

MEMORANDUM

September 8, 2016

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Senior Legislative Analyst
SUBJECT: Zoning Text Amendment 16-07, Exemptions – Pre-1958 Lots

Zoning Text Amendment (ZTA) 16-07, introduced on June 21, 2016, would reinstitute provisions for pre-1958 lots and parts of lots that existed before the Zoning Ordinance Rewrite. Council President Floreen is the lead sponsor of ZTA 16-07.

It has been the Council's policy to allow the reconstruction of existing dwellings, despite any irregularities in the lot or parcel on which it is located. Subsection 7.7.1.A.1 permits reconstruction of existing legal structures if the floor area, height, and footprint of the structure are not increased. Zoning changes are needed for certain pre-1958 parcels where reconstruction would occur on parcels or parts of lots that do not meet width requirements of their current zoning. The proposed ZTA clarifies that pre-1958 parts of lots are included, and permits reconstruction on pre-1958 parcels that do not meet lot width at the front building line or the front lot line.

Rebuilding existing dwellings beyond the limits of reconstruction is only permitted if the structure is located on a platted lot. Some individuals may want to plat pre-1958 parcels and parts of lots. Re-platting is required to consolidate existing commonly owned lots to prevent new structures from crossing lot lines. All lots created under the Subdivision Regulations must meet current zoning standards, but many pre-1958 parcels and parts of lots no longer qualify for re-platting because they were created at a time when lot width and area requirements were smaller. Before October 30, 2014, the Zoning Ordinance contained provisions that allowed these tracts to be platted. The proposed ZTA would allow re-platting in the same manner as the old zoning code.

Council action after the public hearings was postponed on August 2, 2016 at the request of Councilmember Berliner.

Background

A tract of land is a parcel, a lot, or part of a lot. A tract created by a deed description of its boundary without any reference to a record plat is called a parcel. A lot is a defined tract of land identified in a record plat. When a lot is subsequently divided by a deed or a record plat that did not include all of the previously created

lot, each piece of the former lot is called part of a lot.¹ Grandfathering provisions in the current code refer to a lot (Section 7.7.1.D.1) and parcel (Section 7.7.1.D.2), but fail to cover part of a lot.

The proposed ZTA would allow re-platting in the same manner as in the old zoning code under Lines 42-60. However, the proposed language at lines 61-66 would permit application of the side and rear yard setbacks of the pre-1958 zoning for the dwelling on the re-platted properties. This is language in the old zoning code applied to individual existing pre-1958 recorded lots, but not when two pre-1958 lots or parcels were consolidated. For consolidation of lots or parcels, property owners were required to use the setbacks of the existing zoning. The effect of this change is that a pre-1928 lot or parcel could be consolidated with a neighboring lot or parcel and the owner may build a new house with 5-foot side yard setbacks instead of 8-foot setbacks (current zoning), and two lots or parcels created between 1928 and 1958 could be consolidated to build a new house with 7-foot side yards instead of 8-foot setbacks.

Issues

Should ZTA 16-07 be amended to exactly reflect the provision in the old zoning code?

The intent is to mimic the requirements of the old zoning code. The Planning Board and Planning staff recommend amending lines 61-66 to copy the text from the old code. Those recommended changes in legislative format are as follows:

The dwelling on any lot created under this Section may be constructed or reconstructed in a manner that satisfies the [[maximum building height, lot coverage, and established building line of its zone]] development standards in effect when the building permit is issued [[and the side yard and rear setbacks required by the zoning in effect when the lot, parcel, or part of lot was originally recorded]].

Staff agrees with this change.

Should the scope of the proposed exemption be broadened to include agriculturally zoned land?

The previous code also included these exemption provisions for pre-1958 parcels in all zones, including the RDT zone. Specifically, Section 59-B-5.1 of the old zoning code permitted any lot recorded by deed before June 1, 1958 to have a single-family detached dwelling without having to meet the area requirements of any zone. The Planning Board and Planning Staff believe that this provision should also apply to the AR zone. A modified Line 9 of the ZTA would reflect this change.

Such an amendment is within the scope of ZTA 16-07 as advertised. It would be in conformance to the code effective on October 29, 2014.

