

MEMORANDUM

TO: Planning, Housing and Economic Development Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession 2:** Bill 24-09, Buildings – Permits and Inspections

Bill 24-09, Buildings – Permits and Inspections, sponsored by the Council President at the request of the County Executive, was introduced on May 5, 2009. A public hearing on this bill and related code enforcement proposals was held on June 9, and a Planning, Housing and Economic Development Committee worksession was held on July 13.

Bill 24-09 was recommended by the Executive's Code Enforcement Work Group (see Executive memo on ©7). It would increase inspection requirements and add new deadlines for single- and 2-family houses and most townhouses. Its primary purpose is to impose a deadline on construction completion (see Department of Permitting Services memo on ©9). The Bill also would let DPS extend a building permit for two 6-month periods if the permit-holder shows good cause; the current law allows a single 6-month extension without a showing of good cause. This Bill would take effect on July 1, 2010.

Issues

1) Completion deadline This Bill would effectively set an 18-month deadline after the building permit was issued to finish building a single-family house or town house. The current law¹ says that an issued building permit is invalid if:

- an approved inspection is not recorded in the Department's inspection history file within 18 months after the permit is issued, and a second approved inspection is not recorded within 20 months after the permit is issued;² or
- the authorized work is suspended or abandoned for a period of 6 months.

After the second inspection is recorded, no further deadline for construction completion applies as long as the work is not "suspended or abandoned" -- a conclusion that DPS inspectors are understandably reluctant to reach. This Bill is intended to fill that gap, at least for single-family houses and town houses. A single-family house normally takes about 9 months to complete, a stick of town houses perhaps 12 months.

¹See County Code §8-25(b).

²As noted later, under Bill 5-09 these deadlines will revert on July 1, 2011 to 12 and 14 months.

The Maryland-National Capital Building Industry Association (BIA)³ opposed this Bill and questioned whether it recognizes that slowdowns in construction completion are most often caused by lack of financing. Civic representatives⁴ respond that an incomplete building project cannot be left unfinished indefinitely because it becomes a blight and hazard to the community, so the law must set some completion deadline. The Civic Federation and the Battery Park Citizens Association⁵ thought the 30 months proposed in this Bill (18-month initial validity period + two 6-month extensions) was too lenient.

The BIA also noted that “we stand against...any shortening of the validity of building permits.” On its face this Bill does not shorten the validity of a building permit. Recently-enacted Bill 5-09 temporarily extended the validity period of a building permit from 14 to 20 months, for a 2-year period starting on June 29. To be consistent with Bill 5-09 during their 1-year period of overlap, the 18-month deadline in this Bill on lines 9 and 46 could be temporarily extended to 24 months until July 1, 2011, when Bill 5-09 expires. However, any further delay of these construction completion deadlines would undercut the central purpose of this Bill.

Council staff recommendation: approve the 18-month deadlines in this Bill.

2) What happens when the building permit expires? When a building permit expires, the current law does not explicitly require the permit holder to secure an unfinished building or clean up the site. The closest provisions are §8-10, which allows DPS to post unsafe buildings and the County to take legal action to make them safe, and §8-19, which allows DPS to make emergency repairs when “there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life”. The County housing code law, Chapter 26, contains similar provisions.

This Bill does not materially affect what must be done after a building permit expires, including when construction is suspended or abandoned for more than 6 months. Civic representatives have long complained⁶ that unfinished building sites remain abandoned indefinitely, create a safety hazard and attractive nuisance to neighborhood residents, and blight the surrounding area. When asked what action DPS would take after a building permit has expired and the site remains unfinished, DPS staff said they would either issue a citation to the owner or tell the owner to apply for a new building permit. In Council staff’s view, neither effectively addresses this problem. DPS staff did reassure Committee members at the first worksession that they have enough tools under current law to respond to safety hazards.

To put maximum pressure on the property owner and any mortgage-holder to take responsibility for the site, we think the County needs clear legal authority to require the owner to at least secure the site and complete the building shell if that has not already been done. If these steps are not taken, the County should be able to complete these tasks, bill the owner, and collect the bill on the property tax. This would not add a new concept to the County Code. The County already has similar authority under §8-19 to abate emergency conditions which DPS finds and under §§26-14 and 26-15⁷ to remedy housing or other code violations which

³See testimony, ©11.

⁴See e.g. Civic Federation testimony on ©12 and Greater Colesville Citizens Association testimony on ©13-14.

⁵See testimony, ©15-16.

⁶See e.g. Civic Federation testimony on ©12, GCCA testimony on ©13-14, and Dean letter on ©17.

⁷These sections are shown on ©18.

DHCA finds, in both cases without going to court. Under §1-18(e) the County can use the property tax bill to collect a court judgment for noncompliance with County law.

Council staff recommendation: insert the following after ©3, line 54:

- (p) The Director must not extend a permit, or reissue a permit that has expired, unless the applicant can show that it has the financial resources to complete all work under the permit in a timely and satisfactory manner.
- (q) If a permit has expired, the permit holder must promptly take all steps necessary either to:
 - (1) restore the site to its original condition; or
 - (2) complete the framing of any unfinished building or structure; and otherwise make the site safe and prevent it from becoming a public nuisance.
- (r) If the permit holder does not promptly take all necessary actions under subsection (q), the Director may do so after notifying the property owner and may charge all costs to the property owner as authorized in Section 8-19(e).

