



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #4
1/10/08

DATE: January 2, 2008
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *R/K*
Ralph Wilson, Zoning Supervisor, Development Review *RW*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To allow outdoor storage yards as a special exception in the Rural Cluster Zone and to establish standards for the approval of outdoor storage yards as a special exception

TEXT AMENDMENT: No. 07-16
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Council President Knapp
INTRODUCED DATE: December 4, 2007

PLANNING BOARD REVIEW: January 10, 2008
PUBLIC HEARING: January 25, 2008; 1:30 PM

STAFF RECOMMENDATION: APPROVAL with modifications to clarify technical language. No substantive changes are proposed.

PURPOSE OF THE TEXT AMENDMENT

To allow outdoor storage yards as a special exception in the Rural Cluster Zone and to establish standards for the approval of outdoor storage yards as a special exception

BACKGROUND

- Zoning Text Amendment 07-16 could most immediately apply to the Gene's Johns and Rentals, Inc. ("Gene's Johns") portable toilet rental business located at 23320 and 23330 Ridge Road, Germantown, Maryland, which now operates under a registered home occupation approved by Montgomery County on April 6, 1995. The property is composed of two lots. Each lot is improved with a detached single family dwelling which fronts on Ridge Road. Combined, the two lots comprise approximately eight acres on the west side of the roadway and are classified in the RC Zone. Viewed from Ridge Road, the two lots are residential in character. The house at 23320 Ridge Road is authorized for the home occupation and contains an

office. Outdoor business activities are located behind the two dwellings and screened from other properties.

- The business has outgrown the home occupation standards, primarily because of the need for outdoor storage space for porta-johns. Outdoor storage is not permitted for a home occupation. Also, there is no specific land use category in the Zoning Ordinance for this type of business. Gene's Johns has been able to operate pursuant to the home occupation authorization because a home occupation is not restricted to any specific type of activity. Rather, home occupations are controlled by operational characteristics such as number of employees, vehicles, office space, *etc.*
- In July, 2005, a zoning inspector for the Montgomery County Department of Permitting Services inspected the properties and concluded that the operations were no longer permissible under a home occupation authorization and issued a zoning violation. Since July, 2005, Gene's Johns has attempted to pursue alternative courses of action that would remedy the zoning violation but with no success. ZTA 07-16 was introduced by Council President Knapp to permit outdoor storage in the RC zone through the approval of a special exception application.

ANALYSIS

The text amendment proposes to permit outdoor storage as a special exception use in the RC zone and establishes special exception standards for the use category in Section 59-G-2 as follows:.

59-G-2.54.3. Storage, outdoor.

A special exception may be granted for a storage, outdoor use, including portable toilet storage, subject to the following requirements:

- (a) The minimum area of the property must be 8 acres.*
- (b) The minimum setback from any property line must be 50 feet, except that the minimum setback may be reduced to 20 feet for structures that existed as of January 1, 1995, and if the site abuts land classified in the Rural Cluster Zone that is not developed under the cluster option of the Rural Cluster Zone.*
- (c) The property must front on and have direct access to a road built to primary or higher standards.*
- (d) Where and such use abuts residentially zoned property, screening that prevents visual impact of the use to adjoining and confronting properties*

must be provided for all parking areas and all exterior areas devoted to on-site operations and the storage of inventory and equipment.

(e) The Board may regulate hours of operation, numbers of vehicles and personnel employed, and other on-site operations, including minor repairs to equipment and vehicles used in the operation of the business, so as to prevent adverse impact on adjoining uses.

(f) One and one-half parking spaces must be provided on-site for each 1,000 square feet of total floor area and sufficient area provided for loading and unloading of trucks.

* * *

Staff recommends that the first line of proposed Section 59-G-2.54.3 be clarified to state “**outdoor storage...**” rather than “**a storage, outdoor use...**” Staff also recommends that subsection “f” be modified to clarify that the parking requirement is calculated on the total floor area associated with the special exception. The modifications are depicted in Attachment 1.

