



Committee: Joint GO and PHED
Committee Review: Completed
Staff: Linda McMillan, Sr. Legislative Analyst
Purpose: To receive testimony/final action - vote expected
Keywords: Hawkins Creamery Road, Davis Airport

AGENDA ITEM #2
October 1, 2019
Public Hearing/Action

SUBJECT

Declaration of No Further Need (DNFN) – Disposition of Land on Hawkins Creamery Road, Gaithersburg (Davis Airport/Laytonsville Airport LLC.)

EXPECTED ATTENDEES

Greg Ossont, Deputy Director, Department of General Services

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Joint GO and PHED Committee recommend approval (5-0) of Declaration of No Further Need to sell 17.47 acres on Hawkins Creamery Road to Davis Airport/Laytonsville Airport, LLC., as recommended by the Executive
- The Joint Committee session was held prior to the public hearing due to scheduling constraints. The Joint Committee can reconvene if it determines it needs to consider testimony presented at today's hearing.

DESCRIPTION/ISSUE

Sale of County property to Laytonsville Airport LLC to expand runway and provide safety zone.

SUMMARY OF KEY DISCUSSION POINTS

- Fee simple transaction for payment of \$131,000; which is below fair market value. Committee was informed that appraisal was difficult since safety regulations will prohibit building any structures. Executive recommends amount based on comparable agricultural land that is not buildable.

This report contains:

Staff Report – if applicable	Pages 1-2
Resolution to approve DNFN	© 1-2
August 26, 2019 memo from Executive - DNFN	© 3-4
Executive Regulation 173-18	© 5-6
Hawkins Creamery Road Fact Sheet	© 7
Aerial View of Property	© 8-9
June 13, 2019 memo from Executive – material terms	© 10-11
ZTA 18-04, Exemptions – Agricultural Zone	© 12-15
Excerpt July 17, 2018 staff report ZTA 18-04	© 16-21

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Resolution No.: _____
Introduced: September 10, 2019
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

SUBJECT: Approval of Declaration of No Further Need: Disposition of County Property:
17.47 acres on Hawkins Creamery Road, Gaithersburg (Davis
Airport/Laytonsville Airport LLC.)

Background

1. Montgomery County Code §11B-45 requires the Council to approve a Declaration of No Further Need before the Executive can dispose of real property that has more than nominal value. Prior to seeking Council approval of a Declaration of No Further Need, the Executive must:
 - (a) submit all material terms of the proposed disposition and any appraisal the Executive relied on in setting the property's market value to the Council; and
 - (b) publish a declaration in the County Register and post a notice on the County website that the County has no further need for the property.If the Council, by resolution, approves the Executive's Declaration of No Further Need, the Executive may dispose of the property for fair market value.
2. On June 13, 2019 the County Executive transmitted the material terms for the disposition of a 17.47-acre parcel on Hawkins Creamery Road. The material terms are a fee simple transaction with a payment of \$131,000; which is less than fair market value. The Executive says that Davis Airport, which is owned by Laytonsville Airport, LLC. requires 600 additional feet of runway, the property is currently in the flight plan, and the deed prohibits any above ground structures or overhead wires that would interfere with the navigable air space. The Executive highlights that the airport currently allows the Montgomery County Police Department to use the runway to calibrate patrol cars and the Laytonsville Fire Department and Civic Air Patrol to train at the facility.
3. On August 26, 2019, the Council received the County Executive's Declaration of No Further Need with the same material terms described in the June 13, 2019 memo.

4. The Government Operations and Fiscal Policy Committee and Planning, Housing, and Economic Development Committee held a joint worksession on September 16, 2019 and recommended approval of the Declaration of No Further Need and waiving the requirement for a fair market value transaction.
5. A public hearing was held on October 1, 2019.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The Declaration of No Further Need for the 17.47-acre parcel on Hawkins Creamery Road in Gaithersburg is approved and the property may be disposed of as described in the material terms provided to the Council on June 13, 2019, the memorandum dated August 26, 2019, and in Executive Order 173-18. The County Council waives the requirement that the disposition be a fair market value transaction.

This is a correct copy of Council action.

