Zoning Text Amendment (ZTA) No. 17-06, Agricultural Zone – Transfer of Development Rights Requirements

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Pam Dunn, Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

Description

Zoning Text Amendment (ZTA) No. 17-06 would exempt certain dwellings in the Agricultural Reserve Zone from the calculation of density under certain circumstances and change the name of “Farm Tenant Dwelling” to “Farm Labor Housing Unit”. Specifically, ZTA 17-06 would amend the Agricultural Reserve (AR) zone by excluding farm tenant dwellings and detached accessory apartments from the calculation of density in the subdivision process when the property is encumbered by an agricultural easement or when the subdivision is for the creation of a child lot. The effect of this proposed exclusion allows the property owner to have a subdivision approved without a retained Transfer of Development Right (TDR) for the excluded units if the dwelling remains accessory to Farming and the principle dwelling or the subdivision is for the sole purpose of creating a child lot.

Summary

Staff recommends approval of ZTA No. 17-06 as introduced. The ZTA would exempt certain dwellings in the Agricultural Reserve zone from the calculation of density under certain circumstances. The ZTA also changes the name of “Farm Tenant Dwelling” to “Farm Labor Housing Unit” and requires a covenant against the property to which the Farm Labor Housing Unit is accessory, with restrictions that satisfy the definition and limited use standards.

Background/Analysis

ZTA 17-06 replaces ZTA 16-02 introduced by the County Council on January 19, 2016. The Planning Board held a public hearing on ZTA 16-02 on February 11, 2016 and recommended approval, with amendments, of the text amendment to amend the Agricultural Reserve (AR) zone by excluding farm tenant dwellings and detached accessory apartments from the calculation of density in the subdivision process when the property is encumbered by an agricultural easement or when the subdivision is for the creation of a child lot. The Board made several revisions to ZTA No. 16-02 including what was deemed a clarification that any subdivision being exempt from the density calculation and the retention of development rights can be encumbered by only certain agricultural easement programs that include: Montgomery County Agricultural Easement Program (AEP); the Maryland Agricultural Land Preservation Program; and the Maryland Strategic Agriculture Land Reserve Program.
Foundation (MALPF); the Montgomery County Rural Legacy Program (RLP); and the Building Lot Termination Program (BLT). During the County Council deliberations, however, consensus on these provisions and others could not be made. The County Council requested that the Planning Board staff work with stakeholders to establish a consensus on achieving the overall goal of allowing a subdivision without requiring TDRs for farm tenant dwellings or accessory apartments so long as these units remain accessory to farming and to allow a landowner to have the rights to create the same size subdivision that they may have thought they had when the agricultural easement was created. The Planning staff met with representatives from the open space community on April 22, 2016 and met with representatives from the agricultural community on April 25, 2016. The comments were incorporated in a draft form of the ZTA which was distributed to all stakeholders on December 6, 2016. In February, 2017, staff’s understanding was that all stakeholders were in general agreement with the draft ZTA. ZTA 17-06 codifies the draft transmitted to County Council staff. Specifically, the legislation:

- changes the name of “Farm Tenant Dwelling” to “Farm Labor Housing Unit”. There was a consensus that the current name did not accurately describe the primary use of the units. A number of jurisdictions across the country include “labor housing” as part of their terminology.
- excludes farm labor housing units and detached accessory apartments from the calculation of density in the subdivision process when the property is encumbered by an agricultural easement and the units remain accessory to Farming and the principal dwelling or when the subdivision is for the creation of a child lot.
- requires the owner to record a covenant against the property to which the Farm Labor Housing Unit is accessory, with restrictions that satisfy the definition and limited use standards of Section 3.3.3.E. The covenant must be in a form approved by the County Attorney’s Office, the County’s Office of Agriculture, and the Planning Board. The owner must record the covenant before filing an application for a building permit for the unit. The stakeholders believe that by requiring a covenant the potential for abuse could be minimized.