RC Zone

The intent of the Rural Cluster (RC) zone is to provide designated areas in the county for a compatible mixture of agricultural uses and low-density residential development to promote agriculture, and to protect scenic and environmentally sensitive areas.

The County Council, in designating special exception uses in the RC zone, established that these uses are compatible with other uses in the zone, absent unacceptable adverse effects on the surrounding properties. Some uses permitted by special exception in the RC zone include: abattoirs, agricultural processing, grain elevators, manufacturing of mulch and composting, milk plants (if not accessory to a farm, otherwise permitted by right), sawmills, landscape contractors, horticultural nurseries, and farm machinery and supply-sales, storage, or service.

Staff believes that the inclusion of outdoor storage as a special exception in the RC zone would be consistent with other special exceptions in the zone since many of the characteristics associated with the existing special exceptions are similar to those pertaining to outdoor storage. For example, inherent characteristics for a number of the existing special exceptions include: buildings and structures; outdoor areas for storage of materials; on-site storage of business vehicles and equipment including small trucks and trailers; traffic associated with trips to the site by employees, suppliers and customers; adequacy of parking areas; dust and noise associated with the movement of products and the loading and unloading of equipment; and long hours of operation. As with the existing special exceptions, the proposed specific standards for an outdoor storage use are crafted to address the inherent and non-inherent adverse impacts.

In addition to the proposed specific standards, the general conditions and general development standards of Section 59-G-1 would apply. Staff therefore has no objection to allowing outdoor storage by special exception in the RC Zone.

RECOMMENDATION

For the reasons stated above, staff recommends approval of the zoning text amendment to allow outdoor storage yards as a special exception in the Rural Cluster Zone and to establish standards for the approval of outdoor storage yards as a special exception.

Attachment 1 depicts the proposed text amendment as modified for plain language clarifications.

GR

Attachments

1. Proposed Text Amendment 07-16 as modified by staff
2. Letter to Gregory Russ from William J. Chen, Jr.

ATTACHMENT 1

Ordinance No:
Zoning Text Amendment No: 07-16
Concerning: Rural Cluster –
Outdoor Storage
Draft No. & Date: 3 – 11/27/07
Introduced: December 4, 2007
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**

By: Council President Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow outdoor storage yards as a special exception in the Rural Cluster Zone;
- establish standards for the approval of outdoor storage yards as a special exception; and
- generally amending provisions related to special exceptions in the Rural Cluster Zone.

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

DIVISION 59-C-9 “AGRICULTURAL ZONES”
Section 59-C-9.3 “Land uses”
DIVISION 59-G-2 “SPECIAL EXCEPTIONS-STANDARDS
AND REQUIREMENTS.”
Add a new section
Section 59-G-2.54.3. “Storage, outdoor”

*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:

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

DIVISION 59-C-9. AGRICULTURAL ZONES.

59-C-9.3. Land uses.

No use is allowed except as indicated in the following table:

— **Permitted uses.** Uses designated by the letter “P” are permitted on any lot in the zones indicated, subject to all applicable regulations.

— **Special exception uses.** Uses designated by the letters “SE” may be authorized as special exceptions, in accordance with the provisions of Article 59-G.

* * *

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
(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			
<u>Storage, outdoor</u>		<u>SE</u>					
Sawmill.	SE	SE ²	SE ²	SE			
Storage for recycling of building or construction materials. ²⁸ (existing)					P		
Winery. ³⁸	SE/P	SE/P	SE/P	SE/P	SE/P	SE ²	SE ²

Wood product and furniture manufacturing. ²⁸ (existing)					P		
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* * *

Sec. 2. Division 59-G-2 is amended as follows:

Division 59-G-2 SPECIAL EXCEPTIONS –STANDARDS AND REQUIREMENTS.

