

Ordinance No.: 17-33  
Zoning Text Amendment No.: 12-16  
Concerning: One-Family Dwelling –  
Pre-1928 Lots  
Draft No. & Date: 3 - 4/9/13  
Introduced: September 25, 2012  
Public Hearing: November 13, 2012  
Adopted: April 9, 2013  
Effective: April 29, 2013

**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: Councilmember Floreen

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- allow the construction of a one-family dwelling located on any size lot recorded before 1928;
- allow the reconstruction of any one-family dwelling located on any size lot recorded before 1928; and
- generally revise the grandfathering provisions for undersized lots

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

- DIVISION 59-B-5. "SPECIAL PROVISIONS FOR CONDITIONS PREDATING 1958."  
Section 59-B-5.1. "Buildable lot under previous ordinance."  
Section 59-B-5.3. "One-family dwelling."

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

## OPINION

Zoning Text Amendment No. 12-16 was introduced on September 25, 2012, sponsored by Councilmember Floreen. The Board of Appeals interprets the Zoning Ordinance as prohibiting the construction of a house on a lot recorded before 1928 that did not meet the minimum lot size for a one-family house (5,000 square feet of land area) required by the 1928 Ordinance.<sup>1</sup> In addition to preventing new construction, the Board's decision would prevent the reconstruction of existing houses without an approved variance. The Board's decision was petitioned for judicial review and is now before the Circuit Court. *ZTA 12-16 is an opportunity for the Council to determine its intent with regard to lots created before 1928.* In the absence of any clarification by the Council, the Circuit Court must determine the Council's intent when it enacted the provision of the Zoning Ordinance at issue.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved with amendments. The Planning Board expressed concern about the unintended consequences of approving ZTA 12-16 as introduced. It recognized that there are several areas of the County where houses were constructed across pre-1928 lot lines. Under ZTA 12-16 as introduced, the houses could be replaced by 2 houses in a manner that would be out of character with established neighborhoods. The Planning Board recommended a requirement that adjoining substandard (smaller than 5,000 square feet) lots in common ownership must be combined. The Planning Board was guarding against one house becoming 2 houses and creating new houses on the side yards of existing houses. This recommendation conflated ZTA 12-16 with ZTA 12-18.

The County Council held a public hearing on November 13, 2012 to receive testimony concerning the proposed text amendment. 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 on April 1, 2013 to review the amendment. The Committee agreed with the fundamental recommendations of the Planning Board with regard to both ZTA 12-16 and ZTA 12-18. In particular, the Committee concluded that a house built on an undersized lot created before 1928 should be allowed to be reconstructed; a house should be allowed on a vacant, undersized lot

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<sup>1</sup> BOA Case No. A-6361.

created before 1928 that does not have an adjoining lot in common ownership; a vacant undersized lot that adjoins another lot in common ownership should not be a buildable lot and must be resubdivided with the adjoining lot in common ownership; resubdivision should be allowed, even if the resultant lot is undersized. The Committee's recommendation would avoid a requirement for a variance to build a one-family house under any of these situations. The Committee did not intend to restrict the right of resubdivision into multiple lots for any combination of property that would otherwise satisfy a property's current zoning.

The District Council reviewed Zoning Text Amendment No. 12-16 at a worksession held on April 9, 2013 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee, with a revision to the Committee's recommended text. The Council deleted the words "building line and the" from line 15 to eliminate ambiguity and conform the requirements of Section 59-B-5.1(a) to the provisions of Section 59-B-5.3(a). The Council also recognized that under the Zoning Ordinance's rules of interpretation, the singular also means the plural; in particular, the term "lot" also refers to "lots".

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. 12-16 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:*

1           **Sec. 1. DIVISION 59-B-5 is amended as follows:**

2    DIVISION 59-B-5. SPECIAL PROVISIONS FOR CONDITIONS PREDATING  
3    1958.

4    \*   \*   \*

5    **Sec. 59-B-5.1. Buildable lot under previous ordinance.**

6    Any lot that was recorded by subdivision plat [prior to] before June 1, 1958, or any  
7    lot recorded by deed [prior to] before June 1, 1958 that does not include parts of  
8    previously platted properties, and that was a buildable lot under the law in effect  
9    immediately before June 1, 1958, is a buildable lot for building a one-family  
10   dwelling only, even though the lot may have less than the minimum area for any  
11   residential zone. Any such lot may be developed under the zoning development  
12   standards in effect when the lot was recorded, except that:

13   a)   a one-family dwelling on a lot recorded before March 16, 1928[,] in the  
14        original Maryland-Washington Metropolitan District must meet the  
15        [[development standards in]] front, side, and rear yard provisions of the 1928  
16        Zoning Ordinance; [[however, compliance with the minimum lot size for a  
17        one family dwelling is not required]] if such lot is smaller than 5,000 square  
18        feet in land area and adjoins another lot in common ownership on November  
19        8, 2012 or any time thereafter, the lots must be resubdivided under Section  
20        59-B-5.4(c);

21    \*   \*   \*

22    **Sec. 59-B-5.3. One-family dwelling on single lot.**

23    Any one-family dwelling in a residential zone or agricultural zone that was built on  
24    a lot legally recorded by deed or subdivision plat before June 1, 1958[,] is not a  
25    nonconforming building. The dwelling may be altered, renovated, [or] enlarged, or  
26    replaced by a new dwelling on the single lot, under the zoning development  
27    standards in effect when the lot was recorded, except that:

28 (a) a one-family dwelling on a lot recorded before March 16, 1928[,] in the  
29 original Maryland-Washington Metropolitan District[,] must meet the  
30 [[development standards in]] front, side, and rear yard provisions of the 1928  
31 Zoning Ordinance; [[however, compliance with the minimum lot size for a  
32 one family dwelling is not required;]]

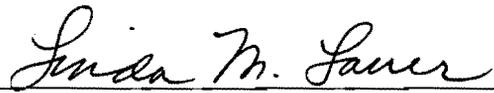
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34 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
35 date of Council adoption.

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37 This is a correct copy of Council action.

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40 Linda M. Lauer, Clerk of the Council