



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

**MCPB**  
**Item #** 6  
**4/15/10**

**DATE:** April 7, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
Cathy Conlon, Subdivision Supervisor  
Ralph Wilson, Zoning Supervisor *RW*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** Amend the Zoning Ordinance to provide an exemption from current zoning standards for certain unplatted parcels with legally constructed one-family detached dwelling units

**TEXT AMENDMENT:** 10-03  
**INTRODUCED BY:** Councilmembers Knapp and Elrich  
**INTRODUCED DATE:** March 16, 2010

**PLANNING BOARD REVIEW:** April 15, 2010  
**COUNCIL PUBLIC HEARING:** April 20, 2010; 1:30pm

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**STAFF RECOMMENDATION**

Staff recommends approval of ZTA 10-03, with modifications, to allow a parcel that was created by deed and contains a one-family detached dwelling unit that was lawfully constructed to be exempt from the area and dimensional requirements of its current zone, and to allow the parcel to be recorded if the resulting lot meets the requirements of the zone that was in place when the dwelling was constructed. Staff recommends several plain language changes to clarify the intent of the legislation. Staff also recommends adding language clarifying that a lawfully constructed one-family detached dwelling unit does not refer to a farm tenant dwelling. This clarification is necessary to eliminate the possibility of creating more than one lot when a farm tenant dwelling is located on the same parcel as a one-family detached dwelling.

Staff has revised the ZTA to include our recommendations.

**BACKGROUND/ANALYSIS**

In the past, the provisions of Chapter 59 (Zoning Ordinance) and Chapter 50 (Subdivision Regulations) of the County Code permitted issuance of building permits on unrecorded parcels of land, and many dwelling units that were

constructed under those provisions still exist today on parcels that remain unrecorded. Over the years, however, the County Code has been changed to place limits on such construction. Today, Section 50-20(a) of the Subdivision Regulations prohibits the issuance of building permits for the construction of a dwelling or other structure on a parcel of land which is not shown on a plat recorded in the County plat books unless that parcel is covered by an exception. The specific provisions for such exceptions are covered in Section 50-9 of the Subdivision Regulations (Attachment 2). Unrecorded parcels that do not qualify for one of these exceptions must be recorded by plat in order to obtain a building permit. This provision not only limits the construction of new dwellings, but may also affect a property owner's ability to renovate or replace existing dwellings.

The most commonly applied exception for existing dwellings on unrecorded parcels is the *Single residential lot* exception in Section 50-9(f). This exception allows a building permit to be issued for an unrecorded parcel that has not changed in size or shape since June 1, 1958, without the need to record the parcel by plat. Many existing dwellings qualify for this exception, but a problem arises if a property owner has changed the shape and size of the parcel on which the existing dwelling was originally built. In these instances, the parcel must be recorded before the issuance of a building permit, and in some cases, recordation is not possible because the zoning of the underlying land has changed over the years, leaving the changed parcel too small to qualify for recordation under the new zone. This leaves the existing dwelling in jeopardy because it prevents issuance of a building permit for replacement of the dwelling should it become necessary. It can also prevent the expansion of existing dwellings.

The proposed text amendment addresses the problem described above by adding an exemption to the Zoning Ordinance that will permit an unplatted parcel that contains an existing dwelling to be recorded under the area and dimensional standards of the zone in which the property was classified when the dwelling was built.

Staff supports the proposed amendment, but recommends several plain language changes to clarify the intent of the legislation. Staff also recommends adding language clarifying that a lawfully constructed one-family detached dwelling unit does not refer to a farm tenant dwelling. This clarification is necessary to eliminate the possibility of creating more than one lot when a farm tenant dwelling is located on the same parcel as a one-family detached dwelling.

CC/GR

#### Attachments

1. Proposed ZTA No. 10-03 as modified by staff
2. Section 50-9, Exceptions to platting requirements

# ATTACHMENT 1

Zoning Text Amendment No: 10-03  
Concerning: Exemptions – Legal Dwellings  
Draft No. & Date: 1 - 3/3/10  
Introduced: March 16, 2010  
Public Hearing:  
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: Councilmembers Knapp and Elrich

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- provide an exemption from current zoning standards for certain unplatted parcels with legally constructed one-family detached dwelling units.

