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**Chapter 59. Zoning Ordinance**

**59-C-6.215. Methods of development and approval procedures.** Two methods of development are possible in each of these zones.

(a) **Standard method of development.** The standard method requires compliance with a specific set of development standards and permits a range of uses and a density compatible with these standards. If residential uses are included in a development, moderately priced dwelling units must be provided in accordance with Chapter 25A. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site.

(b) **Optional method.** Under the optional method greater densities may be permitted and there are fewer specific standards, but certain public facilities and amenities must be provided by the developer. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted. If residential uses are included in a development, moderately priced dwelling units must be provided in accordance with chapter 25A. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site. The procedure for approval of an optional method project is specified in Division 59-D-2, and the procedure for approval of a site plan is specified in Division 59-D-3.

**Sec. 59-C-10.2.2. Optional method of development for mixed use development.**

Under this method, general commercial uses and higher density residential uses are allowed in the RMX Zones provided that they are in accordance with the provisions of section 59-C-10.3, as well as the density, numerical limitations, and other guidelines contained in the applicable master plan approved by the District Council. In addition, a project plan and site plan must be approved by the Planning Board.

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**59-C-10.3.8. Minimum building setbacks.**

	<b>Commercial Buildings</b>	<b>Residential Buildings</b>
(a) From one-family residential zoning	100'	100'
(b) From residential zoning other than one-family	50'	30'
(c) From any street <sup>1</sup>	25'	30'
(d) From abutting commercial or industrial zoning	25'	30'

1 No minimum setback is required if in accordance with master plan.

The Planning Board may reduce the minimum setbacks shown in (a) through (d) above, no greater than 50%, upon a finding that trees or other features on the site permit a lesser setback without adversely affecting development on an abutting property.

**59-D-2.11. Project plan required.**

In order to ensure that the development will include the public facilities, amenities and other design features that will create an environment capable of supporting the greater densities and

intensities permitted by the optional method of development, the developer is required to submit a project plan as a part of the application for the use of the optional method; and a site plan must be approved in accordance with the requirements of division 59-D-3 prior to the issuance of any building permit. The project plan shall be such as would result in the satisfaction of the stated purposes of the zone applied for, and the fact that a project complies with all of the stated general regulations, development standards or other specific requirements of the zone shall not, by itself, be deemed to create a presumption that the proposed development would be desirable and shall not be sufficient to require the approval of the project plan or the granting of the application.

**59-D-2.12. Contents of project plan.**

The project plan must clearly indicate how the proposed development meets the standards and purposes of the applicable zone. It must include the following, in addition to any other information which the applicant considers necessary to support the application:

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(a) A natural resources inventory prepared in accordance with a technical manual adopted by the Planning Board, and in addition:

- (1) Other natural features, such as rock outcroppings and scenic views; and
- (2) Historic buildings and structures and their approximate ages.

(b) A map showing the relationship of the site to the surrounding area and the use of adjacent land.

(c) The names and addresses of all adjacent property owners.

(d) A land use plan showing:

(1) The locations and uses of all buildings and structures, the general bulk and height of the principal buildings and their relationship to each other and to adjacent areas, the gross floor areas of buildings, by types of use, and the FAR of the project.

(2) A preliminary classification of dwelling units by type and by number of bedrooms, showing the number, size and location of moderately priced dwelling units to be constructed in accordance with chapter 25A, Montgomery County Code, as amended.

(3) The general locations of vehicular and pedestrian circulation systems (both exterior and interior), identification of public and private areas and their dimensions and the locations of points of access to the site and to public transportation facilities.

(4) The locations of parking areas with calculations of the number of parking spaces.

(5) The location of land to be dedicated to public use.

(6) The location of land which is intended for common, quasi-public or amenity use but not proposed to be in public ownership, and proposed restrictions, agreements or other documents indicating the manner in which it will be held, owned and maintained in perpetuity for the indicated purposes.

(7) The preliminary forest conservation plan prepared in accordance with Chapter 22A.

(8) The preliminary water quality plan prepared in accordance with Chapter 19.

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(e) A detailed statement describing the manner in which the development would conform to the approved and adopted sector plan and the purposes of the applicable zone.

(f) A statement and analysis demonstrating the manner in which the development would result in a more efficient and desirable development than could be accomplished by the use of the standard method of development.

(g) A development program stating the sequence in which all structures, open and amenity spaces, vehicular and pedestrian circulation systems and community recreational facilities are to be developed.

(h) The relationship, if any, of the development program to the county's capital improvements program.

