



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

**MCPB**  
**Item #6**  
**9/16/10**

**DATE:** September 8, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To define pet daycare and allow pet daycare in certain agricultural zones and under certain conditions

**TEXT AMENDMENT:** No. 10-08  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Knapp  
**INTRODUCED DATE:** June 22, 2010  
**PLANNING BOARD REVIEW:** September 16, 2010  
**PUBLIC HEARING:** September 21, 2010; 1:30 pm

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**STAFF RECOMMENDATION:** Denial. There is no apparent rational basis for permitting a pet daycare use by right in the Rural and RDT zones. The proposed new use “daycare for pets” would appear to fall into the land use category “animal boarding place”. Animal boarding in the Rural and RDT zones is permitted only after approval of a special exception by the Board of Appeals. The special exception process serves to ensure that animal boarding operations will not be detrimental to surrounding properties and the general public. Staff does not support establishing different standards for certain animal boarding operations located in the Rural and RDT zones even if they are located on larger tracts of 75 acres or more, as specified herein.

**BACKGROUND/ ANALYSIS**

ZTA 10-08 proposes to establish a new land use titled “daycare for pets”. The use is defined as *activities, fenced areas, and structures for the care, feeding, exercising, and training of pets other than overnight boarding*. As proposed, the use would be permitted by right in the Rural and RDT zones and limited to tracts of land of at least 75 acres. A proposed footnote further limits the scope of the use by requiring pets to be transported to and from the site by the pet daycare provider and by requiring all facilities and structures associated with the use to be located at least 500 feet from any neighboring residential building.

The text amendment as proposed is as follows:

**Division 59-C-9 AGRICULTURAL ZONES.**

\* \* \*

**59-C-9.3 Land uses.**

No use is allowed except as indicated in the following table:

**-Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

**-Special Exception Uses.** Uses designated by the letters "SE" may be authorized as special exceptions under Article 59-G.

	Rural	RC	LDRC	RDT	RS	RNC	RNC/TDR
* * *							
(h) Services: <sup>2</sup>							
* * *							
Day care facility for more than 4 senior adults and persons with disabilities.	SE	SE	SE	SE <sup>48</sup>	SE	SE	SE
Day care facility for not more than 4 senior adults and persons with disabilities. <sup>14</sup>	P	P	P	P <sup>48</sup>	P	P	P
<u>Daycare for pets</u>	<u>P*</u>			<u>P*</u>			
Domiciliary care home for more than 16 residents. <sup>35</sup>	SE	SE	SE	SE <sup>48</sup>	SE	SE	SE
Educational institution, private.	SE	SE	SE	SE <sup>13, 48</sup>	SE	SE	SE

\* The tract of land must be at least 75 acres. Pets must be transported to and from the site by the pet daycare provider. All facilities and structures must be at least 500 feet from any neighboring residential building.

After examination of existing uses in the Zoning Ordinance, staff has determined that the proposed daycare for pets falls into the land use category for an animal boarding place. The Zoning Ordinance defines animal boarding place as follows:

*Animal boarding place: Any buildings or land, other than a veterinary hospital, used, designated or arranged for the boarding, breeding or care of dogs, cats, pets, fowl or other domestic animals for profit, not including those animals raised for agricultural purposes.*

Currently, an animal boarding place is allowed in the Rural and RDT Zones (and 22 other zones) only through approval of a special exception application by the Board of Appeals. The only exceptions are in the C-3, I-1 and I-4 Zones where an animal boarding place is permitted by right if located in a soundproof building.

Under the ZTA, the potential physical, environmental, and operational impacts associated with an animal boarding place and its relationship to the neighboring residential communities would go unexamined. The ZTA proposes to address potential impacts of a pet daycare by allowing the use only on relatively large sites, establishing a 500-foot minimum setback of structures from adjacent residential buildings and permitting only the pet daycare provider to transport animals to a pet daycare site. However, without an analysis on a site by site basis, there is no way to assess the adequacy of the proposed mitigating measures. Below staff explores this question through a discussion of the special exception process and how it compares to by-right development.

### **Special Exception Provisions**

#### *Inherent/Non-inherent Effects*

The standard of evaluation for a special exception requires consideration of the inherent and non-inherent adverse effects on nearby properties and on the general neighborhood where the use is proposed. Inherent adverse effects are the harmful effects caused by the physical and operational characteristics necessarily associated with the particular use irrespective of the size or scale of operations. Non-inherent adverse effects are any harmful effects caused by physical and operational characteristics not necessarily inherently associated with the particular special exception use, or adverse effects created by unusual characteristics of the site.

Any analysis of inherent and non-inherent adverse effects must first establish what physical and operational characteristics are necessarily associated with a particular special exception use. As established by previous animal boarding place cases, the inherent, generic physical and operational characteristics necessarily associated with an animal boarding place include: (1) vehicular trips to and from the site; (2) noise and odor of animals; (3) deliveries of mail and small parcels; and (4) drop-off and pick-up of dogs in parking areas.

Any adverse effects of a proposed animal boarding place that result from the above four characteristics are considered inherent adverse effects. Alone, inherent adverse effects are not sufficient to constitute a denial. On the other hand, adverse effects that are not characteristic of an animal boarding place use, or inherent effects that are proliferated due

to distinctive site characteristics, are considered non-inherent adverse effects, which may be sufficient to result in the denial of the special exception application.

