

CORRECTED

Ordinance No: 16-31

Zoning Text Amendment No: 08-11

Concerning: Standards – Residential Zones

Draft No. & Date: 6 – 12/09/08

Introduced: May 6, 2008

Public Hearing: June 17, 2008

Adopted: December 9, 2008

Effective: April 28, 2009

**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 Berliner, Andrews, Elrich, and Trachtenberg

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the provisions concerning an established building line;
- require regulations to implement the provision concerning a sloping lot;
- amend the maximum height for certain lots in the R-200 zone;
- amend the maximum building coverage for certain lots in certain one-family residential zones; and
- generally amend the development standards for one-family residential 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-5.33 “Established building line”
- Section 59-A-5.41 “Additional stories on sloping lots”
- DIVISION 59-C-1 “RESIDENTIAL ZONES, ONE-FAMILY”
- Section 59-C-1.32 “Development standards”

CLERK’S NOTE: Typographical error corrected on line 232 to read, “filed after April 28, 2009”

OPINION

Zoning Text Amendment No. 08-11 was introduced on May 6, 2008. ZTA 08-11 would amend the Zoning Ordinance to:

- lower the maximum height for certain lots in the R-200 zone;
- reduce the maximum building coverage for certain lots in certain one-family residential zones;

- 47 - amend provisions concerning an established building line by specifying the
 48 buildings to be included, the buildings to be excluded, and an alternative method
 49 to determine the setback required; and
 50 - require regulations to implement the provisions for any sloping lot.
 51

52 Planning Staff supported ZTA 08-11 with minor editorial changes to the established building line
 53 and the sloping lots provisions. Planning Staff did not recommend any changes to the building
 54 coverage limits or the grandfathering provisions of ZTA 08-11 as introduced.
 55

56 The Planning Board agreed that there is a need to address site design and compatibility issues in
 57 smaller lot zones; however, the Board was split (2-2) on supporting ZTA 08-11. In particular,
 58 some Board members thought that existing houses should have the ability to rebuild under
 59 current development standards. Board members who did not endorse ZTA 08-11 thought that
 60 there are too many unanswered questions concerning the impact of the legislation. The Board
 61 members in support of ZTA 08-11 believed that the ZTA would improve the compatibility of
 62 infill structures in many existing small lot neighborhoods.
 63

64 The Executive supported the concepts reflected in ZTA 08-11 and the Agreement in Principle
 65 reached by the Infill Development Task Force. The Executive also believed that some particular
 66 problems raised in the public hearing warranted the Council's attention. The Montgomery
 67 County Planning Board, in its report to the Council, recommended that the text amendment be
 68 approved.
 69

70 The Council held a public hearing on ZTA 08-11 on June 17, 2008. There was a significant
 71 amount of written testimony, both for and against the ZTA. The Infill Development Task force
 72 submitted "an agreement in principle" that recommended a number of amendments to the ZTA
 73 as introduced. The text amendment was referred to the Planning, Housing, and Economic
 74 Development Committee for review and recommendation.
 75

76 The Planning, Housing, and Economic Development Committee held a worksession to review
 77 the amendment on July 21, October 13, November 10, November 17, November 24, and
 78 November 25, 2008. The Committee requested and received data from the Planning Department
 79 and the Department of Permitting Services to examine the quantitative and geographic effects of
 80 ZTA 08-11 and alternatives. On November 25, 2008 the Committee recommended approval of
 81 ZTA 08-11, with amendments to define the lots that would be subject to lower building coverage
 82 limits. In particular, the Committee recommended the following definition of infill development:
 83

84 Any building or construction of a one-family dwelling on a lot in the R-60,
 85 R-90, or R-200 zone if:

86 (a) the lot was created:

87 (1) by a plat recorded before January 1, 1978; or

88 (2) by a plat of resubdivision that created fewer than 6 lots on a lot
 89 previously created by a plat recorded before January 1, 1978;

90 (b) the lot is less than 20,000 square feet in area; and

91 (c) the construction proposed is more than one story, excluding any
 92 basement, and is:

93 (1) a new one-family dwelling;

- 94 (2) the demolition and reconstruction of more than 50 percent of the
95 floor area of the dwelling existing on {effective date}; or
96 (3) the addition of more than 50 percent of the floor area of the
97 dwelling existing on {effective date}.

98
99 The primary problem addressed by ZTA 08-11 was described to the Committee as newly
100 constructed homes in established neighborhoods that loom over their neighbors and invade their
101 privacy. The longer-term residents believe that oversized homes are out of character with their
102 community. The Committee's recommended amendments would apply the limitation on
103 building coverage to older communities, on smaller lots, and in appropriate zones. The
104 Committee recommended retaining the current building coverage limits for one-story homes,
105 one-story additions, and other additions related to the scale of the existing house. The approach
106 recommended by the Committee defined infill development as construction that takes place after
107 the effective date of the legislation. The Committee also recommended assuring that, in all
108 instances, larger lots were allowed a larger building footprint than smaller lots, and excluding
109 certain elements from the new coverage limits (any bay window, chimney, porch, or a detached
110 garage, if the garage is less than 241 square feet of floor area and less than 20 feet in height).

111
112 The Committee further recommended:

- 113
114 1) adopting the provision to reduce allowable building height in the R-200 zone as
115 introduced in ZTA 08-11;
116 2) amending the established building line provision to provide more flexibility to
117 conform to neighboring setbacks;
118 3) requiring the propagation of regulations to implement the sloping lot provisions of
119 ZTA 08-11 by the end of November 2009; and
120 4) amending the effective date to 140 days after the Council's adoption.