(i) A draft traffic mitigation agreement, unless one has previously been submitted at the time of subdivision, if the proposed development is to be located in a transportation management district designated under chapter 42A, article II.

**Sec. 59-D-2.4. Action by planning board.**

The planning board shall act within 30 days after the close of the record of the public hearing, by majority vote of those present and voting and based upon the evidence and testimony contained in the record, to approve, approve subject to modifications and conditions, or disapprove.

**59-D-2.41. Coordination of Project Plan with Pending Master or Sector Plan.**

In order to coordinate the review of a project plan with County planning and zoning procedures, the Planning Board may defer action on a proposed project plan application, that has been determined to be complete, if all or any part of the plan lies within the boundaries of and conflicts with the proposals of a pending plan or plan amendment. For purposes of this section a pending plan or plan amendment is a preliminary draft or final draft of a master plan or sector plan or master plan or sector plan amendment as prepared by The Maryland-National Capital Park and Planning Commission in accordance with the work program approved by the District Council and the provisions of Chapter 33-A of the County code.

A proposed project plan deferred under this section must be resubmitted to the Planning Board either:

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(a) following the final disposition by the District Council of the pending plan or the plan amendment; or

(b) no later than 12 months from the completion date of the preliminary draft plan or preliminary draft plan amendment, unless there is a determination by the Planning Board that the project plan presents a substantial conflict with the proposed land use objectives of the draft plan or draft plan amendment, in which case a project plan may be deferred at the option of the Planning Board for a maximum period of 18 months from the completion date of the preliminary draft plan or preliminary draft plan amendment, but in no event beyond the period provided in (a) above.

**59-D-2.42. Findings required for approval.**

The fact that an application complies with all of the specific requirements and intent of the applicable zone does not create a presumption that the application must be approved. The Planning Board can approve, or approve subject to modifications, an application only if it finds that the proposed development meets all of the following requirements:

(a) It would comply with all of the intents and requirements of the zone.

(b) It would conform to the applicable sector plan or urban renewal plan. However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a project plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit. If the Committee finds that the development would not be financially feasible, the Planning Board must decide which if any of the following measures authorized by Chapter 59 or Chapter 50 should be approved to assure the construction of all required MPDUs on site:

(1) exceeding an applicable height limit, lower than the maximum height in the zone, that is recommended in a master plan or sector plan,

(2) exceeding an applicable residential density limit, lower than the maximum density in the zone, that is recommended in a master plan or sector plan, or

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(3) locating any required public use space off-site.

(c) Because of its location, size, intensity, design, operational characteristics and staging, it would be compatible with and not detrimental to existing or potential development in the general neighborhood.

(d) It would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under chapter 42A, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.

(e) It would be more efficient and desirable than could be accomplished by the use of the standard method of development.

(f) It would include moderately priced dwelling units in accordance with chapter 25A of this Code, if the requirements of that chapter apply.

(g) When a project plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from one lot to another or transfer densities within a lot with two or more CBD zones, pursuant to the special standards of either section 59-C-6.2351 or 59-C-6.2352 (whichever is applicable), the project plan may be approved by the planning board based on the following findings:

(1) The project will preserve an historic site, building, structure or area as shown on the Locational Atlas and Index of Historic Sites or the Master Plan for Historic Preservation; and/or

(2) The project will implement an urban renewal plan adopted pursuant to Chapter 56 of the Montgomery County Code; and/or

(3) The project will result in an overall land use configuration that is significantly superior to that which could otherwise be achieved.

(h) Any applicable requirements for forest conservation under Chapter 22A.

(i) Any applicable requirements for water quality resource protection under Chapter 19.

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**Sec. 59-D-2.6. Amendment.**

**(a) Minor Plan Amendment**

(1) A minor amendment is an amendment or revision to a plan or any findings, conclusions, or conditions associated with the plan that does not entail matters that are fundamental determinations assigned to the Planning Board. A minor amendment is an amendment that does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in its review of the plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.

(2) No action taken by the staff on a request for a minor plan amendment can alter in any manner the validity period previously established by the Planning Board.

**(b) Major Plan Amendment**

(1) Any action taken by the Planning Board to amend or revise a previously approved plan, whether such amendment is limited or comprehensive in scope, will be considered a major plan amendment.

(2) The Planning Board will determine, on a case by case basis, whether the validity period should be extended and, if so, for what duration. In making such determination, the Board must consider the nature and scope of the requested amendment.

**Sec. 59-D-3.1. Requirements.**

The site plan must be filed with the Planning Board; it may cover all or any part of a lot or tract, and must meet the following requirements:

(a) If the land is classified in a zone that requires a development plan, the site plan must be consistent with the approved development plan.

