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By: **Prince George's County Delegation and Montgomery County Delegation**

Introduced and read first time: February 10, 2006

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2006

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland-National Capital Park and Planning Commission - Municipal**  
 3 **Corporations**  
 4 **PG/MC 106-06**

5 FOR the purpose of ~~altering the basis for certain recommendations made by certain~~  
 6 ~~municipal corporations to the Montgomery County Planning Board; requiring~~  
 7 ~~the Montgomery County Planning Board to give great weight to the~~  
 8 ~~recommendations of certain municipal corporations in Montgomery County~~  
 9 ~~under certain circumstances;~~ clarifying that municipal corporations in  
 10 Montgomery County may impose additional or stricter building requirements  
 11 for the protection of water as well as land; granting municipal corporations in  
 12 Montgomery County the authority to regulate certain dimensions of structures  
 13 and lot coverage; ~~clarifying that certain violations involving trees are~~  
 14 ~~misdemeanors;~~ and generally relating to the Maryland-National Capital Park  
 15 and Planning Commission and municipal corporations.

16 BY repealing and reenacting, with amendments,  
 17 Article 28 - Maryland-National Capital Park and Planning Commission  
 18 ~~Section 7-117.2, 8-115.1, and 8-120~~ Section 8-115.1  
 19 Annotated Code of Maryland  
 20 (2003 Replacement Volume and 2005 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 22 MARYLAND, That the Laws of Maryland read as follows:

## 1 Article 28 - Maryland-National Capital Park and Planning Commission

2 ~~7-117.2.~~

3 (a) (1) (i) In Montgomery County, the subdivision regulations and zoning  
4 ordinance shall provide that, before any action is taken by the planning board on an  
5 application for a preliminary plan of subdivision or resubdivision, project plan, or site  
6 plan review for property described in subparagraph (ii) of this paragraph, a copy of  
7 the application shall be referred promptly to the incorporated municipality for review  
8 and comment.

9 (ii) This subsection applies to property that:

10 1. Is located within the boundaries of an incorporated  
11 municipality as defined in § 8-104(c) of this article; or

12 2. Shares a common boundary line, or a portion of a common  
13 boundary line, with property lying entirely within the boundaries of an incorporated  
14 municipality.

15 (2) If the incorporated municipality elects to comment, the incorporated  
16 municipality shall promptly forward its written comments to the planning board.

17 (b) (1) In Montgomery County, on referral of a preliminary plan proposing  
18 the resubdivision of residentially zoned property lying within the boundaries of an  
19 incorporated municipality, the incorporated municipality shall initially determine  
20 whether to transmit a recommendation concerning the plan to the planning board.

21 (2) If the initial determination is to transmit a recommendation, the  
22 incorporated municipality, after providing reasonable public notice, shall hold a  
23 hearing before it transmits its recommendation to the planning board.

24 (3) The recommendation shall be in writing and shall include all  
25 pertinent findings of fact and conclusions of law supporting the recommendation,  
26 based on the record of the hearing.

27 (4) An incorporated municipality may recommend denial of a plan under  
28 this subsection only if it determines that the plan fails to comply with particular  
29 provisions of the subdivision regulations OR THAT THE PLAN IS INCONSISTENT WITH  
30 THE LONG TERM VISION STATEMENT OF THE INCORPORATED MUNICIPALITY, IF THE  
31 STATEMENT HAS BEEN ADOPTED AFTER NOTICE AND A PUBLIC HEARING.

32 (5) If an incorporated municipality recommends denial of a plan, it shall  
33 also transmit a written record of the hearing to the planning board for inclusion in the  
34 record compiled by the planning board.

35 (6) An incorporated municipality shall be considered to have waived its  
36 right to make a recommendation under this subsection unless it transmits its written  
37 recommendation and complete record, if required, to the planning board within 45  
38 days of the delivery of the plan and application by the planning board.

1           ~~(7) (4) When an incorporated municipality recommends denial of a~~  
 2 ~~residential SUBDIVISION OR resubdivision application, a two-thirds majority vote of~~  
 3 ~~the members of the planning board then present and participating is required to~~  
 4 ~~override the recommendation of the incorporated municipality.~~

5           ~~(H) IN MAKING A DECISION ON A RESIDENTIAL SUBDIVISION OR~~  
 6 ~~RESUBDIVISION APPLICATION, THE RECOMMENDATION OF THE INCORPORATED~~  
 7 ~~MUNICIPALITY SHALL BE GIVEN GREAT WEIGHT.~~

8 8-115.1.

