

February 14, 2005

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Faroll Hamer, Acting Director
Department of Park and Planning

SUBJECT: Proposed Development Review Legislation
ZTA 05-20
ZTA 05-18
SRA 05-05
SRA 05-06

ZTA 05-20

Single document issue:
Lines 7, 12 and 157

The revised legislation distinguishes between the document seen by the Planning Board at the time of the public hearing (public hearing site plan) and the final approved document (certified site plan). On lines 157-160 the process for creating the certified site plan is described as incorporating engineered drawings into the certified site plan after the Planning Board hearing. It should be noted that the drawings may need to be changed prior to certification to incorporate engineering details that were not available at the time of the hearing, but they are also altered to reflect the Planning Board's conditions. The language as written appears to be broad enough to support this interpretation.

The new language also provides for the process for notice and inspection of the certified plans to be provided in the board's Rules of Procedures.

Staff recommendation: no change

Rules of Procedure

See line 410

The revised legislation provides for the Planning Board's Rules of Procedure to be approved by the Council per method 2 of Section 2A-15. This rule requires the Council to act within 60 days of receipt of the rules, and if no action is taken, the rules are automatically approved. However, the Council can extend the time limit indefinitely. In recent practice, the Council has extended the time limit rather than let it expire.

Staff comment: Royce Hansen addressed this issue in his memo of January 27, 2006 to the PHEC Committee.

“I think submitting regulations for Council review and comment is a useful and appropriate component of its oversight function *but strongly recommend against requiring Council approval of Planning Board regulations* (his emphasis). This seriously undermines the independence and integrity of the Board and is an invitation for mischief. I can remember Councils that would have not used such power benignly. In the best of circumstances it places on the Council responsibility for fixing any inadequate or dysfunctional regulations, with which it is unlikely to have first hand acquaintance. The Council should provide legislative standards for rulemaking and conduct rigorous oversight, but not become a superboard.”

Furthermore, mandating this process may prevent the Planning Board from acting in a timely fashion to timely adopt new Rules, and to timely amend the Rules in the future. Staff suggests that County Council review through the Council's Method 3 review of regulations is more appropriate. This method requires the Board to publish its Rules in the register, which will provide broader public advertisement than likely would be achieved solely through the Board's public hearing process, and also provides for County Council review of the Rules, but will not have the potential to leave the Rules “in limbo” for an indefinite period of time.

Staff recommendation: eliminate or impose Method 3.

Minor Amendment Issue

Line 290

The definition of major and minor site plans has been removed from the legislation, and the Planning Board is required to include those definitions in its Rules of Procedure. Notice for minor amendments is required (15 days). Each application must show every proposed amendment, and the amendment process required by the legislation is the only way a certified site plan may be modified. The Planning Director must forward each minor amendment to the Planning Board and DPS immediately after approving it.

Staff comment: Staff had suggested that a simple substitution process for very limited items of equal value (for example, substituting one shade tree for another, or brands of

recreational equipment) could be instituted and documented with no detriment to the approved plan. Council members expressed a strong preference for a more flexible method of dealing with such minor changes on a case-by-case basis.

Staff recommendation: No change.

Posting of the site, pre-application notice and meetings with communities

Line 104

The legislation requires verification that the applicant has posted notice on the property, notified affected parties, and held a pre-submittal meeting with the public. The details are required to be provided in the Rules of Procedure.

Staff recommendation: no change.

Controlling document and language

Line 239 and 241

The statements that the site plan governs in case of a conflict with another plan, and that the most rigorous provision governs if there is a conflict between provisions within a site plan, have been eliminated.

Staff recommendation: no change.

Violations

Line 251

If the Planning Board finds after a hearing (on its own, or through a hearing officer) has been held, that a certified site plan is not being complied with, the Board may impose a civil fine or penalty, suspend or revoke the site plan, approve a compliance program, allow the applicant to propose modifications to the certified site plan, or take any combination of those actions. In addition, it calls for DPS to suspend any building permit or withhold use-and-occupancy permits if the Board has revoked a site plan, until such time as the Board reinstates the site plan or approves a new site plan.

Staff comment: This provides a suitably broad array of choices for the Planning Board. Additional language should be added to line 260 to indicate that these choices apply not only to site plans that are not being complied with, but to site plans that were approved in error (for example, without required standards).

Staff recommendation: minor change as indicated above.

“Consistent with” versus “conforms to” issue:

The language in the current version reflects a general concept to apply a conformity standard to detailed plans that must conform to other detailed plans (e.g. building permits to site plans), to plans that must conform to conditions or regulations, and to detailed plans that must conform to any plans, including conceptual plans, approved by the Council or the Board of Appeals. The consistency standard would be applied only to detailed plans that must be consistent with conceptual plans approved by the Planning Board.

Staff comment: The consistency standard is the appropriate standard to apply to all detailed plans in comparison to conceptual plans, regardless of who approved the conceptual plans. Using the word “consistency” does not create a looser standard, it reflects the degree of congruence that is possible between a detailed plan and a conceptual plan.

Staff recommendation: Change “conforms to” to “is consistent with” for detailed plans in comparison with conceptual plans, regardless of the approving authority.

ZTA 05-18

Hearing officer:

This legislation states that the Planning Board may assign a hearing office designated by the Planning Board, including a Hearing Examiner from the Office of Zoning and Administrative Hearings, to conduct a public hearing and submit a report and recommendation on alleged violations.

Staff recommendation: no change.

SRA 05-06

Interagency coordination

Requires agency recommendations to be provided to the Planning Department within 30 days or other appropriate time. If the recommendation is not submitted within the allowed time, the Chair of the Board must notify the County Executive and the Council President.

SRA 05-05

Definitions

Clarifies definitions of Enforcement Agent, Planning Board Action, and Planning Director.

MOU between Department of Permitting Services and Department of Park and Planning

The Council determined that a Memorandum of Understanding detailing specific responsibilities of the two agencies concerning review of permits and inspections would be the most appropriate way to clarify the roles and responsibilities of the two agencies. A draft outline of the MOU is attached. *It should be noted that the Department of Permitting Services has not had the opportunity to review or comment on the draft.*

Future legislation:

It has come our attention that there is no ordinance controlling site grading and surface drainage for Montgomery County. There is a stormwater management ordinance that regulates piped runoff from roofs, streets into ponds or other facilities, but there is no ordinance that regulates surface runoff into existing properties, or other site surface drainage issues. Staff recommends that such an ordinance, including regulations to establish site slope limitations (minimum and maximum grades), slope setbacks, on-site surface drainage (ponding, drainage terraces, erosion control, overflows, ground water and downspout discharge) be enacted.

In addition, the standards for construction and inspection of private roads are inadequate. Private roads must be constructed to a minimum profile (amount of gravel, base coat and top coat) but there are no standards for the crown or for curbs and gutters. Furthermore, the construction is not inspected in the field, as there are currently no inspectors available for such work. It is recommended that stricter standards for private roads be enacted and that responsibility for inspections is clearly assigned.