



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

MCPB
Item #
9/16/10

MEMORANDUM:

DATE: August 26, 2010
TO: Montgomery County Planning Board
VIA: Glenn Kreger, Acting Chief, Vision Division *JK*
FROM: Callum Murray, Team Leader, Potomac and Rural Area
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the provisions for child lots in the Rural Density Transfer (RDT) Zone
TEXT AMENDMENT: No. 10-12
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Knapp
DATE INTRODUCED: July 27, 2010
PLANNING BOARD REVIEW: September 16, 2010
PUBLIC HEARING: September 21, 2010; 1:30 PM

STAFF RECOMMENDATION: APPROVAL with modifications.

INTRODUCTION

Zoning Text Amendment (ZTA) 10-12, sponsored by Councilmember Knapp, was introduced on July 27, 2010 (Attachment 1).

According to the July 26, 2010 Council staff memorandum to the County Council, the ZTA would:

- 1) Add a provision for child lots to the intent of the RDT zone;
- 2) Explicitly allow child lots in addition to the density otherwise allowable;
- 3) Clarify the requirement to retain a development right for each lot;
- 4) Require the owner to personally establish continuous ownership since 1981;
- 5) Allow up to 3 child lots for each qualified owner with a provision for hardships;
- 6) Require a minimum tract size based on the number of child lots created;
- 7) Establish a maximum lot size for a child lot (see page 4); and
- 8) Require the child for whom the lot was created to own the child lot for at least 5 years, with a provision for hardships.

TIMELINE

For many years, there has been vigorous debate on how to interpret the existing language in the Zoning Ordinance pertaining to child lots.

In April 2006, the County Council appointed the Ad Hoc Agricultural Policy Working Group (Working Group) to “provide comprehensive advice on ways to ensure the long term protection of the Agricultural Reserve and preservation of the agricultural industry.” In particular, the Council charged the Working Group with addressing a number of specific and inter-related issues, including a thorough review of the Child Lot program.

The Working Group produced their Final Report in January 2007. On March 12, 2007, the Planning Board transmitted their recommendations to the County Council.

In March 2007, the Planning, Housing and Economic Development (PHED) Committee discussed the Report, including the Board’s comments, and instructed Council staff to prepare draft policy instruments, including zoning text amendments, which would implement the Working Group’s recommendations via a series of short, mid and long term steps.

In June 2007, ZTA 07-06 was introduced to clarify that child lots would be permitted in addition to market lots and in excess of base density for the RDT Zone. The Board did not recommend approval of ZTA 07-06. An alternative ZTA 07-09 was introduced at the request of the Planning Board and supported the Board’s position at that time that child lots would be allowed as long as the overall density of a parcel did not exceed the maximum residential density permitted in the RDT Zone (one dwelling unit per 25 acres). On July 19, 2007, the County Council held a public hearing on the alternative ZTAs but took no action on either.

The Ad Hoc Agricultural Policy Working Group (Working Group) believed that “Efforts to identify potential strategies should involve property owners and must be cognizant of the existing tensions between the Planning Department and rural property owners on this issue.” The Working Group recommended that the Planning Department consider using existing agricultural advisory groups to help develop these strategies.

On March 4 and 18, 2010, the Planning Board considered an amended draft Zoning Text Amendment which had been discussed extensively with the Agricultural Advisory Committee (AAC), the Agricultural Preservation Advisory Board (APAB), and a sub-committee made up of members of both groups. The draft ZTA was also presented to the Upcounty Citizens Advisory Board on May 17, 2010.

The AAC and APAB were initially vigorously opposed to the Child Lot Standards ZTA, believing that it would adversely affect their property rights. Planning staff incorporated several amendments to preliminary drafts, based on constructive suggestions by members of both the AAC and APAB.

On May 19, 2010, the Planning Board transmitted a draft ZTA for child lot standards, with a request for introduction. Councilmember Knapp amended the ZTA forwarded by the Planning Board after consultation with the agricultural community. This ZTA (10-12) incorporates elements from the original ZTA 07-06 together with significant portions of the draft ZTA transmitted by the Board in May 2010.