3) Demolition permit completion After the original Council staff memo for this worksession was circulated, Eileen Finnegan of the Hillandale Citizens Association urged that the Bill should also set limits on how long the work authorized by a demolition permit can remain unfinished. See Finnegan email on ©20 and Council staff and DPS responses on ©21. DPS Director Reid said her Department “will provide input for an amendment that addresses” this issue. As Council staff noted in our response to Ms. Finnegan, we think such an amendment would be within the scope of this Bill because a demolition permit is a type of building permit.

The current law in §8-27(f) authorizes but does not require DPS to complete the demolition process and clear the site within 60 days if the permit-holder does not do so. To require DPS to enforce performance of a demolition permit within 90 days, we would insert the following amendment after ©4, line 54:

8-27. Demolition or removal of buildings.

* * *

- (f) Bond or surety. Each applicant for a demolition or removal permit must file a performance bond, cash, certificate of guarantee, or surety with the Department, in an amount equal to the cost of demolition or removal, to assure the safe and expedient demolition or removal of the building or structure and clearing of the site. If the building or structure is not demolished or removed and the site is not cleared of all debris within the time specified in the permit, but not sooner than ~~[[60]]~~ 90 days after the permit is issued, the Director ~~[[may]]~~ must enter the property, demolish or remove the building or structure, clear the site of debris, and take action to forfeit the performance bond, enforce the guarantee, or otherwise reimburse the Department for its cost.

* * *

DPS has not had a chance to review this amendment.

4) Effective date As introduced, this Bill would take effect on July 1, 2010. If the added inspection requirements and completion deadlines are a good idea, Council staff questions why the County should wait almost a year to phase them in, particularly when construction is down now and DPS inspectors have lighter workloads.

Council staff recommendation: apply the new requirements and deadlines to any building permit-issued on or after January 1, 2010. To do so, on ©4, line 55, replace **[[July]]** with January.

This packet contains:	<u>Circle #</u>
Bill 24-09	1
Legislative Request Report	5
Memo from County Executive	6
Executive memo re Code Enforcement Work Group report	7
Fiscal Impact Statement	8
Memo from DPS	9
BIA testimony	10
Civic Federation testimony	12
Colesville Citizens Association testimony	13
Battery Park Citizens Association testimony	15
Dean letter	17
County Code §§26-14, 26-15 (housing code enforcement)	18

Bill No. 24-09
Concerning: Buildings – Permits and Inspections
Revised: 4-24-09 Draft No. 2
Introduced: May 5, 2009
Expires: November 5, 2010
Enacted: _____
Executive: _____
Sunset: None
Effective: July 1, 2010
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) revise the validity periods for building permits for certain dwelling units;
- (2) revise inspection requirements for certain dwelling units; and
- (3) generally amend County law governing building permits.

By amending

Montgomery County Code
Chapter 8, Buildings
Sections 8-25 and 8-26

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law-unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

- 29 (A) shows good cause for each extension;
- 30 (B) requests an extension in writing before the permit
- 31 expires; and
- 32 (C) pays the fee specified in paragraph [(2)] (3).

33 * * *

34 **8-26. Conditions of permit.**

35 * * *

36 (n) Required inspections. The Director must record the following
 37 inspections in the Department’s inspection history file for any
 38 building permit for a detached one- or two-family dwelling:

- 39 (1) an approved inspection, other than the sign inspection, within 6
 40 months after the building permit was issued;
- 41 (2) an approved inspection of any exterior surface, including any
 42 window, wall siding, and roof, installed as part of any
 43 renovation, addition, or new construction of a dwelling or other
 44 building or structure on the premises, within 12 months after
 45 the building permit was issued; and
- 46 (3) an approved final inspection within 18 months after the
 47 building permit was issued, unless the Director extended the
 48 permit under Section 8-25(b)(3) or (4).

49 If the Director extended a permit under Section 8-25(b)(3) or (4), the
 50 deadline to file an inspection under this subsection is extended by the
 51 same period of time.

52 (o) Invalid permits. A permit holder must not perform or continue any
 53 work under a permit that does not comply with all conditions imposed
 54 under this Section.

LEGISLATIVE REQUEST REPORT

Bill 24-09

Buildings -- Permits and Inspections

- DESCRIPTION:** This Bill amends Chapter 8 (Buildings), to require certain detached one- and two-family dwellings and townhouses to obtain an approved final inspection 18 months after the initial permit is issued.
- PROBLEM:** Currently, many residential construction projects languish without any progress. Chapter 8 does not set a deadline for a final, approved inspection.
- GOALS AND OBJECTIVES:** To ensure that residential building projects are completed.
- COORDINATION:** Department of Permitting Services
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** Subject to the general oversight of the County Executive and the County Council.
- EXPERIENCE ELSEWHERE:** N/A.
- SOURCE OF INFORMATION:** Nowelle A. Ghahhari, Assistant County Attorney, Division of Public Safety Litigation; Reginald Jetter, Chief, Division – Case Work Management, Department of Permitting Services; George Muste, Manager, Residential Review and Complaints, Department of Permitting Services.
- APPLICATION WITHIN MUNICIPALITIES:** All but Gaithersburg and Rockville.
- PENALTIES:** Class A Violation.

