

Ordinance No: 16-14
Zoning Text Amendment No: 07-17
Concerning: Growth Policy –
Special Exceptions and
Local Zoning Map Amendments
Draft No. & Date: 5 -2/21/08
Introduced: December 11, 2007
Public Hearing: February 5, 2008
Adopted: February 26, 2008
Effective: March 17, 2008

**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: Council President Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- clarify and update the process for special exceptions to address certain adequate public facilities issues;
- require an application for a local zoning map amendment to address certain adequate public facilities issues; and
- update and generally amend the process for review of special exceptions and local zoning map amendments.

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

- DIVISION 59-G-1. “Special Exceptions - Authority and Procedure”
 - Section 59-G-1.21. General conditions
- DIVISION 59-H-2. Map Amendments – Applications
 - Section 59-H-2.4. Contents of standard method of application-Local map
- DIVISION 59-H-5. Hearing Examiner
 - Section 59-H-5.11. The hearing
 - Section 59-H-5.12. The report
 - Section 59-H-5.3. Authority of hearing examiner

*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. 07-17 was introduced on December 11, 2007 to clarify and update the provision for special exceptions to address Growth Policy issues. The date of the application would determine the applicable Growth Policy. ZTA 07-17 would also require an application for a local zoning map amendment to address Growth Policy issues. Other changes would edit the subject sections to make them precise, concise, and decisive.

The Montgomery County Planning Board recommended approval of ZTA 07-17 with amendments. The Planning Board recommended amendments to ZTA 07-17 to:

- clarify that for special exceptions that require approval of a subdivision, the Board of Appeals, in its review, must consider whether the public facilities and services will be adequate to serve the proposed development based on the Growth Policy standards in effect when the special exception application was submitted;
- give the Planning Board, not the Board of Appeals, the authority to determine the adequacy of public facilities for all special exceptions, even when a preliminary plan of subdivision is not required; and
- clarify that each application for a local map amendment must provide sufficient information to show that there is a reasonable probability that public facilities and services will be found adequate to serve the proposed development under the Growth Policy in effect when the local map amendment application was submitted.

In the opinion of the Planning Board, ZTA 07-17, as introduced, could be interpreted to require that the Adequate Public Facilities (APF) test be applied at the zoning stage. The Planning Board took the position that an APF test is not necessary at the local map amendment stage since there are rigorous APF findings applied at subdivision review, and APF requirements for any particular application can change considerably between local map amendment review and subdivision review.

The Council held a public hearing on ZTA 07-17 on February 5, 2008. The one speaker who gave testimony at the hearing agreed with the core idea of the ZTA to make the filing date of an application the date that determines the applicable growth policy rules.

The Planning, Housing, and Economic Development Committee held a worksession on February 19, 2008 to review the text amendment. After careful review of the materials of record, the Committee recommended (2-0) approval of ZTA 07-17 with amendments. The Committee recommended amendments to require:

- 1) a finding for special exceptions that the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted;
- 2) the Planning Board to *determine* the adequacy of public facilities for any special exception that requires a subdivision approval; and
- 3) sufficient information from an applicant for a Local Zoning Map Amendment to demonstrate a *reasonability probability* that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the Local Zoning Map Amendment application was submitted.

The Committee also endorsed editorial changes recommended by staff.

The District Council reviewed Zoning Text Amendment No. 07-17 at a worksession held on February 26, 2008. The Council agreed with the Committee recommendation to approve ZTA 07-17 as amended by the Committee.

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. 07-17 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:

28 (B) If the special exception does not require approval of a
 29 preliminary plan of subdivision, the Board of Appeals
 30 must ~~[[decide]]~~ determine the adequacy of public
 31 facilities [must be determined by the Board of Appeals]
 32 when it considers the special exception application [is
 33 considered]. [The adequacy of public facilities review
 34 must include the Local Area Transportation Review and
 35 the Policy Area Transportation Review, as required in the
 36 applicable Annual Growth Policy.] ~~[[In its review, the]]~~
 37 The Board must consider whether the available public
 38 facilities and services will be adequate to serve the
 39 proposed development under the Growth Policy
 40 standards in effect when the application was submitted.

41 [(ii)] ~~[[B)]]~~ (C) With regard to [findings relating to] public
 42 roads, the Board[,], or the Hearing Examiner[,], or the
 43 District Council, as the case may be,] must further
 44 [determine] find that the [proposal] proposed
 45 development will not reduce the safety of vehicular or
 46 pedestrian traffic.

47 * * *

48 **Sec. 2. Division 59-H-2. Map Amendments – Applications is amended**
 49 **as follows:**

50 * * *

51 **59-H-2.4. Contents of standard method of application - Local map**
 52 **amendments.**

53 [In case of] Each application for a local map amendment[, the application
54 therefor shall be in such] must follow a form [as the district council may prescribe]
55 prescribed by the District Council and [shall] must include [the following]:

56 * * *

57 (f) Sufficient information to [[show]] demonstrate a reasonable
58 probability that available public facilities and services will be
59 adequate to serve the proposed development under the Growth
60 Policy standards in effect when the application is submitted.

