

MEMORANDUM

April 19, 2013

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Zoning Text Amendment 13-01, Planned Development (PD) Zones – Procedures

Zoning Text Amendment (ZTA) 13-01, sponsored by Councilmember Berliner, was introduced on March 12, 2013.

This ZTA would allow the construction of a fence in PD zones on the property of a private educational institution, without an amendment to a site plan. A fence constructed without a site plan must not cross a trail, path, or roadway.

The Council held a public hearing on April 16, 2013. The Planning Board recommended approval of ZTA 13-01 with a revision to require Planning Department review. The Board stated that the purpose of this review would be to ensure consistency with approved site plans and to ensure that new fences will not cut off important pedestrian and bicycle access points, an element that the Planning Board typically considers in a site plan review. Planning Department staff and the 2 other speakers recommended approval of ZTA 13-01 as introduced.

Issues

Why approve ZTA 13-01?

A fence provides a measure of security for a school. It makes entry onto school grounds more difficult for intruders and makes leaving the grounds more difficult for students. Compared to other security measures, a fence is relatively inexpensive. A fence is a benefit to a school.

Currently, in zones where site plans are required, a fence requires site plan approval or a site plan amendment. Site plans are time consuming. In FY 2012, the average approved site plan took more than 22 weeks from the date of submission to the date of approval. In that same period, even a limited site plan amendment took 11 weeks.

Site plans are expensive. For an institution, the site plan application fee is \$5,020 and a limited site plan amendment is \$4,500. The cost of preparing the application submission can be in the tens of thousands of dollars. The Council heard testimony that the full cost to get a site plan approved could exceed the cost of the fence.

The major complaint about fences is that it could cross a public trail, path, or roadway. The ZTA prohibits that from occurring. DPS would be in the position to make that determination. The Planning Board wants the Council to have the Planning Director duplicate that effort with the possibility of a Planning Board public hearing. The process proposed by the Planning Board would be new to the Ordinance, with subjective standards for review.

Staff recommends approving ZTA 13-01 as introduced.

This Packet Contains

ZTA 13-01
Planning Board Testimony
Planning Staff Testimony

© number

1 – 3
4 – 7
8

Zoning Text Amendment No.: 13-01
Concerning: Planned Development
Zones – Procedures
Draft No. & Date: 1 - 2/8/13
Introduced: March 12, 2013
Public Hearing:
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: Councilmember Berliner

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow fences under certain circumstances without a site plan or a site plan amendment in Planned Unit Development Zones; and
- generally amend the provisions concerning the application and approval procedures for Planned Unit Development Zones

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

DIVISION 59-C-7. “PLANNED UNIT DEVELOPMENT ZONES.”
Section 59-C-7.19. “Procedure for application and approval.”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by 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 **Sec. 1. DIVISION 59-C-7 is amended as follows:**

2 **DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES.**

3 * * *

4 **59-C-7.19. Procedure for application and approval.**

5 (a) [Application] An application and a development plan [approval must be in
6 accordance with the provisions of division] must be submitted and approved
7 under Division 59-D-1.

8 (b) Site plans must be submitted and approved [in accordance with the
9 provisions of division] under Division 59-D-3; however, the installation of a
10 fence, not including a deer fence, on the property of a Private Educational
11 Institution is permitted without a site plan or a site plan amendment, if the
12 fence does not cross a public trail, path, or roadway.

13 * * *

14 **Sec. 2. Effective date.** This ordinance becomes effective one day after the
15 date of Council adoption.

16

17 This is a correct copy of Council action.

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20 _____
Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

April 16, 2013

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 13-01

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 13-01 at its regular meeting on April 11, 2013. After careful review of the material of record, the Board voted unanimously to recommend approval of the Zoning Text Amendment with one modification to require that a fence permit application be reviewed by the Planning Department Director before being approved by the Department of Permitting Services (DPS). The modified language is included as a separate attachment to the technical staff report.

ZTA No. 13-01 would allow the construction of a fence in a Planned Development (PD) zone on the property of a private educational institution without a site plan or an amendment to a site plan. Under this provision, a fence constructed without a site plan must not cross a public trail, path or roadway.

The intent of ZTA No. 13-01 is to permit private schools located in PD zones, some of which do not have site plan approvals because they pre-date the rezoning of the property to the PD zone, to make security and safety improvements to their property (fences being one part of the security program) in as timely a manner as possible.

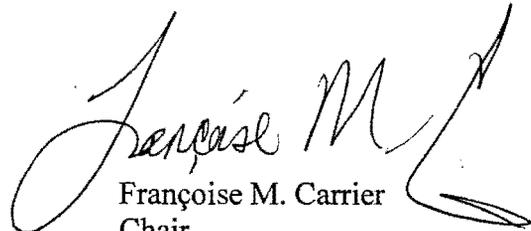
Prior to issuing a permit for a fence in the PD zones, the Department of Permitting Services (DPS) is required to check the certified site plan for the development to ensure that the proposed fence is shown on the plan. If the fence is not depicted on the certified site plan, a site plan amendment is required. In the case of a private school that does not have an approved site plan, the process would require application for a site plan for the entire site, requiring a significant amount of time and money well in excess of that needed to install the fence. Even for a private school with an existing certified site plan, the cost and time of

amending the plan to identify a fence appears unnecessary when no site layout or design element amendments, other than placement of a fence, are being proposed.

