CORRECTED
Ordinance No: 16-31
Zoning Text Amendment No: 08-11
Concerning: Standards – Residential Zones
Draft No. & Date: 6 – 12/09/08
Introduced: May 6, 2008
Public Hearing: June 17, 2008
Adopted: December 9, 2008
Effective: April 28, 2009

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: Councilmembers Berliner, Andrews, Elrich, and Trachtenberg

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AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the provisions concerning an established building line;
- require regulations to implement the provision concerning a sloping lot;
- amend the maximum height for certain lots in the R-200 zone;
- amend the maximum building coverage for certain lots in certain one-family residential zones; and
- generally amend the development standards for one-family residential zones.

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

DIVISION 59-A-2	"DEFINITIONS AND INTERPRETATION"
Section 59-A-2.1	"Definitions"
DIVISION 59-A-5	"COMPLIANCE REQUIRED"
Section 59-A-5.33	"Established building line"
Section 59-A-5.41	"Additional stories on sloping lots"
DIVISION 59-C-1	"RESIDENTIAL ZONES, ONE-FAMILY"
Section 59-C-1.32	"Development standards"

EXPLANATION: ***Boldface*** *indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

CLERK'S NOTE: Typographical error corrected on page 10, line 87 to read, "filed after April 28, 2009"

OPINION

Zoning Text Amendment No. 08-11 was introduced on May 6, 2008. ZTA 08-11 would amend the Zoning Ordinance to:

- lower the maximum height for certain lots in the R-200 zone;
- reduce the maximum building coverage for certain lots in certain one-family residential zones;
- amend provisions concerning an established building line by specifying the buildings to be included, the buildings to be excluded, and an alternative method to determine the setback required; and
- require regulations to implement the provisions for any sloping lot.

Planning Staff supported ZTA 08-11 with minor editorial changes to the established building line and the sloping lots provisions. Planning Staff did not recommend any changes to the building coverage limits or the grandfathering provisions of ZTA 08-11 as introduced.

The Planning Board agreed that there is a need to address site design and compatibility issues in smaller lot zones; however, the Board was split (2-2) on supporting ZTA 08-11. In particular, some Board members thought that existing houses should have the ability to rebuild under current development standards. Board members who did not endorse ZTA 08-11 thought that there are too many unanswered questions concerning the impact of the legislation. The Board members in support of ZTA 08-11 believed that the ZTA would improve the compatibility of infill structures in many existing small lot neighborhoods.

The Executive supported the concepts reflected in ZTA 08-11 and the Agreement in Principle reached by the Infill Development Task Force. The Executive also believed that some particular problems raised in the public hearing warranted the Council's attention. The Montgomery County Planning Board, in its report to the Council, recommended that the text amendment be approved.

The Council held a public hearing on ZTA 08-11 on June 17, 2008. There was a significant amount of written testimony, both for and against the ZTA. The Infill Development Task force submitted "an agreement in principle" that recommended a number of amendments to the ZTA as introduced. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession to review the amendment on July 21, October 13, November 10, November 17, November 24, and November 25, 2008. The Committee requested and received data from the Planning Department and the Department of Permitting Services to examine the quantitative and geographic effects of ZTA 08-11 and alternatives. On November 25, 2008 the Committee recommended approval of ZTA 08-11, with amendments to define the lots that would be subject to lower building coverage limits. In particular, the Committee recommended the following definition of infill development:

Any building or construction of a one-family dwelling on a lot in the R-60, R-90, or R-200 zone if:

(a) the lot was created:
  (1) by a plat recorded before January 1, 1978; or
  (2) by a plat of resubdivision that created fewer than 6 lots on a lot previously created by a plat recorded before January 1, 1978;

(b) the lot is less than 20,000 square feet in area; and

(c) the construction proposed is more than one story, excluding any basement, and is:
  (1) a new one-family dwelling;
  (2) the demolition and reconstruction of more than 50 percent of the floor area of the dwelling existing on {effective date}; or
  (3) the addition of more than 50 percent of the floor area of the dwelling existing on {effective date}.

The primary problem addressed by ZTA 08-11 was described to the Committee as newly constructed homes in established neighborhoods that loom over their neighbors and invade their privacy. The longer-term residents believe that oversized homes are out of character with their community. The Committee's recommended amendments would apply the limitation on building coverage to older communities, on smaller lots, and in appropriate zones. The Committee recommended retaining the current building coverage limits for one-story homes, one-story additions, and other additions related to the scale of the existing house. The approach recommended by the Committee defined infill development as construction that takes place after the effective date of the legislation. The Committee also recommended assuring that, in all instances, larger lots were allowed a larger building footprint than smaller lots, and excluding certain elements from the new coverage limits (any bay window, chimney, porch, or a detached garage, if the garage is less than 241 square feet of floor area and less than 20 feet in height).

