



December 19, 2005

To: Montgomery County Planning Board

From: Jeff Zyontz, Chief
On assignment to Development Review Division

Rose Krasnow, Chief
Development Review Division

Subject: Interim guidelines to define Major Site Plan Amendments and the procedures for minor amendments
– A continuation from December 15 Planning Board work session on defining Minor Site Plan Amendments

Recommendation – Approve Interim Guidelines.

Discussion:

One of the lessons learned from the Clarksburg situation is the need to define the limits of staff discretion with respect to approving minor site plan amendments. We have informed the County Council that we will address the issue this month. The definition of a minor amendment will be the matter of public debate next month. Legislation has already been introduced at the County Council concerning this very issue. (Proposed zoning text amendment 05-20 is attached to this memo.) The outcome of establishing interim guidelines will be the basis of Planning Board comments on the County Council's pending legislation.

The Planning Board reached a general consensus at its December 15 meeting that the interim guideline should define a "major site plan amendment". Any amendment with less than a major impact MAY, under this concept, be considered a "minor amendment". That which is not a "major" change may be treated as a major change if the Director of Park and Planning deems it significant enough to warrant public scrutiny and the Planning Board's attention.

In addition to "reversing" the specifications of a minor amendment to define a major amendment and making other changes desired by the Planning Board, staff added two additional specifications to this draft. Specifications 9 and 10, below, deal with roadway changes and changes that would be amendments to project plans or preliminary plans.

Major, Minor, and Limited Site Plan Amendments

Matters Properly Considered as Major Amendments Requiring Approval by the Planning Board after Public Testimony

The zoning ordinance at all times represents the absolute minimum requirements that cannot be violated. Specific conditions or other requirements imposed by the Board at the original site plan approval or through a binding element of a zoning approval are always a major site plan amendment. Any change that requires a waiver of standards established in the zoning ordinance will also be a major amendment.

- 1) An increase in height of more than 5%
- 2) An increase in gross floor area of more than 5
- 3) A change in set-backs or build-to-lines of more than 5%
- 4) A decrease in green space of more than 5%
- 5) A redesign of recreation areas or recreational equipment that provides a lower capacity or inferior equipment
- 6) A redesign of parking or loading areas that brings them closer to the property line
- 7) A redesign of the landscape plan, including fences, berms and lighting, that deviates significantly from the concept of the original plan, or includes landscape and hardscape material of lesser quality
- 8) Modifications of grading, utilities, or storm water management that have a significant visual impact on public areas or neighboring property
- 9) Any change to the public or private roadway system that has an impact on capacity, safety, access or on-street parking
- 10) Any change that would require an amendment to the binding elements approved at zoning, project plan or preliminary plan

Minor Amendments Approved by the Director of Park and Planning

Minor amendments may be approved the Director administratively without public hearing if they are limited in scope and nature and do not exceed the limits stated above. The Director is not authorized to waive requirements in the zoning ordinance, grant variances, or modify conditions or other requirements imposed by the Planning Board in any case. If the Planning Board has declared any of the above elements to be binding elements as part of the original plan, the Director shall not have the authority to approve a minor amendment for that element. Before approving the plan, the Director shall make all findings the Planning Board would be required to make, if it reviewed the application.

Furthermore, the Director shall find that, in the case of an increase in floor area, additional traffic generated does not exceed the approved level for the site; and that in the case of recreational facilities and landscaping, equipment, plant materials, and construction materials are equal to or better than what was originally approved

Procedures for Minor Amendments

Complete an application form.
Submit letter explaining the proposed change
Submit three sets of plans
Pay an application fee (\$300-\$1,500)

The Applicant should update their adjacent and adjoining property owners list and must send notice by mail to these entities and all other parties of record Any contract purchasers within the site plan being amended or on a block adjacent to or abutting the area proposed for change must also be given notice.

The notice shall be specific on all changes being sought from the Planning Board approval and should include a copy of the site plan drawings as amended.

The notice shall include the Plan number, as assigned by Park and Planning, to make it easier for the noticed parties to obtain information or provide comments. Noticed parties shall give a date (30 days after the mailing date of the notice) by which comments must be submitted to Park and Planning.

