Staff Memorandum

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To: Montgomery County Planning Board

Via: Rose Krasnow, Interim Planning Director

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Zoning Text Amendment (ZTA) 13-04, Zoning Ordinance – Revised
District Map Amendment (DMA) G-956

Executive Summary

This memorandum is divided into three sections:

- Staff Recommendation
- ZTA 13-04 and DMA G-956 Overview
- Staff Recommended Revisions

Section 1 is a brief statement recommending the transmittal of comments to the County Council.

Section 2 is a summary of ZTA 13-04 and DMA G-956, highlighting significant aspects of the ZTA and impacts of the DMA.

Section 3 outlines several changes to the introduced text based on additional stakeholder input and another round of thorough reading. These changes are primarily for clarity, consistency, and minor corrections; no substantive policy changes are effectuated or intended.

§1. Staff Recommendation

Staff recommends approval of ZTA 13-04, Zoning Ordinance – Revised, and DMA G-956, adopting the zoning maps implementing the new ordinance and making the GIS layer the official zoning maps of the County, with the revisions specified in Section 3, Staff Recommended Revisions.
§2. ZTA 13-04 and DMA G-956 Overview

§2.1. ZTA 13-04, Zoning Ordinance - Revised
ZTA 13-04 embodies a complete revision of the existing zoning ordinance, Chapter 59 of the Montgomery County Code. This Ordinance regulates land development in the County, primarily in concert with Chapter 50, Subdivision Regulations.

Chapter 59 specifically establishes the zoning districts that regulate:
- Allowed uses,
- Allowed densities and heights,
- Lot standards, such as setbacks and coverage,
- Parking, landscaping, open space, and sign regulations, and

Chapter 59 also establishes the review process for rezonings, text amendments, and regulatory applications.

Several departments and governmental bodies use the zoning ordinance on a daily basis to review and approve land development, including the Planning Department, the Planning Board, the Department of Permitting Services, the Hearing Examiner, the Board of Appeals, and the County Council. Revision of the zoning ordinance was initiated at the behest of many of these bodies with several basic goals in mind:
- Simplify and consolidate;
- Improve clarity and consistency;
- Accommodate changing markets and demographics, while protecting established neighborhoods;
- Reflect more sustainable policy goals; and
- Provide the tools necessary to shift from greenfield development to infill, mixed-use development.

To these ends, the revised ordinance contains significant changes in layout, presentation, and organization and makes significant modifications to mixed-use and industrial zoning regulations, while minimizing impacts to agricultural and residential regulations. The most significant changes are outlined below.

Organization
Whereas the existing zoning ordinance is difficult to navigate, has information in dispersed and counterintuitive locations, and does not provide a systematic arrangement for various topics, the revised zoning ordinance has a vastly improved organization, providing separate articles on:
2. Zones
3. Uses and Use Standards
4. Euclidean Zone Regulations
5. Floating Zone Regulations
6. Optional Method Regulations
7. General Development Regulations
8. Administration and Procedures
9. Zones Retained from Previous Ordinance.

The formatting of the section outlines also provides a more intuitive organization. Section numbering in the existing zoning ordinance is inconsistent; for example, one section is numbered 59-F-10.2(b)(1)(F)1.a and another section is numbered 59-G-2.00(a)(5)(i). The new zoning ordinance has consistent numbering throughout based on a standard outline format consisting of letters, numbers, and lower-case Roman numerals, for example:

- Article 59-1.
- Division 1.1.
- Section 1.1.1.
- Subsections: A.1.a.i(a)(1).

Finally, there are no footnotes in the revised zoning ordinance; the information contained in those footnotes has been encompassed in the body of the text, typically as use, process, or development standard regulations.

**Land Uses**

Land uses are consolidated and collected in one table in the revised zoning ordinance. The general philosophy about uses is to group by intensity, rather than differentiate by name.

Taking its impetus from the introduction of limited uses in the existing Commercial-Residential zones, the limited use is established generally and provides a convention to apply specific “use standards” to otherwise permitted uses (allowing removal of dozens of footnotes). Similarly, in some cases, specific use standards have been retained for conditional uses (formerly special exceptions). All use definitions and use standards are in one location, Article 59-3, and are indexed to one use table.

