

Agenda Item #3  
June 30, 2009

**Action**

**MEMORANDUM**

June 26, 2009

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action - Zoning Text Amendment 09-02,  
Special Provision –Parcel Consolidation

**PHED Committee Recommendation.** On June 22, 2009 the Committee recommended (3-0) the approval of ZTA 09-02 as amended. The Committee was persuaded that the current requirements that: 1) a house must be built on a recorded lot, and 2) a record plat must satisfy zoning ordinance standards, leaves some home owners in an untenable situation. The Committee agreed with an amendment to the ZTA to require documentation of a pre-existing house. The Committee also agreed that ZTA 09-02 should be amended to prevent a property owner from creating more than one lot.

Background

On April 21, 2009 Zoning Text Amendment (ZTA) 09-02, sponsored by Councilmember Berliner, was introduced. ZTA 09-02 would amend the Zoning Ordinance to allow 2 or more tracts of land created by deed or plat before June 1, 1958 to be consolidated by record plat into 1 buildable lot, without regard to the width and size requirements of the underlying zone, if:

- (1) the tracts of land are under common ownership; and
- (2) a habitable one-family dwelling crosses a property line created by a deed or plat.

The Council held a public hearing on ZTA 09-02 on June 9, 2009. The Planning Board recommended approval of ZTA 09-02 with revisions to require an applicant to provide documentation of the current or past house. The revisions would also require a plat to include all

of the parcels under the house in a single lot. All of the testimony favored the approval of the ZTA.

Issues

Should a landowner be allowed to record a plat, even if the lot is substandard, for the purpose of rebuilding a house?

County law requires record plats as a precondition to most building permits. Without a provision to do otherwise, plats must conform to the standards on the zone for lot size and width. Rebuilding a house that crosses a property line is not allowed. Currently, a property owner of a house that crosses property lines can not record a plat or get a building permit for new construction. This ZTA would resolve this dilemma. The Planning Board's recommended revision to require documentation would be a positive change to the ZTA.

Should the new lot include all tracts of land under the house?

There is a theoretical possibility that two lots could be created where one house previously existed. The revision proposed by the Planning Board would eliminate this possibility.

This packet contains

© page

ZTA 09-02 as recommended by the PHED Committee  
Planning Board & Planning Staff recommendations

1 – 3  
4 – 7

Zoning Text Amendment No: 09-02  
Concerning: Special Provision - Parcel  
Consolidation  
Draft No. & Date: 2 – 6/24/09  
Introduced: April 21, 2009  
Public Hearing: June 9, 2009  
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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By: Councilmember Berliner

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AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow the consolidation of certain lots, parts of lots, or parcels under certain circumstances.

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

DIVISION 59-B-5. “SPECIAL PROVISIONS FOR CONDITIONS PREDATING 1958”

Adding:

Section 59-B-5.4. “Resubdivision of lots, parts of lots, or parcels with dwellings”

*EXPLANATION: **Boldface** indicates a heading or a defined term.  
Underlining indicates text that is added to existing laws by the original text amendment.  
[Single boldface brackets] indicate text that is deleted from existing law by the 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.*

## OPINION

Zoning Text Amendment 09-02 was introduced on April 21, 2009. Zoning Text Amendment 09-02 would amend the Zoning Ordinance to allow 2 or more tracts of land created by deed or plat before June 1, 1958 to be consolidated by record plat into 1 buildable lot, without regard to the width and size requirements of the underlying zone, if:

- (1) the tracts of land are under common ownership; and
- (2) a habitable one-family dwelling crosses a property line created by a deed or plat.

The Montgomery County Planning Board, in its report to the Council, recommended that the text amendment be approved with amendments. The Planning Board recommended approval of ZTA 09-02 with revisions to require an applicant to provide documentation of the current or past house. The revisions would also require a plat to include all of the parcels under the house in a single lot.

The County Council held a public hearing on June 9, 2009 to receive testimony concerning the proposed text amendment. All of the testimony favored the approval of the ZTA.

The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation. The Planning, Housing, and Economic Development Committee held a worksession on June 22, 2009 to review the amendment. The Committee was persuaded that the current requirements that: 1) a house must be built on a recorded lot, and 2) a record plat must satisfy zoning ordinance standards, leaves some home owners in an untenable situation. The Committee agreed with an amendment to the ZTA to require documentation of a pre-existing house. The Committee also agreed that ZTA 09-02 should be amended to prevent a property owner from creating more than one lot.

The District Council reviewed Zoning Text Amendment 09-02 at a worksession held on June 30, 2009 and agreed with the recommendations of the Planning, Housing, and Economic Development 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 09-02 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:*

1           **Sec. 1. DIVISION 59-B-5 is amended by adding Section 59-B-5.4 as**

2 **follows:**

3 DIVISION 59-B-5. SPECIAL PROVISIONS FOR CONDITIONS PREDATING  
4 1958.

5 \* \* \*

6 **Sec. 59-B-5.4. Resubdivision of lots, parts of lots, or parcels with dwellings.**

7 (a) Any two or more tracts of land created by deed or plat before June 1, 1958 may  
8 be consolidated by record plat into one buildable lot, even if the new lot does  
9 not meet the width and size requirements of the underlying zone, if:

10 (1) the tracts of land are under common ownership; [[and]]

11 (2) a habitable one-family dwelling located on the tracts, before {the  
12 effective date}, crossed a property line created by deed or plat[.]]  
13 documented by a professionally certified house location plan, previously  
14 issued demolition permit, or similar substantial evidence; and

15 (3) all the tracts of land on which the dwelling is, or was, located are  
16 included in the newly created lot.