Mary Anne Paradise, Acting Clerk of the Council



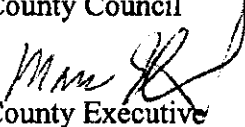
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

August 26, 2019

TO: Nancy Navarro, President
Montgomery County Council

FROM: Marc Elrich 
Montgomery County Executive

SUBJECT: Declaration of No Further Need – Disposition of Land on Hawkins Creamery Road, Gaithersburg

On June 13, 2019, I sent material terms to Council and provided notice that I intend to sell a County-owned 17.47-acre parcel on Hawkins Creamery Road, Gaithersburg. I recommended that the County sell the property to Laytonsville Airport, LLC at \$131,000.00, which is less than fair market value. Attached you will find the material terms memo dated June 13.

In accordance with the provisions of Section 11B-45, attached please find Executive Order No. 173-18, which was advertised in the County Register starting September 27, 2018, to give notice of the intent to proceed with a sale to Laytonsville Airport, LLC.

The County may consider a purchase amount at less than fair market value if it is determined to be in the best interest of the County. Expanding the runway at Davis Airport will relieve some of the repetitive training traffic at the Montgomery County Airpark in Gaithersburg, which is likely to continue and increase in coming years due to new FAA regulations.

Furthermore, the Davis Airport allows the Montgomery County Police Department to utilize the runway for patrol car calibration and offers space for training exercises to the Laytonsville Fire Department and Civic Air Patrol. The Davis Airport also offers use of the facilities to scouting and youth aviation organizations. The Airport is in talks with MCPS to help provide facilities and support for their new pilot program, as well as the Universities at Shady Grove regarding their aviation and mechatronics programs. In short, an additional modern airport will add to the safety of the County's air infrastructure and support education and other civic programs in the County. The aforementioned provide benefits to the County and warrant a less than fair market purchase price.

Declaration of No Further Need – Disposition of Land on Hawkins Creamery Road, Gaithersburg
August 26, 2019
Page 2

I hope this information is helpful. If you have any questions, please contact Greg Ossont, Deputy Director, Department of General Services, at 240.777.6192 or greg.ossont@montgomerycountymd.gov.

Attachment: Executive Order No 173-18
Material Terms Memo dated June 13, 2019

c: David Dise, Director, Department of General Services
Greg Ossont, Deputy Director, Department of General Services
Richard Madaleno, Director, Office of Management and Budget
Michael Coveyou, Acting Director, Department of Finance
Cathy Matthews, Upcounty Regional Services Center Director
Keith Miller, Executive Director, Montgomery County Revenue Authority



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Disposition of County Property: 17.47 acres on Hawkins Creamery Road	Executive Order No. 173-18	Subject Suffix
Montgomery County Department of General Services	Department No.	Effective Date 9/27/18

BACKGROUND

WHEREAS, the property on Hawkins Creamery Road in Gaithersburg, Maryland ("Property") was purchased in fee simple by the County to accommodate airport operations; and

WHEREAS, the Property is 17.47 acres, is zoned AR, and is located in an area that is bordered by a residential lot and agricultural land to the north, the Davis Airport runway to the east, undeveloped land to the south, and forested County-owned properties to the west; and

WHEREAS, the deed to the County prohibits any above-ground structures or overhead wires that would interfere with the navigable air space of the Davis Airport, including the runway; and

WHEREAS, the Property is largely unimproved; and

WHEREAS, the Davis Airport requires 600 feet of additional runway to meet additional safety standards; and

WHEREAS, the Montgomery County Council adopted Zoning Text Amendment No. 18-04 on July 17, 2018, supporting the expansion and enlargement of lawful, nonconforming uses in the Agricultural Reserve zone if it is required for safety purposes; and

WHEREAS, the Davis Airport is owned by the Laytonsville Airport, LLC, which operates the airport; and

WHEREAS, the Laytonsville Airport, LLC received state funding to support the cost of the runway expansion; and

WHEREAS, a fee simple transaction is appropriate for the planned capital investment; and

WHEREAS, the County may consider a purchase amount at less than fair market value if it is determined to be in the best interest of the County after completion of an appraisal of the property; and

WHEREAS, the County Executive has determined that the Property is no longer needed for County use and should be conveyed to the Laytonsville Airport, LLC for the purpose of expanding the existing runway for safety purposes insofar as permitted by law; and



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Disposition of County Property: 17.47 acres on Hawkins Creamery Road	Executive Order No. 173-18	Subject Suffix
Montgomery County Department of General Services	Department No.	Effective Date 9/27/18

WHEREAS, in accordance with the provision of Montgomery County Code Section 11B-45, Disposition of Real Property, the County Executive must issue an Executive Order declaring that County owned or controlled land is no longer needed for County use.