ANALYSIS

The following sections address six issues, as follows:

- 1) Applicability requirements and exempted lots and parcels 59-C-9.41.1.(a)(1)(A) and 59-C-9.74(b)
- 2) Number and proportion of child lots 59-C-9.41.1.(a)(3)
- 3) Size of child lot 59-C-9.41.1.(a)(4)
- 4) Ownership of child lot – 59-C-9.41.1(a)(5)
- 5) Penalty for Violations 59.C-9.41.1(d)(2)
- 6) Density and TDR retention 59-C-9.41

1) Applicability requirements and exempted lots and parcels 59-C-9.41.1.(a)(1)(A) and 59-C-9.74(b)

The proposed ZTA changes the language of the current section to require that, to create child lots, property owners establish ownership as of January 7, 1981, the date the RDT zone was applied to the major part of the Agricultural Reserve under SMA G-266. However, portions of the Damascus planning area were changed to RDT in 1982, and a significant portion of the Clarksburg planning area was changed from R-200 to RDT in 1994. The January 6, 1981 date only applies to the portions of the County that were rezoned under G-266 and it does not cover all of the lands currently zoned RDT in the County. Staff recommends restoring the original language and amending the January 7, 1981 date to “...*the date of the adoption of the sectional map amendment that rezoned the Property to RDT.* “

2) Number and proportion of child lots 59-C-9.41.1.(a)(3)

The Planning Board’s former position, as articulated by the previous ZTA 07-09, was that the inclusion of child lots on land in an Agricultural Reserve essentially increased lot yields, compromised zoning as an effective land use management tool, and compromised preservation objectives for the area. At that time, the Board’s position was supported by over 60 organizations and individuals, but was opposed by the agricultural community, the Ad Hoc Agricultural Policy Working Group, Executive staff, and by County Council legislative staff. After a public hearing, no action has been taken by the County Council.

In March 2010, planning staff proposed a resolution to this impasse that would restrict the number, size and placement of lots created for children, paralleling the evolution of child lot policy and law of the Maryland Agricultural Land Preservation Foundation (MALPF). The legislative MALPF Task Force determined several years ago that the original intent of child lots under the State program – to encourage the continuation of family farming operations by allowing grown children to live and work on the farm – had become somewhat outdated, and that the provision was increasingly subject to subdivision for purposes other than long-term occupancy by members of the family farm.

The Task Force determined, and the legislature subsequently established, that the total number of family (child) lots allowed on otherwise preserved farms should be limited to a maximum of three: one for the first full 20 acres and one per full 50 acres thereafter, up to the maximum of three. It was also decided that the number of family lots could not exceed the number of lots that would have been allowed under County zoning at the time the easement was purchased; upon selling an easement, the owner of a farm with two development rights can never exclude more than two family lots. The idea was that development rights eliminated by the easement would be replaced by family lots up to a fairly stringent limit that would not subject the land to a residential presence that compromised the goals of the Program. Much of this reasoning was based on the fact that, ultimately, the owners and occupants of what were originally child lots would no longer be the children of the owners of the working farm.

MALPF easements restrict the number of child lots on any parcel to three, their location is subject to MALPF approval, and they must be no more than one acre in size. Although MALPF easements constitute a voluntary contractual agreement for compensation, staff suggested that they provided a successful and well accepted model on which to base zoning guidelines. It is both reasonable and proportionate. Staff suggested the following minor modification: a limit of one child lot for properties with a minimum of 25 acres in size, two child lots for properties with a minimum of 70 acres in size, and a limit of three for properties over 120 acres.

The maximum number and the proportions have been included in ZTA 10-12 under Sec. 59-C-9.41.1. (3) and planning staff recommends approval.

3) Size of child lot 59-C-9.41.1.(a)(4)

This section reads:

“A lot created for a child must be no larger than one acre, or the minimum necessary for approval of well and septic. The area of the driveway stem on a flag lot must not be included in the maximum area limit.”

The draft ZTA transmitted by the Planning Board had *“but in no case greater than 3 acres,”* at the end of the first sentence. Without it, the section is a non sequitur.

Planning staff understands that the reason the agricultural community wishes the 3-acre limit to be removed is because in 2008 the Department of the Environment for the State of Maryland contacted Montgomery County Well and Septic Division of the Department of Permitting Services regarding prohibiting the use of septic easements for purposes of installing septic systems. Legislation for exemption of this prohibition failed in Annapolis last year but will be resuscitated this year with every prospect for success. The Department of Permitting Services, the Agricultural Advisory Committee (AAC) and the Agricultural Preservation Advisory Board (APAB) all support the exemption for several reasons. Lots (whether child lots or otherwise) can take valuable land from farms unless there is flexibility to reposition them and protect the land that would otherwise be consumed. It is possible to farm over deep trench septic systems with no loss of tillable land and septic easements have typically been used to reposition lots so as not to disturb agricultural operations.

