



Zoning Text Amendment (ZTA) No. 16-04, Agricultural Reserve (AR) Zone – Transitory Uses

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Description

ZTA No. 16-04 would allow transitory uses in the Agricultural Reserve (AR) Zone on property with a recorded transferable development rights easement. Specifically, the ZTA would amend the Agricultural Reserve zone by deleting transitory uses from the list of prohibited uses when transferable development rights (TDRs) are severed from a property.

Summary

Staff recommends approval of ZTA 16-04 as introduced, to allow transitory uses in the Agricultural Reserve Zone on property with a recorded transferable development rights easement.

Background/Analysis

On October 2, 2007, the County Council adopted ZTA No. 07-07 (Ordinance No. 16-08-see Attachment 2), to clarify the long standing legislative intent that the *development* of RDT-zoned parcels (since renamed the AR zone) encumbered by TDR easements must be limited to single-family and agricultural and agricultural-related uses only. The ZTA was based on recommendations by a County Council Ad Hoc Agricultural Policy Working Group. The Ad Hoc Working Group's reason for restricting uses was to promote the intent of preserving agricultural land.

Zoning Text Amendment (ZTA) 16-04 would amend the Agricultural Reserve zone by deleting transitory uses from the list of prohibited uses when transferable development rights (TDRs) are severed from a property.

In the opinion of the sponsor, transitory uses should be allowed in the AR zone without regard to the TDR status of the property. Food trucks (included in the definition of a transitory use), which must move around, can enhance agricultural activities without increasing impervious surface. The temporary use of land for food trucks will never foreclose agricultural production and may provide an additional source of income for farmers holding farm markets.

Transitory Use

Under Section 3.5.15. Temporary Commercial Uses, a Transitory Use means a use on private property or the public right-of-way conducted from a *vehicle or from a movable structure* that remains in the same location *for less than 24 hours. Transitory Use includes a food service truck.*

A Transitory Use is allowed as a limited use in all zones (including the AR zone) and must adhere to several limited use standards including: registration in accordance with Chapter 47 (Vendors); location in the public right-of-way only where it satisfies Chapter 47; locating on private property only if it would be allowed as a permanent use in the applicable zone; and prohibition on any portion of the open space required by the zone in which the property is located.

By definition, a transitory use is temporary and mobile and therefore does not impede agricultural development on AR property. Staff further believes (as does the sponsor) that a transitory use can enhance agricultural activities for farmers holding farm markets without restricting agricultural land preservation and/or development.

Comments from the Montgomery County Agricultural Advisory Committee (AAC)-Attachment 3

The AAC believes that ZTA 16-04 will help promote agricultural education and agricultural tourism opportunities in the Agricultural Reserve by removing the prohibition for Food Service Trucks stopping on properties encumbered by Transferable Development Rights-TDR easement.

The County has over 50,000 acres of farmland encumbered by TDR easements and many of the property owners would like to offer food and refreshments to residents that visit the farms. The ZTA 16-04 will go a long way by removing the restrictive requirements that inhibit farmers from promoting their farms to the general public.

Conclusion

Staff recommends approval of ZTA No. 16-04 as introduced, based on the discussion above. The intent of the AR zone is to promote agriculture as the primary land use in areas of the County designated for agricultural preservation. The AR zone accomplishes this intent by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas. The restriction of the uses on properties encumbered by TDR easements promotes the intent of the AR Zone. Staff believes that the limited and short-term nature of transitory uses does not impede the intent of the zone.

Attachments

1. ZTA No. 16-04 as introduced
2. ZTA No. 07-07 (Ordinance No. 16-08) as adopted by the County Council
3. Letter from the Agricultural Advisory Committee dated June 3, 2016

ATTACHMENT 1

Zoning Text Amendment No.: 16-04
Concerning: Agricultural Reserve
(AR) Zone – Transitory
Uses

Draft No. & Date: 1 – 4/20/16

Introduced:

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: Councilmember Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow transitory uses in the Agricultural Reserve Zone on property with a recorded transferable development rights easement.

