



## Zoning Text Amendment (ZTA) No. 17-04, Country Inn – Standards

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Completed: 09/1/17

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### Description

ZTA 17-04 revises the standards for allowing a Country Inn as a conditional use in the R-200 zone. Specifically, in the R-200 zone, the proposed site for a Country Inn must have at least one property line abutting R, RC, RNC, or AR zoned property and the abutting property zoned R, RC, RNC, or AR must be at least 2 acres in size.

### Summary

**Staff does not recommend approval of ZTA 17-04.** The existing conditional use process provides adequate standards and requirements to address issues that potentially could impact properties near a Country Inn. The public input requirement of the conditional use process further provides opportunity to address concerns unique to a particular site.

If the County Council decides to approve ZTA 17-04, staff provides the following comments for County Council consideration:

- Given the fact that the amended language proposes that one abutting property and the subject property must have a minimum lot area of 2 acres, staff is unclear of the logic for singling out the R-200 zoned property for the stricter standard but not the RE-2 and RE-1 zoned properties, especially when the standard minimum lot size for RE-1 zoned properties could be less than 2 acres. If the County Council approves the ZTA, it would be more consistent to require that the size of at least one adjoining property be a minimum of 2 acres regardless of its zoning category and that the stricter standard apply also to the RE-2 and RE-1 zones.
- If the intent is to maintain a rural character or setting, excluding confronting properties from the proposed proximity standard does not appear consistent with the intent, given, in many cases, the adjacent roads are primary residential or country roads with less than 80' ROW width.

- Any conditional use application filed before the effective date of Council approval of ZTA 17-04, should be grandfathered and thereby, permitted to continue through the conditional use process under the rules in place when the application was filed.

As written, approval of ZTA 17-04 would impact the application of any proposed new Country Inn, including any application pending at the time of Council approval.

## Background/Analysis

Prior to the adoption of the new Zoning Code in 2014, a Country Inn was allowed within an area zoned “Country Inn” through a Floating Zone map amendment process. With the adoption of the new Zoning Code in 2014, all “Country Inn” zoned properties reverted to their original rural or residential zoning and the use itself became a Limited Use (for previously approved country inns) or Conditional Use (for new country inns) approved in the Rural Residential and Residential Detached zones, provided that certain criteria are met.

Attachment 2 depicts six floating zone applications for the Country Inn zone approved by the District Council prior to the adoption of the new Zoning Code in 2014. Since the adoption of the new Zoning Code, one conditional use application (CU-15-06, Maryland Catering Company), has been submitted. The application was accepted prior to the introduction of ZTA 17-04 (filed March 24, 2015) but has not yet been acted on. Of the six previously approved County Inns, two have reverted to their previous R-200 zoning classification (Comus Inn and the Yegher property), with only one abutting either a Rural Residential or AR zone (Comus Inn). Since all six Country Inn approvals occurred prior to the adoption of the new Zoning Code, they are grandfathered as limited uses in the Code.

Attachment 2 also describes the rationale for recommending approval of each application. The rationale statements vary based on the environment of *each* application. As such, Staff is concerned that by arbitrarily narrowing the scope of what is considered a rural setting by placing an “adjacent zone” rule on only one zone (the R-200 zone), the Council could be limiting the possibility for Country Inn uses in appropriate locations. Also, it is unclear to staff as to why the legislation places the adjacency rule on only one of the three Residential Zones, given the fact that any Country Inn application, in any zone, must be located on at least 2 acres. ***Staff believes that the designation of a rural area should be established on a case-by-case basis, utilizing the “Necessary Findings” analysis of the conditional use approval process.***

## Conditional Use Provisions

Currently, a new Country Inn is allowed only through conditional use approval in the R, RC, RE-2, RE-1 and R-200 zones, and must adhere to the necessary findings of Section 7.3.1.E and the use-specific standards of Section 3.5.3.A.2.b which state:

- Where a Country Inn is not legally existing before October 30, 2014, it may be allowed as a conditional use by the Hearing Examiner under Section 7.3.1, Conditional Use and the following standards:

- i. The minimum lot area is 2 acres, or a lesser area if a master plan recommends a lesser area.
- ii. The maximum coverage is 10%.
- iii. A minimum of 50% of the lot must be open space.
- iv. The minimum setback from any street is 50 feet. The minimum setback from any other lot line is 75 feet.

ZTA 17-04 would revise the standards for allowing a Country Inn as a conditional use in the R-200 zone by adding the following provision under Subsection b (above):

- v. In the R-200 zone, the proposed site must have at least one property line abutting R, RC, RNC, or AR zoned property and the abutting property zoned R, RC, RNC, or AR must be at least 2 acres in size.

As defined, Country Inn means an establishment for dining in a **rural area** that may include a maximum of 12 overnight guest rooms and the following subordinate uses: rural antique shop; handicrafts or art sales; equestrian- related retail sales and service; and recreational facilities primarily for the use of guests.

***In the opinion of the sponsors, the ZTA adds an appropriate limitation on what is a rural area.***

As stated above, staff is unclear why the rationale for establishing more stringent rules for defining a rural environment only applies to one of the zones that permits a Country Inn through conditional use approval. As discussed below, the Conditional Use process addresses the compatibility of a use on the surrounding neighborhood, on a case by case basis.

#### Necessary Findings (Section 7.3.1.E)

An applicant for a conditional use must demonstrate that the general and specific standards and requirements are satisfied. These standards include: minimum setback and lot size requirements; maintaining harmony with the general character of the adjacent neighborhoods, consistent with the master plan, through consideration of design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions; and establishing abatement measures to minimize or eliminate objectionable noise, vibrations, fumes, odors, dust, illumination, glare, physical activity at the subject site or the health, safety, or welfare of neighboring residents, visitors, or employees. ***Staff believes that the findings of approval of Section 7.3.1.E and the specific standards of Section 3.5.3.A.2.b provide adequate measures to establishing whether a rural setting is being adhered to and whether the adjacent neighborhoods are being protected.***

#### Citizen Comments

Staff received a white paper on the history of the implementation of the Country Inn Zone (by David Brown, Susanne Lee, Stephen Lehrman and Curt Uhre) that they believe provides clear, documented precedent for limiting country inns in the R-200 zone to rural locations, as is the intent of the ZTA. As detailed in the paper, the two R-200 rezonings to Country Inn were in rural locations, not locations abutting single-family homes developed under R-200 zoning. They believe that the adoption of ZTA 17-04 is therefore consistent with and will further this long-standing development pattern while protecting existing R-200 zoned residential neighborhoods from an incompatible use. (Attachment 4)

According to GIS records (Attachment 3), the Yegher property, one of the two R-200 zoned properties referenced above, is located adjacent to a detached house subdivision zoned R-200 and a detached house subdivision zoned RE-2. In staffs' view, a case-by-case analysis of a Country Inn conditional use application appears to be the more appropriate means of deciding the merit of the required rural location. Under the proposed ZTA, a Country Inn would not be permitted in this location.

Former Planning Commissioner Amy Presley also provided comments (an Affidavit) on ZTA 17-04 and believes, given her participation in the Planning Board worksessions where the staff proposed eliminating single-purpose zones such as the Country Inn Zone, that the ZTA is a worthy adjustment to the terms and conditions the Board agreed to for elimination of the Country Inn Zone. Attachment 5 provides in detail the rationale for Ms. Presley's comments.

## **Conclusion**

***Staff does not recommend approval of the approach of this ZTA and therefore recommends denial of ZTA 17-04.*** The existing conditional use process provides adequate standards and requirements to address issues that potentially could impact properties near a proposed Country Inn. The public input requirement of the conditional use process further provides opportunity to address concerns unique to a particular site.

Staff is unclear of the logic for singling out the R-200 zone for the stricter standard but not the RE-2 and RE-1 zoned properties, all of which are categorized as "Residential" (versus the "Rural Residential" designation for the R and RC zones) and especially given the standard minimum lot size for RE-1 zoned properties could be less than 2 acres. If the County Council decides to approve the ZTA (in some form), it would be more consistent to require that the size of at least one adjoining property be a minimum of 2 acres *regardless* of its zoning category and that the stricter standard apply also to the RE-2 and RE-1 zones. Staff further believes that it would be unfair to change the rules for a Country Inn applicant that received application acceptance prior to the introduction of ZTA 17-04.

## **ATTACHMENTS**

1. ZTA 17-04 as introduced
2. Table of Existing Country Inn Approvals Prior to New Zoning Code
3. Mapping of Country Inn Zones
4. The Country Inn Zones
5. Affidavit from Former Commissioner Amy Presley

## ATTACHMENT 1

Zoning Text Amendment No.: 17-04  
Concerning: Country Inn – Standards  
Draft No. & Date: 2 – 6/14/17  
Introduced: June 27, 2017  
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**

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Lead Sponsors: Councilmembers Elrich and Hucker  
Co-Sponsors: Council President Berliner and Councilmembers Katz, Rice,  
Leventhal, and Riemer

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- Revise the standards for allowing a Country Inn as a conditional use in the R-200 zone; and
- Generally amend the standards for a Country Inn

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

Division 3.5.           “Commercial Uses”  
Section 3.5.3.A.       “Country Inn”

**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:*

**Sec. 1. Division 59-3.5 is amended as follows:**

**Division 3.5. Commercial Uses**

\* \* \*

**Section 3.5.3. Eating and Drinking**

**A. Country Inn**

**1. Defined**

Country Inn means an establishment for dining in a rural area that may include a maximum of 12 overnight guest rooms and the following subordinate uses: rural antique shop; handicrafts or art sales; equestrian-related retail sales and service; and recreational facilities primarily for the use of guests.

**2. Use Standards**

a. Where a Country Inn is allowed as a limited use, it must satisfy the following standards:

- i. The property on which the use is located must have been in the Country Inn zone and be the subject of an approved development plan or development plan amendment before October 30, 2014, and must satisfy the development plan and any associated binding element

or covenant applicable to the property as of October 29,  
2014.

ii. A conditional use application for a Country Inn may be  
filed with the Hearing Examiner if this use standard [can  
not] cannot be met.

b. Where a Country Inn is not legally existing before October 30,  
2014, it may be allowed as a conditional use by the Hearing  
Examiner under Section 7.3.1, Conditional Use and the  
following standards:

i. The minimum lot area is 2 acres, or a lesser area if a  
master plan recommends a lesser area.

ii. The maximum coverage is 10%.

iii. A minimum of 50% of the lot must be open space.

iv. The minimum setback from any street is 50 feet. The  
minimum setback from any other lot line is 75 feet.

v. In the R-200 zone, the proposed site must have at least  
one property line abutting R, RC, RNC, or AR zoned  
property and the abutting property zoned R, RC, RNC, or  
AR must be at least 2 acres in size.

\* \* \*



40           **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
41   date of Council adoption.

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43   This is a correct copy of Council action.