In their letter to the Planning Board of March 17, 2010, the AAC stated that, "This legislation will authorize the use of septic easements in Montgomery County as another tool for rural property owners to achieve **smaller lot sizes...**" (Emphasis attached).

Given that MALPF easements restrict child lots to no more than one acre in size, planning staff recommends restoration of the original language, with an amendment (in bold) as follows:

*"A lot created for a child must be no larger than one acre, or the minimum necessary for approval of well and septic, but in no case greater than 3 acres." **In the event that a septic easement is not possible, the Planning Board may approve a child lot greater than 3 acres. The area of the driveway stem on a flag lot must not be included in the maximum area limit.**"*

4) Ownership of child lot – 59-C-9.41.1(a)(5)

This section requires the child for whom the lot is created to be the owner of record when the lot is initially recorded. This is not possible since the ownership of the lot cannot be transferred by the parent until the plat is recorded. Further, it would not seem to be important that the time it takes a parent to transfer the lot be limited, provided that the child, or spouse of the child, owns the lot at the time the building permit is issued. Staff recommends modification of the language in this section as follows:

*"(5) ~~When a child lot is initially recorded,~~ **The child for whom the lot is created, or the spouse of the child, must be the listed owner of the lot in the County land records at the time the initial building permit is issued for the lot.**"*

5) Penalty for Violations 59.C-9.41.1(d)(2)

On March 11, 2010, the Planning Board recommended that the ownership requirement be enforced as follows:

1. *The plat of subdivision must include an owner certification that the lot is being created for a child of the owner.*
2. *The deed for each child lot created must include a covenant, entered into and executed by both original grantor and child as grantee, enforceable by the Department of Permitting Services on the advice of the Agricultural Preservation Advisory Board, that includes, at a minimum, the following provisions:*
 - a) *Title must remain with the child/grantee for five years from the date of recordation of the deed;*
 - b) *Upon written request by either the grantor or grantee, the Agricultural Preservation Advisory Board may grant a written waiver of the five-year restriction for certain hardships as determined by guidelines adopted by the Agricultural Preservation Advisory Board;*

- c) *In the event of a violation of the covenant, whereby title is transferred within the five-year period, an easement must be recorded on the parent tract extinguishing a buildable lot; and*
 - d) *If a buildable lot is no longer available at the time of such transfer (or upon the discovery of such violation), the grantor and grantee shall be jointly and severally liable for liquidated damages based on the value of a BLT at the time of the transfer with pro-rata reduction for each year in the five-year covenant. (For example, 100% value if the transfer occurs during the first year of the covenant, 90% for the second year, 80% for the third year and no less than 10% for the last year.)*
3. *Funds collected as liquidated damages must be deposited into Montgomery County's Agricultural Land Preservation Fund; provided however, that the Agricultural Preservation Advisory Board may be reimbursed to cover any costs or expenses incurred to enforce the covenant.*

However, the AAC and APAB believe that enforcement proceedings are not one of the duties and responsibilities of the APAB outlined in Chapter 2B of the Montgomery County Code, and Title 2, Subtitle 5, of the Annotated Code of Maryland (see Attachments 2 and 3). APAB duties involve the implementation of State and County easement programs by serving in an advisory capacity, and the APAB believes that the legal opinion of the County Attorney's office would need to be ascertained as to the appropriateness of expanding their role.

