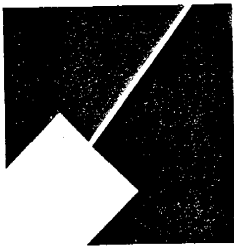


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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March 21, 2006

MEMORANDUM:

TO: Montgomery County Planning Board

FROM: Faroll Hamer, Acting Director *FH*

John A. Carter, Chief (301.495.4575) *JAC*
Community-Based Planning Division

SUBJECT: Agricultural Initiatives: Regulations for Sand Mound Use, Private Institutional Uses/Residential Densities, Agricultural Issues Task Force, and Other Development Policies

RECOMMENDATIONS

The County Council requested additional comments and recommendations on the following items prior to a meeting of the Transportation and Environment (T&E) Committee on March 30, 2006:

1. **Use of Sand Mound Septic Systems in the RDT Zone** – Support a temporary moratorium as set forth in Bill 38-05 on the permitting of sand mound systems in the Rural Density Transfer (RDT Zone). Bill 38-05 should be strengthened by eliminating the exemption for child lots and eliminating the exemption for five (or fewer) lot subdivisions. At the very least, the definition of “one location” should be clarified.
2. **Calculation of Residential Density with Special Exceptions and Private Institutional Facilities** – Support Zoning Text Amendment 05-23 that will exclude land used for Special Exceptions and Private Institutional Facilities from the calculation of residential density for any parcel in the RDT Zone.
3. **Agricultural Issues Task Force** – Continue to support the establishment of a Task Force with a wide range of representatives from the agricultural community, residents of Montgomery County, County Government, and the M-NCPPC. The Task Force should examine the need for minor amendments to the Master Plan for the Preservation of Agricultural and Rural Open Space, child lots, TDRs and commercial zones, and other issues. The Task Force should incorporate the goals of the General Plan, and any new regulations should be in conformance with the General Plan.
4. **Other Development Policies Including the Use of Child Lots and the Transfer of Super TDRs** – The staff will return to the Planning Board in the near future with recommendations concerning the use of child lots and the transfer of Super TDRs. The Agricultural Task Force should also consider these issues. A temporary moratorium on the use of child lots is recommended while the issue is being considered.

5. **Moratorium** – The staff recommends that the Planning Board consider a moratorium on building permits for new construction of all non-agricultural uses in the Agricultural Reserve. Alternatively, the Planning Board may wish to recommend a moratorium on all subdivision activity.

DISCUSSION

Twenty-five years ago the Master Plan for the Preservation of Agricultural and Rural Open Space was approved and adopted. County and state programs continue to be created to implement this master plan. The M-NCPPC maintains a strong commitment to implementing this master plan. Recent examples of completed projects that implement this master plan include the following:

- Completion of a Status Report of the Transferable Development Rights Program and presentation to the Planning, Housing and Economic Development Committee in July 2005 concerning the remaining sending and receiving areas.
- Designation of additional receiving areas for the transfer of development rights in the recently approved master plans for Olney, Shady Grove and Woodmont Triangle areas, and the pending Damascus Master Plan.
- Approval and Adoption of the Olney Master Plan and completion of the Planning Board Draft of the Damascus Master Plan that preserves significant portions of the Agricultural Reserve.

The County Council recently requested a response from the Planning Board concerning the following items to improve the implementation of the Master Plan for the Preservation of Agricultural and Rural Open Space:

- Use of Sand Mound Septic Systems in the RDT Zone (Bill 38-05)
- Calculation of Residential Density with Special Exceptions and Private Institutional Facilities (Zoning Text Amendment 05-23)
- Agricultural Issues Task Force
- Use of Child Lots and Transfer of Super TDRs

ANALYSIS

Use of Sand Mound Septic Systems in the RDT Zone

The Planning Board and the County Council have been actively considering the issue of sand mound septic systems because their use in the RDT Zone has been increasing, and there is a need to consider the long-range consequences and implications of this technology. The Planning Board has already expressed support for a temporary moratorium proposed on the permitting of sand mound systems in the RDT Zone, and the formation of a working group to evaluate these systems. The staff recommends that the following elements be a part of any evaluation of the use of sand mound systems:

- Bill 38-05 should be modified and strengthened. The way it is currently written, all child lots (existing and future) would be exempt from the moratorium, as would all lots in a development that does not exceed five dwelling units in "one location." This last exemption is particularly troublesome. It references the MPDU legislation (Chapter 25A) for the definition of "at one location." The definition of "at one location" in Chapter 25A is "The property lines are contiguous or nearly contiguous at any point." Because the definition is ambiguous, and because so many clusters of five or fewer lots are approved in the Agricultural Reserve, the vast majority of existing and proposed development would be exempt from the moratorium.
- The Planning Board previously encouraged an evaluation of the long-term viability of using artificial tools such as septic limitations to control land uses that are otherwise allowed in a zone. The Planning Board stated that while this is a common practice, it leads to confusion among property owners, unrealistic expectations regarding development potential, and represents a legal concern in limiting development. There are better land-use tools for the purpose of controlling growth.

Calculation of Residential Density with Special Exceptions and Private Institutional Facilities

The staff recommends that the Planning Board continue to support Zoning Text Amendment 05-23 that will exclude land used for Special Exceptions and Private Institutional Facilities from the calculation of residential density in the RDT Zone. The existing Zoning Ordinance is not clear in describing the method to calculate residential density. The potential exists for a parcel in the RDT Zone to include a Special Exception and residential density. This Zoning Text Amendment would exclude the land area of the Special Exception from the land area available for the calculation of density. This Zoning Text Amendment is especially important to eliminate the potential for large Special Exceptions and Private Institutional Facilities to double count residential density on parcels in the RDT Zone.

Agricultural Issues Task Force

The County Council has indicated their intent to create a Task Force to examine the multiplicity of issues before them in a comprehensive way. The Planning Board may wish to consider, as part of its priority-setting discussions, supporting this effort. It should be noted that there is no work program item currently in the FY07 budget that would support the necessary staff effort.

The Task Force members would represent the agricultural community, landowners, developers, open space advocates, environmentalists, preservationists and Heritage Montgomery. The Task Force would be staffed by a Planning Department team, with a division chief and planners as needed.

The mission of the Task Force should be to reaffirm the overarching rationale for the creation and maintenance of the Agricultural Reserve and bring agricultural reserve policies into conformance with the 1993 General Plan Refinement, either through an amendment to the 1985 Master Plan for the Preservation of Agriculture and Rural Open Space or through a comprehensive series of individual policy decisions, regulations and text amendments.

The topics for Task Force review would include: current activities, such as residential subdivision and child lot activity; total capacity or build-out of the Reserve; construction of PIFs and other non-residential and non-agricultural uses; reforms to the TDR program, including the effectiveness of a BLT or Super TDR proposal; sand mounds; profitability of farming; advisability of encouraging ag-tourism; need for ag education; and the role of the Agricultural History Farm Park. The Task Force would also review other growth management techniques, such as stronger environmental regulations, larger impact fees; and more stringent traffic and public safety standards; and other policies based on an expectation that private development will fund a larger share of public infrastructure, facilities and amenities so as to direct growth away from the Agricultural Reserve and towards the Urban Ring and I-270 Corridor.

Schedule for Task Force: Once the County Council identifies members of the Task Force, a Planning Board hearing could be held on the issues and framework at the end of April. The staff could complete a draft report by early June, and check in with the Planning Board prior to completion of the report. A public hearing on the draft report could be held in mid-July, and worksessions could be held in July and September, with a final report transmitted to the County Council and County Executive at the end of September.

Other Development Policies Including the Use of Child Lots and the Transfer of Super TDRs

- **Child Lot Provisions in the RDT Zone** - In December 2005, the Planning Board deferred action on a potential Zoning Text Amendment. This amendment was intended to address concerns with the child lot provisions in the RDT Zone, request additional elements to consider, and allow additional time for community input on the proposals. The staff is currently working on an updated report to the Planning Board to consider elements for this Zoning Text Amendment. This report will include substantial additional research on this issue. The staff recommends that a temporary moratorium on child lot subdivisions in the RDT Zone also be considered. The child lot provisions should be considered by the Agricultural Issues Task Force.
- **Creation of a Transfer of Super TDRs** - As a means to reduce development potential in the RDT Zone, the staff recommends that the Planning Board continue to support the Zoning Text Amendment to establish Super TDRs. These Super TDRs would be applicable only to the remaining "buildable" TDR after all of the other "transferable" TDRs have been established and removed from a property. The Super TDRs would be based on their value as a building lot excluding the underlying value of the property for other allowed uses.

