

**M E M O R A N D U M**

June 12, 2013

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz, Legislative Attorney  
SUBJECT: SRA 13-02, Platting Exemptions – Single Family Dwelling

SRA 13-02, Platting Exemptions – Single Family Dwelling, sponsored by Councilmember Floreen, was introduced on April 2, 2013. A public hearing was held on June 11 at 1:30 p.m. The Planning Board representative was the only speaker. The Planning Board recommended approval with no substantive edits.

**Background**

SRA 13-02 would allow the owner of a one-family dwelling that was involuntarily demolished by fire, wind, falling debris, water, or other force of nature to rebuild without filing a record plat. This would be allowed without regard to when the lot or parcel was created.

The County Code generally requires a record plat before the issuance of a building permit.<sup>1</sup> Plats are required for their clarity in mapping a property in relation to abutting properties. They provide the County with any required land dedications and locate easements. Plats allow for a determination of a building's conformance to street frontage, setback, side yard, and area zoning standards. Plats require a survey and can be expensive.

Some houses are located on platted land, but the house was constructed across lot lines or is partially on a lot (created by plat) and partially on a parcel (created by deed).<sup>2</sup> The code allows such houses involuntarily destroyed to rebuild, even if the new house still crosses a lot line.<sup>3</sup> The County does not

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<sup>1</sup> Sec. 50-8. Same-Filing and approval of plats.

Whenever any subdivision or resubdivision of land is proposed to be made within the district, and before any contract for the sale of or any offer to sell such subdivision is made, or before any development or construction of any building takes place within a subdivision or any part thereof, the subdivider thereof or his agent shall file, in accordance with procedure prescribed in this chapter, a plat of the proposed subdivision with the board for its approval and the approved record plat shall be recorded in the land records of the county, except as provided in section 50-9.

<sup>2</sup> Before 1928, plats were filed without a requirement to do so and a permit was not required to construct a house. These circumstances sometimes led to houses being constructed across lot lines.

<sup>3</sup> Sec. 50-20.

have any interest in adding to the burdens of a homeowner who wants to rebuild in the face of a catastrophic loss.

The code currently allows the owners of parcels created before the establishment of the platting requirement (1958) to build one house without recording a plat.<sup>4</sup> The owner of property that has changed its size or shape by deed since 1958 must file a record plat. This is currently true, even if an existing home is involuntarily destroyed. SRA 13-02 would allow the owner of property created by deed the same right to rebuild without platting as currently exists for lots crossing lot lines.

## Issues

*Should the exception to the platting requirement apply to only legally constructed houses?*

As introduced, SRA 13-02 allows any owner of land on which their house was involuntarily destroyed to rebuild without filing a record plat. There is no requirement that the house satisfied zoning and subdivision requirement when it was constructed. If the Council wants to allow only “legally constructed” houses to be rebuilt, the SRA would need to be revised.

*Should there be other limitations on reconstruction?*

As drafted, there is no time limit between involuntary demolition and the building permit application. The owner of the demolished property may sell the property, and the new owner would be able to get a permit without recording a plat. If the Council wants to be more restrictive, amendments would be required.

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- (b) A building permit must not be approved for the construction of a dwelling or other structure, except a dwelling or structure strictly for agricultural use, which is located on more than one lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot, except a building permit:

\* \* \*

- (5) for the reconstruction of a one-family dwelling that is located on part of a previously platted lot, recorded by deed before June 1, 1958, if the dwelling is destroyed or seriously damaged by fire, flood or other natural disaster ...;

\* \* \*

<sup>4</sup> Sec. 50-9. Exceptions to platting requirements.

- (f) Single residential lot. An application for a building permit for one (1) single-family detached dwelling unit, on a parcel, not previously included on a recorded plat, which has not changed in size or shape since June 1, 1958, provided:
- (1) A description and location plat of the lot and proposed structure have been furnished with the permit application, sufficiently detailed, to locate the same on the base maps of Montgomery County.
  - (2) Approval of the permit application would not result in obstructing the future opening, extension or widening of any road deemed essential in the public interest, nor would it otherwise jeopardize any planned public facility.
  - (3) The proposed lot and use comply with the zoning ordinance (except for street frontage) and the site plan shows clearly the setbacks, side and rear yards and any other information needed to check compliance with regulations, including establishment of a building restriction line along any existing or proposed road sufficient to provide for future expansion or opening of such road to its ultimate width.
  - (4) Approval of the permit would not affect adversely the general plan for the physical development of the regional district or any portion thereof.

