

Action

M E M O R A N D U M

June 11, 2010

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action - Executive Regulation 18-09AM – Additional Stories on Sloping Lots

PHED Recommendation: On May 6 the Committee (3-0) recommended approval of Regulation 18-09AM that requires measurements from the pre-development grade but is otherwise identical to Regulation 18-09 as first submitted. The Committee considered and rejected revisions to:

- 1) require the presence of either a 1 foot to 12 foot slope **or** at least a 6 foot drop in elevation instead of the proposed requirement for both attributes; and
- 2) allow diagonal measurements from one corner of a building to an opposite corner of the building.

Councilmember Elrich would amend the Zoning Ordinance provision to only allow additional stories on the downhill side of a building only if the lot sloped downhill from the street. On May 18, 2010 Councilmember Elrich sponsored ZTA 10-06 to implement his recommendation.¹

Effective Date

The regulation will be in effect the day that the Council approves the regulation. Staff anticipates that the Executive will transmit a correction to the effective date before the Council approves the regulation.

Background

ZTA 08-11 – Required regulations

The Zoning Ordinance limits the height and number of stories for one-family detached dwellings. The sloping lot provision allows additional stories in a building, if the stories are located on the downhill side

¹On June 22, 2010 the Council will hold a public hear on ZTA 10-06.

of a sloping lot.² The Department of Permitting Services (DPS) estimates that this provision is applied about 12 times a year. At one time, this provision required the lot to slope at the rate of 10 percent. Since the slope percentage was removed by a ZTA, DPS has interpreted this provision on a case-by-case basis. DPS allowed the sloping lot provision to be used when the slope was 8.5 percent. In the course of the Council's deliberations on ZTA 08-11, DPS stated that the sloping lot provision allowed the downhill side of a lot to have additional stories, even if it is the back yard that slopes down to the front yard.

The Council required 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

Executive regulation 18-09 was published in the October 2009 County Register. Only a representative of the Building Association submitted comments. 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. As required by Section 59-A-5.41, the regulation was submitted for the Council's approval under method 2 review.³ On March 2, 2010 the Council extended the time for its review until June 30, 2010. The Committee received additional comments from 2 residents.

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

² This provision was first adopted by the Council on February 11, 1964 and was retained in every zoning ordinance since then.

³ Section 2A-15(f) Method (2):

- (A) The issuer must send a copy of the proposed regulation to the County Council after the deadline for comments published in the Register.
- (B) The Council by resolution may approve or disapprove the proposed regulation within 60 days after receiving it.
- (C) If necessary to assure complete review, the Council by resolution may extend the deadline set under subparagraph (B).
- (D) If the Council approves the regulation, the regulation takes effect upon adoption of the resolution approving it or on a later date specified in the regulation.
- (E) If the Council does not approve or disapprove the proposed regulation within 60 days after receiving it, or by any later deadline set by resolution, the regulation is automatically approved.
- (F) If a regulation is automatically approved under this method, the regulation takes effect the day after the deadline for approval or on a later date specified in the regulation.

discusses building height, which is measured from the street side⁴; 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 history lends support to DPS's interpretation.

When is a lot considered to be sloping?

There are two elements to the regulation's definition:

- 1) How much of a slope is considered sloping?
- 2) From what point on the property can the slope be measured?

How much slope is enough and how is it measured?

The Regulation has two alternatives to define how much slope is enough: 1) a change in elevation of at least 1 foot for every 12 feet of horizontal distance; and 2) a change in elevation of at least 6 feet. The first slope definition equates to an 8.3% grade.

The definition of height includes the following provisions: "for the purposes of determining building height and story, at no point must the finished grade be higher than the pre-development grade." The sloping lot regulation as amended includes a similar reference to the pre-development grade.

DPS staff indicated that they would only use the pre-development grade to determine sloping lots. The Executive amended the regulation to be consistent with DPS's intent to use the pre-development grade for the purpose of measuring sloping lots.

⁴ § 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.

From what points on the property can the slope be measured?

The regulation includes 8 alternative measure points from which to derive the qualifying slope:

- 1) from front lot line to rear of building or addition;
- 2) from rear lot line to front of building or addition;
- 3) from front building restriction line to rear building restriction line;
- 4) from rear building restriction line to front building restriction line;
- 5) from front of building or addition to rear of building or addition;
- 6) from rear of building or addition to front of building or addition;
- 7) between side building restriction lines;
- 8) from one side of building or addition to other side of building or addition.

If the lot is sloping, there is a downhill side of a building toward one or more lot lines. In addition, if the building does not have parallel lot lines, any side of the building may be downhill. The downhill side varies because the topography on the lot can vary infinitely. The Committee considered allowing the sloping lot provision to be used if a lot sloped diagonally across a site but was not persuaded to recommend that to DPS.

The longer the distance measured, the more likely finding a qualifying slope will be. The longest distance-measuring points are those that refer to lot lines. Fewer measures would restrict the application of the sloping provision. The regulation could result in more houses qualifying for the sloping lot provision.