The Planning Board has already supported the evaluation of the "Buildable Lot Transfer" (BLT) program being proposed by the Agricultural Services Division which has the potential to "jump start" the Super TDRs concept by authorizing the county to purchase Super TDRs or BLTs using funds from the county's Agricultural Easement Program and holding them until appropriate receiving areas have been determined and located. The Planning Board has stated that these two concepts could work well together as this new element of the Transferable Development Rights Program is being established. Since November, the "BLT" program has moved forward and it is nearing implementation. This issue should also be considered by the Agricultural Issues Task Force.

CONCLUSION

The staff and the Planning Board continue to address issues concerning the implementation of the Master Plan for Agricultural and Rural Open Space. These issues represent a significant focus of the Rural Team in the Community-Based Planning Division.

JC:JD:ha: j:\2006 staff reports\team 7\Agricultural Initiatives - Final

Attachment:

1. Bill 38-05
2. Chapter 25A
3. Zoning Text Amendment 05-23

Proposed amendments

By Councilmember Perez

The Laws of Montgomery County ~~[[2005]] 2006~~ are amended as follows:

Sec. 1. Temporary Prohibition.

Notwithstanding any provision of County Code Chapter 27A, any other County law, or any County regulation to the contrary, the Director of the Department of Permitting Services and any other County department or office must not issue a permit for the construction or installation of any mound septic system or innovative or alternative individual sewage disposal system that would be located in the Rural Density Transfer zone.

Sec. 2. Exceptions.

This Act does not apply to the construction or installation of any septic system or other individual sewage disposal system that is necessary to:

- (a) replace a failed or malfunctioning system that serves a building built before this Act takes effect; [[or]]
- (b) respond to a public health emergency when no other alternative means of sewage disposal is feasible;
- (c) construct any non-residential building for an exclusively agricultural use, such as a barn, stable, or shed;
- (d) construct a 1-family residence allowed under Section 59-C-9.74(b)(4); or
- (e) construct a 1-family residence which is part of a development that:
 - (1) does not exceed 5 dwelling units at one location, as that term is defined in County Code Section 25A-3(b); and
 - (2) is not contiguous to any other development that exceeds 5 dwelling units.

Sec. 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law. This Act does not apply to any building for which either a building permit or a final septic permit was issued before this Act became law, or that is covered by a preliminary plan of subdivision that the Planning Board approved before this Act became law.

Sec. 4. Expiration.

This Act expires on ~~[[July]]~~ October 31, 2006.

§25A-2

MONTGOMERY COUNTY CODE
Chapter 25A

- (6) Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards; and
- (7) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a County Housing Initiative Fund. (1974 L.M.C., ch. 17, § 1; 1989 L.M.C., ch. 27, § 1; 2003 L.M.C., ch. 1, § 1.)

Sec. 25A-3. Definitions.

The following words and phrases, as used in this Chapter, have the following meanings:

- (a) *Applicant* means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, and any transferee of all or part of the land at one location.
- (b) *At one location* means all adjacent land of the applicant if:
 - (1) The property lines are contiguous or nearly contiguous at any point; or
 - (2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or
 - (3) The property lines are separated only by other land of the applicant which is not subject to this Chapter at the time of any permit, site plan, development or subdivision application by the applicant.
- (c) *Available for building development* means all land:
 - (1) Owned by, or under contract to, the applicant;
 - (2) Zoned for any type of residential development to which an optional density bonus provision applies;
 - (3) Which will use public water and sewerage; and
 - (4) Which is already subdivided or is ready to be subdivided for construction or development.
- (d) *Closing costs* means statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, house location survey charges and fees for preparation of loan documents and deed of conveyance.