Staff recommends approval of ZTA 17-06 as introduced. Additional background information is included in Attachment 2, including the Planning Board recommendation and the technical staff report for ZTA 16-02.

Attachments

1. ZTA No. 17-06 as introduced
2. Planning Board recommendation and technical staff report for ZTA 16-02
AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- exempt certain dwellings in the Agricultural Zone from the calculation of density under certain circumstances;
- change the name of “Farm Tenant Dwelling” to “Farm Labor Housing Unit”, and
- generally amend the provisions concerning the special requirements for the transfer of density

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

DIVISION 59-1.4. “Defined Terms”
Division 3.1. “Use Table”
Division 3.3. “Residential Uses”
Section 3.3.3. “Accessory Residential Uses”
Section 3.5.6. “Lodging”
DIVISION 59-4.2. “Agricultural Zone”
Section 4.2.1. “Agricultural Reserve Zone (AR)”
Section 6.2.4. “Parking Requirements”
Section 6.3.4. “Rural Open Space”

OLD ZONING ORDINANCE TO NEW ZONING ORDINANCE SECTION CROSS REFERENCE
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 59-1.4. is amended as follows:

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

In this Chapter, terms that are not specifically defined have their ordinary meaning. The following words and phrases have the meanings indicated.

* * *

Farm [Tenant Dwelling] Labor Housing Unit: See Section 3.3.3.E.1

* * *

Sec. 2. DIVISION 59-3. is amended as follows:

Division 3.1. Use Table

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

* * *
## Definitions and Standards

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<thead>
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### Rural Residential

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<th>Residential Multi-Unit</th>
<th>Commercial/Residential</th>
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<th>Industrial</th>
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<td>RE-2 RE-2C RE-1 R-200</td>
<td>R-90 R-60 R-40 TLD TMD TMD THD</td>
<td>R-30 R-20 R-10 CRN CRT CR GR NR LSC EOF IL IM IH</td>
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</table>
Division 3.3. Residential Uses

Section 3.3.3. Accessory Residential Uses

A. Accessory Apartment, In General

2. Use Standards for all Accessory Apartments

a. Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:

iv. An Accessory Apartment must not be located on a lot where any other allowed rental Residential use exists; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm [Tenant Dwelling] Labor Housing Unit or a Guest House.

E. Farm [Tenant Dwelling] Labor Housing Unit

1. Defined

Farm [Tenant Dwelling] Labor Housing Unit means a dwelling unit accessory to the farm and under the control of the owner or operator of the farm on which the dwelling unit is located and occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis. Farm [Tenant Dwelling] Labor Housing Unit includes up to 3 mobile homes. A Farm [Tenant Dwelling] Labor Housing Unit is not restricted by the definition of household or dwelling unit, and may share a well or septic system or both.
2. Use Standards

Where a Farm Tenant Dwelling Labor Housing Unit is allowed as a limited use, it must satisfy the following standards:

a. In the Agricultural and Rural Residential zones, it is excluded from any density calculations if it remains accessory to a farm. If the property associated with a Farm Tenant Dwelling Labor Housing Unit is subsequently subdivided so that it is no longer accessory to the farm as defined in Section 59.3.7.4.B, the Farm Tenant Dwelling Labor Housing Unit is included in the density calculations.

b. The maximum number of tenants in a single dwelling is limited by well and septic capacity.

c. In the RE-2C zone only one Farm Tenant Dwelling Labor Housing Unit is allowed and it must be a mobile home.

d. In the Agricultural, Rural Residential, RE-2, and RE-1 zones, a Farm Tenant Dwelling Labor Housing Unit in existence before June 1, 1958 may be rented to a tenant other than an agricultural worker, if the dwelling meets all applicable health and safety regulations.

e. In the RE-2, RE-1, and R-200 zones, only one mobile home is allowed.

f. The owner must record a covenant against the property to which the Farm Labor Housing Unit is accessory, with restrictions that satisfy Section 3.3.3.E. The covenant must be in a form approved by the County Attorney’s Office, the County’s Office of Agriculture, and the Planning Board. The
owner must record the covenant before filing an application for
a building permit for the unit.

