

MCPB
Item #1
01/12/06

DATE: January 6, 2006
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RKZ*
 Carlton Gilbert, Zoning Supervisor *CG*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the Zoning Ordinance to require that a TDR easement limit future development of non-residential uses other than agriculture in the Rural Density Transfer (RDT) zone; clarify that TDRs do not apply to property classified in the RDT zone developed with a non-residential use other than agriculture; and generally amend the TDR provisions

TEXT AMENDMENT: No. 05-23
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmembers Subin, Floreen and Knapp
INTRODUCED DATE: December 13, 2005
PLANNING BOARD REVIEW: January 12, 2006
PUBLIC HEARING: January 19, 2006; 7:00 p.m.

STAFF RECOMMENDATION: Support Zoning Text Amendment 05-23 with modifications, and request evaluation of easement limitations language.

PURPOSE OF THE TEXT AMENDMENT

To amend the Zoning Ordinance to require that a TDR easement limit future development of non-residential uses other than agriculture in the Rural Density Transfer (RDT) zone; clarify that TDRs do not apply to property classified in the RDT zone developed with a non-residential use other than agriculture; and generally amend the TDR provisions

DISCUSSION

This text amendment was introduced by Councilmembers Michael Subin, Nancy Floreen and Michael Knapp on December 13, 2005. It modifies the transferable development program to accomplish two primary objectives:

1. To require that a TDR easement limit future development of non-residential uses other than agriculture in the Rural Density Transfer (RDT) zone; and
2. To clarify that TDRs do not apply to property classified in the RDT zone that is developed with a non-residential use other than agriculture.

The impetus for the text amendment springs from a growing concern that a number of non-residential uses are allowed by right or by special exception in the RDT zone that can be built even if no development rights remain on the property. This concern was noted in the November 17, 2005 staff report to the Planning Board, and the Board supported the staff recommendation to research this issue and return to the Board with a recommendation in the spring. The M-NCPPC staff believed that this change might require a Master Plan amendment and wanted more time to consider that. This concern was also reflected in the public comments regarding the subject, although there was general support for pursuing the changes conceptually. The Council staff does not believe that an amendment is required, and thus the text amendment was drafted and introduced. The text amendment revises the transfer of density regulations to deny the ability to transfer any development rights from any property that is developed with any non-residential use other than an agricultural use, and requires all TDR easements to prohibit future development of any non-agricultural use on the affected property.

The staff recommends support for the text amendment, especially the clause denying transfer of development rights from property with existing non-agricultural uses. **The staff, however, does recommend that the language be modified to indicate that the easement prohibit the future development of any *non-agriculturally related use*, instead of any use other than *agriculture*.** Since the intent of the RDT Zone is to support agricultural uses, the staff believes that this restriction should not be applied to those uses that support agriculture. These should include the uses under the following classifications in Section 59-C-9.3 Land Uses in the Agricultural Zones: (a) Agricultural, (b) Agricultural-Industrial, (c) Agricultural-Commercial, and the Farm Machinery and Farm supply uses under the (g) Commercial uses.

The staff is less certain regarding the requirement that TDR easements prohibit non-agricultural uses on the affected property. A TDR easement would generally represent 5 acres of a property, not all of a property. Therefore the staff is not certain how an easement representing one portion of a property can restrict all

future non-agricultural use of the property (see Attachment 2, Research Memorandum). The staff believes that this portion of the text amendment should be more closely considered during deliberations during the County Council worksessions.

RECOMMENDATION

The text amendment reflects a modification that the Board has already supported in principle, and the staff recommends support of the text amendment with the modification to restrict future non-agriculturally related uses rather than non-agricultural uses; and a request for an evaluation of the concern regarding the easement limitations during deliberations at the Council.

ATTACHMENTS

1. Zoning Text Amendment 05-23
2. Research and Technology Team Memorandum

ATTACHMENT 1

Zoning Text Amendment No: 05-23
Concerning: TDR Easement-Nonresidential
uses
Draft No. & Date: 1 – 12/6/05
Introduced: December 13, 2005
Public Hearing: January 19, 2005; 7:00 pm
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**

By: Councilmembers Subin, Floreen and Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- requiring that a TDR easement limit future development of non-residential uses other than agriculture in the Rural Density Transfer (RDT) zone;
- clarifying that TDRs do not apply to property classified in the RDT zone developed with a non-residential use other than agriculture; and
- generally amending the TDR provisions.

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

DIVISION 59-C-1 “RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.39 “Special regulations for optional method development using transferable development rights”
DIVISION 59-C-9 “AGRICULTURAL ZONES”
Section 59-C-9.6 “Transfer of density-Option in Rural Density Transfer zone”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the 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.*

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-C-1 is amended as follows:**

2 **DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

3 * * *

4 **59-C-1.39. Special regulations for optional method development using transferable**
5 **development rights.**

6 **59-C-1.391. Applicability.** The following procedures and regulations apply to the
7 transfer of development rights from land classified in the rural density transfer zone
8 (RDT) to land classified in the transferable development rights (TDR) zones. The
9 [planning board] Planning Board may approve subdivision of such land at densities
10 not to exceed the maximum density permitted in the applicable TDR zone and
11 conforming to the guidelines contained in the applicable master plan approved by the
12 district council. Any increase in density above the density applicable to the standard
13 method of development must be based on a ratio of one single-family dwelling unit
14 for each transferable development right (TDR), and 2 multi-family dwelling units for
15 each transferable development right (TDR).