ACTION

In consideration of the above recitals, the County Executive hereby declares that the Property identified in the attached Exhibit A, located on Hawkins Creamery Road, Gaithersburg, MD 20882, comprising approximately 17.47 acres, is no longer needed for County use and is available for disposition to the Laytonsville Airport, LLC.

Approved as to Form and Legality
Office of the County Attorney

By: *Clifford B. Bynally*

Date: *9/27/18*

Send to REP Not 12/18/18
Officer *COMPUTER*

Distribution:

County Council
County Attorney
Department of General Services

APPROVED

Fariba Kassiri

Fariba Kassiri
Assistant Chief Administrative

Hawkins Creamery Road Fact Sheet

Tax Account #: 01-03040137

Zoning: AR

Size: 17.47 acres

Address: Hawkins Creamery Road, Gaithersburg, 20882. Adjacent to the Davis Airport runway.

Deed: Liber: 11954 / Folio: 14

Plat: N/A

Master Plan: Damascus Master Plan (2006)

The property itself is included in the "Rural Area" of the Plan, within the Agricultural Reserve. The Davis Airport is recognized as an element of the County's multi-modal transportation system and one of Montgomery County's two public-use airports (p. 58).

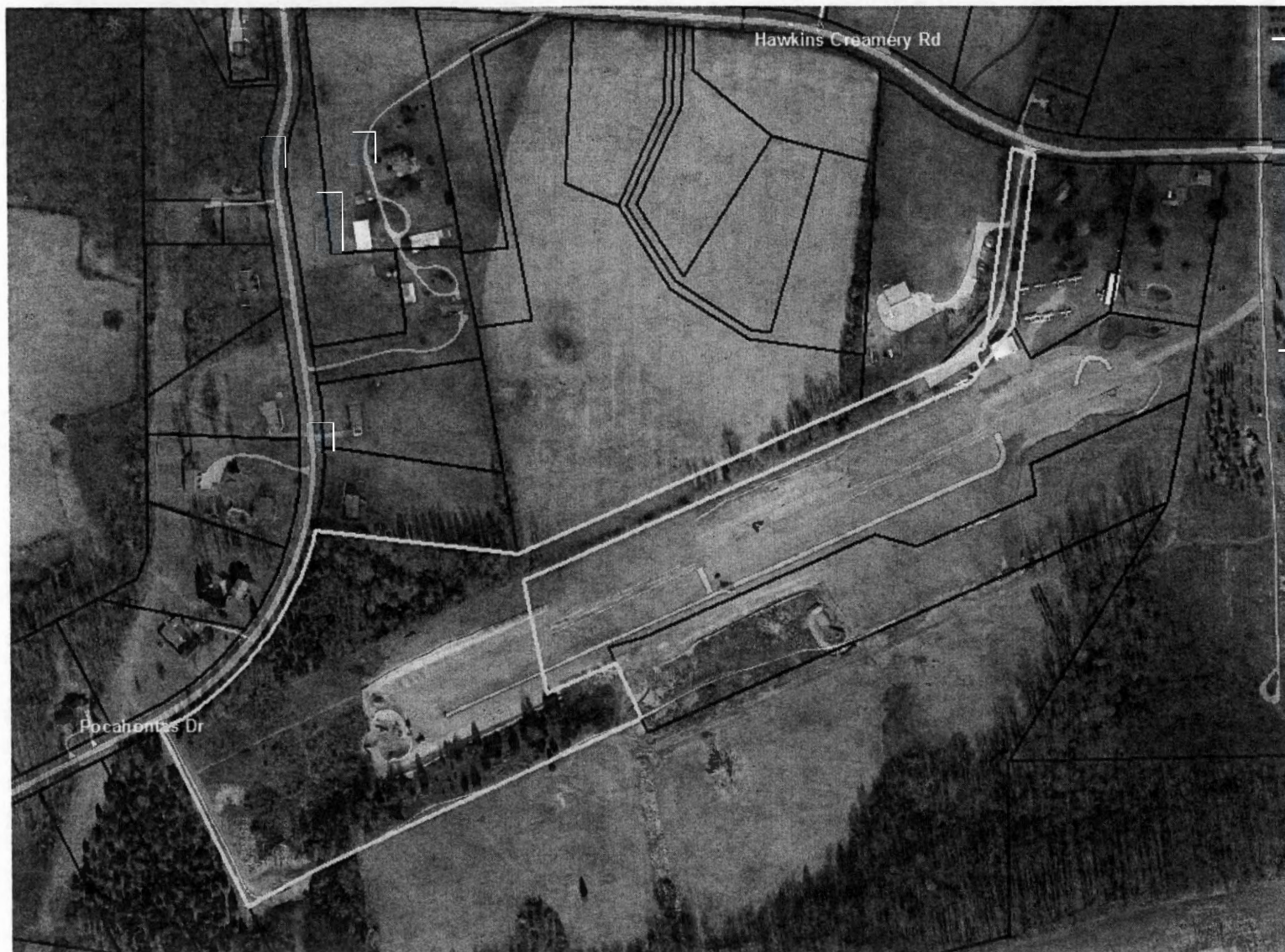
Additional Information:

The Davis Airport needs 600 feet of additional runway to meet safety standards for flight training, part of the Airport's expansion plans. The Airport has received state funding to support the cost of the runway expansion. Zoning Text Amendment No. 18-04, attached, which became effective on August 6, supports the expansion/enlargement of lawful, nonconforming uses in the Agricultural Reserve zone if it is required for safety purposes. It is the County Executive's intention to sell the land to the Davis Airport to allow for an expanded runway necessary for safety reasons.

Property – 2015



Property Outline






OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

June 13, 2019

TO: Nancy Navarro, President
Montgomery County Council

FROM: Marc Elrich 
Montgomery County Executive

SUBJECT: Material Terms – Disposition of Land on Hawkins Creamery Road, Gaithersburg

The purpose of this memorandum is to provide the material terms of the disposition of a County-owned 17.47-acre parcel on Hawkins Creamery Road, Gaithersburg. I am recommending that the County sell the property to Laytonsville Airport, LLC at \$131,000.00, which is less than fair market value. Attached you will find Executive Order No 173-18 which was advertised in the County Register starting September 27, 2018.

The property is adjacent to the Davis Airport, which is owned by Laytonsville Airport, LLC, the operator of the airport. The County originally acquired the land to accommodate airport operations. The property is currently in the flight path and the deed prohibits any above-ground structures or overhead wires that would interfere with the navigable air space of the Davis Airport, including the runway. The Davis Airport requires 600 feet additional runway to meet safety standards as part of the Airport's expansion plans. The Airport has received state funding commitments to support the cost of the runway expansion. A fee simple transaction is appropriate for the planned capital investments. Additionally, Zoning Text Amendment No. 18-04, effective on August 6th, 2018, supports the expansion/enlargement of lawful, nonconforming uses in the Agricultural Reserve zone if it is required for safety purposes.

The County may consider a purchase amount at less than fair market value if it is determined to be in the best interest of the County. Expanding the runway at Davis Airport will relieve some of the repetitive training traffic at the Montgomery County Airpark in Gaithersburg, which is likely to continue and increase in coming years due to new FAA regulations. Furthermore, the Davis Airport allows the Montgomery County Police Department to utilize the runway for patrol car calibration and offers space for training exercises to the Laytonsville Fire Department and Civic Air Patrol. The Davis Airport also offers use of the facilities to scouting and youth aviation organizations. The Airport is in talks with MCPS to help provide facilities

Material Terms – Disposition of Land on Hawkins Creamery Road, Gaithersburg
June 13, 2019
Page 2

and support for their new pilot program, as well as the Universities at Shady Grove regarding their aviation and mechatronics programs. In short, an additional modern airport will add to the safety of the County's air infrastructure and support education and other civic programs in the County. Selling this property to Laytonsville Airport, LLC so that they can expand the runway to meet additional safety standards will also benefit the local economy given the expected growth in the flight training industry.

I hope this information is helpful. If you have any questions, please contact Greg Ossont, Deputy Director, Department of General Services, at 240.777.6192 or greg.ossont@montgomerycountymd.gov.

Attachment: Executive Order No 173-18

cc: David Dise, Director, Department of General Services
Greg Ossont, Deputy Director, Department of General Services
Richard Madaleno, Director, Office of Management and Budget
Michael Coveyou, Acting Director, Department of Finance
Cathy Matthews, Director, Upcounty Regional Services Center
Keith Miller, Executive Director, Montgomery County Revenue Authority

Ordinance No.: 18-47
Zoning Text Amendment No.: 18-04
Concerning: Exemptions –
Agricultural Zone
Draft No. & Date: 1 – 3/1/2018
Introduced: April 10, 2018
Public Hearing: May 15, 2018
Adopted: July 17, 2018
Effective: August 6, 2018

**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”
Section 7.7.2	“Nonconforming Use”

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.*

OPINION

Zoning Text Amendment No. 18-04 was introduced on April 10, 2018. ZTA 18-04 would allow the expansion of uses in the Agricultural Reserve zone that were legal before October 30, 2014 but were subsequently made non-conforming.