59.C-9.41.1(d)(2) places the burden of enforcing the restriction on child lot transfers on the Planning Board. Planning staff recommends that the Board and Council consider whether the Board has the authority and resources necessary to take legal action to recover the proceeds of any child lot transfer violations. If the Board agrees to take on the enforcement burden, staff recommends that in lieu of the proposed language in 59-C-9.41.1(d), the Planning Board's originally proposed language be inserted with the following revisions:

- 1. *The plat of subdivision must include an owner certification that the lot is being created for a child of the owner.*
- 2. *The deed for each child lot created must include a covenant, entered into and executed by both original grantor and child as grantee, enforceable by the Planning Board, that includes, at a minimum, the following provisions:*
 - a) *Title must remain with the child/grantee for five years from the date of recordation of the deed;*
 - b) *Upon written request by either the grantor or grantee, the Planning Board may grant a written waiver of the five-year restriction for certain hardships;*
 - c) *In the event of a violation of the covenant, whereby title is transferred within the five-year period, an easement must be recorded on the parent tract extinguishing a buildable lot; and*

- d) *If a buildable lot is no longer available at the time of such transfer (or upon the discovery of such violation), the grantor and grantee shall be jointly and severally liable for liquidated damages based on the value of a BLT at the time of the transfer with pro-rata reduction for each year in the five-year covenant. (For example, 100% value if the transfer occurs during the first year of the covenant, 90% for the second year, 80% for the third year and no less than 10% for the last year.)*
 - e) *In the event of a violation of the covenant, whereby title is transferred within the five-year period, by order of a court of competent jurisdiction, a lien will be recorded on the parent tract extinguishing a buildable lot; and*
 - f) *If a buildable lot is no longer available at the time of such transfer (or upon the discovery of such violation), the grantor and grantee shall be jointly and severally liable for liquidated damages based on the value of a BLT at the time of the transfer with pro-rata reduction for each year in the five-year covenant. (For example, 100% value if the transfer occurs during the first year of the covenant, 90% for the second year, 80% for the third year and no less than 10% for the last year.)*
3. *Funds collected as liquidated damages must be deposited into Montgomery County's Agricultural Land Preservation Fund; provided however, that the Planning Board may be reimbursed to cover any costs or expenses incurred to enforce the covenant.*

6) Density and TDR retention 59-C-9.41

This section includes certain farm dwellings in the base density calculation and is not limited to child lots. The new language governing TDR retention is preferable to the existing language in 59-C-9.6 from the standpoint of clarity and avoiding situations in which a farm tenant dwelling, farm mobile home, or guest house would become nonconforming at the time of subdivision. Section 59-C-9.6 permits transfer of residential development rights (TDRs) at a rate of one per five acres minus the number of existing dwelling units. This law exempts bona fide farm tenant dwellings, farm mobile homes, and guest houses from this calculation, but only until the property is subdivided.

There are differences of opinion about what this exemption means. Some interpret it to mean that as long as a unit remains appurtenant to the farm it does not require a retained TDR. Others read it to mean that once the property is subdivided (i.e. the subject of an approved preliminary plan or minor subdivision) then each dwelling unit must have a retained TDR. If an existing dwelling unit did not have a retained TDR at the time of subdivision, the unit would be nonconforming and might have to be razed. If the latter interpretation is correct, ZTA 10-12 simply clarifies existing law: that a TDR must be retained for each dwelling unit. Planning staff recommends approval of the new language.

7) **Miscellaneous**

A grandfather clause should be added to include properties with existing subdivision approvals but which are not already vested.

Line 58 Planning staff recommends the following change... “a ~~building~~ *development* right is retained for each dwelling unit”

Line 106 Planning staff recommends striking the word “Improperly.”

RECOMMENDATIONS

Planning staff recommends approval of the zoning text amendment with the amendments discussed above.

CM:ha G:\MURRAY\TA 10-12 Child Lots Final2.doc

Attachments

1. Zoning Text Amendment 10-12
2. Agricultural Preservation Advisory Board letter March 17, 2010
3. Agricultural Advisory Committee letter March 17, 2010

ATTACHMENT 1

Zoning Text Amendment No.: 10-12
Concerning: RDT Zone - Child Lot
Standards

Draft No. & Date: 1 – 7/26/10

Introduced:

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**

By: Councilmember Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the density calculations in the RDT Zone to exclude a child lot under specified conditions;
- amend the standards to approve a child lot in the RDT Zone; and
- generally amend the child lot provisions in the RDT Zone

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

| | |
|-------------------|---|
| DIVISION 59-A-2 | “DEFINITIONS AND INTERPRETATIONS” |
| Section 59-A-2.1 | “Definitions” |
| DIVISION 59-C-9 | “AGRICULTURAL ZONES” |
| Section 59-C-9.41 | “Density in RDT zone” |
| Section 59-C-9.74 | “Exempted lots and parcels-Rural Density Transfer zone” |

And adding:

| | |
|-------------------|------------------------------|
| Section 59-C-41.1 | “Child Lots in the RDT Zone” |
|-------------------|------------------------------|

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:

1 **Sec. 1. DIVISION 59-A-2 is amended as follows:**

2 **59-A-2.1. Definitions.**

3 In this Chapter, the following words and phrases have the meanings indicated:

4 * * *

5 **Child Lot:** A lot created for use for a one-family dwelling unit by a child, or the
6 spouse of a child, of a property owner.