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46   Linda M. Lauer, Clerk of the Council

## ATTACHMENT 2

Country Inn	Zoning Case/Year	Pre CINN Zone	Current Zone	Zones of Abutting Properties	Water/Sewer Category	Rationale for Approval
Yegher property 22010 Ridge Rd Clarksburg.	G-384/1983	R-200	R-200 MP individual Historic site	R-200, PRC, RE-2, AR (Confronting )	W-1, S-3 <sup>1</sup>	Primarily agricultural area with some low-density development; consistent with 1968 Clarksburg Plan intent for MD 27 as rural corridor; uses existing structures; exceeds CINN zone's standards for building coverage, setbacks, open space
Banvard property 17530 New Hampshire Ave, Ashton	G-489/1986	RE-2	RE-2 MP individual Historic site	RE-2, RC, Rural	W-6, S-6	Mixed agricultural and low density residential area; consistent with 1980 SS/A Special Study's designated rural buffer; uses existing structures; exceeds CINN zone's standards for building coverage, open space
Edgewood inn 16101 Oak Hill Road, Silver Spring	G-640/1990	RE-1	RE-1 MP individual Historic site	RE-1, RC	W-1, S-1 <sup>2</sup>	Mixed agricultural and low density residential area; 1981 Emoco plan recommends country inn; uses existing structures; exceeds CINN zone's standards for building coverage, setbacks, open space
Brookeville Farms 19311 Georgia Ave, Brookville	G-738/1997	RC	RC	RC, RE-2, R-200 Adjacent to MP Historic District	W-1, S-1	Large-lot residential community; consistent with 1980 Olney plan designation of area for open space preservation; uses existing structures; exceeds CINN zone's standards for building coverage, open space
Comus Inn 23900 Old Hundred Road, Dickerson	G-804/2003	R-200	R-200 Nat'l registered individual Historic site; Location Atlas Historic District	R-200, NR, AR	W-6, S-6	Historic rural crossroads settlement; consistent with 1980 Ag Plan support for limited commercial activity in settlements; uses existing structures; exceeds CINN zone's standards for building coverage, open space
Normandie Farms 10710 Falls Road, Potomac	G-820/2005	RE-2/TDR	RE-2	RE-2, RE-2 (TDR Overlay), R-200	W-1, S-1	Mixed low-density residential, recreational and institutional area; 2002 Potomac plan recommends country inn to allow existing restaurant to continue/expand; uses existing structures with rural design elements; exceeds CINN zone's standards for open space, setbacks; golf course and school contribute to open space character
Proposed Country Inn: CU-15-06						
Maryland Catering Co			R-200 Conditional Use MP individual Historic site	R-200, NR RE-2 Confronting Nat'l Historic District	W-1, S-1	Attached and detached residential, A substantial portion of the neighborhood is held in public park ownership and includes the C&O Canal National Historical Park and associated facilities, the Rockwood Special Park, forested areas, stream valleys and the C & O Canal. Old Anglers Inn, a registered historic structure/restaurant, which is also owned and operated by the Applicant, abuts the subject property along its western border and fronts on to MacArthur Boulevard.

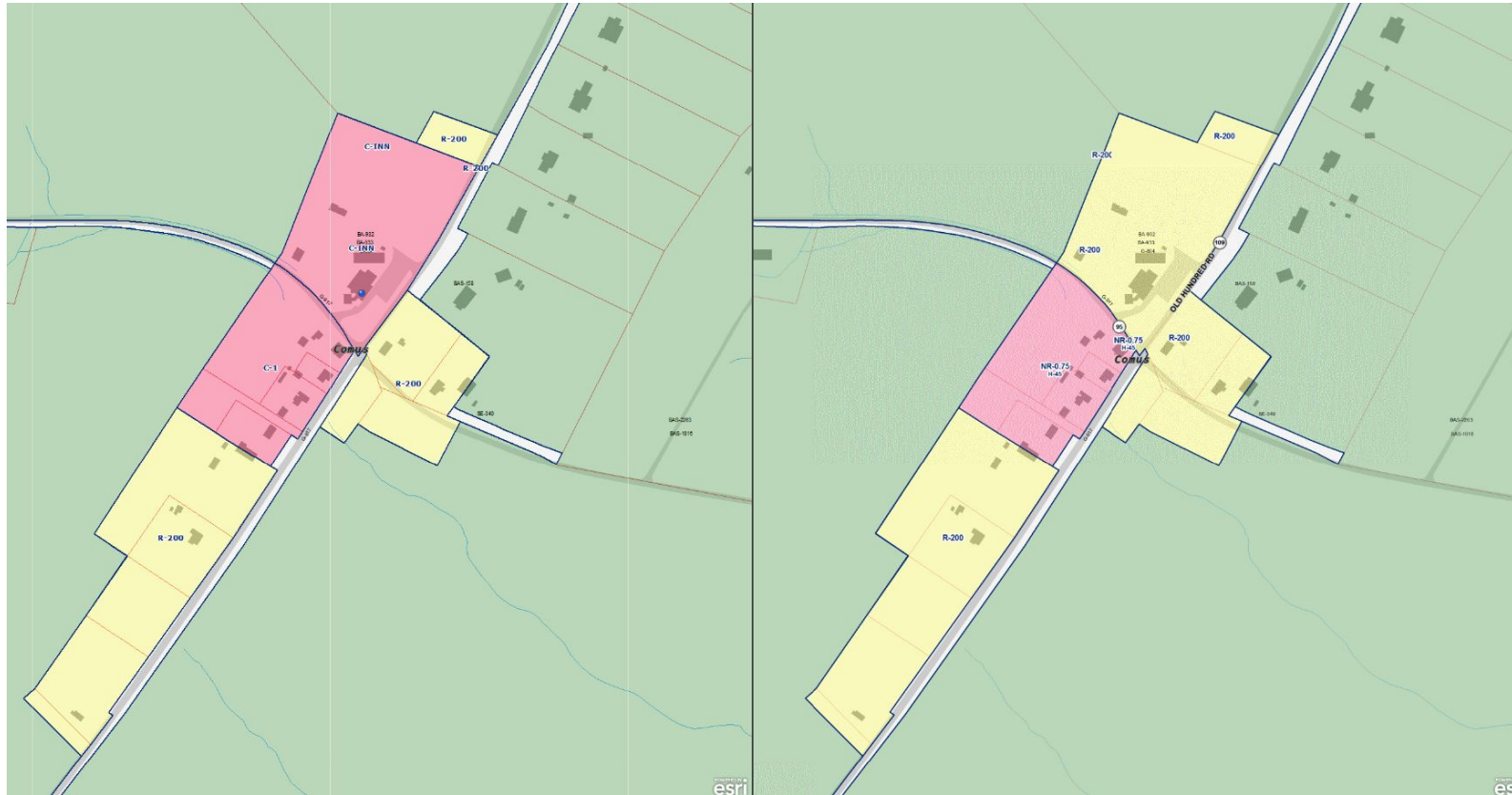
<sup>1</sup> Technical staff report states that property is in categories W-5, S-5 and that absence of sewer service contributed to rural character. Categories changed subsequent to approval.

<sup>2</sup> Hearing Examiner's report states that property is in categories W-6, S-6, with water category change under review at time (1990). Sewer category changed subsequent to approval.

## ATTACHMENT 3

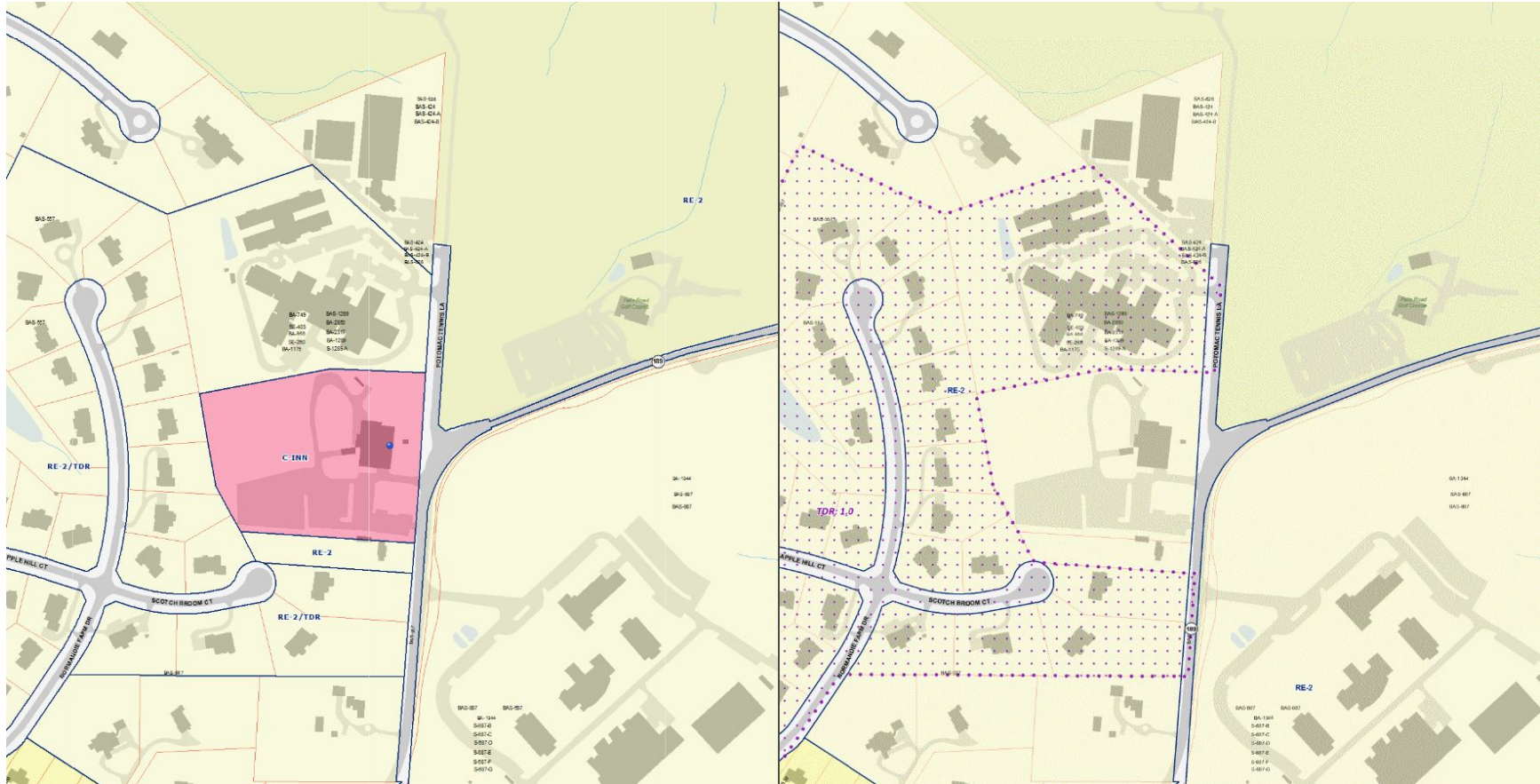
Comus Inn

Zones: Prior zone – R-200. Confronting C-1 zone completely along one side, R-200 abutting 2 sides, RDT abutting and confronting



