



Montgomery County

Office of Intergovernmental Relations

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HB 1167

DATE: March 6, 2025

SPONSOR: Montgomery County Delegation and Prince George's County Delegation

ASSIGNED TO: Environment and Transportation

CONTACT PERSON: Kathleen Boucher (Kathleen.boucher@montgomerycountymd.gov)

COUNTY EXECUTIVE POSITION: Support with Amendments

COUNTY COUNCIL POSITION: Support

Montgomery County – Municipal Authority to Regulate Structures – Alterations MC/PG 116-25

House Bill 1167 is intended to apply to municipalities over which the County has planning and zoning authority (i.e., Takoma Park, Kensington, Garrett Park, Somerset, Glen Echo, Martin's Addition, Town of Chevy Chase, Chevy Chase View, Chevy Chase Village, Village of Chevy Chase, Section 3, and Village of Chevy Chase, Section 5). Section 20-509 of the Land Use Article currently allows these municipalities to impose additional or stricter building requirements than are required by County zoning law. Any such building requirement: (1) must be imposed for the protection of the public health, safety, and welfare or for the preservation, improvement, or pretention of lands, water and improvements in the municipal corporation or special taxing district; and (2) may regulate only the construction, repair, or remodeling of single family residential houses, buildings, or other structures on land zoned single-family residential use as it relates to: (i) fences, walls, hedges, or similar barriers; (ii) signs; (iii) residential parking; (iv) residential storage; (v) location of structures, including setback requirements; (vi) dimensions of structures, including height, bulk, massing, and design; and (vii) lot coverage, including impervious surface.

The bill modifies the municipal authority described in item (2) above to allow a municipal corporation to regulate the construction, repair, or remodeling of any type of residential house, building, or other structure on land zoned predominantly single-family residential use as of January 1, 2024. The bill also adds language to require that any building requirement adopted by a municipality apply "without regard to housing type." The bill provides that a building requirement adopted for multifamily housing: (1) may not be more restrictive than a building requirement adopted for single-family housing; and (2) may be less restrictive than a building requirement adopted for single-family housing. According to the sponsor, this bill is intended to clarify the authority of municipalities (and governed special taxing districts) in light of a 2021 letter of advice issued by the Office of the Attorney General regarding the meaning

of § 20-509 of the Land Use Article (see **Attachment 1**). The bill was requested by 11 of the impacted municipalities, who consider the bill to be making a “technical” clarifying amendment to current State law.

The Montgomery County House Delegation voted to support this bill with amendments that narrow the scope of the bill to authorize the twelve municipalities subject to the bill to impose additional building requirements in the seven areas listed above for construction, repair, or remodeling of residential buildings with four or fewer dwelling units (including single unit houses, duplexes, triplexes, quadplexes, cottage clusters, townhouses, and similar buildings) and their accessory structures. The amendments also repeal provisions in the bill that limit its applicability to buildings in land zoned for predominantly single-family residential use and makes the bill applicable to the specified residential buildings and accessory structures regardless of zoning.

County Executive Position

The County Executive supports the balance of municipal authority that is reflected in the bill as amended by the Montgomery County House Delegation and respectfully requests that the Environment and Transportation Committee give the bill a favorable report with those amendments.

County Council Position

The County Council considered this bill prior to the action taken by the Montgomery County House Delegation and voted unanimously to support the bill. The Council was aware at that time that the bill sponsor was working with Montgomery County Planning Board Chair Artie Harris on amendments that were intended to clarify the original intent of the bill. The Council indicated that the specific language of the clarifying amendment would be best determined by the Delegation.

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CONFIDENTIAL

January 19, 2021

The Honorable Jeff Waldstreicher
Maryland Senate
2 East Miller Senate Building
Annapolis, Maryland 21401

The Honorable Alfred C. Carr, Jr.
Maryland House of Delegates
222 House Office Building
Annapolis, Maryland 21401

The Honorable Emily Shetty
Maryland House of Delegates
224 House Office Building
Annapolis, Maryland 21401

The Honorable Jared Solomon
Maryland House of Delegates
222 House Office Building
Annapolis, Maryland 21401

Dear Senator Waldstreicher and Delegates Carr, Shetty, and Solomon:

You have made a confidential inquiry about whether municipalities may still regulate aspects of residential zoning under § 20-509 of the Land Use Article (“LU”) for non-single family home residential buildings (such as duplexes and townhomes), if Zoning Text Amendment (“ZTA”) No. 20-07 pending before the Montgomery County Council is enacted as introduced. While you may want to consult with the Montgomery County Office of Law with respect to the intent and application of the County’s proposed zoning amendment, I do not see anything in the proposed zoning amendment as introduced that clearly interferes with a municipality’s right to regulate under LU § 20-509 in certain areas with regard to non-single family residential units on land zoned for single-family residential use. Short of changing the zoning designation itself, the county may not take away authority of municipalities granted under State law.

