


**Action**

**MEMORANDUM**

January 12, 2018

TO: County Council

FROM: Jeffrey L. Zyontz , Senior Legislative Analyst

SUBJECT: Action: ZTA 17-14, Walls and Fences – Setback Exemption

**PHED Committee recommendation:** On December 11, 2017, the Committee (3-0) recommended approval of ZTA 17-14 as introduced.

**Background**

Zoning Text Amendment (ZTA) 17-14 was introduced on October 31, 2017. Councilmember Leventhal is the lead sponsor.

Currently, the Zoning Ordinance exempts fences and walls from setback requirements if the height of the structure is 6.5 feet or lower. A landowner who wants a higher fence is either required to meet the setback requirement or to apply for a variance. The sponsor believes that when residentially zoned property abuts a non-residentially zoned property (in Commercial/Residential, Employment, or Industrial zones), an 8-foot fence should be allowed without a setback or variance.

The Planning Board and Planning staff had no objection to ZTA 17-14. In their opinion, the ZTA would be useful in protecting dwellings from the light and noise of commercial neighbors.

The Council held a public hearing on December 5, 2017. The Planning Board representative was the only speaker.

**Issues**

If there are any issues with the ZTA, the Committee was not made aware of them. The Committee recommended approval of ZTA 17-14 as introduced.

**This Packet Contains**

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Zoning Text Amendment No.: 17-14  
Concerning: Walls and Fences -  
Setback Exemption  
Draft No. & Date: 1 – 10/10/17  
Introduced: October 31, 2017  
Public Hearing: December 5, 2017  
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**

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Lead Sponsor: Councilmember Leventhal

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

- revise, under certain circumstance, the provisions that allow fences and walls to be exempt from setback standards

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 No. 17-14 was introduced on October 31, 2017. Currently, the Zoning Ordinance exempts fences and walls from setback requirements if the height of the structure is 6.5 feet or lower. A landowner who wants a higher fence is either required to meet the setback requirement or to apply for a variance. The sponsor believes that when residentially zoned property abuts a non-residentially zoned property (in Commercial/Residential, Employment, or Industrial zones), an 8-foot fence should be allowed without a setback or variance.

In its report to the Council, the Montgomery County Planning Board recommended approval as introduced. In their opinion, the ZTA would be useful in protecting dwellings from the light and noise of commercial neighbors.

The Council held a public hearing on December 5, 2017. The Planning Board representative was the only speaker.

The text amendment was referred to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation.

The PHED Committee held a worksession on December 11, 2017 to review the text amendment. After careful review of the materials of record, the Committee recommended that ZTA 07-14 be approved as introduced.

The District Council reviewed Zoning Text Amendment No. 17-14 at a worksession held on January 16, 2018. The Council agreed with the Committee's recommendation to approve ZTA 17-14.

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. 17-14 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:*

**Sec. 1. ARTICLE 59-6 is amended as follows:**

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

\* \* \*

**Section 6.4.3. General Landscaping Requirements**

\* \* \*

**C. Fences and Walls**

\* \* \*

**3. Exemptions from Building Line and Setbacks**

Building line and setback requirements do not apply to:

a. deer fencing:

- i. in an Agricultural or Rural Residential zone; or
- ii. behind the front building line for property in a non-Agricultural or non-Rural Residential zone unless the property adjoins a national historical park.

b. a retaining wall where changes in street grade, width, or alignment have made such structures necessary;

c. any other wall or fence that is [6.5 feet or less in height and is] not on a property abutting a national historic park[;] and is:

- i. 6.5 feet or less in height when not abutting a Commercial/Residential, Employment, or Industrial zone; or
- ii. 8 feet or less in height when located in a Residential zone and the fence abuts a Commercial/Residential, Employment, or Industrial zone;

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

- 26 e. any boundary fence behind the front building line, if the  
27 property is located within 100 feet of a parking lot in a national  
28 historical park; and  
29 f. deer fencing and any other fence that is 8 feet or less in height,  
30 if the property is farmed and agriculturally assessed.