The uses listed in this Division, as shown on the index table below, may be allowed as special exceptions in any zone where they are so indicated, as provided in this Article, subject to the standards and requirements in this Division and the general conditions specified in Section 59-G-1.21.

USE	SECTION
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* * *

Sanitarium.....	See G-2.31
Sawmills.....	G-2.54
Secondary agricultural processing, not otherwise specified.....	G-2.54.1
Solid waste transfer station, sanitary landfill, or incinerator.....	G-2.54.2
<u>Storage, outdoor.....</u>	<u>G-2.54.3</u>
Swimming pools, commercial.....	G-2.55

* * *

59-G-2.54.3. Storage, outdoor.

A special exception may be granted for [[a storage,]] outdoor storage [[use]], including portable toilet storage, subject to the following requirements:

- (a) The minimum area of the property must be 8 acres.
- (b) The minimum setback from any property line must be 50 feet, except that the minimum setback may be reduced to 20 feet for structures that existed as of January 1, 1995, and if the site abuts land classified in

the Rural Cluster Zone that is not developed under the cluster option of the Rural Cluster Zone.

(c) The property must front on and have direct access to a road built to primary or higher standards.

(d) Where an [[d]]y such use abuts residentially zoned property, screening that prevents visual impact of the use to adjoining and confronting properties must be provided for all parking areas and all exterior areas devoted to on-site operations and the storage of inventory and equipment.

(e) The Board may regulate hours of operation, numbers of vehicles and personnel employed, and other on-site operations, including minor repairs to equipment and vehicles used in the operation of the business, so as to prevent adverse impact on adjoining uses.

(f) One and one-half parking spaces must be provided on-site for each 1,000 square feet of total floor area associated with the special exception and sufficient area provided for loading and unloading of trucks.

* * *

Sec. 3. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

CHEN, WALSH, TECLER & MCCABE, L.L.P.

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*ALSO ADMITTED IN THE
DISTRICT OF COLUMBIA

1-800-229-9510

December 21, 2007

Gregory Russ, Development Review Division
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

VIA EMAIL, FAX, AND REGULAR MAIL

Re: Zoning Text Amendment No. 07-16

Dear Mr. Russ:

This letter is sent to give you background information in support of Zoning Text Amendment No. 07-16. As you know, the zoning text amendment proposes to authorize outdoor storage as a special exception in the Rural Cluster ("RC") Zone. It has been introduced at the request of my client, Gene's Johns and Rentals, Inc. ("Gene's Johns").

Gene's Johns operates a portable toilet rental business at 23320 and 23330 Ridge Road, Germantown, Maryland, pursuant to a registered home occupation authorization that was approved by Montgomery County on April 6, 1995 (Permit No. 330). It is a family owned and operated business currently owned and operated by Vincent E. Lufsey. Mr. Lufsey's father, Eugene Lufsey, started the business. The Lufsey family are long-time Montgomery County residents.

The aforesaid addresses are adjacent properties, each improved with a detached single family dwelling which fronts onto Ridge Road. Combined, the two properties comprise approximately eight acres on the west side of the roadway and are at present classified in the RC Zone. Viewed from Ridge Road, the two properties are residences. The house at 23320 Ridge Road is authorized for the home occupation and contains an office. Outside activities are located behind the two dwellings, and those activities are screened from other properties. Behind the dwellings there are other buildings, including a large barn, which were already on the properties when the home occupation authorization was approved by the County. The properties' prior owners had constructed these other buildings, and they are used in the business as is permitted for home occupations. Those buildings, I emphasize, pre-existed the operations of Gene's Johns. The barn apparently had been used as an indoor horse rink. The two detached single family dwellings front onto Ridge Road and present a residential

appearance; business operations to the rear are not visible from Ridge Road. The rest of the perimeter of the properties is screened from adjacent properties by mature pine trees. The properties back up to the Ovid Hazen Wells Park, and the northern boundary abuts the M-NCPPC service drive into the park.