61 [(f)] (g) Such other relevant information as either the [district council]
62 District Council or the [hearing examiner] Hearing Examiner
63 [determines to be] finds necessary to evaluate the impact of a
64 [particular application] proposed development on public
65 facilities[,] or existing or proposed development [in the immediate
66 area of] near the application site.

67 * * *

68 **Sec. 3. Division 59-H-5. Hearing Examiner is amended as follows:**

69 **59-H-5.1. Duties of hearing examiner.**

70 **59-H-5.11. [The hearing] Hearing.**

71 The [hearing examiner shall] Hearing Examiner must conduct a public
72 [hearings in accordance with section] hearing under Section 59-H-4.4 on [all
73 applications] each application for a local zoning map [amendments] amendment
74 that is not otherwise reserved for hearing by the [district council] District Council.

75 **59-H-5.12. [The report] Report.**

76 (a) Within 45 days after [the closing of] the record on any application
77 closes, the [examiner shall] Hearing Examiner must forward to the
78 [district council] District Council a written report [setting forth]
79 including a description of the application, [his] findings, and [his] a

80 recommendation of approval or denial, or [for] any other disposition
81 of the application, together with [his] detailed reasons [therefore] for
82 the recommendation. [Any] The Examiner may include any other
83 [matters] matter of record which[, in the opinion of the examiner, are]
84 the Examiner finds relevant [and pertinent for] to a decision by the
85 [district council may be included by him] District Council. The
86 [district council by resolution] District Council may extend the time
87 for [such] the Examiner's report by resolution.

88 (b) [Recommendations of the hearing examiner shall] Any
89 recommendation of the Hearing Examiner must be based on the
90 evidence of record.

91 (c) [Concurrently with the transmittal] When the Hearing Examiner
92 transmits a report to the [district council] District Council, the
93 Examiner must also send copies [of the hearing examiner's report shall
94 be mailed] to the applicant, the [planning board] Planning Board, and
95 [to all persons and associations entering] each person or association
96 who entered an appearance at the hearing, as [evidenced by] shown in
97 the hearing transcript.

98 * * *

99 **59-H-5.3. Authority of hearing examiner.**

100 (a) The [hearing examiner is hereby authorized to] Hearing Examiner
101 may:

102 (1) schedule for public hearing any application for a local map
103 amendment;

104 (2) [to] extend the time for [the] closing [of] the record, either to a
105 time certain or for a reasonable [period of] time, [in those
106 applications where in his discretion] if:

107 (A) the Hearing Examiner finds additional information or
108 [governmental] government action is necessary on
109 [matters material and] any relevant [to an application
110 under consideration] issue; or

111 (B) [when] the applicant or [other] another party requests
112 [such] a delay for good cause [shown];

113 (3) [to suspend, defer,] postpone or continue a public [hearings,
114 either] hearing to a time certain or for a reasonable [period of]
115 time [when in his discretion] if:

116 (A) the Hearing Examiner finds that the pendency of any
117 proposed [preliminary or final] master plan, [or] sector
118 plan, [or amendments thereto] plan amendment, highway
119 [plans] plan, capital improvement [programs or
120 amendments thereto] program, zoning [and] or planning
121 [studies] study, zoning text [amendments] amendment,
122 pending court [decisions] case, or other [matters of a]
123 relevant [or material nature] matter may substantially
124 affect [or bear upon] the application under consideration;
125 or

126 (B) [when] the applicant or [other] another party for good
127 cause requests [such suspension, deferral,] a
128 postponement or continuance.

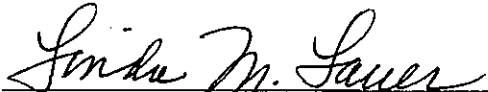
129 (b) The [district council] District Council may, by resolution, order the
130 hearing examiner to [suspend, defer,] postpone or continue a public
131 [hearings, the scheduling of public hearings] hearing or the issuance
132 of [the examiner's] a report and recommendation on a local map
133 amendment application, either to a time certain or for a reasonable

134 [period of] time, when [such action] a delay is necessary to [provide]
135 allow sufficient [reasonable] time for the [district council's adoption
136 or approval of] District Council to approve any [preliminary or final]
137 master plan, [or] sector plan, [or amendments thereto] plan
138 amendment, zoning [plan] or planning study, highway plan or project,
139 zoning text amendment, sewer, water, or other capital improvements
140 project, [or amendments thereto] which may [in its discretion] have a
141 substantial effect [or bearing upon] on any local map amendment
142 application before the [hearing examiner] Hearing Examiner.

143 (c) The [hearing examiner is hereby authorized to] Hearing Examiner
144 may issue subpoenas to compel the attendance of witnesses and
145 production of documents at any public hearing and [to] administer
146 [oaths] an oath to [witnesses] any witness appearing before the
147 [examiner] Examiner.

148 **Sec. 2. Effective date.** This ordinance takes effect 20 days after Council
149 adoption.

150 This is a correct copy of Council action.

151
152 A handwritten signature in cursive script, reading "Linda M. Lauer", is written over a horizontal line.

153 Linda M. Lauer, Clerk of the Council