council] District Council a written report [setting forth]
75 including a description of the application, [his] findings, and [his] a
76 recommendation of approval or denial, or for any other disposition of
77 the application, together with [his] detailed reasons [therefore] for the
78 recommendation. [Any] The Examiner may include any other
79 [matters] matter of record which[, in the opinion of the examiner, are]
80 the Examiner finds relevant [and pertinent for] to a decision by the
81 [district council may be included by him] District Council. The

82 [district council by resolution] District Council may extend the time
83 for [such] the Examiner's report.

84 (b) [Recommendations of the hearing examiner shall] Any
85 recommendation of the Hearing Examiner must be based on the
86 evidence of record.

87 (c) [Concurrently with the transmittal] When the Hearing Examiner
88 transmits a report to the [district council] District Council, the
89 Examiner must also send copies [of the hearing examiner's report shall
90 be mailed] to the applicant, the [planning board] Planning Board, and
91 [to all persons and associations entering] each person or association
92 who entered an appearance at the hearing, as [evidenced by] shown in
93 the hearing transcript.

94 * * *

95 **59-H-5.3. Authority of hearing examiner.**

96 (a) The [hearing examiner is hereby authorized to] Hearing Examiner
97 may:

98 (1) schedule for public hearing any application for a local map
99 amendment;

100 (2) [to] extend the time for [the] closing [of] the record, either to a
101 time certain or for a reasonable [period of] time, [in those
102 applications where in his discretion] if:

103 (A) the Hearing Examiner finds additional information or
104 [governmental] government action is necessary on
105 [matters material and] any relevant [to an application
106 under consideration] issue, or

107 (B) [when] the applicant or [other] another party requests
108 [such] a delay for good cause [shown];

109 (3) [to suspend, defer,] postpone or continue a public [hearings,
110 either] hearing to a time certain or for a reasonable [period of]
111 time [when in his discretion] if:

112 (A) the Hearing Examiner finds that the pendency of any
113 proposed [preliminary or final] master plan, [or] sector
114 plan, [or amendments thereto] plan amendment, highway
115 [plans] plan, capital improvement [programs or
116 amendments thereto] program, zoning [and] or planning
117 [studies] study, zoning text [amendments] amendment,
118 pending court [decisions] case, or other [matters of a]
119 relevant [or material nature] matter may substantially
120 affect [or bear upon] the application under consideration;
121 or

122 (B) [when] the applicant or [other] another party for good
123 cause requests [such suspension, deferral,] a
124 postponement or continuance.

125 (b) The [district council] District Council may, by resolution, order the
126 hearing examiner to [suspend, defer,] postpone or continue a public
127 [hearings, the scheduling of public hearings] hearing or the issuance
128 of [the examiner's] a report and recommendation on a local map
129 amendment application, either to a time certain or for a reasonable
130 [period of] time, when [such action] a delay is necessary to [provide]
131 allow sufficient [reasonable] time for the [district council's adoption
132 or approval of] District Council to approve any [preliminary or final]
133 master plan, [or] sector plan, [or amendments thereto] plan
134 amendment, zoning [plan] or planning study, highway plan or project,
135 zoning text amendment, sewer, water, or other capital improvements

136 project, [or amendments thereto] which may [in its discretion] have a
137 substantial effect [or bearing upon] on any local map amendment
138 application before the [hearing examiner] Hearing Examiner.

139 (c) The [hearing examiner is hereby authorized to] Hearing Examiner
140 may issue subpoenas to compel the attendance of witnesses and
141 production of documents at any public hearing and [to] administer
142 [oaths] an oath to [witnesses] any witness appearing before the
143 [examiner] Examiner.

144 **Sec. 2. Effective date.** This ordinance takes effect 20 days after Council
145 adoption.

146 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council