

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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December 19, 2005

**MEMORANDUM**

**TO:** Montgomery County Planning Board

**VIA:** John A. Carter, Chief *JAC*  
Community-Based Planning Division

**FROM:** Judy Daniel, Rural Area Team Leader (301-495-4559) *JD*  
Community-Based Planning Division

**SUBJECT:** Zoning Text Amendment – Proposed Modifications to Child Lot Provisions  
in the Rural Density Transfer Zone

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**RECOMMENDATION:** Approval to transmit to Montgomery County Council.

On December 8, the Planning Board first considered a proposed Zoning Text Amendment addressing the provisions for child lots in the Rural Density Transfer (RDT) Zone. The Planning Board decided to defer consideration of the text amendment for two weeks in order to provide more time for public comment, to allow time for the staff to prepare certain modifications to the proposed text amendment, and to answer certain questions pertaining to the history of child lots.

The staff has amended the proposed text amendment as requested by the Planning Board, and provided the additional information requested by the Planning Board to assist with their deliberations including:

1. Survey of practices regarding child lots in the agricultural zones in other regional jurisdictions.
2. Completion of the history of child lots created in the RDT Zone from 1981-2005.
3. Additional research on the potential for additional child lots on properties in the RDT Zone that are agriculturally assessed.
4. An assessment of why some RDT property owners have tried (or succeeded) in exceeding the child lot intent in creating lots, and what modifications to these provisions would make this practice less attractive.
5. Proposals for penalty language for non-compliance, including a summary of enforcement tools used by the Maryland Agricultural Land Preservation Foundation and the county's Agricultural Easement Program.
6. A summary of the County's agricultural support and preservation programs.

The Planning Board also requested that the staff obtain further response from the members of the community regarding the child lot proposals, particularly the agricultural community. Because the four primary agricultural groups meet monthly, and need lengthy lead time to respond to proposals for regulatory changes, and with only one full week to make the substantial changes to the zoning text amendment requested by the Planning Board, and to complete the extensive additional research requested by the Board – and to be able to inform the agricultural community of how the text amendment provision would differ from what they had been expecting, it was not possible to give them the exact language of the revised text amendment in time for them to respond. These groups meet monthly, and for them to have fully sufficient time to respond they would need at least two months to review a proposal, with no substantive changes made to the proposal during that time. In this instance, the agricultural groups were asked to consider a text amendment significantly different from what they had been told was being considered, in a one-week time frame.

The staff had met with members of the agricultural community during October and November (as noted in Circle F of this report) to discuss all the agricultural initiatives, including the potential changes to the child lot provisions. The proposals discussed with these groups were essentially those recommended to the Planning Board on December 8, although the exact language of the text amendment was modified until the staff report was sent to the Planning Board on December 2. The standard process of the staff has been to keep all interested parties informed of the general nature of the changes being proposed, and the major elements of any changes; or even drafts of the proposed changes – but due to staff time constraints, most significantly legal staff time constraints, it is not possible for the staff to complete the final text amendment weeks ahead of the Planning Board review.

In this instance, as more fully discussed in the Public Outreach section, the significant modifications to the text amendment requested by the Planning Board, and the time constraints of the turnaround, has led to vehement opposition to some of the changes proposed from the agricultural community, and vehement frustration and anger regarding the process. The staff met with the Agricultural Preservation Advisory Board on December 13 to discuss the modifications to the text amendment proposed by the Planning Board. This group was already aware of the major elements of the version presented to the Planning Board on December 8 due to prior outreach – and that group has conveyed their comments to the Planning Board, as noted in the public outreach section of this report). Unfortunately, when the staff met with the Agricultural Preservation Advisory Board, there was a misunderstanding regarding the most important and dramatic change in the text amendment from the original proposal. The staff was informed of this miscommunication on late Friday afternoon, December 16, which is the primary reason this report was delayed; to allow time to receive their revised comments.