## Normandie Farms

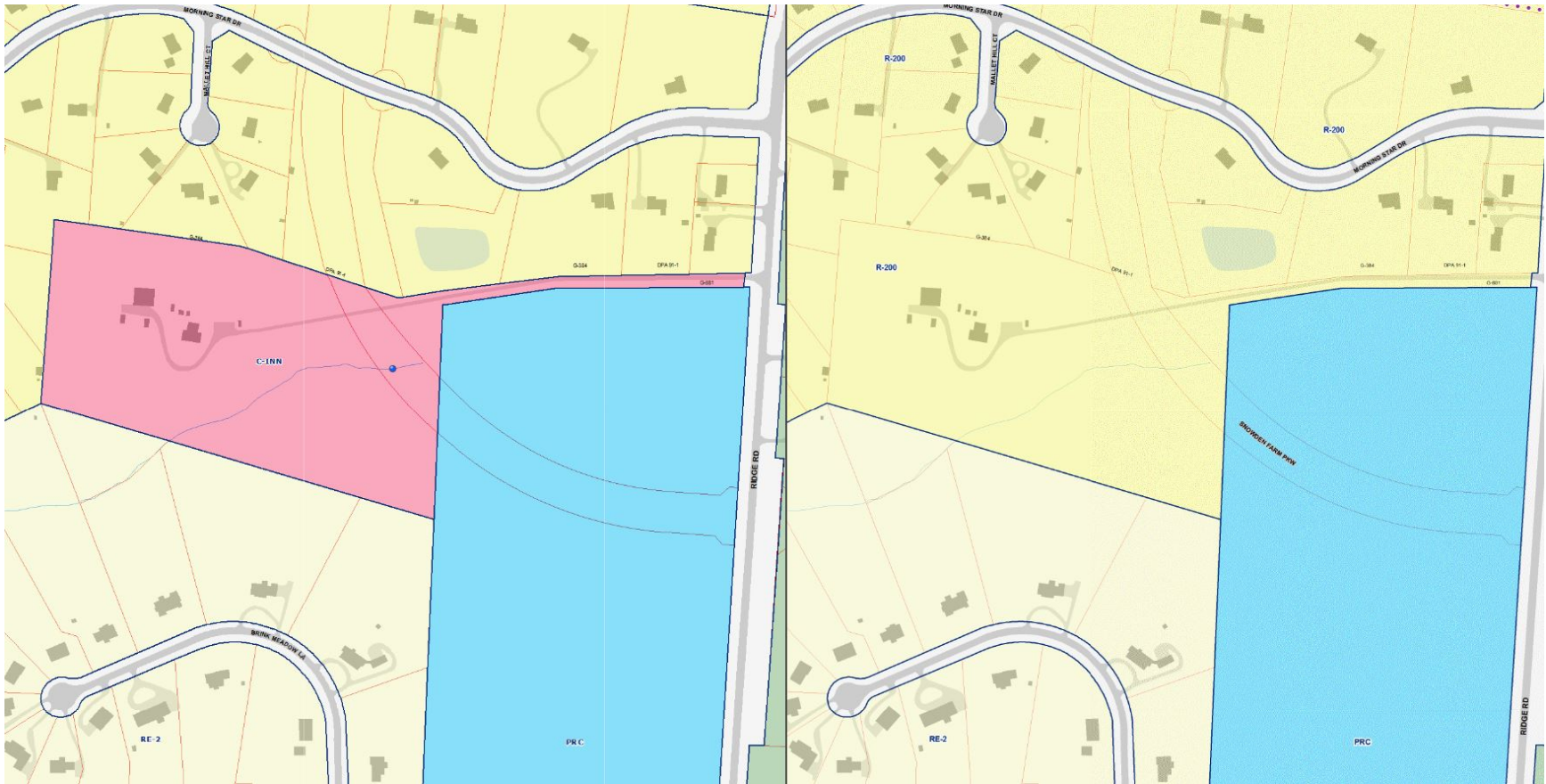
Zones: Prior zone – RE-2/TDR (1.0). Abutting RE-2/TDR (1.0) on three sides, RE-2 confronting property, R-200 in neighborhood.





## Yegher property

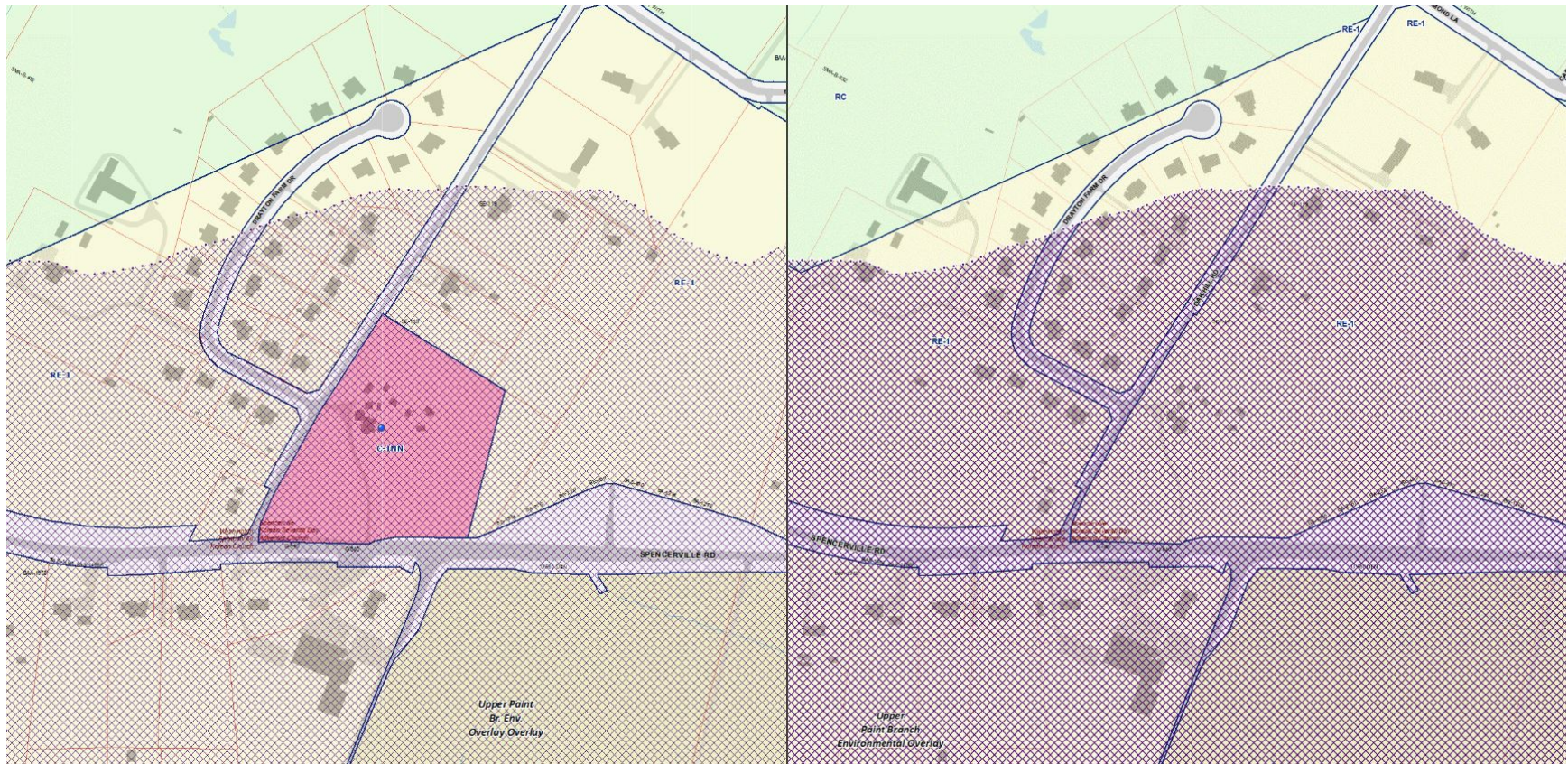
Zones: Prior zone R-200. Abutting R-200 on 2 sides, RE-2 abutting property on one side, PRC abutting property on one side and along pipestem driveway. At time of rezoning development plan shows all abutting zones as R-200.





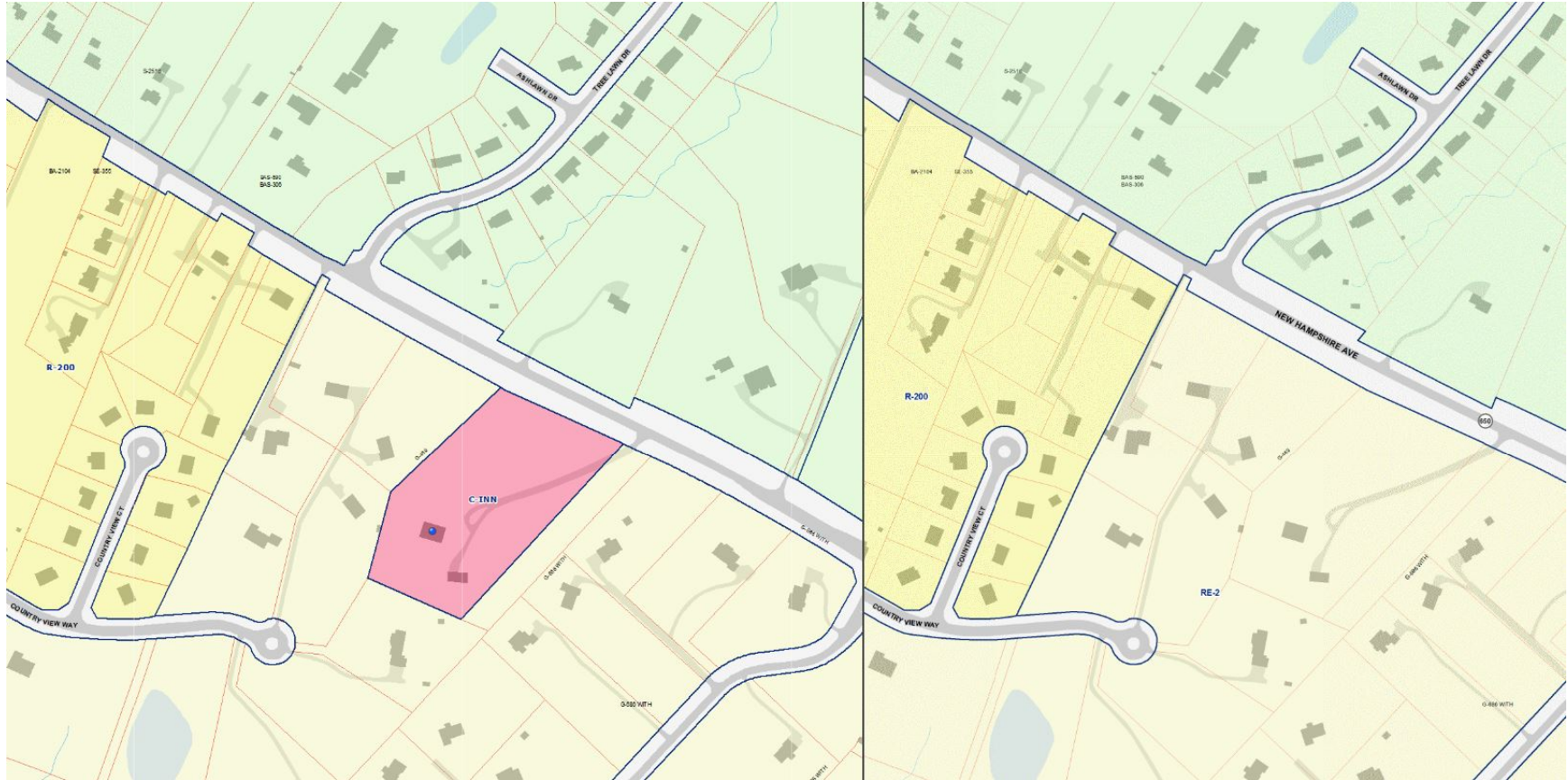
## Edgewood Inn

Zones: Prior zone - RE-1. Abutting and confronting RE-1 zone. Rural Cluster in the neighborhood.



