

MEMORANDUM

July 20, 2010

TO: Transportation, Infrastructure, Energy, & Environment Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Bill 17-10, Public Utility Easement – Urban Roads; and Subdivision Regulation Amendment (SRA) 10-01, Public Utility Easements – Urban Roads

Minutes from June 24 worksession on SRA 10-01 and Bill 17-10

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) The Committee asked County Executive Staff and Planning Board Staff to work out their differences and come back to the Committee with a joint recommendation to amend SRA 10-01 and Bill 17-10.

Agreement between staff:

DPS, DOT, and Planning Board staff agreed to the following revised SRA:

- (b) [[Unless the Planning Board determines that the resulting building setbacks would be appropriate, a public utility easement on a record plat must not be required if the easement would abut an urban road as defined by Chapter 49 Section 32(c)(1).]] Generally, public utilities must be located in a public utility easement alongside the roadway right-of-way; however, when the Planning Board determines that the preferred location of a building is abutting an urban roadway right-of-way as defined by Chapter 49 Section 32(c)(1):
- (1) public utilities must be located, if feasible, in a manner that does not require a building setback different from the preferred location;
 - (2) if no feasible locations are found for utilities under subsection (1), the County must allow utilities in the right-of-way by issuing a permit that satisfies County standards.

DPS, DOT, and Planning Board staff agreed to the following revised Bill 17-10:

- (g) [[Public]] Generally, all public utilities must be located in a public utility easement adjacent and contiguous to dedicated roadway rights-of-way; however, when the Planning Board determines that the preferred location of a building is abutting an urban roadway right-of-way and no feasible alternatives have been identified on-site, utilities must be allowed [[in urban]] by permit within road rights-of-way[.] in the following order of preference:
- (1) in a public alley;
 - (2) under the sidewalk;
 - (3) under the area used for on-street parking;
 - (4) under a travel lane.
- (h) When utilities are located within the right-of-way and the utility needs to be repaired or replaced, the utility company must be responsible for restoring, at its sole cost, the affected surface and transition areas to the condition that existed before making the repair, or to a better condition.

Staff recommends approval of the ZTA and Bill as amended by the joint agreement.¹

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.

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.²

SRA 10-01 would allow appropriate building setbacks by prohibiting public utility easements along urban roads³. The Planning Board would have the authority to allow a public utility easement along an urban road

¹ “We seldom find any person of good sense, except those who share our opinions.” Francois De La Rochefoucauld

² 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.

³ 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

if it finds that the resulting building setbacks are appropriate.⁴ 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.

PEPCO favors the approval of the SRA and Bill with amendments. PEPCO would like a requirement for color coded utility plans with subdivisions. Pepco would also want a provision that utilities be paid for reconstruction work, if public works harms utilities.

This packet contains:

SRA 10-01

Bill 17-10

PEPCO testimony

Circle #

1 – 3

4 – 6

7 – 8

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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.

⁴ The mandatory referral process under Article 28 includes the placement of public utilities.

Ordinance No.:
Subdivision Regulation Amend. No.: 10-01
Concerning: Public Utility Easements –
Urban Roads
Revised: 7/22/10; Draft No. 2
Introduced: April 13, 2010
Public Hearing: June 15, 2010
Adopted:
Effective:

**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 Elrich

AN AMENDMENT to the Subdivision Regulations to:

prohibit public utility easement along urban roads under certain circumstances.

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Section 50-40, Public utilities

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>

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. Section 50-40 is amended as follows:**

2 **Sec. 50-40. Public utilities.**

3 (a) General. Pipelines, electric power and energy transmission and distribution
4 lines and cables, and telephone and telegraph lines and cables [shall] must be
5 underground in a subdivision where the preliminary subdivision plan is filed
6 subsequent to June 6, 1967.

7 (b) [[Unless the Planning Board determines that the resulting building setbacks
8 would be appropriate, a public utility easement on a record plat must not be
9 required if the easement would abut an urban road as defined by Chapter 49
10 Section 32(c)(1).]]