Essentially, the Agricultural Preservation Advisory Board (APAB) members are in strong opposition to the change in the density calculation for child lots, as requested by the Planning Board. The staff anticipated this reaction, so the staff is not surprised at the position of the members of the APAB. This change will reverse 25 year of practice by the Planning Board in the interpretation of the intent for child lots in the RDT Zone.

The staff will be meeting with the Agricultural Advisory Committee on Tuesday evening, December 20 to obtain their thoughts on the revised proposals. The staff anticipates a similar if not stronger negative reaction to the density interpretation, and other elements of the proposed modifications. The staff will include a report on their reaction and comments in the presentation.

**December 8 Text Amendment Proposal** -The primary reasons for preparing the text amendment remain as stated in the prior report, attached for reference. The original proposal was limited in scope, primarily intended to provide improved enforcement tools, institutionalize existing policy, and rectify ambiguities in the zoning language. It was designed to change the existing language to match existing policy, and improve enforcement tools – but not to change existing policy. It took a position that the provision did not need major changes, but the evolved policy did need to be included in the language of the zone. The staff decision to propose this limited scope derived from listening to the input from interested citizen groups, and members of the agricultural community, and those familiar with the origins of the child lot provision. It included the following major elements:

1. Enforcement tools:
  - a. Required notation on the record plat of lot ownership and development rights
  - b. Required proof of relationship and required submittal of an affidavit at time of application for subdivision
  - c. Establishing a five year ownership requirement
  - d. Clarification that only one lot is allowed per child anywhere in the county
  - e. Ownership criteria and proportionate ownership provisions are defined
  - f. The Department of Permitting Services is established as the agency charged with enforcing the ownership requirement
2. Clarification that child lots are exempt from the RDT Zone density requirements
3. A farmland preservation review standard
4. A sunset provision for the creation of child lots in 2011

The modifications requested by the Planning Board included certain elements that are far wider in scope, particularly in regard to the density provisions, that are very controversial, particularly with the agricultural community. The revised recommended zoning text amendment includes the following additions and modifications:

The revised recommended Zoning Text Amendment includes the following additions and modifications:

1. A discrepancy in Section 59-C-9.41 (density in the RDT Zone) is clarified for consistency.
2. Section 59-C-9.74 (b)(2) and (3) contain minor language changes for clarity.
3. The child lot provision is limited to property owners whose land is agriculturally assessed and in agricultural production (to be determined by the Agricultural Preservation Advisory Board). (59-C-9.74 (c))

4. Child lots cannot be conveyed to a minor. (59-C-9.74 (c)(1)(ii))
5. Child lots must be created during the lifetime of an owner. (59-C-9.74 (c)(1)(vi))
6. If no dwelling is constructed on the lot, it may be sold at any time - with a restriction preventing the construction of any habitable structure. The restriction will be governed by a declaration in the land records and noted on the record plat. (59-C-9.74 (c)(1)(vii))
7. The provision for assessing the agricultural potential of lots in child lot subdivisions is eliminated. (59-C-9.74 (c) (2))
8. The definition of a "property owner" is expanded to include members of a family corporation. (59-C-9.74 (c)(2)(i))
9. The allowed density for child lots is to be inclusive of the allowed development density of the property—not in addition to the allowed development density. (59-C-9.74 (c)(2)(iii))
10. A maximum lot size for child lots is proposed as the smallest lot size required for well and septic requirements for a dwelling. (59-C-9.74 (c)(2)(iv))
11. It is established that child lots should be placed to avoid fragmenting farmfields, pasture, or forest. (59-C-9.74 (c)(2)(v))
12. The five-year ownership requirement is retained, and a restriction on leasing the property is added. All restrictions on the property must be noted on the plat and on a declaration recorded in the land records of the county. Enforcement of this provision is noted to be under the provisions of Section 8-22 of the Montgomery County code. (59-C-9.74 (c)(2)(vii))
13. The "sunset" clause is revised to state that no new applications for child lots will be accepted after the sunset date. (59-C-9.74 (c)(3))

#### **Other Recommendations**

Given the complexity of the proposed text amendment, and the current ambiguity in the zoning language, the staff recommends a six-month moratorium on the review and approval of child lot subdivisions, inclusive of any proposals currently under review. This timeframe will allow the County Council to consider the proposed Zoning Text Amendment.

