

## ZTA 23-08

# TRANSFERABLE DEVELOPMENT RIGHTS - CEMETERY

### Description

This ZTA would modify the list of prohibited commercial uses on lots or parcels which are encumbered by a recorded Transfer of Development Right (TDR) easement, to allow for the expansion of an existing cemetery.

ZTA 23-08

Completed: 12-14-2023

MCPB

Item No. 06

12-21-2023

2425 Reddie Drive

Floor 14

Wheaton, MD 20902

BB	Benjamin Berbert, Planner III, Countywide Planning and Policy <a href="mailto:Benjamin.Berbert@montgomeryplanning.org">Benjamin.Berbert@montgomeryplanning.org</a> , 301-495-4644
ymg	Lisa Govoni, Acting Supervisor, Countywide Planning and Policy <a href="mailto:Lisa.Govoni@montgomeryplanning.org">Lisa.Govoni@montgomeryplanning.org</a> , 301-650-5624
DA	David Anspacher, Acting Chief, Countywide Planning and Policy <a href="mailto:David.Anspacher@montgomeryplanning.org">David.Anspacher@montgomeryplanning.org</a> , 301-495-2191

#### ZTA SPONSORS

Lead Sponsor:  
Councilmember Balcombe

#### INTRODUCTION DATE

November 7, 2023

#### COUNCIL PUBLIC HEARING DATE

January 16, 2024

#### REVIEW BASIS

Chapter 59

## Summary

- Currently, the code identifies numerous uses that are prohibited on lots or parcels within the AR zone that are encumbered by a Transfer of Development right easement.
- ZTA 23-08 would amend the list of prohibited commercial uses to permit cemeteries, if an expansion of an existing cemetery.
- Montgomery Planning Staff recommends supporting the ZTA as introduced, but provides background information Staff considered in reaching this conclusion.

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## SECTION 1 – BACKGROUND

### Rationale For Introduction

Zoning Text Amendment (ZTA) 23-08, Transferable Development Rights - Cemetery, was introduced by Councilmember Balcombe on November 7, 2023 (Attachment A). The ZTA is scheduled for a District Council Public Hearing on January 16, 2024. The ZTA modifies the list of prohibited uses on a lot or parcel located in the AR zone and encumbered by a recorded Transfer of Development Rights (TDR) easement. Currently, cemetery is a prohibited commercial use. While this ZTA would continue to prohibit new cemeteries, it would allow an existing cemetery to expand onto TDR easement encumbered land.

The restriction on uses on lots or parcels in the AR Zone and encumbered by a recorded TDR easement, including cemeteries, was first adopted by the Council with ZTA 07-07, and enacted by Ordinance 16-08 effective October 22, 2007. Just prior to when this ZTA was adopted, the uses allowed in the Rural Density Transfer (RDT) were largely limited to agriculture and residential detached uses, however a number of uses were also allowed by Special Exception (now known as Conditional Use). ZTA 07-07 added a footnote to the use table for Agricultural Zones prohibiting most non-residential uses in the RDT zone if the site is under a TDR easement. The intent was to limit over-development and commercialization of the Agricultural Reserve and to adhere to the land preservation intent of TDRs.

During the 2014 zoning rewrite, footnotes were not included as part of the zoning code, however the intent of ZTA 07-07 was captured as Section 59-3.1.5 Transferable Development Rights, which lists all of the uses prohibited on land encumbered by TDR easements, organized by use category, including cemeteries. Per the Council Sponsor, at least one existing cemetery in the AR zone has expressed concern that they are unable to expand because the adjacent parcels they own are encumbered with a TDR easement.

## SECTION 2 – TEXT AS INTRODUCED

### ZTA 23-08 As Introduced

ZTA 23-08 modifies section 59-3.1.5. Transferable Development Rights, subsection 4. Commercial, as follows:

#### **4. Commercial**

- a. Veterinary Office/Hospital
- b. Bed and Breakfast (if not accessory to Farming)

- c. Cemetery, unless expanding an existing Cemetery
- d. Funeral Home, Undertaker
- e. Lawn Maintenance Service
- f. Rural Antique Shop
- g. Shooting Range (Outdoor)

## SECTION 3 – ANALYSIS AND RECOMMENDATIONS

### ZTA 23-08 Analysis and Recommendations

Planning Staff recommends the Planning Board support ZTA 23-08 as introduced. Planning Staff considered numerous factors before reaching this recommendation, including whether to exempt cemeteries entirely, whether to allow any prohibited use to expand onto TDR easement land, and whether limits should be placed on the cemetery expansion.