BILL



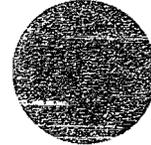
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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM



April 2, 2009

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation – Buildings – Permits and Inspections

I am attaching for the Council's consideration a bill which requires certain detached one- and two-family dwellings and townhouses to obtain an approved final inspection within 18 months after the Department of Permitting Services issues the initial building permit. I am also attaching a Legislative Request Report for the bill.

This bill is one of four legislative proposals that I am submitting to Council today to implement the recommendations included in the November 2008 final report of the Code Enforcement Work Group. Each of these proposals is intended to address code enforcement problems which erode the quality of life in the County.

Under current law, there is no deadline for a final, approved inspection and many projects languish without any progress. This bill will help ensure that residential buildings are completed within a reasonable time. Thank you for your prompt consideration of this legislation. I look forward to working with the Council as it considers this proposal.

Attachments (2)

cc: Thomas Street, ACAO
Marc Hansen, Deputy County Attorney
Carla Reid, Director, DPS
Richard Nelson, Director, DHCA

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

November 10, 2008

In File

TO: Michael Knapp, Council President
FROM: Isiah Leggett, County Executive 
SUBJECT: Transmittal of Code Enforcement Work Group Report Draft



I am transmitting the final report of the Code Enforcement Work Group, which includes comprehensive recommendations to address issues relating to enforcement of the County's housing and zoning laws in residential areas. Collectively, the recommendations impact on numerous safety issues, the quality of life in residential communities, and maintaining the residential character of these neighborhoods. The recommendations attempt to strike a balance between the above mentioned issues while recognizing how residential property use has changed over the past several decades. The report includes a number of proposed legislative changes which I support. I will be transmitting a formal legislative package in the near future.

Over the past year, I have listened to residents, civic associations and other groups who have concerns relating to safety, quality of life and maintenance of the residential character of neighborhoods. Specific issues include unkempt residential properties, lack of coordination of residential code violations enforced by multiple County departments, vehicles parked on front lawns, unsafe passage on residential streets resulting from large parked commercial and recreational vehicles, enforcement of home occupations, and repeat violation offenders.

Almost immediately upon beginning to hear these concerns I directed the formation of a Code Enforcement Work Group, comprised largely of Executive Branch staff whose responsibilities include enforcing various components of the housing and zoning laws. This group has worked over the past year to develop a set of recommendations to address the issues. The Group's recommendations, which I endorse, fall into three broad categories:

1. Changes to the County's housing and zoning laws;
2. Internal work process (sometimes referred to as business processes) changes and cross training for DPS, DHCA, MCFRS, MCPD and DEP staff; and
3. Education programs for residents and community associations that inform property owners of their rights and responsibilities.

While I am well aware of the Council's committee system and the potential for the various legislative proposals recommended by the Work Group to be assigned to different committees, I request that these recommendations be looked at comprehensively. It would be unfortunate for proposed on-property and off-property parking solutions to be looked at without consideration to their impact upon each other, or the home occupation recommendations to be reviewed without considering their tie to aspects of the parking recommendations.

My staff and I look forward to working with you on these issues and I am confident that solutions will be implemented which address safety and other issues raised by our constituents.

Attachment (1): Code Enforcement Work Group Final Report

Bill 24-09



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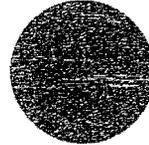
OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 30, 2009



MAY - 1 PM 2:50
MONTGOMERY COUNTY
COUNCIL

TO: Phil Andrews, President, County Council
FROM: Joseph F. Beach, Director
SUBJECT: Council Bill – Buildings-Permits and Inspections

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

This Bill amends Chapter 8 (Buildings), to require certain detached one- and two-family dwellings and townhouses and their accessory structures to obtain an approved inspection 6 and 12 months after the permit is issued and an approved final inspection within 18 months after the permit is issued, unless the permit has been extended.

FISCAL AND ECONOMIC SUMMARY

The Department of Permitting Services (DPS) states that the proposed amendment, as drafted, would require additional inspections for all new construction and additions to certain detached one- and two-family dwellings and townhouses and their accessory structures. The first-year costs to DPS to conduct the additional inspections are approximately \$334,850. The costs include three new staff members (\$208,930), three vehicles (\$75,000) and miscellaneous operating expenses such as computers, phones, office space, and vehicle maintenance (\$50,920). DPS also anticipates additional revenues of \$302,406 through increased fees of affected permits.

The Department of Finance confirms there is no economic impact.