While there may be an argument that the application of LU § 20-509 is limited to municipal regulation of houses, buildings, or other structures that are exclusively single-family residential units, in my view the more reasonable interpretation is that the regulatory authority under that statute extends to single-family residential houses, and also to buildings and other structures that are not exclusively single-family residential units, such as duplexes or townhomes. Any ambiguity as to that interpretation, however, could be clarified through legislation.

Under LU § 20-509(a), subject to certain limitations, a municipality in Montgomery County “may impose an additional or stricter building requirement than is required by a State,

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regional, or county unit that exercises zoning or planning authority over the” municipality “if the authority is exercised in addition to the State, regional, or county zoning or planning authority.” An allowable additional or stricter building requirement under that provision:

(1) shall be imposed for:

(i) the protection of the public health, safety, and welfare; or

(ii) the preservation, improvement, or protection of lands, water, and improvements in the municipal corporation or governed special taxing district; and

(2) may regulate only the construction, repair, or remodeling of *single-family residential houses, buildings, or other structures* on land zoned for single-family residential use as it relates to:

(i) fences, walls, hedges, and similar barriers;

(ii) signs;

(iii) residential parking;

(iv) residential storage;

(v) the location of structures, including setback requirements;

(vi) the location of structures, including height, bulk, massing, and design; and

(vii) lot coverage, including impervious surfaces.

LU § 20-509(b) (Emphasis added).

Proposed ZTA No. 20-07, as introduced, purports to: (1) “allow duplexes, townhouses, and apartments in the R-60 zone under certain circumstances;” (2) “amend the density, infill development, and parking standards in the R-60 zone under certain circumstances; and” (3) “generally amend the provisions for R-60 zoned property near Metrorail Stations.” See “ZTA 20-07.pdf (montgomerycountymd.gov)”.

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Assuming the regulations in ZTA No. 20-07 regulate the same areas and features authorized for regulation in LU § 20-509, I do not see any clear limitation on a municipality from enacting additional or more strict building requirements in accordance with LU § 20-509 as they relate to “non-single family home type residential buildings such as duplexes and townhomes” because those buildings appear to fall within the meaning of “building” or “other structure” as evidenced in the legislative history of LU § 20-509.

The legislative history of LU § 20-509 suggests that structures other than just single-family homes were intended to be included in the authority granted to a municipality under that section to enact certain additional or more strict building requirements. In 2016, the General Assembly enacted Chapter 731 (House Bill 1024) of the 2016 Laws of Maryland, which “clarifie[d]” that a municipality in Montgomery County “may adopt specified building requirements that regulate the construction, repair, or remodeling of *other structures*, in addition to single-family residential houses or buildings, on land zoned for single-family residential use.” Department of Legislative Services, Third Reader Fiscal and Policy Note for House Bill 1024 of 2016. (Emphasis in original). Although the terms “building” and “structure” in this context do not appear to be defined in the Land Use Article, the Fiscal and Policy Note indicated that under Montgomery County’s zoning ordinance (Montgomery County Code, Art. 59-1, § 1.4.2.), “building” is defined as “a structure having one or more stories and a roof, designed primarily for the shelter, support, or enclosure of persons, animals, or property of any kind.” *Id.* at 2. “Structure” is defined in the County’s zoning ordinance as “a combination of materials that requires permanent location on the ground or attachment to something having permanent location on the ground, including buildings and fences.” *Id.*

While the phrase “single-family residential houses, buildings, or other structures” could be read as the phrase “single-family residential” qualifying each of the words “houses,” “buildings,” and “structures” so that the regulations only apply to single-family units, in light of the breadth of the terms “building” and “structure” used in the County zoning law and referenced in the legislative history of LU § 20-509, in my view the more reasoned interpretation of that phrase is that municipal regulation under that section may apply to any single-family residential house, or to *any* “building” or “other structure” in the zoning area, regardless of whether the building or other structure relates to single family residences or multi-family residences.

Additionally, the fact that the phrase “single-family residential houses, buildings, or other structures” is separated by serial commas, suggests that the terms were intended to be independent of each other. If the intent of the General Assembly was that the terms “houses,” “building,” and “other structures” were each to be qualified by the phrase “single-family residential,” it could have more clearly been accomplished by tabulating out each of those terms in an enumerated list

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immediately preceded by the qualifying phrase. Any doubt regarding the application of that phrase in the regulatory authority of a municipality to impose certain building requirements on buildings or structures other than single-family residential units, of course could be clarified through legislation.

I hope this is responsive to your request. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,



Jeremy M. McCoy
Assistant Attorney General