**As a permitted use, an animal boarding place would not be subject to an analysis of the inherent/non-inherent adverse impacts of the use on a particular site.**

*General Conditions of Approval for Special Exceptions/Specific SE Standards and Requirements*

An applicant for a special exception must demonstrate that the general and specific standards are satisfied. These standards include: minimum setback requirements; maintaining harmony with the general character of the adjacent neighborhoods through consideration of design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions; and establishing lighting and noise abatement measurements.

**In cases where an animal boarding place becomes a by-right use, there is no authority designated to help mitigate impacts concerning building/structure location and overall site design. Further, public input in the facility design and layout process and in the regulation of hours of operation has been paramount, particularly when an animal boarding place is proposed in the vicinity of residential property. The public input process may also assist in regulating the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or typically kept.**

**RECOMMENDATION**

Based on the analysis above, Staff recommends denial of the proposed text amendment that would define pet daycare and allow pet daycare by-right in certain agricultural zones and under certain conditions. Instead, any use of this type should be permitted only after approval of a special exception by the Board of Appeals.

Attachment 1 depicts the text amendment as introduced.

GR

Attachments

1. Zoning Text Amendment 10-08
2. Excerpt of Special Exception General Conditions & Specific Standards and requirements for Animal boarding places

# ATTACHMENT 1

Zoning Text Amendment No.: 10-08  
Concerning: Agricultural Zones –  
Pet Daycare  
Draft No. & Date: 2 - 6/17/10  
Introduced: June 22, 2010  
Public Hearing:  
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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By: Councilmember Knapp

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AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- define pet daycare;
- allow pet daycare in certain agricultural zones; and
- generally amend the provisions for pet care in agricultural zones

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

DIVISION 59-A-2  
Section 59-A-2.1  
DIVISION 59-C-9. “AGRICULTURAL ZONES”  
Section 59-C-9.3 “Land uses”

**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 that text 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.*

## 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. DIVISION 59-A-2 is amended as follows:**

**DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.**

**59-A-2.1 Definitions.**

\* \* \*

Daycare for pets. Activities, fenced areas, and structures for the care, feeding, exercising, and training of pets other than overnight boarding.

\* \* \*

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

**Division 59-C-9 AGRICULTURAL ZONES.**

\* \* \*

**59-C-9.3 Land uses.**

No use is allowed except as indicated in the following table:

**-Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

**-Special Exception Uses.** Uses designated by the letters "SE" may be authorized as special exceptions under Article 59-G.

	Rural	RC	LDRC	RDT	RS	RNC	RNC/TDR
* * *							
(h) Services: <sup>2</sup>							
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Day care facility for more than 4 senior adults and persons with disabilities.	SE	SE	SE	SE <sup>48</sup>	SE	SE	SE

Day care facility for not more than 4 senior adults and persons with disabilities. <sup>14</sup>	P	P	P	P <sup>48</sup>	P	P	P
<u>Daycare for pets</u>	<u>P*</u>			<u>P*</u>			
Domiciliary care home for more than 16 residents. <sup>35</sup>	SE	SE	SE	SE <sup>48</sup>	SE	SE	SE
Educational institution, private.	SE	SE	SE	SE <sup>13, 48</sup>	SE	SE	SE

19 \* The tract of land must be at least 75 acres. Pets must be transported to and  
 20 from the site by the pet daycare provider. All facilities and structures must be at  
 21 least 500 feet from any neighboring residential building.

22 \* \* \*

23 **Sec. 3. Effective date.** This ordinance takes effect immediately upon the  
 24 date of Council adoption.

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26 This is a correct copy of Council action.

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 Linda M. Lauer, Clerk of the Council

**59-G-1.21. General conditions.**

- (a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:
- (1) Is a permissible special exception in the zone.
  - (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.
  - (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.
  - (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.
  - (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
  - (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
  - (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of



## ATTACHMENT 2

the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.

- (8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
- (9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

**Sec. 59-G-2.02. Animal boarding place.**

\* \* \*

(b) In any residential or rural zone where permitted by special exception, an animal boarding place must comply with the following conditions and requirements:

(1) The minimum lot size is 2 acres or the minimum required in the zone, whichever is greater.

(2) Exterior areas used to exercise, walk, or keep animals must be set back from any property line a minimum of 200 feet and screened from adjacent residential properties. All exterior exercise areas and runs must be fenced for the safe confinement of animals.

(3) For all buildings in which animals will be present, maximum expected interior sound levels must be reduced to 40 dBA (A-weighted decibels) outside, measured at ten feet from the structure.

(4) All buildings and accessory structures must be set back from any property line a minimum of 75 feet.

(5) No animal may be outdoors between 6 p.m. and 8 a.m.

(6) On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time.

(7) Dogs must not be walked or exercised in outdoor areas that are off-site.

(8) In addition to the submittal requirements in Sec. 59-A-4.22, the applicant must submit the following information. Applications submitted without this information are incomplete and will not be accepted or assigned a case number:

(i) acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b) (3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst scenario sound level occurs.

(ii) detailed floor plans that show all the interior areas, including runs and kennels, and

(iii) site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.

(9) The board must specify a minimum number of off-street parking spaces equal at least to the number of employees on the maximum shift plus three. The required number of parking spaces must in no case be less than 3.

(10) The Board may regulate hours of operation. The Board may also regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or kept.

(11) Any accessory operation, such as grooming or the sale of pet food and supplies, must be set forth in the statement of operations and must be limited as an accessory activity to a percentage of sales not to exceed 20%.

(12) All litter and animal waste must be contained and controlled on the site.

(13) If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect.

(c) Any animal boarding place lawfully existing before November 1, 1977, is a conforming use and may be extended, enlarged or modified by special exception subject to the provisions of this section.