

**CORRECTED COPY**

Ordinance No: 15-53

Zoning Text Amendment No: 03-27

Concerning: Building height measurement

Draft No. & Date: 2 – October 18, 2005

Introduced: November 25, 2003

Public Hearing: January 13, 2004; 1:30 PM

Adopted: October 18, 2005

Effective: October 12, 2005

**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 Denis and Subin

---

**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- revising the definition of basement;
- revising the definition of cellar;
- adding a definition for pre-development grade;
- adding a definition of finished grade;
- revising the method ~~[[for]]~~ of calculating building height for one-family residential buildings in the R-60 and R-90 zones; and
- revising the maximum allowable building height for one-family residential buildings in the R-60 and R-90 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-5.4 “Height of buildings and structures”

Add a new section:

Section 59-A-5.44 “Existing buildings and permits filed”

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.*

## OPINION

Zoning Text Amendment (ZTA) 03-27 was introduced on November 25, 2003. The ZTA would change how the terms “basement” and “cellar” are defined, revise the method for calculating building height, and add a definition for the term “pre-development grade”.

The Montgomery County Planning Board in its report to the Council expressed several concerns with the ZTA, and recommended that a working group be formed to examine a broad range of issues relating to building height, and how the definitions of basement and cellar interact with the building height measurement methodology.

The County Council held a public hearing on January 13, 2003, to receive testimony concerning ZTA 03-27. After the January 13, 2003 public hearing, a working group was formed to evaluate the building height issue. The working group set as its objective achieving the purposes of ZTA 03-27 without unreasonably restricting new residential construction or expansion opportunities. The working group report was issued on June 24, 2004 and recommended several revisions to ZTA 03-27.

The Planning, Housing, and Economic Development Committee held worksessions on January 24, 2005, and June 27, 2005. Advocates for and against the ZTA participated at the worksessions. The Committee reported to the Council on July 12 that general agreements had been reached on important issues. At the July 12 meeting, several amendments were proposed to ZTA 03-27, including changing the ending point of the measurement from 35 feet to 30 feet at the mid point of the roof. A second public hearing was held on September 8, 2005 to consider potential amendments lowering the maximum building height and eliminating “story” as a measure of building height.

Additional worksessions were held by the Committee on September 28, 2005 and October 12, 2005 to consider the testimony on the proposals to lower the maximum building height and eliminate “story” as a measure of building height. After careful consideration of the materials of record and the comments and concerns expressed by interested parties, the Committee recommended to the Council that ZTA 03-27 be approved with revisions to (1) limit the effects of the ZTA to residential construction in the R-90 and R-60 zones; (2) measure building height from the average elevation of finished grade along the front of the building; and (3) measure building height to the highest point of a roof surface of a flat roof or the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.

Under the Committee recommendation, only one-family detached residential construction in the R-90 and R-60 zones would be affected by the proposed new measurement methodology. The Committee did not support eliminating story as a measure of building height or lowering building height from 35 feet to 30 feet; however, it agreed to apply a 32-foot height standard to replacement homes and any residential building constructed on a platted lot that abuts or confronts another residential building on a platted lot in a different subdivision in the R-90 or R-60 zones.

The District Council reviewed Zoning Text Amendment No. 03-27 and the recommendations of the Planning, Housing, and Development Committee on October 18, 2005. The Council agreed that building height in the R-60 and R-90 zones should be measured from the average elevation of finished grade in front of the building to the highest point of a building regardless of roof type or the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof. This approach eliminates the need to determine what is or is not a terrace and penalizes excessive terrace removal by tying the measurement of height to the average grade of the front finished elevation.

The Council considered a proposal to measure the height limit to 30 feet at the roof midpoint or 35 feet at the roof ridge line. This was believed to be the most direct method to limit building height and remove perceived loopholes that allow a home substantially above 35 feet in the zones where 35 feet is the nominal height limit. Grading to convert a basement to a cellar was expressly prohibited. The Council considered the potential impacts of the new building height standards and agreed that any existing building and any construction that takes place under a building permit approved, or permit application filed, before the effective date of the new standards could continue as a conforming building.

ZTA 03-27, as amended by the Council, establishes simple and understandable criteria for determining building height, eliminates the terrace height exception, and removes perceived loopholes that allow a home substantially above 35 feet in the zones where 35 feet is the height limit. The Council concluded that ZTA 03-27, as amended, is a fair and effective measure to address difficult and controversial building height issues.

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. 03-27 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-A-2 is amended as follows:**

2   **DIVISION 59-A-2.       DEFINITIONS AND INTERPRETATION.**

3   **59-A-2.1.   Definitions.**

4   \* \* \*

5   **Basement:** That portion of a building below the first floor joists of which at least  
6 half of [whose] its clear ceiling height is above the [mean level of the adjacent  
7 ground] average elevation of the finished grades [[along all sides of the building]]  
8 along the perimeter of the building.