The following contributed to and concurred with this analysis: Alicia Thomas, Department of Permitting Services; George Muste, Department of Permitting Services; Mike Coveyou, Finance; David Platt, Finance

jfb:agw

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Jennifer Barrett, Department of Finance
Carla Reid, Director, Department of Permitting Services

Office of the Director

8



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid
Director

MEMORANDUM

May 4, 2009

TO: Michael Faden, Senior Legislative Attorney
County Council

FROM: Carla Reid, Director
Department of Permitting Services

SUBJECT: Code Enforcement Legislation

This legislation solves the problem of the indefinite period of time that single family dwellings, townhouses and residential accessory structures can be under construction. Under current law there is no deadline by which a final inspection must be approved and the construction completed. Construction can continue unfinished for an indefinite amount of time. This legislation imposes a deadline for a final inspection and two additional inspections for detached one or two family dwellings.

DPS will change its practice of inspecting at the request of the applicant to proactively inspecting as part of our routine enforcement of this bill.

The implementation of this bill will also protect homeowners from occupying their homes without approved inspections. As part of the building permit application process homeowners will be advised that final inspections are required prior to occupancy. If a homeowner occupies the area covered by the building permit and there is no approved final inspection the permittee will receive a citation.

If you have questions or need additional information please call Reginald Jetter on 240 777-6275.

9



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**Maryland National Capital Building Industry Association
Testimony
On**

**Zoning Text Amendment 09-03, Home Occupations and Residential Off-street Parking
Bill 22-09, Enforcement of County Laws - Notice of Violation - Appeals
Bill 24-09, Buildings - Permits and Inspections
June 09, 2009
Before the
Montgomery County Council**

Good evening, I am Bryan Whittington. I am speaking on behalf of the Maryland-National Capital Building Industry Association (MNCBIA), a regional organization of more than 700 members representing the interests of more than 18,000 individuals in the building and development industry operating in Calvert, Charles, Montgomery, Prince George's and St. Mary's counties in Maryland and in the city of Washington DC.

The County Executive's Code Enforcement Work Group, composed of county departments' representatives, was tasked with developing responses to assorted complaints received by County agencies; the Work Group's recommendations were presented to the County Council late 2008.

The 2008 report failed to specify the number of complaints that were investigated, and the number of complaints that were deemed valid; its recommendations relied on conclusions drawn from **15** case studies – this in a County with over 900,000 residents.

The MNCBIA recognizes that the proposed legislation is not intended to affect 'the building industry' as the 15 complaints appear to be generated by neighbor against their neighbor home-owner's use of property; however, we find that it does have a ripple effect on many of the subcontractors and small business that provide services to the industry. We are sympathetic to concerns raised by existing residents over how their neighborhoods are changing; however the 2008 Report and the resulting legislation have, we believe unintended consequences, as they affect many residents who are in the building-related trades as well as those who are on the first rung of the economic ladder.

Some of the proposed changes will make home-based businesses more difficult to operate, if one is able to discern what is and is not allowed per the 32-page ZTA ... difficult to understand is how a new home-based business can function if employees are not allowed to stop by to get work orders and/or payroll checks. The ZTA also bans parking, but with so many restrictions that it is doubtful if Joe the Plumber will ever understand where he can, or cannot, park, when he drives home from work. To further complicate Joe's life, the ZTA does not identify *where he can* park, and how he can get home. In addition, the ZTA is counterproductive and undermines recently adopted public policy seeking sustainability and green initiatives -- it penalizes those folks who work from home. The ZTA inadvertently will force small businesses to either cease to exist or chose to contribute to the traffic-in-the streets ... small businesses will be forced to find

BUILDING HOMES, CREATING NEIGHBORHOODS

Representing the Building and Development Industry in Calvert, Charles, Montgomery, Prince George's and St. Mary's Counties and Washington, D.C.
Affiliated with the Maryland State Builders Association and the National Association of Home Builders

,reasonable office space further out and further away from the high business activity centers – thereby increasing traffic with these longer commuting patterns.

Bill 22-09 sets in motion 'selective' enforcement, and can easily result in wide-spread discrimination against residents in the County who are not versed in current rules and regulations; it also subjects the ability and "right-to-cure" to an inspector's discretion, without clearly establishing what triggers the use of discretion¹. This Bill allows the County to speed up a very complex and cumbersome process and makes it very difficult for someone, be it builder or homeowner, the time to effect the appropriate changes in order to not be taken to court over the situation. We recognize that, if the issue is a life safety or health issue, swift enforcement should be allowed; however, current regulations already allow a 'stop-work' order for those situations. Given the ever-increasing number of changes to zoning and building codes, a better systematic approach would be for the County to provide on-going education to *all* residents, so that *all* residents understand what is and is not, permitted.

The MNCBIA opposes Bill- 24-09. It creates new requirements on the finalizing of building projects without recognizing that the failure to proceed with a project is most often directly related to the ability to finance the project; the Bill fails to provide an alternative, given the current economic rollercoaster being experienced by so many. In one of the worst economic situations in most of our lifetimes, we stand against this Bill and any shortening of the validity of building permits. Our industry is under siege and the slow economy requires that building projects will take longer to complete as financing, sales and other impacts are factored in. It is unclear how this legislation does not subvert, and conflicts, with the intent of the recently passed Bill 5-09.

