



Chapter 130 – Ordinance 07-08

ZONING

Code of Ordinance of the City of New Carrollton
February 21, 2007

AN ORDINANCE

NO. 07-08

AN ORDINANCE TO ESTABLISH CHAPTER 130 “ZONING” OF THE CODE OF THE CITY OF NEW CARROLLTON, FOR THE PURPOSE OF SETTING PROCEDURAL REGULATIONS GOVERNING ANY OR ALL OF THE FOLLOWING: DEPARTUES FROM DESIGN AND LANDSCAPE STANDARDS, PARKING AND LOADING STANDARDS, SIGN DESIGN STANDARDS, AND VARIANCES FOR LOT SIZE, SETBACK, AND SIMILAR REQUIREMENTS FOR LAND WITHIN THE CORPORATE BOUNDARIES OF THE CITY;

WHEREAS, the City Council of the City of New Carrollton, a body politic and corporate in the State of Maryland is allowed under Maryland State Law and Prince George’s County Code 27-924 to enact an ordinance giving power to the City to govern certain zoning powers; and

WHEREAS, Chapter 130 of the City Code is hereby established to provide guidelines for governing these delegated powers; and

WHEREAS, the City may not impose any standard or requirement stricter than those standards or requirements set forth in the Prince George’s County Zoning; and

WHEREAS, the City ordinance will not apply to any variance requests over which the District Council has retained jurisdiction pursuant to Section 27-239.03 of the Prince George’s County Code.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of New Carrollton, Maryland, that Chapter 130 of the City Code be established as shown below:

Chapter 130 ZONING

Art. I. Municipal Zoning Authority, §§ 130-1, 130-2

Art. II. Variances, §§ 130-3--130-8

Art. III. Departures from Design, Landscaping, Parking, Loading, and Sign Design Standards, §§ 130-9--130-12

ARTICLE I. MUNICIPAL ZONING AUTHORITY

Sec. 130-1. Purposes.

The purpose of this chapter is to create a process whereby the city council may grant departures from design standards, landscaping standards including parking and loading standards, and sign design standards, as well as variances from lot size, setback, lot coverage, lot/width frontage, green area, height and any other requirements of the Prince George's County zoning ordinance from which a variance may be granted by the Prince George's County council or board of appeals in order to overcome deficiencies in the current zoning process, to remove obstacles which hinder development within the city and to promote community and economic vitality by encouraging appropriate development within the city.

Sec. 130-2. Definitions.

(a) Board of appeals: The City of New Carrollton Board of Appeals.

(b) Person of record (party of record): The owner, applicant, correspondent and any person who, in writing, prior to the close of the hearing before the planning board or board of appeals or in testimony before the planning board or board of appeals, requests to become a party to the proceeding.

Sec. 130-3. Board Composition.

The City will create a single board, the Board of Appeals (the Board), with at least three members, to review and approve all planning and zoning issues.

ARTICLE II. VARIANCES

Sec. 130-4. Powers and duties of board of appeals to conduct hearings.

(a) The board of appeals shall conduct hearings for applications for variances from the strict application of the Prince George's County zoning ordinance with respect to lot size, setback, lot coverage, lot/width frontage, green area, height and any other requirements of the Prince George's County zoning ordinance from which a variance may be granted by the Prince George's County board of appeals, except that the board of appeals shall not have the power to hear and decide applications for variances in conjunction with a special exception or revision of site plan.

(b) The board of appeals shall conduct a complete public hearing on the requests specified in subsection (a) of this section, subject to all the requirements and restrictions imposed by law upon the city council. The board of appeals is empowered to swear witnesses and to issue subpoenas for witnesses and documents.

(c) After the conclusion of the hearing, the board of appeals shall serve upon all persons of record a written recommendation containing specific findings of fact, conclusions of law, and a recommended disposition of the case. The recommendation shall be filed with the city council and the Prince George's County planning department at the same time.

(d) Rules of procedure for hearings and other meetings:

(1) The board of appeals may adopt rules of procedure consistent with the provisions of this article and the Prince George's County zoning ordinance.

(2) The board of appeals shall keep minutes of its proceedings.

(3) Hearings may be adjourned and continued. If the date, time, and place of the continued hearing is publicly announced at the time of the adjournment, no further notice of the continuation shall be required. If the date, time, and place is not publicly announced at the time of the adjournment, notice shall be given in the same manner as with the original hearing.

(4) All actions of the board of appeals shall be taken by resolution, in which a majority of the members must concur. Each resolution shall contain a statement of the grounds and findings of fact and conclusions of law forming the basis of the action. The text of the resolution and record of members' votes shall be incorporated into the minutes of the board of appeals. All such resolutions of the board of appeals shall be transmitted to the city council within five (5) days of the date thereof.

