



Zoning Text Amendment (ZTA) No. 16-02, Agricultural Zone – Transfer of Development Rights Requirements



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Description

Zoning Text Amendment (ZTA) No. 16-02 would exempt certain dwellings in the Agricultural Reserve Zone from the calculation of density under certain circumstances. Specifically, ZTA 16-02 would amend the Agricultural Reserve (AR) zone by excluding farm tenant dwellings and detached accessory apartments from the calculation of density in the subdivision process when the property is encumbered by an agricultural easement or when the subdivision is for the creation of a child lot. The effect of this proposed exclusion allows the property owner to have a subdivision approved without a retained Transfer of Development Right (TDR) for the excluded units if the dwelling existed before October 31, 2014; the dwelling remains accessory to Farming and the principle dwelling; and the subdivision is for an encumbered property existing before October 31, 2015 or for the sole purpose of creating a child lot.

Summary

Staff recommends approval of ZTA No. 16-02 as introduced. The ZTA would exempt certain dwellings in the Agricultural Reserve zone from the calculation of density under certain circumstances.

Background/Analysis

Under the current code, a development right is not required for farm tenant dwellings or an accessory apartment as long as the dwelling unit remains accessory to farming; however, if a property in the AR zone is subdivided, these units are not excluded from the calculation of density. A subdivision applicant under the current code would need to prove the existence of a retained TDR for the principle dwelling, any excluded unit, and the proposed new lot.

Until July 2010, the Planning Board did not require a retained TDR for a tenant dwelling when that dwelling unit remained accessory to the principle dwelling (and both the principle dwelling and tenant dwelling remained on a single lot or parcel with the farm). In reliance on this interpretation, landowners who negotiated agricultural easements with tenant houses retained only the TDRs necessary for new units, but did not retain one for any existing tenant house.

In the Planning Board's approval of the Barnesville Oak Farm subdivision (July 2010), the Board explicitly changed its interpretation and required a retained TDR for a tenant dwelling when a subdivision created any new lot. ZTA 16-02 would codify (grandfather) the Planning Board's pre-2010 interpretation for property that sold an agricultural easement; it would allow a subdivision without requiring TDRs for farm tenant dwellings or accessory apartments so long as these units remain accessory to farming. It would also allow a landowner to have the rights to create the same size subdivision that they may have thought they had when the agricultural easement was sold.

An additional provision in ZTA 16-02 would allow the creation of a child lot on property without a retained TDR for a tenant dwelling or detached accessory apartment when an agricultural easement does not encumber the property.

Staff has no objection to grandfathering the Planning Board's pre-2010 interpretation for property that sold an agricultural easement.

Attachments

1. ZTA No. 16-01 as introduced

ATTACHMENT 1

Zoning Text Amendment No.: 16-02
Concerning: Agricultural Zone –
Transfer of Development
Rights Requirements
Draft No. & Date: 2 - 1/14/16
Introduced: January 19, 2016
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- exempt certain dwellings in the Agricultural Zone from the calculation of density under certain circumstances; and
- generally amend the provisions concerning the special requirements for the transfer of density

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

DIVISION 59-4.2. “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:

1 **Sec. 1. DIVISION 59-4.2. is amended as follows:**

2 **Division 4.2. Agricultural Zone**

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

4 * * *

5 **D. Special Requirements for the Transfer of Density**

6 1. In General

7 a. Under Section 4.9.15.B and in conformance with a general
8 plan, master plan, or functional master plan, residential density
9 may be transferred at the rate of one development right per 5
10 acres minus one development right for each existing dwelling
11 unit, from the AR zone to a TDR Overlay zone. A development
12 right is not required for the following dwelling units on land in
13 the AR zone as long as the dwelling unit remains accessory to
14 Farming and the principle dwelling:

15 [a] i. Farm Tenant Dwelling[,]; and

16 [b. Attached Accessory Apartment,]

17 [c] ii. Detached Accessory Apartment[, and]

18 [d. Bed and Breakfast].

19 b. If a property is subdivided, [dwellings associated with these
20 uses] any Farm Tenant Dwellings or Detached Accessory
21 Apartments are not excluded from the calculation of density
22 and must have a retained a development right in addition to the
23 retained development right for any newly created lot; however,
24 these dwellings are excluded from the density calculation and
25 need not have a retained development right if:

26 i. the dwelling existed before October 31, 2014;

- 27 ii. the dwelling remains accessory to Farming and the
- 28 principle dwelling; and
- 29 iii. the subdivision is for:
- 30 (a) property encumbered by any agricultural easement
- 31 program administered by the County before
- 32 October 31, 2015; or
- 33 (b) the sole purpose of creating a child lot.
- 34 c. The density transfer provisions are not applicable to publicly
- 35 owned rights-of-way for roads, streets, alleys, easements, or
- 36 rapid transit routes classified in the AR zone.

37 * * *

38 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the

39 date of Council adoption.

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41 This is a correct copy of Council action.

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44 Linda M. Lauer, Clerk of the Council