We would request that the Council, in its first work session on this legislation to:

- request data on the universe of complaints or service requests vs the county's population or the number of permits issued
- establish the percentage of valid complaints to the universe of complaints
- seek clarification of the 15 case studies, identifying when those cited for wrongdoing were conversant with current requirements and laws
- identify the number of complaints readily resolved, once the alleged 'scofflaws' were informed of what must be corrected or addressed.

If the data does suggest a very small percentage – as we suspect- why would the County Council not look to education on residents where complaints are frequent and enforcement of current laws ... a pro-active approach which can yield better returns and effect?

We look forward to participating in the worksessions on all legislation that addresses recommendations made by the Code Enforcement Work Group. Thank you for the opportunity to comment.

¹ Will it be the number of complaints received by DPS and/or DHCA or the number of valid "service requests" received by DPS?



June 9, 2009

MCCF Testimony to County Council on Bill 24-09, Building Permits

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of the Planning and Land Use Committee. We appreciate the fact that this legislation would seem to limit the impact that infill projects--specifically, one-family and two-family detached dwelling and townhouses no more than 3 stories above grade in height--can have on existing residential neighborhoods.

We do not understand, then, why the section on "required inspections" (beginning on line 36) pertains only to one-family and two-family detached dwellings and not also to 3-story townhouses. In addition, we believe that the wording of subsection 3 of the "required inspections" section should specify that the final inspection, which must occur within 18 months after issuance of the Building Permit, should find that all work on the exterior and interior of the structure is completed and the dwelling is habitable, that all work on the yard has been completed and it is no longer a sea of mud, and that the porta-john has been removed from the site.

In addition, we are concerned that the bill allows a period of 18 months from date of Building Permit issuance to the date of final inspection, and would also allow up to two 6-month extensions on top of that. Thirty months is an extremely long period of time to allow construction sites to exist in established residential neighborhoods, especially since these unfenced, unsecured sites constitute an "attractive nuisance" for children and others. Commercial construction sites are required to be fenced, so why not require fencing around residential construction sites, particularly those in the midst of established neighborhoods?

Finally, although it is not addressed in the proposed bill, we suggest the Council limit the validity period for Demolition Permits, perhaps to 30 or 60 days. And we believe that a final inspection should be required on all demolition projects, especially those which are not immediately progressing to the building phase, in order to insure that the foundation hole left by demolition of the prior structure is filled in and the site secured by fencing (in order to prevent the occurrence of unintentional swimming holes in the midst of residential neighborhoods, when the basements of demolished homes fill with rainwater).

As always, the Federation stands ready to assist Council members in your consideration of this legislation. Thank you.

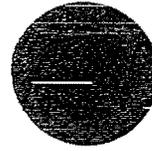
- ① BILL 22-09
- ② BILL 23-09
- ③ BILL 24-09
- ④ ZTA 09-03

CC
BD
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Greater Colesville Citizens Association
PO Box 4087
Colesville, MD 20914

County Council
Attn: Phil Andrews, President
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 217
Rockville, Maryland 20850

049488



June 9, 2009

Re: Bills 22-09, 23-09, 24-09 and ZTA 09-03

Dear Councilmember:

GCCA discussed the three bills and one zoning text amendment (ZTA) at its June 1 meeting and voted to take the positions provided below.

GCCA would like to thank the County Executive and Council for taking the time and effort to correct problems with the zoning laws and administration that will have a great benefit to citizens of the County.

Bill 22-09. GCCA supports the first part of this bill as a way to quickly address violations, but has not taken any position on the fire code standards and solid waste infractions. By eliminating the ability to appeal violations before the Board of Appeals, the time to address violations will be shortened by six months or more. Also allowing the inspectors at their discretion to issue a citation immediately, rather than just issuing a Notice of Violation, allows action to be taken quickly for major violations or violations from repeat offenders. These two steps will help restore faith in the zoning enforcement and help improve the morale of County inspectors, which must surely be poor under the existing law. We also support continuing the provision that allows citizens to appeal to the Board of Appeals in those rare situations where they feel that a building permit should not have been issued.

Bill 23-09. This bill as written created a lot of discussion on the GCCA Board. On the one hand we want to have old junked vehicles removed from residential properties. However, a number of people have antique cars or ones they are planning to restore which this bill as written would not allow them to keep, except in a garage or other building. Many citizens do not have a garage but keep such vehicles under a tarp or in a carport. Because of the last concern, the majority of the GCCA Board voted to oppose the bill as written. We urge the Council to find a way to address both issues.

Bill 24-09. GCCA supports this bill as a way of having structures built within a reasonable period of time once a building permit has been issued. One of the new members to the GCCA bought a house when they moved to Colesville that never had a final inspection but had been occupied for some 17 years. The fact that it was not a legal structure never came to light before the settlement and not until several months after they

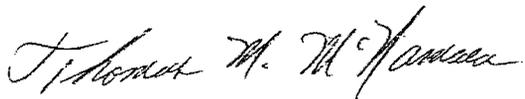
occupied the house. Having a time limit for when a valid inspection is made should help prevent that kind of event from occurring again. We also request that the inspector ensure that the building was not built as part of the process to revoke a building permit. GCCA also had the concern, not addressed by this bill, about completing a structure or demolishing a structure that had been started but not completed. With the recession and housing bust, this has been more of a problem. GCCA also urges the Council to address this problem, if there is not already a way to address it.

