



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

MCPB
Item #10
1/13/11

DATE: January 3, 2011
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Area 1 *JK*
FROM: Greg Russ, Zoning Coordinator, Functional Planning & Policy *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To allow the Hearing Examiner to decide adequate public facility issues and parking waivers when the Examiner is granted the authority to approve a special exception application

TEXT AMENDMENT: No. 10-13
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Floreen
INTRODUCED DATE: December 14, 2010

PLANNING BOARD REVIEW: January 13, 2011
PUBLIC HEARING: January 18, 2011; 1:30pm

STAFF RECOMMENDATION: Approval with modifications to provide the Hearing Examiner the authority to waive parking requirements and to determine the adequacy of public facilities in special exception cases where the Examiner has the authority to deny or approve the special exception. The Board of Appeals currently has this authority when it decides a special exception. Staff's proposed modifications are minor clarifications to assist in achieving the proposed objective.

ANALYSIS

A summary of the proposed changes, by general category, is discussed below.

I. Provide the Hearing Examiner the authority to grant parking waivers (Section 59-E-4.5)

Currently the Director of DPS, the Planning Board or the Board of Appeals may waive any off-street parking and loading requirement not necessary to accomplish the objectives in Section 59-E-4.2 (parking facilities). This section provides authority to the applicable agency/department where final decision

making is granted. In the case of special exception approvals, the Board of Appeals has the decision-making authority for most special exception types and has parking waiver authority for these uses.

In addition to the authorization given to the Board of Appeals to hear and decide petitions for special exceptions under Section 59-A-4.11, the Hearing Examiner may hear and decide petitions for special exceptions for several uses that include: boardinghouses for 3 guests or fewer and home occupations (in both cases if located in the R-30, R-20 or R-10 zones); noncommercial riding stable for not more than 2 horses, for personal or family use in the RE-2 zone; temporary structures in residential zones; renewals of temporary special exceptions originally granted by the Board, Director of DPS or Hearing Examiner for boardinghouses, and home occupations; farm tenant mobile homes, for more than one but less than 4, provided such farm tenant mobile homes meet the definition established for such uses by this chapter and that such uses are not within 200 feet of a non-farm residence; and child day care facilities for up to 30 children. ZTA 10-13 modifies Section 59-E-4.5 by establishing parking waiver authority for the Hearing Examiner, consistent with the authority granted to other application-approving agencies/departments as stated above. Staff recommends approval of these changes.

II. Provide the Hearing Examiner the authority to determine the adequacy of public facilities in certain special exception cases (Section 59-G-1.21-General conditions)

Under the general conditions of approval for a special exception application (Section 59-G-1.21), a special exception may be granted when the Board of Appeals or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use complies with a number of findings, one being the adequacy of public facilities and services to serve a proposed development (Section 59-G-1.21(a)(9)). Currently subsection 9(B) only includes the Board of Appeals as an agency/department authorized to make a determination of adequate public facilities when a special exception does not require approval of a preliminary plan of subdivision. ZTA 10-13 clarifies subsection 9(B) to make certain that the Hearing Examiner also has authority to determine the adequacy of public facilities and services for special exception developments that it has authority to hear and decide. Staff recommends approval of these changes with several additional modifications as depicted below and included on lines 40 and 43 of ZTA 10-13 (see Attachment 1). Staff's proposed deletions are **[[Double boldface bracketed]]** and additions are Double underlined

- (B) If the special exception does not require approval of a preliminary plan of subdivision, the Board **[[of Appeals]]** or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board or Hearing

Examiner 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.

GR
Attachments

1. Proposed Text Amendment No. 10-13

ATTACHMENT 1

Zoning Text Amendment No.: 10-13
Concerning: Hearing Examiner Waivers –
Parking and Public Facilities
Draft No. & Date: 1 – 12/1/10
Introduced: December 14, 2010
Public Hearing:
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 Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow the Hearing Examiner to decide adequate public facility issues and parking waivers when the Examiner is granted the authority to approve a special exception application; and
- generally amend the special exception provisions for parking and public facilities

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

Division 59-E-4. **PARKING FACILITY PLANS FOR PROJECTS
CONSTRUCTED IN ACCORDANCE WITH BUILDING
PERMITS FILED AFTER JUN 28, 1984**

Section 59-E-4.5. **Waiver – parking standards**

Division 59-G-1. **SPECIAL EXCEPTIONS – AUTHORITY AND PROCEDURE.**

Section 59-G-1.21. **General conditions**

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate that text is deleted from existing law by 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. DIVISION 59-E-4 is amended as follows:**

2 * * *

3 **Sec. 59-E-4.5. Waiver - parking standards.**

4
5 [The] When approving an application the Director, Planning Board, [or]
6 Board of Appeals, or Hearing Examiner may waive any requirement in this
7 Article not necessary to accomplish the objectives in Section 59-E-4.2, and in
8 conjunction with reductions may adopt reasonable requirements above the
9 minimum standards. Any request for a waiver under this Section must be
10 referred to all adjoining property owners and affected citizen associations for
11 comment before a decision on the requested waiver.

12 * * *

13 **Sec. 2. DIVISION 59-G-1 is amended as follows:**

14 * * *

15 **59-G-1.21. General conditions.**

16 (a) A special exception may be granted when the Board or the Hearing
17 Examiner finds from a preponderance of the evidence of record that the
18 proposed use:

19 * * *

20 (4) Will be in harmony with the general character of the
21 neighborhood, considering population density, design, scale,
22 and bulk of any proposed new structures, intensity and
23 character of activity, traffic and parking conditions, and number
24 of similar uses. [The Board or Hearing Examiner must consider
25 whether the public facilities and services will be adequate to
26 serve the proposed development under the Growth Policy

27 standards in effect when the special exception application was
28 submitted.]

29 * * *

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

33 (A) If the special exception use requires approval of a
34 preliminary plan of subdivision, the Planning Board must
35 determine the adequacy of public facilities in its
36 subdivision review. In that case, approval of a
37 preliminary plan of subdivision must be a condition of
38 granting the special exception.

39 (B) If the special exception does not require approval of a
40 preliminary plan of subdivision, the Board [[of Appeals]]
41 or the Hearing Examiner must determine the adequacy of
42 public facilities when it considers the special exception
43 application. The Board or Hearing Examiner must
44 consider whether the available public facilities and
45 services will be adequate to serve the proposed
46 development under the Growth Policy standards in effect
47 when the application was submitted.

48 * * *

49 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
50 Council adoption.

51

52 This is a correct copy of Council action.

53

54

55 Linda M. Lauer, Clerk of the Council