Although DPS would be required to ensure that a fence is built to code and does not interfere with any public access element on the property (such as rights-of-way or easements), several Planning Board members believed that some form of Planning Department review should continue to occur to ensure consistency with approved site plans and to ensure that new fences will not cut off important pedestrian and bicycle access points, an element that the Planning Board typically considers in a site plan review. The Board therefore recommends that additional language be included to require the Director of the Planning Department to review any fence permit application before the permit is granted by DPS, and to bring the application to the Planning Board for consideration at a public session in cases with substantial opposition or where it is not clear that the proposed fence meets the intent of this section.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, April 11, 2013.


Françoise M. Carrier
Chair

FC:GR

Attachments

1. ZTA 13-01 as modified by the Planning Board
2. Technical Staff Report

MODIFIED BY THE PLANNING BOARD ON APRIL 11, 2013

Zoning Text Amendment No.: 13-01
Concerning: Planned Development
Zones – Procedures
Draft No. & Date: 1 - 2/8/13
Introduced: March 12, 2013
Public Hearing:
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: Councilmember Berliner

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow fences under certain circumstances without a site plan or a site plan amendment in Planned Unit Development Zones; and
- generally amend the provisions concerning the application and approval procedures for Planned Unit Development Zones

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DIVISION 59-C-7. "PLANNED UNIT DEVELOPMENT ZONES."
Section 59-C-7.19. "Procedure for application and approval."

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
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[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

1 **Sec. 1. DIVISION 59-C-7 is amended as follows:**

2 **DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES.**

3 * * *

4 **59-C-7.19. Procedure for application and approval.**

5 (a) [Application] An application and a development plan [approval must be in
6 accordance with the provisions of division] must be submitted and approved
7 under Division 59-D-1.

8 (b) Site plans must be submitted and approved [in accordance with the
9 provisions of division] under Division 59-D-3; however, the installation of a
10 fence, not including a deer fence, on the property of a Private Educational
11 Institution is permitted without a site plan or a site plan amendment, if the
12 fence does not cross a public trail, path, or roadway. The building permit
13 application for the fence must be reviewed by the Planning Department
14 Director for compliance with these provisions before the permit can be
15 granted by the Department of Permitting Services. As part of the review, the
16 Planning Department Director may forward the application to the Planning
17 Board for its consideration at a public meeting in cases with substantial
18 opposition or where it is not clear that the proposed fence location meets the
19 intent of this section.

20 * * *

21 **Sec. 2. Effective date.** This ordinance becomes effective one day after the
22 date of Council adoption.

23
24 This is a correct copy of Council action.

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27 _____
Linda M. Lauer, Clerk of the Council



Zoning Text Amendment (ZTA) No. 13-01, Planned Development (PD) Zones-Procedures



Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174



Mary Dolan, Chief, FP&P, mary.dolan@montgomeryplanning.org, 301-495-4552

Completed: 04/04/13

Description

ZTA No. 13-01 would allow the construction of a fence in a Planned Development (PD) zone on the property of a private educational institution without a site plan or an amendment to a site plan. Under this provision, a fence constructed without a site plan must not cross a public trail, path or roadway.

Summary

Staff recommends approval as introduced of ZTA No. 13-01 to allow fences under certain circumstances without a site plan or a site plan amendment in Planned Development (PD) zones.

Analysis

Under Section 59-D-7.19(b) of the PD zones, a site plan must be submitted and approved in accordance with the provisions of Division 59-D-3.

The sponsor's intent for ZTA No. 13-01 is to permit private schools located in PD zones, some of which do not have site plan approvals because they pre-exist the rezoning of the property to the PD zone, to make security and safety improvements to their property (*fences being one part of the security program*) in as timely a manner as possible.

Prior to issuing a permit for a fence in the PD zones, the Department of Permitting Services (DPS) is required to check the certified site plan for the development to ensure that the proposed fence is shown on the plan. If the fence is not depicted on the certified site plan, a site plan amendment is required (Section 59-D-3.7—see Attachment 2). In the case of a private school that does not have an approved site plan, the process would require application for a site plan for the entire site, requiring a significant amount of time and money well in excess of that needed to install the fence (Section 59-D-3.2—see Attachment 2). Even for a private school with an existing certified site plan, the cost and time of amending the plan to identify a fence appears unnecessary when no site layout or design element amendments, other than placement of a fence, are being proposed.

Staff has no objection to the limited scope of ZTA No. 13-01 since under the ZTA, DPS would be required to ensure (as they currently do) that a fence is built to code and does not interfere with any public access element on the property (such as rights-of-way or easements).

Attachments

1. ZTA No. 13-01
2. Site Plan Contents requirements & Site Plan Amendment Process-Zoning Ordinance