

MEMORANDUM

March 5, 2021

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment 20-06, Surface Parking – Residential Zones

PURPOSE: Worksession #1 for ZTA 20-06

Expected Participants:

Casey Anderson, Chair, Montgomery County Planning Board
Jason Sartori, Chief, Countywide Planning and Policy, Planning Department
Ben Berbert, Planner Coordinator, Countywide Planning and Policy, Planning Department

Background

Zoning Text Amendment (ZTA) 20-06, lead sponsor Councilmember Hucker, was introduced on November 10, 2020. ZTA 20-06 would allow the Planning Board approval of a site plan to supersede a Special Exception (now called Conditional Use) for surface parking in a residential zone.

Before the Zoning Ordinance Rewrite in 2014, a Special Exception for surface parking in a residential zone “in connection with a commercial use” was allowed. This could occur with separate properties, one zoned commercial and one residential, or could be a single, split-zoned property. According to Planning staff, “At the time, it was more common to either create a split zone property, or to only rezone one of multiple properties as a means of limiting the size of the commercial development. Many of the old commercial zones didn’t have explicit limits on density, just on coverage and/or green area, therefore limiting the area of commercial zoning or limiting the parking was a way to limit the total development size. Most of these developments would not have required a site plan when developed, which further explains why it was beneficial to require a Special Exception for parking in a residential zone rather than provide the whole development with a commercial zone.”

Under the current code, Conditional Use approval for surface parking in a residential zone is only allowed for uses allowed in the residential zone.¹ In the Zoning Ordinance Rewrite in 2014, the Special Exception for “off-street parking in connection with commercial uses” was eliminated, but Special Exceptions approved under the old code are still valid and are grandfathered under the new code.² In the absence of ZTA 20-06, a project involving a change to the commercial use that originally used Special Exception parking would be subject to both a site plan amendment and a Special Exception amendment, each from a different body. Planning staff could be required to review/comment on two separate applications for one project in two zones that would entail review by two separate bodies with two separate procedural requirements.

The Planning Board believes the current situation is overly burdensome and does not promote administrative economy to commercial use site plan applicants. It requires a back-and-forth process between the Planning Board and the Board of Appeals before mutually agreeable conditions can be established. Under ZTA 20-06, the Planning Board would have jurisdiction over the entire amendment process for grandfathered developments.

Planning Board and Planning Staff Recommendations

Planning Board and Planning staff recommend approval of this ZTA. Specifically, they agree that this ZTA would provide relief to commercial developments that are in effect split-zoned because they have commercial uses on commercial zoning and associated parking on residential zoning. The ZTA, by amending the definition of Surface Parking for Use Allowed in the Zone to include parking located on residentially zoned land previously approved by a Special Exception, would allow applicants who meet this definition to use the site plan process. This would provide applicants flexibility to renovate or redevelop these properties without having to go through multiple review processes. Of note, less than twenty-five properties are left in the County to which this provision may apply, due to sectional map amendments that have occurred over the years.

The Planning Board recommends one amendment to the ZTA as introduced; it would change where, under the use provisions, the new language occurs. Specifically, as originally drafted, new Subsection 3.5.9.C.2.b.iii only applies where a sketch plan is not required. Planning recommends moving the new Subsection to 3.5.9.C.2.c and adding “whether or not a sketch plan is required...”

Public Hearing

A public hearing was held on January 19, 2021. One speaker testified in support. Mr. Kominers’ testimony included a suggestion that the new language be moved and revised so that it applies whether or not a

¹ “Surface parking for Use Allowed in the Zone means surface parking in connection with any permitted or limited use allowed in the zone where no building or other use requiring parking is on the same lot.” Section 3.5.9.C.

² “A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased...”. Section 7.7.1.A.1; *see also* “Any development plan, schematic development plan, diagrammatic plan, concept plan, project plan, sketch plan, preliminary plan, record plat, site plan, special exception, variance, or building permit filed or approved before October 30, 2014 must be reviewed under the standards and procedures of the property’s zoning on October 29, 2014, unless an applicant elects to be reviewed under the property’s current zoning.” Section 7.7.1.B.

sketch plan is required. The Planning Board testified to its support of the ZTA, including its support of such an amendment.