This Packet Contains
ZTA 16-07 as recommended by Staff
Planning Staff report

© number
1 – 5
6 – 7

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¹ Maryland allowed the filing of subdivisions in the County courthouse from 1894. The County's first subdivision regulations were not adopted until the mid-1930s. Unlike the current standards, there was no requirement to only subdivide property by a record plat. Deeds could and did at times override plats.

Zoning Text Amendment No.: 16-07
Concerning: Exemptions – Pre-1958 Lots
Draft No. & Date: 1 – 6/15/16
Introduced: June 21, 2016
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**

Lead Sponsor: Council President Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow the consolidation of lots, parts of lots, and parcels created before 1958; and
- generally amend the provisions for residential lot and parcel exemptions.

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

DIVISION 59-7.7. “Exemptions and Nonconformities”
Section 7.7.1. “Exemptions”

Boldface	<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. Division 59-7.7 is amended as follows:**

2 **Division 7.7. Exemptions and Nonconformities**

3 **Section 7.7.1. Exemptions**

4 * * *

5 **D. Residential Lots and Parcels**

6 **1. Residential Lot**

7 Unless adjoining lots have merged by virtue of ownership and zoning
8 requirements, DPS may issue a building permit for a detached house
9 on any Residential or Rural Residential zoned lot or parcel identified
10 [either] on a plat recorded before October 30, 2014, a part of lot
11 recorded before June 1, 1958, or a deed recorded before June 1, 1958,
12 without regard to the street frontage and lot size requirements of its
13 zoning, except as provided in Section 7.7.1.D.3.b.

14 **2. Pre-1958 Parcel**

15 A detached house on a platted lot, parcel, or part of a previously
16 platted lot that has not changed in size or shape since June 1, 1958,
17 exclusive of changes due to public acquisition, may be:

- 18 a. constructed under its current zoning without regard to the
19 minimum lot width at the front lot line and front building line;
- 20 b. reconstructed either on its current footprint and up to its current
21 maximum building height; or
- 22 c. constructed or reconstructed in a manner that satisfies the
23 maximum building height, lot coverage, and established
24 building line of its zone when the building permit is submitted
25 and the side yard and rear setback required by its pre-1958
26 zoning in effect when the lot, parcel, or part of a lot was first
27 created.

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3. Pre-1928 Lot

- a. In addition to the provisions of Section 7.7.1.D.1, a new or reconstructed detached house on any lot recorded before 1928 must satisfy the front, rear, and side yard setbacks of the 1928 Zoning Ordinance; however, a new building must satisfy the established building line requirements under Section 4.4.1.A if applicable.
- b. Before DPS may issue a building permit for a new detached house on a lot less than 5,000 square feet in land area that was recorded before 1928 and adjoins vacant land in common ownership any time since November 8, 2012, the lot must be subdivided with such adjoining property without regard to the minimum width and area requirements of the applicable zone.

* * *

10. Subdivision of lots, parts of lots, or parcels.

- a. Any two or more tracts of land created by deed or plat before June 1, 1958 may be consolidated by record plat into one buildable lot without regard to the minimum width and area requirements of the applicable zone, if:
 - i. the tracts of land are under common ownership;
 - ii. a habitable detached house located on the tracts before July 20, 2009 crossed a property line created by deed or plat documented by a professionally certified house location plan, previously issued demolition permit, or similar evidence;
 - iii. all the tracts of land on which the dwelling is, or was, located are included in the newly created lot; and

55 iv. if abutting vacant lots were in common ownership on
56 November 8, 2012 or any time thereafter and the original
57 lots were recorded in the original Maryland-Washington
58 Metropolitan District before March 16, 1928, any such
59 vacant lots under common ownership must be included in
60 the newly created lot.

61 b. The dwelling on any lot created under this Section may be
62 constructed or reconstructed in a manner that satisfies the
63 maximum building height, lot coverage, and established
64 building line of its zone when the building permit is issued and
65 the side yard and rear setbacks required by the zoning in effect
66 when the lot, parcel, or part of lot was originally recorded.

67 * * *

68 **Sec. 2.** Effective Date. This amendment takes effect immediately upon
69 approval.