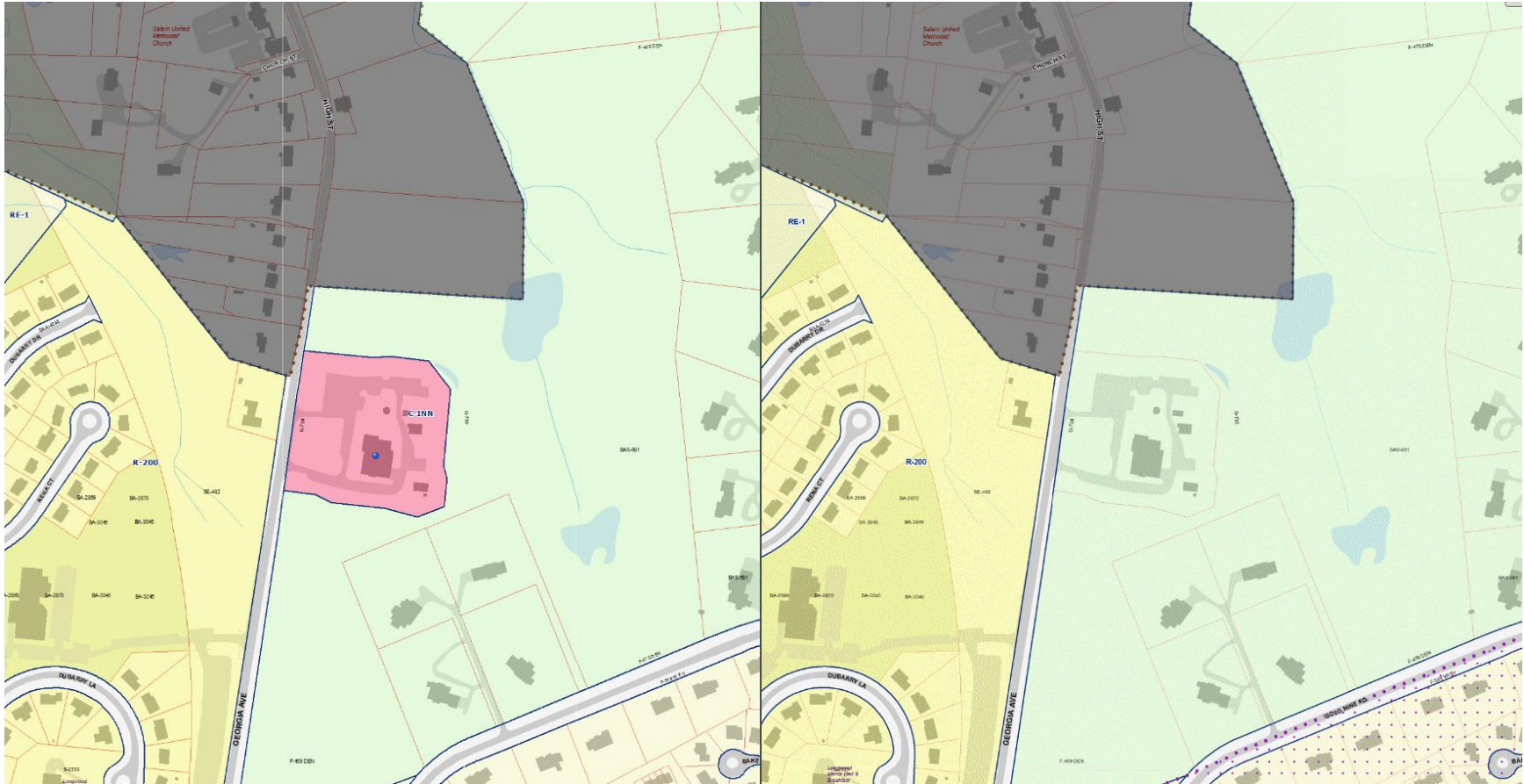


Zones: Prior zone – RE-2. Abutting RE-2, confronting Rural and Rural Cluster, R-200 in the neighborhood. R-90, R-60 and C-1 zoning within a ¼ mile.



## Brookeville Farms

Zone: Prior zone – Rural Cluster. Abutting Rural Cluster, confronting R-200, RE-2/TDR (2.0) in the neighborhood.





## Old Angler's Inn

Zone: Current zone – R-200. Abutting R-200, confronting R-200, and RE-2.



## THE COUNTRY INN ZONE

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### ORIGINS AND HISTORY

January 12, 2017

Prepared by David Brown, Susanne Lee, Stephen Lehrman and Curt Uhre

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This paper reviews the origins of the Montgomery County Country Inn Zone of 1967, its evolution and use during the decades it was in effect, and its transition in 2014 into a conditional use when the Zone, along with most single-use zones, was eliminated. The purpose of this review is to add clarity and historical depth to the term “country inn,” for the purpose of determining whether any future proposal for a conditional use under the rubric “country inn” meets the threshold definitional requirement.

#### I. DEVELOPMENT OF THE COUNTRY INN ZONE

##### 1. Enactment

Prior to 1967, there was no use category in the Zoning Ordinance for “country inn.” Hence, whatever use might be thought to amount to a country inn had to fit into another use category that was either a permitted or special exception use in the zone classification for the land in question. Most likely, any such effort was doomed to failure in the rural areas of the County at that time, where commercial uses were disfavored. Whatever the motivation, however, the Country Inn Zone was created by Ord. No. 6-47 (Aug. 15, 1967) as a new section 111-21A of the Zoning Ordinance. **Exhibit 1.** It was a floating zone, inserted among the other commercial zones in the County. It envisioned a “site

development plan” that would be reviewed by the Planning Board and the rezoning acted upon by the District Council, and thereafter amended only with Planning Board approval. Sec. 111-21A.f.(2). The uses allowed in the zone were the defined Country Inn use (which could include a dwelling for not more than one family) and “farming and other agricultural use.” Sec. 111-21A.b.(2). The purpose of the Country Inn Zone, quoted in full below, emphasizes that a Country Inn is to be (a) a “dining establishment,” and (b) “in a rural area of the County:”

111-21A. COUNTRY INN ZONE.

a. *Purpose.*

(1) Definition. For the purposes of this ordinance, a country inn shall be defined as a dining establishment in a rural area of the County, removed from planned or existing commercial areas and generally accessible for patronage only by automobile transportation.

(2) Use. This category is intended to be used for the purpose of permitting country inns on suitable sites at suitable locations. It is not intended for use in locations that are proper, from a planning standpoint, for retail or other commercial uses and classifications.

(3) Restrictions. Because it is an isolated commercial use in a rural area, a country inn is required to comply with certain restrictions not imposed upon other uses in rural areas nor upon restaurants in commercial areas, so that construction and development on the site will be such as will ensure, insofar as possible, that the proposed country inn will be compatible with and will not adversely affect that rural character of the surrounding area. For this reason, development is to be carried out in accordance

with a development plan approved as being consistent with the purposes of this section.

(4) Compatibility. The use of this category at any location is not an indication that the surrounding area is other than rural, that its character is altered by the granting of this zoning category or the presence of the inn, or that any other change in zoning is appropriate because of this change. Further, the fact that an application for the County Inn Zone complies with all of the specific requirements set forth herein shall not be deemed to create a presumption that the proposed country inn would in fact be compatible with the surrounding land uses and is not, in itself, sufficient to require the granting of any application.

Just why the Country Inn Zone was enacted when it was, and how its terms came into being is part of the 1960's legislative history that has not been unearthed at this juncture. It is clear, however, that it was not prompted by development plans that would lead to approval of a Country Inn rezoning in the immediate future of this 1967 enactment. As detailed below, the first such rezoning was not approved until 1983, or more than 15 years after the Zone was created.

## **2. Zone Changes Through 1982**

The Zoning Ordinance was recodified in the 1970's to take its place as Chapter 59 of the County Code. In the first iteration of this process, the entirety of 111-21A became 59-59, via Ord. No. 6-131, § 5, without any other change. **Exhibit 2.** In 1976-77, there was a more complete recodification of the Zoning Ordinance. The 59-59 provisions were split up to reflect the organization, numbering and lettering format that stayed in place for the whole Ordinance for the ensuing nearly 40 years. **Exhibit 3.** This resulted in the

Country Inn Zone being placed in §59-C-4.9, still among the commercial zones. The country inn definition, word-for-word from §111-21A.a.(1), was transferred to §59-A-2.1. The purpose language in §59-C-4.91 likewise tracks the language in for §111-21A.a.(2)-(4), except that the last sentence of (4), dealing with plan approval, was omitted. The development standards did not materially change, and the processes for development and site plan approvals were consolidated into new §§59-D-1 and D-3. §59-C-4.98.

By 1981, with still no completed Country Inn rezonings, the Planning Board requested a revision to the Country Inn Zone to broaden the uses to include guest rooms and specialized commercial activities, as well as to modify the purpose clause and development standards. This proposal was enacted, with only one significant change, by the District Council as Ord. No. 9-65, ZTA 81038, on March 16, 1982. **Exhibit 4.** This ZTA was one of nine considered (along with three SRA's) by the Planning Board in connection with implementing the land use and zoning recommendations of the Eastern Montgomery County Master Plan. Technical Staff recommended approval of ZTA 81038 and the Board endorsed the recommendation. Soon thereafter, the Council public hearing took place on January 21, 1982, followed by a worksession on February 3, 1982. What came out in this process were two concerns: (1) that the potentially large size of country inns could prove incompatible with the rural land use concept for the surrounding area, and (2) that the amendment too broadly allowed other commercial uses. More particularly, at the time, Barry's Antiques on Route 198 in Burtonsville was seeking Country Inn rezoning, apparently hoping to take advantage of the contemplated broadening of commercial uses in the zone. However, the worksession resulted in a change to the ZTA, modifying the

new §59-C-4.991 to be added, by replacing the bracketed words below with the underlined words:

59-C-4.991. Retail Uses. The retail uses permitted in the Country Inn Zone in accordance with Section C-4.0 are permitted only [in conjunction with a Country Inn] as accessory to the main country inn use.

In its Opinion accompanying approval of ZTA 81038, the Council added the following explanation:

The Council has carefully reviewed the material of record and is of the opinion that Zoning Text Amendment No. 81038 is in need of certain revisions to assure that development will occur more in keeping with rural land use concepts. The Council supports the addition of a limited number of commercial uses to be added to the County Inn Zone, but only to the extent that such uses are accessory or auxiliary to the main country inn use. In addition, the Council believes that guest rooms provided in connection with a country inn should be integrated with the main country inn building. Further, the list of permitted uses should be narrowed to exclude art galleries, auction houses and gift shops, which, in the opinion of the Council are incompatible with country inns in rural locations.

Notably, one feature of the Planning Board draft ZTA that emerged unchanged in the final ZTA was an addition to the definition of “Hotel, motel and Inn.” This sentence was added at the end of the definition: “A country inn shall not be interpreted or otherwise construed as being a hotel, motel or inn.” Opinion at 2. This added language appears to reflect the Council’s intention that there be no ambiguity about the line separating an “Inn” from a “Country Inn.” In the Country Inn Zone, the **maximum** of twelve guest rooms must be integrated with the primary dining establishment function. By contrast, an Inn, with a **minimum** of twelve guest rooms could, but was not required to, “contain a restaurant.”

Subsequently, the definitions of “Country Inn” and “Hotel, motel and inn” were modified to make the separation between them even clearer. The sentence added to “Hotel, motel and inn,” noted above was changed to read as follows: “A hotel, motel or inn is not a bed-and-breakfast lodging, country inn, fraternity or sorority house, or school or college dormitory, as defined and regulated elsewhere in this ordinance.” In the same vein, the following sentence was added to the end of the pre-existing definition of “Country Inn”: “A country inn is not a bed-and-breakfast lodging, motel, inn or other use defined and regulated elsewhere in this ordinance.”

In 1982, the Country Inn Zone went through further minor modification, in that it was recodified as §59-C-4.39. **Exhibit 5.** The definition of country inn was very slightly clarified to begin with “An establishment primarily for dining...” rather than “Primarily a dining establishment....”). With this change, except for the uncertain date of harmonization with the “hotel, motel or inn” definition, as noted above, the definition of Country Inn stayed unchanged until revised in the 2014 Zoning Ordinance Rewrite, as discussed below. The Purpose clause in §59-C-4.390 is identical to that in former §59-C-4.91, and elsewhere there was no material change in the Zone.

### **3. Zone Changes 1983-2014**

Changes to the Country Inn Zone after 1982 occurred during the time there were actual rezonings of properties into the Zone. None of these amendments, however, has any direct bearing on the fundamental definitional question of exactly what is and is not a “Country Inn.” For completeness of discussion, the most important of these amendments are briefly noted.