No speakers testified in opposition.

Amendments

As drafted, the new provision would only apply where a sketch plan is not required. Allowing site plan approval to supersede a previously-approved Special Exception, at the option of the applicant, should apply regardless of whether a sketch plan is required. This amendment would be more in line with the intent of ZTA 20-06, to streamline the process for amending development approvals. This amendment would still ensure that the ZTA does not change the underlying zoning (meaning no increase in density or change in uses). In addition, the site plan review process, whether a sketch plan is required or not, will provide similar scrutiny to issues such as circulation and compatibility, keeping with the intent of the original Special Exception.

In addition, correspondence was received after the public hearing suggesting lines 28-29 be revised to read “parking layout” instead of “parking setbacks.” The letter states that Planning is in support of this change. The word “layout” ensures that the site plan review will accommodate any landscaping and edge conditions required.

This packet contains

ZTA 20-06 as introduced

© 1-4

Planning Board and Planning Staff Recommendations

© 5-18

ZTA 20-06 with proposed amendments

© 19-23

Zoning Text Amendment No.: 20-06
Concerning: Surface Parking –
Residential Zones
Draft No. & Date: 2– 11/7/2020
Introduced: November 10, 2020
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: Councilmembers Hucker and Riemer
Co-Sponsor: Councilmember Friedson

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the definition of “Surface Parking for Use Allowed in the Zone”;
- allow site plan approval to supersede a special exception for parking in a residential detached zone under certain circumstances; and
- generally amend the provisions for Surface Parking for Use Allowed in the Zone

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

Division 3.5. “Commercial Uses”
Section 3.5.9. “Parking”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
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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 3.5. Commercial Uses**

2 * * *

3 **Section 3.5.9. Parking**

4 A. Defined, In General

5 Parking means a lot or structure that provides parking for motor vehicles
6 where the facility is the principal use and a fee may be charged.

7 B. Structured Parking

8 Defined

9 Structured Parking means a one or more level free-standing structure for
10 parking or storing motor vehicles that does not share a common floor or
11 ceiling with another use allowed in the zone. Structured Parking does not
12 include Surface Parking.

13 C. Surface Parking for Use Allowed in the Zone

14 1. Defined

15 Surface parking for Use Allowed in the Zone means surface parking
16 in connection with any permitted or limited use allowed in the zone
17 where no building or other use requiring parking is on the same lot, or
18 surface parking allowed in a detached residential zone by a special
19 exception approved before October 30, 2014.

20 2. Use Standards

21 Where Surface Parking for Use Allowed in the Zone is allowed as a
22 limited use, it must satisfy the following standards:

23 a. Where a sketch plan is required, the surface parking is only
24 allowed as part of an approved phasing plan and the Planning
25 Board finds that the layout is safe, efficient, and compatible
26 with adjacent development.

27 b. Where a sketch plan is not required[,];

- 28 i. the parking setbacks must accommodate the landscaping
29 required under Section 6.2.9[,]; and
30 ii. [In] in the CRT, CR, LSC, and EOF zones:
31 (a) the surface parking must be providing parking for
32 a use on an abutting lot or be a municipal public
33 parking lot; and
34 (b) for properties on a business district street, site plan
35 approval is required under Section 7.3.4. The
36 Planning Board must find that the surface parking
37 supports commercial or residential uses that
38 substantially conform with the recommendations
39 of the applicable master plan.
40 iii. Where parking located in a residential detached zone was
41 approved as a special exception in connection with a
42 commercial use, site plan approval under Section 7.3.4
43 may supersede the previously approved special exception
44 at the option of the applicant.
45

46 **Sec. 2. Effective date.** This ordinance becomes effective immediately upon
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49 This is a correct copy of Council action.
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51 _____
52 Selena Mendy Singleton, Esq.
53 Clerk of the Council



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

January 19, 2021

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 20-06

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 20-06 (ZTA 20-06) at its regular meeting on January 14, 2021. By a vote of 5:0, the Planning Board recommends approval of the ZTA with the following comments. The Board is supportive of the ZTA to amend the definition of Surface Parking for Use Allowed in the Zone to include parking on residentially zoned land approved by a Special Exception, and to modify the parking use standards to give applicants a choice to review amend the parking through a Site Plan rather than the Special Exception process. The Board does recommend one adjustment, shifting slightly the location of the modified use standard as explained further below.

