

MEMORANDUM

April 20, 2010

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz, <sup>JZ</sup>Legislative Attorney  
SUBJECT: Introduction – Zoning Text Amendment 10-03, Exemptions – Legal Dwellings

Zoning Text Amendment (ZTA) 10-03, sponsored by Councilmembers Knapp and Elrich, was introduced on March 16, 2010. They believe that the current provisions of the ordinance create an untenable situation for certain unplatted parcel owners. A record plat is required before the Department of Permitting Services can approve a building permit. Some unplatted parcels contain legally constructed one-family dwellings, yet the parcels do not meet the standards of the current zone. The owner of such a parcel is currently unable to record a plat under certain circumstances and is unable to have a building permit approved. ZTA 10-03 would exempt the parcel from the standards of its current zoning and allow a plat to be approved.

The Planning Board and Planning Staff recommended adoption of ZTA 10-03 with an exclusion for farm tenant dwelling and editorial changes.

The Council held a public hearing on ZTA 10-03 on April 20, 2010. Testimony that is not addressed in this memorandum will be addressed at the Committee's worksession.

**Issues**

*Should farm tenant dwellings be excluded?*

The Zoning Ordinance defines 2 types of farm tenant housing:

**Farm tenant dwelling:** A dwelling unit occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis on a farm under the control of the owner or operator of the farm on which the farm tenant dwelling is located.

**Farm tenant mobile home:** A mobile home occupied by agricultural worker(s) actively engaged in farming on a full-time or part-time basis on a farm under the

control of the owner or operator of the farm on which the farm tenant mobile home is located.<sup>1</sup>

Planning Staff indicated that their intention was to exclude both farm tenant dwellings and farm tenant mobile homes from the provisions of 10-03. The RDT zone allows tenant dwellings as an exclusion from the limit on the number of dwelling units allowed per acre:

Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- (a) A farm tenant dwelling, farm tenant mobile home or guest house as defined in section 59-A-2.1, title "Definitions." ...<sup>2</sup>

The Planning Board recommends excluding a farm tenant dwelling from the exemption proposed for other legally constructed dwellings. The purpose of tenant dwellings is to provide housing for farm laborers needed on the same lot as the dwelling. Some farm tenant dwellings are multi-unit buildings. *Staff agrees with the recommendations to exclude both forms of farm tenant housing.*

*Would parcels using the provisions of ZTA 10-03 be allowed to use the minor subdivision process?*

Planning Staff determined that all of the parcels affected by ZTA 10-03 would not be entitled to use the minor subdivision process under §50-35A. Parcels in the RDT zone would be entitled to use the provisions of §50-35A(a)(8)<sup>3</sup>, but legally constructed dwellings on parcels exist in other zones as well. ZTA 10-03 is similar, but not identical, to the provision to record parcels created before 1958.<sup>4</sup> If the Committee recommends approval of ZTA 10-03, Staff recommends an SRA to add a provision to §50-35A that would allow lots created under §59-B-8.1 to use the minor subdivision procedure.

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<sup>1</sup> §59-A-2.1.

<sup>2</sup> §59-C-9.41.

<sup>3</sup> "Plats for Certain Residential Lots located in the Rural Density Transfer Zone. Up to five lots are permitted under the minor subdivision procedure in the RDT zone provided that a pre-preliminary plan is submitted and approved by either the Planning Board or Planning Board staff, in accordance with the procedures for submission and approval of a pre-preliminary plan of subdivision...."

<sup>4</sup> "Plats for Certain Residentially Zoned Parcels Created by Deed Prior to June 1, 1958. While recognizing the single residential parcel exemption of Sec. 50-9(e), an owner may voluntarily submit a plat to record such a parcel under the minor subdivision procedure provided that the parcel is developable for only one single-family, detached dwelling unit." §50-35A(6).

Zoning Text Amendment No: 10-03  
Concerning: Exemptions – Legal Dwellings  
Draft No. & Date: 1 - 3/3/10  
Introduced: March 16, 2010  
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**

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By: Councilmembers Knapp and Elrich

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- provide an exemption from current zoning standards for certain unplatted parcels with legally constructed one-family detached dwelling units.

By adding the following Division of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

**DIVISION 59-B-8. EXEMPTIONS FOR UNPLATTED PARCELS CONTAINING  
ONE-FAMILY DETACHED DWELLING UNITS**

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

**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 59-B-8 is added as follows:**

2   DIVISION 59-B-8. EXEMPTIONS FOR UNPLATTED PARCELS  
3   CONTAINING ONE-FAMILY DETACHED DWELLING UNITS.

4  
5   Sec. 59-B-8.1. One-Family Detached Dwelling Units On Parcels Created by Deed.

6   A parcel, created by deed, that contains a one-family detached dwelling unit that  
7   was lawfully constructed is exempt from the area and dimensional requirements of  
8   its current zone, and may be recorded if the resulting lot meets the requirements of  
9   the zone in which the parcel was classified when the dwelling was constructed.

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11           **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
12   date of Council adoption.

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15   This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIRMAN

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

April 16, 2010

**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. 10-03

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 10-03 at its regular meeting on April 15, 2010. By a vote of 4:0, the Board recommends approval of the text amendment with modifications to clarify the intent of the legislation.

ZTA 10-03 proposes to amend the Zoning Ordinance to allow a parcel that was created by deed and contains a one-family detached dwelling unit that was lawfully constructed to be exempt from the area and dimensional requirements of its current zone, and to allow the parcel to be recorded if the resulting lot meets the requirements of the zone that was in place when the dwelling was constructed. Section 50-20(a) of the Subdivision Regulations prohibits the issuance of building permits for the construction of a dwelling or other structure on a parcel of land which is not shown on a plat recorded in the County plat books unless that parcel is covered by an exception. Unrecorded parcels that do not qualify for an exception must be recorded by plat in order to obtain a building permit. This provision not only limits the construction of new dwellings, but may also affect a property owner's ability to renovate or replace existing dwellings.

