

ZTA 23-09

FARMING – INCIDENTAL OUTDOOR STAYS

Description

This ZTA modifies the definition of Farming to define and allow Incidental Outdoor Stays in the AR zone on a property that also has other agritourism uses.

ZTA 23-09

Completed: 12-14-2023

MCPB

Item No. 07

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ZTA SPONSORS

Lead Sponsor:
Councilmember Fani-Gonzalez

Cosponsors:
Council President Glass
Council Vice-President Friedson
Councilmember Sayles

INTRODUCTION DATE

November 7, 2023

COUNCIL PUBLIC HEARING DATE

January 16, 2024

REVIEW BASIS

Chapter 59

Summary

- In May 2022, Maryland’s Governor signed state House Bill 558 which amended the state definition of agritourism to allow Camping and Incidental Outdoor Stays as a part of a local jurisdiction’s definition of agritourism.
- ZTA 23-09 follows the state lead by amending Montgomery County’s definition of agritourism to also include Incidental Outdoor Stays, and to define and set standards around the new accessory use.
- Montgomery Planning Staff is supportive of the intent of ZTA 23-09 but proposes several recommendations to improve the ZTA including additional use standards, better defining Incidental Outdoor Stays, and relocating the use to Section 3.2.10 Accessory Agricultural Uses.

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SECTION 1 – BACKGROUND

Rationale For Introduction

Zoning Text Amendment (ZTA) 23-09, Farming – Incidental Outdoor Stays, was introduced on November 7, 2023, sponsored by Councilmember Fani-Gonzalez and co-sponsored by Council President Glass, Vice President Friedson, and Councilmember Sayles (Attachment A). The ZTA is scheduled for a District Council Public Hearing on January 16, 2024.

The ZTA amends the list of accessory uses for farming to include incidental outdoor stays, provides standards for the operation of these stays, removes the 10% limit on how much of on-site structures may be used for agritourism, and exempts incidental outdoor stays structures from counting toward any limits on accessory structure square footage. This is partially in response to the state passing HB 558 in 2022 (Attachment B), which enables local jurisdictions to amend their definitions of agritourism to include camping and incidental outdoor stays.

The county has put forth substantial effort and planning toward promoting the agricultural reserve in recent years including the 2020 Agritourism Study, and the recently adopted update to the *Rustic Roads Functional Master Plan*. This ZTA seeks to expand upon these efforts, utilizing the state enabling legislation, to create additional tourism options that include limited overnight accommodations.

As of the writing of this report Planning Staff have been made aware that the lead sponsors may be working on an amended release of the ZTA that would add additional use standards such as a maximum structure size and a minimum tract area. The exact date of the release of this amendment is unsure but would happen before the public hearing on January 16th.

SECTION 2 – TEXT AS INTRODUCED

ZTA 23-10 As Introduced

ZTA 23-09 modifies several sections of code. The first, and largest section modified is Section 3.2.6 Farming, Defined. The code is modified as follows:

Defined

* * *

F. Accessory agricultural education and tourism activities conducted as part of a farm’s regular operations, with emphasis on hands-on experiences and events that foster increased knowledge of agriculture, including cultivation methods, animal care, water conservation, Maryland’s farming history, the importance of eating healthy, and locally grown foods. Allowed activities include corn mazes, hay rides, incidental outdoor stays, and educational tours, classes, and

workshops. [The maximum footprint for any structure and the total footprint of all structures primarily used for education or tourism is limited to 10% of the total footprint square footage of all structures on the site used for agriculture.] The property must have DPS approved sanitation facilities for this accessory use.

G. Incidental outdoor stays accessory to Farming are not a Short-Term Residential Rental under Section 3.3.3.I. Incidental outdoor stays must satisfy the following standards:

1. Accessory agricultural education and tourism activities are conducted as part of the farm's regular operations and satisfy the requirements of Section 3.2.6.F.
2. Incidental outdoor stays must be in separate structures from the primary residence.
3. No cooking facilities are permitted within the same structure as the sleeping quarters.
4. The maximum number of structures permitted for incidental outdoor stays is 10 structures.
5. The maximum number of occupants per structure who are 18 years or older is 2 persons.
6. Incidental outdoor stays are permitted a maximum of 4 days per week.

