



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #21
09/06/02

DATE: September 6, 2002
TO: Montgomery County Planning Board
VIA: Joe Davis, Chief, Development Review
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To clarify the circumstances for exemption of a private school from the special exception process if located on land owned or leased by a religious institution.

TEXT AMENDMENT: No. 02-21
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Denis
INTRODUCED DATE: July 30, 2002

PLANNING BOARD REVIEW: September 12, 2002
PUBLIC HEARING: September 17, 2002; 1:30pm

STAFF RECOMMENDATION: APPROVAL

PURPOSE OF THE TEXT AMENDMENT

- The zoning text amendment is proposed to clarify the circumstances for exemption of a private school from the special exception process if located on land owned or leased by a religious institution.

BACKGROUND

Under current law, a private school located on land owned or leased by any church or religious organization is not required to obtain a special exception. The proposed zoning text amendment would eliminate this exemption for a private school that received special exception approval to operate on a site that was not owned or leased by a religious institution, when the special exception was granted. To date, no private schools with special exception approval have attempted this maneuver.

ANALYSIS

The text amendment proposes to clarify the circumstances for exemption of a private school from the special exception process if located on land owned or leased by a religious institution. Specifically, the proposed language (Sect. 59-G-2.19(e)) reads as follows:

- (e) *Exemptions. The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County.*

This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.

The effect of the text amendment would be to foreclose the possibility of an existing private school avoiding any special exception limitations placed on the school's operation by selling the property to a religious entity and leasing the land back from a religious institution. Staff has no objection to the proposed text amendment but notes that the subject proposal does not preclude a new private school venture from donating or selling property to a religious institution and leasing it back, thereby circumventing the special exception process. It appears that the only way to address this issue would be to eliminate the exemption provision for any private educational institution, other than schools affiliated with a church or religious organization. This would be outside of the scope of the subject text amendment, thereby requiring a separate text amendment proposal by the County Council.

Master and Sector Plan Conformance

The Community-Based Planning Division reports that the proposed text amendment would not affect the general goals and objectives of the master and sector plans.

RECOMMENDATION

The staff supports the proposed text amendment to clarify the circumstances for exemption of a private school from the special exception process if located on land owned or leased by a religious institution

Attachment 1 depicts the proposed text amendment as submitted.

GR

Attachments

1. Proposed Text Amendment 02-21

Zoning Text Amendment No: 02-21
Concerning: Exemption Clause
Draft No. & Date: 1 – 7/23/02
Introduced: July 30, 2002
Public Hearing: 9/17/02; 7:30 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: Councilmember Denis

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

- clarifying the circumstances for exemption of a private school from the special exception process if located on land owned or leased by a religious institution.

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

DIVISION 59-G-2 “SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS”

Section 59-G-2.19 “Educational institutions, private”

*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. Division 59-G-2 is amended as follows:**

2 **DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND**
3 **REQUIREMENTS.**

4 * * *

5 **59-G-2.19. Educational institutions, private.**

6 * * *

7 (e) **Exemptions.** The requirements of Section G-2.19 do not apply to the use of
8 any lot, lots or tract of land for any private educational institution, or
9 parochial school, which is located in a building or on premises owned or
10 leased by any church or religious organization, the government of the United
11 States, the State of Maryland or any agency thereof, Montgomery County or
12 any incorporated village or town within Montgomery County.

13
14 This exemption does not apply to any private educational institution which
15 received approval by the Board of Appeals to operate a private educational
16 institution special exception in a building or on a lot, lots or tract of land that
17 was not owned or leased by any church or religious organization at the time
18 the Board of Appeal’s decision was issued.

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

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4 This is a correct copy of Council action.

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9 Mary A. Edgar, CMC

10 Clerk of the Council

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