



Zoning Text Amendment (ZTA) No. 17-13, Exemptions - Public Taking



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Completed: 11/20/17

Description

ZTA No. 17-13 would remove the possibility of structures located on a lot reduced in area by a public acquisition from becoming nonconforming; allow the repair, alteration, or reconstruction of such structure under certain circumstances; and allow the lot reduced in area by public acquisition to be legal.

Summary

Staff recommends approval of ZTA 17-13, to remove the possibility of structures located on a lot reduced in area by a public acquisition from becoming nonconforming; allow the repair, alteration, or reconstruction of such structure under certain circumstances; and allow the lot reduced in area by public acquisition to be legal. Staff notes that proposed Section 7.7.1.F.2. that spells out that *a lot reduced in area by a public acquisition is legal* doesn't appear to be necessary given that the Subdivision Regulations (Chapter 50) provide an exemption provision from the platting requirement for lots reduced through transfers for public use.

Background/Analysis

The 2014 Zoning Ordinance did not grandfather a lawful structure located on a lot that is reduced in area by a public acquisition. That acquisition could render the structure nonconforming since Section 7.7.1.A.1 (Existing Structure, Site Design, or Use on October 30, 2014) applies only to structures that existed on October 30, 2014. ZTA 17-13 would retain the pre-acquisition, legal status of the property. The amendment is recommended by Council and Executive staff for situations where less than an entire property is publicly acquired. Staff believes that the amendment is necessary and is consistent with public taking language of the previous Zoning Ordinance.

Staff notes that proposed Section 7.7.1.F.2. that spells out that *a lot reduced in area by a public acquisition is legal* doesn't appear to be necessary given that the Subdivision Regulations (Chapter 50)

provide an exemption provision from the platting requirement before building permits can be issued for lots reduced through transfers for public use (Section 50.3.3.B.2). The primary downside to the creation of an “unlawful” lot through eminent domain is that you can’t pull building permits to repair, reconstruct, etc. an existing structure, which would be taken care of by F.1. The language of the ZTA is stated below for your convenience.

F. Public Taking

1. A lawful structure located on a lot reduced in area by a public acquisition that would render the structure nonconforming is legal and may be repaired, altered, or reconstructed, but may not be enlarged.
2. A lot reduced in area by a public acquisition is legal.

Attachments

1. ZTA No. 17-13 as introduced

ATTACHMENT 1

Zoning Text Amendment No.: 17-13
Concerning: Exemptions - Public
Taking
Draft No. & Date: 1 – 8/1/17
Introduced: October 31, 2017
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**

Lead Sponsor: Councilmember Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- remove the possibility of structures located on a lot reduced in area by a public acquisition from becoming nonconforming;
- allow the repair, alteration, or reconstruction of such structure under certain circumstances;
- allow the lot reduced in area by public acquisition to be legal; and
- generally amend the provisions for exemptions

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

Division 7.7. “Exemptions and Nonconformities”
Section 7.7.1. “Exemptions”

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 text that 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:

1 **Sec. 1. DIVISION 59-7.7 is amended as follows:**

2 **Division 7.7. Exemptions and Nonconformities**

3 **Section 7.7.1. Exemptions**

4 * * *

5 **F. Public Taking**

6 1. A lawful structure located on a lot reduced in area by a public
7 acquisition that would render the structure nonconforming is legal and
8 may be repaired, altered, or reconstructed, but may not be enlarged.

9 2. A lot reduced in area by a public acquisition is legal.

10 * * *

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

13
14 This is a correct copy of Council action.

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16 _____
17 Linda M. Lauer, Clerk of the Council