The second section of code amended by the ZTA is Section 3.7.4. Accessory Miscellaneous Uses as follows:

A. Accessory Structure

* * *

2. Use Standards

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

- a. In Agricultural and Rural Residential zones, where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building. Buildings for an agricultural use are exempt from this size restriction. In Agricultural zones, buildings used for incidental outdoor stays under Section 3.2.6.G. are exempt from this size restriction.

The final section of code amended by the ZTA is in Section 4.2.1. Agricultural Reserve Zone (AR), Subsection F. AR Zone, Standard Method Development Standards table.

Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone

* * *

3. Placement

Specification for Principal Building and Accessory Structure Setbacks

* * *

Specification for Principal Building and Accessory Structure Setbacks

* * *

c. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building. Building for an agricultural use are exempt from this size restriction. In Agricultural zones, buildings used for incidental outdoor stays under Section 3.2.6.G. are exempt from this size restriction.

SECTION 3 – ANALYSIS AND RECOMMENDATIONS

ZTA 23-10 Analysis and Recommendations

While Planning Staff support the intent of allowing Incidental Outdoor Stays as an accessory use on agricultural land, Planning Staff have some concerns with the ZTA as introduced. Planning Staff’s recommendations fall into two broad categories. The first three recommendations below are substantive issues that include the deletion of certain sections of text, the lack of a clear operating definition, and modifying and adding to the proposed use standards. The last issue raised is a technical concern about the structure and location of the added text sections.

TEN PERCENT LIMIT FOR AGRITOURISM

The first concern is the deletion of text under Section 3.2.6.F., which is shown in lines 22 – 25 of the attached ZTA. This section describes one accessory farming use, specifically agricultural education, and tourism (Agritourism). The ZTA proposes the deletion of the text that sets a 10% limit for the total footprint of on-site structures that are allowed to be used primarily for agritourism uses. It is not clear to Planning Staff why this section is recommended for removal as part of this ZTA and believe it may cause unnecessary concern or confusion since there would no longer be defined limits to the size of agritourism operations on a given site. It’s possible this section was included for removal because the inclusion of incidental outdoor stays may cause a property to exceed this 10% limit. If that is the concern, a clause exempting structures used for incidental outdoor stays from the 10% limit could be added. This would be similar to the exemptions being added by this ZTA to Sections 3.7.4.A.2.a. and 4.2.1.F. shown above in this staff report.

Recommendation: Do not remove the text in Section 3.2.6.F., which limits Agritourism uses to no more than 10% of the footprint of all on-site structures, and consider exempting structures used for Incidental Outdoor Stays from the 10% limit, if necessary.

DEFINE INCIDENTAL OUTDOOR STAYS

Next, there is no clear definition provided for Incidental Outdoor Stays, rather the proposed text says what the use is not, then goes directly into development standards for the use. As this ZTA is creating a new accessory use, it is important that a clear working definition be established for Incidental Outdoor Stays to clarify the purpose and form of the use for both the general public and the applicable reviewing agencies, to ensure a consistent understanding of what is and is not intended. In a discussion with one interested property owner, the vision is for more permanent, finished structures that include in-suite electrical, climate control, and plumbing, akin to a hotel room. When looking at the existing code, Planning Staff finds a use and definition similar to what seems to be the intent of Incidental Outdoor Stays - Lodging. Specifically, Section 3.5.6.A states that *Lodging means a building, dwelling unit, or portion of a dwelling unit used for the short-term overnight accommodation of paying guests.* A sub-definition of Lodging is Hotel, Motel, which is defined as *a building containing guest rooms arranged for short-term accommodations of less than 30 days for compensation...* It is important that whatever definition is picked for Incidental Outdoor Stays it be able to differentiate this use from other existing uses.

Planning Staff see two distinct paths for how to define Incidental Outdoor Stays. The first is a definition that describes a use similar to camping, with short-term on-site lodging opportunities that occur in separate 'rustic' structures, such as cabins, or semi-permanent tents, and share communal bath and kitchen facilities. The use would be incidental and secondary to other farm operations and does not provide any sense of permanence. An alternative approach would define Incidental Outdoor Stays as short-term on-site lodging that occurs in individual structures, on a farm property, and that allows more full feature accommodations such as in-suite bath facilities and are self-sufficient except for the lack of a kitchen.

