

A RESIDENT'S GUIDE TO

Zoning of Land in Montgomery County

8787 Georgia Avenue, Silver Spring, MD 20910, 301-495-4600, TTY 301-495-1331, www.mc-mncppc.org

This brochure discusses:

- what zoning is and why it is important to you
- the relationship between zoning and master plans
- the roles of the Planning Board, the County Council and the Board of Appeals in zoning
- how the Office of the People's Counsel can assist you in participating in zoning and other land use proceedings
- the two basic types of zoning – Euclidean and Floating, plus overlay zones
- how zoning changes are made
- zoning process known as special exceptions
- where you can read or purchase a copy of the Zoning Ordinance

ZONING AND ITS IMPORTANCE

Zoning is important to residents of the County because it is the legal tool used by your County Council to regulate the use of private property for the purposes of protecting public health, safety and welfare.

Zoning is used to implement the planning policies established by the General Plan, area master plans, sector plans and related functional plans. Comprehensive, effective zoning regulations are essential to achieving the orderly, compatible land use patterns that help make Montgomery County an attractive place to live and work.

See companion *Resident's Guide* brochures on the *Land Use Master Planning Process*, *Subdivision Process* and *Site Plan Process*.

THE ZONING ORDINANCE

The Zoning Ordinance establishes the various zones and specifies detailed procedures governing zoning changes.

The Zoning Ordinance:

- describes and lists all the zones and the uses that are permitted as a matter of right in each zone
- establishes standards for each zone that control density, the location of structures, building heights, setbacks from property lines and other elements of land development
- sets forth procedures on how to change zoning classifications from one zone to another
- establishes "special exception" uses that may be allowed in certain zones, if approved by the Montgomery County Board of Appeals
- establishes the minimum requirements for a Variance which can relieve a property owner from specified zoning requirements or standards. To grant a variance, the Board of Appeals must find that the strict application of the zoning regulations would result in practical difficulties or undue hardship because of extraordinary conditions of shape, topography, or other conditions peculiar to the property.

The Zoning Ordinance is not a static document. It is frequently amended when the County Council adopts zoning text amendments. The changes can be minor, such as correcting typographical or editorial errors, or they can be major, such as creating a new zone, adding new special exceptions or standards to the regulations, or removing them.

The zoning classification of each parcel of land in the County is shown on a series of zoning maps. The County's zoning maps are available for review at M-NCPPC, 8787 Georgia Avenue, Silver Spring; the Department of Permitting Services, at 255 Rockville Pike, Rockville, 240-777-6240; and the Board of Appeals, at 100 Maryland Avenue, Room 217, Rockville, 240-777-6600.

You may purchase the Zoning Ordinance through the Montgomery County Office of the County Attorney, 101 Monroe Street, Third Floor, Rockville, 240-777-6700. A paper copy or a CD-ROM copy is available.

In addition, reference copies of the Zoning Ordinance and its updates are sent to all County public libraries. The Zoning Ordinance may also be viewed online at www.amlegal.com and is accessible via Montgomery County's home page: www.montgomerycountymd.gov under "Charter and County Code."

ZONING AND MASTER PLANS

Montgomery County has adopted a series of master plans for the entire county, each of which applies to a particular geographic area. Each master plan establishes policy goals for development in the area it covers, as well as recommendations for specific locales or even individual pieces of property. Master plan recommendations shape communities by recommending the type and density of land use, and/or proposing a desirable zone for a particular tract of land. These recommendations are implemented through two types of rezoning: sector plan amendments and local map amendments both of which are described later in this brochure.

