

Zoning Text Amendment No: 05-20
Concerning: Site Plans – Approval,
Amendment and Enforcement
Draft No. & Date: 6 2-13-06
Introduced: November 29, 2005
Public Hearing: January 17, 2006
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: District Council

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:
Revising the process to approve, amend, and enforce site plans.

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

DIVISION 59-A-2 Definitions and interpretation
Section 59-A-2.1
DIVISION 59-D-3 Site Plan
Sections 59-D-3.0 through 59-D-3.8

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:*

27 In [the zones] any zone identified in Article 59-C as requiring site plan
28 approval, [no] the Department must not issue a sediment control permit, [and no]
29 building permit, or use-and-occupancy permit for [the construction or use of] any
30 building or structure [may be issued]:

31 (a) until the Planning Board approves a site plan [is approved], and

32 (b) unless [it is in accordance with an] the building or structure conforms
33 to the approved site plan.

34 **59-D-3.1. Requirements.**

35 **59-D-3.1.1. Ownership; identity of applicant.**

36 (a) [The] Each proposed site plan must be filed with the Planning Board[;
37 it]. A proposed site plan may cover all or any part of a lot or tract[,
38 and].

39 (b) An application for site plan approval may be filed only by one or
40 more persons with a financial, contractual, or proprietary interest in
41 the property where the development would be located.

42 (c) If any land or right-of-way is owned or controlled by the State, the
43 County, or another political subdivision or government entity,
44 including the Washington Metropolitan Area Transit Authority
45 ("WMATA"), a person who otherwise qualifies under subsection (b)
46 may apply for site plan approval for development on that land if the
47 application includes a final agency agreement or other written
48 authorization from the government entity authorizing the person to
49 include the public land or right-of-way in the application.

50 (d) If a property is located entirely in an area designated as an urban
51 renewal area under Chapter 56, the landowner, a contract purchaser,
52 or another legal entity or individual holding a legal interest in the
53 land, in whole or in part, may file a site plan application that includes

54 any other property that is also located entirely in the same urban
 55 renewal area.

56 **59-D-3.1.2. Conformity with previous actions.**

57 Each proposed site plan must meet the following requirements:

58 (a) If the land is classified in a zone that requires a development plan, the
 59 site plan must [be consistent with] conform to the approved
 60 development plan.

61 (b) If the site plan is for land classified under Section 59-H-2.5, [title
 62 "Contents of Optional Method of Application-Local Map
 63 Amendments,"] the site plan must [be consistent with] conform to
 64 each binding element of the approved schematic development plan[,
 65 development program,] [[and each recorded covenant]].

66 (c) If the site plan is for the optional method of development in a CBD
 67 Zone, [it] the site plan must [be consistent with] [[conform to]] be
 68 consistent with a project plan approved under Division 59-D-2.

69 (d) If the site plan is for land classified in the MXN Zone, [it] the site plan
 70 must [be consistent with] conform to a diagrammatic plan approved
 71 [in accordance with] under Division D-4.

72 (e) If the site plan does not cover the entire lot or tract or the entire area
 73 included in any [of the plans] plan cited in the preceding paragraphs,
 74 [it] the site plan must show how it is related to and coordinated with
 75 other site plans either approved, under consideration, or yet to be
 76 submitted.

77 [(f) An overlay zone must specify the required elements of the site plan,
 78 and the site plan must be consistent with all standards and regulations
 79 of the overlay zone.]

80 **59-D-3.2. Contents of proposed site plan.**

81 [The] Each proposed site plan must include the following, with all [of the]
 82 maps [being] drawn at a consistent scale:

83 **59-D-3.21. Subdivision plan information.**

84 The information required for the submission of a preliminary subdivision
 85 plan[, as set forth in] under Chapter 50. [An application for site plan approval
 86 must be filed with the planning board by a person with a financial, contractual, or
 87 proprietary interest in the property. If land or rights-of-way is owned or controlled
 88 by the State of Maryland, the county, or other political subdivision, government
 89 entity or agency, or the Washington Metropolitan Area Transit Authority
 90 ("WMATA"), a person may file an application for the land if the application
 91 includes an agency agreement or other written authorization from the government
 92 entity, agency or WMATA authorizing the person to include the public land or
 93 rights-of-way as part of the application. If a property lies entirely in an area
 94 designated as an urban renewal area under Chapter 56 the landowner, contract
 95 purchaser, a legal entity, or individual holding legal interest, whether in whole or
 96 in part, may file a site plan application that may include any other property also
 97 located entirely in the urban renewal area.]