7 * * *

8 **Immediate Family Member:** A person's parents, spouse, children, and siblings.

9 * * *

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

11 DIVISION 59-C-9. AGRICULTURAL ZONES.

12 * * *

13 **Sec. 59-C-9.2. Purposes or intent of the zones.**

14 * * *

15 **59-C-9.23. Intent of the Rural Density Transfer zone.**

16 The intent of this zone is to promote agriculture as the primary land use in sections
17 of the County designated for agricultural preservation in the General Plan and the
18 Functional Master Plan for Preservation of Agriculture and Rural Open Space.
19 This is to be accomplished by providing large areas of generally contiguous
20 properties suitable for agricultural and related uses and permitting the transfer of
21 development rights from properties in this zone to properties in designated
22 receiving areas.

23
24 Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural
25 operations are permitted at any time, including the operation of farm machinery.
26 No agricultural use can be subject to restriction on the grounds that it interferes
27 with other uses permitted in the zone, but uses that are not exclusively agricultural

28 in nature are subject to the regulations [prescribed] in this [division] Division 59-
29 C-9 and in [division] Division 59-G-2, "Special Exceptions-Standards and
30 Requirements."

31

32 The intent of the child lot option in the Rural Density Transfer zone is to facilitate
33 the continuation of the family farming unit or to otherwise meet the purposes of the
34 RDT zone.

35 * * *

36 **59-C-9.4. Development standards.**

37 The following requirements apply in all cases, except as specified in the optional
38 standards for cluster development set forth in sections 59-C-9.5 and 59-C-9.57 and
39 the exemption provisions of section 59-C-9.7.

40 **59-C-9.41. Density in RDT zone.**

41 [Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-
42 9.6 for permitted transferable density.) The following dwelling units on land in the
43 RDT zone are excluded from this calculation, provided that the use remains
44 accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

45 (a) A farm tenant dwelling, farm tenant mobile home or guest house as defined
46 in section 59-A-2.1, title "Definitions."

47 (b) An accessory apartment or accessory dwelling regulated by the special
48 exception provisions of division 59-G-1 and 59-G-2.]

49 Except as provided in subsection (a) or (b), only one one-family dwelling unit per
50 25 acres is permitted. (See Section 59-C-9.6 for permitted transferable density.)
51 Density above one one-family dwelling unit per 25 acres is allowed if:

52 (a) the dwelling unit is accessory to a farm, is not on a separate parcel or lot,
53 and is either:

54 (1) a farm tenant dwelling, farm tenant mobile home, or guest house; or

- 55 (2) an accessory apartment or accessory dwelling regulated by the special
56 exception provisions of Division 59-G-1 and 59-G-2;
57 (b) the lot is a child lot under Section 59-C-9.41.1; and
58 (c) a building right is retained for each dwelling unit.

59

60 **59-C-9.41.1. Child Lots in the RDT Zone.**

61 (a) **Applicability.** A child lot above the density of one one-family dwelling unit
62 per 25 acres is allowed in the RDT zone only if the following requirements
63 are satisfied.

64 (1) The property owner must have:

65 (A) recorded title to the property before January 7, 1981;

66 (B) personally applied for approval to create the lot; and

67 (C) retained a development right for each lot.

68 (2) The Planning Board must not approve more than one child lot for each
69 child of the property owner, regardless of the number of properties
70 owned.

71 (3) Unless the Planning Board finds that a limit on the number of child
72 lots would be a hardship, a maximum of 3 child lots can be
73 established for a qualifying property owner under subsection (1):

74 (A) one child lot is allowed on a tract of land of at least 25 acres;

75 (B) two child lots are allowed on a tract of land of at least 70 acres;

76 (C) three child lots are allowed on a tract of land of at least 120
77 acres.

