

**MEMORANDUM**

May 4, 2010

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz,  Legislative Attorney  
SUBJECT: ZTA 10-02 Residential Townhouse (RT) Zones – Existing Dwellings

**Background**

ZTA 10-02, sponsored by Councilmembers Ervin and Elrich, was introduced on February 9, 2010. The ZTA would make existing multi-family dwellings on land zoned Residential Townhouse (RT) a conforming use. The RT zone is a floating zone that can only be applied by the application of a landowner. In general, applicants have vacant land or land with single-family detached dwellings. Applicants generally demolish any existing buildings and build the approved townhouses as soon as possible. The sponsors were made aware of a situation where land zoned RT included an apartment building. In the opinion of the sponsors, the RT zone should not make existing multi-family housing a non-conforming use.

The Council held a public hearing on March 16, 2010. The Planning Board and Planning Staff recommended approval of ZTA 10-02. The representative of a landowner with RT zoned land with a non-conforming apartment building spoke in favor of the ZTA.

**ISSUE** - *Should multi-family housing be made a conforming use in the RT zone?*

Planning literature says that those uses and structures that fail to contribute to the general welfare due to their unfortunate location should be extinguished over time. Such uses should not expand. If the structures are destroyed intentionally or unintentionally, they should not be replaced. If the use stops for a period of time, the use should not be allowed to resume. The shorthand name for structures and uses in this category is non-conforming.

Sometimes a rezoning will intentionally make a use or structure non-conforming. Since the RT zone is applied at the landowner's request, applicants have the potential of making their own buildings non-conforming. The public interest in making the current use non-conforming is non-existent.

Covenants may complicate any new construction, even if it is to rebuild. If the zone was approved with binding elements, those elements are recorded in the land record and bind future development. ZTA 10-02 addresses this problem by requiring that new construction conform to any covenants recorded under a schematic development plan. No covenants were required in the situation that precipitated ZTA 10-02.

This packet contains

© Number

ZTA 10-02	1-2
Planning Board Recommendation	3-4
Planning Staff Recommendation	5-6

Zoning Text Amendment No: 10-02  
Concerning: Residential Townhouse (RT)  
Zones – Existing Dwellings  
Draft No. & Date: 1 - 2/3/10  
Introduced: February 9, 2010  
Public Hearing: March 16, 2010  
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: Council Vice President Ervin and Councilmember Elrich

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

- add a provision in the RT zones to make certain existing structures conforming.

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

59-C-1.724. Existing structures

**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-C-1 is amended as follows:**

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3           **DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.\***

4           \*    \*    \*

5           **59-C-1.7. R-T zones, townhouse, residential.**

6           \*    \*    \*

7           **59-C-1.724. Existing structures**

8           Multiple-family dwellings existing before the application of a RT zone, are  
9           conforming structures and may be repaired, reconstructed, or structurally altered  
10          under the provisions of their prior zone if the gross floor area of those dwellings is  
11          not increased above the gross floor area that existed on the date that the lot was  
12          rezoned; however, if covenants were recorded under an approved schematic  
13          development plan, any reconstruction or alteration must satisfy the conditions of  
14          those covenants.

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

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19           This is a correct copy of Council action.

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21           \_\_\_\_\_

22           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

March 11, 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. 10-02

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 10-02 at its regular meeting on March 11, 2010. By a vote of 3:0, the Board recommends approval of the text amendment as introduced.

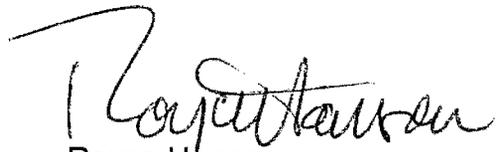
The text amendment proposes to amend the Zoning Ordinance to allow multiple-family dwellings existing on a site before the site's reclassification to the RT zone to remain as conforming structures and to be repaired, reconstructed, or structurally altered under the provisions of the prior zone. The ZTA would also limit any changes to the gross floor area of the structure as it existed on the date the lot was reclassified to the RT zone. In the case of a reclassification to the R-T zone that included a schematic development plan, any reconstruction or alteration must continue to satisfy the conditions of the executed covenants.

The subject text amendment would allow any existing multiple-family housing on R-T zoned property to continue until the site is redeveloped with townhouses. The

Board believes that providing this additional flexibility seems appropriate, especially given the current economic climate.

**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, March 11, 2010.



Royce Hanson  
Chairman

RH: GR



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

**MCPB**  
**Item # 4**  
**3/11/10**

**DATE:** March 4, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
 Ralph Wilson, Zoning Supervisor, Development Review *RW*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To add conforming provisions for certain existing structures in the R-T zone.

**TEXT AMENDMENT:** No. 10-02  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Council Vice President Ervin and Councilmember Elrich  
**INTRODUCED DATE:** February 9, 2010

**PLANNING BOARD REVIEW:** March 11, 2010  
**PUBLIC HEARING:** March 16, 2010; 1:30 PM

**STAFF RECOMMENDATION:** Approve. Staff supports ZTA 10-02 to allow multiple-family dwellings existing on a site before the site's reclassification to the RT zone to remain as conforming structures and to be repaired, reconstructed, or structurally altered under the provisions of the prior zone. The ZTA would also limit any changes to the gross floor area of the structure as it existed on the date the lot was reclassified to the RT zone.

**BACKGROUND/ANALYSIS**

ZTA 10-02 was sponsored by Council Vice President Ervin and Councilmember Elrich to provide grandfather provisions for existing multiple-family dwellings located on property reclassified to R-T zone. The R-T zone does not permit multiple-family dwellings. As such, when a site already developed with multiple-family dwellings is rezoned to the R-T zone, those existing structures become nonconforming. The subject ZTA permits existing structures to remain conforming. The text amendment limits any alterations, repairs or reconstruction to the amount of gross floor area that existed on the date the lot was rezoned to the R-T zone. In the case of a reclassification to the R-T zone that included a schematic development plan, any reconstruction or alteration must continue to satisfy the conditions of the executed covenants.

The subject text amendment would allow any existing multiple-family housing on R-T zoned property to continue until the site is redeveloped with townhouses. Providing this additional flexibility seems appropriate, especially given the current economic climate.

The proposed ZTA is depicted below.

**DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.\***

\* \* \*

**59-C-1.7. R-T zones, townhouse, residential.**

\* \* \*

**59-C-1.724. Existing structures**

Multiple-family dwellings existing before the application of a RT zone, are conforming structures and may be repaired, reconstructed, or structurally altered under the provisions of their prior zone if the gross floor area of those dwellings is not increased above the gross floor area that existed on the date that the lot was rezoned; however, if covenants were recorded under an approved schematic development plan, any reconstruction or alteration must satisfy the conditions of those covenants.

Attachment 1 depicts the proposed text amendment as introduced.

GR

Attachments

1. Proposed Text Amendment 10-02