

MEMORANDUM

June 10, 2010

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz  Legislative Attorney
SUBJECT: Zoning Text Amendment 10-06, Sloping Lots - Applicability

The Council introduced Zoning Text Amendment (ZTA) 10-06, sponsored by Councilmember Elrich, on May 18, 2010. This ZTA would allow only those lots that slope down from the street to the rear of the lot to have additional stories on the rear of the lot. In the opinion of the sponsor, the current sloping lot provision adds to infill development that is out of character with its neighbors; additional stories on the street side of the lot add to the potential for a house to dwarf the dwellings on either side.

A public hearing will be held on June 22, 2010 at 1:30 p.m. If the hearing raises new areas of concern, this ZTA will be rescheduled for another Committee worksession.

Background

The Council required the Department of Permitting Services (DPS) to adopt regulations to implement the provision that allows additional stories on sloping lots when it approved ZTA 08-11 on December 9, 2008:

59-A-5.41. Additional stories on sloping lot.

On any sloping lot, stories in addition to the number permitted in the zone in which the lot is located must be permitted on the downhill side of any building erected on the lot, but the building height limit must not otherwise be increased above that specified for the zone. *This section must be implemented by an executive regulation adopted under method 2 of Section 2A-15.* (The text in *italic* was added by ZTA 08-11.)

Executive regulation 18-09 was published in the October 2009 County Register under the provisions of §59-A-5.41. On January 4, 2010 the Executive submitted Executive Regulation 18-09 for the purpose of implementing Section 59-A-5.41 of the Zoning Ordinance.¹ The regulation is on the Council's June 15, 2010 agenda with a recommendation for approval by the Committee.

¹ After the Council extended the time for review on March 2, 2010, the Committee suggested an amendment to the regulation that was agreeable to the Department of Permitting Services on May 6, 2010. The Executive signed a revised regulation consistent with the Committee suggestion.

Issues

Does Section 59-A-5.41 allow for increased stories if the lot slopes upward from the street elevation to the rear of the lot?

The plain language of the Ordinance would answer this question “yes”; Section 59-A-5.41 allows for increased stories if the lot slopes upward from the street elevation to the rear of the lot. The building is the reference point in §59-A-5.41 to determine the downhill side; it is not the street. The Ordinance discusses building height, which is measured from the street side²; however, using the street as a reference point to determine if the lot is uphill or downhill from the street is not in the text of the code.

The legislative history of §59-A-5.41 indicates that the Council was aware of DPS’s interpretation that the word downhill did NOT refer to elevations relative to the street. The Council was presented with text to change the code to do so, but declined to do so. The legislative history lends support to DPS’s interpretation.

Should §59-A-5.41 be amended?

The general thrust of ZTA 08-11 was to allow one-family detached infill development in harmony with the surrounding houses. Additional stories would be allowed on the street facing side of a building under ZTA 08-11 as approved and regulation 18-09. Mr. Carey submitted the following diagrams to illustrate some situations that may arise in his comments on the sloping lot Executive Regulations. Figure 1 is a level lot. Figures 2 and 3 show lots that slope down from the street to the rear of the lot. ZTA 10-06 would allow those situations with the additional stories on the rear of the lot. It would not allow figures 4 and 5. Figure 5 would likely not be allowed under the current Ordinance because the height of the building as measured from the front of the building would exceed 35 feet. Figure 4 may be out of character to the current neighborhood.

