

MCPB
Item # 6
3/11/04

DATE: March 5, 2004
TO: Montgomery County Planning Board
VIA: Carlton Gilbert, Zoning Supervisor
FROM: Greg Russ, Zoning Coordinator
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To limit the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

TEXT AMENDMENT: No. 04-02
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: District Council at request of Hearing Examiner
INTRODUCED DATE: February 10, 2004

PLANNING BOARD REVIEW: March 11, 2004
PUBLIC HEARING: March 16, 2004; 1:30 p.m.

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSE OF THE TEXT AMENDMENT

To limit the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

BACKGROUND

The Board of Appeals is recommending that the number and duration of time extensions the Board may grant for implementation of variance and special exception cases be limited. The proposed language modifications are described in the analysis section below.

ANALYSIS

Proposed Text Amendment

The proposed text amendment language is as follows:

59-A-4.5. Decision. * * *

59-A-4.53. Duration of validity.

- (a) **Variance.** *A decision of the Board granting a variance is valid for 12 months, during which time a building permit must be obtained and the erection or alteration started.*
- (b) **Special exception.**
 - (1) *A decision of the Board, Hearing Examiner, or County Council approving the special exception is valid for 24 months.*
 - (2) *A special exception is not valid after 24 months if the use is not established or a building permit is not obtained and construction started within the period.*
- (c) **Extension of time.** *The Board may extend the time limit for a variance or special exception if the evidence of record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity. [For a special exception, each] Each extension must not exceed 12 months. If the Board grants an extension, the Board must set a date by which the erection or alteration of the building must be started or the use established. The Board may grant no more than two extensions of time for any variance or special exception.*

The proposed amendment would limit each extension of time for a variance to 12 months, consistent with the timeframe for special exception extensions. In addition, the language limits the number of extensions for variances and special exceptions to no more than two. As such, the Board of Appeals language allows a maximum of four years for the start of construction of a project. If the project has not commenced by that time then a new application must be submitted to the Board.

Staff has no objection with the proposed text amendment. Staff is proposing one plain language clarification on line 22, adding the word "approved" between the words "any" and "variance". It

should be noted that several land use attorneys have stated concerns with the proposed limit on the number of extensions, stating that projects sometimes need longer than four years to implement approved special exception applications.

RECOMMENDATION

The staff supports the proposed text amendment to limit the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

Attachment 1 depicts the proposed text amendment as modified by staff. 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 (staff's changes). [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment (staff's changes).

GR

Attachments

1. Proposed Text Amendment 04-02

ATTACHMENT 1

Zoning Text Amendment No: ~~04-02~~
Concerning: Variances and Special
Exceptions
Draft No. & Date: 1 - 2/04/04
Introduced: February 10, 2004
Public Hearing: March 16, 2004; 1:30 p.m.
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 Board of Appeals

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

- limiting the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and
- limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

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

DIVISION 59-A-4 "COUNTY BOARD OF APPEALS"
Section 59-A-4.5 "Decision"
Section 59-A-4.53 "Duration of Validity"

*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. Section 59-A-4.5 is amended as follows:**

2 **59-A-4.5. Decision. * * ***

3 **59-A-4.53. Duration of validity.**

4 (a) **Variance.** A decision of the Board granting a variance is valid for 12
5 months, during which time a building permit must be obtained and the
6 erection or alteration started.

7 (b) **Special exception.**

8 (1) A decision of the Board, Hearing Examiner, or County Council
9 approving the special exception is valid for 24 months.

10 (2) A special exception is not valid after 24 months if the use is not
11 established or a building permit is not obtained and construction
12 started within the period.

13 (c) **Extension of time.** The Board may extend the time limit for a
14 variance or special exception if the evidence of record establishes that
15 drawing of architectural plans, preparation of the land, or other factors
16 involved in the particular use will delay the start of construction or the
17 establishment of the use beyond the period of validity. [For a special
18 exception, each] Each extension must not exceed 12 months. If the
19 Board grants an extension, the Board must set a date by which the
20 erection or alteration of the building must be started or the use
21 established. The Board may grant no more than two extensions of
22 time for any approved variance or special exception.

23 (d) **Appeal.** If a decision on a variance or a special exception is appealed
24 to a court, the time limits in this section run from the date of the final
25 court order in the appeal.

26 **Sec. 2. Effective date.** This ordinance becomes effective ~~20 days after the~~ _____
27 date of Council adoption.

28

29 This is a correct copy of Council action.

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31

32 _____

33 Mary A. Edgar, CMC

34 Clerk of the Council