On May 2, 2018, the Executive proposed revising the text of ZTA 18-04 by deleting the proposed text and replacing it with the following revision to Section 7.7.2.A, Nonconforming Uses – Expansion.

A lawful nonconforming use of a structure or lot must not be expanded unless in the Agricultural Reserve Zone, a Federal or State health or safety law or regulation requires the expansion. Before expanding the use or structures the property owner must provide to the Director of the Department of Permitting Services a certification from the applicable Federal or State entity that the expansion or enlargement is necessary.

On May 3, 2018, the Planning Board voted to recommend denial of ZTA 18-04 as introduced. The Board agreed with Planning staff that ZTA 18-04 as introduced was overly-broad. The Board recognized the revision proposed by the Executive on May 2. The Board wrote that it “believes that the amended language of ZTA 18-04 is consistent with the purpose of Chapter 59 to provide zoning requirements designed to promote public health, safety, and general welfare.”

The public hearing on ZTA 18-04 was held on May 15, 2018. There were 2 speakers.¹ Alicia Stanley, representing Davis Airport, spoke in favor of ZTA 18-04 as amended by the Executive’s May 2 memorandum. She testified that Davis Airport was created in 1946, decades before the imposition of agricultural zoning in 1980. That zoning, she reports, tied the hands of the owner in keeping up with aviation advances. In her opinion, expansion of the Davis Airport is needed to be able to assure the well-being of pilots and neighbors, as many modern single-engine airplanes need more space to take off and land.

Ramona Bell-Pearson represented the County Executive and supported the Executive’s May 2 revision. She said, “Mr. Leggett has been made aware that there are businesses such as airports and landscaping operations that have equipment and fixtures which from time to time need to be improved, expanded, or upgraded to meet health or safety requirements.”

The Council referred the text amendment to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on July 9, 2018. The Committee recommended approving ZTA 18-04 with amendments consistent with the Executive’s proposed May 2, 2018 proposed revisions. The Committee recommended

¹ Greg Russ spoke in the hearing on ZTA 18-03, which was held at the same day and time as the hearing on ZTA 18-04. In that testimony he repeated the Planning Board’s position in support of the ZTA as revised by the Executive.

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 **Section 7.7.2. Nonconforming Use**

10 A lawful nonconforming use may be continued under the following limits:

11 **A. Expansion**

12 A lawful nonconforming use of a structure or lot must not be expanded
13 unless in the Agricultural Reserve zone, a Federal or State health or safety
14 law, regulation, or agency requires or recommends the expansion for safety
15 purposes. Before expanding the use or structures, the property owner must
16 provide to the Director of the Department of Permitting Services a
17 certification from the applicable Federal or State entity that the expansion or
18 enlargement is necessary.

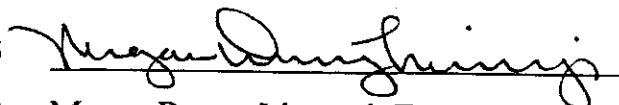
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20 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
21 date of Council adoption.

22

23 This is a correct copy of Council action.

24

25 

26 Megan Davey Limarzi, Esq.

27 Clerk of the Council

further refining the Executive's May 2 revision to keep its focus on expansions due to safety recommendations. The Council agreed with the recommendation of the Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 18-04 will be approved as amended.

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:


AGENDA ITEM #8B
July 17, 2018

Action

MEMORANDUM

July 13, 2018

TO: County Council

FROM: Jeffrey L. Zyontz  Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 18-04, Exemptions – Agricultural Zone

Purpose: Action on ZTA 18-04 after consideration of the Planning, Housing, and Economic Development Committee recommendations

Expected Participants:

- Ramona Bell-Pearson
- Gwen Wright
- Pam Dunn
- Greg Russ

PHED Committee recommendation: On July 9, 2018, the Committee recommended approving ZTA 18-04 with amendments consistent with the Executive's proposed May 2, 2018 proposed revisions (deleting the proposed revision to Section 7.7.1 and amending Section 7.7.2). The Committee recommended further refining the Executive's recommended May 2 revisions to keep its focus on expansion due to safety recommendations.