THE COUNTY COUNCIL'S ROLE IN ZONING

The Montgomery County Council:

- adopts the Montgomery County Zoning Ordinance, which regulates zoning and land uses in all parts of the County except the municipalities of Barnesville, Brookeville, Gaithersburg, Laytonsville, Rockville, Poolesville and Washington Grove
- makes final decisions on all zoning changes
- approves area and functional master plans
- appoints the members of the Planning Board
- appoints the members of the Board of Appeals

THE PLANNING BOARD'S ROLE IN ZONING

The Montgomery County Planning Board, composed of five members, is the County Council's principal adviser on land use, community planning and zoning issues. Among its activities, the Planning Board:

- develops master plans, in an extensive public process, and transmits a final draft to Council for additional public review and approval
- reviews or prepares amendments to the text of the Zoning Ordinance
- formally adopts master plans approved by the Council

- reviews and makes recommendations to the County Council on rezoning applications
- reviews and makes recommendations to the Board of Appeals in special exception cases
- approves subdivisions and site plans to ensure that proposed development complies with the requirements of the applicable zone and any previous approvals by the Council or Board of Appeals

For more information about the Planning Board's authority and functions, see our companion brochure, *A Resident's Guide to the Park and Planning Commission in Montgomery County*.

TYPES OF ZONING

There are two basic types of zoning:

- Euclidean Zones
- Floating Zones.

Euclidean Zones

Euclidean Zones are the oldest type of zoning dating back to 1916. This type of zone got its name from Euclid, Ohio, whose zoning ordinance was the subject of the U.S. Supreme Court decision in *Euclid vs. Ambler* (1926) that upheld the zoning authority of local governments. Euclidean zoning establishes zone districts with set boundaries and specific standards that govern permitted uses, lot sizes, setbacks and building height.

Euclidean Zones generally fall into four broad categories: residential, commercial, industrial and agricultural. Montgomery County also has Euclidean zones that permit mixed-use development, such as the central business district zones, which encourage a combination of residential and commercial uses.

To approve rezoning of a parcel of land to a Euclidean Zone, the Council must find that the applicant has satisfied Maryland "Change or Mistake Rule". For more information on "Change or Mistake" you can contact the Office of the People's Counsel.

In **residential zones**, housing ranges from single-family detached houses on lots of varying sizes to townhouses, garden apartments and high-rise apartments with varying densities permitted in different zones.

Commercial zones provide for retail, office or service-commercial development.

Light and heavy **industrial zones** permit a range and intensity of employment and industrial uses, with varying intensity of uses permitted in different zones. Heavier industrial uses often are located together in an industrial area.

Agricultural zoning was developed to preserve the thousands of acres of agricultural land still existing in the County. In particular, the *Rural Density Transfer Zone* is designed to preserve agricultural land in the County by allowing transferable development rights to be transferred to non-agricultural areas, that are identified on County zoning maps as “receiving areas.”

Floating Zones

Floating zones are a more flexible approach to zoning that encourages creativity of design, permits specialized land development, and provides more flexibility in standards and requirements than the Euclidean zones. When the County Council creates a floating zone, the zone is not attached to any particular piece of property- it “floats” over the County, and individual landowners may request that it be applied to their land through the local map amendment rezoning process.

To approve the application of a floating zone to a particular property, the County Council must find the proposed rezoning is be compatible with surrounding uses, satisfies the purpose clause of the zone and is in accord with the expressed purposes and is in the public interest. Development under the floating zones also requires site plan review by the Planning Board. Site plan review by the Planning Board is required in some of the Euclidean zones, but only under certain circumstances, for example if the proposed development exceeds a certain size.

There are many types of floating zones in the Montgomery County Zoning Ordinance that require varying levels of commitment by the applicant prior to receiving final permission to develop. They are basically divided into two types: a) Development plan zones and b) Non-development plan zones.

Overlay Zones

An overlay zone is established when the Council approves a sectional map amendment. An overlay zone imposes a set of requirements or restrictions in addition to those of the underlying Euclidean zone. In an area where an overlay zone is established,

property is placed simultaneously in the two zones and the land may be developed only under the requirement of both zones. Overlay zones are typically applied where there is a special public interest that is identified in the applicable Master Plan.

To date there are 19 overlay zones contained in the zoning ordinance.

