

Ordinance No: 16-06
Zoning Text Amendment No: 07-04
Concerning: Accessory structure standards
Draft No. & Date: 3 – 6/21/07
Introduced: April 10, 2007
Public Hearing: June 12, 2007; 1:30 p.m.
Adopted: July 3, 2007
Effective: July 3, 2007

**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 Elrich and Berliner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- establishing setback for accessory structures from national park property;
- generally amending the provisions for accessory structure in single-family residential and agricultural 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 INTERPRETATIONS”
Section 59-A-2.1. “Definitions”
DIVISION 59-B-2 “EXEMPTIONS FROM YARD REQUIREMENTS”
Section 59-B-1 “Walls or fences”
DIVISION 59-C-1 “RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.31. “Land uses”
DIVISION 59-C-9 “AGRICULTURAL ZONES”
Section 59-C-9.3. “Land uses”
Section 59-C-9.4 “Development standards”
Section 59-C-9.45 “Yard requirements for an accessory building (in feet)”

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 No. 07-04 was introduced on April 10, 2007 to establish setback for accessory structures from national park property; and generally amend the provisions for accessory structure in single-family residential and agricultural zones.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with amendments to have it apply to all zones and to ensure that accessory uses are allowed.

The County Council held a public hearing on June 12, 2007, to receive testimony concerning the proposed text amendment. 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 18, 2007 to review the amendment. The Committee concluded that the public welfare would be served by restricting accessory structures within 200 feet of a national historical park boundary. The amendments proposed would limit visual intrusions to the natural setting of such parks in a manner that preserves the reasonable use of private property. The essential reasons for the Committee's recommendations are as follows:

- 1) The historic resources, natural resource protection, and popularity inherent in a national historical park provide a rationale for treating properties along its boundary differently from properties adjoining other parks.
- 2) Accessory structures in the Rural Density Transfer (RDT) zone that support farming do not detract from the historic setting of a national historical park.
- 3) Fences could discourage trespassers while maintaining the visual integrity of national historical parks. Fences should be allowed on a limited basis. Rustic fences should be allowed on a property line. Rustic fences are not visually intrusive to the park setting. Deer fences should be allowed 100 feet from a park boundary. Deer fences at that distance are not visually intrusive. Boundary fences should be allowed if a property is located within 100 feet of a park parking lot. Properties within 100 feet of a park parking lot have the highest likelihood of trespassers. Rustic fences and boundary fences should be defined in the Zoning Ordinance.
- 4) The Zoning Ordinance needs to be clarified to make accessory uses and accessory structures generally allowable in residential and agricultural zones.
- 5) The goal of this amendment is to preserve the existing views around a national historical park; it is not to prevent the repair or reconstruction of legally existing structures. The repair or reconstruction of existing structures should be allowed. However, any expansions of these structures should not be allowed. The words allowing a structure to be "modified" or "enlarged", used in some grandfathering provisions, should not be used.

The District Council reviewed Zoning Text Amendment No. 07-04 at a worksession held on July 3, 2007, 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 No. 07-04 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-A-2 is amended as follows:**

2 **DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.**

3 **59-A-2.1. Definitions.**

4 * * *

5 **Deer Fence:** [[A fence that is up to 8 feet high and constructed of an open mesh,
6 heavy weight, plastic or similar material that allows a clear view through the fence.
7 Mesh size ranges from 1.5 x 1.5 inches to 2 x 2.75 inches. A deer fence may be
8 constructed with wood, metal, or fiberglass posts.]] See “fence, deer”

9 * * *

10 **Fence:** Any structure of posts and non-masonry connecting material.

11 **Fence, deer:** A fence that is up to 8 feet high and constructed of an open
12 mesh, heavy weight, plastic or similar material that allows a clear view
13 through the fence. Mesh size ranges from 1.5 x 1.5 inches to 2 x 2.75
14 inches. A deer fence may be constructed with wood, metal, or fiberglass
15 posts.

16 **Fence, rustic:** A fence that is up to 4 feet high and constructed of unpainted
17 wood. The number of posts must not exceed 1 post for every 6 feet of fence
18 plus 1. The number of rails between any 2 posts must not exceed 3. The
19 rails must leave at least 75 percent of the space created between the posts
20 open.

21 **Fence, boundary:** A fence that is up to 5 feet high and constructed of
22 unpainted wood posts and connecting material.

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27 **Sec. 2. Division 59-B-2 is amended as follows:**

28 **DIVISION 59-B-2. EXEMPTIONS FROM YARD REQUIREMENTS.**

29 **59-B-2.1. Walls or fences.**

30 The building line and yard requirements of this chapter do not apply to:

31 ~~(1) a~~ retaining walls where changes in street grade, width or alignment
32 have made such structures necessary,

33 ~~(2) b~~ deer fencing in:

34 ~~(1)~~ all agricultural zones; and [in the rear and side yards of all other
35 zones,]

36 ~~(2)~~ the rear and side yards of all [other] non-agricultural zones
37 [[if]] unless the lot or tract [[is not adjoining]] adjoins a national
38 historical park.

39 ~~(3)~~ the rear and side yards of all [other] non-agricultural zones if
40 the lot or tract adjoins a national historical park and the deer
41 fence is located at least 100 feet from a national historical park
42 boundary.

