

Ordinance No.: 17-34
Zoning Text Amendment No.: 12-18
Concerning: Exemptions – Pre-1928
Resubdivisions
Draft No. & Date: 2 – 4/1/13
Introduced: December 11, 2012
Public Hearing: January 22, 2013
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**

By: Councilmember Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Provide an exemption from current zoning standards for pre-1928 property that resubdivides

By amending the following section 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-5.4. “Resubdivision of lots, parts of lots, or parcels with dwellings.”

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 that text 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. 12-18 was introduced on December 11, 2012, sponsored by Councilmember Floreen. ZTA 12-18 concerns the **resubdivision** of pre-1928 lots. The current code does not allow the resubdivision of parts of lots with other land unless the resulting lot is at least 5,000 square feet. ZTA 12-18 would allow such subdivisions.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved with amendments. 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 January 22, 2013 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 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. 12-18 at a worksession held on April 9, 2013 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee. The Council 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. 12-18 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-5.4. Resubdivision of lots, parts of lots, or parcels ~~[[with dwellings]]~~.**

6 (a) Any two or more tracts of land created by deed or plat before June 1, 1958
7 may be consolidated by record plat into one building lot, even if the new lot
8 does not meet the width and ~~[[size requirements]]~~ area provisions of the
9 underlying zone, if:

10 (1) the tracts of land are under common ownership;

11 (2) a habitable one-family dwelling located on the tracts~~[[,]]~~ before July
12 20, 2009~~[[,]]~~ crossed a property line created by deed or plat
13 documented by a professionally certified house location plan,
14 previously issued demolition permit, or similar substantial evidence;
15 ~~[[and]]~~

16 (3) all the tracts of land on which the dwelling is, or was, located are
17 included in the newly created lot; and

18 (4) if abutting vacant lots were in common ownership on November 8,
19 2012 or any time thereafter and the original lots were recorded in the
20 original Maryland-Washington Metropolitan District before March
21 16, 1928, any such vacant lots under common ownership must be
22 included in the newly created lot.

23 (b) Any tract of land created by deed or plat before March 16, 1928 and
24 containing a legally constructed one-family dwelling may be platted into one
25 building lot. Such a tract of land ~~[[may]]~~ must be consolidated by the record
26 plat with an ~~[[adjacent]]~~ abutting vacant tract of ~~[[commonly owned]]~~ land
27 under common ownership on November 8, 2012, or any time thereafter, into

28 a larger building lot, even if the resulting lot still does not meet the width
29 and [[size requirements]] area provisions of [[any]] the applicable zone.

30 (c) Any tract of land created by deed or plat before March 16, 1928 that fails to
31 meet the width or area provisions of the 1928 Ordinance and is abutting a
32 tract of land under common ownership on November 8, 2012 or any time
33 thereafter, must be platted into one building lot, even if the resulting lot still
34 does not meet the width and area provisions of the applicable zone.

35 (d) The dwelling on any lot created under [subsection] subsections (a), [[and]]
36 (b), or (c) may be altered, renovated, enlarged, or replaced by a new
37 dwelling under the zoning development standards in effect when the
38 application is approved, even if the zoning [[standards]] provisions for the
39 lot's width and [[size]] [standards] area are not satisfied.

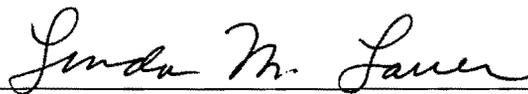
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41 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
42 date of Council adoption.

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44 This is a correct copy of Council action.

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47 Linda M. Lauer, Clerk of the Council