In 1989, the purpose clause in §59-C-4.390 was amended to include the following sentence: “In addition, it is the purpose of this zone to preserve and maintain significant trees.” Ord. No. 11-62, ZTA 89010.

In 2003, the Country Inn Zone was amended to allow the Council to reduce the building and parking setback standards for existing buildings proposed to become country inns. Ord. No. 15-16, ZTA 03-22 (Sept. 30, 2003). **Exhibit 6.** The Council noted that “[t]he Country Inn zone is primarily intended for the development of existing structures in rural locations.” *Id.* at 2. The Planning Board had unanimously recommended approval earlier that month, after Technical Staff had noted that this adjustment would be needed in order for the Comus Inn to proceed with its application for rezoning into the Country Inn Zone. This change suggests that all concerned felt that the preservation and reuse of existing structures as country inns ought to take precedence over any setback violation presented by the existence of a structure that long predated setback requirements (which of course could be cured by requiring all or part of the building to be reconstructed in conformity with setback requirements).

A 2.5-acre site owned by Ruppert Nurseries on Route 108, part of a larger agricultural property used as a tree farm, had been rezoned into the Country Inn Zone in 1985 so that the existing structure on the property could be adapted to that use. The conversion never took place, however, due to a prohibition on septic field use of the property. But the property could not revert to its prior RDT zoning without a map amendment, and the septic problem that surfaced after the rezoning was not within the change or mistake rule for a local map amendment. This situation was the trigger for Ord.



No. 15-42, ZTA 04-21 (Jan. 3, 2005). **Exhibit 7.** The ZTA added §59-C-4.399.1, “Remedial Map Amendment,” to the Country Inn Zone, allowing a landowner in the Country Inn Zone to return the property to its previous Euclidian zone via a remedial map amendment process. The problem Ruppert Nurseries faced may explain why, as detailed below, no other Country Inn Zone applications emanated from the RDT zone.

In 2012, an apparent inconsistency between the 2-acre minimum lot size for the Country Inn Zone and a zoning recommendation in the Potomac Subregion Master Plan surfaced. A parcel of slightly less than two acres was recommended for the RE-2 zone with possible conversion to the Country Inn Zone. The parcel is located in the small Darnestown Rural Village Center and is surrounded by rural land in the RE-2 and RC zones. The Planning Board recommended addressing the apparent conflict by modifying the minimum lot area requirement in §59-C-4.391 to be less than two acres “if a master plan recommends a lesser area.” The Board concluded that the ZTA could be implemented with “minimal impact to other properties since all other development standards would still apply.” The end result was Ord. No. 17-27, ZTA 12-17 (Dec. 31, 2012). **Exhibit 8.** ZTA 12-17 modified §59-C-4.391 to provide the under-two-acre exception. In addition, legislative staff also proposed amendments to the Purpose clause in §59-C-4.390, ostensibly to make the text “more concise, precise and decisive.” The proposed revision to this section was included in ZTA 12-17 as adopted. This was the last amendment to the Country Inn Zone before the Zone was eliminated in the 2014 Zoning Ordinance Rewrite. At the time the Rewrite replaced it, the purpose clause, and the definition of “Country Inn” read as follows:

#### **59-C-4.390. Purpose.**

The purpose of this zone is to permit country inns at appropriate rural locations. It is primarily intended that country inns be located in existing buildings, but country inns located in new buildings, where appropriate, are not prohibited. The Council's approval of this zone must be based on certain restrictions that are not imposed upon other uses in rural areas or on restaurants and inns in commercial areas; these restrictions are used to protect the rural character of the surrounding area. Construction and development of a country inn zoned site must ensure that the proposed uses will be compatible with the rural character of the surrounding area. In addition, it is the purpose of this zone to preserve significant trees. Development must be consistent with the purpose of this zone and satisfy a development plan submitted under Division 59-D-1. The use of this zone is not an indication that the surrounding area is: (1) other than rural, (2) altered in its character by the granting of this zone or the presence of the country inn, or (3) appropriate for a change in zoning.

**Country inn:** An establishment primarily for dining in a rural area of the county, removed from planned or existing commercial areas and generally accessible for patronage only by automobile transportation. A country inn may contain in the same building a maximum of 12 guest rooms where, for compensation, food and lodging are provided for guests, and may also contain specific commercial uses. A country inn is not a bed-and-breakfast lodging, motel, inn or other use defined or regulated elsewhere in this ordinance.

## **II. IMPLEMENTATION OF THE COUNTRY INN ZONE – 1983 TO 2005**

Detailed below is the record of implementation of the Country Inn Zone from the time the first rezoning was approved in 1983 until the last approval in 2005. At the time the Zone was removed from the Zoning Ordinance (2014), there were six Country Inn properties that had to be rezoned into some other classification if the Zone were to be eliminated. The seventh rezoning, the Ruppert Nurseries property, had earlier been given

the opportunity to revert back to its original RDT zoning by remedial map amendment, as noted above. All seven properties, however, went through a hearing examiner review process that led to the Council-approved rezoning, leaving behind a clear administrative record in each case that can be considered the best historical evidence of proposed development that the Council deemed suitable for the Country Inn Zone. This is so regardless of whether or not the particular property was ultimately developed with an actual country inn as was contemplated at the time of each rezoning. In fact, of the seven properties, only three became (and remain) functioning country inns.

In each instance, the County Council's Resolution and Opinion affirmed the Hearing Examiner's Report and Recommendation and the Planning Board Recommendation finding the requirements for reclassification to the Country Inn Zone had been met. These Council Resolutions and Opinions repeatedly provide clear, consistent, conclusions regarding the elements the Council determined were essential for a site to qualify for rezoning to a Country Inn. Although each site was unique as to how it might meet technical, quantitative development standards such as setbacks, three overarching site and use characteristics were seen as especially significant and met by all seven : location in a rural area, dining , and use of an existing structure. Set forth below are key passages from the Council Resolutions/Opinions, listed in chronological order, highlighting the Council's conclusions with regard to each of the sites and the factual findings cited to support them. Citations are to specific pages in each Council resolution.

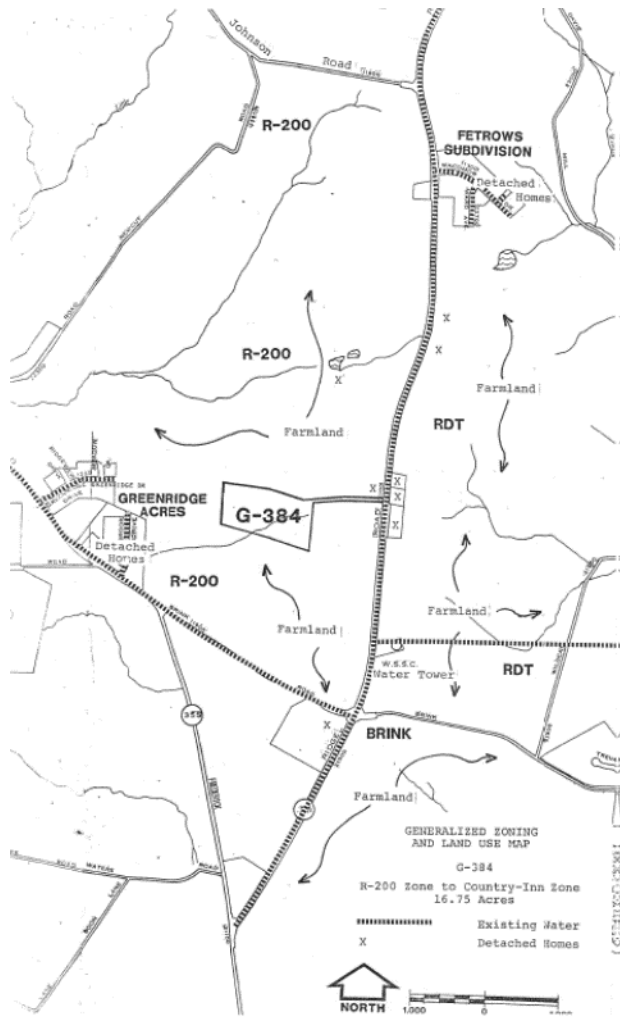
1. **Yegher Property, 22010 Ridge Road, Germantown. County Council Resolution No. 10-431, Oct. 18, 1983. Original Zone: R-200. Exhibit 9.**

The Council concluded that “[t]he subject property is located in a rural area and would be an appropriate setting for a Country Inn because its use is limited to a small but quality restaurant operation and would not include commercial lodging or other uses permitted under the zone.” p. 3.

Rural Area: “ The surrounding area includes the land fronting on both sides of Ridge Road between Brink and Johnson Roads and extending west to include the Greenridge Acres Subdivision. This area is largely agricultural. The subject property is almost surrounded by a 170-acre farm...currently under cultivation.” p. 2. “The eastern boundary of the site abuts another farm...currently under cultivation.” p. 2. “The rural character of the area would be protected by the proposed development because much of the site would be retained in its natural state.” p.3.

Dining: The Country Inn “would be used exclusively used as a restaurant and would not provide lodging except for a custodian or employee. The restaurant proposes to serve about 65 people, with maximum capacity being limited to 90. The restaurant would be open about 11:00 am and close at 11:00 pm. Lunch and dinner would be served. The Country Inn would not provide entertainment or dancing. “ p. 2.

Existing/c Structure: “The original farmhouse was built in 1890 and has been expanded since that time.” p. 1. “The plan proposes to retain the farmhouse and use it as the restaurant. The several accessory farm buildings would also be retained as well as existing vegetation, including the several large trees located near the farmhouse.” p. 2.



**2. Abells Level/ Ruppert Nurseries, 23061 Laytonsville Road, Laytonsville. County Council Resolution No. 10-1662, December 17, 1985. Original Zone: RDT. Exhibit 10.**

The Council concluded: “The...Council... agrees with the determination of the hearing examiner that the application satisfies the requirements of the Country Inn Zone. The subject property is located in an area that would be an appropriate setting for a country inn because its use would be limited to a small restaurant, guest rooms and modest retail sales. The proposed use would be located in an existing farm structure. The proposed use would be compatible with the rural character of the surrounding area.” p. 3.

Rural Area: “The surrounding impact area is predominantly rural in character....The subject property is virtually surrounded by active farm land.” p. 2.

Dining: “The development plan proposes to operate the existing farm house as a country inn restaurant.... The country inn would provide dining for about 47 people and would operate between 11:00 a.m. and 9:00 p.m.” p. 2.

Existing Structure: “The site is improved with a nine room, two and one-half story Queen Anne-style farm house.” p.2.