16 **59-C-1.392. General Provisions.**

17 (a) A development right [shall] must be created, transferred and extinguished only by
18 means of documents, including an easement and appropriate releases, in a
19 recordable form approved by the [planning board] Planning Board. The easement
20 [shall] must limit the future construction of one-family dwellings on a property in
21 the RDT zone to the total number of development rights established by the zoning
22 of the property minus all development rights previously transferred in accordance
23 with this section, the number of development rights to be transferred by the
24 instant transaction, and the number of existing one-family detached dwellings on
25 the property. The easement must also prohibit the future development of any non-
26 residential use, other than agriculture as defined in 59-A-2, on the affected
27 property.

- 28 (b) The transfer of development rights [shall] must be recorded among the land
29 records of Montgomery County, Maryland.
- 30 (c) The development density of a property under the TDR optional method [may]
31 must not be increased above the maximum density permitted in the zone (section
32 59-C-1.332(c)) nor beyond the density or number of dwelling units
33 recommended for [such] the property by the land use plan of the applicable
34 master plan approved by the district council.
- 35 (d) A property developed with the transfer of development rights [shall] must
36 conform to the requirements of chapter 25A of the Montgomery County Code
37 requiring MPDU[']s. The applicability of chapter 25A and the MPDU density
38 increase provided by section 59-C-1.6 [shall] must be calculated after the base
39 density of a property has been increased by a transfer or development rights. The
40 density increase provided by section 59-C-1.6 may be made without [the
41 acquisition of] acquiring additional development rights.

42 * * *

43 **Sec. 2. DIVISION 59-C-9 is amended as follows:**

44 **DIVISION 59-C-9. AGRICULTURAL ZONES.**

45 * * *

46 **59-C-9.6. Transfer of density—Option in Rural Density Transfer zone.**

47 In accordance with section 59-C-1.39 and in conformance with an approved and adopted
48 general, master, sector, or functional plan, residential density may be transferred at the rate
49 of one development right per 5 acres minus one development right for each existing
50 dwelling unit, from the Rural Density Transfer zone to a duly designated receiving zone,
51 pursuant to section 59-C-1.39. The density transfer provisions [are not applicable] do not
52 apply to publicly owned rights-of-way for roads, streets, alleys, easements, or rapid transit
53 routes classified in the Rural Density Transfer zone, or to property classified in the Rural
54 Density Transfer zone that is developed with a non-residential use, other than agriculture

55 as defined in 59-A-2. The following dwelling units on land in the RDT zone are excluded
56 from this calculation, provided that the use remains accessory to a farm. Once the
57 property is subdivided, the dwelling is not excluded:

- 58 (a) A farm tenant dwelling, farm tenant mobile home, or guest house as defined in
59 section 59-A-1.2, title "Definitions."
- 60 (b) An accessory apartment or accessory dwelling regulated by the special exception
61 provisions of divisions 59-G-1 and 59-G-2.

62
63 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
64 date of Council adoption.

65

66 This is a correct copy of Council action.

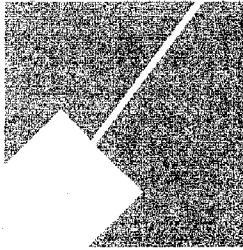
67

68

69

70

71 Linda M. Lauer, Clerk of the Council



December 22, 2005

Memorandum

To: Gregory Russ, Zoning Planner Coordinator, Development Review Division

Via: Karl Moritz, Research & Technology Center, 301-495-1312

From: Sharon K. Suarez, AICP, Housing Coordinator, RTC
Matthew Greene, AICP, Senior Planner, RTC

Re: Zoning Text Amendment 05-23, Transfer of Development Right (TDR) Easement --
Non-residential Uses

BACKGROUND

As proposed, ZTA 05-23 would (1) require that a TDR easement, in addition to limiting the construction of one-family dwellings, prohibit the construction of any non-residential use, other than agriculture as defined in Section 59-A-2; and (2) clarify that the TDRs do not apply to property classified in the Rural Density Transfer zone that is developed with a non-residential use, other than agriculture as defined in 59-A-2.

RECOMMENDATION

The Research & Technology Center recommends the text of Section 59-C-9.6 clearly indicate how the ZTA applies to those properties that are not entirely in non-residential uses or non-agricultural uses.

DISCUSSION

The provision to limit future development of non-residential uses on parcels with TDR easements will help limit the encroachment of non-agricultural uses into the agricultural reserve. However, the provision (beginning on line 53) stating that density transfer cannot take place on property that is developed with non-residential uses may need further clarification. No differentiation is made between land that is wholly or partially in a non-residential use or in a way that is not defined as agriculture in 59-A-2.

As the ZTA is written, a landowner having a 100-acre parcel with only five acres in use as a church, day care facility, or shooting range may be prohibited from selling TDRs for the undeveloped 95 acres. Yet the purpose of the zone may be better served if the TDRs were severed.