Sec. 130-5. Criteria for granting variances.

A variance from lot size, setback, lot coverage, lot/width frontage, green area, height and any other requirements of the Prince George's County zoning ordinance from which a variance may be granted by the Prince George's County board of appeals may only be granted upon a finding that:

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
- (2) The strict application of the county zoning ordinance will result in peculiar and unusual practical difficulties to the owner of the property; and
- (3) The variance will not substantially impair the intent, purpose, or integrity of any applicable county general plan or county master plan.

Sec. 130-6. Procedures for granting variances.

(a) [Public hearing required.] Before making its recommendation on any variance request, the board of appeals shall hold a public hearing on the matter.

(b) Filing requirements.

- (1) Variance requests shall be made on the forms provided by the board of appeals. All information required on the forms shall be furnished by the applicant and the board of appeals shall not accept any form which is incomplete.
- (2) Variance requests shall be numbered sequentially and scheduled to be heard by the board of appeals. The schedule shall be posted conspicuously in a public place at least seven (7) days prior to the hearing date.
- (3) Variance requests may be made by any person who alleges that he or she is aggrieved by the issuance of a zoning violation or notice or other decision made in administering the Prince George's County zoning ordinance if such decision relates to lot size, setback, lot coverage, lot/width frontage, green area, height or any other requirements of the Prince George's County zoning ordinance from which a variance is permitted. Such person shall notify the board of appeals of the request within thirty (30) days of the issuance of the notice or other decision. The board of appeals may waive the requirement and allow the filing of a variance prior to any action denying a permit.

(c) Filing fees.

(1) Upon filing the application, the applicant shall pay filing fee to the city in an amount established by the city council and amended from time to time, to help defray the costs of processing the application. The applicant shall also pay a fee as established by the city council of ten dollars (\$10.00) for each public notice sign required by this section. The filing and sign fees are nonrefundable unless, following a request by the applicant, the board of appeals finds that the fees were paid by mistake. All fees must be paid at the time of filing, except as otherwise provided in this article.

(2) In lieu of the fee, the applicant may submit an affidavit claiming that payment of the fee would be an extreme financial hardship. Such hardship may only be claimed by a natural person. The affidavit shall contain the information required by the board of appeals and any other pertinent facts which the applicant feels are necessary.

(3) Upon filing the affidavit, the board of appeals shall, within ten (10) working days, determine whether payment of the fee is an extreme financial hardship on the applicant. Should the board of appeals find that hardship does not exist, the applicant shall be required to pay the fee before the request may be heard by the board of appeals.

(d) Notice of public hearing.

(1) At least seven (7) days notice of the date, time and place of the hearing shall be sent by certified mail, return receipt requested, to the applicant, to any agency or department whose decision is the subject of the variance request and to the owners of abutting property (including those properties directly across a street, alley or stream).

(2) The board of appeals may send notice of the hearing to other interested persons, organizations, or agencies, and/or the state highway administration. The board of appeals shall send a notice of hearing and a site plan drawn to scale to the Maryland-National Capital Park and Planning Commission, the Prince George's County planning board, and the Prince George's County council sitting as the district council.

(3) All notices shall contain:

- a. The name of the applicant;
- b. The date, time, and place of the hearing; and

- c. A brief statement describing the specific nature of the variance request.
- (4) The board of appeals shall require notice of hearings by at least one (1) advertisement in a newspaper of general circulation in the city. The advertisement shall appear not less than five (5) days prior to the date of the hearing and shall contain the same information as is required in the written notices.
- (5) When the subject property is not in a residential zone, the board of appeals shall post the property with a durable sign at least fifteen (15) days prior to the scheduled hearing date. The sign shall include the following information:
- a. The title "Notice of Public Hearing;"
 - b. The name of the applicant;
 - c. Total area of the property;
 - d. A brief statement describing the nature of the request;
 - e. Date, time and place of the public hearing; and
 - f. Instructions for obtaining further information regarding the request.
- (6) There shall be one (1) sign posted for each one thousand (1,000) feet or fraction thereof of frontage on each improved street. The sign(s) shall be posted on the property near the street right-of-way, so as to be visible from the improved portion of the street. When more than one (1) sign is required to be posted along a street, the signs shall, where practicable, be evenly spaced along the street.
- (7) If the property does not have frontage on an improved street, one (1) sign shall be placed near to, and be visible from, the improved portion of the nearest, most traveled street. In addition to the required information, this sign shall state that the sign is not on the subject property, and that a property having no improved street frontage is the subject of the hearing.
- (8) All signs posted shall be conspicuous and legible for at least fifteen (15) days prior to the hearing. The applicant is responsible for the posting of and the maintenance of all signs.
- (e) In order to help it reach a decision, the board of appeals may request the Maryland-National Capital Park and Planning Commission, Prince George's County, Prince George's County planning board, and/or the state highway administration to

furnish technical service, advice, data or factual evidence. These comments and recommendations shall be available for public examination prior to the public hearing.

