

**CORRECTED**

Ordinance No: 16-31

Zoning Text Amendment No: 08-11

Concerning: Standards – Residential Zones

Draft No. & Date: 6 – 12/09/08

Introduced: May 6, 2008

Public Hearing: June 17, 2008

Adopted: December 9, 2008

Effective: April 28, 2009

**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 Berliner, Andrews, Elrich, and Trachtenberg

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

- amend the provisions concerning an established building line;
- require regulations to implement the provision concerning a sloping lot;
- amend the maximum height for certain lots in the R-200 zone;
- amend the maximum building coverage for certain lots in certain one-family residential zones; and
- generally amend the development standards for one-family residential 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 INTERPRETATION”
- Section 59-A-2.1 “Definitions”
- DIVISION 59-A-5 “COMPLIANCE REQUIRED”
- Section 59-A-5.33 “Established building line”
- Section 59-A-5.41 “Additional stories on sloping lots”
- DIVISION 59-C-1 “RESIDENTIAL ZONES, ONE-FAMILY”
- Section 59-C-1.32 “Development standards”

CLERK’S NOTE: *Typographical error corrected on line 232 to read, “filed after April 28, 2009”*

**OPINION**

Zoning Text Amendment No. 08-11 was introduced on May 6, 2008. ZTA 08-11 would amend the Zoning Ordinance to:

- lower the maximum height for certain lots in the R-200 zone;
- reduce the maximum building coverage for certain lots in certain one-family residential zones;

- 47 - amend provisions concerning an established building line by specifying the  
 48 buildings to be included, the buildings to be excluded, and an alternative method  
 49 to determine the setback required; and  
 50 - require regulations to implement the provisions for any sloping lot.  
 51

52 Planning Staff supported ZTA 08-11 with minor editorial changes to the established building line  
 53 and the sloping lots provisions. Planning Staff did not recommend any changes to the building  
 54 coverage limits or the grandfathering provisions of ZTA 08-11 as introduced.  
 55

56 The Planning Board agreed that there is a need to address site design and compatibility issues in  
 57 smaller lot zones; however, the Board was split (2-2) on supporting ZTA 08-11. In particular,  
 58 some Board members thought that existing houses should have the ability to rebuild under  
 59 current development standards. Board members who did not endorse ZTA 08-11 thought that  
 60 there are too many unanswered questions concerning the impact of the legislation. The Board  
 61 members in support of ZTA 08-11 believed that the ZTA would improve the compatibility of  
 62 infill structures in many existing small lot neighborhoods.  
 63

64 The Executive supported the concepts reflected in ZTA 08-11 and the Agreement in Principle  
 65 reached by the Infill Development Task Force. The Executive also believed that some particular  
 66 problems raised in the public hearing warranted the Council's attention. The Montgomery  
 67 County Planning Board, in its report to the Council, recommended that the text amendment be  
 68 approved.  
 69

70 The Council held a public hearing on ZTA 08-11 on June 17, 2008. There was a significant  
 71 amount of written testimony, both for and against the ZTA. The Infill Development Task force  
 72 submitted "an agreement in principle" that recommended a number of amendments to the ZTA  
 73 as introduced. The text amendment was referred to the Planning, Housing, and Economic  
 74 Development Committee for review and recommendation.  
 75

76 The Planning, Housing, and Economic Development Committee held a worksession to review  
 77 the amendment on July 21, October 13, November 10, November 17, November 24, and  
 78 November 25, 2008. The Committee requested and received data from the Planning Department  
 79 and the Department of Permitting Services to examine the quantitative and geographic effects of  
 80 ZTA 08-11 and alternatives. On November 25, 2008 the Committee recommended approval of  
 81 ZTA 08-11, with amendments to define the lots that would be subject to lower building coverage  
 82 limits. In particular, the Committee recommended the following definition of infill development:  
 83

84 Any building or construction of a one-family dwelling on a lot in the R-60,  
 85 R-90, or R-200 zone if:

- 86 (a) the lot was created:  
 87 (1) by a plat recorded before January 1, 1978; or  
 88 (2) by a plat of resubdivision that created fewer than 6 lots on a lot  
 89 previously created by a plat recorded before January 1, 1978;  
 90 (b) the lot is less than 20,000 square feet in area; and  
 91 (c) the construction proposed is more than one story, excluding any  
 92 basement, and is:  
 93 (1) a new one-family dwelling;

- 94 (2) the demolition and reconstruction of more than 50 percent of the  
95 floor area of the dwelling existing on {effective date}; or  
96 (3) the addition of more than 50 percent of the floor area of the  
97 dwelling existing on {effective date}.