ZTA 20-06 provides relief to commercial projects that are in effect split-zoned with the commercial use on commercial zoning and the associated parking on residential zoning. The 2014 update to the Zoning Ordinance removed the use “Parking of automobiles, off-street, in connection with commercial uses” as an allowed Special Exception/Conditional Use in residential zones, but did allow the existing sites to remain valid or be amended through the grandfathering provisions. ZTA 20-06 would amend the definition of Surface Parking for Use Allowed in the Zone, under the development standards for parking as a commercial use in Section 3.5.9 of the Zoning Ordinance to include parking located on residentially zoned land that was approved by a previous Special Exception. This ZTA re-introduces a definition acknowledging these uniquely zoned parking uses to allow other provisions modified by this ZTA the ability to offer regulatory flexibility.

The ZTA also adds a new use standard allowing applicants with parking approved by Special Exception to choose whether to continue amending the approval through the Special Exception process, or to use the Site Plan process. This change allows property owners where parking was approved by a Special Exception in conjunction with a commercial use to use a Site Plan to supersede the Special Exception. This choice provides property owners who may want to amend their approvals to just follow one process for review (Site Plan), rather than having to file amendments through both the Planning Board for site plan, and the Board of Appeals for the Special Exception. The use standard modification recommended by the Board further clarifies that the ability to use Site Plan to amend the Special Exception should apply whether or not a Sketch Plan is part of the process. As drafted, new subsection 3.5.9.C.2.b.iii would only apply where sketch plan is not required. The suggested modification moves the

subsection up a level creating a new 3.5.9.C.2.c., and adding the text “Whether or not a sketch plan is required...” to the start of c.

The split-zone approval was utilized in the 1970s and 1980s as a way of controlling the size of the commercial uses on a given site. There are fewer than 25 active cases left in the County where this provision may apply, as many of these split zone projects have been subject to Sectional Map Amendments associated with Master Plans in recent years. For these remaining properties, this ZTA provides reasonable flexibility to renovate or redevelop their properties without the burden of multiple layers of review. The underlying zoning does not change therefore this does not provide for any increase in density or change in allowed uses. Finally, the site plan process will provide similar scrutiny to issues such as circulation and compatibility ensuring the intent of the Special Exception remains.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, January 14, 2021.



Casey Anderson
Chair

CA:BB:aj

Zoning Text Amendment No.: 20-06
Concerning: Surface Parking –
Residential Zones
Draft No. & Date: 2– 11/7/2020
Introduced:
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Adopted:
Effective:
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Lead Sponsor: Councilmembers Huckler and Riemer

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- generally amend the provisions for Surface Parking for Use Allowed in the Zone

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16 in connection with any permitted or limited use allowed in the zone
17 where no building or other use requiring parking is on the same lot, or
18 surface parking allowed in a detached residential zone by a special
19 exception approved before October 30, 2014.

20 2. Use Standards

21 Where Surface Parking for Use Allowed in the Zone is allowed as a
22 limited use, it must satisfy the following standards:

23 a. Where a sketch plan is required, the surface parking is only
24 allowed as part of an approved phasing plan and the Planning
25 Board finds that the layout is safe, efficient, and compatible
26 with adjacent development.

