

MEMORANDUM

October 9, 2012

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Zoning Text Amendment 12-10, Established Building Line – Clarification

Zoning Text Amendment (ZTA) 12-10, sponsored by Council President Berliner, was introduced on July 17, 2012. The current established building line provision lists buildings that are excluded from the setback calculation. ZTA 12-10 would clarify that any new building on the site of a building excluded from calculating the required setback is still subject to the established building line setback provision.

The Council held a public hearing on September 11, 2012. The 3 speakers favored the adoption of the ZTA. The Planning Board recommended approval, but would revise new subsection (d) as follows:

New buildings identified by the numbered items in subsection (c) [must satisfy] are not exempt from the setback requirements of subsection (c) where applicable.

Staff Comment

The interpretation of the current established building line provision was raised concerning a lot that was formerly served by a septic system and whether that lot was required to meet the established building line. DPS was understood to have said that the building on the lot itself did not have to meet the established line. DPS would now describe that as a misunderstanding. The lot that was previously on a septic system was in fact required to satisfy the established building line setback. In any event, ZTA 12-10 clarifies the Council's intent.

Staff would recommend revising new subsection (d) as follows:

New buildings on lots identified by the numbered items in subsection (c) must satisfy the setback requirements of subsection (c) where applicable.

- 1) Adding the phrase "on lots" is in recognition that the numbered items listed in subsection (c) identifies types of lots rather than buildings.

- 2) The entire phrase expresses a positive statement rather than a negative statement as recommended by the Planning Board. Positive statements are recommended by the County's Plain English manual.
- 3) There will be instances where the established building line is not enforced; the neighboring houses may be more than 300 feet away from the side lot lines. Adding "where applicable" as recommended by the Planning Board is appropriate.

This Packet Contains

ZTA 12-10

Planning Board Recommendation

© number

1 – 3

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Zoning Text Amendment No.: 12-10
Concerning: Established Building Line
– Clarification
Draft No. & Date: 1 - 6/22/12
Introduced: July 17, 2012
Public Hearing: September 11, 2012
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: Council President Berliner

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the provisions for determining the established building line; and
- amend the applicability of the established building line requirement.

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

DIVISION 59-A-5. “Compliance Required.”
Section 59-A-5.33. “Established building line.”

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

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:

Sec. 1. DIVISION 59-A-5 is amended as follows:

DIVISION 59-A-5. COMPLIANCE REQUIRED.

* * *

59-A-5.33. Established building line.

- (a) The established building line, as defined in Section 59-A-2.1, applies only to new buildings in the R-60, R-90, R-150, and R-200 zones. The established building line does not apply to an alteration or addition to an existing building.
- (b) The two or more one-family detached residential buildings considered in determining the established building line must all be:
 - (1) within 300 feet of the side property line of the proposed construction site, measured along the street frontage;
 - (2) along the same side of the street;
 - (3) between intersecting streets or to the point where public thoroughfare is denied;
 - (4) in existence or approved by a building permit when the building permit application on the subject property is filed;
 - (5) legally constructed; and
 - (6) not on a through lot if the building on the through lot fronts on a street other than the street fronting the subject property.
- (c) The established building line is the minimum setback for the zone, unless there are at least two buildings as described in subsection (b) and more than 50 percent of the buildings described in subsection (b) are set back greater than the minimum, in which case the average setback of all the buildings described in subsection (b), excluding those buildings:
 - (1) in the R-200 zone that are or were ever served by well or septic;
 - (2) on the subject property;
 - (3) in a different zone than the subject property;

- 29 (4) on a through lot that fronts on a street different than the subject
- 30 property;
- 31 (5) located on any pipestem, wedge-shaped, or flag-shaped lot; or
- 32 (6) approved by permit for demolition, except if a building permit
- 33 was also approved with the same setback,
- 34 is the established building line, unless the applicant chooses to calculate
- 35 the setback as the average setback of the two adjoining lots or the
- 36 applicant chooses to use the front setback of the existing one-family
- 37 building that was established before [demotion] demolition, excluding
- 38 any approved variance, if the existing building meets the minimum
- 39 setback of the zone. All calculations must be based on a survey that is
- 40 signed and sealed by a licensed engineer or surveyor. Any building
- 41 excluded from the established building line restriction must comply with
- 42 the minimum setback requirement of the zone.
- 43 (d) New buildings identified by the numbered items in subsection (c) must
- 44 satisfy the setback requirements of subsection (c).
- 45 (e) Corner lots have two front yards and are subject to established building
- 46 line standards on both streets. At the option of the applicant, a corner lot
- 47 may use front setbacks of the adjoining buildings on both sides of the
- 48 corner lot.

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

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53 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 CHAIR

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

September 7, 2012

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. 12-10

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 12-10 at our regular meeting on September 6, 2012. By a vote of 5:0, the Board recommends approval of the text amendment, as modified, to allow developers to amend the provisions for determining the established building line and to amend the applicability of the established building line requirement.

The current established building line provision lists buildings that are excluded from the established building line setback calculation. The ZTA attempts to clarify that when a new building is to be constructed on a site where a previous building was not subject to the required setback calculation, the new building is not exempt from the applicable sections of the established building line setback provision. The Planning Board’s recommended language modification provides further clarification of this provision and is included as a separate attachment to the technical staff report.

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, September 6, 2012.

Françoise M. Carrier
Chair

FC: GR/am