

Zoning Text Amendment (ZTA) No. 12-16, One-Family Dwelling - Pre-1928 Lots



Gregory Russ, Planner Coordinator, Functional Planning & Policy Division, gregory.russ@montgomeryplanning.org, 301-495-2174



Mary Dolan, Chief, Functional Planning & Policy Division, mary.dolan@montgomeryplanning.org 301-495-4552

Completed: 10/18/12

Description

ZTA 12-16 amends the pre-1928 provisions of Sections 59-B-5.1 and 59-B-5.3 of the Zoning Ordinance. Specifically, the ZTA allows the construction of a one-family dwelling located on any size lot recorded before 1928 and allows the reconstruction of any one-family dwelling located on any size lot recorded before 1928.

Summary/Analysis

Staff recommends that the Planning Board transmit the following comments to the County Council concerning ZTA 12-16:

- **Staff recommends that the phrase on lines 15 and 27 be modified from “minimum lot size” to “minimum lot area” to adhere to consistent language usage of the Ordinance.**
- **ZTA 12-16 could potentially allow development of a number of properties with less than the minimum lot area and lot width required for any residential zone including, redevelopment of properties that currently have one dwelling on more than one small lot to build multiple dwellings.**

Currently, any lot that meets the following criteria is considered a buildable lot for a one-family dwelling only, even though the lot may have less than the minimum area for any residential zone. This includes lots:

- recorded by subdivision plat prior to June 1, 1958, or
- recorded by deed prior to June 1, 1958 that do not include parts of previously platted properties, and
- buildable lots under the law in effect immediately before June 1, 1958.

Any such lot may be developed under the zoning development standards in effect when the lot was recorded although there are several exceptions to this allowance. One exception requires lots recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District to meet the development standards in the 1928 Zoning Ordinance. These standards include a requirement that a one-family residential lot have a minimum area of five thousand (5,000) square feet and a minimum width of fifty (50) feet at the front building line. The minimum side yard was established at 7 feet, except

when a lot or parcel of land has a width of forty (40) feet or less and is included in a plat of record at the time of the passage of the 1928 Ordinance, the minimum side yard setback is five feet.

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 area required by the 1928 Ordinance. ZTA 12-16 would establish that a one-family dwelling can be constructed on a lot smaller than 5,000 square feet, and existing houses on such lots can be reconstructed. All other dimensional and setback requirements would apply.

ZTA Language

Under lines 13-16 and 24-27 of the ZTA the following phrase was added to Sections 59-B-5.1 and 59-B-5.3 to accomplish the intent:

however, compliance with the minimum lot size for a one-family dwelling is not required;

Staff recommends that the phrase “minimum lot size” be amended to state “minimum lot area” to adhere to consistent language usage of the Ordinance.

GIS Lot Size Information

Generally, there are thousands of lots presently zoned R-60 or R-90 (the current zoning for most small lots in the County) that were platted prior to 1928. To obtain specific details (number of lots, lot widths, etc.) would entail researching each plat book (100+ plats per book) and each plat (dozens to hundreds of lots per plat), since there is currently no GIS information based on properties platted prior to 1928 or based on the width of street frontage.

GIS provided information on the number of R-60 and R-90 properties that are less than 5,000 square feet. Currently there are approximately 15,910 (5.93% of total number of R-60 and R-90 properties) R-60 and R-90 lots less than 5,000 square feet in the County (There are a total of 268,276 R-60 and R-90 lots in the County). Again, we currently have no detailed information on the street frontage widths although generally, we know that thousands of lots in the down-county areas that are zoned R-60 and R-90 were originally recorded with widths between 20 and 40 feet. GIS data is not available to specifically identify how many of these small lots were recorded prior to 1928, but based on staff’s experience researching lots over the years, most of them were.

Effect of the Proposed ZTA

The existing provisions of 59-B-5.1 and 59-B-5.3 permit development on lots legally recorded by deed or subdivision plat before June 1, 1958, and after March 16, 1928, that may have less than the minimum area for any residential zone provided they meet the other development standards of the zone in effect when the lot was recorded. The existing provisions of subsections 59-B-5.1(a) and 59-B-5.3(a) override the exception from the minimum lot area requirement in these sections and require lots recorded by deed or subdivision plat before March 16, 1928, to have at least 5,000 square feet of lot area. ZTA 12-16 grants the minimum lot area exception to these lots. A significant number of the R-60 and R-90 lots that are noted above were recorded prior to March 16, 1928, so ZTA 12-16 would permit development or redevelopment of a number of properties with less than the minimum lot area and lot width required for the applicable zone that currently do not have that right. Redevelopment could include building

multiple dwellings on small lots that currently contain one dwelling built over the lot lines of two or more small lots. There are many neighborhoods where the established character results from dwellings being located on more than one small lot. In those neighborhoods in particular, redevelopment to create multiple dwellings could be an undesirable consequence of the proposed ZTA.

GR/MD/am

ATTACHMENTS

1. ZTA 12-16 as modified by staff

ATTACHMENT 1

Zoning Text Amendment No.: 12-16
Concerning: One-Family Dwelling -
Pre-1928 Lots

Draft No. & Date: 1- 9/19/12
Introduced: September 25, 2012
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**

By: Councilmember Floreen

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.*

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 lot recorded before March 16, 1928[,] in the original Maryland-
14 Washington Metropolitan District must meet the development standards in
15 the 1928 Zoning Ordinance; however, compliance with the minimum lot
16 [[size]] area for a one-family dwelling is not required;

17 * * *

18 **Sec. 59-B-5.3. One-family dwelling.**

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

- 24 (a) a one-family dwelling on a lot recorded before March 16, 1928[,] in the
25 original Maryland-Washington Metropolitan District[,] must meet the
26 development standards in the 1928 Zoning Ordinance; however, compliance
27 with the minimum lot [[size]] area for a one-family dwelling is not required;

28 * * *

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

31

32 This is a correct copy of Council action.

33

34 _____

35 Linda M. Lauer, Clerk of the Council