Recommendation: Provide a clear definition of Incidental Outdoor Stay that is distinct and unique from that of Lodging. Planning Staff's preferred definition is a more camping like definition, with rustic structures and no in-suite plumbing.

INCIDENTAL OUTDOOR STAYS – USE STANDARDS

The ZTA then continues to introduce development standards for Incidental Outdoor Stays, which extend from lines 30 – 41 of the introduced ZTA. Below Planning Staff reviews each proposed standard and proposes amendments and additional standards.

1. Accessory agricultural education and tourism activities are conducted as part of the farm's regular operations and satisfy the requirements of Section 3.2.6.F.

Planning Staff has no concerns with this requirement and recommends it remain as introduced. This would ensure incidental outdoor stays are only part of existing farms that have agritourism operations and would not otherwise allow the stays on other farm properties.

2. Incidental outdoor stays must be in separate structures from the primary residence.

Planning Staff has no concerns with this requirement and recommends it remain as introduced. This is an important distinction separating this use from a Bed and Breakfast, or a Short-Term Residential Rental.

3. No cooking facilities are permitted within the same structure as the sleeping quarters.

Planning Staff agrees there should not be cooking facilities permitted in Incidental Outdoor Stays, but recommends expanding the prohibition to not allow any plumbing facilities in the same structure as sleeping quarters. Most rustic cabins found in park campgrounds do not offer in-suite running water and instead share a common bathhouse. Offering in-suite plumbing for bathrooms makes the use seem less incidental and more like full-service hotel-like accommodations.

4. The maximum number of structures permitted for incidental outdoor stays is 10 structures.

Planning Staff has no concerns with this standard limiting the total number of structures to 10. The limitation seems reasonable to limit impacts to traffic, noise, or necessary sanitation services, and to keep the scale of the use as an accessory to existing farm uses.

5. The maximum number of occupants per structure who are 18 years or older is 2 persons.

The limitation on adult occupants is reasonable, as it's another standard that will limit the impacts of Incidental Outdoor Stays on surrounding properties. This limitation however is only on the number of adults and does not address total occupancy. Planning Staff understands and supports the desire not to set standards that would impact the ability of an immediate family to partake in Incidental Outdoor Stays together. Without additional safeguards, it is plausible a structure for an Incidental Outdoor Stay could be reserved for a kids group or kids camp with two adult chaperones and an unknown number of children, which seems outside the intent of Incidental Outdoor Stays.

Recommendation: Set either an upper limit on the total occupancy of each structure, at 10 or fewer, or a maximum square foot size for each individual structure, such as 400 square feet or smaller, that establishes a reasonable upper limit to how intense this use can be.

6. Incidental outdoor stays are permitted a maximum of 4 days per week.

This standard implies limits on the duration of the use to minimize continuous impacts on surrounding properties. It is not clear, however, what is meant by limiting it to four days a week. Is the entire farm only permitted to allow stays four days per week, or is each structure limited to just four days per week? It also could be read that any individual renter is limited to staying four days per week, but no limit exists on how many nights each room is rented.

Recommendation: Planning Staff recommends this be clarified to limit each farm to hosting Incidental Outdoor Stays to four times per week to minimize the impacts on surrounding properties and to be clear the standards apply to all units at the same time.

7. Other Potential Standards

In addition to previous recommendations to prohibit sanitation facilities within the individual structures, and to set upper limits on the size or occupancy of each structure, Planning Staff have identified additional standards that should be considered for this use. As a basis for additional recommendations, Planning Staff looked at the standards for the use Campground, as a similar type of existing use. Standards for the Campground use include a maximum campsite density of 15 per acre (2,904 square feet per campsite), a minimum area per campsite of 900 square feet excluding parking, a minimum site area of 10 acres, and 100-foot minimum setbacks from adjacent property lines.