*Must the location of the footprint of the house be the same as the destroyed house?*

Generally, a rebuilt house is on the same footprint as the destroyed house. That footprint may not satisfy the setback requirements of the current code and may otherwise be ill-located. Staff recommends allowing flexibility to relocate the footprint of the rebuilt house by amending SRA 13-02 as introduced:

(2) An application for a building permit [[for]] to rebuild a [[one (1) single]] one-family detached dwelling unit, on a parcel or on part of a lot, when the permit is to rebuild a dwelling involuntarily demolished by fire, wind, falling debris, water, or other force of nature. The new replacement dwelling must be located:

(A) on the same footprint as the demolished dwelling; or

(B) on the same lot or part of a lot where current zoning setback standards are satisfied.

A parcel can either be an unplatted area described by a deed or it can be identified as a parcel on a plat. Staff believes that the change recommended by the Planning Board would be more restrictive than allowing a house to rebuild on a parcel, no matter how the parcel was created.

A lot is always on a previously filed plat. Staff believes that the adding the words “previously platted” is unnecessary.

This packet contains

SRA 13-02 as amended by staff  
Planning Board recommendation  
Planning Staff recommendation

© number

1 – 3  
4 – 10  
11 –12

1           **Sec. 1. Section 50-9 is amended as follows:**

2           **Sec. 50-9. Exceptions to platting requirements.**

3           Recording of a subdivision plat under this Chapter is not required for:

4           \*    \*    \*

5           (f)    *Single residential lot.*

6           (1)    An application for a building permit for one (1) single-family  
7           detached dwelling unit on a parcel not previously included on a  
8           recorded plat, which has not changed in size or shape since June 1,  
9           1958, provided:

10          [(1)](A)    A description and location plat of the lot and proposed  
11                   structure have been furnished with the permit application,  
12                   sufficiently detailed, to locate the same on the base maps of  
13                   Montgomery County.

14          [(2)](B)    Approval of the permit application would not result in  
15                   obstructing the future opening, extension, or widening of any  
16                   road deemed essential in the public interest, nor would it  
17                   otherwise jeopardize any planned public facility.

18          [(3)](C)    The proposed lot and use comply with the zoning  
19                   ordinance (except for street frontage) and the site plan shows  
20                   clearly the setbacks, side and rear yards, and any other  
21                   information needed to check compliance with regulations,  
22                   including establishment of a building restriction line along any  
23                   existing or proposed road sufficient to provide for future  
24                   expansion or opening of such road to its ultimate width.

25          [(4)](D)    Approval of the permit would not affect adversely the  
26                   general plan for the physical development of the regional  
27                   district or any portion thereof.

28           (2) An application for a building permit [[for]] to rebuild a [[one (1)  
29           single]] one-family detached dwelling unit, on a parcel or on part of a  
30           lot, when the permit is to rebuild a dwelling involuntarily demolished  
31           by fire, wind, falling debris, water, or other force of nature. The new  
32           replacement dwelling must be located:

33           (A) on the same footprint as the demolished dwelling; or

34           (B) on the same lot or part of a lot where current zoning setback  
35           standards are satisfied.

36           \* \* \*

37           **Sec. 2. Section 50-20 is amended as follows:**

38           **Sec. 50-20. Limits on issuance of building permits.**

39           \* \* \*

40           (b) A building permit must not be approved for the construction of a dwelling or  
41           other structure, except a dwelling or structure strictly for agricultural use,  
42           which is located on more than one lot, which crosses a lot line, which is  
43           located on the unplatted remainder of a resubdivided lot, or which is located  
44           on an outlot, except a building permit:

45           \* \* \*

46           (4) for an underground parking facility that crosses the vertical plane of  
47           any lot line, as projected below grade, or extends into a public right-  
48           of-way if that extension is approved by the appropriate public agency;  
49           or

50           (5) [for the reconstruction of a one-family dwelling that is located on part  
51           of a previously platted lot, recorded by deed before June 1, 1958, if  
52           the dwelling is destroyed or seriously damaged by fire, flood or other  
53           natural disaster or;]

54            [(6)] for an addition to an existing one-family dwelling, a porch, deck,  
55            fence, or accessory structures associated with an existing one-family  
56            dwelling located on part of a previously platted lot, recorded by deed  
57            before June 1, 1958.

58            \*   \*   \*

59            **Sec. 3. Effective date.** This ordinance takes effect 10 days after the date of  
60            Council adoption.