Specifically, the Committee recommends that Section 7.7.2.A read as follows:

A lawful nonconforming use of a structure or lot must not be expanded unless in the Agricultural Reserve zone, a Federal or State health or safety law, regulation, or agency requires or recommends the expansion for safety purposes. Before expanding the use or structures, the property owner must provide to the Director of the Department of Permitting Services a certification from the applicable Federal or State entity that the expansion or enlargement is necessary.

Background

Zoning Text Amendment (ZTA) 18-04, lead sponsor Council President Riemer at the request of the County Executive, was introduced on April 10, 2018. ZTA 18-04 would allow the expansion of uses in the Agricultural Reserve zone that were legal before October 30, 2014 but were subsequently made non-conforming.

The Executive's transmittal letter includes the following statement:

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.

ZTA 18-04 would expand, not restrict, the potential for non-farm uses in the Agricultural zone. The ZTA as proposed would allow the expansion of uses that were made non-conforming by the 2014 Zoning Ordinance Rewrite.

On April 27, 2018, the Planning staff memorandum to the Planning Board recommended denial of ZTA 18-04 as introduced. Planning staff wrote:

Staff is concerned with the overly broad expansion capability established in the text of the amendment. 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.

The County Executive responded to Planning staff concerns in a memorandum to Council President Riemer, dated May 2, 2018.

The Executive proposed revising the text of ZTA 18-04 by deleting the proposed text and replacing it with the following revision to Section 7.7.2.A, Nonconforming Uses – Expansion.

A lawful nonconforming use of a structure or lot must not be expanded unless in the Agricultural Reserve Zone, a Federal or State health or safety law or regulation requires the expansion. Before expanding the use or structures the property owner must provide to the Director of the Department of Permitting Services a certification from the applicable Federal or State entity that the expansion or enlargement is necessary.

In proposing the revision, the Executive expressed his intent “to assure that protection of the agricultural reserve continue, and as little impact as possible occurs to the existing protected area.”

On May 3, 2018, the Planning Board voted to recommend denial of ZTA 18-04 as introduced. The Board agreed with Planning staff that the ZTA as introduced was overly-broad. The Board recognized the revision proposed by the Executive on May 2. The Board wrote that it “believes that the amended language of ZTA 18-04 is consistent with the purpose of Chapter 59 to provide zoning requirements designed to promote public health, safety, and general welfare.”

The public hearing on ZTA 18-04 was held on May 15, 2018. There were 2 speakers.¹ Alicia Stanley, representing Davis Airport, spoke in favor of ZTA 18-04 as amended by the Executive's May 2 memorandum. She testified that Davis Airport was created in 1946, decades before the imposition of agricultural zoning in 1980. That zoning, she reports, tied the hands of the owner in keeping up with aviation advances. In her opinion, expansion of the Davis Airport is needed to be able to assure the well-being of pilots and neighbors, as many modern single-engine airplanes need more space to take off and land.

Ramona Bell-Pearson represented the County Executive and supported the May 2 revision.² She said, "Mr. Leggett has been made aware that there are businesses such as airports and landscaping operations that have equipment and fixtures which from time to time need to be improved, expanded, or upgraded to meet health or safety requirements."

Issues

Is there a basis for allowing the expansion of non-conforming uses?

A non-conforming use describes legally-made improvements that would not be allowed under the current zoning ordinance. The policy of allowing nonconforming uses to continue originated in concerns that the application of zoning regulations to uses existing before the current zone's enactment might be construed as confiscatory and unconstitutional. Jurisdictions limit their enlargement and reconstruction so that they will disappear over time.³ The ultimate goal of the zoning code is to achieve uniformity of property uses within each zoning district that can only be accomplished by the elimination of uses that do not conform to the specifications of district regulations.

Currently, the County zoning code, like other zoning codes, does not allow the expansion of non-conforming uses. When health and safety regulations "require" the expansion, the variance process is available.⁴

¹ Greg Russ spoke at the hearing on ZTA 18-03, which was held the same day and time as the hearing on ZTA 18-04. In that testimony he repeated the Planning Board's position in support of the ZTA as revised by the Executive.

² Ms. Bell-Pearson is no longer an Assistant Chief Administrative Officer in the County Executive's Office.

³ The allowance of nonconforming uses has been characterized by the courts as a "grudging tolerance" of them; the right of governing bodies to adopt reasonable measures to eliminate them has been recognized. A property owner's right to continue a nonconforming use may be lost by abandonment. Any discontinuance of the nonconforming use for 6 consecutive months constitutes abandonment. It has been held that local discontinuance periods apply even when the owner can prove that he did not actually intend to abandon the nonconforming use.