31 \* \* \*

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

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35 This is a correct copy of Council action.

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38 Megan Davey Limarzi, Esq.  
39 Clerk of the Council



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**OFFICE OF THE CHAIR**

December 4, 2017

**TO:** The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

**FROM:** Montgomery County Planning Board

**SUBJECT:** Zoning Text Amendment No. 17-14

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment (ZTA) No. 17-14 at its regular meeting on November 30, 2017. By a vote of 4:0 (Commissioner Fani-Gonzalez absent), the Planning Board recommends approval of the text amendment to revise, under certain circumstance, the provisions that allow fences and walls to be exempt from setback standards.

Currently, the Zoning Ordinance exempts fences and walls from setback requirements if the height of the structure is 6.5 feet or lower. Exceptions are granted for deer fencing or other fences located in the Agricultural or Rural Residential zones or are 8 feet or less in height and located on land that is farmed and agriculturally assessed. A landowner who wants a higher fence is either required to meet the setback requirement or to apply for a variance. The ZTA would allow the owner of residentially zoned property abutting a non-residentially zoned property (in Commercial/Residential, Employment, or Industrial zones), an 8-foot high fence without a setback or a variance.

The Board has no objection to ZTA 17-14 given that the relaxation of the height standard could assist homeowners in residential zones in minimizing possible visual and audible obtrusions associated with adjacent non-residential uses (headlights from larger vehicles, sounds from machinery, etc.).

**CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, November 30, 2017.

  
Casey Anderson  
Chair

CA:GR



**Zoning Text Amendment (ZTA) No. 17-14, Walls and Fences - Setback Exemption**

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**Completed: 11/20/17**

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**Description**

ZTA No. 17-14 would revise, under certain circumstance, the provisions that allow fences and walls to be exempt from setback standards.

**Summary**

**Staff recommends approval of ZTA 17-14, to revise, under certain circumstance, the provisions that allow fences and walls to be exempt from setback standards.**

**Background/Analysis**

Currently, the Zoning Ordinance exempts fences and walls from setback requirements if the height of the structure is 6.5 feet or lower. (Exceptions are granted for deer fencing or other fences located in the Agricultural or Rural Residential zones or are 8 feet or less in height and located on land that is farmed and agriculturally assessed). A landowner who wants a higher fence is either required to meet the setback requirement or to apply for a variance. The sponsor believes that when the owner of residentially zoned property abuts a non-residentially zoned property (in Commercial/Residential, Employment, or Industrial zones), an 8-foot fence should be allowed without a setback or a variance.

Staff has no objection to ZTA 17-14 given that the relaxation of the height standard could assist homeowners in residential zones in minimizing possible visual and audible obtrusions associated with adjacent non-residential uses (headlights from larger vehicles, sounds from machinery, etc.). Staff has highlighted the applicable ZTA language below for the Board's convenience.

**Section 6.4.3. General Landscaping Requirements**

\* \* \*

**C. Fences and Walls**

\* \* \*

3. Exemptions from Building Line and Setbacks

Building line and setback requirements do not apply to:

- a. deer fencing:
  - i. in an Agricultural or Rural Residential zone; or
  - ii. behind the front building line for property in a non-Agricultural or non-Rural Residential zone unless the property adjoins a national historical park.
- b. a retaining wall where changes in street grade, width, or alignment have made such structures necessary;
- c. any other wall or fence that is [6.5 feet or less in height and is] not on a property abutting a national historic park[;] and is:
  - i. 6.5 feet or less in height when not abutting a Commercial/Residential, Employment, or Industrial zone; or
  - ii. 8 feet or less in height when located in a Residential zone and the fence abuts a Commercial/Residential, Employment, or Industrial zone;
- d. a rustic fence on a property abutting a national historical park;
- e. any boundary fence behind the front building line, if the property is located within 100 feet of a parking lot in a national historical park; and
- f. deer fencing and any other fence that is 8 feet or less in height, if the property is farmed and agriculturally assessed.

Attachments

- 1. ZTA No. 17-14 as introduced