The Committee further recommended:

1) adopting the provision to reduce allowable building height in the R-200 zone as introduced in ZTA 08-11;
2) amending the established building line provision to provide more flexibility to conform to neighboring setbacks;
3) requiring the propagation of regulations to implement the sloping lot provisions of ZTA 08-11 by the end of November 2009; and
4) amending the effective date to 140 days after the Council's adoption.

The District Council reviewed Zoning Text Amendment No. 08-11 at a worksession held on December 9, 2008, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee, except as follows:

1) the Council applied the limited building coverage to lots smaller than 25,000 square feet;

2) a one-story basement was excluded from the definition of a one-story house only if average elevation in the front of the house was higher than the average elevation along the rear of the house; and
3) the first 240 square feet of any garage less than 350 square feet will be excluded from the calculation of building coverage.

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. 08-11 will be approved as amended.

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-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION

Sec. 59-A-2.1. Definitions.

* * *

Infill development: Any building or construction after April 28, 2009 of a one-family dwelling on a lot in the R-60, R-90, or R-200 zone if:

(a) the lot was created:

(1) by a plat recorded before January 1, 1978; or

(2) by a plat of resubdivision that created fewer than 6 lots from a lot previously created by a plat recorded before January 1, 1978;

(b) the lot is less than 25,000 square feet in area; and

(c) the construction proposed is more than one story, excluding any basement if the average elevation of the finished grade is higher along the front of the dwelling than the average elevation along the rear of the dwelling, and is:

(1) a new one-family dwelling;

(2) the demolition and reconstruction of more than 50 percent of the floor area of the dwelling existing on April 28, 2009; or

(3) the addition of more than 50 percent of the floor area of the dwelling existing on April 28, 2009.

* * *

Sec. [[1]]2. 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 [[main]] one-family detached residential buildings considered in determining the established building line must all be:

(1) [all be] within 300 feet of the side property line of the proposed construction site [(excluding corner lots)] measured along the street frontage;

(2) [all be] along the same side of the street;

(3) [all be] between intersecting streets or to the point where public thoroughfare is denied;

(4) [all exist at the time] in existence or approved by a building permit when the building permit application on the subject property is filed;

(5) [not be nonconforming, unlawfully] legally constructed [, or constructed pursuant to a lawfully granted variance]; and

(6) [not be located on a pipestem or flag-shaped lot.] 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;

(4) on a through lot that fronts on a street different than the subject property[[,]];

(5) located on any pipestem, wedge-shaped, or flag-shaped lot; or

(6) approved by permit for demolition, except if a building permit was also approved with the same setback[[.]],

is the established building line, unless the applicant chooses to calculate the setback as the average setback of the two adjoining lots or the applicant chooses to use the front setback of the existing one-family building that was established before demolition, excluding any approved variance, if the existing building meets the minimum setback of the zone. All calculations must be based on a survey that is signed and sealed by a licensed engineer or surveyor. [[The engineer or surveyor who signed the survey must also file an affidavit attesting to the accuracy of the survey.]] Any building excluded from the established building line restriction must comply with the minimum setback requirement of the zone.

(d) Corner lots have two front yards and are subject to established building line standards on both streets. At the option of the applicant, a corner lot may use front setbacks of the adjoining buildings on both sides of the corner lot.

* * *

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 [such] the lot is [situated shall] located must be permitted on the downhill side of any building erected on [such] the lot, but the building height limit [shall] must not otherwise be increased above that specified for the zone. [[The Department must implement this]] This section must be implemented by an executive [[under a]] regulation adopted under method 2 of Section 2A-15.