Providing a maximum density of 15 units per acre with minimum space requirements of 900 square feet presumably was intended to avoid overcrowding of camping spaces, for the enjoyment of campers. This density standard seems less relevant for Incidental Outdoor Stays since some level of privacy is implied with each accommodation in a separate structure. The minimum site area requirement for Campground is something Planning Staff does find relevant to discuss as it pertains to Incidental Outdoor Stays, but recommends two separate and complementary standards. First, there should be a minimum farm acreage to ensure Incidental Outdoor Stays are truly accessory to other farming activities, and there should be a maximum site area on the farm associated with Incidental Outdoor Stays to avoid unnecessary loss of farmland. There is no clear data to analyze to assist in setting these standards, so Planning Staff recommends a minimum farm acreage of 25 acres to be consistent with the minimum tract size for a buildable lot in the AR zone. To avoid excessive loss of farmland, Planning Staff recommends improvements for Incidental Outdoor Stays (including associated parking and shared accommodations) be restricted to a maximum of 10% of the farm, or five acres, whichever is smaller. Even on the smallest farm site, that would allow at least 2.5 acres to be used for Incidental Outdoor Stays, which equals four structures per acre, and on larger farms would allow as little as two structures per acre.

Planning Staff also support the inclusion of setbacks from surrounding properties to reduce any negative impacts on existing surrounding residences. Campground has a minimum setback of 100 feet to any property line, which seems reasonable to create visual and acoustic separation between the use and potential adjacent residents. Being cognizant that often a farm site may be made up of multiple parcels with the same owner, Planning Staff would recommend the 100-foot setback apply to any property not part of the farm.

Additionally, the Climate Assessment, discussed in more detail in Section 4 of this report, recommends that the development of Incidental Outdoor Stays should avoid removing existing

farmland used for food production, and avoid soils identified by the US Department of Agriculture as either Soil Classification Category I or Soil Classification Category II. This use is intended to complement farming and Agritourism, so it makes sense to ensure the primary farming use is not impacted by the overnight accommodations. The restriction based on Soil Classification has been used before to direct the location of solar in the Agricultural Reserve and seems appropriate to replicate for Incidental Outdoor Stays.

Recommendations:

- Set a minimum farm size of 25 acres;
- Set a maximum site area used for Incidental Outdoor Stays at 10% of the farm or five acres, whichever is smaller;
- Require a minimum 100-foot setback from any adjacent property not part of the farm;
- Prohibit the development of Incidental Outdoor Stays on farmland currently used for food production, or identified by the US Department of Agriculture as Soil Classification Category I or Soil Classification Category II.

APPROPRIATE CODE SECTION

The ZTA places new standards for Incidental Outdoor Stays within the definition section for Farming, as a new accessory use to Farming, under Section 3.2.6. Specifically, the term Incidental Outdoor Stays is added as a part of Section 3.2.6.F which is the operational definition of Agritourism, and then new use standards for Incidental Outdoor Stays are added as a new Section 3.2.6.G.

Planning Staff have identified concerns with the structure of this ZTA. First, it is not clear if Incidental Outdoor Stays are a new use (or accessory use to farming), or if It's truly intended to be an integral part of the definition of farming. Because the ZTA proposes use standards for Incidental Outdoor Stays, Planning Staff assumes that Incidental Outdoor Stays are intended to be a new use or new accessory use. Second, because Incidental Outdoor Stays has been added as part of the definition of farming, a permitted use in the AR zone, it has created a situation where use standards are within the definition section of the use rather than in their own standards section, and its created a situation where a permitted use has standards. Planning Staff has found no existing situation in Division 59-3 Use Standards where a use's definition section contains use standards, nor do permitted uses contain use standards. A use being permitted in Division 59-3 implies that there are no standards to follow except for those required by the underlying zone which are part of Division 59-4 the Development Standards for Euclidian Zones.

There are a few potential solutions that would remedy this situation:

- Make Farming a limited use in the AR zone, clearly define Incidental Outdoor Stays as an accessory to Farming, and provide the proposed (as amended) use standards as limited use standards for farming to follow when implementing Incidental Outdoor Stays.
- Make Incidental Outdoor Stays an Accessory Agricultural Uses under Section 3.2.10, by adding a new Section 3.2.10.D. Set Incidental Outdoor Stays as a limited use in the AR zone, define the use, and include the proposed (as amended) use standards as limited use standards.

Recommendation: For the most consistency and clarity, Planning Staff recommends the second option above, moving Incidental Outdoor Stays to Accessory Agricultural Uses under Section 3.2.10. This more clearly creates a new use for Incidental Outdoor Stays that can be included in the code without having to classify farming as a limited use, and matches the presumed intent around proposing new use standards in the ZTA.