98 * * *

99 **59-D-3.23. Proposed development.**

100 A plan of the proposed development, including [[but not limited to]] the
 101 following information unless waived by the Planning Director at the time of
 102 application as [[being]] unnecessary because of the limited scope of the proposal:

103 * * *

104 (p) Verification that the applicant has posted notice on the property,
 105 notified affected parties, and held a pre-submittal meeting with the
 106 public, as required by Planning Board regulations.

107 **59-D-3.3. [Reserved] Zoning certification.**

108 (a) If any part of the land included in the site plan is classified under a
 109 zone that was applied [[under]] through a local map amendment
 110 which included a development plan, schematic development plan, or
 111 diagrammatic plan that the District Council approved, the applicant
 112 must submit a sworn statement[[, signed by the applicant or its
 113 counsel,]] certifying that the site plan conforms to [[all binding
 114 representations made to]] the development plan, schematic
 115 development plan, or diagrammatic plan approved by the District
 116 Council during the local map amendment process[[, including
 117 representations about type of use, density, building height, floor area
 118 ratio, setbacks, landscaping and parking, as well any other element on
 119 which the District Council expressly relied in reaching its decision]].

120 (b) This certification does not relieve the Planning Board of its duty to
 121 independently determine that the site plan [[is consistent with]]
 122 conforms to any applicable development, diagrammatic, [[plan]] or
 123 [[the binding elements of any applicable]] schematic development
 124 plan.

125 **59-D-3.4. Action by Planning Board.**

126 (a) [A] The Planning Board[[, or a hearing officer designated by the
 127 Board,]] must hold a duly noticed public hearing [must be held by the
 128 Planning Board] on each site plan application. The Planning Board
 129 must [[approve, approve [subject to modifications] with amendments,
 130 or disapprove]] take final action on the proposed site plan not later
 131 than 45 days after [receipt of the site plan] receiving the application,
 132 unless the applicant agrees to extend the time for Board action. [[,
 133 but]] However, [such action and notification is not required] the
 134 Planning Board need not act before [the approval of] a preliminary

135 plan of subdivision involving the same property is approved. The
136 Planning Board [then] must notify the applicant and all other parties
137 of record in writing of its action.

138 (b) [[The site plan approved by the Planning Board must be a single
139 document which controls what the applicant may build on the
140 specified site. The Planning Board must specify all applicable
141 conditions and requirements in the approved site plan. When the site
142 plan is approved by the Planning Board, it must contain all applicable
143 data, maps, drawings, and other information. The Planning Board's
144 opinion (when an opinion is legally required) is part of the approved
145 site plan, has no separate legal effect, and must briefly describe the
146 Board's findings and conclusions. The approved site plan must not
147 incorporate any other document by reference.]]

148 The Planning Board must consider each public hearing site plan after
149 holding the hearing required under subsection (a), and at the same or a
150 later meeting must by resolution approve, approve with conditions, or
151 disapprove the proposed site plan. The Planning Board resolution
152 must contain:

- 153 (1) all necessary findings of fact and conclusions of law;
154 (2) all applicable conditions and requirements of site plan approval,
155 if the plan is approved; and
156 (3) all applicable data, maps, drawings and other information.

157 The Planning Board may adopt regulations that allow an applicant to
158 submit certain required engineered drawings after the Board acts on
159 the site plan and prescribe the notice and approval process that applies
160 before those drawings may be incorporated into a certified site plan.

161 The certified site plan must control what the applicant may build on
162 the specified site.

163 (c) In reaching its decision the Planning Board must [determine whether]
164 require that:

165 (1) the site plan [is consistent with] conforms to [[an approved]] a
166 development plan, schematic development plan, or
167 diagrammatic plan certified by the Hearing Examiner under
168 Section 59-D-1.64, or [[a]] is consistent with an approved
169 project plan for the optional method of development, if
170 required, unless the Planning Board expressly modifies any
171 element of the project plan;

172 (2) the site plan meets all of the requirements of the zone in which
173 it is located, and where applicable [is consistent with] conforms
174 to an urban renewal plan approved under Chapter 56[.];

175 (3) the locations of [the] buildings and structures, [the] open
176 spaces, [the] landscaping, recreation facilities, and [the]
177 pedestrian and vehicular circulation systems are adequate, safe,
178 and efficient;

179 (4) each structure and use is compatible with other uses and other
180 site plans, and with existing and proposed adjacent
181 development; and

182 (5) the site plan meets all applicable requirements of Chapter 22A
183 regarding forest conservation, [and] Chapter 19 regarding water
184 resource protection, and any other applicable law.

