

POLICY GUIDANCE ON CONDITIONAL USE REVIEW BY THE PLANNING BOARD, AND CONCURRENT REVIEW OF CONDITIONAL USES AND PRELIMINARY PLANS

Description

Planning Staff is seeking approval of two policies related to conditional uses:

- 1) Identify when recommendations on conditional use applications shall be transmitted to the Hearing Examiner by the Planning Board or the Planning Director.
- 2) Allow the concurrent review and public hearing of conditional uses and preliminary plans for the same subject property by Planning Staff and Planning Board.

Policy - Conditional Uses

Completed: 7-18-24

MCPB

Item No. 12

7-25-24

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PLANNING TEAM

Countywide Planning and Policy

PLANNING BOARD BRIEFING DATE

July 25, 2024

REVIEW BASIS

Chapters 50 and 59

Summary

- Planning Staff are recommending two policies to streamline the conditional use process.
- Policy 2024-03 would clarify which conditional use applications would have a Planning Board hearing prior to providing recommendations to the Hearing Examiner.
- Policy 2024-04 would establish how preliminary plans and conditional use plans are to be reviewed concurrently, and how amendments to the preliminary plans would occur.

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SECTION 1 – BACKGROUND

Montgomery Planning Staff serves as technical staff to the Hearing Examiner for reviewing conditional use applications. The county has made strides recently to reduce the regulatory burden and timeframe of certain conditional uses, most recently through Zoning Text Amendment ([ZTA 23-11](#)) and Subdivision Regulation Amendment ([SRA 23-02](#)). Collectively these helped consolidate similar but separate conditional uses into singular new uses, provided opportunities for certain conditional uses to be reviewed as limited uses, gave the Hearing Examiner additional flexibility in their reviews, and set up an opportunity for the Planning Board to streamline its review processes.

The two recommended policy items are intended to streamline the Montgomery Planning Board's and Montgomery Planning Department's role in the conditional use process. Policy 2024-03 would provide guidance on which conditional use applications will be brought before the Planning Board for review and comment prior to transmitting to the Hearing Examiner, and which applications will have recommendations sent directly from the Planning Director. Policy 2024-04 would adopt an approach for allowing concurrent Planning Board hearings for conditional uses and preliminary plans, and would identify those steps that would be required if an amendment becomes necessary.

SECTION 2 – REVIEW AND RECOMMENDATION OF CONDITIONAL USES

EXISTING PRACTICES AND CODE CITATION

Section [59-7.3.1.D](#) of the Zoning Code sets forth the rules and responsibilities for the Planning Director and the Planning Board when providing recommendations to the Hearing Examiner on a conditional use application. The Planning Director may issue recommendations directly to the Hearing Examiner, or issue recommendations first to the Planning Board who would then review Staff's recommendations as part of a consent calendar¹ or by holding a public hearing. Planning Staff then forwards the Board's recommendations to the Hearing Examiner. There is no existing policy that determines when a recommendation should be reviewed by the Planning Board or when the Planning Director can forward the recommendation directly to the Hearing Examiner². The result is most conditional use applications are reviewed by the Planning Board before providing recommendations to the Hearing Examiner. Conditional use applicants have criticized this process as it requires two hearings, one by the Planning Board and one by the Hearing Examiner, and adds costs to applicants. As part of an overall effort to streamline the conditional use process, Montgomery Planning was

¹ The Planning Board no longer has a consent calendar, therefore all recommendations to the Board would be heard through a regular public hearing agenda item.

² Telecommunications towers are forwarded directly to the Hearing Examiner due to shot clock time limitations on these reviews.

requested by the Council to develop policies to reduce the total number of conditional uses reviewed by the Board.

PROPOSED POLICY

Planning Staff recommend a policy where conditional uses are only reviewed by the Planning Board if the proposed project would also need other regulatory approvals from the Planning Board prior to receiving a building permit. This could include applications needing a preliminary plan or a forest conservation plan. Conditional use applications that do not require additional regulatory approvals would have recommendations transmitted directly from the Planning Director to the Hearing Examiner, without the need for Planning Board review.

The primary benefits of transmitting recommendations directly from the Planning Director to the Hearing Examiner is reducing costs to the applicant and reducing the number of hearings from two to one. However, if a development project associated with a conditional use application needs to be reviewed by the Board for forest conservation or preliminary plan, then there is no benefit to dropping the conditional use application hearing. Later in this staff report, Planning Staff will discuss a second policy intended to streamline these types of concurrent reviews.

Planning Staff examined data over a six-year period from 2017 - 2023 in the Development Application Information Center (DAIC) to see how many conditional uses were not associated with another type of regulatory plan (Attachment ##). Of a total of 80 conditional uses, 42, or approximately half, did not have an associated forest conservation plan or preliminary plan. Planning Staff note half of those (22 of the 42) were for either an accessory apartment or a daycare of up to 12 children. Neither use requires conditional use review today because of recent zoning changes. Another portion of these cases were for small amendments, or cell towers that are no longer being reviewed by the Planning Board. Therefore, Planning Staff expect the streamlining impact to reduce the number of conditional use applications reviewed by the Planning Board by approximately 25%.