REZONING

The zoning of private property can be changed in two ways:

- A sectional map amendment, which is a comprehensive rezoning of an area of the County, usually to implement the recommendations of a master plan. Sectional map amendments are proposed only by the Planning Board or the County Council, and must be approved by the Council.
- A local map amendment, which is a rezoning requested for a particular parcel of land by the property owner or a contract purchaser.

County Council decides whether or not to grant rezoning based on the evidence of record. In each case, the Council considers the Hearing Examiner’s Report and Recommendation, the Planning Board Recommendation and the Technical Staff Report.

SECTIONAL MAP AMENDMENTS

- A sectional map amendment may be proposed only by the Planning Board or the County Council, to implement the zoning recommendations of a master plan amendment
- An application for a sectional map amendment must show the boundaries of each area proposed for a Euclidean zone. It must also describe the acreage involved and provide a rationale for the amendment
- The Planning Board must provide a written recommendation as part of the record on the application
- The Council holds a public hearing on the sectional map amendment, with notice to the public, to take testimony
- A sectional map amendment takes effect only after approval by County Council

LOCAL MAP AMENDMENTS

- A property owner may request rezoning by filing an application for a local map amendment with the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Suite 200, Rockville, MD 20850.
- Notice of the application and public hearing date is provided by mail to adjoining neighbors and residents groups. In addition, a large sign must be posted prominently on the property
- M-NCPPC staff prepares a Technical Staff Report analyzing zoning standards and potential impacts on the neighborhood, such as traffic and environmental effects, and making a recommendation of approval or denial
- Planning Board considers the application and the Technical Staff Report at a public hearing at which the applicant and members of the public have the opportunity to testify within prescribed time limits
- Planning Board forwards a written recommendation of approval or denial to the Office of Zoning and Administrative Hearings
- A Hearing Examiner from the Office of Zoning and Administrative Hearings holds a public hearing on the application and issues a Report which analyzes the evidence and testimony and makes a recommendation to the Council
- County Council decides whether or not to grant rezoning based on the evidence of record. In each case, the Council considers the Hearing Examiner's Report and Recommendation, the Planning Board Recommendation and the Technical Writer Report.

SPECIAL EXCEPTIONS

The Zoning Ordinance identifies specific uses as Special Exceptions in certain zones, which means they are only permitted in the given zone after additional review. The applicant applies to the Board of Appeals for a special exception. The Board of Appeals reviews, approves or denies, applications on a case-by-case basis, after receiving a recommendation from the Planning Board and the Hearing Examiner. After a special exception application is approved, as long as the use of the property and adherence to the conditions of approval are maintained, the special exception can continue. The special exception then "runs with the land" even if the property's ownership changes.

The Office of Zoning and Administrative Hearings holds the public hearing on special exceptions and forwards a Report and Recommendation to the Board of Appeals, which is the basis of their decision on whether to grant a special exception.

THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

Established by the County Council, the Hearing Examiners are assigned to hold hearings on local map amendment cases.

Hearings on local map amendments include:

- unlimited time to testify
- swearing in of all witnesses
- cross examination of all witnesses
- a transcript of proceedings
- Report and Recommendation prepared based on evidence and testimony presented at hearing

Report and Recommendation forms basis on which County Council considers whether to grant or deny application.

OFFICE OF THE PEOPLE'S COUNSEL

The Office of the People's Counsel protects the public interest in zoning hearings by promoting a full and fair presentation of relevant issues to achieve a balanced hearing record; and, provides technical assistance to residents and citizen associations so they can effectively participate in the County's zoning process.

Please call the Office of the People's Counsel for assistance in understanding the zoning process, zoning regulations, and ways to effectively present your views and issues so that they are considered in zoning decisions.



**The Maryland-National Capital
Park and Planning Commission**

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The M-NCPPC encourages the participation of all individuals in its programs and services. For accommodations, please call 301-495-4600, TTY 301-495-1331.

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