

Zoning Text Amendment (ZTA) No. 12-05, Commercial/Residential Zones - Grandfathering

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Completed: 03/28/12

Description

ZTA 12-05 applies the grandfathering provisions of the Commercial/Residential (CR) zones to the Commercial/Residential Town (CRT) and the Commercial/Residential (CRN) zones; and revises the grandfathering provision for projects with a previously approved special exception. Specifically the ZTA would:

- Grandfather any lawfully existing buildings, structures, or uses that predate the application of the CRT or CRN zone.
- Grandfather any project, or portion of a project, that received an approved development plan under Division 59-D-1 or schematic development plan under Division 59-H-2 before the application of the CRT or CRN zone.
- Grandfather any project which has had a preliminary or site plan approved before the application of the CRT or CRN zone.
- Grandfather any project that had a special exception approved before application of the CRT or CRN zone. ZTA 12-05 further modifies the provision where a special exception holder chooses to operate under the CR, CRN or CRT provisions instead of under the special exception by requiring any plan (sketch plan, preliminary plan, or site plan) approved by the Planning Board under this Division to consider the terms and conditions of the approved special exception. The ZTA also eliminates the requirement that written notice be provided to the Board of Appeals that the special exception has been abandoned.

Summary/Analysis

Staff recommends approval of ZTA 12-05 with modifications. One modification would allow continuation of the current process of requiring written notice to the Board of Appeals when a special exception is abandoned in order to operate under the provisions of the CR, CRN or CRT zone (under subsection (e)(2)). The second modification would eliminate the language under subsection (e)(2) that states that “the Planning Board **must** consider the terms and conditions of the approved special exception” when approving a plan under the CR, CRN or CRT zone that was previous.

ZTA 12-05 was sponsored by the PHED Committee to clarify the grandfather provisions for sites recommended for reclassification to the CRN and CRT zones by the Kensington Sector Plan. The ZTA proposes changes to the

existing grandfather provisions for the CR zones to fully extend these provisions to the CRN and CRT zones. **Staff recommends approval of the changes under subsections a through d of Section 59-C-15.**

Subsection (e)(2) removes the notification to the Board of Appeals that the special exception has been abandoned. **Staff recommends that this provision remain in the law so that the Board of Appeals can update its records.**

Staff believes that the statement in subsection (e) that “any plan approved by the Planning Board under this Division **must consider** the terms and conditions of the approved special exception” is highly ambiguous. The intent of this language, at a minimum, is for the Planning Board to know the terms and conditions of the prior special exception before approving something else. If there was a good idea in the terms and conditions, the Planning Board might retain the condition as part of their approval.

Staff believes that it would be unfair if a property owner, who decides to proceed as an allowed use under a CR, CRN or CRT zone, rather than under an approved special exception, has to meet *or consider* a different set of standards than another property that did not have the previous special exception approval. Staff believes that the new zoning should reflect a new determination by the Council about the appropriateness of the allowed use, and that both property owners should be able to proceed accordingly. **As such, staff recommends eliminating the proposed provision in subsection (e) that “any plan approved by the Planning Board under this Division must consider the terms and conditions of the approved special exception”.** Should the Board decide to keep the provision, staff recommends that the phrase “must consider” be changed to “may consider”.

GR/MD/kr

ATTACHMENTS

1. ZTA 12-05 as modified by staff

ATTACHMENT 1

Zoning Text Amendment No.: 12-05
Concerning: Commercial/Residential
Zones - Grandfathering
Draft No. & Date: 2 – 2/15/12
Introduced: February 28, 2012
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: The Planning, Housing, and Economic Development Committee

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- apply the grandfathering provisions of CR zones to CRT and CRN zones; and
- revise the grandfathering provision for projects with a previously approved special exception.

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

DIVISION 59-C-15 “COMMERCIAL/RESIDENTIAL ZONES”
Section 59-C-15.9 “Existing Approvals”

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

Sec. 1. DIVISION 59-C-15 is amended as follows:

DIVISION 59-C-15. COMMERCIAL/RESIDENTIAL ZONES.

* * *

59-C-15.9. Existing Approvals.

- (a) One or more lawfully existing buildings, structures, or uses that predate the application of the CRT, CRN, or CR zone to the land are conforming structures or uses and may be continued, renovated, repaired, or reconstructed to the same size and configuration, or enlarged up to a total of 10 percent above the total existing floor areas of all buildings and structures on site or 30,000 square feet, whichever is less, and such development does not require a site plan. Any enlargement of a building structure or use may be further limited by Subsection (e). Expansions in excess of the limitations in this Subsection will require compliance with the full provisions of this Division. Uses located in a building or structure deemed conforming under the provisions of this Subsection may be converted to any permitted non-residential or residential use(s) up to the density limits for the land use established by the CRT, CRN, or CR zone.
- (b) A project that received an approved development plan under Division 59-D-1 or schematic development plan under Division 59-H-2 before the application of the CRT, CRN, or CR [zones] zone to the land may proceed under the binding elements of the development plan and will thereafter be treated as a lawfully existing building, and may be renovated or reconstructed under Subsection (a) above. Such development plans or schematic development plans may be amended as allowed under Division 59-D-1 or 59-H-2 under the provisions of the previous zone; however, any incremental increase in the total floor area beyond that allowed by Subsection (a) above or any incremental increase in building height greater

28 than 15 feet requires, with respect to the incremental increase only, full
29 compliance with the provisions of this Division. Any failure to fully comply
30 with the binding elements of the development plan will require full
31 compliance with the provisions of this Division.

32 (c) At the option of the owner, any portion of a project subject to an approved
33 development plan or schematic development plan described in Subsection
34 (b) above may be developed under this Division. The remainder of that
35 project continues to be subject to the approved development plan or
36 schematic development plan under Subsections (a) and (b).

37 (d) A project which has had a preliminary or site plan approved before the
38 application of the CRT, CRN, or CR zone to the property may be built or
39 altered at any time, subject to either the full provisions of the previous zone
40 or this Division, at the option of the owner. If built under the previous
41 approval, it will then be treated as a conforming building, structure, or use
42 and may be renovated, continued, repaired, or reconstructed under
43 Subsection (a) above. If built with an incremental increase over the previous
44 approval, only that incremental increase must comply with this Division.

45 (e) A project that [has] had a special exception approved before application of
46 the CRT, CRN, or CR zone to the site may:

47 (1) continue as a lawfully existing use and a lawful structure as long as it
48 fully complies with the terms and conditions of its approval[. Any];
49 any failure to fully comply with the terms and conditions of the
50 special exception approval will require full compliance with the
51 provisions of this Division[.];

52 (2) [If a special exception holder chooses to] operate under this Division
53 instead of under the special exception, but must provide written notice
54 to the Board of Appeals that the special exception has been

55 abandoned. [written notice must be provided to the Board of Appeals
56 that the special exception has been abandoned] ~~[[by the approval of a~~
57 ~~sketch plan, preliminary plan, or site plan; any plan approved by the~~
58 ~~Planning Board under this Division must consider the terms and~~
59 ~~conditions of the approved special exception.]]~~

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61 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
62 date of Council adoption.

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64 This is a correct copy of Council action.

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67 Linda M. Lauer, Clerk of the Council