



The Montgomery County Council Affirms Property Rights of Pre-1928

Substandard Lots

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The Montgomery County Council recently enacted three separate but related pieces of legislation (ZTA 12-16, ZTA 12-18 and SRA 12-03) that finally clarifies once and for all the property rights of “pre-1928 substandard lots” in the County. The need for clarifying legislation was instigated by a 2012 Board of Appeals decision (Case No. A-6361) to revoke a building permit issued by the County Department of Permitting Services for a new dwelling on a lot with less than 5,000 square feet of lot area located in Cabin John, Maryland. The problem with the Board’s ruling in Case No. A-6361 was that it not only denied property owners of vacant substandard lots the constitutional right to realize a reasonable use of their properties, but it also rendered many properties with existing homes *non-conforming*, meaning that if a home on a substandard lot is destroyed by any means (either by natural disaster or by intentional demolition), it could not be rebuilt. Allowing the Board of Appeals ruling to stand meant that the property values and rights of many homeowners would be in jeopardy.

Miller, Miller & Canby (representing the owner of the property at issue in Case No. A-6361) worked in close collaboration with representatives of the Maryland-National Capital Building Industry Association (M-NCBIA) over a period of six months to reach consensus with community representatives of the Town of Glen Echo and the Montgomery County Planning Board on the three-bill package. The resulting legislative solution constitutes a balanced approach that upholds the constitutional property rights of legal substandard lots while at the same time remains sensitive to concerns raised by community representatives relating to protection of an established neighborhood's character.

More specifically, "pre-1928 lots" are lots that were created by plat or deed prior to the existence of any zoning laws in the County. When the County enacted its first Zoning Ordinance on March 16, 1928, it established a minimum lot size requirement of 5,000 square feet for a one-family dwelling, rendering *substandard* a number of smaller pre-existing lots located mostly in down-county areas such as parts of Bethesda, Chevy Chase, Glen Echo and Cabin John, among others. In the mid-1950s, the County enacted "grandfathering provisions" (codified in Sections 59-B-5.1 and 59-B-5.3 of the Zoning Ordinance) intended to uphold the buildable status of substandard lots that were legally created under previous law or in the case of pre-1928 lots when no laws existed. These grandfathering provisions, however, have been subject to differing interpretations over time, with the most recent interpretation by the Board of Appeals resulting in the revocation of the aforementioned building permit. The County Council's recent enactment in essence overturns the Board of Appeals ruling in Case No. A-6361.

In summary, the Council affirmed the following in ZTA 12-16, ZTA 12-18 and SRA 12-03:

- 1) A dwelling built on a substandard lot created before 1928 should be allowed to be

reconstructed;

2) A dwelling should be allowed on a vacant substandard lot created before 1928 that does not have an adjoining lot in common ownership;

3) A vacant substandard lot that adjoins another lot in common ownership should be required to re-subdivide with the adjoining lot in common ownership in order to build a dwelling; and

4) A re-subdivision should be allowed even if the resulting lot remains undersized.