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

DIVISION 59-3.1. “Use Table”

Section 3.1.5. “Transferable Development Rights”

DIVISION 59-3.5. “Commercial Uses”

Section 3.5.15. “Temporary Commercial Uses”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment or by ZTA 14-09.

[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 or text added by this amendment in addition to ZTA 14-09.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment or indicates a change from ZTA 14-09.

** * * 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 59-3.1 is amended as follows:**

2 **DIVISION 3.1. Use Table**

3 * * *

4 **Section 3.1.5. Transferable Development Rights**

5 A. The following uses are prohibited if the lot or parcel on which the use is
6 located is in the AR zone and is encumbered by a recorded Transfer of
7 Development Rights easement:

8 * * *

9 **4. Commercial**

- 10 a. Veterinary Office/Hospital
- 11 b. Bed and Breakfast (if not accessory to Farming)
- 12 c. Cemetery
- 13 d. Funeral Home, Undertaker
- 14 e. Lawn Maintenance Service
- 15 f. Rural Antique Shop
- 16 g. Shooting Range (Outdoor)
- 17 [h. Transitory Use]

18 * * *

19 **Sec. 2. DIVISION 59-3.5 is amended as follows:**

20 **DIVISION 3.5. Commercial Uses**

21 * * *

22 **Section 3.5.15. Temporary Commercial Uses**

23 * * *

24 **C. Transitory Use**

25 **1. Defined**

26 Transitory Use means a use on private property or the public right-of-
27 way conducted from a vehicle or from a movable structure that

28 remains in the same location for less than 24 hours. Transitory Use
29 includes a food service truck.

30 **2. Use Standards**

31 Where a Transitory Use is allowed as a limited use, it must satisfy the
32 following standards:

- 33 a. A Transitory Use must be registered under Chapter 47.
- 34 b. A Transitory Use may be located in the public right-of-way
35 where it satisfies Chapter 47.
- 36 c. A Transitory Use may be allowed on private property only if it
37 would be allowed as a permanent use in the applicable zone
38 under Section 3.1.6.
- 39 d. A Transitory Use is prohibited on any portion of the open space
40 required by the zone in which the property is located.
- 41 [e. In the AR zone, this use may be prohibited under Section 3.1.5,
42 Transferable Development Rights.]

43
44 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after
45 approval.

46
47 This is a correct copy of Council action.

48
49 _____
50 Linda M. Lauer, Clerk of the Council

Ordinance No: 16-08
Zoning Text Amendment No: 07-07
Concerning: Rural Density Transfer – Use
Limitations
Draft No. & Date: 3 – 9/28/07
Introduced: June 12, 2007
Public Hearing: July 19, 2007; 7:30 PM
Adopted: October 2, 2007
Effective: October 22, 2007

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

By: Council President at the Request of the Ad Hoc Agricultural Policy Working Group

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- to limit the uses allowed in the Rural Density Transfer Zone when a property is under a transfer of development rights easement; and
- generally amend uses allowed in the Rural Density Transfer Zone.

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

DIVISION 59-C-9
Section 59-C-9.3

“AGRICULTURAL ZONES”
“Land uses”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment No. 07-07 was introduced on June 12, 2007 to limit the land uses allowed in the Rural Density Transfer (RDT) zone when a property is encumbered by a transfer of development rights (TDR) easement.

The Montgomery County Planning Board recommended approval of ZTA 07-07 with suggestions for the purpose of clarification.

The County Council held a public hearing on July 19, 2007 to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on September 10 to review the text amendment. After careful review of the materials of record, the Committee recommended that ZTA 07-07 be approved with amendments. The Committee concluded that property encumbered by a TDR easement should be subject to greater land use restrictions than land not so encumbered but more uses were appropriate than those in the ZTA as introduced. The additional uses allowed by the Committee's recommendation were advocated in public testimony. As amended, the ZTA would allow all accessory building and uses and all transportation, communication, and utilities. Other added uses were in the Committee's opinion directly related to residential or agricultural uses. The Committee also recommended a provision to grandfather existing buildings.