Evidence of the notice and the parties who received it must be given to Park and Planning.

If no comments are received and staff has no issues with the proposed change, a memo will be written detailing the items being changed and making a finding that the change(s) will not alter the intent of the Board's approval. The Director of Park and Planning may then approve the minor amendment in writing.

If comments are received, staff and the Director will determine whether such comments are substantive enough to require that the amendment be submitted to the Planning Board.

A new signature set reflecting the amendment, must be submitted before final approval is granted.

Limited Amendment

The Director of Park and Planning may bring a site plan amendment to the Planning Board even if it is within the above standards. Staff recommends that such items be brought back to the Board in the form of a limited amendment. A full staff report would not be required; rather a memo would be prepared, outlining each request and accompanied by any necessary drawings and a summary of the Board's discussion with respect to the particular standard or requirement at the time of original approval. Should the Board approve the Limited Amendment, a revised opinion would need to be issued. If the issue is uncontested, the Planning Board may address limited site plan amendments as a consent item.

In addition, as approved plans go through signature set and record plat review and more detailed information about the project becomes known, it may be evident that certain standards or requirements set by the Board need to be modified to reflect updated information. This situation may be addressed by a limited site plan amendment.

ATTACHMENT

Zoning Text Amendment No: 05-20
Concerning: Signs –Site Plans – Approval,
Amendment and Enforcement
Draft No. & Date: 3 11-23-05
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: County 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:*

①

1 **Sec. 1. Section 59-A-2.1 is amended as follows:**

2 **59-A-2.1. Definitions.**

3 In this Chapter, the following words and phrases have the meanings indicated:

4 * * *

5 **Planning Director:** The staff member in the Department of Park and Planning
6 who is in charge of all planning, zoning, and land development approval activities
7 of the Department, and who reports directly to the Chair of the Planning Board.

8 * * *

9 **Sec. 2. DIVISION 59-D-3 is amended as follows:**

10 **DIVISION 59-D-3. Site plan.**

11 **59-D-3.0. Generally.**

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

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

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

19 **59-D-3.1. Requirements.**

20 **59-D-3.1.1. Ownership; identity of applicant.**

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

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

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

35 (d) If a property is located entirely in an area designated as an urban
 36 renewal area under Chapter 56, the landowner, a contract purchaser,
 37 or another legal entity or individual holding a legal interest in the
 38 land, in whole or in part, may file a site plan application that includes
 39 any other property that is also located entirely in the same urban
 40 renewal area.

41 **59-D-3.1.2. Conformity with previous actions.**

42 Each proposed site plan must meet the following requirements:

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

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

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

- 54 (d) If the site plan is for land classified in the MXN Zone, [it] the site plan
55 must [be consistent with] conform to a diagrammatic plan approved
56 [in accordance with] under Division D-4.
- 57 (e) If the site plan does not cover the entire lot or tract or the entire area
58 included in any [of the plans] plan cited in the preceding paragraphs,
59 [it] the site plan must show how it is related to and coordinated with
60 other site plans either approved, under consideration, or yet to be
61 submitted.
- 62 [(f) An overlay zone must specify the required elements of the site plan,
63 and the site plan must be consistent with all standards and regulations
64 of the overlay zone.]

65 **59-D-3.2. Contents of proposed site plan.**

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

68 **59-D-3.21. Subdivision plan information.**

69 The information required for the submission of a preliminary subdivision
70 plan[, as set forth in] under Chapter 50. [An application for site plan approval
71 must be filed with the planning board by a person with a financial, contractual, or
72 proprietary interest in the property. If land or rights-of-way is owned or controlled
73 by the State of Maryland, the county, or other political subdivision, government
74 entity or agency, or the Washington Metropolitan Area Transit Authority
75 ("WMATA"), a person may file an application for the land if the application
76 includes an agency agreement or other written authorization from the government
77 entity, agency or WMATA authorizing the person to include the public land or
78 rights-of-way as part of the application. If a property lies entirely in an area
79 designated as an urban renewal area under Chapter 56 the landowner, contract
80 purchaser, a legal entity, or individual holding legal interest, whether in whole or

81 in part, may file a site plan application that may include any other property also
 82 located entirely in the urban renewal area.]

