



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 7
9/11/03

DATE: September 5, 2003
TO: Montgomery County Planning Board
FROM: Joseph R. Davis, Chief *JRD*
Development Review Division
301-495-4591

REVIEW TYPE: Zoning Text Amendment
PURPOSE: Authorizing the District Council to approve certain exceptions to the setback requirements for buildings and parking areas existing at the time of reclassification to the Country-Inn Zone

TEXT AMENDMENT: No. 03-22
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmembers Floreen, Knapp and Leventhal
DATE INTRODUCED: July 29, 2003

PLANNING BOARD REVIEW: September 11, 2003
PUBLIC HEARING: September 9, 2003; 1:30 PM

STAFF RECOMMENDATION

APPROVAL of the Text amendment with the following minor modification:

On line 12 of page 3, insert 75 feet in place of 50 feet.

ISSUE TO BE RESOLVED BY TEXT AMENDMENT

To provide for reduced setbacks for existing buildings and existing parking areas located on sites rezoned to the Country-Inn Zone that do not meet the minimum setbacks contained in the Country-Inn Zone, at the time of rezoning.

BACKGROUND

The Country-Inn Zone has been in effect for over twenty years. It was originally enacted to accommodate restaurants in rural settings. A country-inn may include up to twelve guest rooms as well as a dwelling for the innkeeper and family. The purpose clause of the Zone states that the intent of the Country-Inn Zone is to permit country-inns at appropriate rural locations and that it is further intended that such use be located in

existing buildings and structures, but new structures are allowed where appropriate. The Zone requires the submission and approval of a Division 59-D-1 development plan. A Division 59-D-3 site plan must also be approved prior to issuance of a building permit or prior to issuance of a use and occupancy permit, if located in an existing building.

When the Country-Inn Zone was enacted, there was no provision provided for reduced setbacks for existing buildings and parking areas that could not meet the established setback standards of the Zone. Staff believes that this was an oversight in that one of the stated purposes of the Zone is to utilize existing buildings and structures. Staff believes that a nonconforming building can be reclassified into the Zone, but current nonconforming use provisions in Division 59-G-4 of the Zoning Ordinance preclude a nonconforming building or structure from being altered, renovated or enlarged unless the construction will “conform the building” to the requirements of the zone in effect.

ANALYSIS

The need for the subject text amendment was identified during the review of a zoning application proposing to rezone the existing Comus Inn to the Country-Inn Zone. In the course of reviewing the application, it was found that a proposed minor building addition to accommodate a new restroom facility could not be approved because the proposed bathroom addition to the existing Comus Inn building would encroach into the minimum fifty-foot setback from Comus Road (MD 109), as prescribed in the Country-Inn zone. In addition, the existing parking lot encroaches into the minimum parking setback area along the property’s frontage on Old Hundred Road (MD 95). The Hearing Examiner for the zoning application concluded, in the Hearing Examiners Report and Recommendation dated July 7, 2003, that the development plan could not be recommended for approval because the development would not meet the setback requirements of the Zone. The Hearing Examiner recommended deferral of the application pending approval of a text amendment by the County Council to address the setback deficiencies for the existing buildings, structures and parking.

A text amendment is necessary to address the problem because there is no administrative relief from the minimum required setbacks. The Variance procedures of Division 59-G-3 do not allow the Board of Appeals to reduce the minimum setbacks for commercially or industrially zoned properties that abut or adjoin any residentially zoned land. This prohibition does not apply if the abutting or adjoining residentially zoned land is recommended for commercial/industrial development on the area master plan. In this instance, the adjacent residentially zoned properties are not recommended for commercial or industrial zoning on the area master plan. While the property located across MD 109 is zoned C-1, the prohibition on granting a setback variance still applies because the other surrounding properties are zoned R-200 and RDT.

The subject text amendment proposes to amend Sec. 59-C-4.39 of the Zoning Ordinance, which contains the setback requirements for the Country-Inn Zone. The text amendment would add new language to authorize the District Council to approve a setback less than fifty feet from a street and less than 75 feet from another boundary for any existing

building and parking area in existence at the time of reclassification to the country-Inn Zone. The Council may also approve additions or improvements to such building and parking areas shown on the Development Plan. Staff supports the text amendment with the minor change that the possible reduction for the parking setback apply to setbacks less than 75 feet rather than less than 50 feet, as introduced. There may be situations where a reduction to less than 75 feet, but more than 50 feet may be appropriate.

Attachment

Zoning Text Amendment No: 03-22
Concerning: Country Inn Zone
Draft No. & Date: 1 – 12/13/02
Introduced: July 29, 2003
Public Hearing: 9/9/03; 1:30 PM
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: Councilmembers Floreen, Knapp and Leventhal

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

- authorizing the District Council to approve certain exceptions to the setback requirements for buildings and parking area existing at the time of reclassification to the Country Inn zone

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

DIVISION 59-C-4	“COMMERCIAL ZONES”
Section 59-C-4.39	“Country inn zone-Purpose and development standards”
Section 59-C-4.394	“Setbacks”

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-C-4 is amended as follows:**

2 **DIVISION 59-C-4. COMMERCIAL ZONES.**

3 * * *

4 **59-C-4.39. Country Inn zone-Purpose and development standards.**

5 * * *

6 **59-C-4.394. Setbacks.**

7 (a) Minimum setback from any street—50 feet, except that the District Council
8 may approve a setback less than 50 feet for any building and parking
9 existing on the site at the time of reclassification to the Country Inn zone and
10 for any addition or improvement shown on the Development Plan.

11 (b) Minimum setback from any other boundary of the lot—75 feet, except that
12 the District Council may approve a setback less than 50 feet for any building
13 and parking existing on the site at the time of reclassification to the Country
14 Inn zone and for any addition or improvement shown on the Development
15 Plan.

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17 **Sec. 2. Effective date.** This ordinance becomes effective on the date of
18 Council adoption.

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20 This is a correct copy of Council action.

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25 _____
26 Mary A. Edgar, CMC
Clerk of the Council