185 [(b)] (d) The Planning Board [shall] must not approve the proposed site plan
186 if it finds that the proposed development would not achieve a
187 maximum of compatibility, safety, efficiency and attractiveness[; and

188 the]. The fact that a proposed site plan [complies] may comply with
189 all [of the stated general regulations,] applicable development
190 standards or other specific requirements of the applicable zone [shall]
191 does not, by itself, [be deemed to] create a presumption that the
192 proposed site plan is, in fact, compatible with surrounding land uses
193 and, in itself, [shall] is not [be] sufficient to require [approval of] the
194 Planning Board to approve the proposed site plan.

195 (e) In the resolution approving a site plan, the Planning Board may
196 expressly designate:

197 (1) certain elements of the plan as [[binding]] essential elements
198 that must not be modified [[without]] except by a plan
199 amendment approved by the Planning Board under Section 59-
200 D-3.7; and

201 (2) other elements as guidelines that will have minimal effect on
202 the overall design, layout, quality, or intent of the plan, and
203 which may be modified by minor plan amendments under
204 Section 59-D-3.7[[c)(6)] unless the Planning Director
205 recommends that any specific modification be treated as a
206 major plan amendment.

207 [(c)] (f) [[Upon approval]] After final Planning Board action, the site plan
208 approval resolution must be:

209 (1) [Signed by the applicant agreeing to execute all the features and
210 requirements that are part of the site plan;

211 (2) Signed by the [[Chairman of the]] Planning Board Chair, or
212 [his] the Board's designee, certifying Planning Board approval
213 of the site plan; and

214 [(3)] (2) Forwarded to the Department for reference in issuing
 215 building permits under Section 59-D-3.5.

216 [(g) When a hearing officer is designated to conduct a hearing under this
 217 Division, the officer must forward a written report, with a
 218 recommendation for decision, to the Planning Board, including
 219 findings of fact and conclusions of law where required or
 220 appropriate.]]

221 **59-D-3.5. Effect of site plan.**

222 (a) In the case of any land in a zone requiring site plan approval[, as
 223 provided in article 59-C,] or any special exception for which site plan
 224 approval is a condition, [as provided in sections 59-A-4.22 and 59-G-
 225 1.22(b),] the Planning Board must not approve a record plat [required
 226 by chapter 50 of this Code, title “Subdivision of Land,”] [[must not be
 227 approved]] unless [it is in strict compliance] the plat strictly
 228 [[complies with a]] conforms to the certified site plan [[approved]] [as
 229 provided by this division 59-D-3] [[by the Planning Board]].

230 (b) [No] A sediment control permit, building permit, or use-and-
 231 occupancy permit [may] must not be issued unless [it is in strict
 232 compliance] each strictly complies with [[an approved]] a certified
 233 site plan.

234 (c) All [the] requirements and features that are part of the [[approved]]
 235 certified site plan must be [[executed]] implemented [in accordance
 236 with] as specified in the [applicant’s] development program required
 237 by section 59-D-3.23(m), as modified by the Planning Board in the
 238 [[approved]] certified site plan or at any later time.

239 (d) [[If any part of an approved site plan conflicts with any previously
 240 approved project, urban renewal, or preliminary subdivision plan, the

241 site plan governs.]] [[In any conflict between 2 or more provisions of
 242 an approved site plan, the most rigorous provision governs.]]

243 [[e)]] [A] The Planning Board may require the applicant to post a
 244 performance bond securing compliance with and full [[execution]]
 245 implementation of all features of the certified site plan [may be
 246 required to be posted with the Planning Board] in an amount
 247 [established] set by the Planning Board. [In such cases, no] If a bond
 248 is required, the Department must not issue a sediment control permit,
 249 building permit, or use-and-occupancy permit [may be issued] until
 250 this bond is posted.

251 **59-D-3.6. Failure to comply.**

252 (a) If the Planning Board finds [[reason to conclude]], [[for any site plan
 253 approved under this Section,]] on its own motion or after a complaint
 254 is filed with the Planning Board or the Department, and after giving
 255 due notice to the applicant, the complainant, and all parties previously
 256 before the Board on this plan and holding a public hearing or
 257 receiving a report of a public hearing held by a designated hearing
 258 officer, that any [of the terms, conditions or restrictions upon which]
 259 term, condition, or restriction in [[the]] [site] a certified site plan [was
 260 approved are] is not being complied with, the Planning Board[[, after
 261 due notice to the applicant and all other parties concerned and a public
 262 hearing held by the Planning Board or a hearing officer designated by
 263 the Board,]] may:

- 264 (1) impose a civil fine or penalty authorized by Section 50-41;
 265 (2) suspend or revoke [its approval of the] the site plan; [[or]]

266 (3) approve a [plan of] compliance program which would permit
 267 the applicant to take corrective action to comply with the
 268 certified site plan;

269 (4) allow the applicant to propose modifications to the certified site
 270 plan, or

271 (5) take any combination of these actions.