The staff also proposes to evaluate creating a new category of property in the RDT Zone for those properties that have extinguished all development potential. These "farmparcels" would be easily traceable as non-developable properties, and would avoid tax and other implications. The staff will complete this evaluation and return to the Planning Board in late spring of 2006 with a proposal for amending the Subdivision Regulations. This category would be used for the residual farm parcels after all lots have been created.

## DISCUSSION

The staff notes the following in regard to the requested revisions to the text amendment:

1. *Clarification of discrepancy in Section 59-C-9.41 (density in the RDT Zone).*

This phrase is added to clarify that density in the RDT Zone may be exceeded for the creation of child lots under the requirements in Section 59-C-9.74(c).

2. *Section 59-C-9.74(b)(2) and (3) contain minor language changes for clarity.*

Minor modification of the language will improve enforceability.

3. *Limit on the use of the child lot provision to agriculturally assessed land that is in agricultural production. (59-C-9.74 (c))*

The Agricultural Preservation Advisory Board (APAB) is willing to provide certification that properties are in agricultural production; and that the task is within their enabling documents. They pointed out that much of the farmed land in the county is leased by farmers, but not owned by farmers. The APAB indicated that while they support the concept restricting the child lot provision to "farmed" land, they would not support a requirement to restrict it to property owners who are "farmers" and they would not want to make that differentiation. They also believe that such a differentiation would be counter to the intent conveyed to land owners when the Master Plan and the RDT Zone were created.

4. *Child lots cannot be conveyed to a minor. (59-C-9.74 (c)(1)(ii))*

To ensure that child lots are only conveyed to an adult who is able to secure a building permit, the provision establishes that lots cannot be created until the child is 18. At that time, the child can build the home on the lot and begin the five-year ownership requirement. The Agricultural Preservation Advisory Board expressed concern with this requirement, since if it is combined with the sunset clause, it would preclude creating child lots for any designated children who are not yet 18 at the time of the sunset date.

5. *Child lots must be created in lifetime of owner, not after death through a will. (59-C-9.74 (c)(1)(vi))*

This proposed modification is intended to eliminate the potential for confusion and ambiguity in wills regarding land distribution to children. While a will can designate who will receive land, child lots—which exceed the density of the zone—must be created during the life of the property owner; not through desire expressed in a will. This has been at question in a very few instances, but the staff believes this potential should be eliminated.

6. *If no dwelling is constructed on the lot, it may be sold at any time – with a restriction preventing the construction of any habitable structure. This restriction will be governed by a declaration in the land records and noted on the record plat. (59-C-9.74 (c)(1)(vii))*

The staff recommends including a provision for sale of a child lot that has not had a dwelling constructed. There may be instances when the dwelling is never built, and it is important to not restrict all use of the land. The recommended provision allows sale of the lot, but only with a restriction denying the construction of any habitable structure. This will allow agricultural use of the property.

The legal staff and planning staff discussed the issue of enforcement and penalties with County Council staff and County Attorneys, including the County Attorney assigned to the Department of Permitting Services. There was consensus that a requirement for the filing of restrictive declarations by the intended beneficiary would ensure that purchasers will be placed on notice of the limitations on transferring the property.

7. *The provision for assessing the agricultural potential of lots in child lot subdivisions is eliminated. (59-C-9.74 (c) (2))*

As requested by the Planning Board, this provision is removed. The review by the Agricultural Preservation Advisory Board (APAB) will establish the relationship of the property to agricultural production.

8. *The definition of a “property owner” is expanded to include members of a family corporation, and establishes that any person named as a member of such corporation, trust, or partnership must have been of legal age (18) at the time of the creation of the RDT Zone. (59-C-9.74 (c)(2)(i))*

As suggested by the APAB, family corporations are added as potential property owners. This is a common practice in farming families for tax reasons.