**Building Types**

One aspect of the revised zoning ordinance that incorporates one aspect of a form-based code is the introduction of building types. The impetus behind this is that different types of buildings are necessary to accommodate the various uses allowed in any given zone, but that the development standards (setbacks, lot width, coverage, etc.) should be based on building type,
not by zone. This allows greater protections to be provided in residentially-zoned areas that allow non-residential uses (museums, medical clinics, funeral homes, care facilities) because the setbacks, buffering, and other standards are more restrictive if a building is not a detached house. It also allows for variable treatment of apartment buildings, multi-use buildings, and general buildings in mixed use zones – some buildings, for example, may be required to meet certain additional design standards, such as minimum glazing, entrance spacing, or blank wall restrictions.

### Sec. 4.1.4. Building Types Allowed by Zone

Building types are allowed by zone as follows:

<table>
<thead>
<tr>
<th>Agricultural Zone</th>
<th>Detached House</th>
<th>Duplex</th>
<th>Townhouse</th>
<th>Apartment</th>
<th>Multi Use Building</th>
<th>General Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Reserve (AR)</td>
<td>A</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>A</td>
</tr>
<tr>
<td>Rural Zoning</td>
<td>A</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>A</td>
</tr>
<tr>
<td>Rural Cluster (RC)</td>
<td>A</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>A</td>
</tr>
<tr>
<td>Rural Neighborhood Cluster (RNC)</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>—</td>
<td>—</td>
<td>A</td>
</tr>
</tbody>
</table>

### Development Methods

Standard method development standards have been separated from optional method development standards for clarity. Also, optional method development applies to more properties under the revised zoning ordinance: CR, CRT, EOF, and LSC. Importantly, optional method development (MPDU, TDR, and Cluster) in the residential zones is only allowed in the same zones, with the same building types, and at the same densities as allowed in the existing zoning ordinance. In the mixed use zones, the public benefit points have been modified slightly – lowering the amount of points that may be awarded in many cases – and new requirements for very large or high-density
projects have been proposed. This is a significant change that was discussed but not highlighted during Planning Board worksessions.

**Floating Zones**
In the existing zoning ordinance, Euclidean zones (those established by master plan) and floating zones (those that may be requested by individual property owners) are indistinguishable. In the revised zoning ordinance they have been separated into distinct articles. Further, the proposed floating zones are fundamentally different in applicability, format, and organization.

There are four families of floating zones mirroring the Euclidean zones: Residential, Commercial-Residential, Employment, and Industrial. Within these four families, a wide range of uses and densities are allowed, but both are restricted by the zone that that is being replaced in the current code and by the amount of land that is assembled. As with the existing ordinance, development standards are quite flexible and determined through a lengthy public review process requiring at least two – and up to three – approvals.

As in the existing ordinance, floating zones may be recommended by a master plan but do not have to be. When not recommended in a master plan, a property owner may request a floating zone but there are significantly more “hurdles” that must be cleared to qualify for rezoning:

- A rezoning application must satisfy nine different purpose clauses focused on comprehensive planning objectives, appropriate use of land, and protection of established neighborhoods;
- When not recommended in a master plan, a rezoning application must meet at least 4 prerequisites based on location and the circulation network;
- The density that may be requested is limited by the zoning of the site that would be replaced by a floating zone and the amount of land that is assembled;
- Allowed uses are established by the density approved (for example, commercial uses are not allowed in the Residential Floating Zone unless the approval is for more than 250 total units);
- Commercial uses are further restricted by density and location within the proposed development; and
- Public benefits may be required (at the same threshold and in an equivalent quantity as Euclidean C/R and Employment zones).

**General Regulations**
Those regulations that apply across zones: site access, parking/queueing/loading, open space and recreation, compatibility standards, general landscaping and outdoor lighting, outdoor display and storage, and signs are regulated in their own respective divisions in Article 59-7, General
Development Regulations. The parking section, in particular, has been clarified and now matches the land use table.