ATTACHMENT 3

Zoning Text Amendment No: 05-23
Concerning: TDR Easement-Nonresidential
uses
Draft No. & Date: 1 – 12/6/05
Introduced: December 13, 2005
Public Hearing: January 19, 2006; 7:00 pm
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**

By: Councilmembers Subin, Floreen and Knapp

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

- requiring that a TDR easement limit future development of non-residential uses other than agriculture in the Rural Density Transfer (RDT) zone;
- clarifying that TDRs do not apply to property classified in the RDT zone developed with a non-residential use other than agriculture; and
- generally amending the TDR provisions.

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

DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.39	“Special regulations for optional method development using transferable development rights”
DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.6	“Transfer of density-Option in Rural Density Transfer zone”

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.*

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-1 is amended as follows:**

2 **DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

3 * * *

4 **59-C-1.39. Special regulations for optional method development using transferable**
5 **development rights.**

6 **59-C-1.391. Applicability.** The following procedures and regulations apply to the
7 transfer of development rights from land classified in the rural density transfer zone
8 (RDT) to land classified in the transferable development rights (TDR) zones. The
9 [planning board] Planning Board may approve subdivision of such land at densities
10 not to exceed the maximum density permitted in the applicable TDR zone and
11 conforming to the guidelines contained in the applicable master plan approved by the
12 district council. Any increase in density above the density applicable to the standard
13 method of development must be based on a ratio of one single-family dwelling unit
14 for each transferable development right (TDR), and 2 multi-family dwelling units for
15 each transferable development right (TDR).

16 **59-C-1.392. General Provisions.**

17 (a) A development right [shall] must be created, transferred and extinguished only by
18 means of documents, including an easement and appropriate releases, in a
19 recordable form approved by the [planning board] Planning Board. The easement
20 [shall] must limit the future construction of one-family dwellings on a property in
21 the RDT zone to the total number of development rights established by the zoning
22 of the property minus all development rights previously transferred in accordance
23 with this section, the number of development rights to be transferred by the
24 instant transaction, and the number of existing one-family detached dwellings on
25 the property. The easement must also prohibit the future development of any non-
26 residential use, other than agriculture as defined in 59-A-2, on the affected
27 property.

- 28 (b) The transfer of development rights [shall] must be recorded among the land
29 records of Montgomery County, Maryland.
- 30 (c) The development density of a property under the TDR optional method [may]
31 must not be increased above the maximum density permitted in the zone (section
32 59-C-1.332(c)) nor beyond the density or number of dwelling units
33 recommended for [such] the property by the land use plan of the applicable
34 master plan approved by the district council.
- 35 (d) A property developed with the transfer of development rights [shall] must
36 conform to the requirements of chapter 25A of the Montgomery County Code
37 requiring MPDU[']s. The applicability of chapter 25A and the MPDU density
38 increase provided by section 59-C-1.6 [shall] must be calculated after the base
39 density of a property has been increased by a transfer or development rights. The
40 density increase provided by section 59-C-1.6 may be made without [the
41 acquisition of] acquiring additional development rights.

42 * * *

43 **Sec. 2. DIVISION 59-C-9 is amended as follows:**

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

45 * * *

46 **59-C-9.6. Transfer of density—Option in Rural Density Transfer zone.**

47 In accordance with section 59-C-1.39 and in conformance with an approved and adopted
48 general, master, sector, or functional plan, residential density may be transferred at the rate
49 of one development right per 5 acres minus one development right for each existing
50 dwelling unit, from the Rural Density Transfer zone to a duly designated receiving zone,
51 pursuant to section 59-C-1.39. The density transfer provisions [are not applicable] do not
52 apply to publicly owned rights-of-way for roads, streets, alleys, easements, or rapid transit
53 routes classified in the Rural Density Transfer zone, or to property classified in the Rural
54 Density Transfer zone that is developed with a non-residential use, other than agriculture

55 as defined in 59-A-2. The following dwelling units on land in the RDT zone are excluded
56 from this calculation, provided that the use remains accessory to a farm. Once the
57 property is subdivided, the dwelling is not excluded:

58 (a) A farm tenant dwelling, farm tenant mobile home, or guest house as defined in
59 section 59-A-1.2, title "Definitions."

60 (b) An accessory apartment or accessory dwelling regulated by the special exception
61 provisions of divisions 59-G-1 and 59-G-2.

62

63 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
64 date of Council adoption.

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66 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council