

MEMORANDUM

September 8, 2016

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Senior Legislative Analyst
SUBJECT: Zoning Text Amendment 16-12, Building Permits

Zoning Text Amendment (ZTA) 16-12, lead sponsor the Planning, Housing, and Economic Development (PHED) Committee, was introduced on August 2, 2016. ZTA 16-12 would delete building code requirements in the zoning code.

The Subdivision Rewrite effort (Subdivision Regulation Amendment (SRA) 16-01) recognized building permit application regulations outside of the code's building permit chapter (Chapter 8). The PHED Committee was persuaded that all building permit provisions should be in the building permit chapter of the code.

Issues

What is the relationship between ZTA 16-12 and Bill 35-16?

ZTA 16-12 deletes provisions currently in the Zoning Ordinance (Chapter 59). The deleted provisions are included in Bill 35-16. Bill 35-16 would amend Chapter 8 so that all building permit provisions are in a single chapter of code. With the removal of all building permit provisions from Chapter 59, the grant of jurisdiction to the Board of Appeals over building permits in Chapter 59 is also deleted. This jurisdiction is already covered in Chapter 2. The following details the deleted provisions in ZTA 16-12 and where those provisions would be included in other sections of code.

The exemption from building permit approval for agricultural facilities (lines 46 to 52) would be deleted from the Zoning Ordinance but are re-codified in Bill 35-16 (lines 46 to 57).

The exemption from building permit approval for utility equipment (lines 53 to 62) would be deleted from the Zoning Ordinance but are re-codified in Bill 35-16 (lines 54 to 63).

The requirement for more information for larger parking lots (lines 64 to 69) would be deleted from the Zoning Ordinance but re-codified in Bill 35-16 (lines 121 to 128).

The requirement for more information for the Planning Director's review of building permits (lines 71 to 78) would be deleted from the Zoning Ordinance but re-codified in Bill 35-16 (lines 83 to 95).

The requirement to allow variations from site plans (lines 82 to 90) would be deleted from the Zoning Ordinance but re-codified in Bill 35-16 (lines 129 to 137).

The requirement concerning use and occupancy permits (lines 91 to 101) would be deleted from the Zoning Ordinance but re-codified in Bill 35-16 (lines 198 to 216).

The requirement concerning the building permit approval process and necessary findings (lines 110 to 122) would be deleted from the Zoning Ordinance but re-codified in Bill 35-16 (lines 255 to 263).

What happens if the Council decides not to approve Bill 35-16?

The Council should not approve ZTA 16-12 unless it also approves the provisions of Bill 35-16 that replace the deleted provisions in ZTA 16-12.

What testimony was received at the public hearing?

A public hearing is scheduled for September 13, 2016 at 1:30 p.m. As the subject matter of this ZTA is completely recaptured in Chapter 8 of the Code under Bill 35-16, staff does not anticipate any significant testimony. The Committee may wish to reconsider any recommendations made on September 12 if any unanticipated testimony is received.

This Packet Contains
ZTA 16-12

© number
1 – 10

Zoning Text Amendment No.: 16-12
Concerning: Building Permits
Draft No. & Date: 1 – 7/19/16
Introduced: August 2, 2016
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**

Lead Sponsor: The Planning, Housing, and Economic Development Committee

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- delete building permit directions and procedures from various sections of the code.

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

DIVISION 4.2.	“Agricultural Zone”
Section 4.2.1.	“Agricultural Reserve Zone (AR)”
DIVISION 7.1.	“Review Authority and Approvals Required”
Section 7.1.2.	“Overview of Review and Approval Authority”
Section 7.1.3.	“Overview of Approvals Required”
DIVISION 7.4.	“Administrative Approvals”
Section 7.4.1.	“Building Permit”
Section 7.4.2.	“Use-and-Occupancy and Temporary Use Permits”
Section 7.4.3.	“Sign Permit”
Section 7.4.4.	“Sign Variance”
DIVISION 7.6.	“Special Provisions”
Section 7.6.1.	“Board of Appeals”

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:

Sec. 1. DIVISION 59-4.2 is amended as follows:

Division 4.2. Agricultural Zone

Section 4.2.1. Agricultural Reserve Zone (AR)

E. Special Requirements for Child Lots

* * *

[4. Building Permit

- a. When a building permit application is initially filed, the child for whom the lot is created must be the listed owner of the lot in the County land records.
- b. A building permit for a detached house on a child lot must be issued only to:
 - i. a child of the property owner;
 - ii. the spouse of a child of the property owner;
 - iii. a contractor for a child of the property owner; or
 - iv. a contractor for the spouse of a child of the property owner.]