SECTION 4 – CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to prepare a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and on community resilience and adaptive capacity. The climate impact assessment for ZTA 23-09 is attached in Attachment C.

ZTA 23-09 is anticipated to have slight to moderate negative impacts on greenhouse gas emissions and sequestration factors, and a combination of slightly negative and slightly positive impacts on community resilience and adaptive capacity factors. Negative greenhouse gas emission and sequestration factors include an increase in vehicle miles traveled since this new activity would only be occurring in the Agricultural Reserve where alternative transportation options are limited, embodied emissions from constructing and maintaining new conditioned sleeping quarters, and impacts to changes in land cover from agricultural or natural uses to a more permanent use. Negative community resilience and adaptive capacity factors include greater exposure to climate hazards driven by land use changes, local degradation to surface and ground water quality, and potential loss of agricultural land used to grow food. Positive impacts on resilience and adaptive capacity include increased opportunities for people to explore and learn about the agricultural reserve, and increased economic opportunities for farmers including their personal revenue, and the need to hire staff personnel expanding job opportunities.

Part of the requirements of Climate Assessments is to recommend amendments or other recommendations that would reduce or eliminate anticipated negative effects of the ZTA. The Climate Assessment has a few recommendations, two that could be an amendment to this ZTA are to not locate Incidental Outdoor Stays on existing land being farmed for food production, or land identified as USDA Soil Category 1 or Category 2 agricultural soils. These recommendations have been

incorporated into the recommended additional standards for Incidental Outdoor Stays, on page 8 of this report.

SECTION 5 – CONCLUSION

Planning Staff recommends the Planning Board support ZTA 23-09 with the recommended modifications to create a clear use definition, expand upon the included use standards, and to relocate the new use under Accessory Agricultural Uses in Section 3.2.10. of the code.

SECTION 6 – ATTACHMENTS

Attachment A: Zoning Text Amendment 23-09 Intro Packet

Attachment B: HB 558

Attachment C: Climate Assessment 23-09



Committee: PHP

Committee Review: At a future date

Staff: Livhu Ndou, Legislative Attorney

Purpose: To introduce agenda item – no vote expected

Keywords: #Farming #Agritourism #OvernightStays
#OutdoorStays

AGENDA ITEM #7C

November 7, 2023

Introduction

SUBJECT

Zoning Text Amendment (ZTA) 23-09, Farming - Incidental Outdoor Stays

Lead Sponsor: Councilmember Fani-González

Co-Sponsor: Council President Glass and Council Vice-President Friedson

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

To introduce ZTA – no vote expected

DESCRIPTION/ISSUE

ZTA 23-09 would allow overnight stays on farms in the AR zone that also have accessory agricultural education and tourism activities conducted as a part of the farm's regular operations.

SUMMARY OF KEY DISCUSSION POINTS

- Under the current zoning ordinance, accessory agricultural education and tourism activities may be conducted as a part of a farm's regular operations, as an accessory use to Farming. Accessory agricultural education and tourism activities include corn mazes, hay rides, and educational tours, classes, and workshops. ZTA 23-09 would include incidental outdoor stays in that list.
- Incidental outdoor stays will be allowed in separate structures from the primary residence, with certain limits on the number of persons, days, and facilities.
- A public hearing is tentatively scheduled for January 16, 2024, pending approval of a resolution to extend the time for a public hearing.

This report contains:

ZTA 23-09

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Ordinance No.: _____
Zoning Text Amendment No.: 23-09
Concerning: Farming – Incidental
Outdoor Stays
Revised: 10/25/2023 Draft No.: 1
Introduced: November 7, 2023
Public Hearing: _____
Adopted: _____
Effective: _____

**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 Fani-González
Co-Sponsors: Council President Glass, Council Vice-President Friedson

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) allow incidental outdoor stays as part of agritourism; and
- (2) generally amend the accessory farming uses.

