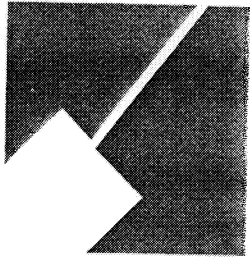


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MCPB
Item #3
7/10/03

DATE: July 7, 2003
TO: Montgomery County Planning Board
VIA: Joseph R. Davis, Chief, Development Review
FROM: Greg Russ, Zoning Coordinator
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To clarify that a benefit performance may take place on property regulated by special exception, without modification of the special exception, to exempt certain property from certain land use restrictions that apply to a benefit performance, and to make plain language changes, throughout.

TEXT AMENDMENT: No. 03-15
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Silverman
INTRODUCED DATE: June 10, 2003
PLANNING BOARD REVIEW: July 10, 2003
PUBLIC HEARING: July 15, 2003; 1:30pm

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSE OF THE TEXT AMENDMENT

To clarify that a benefit performance may take place on property regulated by special exception, without modification of the special exception, to exempt certain property from certain land use restrictions that apply to a benefit performance, and to make plain language changes, throughout.

BACKGROUND

Section 30-4 of the County Code permits non-profit organizations to conduct a performance for the benefit of a charitable organization. A benefit performance may include an outdoor or indoor carnival, fair, picnic, dance, concert, bazaar, exhibition, and similar activities to which the public may be invited, with or without charge for

admission. The net proceeds must benefit solely the non-profit organization. A written permit from the Department of Permitting Service is required to conduct a benefit performance.

Zoning regulations allow a benefit performance to be conducted in any zone, subject to certain restrictions. A question has been raised as to whether or not a benefit performance may take place on property regulated by special exception. ZTA 03-15 will clarify that a benefit performance may be conducted on property regulated by special exception, without modification of the special exception. The proposed text amendment is general in nature but would have immediate applicability with the Strathmore Hall Arts Center located at 10701 Rockville Pike and the adjacent American Speech-Language-Hearing Association (ASHA) property located within the southeast quadrant of the intersection of Rockville Pike and Strathmore Avenue and subject to a special exception.

ANALYSIS

The proposed text amendment language is as follows:

59-A-6.5. Benefit performance.

(a) A [B] benefit performance[s] permitted under [s] Section 30-4 may be conducted in any zone, including on property regulated by special exception without requiring a modification of the special exception.; provided, that:;

[(a)](b) No such] A benefit performance [may be] must not be:

(1) conducted in any residential, [or] C-O, or C-1 zone for a period exceeding 15 days for any one performance, or [nor be]

(2) located within 600 feet of any dwelling unless at least 75 percent of the occupants of [any such] the dwellings within 600 feet [of such site] consent to [such] the performance in writing.

[(b)] (c) The [provisions] restrictions of subsection [(a)] (b) [above shall not] do not apply to a benefit performance conducted [upon] on:

(1) property which is occupied by a private club operating in compliance with this Chapter, a church, a fire department, a public school, or a nationally chartered service or veterans organization, not organized for gain or profit of any individual member of such groups; or

(2) County-owned property, including any adjacent or confronting property which is regulated by special exception.

The proposed language attempts to establish and/or clarify two issues. The first is to allow a public benefit performance on any property whether or not it is regulated by special exception. Additionally, any site regulated by special exception would not be required to modify the special exception to operate the benefit performance. Staff has no objection to this request since the benefit performance would be limited to 15 days (as with any benefit performance not exempted by proposed subsection “c”) and since any impacts to surrounding residential properties (if any) by the benefit performance would be limited (600-foot distance requirement) whether located on a special exception property or not.