When deciding whether cemeteries should remain as a prohibited use in the AR zone on TDR easement encumbered land, Planning Staff considered why they were added to the list originally. From a visual standpoint, cemeteries can be attractive and fit with an agricultural setting and are often landscaped with lawns of grass and canopy trees. This presumes a primary intent of the Agricultural Reserve is for open space protection rather than agricultural protection. However, the main intent of the Agricultural Reserve, and the subsequent TDR program is to protect land for agriculture. Arguably, cemeteries are the only land use that can never be removed and have the land restored to agricultural land. Once land is used for a burial site, it is forever a protected burial site, permanently removing that land from agricultural use. For this reason, Planning Staff decided it made sense to keep cemeteries generally prohibited from TDR easement lands.

Planning Staff also considered the viability of recommending that all uses prohibited in the AR zone when encumbered by a TDR easement be allowed to expand onto adjacent TDR easement encumbered land. From a use parity perspective, this recommendation makes sense, however it would dramatically increase the scope of impact of the ZTA in a way not intended. From a practical site development standpoint, other non-residential uses looking to expand have more options to redevelop and reconfigure existing sites to fit expanded operations, whereas a cemetery running out of space only has one option to grow. Also, while visually protecting open space may not be the primary intent of the Agricultural Reserve, it is a consideration, and cemeteries are less impactful visually than most other types of non-residential use. Therefore, it makes sense to keep the scope of this ZTA to cemeteries.

Finally, Planning Staff considered whether limitations on the expansion of cemeteries should be included in the Board's recommendation. The limits considered included the size of the expansion,

either in total area or as a percent of the original cemetery, limits on what categories of soil can be expanded upon, and whether the expansion should only be allowed once. Enforcement of these potential limitations would complicate the review and approval process and must be weighed against the potential benefits. Staff ran an analysis looking at all the known cemeteries that are in or adjacent to an existing TDR easement. A total of 90 unique sites exists, however only 21 were considered active based on a 2018 survey by Montgomery Preservation, Inc. This shows the scope of possible future applicants to be quite small. There is an undetermined number of new cemeteries that could be established on non-TDR easement land that could later expand onto TDR easement land, but based on recent applications for new cemeteries, this also seems unlikely to result in any substantial number of properties. Ultimately Planning Staff do not find it useful or necessary to recommend limitations to the proposed expansion provisions since the expected scope of change is very small.

## 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 upon community resilience and adaptive capacity. The full climate impact assessment for ZTA 23-08 is attached in Attachment B with a brief summary provided below.

ZTA 23-08 is anticipated to have slight negative impacts on greenhouse gas (GHG) emissions and sequestration factors, and a mix of slight negative and positive impacts on adaptive capacity factors. Negative impacts on GHG emissions are caused by a combination of increased vehicle miles traveled by expanding a land use in the AR zone, away from population centers, an increase in embodied emissions from new infrastructure serving the cemetery, and changes in land cover that may reduce the capacity for plants or the soil to store carbon. Negative impacts to adaptive capacity and community resilience come from a slight increase in flood risks if the expanded cemeteries greatly replace natural ground covers resulting in urban runoff, and due to the potential for taking productive farmland out of food production with a cemetery expansion. Slight positive impacts may result from enhancements of community connections and cohesiveness with an expanded local cemetery. The potential for forest loss with cemetery expansion is also a concern, however any land disturbance greater than 5,000 square feet in size is required to follow the Forest Conservation Law which is a potential mitigating factor.

## SECTION 5 – CONCLUSION

Planning Staff recommends the Planning Board support ZTA 23-08 as introduced. This ZTA would allow existing cemeteries to expand onto land encumbered with a TDR easement. This ZTA is a reasonable amendment providing targeted relief to a unique land use that allows for reasonable expansion without jeopardizing the intent of the Agricultural Reserve.

## SECTION 6 – ATTACHMENTS

*Attachment A: Zoning Text Amendment 23-08 Intro Packet*

*Attachment B: Climate Assessment 23-08*



**Committee:** PHP  
**Committee Review:** At a future date  
**Staff:** Livhu Ndou, Legislative Attorney  
**Purpose:** To introduce agenda item – no vote expected  
**Keywords:** #Cemetery #TDR #AgriculturalReserve

AGENDA ITEM #7A  
November 7, 2023  
**Introduction**

## SUBJECT

Zoning Text Amendment (ZTA) 23-08, Transferable Development Rights – Cemetery

Lead Sponsor: Councilmember Balcombe

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

To introduce ZTA – no vote expected

## DESCRIPTION/ISSUE

ZTA 23-08 would allow a property owner in the AR zone to expand a cemetery onto land that currently has a TDR.