78 (4) A lot created for a child must be no larger than one acre, or the
79 minimum area necessary for approval of well and septic. The area of
80 the driveway stem on a flag lot must not be included in the maximum
81 area limit.

82 (5) When a child lot is initially recorded, the child for whom the lot is
83 created must be the listed owner of the lot in the County land records.

84 (b) **Building Permit Restricted.** A building permit for a one-family dwelling
85 unit on a child lot must be issued only to:

86 (1) a child of the property owner;

87 (2) the spouse of a child of the property owner;

88 (3) a contractor for a child of the property owner; or

89 (4) a contractor for the spouse of a child of the property owner.

90 (c) **Transfer restricted.** Except as provided in subsection (c)(1) and (c)(2),
91 ownership of a child lot must not be transferred or leased within 5 years of
92 the date of the Department of Permitting Services' final inspection of the
93 dwelling unit.

94 (1) The owner of the child lot may only lease the lot to an immediate
95 family member.

96 (2) Ownership of a child lot may be transferred if the Planning Board
97 finds a hardship after the date of final inspection, such as death of the
98 child or a bona fide foreclosure of the mortgage or deed of trust.

99 (d) **Penalty for Violations.**

100 (1) Except as provided in subsection (d)(2), any violation of this
101 subsection is subject to the penalty and enforcement provisions in
102 Section 59-A-1.3.

103 (2) The Planning Board may take legal action to stop or cancel any
104 transfer or building permit of a child lot if any party to the transfer or
105 the building permit does not comply with all requirements of Section
106 59-C-9.41.1. The Planning Board may recover any funds improperly
107 obtained from any sale or lease of a child lot in violation of this

108 subsection, plus costs and interest at the rate prescribed by law from
109 the date a violation occurred.

110 **(e) Covenant required. A covenant between the property owner and the
111 Montgomery County Planning Board must be recorded in the Montgomery
112 County land records. The covenant must:**

- 113 **(1) be recorded simultaneously with the record plat;**
- 114 **(2) identify the transfer restrictions in subsection (c); and**
- 115 **(3) identify the penalties for violations as identified in subsection (d).**

116 * * *

117 **59-C-9.7. Exempted lots and parcels and existing buildings and permits.**

118 * * *

119 **59-C-9.74. Exempted lots and parcels—Rural Density Transfer zone.**

120 (a) The number of lots created for children [in accordance with] under the
121 Maryland Agricultural Land Preservation Program must not exceed the
122 development rights assigned to the property and retained by the property
123 owner.

124 (b) The following lots are exempt from the area and dimensional requirements
125 of section 59-C-9.4 but must meet the requirements of the zone applicable to
126 them [prior to their classification in the Rural Density Transfer zone] before
127 January 7, 1981.

128 (1) A recorded lot created by subdivision, if the record plat was approved
129 for recordation by the Planning Board [prior to the approval date of
130 the sectional map amendment which initially zoned the property to the
131 Rural Density Transfer Zone] before January 7, 1981.

132 (2) A lot created by deed executed [on or] before [the approval date of the
133 sectional map amendment which initially zoned the property to the
134 Rural Density Transfer Zone] January 7, 1981.

135 (3) A [record] recorded lot having an area of less than 5 acres created
136 after [the approval date of the sectional map amendment which
137 initially zoned the property to the Rural Density Transfer Zone]
138 January 7, 1981 by replatting 2 or more lots; provided that the
139 resulting number of lots is not greater than the number which were
140 replatted.

141 (4) A lot created for use for a one-family [residence] dwelling by a child,
142 or the spouse of a child, of the property owner, [provided that the
143 following conditions are met] if the lot satisfies the requirements of
144 59-C-9.41.1. [:

145 (i) The property owner can establish that he had legal title on or
146 before the approval date of the sectional map amendment which
147 initially zoned the property to the Rural Density Transfer Zone;

148 (ii) This provision applies to only one such lot for each child of the
149 property owner; and

150 (iii) Any lots created for use for one-family residence by children of
151 the property owner must not exceed the number of development
152 rights for the property owner.]

153 * * *

154 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
155 Council adoption.