(f) At the conclusion of the public hearing, the board of appeals may close the record, or may leave the record open (for a specified time) for receipt of additional written evidence.

(g) Not less than fifteen (15) days after receipt of a recommendation of the board of appeals regarding a variance, a majority of the city council may adopt the recommendation of the board of appeals by consent, unless within that fifteen-day period, a councilmember requests oral argument on the matter or exceptions and a request for oral argument are filed in accordance with section 130-6 below. Oral argument may only be requested by a councilmember when an action of the board of appeals is not unanimous or when it is alleged that the recommendation fails to comply with the criteria established herein. Oral argument shall be conducted in accordance with section 130-6. Failure of the city council to act on the recommendation of the board of appeals within sixty (60) days of the receipt thereof shall result in the denial of the request.

Sec. 130-7. Exceptions to the board of appeals' recommendation regarding variances.

Any person of record may file with the city clerk, within fifteen (15) calendar days after the date of the notice of the board of appeals' recommendation, exceptions to the board of appeals' recommendation, and a request for oral argument before the city council, under the circumstances set forth in section 130-5(g).

(1) The city clerk shall notify the board of appeals of any exceptions and/or requests for oral argument, and within seven (7) days of receiving said notice the board of appeals shall transmit to the city council a copy of the record created by the board of appeals, including but not limited to, all written evidence and materials submitted for consideration by the board of appeals and a transcript of the public hearing on the variance application.

(2) The city council shall schedule oral argument on the appeal. The city clerk shall give at least seven (7) calendar days notice of the hearing to all persons of record and the board of appeals. Oral argument shall be limited to the facts and information within the record made at the hearing before the board of appeals.

(3) After the close of the council's hearing, a majority of the city council shall accept, deny, or modify the recommendation of the board of appeals, or return the variance

application to the board of appeals to take further testimony or reconsider its recommendation.

(4) The council shall give its decision in writing, stating the reasons for its action. Copies of the decision shall be sent to all persons of record, the board of appeals, the Maryland-National Capital Park and Planning Commission and the Prince George's County council sitting as the district council.

Sec. 130-8. Validity period of decision regarding variances.

(a) A decision of the city council permitting the erection of a building or structure shall not be valid for more than two (2) years, unless a building permit for the erection of the building or structure in question is obtained within this period and the construction is started and proceeds to completion in accordance with the terms of the decision and the permit.

(b) A decision of the city council granting a variance from the screening requirements set forth in sections 27-469(b)(3) and 27-470(b)(3) of the Prince George's County zoning ordinance shall not be valid for more than five (5) years.

Sec. 130-9. Refiling variance requests.

If the city council denies a variance, no further variance covering the same specific subject on the same property shall be filed within the following twelve-month period. If the second variance is also denied, no other subsequent variances covering the same specific subject on the same property shall be filed within each eighteen-month period following the second denial.

**ARTICLE III. DEPARTURES FROM DESIGN, LANDSCAPING, PARKING,
LOADING, AND SIGN DESIGN STANDARDS**

Sec. 130-10. Powers and duties of the Board to conduct hearings.

(a) The Board shall also conduct hearings for the following categories of requests with respect to property located within the corporate boundaries:

(1) Departures from design and landscaping standards of the Prince George's County zoning ordinance, part 2 "general", division 4 "regulations applicable in all zones", subdivision 6 "landscaping, buffering and screening" (section 27-123); "parking

standards" part 11, division 2, subdivision 2 (sections 27-554 through 27-566); division 3, subdivision 2 (sections 27-577 through 27-581).

(2) Departures from parking and loading schedules of the Prince George's County zoning ordinance, part 11 "off-street parking and loading", division 2 "parking facilities", subdivision 3 "schedule" (section 27-568) and division 3 "loading facilities", subdivision 3 "schedule" (section 27-582).

(3) Departures from sign design standards of the Prince George's County zoning ordinance, part 12 "signs", division 3 (sections 27-613 through 27-630).

(b) The Board shall conduct a complete public hearing on the requests specified in subsection (a) of this section, subject to all the requirements and restrictions imposed by law upon the city council. The Board is empowered to swear witnesses and to issue subpoenas for witnesses and documents.

