

Ordinance No.: 17-01
Zoning Text Amendment No.: 10-13
Concerning: Hearing Examiner Waivers –
Parking and Public Facilities
Draft No. & Date: 2 – 1/31/11
Introduced: December 14, 2010
Public Hearing: January 18, 2011
Adopted: February 8, 2011
Effective: February 28, 2011

**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 Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow the Hearing Examiner to decide adequate public facility issues and parking waivers when the Examiner is granted the authority to approve a special exception application; and
- generally amend the special exception provisions for parking and public facilities

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

Division 59-E-4. **PARKING FACILITY PLANS FOR PROJECTS
CONSTRUCTED IN ACCORDANCE WITH BUILDING
PERMITS FILED AFTER JUNE 28, 1984.**

Section 59-E-4.5. Waiver – parking standards.

Division 59-G-1. **SPECIAL EXCEPTIONS – AUTHORITY AND PROCEDURE.**

Section 59-G-1.21. General conditions.

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 that text 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.*

OPINION

Zoning Text Amendment No. 10-13, sponsored by Councilmember Floreen at the request of the Hearing Examiner, was introduced on December 14, 2010.

The Montgomery County Planning Board, in its report to the Council, recommended that the text amendment be approved with editorial amendments.

The County Council held a public hearing on January 18, 2011 to receive testimony concerning the proposed text amendment. Testimony suggested the need to clarify the set of special exceptions that will require a review of the adequacy of public facilities by the Board of Appeals or the Hearing Examiner. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

On January 31, 2011, the Planning, Housing, and Economic Development Committee held a worksession to review the amendment. The Committee agreed to recommend the approval of the text amendment with revisions to clarify the set of special exceptions that require a review of the adequacy of public facilities by the Board of Appeals or the Hearing Examiner. In the opinion of the Committee, sites with a valid adequate public facilities determination should not be required to have an additional review by the authority reviewing the special exception. The Committee also agreed with one of the editorial changes recommended by the Planning Board.

The District Council reviewed Zoning Text Amendment No. 10-13 at a worksession held on February 7, 2011 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 10-13 will be approved with amendments.

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-E-4 is amended as follows:**

2 * * *

3 **Sec. 59-E-4.5. Waiver - parking standards.**

4

5 [The] When approving an application, the Director, Planning Board, [or]
6 Board of Appeals, or Hearing Examiner may waive any requirement in this
7 Article not necessary to accomplish the objectives in Section 59-E-4.2, and in
8 conjunction with reductions may adopt reasonable requirements above the
9 minimum standards. Any request for a waiver under this Section must be
10 referred to all adjoining property owners and affected citizen associations for
11 comment before a decision on the requested waiver.

12 * * *

13 **Sec. 2. DIVISION 59-G-1 is amended as follows:**

14 * * *

15 **59-G-1.21. General conditions.**

16 (a) A special exception may be granted when the Board or the Hearing
17 Examiner finds from a preponderance of the evidence of record that the
18 proposed use:

19 * * *

20 (4) Will be in harmony with the general character of the
21 neighborhood, considering population density, design, scale,
22 and bulk of any proposed new structures, intensity and
23 character of activity, traffic and parking conditions, and number
24 of similar uses. [The Board or Hearing Examiner must consider
25 whether the public facilities and services will be adequate to
26 serve the proposed development under the Growth Policy

27 standards in effect when the special exception application was
28 submitted.]

29 * * *

30 (9) Will be served by adequate public services and facilities, including
31 schools, police and fire protection, water, sanitary sewer, public roads,
32 storm drainage, and other public facilities.

33 (A) If the special exception use requires approval of a
34 preliminary plan of subdivision, the Planning Board must
35 determine the adequacy of public facilities in its
36 subdivision review. In that case, approval of a
37 preliminary plan of subdivision must be a condition of
38 granting the special exception.

39 (B) If the special exception:
40 (i) does not require approval of a new preliminary
41 plan of subdivision[[,]]; and
42 (ii) the determination of adequate public facilities for
43 the site is not currently valid for an impact that is
44 the same as or greater than the special exception's
45 impact;

46 then the Board of Appeals or the Hearing Examiner
47 must determine the adequacy of public facilities when it
48 considers the special exception application. The Board
49 of Appeals or the Hearing Examiner must consider
50 whether the available public facilities and services will
51 be adequate to serve the proposed development under
52 the Growth Policy standards in effect when the
53 application was submitted.

54 * * *

55 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
56 Council adoption.

57

58 This is a correct copy of Council action.

59

60 *Linda M. Lauer*

61 Linda M. Lauer, Clerk of the Council