

A Zoning Rewrite Team Green Paper

**Initial ideas for discussion and testing
to create a simpler ordinance based
on sustainability and quality of place.**



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IV. Approval Procedures

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Contents

Introduction	2
Problem Statement	3
Background	3
Proposed Solution	3
Summary & Example	5
Selected Resources	6

Introduction

Approval procedures for development in Montgomery County are generally covered by Articles 59-D, 59-G, and 59-H of the Zoning Ordinance and the Subdivision Regulations (Chapter 50). In all, there are 13 different procedures covered by the Ordinance and the Subdivision Regulations:

- Development Plan
- Diagrammatic Plan
- Schematic Development Plan
- Supplementary Plan
- Pre-Preliminary Plan
- Urban Renewal Plan
- Project Plan
- Preliminary Plan
- Site Plan
- Record Plat
- Variance
- Special Exception

This paper briefly outlines suggestions to consolidate, streamline, and rationalize the development approvals reviewed under the Subdivision Regulations and Zoning Ordinance. The guiding principles of further procedural analysis are:

1. Appropriate public openness and opportunities for input, and
2. Reasonable development oversight by professional staff through equitable review processes.

Problem Statement

The Montgomery County Zoning Ordinance can provide a more rational and streamlined set of approval procedures for its various development applications while remaining comprehensive and transparent. A thorough but systematic set of approval procedures

will ensure that the following objectives are met:

1. Citizens and developers are able to readily understand the steps various development applications must take.
2. The rigor of the required reviews and hearings is balanced against the potential local and regional impacts.
3. Public noticing and the ability to ensure transparency are retained and enhanced.
4. Approval processes are tied to development type and impact, not necessarily the zone in which the development takes place.
5. Redundant processes and hearings are reduced or eliminated.
6. Submittal requirements are rational, consistent, and focused on providing the information needed to make the findings required for approval.

Background

In 1928 there were basically two approval procedures: a certificate of occupancy and compliance was needed coincident with the application for a building permit and that building permit required a plat to be filed and kept with the office of the Building Inspector. Things are a little different now.

For example, the creation of the CBD zones led to the requirement for a Project Plan, which was then

applied to the optional method of development in the RMX, MXTC, TMX, and TOMX zones.

The advent of the floating zones, which require approval by the District Council, led to the four types of rezoning plans we now have:

- Development Plan: R-4plex, R-MH, C-Inn, PD, MXP, TS, PN, PRC, PCC, TS-R, and TS-M zones.
- Diagrammatic Plan: MXN zone.
- Schematic Development Plan: OM, CT, C-3, RH, CP, HM, RS, LSC, I3, and the RT zones.
- Supplementary Plan: TS.

The “Combined Urban Renewal Project Plan” is only used to expedite project review and approval in urban renewal areas designated under Chapter 56.

Most approvals are obtained through the preliminary and site plan review processes. The pre-preliminary plan is a plan seeking advice (typically non-binding) from Planning Department staff and/or the Planning Board. Preliminary plans are reviewed by the Planning Board when properties subdivide or re-subdivide. Site plans are detailed development plans approved by the Planning Board. Record plats are legal documents that become part of the County land records after subdivision or re-subdivision.

Variances are heard by the Board of Appeals when an application cannot meet the standards of development for reasons of hardship or unusual circumstances.

Special exceptions are approvals for permitted uses that have restrictions beyond

the regular development standards typically due to concerns about nuisances or adverse impacts.

Rewrite Team Solution

After diagnosis of the existing approval procedures, a review of the literature on development review, and research into the review process of several other jurisdictions, the zoning rewrite team has come to several conclusions:

1. Approval procedures should be grouped in one section of the code and then by the agency that has jurisdiction.
2. Approval procedures should not have unnecessary redundancy and layers of approval.
3. Approval procedures should be based on use and impact – not necessarily zone.
4. Rezoning applications should be consolidated to reflect the flexibility of mixed-use planned developments.
5. Some approval procedures might be consolidated to provide the reviewing agency with a more holistic view and avoid redundancy and conflict between approvals.

Each of these conclusions is discussed briefly below.

Grouping of Approvals

Our current ordinance discusses approval procedures in Articles 59-D, 59-G, and 59-H (and there are some related issues in 59-A). There

is no consistent format to the sections within these approvals and they are not grouped by the agency with ultimate jurisdiction over the approval. A better approach would be to consolidate approval procedures into one article and begin with a table that outlines the processes, the review agencies, and their roles:

TABLE 2-1: SUMMARY OF THE ROLES OF DECISION-MAKING BODIES								
			H = Hearing (Public Hearing Required)		D = Decision (Responsible for Final Decision)			
			M = Meeting (Public Meeting Required)		A = Appeal (Authority to Hear/Decide Appeals)			
			R = Recommendation (Responsible for Review and a Recommendation in Specified Circumstances)					
Procedure	Sub-section	Board of Mayor and Alderman (BOMA)	Planning Commission (FMPC)	Board of Zoning Appeals (BOZA)	Historic Zoning Commission (HZC)	Planning Dept.	Development Review Team (DRT)	Codes Dept.
Site Plan Review	2.4.3		M-D A [2]		R	R-D [1]	R	
Land Use Plan Amendment	2.4.4		M-D			R	R	
Variance	2.4.5			M-D		R		R
Appeal of Administrative Decision	2.4.6			M-D				
Performance Agreements	2.4.7		R-A [3]			D		
Tree Removal Permit	2.4.8					R		R-D
Certificates of Appropriateness in the HPO District	2.4.9				M-D	R		
Sign Permit	2.4.10							D

Approval Procedure Redundancy

Many developments have to go through several application types that have similar findings. But the wording and focus of the findings may put these applications in conflict with later findings. This is especially true when a condition is placed on an application in the early phases that binds an applicant to something that becomes a problem when a more detailed design is created. Appropriate findings should be made with the appropriate plan.

Project plans have also become a point of contention for developers because they have become as detailed as site plans. Our team is investigating a way to shorten the approval process and/or create a more “conceptual” approval.

Impact of Approvals

Currently, many approvals are based on the zone in which a proposed development is located, rather than on the impact of the use. Of course, there are some uses that will always require a more rigorous review because of the assumed context of the zone. It makes more sense, however, to first ensure that approvals are based on impact and later coordinate the process across zones. For example, in the current code, a 5,000 square-foot building with few generated trips and little visual impact may require a site plan, while a 60,000 square-foot building with a large number of trips and a significant visual impact may not.

Rezoning

We have several dozen zones that require rezoning plans and each type of rezoning plan has its own findings. A solution that we are researching is the feasibility of reducing the number of existing floating zones. Any rezoning (other than to correct a change or mistake) might be better accomplished through a revised, more flexible planned-development zone. In this case, an applicant could use the parameters of the planned development zone to design the basic framework: uses, transportation patterns, overall densities, public amenities, and open space patterns. The District Council would then make the necessary findings that, for a number of specified reasons, this planned development would be more beneficial to the public than that which could be accomplished with the underlying zone(s). The project would then go through a subdivision

and site plan process as a whole or in phases.

Consolidation of Approvals

There are some review processes, such as for a development that requires both a preliminary plan and site plan, that could be reviewed by one submittal. In this case, a planner and designer might be assigned as a review team to ensure the subdivision and site plan findings were adequate, but only one application would be required. Another current practice that causes confusion occurs when both a special exception and a site plan are required. We are looking into a limited special exception approval, which may approve only the use in question contingent upon the findings of a site plan to ensure compatibility. Any and all options are on the table.

Summary & Example

There are a number of related items that will come into play when the larger questions of approval processes are evaluated within the restructuring of the entire Ordinance. For example:

- Which agencies should control intake?
- Which agencies should become lead-agencies and for which applications?
- What processes can be eliminated if the Code provides better guidance and regulation?
- What applications can be fast-tracked by using new options, such as “land use typologies” (an upcoming green paper)?

This initial review and discussion will provide a foundation for a fairer, more reasonable, and appropriately

comprehensive approach to our approval procedures. Applicants, regulatory bodies, and citizens will have a clearer understanding what is required for each application type and how to provide effective input for each.

One example of the problems inherent in the current process involves a zoning case that will also require special exception review and subdivision and site plan approval. Duplicated findings are needed throughout the process, leading to extraordinarily long approval time frames. Applicants should know quickly and through an iterative but increasingly focused process whether their project will be allowed to proceed. In this example, the zoning review might be limited to basic findings about compatibility between the proposed zone and the surrounding area. The subdivision review might then be limited to right-of-way issues, general environmental protections, lot size(s), and general uses on lots. The special exception review would be limited to the impacts on adjacent neighborhoods and local context. And the site plan review would tie these previous approvals together in a comprehensive and detailed design. But the type of plant needed to screen a generator pad, for example should not be a subject for each of these plans.

Our goal is to create an ordinance that:

1. Provides appropriate and reasonable zoning approval processes and
2. Maintains and enhances the input citizens have planning the vision of an area and the transparency of the implementation of that vision.

We think these initial suggestions should spark a dialogue to help us achieve the above objectives.

Selected Resources

Texts:

- Anderson, Robert, *Anderson's American Law of Zoning*, 4th ed, New York, Clark Boardman, Callaghan, 1996.
- Elliott, Donald, *A Better Way to Zone*, Washington DC, Island Press, 2008.
- Freilich, Robert, et.al, *21st Century Land Development Code*, Chicago, APA, 2008.
- Kushner, James, *Comparative Urban Planning Law*, Carolina Academic Press, 2003.
- Rohan, Patrick, *Zoning and Land Use Controls*, Matthew Bender/Lexis Nexis, 2001.

Primary Jurisdictions Researched:

- Franklin, TN
Chicago, IL
Denver, CO
Burlington, VT