

Ordinance No: 18-16  
Zoning Text Amendment No.: 16-07  
Concerning: Exemptions – Pre-1958 Lots  
Draft No. & Date: 2 – 9/12/16  
Introduced: June 21, 2016  
Public Hearing: August 2, 2016  
Adopted: September 20, 2016  
Effective: September 20, 2016

**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: Council President Floreen

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**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>

## OPINION

Zoning Text Amendment No. 16-07 was introduced on June 21, 2016 to reinstitute provisions for pre-1958 lots and parts of lots that existed before the Zoning Ordinance Rewrite. Council President Floreen is the lead sponsor of ZTA 16-07.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved. Planning Staff recommended approval with an amendment to parallel the text in the Zoning Ordinance in effect on October 29, 2014.

The Council conducted a public hearing on August 2, 2016. The Planning Board and Planning Staff recommended an amendment to conform the ZTA to the Zoning Ordinance effective on October 29, 2014. The ZTA as introduced would permit an application for a building with the side and rear yard setbacks of the pre-1958 zoning on the re-platted properties. This requirement is 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. The applicant for a building permit for the consolidation of land was required to use the setbacks of the existing zoning. The effect of this change would be that the owner of a consolidated pre-1928 lot or parcel could 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. The Planning Board and Planning Staff also recommended allowing ZTA 16-07 to apply to Agricultural Reserve zoned property.

The District Council reviewed Zoning Text Amendment No. 16-07 at a worksession held after the public hearing on August 2, 2016. The Council referred the matter to the Planning, Housing, and Economic Development Committee.

On September 12, 2016, the Planning, Housing, and Economic Development Committee agreed with the recommendations by the Planning Board to approve ZTA 16-07 with amendments. Those amendments would require new buildings to conform to the zoning standards required by the property's current zoning. The amendments would also allow agriculturally zoned property to use the provisions of ZTA 16-07.

On September 20, 2016, the Council agreed with the recommendation of the Committee.

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. 16-07 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:*

**Sec. 1. Division 59-7.7 is amended as follows:**

**Division 7.7. Exemptions and Nonconformities**

**Section 7.7.1. Exemptions**

\* \* \*

**D. Residential Lots and Parcels**

**1. Residential Lot**

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

**2. Pre-1958 Parcel**

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

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

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**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

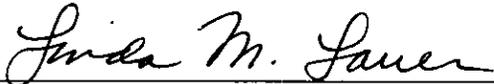
55                    iv. if abutting vacant lots were in common ownership on  
56                    November 8, 2012 or any time thereafter and the original  
57                    lots were recorded in the original Maryland-Washington  
58                    Metropolitan District before March 16, 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.

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72 This is a correct copy of Council action.

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75 Linda M. Lauer, Clerk of the Council