



Zoning Text Amendment (ZTA) No. 18-04, Exemptions – Agricultural Reserve Zone



Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174



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

Completed: 04/27/18

Description

Zoning Text Amendment (ZTA) 18-04 would grandfather existing legal uses in the Agricultural Reserve (AR) zone; and generally amend the provisions related to uses in the AR zone.

Summary

Staff recommends denial of ZTA No. 18-04, as introduced, to grandfather existing legal uses in the Agricultural Reserve zone that were made nonconforming as of October 30, 2014. Staff is concerned with the overly broad expansion capability established in the text amendment language. To this end, staff is concerned that ZTA 18-04 would allow for the expansion of uses that are not necessarily consistent with the established policy of preservation of agricultural land and uses in the AR zone.

Background/Analysis

According to County Council staff’s introduction memorandum, the intent of ZTA 18-04 is to allow the expansion of uses in the Agricultural Reserve zone that were legal before October 30, 2014 but were subsequently made nonconforming on October 30, 2014. The Executive's transmittal letter attached to the Council Staff memorandum states that *“In light of the fact that there continues to be legitimate concerns about protecting farmland and agriculture, we need to restrict uses in those zones. For that reason, this proposed amendment to the zoning text is proposed to apply only to those uses and structures that were existing and legal at the time the 2014 zoning text went into effect”*.

According to County Council staff (and Planning staff agrees), ZTA 18-04 would expand, not restrict, the potential for non-farm uses in the Agricultural zone. The ZTA as proposed would not limit the expansion of uses that were made non-conforming by the 2014 Zoning Rewrite.

ZTA 18-04 Language as introduced

Below is the ZTA as introduced:

Section 7.7.1. Exemptions

* * *

F. Existing Uses and Structures in the Agricultural Zone

In the Agricultural Zone, any legal use and associated structures in existence on October 30, 2014 that do not meet the zoning standards on or after October 30, 2014 are conforming and may be expanded.

* * *

As introduced, staff has concerns about the meaning of the broad grandfathering language in proposed ZTA 18-04. It is unclear what the words “may be expanded” give license to do with both the existing structures and an existing use. It is unclear how much the use could be “expanded” or how large the structures can get.

When comparing the broad expansion authority granted under ZTA 18-04 with the limited grandfathering exemptions granted under the other provisions of Zoning Ordinance §59.7.7.1, staff believes that additional discussion is warranted before approving this legislation. Below are a few examples of exemption provisions currently under Section 7.7.1. Exemptions:

- A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased, except as provided for in Section 7.7.1.C for structures in Commercial/Residential, Employment, or Industrial zones, or Section 7.7.1.D.5 for structures in Residential Detached zones.(Section 7.7.1.A.1)
- Except for a Registered Living Unit, any use that was conforming or not nonconforming on October 29, 2014 and that would otherwise be made nonconforming by the application of zoning on October 30, 2014 is conforming, *but may not expand.* (Section 7.7.1.A.2.a)
- Any allowed use, up to the density limits established by the current zoning, may be located in a building or structure deemed conforming...(Section 7.7.1.A.2.b)
- Existing development in a Commercial/Residential, Employment, or Industrial zone *may expand by up to the lesser of 10% of the gross floor area approved for the site on October 30, 2014 or 30,000 square feet*, except for properties with 2,000 square feet or less of floor area, which may expand by up to 30% of the gross floor area approved for the site on October 30, 2014. (Section 7.7.1.C.2)

Intent of the AR Zone

The intent of the AR zone is to promote agriculture as the primary land use in areas of the County designated for agricultural preservation in the General Plan, the Functional Master Plan for Preservation of Agriculture and Rural Open Space, and other current or future master plans. The AR zone accomplishes this intent by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas.

Agriculture is the preferred use in the AR zone. All agricultural operations are permitted at any time, including the operation of farm machinery. An agricultural use cannot be restricted on the grounds that

it interferes with other uses permitted in the zone, but uses that are not exclusively agricultural in nature must satisfy additional use standards or the conditional use approval process. The County has spent millions of dollars to preserve agriculture through the purchase of easements. It has created the TDR program to compensate for reducing housing density. In staff's view, the overly broad expansion capability established in the text amendment language would be counter to the County's established policy for the AR zone.

There are a number of nonconforming uses in the AR including, but not limited to: golf courses, private schools, airports, market rental of farm tenant houses, landscape contractors, storage facilities, industrial uses. Again, a blanket approval to allow unconstrained expansion of these (and other unnamed) nonconforming uses conflicts with the goals of the AR master plan as well as standing law.

Conclusion

It should be noted that the County staff is drafting amended text to be discussed at the Planning, Housing and Economic (PHED) Committee worksession to possibly narrow the scope and reduce the impact of ZTA 18-04 on the AR zone. However, as introduced, Planning staff does not believe that ZTA 18-04 is consistent with the County's established policy for preserving agricultural land and land uses.

Attachments

1. ZTA No. 18-04 as introduced

ATTACHMENT 1

Zoning Text Amendment No.: 18-04
Concerning: Exemptions –
Agricultural Zone
Draft No. & Date: 1 – 3/1/2018
Introduced: April 10, 2018
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 Riemer at the request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- grandfather existing legal uses in the Agricultural zone; and
- generally amend the provisions related to uses in the Agricultural zone

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

Division 7.7. “Exemptions and Nonconformities”
Section 7.7.1. “Exemptions”

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:

1 **Sec. 1. Division 7.7 is amended as follows:**

2 **Section 7.7.1. Exemptions**

3 * * *

4 **F. Existing Uses and Structures in the Agricultural Zone**

5 In the Agricultural Zone, any legal use and associated structures in existence
6 on October 30, 2014 that do not meet the zoning standards on or after
7 October 30, 2014 are conforming and may be expanded.

8 * * *

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

11
12 This is a correct copy of Council action.

13
14 _____

15 Megan Davey Limarzi, Esq.
16 Clerk of the Council