[5]4. Ownership Transfer

* * *

[6]5. Penalty for Violations

* * *

[7]6. Deed Restrictions and Certificates of Compliance

* * *

[8]7. Existing Child Lots and Preliminary Plan Applications

* * *

Sec. 2. DIVISION 59-7.1 is amended as follows:

Division 7.1. Review Authority and Approvals Required

* * *

28 **Section 7.1.2. Overview of Review and Approval Authority**

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Approval Requested	Section Reference	Authority						
		Sign Review Board	DPS Director or Staff	Planning Director or Staff	Planning Board	Hearing Examiner	Board of Appeals	District Council
District Council Approvals								
Local Map Amendment	7.2.1			R	R	R		D
Corrective Map Amendment	7.2.2			R	R			D
Sectional or District Map Amendment	7.2.3			R	R			D
Zoning Text Amendment	7.2.4		R	R	R			D
Regulatory Approvals								
Conditional Use	7.3.1			R	I	D	A	
Variance	7.3.2			I	I	I	D	
Sketch Plan	7.3.3			R	D			
Site Plan	7.3.4			R	D			
Administrative Approvals								
[Building Permit]	[7.4.1]		[D]			[I]	[A]	
[Use-and-Occupancy and Temporary Use Permit]	[7.4.2]		[D]			[I]	[A]	
Sign Permit	[7.4.3] <u>7.4.1</u>		D			I	A	
Sign Variance	[7.4.4] <u>7.4.2</u>	D				I	A	

31 **KEY:** A = Appeal D = Decision I = Review and recommendation if requested by a reviewing, deciding, or
 32 appellate body R = Review and recommendation

33 * * *

34 **Section 7.1.3. Overview of Approvals Required**

35 * * *

Application	Section Reference	Applicability
District Council Approvals		

Local Map Amendment	7.2.1	A local zoning change to apply a Floating or Euclidean zone to a specific property.
Corrective Map Amendment	7.2.2	Correction of an error in the application or mapping of a comprehensive rezoning.
Sectional or District Map Amendment	7.2.3	A comprehensive rezoning of an area or areas of the County.
Zoning Text Amendment	7.2.4	A change in the text of this Chapter.
Regulatory Approvals		
Conditional Use	7.3.1	Use of any property for a conditional use, as designated by Article 59-3.
Variance	7.3.2	A request to deviate from any requirement of this Chapter.
Sketch Plan	7.3.3	Required for development under the optional method.
Site Plan	7.3.4	Optional method development requires approval of a site plan after approval of a sketch plan. Development under a Floating zone requires approval of a site plan after approval of a Local Map Amendment. Development under standard method may require site plan approval under Section 7.3.4.
Administrative Approvals		
[Building Permit]	[7.4.1]	[Required before any building or structure can be erected, moved, altered, or enlarged. See exemptions in Section 7.4.1.]
[Use-and-Occupancy and Temporary Use Permits]	[7.4.2]	[Required before any building, structure, or land can be used or can be converted, in whole or in part, from one use to another. See exemptions in Section 7.4.2.]
Sign Permit	[7.4.3] 7.4.1	Required when a sign is constructed, erected, moved, enlarged, illuminated, or substantially altered. Routine maintenance, including painting, cleaning, changing copy where permitted, or changing copy that satisfies a sign concept plan, does not require a permit. See exemptions in Section 6.7.3.
Sign Variance	[7.4.4] 7.4.2	Any sign not listed in Division 6.7, or that does not satisfy the requirements in Division 6.7, may apply for a sign variance from the Sign Review Board.

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37 * * *

38 **Sec. 3. DIVISION 59-7.4 is amended as follows:**

39 **DIVISION 7.4. Administrative Approvals**

40 * * *

41 **[Section 7.4.1. Building Permit]**

42 **[A. Applicability**

43 1. A building permit is required before any building or structure can be
 44 erected, moved, altered, or enlarged under Chapter 8.

45 2. A building permit is not required for:

46 a. Any building or structure used exclusively for agricultural
 47 purposes on land used exclusively for agriculture, except for:

- 48 i. a building or structure used for a purpose that is not
- 49 exclusively agricultural, including conditional uses, even
- 50 though located on otherwise agricultural land; or
- 51 ii. an equestrian facility, building, or structure intended for
- 52 use by participants or spectators at an equestrian event.
- 53 b. The following public utility equipment:
- 54 i. any structure and its attached cross arms carrying
- 55 overhead electric power and energy transmission and
- 56 distribution lines that carry 69,000 volts or less;
- 57 ii. equipment installed and maintained by a public utility
- 58 under regulation by the State Public Service
- 59 Commission; or
- 60 iii. poles or structures used for street lights, fire alarm boxes,
- 61 traffic signals, or similar municipal equipment installed
- 62 by the State or a local municipality.]