(b) If the site plan is for land classified under Section 59-H-2.5, title "Contents of Optional Method of Application-Local Map Amendments," the site plan must be

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consistent with the approved schematic development plan, development program, and recorded covenant.

(c) If the site plan is for the optional method of development in a CBD Zone, it must be consistent with a project plan approved under Division 59-D-2.

(d) If the site plan is for land classified in the MXN Zone, it must be consistent with a diagrammatic plan approved in accordance with Division D-4.

(e) If the site plan does not cover the entire lot or tract or the entire area included in any of the plans cited in preceding paragraphs, it must show how it is related to and coordinated with other site plans either approved, under consideration, or yet to be submitted.

(f) An overlay zone must specify the required elements of the site plan, and the site plan must be consistent with all standards and regulations of the overlay zone.

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**59-D-3.23. Proposed development.**

A plan of the proposed development including but not limited to the following information unless waived by the planning director at the time of application as being unnecessary because of the limited scope of the proposal:

- (a) The location, height, ground coverage and use of all structures.
- (b) For each residential building, the number and type of dwelling units, classified by the number of bedrooms, and the total floor area, if any, to be used for commercial purposes.
- (c) The floor areas of all nonresidential buildings and the proposed use of each.
- (d) The locations of all green areas, including recreational areas, natural feature preservation areas, community open space areas, and other open spaces.
- (e) Calculations of building coverage, density, green area, numbers of parking spaces and areas of land use.
- (f) The location of all public schools, parks and other community recreational facilities, indicating the location and use of all land to be dedicated to public use.
- (g) The location and dimensions of all roads, streets and driveways, parking facilities, loading areas, points of access to surrounding streets, and pedestrian walks.
- (h) A grading plan.
- (i) The location of all sewer, water and storm drainage lines, and all easements and rights- of-way, existing or proposed.
- (j) Storm water management drawings and calculations, and plans for siltation and erosion control, both during and after construction.
- (k) A landscaping plan, showing all man-made features and the location, height or caliper, and species of all plant materials.
- (l) An exterior lighting plan, including all parking areas, driveways and pedestrian ways, and including the height, number and type of fixtures and a diagram showing their light distribution characteristics.

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(m) A development program stating the sequence in which all structures, open spaces, vehicular and pedestrian circulation systems, landscaping and recreational facilities are to be developed. The applicant shall designate the point in the development program sequence when the applicant will notify the planning board to request inspection for compliance with the approved site plan.

(n) A final forest conservation plan prepared in accordance with Chapter 22A.

(o) A final water quality plan prepared in accordance with Chapter 19

**Sec. 59-D-3.4. Action by Planning Board.**

(a) A public hearing must be held by the Planning Board on each site plan application. The Planning Board must approve, approve subject to modifications, or disapprove the site plan not later than 45 days after receipt of the site plan, but such action and notification is not required before the approval of a preliminary plan of subdivision involving the same property. The Planning Board then must notify the applicant in writing of its action. In reaching its decision the Planning Board must determine whether:

(1) the site plan is consistent with an approved development plan or a project plan for the optional method of development, if required;

(2) the site plan meets all of the requirements of the zone in which it is located, and is consistent with an urban renewal plan approved under Chapter 56.

(3) the locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;

(4) each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development; and

(5) the site plan meets all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection.

(b) The Planning Board shall not approve the site plan if it finds that the development would not achieve a maximum of compatibility, safety, efficiency and attractiveness; and the fact that a site plan complies with all of the stated general regulations, development standards or other specific requirements of the zone shall not, by itself, be deemed to create a presumption that the proposed site plan is, in fact,

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compatible with surrounding land uses and, in itself, shall not be sufficient to require approval of the site plan.

(c) Upon approval, the site plan must be:

(1) Signed by the applicant agreeing to execute all the features and requirements that are part of the site plan;

(2) Signed by the chairman of the Planning Board, or his designee, certifying Planning Board approval of the site plan; and

(3) Forwarded to the Department for reference in issuing building permits under Section 59-D-3.5.

**Sec. 59-D-3.5. Effect of site plan.**

In the case of any land in a zone requiring site plan approval, as provided in article 59-C, or any special exception for which site plan approval is a condition, as provided in sections 59-A-4.22 and 59-G-1.22(b), a record plat required by chapter 50 of this Code, title "Subdivision of Land," must not be approved unless it is in strict compliance with a site plan approved as provided by this division 59-D-3. No sediment control permit, building permit or use-and-occupancy permit may be issued unless it is in strict compliance with an approved site plan. All the requirements and features that are part of the approved site plan must be executed in accordance with the applicant's development program required by section 59-D-3.23(m). A performance bond securing compliance with and full execution of all features of the site plan may be required to be posted with the planning board in an amount established by the planning board. In such cases, no sediment control permit, building permit or use-and-occupancy permit may be issued until this bond is posted.

