



**Subdivision Regulation Amendment (SRA) No. 12-03, Minor Subdivisions-Part of a Lot;
Zoning Text Amendment No. 12-18, Exemptions-Pre-1928 Re-subdivisions**



Gregory Russ, Planner Coordinator, gregory.russ@montgomeryplanning.org, 301-495-2174



Mary Dolan, Acting Chief, FP&P, mary.dolan@montgomeryplanning.org, 301-495-4552

Completed 1/10/13

Description

SRA No. 12-03 proposes to expand the existing provisions of Chapter 50 for minor subdivisions to allow the Planning Board to approve plats for certain properties not classified in an agricultural zone under the minor subdivision process. Specifically, the expansion would allow consolidation of an existing *part of a lot that contains a legally constructed one-family dwelling unit* with a partition of land created as a result of a deed under the minor subdivision process. Currently under the minor subdivision provisions, a partition of land created by a deed can only be consolidated with an existing platted lot. Application for this new expanded provision would be permitted provided:

- in a one-family residential zone, the partition of land created by deed cannot itself be platted under the area and dimensional standards of the zone;
- any conditions applicable to the existing lot remain in full force and effect on the new lot;
- any required street dedication is provided; and
- the subject lot was not identified as an outlot on a plat.

ZTA No.12-18 would allow any tract of land created by deed or plat before March 16, 1928 and containing a legally constructed one-family dwelling to be platted into one building lot. Such a tract of land would be allowed to consolidate by record plat with an adjacent tract of commonly owned land into a larger building lot, even if the resulting lot still does not meet the width and size requirements of any zone. As such, ZTA 12-18 and SRA 12-03 are complementary amendments.

Summary

Staff recommends approval of SRA 12-03, as introduced, and ZTA 12-18 with minor language modifications. The SRA would permit expansion of the minor subdivision provisions to allow consolidation of an existing platted lot *or part of a lot that contains a legally constructed one-family dwelling unit* with a partition of land created as a result of a deed under certain circumstances as outlined above. The ZTA would allow such lots to continue to be buildable lots even though the resulting lots might not meet certain zoning standards. The changes proposed by staff delete the word “plat” on line 16 and add language on line 18 clarifying that a legally constructed one-family dwelling located on a

deeded tract before March 16, 1928 may be platted into one building lot even if the resulting lot does not meet the width and size requirements of any zone.

In a number of cases, landowners submitted subdivision plats with the County before the requirement for such in 1928. On occasion, property owners ignored the outlines of the lots created by these plats and created parcels by deed before 1928. Houses constructed on these deed parcels were considered only “part of a lot” because of the lot lines of the original subdivision. Although legally built, these houses were not on lots that conform to the zoning standards for residential structures based on the 1928 Zoning Ordinance. SRA 12-03 would allow the owner of a lot with a house on it that was built under these circumstances to use the minor subdivision process to add to the size of their property by re-subdividing and consolidating the adjoining properties. The resulting subdivision may still result in a lot that does not meet current zoning standards. ZTA 12-18 would allow a deeded tract of land that includes a legally constructed one-family dwelling to be platted into one buildable lot. The ZTA would also allow such lots to be consolidated with adjacent commonly owned land into a larger building lot, even if the resulting lot still does not meet the width and size requirements of any zone.

The Montgomery County Subdivision Regulations, Chapter 50 of the County Code, specify the procedures for approval of subdivisions by the Planning Board. The procedures involve the submission of a preliminary plan for staff review and Planning Board action. The preliminary plan stage of the process is followed by the submission of a record plat which is reviewed by staff, approved by the Planning Board, reviewed by other agencies, and then recorded in the land records of the county.

Years ago, in response to complaints that some types of simple subdivisions did not warrant the time and expense associated with the review of a preliminary plan, the Subdivision Regulations were amended to provide for approval of minor subdivisions. The minor subdivision process specifies certain types of subdivision that may proceed directly to review and approval of a record plat without the prior approval of a preliminary plan. SRA 12-03 would expand the process to cases as described above.

Requirements for Subdivision

The Subdivision Regulations generally specify that whenever land in the county is subdivided for any purpose, a plat of such subdivision must be recorded in the land records of the county. They further specify that, with certain exceptions, the Department of Permitting Services must not approve a building permit for the construction of a dwelling or other structure, unless the dwelling or structure would be located on a lot or parcel of land which is shown on a recorded plat. They also prohibit, with certain exceptions, the issuance of a building permit for construction of a dwelling or other structure which is located on more than one lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot. Together, these requirements result in the need for platting of many properties prior to land development.

In order to provide an orderly basis for the processing of subdivisions prior to approval, the Subdivision Regulations specify that the Board consider such plans in two stages. The first stage of the process, except for specific minor subdivisions, is submittal of a preliminary plan for approval. The second stage is submittal of a final plat for approval and recordation. In approving these applications, the Board must find that proposed subdivision will meet the standards established in both the Subdivision Regulations and in the road construction code or other ordinances or regulations. To ensure that these findings can

be made, the preliminary plan and final record plat are referred to other county agencies or departments for their review and recommendations prior to Planning Board action.