9. *The allowed density for child lots is to be inclusive of the allowed development density of the property—not in addition to the allowed development density. (59-C-9.74 (c)(2)(iii))*

As requested by the Planning Board, this provision is changed to be substantially more limiting than has been the practice of the staff and Planning Board. The existing language is conflicting, allowing either interpretation. This change will clearly establish a substantially more restrictive policy than existing staff and Planning Board practice. With this change, child lots can only exceed the RDT Zone density if the number of child lots requested exceeds the number of allowed “market” lots on the property. The APAB has strong objections to this provision. The staff received the following comments from the Agricultural Services Division staff late Friday afternoon, December 16 regarding this element:

The Agricultural Preservation Advisory Board firmly opposes any revision to the child lot provisions in the RDT Zone that attempts to count children's rights against the base zone density. They regard this as a "grandfathering" issue. They state that: "A grandfathered clause is defined as **"A provision in a statute that exempts those already involved in a regulated activity or business from the new regulations established by the statute"**."

Grandfathered provisions in land use issues usually involve granting more rights to those individuals impacted by changes in zoning as opposed to those individuals who acquire property once the change has taken place. If the intent truly was to apply children's lot rights towards the permitted density, then why have a grandfathered provision under zoning at all?

Clearly, the intent of the original grandfather provision for children's lots was to allow additional density above that permitted in accordance with the 1/25 acre zoning provided TDRs were retained and the density did not exceed the previous zone. We have all the past and current publications from the M-NCPPC entitled "Plowing New Ground" which clearly states this fact.

Changing the density provision will be a major battle in the agricultural community. Farmland preservation must not and cannot come at the expense vested property rights. The landowners in the RDT Zone have already given up a great deal in the name of farmland preservation. There seems to be very little recognition among various groups.

Some would like to believe that the TDRs granted as a result of the down-zoning, somehow made up for the lost equity in land. It would be wonderful if it was actually true, but until two years ago, the vast majority of landowners who sold TDRs did so at a tremendous discount. For the Planning Board to now come back and suggest another mechanism to take away more rights that were vested with the land for owners at the time the down-zoning occurred results in what is tantamount to a taking and a betrayal of trust to Rural Landowners. If the public is desirous of further protections in the land, then they must be provided an economic incentive that discourages land conversion."

The M-NCPPC staff notes the following language in the *Plowing New Ground* document noted in the above statement:

#### **#8. Are Lots for the Landowners' Children Exempt?**

Maybe, depending on when the property was purchased and the availability of a development right. An exemption is allowed for children of property owners in the RDT Zone prior to January 6, 1981. A development right must be held in reserve for each house built on the property for a child of the owner. *Any development rights used for "child lots" reduce the total number that can be sold from the property.* When this application goes through the subdivision process, affidavits will be required to verify that the lots will be used for the landowner's child, and appropriate measure are taken in the land records to restrict development on these properties.

The staff notes that while it appears that while the density change will change twenty-five years of policy, the language in *Plowing New Ground* does not support the existing policy.

10. *A maximum lot size for child lots is proposed as the smallest lot size required to meet well and septic requirements for a dwelling. (59-C-9.74 (c)(2)(iv))*

The Planning Board requested this modification as a means to limit the appeal of child lots as a marketable entitlement; and protect the agricultural potential of the residual parts of the property. The intent is to allow child lots that are to the greatest possible extent a lot to allow the child of the property owner to construct a personal dwelling.

11. *To the greatest possible extent, lots created under these provisions should be placed to avoid fragmenting farmfields, pasture, or forest. (59-C-9.74 (c)(2)(v))*

This requirement is designed to reflect the intended agricultural use of the remaining property, by keeping house sites away from agricultural areas.

12. *The five-year ownership requirement is retained, and a restriction on leasing the constructed dwelling is added. The notation of the restriction is to be recorded in the land records, as well as on the Record Plat. Enforcement of this provision is noted to be under the provision of Section 8-22 of the County Code. (59-C-9.74 (c)(2)(vii))*

The Planning Board had discussed the potential for adding a habitation requirement. The staff advises against dictating where people must live and recommends that the restriction be limited to the sale or lease of the dwelling within the five-year period. And for enforcement reasons, the 5-year ownership/leasing restriction is also to be recorded in the land records as well as on the plat.