63 **[B. Application Requirements**

64 For projects that do not require site plan approval or conditional use approval and
65 have more than 10 parking spaces, an application for building permit must include
66 a plan showing the location and design of entrances and exits to public roads; the
67 location and size of all buildings and structures; the location of parking spaces,
68 directional markings, traffic-control devices and signs; and that it satisfies Division
69 6.2.]

70 **[C. Review and Recommendation**

71 DPS must submit the application to the Planning Director for review for any
72 building permit that requests:

- 73 1. construction of a new principal structure; or

74 2. construction that increases the gross floor area of an existing
75 commercial structure.

76 The Planning Director must confirm in writing that the application satisfies this
77 Chapter and that the property has all necessary approvals required by the Planning
78 Department and Planning Board.]

79 **[D. Approval Process**

80 DPS accepts the applications for all building permits.]

81 **[E. Necessary Findings for a Site with a Conditional Use**

82 For a site with a conditional use:

83 1. DPS may allow minor adjustments during construction that do not
84 substantially alter the size, location, or external appearance of any
85 approved building, structure, or use. DPS must immediately notify the
86 deciding body of any deviations from the approval of the deciding
87 body.

88 2. Any change proposed during construction that would substantially
89 alter the location or external appearance of any approved building,
90 structure, or use requires an amendment under Article 59-7.]

91 **[Section 7.4.2. Use-and-Occupancy and Temporary Use Permits]**

92 **[A. Applicability**

93 1. A use-and-occupancy permit is required before any building,
94 structure, or land can be used or can be converted, wholly or in part,
95 from one use to another.

96 2. Exemptions from use-and-occupancy permit requirement:

97 a. land or buildings used exclusively for agricultural purposes;

98 b. a use for which a valid occupancy permit was issued and not
99 revoked before June 1, 1958;

100 c. a Family Day Care (Up to 8 Persons); and

101 d. a Transitory Use.]

102 **[B. Application Requirements**

103 Each application for a use-and-occupancy permit must be accompanied by 2 copies
104 of a plan drawn to scale showing:

- 105 1. the lot on which a use is proposed, lot dimensions, lot and block
- 106 numbers and subdivision name, if any;
- 107 2. the location, extent, and layout for the proposed use and any other
- 108 pertinent information; and
- 109 3. north point, date and scale of plan.]

110 **[C. Approval Process**

111 DPS accepts the application for all use-and-occupancy and temporary use permits.]

112 **[D. Necessary Findings**

- 113 1. DPS must certify compliance with this Chapter.
- 114 2. Any building, structure, or land on a site with any previous
- 115 development approval must satisfy the requirements, representations,
- 116 plans, and conditions contained in the decision or resolution of the
- 117 deciding body.
- 118 3. On the basis of a final inspection, DPS must verify that construction
- 119 or alteration has been completed according to the applicable decision
- 120 or resolution.
- 121 4. A temporary use permit may be issued if the use satisfies the
- 122 applicable use standards under Article 59-3.]

123 **Section [7.4.3] 7.4.1. Sign Permit**

124 * * *

125 **D. Necessary Findings**

- 126 1. DPS may issue a sign permit based on one of the following:

- 127 a. its determination, upon review of the application, that the
128 proposed sign or sign concept plan satisfies Division 6.7; or
129 b. submission of the application packet and a written certification
130 by a sign installer that the proposed sign satisfies Division 6.7.
- 131 2. DPS has the authority to resolve any dispute or to interpret any
132 ambiguity in Section [7.4.3] 7.4.1.

133 * * *

134 **Section [7.4.4] 7.4.2. Sign Variance**

135 * * *

136 **C. Necessary Findings**

137 * * *

- 138 6. The Sign Review Board may approve a variance for a sign on
139 property with a conditional use approval if the Hearing Examiner or
140 Board of Appeals, as applicable, has approved the sign. Nothing in
141 Section [7.4.4] 7.4.2 prevents the Sign Review Board from imposing
142 more restrictive conditions than the Hearing Examiner or Board of
143 Appeals, but the Sign Review Board must not approve a sign variance
144 that is less restrictive than any condition set by the Hearing Examiner
145 or Board of Appeals.

146 * * *

147 **Sec. 4. DIVISION 59-7.6 is amended as follows:**

148 **DIVISION 7.6. Special Provisions**

149 **Section 7.6.1. Board of Appeals**

150 * * *

151 **C. Filing of Appeals**

- 152 1. Appeals to the Board of Appeals may be made:

- 153 a. by any person, board, association, corporation, or official
154 allegedly aggrieved by [the grant or refusal of a building or use-
155 and-occupancy permit or by] any [other] administrative
156 decision based or claimed to be based, in whole or in part, upon
157 this Chapter, including the zoning map[[,]]; or
158 b. about property affected by the master plan of highways.

159 * * *

160 **Sec. 5. Effective date.** This ordinance becomes effective on the date that
161 Bill 35-16 is effective.

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163 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council