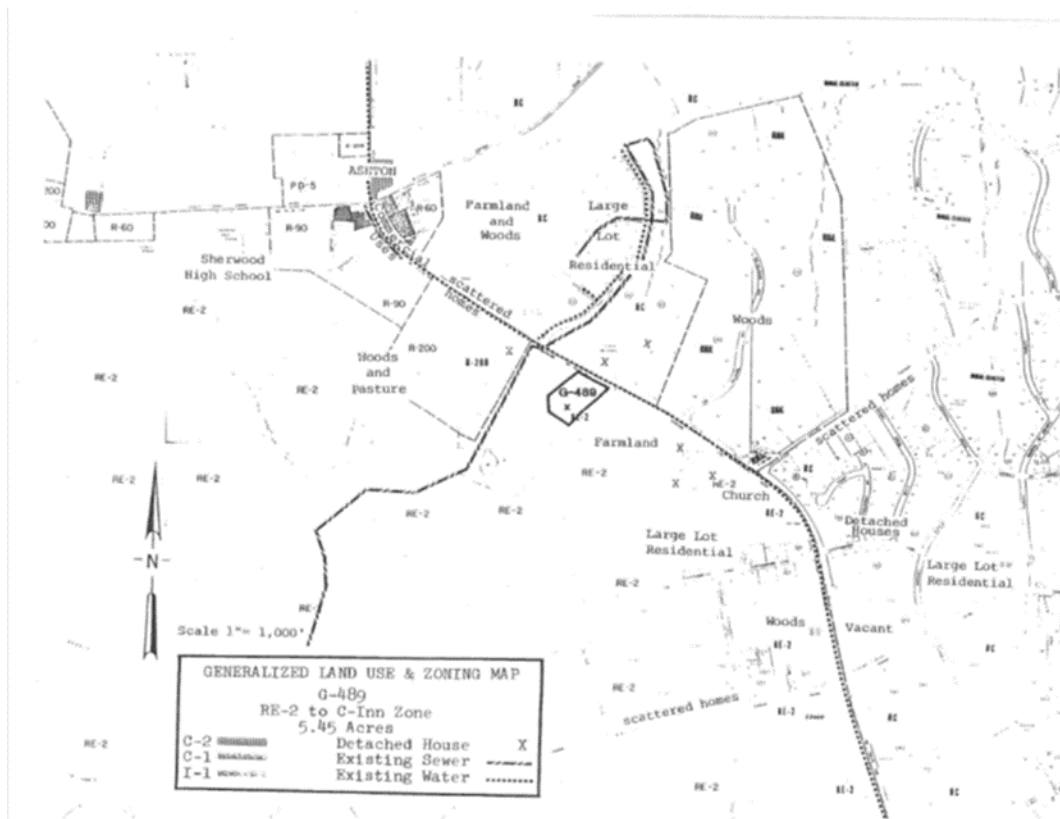
**3. Banvard (Cherry Grove) Property, 17530 New Hampshire Ave., Ashton. County Council Resolution No. 10-1844 , April 8, 1986. Original Zone: RE-2. Exhibit 11.**

The Council concluded that the “applicant’s proposal to preserve the historic building and its historic environmental setting, not only provides a positive contribution to the retention of the rural character of the area in which the subject property is located but also provides an historic resource for the benefit and enjoyment of the public.” p. 6.

Rural Area: “The area along New Hampshire Avenue is rural in character with scattered residences, tilled farmland and cow pastures adjacent to the roadway. To the north of the subject property on the opposite side of New Hampshire Avenue is residential land in the Rural Cluster Zone, with densities of one unit for every five acres. The Surrounding Area of the subject property is classified in the Rural, Rural Cluster and RE-2 Zones. All of the roads in the immediate vicinity of the subject property are classified as rural roadways, which are basically 20 -feet wide with no curbs or gutters.” p. 3.

Dining: “The Development Plan submitted by the applicant reflects the intent to run a five bedroom bed and breakfast operation on the second floor of the building and a restaurant serving dinner five or six days a week on the first floor of the structure.” p.3.

Existing Structure: “The subject property is improved with a two-story house known as ‘Cherry Grove,’ which is a designated historic building of Montgomery County. ” p. 2. “Cherry Grove was built in 1773 and is intact as originally constructed. The Historic Preservation Commission has approved the use of Cherry Grove as a County Inn.” p. 2. “The retention and enhancement of the existing environmental setting of the historic structure and the preservation and maintenance of the building itself would safeguard a vestige of New Hampshire Avenue’s colonial past by retaining the main residence of a colonial plantation.” p.6.





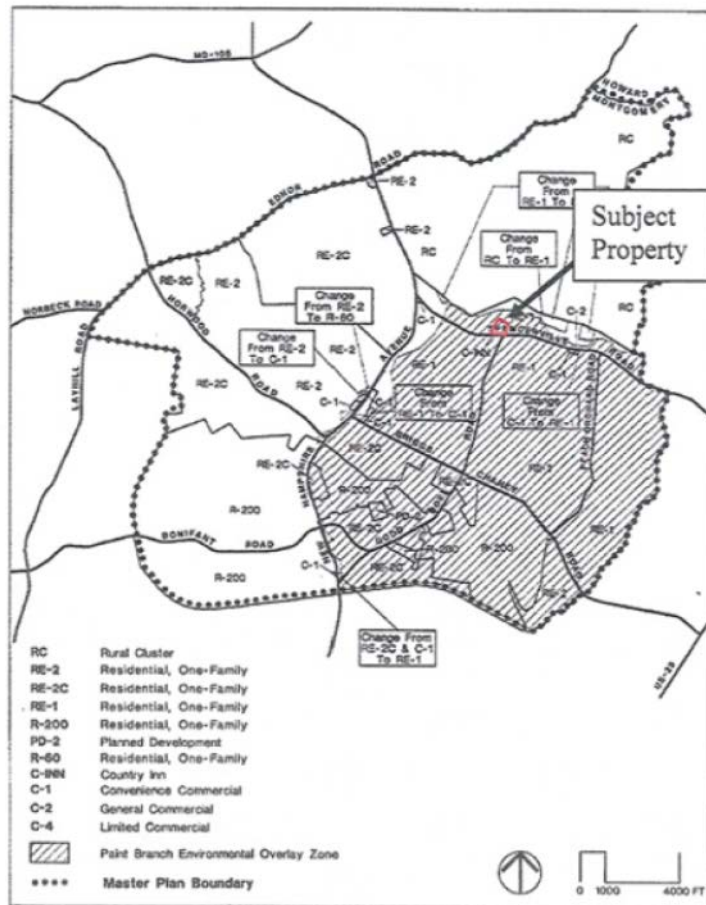
**4. Edgewood Inn, 16101 Oak Hill Road, Silver Spring, County Council Resolution No. 11-1840, January 30, 1990. Original Zone: RE-1. Exhibit 12.**

The Council concluded: “the subject property is located in an area that is rural and will be an appropriate setting for a Country Inn as indicated by the Master Plan. The proposed use will be located in an existing residential structure and will be limited in a manner compatible with the rural character of the area.” p. 2

Rural Area: “This area is predominantly rural in character with a mixture of farms, low density residential development and institutional uses.” p.2. “Farms are located west, east, and southeast of the site.” p. 2.

Dining: “The proposed development will retain the existing residential structure as a country inn restaurant to serve up to 90 patrons.” p. 3.

Existing Structure: “The site is currently developed with a two-and-one-half-story frame residence and is shown on the Locational Atlas and Index of Historic Sites as ‘Edgewood II’.”p.2. “There are several outbuildings located on the site including an old blacksmith shop, a garage, several maintenance buildings, and a (sic) ruins of a barn.” p.2



**5. Brookeville Farms, 19311 Georgia Ave., Brookeville, County Council Resolution No. 13-920, June 10, 1997. Original Zone: RC. Exhibit 13.**

The Council concluded the site satisfied the requirements of the Country Inn Zone:

“In this respect, the subject property is located in an area that is rural and will be an appropriate setting for a country inn as indicated by the Master Plan. The proposed use will be located in an existing residential structure and will be limited in a manner compatible with the rural character of the area. “ p. 3-4.

Rural Area: “The 1980 Olney Master Plan designates the subject property as part of the rural open space area which is consistent with the Country Inn Zone.” p. 2.  
“Generally, and especially on the east side of Georgia Avenue, the area is predominantly rural in character with a mixture of farms, low density residential development and institutional uses.” p. 2.

Dining: “The proposed development will retain the existing residential structure as a country inn restaurant to serve up to 89 patrons with banquet facilities for up to 115 patrons....” p. 2-3.

Existing Structure: “Existing structures include a two story brick and frame dwelling....” p. 2.



6. **Comus Inn, 23900 Old Hundred Road, Dickerson, Council Resolution No. 15-358, Sept. 30, 2003. Original Zone: R-200. Exhibit 14.**

The Council concluded: “the country inn proposed to be reopened on the subject property would be compatible with and would not adversely affect the rural character of the adjacent development.” p. 9.

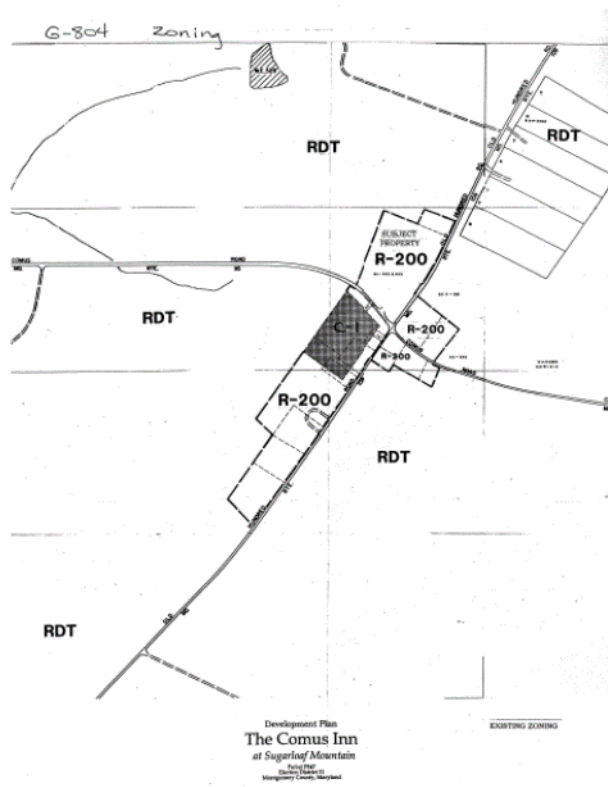
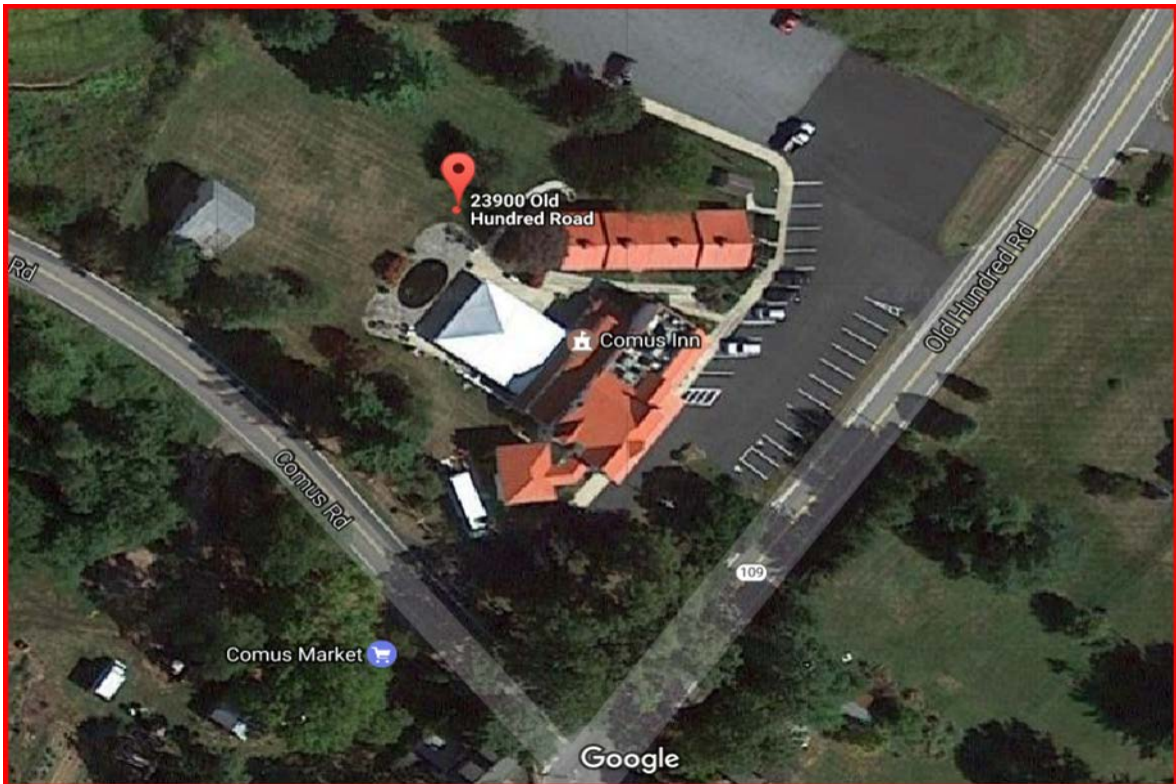
Rural: “The subject property is located within the rural village of Comus, a linear crossroads community surrounding the intersection of Comus and Old Hundred Roads....The surrounding area contains larger, rural residential lots and agricultural land classified under the RDT zone. Properties within the village and travelers along Old

Hundred and Comus Roads enjoy sweeping views of the agricultural setting and Sugarloaf Mountain. Comus Road is classified as a Rural Road, due in part to its alignment leading to Sugarloaf Mountain and in part to its relationship to the Comus crossroads.” p. 3.