The District Council reviewed Zoning Text Amendment No. 07-07 at a worksession held on October 2, 2007. The Council agreed with the Committee recommendation to approve ZTA 07-07 as amended.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 07-07 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-C-9 is amended as follows:**

2 **DIVISION 59-C-9. AGRICULTURAL ZONES.**

3 * * *

4 **59-C-9.3 Land uses.**

5 * * *

	Rural	RC	LDRC	RDT[[[*]]	RS	RNC	RNC/TDR
(a) Agricultural:							
Agricultural processing, primary						P	P
Equestrian facility. ⁴¹	P/SE	P/SE	P/SE	P/SE	P/SE	SE ²	SE ²
Farm. ¹	P	P	P	P	P	P	P
Fish hatchery.	P	P	P	P	P		
Other agricultural use.	P	P	P	P	P	P	P
(b) Agricultural-Industrial:							
Abattoir.	SE	SE ²	SE ²	SE			
Agricultural processing. ³⁶	SE	SE ²	SE ²	SE	SE		
Construction Debris Reclamation Facility.					P		
Contractors storage yard ²⁸ (existing)					P		
Grain elevator. ³⁶	SE	SE ²	SE ²	SE	SE		
Manufacture of light sheet metal products. ²⁸ (existing)					P		
Manufacture of mulch and composting.	SE	SE ²	SE ²	SE	SE		
Milk plant. ³⁷	SE	SE ²	SE ²	SE			
Sawmill.	SE	SE ²	SE ²	SE			
Storage for recycling of building or construction materials. ²⁸ (existing)					P		

	Rural	RC	LDRC	RDT[[*]]	RS	RNC	RNC/TDR
Winery. ³⁸	SE/P	SE/P	SE/P	SE/P	SE/P	SE ²	SE ²
Wood product and furniture manufacturing. ²⁸ (existing)					P		
(c) Agricultural-Commercial:							
Blacksmith. ⁴	SE	SE ²	SE ²	SE	P	P ²	P ²
Christmas tree sales between December 5 and 25.	P	P	P	P	P	P ²	P ²
Country market.	SE	SE	SE	SE	P	SE ²	SE ²
Farm market. ⁵	P	P	P	P	P	P ²	P ²
Landscape contractor. ^{3,2}	SE	SE	SE	SE	P	SE ²	SE ²
Nursery, horticultural - retail. ^{1,3}	SE	SE	SE	SE	P	SE ²	SE ²
Nursery, horticultural - wholesale. ^{1,3}	SE	SE ²	SE ²	SE	P	SE ²	SE ²
(d) Resource Production and Extraction:²							
Rock or stone quarry, as a temporary use.	SE	SE	SE	SE*			
Sand, gravel or clay pit, or extraction of other natural materials, as a temporary use.	SE	SE	SE	SE*			
(e) Residential:²							
Accessory apartment. ^{6,7}	SE	SE	SE	SE*		SE	SE
Accessory dwelling. ⁷	SE	SE	SE	SE*	SE	SE	
Accessory dwelling for agricultural workers. ⁴²				P			
Bed-and-breakfast lodging with one or 2 guest rooms. ³¹	P	P	P	P*	P	P	P
Bed-and-breakfast lodging with 3, 4 or 5 guest rooms. ¹⁸	SE	SE	SE	SE*	P	SE	SE
Dwelling, one-family detached.	P	P	P	P	P	P	P

	Rural	RC	LDRC	RDT[[[*]]]	RS	RNC	RNC/TDR
Dwelling, one-family semidetached. ⁴⁴						P	P
Farm tenant dwelling. ⁸	P	P	P	P		P	P
Farm tenant mobile home, more than one but less than 4. ⁸	SE	SE	SE	SE		SE	SE
Group home, small.	P	P	P	P*	P	P	P
Group home, large. ¹⁵	SE	SE	SE	SE*	SE	SE	SE
Guest house, as accessory use. ⁸	P	P	P	P*	P	P	
Guest rooms, for not more than 2 roomers in any dwelling unit.	P	P	P	P*	P	P	P
Housing and related facilities for senior adults or persons with disabilities.	SE	SE	SE		SE	SE	SE
Life care facility.	SE	SE	SE			SE	SE
Mobile home, double-wide. ⁹	P	P	P	P*	P	P	P
Registered living unit. ^{6,20}	P	P	P	P*	P	P	P
Townhouse.						P	P
(f) Transportation, Communication and Utilities:							
Airstrip, associated with farm.		SE ²	SE	SE			
Amateur radio facility.	P ^{46/} SE	P ^{46/} SE	P ^{46/} SE	P ^{46/} SE	P ^{46/} SE	P ^{46/} SE	
Cable communication system. ¹⁰	SE	SE	SE	SE	SE	SE	SE
Electric power transmission and distribution line, overhead, carrying more than 69,000 volts.	SE	SE	SE	SE	SE	SE	SE
Electric power transmission and distribution line, overhead, carrying 69,000 volts or less.	P	P	P	P	P	P	P

