



**Zoning Text Amendment (ZTA) No. 16-07, Exemptions – Pre-1958 Lots**

---



Gregory Russ, Planner Coordinator, FP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174



Pam Dunn, Chief, FP&P, [pamela.dunn@montgomeryplanning.org](mailto:pamela.dunn@montgomeryplanning.org), 301-650-5649

**Completed: 07/21/16**

---

**Description**

Zoning Text Amendment (ZTA) No. 16-07 would allow the consolidation of lots, parts of lots, and parcels created before 1958 in a manner consistent with the provisions of the Zoning Ordinance in place prior to October 30, 2014.

**Summary**

**Staff recommends approval of ZTA No. 16-07 with modifications to also include exemption provisions for pre-1958 parcels in the RDT zone (now AR zone) and permit them to be built upon without having to meet the minimum area requirements of any zone.**

**Background/Analysis**

Zoning Text Amendment (ZTA) 16-07, would reinstitute provisions for pre-1958 lots and parts of lots that existed before the Zoning Ordinance Rewrite adopted in 2014. It has been the Council's policy to allow the reconstruction of existing dwellings despite any irregularities in the lot or parcel on which it is located. In Chapter 59, Section 7.7.1. Exemptions, provisions were created to permit construction and reconstruction of new and existing structures in varying circumstances. However, when combined with provisions of the Subdivision Regulations for platting of land, the intent of some of the provisions cannot be met.

Subsection 7.7.1.A.1 permits reconstruction of existing legal structures on recorded lots and pre-1958 unplatted parcels if the floor area, height and footprint of the structure are not increased, or as otherwise limited by subsections B, C, and D<sup>1</sup>. ZTA 16-07 clarifies that pre-1958 parts of lots are included in the exemption for issuance of a building permit for a detached house, without regard to the street frontage and lot size requirements of its current zoning (Lines 10-13), and permits reconstruction on

---

<sup>1</sup> Note that reconstruction in this section does not include rebuilding to the setback limits of the underlying zoning.

pre-1958 parcels that do not meet lot width at the front building line as well as the front lot line (Line 19). The previous zoning code contained exceptions that provided for these differences, but they were not all retained in the new code. Therefore, to meet the intent of the new code's provisions for resubdivision, the proposed ZTA puts back the previous exemptions for the Residential and Rural Residential zones. However, the previous code also included these exemption provisions for pre-1958 parcels in all zones, including the RDT zone. Specifically, Section 59-B-5.1 of the old Zoning Code permitted any lot recorded by deed before June 1, 1958 to have a single family detached dwelling without having to meet the area requirements of any zone. Staff believes that this provision should also apply to the AR zone. **Staff has modified Line 9 of the ZTA to reflect this change.**

Rebuilding existing dwellings beyond the limits of reconstruction (under Section 7.7.1) is only permitted if the structure is located on a platted lot. Some individuals may want to plat pre-1958 parcels and parts of lots. Re-platting is required to consolidate existing commonly owned lots to prevent new structures from crossing lot lines and to meet the requirements to consolidate commonly owned land under Subsection 7.7.1.D.3.b. All lots created under the Subdivision Regulations must meet current zoning standards, but many pre 1958 parcels and parts of lots no longer qualify for re-platting because they were created at a time when lot width and area requirements were smaller. Before October 30,2014, the Zoning Ordinance contained provisions that allowed these tracts to be platted. The proposed ZTA would allow re-platting in the same manner as the old zoning code under Lines 42-60. However, the proposed language at lines 61-66 that would permit application of the side and rear yard setbacks of the pre-1958 zoning for the dwelling on the re-platted properties is language in the old zoning code that applied to individual existing pre-1958 recorded lots, but not when two pre-1958 lots or parcels were consolidated. For consolidation of lots or parcels, you were required to use the setbacks of the existing zoning. The effect of this change is that pre-1928 lots or parcels could be consolidated and used to build a new house with 5-foot side yard setbacks instead of 8-foot setbacks (current zoning), and two lots or parcels created between 1928 and 1958 could be consolidated to build a new house with 7-foot side yards instead of 8-foot setbacks. If the intent is to mimic the requirements of the old zoning code, then lines 61-66 must be modified to reflect this intent. **Staff has included recommended changes to this section in case the County Council intends to establish consistency with the language of the old Zoning Code.**

#### **Attachments**

1. ZTA No. 16-07 as modified by staff

# ATTACHMENT 1

Zoning Text Amendment No.: 16-07  
Concerning: Exemptions – Pre-1958 Lots  
Draft No. & Date: 1 – 6/15/16  
Introduced: June 21, 2016  
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**

---

Lead Sponsor: Council President Floreen

---

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

- allow the consolidation of lots, parts of lots, and parcels created before 1958; and generally amend the provisions for residential lot and parcel exemptions.