Dining: “Once the renovation is completed, the Applicant plans to reopen the Comus Inn as a destination-quality, fine dining restaurant comparable to L’Auberge Chez Francois and the Inn at Little Washington. The applicant intends the inn to become the finest restaurant in Montgomery County, with a high-end, and prix fixe menu. The restaurant would offer lunch and dinner Monday through Saturday, and brunch and dinner on Sunday....As part of maintaining a strong connection to the community, the Applicant’s business plan includes departing from the high-end menu on Sunday nights to offer standard American fare, with family-style service, at lower prices to allow local residents to enjoy the restaurant on a regular basis. The present application does not include any lodging activities.” p .5.

Existing Structure: The property is “developed with a two-story, brick and siding structure housing the inn; a one-story former chicken house that is used as an antique shop; a small shed behind the antique shop; a two-story frame well house in the southwestern corner of the property; and a gravel parking area north of the buildings.” p.2. “The original core of the Comus Inn building was built as a log cabin in 1862 and expanded twice, circa 1875 and 1885. The entire property has been determined eligible for listing on the National Register of Historic Properties and is expected to be listed in the near future. The property already is listed on the State Register of Historic Places, and is identified as a historic property on the location atlas for Montgomery County.” p. 2.





**7. Normandie Farms, 10701 Falls Road, Potomac, County Council Resolution 15-1354, March 7, 2006. Original Zone: RE-2/TDR. Exhibit 15.**

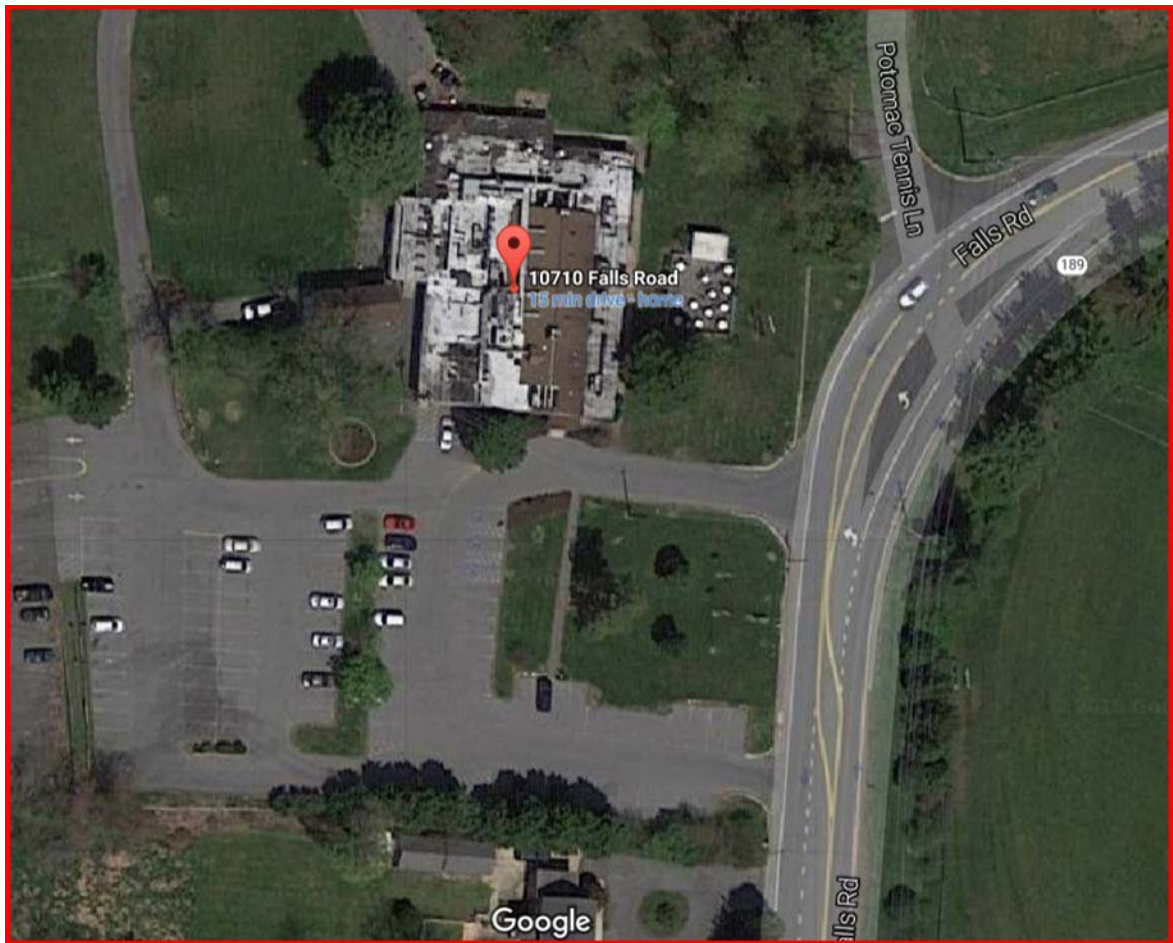
The Council concluded that “the continued used of the property for a country inn, its reclassification to the Country Inn Zone, and implementation of the proposed Development Plan would be compatible with and would not adversely affect the rural character of the area; in fact, the proposed development would enhance the rural character that the Normandie Farm Restaurant lends to the surrounding area.” p. 7.

Rural Area: “While the surrounding area may fairly be characterized as semi-rural, there is substantial open space on the grounds of the nearby golf course and the Bullis School, and the nearby homes are on large lots, approximately one to three acres in size. The large lots and significant open space in the vicinity lend an open, rural character to the area. Moreover, the architectural style and setting of the Normandie Farm Restaurant have contributed, in large measure, to the rural character of the surrounding area, and would continue to do so with the proposed expansion.” p. 6.

Dining: “The property...has been the home of the Normandie Farm Restaurant for over 70 years.” p. 1. “The Applicant proposes to expand the restaurant by building a second building, about the same size as the first and in a similar architectural style, immediately to the west of the existing restaurant. The two buildings would share a kitchen, and would be connected by an enclosed breezeway.” p. 4.

Existing Structure: “The Normandie Farm Restaurant has been located on the subject property since 1931, predating zoning in the County.” p.2. “The proposed development would provide for the preservation and renovation of an existing structure

that has been in the present use for more than 70 years, and permit the construction of a new structure of a compatible style and scale, preserving the rustic, French country character of the architecture.” p.6.





Topographic map of the Petoskey area. The map shows the location of the subject property, which is outlined in black. The subject property is located on the corner of Polomac Tennis La and Falls Rd. Other labeled features include Lockland Rd, Glen, Apple Hill Ct, Normalville, S Glen Rd, Falls Rd, Democracy Blvd, Polomac Tennis La, Petoskey Tennis Club, Manor Care Nursing Home, Falls Rd Golf Course, Bulls School, and Petoskey United Methodist Church. The map also shows various roads, trails, and topographical features like hills and water bodies.

### III. CONVERSION OF THE COUNTRY INN ZONE INTO A LIMITED OR CONDITIONAL USE

A principal objective of the multi-year Zoning Ordinance Rewrite project was the simplification of the Zoning Ordinance, whose double-sided, single-spaced, endlessly footnoted pages weighed in at over 5.5 pounds (and is now a svelte 2.25 pounds). One key strategy employed was to eliminate as many as possible of the single-purpose zones that had crept into the Ordinance over the years, and this included the Country Inn Zone. Our understanding of how this was done for the Country Inn Zone does not come from a detailed public record of Planning Board, PHED Committee, or District Council

consideration. Rather we infer what process staff went through from what was actually done.

**a. Grandfathering.** One critical first step was to avoid creating any nonconforming uses out of the properties that had been lawfully rezoned into the Country Inn Zone. This was accomplished by “grandfathering” the extant Country Inn Zone rezonings by, in effect, undoing the rezonings (returning the land to the zone from whence they had come when initially rezoned into the Country Inn Zone) and categorizing their actual or possible country inn use as a lawful use in those zones. In the parlance of the new Code, this meant a “limited use” or “L” designation for country inn in the following zones, all of which were retained: RC, RE-2, RE-1 and R-200. §59-3.1.6 and §59-3.5.3.A.2.a.i. An “L” was also added to the “R” zone, inexplicably and uselessly, because there was no Country Inn zoned property at the time of zone elimination that had come from the “R” zone.

**b. New Country Inns: What zones?** Staff also determined that “country inn,” now an established use category, could continue to be approved in the future, not by a rezoning, but rather by satisfaction of conditional use standards—standards geared to those used in the former rezoning process. Hence, any properties seeking to establish a country inn in the future (i.e., after October 30, 2014) would have to demonstrate compliance with the conditional use standards for a country inn. §§59-3.5.3.A.2.a.ii and 3.5.3.A.2.b. Left unanswered by these decisions, however, was the pivotal question: where? Previously, “where” had been determined case-by-case as Country Inn rezoning applications were processed and decided. The underlying zoning that would be lost with the rezoning could

be anything, so long as the requirements for the Country Inn Zone were met. But now, for conditional uses, the calculus would have to be different: not all conditional uses are appropriate in all zones; most are available only in a relatively select subset of zones. So staff had to decide in what zones it was appropriate to provide that a country inn would be an acceptable conditional use if appropriately conditioned. So far as the public record is concerned, the staff decision on this point was never closely examined at the Planning Board or Council level. The apparent solution was to make the conditional use standards available in exactly the same zones where staff had found it necessary to apply the limited use (“L”) designation, i.e., R, RC, RE-2, RE-1 and R-200. On the surface, this appears a reasonable short-cut to a more comprehensive analysis of zone-appropriateness for country inns. After all, these were the zones (except for “R”) where prior country inns (actual and planned, if not built) emanated from. But whether this list was arrived at merely by matching “L” and “C” in the land use table or by a more searching inquiry, these are the applicable, legally established zones, whether the list is a reasonable one or not.

Assessing the reasonableness of the list begins by first examining whether the definition of “Country Inn” went through any meaningful change in the Zoning Ordinance Rewrite. In general, the Rewrite was not intended to work substantive change. A good case can be made that the term “Country Inn” did not undergo material substantive change in the Rewrite process. The old provision began as follows: “Country inn: An establishment primarily for dining in a rural area of the county . . .” §59-A-2.1 The new provision begins as follows: “Country inn means as establishment for dining in a rural area. . .” §59-3.5.3A.1. Both provisions, with equal force, focus on dining and limit the

use to areas deemed “rural.” Hence, the rezoning history described above should be deemed an important guide to crafting the list of zones for which this conditional use is eligible.