9   \* \* \*

10 **Cellar:** That portion of a building below the first floor joists of which at least half  
11 of [whose] its clear cellar ceiling height is below the [mean level of the adjacent  
12 ground] average elevation of the finished grade [[along all sides of the building]]  
13 along the perimeter of the building.

14   \* \* \*

15 **Grade, finished:** The grade following completion of the building or renovation,  
16 as established at spot elevations taken at intervals along the front of the building.

17

18 **Height of building:** [The vertical distance measured from the level of approved  
19 street grade opposite the middle of the front of a building to the highest point of  
20 roof surface of a flat roof; to the mean height level between eaves and ridge of a  
21 gable, hip, mansard, or gambrel roof; except, that if a building is located on a  
22 terrace, the height above the street grade may be increased by the height of the  
23 terrace. In the case of a building set back from the street line 35 feet or more, the  
24 building height is measured from the average elevation of finished ground surface  
25 along the front of the building. On corner lots exceeding 20,000 square feet in  
26 area, the height of the building may be measured from either adjoining curb grade.  
27 For lots extending through from street to street, the height may be measured from

28 either curb grade.] The vertical distance measured from the level of approved  
29 street grade opposite the middle of the front of a building to the highest point of  
30 roof surface of a flat roof or to the mean height level between eaves and ridge of a  
31 gable, hip, mansard, or gambrel roof. However, if a building is located on a  
32 terrace, the height above the street grade may be increased by the height of the  
33 terrace. In the case of a building set back from the street line 35 feet or more, the  
34 building height is measured from the average elevation of finished ground surface  
35 along the front of the building. On a corner lot exceeding 20,000 square feet in  
36 area, the height of the building may be measured from either adjoining curb grade.  
37 For a lot extending through from street to street, the height may be measured from  
38 either curb grade.

39  
40 **Height of residential building in the R-60 and R-90 zones:** For any one-family  
41 detached residential building in the R-60 or R-90 zone, [[The]] building height is  
42 the vertical distance measured from [[to the highest point of a building from]] the  
43 average elevation of the finished grades along [[all sides]] the front of the building  
44 to either: (1) the highest point of roof surface regardless of roof type, or (2) the  
45 mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel  
46 roof. However, for the purposes of determining building height and story, at no  
47 point must the finished grade be higher than the pre-development grade. In all  
48 cases where this [[ordinance]] Chapter provides for height limitations by reference  
49 to a specified height and a specified number of stories, [[the intent is to limit]]  
50 building height is limited to the specified maximum footage and the number of  
51 stories within the specified maximum footage.

52 \* \* \*

53 **Pre-development grade:** The [[natural]] grade that existed [[prior to]] at the time  
54 of application for a building or demolition permit, or the grade necessary to

55 implement an approved subdivision plan. Determination of [[natural]] grade is by  
 56 examination of the contour lines on the property as they extend to the adjoining  
 57 properties and to the street.

58 **Sec.2. DIVISION 59-A-5 is amended as follows:**

59 \* \* \*

60 **59-A-5.44. Existing buildings and permits filed.**

61 Any one-family detached residential building existing in the R-60 or R-90 zone  
 62 constructed under a building permit issued before October 12, 2005, or under a  
 63 building permit application filed before October 12, 2005, that does not conform to  
 64 the building height limit of the applicable zone or the method of calculating  
 65 building height in effect after October 12, 2005, is a conforming building.  
 66 However, any alteration, repair, or reconstruction that would increase the height of  
 67 the building as it existed on October 12, 2005, must conform to the standards in  
 68 effect after October 12, 2005.

70 **Sec. 3. DIVISION 59-C-1 is amended as follows:**

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

72 \* \* \*

73 **59-C-1.32. Development Standards.**

	RE-2 <sup>1</sup>	RE-2C <sup>1</sup>	RE-1 <sup>1</sup>	R-200	R-150 <sup>3</sup>	R-90	R-60	R-40 <sup>2</sup>	R-4plex	RMH 200
<b>59-C-1.327. Maximum Building Height (in Feet).</b>										
Except for agricultural buildings, and except as provided in Division 59-B-1 the maximum height of any building shall be as follows:										
For any building in these zones:	50	50	50	50	50			<u>35</u>		50
For a main building in these zones:									35	
For a main building in the zones indicated with an [[thus]] (*):						<u>*</u>	<u>*</u>			

<p>The height must not exceed: <u>(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: [[except as follows]]</u></p>									
<p>(a) The height must not exceed 2 ½ stories<sup>5</sup> or <u>30 or 35 feet, depending on the method of measurement</u>, 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 than this requirement.</p>									
<p>(b) The height may be increased to either 3 stories or 40 feet if approved by the Planning Board through the site plan approval procedures of Division 59-D-3.</p>						*	*	*	

74

75           **Sec. 4. Effective date.** This ordinance becomes effective on October 12,  
 76 2005.

77

78 This is a correct copy of Council action.

79

80

81 \_\_\_\_\_

82 Linda M. Lauer, Clerk of the Council