


Action

MEMORANDUM

February 1, 2019

TO: County Council

FROM: Jeffrey L. Zyontz,  Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 18-12, Setback Exemptions – Fences

PURPOSE: Action – vote to approve, disapprove, or amend and approve the recommendations of the Planning, Housing, and Economic Development Committee

Expected to Attend:

Casey Anderson, Chair, Planning Board
Jason Sartori, Acting Chief, Functional Planning and Policy, M-NCPPC
Greg Russ, Planner Coordinator, M-NCPPC
Ehsan Motazedi, Chief, Zoning and Enforcement, Department of Permitting Services

PHED Committee Recommendation: On January 28, 2019, the Committee (2-0; Councilmember Jawando absent) recommended approval of ZTA 18-12 as introduced.

Background

Zoning Text Amendment (ZTA) 18-12, lead sponsor Councilmember Riemer, was introduced on December 11, 2018. ZTA 18-12 would allow for fences up to 8 feet tall if abutting a master planned right-of-way for a rail line or abutting any service road that provides access to a master planned right-of-way for a rail line.¹

As a general matter, all structures in residential zones must be set back from property lines. The amount of the setback is governed by the standards of the zone. The code provides an exception to the required setback for some fences. Deer fences and fences abutting non-residential zones may be as high as 8 feet tall and be exempt from the setback requirement. All other fences exempt from setback requirements may be no taller than 6.5 feet. ZTA 18-12 would increase the allowable height of a fence that would be exempt from a setback requirement under certain circumstances.

The Council held a public hearing on January 15, 2019. The County Executive submitted testimony supporting ZTA 18-12. The Planning Board supported ZTA 18-12. The Planning Board was surprised to learn that an 8-foot high fence abutting a rail line was not already allowed by the code. Planning staff has no

¹ Key words: #Fences, #LightRail, #PurpleLine, #RightofWay.

objection to ZTA 18-12 given that the relaxation of the height standard could assist in minimizing possible visual and audible obtrusions associated with trains. A property owner abutting the Purple Line expressed support for the ZTA.

The Planning, Housing, and Economic Development Committee recommended approval of ZTA 18-12 as introduced.

Issues

Why allow fences on a property line at all?

The common pattern of residential development is the single-family dwelling near the center of a lot and surrounded by yards, most of which are open to public view. There are many situations in which fences are appropriate and necessary. They can be used to keep a toddler in a yard. Pets have access to the outdoors without getting into neighbor's properties. Lawns and gardens can be protected from some animals. Fences are required to safeguard against the dangers of yard pools. In addition, fences can block off the hot sun and break the cold wind and can shield against unsightly neighboring yards and inquisitive eyes.² Allowing a fence on the property line maximizes the area of enclosed yard space.

Why have any height limit on a fence on the property line?

Zoning restrictions for a fence are balanced with the right of adjoining property owners to light, air, and view. Fence regulations are drawn so they serve both the property owner and the public – neighbors, for the most part – with little conflict. When the immediate neighbor is a rail right-of-way, the reasons for a shorter fence are diminished.

Can a fence on a property line ever be higher than 8 feet?

It would be expected under the approval of ZTA 18-12 that fences bordering a rail right-of-way would be allowed up to 8 feet. The current code allows for alternative methods of compliance with zoning code standards only if the site is in some manner unique.³

This packet contains
ZTA 18-12

© number
1 – 4

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² "Privacy isn't negotiable. It's the right of every American." Jackie Speier

³ Division 6.8. Alternative Compliance

Section 6.8.1. Alternative Method of Compliance

The applicable deciding body may approve an alternative method of compliance with any requirement of Division 6.1 and Division 6.3 through Division 6.6 if it determines that there is a unique site, a use characteristic, or a development constraint, such as grade, visibility, an existing building or structure, an easement, or a utility line. The applicable deciding body must also determine that the unique site, use characteristic, or development constraint precludes safe or efficient development under the requirements of the applicable Division, and the alternative design will:

- A. satisfy the intent of the applicable Division;
- B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;
- C. provide necessary mitigation alleviating any adverse impacts; and
- D. be in the public interest.

Zoning Text Amendment No.: 18-12
Concerning: Setback Exemptions –
Fences
Draft No. & Date: 1 – 11/16/18
Introduced: December 11, 2018
Public Hearing: January 15, 2019
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 Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the standards for an exemption to the building line and setback requirements for certain fences

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

Division 6.4. “General Landscaping and Outdoor Lighting”
Section 6.4.3. “General Landscaping Requirements”

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.*

OPINION

Zoning Text Amendment (ZTA) 18-12, lead sponsor Councilmember Riemer, was introduced on December 11, 2018. ZTA 18-12 would allow for fences up to 8 feet tall if abutting a master planned right-of-way for a rail line or abutting any service road that provides access to a master planned right-of-way for a rail line.

As a general matter, all structures in residential zones must be set back from property lines. The amount of the setback is governed by the standards of the zone. The code provides an exception to the required setback for some fences. Deer fences and fences abutting non-residential zones may be as high as 8 feet tall and be exempt from the setback requirement. All other fences exempt from setback requirements may be no taller than 6.5 feet. ZTA 18-12 would increase the allowable height of a fence that would be exempt from a setback requirement under certain circumstances.

In its report to the Council, the Montgomery County Planning Board recommended approval as introduced. Planning staff did not object to ZTA 18-12 given that the relaxation of the height standard could assist in minimizing possible visual and audible obtrusions associated with trains.

The Council's public hearing was conducted on January 15, 2019. All testimony supported the approval of ZTA 18-12.

The Council referred the text amendment to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on January 28, 2019. The Committee recommended approving ZTA 18-12 as introduced.

The Council agreed with the recommendation of the 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. 18-12 will be approved as introduced.

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 59-6.4 is amended as follows:**

2 **Division 6.4. General Landscaping and Outdoor Lighting**

3 * * *

4 **Section 6.4.3. General Landscaping Requirements**

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6 C. Fences and Walls

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8 3. Exemptions from Building Line and Setbacks

9 Building line and setback requirements do not apply to:

- 10 a. deer fencing:
 - 11 i. in an Agricultural or Rural Residential zone; or
 - 12 ii. behind the front building line for property in a non-
 - 13 Agricultural or non-Rural Residential zone unless the
 - 14 property adjoins a national historical park[.];
- 15 b. a retaining wall where changes in street grade, width, or
- 16 alignment have made such structures necessary;
- 17 c. any other wall or fence that is not on a property abutting a
- 18 national historic park and is:
 - 19 i. 6.5 feet or less in height when not abutting a
 - 20 Commercial/Residential, Employment, or Industrial
 - 21 zone; or
 - 22 ii. 8 feet or less in height when [located in a Residential
 - 23 zone and] the fence abuts:
 - 24 (A) a Commercial/Residential, Employment, or
 - 25 Industrial zone; or
 - 26 (B) a master planned right-of-way for a rail line; or

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(C) any service road that provides access to a master
planned right-of-way for a rail line;

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d. a rustic fence on a property abutting a national historical park;

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e. any boundary fence behind the front building line, if the

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property is located within 100 feet of a parking lot in a national

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historical park; and

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f. deer fencing and any other fence that is 8 feet or less in height,

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if the property is farmed and agriculturally assessed.

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

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This is a correct copy of Council action.

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Megan Davey Limarzi, Esq.

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Clerk of the Council