



# Legal Views

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*A Resource from Montgomery County's Office of the County Attorney*

November 2009

Isiah Leggett, County Executive

Leon Rodriguez, County Attorney

## COOP and You!

**Silvia C. Kinch**

With the resurgence of the H1N1 virus this fall, ensuring that your office is able to continue its core functions is essential. Ensuring function-ability is where a Continuity of Operations Plan, or COOP, can help you.

COOP, initially a creation of the federal government, is a series of pro-active plans that allow government to continue to operate in the event of a catastrophic event. A catastrophic event need not be the destruction of a building, or some other horrific event – it could simply be a reduction in the amount of available employees due to illness or weather events, such as a blizzard or tornado. COOP is a trend that has grown beyond the federal government. Most state and local governments have adopted COOP programs and it is a good idea for any business or office.

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## Changes to the Established Building Line

**Barbara Jay**

There was a time, not too long ago, when a property owner seeking to tear down an existing house and rebuild on the newly-cleared lot may have been prevented from building in line with the foundation of the old front wall by what was called the “established building line” calculation, or “EBL.” With the enactment of Zoning Text Amendment 08-11 (Ordinance 16-31), the Zoning Ordinance has been changed to allow new construction to adhere to the setback of the (previously) existing house, as long as that setback meets the minimum for the zone and did not result from the grant of a variance.

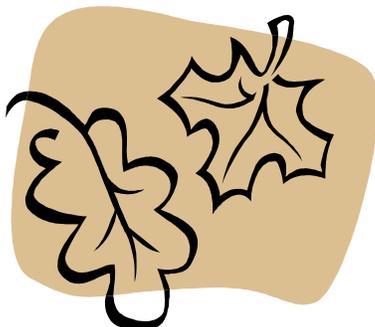
The established building line is applicable to new construction in the R-60, R-90, R-150 and R-200 zones. Zoning Text Amendment 08-11, which took effect April 28, 2009, amended Section 59-A-5.33 of the Zoning Ordinance to provide an applicant for a building permit with three different ways in which to calculate the EBL. The first method is largely the same as that utilized prior to the enactment of the ZTA, and involves averaging the front setbacks of qualifying properties located within 300 feet on either side of the subject property. The Ordinance details the properties which may be included for the purposes of this calculation. The second method, available at the election of the permit applicant, is essentially a scaled down version of the first, and involves averaging the front setbacks of the two properties adjoining the subject property. The final method is simply to use the front setback of the existing building if that setback exceeds the minimum for the zone and did not result from a variance. Since corner lots are subject to the EBL on two sides, the new law also includes a

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If you are interested in COOP, and could use some assistance in formulating your plan, several websites provide information to businesses on how to plan for emergencies. FEMA’s emergency planning website for businesses is helpful and is located at:

<http://www.ready.gov/business/>.

Given our current influenza pandemic, here are a few things to keep in mind while you draft your COOP:

- What are the core functions of your business, and what can be set aside until you are back to 100% capacity?
- Who are your essential personnel? Do they know they are essential personnel? What will you do if they are sick and cannot come to work?
- How will you deal with a sick employee who comes to work and refuses to go home?
- Where is your essential information stored? If it’s on a computer or stored in your office, what will you do if you can’t enter the building or the power is off?

These are just a few of the many questions that you may need to answer while you are drafting your COOP. Once you have completed your COOP, make sure to distribute it

to your essential personnel and ensure that your employees know what, if any, role they will have in the event that you need to utilize your COOP. Also, take a copy home and keep it in a safe place so that, in the event of the unthinkable, you don’t have to worry about making it back to your office to dig out your COOP. ❖

***Established Building Line***

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provision similar to the second method set forth above, in which the setbacks of the immediately flanking properties are used, but instead of averaging those setbacks, those setbacks become the front setbacks for either side of the corner property.

The County’s Department of Permitting Services has diagrams available on-line to help permit applicants calculate the EBL for their property under the new law. Those diagrams can be accessed under the heading “Established Building Line” at:

<http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/z/zoning.asp>

The full text of Zoning Text Amendment 08-11 is also available from this website for those who are curious about other changes made to infill development by this legislation. ❖

**WHY DO WE SAY THAT?**

☛ Did you know when you say **OK** you’re making a political statement? Well, at one time you would have been. Now a staple of our vocabulary, *OK* only caught on after it was a campaign rallying cry for the 1836 presidential candidate Martin Van Buren, whose nickname was Old Kinderhook.

☛ Add a few words to “**happy as a clam**” and this puzzling phrase makes sense. The original expression was “happy as a clam in high tide,” which refers to the fact that clam diggers collect their quarry at low tide. When the high waters hide them from view, clams are blissfully safe.

☛ “**Under the weather**” was an expression coined at sea, when passengers on a ship were instructed to go below deck if they weren’t feeling well. Sheltered from the wind and waves – or “weather” – the better surroundings were sure to make them feel better.

By Katie Dodd  
As printed in American Profile, October 5-11, 2008

# Ethics – Employment Restrictions

## Chris Hinrichs

As a current or former County employee, one should be aware that the law places certain restrictions on non-County employment. For example, Chapter 19A of the Montgomery County Code details restrictions on “other employment” and “employment of former public employees.” One should consider consulting with his/her union representative, supervisor, or the ethics commission’s staff for further questions or information that may apply to a particular situation.

For current employees, the County’s ethics law requires approval from the Ethics Commission prior to engaging in “any other employment.” An employee may begin this process by visiting the Ethics Commission’s web site and printing a “Request for Employment Outside of County Service.” The form should be completed and submitted to the department head for conditional approval before being forwarded to the Ethics Commission. Employees should check with a supervisor first, since some departments may utilize a variation of the form and/or process.

Chapter 19A places some restrictions and limitations on the types of outside employment in which current County employees may engage. For example, Section 19A-12(b)(2) mandates that, “a public employee must not: hold any employment relationship that would impair the impartiality and independence of judgment of the public employee.” Also, Section 19A-12(b)(1) prohibits working for an entity that is directly regulated by the agency with which the employee is affiliated. Section 19A-14(a) prohibits a County employee from using the prestige of his/her office for the gain of another if he/she is compensated for it. Finally, Section 19A-14(g)(1) generally prohibits County employees from representing or offering expert advice to others who are in an adverse position with the County.

Section 19A-13 also places restrictions on the types of employment former employees can accept. For example, former employees cannot, “accept employment or assist any party, other than a County agency, in a case, contract, or other matter for 10 years after the last date the employee significantly participated in the matter as a public employee.” Additionally, for one year after separation from the County, a former County employee is prohibited from entering into any employment relationship with a person or entity that contracts with the County, “if the public employee significantly participated in regulating the person or business; or had official responsibility concerning a contract with the person or business.”

The provisions described within this article illustrate a sample of the outside employment restrictions on current as well as former County employees. One should refer to Chapter 19A or contact the Ethics Commission for the complete detailed list of restrictions. The restrictions on outside employment are not overly burdensome; however, it is a wise County employee who is aware of the restrictions and complies with them. ❖

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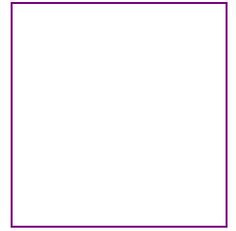
*Patricia P. Via*

**Legal Views** is a quarterly newsletter prepared as part of the County Attorney’s preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of Legal Views does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.





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