The second task is to locate the zones for which the “rural” designation is a comfortable fit. This should be based on existing development patterns, not what was deemed “rural” decades ago at the time of some of the Country Inn rezonings. “Rural” squarely fits the purpose or intent of the R and RC zones, functionally equivalent under both the old and new ordinances. *Compare §§59-C-9.21 & 9.22 with §§59-4.3.3.A. & 43.4.A.* It also has the potential to fit some RE-2 zoned areas, especially if still largely undeveloped, but even where development has taken place, it has been on lots no smaller than the Country Inn minimum of 2 acres. Inclusion of RE-2 among the eligible zones cannot be viewed as unreasonable, especially since such inclusion is no guarantee of approval even when all specific requirements of the use are met. 59-7.3.1.E.3. (This general provision for conditional uses in the current code is substantively identical to language in the original 1967 purpose clause for the Country Inn Zone, as quoted above—111-21A a.(4))

Moving down the “C” list any further, however, to the RE-1 and R-200 zones, becomes increasingly problematic. The RE-1 zone can be developed with lots as small as one-acre, and the R-200 zone can be developed with lots as small as 20,000 sq. ft., or less than half an acre. In order for the “C” designations for the RE-1 and R-200 zones on the use table at §59-3.1.6 for Country Inn not to be applied mistakenly, therefore, it will be necessary to carefully consider in every RE-1 and R-200 country inn application whether

the neighboring properties in those zones have been developed residentially at those lot sizes, and then rather rigorously apply the “rural” locational criterion. Put another way, it is by no means enough to note that the use is allowed as a conditional one in the zone and the applicant’s property is in that zone. The pivotal question remains: is the subject property in what is still a rural area of the County? The smaller the allowed lot size, the more important it is that this question be scrupulously examined as a threshold definitional matter.

As has been detailed above for prior cases emanating from R-200 and RE-1- zoned properties, the answer to that question, at the time of Country Inn rezoning, was “yes”: in 1983, when the Yegher property was rezoned from R-200 to the Country Inn Zone; in 1990 when the Edgewood Inn was rezoned from RE-1 to the Country Inn Zone; and in 2003 when the Comus Inn was rezoned from R-200 to the Country Inn Zone. And the answer is still “yes” today, because the rural character of the neighboring properties and the larger neighborhood is largely unchanged, i.e., rural.

**c. Primary Function: Dining Establishment.** The other, equally pivotal definitional criterion that runs through the history of the Country Inn Zone and its reincarnation as a conditional use is the “what?” What is the primary function that distinguishes a country inn from other uses? Old and new, the primary function in and always has been use as a dining establishment. All seven Country Inn rezonings were predicated on this primary function. In fact, at the outset, this was the **only** function allowed. The possibility of up to twelve guest rooms was a later addition, as were a variety of specific commercial uses deemed acceptable in relation to maintaining a country inn,

provided that they were subordinate uses. The three Country Inns extant as lawful limited uses all have a dining room open to the public at regularly scheduled times as their primary function.

**d. Country Inn Accessory Uses.** The current definition of “country inn” carries along with it specified subordinate uses that may accompany the inn, which is to be an “establishment for dining” with anywhere from zero to twelve guest rooms. §59-3.5.3.A.1. The specified subordinate uses are “rural antique shop, handicrafts or art sales, equestrian-related retail sales and service, and recreational facilities primarily for the use of guests.” *Id.* This list is not necessarily exhaustive, but it does clearly illustrate particular uses deemed incidental to the country inn use. These and any other proposed Accessory Use of the inn must comply with the limitations on accessory uses set forth in §59-3.7.4.B. That section specifies that the use must be “incidental and subordinate to the principal use . . . of the [country inn].” Further, uses eligible to be accessory to a country inn must themselves be permitted or limited uses in the same zone as the country inn, and be able to meet the use standards applicable to it.

Application of the Accessory Use limitations in 59-3.7.4.B. is well illustrated by considering whether a country inn may include on the premises a banquet facility. The term “banquet facility” is found in §59-3.5.3.B.1., as a use within the broader category “Restaurant.” In the old Ordinance, the Use Table employed the term “Eating and Drinking Establishment.” There was no “Restaurant” definition or such a category in the Use Table for commercial zones (former §59-C-4.2). Currently, “Restaurant” is a permitted or limited use only in designated CR, Employment and Industrial zones. Use Table, §59-3.1.6. The

new Use Table does not allow the “Restaurant” use in any of the zones where the country inn use is allowed as a conditional or limited use. Hence, under 59-3.7.4.B., a banquet facility cannot be added to a country inn as an incidental and subordinate use, and a country inn cannot be primarily or exclusively a banquet facility rather than a dining establishment.

This conclusion is further reinforced by the fact that “banquet facility,” a term not employed in the old Ordinance, also appears in the new definition of the Hotel, Motel Use. §59-3.5.6. It is a use that “may include one or more restaurants, meeting rooms or banquet facilities.” *Id.* The Hotel, Motel Use is a permitted use only, and only in specified CR and Employment Zones. §59-3.1.6. In short, the new Ordinance explicitly identifies where, either as a “Restaurant” Use, or as part of a Hotel, Motel Use, a banquet facility is allowed. None of those zones are within the small group of zones where a country inn is allowed.

**e. Existing v. New Structure.** From 1982 to 2014, i.e., the entire time the Country Inn Zone was actually utilized for rezonings, the purpose clause of the Country Inn Zone made clear that it was primarily intended the country inns be located in existing structures, while not precluding location in new structures “where appropriate.” Hence, whether a new application under the current Zoning Ordinance is or is not for reuse of an existing structure cannot be regarded as a definitional issue. This is so even though in none of the seven Country Inn rezoning approvals did the applicant propose to erect a new structure for the country inn. This history, however, is not irrelevant to consideration of a country inn conditional use application that in fact meets the prescribed definitional criteria for a country inn. When no existing structure is going to be repurposed, this should promote close scrutiny of any proposal for a country inn in a new structure. An existing

structure has a size, shape and setback characteristics that are typically regarded as a familiar, settled part of the landscape. In such a situation, repurposing the structure into a country inn is likely to cause less disruption to surrounding properties or to settled expectations than would the construction of an entirely new structure.



**AFFIDAVIT OF AMY PRESLEY**

1. I, Amy Presley, am an adult resident of Montgomery County, Maryland and a former Member of the Montgomery County Planning Board.
2. My eight years of service as a Board Member included the period from approximately 2010-13 in which the Board oversaw a comprehensive rewrite of the Montgomery County Zoning Ordinance by the Planning Board Staff.
3. This required Board Members to devote seemingly endless hours to study and worksessions with Staff over several years, examining and discussing what had to be thousands of hours of Staff research, analysis and writing.
4. A principal goal of the Rewrite Project was to simplify the Ordinance for the future while at the same time minimizing impact on the existing rights of property owners, as defined by the existing Ordinance.
5. One of many methods of furthering this goal was Staff's proposed elimination of single-purpose zones such as the Country Inn Zone.
6. I participated in the Board worksessions on October 15, 2012 and November 13, 2012, in which the Board discussed and approved the proposed elimination of the Country Inn Zone and resolved concerns about how best to protect the rights of owners of property in that Zone.
7. Given my participation in this process, I have been asked to provide the Board my views on ZTA 17-04. The Board is scheduled to consider the ZTA on September 7, 2017 and provide a recommendation to the District Council, in advance of a Council public hearing on September 12, 2017. For the reasons

expressed below, I consider ZTA 17-04 a worthy adjustment to the terms and conditions the Board agreed to in 2012 for elimination of the Country Inn Zone.

8. As presented by Staff in 2012, I was aware that the Country Inn Zone was a floating zone that had been applied for and approved in fewer than ten locations in the County, and that an even smaller number of those approvals had actually resulted in the development of a country inn.

9. Hence, the focus of the worksessions was on how to transition country inns from a zone to a use, such that (a) existing country inns could continue and (b) properties already rezoned to the Country Inn Zone but not yet developed with a country inn would still be able to develop the use, as already approved by their existing approved development plan.

10. The Board worked out a resolution with Staff that properties in the Country Inn Zone would revert to the base zone from whence they were rezoned, and made a limited ("L") use in that base zone. For those particular properties this was described as the functional equivalent of a permitted use in that base zone. In this way, developed country inns became fully protected uses, and undeveloped Country Inn zoned properties, having already gone through a rezoning hearing, would not have to go through a conditional use hearing to proceed according to their approved development plan.

11. This resolution, in my view and I believe that of my fellow Board Members, fully and satisfactorily addressed concerns expressed to the Board at the October 15, 2012 worksession by the owners of two of the Country Inn zoned properties about their existing and future property rights.

12. What those worksessions did not discuss, however, was the question of where and under what terms a country inn, as converted from a zone to a use, should be allowed in the future as a conditional use—situations where the subject property had not gone through the Country Inn rezoning process before adoption of the new Ordinance.
13. Instead, without discussion of its potential future impact, the Board simply decided that in every box in the zoning use table where an “L” was needed to effectuate the agreed protection of Country Inn zoned properties, as described above, a “C” would also be added to leave open the prospect for future country inns as a conditional use in those zones.
14. Given the small number of properties then at issue, and the focus of the worksession on their protection, there was no Staff presentation or discussion about the possibility that adding the “C” in the “L” base zones could have a significant impact on the many areas of the County developed with single-family residences in half-acre zoning, i.e., the R-200 zone. Nor did Staff highlight, or the Board discuss, proposed substantive changes in the definition of “country inn” in the then-existing Ordinance.
15. In hindsight, the adjustments we made to the Staff proposal to protect a small number of existing Country Inn zoned properties resulted in significant change when no change was intended. We inadvertently created a situation where all R-200 zoned neighborhoods were made subject to the possibility of development in their midst of a restaurant, without regard for whether the location of the inn was a “rural area,” an undefined requirement carried forward from the

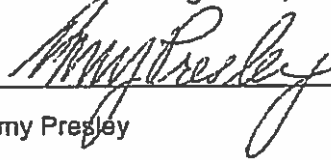
existing Ordinance. While this locational factor was preserved in the Staff draft changing country inn from a zone to a use, the rewrite stripped from the existing country inn definition language that further described the intended "rural area" locations: "removed from planned or existing commercial areas and generally accessible for patronage only by automobile transportation." In my view, this additional language, whose omission from the new Ordinance the Board unintentionally approved, makes clear that country inns are not appropriate for any developed R-200 residential neighborhood where residents would be within easy walking distance of such a commercial use in their midst.

16. Had the Staff presented to me in the worksessions on the Country Inn Zone any indication of the potentially widespread impact of making the country inn conditional use available in the R-200 zone, I would have been very concerned that it would be used, or attempted to be used, in areas that were not truly rural, precipitating much concern and conflict in existing residential neighborhoods when someone proposes such a use in the R-200 zone, including conflict over whether the location is really in a "rural area."

17. I support ZTA 17-04 because it addresses this very problem we unfortunately overlooked, and does so in a very sensible, workable and non-subjective way. It defuses any debate about whether the country inn is or is not in a "rural area," by limiting its applicability to those R-200 zoned properties that are adjacent to zones that are unmistakably rural. Had this solution been advanced during the worksessions back in 2012, I would have supported it, and might have even gone further to propose that the new country inn conditional use be limited to

rural zones only, and not be included in the R-200, RE-1 and RE-2 zones. At the least, however, ZTA 17-04 is a step in the right direction of keeping commercial uses out of our established single-family residential neighborhoods.

I, Amy Presley, declare under the penalty of perjury that the foregoing is true and correct. Executed on August 10, 2017.

  
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Amy Presley