

Action

MEMORANDUM

June 25, 2010

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney *JLZ*

SUBJECT: **Action** - Subdivision Regulation Amendment (SRA) 10-02, Minor Subdivisions - Applicability

**PHED recommendation:** On June 14, the Committee (3-0) recommended approval of SRA 10-02 as introduced.

**Background**

On May 4, 2010 the Council adopted ZTA 10-03, which allowed certain legally constructed single family dwellings to record a plat even if they did not satisfy the conditions of their current zone.

Planning Staff determined that all of the parcels affected by ZTA 10-03 would not be entitled to use the minor subdivision process under §50-35A. Parcels in the RDT zone would be entitled to use the provisions of §50-35A(a)(8)<sup>1</sup>, but legally constructed dwellings on parcels exist in other zones as well. ZTA 10-03 is similar, but not identical, to the provision to record parcels created before 1958.<sup>2</sup> The Committee recommended this SRA to add a provision to §50-35A that would allow lots created under §59-B-8.1 to use the minor subdivision procedure. SRA 10-02 would allow certain legally constructed one-family detached dwelling units to record under the current rules for minor subdivisions as previously recommended by the Committee, with 2 conditions recommended by Planning Staff:

- 1) Any required street dedications along the frontage of the proposed lots must be shown on the record plat; and

---

<sup>1</sup> "Plats for Certain Residential Lots located in the Rural Density Transfer Zone. Up to five lots are permitted under the minor subdivision procedure in the RDT zone provided that a pre-preliminary plan is submitted and approved by either the Planning Board or Planning Board staff, in accordance with the procedures for submission and approval of a pre-preliminary plan of subdivision...."

<sup>2</sup> "Plats for Certain Residentially Zoned Parcels Created by Deed Prior to June 1, 1958. While recognizing the single residential parcel exemption of Sec. 50-9(e), an owner may voluntarily submit a plat to record such a parcel under the minor subdivision procedure provided that the parcel is developable for only one single-family, detached dwelling unit." §50-35A(6).

- 2) There is adequate sewerage and water service to the property, which may be either public service or approved private septic system/private well.

Street dedication is part of the regular subdivision process. It would be required in the regular subdivision process.

The absence of adequate water and sewer service on-site would require the applicant to go through the regular subdivision process.

The other changes to Chapter 50 in SRA 10-02 would correct a subsection reference and would make “plain English” edits.

The Committee recommended adoption of SRA 10-02 as introduced.

This packet contains:  
SRA 10-02

Circle #  
1-6

F:\Land Use\SRAs\SRA 10-02 Minor Subdivisions\SRA 10-02 Action memo June 29.doc

Ordinance No.:  
Subdivision Regulation Amend. No.: 10-02  
Concerning: Minor Subdivisions - Applicability  
Revised: 5/10/10; Draft No. 1  
Introduced: May 18, 2010  
Public Hearing: June 22, 2010  
Adopted:  
Effective:

**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: Planning, Housing, and Economic Development Committee

---

**AN AMENDMENT** to the Subdivision Regulations to:

- allow parcel owners with certain legally built single family detached dwellings to use the minor subdivision procedures; and
- generally amend the provisions concerning minor subdivisions.

By amending

Montgomery County Code  
Chapter 50, Subdivision of Land  
Section 50-35A, Minor Subdivision-Approval Procedure

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

OPINION

Subdivision regulation Amendment No. 10-02, sponsored by the Planning, Housing, and Economic Development Committee, was introduced on May 18, 2010. On May 4, 2010 the Council adopted ZTA 10-03, which allowed certain legally constructed single family dwellings to record a plat even if they did not satisfy the conditions of their current zone.

Planning Staff determined that all of the parcels affected by ZTA 10-03 would not be entitled to use the minor subdivision process under §50-35A. Parcels in the RDT zone would be entitled to use the provisions of §50-35A(a)(8), but legally constructed dwellings on parcels exist in other zones as well. The Committee recommended this SRA to add a provision to §50-35A that would allow lots created under §59-B-8.1 to use the minor subdivision procedure. SRA 10-02 would allow certain legally constructed one-family detached dwelling units to record under the current rules for minor subdivisions as previously recommended by the Committee, with 2 conditions recommended by Planning Staff:

- 1) any required street dedications along the frontage of the proposed lots must be shown on the record plat; and
- 2) there is adequate sewerage and water service to the property, which may be either public service or approved private septic system/private well.

Street dedication would be required in the regular subdivision process. The absence of adequate water and sewer service on-site would require the applicant to go through the regular subdivision process. The other changes to Chapter 50 in SRA 10-02 would correct a subsection reference and would make “plain English” edits.