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Approved:

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Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date



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

OFFICE OF THE CHAIRMAN

June 4, 2013

**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:** Subdivision Regulation Amendment No. 13-02

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Subdivision Regulation Amendment No. 13-02 at its regular meeting on May 30, 2013. After careful review of the material of record, the Board voted unanimously to recommend approval of the Subdivision Regulation Amendment with several minor clarifications. The modified language is included as a separate attachment to the technical staff report.

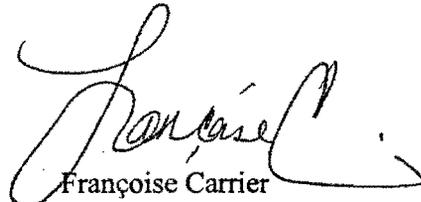
The Subdivision Regulations generally specify that whenever land in the county is subdivided for any purpose, a plat of such subdivision must be recorded in the land records of the county. They further specify that, with certain exceptions, the Department of Permitting Services must not approve a building permit for the construction of a dwelling or other structure, unless the dwelling or structure is located on a lot or parcel of land which is shown on a recorded plat. A subdivision record plat requires submission of engineered drawings and the dedication of land for master planned rights-of-way. As with certain other exceptions to the platting requirements, the County wants land that contained a house that has been demolished by a force of nature to be exempt from these requirements so that reconstruction can be accomplished without added cost and time.

In general, the Board supports expanding the existing provisions of Chapter 50 to permit the rebuilding of a one-family dwelling if the dwelling was involuntarily demolished, without the need to record or re-record the underlying land. The Board recommends certain plain language modifications to the SRA as introduced to clarify that the intent is to allow rebuilding of a house on an unplatted parcel or on a part of a previously platted lot.

The Honorable Nancy Navarro  
June 4, 2013  
Page 2

### 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 position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, May 30, 2013.



Françoise Carrier  
Chair

FC:GR

#### Attachments

1. SRA 13-02 as modified by the Planning Board
2. Technical Staff Report

**AS MODIFIED BY THE PLANNING BOARD on May 30, 2013**

Subdivision Regulation Amendment No.: 13-02  
Concerning: Platting Exemptions – Single  
Family Dwelling  
Draft No. & Date: 1 – 3/22/13  
Introduced: April 2, 2013  
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 Floreen and Rice

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**AN AMENDMENT** to the Subdivision Regulations for the purpose of:

- exempting property that includes an involuntarily demolished single family dwelling for platting requirements; and
- generally clarifying limitations on the issuance of building permits

By amending

Montgomery County Code  
Chapter 50. SUBDIVISION OF LAND.  
Section 50-9. "Exceptions to platting requirements."  
Section 50-20. "Limits on issuance of building permits."

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by introduced Subdivision Regulation Amendment.</i>
[Single boldface brackets]	<i>Deleted from existing law by introduced Subdivision Regulation Amendment.</i>
<u>Double underlining</u>	<i>Added to the Subdivision Regulation Amendment by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the Subdivision Regulation Amendment by amendment.</i>
* * *	<i>Existing law unaffected by Subdivision Regulation Amendment.</i>

*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. Section 50-9 is amended as follows:**

2           **Sec. 50-9. Exceptions to platting requirements.**

3           Recording of a subdivision plat under this Chapter is not required for:

4           \*    \*    \*

5           (f)    *Single residential lot.*

6           (1)    An application for a building permit for one (1) single-family  
7                   detached dwelling unit, on a parcel, not previously included on a  
8                   recorded plat, which has not changed in size or shape since June 1,  
9                   1958, provided:

10           [(1)](A)    A description and location plat of the lot and proposed  
11                   structure have been furnished with the permit application,  
12                   sufficiently detailed, to locate the same on the base maps of  
13                   Montgomery County.

14           [(2)](B)    Approval of the permit application would not result in  
15                   obstructing the future opening, extension, or widening of any  
16                   road deemed essential in the public interest, nor would it  
17                   otherwise jeopardize any planned public facility.

18           [(3)](C)    The proposed lot and use comply with the zoning  
19                   ordinance (except for street frontage) and the site plan shows  
20                   clearly the setbacks, side and rear yards, and any other  
21                   information needed to check compliance with regulations,  
22                   including establishment of a building restriction line along any  
23                   existing or proposed road sufficient to provide for future  
24                   expansion or opening of such road to its ultimate width.

25           [(4)](D)    Approval of the permit would not affect adversely the  
26                   general plan for the physical development of the regional  
27                   district or any portion thereof.

28           (2) An application for a building permit [for] to rebuild a one [(1)  
29           single]-family detached dwelling unit, on [a] an unplatted parcel or  
30           on part of a previously platted lot, when the permit is [to rebuild] for  
31           a dwelling involuntarily demolished by fire, wind, falling debris,  
32           water, or other force of nature.