## SUMMARY OF KEY DISCUSSION POINTS

- Under the current zoning ordinance, a Cemetery is prohibited if the lot or parcel on which the cemetery would be located is in the AR zone *and* is encumbered by a recorded Transfer of Development Rights easement.
- ZTA 23-08 would allow a property owner in the AR zone to expand a cemetery onto land that currently has a TDR.
- 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 23-08

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Ordinance No.: \_\_\_\_\_  
Zoning Text Amendment No.: 23-08  
Concerning: Transferable  
Development Rights -  
Cemetery  
Revised: 10/17/2023 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**

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Lead Sponsor: Councilmember Balcombe

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- (1) allow certain parcels in the Agricultural Reserve (AR) zone that have Transfer of Development Rights (TDRs) to be allowed to be used as cemeteries; and
- (2) generally amend the provisions for TDRs.

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

Division 3.1.           “Use Table”  
Section 3.1.5.       “Transferable Development Rights”

**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:*



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 # 23-08 Transferable Development Rights - Cemetery

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#### 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.

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#### SUMMARY

The Montgomery County Planning Board anticipates that ZTA 23-08 have both slight to moderate negative impacts as well as slight positive impacts on the county's goals of addressing greenhouse gas emissions, carbon sequestration, and ensuring resilience and adaptive capacity of our communities, depending on the performance factor. Overall, more impacts are slightly negative than positive.

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#### BACKGROUND AND PURPOSE OF ZTA 23-08

This ZTA would modify the current prohibition on building cemeteries in the AR zone on land encumbered with a TDR easement to all expansions of existing cemeteries to occur. The establishment of new cemeteries would still be prohibited.

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## 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

Building Embodied Emissions – Pavement infrastructure, Material waste produced

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

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

### ADAPTIVE CAPACITY-RELATED VARIABLES

Change to accessibility or prevalence of community and public spaces, Change to accessibility or prevalence of local food sources and other goods, Change to community connectivity

### OTHER VARIABLES

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

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## ANTICIPATED IMPACTS

The ZTA is anticipated to result in slight negative impacts on greenhouse gas emissions, sequestration, and community resilience, and a combination of negative and positive impacts on adaptive capacity as described in more detail below. Due to the uncertainty of the locations of the expanded cemetery sites 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 23-08 is anticipated to have slight 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 cemeteries are more limited in the agricultural zones, with travel by individual automobile likely the most prevalent form of transportation, increasing vehicle miles traveled. The expansion of the cemeteries could increase the number of burials at these sites, increasing the number of trips. Overall, these impacts are expected to be slight because the number of cemeteries adjacent to TDR easements in the agricultural zone are limited.

Building embodied emissions are also expected to be slight. The primary sources of additional building embodied emissions are expected to come from additional pavement for drive aisles and parking, and from additional material waste generated by people attending the expanded number of burials that may be generated by expanding the cemeteries.

Impacts to sequestration from Land Cover Change and Management are also expected to be slight. 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 cemetery expansion, reducing the amount of carbon sequestered and stored.

## COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

ZTA 23-08 is anticipated to have slight 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. Slight negative impacts to air quality may result from increased motor vehicle trips and vehicle miles traveled generated by additional burials in the agricultural zones.

There could be slight positive impacts to community adaptive capacity as the expanded cemeteries 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 if expanded cemeteries increase staffing levels needed for cemetery operations and maintenance, and if the number of commercially sold cemetery plots is increased.

ZTA 23-08 has a potential to have a more significant negative impact on the accessibility of local food sources and other goods if large areas of currently farmed lands are converted to expanded cemetery space. The severity of this loss of farmland and associated food crops depends on the extent to which the cemeteries that qualify for expansion under this ZTA take advantage of the opportunity, and how large each expansion becomes.

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

ZTA 23-08 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.

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### RECOMMENDED AMENDMENTS

The Climate Assessment Act requires the Planning Board to offer appropriate recommendations such as amendments to the proposed ZTA 23-08 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.

## SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-08 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*.