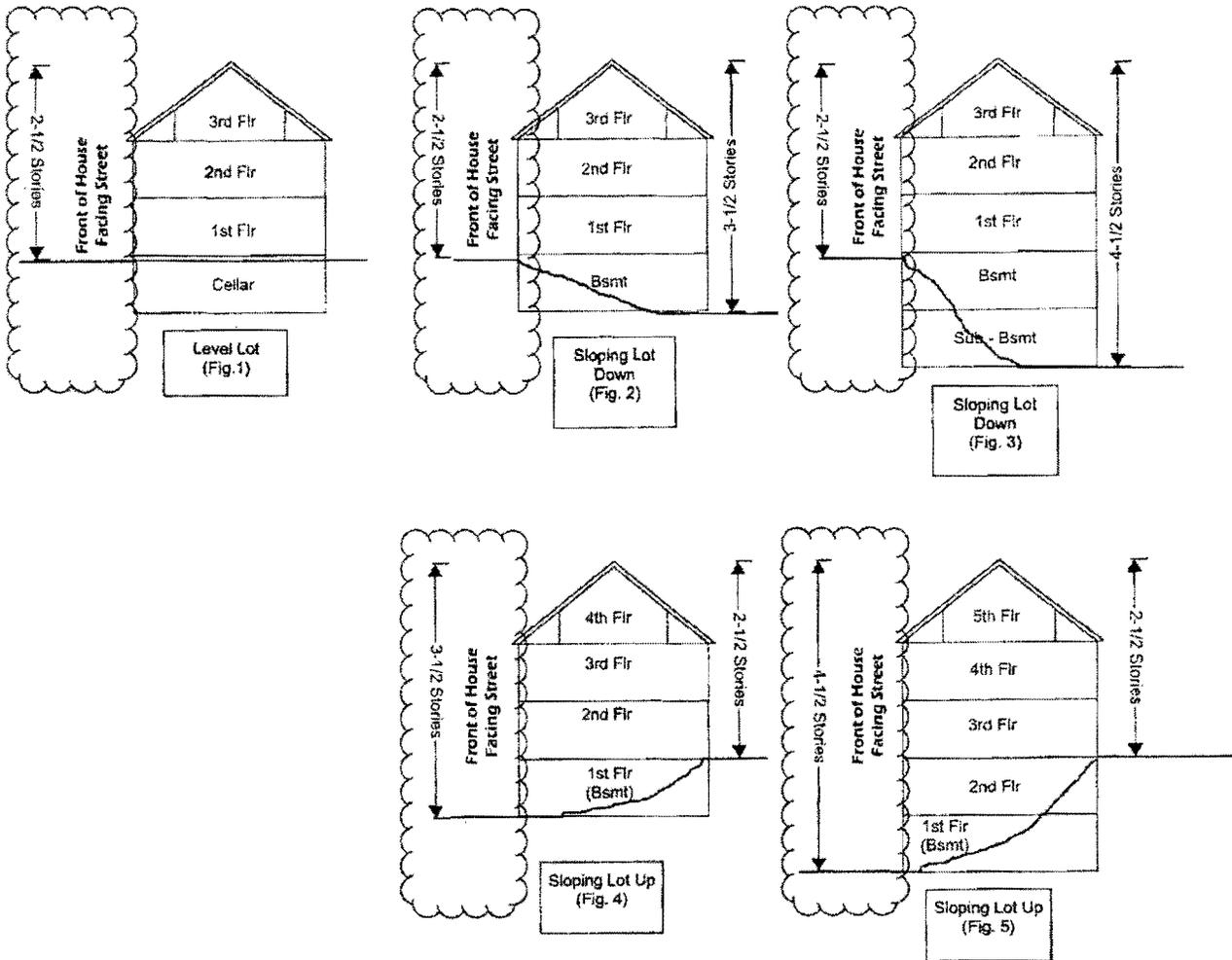
² § 59-A-2.1. Definitions.

In this Chapter, the following words and phrases have the meanings indicated:

* * *

Height of building: The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof or to the mean height level between eaves and ridge of a gable, hip, mansard, or gambrel roof. However, if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace. In the case of a building set back from the street line 35 feet or more, the building height is measured from the average elevation of finished ground surface along the front of the building. On a corner lot exceeding 20,000 square feet in area, the height of the building may be measured from either adjoining curb grade. For a lot extending through from street to street, the height may be measured from either curb grade.

Height of residential building in the R-60 and R-90 zones: For any one-family detached residential building in the R-60 or R-90 zone, building height is the vertical distance measured from the average elevation of the finished grades along the front of the building to either: (1) the highest point of roof surface regardless of roof type, or (2) the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof. However, for the purposes of determining building height and story, at no point must the finished grade be higher than the pre- development grade. In all cases where this Chapter provides for height limitations by reference to a specified height and a specified number of stories, building height is limited to the specified maximum footage and the number of stories within the specified maximum footage.



The heights and setbacks of houses are more important to an observer's perception of bulk than the number of stories. Nevertheless, the current code includes a limit on stories, in addition to building height and setback. The number of stories is more easily determined than height.³

The ZTA would use the average street-line elevation to measure slope. Lots that sloped from side yard to side yard would not qualify for additional stories. Lots that sloped diagonally would not qualify (nor do these types of lots qualify under the Executive's Regulations).

Department of Permitting Services Staff would argue against the approval of ZTA 10-06. In their opinion, the ZTA would be unfair to homeowners along blocks where existing houses have taken advantages of the current sloping lot provision.

As long as stories are regulated by the Ordinance, *staff recommends amending ZTA 10-06 as introduced.*

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ZTA 10-06

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³ Height can only be determined by surveying equipment. Specialized equipment is not required to determine the number of stories.

Zoning Text Amendment No.: 10-06
Concerning: Sloping Lots - Conditions
Draft No. & Date: 1 – 5/11/10
Introduced: May 18, 2010
Public Hearing: June 22, 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**

By: Councilmember Elrich

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the provision concerning sloping lots

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

DIVISION 59-A-5 “COMPLIANCE REQUIRED”
Section 59-A-5.41 “Additional stories on sloping lots”

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-A-5 is amended as follows:**

2 **Division 59-A-5. Compliance Required.**

3 * * *

4 **59-A-5.41. Additional stories on sloping lot.**

5 [On any] If the average elevation of the lot along the front lot line abutting a street is
6 higher than the average elevation of the lot along the rear lot line, and the lot is a sloping
7 lot, stories in addition to the number permitted in the zone in which the lot is located must
8 be permitted on the downhill side of any building erected on the lot, but the building
9 height limit must not otherwise be increased above that specified for the zone. This
10 section must be implemented by an executive regulation adopted under method 2 of
11 Section 2A-15.

12 * * *

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

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16 This is a correct copy of Council action.

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18 _____
19 Linda M. Lauer, Clerk of the Council
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