156

157 This is a correct copy of Council action.

158

159

160 _____
Linda M. Lauer, Clerk of the Council

ATTACHMENT 2



AGRICULTURAL PRESERVATION ADVISORY BOARD

March 17, 2010

Dr. Royce Hanson, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland

Re: Proposed ZTA on Child Lots within the RDT Zone

Dear Chairman Hanson:

I am writing to you today as staff to the Agricultural Preservation Advisory Board (APAB) regarding the proposed ZTA governing Child Lots within the Rural Density Transfer Zone. The APAB has not had sufficient time to provide specific comments regarding this proposed ZTA. This item will be discussed in detail at the APAB's April 13, 2010 monthly meeting and the APAB will provide written recommendation on the proposed ZTA at this time.

As staff, I have read the proposed recommendations and am encouraged with some of the most recent changes, however the APAB has not yet discussed in detail the most recent recommendations proposed. I have however, identified a specific recommendation involving the role of the APAB within this ZTA that will require consultation with the County Attorney's office as to the legal authority vested with the APAB involving enforcement proceedings.

More specifically, the ZTA calls for the APAB to be the enforceable body for Child lots. Chapter 2B of the Montgomery County Code outlines the duties and responsibilities of the APAB. It should be noted, that their duties involve the implementation of State and County Easement programs by serving in an advisory capacity. Enforcement proceedings are not one of the duties and responsibilities of the APAB outlined in Chapter 2B. Under Chapter 2B-20: Enforcement of State and County Agricultural Easements, the Department of Permitting Services is identified as the enforcement agency for any violation to Chapter 2B or the terms of any agricultural easement.

A question as to the appropriateness of the APAB, from a legal perspective, to be the enforceable body under zoning must be ascertained. The duties and responsibilities of the APAB are vested in both Chapter 2B of the Montgomery County Code and Title 2, Subtitle 5, of the Annotated Code of Maryland. Given the specific reference to the Department of Permitting

Agricultural Services Division

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Dr. Royce Hanson, Chairman
Montgomery County Planning Board
March 18, 2010
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Services in Chapter 2B as the enforcement agency for State and County agricultural easements, it appears giving APAB enforcement responsibilities under zoning may be in conflict with both State and County Law. This is a question that must be further explored before enacted within this ZTA.

Please accept this correspondence as a point of preliminary discussion regarding the legal roles and duties of the APAB and the need to ascertain the legal opinion of the County Attorney's office as to the appropriateness of expanding their role as an enforcement body under zoning.

Sincerely,



John P. Zawitoski, Staff
Agricultural Preservation
Advisory Board

cc: Vickie Gaul, Associate County Attorney
Jeremy V. Criss, Ag Services Manager

ATTACHMENT 3



AGRICULTURAL ADVISORY COMMITTEE

March 17, 2010

Dr. Royce Hanson, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland

Dear Chairman Hanson,

Re: Draft Zoning Text Amendments
Rural Density Transfer RDT Zone

On behalf of the Montgomery County Agricultural Advisory Committee (AAC), please accept this letter as our preliminary comments on the draft zoning text amendments for the RDT zone. On Tuesday March 16, 2010, the AAC members had their first opportunity to review and discuss this extensive document at our monthly meeting. Please understand that our staff distributed by e-mail to the AAC the MNCPPC staff recommendations dated February 25, 2010 that the Planning Board discussed on March 4, 2010. The AAC members came to the meeting ready to review and comment on this MNCPPC staff report. However, at our meeting last night our staff presented the revised MNCPPC staff report dated March 11, 2010 for tomorrow's Planning Board work session.

The time allotted for this item within the AAC agenda only allowed for a cursory group read through. In the context of the meeting, this outcome was unavoidable. The Committee members noted several changes that were positive steps, and we very much appreciate the Board's willingness to respond to the concerns of the agricultural community on these issues which are as follows:

Child Lot Standards

Future child lots will be allowed above base density
Removing the requirement for child actively engaged in the farming operation
Enforcing Child lot ownership as compared to residency
The current proposal represents the closest we have come to reach the ZTA 07-06 recommendations of the Ad Hoc Agricultural Policy Working Group

However, there was insufficient time at our meeting for each member to read the entire packet, and there were some additional questions about some of the provisions listed below that we simply did not have the opportunity to thoroughly read, analyze and discuss during the course of the meeting.