98  
99 The primary problem addressed by ZTA 08-11 was described to the Committee as newly  
100 constructed homes in established neighborhoods that loom over their neighbors and invade their  
101 privacy. The longer-term residents believe that oversized homes are out of character with their  
102 community. The Committee's recommended amendments would apply the limitation on  
103 building coverage to older communities, on smaller lots, and in appropriate zones. The  
104 Committee recommended retaining the current building coverage limits for one-story homes,  
105 one-story additions, and other additions related to the scale of the existing house. The approach  
106 recommended by the Committee defined infill development as construction that takes place after  
107 the effective date of the legislation. The Committee also recommended assuring that, in all  
108 instances, larger lots were allowed a larger building footprint than smaller lots, and excluding  
109 certain elements from the new coverage limits (any bay window, chimney, porch, or a detached  
110 garage, if the garage is less than 241 square feet of floor area and less than 20 feet in height).

111  
112 The Committee further recommended:

- 113  
114 1) adopting the provision to reduce allowable building height in the R-200 zone as  
115 introduced in ZTA 08-11;  
116 2) amending the established building line provision to provide more flexibility to  
117 conform to neighboring setbacks;  
118 3) requiring the propagation of regulations to implement the sloping lot provisions of  
119 ZTA 08-11 by the end of November 2009; and  
120 4) amending the effective date to 140 days after the Council's adoption.

121  
122 The District Council reviewed Zoning Text Amendment No. 08-11 at a worksession held on  
123 December 9, 2008, and agreed with the recommendations of the Planning, Housing, and  
124 Economic Development Committee, except as follows:

- 125  
126 1) the Council applied the limited building coverage to lots smaller than 25,000 square  
127 feet;  
128 2) a one-story basement was excluded from the definition of a one-story house only if  
129 average elevation in the front of the house was higher than the average elevation  
130 along the rear of the house; and  
131 3) the first 240 square feet of any garage less than 350 square feet will be excluded from  
132 the calculation of building coverage.

133  
134 For these reasons, and because to approve this amendment will assist in the coordinated,  
135 comprehensive, adjusted, and systematic development of the Maryland-Washington Regional  
136 District located in Montgomery County, Zoning Text Amendment No. 08-11 will be approved as  
137 amended.

138  
139  
140  
141

ORDINANCE

142  
143  
144  
145  
146  
147

*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-A-2 is amended as follows:  
DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION**

**Sec. 59-A-2.1. Definitions.**

151

\* \* \*

152  
153

**Infill development:** Any building or construction after April 28, 2009 of a one-family dwelling on a lot in the R-60, R-90, or R-200 zone if:

154

(a) the lot was created:

155

(1) by a plat recorded before January 1, 1978; or

156

(2) by a plat of resubdivision that created fewer than 6 lots from a lot previously created by a plat recorded before January 1, 1978;

157

158

(b) the lot is less than 25,000 square feet in area; and

159

(c) the construction proposed is more than one story, excluding any basement if the average elevation of the finished grade is higher along the front of the dwelling than the average elevation along the rear of the dwelling, and is:

160

161

162

(1) a new one-family dwelling;

163

(2) the demolition and reconstruction of more than 50 percent of the floor area of the dwelling existing on April 28, 2009; or

164

165

(3) the addition of more than 50 percent of the floor area of the dwelling existing on April 28, 2009.