11 Generally, public utilities must be located in a public utility easement
12 alongside the roadway right-of-way; however, when the Planning Board
13 determines that the preferred location of a building is abutting an urban
14 roadway right-of-way as defined by Chapter 49 Section 32(c)(1):

15 (1) public utilities must be located, if feasible, in a manner that
16 does not require a building setback different from the preferred
17 location;

18 (2) if no feasible locations are found for utilities under subsection
19 (1), the County must allow utilities in the right-of-way by
20 issuing a permit that satisfies County standards.

21 (c) Installation. Underground installation shall be required but not limited to a
22 total of six (6) or more buildings in a subdivision. Temporary overhead lines
23 [shall] must be permitted for any total of less than six (6) buildings in a
24 subdivision.

25 [(c)](d) * * *

26
27 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of

28 Council adoption.

29

30 *Approved:*

31

32

33 _____
Isiah Leggett, County Executive

Date

34

35 *This is a correct copy of Council action.*

36

37

38 _____
Linda M. Lauer, Clerk of the Council

Date

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.



A PHI Company

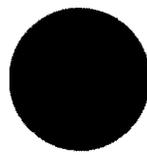
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057713

June 23, 2010



The Honorable Nancy Floreen
Chair, Transportation, Environment and Infrastructure Committee
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

2010 JUN 24 AM 9:05

HOUSE OF REPRESENTATIVES

Dear Councilmember Floreen:

I write today to address Pepco's position on Bill 17-10 and the companion Subdivision Regulation Amendment (SRA) 10-01 which are scheduled to be before your committee on June 24. Pepco supports the goals of transit-oriented, pedestrian-friendly, mixed-use development as envisioned in this legislation. However, Pepco is concerned that this legislation, as drafted, does not ensure the level of coordination between utilities and developers that would be necessary if all utilities along urban roads were to be in public space. In addition, this legislation does not explicitly allow utilities the financial protections provided under state law.

Color-Coded Utility Concept Plans

SRA 10-01 attempts to empower the Planning Board to prohibit public utility easements and allow developers to construct buildings closer to the property line. Bill 17-10 seeks to provide utilities the space to safely install and maintain their facilities within the public right-of-way. However, in order to ensure that all utilities have adequate space, Pepco recommends that developers submit a color-coded utility concept plan that identifies the existing and proposed location of all public utilities, including streetlights. In similar legislation, the Prince George's County Council recently required developers submit a color-coded utility drawing to improve coordination of facilities in public space. The proposed concept plan, drawn to scale, would allow utilities to notify developers early in the process if space limitations present a safety concern.

Rights-of-Way and Easements – Consistency with State Regulations

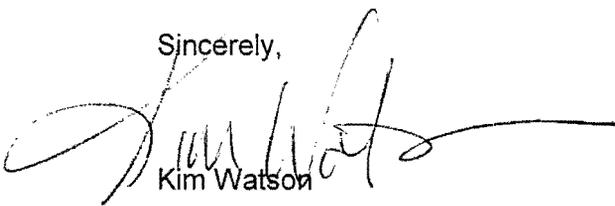
The Code of Maryland Regulations (COMAR) provides that "rights-of-way and easements suitable to the utility shall be furnished at no cost to the utility." However, Bill 17-10 does not explicitly address a utility's right to the space necessary to provide safe service, at no cost to the utility. In addition, COMAR 20.85.01.03 provides that utilities should not be responsible for the costs of utility relocation necessitated by road work, subsequent to construction. To prevent confusion, Pepco requests amendments that explicitly address these costs in a manner that is consistent with COMAR.

The Honorable Nancy Floreen
June 23, 2010
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After speaking with the legislation's sponsor, other Montgomery County utilities and representatives of the development community, Pepco proposes the attached amendments. Pepco believes these amendments address utility concerns without unfairly burdening other stakeholders in the development process. Although the company does not waive its rights under COMAR, Pepco remains committed to working with Montgomery County and developers to implement the County's vision for transit-oriented and pedestrian-friendly development. We hope the T&E committee and ultimately the County Council as a whole, will give the attached amendments full consideration.

A representative from my office will attend the T&E committee work sessions on this matter. If you have any questions about Pepco's position on this topic, please contact Charles Washington, Manager, Government Affairs in my office at 202-872-2132.

Sincerely,



Kim Watson

cc: Montgomery County Council

Enclosures