

Introduced	<u>1/3/17</u>
Public Hearing	<u>1/17/17</u>
Council Action	<u>2/6/17</u>
Executive Action	<u>          </u>
Effective Date	<u>4/21/17</u>

**County Council of Howard County, Maryland**

2017 Legislative Session

Legislative Day No. 1

Bill No. 5-2017

Introduced by: Greg Fox

Co-sponsored by: Mary Kay Sigaty

AN ACT amending the Howard County Code to clarify that court-ordered partitions of real property under certain conditions are not included within the definitions of minor subdivision or resubdivisions under the Subdivision Regulations; and generally relating to Minor Subdivisions and Resubdivisions.

Introduced and read first time January 3, 2017. Ordered posted and hearing scheduled.

By order Jessica Feldmark  
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on January 17, 2017.

By order Jessica Feldmark  
Jessica Feldmark, Administrator

This Bill was read the third time on February 6, 2017 and Passed , Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order Jessica Feldmark  
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 9<sup>th</sup> day of February 2017 at 3 a.m./p.m.

By order Jessica Feldmark  
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive \_\_\_\_\_, 2017

\_\_\_\_\_  
Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, in a lawsuit between two brothers, William and Howard Streaker, to dissolve their  
2 partnership, the Circuit Court for Howard County, in 1976, and then in an amended decree in  
3 1978, ordered a partition of the 30 acre real property co-owned by the Streakers; and

4 **WHEREAS**, the subdivision plat to effectuate this partition was filed with the Department of  
5 Planning and Zoning in 1979 and was finally approved and recorded in 1983 splitting the  
6 Streaker property into two fifteen acre parcels; and

7 **WHEREAS**, there is a line of cases which hold that a court-ordered partition of real property is  
8 outside the purview of a County's Subdivision requirement, and therefore the Streakers could  
9 have arguably subdivided their co-owned parcel in 1978 by partition deed; and

10 **WHEREAS**, in 1978 the Streakers alternatively could have asked for a waiver from the  
11 Subdivision Regulations in effect at that time to allow the split of the property in two by deed but  
12 for unknown reasons simply had the plat approved and recorded by the County; and

13 **WHEREAS**, if the property had been subdivided by deed, the provisions sought to be changed  
14 by this bill would not limit the proposed minor subdivision of the Howard Streaker lot; and

15 **WHEREAS**, William Streaker proceeded over the years to re-subdivide his 15 acre lot several  
16 times, while Howard Streaker did not subdivide his lot; and

17 **WHEREAS**, when Howard Streaker sought to subdivide his 15 acre lot into a minor subdivision  
18 in 2014, after the enactment of the State's Tiers legislation, he discovered that he could not do so  
19 because his Tier IV property was deemed to have reached the minor subdivision limit for Tier IV  
20 properties due to the subdivision activity of his brother William Streaker's lot; and

21 **WHEREAS**, Howard Streaker's lot was considered part of the original 1983 subdivision  
22 approved by the County, so that any subsequent resubdivision of William Streaker's lot was  
23 attributed to Howard Streaker's lot; and

24 **WHEREAS**, DPZ, on October 8, 2014 approved a waiver to the definition of "resubdivision"  
25 under the Subdivision Regulations to allow Howard Streaker to proceed with the minor  
26 subdivision but the waiver approval contained a condition that provided that the minor  
27 subdivision plat had to be submitted within one year; and

1 **WHEREAS**, immediately after the grant of the waiver, Mr. Streaker sold the property to Paul  
2 DiMarco; and

3 **WHEREAS**, Mr. DiMarco was unable to meet the one year subdivision deadline due to a variety  
4 of factors, some of which may have not been his fault, and at this time is unable to further  
5 subdivide his 15 acre parcel, pending an appeal before the Howard County Board of Appeals;  
6 and

7 **WHEREAS**, because the Streaker property could arguably have been subdivided by deed in  
8 1978 without County approval because of the Court-ordered partition, and had it done so, the  
9 provisions of the Subdivision Regulations sought to be changed by this bill would not apply to  
10 limit the proposed minor subdivision of the property; and

11 **WHEREAS**, the combination of the County definitions of “minor subdivision” and  
12 “resubdivision” as applied to the State’s Tiers requirements, and the designation of the Howard  
13 Streaker lot as a Tier IV property has had the unintended consequence of preventing the further  
14 subdivision of Mr. DiMarco’s lot.

15 **NOW THEREFORE**, the passage of this bill will clarify that the intent of the definitions of  
16 these terms was not meant to be applied to a lot which was created pursuant to a court-ordered  
17 partition occurring prior to January 1, 1984, including the Howard Streaker property and any  
18 other similarly situated property when such partition could arguably have been accomplished  
19 through deed instead of a County-approved parcel division ..

20

21 *Section 1. Be it enacted by the County Council of Howard County, Maryland, that the Howard County*  
22 *Code is hereby amended as follows:*

23 *By Amending:*

24 *Title 16 - Planning, Zoning and Subdivisions and Land Development Regulations*

25 *Subtitle 1. - Subdivision and Land Development Regulations*

26 *Article I. - General*

27 *Section 16.108. – Rules of Construction; definitions.*



1 **Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland that  
2 *this Act shall become effective 61 days after its enactment.*

3

4

5

6

7

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on February 19, 2017.

  
\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council