(c) After the conclusion of the hearing, the Board shall serve upon all persons of record a written recommendation containing specific findings of fact, conclusions of law, and a recommended disposition of the case. The recommendation shall be filed with the city council and the Prince George's County planning department at the same time.

(d) Rules of procedure for hearings and other meetings:

(1) The Board may adopt rules of procedure consistent with the provisions of this article and the Prince George's County zoning ordinance.

(2) The Board shall keep minutes of its proceedings.

(3) Hearings may be adjourned and continued. If the date, time, and place of the continued hearing are publicly announced at the time of the adjournment, no further notice of the continuation shall be required. If the date, time, and place is not publicly announced at the time of the adjournment, notice shall be given in the same manner as with the original hearing.

(4) All actions of the Board shall be taken by resolution, in which a majority of the members must concur. Each resolution shall contain a statement of the grounds and findings of fact and conclusions of law forming the basis of the action. The text of the resolution and record of members' votes shall be incorporated into the minutes of the Board. All such resolutions of the planning board shall be transmitted to the city council within five (5) days of the date thereof.

Sec. 130-11. Departures from design standards, landscaping standards, parking and loading standards and sign design standards.

(a) A departure from the design standards contained in part 11 and part 12 of the Prince George's County zoning ordinance and the Prince George's County landscape manual may be permitted by the Board in accordance with the provisions of this section.

(b) Procedures.

(1) Application:

a. All requests for a departure from design standards shall be in the form of an application filed with the Board. The Board shall determine the contents of the application and shall provide the application form.

b. Along with the application, the applicant shall submit the following:

1. Fifteen (15) copies of a site plan and other graphic illustrations which are considered necessary to indicate what is being proposed;

2. Fifteen (15) copies of a written statement by the applicant addressing the requirements of paragraph (8) below. The applicant shall be responsible for providing all information that is necessary for the planning board to make its decision under paragraph (7); and

3. A list of the names and addresses of the abutting property owners.

(2) Filing fees:

a. Upon filing the application, the applicant shall pay to the city a filing fee as established by council to help defray the costs of processing the application. A reduction in the fee may be permitted by the Board when it finds that payment will cause undue hardship upon the applicant.

b. Sign posting fees.

1. In addition to the filing fee, a sign posting fee as established by city council for each

sign required shall be paid by the applicant to the Board at the time the application is filed.

2. No part of a fee shall be refunded or waived unless the Board determines that one (1) of the following conditions applies:

(i) The fee was paid by mistake, and the applicant has requested (in writing) a refund; or

(ii) The application has been withdrawn prior to posting the sign. In this case, the entire sign posting fee shall be refunded.

(3) Hearing. Prior to making a recommendation on a departure from design standards, the Board shall hold a public hearing on the matter. The Board shall determine the procedures under which the hearing will be held.

(4) Notice:

a. Notice of the date, time and place of the hearing shall be sent to all persons of record. Notice of the date, time and place of the hearing, and a site plan drawn to scale shall be sent to the Maryland-National Capital Park and Planning Commission and the Prince George's County council sitting as the district council.

b. The subject property shall be posted with at least one (1) durable sign giving notice of the hearing at least fifteen (15) days prior to the scheduled hearing date. The contents of the sign and the number of signs required shall be determined by the Board. All signs posted must be conspicuous and legible. The applicant shall be responsible for posting all signs and for the maintenance of all signs.

c. Additional notice may be given, as determined by the Board.

(5) In order to help it reach a decision, the Board may request the Maryland-National Capital Park and Planning Commission, Prince George's County, Prince George's County planning board, and/or the state highway administration to furnish comments or recommendations. These comments and recommendations shall be available for public examination prior to the public hearing.

(6) Record:

a. The record created before the Board shall include, but not be limited to:

1. The application form and accompanying data;

2. Comments and recommendations (if any) from the Maryland-National Capital Park and Planning Commission, Prince George's County, Prince George's County planning board, and the state highway administration;

3. All correspondence relative to the application;

4. All testimony at the public hearing; and

5. Other items which the Board deems necessary.

b. At the conclusion of the public hearing, the Board may close the record, or may leave the record open (for a specified time) for receipt of additional written evidence.

(7) Board recommendation:

a. After the close of the record, the Board shall take action on the request. The recommendation of the Board shall be based on the record, and shall be embodied in a resolution adopted at a public meeting, containing the findings of fact and conclusions of law forming the basis for the Board's recommendation.

b. The Board shall within fifteen (15) days after the close of the record give written notice of its recommendation to all persons of record and the mayor and council.