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

Division 3.2.	“Agricultural Uses”
Section 3.2.6.	“Farming”
Division 3.7.	“Miscellaneous Uses”
Section 3.7.4.	“Accessory Miscellaneous Uses”
Division 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:

27 G. Incidental outdoor stays accessory to Farming are not a Short-Term
28 Residential Rental under Section 3.3.3.I. Incidental outdoor stays must
29 satisfy the following standards:

- 30 1. Accessory agricultural education and tourism activities are conducted
31 as part of the farm’s regular operations and satisfy the requirements of
32 Section 3.2.6.F.
- 33 2. Incidental outdoor stays must be in separate structures from the
34 primary residence.
- 35 3. No cooking facilities are permitted within the same structure as the
36 sleeping quarters.
- 37 4. The maximum number of structures permitted for incidental outdoor
38 stays is 10 structures.
- 39 5. The maximum number of occupants per structure who are 18 years or
40 older is 2 persons.
- 41 6. Incidental outdoor stays are permitted a maximum of 4 days per week.

42 * * *

43 **Sec. 2. Division 59-3.7 is amended as follows:**

44 **Division 3.7. Miscellaneous Uses**

45 * * *

46 **Section 3.7.4. Accessory Miscellaneous Uses**

47 **A. Accessory Structure**

48 1. **Defined**

49 Accessory Structure means a structure subordinate to and located on
50 the same lot as a principal building, the use of which is incidental to
51 the use of the principal building or to the use of the land. An
52 Accessory Structure is not attached by any part of a common wall or
53 common roof to the principal building.

54 2. Use Standards

55 Where an Accessory Structure is allowed as a limited use, it must
56 satisfy the following standards:

57 a. In Agricultural and Rural Residential zones, where the principal
58 building on a lot is a detached house, the cumulative footprint
59 of all accessory buildings on that lot may not exceed 50% of the
60 footprint of the principal building. Buildings for an agricultural
61 use are exempt from this size restriction. In Agricultural zones,
62 buildings used for incidental outdoor stays under Section
63 3.2.6.G. are exempt from this size restriction.

64 * * *

65 **Sec. 3. Division 59-4.2 is amended as follows:**

66 **Division 4.2. Agricultural Zone**

67 **Section 4.2.1. Agricultural Reserve Zone (AR)**

68 * * *

69 F. AR Zone, Standard Method Development Standards

	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
* * *	
3. Placement	
* * *	
Specification for Principal Building and Accessory Structure Setbacks	
* * *	
c. Where the principal building on a lot is a detached house, the cumulative	

footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building. Buildings for an agricultural use are exempt from this size restriction. In Agricultural zones, buildings used for incidental outdoor stays under Section 3.2.6.G. are exempt from this size restriction.

* * *

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Sec. 4. Effective date. This ordinance becomes effective 20 days after the

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date of District Council adoption.

Chapter 430

(House Bill 558)

AN ACT concerning

Land Use – Agritourism – Definition

FOR the purpose of altering the definition of “agritourism” to include camping and incidental outdoor stays for the purpose of a certain provision of law authorizing a local jurisdiction to adopt the definition of “agritourism”; and generally relating to agritourism.

BY repealing and reenacting, with amendments,

Article – Land Use

Section 4–212

Annotated Code of Maryland

(2012 Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Land Use

4–212.

(a) (1) In this section, “agritourism” means an activity conducted on a farm that is offered to a member of the general public or to invited guests for the purpose of education, recreation, or active involvement in the farm operation.

(2) “Agritourism” includes:

- (i) farm tours;
- (ii) hayrides;
- (iii) corn mazes;
- (iv) seasonal petting farms;
- (v) farm museums;
- (vi) guest farms;
- (vii) pumpkin patches;
- (viii) “pick your own” or “cut your own” produce;

(IX) CAMPING;

(X) INCIDENTAL OUTDOOR STAYS;

[(ix)] (XI) classes related to agricultural products or skills; and

[(x)] (XII) picnic and party facilities offered in conjunction with any agritourism activity.

(b) A local jurisdiction may adopt the definition of “agritourism” as defined in this section by local ordinance, resolution, law, or rule.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.

Approved by the Governor, May 16, 2022.

The logo for Montgomery Planning, featuring a blue square icon with a white stylized 'M' and the text 'Montgomery Planning' in a blue sans-serif font.