Section 3.5.6. Lodging

B. Bed and Breakfast

2. Use Standards

a. Where a Bed and Breakfast is allowed as a limited use, it must
   satisfy the following standards:

   i. A Bed and Breakfast is prohibited in a dwelling unit that
      also provides guest rooms for roomers, or in a Farm
      [Tenant Dwelling] Labor Housing Unit, or on a site that
      includes an Accessory Apartment.

Sec. 3. Article 59-4. is amended as follows:

Division 4.1. Rules for All Zones

Section 4.1.2. Compliance Required

C. In the Agricultural, Rural Residential, and Residential Detached zones, only
one detached house is allowed per lot, except as allowed under Section 3.1.6
for a Detached Accessory Apartment, Farm [Tenant Dwelling] Labor
Housing Unit, or Guest House, or under Section 7.7.1.A.1 for an Existing
Structure on October 30, 2014.

Division 4.2. Agricultural Zone

Section 4.2.1. Agricultural Reserve Zone (AR)
D. Special Requirements for the Transfer of Density

1. In General

a. Under Section 4.9.15.B and in conformance with a general plan, master plan, or functional master plan, residential density may be transferred at the rate of one development right per 5 acres minus one development right for each existing dwelling unit, from the AR zone to a TDR Overlay zone. A development right is not required for the following dwelling units on land in the AR zone as long as the dwelling unit remains accessory to Farming and the principal dwelling:

   [a] i. Farm [Tenant Dwelling] Labor Housing Unit[,] and
   [b. Attached Accessory Apartment,]
   [c] ii. Detached Accessory Apartment[,] and
   d. Bed and Breakfast.]

b. If a property is subdivided so that any Farm Labor Housing Units or Detached Accessory Apartments are no longer accessory to the farm as defined in Section 59.3.7.4.B, [dwellings associated with these uses] any Farm Labor Housing Units or Detached Accessory Apartments are not excluded from the calculation of density and must have retained a development right in addition to the retained development right for any newly created lot; however, these dwellings are excluded from the density calculation and need not have a retained development right if:

   i. the dwelling remains accessory to Farming and the principal dwelling; or
ii. the subdivision is for the sole purpose of creating a child lot.

c. The density transfer provisions are not applicable to publicly owned rights-of-way for roads, streets, alleys, easements, or rapid transit routes classified in the AR zone.

* * *

Sec. 4. DIVISION 59-6. is amended as follows:

* * *

Section 6.2.4. Parking Requirements

* * *

B. Vehicle Parking Spaces

<table>
<thead>
<tr>
<th>USE or USE GROUP</th>
<th>Metric</th>
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<th>Baseline Minimum</th>
<th>Baseline Maximum</th>
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Section 6.3.4. Rural Open Space

A. General Requirements

* * *

4. Uses in Rural Open Space
a. In the RC zone, the following uses allowed under Article 59-3 are prohibited in any rural open space area:

vii. Farm [Tenant Dwelling] Labor Housing Unit not associated with a farm in the rural open space;

Sec. 5. OLD ZONING ORDINANCE TO NEW ZONING ORDINANCE SECTION CROSS REFERENCE is amended as follows:

<table>
<thead>
<tr>
<th>Old ZONING ORDINANCE</th>
<th>New ZONING ORDINANCE</th>
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<tr>
<td>Article 59-G. Special Exceptions, Variances, and Nonconforming Uses.</td>
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Sec. 6. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