(8) Required findings:

a. A recommendation that a departure be granted shall be made by the Board only upon the following findings:

1. The purposes of the Prince George's County zoning ordinance will be equally well or better served by the applicant's proposal;

2. The departure is the minimum necessary, given the specific circumstances of the request;

3. The departure is necessary in order to alleviate circumstances which are unique to the site; or prevalent in areas of the county developed prior to November 29, 1949;

4. The departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood.

b. For a departure from a standard contained in the landscape manual, the Board shall find, in addition to the requirements in paragraph (8) a. above, that a proposal for alternative compliance has been denied by the Maryland-National Capital Park and Planning Commission, based upon a finding that there is no feasible proposal for alternative compliance which would exhibit equal or better design characteristics.

c. For departures from parking and loading standards, the Board shall find, in addition to the findings required by subsection (8)a.2. and 3. of this section, that:

1. The purposes of section 27-550 of the Prince George's County Code will be served by the applicant's request;

2. All methods for calculating the number of spaces required (division 2, subdivision 3, and division 3, subdivision 3, of the Prince George's County Code) have either been used or found to be impractical; and

3. Parking and loading needs of adjacent residential areas will not be infringed upon if the departure is granted.

d. In making its findings, the Board shall give consideration to the following:

1. The parking and loading conditions within the general vicinity of the subject property, including numbers and locations of available on-and-off street spaces within five hundred (500) feet of the subject property;

2. The recommendations of an area master plan or county or local revitalization plan, regarding the subject property and its general vicinity;

3. Public parking facilities which are proposed in the county's capital improvement programs within the general vicinity of the property.

e. Facilities for the physically handicapped. A departure from the design standards for parking facilities for the physically handicapped shall not be granted.

(c) Not less than fifteen (15) days after receipt of a recommendation of the Board regarding a departure, a majority of the city council may adopt the recommendation of the Board by consent, unless within that fifteen (15) day period, a councilmember requests oral argument on the matter or exceptions and a request for oral argument are filed in accordance with section 130-10.

Oral argument may only be requested by a councilmember when a recommendation of the Board is not unanimous or when it is alleged that the recommendation fails to comply with the criteria established herein. Oral argument shall be conducted in accordance with

section 130-10. Failure of the city council to act on the recommendation of the Board within sixty (60) days of the receipt thereof shall result in the denial of the request.

Sec. 130-12. Exceptions to the Board's recommendation regarding departures.

(a) Any person of record may file with the city council within fifteen (15) calendar days after the notice of Board's recommendation exceptions to the Board's recommendation and a request for oral argument before the city council, under the circumstances set forth in section 130-8.

(b) The city clerk shall notify the Board of any exceptions and/or request for oral argument within seven (7) days of receiving said notice, the Board shall transmit to the city council a copy of the record created by the Board, including but not limited to, all written evidence and materials submitted for consideration by the Board and a transcript of the public hearing on the proposed departure.

(c) The city council shall schedule a public hearing on the appeal. The city clerk shall give at least fourteen (14) calendar days notice of the hearing to all persons of record and the planning board. Oral argument shall be limited to the facts and information within the record made at the hearing before the Board.

(d) After the close of the council's hearing, a majority of the city council shall affirm, reverse, or modify the recommendation of the Board, or return the proposed departure to the Board to take further testimony or reconsider its recommendation.

(e) The council shall give its decision in writing, stating the reasons for its action. Copies of the decision shall be sent to all persons of record, the Board, the Maryland- National Capital Park and Planning Commission and the Prince George's County council sitting as the district council.

Sec. 130-13. Appeal.

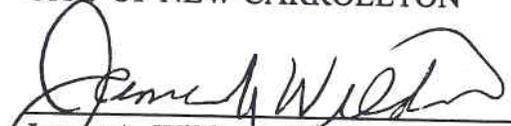
Any person aggrieved by a decision of the city council who was a person of record in the proceeding before it may appeal the decision to the circuit court for Prince George's County, Maryland which shall have the power to affirm the decision of the municipality, or, if the decision is not in accordance with law, to remand the matter or to modify or reverse the decision.

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ADOPTED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF
NEW CARROLLTON, MARYLAND ON THE 21ST DAY OF FEBRUARY, 2007.

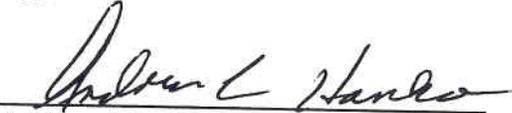
ATTEST:


Regina Robinson
City Clerk

CITY OF NEW CARROLLTON

James A. Wildoner, Chairman
City Council

Date: April 18, 2007

Approved:


Andrew C. Hanko
Mayor

Date: April 18, 2007