CLIMATE ASSESSMENT FOR

ZTA 23-09 Farming-Incidental Outdoor Stays

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the county's contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs, at the county level. The scope of the Climate Assessments is limited to addressing climate change, specifically the effect of land use recommendations in master plans and ZTAs on greenhouse gas (GHG) emissions and sequestration, and how actions proposed by master plans and ZTAs could improve the county's adaptive capacity to climate change and increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed master plans and ZTAs may impact GHG emissions and community resilience.

SUMMARY

This ZTA expands on the definitions of Agritourism and Farming to include "incidental outdoor stays."

Under the current zoning ordinance, accessory agricultural education and tourism activities may be conducted as a part of a farm's regular operations, as an accessory use to Farming. Accessory agricultural education and tourism activities include corn mazes, hay rides, and educational tours, classes, and workshops. ZTA 23-09 would include incidental outdoor stays in that list.

Incidental outdoor stays will be allowed in separate structures from the primary residence, with certain limits on the number of persons, days, and facilities.

BACKGROUND AND PURPOSE OF ZTA 23-09

This is enabled by State legislation that passed in 2022 allowing local jurisdictions to establish this use as a part of farming, and to set their own working definitions. ZTA 23-09 would enable overnight stays on farms in the AR zone that also have accessory agriculture education and tourism activities conducted as part of the farm's regular operations.

VARIABLES THAT COULD AFFECT THE ASSESSMENT

[List the climate-related and non-climate related variables that were considered in the assessment. Climate related variables include the various GHG reduction, sequestration, resilience, and adaptive capacity activities in the climate assessment checklists (see Tables 1 and 8 and associated text) contained in the *Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, or other variables identified in the assessment.*]

CLIMATE-RELATED VARIABLES

Transportation- Vehicle miles traveled by type, Number of trips, Non-vehicle modes of transportation

Building Embodied Emissions – Building square footage, Building life span, Pavement infrastructure, Material waste produced, Use of green building materials

Energy – Electricity usage, Stationary fuel usage

Land Cover and Management – Area of forest, Area of non-forest tree canopy, Area of green cover

RESILIENCE-RELATED VARIABLES

Exposure-Related Factors – Activity in flood-risk areas, Exposure to other hazards, Potential for shelters to be inadequately designed and built to protect people from exposure to climate hazards.

Sensitivity-Related Factors – Change to forest cover, Change to non-forest tree canopy, Change to quality or quantity of other green areas, Change in perviousness, Change in stormwater management system treatments, Change to water quality or quantity, Change to air quality, Infrastructure design decisions.

ADAPTIVE CAPACITY-RELATED VARIABLES

Change to emergency response and recovery capabilities, Change to accessibility or prevalence of local food sources and other goods, Change in availability or distribution of economic and financial resources, Change to community connectivity, Change in distribution of resources and support.

OTHER VARIABLES

Other variables include the number and frequency of events at each permitted site, transportation options, and where the sites are located.

ANTICIPATED IMPACTS

The ZTA is anticipated to result in slight to moderate negative impacts on greenhouse gas emissions, sequestration, and community resilience, and a combination of negative and positive impacts on adaptive capacity as described in greater detail below. Due to the uncertainty of the locations of these uses, the size and types of buildings, design of infrastructure, and intensity of use, data are not obtainable to quantify the greenhouse gas emissions and sequestration impacts.

GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

ZTA 23-09 is anticipated to have slight to moderate negative impacts on greenhouse gas emissions and carbon sequestration. Note: The *Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County* indicates that carbon sequestration, drawdown, and reduction are generally used interchangeably. The *Recommendations* document uses the term sequestration.

The transportation-related impacts are primarily due to the ZTA activities occurring in the Agricultural areas of the county, which tend to be located farther away from population-centers that would be the origin points for many of the trips taken. In addition, transportation options to access the farms offering incidental overnight stays are more limited in the agricultural zones, with travel by individual automobile likely the most prevalent form of transportation, increasing vehicle miles traveled and number of trips. The greenhouse gas emissions from transportation could be significant, depending on the number of farms that choose to offer incidental overnight stays.

The building embodied emissions result from the potential construction of the structures that will house the guests who are staying on the farms, and any incidental pavement for access and parking. These emissions could be moderate, as there are limitations on the allowable number of buildings (ten) and the number of occupants (a maximum of 2 people who are 18 years or older).