The business has thrived and grown such that today it has outgrown the permissible strictures for home occupations, primarily because the business needs outdoor storage space for porta-johns and outdoor storage is not permissible with a home occupation. Also, in searching for an appropriate zoning use classification it became clear that the Montgomery County Zoning Ordinance does not contain any land use category for this type of business. Gene's Johns has been able to operate pursuant to the home occupation authorization because, as you may know, a home occupation is not restricted to any specific type of activity. Rather, home occupations are controlled by operational characteristics such as number of employees, vehicles, office space, *etc.* But, as noted, outdoor storage is not permissible.

In July, 2005, a zoning inspector for Montgomery County inspected the properties and concluded that the operations are no longer permissible under a home occupation authorization and issued a zoning violation. Since July, 2005, Gene's Johns has attempted to pursue alternative courses of action that would remedy the zoning violation. We actively investigated the possibility of seeking a special exception for a major home occupation, but that alternative is not available because it also does not permit outdoor storage. We attempted to ascertain if the use could "fit" within the scope of land uses already recognized in the Zoning Ordinance. Unfortunately, in the RC Zone there is no land use which would include the business. We also have made preliminary inquiries with M-NCPPC staff about the possibility of seeking a zoning change for the properties, but it appears that a zoning map amendment would not be successful. Gene's Johns also has attempted to find another location in Montgomery County to which the business could be re-located, but those efforts have not been successful. New locations outside the County were also investigated and pursued, but such an option would result in the business losing a large part of its work force who reside in the Takoma Park area. The bottom line, after pursuing all apparent alternatives, is the conclusion that a zoning text amendment is the only available course of action to take if the business is to remain in Montgomery County.

As indicated, the RC Zone does not contain any land use that would permit this business as either a permitted use or a special exception. The effort to develop a zoning text amendment has taken over a year of discussions, including draft legislative proposals, with representations of the Clarksburg Civic Association, the staff of the M-NCPPC, and the Council's Legislative Attorney, Jeffrey Zyontz. Various different approaches were drafted and considered. The particular features of Gene's Johns operations were given specific

CHEN, WALSH, TECLER & MCCABE, LLP.

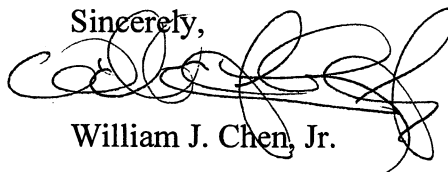
consideration in drafting a ZTA. The minimum area would be eight acres. This type of business needs space for outdoor storage of porta-johns that are not in use, and that is the reason for the minimum land area requirement. It is also the land area of Gene's Johns properties. The parking standard would be the same as for an "Industrial, manufacturing establishment or warehouse" of Section 59-E-3.7 of the Zoning Ordinance. Gene's Johns does not store or treat any effluent on-site, and no effluent could be stored or treated on-site under ZTA No. 07-16. As noted, from Ridge Road the properties appear to be two residential dwellings. I note and emphasize that my client's operations have not been intrusive on neighbors, nor a deleterious land use.

My client also has no objection to labeling the use "Storage, outdoor (existing)". The term "(existing)" is attached to several other uses in the Agricultural Zones, and I am sure it would be welcomed by the Clarksburg Civic Association.

If Gene's Johns cannot obtain relief through a ZTA it probably will have to leave the County. This would be a disservice to Gene's Johns and its customers which include the City of Rockville and the Maryland-National Capital Park and Planning Commission. It is a responsible local business and the County should want to find a way to keep it in the County.

We hope that the technical staff and the Planning Board will support enactment of ZTA No. 07-16.

Sincerely,



William J. Chen, Jr.

WJC:mmml

cc: Vincent E. Lufsey, Gene's Johns
Philip E. Perrine, P.E., A.I.C.P.
Kathie Hulley
John Cook

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