33           \* \* \*

34           **Sec. 2. Section 50-20 is amended as follows:**

35           **Sec. 50-20. Limits on issuance of building permits.**

36           \* \* \*

37           (b) A building permit must not be approved for the construction of a dwelling or  
38           other structure, except a dwelling or structure strictly for agricultural use,  
39           which is located on more than one lot, which crosses a lot line, which is  
40           located on the unplatted remainder of a resubdivided lot, or which is located  
41           on an outlot, except a building permit:

42           \* \* \*

43           (4) for an underground parking facility that crosses the vertical plane of  
44           any lot line, as projected below grade, or extends into a public right-  
45           of-way if that extension is approved by the appropriate public agency;  
46           or

47           (5) [for the reconstruction of a one-family dwelling that is located on part  
48           of a previously platted lot, recorded by deed before June 1, 1958, if  
49           the dwelling is destroyed or seriously damaged by fire, flood or other  
50           natural disaster or;]

51           [(6)] for an addition to an existing one-family dwelling, a porch, deck,  
52           fence, or accessory structures associated with an existing one-family  
53           dwelling located on part of a previously platted lot, recorded by deed  
54           before June 1, 1958.

55 \* \* \*

56 **Sec. 3. Effective date.** This ordinance takes effect 10 days after the date of  
57 Council adoption.

58

Approved:

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Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date



**Subdivision Regulation Amendment (SRA) No. 13-02, Platting Exemptions – Single Family Dwelling**

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*GR*

Gregory Russ, Planner Coordinator, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174

*MD*

Mary Dolan, Chief, FP&P, [mary.dolan@montgomeryplanning.org](mailto:mary.dolan@montgomeryplanning.org), 301-495-4552

Completed 5/23/13

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**Description**

SRA No. 13-02 proposes to expand the existing provisions of Chapter 50 to create an exception from the subdivision platting requirements for parts of previously recorded lots and unrecorded parcels that contained an existing one-family dwelling that was involuntarily demolished. Specifically, the recording of a subdivision plat under this Chapter would not be required prior to issuance of a building permit for one (1) single-family detached dwelling unit, on a parcel or on part of a lot, when the permit is to rebuild a dwelling involuntarily demolished by fire, wind, falling debris, water, or other force of nature. Currently, Section 50-20 only allows reconstruction of a one-family dwelling that is involuntarily destroyed if it is located on a part of a previously recorded lot that was recorded by deed before June 1, 1958. SRA 13-02 would remove this distinction.

**Summary**

**Staff recommends approval of SRA 13-02, as modified by staff to make minor plain language clarifications, to create an exception from the subdivision platting requirements for parts of previously recorded lots and unrecorded parcels to permit the rebuilding of a one-family dwelling that was involuntarily demolished.**

The Subdivision Regulations generally specify that whenever land in the county is subdivided for any purpose, a plat of such subdivision must be recorded in the land records of the county. They further specify that, with certain exceptions, the Department of Permitting Services must not approve a building permit for the construction of a dwelling or other structure, unless the dwelling or structure is located on a lot or parcel of land which is shown on a recorded plat. A subdivision record plat requires submission of engineered drawings and the dedication of land for master planned rights-of-way. As with certain other exceptions to the platting requirements (see Attachment 2), the County wants land that contained a house that has been demolished by a force of nature to be exempt from these requirements so that reconstruction can be accomplished without added cost and time.

In general, staff supports expanding the existing provisions of Chapter 50 to permit the rebuilding of a one-family dwelling if the dwelling was involuntarily demolished, without the need to record or re-record the underlying land. Staff recommends certain plain language modifications to the SRA as introduced to clarify that the intent is to allow rebuilding of a house on an unplatted parcel or on a part of a previously platted lot. The language as modified by staff is depicted below.

**Sec. 50-9. Exceptions to platting requirements.**

Recording of a subdivision plat under this Chapter is not required for:

\* \* \*

(f) *Single residential lot.*

\* \* \*

(2) An application for a building permit ~~[[for]]~~ to rebuild a one ~~[[1]]~~ single-family detached dwelling unit, on ~~[[a]]~~ an unplatted parcel or on part of a previously platted lot, when the permit is to rebuild a dwelling involuntarily demolished by fire, wind, falling debris, water, or other force of nature.

\* \* \*

Staff recommends approval of SRA 13-02 with these modifications.

ATTACHMENTS

1. SRA 13-02 as modified by staff
2. Chapter 50-9, Exceptions to platting requirements.