<table>
<thead>
<tr>
<th>USE or USE GROUP</th>
<th>Metric</th>
<th>Baseline Minimum</th>
<th>Commercial/Residential and Industrial Zones</th>
<th>Agricultural, Rural Residential Zones</th>
<th>Outside a Parking Benefit District</th>
<th>Within a Parking Benefit District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Health Practitioner (Low Impact)</td>
<td>Non-Resident Employee</td>
<td>1.00</td>
<td>1.00</td>
<td>1.00</td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>Home Health Practitioner (High Impact)</td>
<td>plus, Each Client Added</td>
<td>1.00</td>
<td>1.00</td>
<td>1.00</td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>Lux/Residental</td>
<td>Recreational (Dancing, etc)</td>
<td>1.00</td>
<td>1.00</td>
<td>1.00</td>
<td>1.00</td>
<td></td>
</tr>
</tbody>
</table>

**COMMERCIAL AND INDUSTRIAL**

- Ambulance, Rescue Squad (Private) | Employee | 1.00 | 1.00 | 1.00 | 1.00 | 
- Charitable, Philanthropic Institution | Recreational (Student) | 1.00 | 1.00 | 1.00 | 1.00 | 
- Cultural Institution | 
- Day Care Facility | 
- Family Day Care | Non-Resident Employee | 1.00 | 1.00 | 1.00 | 1.00 | 
- Group Day Care | Day Care Center | 1,000 SF of GFA | 3.00 | 3.00 | 4.00 | 3.00 | 
- Educational Institution (Private) | Student (Grades K-12) | 0.25 | 0.25 | 0.25 | 0.25 | 
- Hospital | 
- Private Club, Service Organization | 1,000 SF of GFA | 2.50 | 2.50 | 3.00 | 2.50 | 
- Religious Assembly | 
- Swimming Pool (Community) | Every 7 Percent of the Property | 1.00 | 1.00 | 1.00 | 1.00 | 

**COMMERCIAL**

- Animal Boarding and Care | Employee | 2.50 | 2.50 | 2.50 | 2.50 | 
- Veterinary Office/Healthcare | Employee | plus, Each Insurer | 2.50 | 2.50 | 3.00 | 2.50 | 
- Veterinary Office/Healthcare | plus, Each Insurer | 2.50 | 2.50 | 3.00 | 2.50 | 

**SÄTZING AND SPOOLS**

- Cemetery | 1,000 SF for Non-Residential, excluding outdoor seating areas in the Commercial/Residential and Employment Zones | 10.00 | 4.00 | 13.00 | 4.00 | 

There are some significant changes in the revised zoning ordinance related to how the general regulations are implemented; most are based on achieving greater sustainability relating to issues such as impervious area, tree canopy, air and water quality, and public health. To this end:

- Parking requirements are generally lower and surface parking lots require more landscaping;
- Open space has minimum permeable and tree canopy requirements; and
- Landscape and lighting standards have been codified.

To protect established neighborhoods, the general regulations have been modified to include compatibility standards – establishing setback, height, and screening standards based on the adjacent uses, further requirements for outdoor storage and display, and lighting restrictions.
**Administration and Procedures**
Many have bemoaned the difficult regulatory review process in Montgomery County; others laud the fact that such a process ensures thoroughness and provides greater protections for current residents. In the spirit of William F. Buckley, Jr.’s quote, “A conservative is someone who stands athwart history yelling ‘Stop!…’", we are a conservative county. Thus, although this section has been greatly improved organizationally, there are fewer changes to the process than originally hoped for by many. That said, there are several improvements:
- The grouping of all approvals under applicable approving bodies,
- Consistent organization step-by-step under each approval section,
- Revised submittal requirements to ensure that proper information (and not too much) is given at each approval step,
- Revised findings in line with approval purpose and the iterative nature of many procedures,
- Standardized notice requirements, and
- Incorporation of internet-based noticing.

