

Ordinance No: 16-11  
Zoning Text Amendment No: 07-05  
Concerning: Site Plan Amendment  
-Procedures

Draft No. & Date: 4 – 11/05/07

Introduced: May 8, 2007

Public Hearing: June 12, 2007; 1:30 p.m.

Adopted: November 20, 2007

Effective: November 20, 2007

**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 Leventhal, Floreen, Knapp, and Ervin

**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- exempt minor building permits from a finding of conformance to an approved site plan;
- establish a procedure and standards for the approval of minor site plan amendments by the Planning Director; and
- generally amend site plan approval procedures.

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

DIVISION 59-D-3 “Site Plan”

Section 59-D-3.7. “Amendment of a site plan”

**[[ Add a new Section 59-D-3.0.1]] Adding the following new Sections:**

Section 59-D-3.0.1 “Conforming Permits”

Section 59-D-3.0.1.1 “Permits **[[and changes]]** exempt from conforming to an approved site plan”

Section 59-D-3.0.1.2 “Changes exempt from conforming to an approved site plan”

**[[Section 59-D-3.7. “Amendment of a site plan”]]**

**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.*

## OPINION

Zoning Text Amendment No. 07-05 was introduced on May 8, 2007 to exempt minor building permits from a finding of conformance to an approved site plan; establish a procedure and standards for the approval of minor site plan amendments by the Planning Director; and generally amend site plan approval procedures.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved. The Board supported ZTA 07-05 only because it would allow a non-substantive site plan amendment to be approved administratively by the Planning Director. The Board recommended a procedure to allow the Planning Director to approve site plan amendments rather than granting the Department of Permitting Services (DPS) the authority to issue permits that are not in conformance with an approved site plan.

The County Council held a public hearing on June 12, 2007, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on November 5, 2007 to review the amendment. After careful review of the materials of record, the Committee recommended that ZTA 07-05 be approved with amendments. The Committee recognized the benefits of specifying permits and changes to approved site plan site plans that do not require conformance to the approved plan but limited the ability to do so to site plans that were completed for at least 5 years. The Committee also recommends clarifying that some changes that can occur without any permits; and that any permit for sediment control or the replacement of a building requires conformance to the approved sector plan.

The Committee also agreed that under limited circumstances, the Planning Director should be able to amend an approved site plan without the Planning Board's approval. The Committee recommended allowing that ability if the amendment does not increase the height of any building, increase the floor area of any non-residential building, increase the number of dwelling units, or prevent circulation on any street or path.

The Committee would allow administrative amendments for recreational facilities. The Committee recommends allowing other site plan amendments that have a minimum affect on the overall design without identifying specifying such changes. Such changes may include grading, utilities, and light, depending on the significance of the elements to the approved plan. Finally the Committee did not recommend any changes in ZTA 07-05 to address technical changes such as topographic errors in any resolution that memorializes the Planning Board's action; such changes, in the opinion of the Committee, are not site plan amendments and can be addressed in the Planning Board's regulations.

The District Council reviewed Zoning Text Amendment No. 07-05 at a worksession held on November 20, 2007. The District Council agreed with the recommendations of the

Committee; however, the Council also agreed that any modification to an improvement shown on an approved site plan that satisfies §59-D-3.0.1.1 and §59-D-3.0.1.2 should not need an amendment to the site plan. In addition, to address the needs of residents and the Planning Board, ZTA 07-05 should take effect on the day of adoption.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 07-05 will be approved as amended.

*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-D-3 is amended as follows:**

2           **DIVISION 59-D-3. SITE PLAN.**

3           **59-D-3.0. Generally.**

4           **59-D-3.0.1 Conforming permits**

5           In any zone identified in Article 59-C as requiring site plan approval, the Department must not  
6           issue a sediment control permit, building permit, or use-and-occupancy permit for any building  
7           or structure:

- 8           (a)     until the Planning Board approves a site plan, and
- 9           (b)     unless the building or structure conforms to the approved site plan.