As noted in the enforcement discussion of item "6" above, enforcement will be aided by including the requirement for a declaration to be recorded in the land records of the county. And while the Zoning Ordinance has enforcement mechanisms noted in Section 59-A-1.3; the staff recommends a reference to Section 8-22 (Violations) of the County Code also.

In addition, the staff recommends modifications to the language of Section 8-22 and 8-26; specifically as noted below, and perhaps in other sections which will be determined in consultation with County staff:

#### **Section 8-22. Violations.**

- (a) *Notice of violation.* The director shall serve a notice or order on the person responsible for the erection, construction, alteration, extension, repair, use or occupancy of a building or structure in violation of the provisions of this chapter or any other applicable federal, state or local law or regulation or in violation of a detail statement or a plan approved thereunder or in violation of a permit or certificate issued under the provisions of this chapter or in violation of a



restriction on the sale or lease of a building or structure on a lot created under the provisions of Montgomery County Code § 59-C-9.74(c); and such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

- (b) *Prosecution of violation.* If the violation cited in the notice or order is not abated within the period set forth in said notice or order, the director may institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful use of the building or structure in violation of the provisions of this chapter or of the order or direction made pursuant thereto.
- (c) *Violation penalties.* Any person who violates a provision of this chapter or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of an approved plan or who refuses, ignores or violates an order of the director or a condition of permit or certificate issued under the provisions of this chapter shall be subject to punishment for a class A violation as set forth in section 1-19 of chapter 1 of the County Code. Each day a violation continues to exist shall constitute a separate offense. (1975 L.M.C., ch. 1, § 2; 1983 L.M.C., ch. 22, § 12.)

**Sec. 8-26. Conditions of permit.**

- (a) *Generally.* No permit to begin work for new construction, alteration, removal, demolition, or other building operation shall be issued until the fees authorized in this section are paid to the department nor shall an amendment to a permit necessitating an additional fee because of an increase in the estimated cost of the work involved be approved until the additional fee is paid. The department must not issue building permits for a residence, except a building designed to be used as a residence for the person's own or immediate family use, under the provisions of section 26A-12 of chapter 26A, to any person except a licensed building contractor or authorized agents of the licensed building contractor.

\* \* \*

(m) Compliance with Chapter 59 restriction against sale or lease of a one-family residence on a lot created for the child or spouse of a child of a property owner. The issuance of a building permit for a one-family residence on a lot created for the use for a one-family residence by the child or the spouse of a child of the property owner, pursuant to Montgomery County Code § 59-C-9.74(c) shall be expressly conditioned upon a restriction that the intended beneficiary, in whose name the permit is issued, may not sell or lease the dwelling for a period of at least five years from the date that the Department approved the final inspection for the dwelling.

- 13. *The "sunset" clause is revised to state that no new applications for child lots will be accepted after the sunset date. (59-C-9.74 (c)(3))*

The staff recommends revising this clause to clarify that applications already being reviewed at the date of sunset will be honored and reviewed.

## **Additional Information Requested**

In response to the request by the Planning Board, the following information is presented:

### **1. Regulatory Practice Regarding Child Lots in Other Regional Jurisdictions**

The staff has found no similar provisions for child lots in any other regional jurisdictions, as outlined in the attached staff memorandum. This confirms that the child lot provision is a privilege granted to provide a degree of compensation for a downzoning; although compensation is not required in law. Baltimore County has a child lot provision, but it is ambiguous, not similar to the Montgomery County provision, and the staff in Baltimore County thus far is not familiar with the actual intent.

The staff has located a 1999 staff memo regarding the history of child lot provisions in Montgomery County. That memo indicates that Montgomery County allowed property owners (*not farmers or owners of land in agricultural production*) in the agricultural zones the right to construct a "child lot" at their prior density as a result of a series of downzonings - from RE-2 (2-acre density) to Rural (5-acre density) in 1974; and from Rural (5 acre density) to RDT (25 - acre density) in 1981. A child lot would be permitted only if the property owner demonstrated ownership prior to downzoning.

