

Action

MEMORANDUM

July 23, 2010

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney *JZm*

SUBJECT: Action - Bill 17-10, Public Utility Easement – Urban Roads

Transportation, Infrastructure, Energy, & Environment Committee Recommendation – On July 22, 2010 the Committee recommended (2-1; Councilmember Berliner would approve Bill 17-10 with amendments) disapproval of Bill 17-10. The Committee is not opposed to public utilities in public rights-of-way along urban roads; however, it does not believe that legislation is necessary to accomplish this goal. The objection by PEPCO is an indication that the Bill should not be adopted, even with amendments.

Background

SRA 10-01, Public Utility Easements – Urban Roads; and Bill 17-10, Public Utility Easement – Urban Roads, sponsored by Councilmember Elrich, were introduced on April 13, 2010.

Generally, the Planning Board requires a public utility easement (PUE) along the edge of the roadway right-of-way; the PUE is generally in the area between the sidewalk and the building. The easement gives utilities the right to access to their service lines. Buildings must be located outside of the easement areas. This suburban model of development is appropriate for most areas of the County; it is a problem in pedestrian-oriented areas where it is desirable for the building to be built next to the public sidewalk. Under permits issued by the Department of Permitting Services (DPS), public utilities are allowed in a Central Business District's public rights-of-way (ROWs).

It is not clear how utilities would be accommodated in urbanizing areas such as White Flint. The design guidelines call for buildings next to the sidewalk. DPS does not want utilities in the ROW unless it is the last resort.¹

SRA 10-01 would allow appropriate building setbacks by prohibiting public utility easements along urban

¹ Utilities would be under brick, concrete, or asphalt. Major repairs require tearing up hard surfaces and disrupting pedestrians and motor vehicles. Given the cost, time, and inconvenience, utilities would also prefer to be in the right-of-way as a last resort.

roads². The Planning Board would have the authority to allow a public utility easement along an urban road if it finds that the resulting building setbacks are appropriate.³ The SRA was introduced with a companion Bill. Bill 17-10 would **require** the Department of Transportation to allow public utilities to be located in the ROW of an urban road.

The Planning Board recommended approval of SRA 10-01 and Bill 17-10 with modifications. It recognized that placing utilities in ROWs should be an option, but not a mandate. The Board recognized that the SRA would give it the authority to reject a PUE if it did not result in desirable building setbacks, but they also wanted flexibility to address streetscapes. The Planning Board recommendation was consistent with the Planning Staff recommendation.

On June 15, 2010 the Council held a public hearing. The County Executive expressed concern over **requiring** public utilities to be in the public ROW. Testimony pointed out that the Bill would limit the Executive Branch's discretion and its ability to coordinate issues through the permitting process. There was no other testimony.

On June 24, 2010 the Committee (2-0 with Councilmember Elrich attending and in agreement) recommended the following:

- 1) If the Planning Board determines that a building should abut a roadway right-of-way along an urban roadway, the location of public utilities should not prevent that from occurring. Whenever possible, it would be preferable to have public utilities on private property.
- 2) As a last resort, public utilities along urban roads should be located in the public right-of-way.

Even though they agreed to amendments with Planning Staff, DOT and DPS Staff suggested adopting their agreement as a statement of policy, rather than changing the law. Councilmember Elrich believes that transparency requires a change to the law.

PEPCO did not favor the approval of the SRA and Bill but suggested amendments that would make it acceptable to them. PEPCO would: like a requirement for color coded utility plans with subdivisions; not want alleyways listed as an appropriate place for utilities; want a provision that utilities be paid for reconstruction work, if public works harms utilities.

This packet contains:
Bill 17-10

Circle #
1 - 3

F:\Land Use\SRAs\SRA 10-01 PUE- urban roads\Bill 17-10 T&E Action.doc

² Under §49-32(c)(1) an "urban road" is "a road segment in or abutting a Metro Station Policy Area, Town Center Policy Area, or other urban area expressly identified in a Council resolution." The current Metro Station Policy Areas include: Shady Grove, White Flint, Twinbrook, Grosvenor, Bethesda CBD, Friendship Heights, Glenmont, Wheaton CBD, and Silver Spring CBD. Germantown Town Center is the only designated town center. The other areas identified as urban by resolution are: Clarksburg, Damascus, Olney, the North Bethesda Commercial/Mixed Use area, the Montgomery Hills Parking Lot District, and the Flower/Piney/Arliss Commercial Areas.

³ The mandatory referral process under Article 28 includes the placement of public utilities.

Bill No. 17-10
Concerning: Public Utility Easement-
Urban Roads
Revised: 4-1-10 Draft No. 1
Introduced: April 13, 2010
Expires: October 13, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Elrich

AN ACT to:

(1) allow public utilities in the right-of-way of urban roads.

By amending

Montgomery County Code
Chapter 49, Road Code
Section 49-32. Design standards for types of roads.

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:

1 **Sec. 1. Section 49-32 is amended as follows:**

2 (a) The design standards adopted under this Article govern the construction or
3 reconstruction of any County road except Rustic Roads and Exceptional Rustic
4 Roads.

5 * * *

6 (b) A limited segment of a County road may be designed to vary slightly from the
7 applicable standards, criteria, or specifications, as necessary to adjust to site-
8 specific conditions, as long as the road's typical cross-section and other
9 attributes conform to the applicable standards, criteria, or specifications.

10 * * *

11 (c) In this Article and the standards adopted under it:

12 (1) an 'urban' road is a road segment in or abutting a Metro Station Policy
13 Area, Town Center Policy Area, or other urban area expressly identified
14 in a Council resolution;

15 * * *

16 (d) The minimum right-of-way for a road may be specified in the applicable
17 master plan or sector plan for the area where the road is located.

18 * * *

19 (g) [[Public]] Generally, all public utilities must be located in a public utility
20 easement adjacent and contiguous to dedicated roadway rights-of-way; however,
21 when the Planning Board determines that the preferred location of a building is
22 abutting an urban roadway right-of-way and no feasible alternatives have been
23 identified on-site, utilities must be allowed [[in urban]] by permit within road rights-
24 of-way[[.]] in the following order of preference:

- 25 (1) in a public alley;
- 26 (2) under the sidewalk;
- 27 (3) under the area used for on-street parking;
- 28 (4) under a travel lane.

