



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

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Completed: 09/7/17

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

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

ATTACHMENT 1

Zoning Text Amendment No.: 17-06
Concerning: Agricultural Zone –
Transfer of Development
Rights Requirements
Draft No. & Date: 1 - 7/20/17
Introduced: July 25, 2017
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: Councilmember 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;
- 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”
Section 1.4.2.	“Specific Terms and Phrases Defined”
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.	“Development Standards for Euclidean Zones”
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

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 59-1.4. 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.

* * *

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential												Commercial/ Residential			Employment				Industrial		
							Residential Detached								Residential Townhouse			Residential Multi-Unit										
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH
* * *																												
RESIDENTIAL																												
* * *																												
ACCESSORY RESIDENTIAL USES	3.3.3.																											
* * *																												
Farm [Tenant Dwelling] Labor Housing Unit	3.3.3.E	L	L	L	L	L	L	L	L																			

* * *

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)

97 * * *

98 **D. Special Requirements for the Transfer of Density**

99 1. In General

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

108 [a] i. Farm [Tenant Dwelling] Labor Housing Unit[,]; and

109 [b. Attached Accessory Apartment,]

110 [c] ii. Detached Accessory Apartment[, and

111 d. Bed and Breakfast.]

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

122 i. the dwelling remains accessory to Farming and the
 123 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

USE or USE GROUP	Metric	Agricultural, Rural Residential, Residential, and Industrial Zones	Commercial/Residential and Employment Zones		
			Within a Parking Lot District or Reduced Parking Area	Baseline Maximum	Outside a Parking Lot District or Reduced Parking Area
		Baseline Minimum	Baseline Minimum		Baseline Minimum
* * *					
Accessory Residential Uses					
* * *					
Farm [Tenant Dwelling] Labor Housing Unit	Dwelling Unit	1.00	--	--	--
* * *					

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:

Old ZONING ORDINANCE	New ZONING ORDINANCE
Article 59-G. Special Exceptions, Variances, and Nonconforming Uses.	
* * *	
Division 59-G-2. Special Exceptions—Standards and Requirements.	Division 3.2. thru Division 3.7.
* * *	
Sec. 59-G-2.00.1. Accessory dwelling.	Sec. 3.3.3.E.2. Use Standards [Farm [Tenant Dwelling] <u>Labor Housing Unit</u>]
* * *	
Sec. 59-G-2.21.4. Farm tenant mobile home.	Sec. 3.3.3.E.2. Use Standards [Farm [Tenant Dwelling] <u>Labor Housing Unit</u>]
* * *	

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



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

OFFICE OF THE CHAIR

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 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. 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;

- 27 ii. the dwelling remains accessory to Farming and the
28 principle dwelling; and
29 iii. the subdivision is for:
30 (a) property encumbered by [[any agricultural
31 easement program]] a Montgomery County
32 Agricultural Easement Program (AEP), a
33 Maryland Agricultural Land Preservation
34 Foundation (MALPF), a Montgomery County
35 Rural Legacy Program (RLP) or a Building Lot
36 Termination Program (BLT), administered by the
37 County before October 31, 2015; or
38 (b) the sole purpose of creating a child lot.
39 c. The density transfer provisions are not applicable to publicly
40 owned rights-of-way for roads, streets, alleys, easements, or
41 rapid transit routes classified in the AR zone.

42 * * *

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

45
46 This is a correct copy of Council action.

47
48 _____
49 Linda M. Lauer, Clerk of the Council



Zoning Text Amendment (ZTA) No. 16-02, Agricultural Zone – Transfer of Development Rights Requirements



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Completed: 02/4/16

Description

Zoning Text Amendment (ZTA) No. 16-02 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