The intent of the second part of the proposed text amendment is to exempt from the restrictions of proposed subsection “b” any County-owned property and any adjacent or confronting property subject to a special exception if the benefit performance is conducted on both the County-owned property and the adjacent or confronting property and the benefit performance is sponsored by the County. Staff believes that the proposed language should be modified to clarify this intent. Otherwise, as written, any property regulated by special exception located adjacent to or confronting County-owned property would be exempt from the restrictions of this section. Staff’s proposed modification to the text amendment language is as follows:

[(b)] (c) The [provisions] restrictions of subsection [(a)] (b) [above shall not] do not apply to a benefit performance conducted [upon] on:

- (1) property which is occupied by a private club operating in compliance with this Chapter, a church, a fire department, a public school, or a nationally chartered service or veterans organization, not organized for gain or profit of any individual member of such groups; or*
- (2) County-owned property[[, including]] and any adjacent or confronting property [[which is regulated by]] subject to a special exception if the benefit performance is conducted on both the County-owned property and the adjacent or confronting property and the benefit performance is sponsored by the County.*

Several citizens have expressed concern with the proposed exemption of the special exception-regulated properties from the restrictions associated with a benefit performance (15-day performance limit and a 600-foot distance of a benefit performance from any dwelling unless otherwise okayed by the affected dwelling owners). The clarification of the text by staff would allow the exemptions only if the property regulated by special exception is adjacent to or confronting a County-owned site and both properties are being used for a benefit performance being sponsored by the County. As such, any other proposed benefit performance to be located on property regulated by special exception would not be exempt from the restrictions of this section.

RECOMMENDATION

The staff recommends approval of the proposed text amendment to clarify that a benefit performance may take place on property regulated by special exception, without modification of

the special exception, to exempt certain property from certain land use restrictions that apply to a benefit performance, and to make plain language changes, throughout. Staff has proposed several plain language changes to clarify the intent of the proposed text amendment.

Attachment 1 depicts the proposed text amendment as amended.

GR

Attachments

1. Proposed Text Amendment 03-15 as amended.

ATTACHMENT 1

Zoning Text Amendment No: 03-15
Concerning: Benefit performance
Draft No. & Date: 1 – 6/5/03
Introduced: June 10, 2003
Public Hearing: July 15, 2003; 1:30 PM
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 Silverman

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

- clarifying that a benefit performance may take place on property regulated by special exception, without modification of the special exception,
- exempting certain property from certain land use restrictions that apply to a benefit performance, and
- making plain language changes, throughout.

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

DIVISION 59-A-6 “USES PERMITTED IN MORE THAN ONE CLASS OF
 ZONE”
Section 59-A-6.5 “Benefit performance”

*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:

1 **Sec. 1. Article 59-A-6 is amended as follows:**

2 **DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF**
3 **ZONE.**

4 * * *

5 **59-A-6.5. Benefit performance.**

6 (a) A [B] benefit performance[s] permitted under [s] Section 30-4 may be
7 conducted in any zone, including on property regulated by special exception
8 without requiring a modification of the special exception.; provided, that:]

9 [(a)](b) [No such] A benefit performance [may be] must not be:

10 (1) conducted in any residential, [or] C-O, or C-1 zone for a period
11 exceeding 15 days for any one performance, or [nor be]

12 (2) located within 600 feet of any dwelling unless at least 75 percent of
13 the occupants of [any such] the dwellings within 600 feet [of such
14 site] consent to [such] the performance in writing.

15 [(b)] (c) The [provisions] restrictions of subsection [(a)] (b) [above shall not]
16 do not apply to a benefit performance conducted [upon] on:

17 (1) property which is occupied by a private club operating in compliance
18 with this Chapter, a church, a fire department, a public school, or a
19 nationally chartered service or veterans organization, not organized
20 for gain or profit of any individual member of such groups; or

21 (2) County-owned property[[, including]] and any adjacent or confronting
22 property [[which is regulated by]] subject to a special exception if the
23 benefit performance is conducted on both the County-owned property and
24 the adjacent or confronting property and the benefit performance is
25 sponsored by the County.

27 **Sec. 2. Effective date. This ordinance becomes effective immediately**
28 **upon Council adoption.**

29

30 This is a correct copy of Council action.

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35 Mary A. Edgar, CMC

36 Clerk of the Council