43 ~~(3) c~~ other walls or fences that are [not over] 6 ½ feet or less in height and
44 are not on a lot or tract adjoining a national historical park, [[or]]

45 (d) rustic fences on a lot or tract adjoining a national historical park,

46 (e) boundary fences on the rear and side yards if the lot or tract is located
47 within 100 feet of a parking lot in a national historical park.

48 ~~(4) [[d]]f~~ deer and other fences not over 8 feet in height if the property is
49 farmed and agriculturally assessed.

50

51 On a corner lot in any residential zone, a deer fence must not be located closer to
52 the street than the face of the building.

53

54 Fence height is measured from the lowest level of the ground immediately under
55 the fence. On a corner lot in any residential zone a fence, wall other than a
56 retaining wall, terrace, structure, shrubbery, planting or other obstruction to vision
57 must not have a height greater than 3 feet above the curb level for a distance of 15
58 feet from the intersection of the front and side street lines.

59 * * *

60 **Sec. 3. DIVISION 59-C-1 is amended as follows:**

61 **Division 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

62 * * *

63 **59-C-1.31. Land uses.**

64 No use is allowed except as indicated in the following table:

- 65 - **Permitted Uses.** Uses designated by the letter "P" are permitted on
- 66 any lot in the zones indicated, subject to all applicable regulations.
- 67 - **Special Exception Uses.** Uses designated by the letters "SE" may be
- 68 authorized as special exceptions, in accordance with the provisions of
- 69 Article 59-G.

70 * * *

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
(g) Miscellaneous.										
Accessory buildings or structures for housing animals or fowl.	P	P	P	P	P	P	P			
Accessory buildings, [[and]] structures, and uses [uses]. ³²	P	P	P	P	P	P	P	P	P	P

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	RE-2 ¹	RE-2C ¹	RE-1 ¹	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4plex	RMH 200
59-C-1.326 Yard Requirements for an Accessory Building, or Structure (in Feet).⁷										
(a) For all lots.										
(1) An accessory building or structure must be located in a rear yard and must not occupy more than 20 percent of the rear yard. (2) An accessory building or structure must be set back from the lot lines with a minimum setback as follows:										
(A) From the street line:	80	80	80	65	65	60	60	60		65
(B) From a rear lot line:	10	10	10	7	7	5	5	5		7
(C) From a side lot line:	15	15	15	12	12	5	5	5		12
<u>(D) From a national historical park boundary line unless the accessory structure on the lot or tract is exempted [[by]] under Sec. 59-B-2.1*.</u>	<u>200</u>	<u>200</u>	<u>200</u>							
* * *										

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77 * * *

78 * Any accessory structure lawfully existing before July 3, 2007 and located

79 less than 200 feet from a national historical park is a conforming structure

80 and may be repaired or reconstructed under the standards in effect before

81 July 3, 2007.

82 **Sec. 3. Division 59-C-9 is amended as follows:**

83 **DIVISION 59-C-9. AGRICULTURAL ZONES.**

84 * * *

85 **59-C-9.3. Land uses.**

86 * * *

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
(j) Miscellaneous:							
Accessory buildings, [[and]] structures, and uses [uses]. ⁴⁷	P	P	P	P	P	P	P

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88 **59-C-9.4. Development standards.**

89 * * *

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
59-C-9.45. Yard requirements for an accessory building or structure (in feet).							
(a) In the Rural and Rural Cluster zone, an accessory building on a residential lot must be located in the rear yard and occupy no more than 25 percent thereof. In all 7 zones, it must be set back at least as follows:							
[[a]] (1) From the front lot line or proposed street line	80	80	80	(see note 1)	80	80	80
[[b]] (2) From the side lot line:							
[[1]] (A) Of an interior lot	15	15	15	15	15	15	15
[[2]] (B) Of a lot abutting a public street	50 ¹	50 ¹	50 ¹	50 ¹	50 ¹	50	50
[[c]] (3) From a rear lot line	10	10	10	10	10 ³	10	10
(b) Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be located at least 25 feet from a lot line and at least 100 feet from dwelling on another lot or parcel.							
[[c]] (d) <u>In the zones indicated thus(*), any [[Any]] accessory building or structure on a lot or tract adjoining a national historical park must be located at least 200 feet from the national historical park unless the accessory structure on the lot or tract is exempted [[by]] under Sec. 59-B-2.1*.</u>	*	*	*		*	*	*

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91 * * *

92 * Any accessory structure lawfully existing before July 3, 2007 and located
 93 less than 200 feet from a national historical park is a conforming structure
 94 and may be repaired or reconstructed under the standards in effect before
 95 July 3, 2007.

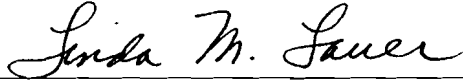
96 **Sec. 4. Effective date.** This ordinance takes effect immediately on the date
97 of Council adoption and applies to all permits issued that have not started
98 construction.

99

100 This is a correct copy of Council action.

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A handwritten signature in cursive script that reads "Linda M. Lauer". The signature is written in black ink and is positioned above a horizontal line.

103

Linda M. Lauer, Clerk of the Council