166

167

\* \* \*

**Sec. 2. DIVISION 59-A-5 is amended as follows:**

169

**Division 59-A-5. Compliance Required.**

170

\* \* \*

171

**59-A-5.33. Established building line.**

- 172 (a) The established building line, as defined in Section 59-A-2.1, applies only to  
173 new buildings in the R-60, R-90, R-150, and R-200 zones. The established  
174 building line does not apply to an alteration or addition to an existing  
175 building.
- 176 (b) The two or more one-family detached residential buildings considered in  
177 determining the established building line must all be:
- 178 (1) within 300 feet of the side property line of the proposed construction  
179 site measured along the street frontage;
  - 180 (2) along the same side of the street;
  - 181 (3) between intersecting streets or to the point where public thoroughfare  
182 is denied;
  - 183 (4) in existence or approved by a building permit when the building  
184 permit application on the subject property is filed;
  - 185 (5) legally constructed; and
  - 186 (6) not on a through lot if the building on the through lot fronts on a street  
187 other than the street fronting the subject property.
- 188 (c) The established building line is the minimum setback for the zone, unless  
189 there are at least two buildings as described in subsection (b) and more than  
190 50 percent of the buildings described in subsection (b) are set back greater  
191 than the minimum, in which case the average setback of all the buildings  
192 described in subsection (b), excluding those buildings:
- 193 (1) in the R-200 zone that are or were ever served by well or septic;
  - 194 (2) on the subject property;
  - 195 (3) in a different zone than the subject property;
  - 196 (4) on a through lot that fronts on a street different than the subject  
197 property;
  - 198 (5) located on any pipestem, wedge-shaped, or flag-shaped lot; or

199 (6) approved by permit for demolition, except if a building permit was  
200 also approved with the same setback,  
201 is the established building line, unless the applicant chooses to calculate the  
202 setback as the average setback of the two adjoining lots or the applicant  
203 chooses to use the front setback of the existing one-family building that was  
204 established before demolition, excluding any approved variance, if the  
205 existing building meets the minimum setback of the zone. All calculations  
206 must be based on a survey that is signed and sealed by a licensed engineer or  
207 surveyor. Any building excluded from the established building line  
208 restriction must comply with the minimum setback requirement of the zone.  
209 (d) Corner lots have two front yards and are subject to established building line  
210 standards on both streets. At the option of the applicant, a corner lot may  
211 use front setbacks of the adjoining buildings on both sides of the corner lot.

212 \* \* \*

213 **59-A-5.41. Additional stories on sloping lot.**

214 On any sloping lot, stories in addition to the number permitted in the zone in which  
215 the lot is located must be permitted on the downhill side of any building erected on  
216 the lot, but the building height limit must not otherwise be increased above that  
217 specified for the zone. This section must be implemented by an executive  
218 regulation adopted under method 2 of Section 2A-15.

219 \* \* \*

220

221

222

223

224

225





231

232 ‡ If the lot is the site of a building permit application filed after April 28, 2009, then the  
233 maximum allowable building height is determined by either of two methods and varies with the  
234 lot area as follows:

235 Lot Area in Square Feet Height in Feet

Equal to or greater than	And less than	Height to the highest point of any roof		The mean height in feet between the eaves and ridge of a gable, hip, mansard, or gambrel roof
25,000	40,000	45	or	40
15,000	25,000	40	or	35
0	15,000	35	or	30

236 Any building constructed or proposed under a building permit filed before April 28, 2009 is  
237 conforming. Any such building may be continued, maintained, repaired, and, if demolished by  
238 accidental or natural forces, rebuilt to the same building height, three dimensional shape, and lot  
239 coverage allowed under any building permit filed anytime before April 28, 2009.

240 ‡‡ If the building on a lot is infill development, then the maximum area that may be covered by  
241 any building, including any accessory building and any weatherproofed floor area above a porch,  
242 but not including any bay window, chimney, porch, or up to 240 square feet of a detached  
243 garage, if the garage is less than 350 square feet of floor area and less than 20 feet in height, must  
244 vary with the lot area as follows:

- 245 Lot area less than 6,000 square feet: 30 percent of the lot area.
- 246 Lot area equal to or greater than 6,000 square feet but less than 16,000
- 247 square feet: 30 percent, less .001 percent for every square foot of lot area
- 248 exceeding 6,000 square feet.
- 249 Lot area equal to or greater than 16,000 square feet: 20 percent of the lot
- 250 area.

251 Any building constructed or proposed under a building permit filed before April 28, 2009 and  
252 any infill development may be continued, maintained, repaired, and, if demolished by accidental  
253 or natural forces, rebuilt to the same building height, three dimensional shape, and lot coverage  
254 allowed under any building permit.

255 \* \* \*

256 **Sec. 4. Effective date.** This ordinance takes effect 140 days after the date of  
257 Council adoption.

258 **Sec. 5. Regulation Required.** The regulation required under §59-A-5.41 must be  
259 submitted by the Department of Permitting Services for Council's approval before  
260 November 27, 2009.

261 **Sec.6. Status Report Required.** The Department of Permitting Services is  
262 required, before June 25, 2010, to report to the Council on their one year  
263 experience implementing this Zoning Text Amendment, including their  
264 implementation of §59-A-5.41.

265

266 This is a correct copy of Council action.

267

268

269 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council