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71 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

Zoning Text Amendment (ZTA) No. 16-07, Exemptions – Pre-1958 Lots

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 Pam Dunn, Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

Completed: 07/21/16

Description

Zoning Text Amendment (ZTA) No. 16-07 would allow the consolidation of lots, parts of lots, and parcels created before 1958 in a manner consistent with the provisions of the Zoning Ordinance in place prior to October 30, 2014.

Summary

Staff recommends approval of ZTA No. 16-07 with modifications to also include exemption provisions for pre-1958 parcels in the RDT zone (now AR zone) and permit them to be built upon without having to meet the minimum area requirements of any zone.

Background/Analysis

Zoning Text Amendment (ZTA) 16-07, would reinstitute provisions for pre-1958 lots and parts of lots that existed before the Zoning Ordinance Rewrite adopted in 2014. It has been the Council's policy to allow the reconstruction of existing dwellings despite any irregularities in the lot or parcel on which it is located. In Chapter 59, Section 7.7.1. Exemptions, provisions were created to permit construction and reconstruction of new and existing structures in varying circumstances. However, when combined with provisions of the Subdivision Regulations for platting of land, the intent of some of the provisions cannot be met.

Subsection 7.7.1.A.1 permits reconstruction of existing legal structures on recorded lots and pre-1958 unplatted parcels if the floor area, height and footprint of the structure are not increased, or as otherwise limited by subsections B, C, and D¹. ZTA 16-07 clarifies that pre-1958 parts of lots are included in the exemption for issuance of a building permit for a detached house, without regard to the street frontage and lot size requirements of its current zoning (Lines 10-13), and permits reconstruction on

¹ Note that reconstruction in this section does not include rebuilding to the setback limits of the underlying zoning.

pre-1958 parcels that do not meet lot width at the front building line as well as the front lot line (Line 19). The previous zoning code contained exceptions that provided for these differences, but they were not all retained in the new code. Therefore, to meet the intent of the new code's provisions for resubdivision, the proposed ZTA puts back the previous exemptions for the Residential and Rural Residential zones. However, the previous code also included these exemption provisions for pre-1958 parcels in all zones, including the RDT zone. Specifically, Section 59-B-5.1 of the old Zoning Code permitted any lot recorded by deed before June 1, 1958 to have a single family detached dwelling without having to meet the area requirements of any zone. Staff believes that this provision should also apply to the AR zone. **Staff has modified Line 9 of the ZTA to reflect this change.**

Rebuilding existing dwellings beyond the limits of reconstruction (under Section 7.7.1) is only permitted if the structure is located on a platted lot. Some individuals may want to plat pre-1958 parcels and parts of lots. Re-platting is required to consolidate existing commonly owned lots to prevent new structures from crossing lot lines and to meet the requirements to consolidate commonly owned land under Subsection 7.7.1.D.3.b. All lots created under the Subdivision Regulations must meet current zoning standards, but many pre 1958 parcels and parts of lots no longer qualify for re-platting because they were created at a time when lot width and area requirements were smaller. Before October 30, 2014, the Zoning Ordinance contained provisions that allowed these tracts to be platted. The proposed ZTA would allow re-platting in the same manner as the old zoning code under Lines 42-60. However, the proposed language at lines 61-66 that would permit application of the side and rear yard setbacks of the pre-1958 zoning for the dwelling on the re-platted properties is language in the old zoning code that applied to individual existing pre-1958 recorded lots, but not when two pre-1958 lots or parcels were consolidated. For consolidation of lots or parcels, you were required to use the setbacks of the existing zoning. The effect of this change is that pre-1928 lots or parcels could be consolidated and used to build a new house with 5-foot side yard setbacks instead of 8-foot setbacks (current zoning), and two lots or parcels created between 1928 and 1958 could be consolidated to build a new house with 7-foot side yards instead of 8-foot setbacks. If the intent is to mimic the requirements of the old zoning code, then lines 61-66 must be modified to reflect this intent. **Staff has included recommended changes to this section in case the County Council intends to establish consistency with the language of the old Zoning Code.**

Attachments

1. ZTA No. 16-07 as modified by staff