ZTA 09-03. GCCA supports this legislation to deal with home occupations and off-street parking. For home occupations, we support the requirement to require an inspection before a major home occupation can begin as a means of verifying the site conditions, and thus settle differences between the homeowner and neighbors before they occur. GCCA also supports the ability of the inspector to issue a notice of violation immediately rather than first issuing a warning. This will result in violations being rectified in a timely manner rather than dragging out for months. The last home occupation change of requiring the owner to show proof of home address will reduce problems that occur with the owner not actually living there, which is a requirement. (Now they only need to live there 220 days a year.)

GCCA strongly supports the provision to limit the amount of front yard that can be covered as a way of retaining a residential character of the house. Having a fully paved front yard, which occurs all too often today, makes the property look more like a commercial one. It also has a negative impact on the amount of storm-water run-off, which often impacts downhill neighbors and the environment.

GCCA also supports the other part of the ZTA that prohibits the parking of heavy commercial vehicles in one-family zones. Such parking is an eyesore to the remainder of the neighborhood and introduces a commercial feel, which doesn't belong in a residential area.

Sincerely,



Thomas M. McNamara
President

Daniel L. Wilhelm
Vice President

P.S. If you have any questions, please talk to Dan Wilhelm

BATTERY PARK CITIZENS ASSOCIATION

TESTIMONY TO DISTRICT/COUNTY COUNCIL

JUNE 9, 2009

Good evening. My name is Sara Gilbertson. I am the President of the Battery Park Citizens Association. I thank you for the opportunity to speak to you today.

Battery Park is an 80-year-old neighborhood formed by the wedge of Old Georgetown Road and Wilson Lane just outside downtown Bethesda. Due to the growth of Bethesda over the decades, Battery Park has changed from a neighborhood of entirely single-family homes to a residential neighborhood with significant amount of non-residential activity along Old Georgetown Road and Wilson Lane. The issues of adjacency to downtown Bethesda, and, in particular, the continuing leakage, intrusion and encroachment of commercial development, is a source of distress in Battery Park.

Three of the four bills under discussion tonight do not need much comment by the Battery Park Citizens Association and I will dispose of them quickly:

- First is Bill 23-09, Unused Vehicles – Storage -- I favor this bill as a preemptive measure to protect against potential blight.
- Second is Bill 24-09, Building Permits and Inspections -- For such a short bill, it raises a significant number of technical complications. In the order in which they appear in the proposed text:

(i) Under proposed Section 8-25(b)(2), a building permit is automatically invalid if an approved final inspection isn't recorded in the Department's files, even, apparently, if the failure to record a final inspection is the Department's own fault. You might want to carve out an exception for that.

(ii) Under proposed Section 8-25(b)(3), the Department can extend building permits for "good cause." "Good cause" is not defined. Is the current economic recession that has stymied new construction "good cause?" What about a builder's own financial problems, whether in a bad market or a good market? What if a small builder in a good market first allocates its scarce resources to other projects? What about a family medical crisis?

(iii) Can a permit holder obtain extensions of building permits for "good cause" if the site has outstanding violations of building, housing, health or other codes? What if the site has no violations but the permit holder or its affiliates have such violations on other sites? This bill fails to disqualify bad apples. You should add compliance with other codes as a prerequisite to making a "good cause" claim for extension.

(iv) In addition to the initial year-and-a-half for which the building permit was issued, this bill authorizes up to two six-month extensions of the building permit. Two-and-a-half years is a long time for a site to sit, abandoned or vacant, in a residential neighborhood, blighting the homes around it. I urge you to shorten those time frames, perhaps by reverting to the 12-month initial period and/or the one six-month extension permitted under the current law.

- Third is Bill 22-09, Enforcement of County Laws – Notice of Violations – Appeals -- This Bill is generally fine with us. However, it does seem a bit unfair for proposed Section 1-18(f)(3)(A) to allow an enforcement officer who has issued a "notice of violation,"

23-09
24-09
Guthrie, Lynn

BD

From: Larry Dean [larry_dean@verizon.net]
Sent: Sunday, June 07, 2009 10:35 PM
To: Ike Leggett; Montgomery County Council; Andrews' Office, Councilmember; Berliner's Office, Councilmember; Elrich's Office, Councilmember; Ervin's Office, Councilmember; Floreen's Office, Councilmember; Knapp's Office, Councilmember; Leventhal's Office, Councilmember; Praisner's Office, Councilmember; Trachtenberg's Office, Councilmember
Cc: DPS Email
Subject: Support for the Proposed Code Enforcement Bill

049514



Importance: High

Dear Isiah Leggett, Montgomery County Executive, and Members of the Montgomery County Council:

We are writing to support the passage of the Code Enforcement bill being considered this week as reported in *The Gazette* of May 6, 2009. Specifically we urge support of the requirement to mandate a final inspection no later than eighteen months after a building permit is issued. The article in *The Gazette* regarding this issue does not address penalties for failure to comply. It is important that fines be imposed for those who either avoid inspection or fail the final inspection so that projects will be completed in a timely fashion.