	Rural	RC	LDRC	RDT[[*]]	RS	RNC	RNC/TDR
Electric power transmission and distribution line, underground.	P	P	P	P	P	P	P
Helistop.	SE	SE ^{2,11}	SE ^{2,11}	SE ¹¹			
Parking of motor vehicles, off-street, in connection with any use permitted.	P	P	P	P	P	P	P
Parking of motor vehicles, off-street, in connection with commercial uses.	P ³⁹			P ³⁹			
Pipeline, aboveground.	SE	SE	SE	SE	SE		
Pipeline, underground.	P	P	P	P	P	P	P
Public utility buildings and structures.	SE	SE	SE	SE	SE	SE ²	SE ²
Radio or television broadcasting stations and towers.	SE	SE ²	SE ²	SE	SE		
Railroad track.	P	P	P	P	P		
Rooftop mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room. ²⁷	P	P		P		P	P
Telecommunications facility.	P ³³ / SE	P ³³ / SE	P ³³ / SE	P ³³ / SE	P ³² / SE	SE ²	
Telephone or telegraph line.	P	P	P	P	P	P	P
(g) Commercial:²							
Antique shop.	SE	SE	SE	SE*	P	SE	SE
Auction facility. ¹²				SE*	P		
Farm machinery: sales, storage, or service.		SE	SE	SE*	P		
Farm supply: sales, storage, or service.		SE	SE	SE*	P		
Transitory use. ²⁶	P/SE	P/SE		P*/SE*		P/SE	P/SE

	Rural	RC	LDRC	RDT[[*]]	RS	RNC	RNC/TDR
(h) Services:²							
Adult foster care home.	P	P	P	P [*]	P	P	P
Ambulance or rescue squad, publicly supported.	P	P	P	P [*]	P	P	P
Animal boarding place.	SE	SE	SE	SE	SE	SE	SE
Cemetery.	SE	SE	SE	SE [*]	SE	SE	SE
Charitable or philanthropic institution. ¹⁹	SE	SE	SE	SE [*]	SE	SE	SE
Child day care facility:							
—Family day care home.	P	P		P	P	P	P
—Group day care home. ³⁴	P	P		P [*]	P	P	P
—Child day care center.	SE	SE		SE [*]	P	SE	SE
Church, memorial garden, convent, monastery, and/or other place of worship.	P	P	P	P [*]	P	P	P
Day care facility for more than 4 senior adults and persons with disabilities.	SE	SE	SE	SE [*]	SE	SE	SE
Day care facility for not more than 4 senior adults and persons with disabilities. ¹⁴	P	P	P	P [*]	P	P	P
Domiciliary care home for more than 16 residents. ³⁵	SE	SE	SE	SE [*]	SE	SE	SE
Educational institution, private.	SE	SE	SE	SE ^{13,*}	SE	SE	SE
Family burial sites.	SE	SE	SE	SE			
Fire station, publicly supported.	P	P	P	P [*]	P	P	P
Funeral parlor or undertaking establishment				SE ^{40,*}			
Home health practitioner's office.	P ^{22/} SE ²¹	P ^{22/} SE ²¹	P ^{22/} SE ²¹	P ^{22,*/} SE ^{21,*}	P ^{22/} SE ²¹	P ^{22/} SE ²¹	P ^{22/} SE ²¹