83 * * *

84 **59-D-3.3. [Reserved] Zoning certification.**

85 (a) If any part of the land included in the site plan is classified under a
 86 zone that was applied under a local map amendment, the applicant
 87 must submit a sworn statement, signed by the applicant or its counsel,
 88 certifying that the site plan conforms to all binding representations
 89 made to the District Council during the local map amendment process,
 90 including representations about type of use, density, building height,
 91 floor area ratio, setbacks, landscaping and parking, as well any other
 92 element on which the District Council expressly relied in reaching its
 93 decision.

94 (b) This certification does not relieve the Planning Board of its duty to
 95 independently determine that the site plan is consistent with any
 96 applicable development plan or the binding elements of any
 97 applicable schematic development plan.

98 **59-D-3.4. Action by Planning Board.**

99 (a) [A] The Planning Board, or a hearing officer designated by the Board,
 100 must hold a public hearing [must be held by the Planning Board] on
 101 each site plan application. The Planning Board must approve,
 102 approve [subject to modifications] with amendments, or disapprove
 103 the site plan not later than 45 days after [receipt of the site plan]
 104 receiving the application, unless the applicant agrees to extend the
 105 time for Board action, but [such action and notification is not
 106 required] the Planning Board need not act before [the approval of] a
 107 preliminary plan of subdivision involving the same property is

108 approved. The Planning Board [then] must notify the applicant in
109 writing of its action.

110 (b) The site plan approved by the Planning Board must be a single
111 document which controls what the applicant may build on the
112 specified site. The Planning Board must specify all applicable
113 conditions and requirements in the approved site plan. When the site
114 plan is approved by the Planning Board, it must contain all applicable
115 data, maps, drawings, and other information. The Planning Board's
116 opinion (when an opinion is legally required) is part of the approved
117 site plan, has no separate legal effect, and must briefly describe the
118 Board's findings and conclusions. The approved site plan must not
119 incorporate any other document by reference.

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

122 (1) the site plan [is consistent with] conforms to an approved
123 development plan or a project plan for the optional method of
124 development, if required, unless the Planning Board expressly
125 modifies any element of the project plan;

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

129 (3) the locations of [the] buildings and structures, [the] open
130 spaces, [the] landscaping, recreation facilities, and [the]
131 pedestrian and vehicular circulation systems are adequate, safe,
132 and efficient;

133 (4) each structure and use is compatible with other uses and other
134 site plans, and with existing and proposed adjacent
135 development; and

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

139 [(b)] (d) The Planning Board [shall] must not approve the proposed site plan
140 if it finds that the proposed development would not achieve a
141 maximum of compatibility, safety, efficiency and attractiveness[; and
142 the]. The fact that a proposed site plan [complies] may comply with
143 all [of the stated general regulations,] applicable development
144 standards or other specific requirements of the applicable zone [shall]
145 does not, by itself, [be deemed to] create a presumption that the
146 proposed site plan is, in fact, compatible with surrounding land uses
147 and, in itself, [shall] is not [be] sufficient to require [approval of] the
148 Planning Board to approve the proposed site plan.

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

150 (1) certain elements of the plan as binding elements that must not
151 be modified without a plan amendment approved under Section
152 59-D-3.7; and

153 (2) other elements as guidelines that will have minimal effect on
154 the overall design, layout, quality, or intent of the plan, and may
155 be modified by minor plan amendments under Section 59-D-
156 3.7(c)(6).

157 [(c)] (f) Upon approval, the site plan must be:

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

160 (2)] Signed by the Chairman of the Planning Board, or [his] the
 161 Board's designee, certifying Planning Board approval of the
 162 site plan; and

163 [(3)] (2) Forwarded to the Department for reference in issuing
 164 building permits under Section 59-D-3.5.

165 (g) When a hearing officer is designated to conduct a hearing under this
 166 Division, the officer must forward a written report, with a
 167 recommendation for decision, to the Planning Board, including
 168 findings of fact and conclusions of law where required or appropriate.