27 b. Where a sketch plan is not required[,];

- 28 i. the parking setbacks must accommodate the landscaping
29 required under Section 6.2.9[,] and
30 ii. [In] in the CRT, CR, LSC, and EOF zones:
31 (a) the surface parking must be providing parking for
32 a use on an abutting lot or be a municipal public
33 parking lot; and
34 (b) for properties on a business district street, site plan
35 approval is required under Section 7.3.4. The
36 Planning Board must find that the surface parking
37 supports commercial or residential uses that
38 substantially conform with the recommendations
39 of the applicable master plan.
40 [[iii. Where parking located in a residential detached zone
41 was approved as a special exception in connection with
42 a commercial use, site plan approval under Section
43 7.3.4 may supersede the previously approved special
44 exception at the option of the applicant.]]
45 c. Whether or not a sketch plan is required, where parking located in
46 a residential detached zone was approved as a special exception
47 in connection with a commercial use, site plan approval under
48 Section 7.3.4 may supersede the previously approved special
49 exception at the option of the applicant.
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Zoning Text Amendment (ZTA) No. 20-06, Surface Parking – Residential Zones

BB

Benjamin Berbert, Planner Coordinator, CP&P, Benjamin.berbert@montgomeryplanning.org, 301-495-4644

JS

Jason Sartori, Chief, CP&P, jason.sartori@montgomeryplanning.org, 301-495-2172

Completed: 01/07/21

Description

ZTA 20-06 would amend the definition of “Surface Parking for Use Allowed in the Zone” to include parking on residentially zoned property that was approved by a special exception prior to October 30, 2014, and would move the regulatory authority of such parking from the conditional use process to the site plan process.

Summary

Staff recommends approval of ZTA No. 20-06, as introduced, to amend the definition of “Surface Parking for Use Allowed in the Zone” under Section 3.5.9 to include parking on residentially zoned property that is approved by a special exception prior to October 30, 2014, and to allow property owners the option to reduce the regulatory burden and potential for conflicting decisions on development approvals.

Background/Analysis

Rationale for ZTA Introduction

This ZTA is intended to provide property owners with split zoned property, or who own development over multiple properties located in different zones, the option to streamline the process for amending development approvals. Specifically, this ZTA provides relief for properties with a commercial use in a commercial zone, and the associated parking for that commercial use approved through special exception in a residential zone. The old Zoning Ordinance before October 30, 2014 permitted “Parking of automobiles, off-street, in connection with commercial uses” as a special exception in the R-60 and R-40 zones. According to records from the Board of Appeals, there have been 25 properties where a special exception for parking in a residential zone was granted, mostly in the 1970s and 1980s. At the time, it was more common to either create a split zone property, or to only rezone one of multiple properties as a means of limiting the size of the commercial development. Many of the old commercial zones didn’t have explicit limits on density, just on coverage and/or green area, therefore limiting the area of commercial zoning or limiting the parking was a way to limit the total development size. Most of these developments would not have required a site plan when developed, which further explains why it was beneficial to require a Special Exception for parking on a residential zone rather than provide the whole development with a commercial zone.

Upon reviewing these 25 properties, about half are still in use today and are still in a split between the commercially zoned primary structure, and the residentially zoned parking. The other half of the

properties have since been rezoned through a Sectional Map Amendment to fully cover the parking within the same CR or Employment zone as the commercial use. Of the sites where the parking in a residential zone is still active, about half are a single split-zoned lot, and the other half are two separate but adjacent lots with one fully zoned commercial and one fully zoned residential.

The new Zoning Ordinance that took effect on October 30, 2014 removed “Parking of automobiles, off-street, in connection with commercial uses” as a conditional use, but the grandfathering of Section 7.7.1 allows these unique parking approvals to continue. The new Zoning Ordinance is better able to control compatibility and density through the density, form, and master plan requirements of CR and Employment Zones.

Developments split-zoned between residential and commercial zoning can amend their uses and the associated parking through the grandfathering provisions, however the current process would potentially require the Planning Board to take action on a site plan for the commercially zoned portion of the development project, and the Board of Appeals to take action on a special exception amendment for the parking on the residentially zoned portion. The changes proposed by this ZTA would provide an alternative to this cumbersome process that would allow all regulatory authority over the commercial use and its associated parking to fall under the Planning Board through the site plan process.

ZTA 20-06 as introduced

ZTA 20-06 makes two modifications to the Zoning Ordinance. The first amends the definition of Surface Parking for Use Allowed in the Zone under Section 3.5.9.C. The proposed language is as follows:

Surface Parking for Use Allowed in the Zone

1. Defined

Surface parking for Use Allowed in the Zone means surface parking in connection with any permitted or limited use allowed in the zone where no building or other use requiring parking is on the same lot, or surface parking allowed in a detached residential zone by a special exception approved before October 30, 2014.