Building energy emissions will depend on the sources and distribution of energy used and for the heating, lighting and incidental electricity consumed. Additional energy emissions will be associated with the preparation of any meals served at the principal building. These emissions could be reduced or eliminated through the use of clean energy generated on-site.

Impacts to sequestration from Land Cover Change and Management could be slight to moderate. There may be reductions in area of forest, area of non-forest tree canopy, and area of natural ground cover if these areas are cleared and graded to make room for the new buildings, access and parking, reducing the amount of carbon sequestered and stored.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

ZTA 23-09 is anticipated to have slight to moderate negative impacts to community resilience, and slight positive and potentially more significant negative impacts to community adaptive capacity.

Community resilience could be negatively impacted by increased exposure to the hazardous effects of climate change, including increased potential exposure to floods, storms, and temperature extremes. Changes to sensitivity-related factors may include changes (reductions) to forest cover and non-forest tree canopy, changes to the quality or quantity of other green areas, loss of some pervious land covers, increased stormwater management structures that alter natural flows and infiltration of precipitation runoff. The latter impacts have the potential to reduce water quality and quantity, affecting water supply and quality for both humans and natural systems.

Water quality could also be negatively impacted if septic systems are improperly located and sized to handle the additional sewage generated from the increased number of visitors and length of stay. Due to the provision that allows a stay of up to four days per week, water usage for showers, etc. could also increase water use. Water sources could become strained if overused.

Negative impacts to air quality may result from increased motor vehicle trips and vehicle miles traveled generated by additional travel to and through the agricultural zones.

There could be slight positive impacts to community adaptive capacity as the incidental overnight stay events create more opportunities for the public to gather and promote community connectedness and cohesiveness, strengthening support networks and increasing communication. These are seen as helpful to building adaptive capacity to respond to climate disruptions.

The availability or distribution of economic and financial resources may be increased as this new use introduces a new source of revenue for farms. The use may also generate additional employment opportunities if staff is hired to help care for the guests and build and maintain the guest structures, and may create additional visits to local businesses.

ZTA 23-09 has a potential to have both positive and negative impacts on the accessibility of local food sources and other goods. The new uses will bring more people to farms, and may provide opportunities for people to obtain fresh produce during their incidental stays. The impacts could be negative if large areas of currently farmed lands are converted to the buildings and infrastructure created to house the people staying on the farms. The severity of this loss of farmland and associated food crops depends on the extent to which farms that qualify for the new use under this ZTA take advantage of the opportunity, and how large each expansion becomes.

RELATIONSHIP TO GREENHOUSE GAS REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-09 does not involve any GHG activities that relate to the GHG reduction actions from the County's Climate Action Plan. The ZTA does relate to several of the sequestration actions, and the ZTA has the potential to negatively affect the ability of the County to achieve goals related to the following CAP actions:

- S-1 Retain and Increase Forests
- S-2 Retain and Increase Tree Canopy
- S-3 Restore and enhance meadows and wetlands
- S-5 Restore soil fertility, microbial activity, and moisture-holding capacity

None of these actions were rated for reduction potential as evaluated within the CAP.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires the Planning Board to offer appropriate recommendations such as amendments to the proposed ZTA 23-09, or other mitigating measures that could help counter any identified negative impacts through this Climate Assessment.

Since any land disturbance greater than 5,000 square feet should initiate application of the Forest Conservation Law, the requirements of the Law might incentivize forest preservation, and provide mitigation for forest removal. Not protected through the Forest Conservation Law are the production of existing food production, or the protection of high-quality soils, which are generally those soils identified by the US Department of Agriculture as Soil Classification Category I or Soil Classification Category II. Planning Staff recommend the use standards for Incidental Outdoor Stays include prohibition on placing structures associated with Incidental Outdoor Stays on land currently used for food production, or that are classified as Soil Classification Category I or II soils.

While not fully appropriate for a ZTA, it may be beneficial to think of ways to ensure that Incidental Overnight Stays are not just co-located with but are fully immersed in Agritourism activities. This could include inclusion in farm outreach and education components to demonstrate regenerative agricultural techniques to incidental overnight stay guests. This may help distinguish this use from existing definitions of lodging or Bed and Breakfast uses.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-09 was prepared using the methodology for ZTAs contained within the *Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022*.