⁴ Granting the variance may only authorize a use of land allowed by the underlying zone. To approve a variance, the Board of Appeals must find that:

1. denying the variance would result in no reasonable use of the property; or
2. each of the following apply:
 - a. one or more of the following unusual or extraordinary situations or conditions exist:
 - i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;
 - ii. the proposed development uses an existing legal nonconforming property or structure;
 - iii. the proposed development contains environmentally sensitive features or buffers;
 - iv. the proposed development contains a historically significant property or structure; or
 - v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;
 - b. the special circumstances or conditions are not the result of actions by the applicant;
 - c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;

When the Council changes the zoning codes, it does so in the belief that the change in code serves the public interest. Allowing the expansion of a use it deemed inappropriate (not being otherwise permitted) would then be inconsistent with the public interest.

Staff does not recommend the approval of ZTA 18-04, either as submitted or as revised, for this policy reason and because the expansion of an airport unrelated to agriculture in the Agricultural Reserve zone is contrary to a 2010 ZTA approved by the Council.

The PHED Committee recommends approval so that expansions to address safety concerns may be allowed.

What is the Davis Airport story?

Part of Davis Airport is on County-owned land. Davis Airport, by using the airport for more than non-commercial, personal, is currently violating an "easement" it has with the County.⁵ The airport's runway is trespassing on County land to the extent that its current use exceeds the "easement".⁶ Neither the current nor former County Executives have taken any action to enforce the County's easement on the property.

The intended expansion of the runway would require the disposition of additional County land. Any disposition issues will be addressed after the Council's consideration of ZTA 18-04.

Despite all of that, the airport is home to 22 single-engine airplanes. It has a 2,005-foot runway that is 25 feet wide. The Maryland Aviation Administration (MAA) lists the Davis Airport (W50) as a public use airport. It was included in a 2013 MAA report on the economic impact of airports as having 3 employees and direct personal income impact of \$116,000.

The FY 2018 Maryland Consolidated Transportation Program included a state grant to the Davis Airport of \$1,654,000. The airport manager is currently in the process of getting approval to resurface and widen the runway to a new width of 50 feet. The proposal includes moving the runway 20 feet away from the hangar building and the residential area of Pocahontas Drive.

The airport recently completed tree-trimming operations on one end of the runway and has plans to do the same at the other end.

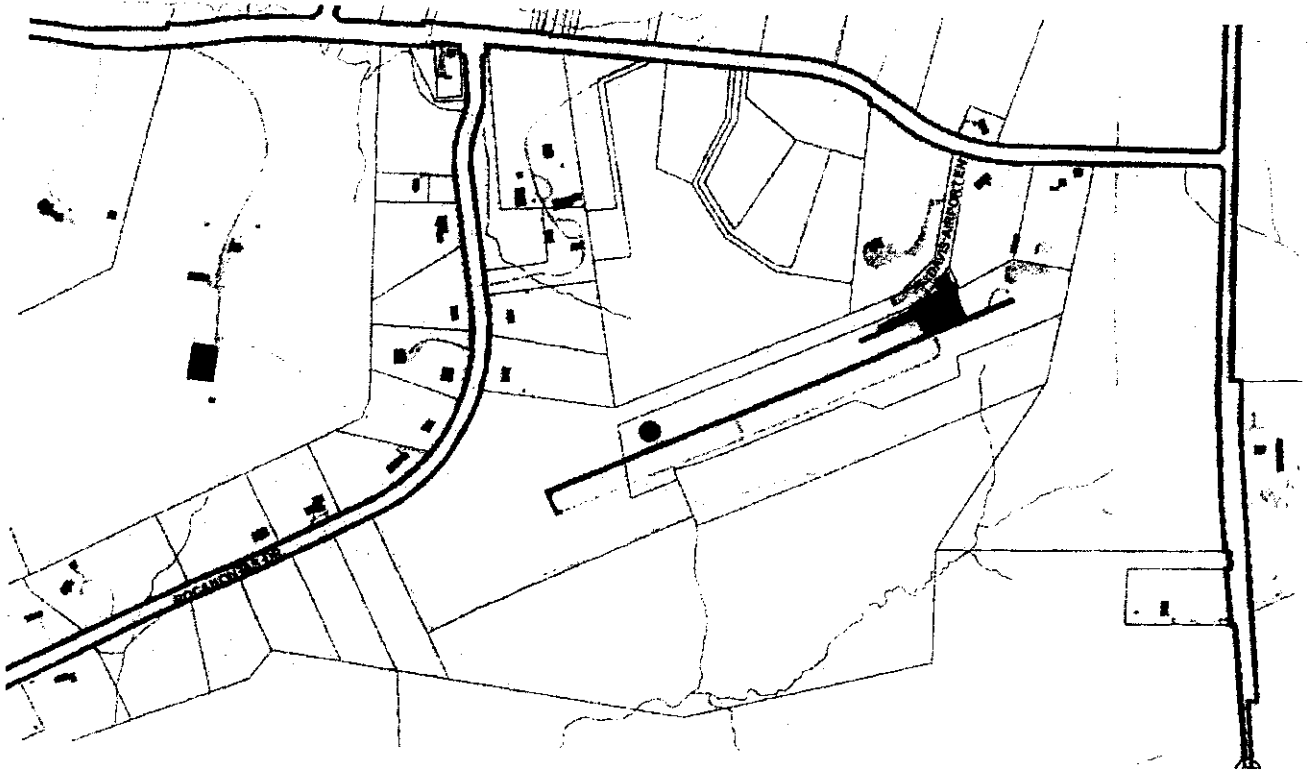
d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and