The Montgomery County definition of a child lot was informally based on that of the State's Maryland Agricultural Land Preservation Foundation (MALPF) program. Although there are references to child lots in the Subdivision Regulations and the zoning ordinance, there is no formal definition of a "child lot" in the Zoning Ordinance.

### **2. Child Lots Created 1981-2005**

Updated research has established that 95 child lots were created within 47 approved subdivision plans in the RDT Zone during the entire 1981-2005 year period. This compares to the 532 lots were created in 162 subdivisions in the RDT Zone during that period. Thus, the child lots represent approximately 17 percent of all lots created in the RDT Zone since its inception. The staff memorandum with this information is attached.

The number of child lots approved annually has varied considerably, but it was generally higher in the 1990s, as reflected on the attached staff memorandum.

### **3. Potential for Future Child Lots**

The Research and Technology Center updated their research on properties with the potential to create child lots. The staff memorandum with this information is attached. It indicates approximately 100 such properties remaining that are agriculturally assessed, and another 69 that are not agriculturally assessed. The 100 properties with agricultural assessment include 74 parcels definitively existing prior to 1981, and 26 with a tax account number indicating creation prior to 1981. Of these 100 parcels, 15 are larger than 100 acres, 36 parcels are 26 to 100 acres, and 49 parcels are smaller than 26 acres.

The staff notes that the smallest size properties are generally less likely to create child lots; and will be the least likely to actually be in production. Thus, up to half of the 100 potential properties are unlikely to be eligible for the creation of child lots under the revised provisions.

The properties that are not coded for agricultural use include 7 that are larger than 100 acres, 11 that are between 26 and 100 acres, and 51 that are smaller than 26 acres. Even if these properties were allowed to create child lots, over half are within the smallest group, and least likely to propose child lots.

As stated before, there is no realistic way to determine how many children these property owners have or whether they intend to attempt to create child lots.

#### **4. Impetus to Exceed Intent of Child Lot Policy**

The staff believes that the impetus for attempting (or succeeding) in violations of the letter or spirit of the child lot provisions comes from three major elements: the opportunity for financial gain, the ambiguity in the existing language regarding intent and process, and the difficulty of enforcing the provisions after lots are sold to third parties.

First, selling a buildable lot in the RDT Zone is very profitable, and some property owners want to stretch the requirements as much as possible in order to gain financial advantage for themselves or their children.

Second, the lack of specific language in the Zoning Ordinance clarifying the intent and process for the provision has allowed the instances of abuse. This has caused increasing concern and confusion regarding exactly what was intended for this provision in recent years. A primary concern has been property owners who “flip” the lots – deeding them to their children who then immediately sell them as building lots, rather than building their home on the family land.

Finally, the lack of sufficient enforcement tools has led to families getting more lots than should have been allowed. There have been a few cases of documented problems with approved subdivisions (the 1999 Wooden Property case). Several other proposed subdivisions that were submitted but not ultimately approved have also caused concern. The reluctance to “punish” innocent third-party purchasers has curtailed enforcement.

The staff believes that the proposed modifications to the regulations will address all of these concerns, and curtail the problems of intent and enforcement.

#### **5. Enforcement Tools at MALPF and AEP**

According to information submitted from the Agricultural Services Division, both MALPF and Montgomery County Agricultural Easement Program (AEP) execute specific release documents. The MALPF has a 5-year restriction on resale. A copy of AEP’s release form is attached. This document is recorded among the land records, and establishes that violation of the terms is an act of perjury.

**6. Concepts Discussed by Planning Board - Not Recommended**

Development Rights and Child Lots – The Planning Board discussed the potential of not requiring use of a development right for a child lot. The staff advises against this concept. The owner must only retain ownership for five years, and then the home will be available for sale on the open market. Although the lot may not be as profitable, and the timeframe for getting the economic benefit is extended; the benefit is not denied. Staff believes that a development right should continue to be required for any child lot.

