



Zoning Text Amendment (ZTA) No. 16-17, Height Encroachments – Townhouses

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Completed: 01/5/17

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**Description**

ZTA No. 16-17 would revise the allowable height encroachments for townhouses located in the CRT, CR, Employment and Industrial zones. Currently, a number of structures (rooftop decks, patios, parapet walls, etc.,) may exceed the established height limit by up to 8 feet for properties located outside of an airport approach area. ZTA 16-17 would eliminate these height encroachments for townhouses in the CRT, CR, Employment and Industrial zones.

**Summary**

**Staff recommends denial of ZTA 16-17 to eliminate the height encroachment provisions for townhouses in the CRT, CR, and Employment Zones. Staff believes that the current height encroachment exemptions are consistent with the anticipated character of the C/R and Employment zones.**

**Background/Analysis**

ZTA 16-17 would include structures on townhouse rooftops in calculating the height of a townhouse building. Currently, such structures as rooftop decks, patios, shade structures and parapet walls are excluded from building height measurements (up to 8 feet) for all building types. ZTA 16-17 would include such structures in the calculation of building height for townhouses. In the opinion of the sponsor, these structures should be included in the height calculation of a townhouse as they visually add to the perceived height of the building and increase shading on other buildings.

Recently, the issue of townhouse height was brought up during the public testimony for the Westbard Master Plan. The testimony noted two concerns: 1) a parapet wall has a perception of exceeding the height allowed in the townhouse (now TLD/TMD/THD) zones; and 2) the creation of outdoor living space that can accompany parapet walls on townhouse rooftops may affect the privacy of adjacent single-family homes.

Building Types in the CRT, CR, Employment and Industrial Zones

A townhouse building type is allowed in all CRT, CR and Employment zones but not the Industrial zones. Also allowed in these zones are the detached house, duplex, apartment, multi-use and general building types. Under ZTA 16-17, all building types, except a townhouse, would be allowed to exceed the established height limit by up to 8 feet for the specified rooftop structures.

#### Intent of the C/R and Employment Zones

The CRN, CRT, and CR zones permit a mix of residential and nonresidential uses at varying densities and heights. The intent of the CRN, CRT, and CR zones (as well as the Employment zones) includes allowing a flexible mix of uses, densities, and building heights appropriate to various settings to ensure compatible relationships with adjoining neighborhoods. Staff does not believe that the proposed text amendment is consistent with the intent of these zones. This is especially the case given that all building types allowed in the zones, except townhouses, would be allowed to exceed the established height limit for specified structures. Where compatibility is a potential concern, any development with a height greater than 40 feet or that is 10,000 square feet or more in size (approximately 5-8 townhouses), and is adjacent to an Agricultural, Rural Residential, or Residential zone, will require approval of a site plan. In the C/R and Employment zones where apartment buildings, multi-use and general building types are permitted in addition to townhouses, staff believes that the current height encroachment exemptions are consistent with the anticipated character and intent of these zones. Staff recommends denial of the ZTA as introduced.

#### **Attachments**

1. ZTA No. 16-17 as introduced

Zoning Text Amendment No.: 16-17  
Concerning: Height Encroachments –  
Townhouses  
Draft No. & Date: 1 – 10/12/16  
Introduced: November 29, 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**

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Lead Sponsor: Councilmember Elrich

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

- revise the allowable height encroachments for townhouses; and
- generally amend the provisions for height encroachments.

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

Division 4.1.           “Rules for All Zones”  
Section 4.1.7.       “Measurement and Exceptions”

**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:*

**Sec. 1. DIVISION 59-4.1 is amended as follows:**

**Division 4.1. Rules for All Zones**

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**Section 4.1.7. Measurement and Exceptions**

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**C. Height**

\* \* \*

**3. Height Encroachments**

Any height encroachment not specifically listed is prohibited.

- a. The following roof structures may occupy a maximum of 25% of the roof area: a spire, belfry, cupola, dome not intended for human occupancy, chimney, flue or vent stack, flagpole, monument, water tank, television antenna or aerial, air conditioning unit, or similar structure or mechanical appurtenance (not including a rooftop renewable energy system). A larger area may be approved by the Planning Board under optional method development in the Commercial/Residential and Employment zones.
- b. The maximum height does not apply to solar panels and any roof structure listed in Section 4.1.7.C.3.a, except that in the TLD, TMD, THD, and R-30 zones, an air conditioning unit or similar structure or mechanical appurtenance may exceed the established height limit by a maximum of 8 feet.
- c. In the CRT, CR, Employment, and Industrial zones, except on a townhouse or on any structure located within an airport approach area, the following may exceed the established height

- 27 limit by up to 8 feet[, except when located within an airport  
28 approach area]:
- 29 i. rooftop deck, patio, shade structure;
  - 30 ii. rooftop garden, landscaping;
  - 31 iii. parapet wall; and
  - 32 iv. [rooftop rainwater collection or harvesting system; and
  - 33 v.] rooftop renewable energy system, such as a [solar panel  
34 or] wind turbine.
- 35 d. An accessory structure located on the roof must not be used for  
36 any purpose other than a use incidental to the principal use of  
37 the building.
- 38 e. A public building may be a maximum of 120 feet; but the  
39 minimum front, rear, and side setbacks must be increased 1 foot  
40 for each foot above the maximum height allowed in the zone.

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

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45 This is a correct copy of Council action.

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48 Linda M. Lauer, Clerk of the Council