* * *

Sec. [[2]]3. DIVISION 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

81 * * *

82 **59-C-1.32. Development standards.**

83 * * *

	RE-2[1]	RE-2C[1]	RE-1[1]	R-200	R-150[3]	R-90	R-60	R-40[2]	R-4 plex	RMH 200
59-C-1.327. Maximum Building Height (in Feet).										
Except for agricultural buildings, and except as provided in **[[division]]** Division 59-B-1, the maximum height of any building or structure [shall] must be [as follows]:										
For any building in these zones:	50	50	50	50*	50			35		50
For a main building in these zones:									35	
For a main building in the zones indicated (*):						*	*			
The height must not exceed: (1) 35 feet when measured to the highest point of roof surface regardless of roof type, or (2) 30 feet to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof, subject to the following:										

	RE-2[1]	RE-2C[1]	RE-1[1]	R-200	R-150[3]	R-90	R-60	R-40[2]	R-4 plex	RMH 200
(a) The height must not exceed 2 ½ stories[5] or 30 or 35 feet, depending on the method of measurement, if other lots on the same side of the street and in the same block are occupied by buildings with a building height the same or less [that] than this requirement.										
(b) The height may be increased to either 3 stories or 40 feet if approved by the [planning board] Planning Board [through the] in a site plan [approval procedures of division 59-D-3].						*	*	*		
An accessory building in these zones must not exceed:									20[9]	
An accessory building in these zones[[,]] must not exceed 2 stories, and the height from existing grade to the highest point of roof surface must not exceed:						20[9]	20[9]	20[9]		
59-C-1.328. Coverage.										
-Maximum percentage of net lot area that may be covered by buildings, including accessory buildings:	25	25	15	25**	25[[**]]	30**	35**	40[[**]]		25
-Maximum percentage of tract that may be covered by buildings:									35	
-Maximum percentage of tract [to be] devoted to green areas:									50	

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*If the lot [[: (1) was created by a plat recorded before January 1, 1996, or by a plat of 5 or fewer lots recorded after January 1, 1996; (2) is less than 40,000 square feet in area; and (3)]] is the site of a building permit application filed after April 28, 2009, then the maximum allowable building height is determined by either of two methods and varies with the lot area as follows:

Lot Area in Square Feet		Height in Feet		
Equal to or greater than	And less than	Height to the highest point of any roof		The mean height in feet between the eaves and ridge of a gable, hip, mansard, or gambrel roof
25,000	40,000	45	or	40
15,000	25,000	40	or	35
0	15,000	35	or	30

[[Any building constructed under a building permit application filed before {date ZTA enacted} is not non-conforming, but the building height must not be increased if it exceeds these standards.]] Any building constructed or proposed under a building permit filed before April 28, 2009 is conforming. Any such building may be continued, maintained, repaired, and, if demolished by accidental or natural forces, rebuilt to the same building height, three dimensional shape, and lot coverage allowed under any building permit filed anytime before April 28, 2009.

** If the [[lot was created by a plat recorded before January 1, 1996, or by a plat of 5 or fewer lots recorded after January 1, 1996,]] building on a lot is infill development, then the maximum [[percentage of lot]] area that may be covered by [[buildings]] any building, including any accessory building and any [[building]] weatherproofed floor area above a porch, but not including any bay window, chimney, [[or]] porch, or up to 240 square feet of a detached garage, if the garage is less than 350 square feet of floor area and less than 20 feet in height, must vary with the lot area as follows:

Lot area less than 6,000 square feet: 30 percent of the lot area.

Lot area equal to or greater than 6,000 square feet but less than [[15,000]] 16,000 square feet: 30 percent, less [[one]] .001 percent for every [[1,000]] square [[feet]] foot of lot area exceeding 6,000 square feet.

Lot area equal to or greater than [[15,000]] 16,000 square feet: 20 percent of the lot area.

109 [[Any building constructed under a building permit application filed before {date ZTA enacted}
110 is not non-conforming, but it must not increase the lot area covered if it exceeds the applicable
111 limit.]] Any building constructed or proposed under a building permit filed before April 28, 2009
112 and any infill development may be continued, maintained, repaired, and, if demolished by
113 accidental or natural forces, rebuilt to the same building height, three dimensional shape, and lot
114 coverage allowed under any building permit.
115 * * *
116 **Sec. [[3]]4. Effective date.** This ordinance takes effect [[20]] 140 days after
117 the date of Council adoption.
118 **Sec. 5. Regulation Required.** The regulation required under §59-A-5.41 must be
119 submitted by the Department of Permitting Services for Council's approval before
120 November 27, 2009.
121 **Sec.6. Status Report Required.** The Department of Permitting Services is
122 required, before June 25, 2010, to report to the Council on their one year
123 experience implementing this Zoning Text Amendment, including their
124 implementation of §59-A-5.41.
125
126 This is a correct copy of Council action.
127
128 Linda M. Lauer
129 Linda M. Lauer, Clerk of the Council