This packet contains

© Page

Regulation 18-09AM
Approval resolution

1 – 3
4



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive . 101 Monroe Street . Rockville, Maryland 20850

Subject: ADDITIONAL STORIES ON SLOPING LOT	Number: 18-09 AM
Originating Department DEPARTMENT OF PERMITTING SERVICES	Effective Date:

Montgomery County Regulation on:

ADDITIONAL STORIES ON SLOPING LOTS

Department of Permitting Services

Issued by County Executive
Regulation # 18-09 AM

Authority: Code Section 59-A-5.41
Supersedes:

Council Review: Method 2 under Code Section 2A-15
Register Vol. , Issue

Comment Deadline: October 31, 2009
Effective Date:
Sunset date: None

SUMMARY;

This regulation adopts a method by which the Department of Permitting Services calculates when a lot slopes sufficiently to merit additional stories on the down side of the sloping lot.

ADDRESSES: Department of Permitting Services
255 Rockville Pike, Second Floor
Rockville, Maryland 20850

STAFF CONTACT: Susan Scala-Demby
240-777-6255

BACKGROUND:

The Department of Permitting Services is responsible for the enforcement of the Zoning Ordinance, Chapter 59 of the Montgomery County code as amended. This regulation provides the method used by the Department of Permitting Services to calculate whether a lot has sufficient slope to allow additional stories on the down side of the lot.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject: ADDITIONAL STORIES ON SLOPING LOT	Number: 18-09 AM
Originating Department DEPARTMENT OF PERMITTING SERVICES	Effective Date:

Section 1: Purpose

This regulation establishes the process for determining if a lot slopes sufficiently to allow additional stories on the downhill side of a building erected on a sloping lot.

Section 2: Applicability

This regulation applies to any lot that is determined to slope sufficiently to allow additional stories in excess of the number of stories allowed in the zone as defined in 59-A-5.41 of the *Zoning Ordinance*.

Section 3: Policy

3.0 It is the policy of the Department of Permitting Services to determine a lot to be sloping when any of the following circumstances occur on the lot:

- (1) there is a change in vertical elevation of a least one (1) foot for each twelve (12) feet of horizontal distance when measured from predevelopment grade between any of the following points:
 - (a) from front lot line to rear of building or addition;
 - (b) from rear lot line to front of building or addition;
 - (c) from front building restriction line to rear building restriction line;
 - (d) from rear building restriction line to front building restriction line;
 - (e) from front of building or addition to rear of building or addition;
 - (f) from rear of building or addition to front of building or addition;
 - (g) between side building restriction lines; or
 - (h) from one side of building or addition to other side of building or addition, and
- (2) Between the points selected, there is a change in elevation of at least six feet.



MONTGOMERY COUNTY EXECUTIVE REGULATION

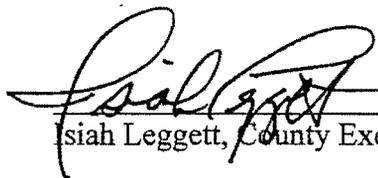
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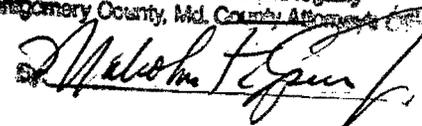
EFFECTIVE DATE

Section 4.

This regulation is effective on April 1, 2010.


Isiah Leggett, County Executive

6/2/10
Date

Approved as to form and legality
Montgomery County, Md. County Attorney


Resolution No. _____
Introduced: June 15, 2010
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 18-09AM, Additional Stories on Sloping Lots

Background

1. The Montgomery County Code §59-A-5.41 authorizes the County Executive to adopt regulations concerning sloping lots under Method 2.
2. On January 4, 2010, the County Council received Executive Regulation 18-09, Additional Stories on Sloping Lots. The Council extended time for action on this regulation on March 2, 2010 until June 30, 2010. The Council received Executive Regulation 18-09AM, on June 3, 2010.
3. The Council reviewed the regulation under Method (2) of County Code §2A-15.
4. Under Method (2), the Council the Council may approve, disapprove, or extend the time for action within 60 days of receiving the regulation. In the absence of Council action, the regulation is deemed approved as submitted.
5. On May 6, 2010, the Planning, Housing, and Economic Development Committee reviewed Executive Regulation 18-09, and recommended approval if the Executive was agreeable to stating that measurements were to be taken from the predevelopment grade. Regulation 18-09AM included that amendment.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The Council approves Executive Regulation 18-09AM, Additional Stories on Sloping Lots.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

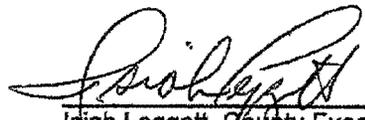
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EFFECTIVE DATE

Section 4.

This regulation is effective on [~~April 1, 2010~~] June 15, 2010.



 Isiah Leggett, County Executive

6/14/10

 Date

Approved as to form and legality
 Montgomery County, Md. County Attorney's Office