121
122 The District Council reviewed Zoning Text Amendment No. 08-11 at a worksession held on
123 December 9, 2008, and agreed with the recommendations of the Planning, Housing, and
124 Economic Development Committee, except as follows:

- 125
126 1) the Council applied the limited building coverage to lots smaller than 25,000 square
127 feet;
128 2) a one-story basement was excluded from the definition of a one-story house only if
129 average elevation in the front of the house was higher than the average elevation
130 along the rear of the house; and
131 3) the first 240 square feet of any garage less than 350 square feet will be excluded from
132 the calculation of building coverage.

133
134 For these reasons, and because to approve this amendment will assist in the coordinated,
135 comprehensive, adjusted, and systematic development of the Maryland-Washington Regional
136 District located in Montgomery County, Zoning Text Amendment No. 08-11 will be approved as
137 amended.

138
139
140
141

ORDINANCE

142
143
144
145
146
147

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-A-2 is amended as follows:

148
149

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION

150

Sec. 59-A-2.1. Definitions.

151

* * *

152

Infill development: Any building or construction after April 28, 2009 of a one-family dwelling on a lot in the R-60, R-90, or R-200 zone if:

153

154

(a) the lot was created:

155

(1) by a plat recorded before January 1, 1978; or

156

(2) by a plat of resubdivision that created fewer than 6 lots from a lot previously created by a plat recorded before January 1, 1978;

157

158

(b) the lot is less than 25,000 square feet in area; and

159

(c) the construction proposed is more than one story, excluding any basement if the average elevation of the finished grade is higher along the front of the dwelling than the average elevation along the rear of the dwelling, and is:

160

161

162

(1) a new one-family dwelling;

163

(2) the demolition and reconstruction of more than 50 percent of the floor area of the dwelling existing on April 28, 2009; or

164

165

(3) the addition of more than 50 percent of the floor area of the dwelling existing on April 28, 2009.

166

167

* * *

168

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

169

Division 59-A-5. Compliance Required.

170

* * *

171

59-A-5.33. Established building line.

- 172 (a) The established building line, as defined in Section 59-A-2.1, applies only to
173 new buildings in the R-60, R-90, R-150, and R-200 zones. The established
174 building line does not apply to an alteration or addition to an existing
175 building.
- 176 (b) The two or more one-family detached residential buildings considered in
177 determining the established building line must all be:
- 178 (1) within 300 feet of the side property line of the proposed construction
179 site measured along the street frontage;
 - 180 (2) along the same side of the street;
 - 181 (3) between intersecting streets or to the point where public thoroughfare
182 is denied;
 - 183 (4) in existence or approved by a building permit when the building
184 permit application on the subject property is filed;
 - 185 (5) legally constructed; and
 - 186 (6) not on a through lot if the building on the through lot fronts on a street
187 other than the street fronting the subject property.
- 188 (c) The established building line is the minimum setback for the zone, unless
189 there are at least two buildings as described in subsection (b) and more than
190 50 percent of the buildings described in subsection (b) are set back greater
191 than the minimum, in which case the average setback of all the buildings
192 described in subsection (b), excluding those buildings:
- 193 (1) in the R-200 zone that are or were ever served by well or septic;
 - 194 (2) on the subject property;
 - 195 (3) in a different zone than the subject property;
 - 196 (4) on a through lot that fronts on a street different than the subject
197 property;
 - 198 (5) located on any pipestem, wedge-shaped, or flag-shaped lot; or

199 (6) approved by permit for demolition, except if a building permit was
200 also approved with the same setback,
201 is the established building line, unless the applicant chooses to calculate the
202 setback as the average setback of the two adjoining lots or the applicant
203 chooses to use the front setback of the existing one-family building that was
204 established before demolition, excluding any approved variance, if the
205 existing building meets the minimum setback of the zone. All calculations
206 must be based on a survey that is signed and sealed by a licensed engineer or
207 surveyor. Any building excluded from the established building line
208 restriction must comply with the minimum setback requirement of the zone.
209 (d) Corner lots have two front yards and are subject to established building line
210 standards on both streets. At the option of the applicant, a corner lot may
211 use front setbacks of the adjoining buildings on both sides of the corner lot.

212 * * *

213 **59-A-5.41. Additional stories on sloping lot.**

214 On any sloping lot, stories in addition to the number permitted in the zone in which
215 the lot is located must be permitted on the downhill side of any building erected on
216 the lot, but the building height limit must not otherwise be increased above that
217 specified for the zone. This section must be implemented by an executive
218 regulation adopted under method 2 of Section 2A-15.

219 * * *

220

221

222

223

224

225

256 **Sec. 4. Effective date.** This ordinance takes effect 140 days after the date of
257 Council adoption.

258 **Sec. 5. Regulation Required.** The regulation required under §59-A-5.41 must be
259 submitted by the Department of Permitting Services for Council's approval before
260 November 27, 2009.

261 **Sec.6. Status Report Required.** The Department of Permitting Services is
262 required, before June 25, 2010, to report to the Council on their one year
263 experience implementing this Zoning Text Amendment, including their
264 implementation of §59-A-5.41.

265

266 This is a correct copy of Council action.

267

268

269 _____
Linda M. Lauer, Clerk of the Council