The property adjacent to ours (10716 Middleboro Drive) is an example of the need for this legislation. The homeowners have been working on an addition/renovation of their residence since December, 2003. The initial building permit for this project was issued in December, 2003 (permit 324249). When that permit expired, a second was issued (376208) for a more extensive renovation. That project failed inspection. In December, 2006 a third permit was issued (434841) and the foundation passed inspection; however, no further inspections have been scheduled. Now the permit has expired again, and construction is not yet complete. **For more than five years the view from our property has been a partially completed exterior and piles of building materials and excavated soil which are unsightly and pose a danger to neighborhood children.**

You may recall that we wrote to you on November 20, 2008 to support the Code Enforcement Work Group Recommendations. We received a reply from County Executive Leggett dated December 4, 2008. Mr. Leggett said that the Department of Permitting Services would be investigating our concerns about the adjacent property and that an inspector would contact us. No one has contacted us; however, a review of the Department of Permitting Services website shows that an inspector closed the case when the owner said that no work was being done (SR 199945929). Leaving aside the question of the accuracy of the owner's assertion that no work is continuing, the case illustrates the need for legislation to strengthen the authority of the Department of Permitting Services to compel the completion of building projects. A cursory inspection of the property would reveal that the renovations are not complete. Rather than close the case, the property owner should be required to complete the project. It should not be acceptable to have a project partially completed for a period of more than five years in Montgomery County. We strongly support the code enforcement regulations as proposed by County Executive Leggett.

Sincerely,

Lawrence E. Dean

Marie W. Dean

10720 Middleboro Drive

Damascus, Maryland 20872

- (e) *Secure from entry.* Each owner of a condemned or abandoned structure must:
- (1) secure all windows and doors which are accessible from the ground, from an adjacent structure, or by the reasonably foreseeable use of a ladder, table, or other device, and
 - (2) keep them secured against unauthorized entry. (Mont. Co. Code 1965, § 91-11; 1972 L.M.C., ch. 16, § 13; 1980 L.M.C., ch. 29, § 1; 1988 L.M.C., ch. 23, § 1; 1993 L.M.C., ch. 26, § 2; 2002 L.M.C., ch. 15, § 1.)

Editor's note—Former § 26-12, "Designation of unfit dwellings and unsafe nonresidential structures; legal procedure of condemnation," was repealed, reenacted with amendments, renumbered § 26-13, and retitled pursuant to 2002 L.M.C., ch. 15, § 1.

Editor's note—Former § 26-13, relating to housing board of review, derived from Mont. Co. Code 1965, § 91-12; 1972 L.M.C., ch. 16, § 13, and 1980 L.M.C., ch. 29, § 1, was repealed by § 1 of 1994 L.M.C., ch. 8.

Sec. 26-14. Repair or removal of condemned buildings or structures.

- (a) *Order of demolition.* If the owner of any building, structure, or premises condemned under this Chapter does not bring the building, structure, or premises into full compliance with this Chapter, or demolish and remove it, during the time specified by the enforcing agency in the order of condemnation or any extension, the enforcing agency may, after 30 days' written notice to the owner, order the building or structure to be demolished, any excavation to be filled, and the property cleared so that it will be in a safe condition.
- (b) *Cost charged to owner.* The County may charge the cost of any action taken under subsection (a) to the owner of the property and collect it as taxes on real property or other debts are collected. The charge is a lien on the property. (Ord. No. 6-170; 1972 L.M.C., ch. 16, § 13; 1980 L.M.C., ch. 29, § 1; 1988 L.M.C., ch. 23, § 1; 1993 L.M.C., ch. 26, § 5; 2002 L.M.C., ch. 15, § 1.)

Editor's note—See County Attorney Opinion dated 12/13/99 explaining that the County has the authority to inspect stormwater management facilities constructed before 1985, but maintenance responsibility lies with the owner.

Editor's note—Former § 26-18, was repealed, reenacted with amendments, and renumbered § 26-14, pursuant to 2002 L.M.C., ch. 15, § 1.

Editor's note—Former § 26-14, "Notice of violation and order to comply with chapter; appeal," was repealed, reenacted with amendments, renumbered § 26-12, and retitled pursuant to 2002 L.M.C., ch. 15, § 1.

Sec. 26-15. Severe conditions and corrective actions.