We question the applicability of MALPF standards for child lots proposed under this ZTA.
We do not support the maximum of 3 child lots which represents the maximum of the MALPF.
The MALPF represents a private contract involving an easement compensation payment to the property owner when child lots proposed under zoning do not.
The Agricultural Preservation Advisory Board (APAB) may not have jurisdiction to enforce child lots permitted under zoning.
Does the State/County code need to be amended for the proposed role of APAB?
Why require a restrictive 10 year ownership requirement when MALPF only requires 5 years?
The AAC supported ZTA 07-06 which recommended a reasonable 5 year ownership requirement.
~~What will constitute significantly changed configuration of a farm?~~
We need to consider examples of significantly changed configuration to better understand this.
Why should all surplus TDRs not reserved be severed?
Why should properties without an existing farm house prohibit a child lot?

We are very encouraged by the progress made towards a generally acceptable proposal for child lots, and we feel that additional time is needed for us to read and discuss the new document and then offer the possibility of even more movement forward toward this goal.

Lot Area Limitations and Cluster Provisions

The AAC has several concerns with this ZTA that will involve a more in depth discussion. We do not recommend the Planning Board moving forward on this ZTA until we know the outcome of MC 11-10, HB 1506. This legislation will authorize the use of septic easements in Montgomery County as another tool for rural property owners to achieve smaller lot sizes encompassing the proposed house foot print, the well, and the septic absorption field with all of the related set back requirements.

Therefore, the AAC voted to urge that you not send these proposals to the County Council until we have had an adequate time to review them and respond. The Agricultural Preservation Advisory Board also needs to provide comments and the first opportunity for them to meet will be April 13, 2010.

We believe that taking additional time to work toward a proposal that can be sent to the County Council with our full recommendations is in everyone's best interest at this time.

Sincerely,

David Weitzer, JVC

David Weitzer, Chair
Montgomery County Agricultural Advisory Committee

Cc: Agricultural Preservation Advisory Board Members
County Council Members



AGRICULTURAL PRESERVATION ADVISORY BOARD

March 17, 2010

Dr. Royce Hanson, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland

Re: Proposed ZTA on Child Lots within the RDT Zone

Dear Chairman Hanson:

I am writing to you today as staff to the Agricultural Preservation Advisory Board (APAB) regarding the proposed ZTA governing Child Lots within the Rural Density Transfer Zone. The APAB has not had sufficient time to provide specific comments regarding this proposed ZTA. This item will be discussed in detail at the APAB's April 13, 2010 monthly meeting and the APAB will provide written recommendation on the proposed ZTA at this time.

As staff, I have read the proposed recommendations and am encouraged with some of the most recent changes, however the APAB has not yet discussed in detail the most recent recommendations proposed. I have however, identified a specific recommendation involving the role of the APAB within this ZTA that will require consultation with the County Attorney's office as to the legal authority vested with the APAB involving enforcement proceedings.

More specifically, the ZTA calls for the APAB to be the enforceable body for Child lots. Chapter 2B of the Montgomery County Code outlines the duties and responsibilities of the APAB. It should be noted, that their duties involve the implementation of State and County Easement programs by serving in an advisory capacity. Enforcement proceedings are not one of the duties and responsibilities of the APAB outlined in Chapter 2B. Under Chapter 2B-20: Enforcement of State and County Agricultural Easements, the Department of Permitting Services is identified as the enforcement agency for any violation to Chapter 2B or the terms of any agricultural easement.

A question as to the appropriateness of the APAB, from a legal perspective, to be the enforceable body under zoning must be ascertained. The duties and responsibilities of the APAB are vested in both Chapter 2B of the Montgomery County Code and Title 2, Subtitle 5, of the Annotated Code of Maryland. Given the specific reference to the Department of Permitting

Dr. Royce Hanson, Chairman
Montgomery County Planning Board
March 18, 2010
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Services in Chapter 2B as the enforcement agency for State and County agricultural easements, it appears giving APAB enforcement responsibilities under zoning may be in conflict with both State and County Law. This is a question that must be further explored before enacted within this ZTA.

Please accept this correspondence as a point of preliminary discussion regarding the legal roles and duties of the APAB and the need to ascertain the legal opinion of the County Attorney's office as to the appropriateness of expanding their role as an enforcement body under zoning.

Sincerely,



John P. Zawitoski, Staff
Agricultural Preservation
Advisory Board

cc: Vickie Gaul, Associate County Attorney
Jeremy V. Criss, Ag Services Manager