In some cases, recordation is not possible because the zoning of the underlying land has changed over the years, leaving the changed parcel too small to qualify for recordation under the new zone. This leaves the existing dwelling in jeopardy because

it prevents issuance of a building permit for replacement of the dwelling should it become necessary. It can also prevent the expansion of existing dwellings.

The Planning Board supports the proposed amendment, but recommends several plain language changes to clarify the intent of the legislation. The Board also recommends adding language clarifying that a lawfully constructed one-family detached dwelling unit does not refer to a farm tenant dwelling. This clarification is necessary to eliminate the possibility of creating more than one lot when a farm tenant dwelling is located on the same parcel as a one-family detached dwelling.

### 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 Silver Spring, Maryland, on Thursday, April 15, 2010.



Royce Hanson  
Chairman

RH: GR



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item # 6  
4/15/10

**DATE:** April 7, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
Cathy Conlon, Subdivision Supervisor  
Ralph Wilson, Zoning Supervisor *RW*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** Amend the Zoning Ordinance to provide an exemption from current zoning standards for certain unplatted parcels with legally constructed one-family detached dwelling units

**TEXT AMENDMENT:** 10-03

**INTRODUCED BY:** Councilmembers Knapp and Elrich

**INTRODUCED DATE:** March 16, 2010

**PLANNING BOARD REVIEW:** April 15, 2010

**COUNCIL PUBLIC HEARING:** April 20, 2010; 1:30pm

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**STAFF RECOMMENDATION**

Staff recommends approval of ZTA 10-03, with modifications, to allow a parcel that was created by deed and contains a one-family detached dwelling unit that was lawfully constructed to be exempt from the area and dimensional requirements of its current zone, and to allow the parcel to be recorded if the resulting lot meets the requirements of the zone that was in place when the dwelling was constructed. Staff recommends several plain language changes to clarify the intent of the legislation. Staff also recommends adding language clarifying that a lawfully constructed one-family detached dwelling unit does not refer to a farm tenant dwelling. This clarification is necessary to eliminate the possibility of creating more than one lot when a farm tenant dwelling is located on the same parcel as a one-family detached dwelling.

Staff has revised the ZTA to include our recommendations.

**BACKGROUND/ANALYSIS**

In the past, the provisions of Chapter 59 (Zoning Ordinance) and Chapter 50 (Subdivision Regulations) of the County Code permitted issuance of building permits on unrecorded parcels of land, and many dwelling units that were

constructed under those provisions still exist today on parcels that remain unrecorded. Over the years, however, the County Code has been changed to place limits on such construction. Today, Section 50-20(a) of the Subdivision Regulations prohibits the issuance of building permits for the construction of a dwelling or other structure on a parcel of land which is not shown on a plat recorded in the County plat books unless that parcel is covered by an exception. The specific provisions for such exceptions are covered in Section 50-9 of the Subdivision Regulations (Attachment 2). Unrecorded parcels that do not qualify for one of these exceptions must be recorded by plat in order to obtain a building permit. This provision not only limits the construction of new dwellings, but may also affect a property owner's ability to renovate or replace existing dwellings.

The most commonly applied exception for existing dwellings on unrecorded parcels is the *Single residential lot* exception in Section 50-9(f). This exception allows a building permit to be issued for an unrecorded parcel that has not changed in size or shape since June 1, 1958, without the need to record the parcel by plat. Many existing dwellings qualify for this exception, but a problem arises if a property owner has changed the shape and size of the parcel on which the existing dwelling was originally built. In these instances, the parcel must be recorded before the issuance of a building permit, and in some cases, recordation is not possible because the zoning of the underlying land has changed over the years, leaving the changed parcel too small to qualify for recordation under the new zone. This leaves the existing dwelling in jeopardy because it prevents issuance of a building permit for replacement of the dwelling should it become necessary. It can also prevent the expansion of existing dwellings.

The proposed text amendment addresses the problem described above by adding an exemption to the Zoning Ordinance that will permit an unplatted parcel that contains an existing dwelling to be recorded under the area and dimensional standards of the zone in which the property was classified when the dwelling was built.

Staff supports the proposed amendment, but recommends several plain language changes to clarify the intent of the legislation. Staff also recommends adding language clarifying that a lawfully constructed one-family detached dwelling unit does not refer to a farm tenant dwelling. This clarification is necessary to eliminate the possibility of creating more than one lot when a farm tenant dwelling is located on the same parcel as a one-family detached dwelling.

CC/GR

Attachments

1. Proposed ZTA No. 10-03 as modified by staff
2. Section 50-9, Exceptions to platting requirements

1           **Sec. 1. DIVISION 59-B-8 is added as follows:**

2   DIVISION 59-B-8. EXEMPTIONS FOR UNPLATTED PARCELS  
3   CONTAINING ONE-FAMILY DETACHED DWELLING UNITS.

4  
5   Sec. 59-B-8.1. One-Family Detached Dwelling Units On Parcels Created by Deed.

6   A parcel, created by deed, that contains a lawfully constructed one-family detached  
7   dwelling unit, excluding a farm tenant dwelling, [[that was lawfully constructed]]  
8   is exempt from the area and dimensional requirements of its current zone, and may  
9   be recorded under Chapter 50 if the resulting lot meets the requirements of the  
10   zone in place [[which the parcel was classified]] when the dwelling was  
11   constructed.

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13           **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
14   date of Council adoption.

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17   This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council