Sand Mounds and Child Lots – The Planning Board also discussed the potential for allowing use of sand mound septic systems for a child lot if such a system enables the creation of a smaller lot or a building site that better preserves contiguous farmfields, forest, or pasture. Since the County Council will soon be establishing a study group to evaluate the sand mound issue, this issue should be part of those discussions.

Agricultural Reservation of Residual Property – Although this concept was discussed by the Planning Board, the staff does not recommend including it due to enforcement concerns. If the remainder portion of the property is designated and preserved for agricultural production, subdivision at a later time would be difficult. The record keeping tasks would be difficult to enforce, and it may put an onerous burden on the property owner.

Exempting Child Lots from the Area and Dimensional Requirements of the RDT Zone – The staff recommends exempting child lots from the density requirements of the RDT Zone but not the lot size (area and dimensional) requirements because the RDT Zone allows smaller lots than the prior Rural Zone.

**7. Summary of Agricultural Initiatives**

The Planning Board requested a summary of all the existing and proposed agricultural preservation elements at the M-NCPPC and Montgomery County. The summary and an accompanying matrix are attached.

**8. Additional Recommendations**

The staff will proceed with the research required to propose the creation of a “farmparcel” as a category within the Subdivision Regulations. Extinguishing development rights leads to the creation of properties with restrictions that need to be clearly designated.

A designation of this type will be helpful for properties with easements, land use restrictions, or other limiting elements. The staff will return with this proposal in the early spring.

## PUBLIC OUTREACH

As noted previously (see Circle F), the staff met during the fall with the following to discuss the agricultural initiatives, *including child lot proposals*: Tom Hoffman, Dolores Milmo, Mike Rubin and others – (primarily regarding child lot provisions and use of sand mounds); the Farm Bureau Board, the Smart Growth Alliance, the Agricultural Preservation Board, the Soil Conservation Board, the Agricultural Advisory Committee, representatives of a number of agricultural preservation groups (including the Audubon Naturalist Society, Boyds Citizens Association, Sugarloaf Citizens Association, Historic Medley, Solutions Not Sprawl, For A Rural Montgomery, Peach Tree Ridge Citizens Association, and the Dickerson Community Association, Montgomery Countryside Alliance, and Celebrate Rural Montgomery leaders).

The elements for a modification to the regulations for child lots discussed at those meetings were essentially the elements presented in the December 8 version of the ZTA. It was limited in scope, intended to clarify existing policy and add enforcement tools, not to change long standing policy.

Prior to the Planning Board's consideration of the Agricultural Initiatives, the staff received comments from many of these groups – which were consolidated in a summary chart that was attached to that November 17 report. The excerpted comments of these groups regarding the regulation child lots are noted below:

<b>Child Lots in the RDT Zone</b>	
<b>Montgomery Countryside Alliance</b>	We are interested in the findings from the research that is underway to establish the number of remaining properties under unchanged ownership since 1980 in addition to reviewing the findings of the research to uncover the past abuses of the child lots provision. We encourage the Planning Board to develop mechanisms to guarantee that the subdivided properties are lived in by a child of the landowner. This must also be monitored and MCA supports the creation of a child lot tracking system. We support an option to restrict use of child lots if the creation of the lots renders the property unusable for agricultural purposes.
<b>Agricultural Preservation Advisory Board</b>	<b>We Endorse with Modification.</b> The report does not quantify the extent of abuses that have occurred, rather it suggests that <i>"There seem to have been some abuses, but the number of subdivisions that can be categorized as abuses have not yet been quantified"</i> The APAB is aware of some abuse and recommends provision B listed in the report as a viable solution. Provision B states: <i>"Enact review standards for the provision so that any subdivision using this provision must guarantee that a home is built and lived in by the recipient for a designated period of time, and consider whether the recipient is employed in the family farm business."</i>
<b>Multi-Group Statement*</b>	Widespread abuse of child lots is growing, and the creation of additional illicit child lots has become a slippery slope in which each new child lot abuse seems to justify the next, more egregious abuse. We reiterate our previously submitted memorandum on this topic dated October 1, 2005, and we again urge those recommendations to be adopted. Critical steps include establishing that (1) Creation of a child lot should be restricted to those situations where both the parent and the child will certify, under oath, the intention for the child to build and live in his/her own residence on the new lot for a minimum of 5 years; and (2) The creation of a child lot should reduce the remaining density on the property. The creation of the child lot, and associated restrictions, should always be recorded on the plat of subdivision. Details are provided in the memorandum of October 1, 2005. We are not opposed to legitimate use of child lots, indeed, we favor their continuation as it supports the preservation of family farming in the county.