169 **59-D-3.5. Effect of site plan.**

170 (a) In the case of any land in a zone requiring site plan approval[, as
 171 provided in article 59-C,] or any special exception for which site plan
 172 approval is a condition, [as provided in sections 59-A-4.22 and 59-G-
 173 1.22(b),] a record plat [required by chapter 50 of this Code, title
 174 "Subdivision of Land,"] must not be approved unless [it is in strict
 175 compliance] the plat strictly complies with a site plan approved [as
 176 provided by this division 59-D-3] by the Planning Board.

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

180 (c) All [the] requirements and features that are part of the approved site
 181 plan must be executed [in accordance with] as specified in the
 182 [applicant's] development program required by section 59-D-3.23(m),
 183 as modified by the Planning Board in the approved site plan.

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

186 site plan governs. In any conflict between 2 or more provisions of an
187 approved site plan, the most rigorous provision governs.

188 (e) [A] The Planning Board may require the applicant to post a
189 performance bond securing compliance with and full execution of all
190 features of the site plan [may be required to be posted with the
191 Planning Board] in an amount [established] set by the Planning Board.
192 [In such cases, no] If a bond is required, the Department must not
193 issue a sediment control permit, building permit, or use-and-
194 occupancy permit [may be issued] until this bond is posted.

195 **59-D-3.6. Failure to comply.**

196 (a) If the Planning Board finds reason to conclude, for any site plan
197 approved under this Section, on its own motion or after a complaint is
198 filed with the Planning Board or the Department, that any [of the
199 terms, conditions or restrictions upon which] term, condition, or
200 restriction in the [site] plan [was approved are] is not being complied
201 with, the Planning Board, after due notice to the applicant and all
202 other parties concerned and a public hearing held by the Planning
203 Board or a hearing officer designated by the Board, may suspend or
204 revoke [its approval of the] the site plan or approve a [plan of]
205 compliance program which would permit the applicant to take
206 corrective action to comply with the site plan.

207 (b) If at the end of the [term of the plan] effective period of the
208 compliance program approved by the Planning Board the applicant
209 has not taken sufficient corrective action [has not taken place to cause
210 compliance], the Planning Board may without holding further
211 hearings revoke [its approval of] the site plan or take other action
212 necessary to ensure compliance, including imposing civil fines,

213 penalties, stop work orders, and corrective orders under Chapter 50.
 214 The Planning Board may [request and] obtain investigations and
 215 reports as to compliance from appropriate County or State agencies.

216 (c) [Upon decision by the Planning Board to revoke approval of] If the
 217 Planning Board suspends or revokes a site plan, the Department must
 218 immediately suspend any applicable building [permits and] permit or
 219 use-and-occupancy [permits issued pursuant to a prior Planning Board
 220 approval are hereby declared invalid] permit until the Planning Board
 221 reinstates the site plan or approves a new site plan for the
 222 development.

223 **59-D-3.7. Amendment of a site plan.**

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

226 (a) The owner of the property to which an approved site plan applies, the
 227 Director, or the Planning Director, may apply at any time for an
 228 amendment to an approved site plan. Each application for an
 229 amendment must show every proposed amendment, in a format
 230 approved by the Planning Board, on a copy of the approved site plan.
 231 The amendment process required in this Section is the only way an
 232 approved site plan may be changed.

233 (b) The Planning Board may approve any proposed site plan amendment
 234 after giving the applicant and any other affected person an opportunity
 235 for a public hearing before the Planning Board or a hearing officer
 236 designated by the Board. The Planning Director, but not any other
 237 member of the Planning staff, may approve a minor amendment as
 238 provided in this Section.