SECTION 3 – CONCURRENT REVIEW OF CONDITIONAL USES AND PRELIMINARY PLANS

EXISTING PRACTICE

When a development proposal requires a conditional use approval, Montgomery Planning generally does not review a preliminary plan of subdivision until after the conditional use has been approved. Preliminary plans are the mechanism for subdividing land, and where adequate public facilities are analyzed. The necessary findings of preliminary plans include whether the proposed layout of the subdivision, location and design of roads is appropriate for the type of development or “use contemplated.” Accordingly, a preliminary plan cannot be approved and validated until after the

conditional use is approved. While there is no code or policy that prohibits concurrent review of a preliminary plan and conditional use, Planning Staff have been hesitant to start the preliminary plan process until the outcome of a conditional use application is known. Allowing both applications to be reviewed simultaneously could shave months off the regulatory review process saving both time and money.

As discussed earlier, one intent behind the recently adopted ZTA 23-11 and SRA 23-02 was to streamline the regulatory timeline and process for conditional use applications. SRA 23-02 specifically added language amending the plan certification process of preliminary plans in Chapter 50, Section 4.2.E. anticipating the Planning Board adopting a new policy allowing for concurrent plan reviews. A new section was added to the code allowing the Planning Director to approve minor changes to preliminary plans prior to certification if necessary to reflect the final approval of the conditional use if those changes do not modify a finding or condition of approval, and no objection is received to making the changes.

Montgomery Planning committed to further streamlining efforts by pursuing a policy to allow the Planning Board to concurrently review and hold one public hearing for both the preliminary plan and the conditional use plan, and to conditionally approve the preliminary plan subject to future approval of the conditional use.

PROPOSED POLICY

Planning Staff recommend that Montgomery Planning and the Planning Board concurrently review preliminary plans and conditional use plans when requested by an applicant. This includes holding one Planning Board hearing to consider the recommendations of the conditional use plan and the necessary findings for approval of the preliminary plan.

While concurrent reviews will help to expedite the process, the conditional use will need to be approved by the Hearing Examiner before the preliminary plan can be implemented or certified. As mentioned above, because preliminary plans make findings that a property is adequate for a specific use, the preliminary plan analysis involves looking at the proposed use. Conditional uses are not permitted by-right therefore the conditional use approval must proceed the preliminary plan approval. Therefore, the implementation of this policy will enable the preliminary plan to be conditionally approved by the Board but not be certified or implementable until the proposed conditional use is approved by the Hearing Examiner. Preliminary Plan certification is the process after a Planning Board hearing where any final conditioned changes to plans are submitted, reviewed, and ultimately signed by the Division Chief. Applicants may not submit for a record plat, or a building permit without a copy of the certified plans.

Planning Staff recommends two new standard conditions of approval for any preliminary plan that is concurrently heard with a conditional use by the Board. The first condition would make the preliminary plan approval contingent on a conditional use plan allowing the proposed land use in a manner consistent with the preliminary plan. This would be the assurance that the preliminary plan

cannot be acted on or treated as valid if the conditional use is not approved. The second condition is that Planning Staff should not certify the preliminary plan until after the Hearing Examiner issues an approval. If the approved conditional use necessitates minor changes to the preliminary plan that do not impact a finding or condition of approval, Planning Staff must wait 16 days to allow for an objection from the community prior to certifying the plans. If the conditional use necessitates major changes to the preliminary plan that do impact a finding or condition of approval, or creates minor changes but objections are received, the preliminary plans shall not be certified, and a preliminary plan amendment will need to be filed.

As stated earlier, SRA 23-02 has already created the code authorization explained through the second recommended condition of approval. According to the Hearing Examiner’s office, it is rare for the Hearing Examiner to request changes to a conditional use plan in a way that would conflict with the findings of a preliminary plan.

The table below reflects the next steps based on various potential outcomes of the conditional use approval process.

| Outcome of the Conditional Use Approval | Next Step(s) |
|---|--|
| The conditional use is approved without any changes that would need to be reflected on the certified preliminary plan. | The preliminary plan may be certified by Planning Staff as soon as a copy of the conditional use approval is received from the Hearing Examiner. |
| The conditional use is approved and minor changes need to be reflected on the certified preliminary plan. No objections are received and the Director approves the changes. | The preliminary plan may be certified by Planning Staff 16 days after the conditional use approval is issued by the Hearing Examiner. |
| The conditional use is approved and minor changes need to be reflected on the certified preliminary plan. Relevant objections are received to modifying the preliminary plan drawings or the Director objects to the changes. | A preliminary plan amendment must be filed, and a new public hearing scheduled for the Planning Board to consider the plan amendment. |
| The conditional use is approved and major changes are needed to the preliminary plan that impact conditions of approval. | A preliminary plan amendment must be filed, and a new public hearing scheduled for the Planning Board to consider the plan amendment. |
| The conditional use is not approved. | The preliminary plan is never certified, cannot be validated and a plat cannot be recorded. |

Planning Staff is not proposing any changes to the process for approving the resolution for a preliminary plan. This would allow the 30-day appeal period and initiation date for the preliminary plan to begin prior to the conditional use being approved, so that once the conditional use is approved, the applicant can quickly proceed to certification of the preliminary plan.

SECTION 4– CONCLUSION

Planning Staff recommends the Planning Board approve two proposed policies related to conditional use review, including Policy 2024-03, which would limit the conditional uses reviewed by the Planning Board only to those that require another regulatory approval requiring a Board hearing, and Policy 2024-04, which would allow for concurrent reviews of preliminary plans with conditional use plans.

SECTION 5 – ATTACHMENTS

Attachment A – Policy 2024-03: Conditional Uses Requiring Planning Board Review

Attachment B – Policy 2024-04: Conditional Use and Preliminary Plan Concurrent Review Policy