17 (b) The dwelling on any lot created under subsection (a) may be altered, renovated,  
18 enlarged, or replaced by a new dwelling under the zoning development  
19 standards in effect when the application is approved, even if the lot's width and  
20 size standards are not satisfied.

21  
22           **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of  
23 Council adoption.

24  
25 This is a correct copy of Council action.

26  
27 \_\_\_\_\_  
28 Linda M. Lauer, Clerk of the Council



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

June 5, 2009

**TO:** The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

**FROM:** Montgomery County Planning Board

**SUBJECT:** Zoning Text Amendment No. 09-02

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 09-02 at its regular meeting on June 4, 2009. By a vote of 5:0, the Board recommends approval of the text amendment as modified by staff to clarify the intent and included in the technical staff report.

The text amendment proposes to permit existing lots, parts of lots, or parcels to be consolidated into a recorded lot that does not meet certain requirements of the underlying zone so that a one-family dwelling that is, or was, located across the property lines can undergo major renovation or be replaced. The amendment is needed because the Subdivision Regulations do not permit a building permit to be issued for most structures that are not located on a recorded lot, or for any structure that crosses a lot line. The affected tracts of land can be subdivided or resubdivided into a buildable lot to eliminate the interior property lines, however, the resulting lot must satisfy all the applicable zoning requirements of Chapter 59. If the proposed amendment is adopted, the affected tracts of land will be able to be consolidated under the Subdivision Regulations into one buildable lot without regard to the width and size requirements of the underlying zone if the tracts are under common ownership and a one-family dwelling crossed a property line created by deed or plat.

The Planning Board supports the proposed amendment, but recommends additional language to clarify the intent. First, we recommend that provision (a)(2) be modified to include the requirement that documentation be provided to verify the existence of a dwelling, which is primarily important when the dwelling no longer exists. Second, the Board recommends a new provision (a)(3) that requires all the tracts of land on which the dwelling is, or was, located to be included in the newly created lot. The Board believes that this provision is necessary to prevent more than one lot from being created in an instance where a dwelling crosses several property lines.

### CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on a motion by Vice-Chairman Robinson, seconded by Commissioner Cryor, with Vice-Chairman Robinson, Commissioners Cryor, Alfandre and Presley and Chairman Hanson voting in favor of the motion, at its regular meeting held in Silver Spring, Maryland, on Thursday, June 4, 2009.



Royce Hanson  
Chairman

RH: GR



MONTGOMERY COUNTY PLANNING DEPARTMENT  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item #  
6/4/09

**DATE:** May 28, 2009  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review  
Cathy Conlon, Subdivision Supervisor  
Ralph Wilson, Zoning Supervisor  
**FROM:** Greg Russ, Zoning Coordinator  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** Amend the Zoning Ordinance to allow the consolidation of certain lots, parts of lots, or parcels with dwellings that predated 1958

**TEXT AMENDMENT:** 09-02  
**INTRODUCED BY:** Councilmember Berliner  
**INTRODUCED DATE:** April 21, 2009

**PLANNING BOARD REVIEW:** June 4, 2009  
**COUNCIL PUBLIC HEARING:** June 9, 2009; 1:30pm

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**STAFF RECOMMENDATION**

**Staff recommends approval of ZTA 09-02, with modifications,** to allow two or more tracts of land created by deed or plat before June 1, 1958 to be consolidated by record plat into one buildable lot without regard to the width and size requirements of the underlying zone if the tracts are under common ownership and a one-family dwelling crossed a property line created by deed or plat. Staff recommends that:

1. provision (a)(2) be modified to include the requirement that documentation be provided to verify the existence of a dwelling; and
2. a new provision (a)(3) be added to require all the tracts of land on which the dwelling is, or was, located to be included in the newly created lot.

Staff has revised the ZTA to include our recommendations. Other revisions have been made to clarify the overall intent of ZTA 09-02.

## BACKGROUND/ANALYSIS

The proposed amendment permits existing lots, parts of lots, or parcels to be consolidated into a recorded lot that does not meet certain requirements of the underlying zone so that a one-family dwelling that is, or was, located across the property lines can undergo major renovation or be replaced. The amendment is needed because the Subdivision Regulations (Chapter 50 of the Montgomery County Code) do not permit a building permit to be issued for most structures that are not located on a recorded lot, or for any structure that crosses a lot line. The affected tracts of land can be subdivided or resubdivided into a buildable lot to eliminate the interior property lines, however, the resulting lot must satisfy all applicable zoning requirements of Chapter 59. If the proposed amendment is adopted, the affected tracts of land will be able to be consolidated under the Subdivision Regulations through either submission of a preliminary plan of subdivision (unrecorded parcels and certain parts of lots), or submission of a new record plat application under the minor subdivision approval procedure (lots and certain parts of lots).

Staff supports the proposed amendment, but recommends additional language to clarify the intent. First, we recommend that provision (a)(2) be modified to include the requirement that documentation be provided to verify the existence of a dwelling, which is primarily important when the dwelling no longer exists. Second, we recommend a new provision (a)(3) that requires all the tracts of land on which the dwelling is, or was, located to be included in the newly created lot. In staff's opinion, this provision is necessary to prevent more than one lot from being created in an instance where a dwelling crosses several property lines. For example, a 42' wide house could be located directly in the center of four 20' wide lots and cross the three internal lot lines. Staff is concerned that, as written, the provision does not clearly prevent consolidating the properties into two 40' wide lots.

CC/GR

Attachments

1. Proposed ZTA No. 09-02