272 (b) If at the end of the [term of the plan] effective period of ~~[[the]]~~ any
 273 compliance program approved by the Planning Board, the Planning
 274 Board finds that the applicant has not taken sufficient corrective
 275 action [has not taken place to cause compliance], the Planning Board
 276 may without holding further hearings revoke [its approval of] the site
 277 plan or take other action necessary to ensure compliance, including
 278 imposing civil fines, penalties, stop work orders, and corrective orders
 279 under ~~[[Chapter 50]]~~ Section 50-41. The Planning Board may
 280 [request and] obtain investigations and reports as to compliance from
 281 appropriate County or State agencies.

282 (c) [Upon decision by the Planning Board to revoke approval of] If the
 283 Planning Board suspends or revokes a site plan, the Department must
 284 immediately suspend any applicable building [permits and] permit
 285 under which construction has not been completed, or withhold any
 286 applicable use-and-occupancy [permits issued pursuant to a prior
 287 Planning Board approval are hereby declared invalid] permit, until the
 288 Planning Board reinstates the site plan or approves a new site plan for
 289 the development.

290 **59-D-3.7. Amendment of a site plan.**

291 [A major plan amendment or minor plan amendment is defined as set forth
 292 in Sec. 59-D-2.6.]

293 (a) The owner of the property to which [[an approved]] a certified site
 294 plan applies[[, the Director, or the Planning Director,]] may apply at
 295 any time for an amendment to [[an approved site]] the plan. Each
 296 application [[for an amendment]] must show every proposed
 297 amendment, in a format approved by the Planning Board, on a copy of
 298 the [[approved]] certified site plan. The amendment process required
 299 in this Section is the only way [[an approved]] a certified site plan
 300 may be [[changed]] modified.

301 (b) The Planning Board may approve any proposed site plan amendment,
 302 other than a minor site plan amendment as defined under subsection
 303 (c), after [[giving the applicant and any other affected person an
 304 opportunity for]] holding a public hearing [[before the Planning Board
 305 or a hearing officer designated by the Board]]. The Planning Director,
 306 but not any other member of the Planning staff, may approve a minor
 307 site plan amendment as provided in this Section.

308 [(c) A minor amendment is a site plan amendment that would only:

309 (1) increase or decrease the height, setback, or gross floor area of a
 310 building by no more than 5 percent;

311 (2) increase or decrease the land area covered by a structure other
 312 than a building by no more than 5 percent;

313 (3) redesign a parking or loading area in a way that does not
 314 significantly affect any neighboring property;

315 (4) redesign a landscape plan in a way that does not alter basic
 316 elements of the plan or significantly affect any public area or
 317 neighboring property;

318 (5) approve any modification required by engineering necessity in
 319 grading, utilities, stormwater management, or any similar plan

320 element, in a way that does not significantly affect any public
 321 area or neighboring property; or

322 (6) modify any other plan element that the Planning Board, in
 323 approving that site plan, designated as an element that will have
 324 minimal effect on the overall design, layout, quality, or intent of
 325 the plan.]]

326 (c) The Planning Board must adopt regulations that define which site plan
 327 amendments may be treated as minor amendments under this Section.

328 (d) [[Along with any other notice required by the Planning Board's rules
 329 of procedure, the]] The applicant must post a conspicuous notice of
 330 each proposed minor amendment within 3 days after filing the
 331 application with the Planning Director at one or more places
 332 [[designated]] and in a form and content approved by the Planning
 333 Director. The applicant also must send written or electronic notice, in
 334 a form and content approved by the Planning Director, within 3 days
 335 after filing the application, to:

336 (1) each person who received notice of the hearing that the
 337 Planning Board held before the site plan was approved;

338 (2) the owner and (if known or reasonably identifiable by the
 339 applicant) any contract purchaser of each adjoining and
 340 confronting property; and

341 (3) each registered civic organization in the area of the property, as
 342 determined by the Planning Director.