e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

⁵ The term "easement" is used in quotes because it was created in the course of a recorded settlement dialogue and was not recorded as a separate document. A 2003 court order in the matter of Marshall, Warner, and Montgomery County v. Mini Paille, case number 227176, created the "easement". The "easement" was for the personal, non-commercial use of the airport; "Personal means personal...it also means non-commercial." The lease also allowed the use of tie-down areas at no charge to Ms. Paille and her heirs.

⁶ There is a 1959 lease for some County-owned land, but it is unclear if that lease covers County-owned ground (Liber 2559 Folio 119). The terms of the lease (\$1/year payment and insurance indemnification) were said to be in force for as long as the area within the lease was integral to the operation of an airport. In any event, that lease was declared to be of "no effect, void" in a 2003 Consent Order (Liber 26044 Folio 644).

Davis Airport offers flight instruction (in a Cessna 172), airplane rentals, and airplane rides. If expanded, the runway expansion could shift some airport operations (take-offs and landings) from the Montgomery County Airpark.



How has the Council treated airstrips in the Agricultural Reserve Zone?

Zoning Text Amendment (ZTA) 10-15, sponsored by Councilmembers Elrich and Rice, was introduced on December 14, 2010. This ZTA clarified when airstrips would be permitted in Agricultural zones. It added 3 provisions for the conditional use approval of an airstrip associated with a farm:

- 1) The aircraft using the airstrip must aid farming operations.
- 2) The airstrip must not be paved.
- 3) The airstrip must be set back from any property line a minimum of 1,000 feet.⁷

The ZTA limited future airstrip approvals. The Council was made aware of the Davis Airport and that it did not have conditional use approval (in 2011, such an approval was called a special exception approval) and that ZTA 10-15 did not affect it.⁸

To the extent that ZTA 18-04 would allow an expanded airport in the Agricultural Reserve zone, it is counter to the limitations on airstrips in the zone approved in 2011.

⁷ ZTA 10-15, adopted March 8, 2011.

⁸ In the March 4, 2011 memorandum from Staff concerning ZTA 10-15.

Are there any other situations where ZTA 18-04 would be applicable?

Staff is unaware of any other current situations where an expansion is required to meet health or safety regulations; however, the need may arise in the future. Research has not been undertaken to identify every non-conforming use in the AR zone. The plain language of both ZTA 18-04 as introduced and the Executive-proposed revision are inclusive of multiple situations.

If approved, should the ZTA be revised as recommended by the Executive?

Yes. The revision would limit unintended consequences to a greater extent than the ZTA as introduced. The revision, with further revisions recommended by the Committee, would be as follows:

A lawful nonconforming use of a structure or lot must not be expanded unless in the Agricultural Reserve zone, a Federal or State health or safety law, regulation, or agency requires or recommends the expansion for safety purposes. Before expanding the use or structures, the property owner must provide to the Director of the Department of Permitting Services a certification from the applicable Federal or State entity that the expansion or enlargement is necessary.

This Packet Contains

ZTA 18-04
Executive Transmittal
Executive Memorandum to Council President Riemer
Planning Board Recommendation
Planning Staff Recommendation

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Not included in this
report on the
property disposition