The scope of preliminary plan review includes: determination of required public and private improvements; design and layout of roads, lots and blocks; the need for public sites and adequate open spaces; and protection of environmentally sensitive areas. In addition, the Board must find prior to approval of a preliminary plan that it will meet requirements of the applicable master plan, has adequate public facilities, and provides for sediment control, forest conservation, and water quality. Preliminary plan review is also a public process, so it includes requirements for pre-submission public meetings, site posting, noticing and public hearing. As such, the review of some preliminary plans can be quite complex and time consuming.

Record plat review includes review of a detailed plat drawing that shows all boundaries, street lines, lot lines and other encumbrances, such as easements, with survey data that is sufficient to locate and reproduce them on the ground. The layout of features on the plat drawing must be in substantial conformance with the applicable preliminary and site plans and their associated conditions of approval, and the plat must not be approved until other supporting plans such as road and street profiles and storm drainage construction plans have also been approved. A record plat application and initial drawing are reviewed by staff and referred to selected outside agencies and departments prior to the submittal of a final plat mylar. The final plat must be approved by the Planning Board within 30 days of its submittal. A plat may not be recorded until all required public improvements for the subdivision have been completed or guaranteed. Record plats are approved on the Board's consent agenda and are not noticed to the public.

Minor Subdivisions

Prior to the late 90's, there was no way to avoid the two-step subdivision process except to request variations from the requirements which the Board was authorized to grant under the regulations at that time. Variations could be granted upon a finding that specific conditions or limitations of the land to be subdivided made it impossible or impractical, or would cause a singular and unnecessary hardship, if full conformance with the Chapter were required. Such variations were granted in several types of instances to waive the requirement to submit a preliminary plan. Staff at the time pointed out that the need for a majority of these variations could be avoided if a minor subdivision procedure were established. After further review of the issue by the Planning Board and County Council, provisions for minor subdivisions were added to the Subdivision Regulations by amendment in 1997. *The minor subdivision process permits recordation of plats for certain types of subdivisions without prior approval of a preliminary plan.* As of now, these subdivisions include:

- Minor lot line adjustments that do not exceed 5% of the combined area of the lots involved
- Conversion of certain outlots into a lot
- Consolidation of recorded lots or parts of lots that were created by deed prior to June 1, 1958
- Further subdivision of commercial, industrial or multi-family residential lots to create ownership or lease lines
- Plats of correction
- Plats for residential lots created from parcels that were created by deed prior to June 1, 1958
- Plats for existing places of worship, private schools, country clubs, private institutions and the like located on unplatted parcels

- Plats for up to five lots in the RDT zone provided they average 5 acres or less in size
- Plats to record certain parcels that were created by deed after June 1, 1958, that contain a lawfully constructed residential dwelling and meet the requirements of the zone in place when the dwelling was constructed
- **Consolidation of an existing platted lot and a partition of land created as a result of a deed (*proposed as the subject of SRA 12-03*)**
- Creation of a Lot from a Part of a Lot

In general, staff supports expanding the minor subdivision provisions to include other specific instances that are appropriate for platting without preliminary plan over granting waivers. This is the appropriate mechanism because it bases the decision to eliminate the requirement for preliminary plans on the specific conditions of the subdivision rather than on a judgment based on the case by case argument by the applicants. Also, the review process for an SRA ensures that all who may have concerns about loss of their authority to review matters associated with preliminary plans agree on what the specific conditions are. SRA 12-03 as introduced reflects the language modification as recommended by technical staff to address the combining of an existing platted lot or *part of a lot that contains a legally constructed one-family dwelling unit* with a partition of land created as a result of a deed. In all instances, the SRA brings the applicable properties, at a minimum, closer to compliance with the zoning standards.

The provisions by which this particular minor subdivision could occur ensure that:

- this minor subdivision won't be used to create larger residential lots in agricultural zones;
- in a one-family residential zone the size of the lot being created by this minor subdivision will be limited because the partition of land being consolidated could not by itself be platted under the standards of the zone;
- any required street dedications will be provided along the frontage of the lot being created;
- development of the resulting lot will continue to be limited by any applicable conditions of subdivision that applied to the original lots; and
- this minor subdivision is not interpreted to permit a recorded outlot to become a buildable lot.

Staff recommends approval of SRA 12-02 with these protections in place.

Modifications to ZTA 12-18

As stated above, ZTA No. 12-18 would allow a deeded tract of land that includes a legally constructed one-family dwelling to be platted into one buildable lot. The ZTA would also allow such lots to be consolidated with adjacent commonly owned land into a larger building lot, even if the resulting lot still does not meet the width and size requirements of any zone. Staff believes that the subject legislation allows substandard pre-1928 properties that have a legal dwelling on them to come closer to complying with certain zoning standards by allowing consolidation with adjacent commonly owned land. The changes proposed by staff delete the word "plat" on line 16 because there would be no need to re-plate already recorded tracks, and adds language on line 18 clarifying that a legally constructed one-family dwelling located on a deeded tract before March 16, 1928 may be platted into one building lot even if the resulting lot does not meet the width and size requirements of any zone. The language as modified is depicted below.