**§2.2. DMA G-956, Adoption of District-Wide Zoning Maps Implementing the Revised Zoning Ordinance**
DMA G-956 will adopt digital zoning maps implementing the new zoning ordinance. As discussed over several months of “implementation” worksessions with the Planning Board, this will have the following impacts:
- The RDT (Rural Density Transfer) zone will be renamed the AR (Agricultural Reserve) zone;
- The R, RC, RNC, RE-2, RE-2C, RE-1, R-200, R-90, R-40, R-30, R-20, R-10 and LSC zones will not be changed;
- All commercial and mixed uses zones (except those noted below) will be classified as one of the following zones: CR, CRT, CRN, NR, GR, or EOF zones;
- The industrial zones will become an IL, IM, or IH zone; and
- The R-H, PCC, PD, PNZ, PRC, TS, and various R-T zones will not be changed.

**§3. Staff Recommended Revisions**

**§3.1. Generally**
Staff recommends continuing work on illustrations and diagrams to be included in the code for clarity. These would include illustrations of measurement methods, building type form requirements, flow charts for each approval procedure, and other expository means to enhance understanding of the ordinance. It is expected that these will be provided during worksessions with the County Council, but – as explained in the revised zoning ordinance – are illustrative and do not change the intent or applicability of written requirements.
## §3.2. Specific Recommendations

<table>
<thead>
<tr>
<th>Page</th>
<th>Recommendation</th>
</tr>
</thead>
</table>
| ii   | The title of the Article 59-4 should be “Article 59-4. Euclidean Zone [Regulations] Requirements: General and Standard Method”.
| iv   | The title of Article 59-5 should be “Article 59-5. Floating Zone [Regulations] Requirements”.
| iv   | The title of Article 59-6 should be “Article 59-6. Optional Method [Regulations] Requirements”.
| v    | The title of Article 59-7 should be “Article 59-7. General Development [Regulations] Requirements”.
| 1-10 | The definition of Cultural Institution should read “Any [private] privately owned or operated facility where works of art or other objects are kept and displayed, or where books, periodicals, and other reading material is offered for reading, viewing, listening, study, or reference, but not typically offered for sale. Cultural Institution includes a museum, cultural or art gallery, and library.”
| 1-17 | The definition of Lawn Maintenance Service should be modified to read, “The business of cutting grass, raking leaves, snow removal, and other activities associated with maintaining a yard; regulated as a low impact home occupation”.
| 3-8  | The use Playground, Outdoor Area (Private), should be removed from the rural zone. The use is intended for development that requires common open space such as Optional Method MPDU or Cluster Development, neither of which is allowed under the rural zone.
| 3-43 | Under Sec. 3.5.1.B.2.b use standards (f) and (h) should be combined. Modify (f) to read “The sound level at the nearest property line [cannot exceed 60 dBA] must satisfy Chapter 31B.”, and strike (h), [For all building in which animals will be contained, sound levels emanating from the interior of the building must satisfy Chapter 31B as measured at the property line].
| 3-44 | Under Sec. 3.5.1.C.2.b use standards v. and vii. should be combined. Modify v. to read “The sound level at the nearest property line [cannot exceed 60 dBA] must satisfy Chapter 31B.”, and strike vii., [For all building in which animals will be contained, sound levels emanating from the interior of the building must satisfy Chapter 31B as measured at the property line].
| 4-64 | Sec. 4.8.2.D.3.b should read “[For any increase in building height] Any portion of a building over 45 feet, [that portion of the building] must be set back from [the nearest] an abutting property in a Residential zone a minimum of 3 feet for each one foot of building height over 45 feet.”
| 4-67 | Under Sec. 4.8.3.3 development standards a. through e. should be deleted. The modified development standards for the IL zone and the overlay standards a. through e. are redundant. Development standard f. should read “[The Planning Board may approve a reduction in the amenity open space requirement to a minimum of 10% of the site.] A maximum of 50% of the required amenity open space may be located off-site within the IMU-TB Overlay zone.”
| 6-23 | Under Sec. 6.6.3.D.2 the heading should read “[Affordable Housing] Moderately Priced Dwelling Units” as there is a separate public benefit for Workforce Housing. It will follow Live/Work in alphabetical order.
| 7-3  | Under Sec. 7.1.4.A. IM needs to be added to the Driveway Dimensions table in the same row and column as the IL and IH zones.