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

DIVISION 59-7.7. “Exemptions and Nonconformities”  
Section 7.7.1. “Exemptions”

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by introduced Subdivision Regulation Amendment.</i>
[Single boldface brackets]	<i>Deleted from existing law by introduced Subdivision Regulation Amendment.</i>
<u>Double underlining</u>	<i>Added to the Subdivision Regulation Amendment by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the Subdivision Regulation Amendment by amendment.</i>
* * *	<i>Existing law unaffected by Subdivision Regulation Amendment.</i>

## 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 59-7.7 is amended as follows:**

2           **Division 7.7. Exemptions and Nonconformities**

3           **Section 7.7.1. Exemptions**

4           \*       \*       \*

5           **D. Residential Lots and Parcels**

6           **1. Residential Lot**

7           Unless adjoining lots have merged by virtue of ownership and zoning  
8           requirements, DPS may issue a building permit for a detached house  
9           on any Agricultural, Residential or Rural Residential zoned lot or  
10          parcel identified [either] on a plat recorded before October 30, 2014, a  
11          part of lot recorded before June 1, 1958, or a deed recorded before  
12          June 1, 1958, without regard to the street frontage and lot size  
13          requirements of its zoning, except as provided in Section 7.7.1.D.3.b.

14          **2. Pre-1958 Parcel**

15          A detached house on a platted lot, parcel, or part of a previously  
16          platted lot that has not changed in size or shape since June 1, 1958,  
17          exclusive of changes due to public acquisition, may be:

- 18          a.       constructed under its current zoning without regard to the  
19                minimum lot width at the front lot line and front building line;  
20          b.       reconstructed either on its current footprint and up to its current  
21                maximum building height; or  
22          c.       constructed or reconstructed in a manner that satisfies the  
23                maximum building height, lot coverage, and established  
24                building line of its zone when the building permit is submitted  
25                and the side yard and rear setback required by its pre-1958  
26                zoning in effect when the lot, parcel, or part of a lot was first  
27                created.

28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54

**3. Pre-1928 Lot**

- a. In addition to the provisions of Section 7.7.1.D.1, a new or reconstructed detached house on any lot recorded before 1928 must satisfy the front, rear, and side yard setbacks of the 1928 Zoning Ordinance; however, a new building must satisfy the established building line requirements under Section 4.4.1.A if applicable.
- b. Before DPS may issue a building permit for a new detached house on a lot less than 5,000 square feet in land area that was recorded before 1928 and adjoins vacant land in common ownership any time since November 8, 2012, the lot must be subdivided with such adjoining property without regard to the minimum width and area requirements of the applicable zone.

\* \* \*

**10. Subdivision of lots, parts of lots, or parcels.**

- a. Any two or more tracts of land created by deed or plat before June 1, 1958 may be consolidated by record plat into one buildable lot without regard to the minimum width and area requirements of the applicable zone, if:
  - i. the tracts of land are under common ownership;
  - ii. a habitable detached house located on the tracts before July 20, 2009 crossed a property line created by deed or plat documented by a professionally certified house location plan, previously issued demolition permit, or similar evidence;
  - iii. all the tracts of land on which the dwelling is, or was, located are included in the newly created lot; and

55                    iv. if abutting vacant lots were in common ownership on  
56                    November 8, 2012 or any time thereafter and the original  
57                    lots were recorded in the original Maryland-Washington  
58                    Metropolitan District before March 16, 1928, any such  
59                    vacant lots under common ownership must be included in  
60                    the newly created lot.

61                    b. The dwelling on any lot created under this Section may be  
62                    constructed or reconstructed in a manner that satisfies the  
63                    [[maximum building height, lot coverage, and established  
64                    building line of its zone]] development standards in effect when  
65                    the building permit is issued [[and the side yard and rear  
66                    setbacks required by the zoning in effect when the lot, parcel, or  
67                    part of lot was originally recorded]].

68                    \*            \*            \*

69                    **Sec. 2.** Effective Date. This amendment takes effect immediately upon  
70 approval.

71  
72 This is a correct copy of Council action.

73  
74 \_\_\_\_\_  
75 Linda M. Lauer, Clerk of the Council