In its report to the Council, the Montgomery County Planning Board recommended that the amendment be approved. On June 14, 2010 the Planning, Housing, and Economic Development Committee held a worksession to review the amendment. The Committee recommended approval of the SRA as introduced.

The County Council held a public hearing on June 22, 2010 to receive testimony concerning the proposed subdivision regulation amendment. All testimony supported the approval of SRA 10-02 as introduced.

The District Council reviewed Zoning Text Amendment No. 10-02 at a worksession held on June 29, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 10-02 will be approved as introduced.

*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 50-35A is amended as follows:**

2       Sec. 50-35A. Minor Subdivisions-Approval Procedure.

3       (a)   *Preliminary Plan Not Required.* The submission of a preliminary  
4           subdivision plan, in accordance with the provisions of Sec. 50-34 and Sec.  
5           50-35, is not required for:

6       \*   \*   \*

7       (6)   Plats for Certain Residentially Zoned Parcels Created by Deed [Prior  
8           to] Before June 1, 1958. [While recognizing the] Although a single  
9           residential parcel [exemption of Sec.] may qualify for an exception to  
10          platting under Section 50-9([e] f), [an owner may voluntarily submit a  
11          plat to record such a parcel under the minor subdivision procedure  
12          provided that] if the parcel is developable for only one single-  
13          family[,detached] detached dwelling unit, then an owner may submit  
14          a plat to record such a parcel under the minor subdivision procedure.

15       \*   \*   \*

16       (8)   Plats for Certain Residential Lots located in the Rural Density  
17          Transfer Zone. Up to [five] 5 lots are permitted under the minor  
18          subdivision procedure in the RDT zone [provided that] if a pre-  
19          preliminary plan is submitted and approved by either the Planning  
20          Board or Planning Board staff, [in accordance with] under the  
21          procedures for submission and approval of a pre-preliminary plan of  
22          subdivision. In addition:

23          [a.](A)       Written approval for a proposed septic area must be  
24                        received from the Montgomery County Department of  
25                        Permitting Services, Well and Septic Section [prior to  
26                        recordation of] before recording the plat;

- 27 [b.](B) Any required street dedications along the frontage of the  
28 proposed lots[,] must be shown on the record plat;
- 29 [c.](C) An easement must be recorded for the balance of the  
30 property noting that density and TDRs have been [utilized] used  
31 for the new lots. Reference to this easement must be [reflected]  
32 noted on the record plat for the lots; [and]
- 33 [d.](D) Lots created in the RDT [Zone] zone through the minor  
34 subdivision procedure must not exceed an average lot size of  
35 [five (5)] 5 acres in size unless approved by the Planning Board  
36 in the review of a pre-preliminary plan of subdivision[.]; and
- 37 [e.](E) Forest conservation requirements must be satisfied [prior  
38 to] before recording the plat.
- 39 (9) Parcels that satisfy Section 59-B-8.1 of Chapter 59 may be platted  
40 under the minor subdivision procedure if:
- 41 (A) Any required street dedications along the frontage of the  
42 proposed lots is shown on the record plat.
- 43 (B) There is adequate sewerage and water service to the property,  
44 which may be either public service or approved private septic  
45 system/private well.
- 46 (b) *Procedure for Platting a Minor Subdivision.* The owner of property that  
47 satisfies the requirements for a minor subdivision[, as specified in Sec.]  
48 under Section 50-35A(a), above, may submit an application for record plat  
49 for approval [in accordance with the provisions of Sec.] under Section 50-36  
50 and [Sec.] Section 50-37 [of this Chapter]. In the case of minor subdivisions  
51 described in [Sec.] Sections 50-35A, (1), (3) and (4), if no additional  
52 development is proposed, then no additional public improvements may be

53 required by the reviewing agencies beyond those required for the original  
54 subdivision[, and provided that no additional development is proposed].

55 (c) Minor subdivision approvals are not subject to the resubdivision criteria of  
56 Section 50-29(b)(2) [of this Code].

57 (d) Any lot created through the minor subdivision process and any lot replatted  
58 as part of a minor lot line adjustment must satisfy all applicable zoning  
59 requirements [as contained] in Chapter 59 [of this Code].

60 (e) A minor lot line adjustment cannot be used to establish a precedent for a  
61 resubdivision that may be filed for other properties located in the same  
62 block, subdivision, or neighborhood.

63

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

66 *Approved:*

67

68

69 \_\_\_\_\_  
Isiah Leggett, County Executive Date

70

71 *This is a correct copy of Council action.*

72

73

74 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council Date