	Rural	RC	LDRC	RDT[[*]]	RS	RNC	RNC/TDR
Home occupation, major. ²¹	SE	SE	SE	SE*	SE	SE	SE
Home occupation, registered. ²²	P	P	P	P*	P	P	P
Home occupation, no impact. ²³	P	P	P	P	P	P	P
Hospice care facility.	SE	SE	SE	SE*	SE	SE	SE
Hospital, veterinary.	SE	SE	SE	SE*	SE	SE	SE
Nursing home. ³⁵	SE	SE			SE	SE	SE
Offices, general. ²⁹					SE		
Publicly owned or publicly operated use.	P	P	P	P	P	P	P
Respite care home.	P	P	P	P*	P	P	P
Sanitarium.	SE	SE	SE	SE*	SE	SE	SE
(i) Cultural, Entertainment and Recreational:							
Boathouse, private.	P	P	P	P*	P		
Camp retreat, non-profit.		P ⁴⁵					
Campground.	SE						
Country club.	SE	SE	SE				
Golf course.	SE	SE	SE	SE ^{25,*}			
Hunting or fishing cabin, private. ¹⁶	P	P	P	P*			
Kennel, noncommercial.	P	P	P	P	P	P	P
Libraries and museums. ³⁰		P				P ²	P ²
Private club or service organization.	SE	SE	SE	SE*	SE	SE ²	SE ²
Recreational or entertainment establishment, or commercial.	SE				SE		
Riding stable, private. ¹⁷						P	

	Rural	RC	LDRC	RDT[[*]]	RS	RNC	RNC/TDR
Rifle, pistol, or skeet shooting range, outdoor.	SE	SE ²	SE ²	SE [*]	SE		
Swimming pool, community.	SE	SE	SE			SE ²	SE ²
Swimming pool, private. ¹⁶	P	P	P	P [*]	P	P	P
Theater, legitimate.	SE				SE		
(j) Miscellaneous:							
Accessory buildings and uses. ⁴⁷	P	P	P	P	P	P	P
Security pavilion.	P ⁴³	P ⁴³	P ⁴³	P ⁴³	P ⁴³	P ⁴³	P ⁴³
Signs, in accordance with the provisions of Article 59-F.	P	P	P	P	P	P	P
Wildlife or game preserve, regulated shooting ground licensed by the Maryland Wildlife Administration, and other conservation areas.	P	P	P	P	P		

6

7 * If a property is [[under]] encumbered by a recorded transfer of developments
 8 rights easement, [[only the following uses are allowed.

- 9 (a) one-family dwellings;
- 10 (b) all agricultural uses;
- 11 (c) all agricultural-industrial uses; and
- 12 (d) all agricultural-commercial uses.

13 Each use that requires a special exception under Sec. 59C-9.3 is allowed
 14 only by the approval of a special exception.]] this use is prohibited.

15 However, any building existing on October 2, 2007 may be repaired or
 16 reconstructed if the floor area of the building is not increased and the use is
 17 not changed.

18



AGRICULTURAL ADVISORY COMMITTEE

June 3, 2016

The Honorable Nancy Floreen
Montgomery County Council President
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Floreen: ZTA 16-04 Agricultural Reserve (AR) Zone-
Transitory Uses

On behalf of the Montgomery County Agricultural Advisory Committee-AAC, please accept this letter as our comments in support of Zoning Text Amendment 16-04 Agricultural Reserve (AR) Zone-Transitory Uses.

The AAC believes the ZTA 16-04 will help promote agricultural education and agricultural tourism opportunities in the Agricultural Reserve by removing the prohibition for Food Service Trucks stopping on properties encumbered by Transferable Development Rights-TDR easements.

The County has over 50,000 acres of farmland encumbered by TDR easements and many of the property owners would like to offer food and refreshments to residents that visit the farms. The ZTA 16-04 will go a long way by removing the restrictive requirements that inhibit farmers from promoting their farms to the general public. It is not possible for farmers to promote their farms and accommodate the needs of visiting residents without providing some food and refreshments.

The AAC thanks the County Council for this opportunity to present our views in support of ZTA 16-04 and please let us know if you have any questions.

Sincerely,

David Weitzer, Chairman