The original definition in this section was specific to parking allowed by right as a primary use on a lot, located adjacent to an allowed use on a separate lot. This expanded definition would include parking that has been allowed by special exception in a residential zone associated with a commercial use in a commercial zone, either on the same lot or an adjacent lot.

The second modification is intended to reduce the burden and possibility of conflicting recommendations that come from having to amend both a special exception and site plan through different regulatory bodies. The ZTA proposes a new use standard iii be added to Section 3.5.9.C as follows:

2. Use Standards

Where Surface Parking for Use Allowed in the Zone is allowed as a limited use, it must satisfy the following standards:

- a. Where a sketch plan is required, the surface parking is only allowed as part of an approved phasing plan and the Planning Board finds that the layout is safe, efficient, and compatible with adjacent development.
- b. Where a sketch plan is not required[,];
 - i. the parking setbacks must accommodate the landscaping required under Section 6.2.9[.]; and
 - ii. [In] in the CRT, CR, LSC, and EOF zones:
 - (a) the surface parking must be providing parking for a use on an abutting lot or be a municipal public parking lot; and
 - (b) for properties on a business district street, site plan approval is required under Section 7.3.4. The Planning Board must find that the surface parking supports commercial or residential uses that substantially conform with the recommendations of the applicable master plan.
 - iii. Where parking located in a residential detached zone was approved as a special exception in connection with a commercial use, site plan approval under Section 7.3.4 may supersede the previously approved special exception at the option of the applicant.

This modification would remove review authority from the Board of Appeals if a property owner chooses to amend the associated parking via a site plan, but the site plan process itself should continue to ensure the parking is adequate and compatible with surrounding uses. The proposed language includes “at the option of the applicant” because it may not always be to a property owner’s benefit to end the special exception process, especially if the associated commercial use does not have or require a site plan.

Conclusion

Staff believes that ZTA 20-06 provides more flexibility to these remaining commercial developments that have their approved associated parking within a residential zone without sacrificing the original intent of the code or weakening any review requirements. Approval of this language does not imply the ability for any of these properties to drastically change in size or character as the size of the commercially zoned area would not increase. This ZTA merely simplifies the process going forward for amendments or redevelopments of properties by providing the option to shift the entire review authority to the site plan process at the Planning Board. Staff recommends approval as introduced.

Attachments

1. ZTA No. 20-06 as introduced.

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Residential Zones
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27 b. Where a sketch plan is not required[,];

- 28 i. the parking ~~[[setbacks]]~~ layout must accommodate the
- 29 landscaping required under Section 6.2.9[,]; and
- 30 ii. ~~[In]~~ in the CRT, CR, LSC, and EOF zones:
- 31 (a) the surface parking must be providing parking for
- 32 a use on an abutting lot or be a municipal public
- 33 parking lot; and
- 34 (b) for properties on a business district street, site plan
- 35 approval is required under Section 7.3.4. The
- 36 Planning Board must find that the surface parking
- 37 supports commercial or residential uses that
- 38 substantially conform with the recommendations
- 39 of the applicable master plan.
- 40 ~~[[iii. Where parking located in a residential detached zone~~
- 41 ~~was approved as a special exception in connection with a~~
- 42 ~~commercial use, site plan approval under Section 7.3.4~~
- 43 ~~may supersede the previously approved special exception~~
- 44 ~~at the option of the applicant.]]~~
- 45 c. Whether or not a sketch plan is required, where parking located
- 46 in a residential detached zone was approved as a special
- 47 exception in connection with a commercial use, site plan
- 48 approval under Section 7.3.4 may supersede the previously
- 49 approved special exception at the option of the applicant.

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51 **Sec. 2. Effective date.** This ordinance becomes effective immediately upon

52 the Council’s adoption.

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54 This is a correct copy of Council action.

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Selena Mendy Singleton, Esq.

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Clerk of the Council