- (a) *Severe conditions.* If the enforcing agency finds that immediate action is needed to protect the public health and safety as a result of a violation of this Chapter, Chapter 22, Chapter 8, or Chapter 17, the enforcing agency may, without notice, conference, or hearing, order the owner to correct or abate the violation.
- (1) The order must be hand-delivered to the owner. If the order cannot be hand-delivered, the order must be posted on the property in a conspicuous location on or near each dwelling or nonresidential structure affected by the order.
 - (2) If the owner does not abate or correct the violation as directed after the order is delivered or posted, the enforcing agency may take any action reasonably necessary to abate or correct the condition or may contract to have the necessary action taken.
 - (3) If an enforcing agency proposes to take any action under this subsection that would directly affect any building or structure which has been designated on the master plan for historic preservation as a historic site or a historic resource in a historic district, the enforcing agency must make its best effort to consult with the Chair of the Planning Board or the Chair's designee before the enforcing agency removes the building or structure, substantially alters any exterior feature, or contracts to do either.
- (b) *Violation, affect on adjacent property.* If an enforcing agency finds that any violation of this Chapter affects neighboring properties or the health or safety of the occupants or the public, the enforcing agency may order necessary actions by notice and service under subsection (a). If the actions are not taken in the time and manner prescribed, the enforcing agency may authorize an officer, agent or employee of the County, or a contractor, to execute the order.
- (c) *Costs charged to owner.* The owner is liable to the County for all reasonable and necessary costs the County incurs as a result of an action taken under subsection (a) or (b). The costs constitute a debt owed the County and may be placed on the tax bill as a lien on the property and collected as ordinary taxes are collected, or collected as any other debt. (1972 L.M.C., ch. 12, § 6; 1972 L.M.C., ch. 16, § 13; 1979 L.M.C., ch. 53, § 1; 1980 L.M.C., ch. 29, § 1; 1988 L.M.C., ch. 23, § 1; 1993 L.M.C., ch. 26, § 6; 1994 L.M.C., ch. 8, § 1; 2002 L.M.C., ch. 15, § 1.)

Editor's note—Former § 26-19, "Emergency and corrective actions," was repealed, reenacted with amendments, renumbered § 26-15, and retitled pursuant to 2002 L.M.C., ch. 15, § 1.

Faden, Michael

From: Eileen Finnegan [finnegan20903@yahoo.com]
Sent: Friday, September 11, 2009 1:39 PM
To: Faden, Michael; mike.faden@montgomerycounty.gov
Cc: Street, Thomas; Reid, Carla; Floreen's Office, Councilmember; Elrich's Office, Councilmember; hillandale-md@yahoogroups.com
Subject: Code Enforcement Issue: Demolition Permits

Hello Mr. Faden,

I read your PHED staff report on Bill 24-09 with great interest and disappointment.

A glaring omission in your analysis is the issue of demolition permits and enforcement issues surrounding these virtual-condemned buildings which cause blight and are attractive nuisances in neighborhoods.

We have had this situation in Hillandale in the past, and have a long-continuing issue at 10318/10316 Parkman Road now. The demolition permit (424891) was applied for 10318 on 6/20/06 and was issued 8/13/07; a temporary electrical hook-up (hangman's gallows) was approved on 1/23/07 for 10316.

This structure which straddles both addresses still stands and pitiful electrical extension cords run through the front yard to the rear of the building. Although the grass is cut, the building is not well maintained with a basement window open to wildlife. Attached is a graphic from the Hillandale Citizens Association testimony to Council, along with a number of photos from today, September 11.

In discussions with members of the Code Enforcement Task Force in March 2009, I was encouraged that Director Reid did believe that setting a time limit of 30-90 days on a demolition permit was reasonable. Furthermore, DHCA and others were going to research if the currently-required Demolition Permit bond could be used to enforce demolition if the permit holder did not take action. It appears that these ideas were not brought forward into legislation.

I appeal to you to rectify the problem and provide the tools in code to eliminate/prevent these eyesores.

Thank you,
Eileen Finnegan

Faden, Michael

From: Reid, Carla
Sent: Friday, September 11, 2009 2:16 PM
To: Faden, Michael; 'Eileen Finnegan'
Cc: Street, Thomas; Floreen's Office, Councilmember; Elrich's Office, Councilmember; 'hillandale-md@yahoo.com'; Boucher, Kathleen; Hansen, Marc P.; Knapp's Office, Councilmember
Subject: RE: Code Enforcement Issue: Demolition Permits

Ms. Finnegan and Mr. Faden:

DPS supports this recommendation and will provide input for an amendment that addresses the same.

Carla A. Reid
Director, Department of Permitting Services
Montgomery County Government
240.777.6363
carla.reid@montgomerycountymd.gov

-----Original Message-----

From: Faden, Michael
Sent: Friday, September 11, 2009 2:06 PM
To: 'Eileen Finnegan'
Cc: Street, Thomas; Reid, Carla; Floreen's Office, Councilmember; Elrich's Office, Councilmember; hillandale-md@yahoo.com; Boucher, Kathleen; Hansen, Marc P.; Knapp's Office, Councilmember
Subject: RE: Code Enforcement Issue: Demolition Permits

Ms. Finnegan-

Thank you for bringing this serious issue to my attention.

I agree that performance time limits should be appropriate for demolition permits as well as building permits, and will bring this issue to the PHED Committee's attention at their worksession on Monday. I assume you will be able to attend.

By sending copies of this response to Executive branch staff, including DPS, I invite their comments on a potential amendment to Bill 24-09 to achieve that result and how such a provision would be enforced. I believe this kind of amendment would be within the scope of Bill 24-09 because a demolition permit is a type of building permit.

Please let me know if you have any further issues that the Committee should consider.

Mike Faden
Michael E. Faden
Senior Legislative Attorney
Montgomery County Council
240-777-7905
mike.faden@montgomerycountymd.gov