343 If a person to whom notice was sent under this subsection, or any
 344 other affected person as defined by Planning Board regulations, has
 345 not filed a written or electronic request for a public hearing [[is not
 346 filed]] within [[10]] 15 days after the notice is [[posted]] sent, the

347 Planning Director may act on the minor amendment without holding a
 348 hearing. [[The Planning Director must forward each minor
 349 amendment to the Department immediately after approving it.]]

350 (e) Before approving a minor amendment, the Planning Director must
 351 make any finding that the Planning Board would be required to make
 352 if it reviewed the amendment. In approving a minor amendment, the
 353 Planning Director must not waive any requirement of law (unless the
 354 law otherwise allows the Planning Board to waive that requirement
 355 [[to be waived]]) or modify any condition or requirement expressly
 356 imposed by the Planning Board when it approved the site plan. The
 357 Planning Director must forward each minor amendment to the
 358 Planning Board and the Department immediately after approving it.

359 (f) If the Planning Director declines to approve a minor amendment or
 360 any [[affected]] person who is eligible to do so under subsection (d)
 361 files a timely request for a public hearing, the Planning Director must
 362 forward the amendment to the Planning Board for review under its
 363 procedures for amendment approval unless the applicant withdraws
 364 the amendment.

365 (g) The Planning Board Chair or the Board's designee must sign any
 366 [[amendment to]] Board resolution that amends [[an approved]] a
 367 certified site plan [[that the Planning Board approves]]. The Chair
 368 must forward each approved amendment to the Department
 369 immediately after signing it.

370 **59-D-3.8. Validity.**

371 (a) The [initiation date for commencing the validity] period during which
 372 [time] a certified site plan [must be validated,] is effective [is] starts
 373 on the later of:

- 374 (1) 30 days [from the date of mailing of the written opinion, as
 375 such date is printed on the opinion] after the Planning Board
 376 Chair or a designee ~~[[notifies]]~~ mails the Board resolution
 377 approving the plan to the applicant and other parties of record
 378 [[that the Chair has signed the plan]]; or
- 379 (2) [in the event] if an administrative appeal is timely noted by any
 380 party who has standing [authorized] to [take an] appeal, the date
 381 [upon which] when the court having final jurisdiction acts,
 382 including the running of any further applicable appeal
 383 ~~[[periods]]~~ period.
- 384 (b) The [validity] effective period of ~~[[an approved]]~~ a certified site plan
 385 [is conditionally tied to] depends on the expiration date of the
 386 underlying approved preliminary plan. The site plan [will validate
 387 upon the recordation of] takes effect when the final record plat is
 388 recorded for all of the property [delineated on] covered by the
 389 approved preliminary plan. Where phasing of development is
 390 [contemplated] required, [validation of phases will be treated in the
 391 same manner] each phase takes effect as provided in the preliminary
 392 plan. [Upon recordation of] After the record plat is recorded, the
 393 ~~[[approved]]~~ certified site plan [will] does not expire or require
 394 amendment [prior to the issuance of] before a building permit is
 395 issued unless:
- 396 (1) the project's APFO approval expires; or
- 397 (2) changes to the applicable zoning map, [or] zoning text, or other
 398 applicable laws or regulations require [a modification of] the
 399 ~~[[approved]]~~ certified site plan to be modified.

400 [The forgoing] This subsection does not preclude an applicant from
 401 seeking an amendment to ~~[[an approved]]~~ a certified site plan to
 402 address minor changes to the applicable zoning map, zoning text, or
 403 other applicable laws or regulations. In [such instances] that case, the
 404 ~~[[approved]]~~ certified site plan [will not be deemed to have expired]
 405 remains in effect.

406 (c) [Extensions.] If [an extension is approved for the] a preliminary
 407 subdivision plan is extended, then the certified site plan [will] must
 408 remain [valid to the extent that] in effect as long as the preliminary
 409 plan remains [valid] in effect.

410 **59-D-3.9 Regulations.**

411 Any regulation adopted by the Planning Board to implement this Division is
 412 subject to District Council review and disapproval as if it were submitted under
 413 method 2 of Section 2A-15.

414 **Sec. 3. Effective Date.**

415 This ordinance takes effect on March 1, 2006. Sections 59-D-3.1, 59-D-3.2,
 416 3.3, and 59-D-3.4, as amended by this ordinance, apply to any site plan that the
 417 Planning Board approves on or after that date. Sections 59-D-3.0, 59-D-3.5, 59-D-
 418 3.6, 59-D-3.7, and 59-D-3.8, as amended by this ordinance, apply to all site plans
 419 approved at any time before or after that date.

420

421 This is a correct copy of Council action.

422

423

424 _____
 Linda M. Lauer, Clerk of the Council

Date