9           (a) Notwithstanding any other law or section of this article to the contrary, the  
 10 legislative body of a municipal corporation, as defined in § 8-104(c) of this title, in  
 11 Montgomery County may by ordinance or regulation, subject to the provisions of  
 12 subsections (b) and (c) of this section, impose an additional or stricter building  
 13 requirement than is otherwise required by any State, regional, or county unit that  
 14 exercises zoning or planning authority over the municipal corporation, provided such  
 15 authority shall be exercised in addition to, but not in lieu of, the State, regional, or  
 16 county zoning or planning authority.

17           (b) A building requirement adopted under this section:

18                   (1) Shall be imposed for the protection of the public health, safety, and  
 19 welfare, or for the preservation, improvement, or protection of lands, WATER, and  
 20 improvements in the municipal corporation; and

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

- 24                   (i) Fences, walls, hedges, and similar barriers;
- 25                   (ii) Signs;
- 26                   (iii) Residential parking;
- 27                   (iv) Residential storage; [and]
- 28                   (v) The location of structures, including setback requirements;

29                   (VI) THE DIMENSIONS OF STRUCTURES, INCLUDING HEIGHT, BULK,  
 30 MASSING, AND DESIGN; AND

31                   (VII) LOT COVERAGE, INCLUDING IMPERVIOUS SURFACES.

32           (c) (1) An ordinance or regulation authorized by this section and enacted by  
 33 a municipal corporation shall provide a procedure for a waiver from the strict  
 34 application of the building requirements.

35                   (2) Before adopting an ordinance or regulation authorized by this  
 36 section, a municipal corporation shall:

- 1 (i) Hold a public hearing; and
- 2 (ii) At least 30 days before the public hearing, transmit a copy of
- 3 the proposed ordinance or regulation to the Montgomery County Council.

4 8-120.

5 (a) ~~In Montgomery County, the construction, reconstruction, erection,~~

6 ~~structural alteration, or use of any building or other structure or the use of land or~~

7 ~~premises, INCLUDING TREES, in violation of any of the provisions of this title or of any~~

8 ~~of the provisions of any regulation enacted under this title or of any decision made~~

9 ~~under this title, is a misdemeanor. The willful issuance of a building, use, or~~

10 ~~occupancy permit in violation of any such provision or decision is a misdemeanor. The~~

11 ~~County Council of Montgomery County or the prosecuting official of Montgomery~~

12 ~~County may prosecute any violation.~~

13 (b) ~~In Prince George's County, the construction, reconstruction, erection,~~

14 ~~structural alteration, or use of any building or other structure in violation of the~~

15 ~~building code of Prince George's County as authorized by this article or by Article 25A~~

16 ~~of the Code, or the use of land or premises in violation of any of the provisions of this~~

17 ~~title, or of any of the provisions of any regulation enacted under this title, or of any~~

18 ~~decision made under this title, or of any zoning text amendment adopted under this~~

19 ~~title, is a misdemeanor. The willful issuance of a building, use, and occupancy or any~~

20 ~~other permit in violation of any such provision or decision is a misdemeanor. Prince~~

21 ~~George's County or the State's Attorney of Prince George's County may prosecute any~~

22 ~~violation.~~

23 (c) (1) ~~In addition to all other remedies provided by law, the governing body~~

24 ~~of Montgomery or Prince George's County may provide by ordinance for the~~

25 ~~imposition of civil monetary fines or penalties for violations of the provisions of this~~

26 ~~title, or of any of the regulations enacted under this title, or any decision made under~~

27 ~~this title, or of any zoning text amendment adopted under this title.~~

28 (2) ~~The governing body may provide for the enforcement of the~~

29 ~~ordinance.~~

30 (i) ~~As provided in Article 66B, § 7.02 of the Code, and not subject to~~

31 ~~an appeal to the board of zoning appeals; or~~

32 (ii) ~~By a hearing by an official, board, or agency of the county, and~~

33 ~~providing for an appeal from that hearing.~~

34 (3) ~~The governing body may provide for the county attorney to prosecute~~

35 ~~violations for which civil monetary fines or penalties are imposed.~~

36 (d) ~~In addition to all other remedies provided by law, the governing body of~~

37 ~~Montgomery County or Prince George's County, public officials of any municipality or~~

38 ~~political subdivision within the regional district, or any neighboring property owner~~

39 ~~or occupant may institute injunction, mandamus, or other appropriate action or~~

40 ~~proceeding to prevent the unlawful construction, reconstruction, erection, alteration,~~

~~1 or use. Any court of competent jurisdiction has jurisdiction to issue restraining orders  
2 and temporary or permanent injunctions or mandamus or other appropriate forms of  
3 remedy or relief.~~

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2006.