By adding the following Division of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

**DIVISION 59-B-8. EXEMPTIONS FOR UNPLATTED PARCELS CONTAINING ONE-FAMILY DETACHED DWELLING UNITS**

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

## 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-B-8 is added as follows:**

DIVISION 59-B-8. EXEMPTIONS FOR UNPLATTED PARCELS  
CONTAINING ONE-FAMILY DETACHED DWELLING UNITS.

Sec. 59-B-8.1. One-Family Detached Dwelling Units On Parcels Created by Deed.

A parcel, created by deed, that contains a lawfully constructed one-family detached dwelling unit, excluding a farm tenant dwelling, [[that was lawfully constructed]] is exempt from the area and dimensional requirements of its current zone, and may be recorded under Chapter 50 if the resulting lot meets the requirements of the zone in place [[which the parcel was classified]] when the dwelling was constructed.

**Sec. 2. Effective date.** This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

### Sec. 50-9. Exceptions to platting requirements.

Recording of a subdivision plat under this Chapter is not required for:

- (a) *Agriculture and uses located on agricultural land.*
  - (1) A bona fide division or partition of land that is and will remain in exclusively agricultural use, as agriculture is defined in this chapter.
  - (2) Land that is and will remain part of a farm, as defined in this chapter, but that is used concurrently for a related use that requires issuance of a building permit. This includes a special exception use approved under divisions 59-G-1 and 59-G-2, unless the Board of Appeals requires subdivision as a condition of the special exception.
  - (3) The issuance of a building permit for any equestrian facility building or structure on land classified in an agricultural zone.
- (b) *Court action.* Partition of lands by will or through action of a court of competent jurisdiction unless or until development of the lands is proposed.
- (c) *Public taking.* Where a property has been changed in size or shape subsequent to the date of its inclusion within the district or subsequent to October 19, 1934, whichever is the later date, by reason of the taking of a part of such property for public use by reference to a properly drawn and recorded plat, such as a right of way plat; provided, that the outlines and dimensions of such remainder may be clearly determined by reference to the previously recorded plats.
- (d) *Adjoining properties.* The sale or exchange of parcels of land (not to exceed a total of 2,000 square feet or one percent of the combined area, whichever is greater) between owners of adjoining properties for the purpose of small adjustments in boundaries; provided, that additional lots are not thereby created and that the original lots are not reduced below the minimum sizes required by this Chapter or by Chapter 59 of this Code. This exemption is not applicable to minor lot line adjustments that occur after May 19, 1997.
- (e) *Utility rights-of-way.* A bona fide division of a tract of land in order that one or more of the resulting parcels may be used as part of an electric transmission line right of way or other public utility right of way; provided, that if a parcel resulting from such division is ever to be used as a building site for other than an electric transmission line or other public right of way, then before a building permit may be issued for such other use, a plat must be filed and recorded.
- (f) *Single residential lot.* An application for a building permit for one (1) single-family detached dwelling unit, on a parcel, not previously included on a recorded plat, which has not changed in size or shape since June 1, 1958, provided:
  - (1) A description and location plat of the lot and proposed structure have been furnished with the permit application, sufficiently detailed, to locate the same on the base maps of Montgomery County.

## Attachment 2

- (2) Approval of the permit application would not result in obstructing the future opening, extension or widening of any road deemed essential in the public interest, nor would it otherwise jeopardize any planned public facility.
- (3) The proposed lot and use comply with the zoning ordinance (except for street frontage) and the site plan shows clearly the setbacks, side and rear yards and any other information needed to check compliance with regulations, including establishment of a building restriction line along any existing or proposed road sufficient to provide for future expansion or opening of such road to its ultimate width.
- (4) Approval of the permit would not affect adversely the general plan for the physical development of the regional district or any portion thereof.
- (g) Telecommunications towers/antennas, including associated accessory structures, unless or until other development of the land which requires a subdivision plan.
- (h) *Certain Residential Property in the City of Takoma Park.* An application for a building permit for one single-family detached dwelling unit on property located in the portion of the City of Takoma Park annexed into Montgomery County on July 1, 1997 that was recorded by a deed prior to January 1, 1982 and which remains otherwise buildable under the Prince Georges County Zoning and Subdivision Regulations on June 30, 1997, provided that a description and locational survey drawing of the lot and proposed structure have been furnished with the permit application, sufficiently detailed to locate the lot and structure on the 1 inch equal 200 foot scale base map of Montgomery County.