\***Multi-Group Statement** incorporates comments from the: Audubon Naturalist Society, Boyds Citizens Association, Sugarloaf Citizens Association, Solutions Not Sprawl, For A Rural Montgomery, Peach Tree Ridge Citizens Association, and Dickerson Community Association

The current proposal is substantially different. It changes 25 years of established policy in the creation of child lots, and will be very controversial among property owners in the RDT Zone. The staff had one week to inform the members of the agricultural community of the scope of these changes and try to obtain their comments. As noted previously, that was very difficult, as they meet monthly, and prefer a much longer time frame for reacting to proposals.

The staff met with the Agricultural Preservation Advisory Board on December 13. The staff discovered Friday afternoon, December 16, that they had initially misunderstood the implication of the modification to the density proposal. Once they did understand it, they expressed extreme disagreement with the revised density proposal, as noted in the comments earlier. The staff will be meeting with the Agricultural Advisory Committee on Tuesday evening, December 20; and we will present their reactions during the presentation on December 22.

While we will do all we can to convey their thoughts on the changed ZTA, the Planning Board should be aware that in general, these groups do not want to react to draft documents or to detailed overviews of what the content may be. They want at least two months to review proposals in order to have time to think about the proposals, and then approve comments to send to the Planning Board about proposals. This is difficult to achieve, given the processes at the M-NCPPC. But the lack of such an advance time frame has led to considerable frustration and anger at the M-NCPPC procedures among the agricultural community.

## **CONCLUSION**

The staff believes that the revised proposals for zoning language changes will establish a strong regulatory framework for the creation of child lots in the RDT Zone, will clarify ambiguity in the current language, and will improve enforcement in the future. However, they will create considerable antipathy among farming families, and many other RDT Zone property owners. Many interested stakeholders reviewed the previously proposed changes during the meetings held during the past two months in conjunction with the review of other agricultural preservation initiatives. But there was only one week available to review these very different and more controversial proposals. As noted, the staff is hearing strong objections to the density issue. All further comments received will be incorporated or will be presented at the Planning Board meeting.

The agricultural community firmly believes that the child lot provision is an equity provision, not just a lot to allow a child to live on family land.

If the Planning Board recommends a ZTA to the County Council, the recommended moratorium on the review of child lots will enable the County Council to establish clear rules and procedures for the review and approval of child lots before any more are approved.

As stated in the December 8 report, while the staff heard general (if not universal) support for better regulation of the child lot provision; there will be considerable controversy surrounding the proposed establishment of a more limited provision for allowing additional density than has been the practice in the past, the limitation of the provision to agricultural properties only, and probably the limited lot size provision. These elements will establish new policy, while the majority of the recommendations place the existing policy in a regulatory framework and improve enforcement tools. While there may have been instances of abuse of this privilege in the past, if only the clarifying and enforcement elements are adopted, they will alone ensure this will be far less likely to occur.

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Attachments

- Circle A Revised Proposed Zoning Text Amendment
- Circle B December 8, 2005 Version of Text Amendment
- Circle C Staff Memorandum – Revised RDT Child Lot Research
- Circle D Staff Memorandum – Revised RDT Child Lot Statistics
- Circle E Staff Memorandum – Child Lot Provisions in Regional Jurisdictions
- Circle F Staff Memorandum – Public Outreach Summary
- Circle G Agricultural Preservation Advisory Board Comments
- Circle H Sample Declaration – Agricultural Easement Program
- Circle I December 8, 2005 Staff Memorandum
- Circle J Summary of Agricultural Initiatives and Matrix