- (a) Any tract of land created by deed [[or plat]] before March 16, 1928 and containing a legally constructed one-family dwelling may be platted into one building lot even if the resulting lot does not meet the width and size requirements of any zone. Such a tract of land may be consolidated by [[the]] record plat with an adjacent tract of commonly owned land into a larger building lot, even if the resulting lot still does not meet the width and size requirements of any zone.

GR/MD/am

ATTACHMENTS

1. SRA 12-03 as introduced
2. ZTA 12-18 as modified by staff

Subdivision Regulation Amendment No.: 12-03
Concerning: Minor Subdivisions – Part of a Lot
Revised: 12/4/12; Draft No. 1
Introduced: December 11, 2012
Public Hearing:
Adopted:
Effective:

**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: Councilmember Floreen

AN AMENDMENT to the Subdivision Regulations to:

- (1) authorize the approval and recordation of a plat for certain properties classified in a one-family residential zone under the minor subdivision procedure under certain circumstances; and
- (2) generally amend the provisions for the application of the minor subdivision process

By amending

Montgomery County Code
Chapter 50. Subdivision of Land.
Section 50-35A. Minor Subdivisions – Approval Procedure.

Boldface	<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>

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. Section 50-35A is amended as follows:

Section 50-35A. Minor Subdivisions – Approval Procedure.

(a) *Preliminary Plan Not Required.* The submission of a preliminary subdivision plan, under [Sec.] Section 50-34 and [Sec.] Section 50-35, is not required for:

(1) Minor Lot Line Adjustment.

* * *

(2) Conversion of an Outlot into a Lot.

* * *

(3) Consolidation of Two or More Lots or a Part of a lot into One Lot.

* * *

(4) Further Subdivision of a Commercial, Industrial or Multi-Family Residential Lot to Reflect a Change in Ownership, Deed, Mortgage or Lease Line.

* * *

(5) Plat of Correction.

* * *

(6) Plats for Certain Residentially Zoned Parcels Created by Deed Before June 1, 1958.

* * *

(7) Plats for Existing Places of Worship, Private Schools, Country Clubs, Private Institutions and Similar Uses Located on Unplatted Parcels.

* * *

(8) Plats for Certain Residential Lots located in the Rural Density Transfer Zone.

* * *

(9) Parcels that satisfy Section 59-B-8.1 of Chapter 59 may be platted under the minor subdivision procedure if:

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53

- * * *
- (10) Combining a lot and adjoining property. Except in agricultural zones, the Planning Board may approve plats under the minor subdivision process to consolidate an existing platted lot, or part of a lot that contains a legally constructed one-family dwelling unit and a partition of land created as a result of a deed, [provided] if:
- (A) in a one-family residential zone, the partition of land created by deed cannot itself be platted under the area and dimensional standards of the zone;
 - (B) any conditions applicable to the existing lot remain in full force and effect on the new lot;
 - (C) any required street dedication is provided; and
 - (D) the subject lot was not identified as an outlot on a plat.
- (11) Creation of a Lot from a Part of a Lot. A part of a previously recorded lot that was created as a result of a deed transfer of land from the lot, and which contains a legally constructed one-family residential dwelling, may be converted into a lot under the minor subdivision procedures if:
- (A) the part of lot is located in a one-family residential zone; and
 - (B) all applicable conditions or agreements applicable to the subdivision approval creating the original lot will also apply to the new lot. The conditions and agreements may include, but are not limited to, any adequate public facilities agreement, conservation easement, or building restriction lines.

* * *

54 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of
55 Council adoption.

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

ATTACHMENT 2

Zoning Text Amendment No.: 12-18
Concerning: Exemptions – Pre-1928
Resubdivisions
Draft No. & Date: 1 – 12/6/12
Introduced: December 11, 2012
Public Hearing:
Adopted:
Effective:

**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: Councilmember Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Provide an exemption from current zoning standards for pre-1928 property that resubdivide

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

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

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 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-5 is amended as follows:

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

* * *

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

(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 building lot, even if the new lot does not meet the width and size requirements of the underlying zone, if:

- (1) the tracts of land are under common ownership;
- (2) a habitable one-family dwelling 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 substantial evidence; and
- (3) all the tracts of land on which the dwelling is, or was, located are included in the newly created lot.

(b) Any tract of land created by deed [[or plat]] before March 16, 1928 and containing a legally constructed one-family dwelling may be platted into one building lot even if the resulting lot does not meet the width and size requirements of any zone. Such a tract of land may be consolidated by [[the]] record plat with an adjacent tract of commonly owned land into a larger building lot, even if the resulting lot still does not meet the width and size requirements of any zone.

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

28 * * *

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

31

32 This is a correct copy of Council action.

33

34 _____

35 Linda M. Lauer, Clerk of the Council