________________________________
Linda M. Lauer, Clerk of the Council
February 19, 2016

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. 16-02

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland—National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 16-02 at our regular meeting on February 11, 2016. By a vote of 5:0, the Planning Board recommends approval, with amendments, of the text amendment to amend the Agricultural Reserve (AR) zone by excluding farm tenant dwellings and detached accessory apartments from the calculation of density in the subdivision process when the property is encumbered by an agricultural easement or when the subdivision is for the creation of a child lot. The effect of this proposed exclusion allows the property owner to have a subdivision approved without a retained Transfer of Development Rights (TDR) for the excluded units if the dwelling existed before October 31, 2014; the dwelling remains accessory to Farming and the principle dwelling; and the subdivision is for an encumbered property existing before October 31, 2015 or for the sole purpose of creating a child lot. Currently, a Bed and Breakfast is depicted as exempt from retaining a TDR but was taken out as part of this ZTA because the Code prohibits this use if the lot or parcel on which the use is located is in the AR zone and is encumbered by a recorded Transfer of Development Rights easement. However, the Board recommends keeping the Bed and Breakfast use in the Code as an exemption until the impacts are realized from the County Council’s recently introduced ZTA No. 16-03 revising the definition and requirements for a Bed and Breakfast.

The Board made additional revisions to ZTA No. 16-02 clarifying that any subdivision being exempt from the density calculation and the retention of development rights can be encumbered by only certain agricultural easement programs that include: Montgomery County Agricultural Easement Program (AEP); the Maryland Agricultural Land Preservation Foundation (MALPF); the Montgomery County Rural Legacy Program (RLP); and the Building Lot Termination Program (BLT).
Under the current code, a development right is not required for farm tenant dwellings or an accessory apartment as long as the dwelling unit remains accessory to farming; however, if a property in the AR zone is subdivided, these units are not excluded from the calculation of density. A subdivision applicant under the current code would need to prove the existence of a retained TDR for the principle dwelling, any excluded unit, and the proposed new lot.

Until July 2010, the Planning Board did not require a retained TDR for a tenant dwelling when that dwelling unit remained accessory to the principle dwelling (and both the principle dwelling and tenant dwelling remained on a single lot or parcel with the farm). In reliance on this interpretation, landowners who negotiated agricultural easements with tenant houses retained only the TDRs necessary for new units, but did not retain one for any existing tenant house.

ZTA 16-02 would codify (grandfather) the Planning Board’s pre-2010 interpretation for property that sold an agricultural easement; it would allow a subdivision without requiring TDRs for farm tenant dwellings or accessory apartments so long as these units remain accessory to farming. It would also allow a landowner to have the rights to create the same size subdivision that they may have thought they had when the agricultural easement was sold.

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, February 11, 2016.

Casey Anderson
Chair

CA:GR
As amended by the Planning Board on February 11, 2016

Zoning Text Amendment No.: 16-02
Concerning: Agricultural Zone –
Transfer of Development
Rights Requirements
Draft No. & Date: 2 - 1/14/16
Introduced: January 19, 2016
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

Lead Sponsor: Council President Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

-exempt certain dwellings in the Agricultural Zone from the calculation of density
under certain circumstances; and
-
generally amend the provisions concerning the special requirements for the
transfer of density

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

DIVISION 59-4.2. “Agricultural Zone”
Section 4.2.1. “Agricultural Reserve Zone (AR)”

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.
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 59-4.2. is amended as follows:

Division 4.2. Agricultural Zone

Section 4.2.1. Agricultural Reserve Zone (AR)

D. Special Requirements for the Transfer of Density

1. In General

   a. Under Section 4.9.15.B and in conformance with a general
      plan, master plan, or functional master plan, residential density
      may be transferred at the rate of one development right per 5
      acres minus one development right for each existing dwelling
      unit, from the AR zone to a TDR Overlay zone. A development
      right is not required for the following dwelling units on land in
      the AR zone as long as the dwelling unit remains accessory to
      Farming and the [[principle]] principal dwelling:

      [a] i. Farm Tenant Dwelling[,]; [[and]]
      [b. Attached Accessory Apartment,]
      [c] ii. Detached Accessory Apartment[, and]; and
      [d. Bed and Breakfast]. iii Bed and Breakfast

   b. If a property is subdivided, [dwellings associated with these
      uses] any Farm Tenant Dwellings or Detached Accessory
      Apartments are not excluded from the calculation of density
      and must have a retained a development right in addition to the
      retained development right for any newly created lot; however,
      these dwellings are excluded from the density calculation and
      need not have a retained development right if:

      i. the dwelling existed before October 31, 2014;
ii. the dwelling remains accessory to Farming and the
   principle dwelling; and

iii. the subdivision is for:
   
   (a) property encumbered by [[any agricultural
       easement program]] a Montgomery County
       Agricultural Easement Program (AEP), a
       Maryland Agricultural Land Preservation
       Foundation (MALPF), a Montgomery County
       Rural Legacy Program (RLP) or a Building Lot
       Termination Program (BLT), administered by the
       County before October 31, 2015; or

   (b) the sole purpose of creating a child lot.

c. The density transfer provisions are not applicable to publicly
   owned rights-of-way for roads, streets, alleys, easements, or
   rapid transit routes classified in the AR zone.

* * *

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

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council
Zoning Text Amendment (ZTA) No. 16-02, Agricultural Zone – Transfer of Development Rights Requirements

Staff recommends approval of ZTA No. 16-02 as introduced. The ZTA would exempt certain dwellings in the Agricultural Reserve Zone from the calculation of density under certain circumstances. Specifically, ZTA 16-02 would amend the Agricultural Reserve (AR) zone by excluding farm tenant dwellings and detached accessory apartments from the calculation of density in the subdivision process when the property is encumbered by an agricultural easement or when the subdivision is for the creation of a child lot. The effect of this proposed exclusion allows the property owner to have a subdivision approved without a retained Transfer of Development Right (TDR) for the excluded units if the dwelling existed before October 31, 2014; the dwelling remains accessory to Farming and the principle dwelling; and the subdivision is for an encumbered property existing before October 31, 2015 or for the sole purpose of creating a child lot.

Summary

Staff recommends approval of ZTA No. 16-02 as introduced. The ZTA would exempt certain dwellings in the Agricultural Reserve zone from the calculation of density under certain circumstances.

Background/Analysis

Under the current code, a development right is not required for farm tenant dwellings or an accessory apartment as long as the dwelling unit remains accessory to farming; however, if a property in the AR zone is subdivided, these units are not excluded from the calculation of density. A subdivision applicant under the current code would need to prove the existence of a retained TDR for the principle dwelling, any excluded unit, and the proposed new lot.

Until July 2010, the Planning Board did not require a retained TDR for a tenant dwelling when that dwelling unit remained accessory to the principle dwelling (and both the principle dwelling and tenant dwelling remained on a single lot or parcel with the farm). In reliance on this interpretation, landowners who negotiated agricultural easements with tenant houses retained only the TDRs necessary for new units, but did not retain one for any existing tenant house.
In the Planning Board's approval of the Barnesville Oak Farm subdivision (July 2010), the Board explicitly changed its interpretation and required a retained TDR for a tenant dwelling when a subdivision created any new lot. ZTA 16-02 would codify (grandfather) the Planning Board's pre-2010 interpretation for property that sold an agricultural easement; it would allow a subdivision without requiring TDRs for farm tenant dwellings or accessory apartments so long as these units remain accessory to farming. It would also allow a landowner to have the rights to create the same size subdivision that they may have thought they had when the agricultural easement was sold.

An additional provision in ZTA 16-02 would allow the creation of a child lot on property without a retained TDR for a tenant dwelling or detached accessory apartment when an agricultural easement does not encumber the property.

Staff has no objection to grandfathering the Planning Board's pre-2010 interpretation for property that sold an agricultural easement.

**Attachments**

1. ZTA No. 16-01 as introduced