**Sec. 59-D-3.6. Failure to comply.**

If the Planning Board finds, for any plan approved under this section, on its own motion or after a complaint is filed with the Planning Board or the Department, that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board, after due notice to all parties concerned and a hearing, may revoke its approval of the site plan or approve a plan of compliance which

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would permit the applicant to take corrective action to comply with the site plan. If at the end of the term of the plan of compliance sufficient corrective action has not taken place to cause compliance, the Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50. The Planning Board may request and obtain investigations and reports as to compliance from appropriate County or State agencies.

Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use-and-occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.

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

**59-H-5.11. The hearing.**

The hearing examiner shall conduct public hearings in accordance with section 59-H-4.4 on all applications for local zoning map amendments not otherwise reserved for hearing by the district council.

**59-H-5.12. The report.**

(a) Within 45 days after the closing of the record on any application, the examiner shall forward to the district council a written report setting forth a description of the application, his findings, and his recommendation of approval or denial or for any other disposition of the application, together with his detailed reasons therefor. Any other matters of record which, in the opinion of the examiner, are relevant and pertinent for a decision by the district council may be included by him. The district council by resolution may extend the time for such report.

(b) Recommendations of the hearing examiner shall be based on the evidence of record.

(c) Concurrently with the transmittal to the district council, copies of the hearing examiner's report shall be mailed to the applicant, the planning board, and to all persons and associations entering an appearance at the hearing as evidenced by the hearing transcript.

**59-H-5.13. Cases heard previously.**

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The hearing examiner shall read and examine the record of, or, at the direction of the district council, conduct new hearings on any application for a local map amendment which has been the subject of a previous public hearing conducted by the district council or a hearing examiner and on which no decision has been made, and make findings and recommendations thereon.

**59-H-5.14. Other duties.**

The hearing examiner shall recommend rules and regulations to the district council to govern the conduct of public hearings and of other functions of the hearing examiner's office and shall perform such other tasks and duties as the district council from time to time may assign.

**Sec. 59-H-5.2. Assignment of hearing examiner.**

(a) The County Council, sitting as the District Council, may assign one or more hearing examiners in the Office of Zoning and Administrative Hearings to conduct hearings under this Division.

(b) Any hearing examiner assigned to conduct hearings under this Division must not, within one year after serving as a hearing examiner, act as agent or attorney in any proceeding or other matter before any County agency or officer involving property which was the subject of a local map amendment pending during the hearing examiner's service as hearing examiner.

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

(a) The hearing examiner is hereby authorized to schedule for public hearing any application for a local map amendment; to extend the time for the closing of the record, either to a time certain or for a reasonable period of time, in those applications where in his discretion additional information or governmental action is necessary on matters material and relevant to an application under consideration or when the applicant or other party requests such delay for good cause shown; to suspend, defer, postpone or continue public hearings, either to a time certain or for a reasonable period of time when in his discretion the pendency of any preliminary or final master plan or sector plan or amendments thereto, highway plans, capital improvement programs or amendments thereto, zoning and planning studies, zoning text amendments, pending court decisions or other matters of a relevant or material nature may substantially affect or bear upon the application under consideration or when the applicant or other party for good cause requests such suspension, deferral, postponement or continuance.

(b) The district council may, by resolution, order the hearing examiner to suspend, defer, postpone or continue public hearings, the scheduling of public hearings or the issuance of the examiner's report and recommendation on a local map amendment application, either to a time certain or for a reasonable period of time, when such action is necessary to provide sufficient reasonable time for the district council's adoption or approval of any preliminary or final master plan or sector plan or amendments thereto, zoning plan or study, highway plan or project, zoning text amendment, sewer, water or other capital improvements project or amendments thereto which may in its discretion have a substantial effect or bearing upon any local map amendment application before the hearing examiner.

(c) The hearing examiner is hereby authorized to issue subpoenas to compel the attendance of witnesses and production of documents at any public hearing and to administer oaths to witnesses appearing before the examiner.

**Sec. 59-H-5.4. Powers reserved by district council.**

The district council may by resolution, and for good cause shown, cancel, negate, void or suspend any order of the hearing examiner suspending, postponing, deferring, or continuing any public hearing.