10          **59-D-3.0.1.1 Permits ~~[[and changes]] exempt from conforming to an approved site plan.~~**

11          In any zone identified in Article 59-C as requiring site plan approval, the Department may,  
12          without a finding of conformance to an approved site plan, issue a ~~[[sediment control permit or~~  
13          a]] building permit for any building or structure on property subject to a site plan that was  
14          completed at least 5 years before the permit application if the permit is for:

- 15          (a)     constructing an accessibility improvement;
- 16          (b)     repairing an existing structure;
- 17          (c)     replacing an existing structure other than a building with a structure other than a  
18                building that has the same ~~[[function]] use and is similar in size; or~~
- 19          (d)     outdoor lighting with full cut-off fixtures.
- 20          [[d)     landscaping by a resident or a residents association; or
- 21          (e)     an addition to a paved surface that does not exceed 1,000 square feet by a resident  
22                or a residents association, if the site is not located in a special protection area.]]

23          The Department must submit a copy of any permit issued under this section to the Planning  
24          Director for inclusion in the record of the site plan. Any modification to an improvement shown  
25          on an approved site plan that is identified in this section does not require an amendment to the  
26          site plan.

27          **59-D-3.0.1.2 Changes exempt from conforming to an approved site plan.**

28          If the site plan was completed at least 5 years before the change, any owners' association may,  
29          without a finding of conformance to an approved site plan, change the following:

- 30          (a)     landscaping, unless such landscaping was required for screening or buffering of  
31                adjoining property; or

32 (b) an addition to a paved surface from the approved site plan that does not exceed  
33 500 square feet if the change is not located in a special protection area.

34 Any modification to an improvement shown on an approved site plan that is identified in this  
35 section does not require an amendment to the site plan.

36 \* \* \*

37 **59-D-3.7. Amendment of a site plan.**

38 (a) The owner of the property to which a certified site plan applies may apply at any  
39 time for an amendment to the plan. Each application must show every proposed  
40 amendment, in a format approved by the Planning Board, on a copy of the  
41 certified site plan. The amendment process required in this Section is the only  
42 way a certified site plan may be modified.

43 (b) The Planning Board may approve any proposed site plan amendment after  
44 holding a public hearing, except as provided in subsection [(c)] (c) and (d).

45 (c) The applicant must post a conspicuous notice of each proposed amendment within  
46 3 days after filing the application with the Planning Director at one or more places  
47 and in a form and content approved by the Planning Director. The applicant also  
48 must send written or electronic notice, in a form and content approved by the  
49 Planning Director, within ~~[[3]]~~ 10 days after filing the application, to:

- 50 (1) each person who received notice of the hearing that the Planning Board  
51 held before the site plan was approved;  
52 (2) the owner and (if known or reasonably identifiable by the applicant) any  
53 contract purchaser of each adjoining and confronting property; and  
54 (3) each registered civic organization in the area of the property, as  
55 determined by the Planning Director.

56 If a person to whom notice was sent under this subsection, or any other affected  
57 person as defined by Planning Board regulations, has not filed a written or  
58 electronic request for a public hearing within 15 days after the notice is sent, the  
59 Planning Board may act on the amendment without holding a hearing.

60 ~~[[1]]~~ The Planning Director may approve in writing any application for an  
61 amendment to a ~~[[certified]]~~ site plan approved by the Planning Board, for which  
62 notice was provided under subsection (c), if the amendment:

- 63           (1)   does not:  
64                (A)   increase the height of any building,  
65                (B)   increase the floor area of any non-residential building,  
66                (C)   increase the number of dwelling units, or  
67                (D)   prevent circulation on any street or path, and  
68           (2)   modifies one or more of the following elements of the approved site plan:  
69                [[i]] (A) a parking or loading area;  
70                [[ii]] (B) landscaping [[or]], a sidewalk, recreational facilities,  
71                        recreational area, public use space, or green area in a manner that  
72                        does not alter basic elements of the plan; or  
73                [[iii]] (C) [[grading, utilities, stormwater management, or any similar  
74                        plan element; or]]  
75                [[iv]] any other plan element that [[the Planning Board, in approving the  
76                        site plan, designated as an element that]] will have a minimal affect  
77                        on the overall design, layout, quality, or intent of the plan. [[; and]]  
78                [[2] does not significantly affect any neighboring property; and  
79                (3) satisfies each requirement of Section 59-D-3.4 (c).]]  
80           [[d]] (e) The Planning Board Chair or the Board's designee must sign any Board  
81                resolution that [emends] amends a certified site plan. The Chair must forward  
82                each approved amendment to the Department immediately after signing it.

83           **Sec. 2. Effective date.** This ordinance takes effect [[20 days after]] on the date of  
84 Council adoption.

85  
86 This is a correct copy of Council action.

87  
88 Linda M. Lauer  
89 Linda M. Lauer, Clerk of the Council