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

- 240 (1) increase or decrease the height, setback, or gross floor area of a
241 building by no more than 5 percent;
- 242 (2) increase or decrease the land area covered by a structure other
243 than a building by no more than 5 percent;
- 244 (3) redesign a parking or loading area in a way that does not
245 significantly affect any neighboring property;
- 246 (4) redesign a landscape plan in a way that does not alter basic
247 elements of the plan or significantly affect any public area or
248 neighboring property;
- 249 (5) approve any modification required by engineering necessity in
250 grading, utilities, stormwater management, or any similar plan
251 element, in a way that does not significantly affect any public
252 area or neighboring property; or
- 253 (6) modify any other plan element that the Planning Board, in
254 approving that site plan, designated as an element that will have
255 minimal effect on the overall design, layout, quality, or intent of
256 the plan.
- 257 (d) Along with any other notice required by the Planning Board's rules of
258 procedure, the applicant must post a conspicuous notice of each
259 proposed minor amendment within 3 days after filing the application
260 with the Planning Director at one or more places designated by the
261 Planning Director. If a written or electronic request for a public
262 hearing is not filed within 10 days after the notice is posted, the
263 Planning Director may act on the minor amendment. The Planning
264 Director must forward each minor amendment to the Department
265 immediately after approving it.

266 (e) Before approving a minor amendment, the Planning Director must
267 make any finding that the Planning Board would be required to make
268 if it reviewed the amendment. In approving a minor amendment, the
269 Planning Director must not waive any requirement of law (unless the
270 law otherwise allows that requirement to be waived) or modify any
271 condition or requirement expressly imposed by the Planning Board
272 when it approved the site plan.

273 (f) If the Planning Director declines to approve a minor amendment or
274 any affected person files a timely request for a public hearing, the
275 Planning Director must forward the amendment to the Planning Board
276 for review under its procedures for amendment approval unless the
277 applicant withdraws the amendment.

278 (g) The Planning Board Chair must sign any amendment to an approved
279 site plan that the Planning Board approves. The Chair must forward
280 each approved amendment to the Department immediately after
281 signing it.

282 **59-D-3.8. Validity.**

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

286 (1) 30 days [from the date of mailing of the written opinion, as
287 such date is printed on the opinion] after the Planning Board
288 Chair notifies the applicant that the Chair has signed the plan;

289 or

290 (2) [in the event] if an administrative appeal is timely noted by any
291 party who has standing [authorized] to [take an] appeal, the date

292 [upon which] when the court having final jurisdiction acts,
 293 including the running of any further applicable appeal periods.

294 (b) The [validity] effective period of an approved site plan [is
 295 conditionally tied to] depends on the expiration date of the underlying
 296 approved preliminary plan. The site plan [will validate upon the
 297 recordation of] takes effect when the final record plat is recorded for
 298 all of the property [delineated on] covered by the approved
 299 preliminary plan. Where phasing of development is [contemplated]
 300 required, [validation of phases will be treated in the same manner]
 301 each phase takes effect as provided in the preliminary plan. [Upon
 302 recordation of] After the record plat is recorded, the approved site
 303 plan [will] does not expire or require amendment [prior to the
 304 issuance of] before a building permit is issued unless:

- 305 (1) the project's APFO approval expires; or
 306 (2) changes to the applicable zoning map, [or] zoning text, or other
 307 applicable laws or regulations require [a modification of] the
 308 approved site plan to be modified.

309 [The forgoing] This subsection does not preclude an applicant from
 310 seeking an amendment to an approved site plan to address minor
 311 changes to the applicable zoning map, zoning text, or other applicable
 312 laws or regulations. In [such instances] that case, the approved site
 313 plan [will not be deemed to have expired] remains in effect.

314 (c) [Extensions.] If [an extension is approved for the] a preliminary
 315 subdivision plan is extended, then the site plan [will] must remain
 316 [valid to the extent that] in effect as long as the preliminary plan
 317 remains [valid] in effect.

318 **Sec. 3. Effective Date.**

319 This ordinance takes effect on March 1, 2006. Sections 59-D-3.1, 59-D-3.2,
320 and 59-D-3.4, as amended by this ordinance, apply to any site plan that the
321 Planning Board approves on or after that date. Sections 59-D-3.0, 59-D-3.5, 59-D-
322 3.6, 59-D-3.7, and 59-D-3.8, as amended by this ordinance, apply to all site plans
323 approved at any time before or after that date.

324

325 This is a correct copy of Council action.

326

327

328 Linda M. Lauer, Clerk of the Council

Date