

Zoning Text Amendment No: 05-
Concerning: Child Lots in the RDT Zone
Draft No. & Date: 1 – 12/01/05
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No:

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

By:

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

- Clarifying ambiguities, codifying established policy, strengthening enforcement of the provision, and establishing new policy regarding density for the Child Lot Provision for the Rural Density Transfer Zone

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

DIVISION 59-C-9 “AGRICULTURAL ZONES”
Section 59-C-9.7. “Exempted lots and parcels and existing buildings and permits.”
Section 59-C-9.74(b)(4).“Exempted lots and parcels – Rural Density Transfer Zone”

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

ORDINANCE

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

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

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

59-C-9.4. Development Standards

* * *

59-C-9.41. Density in RDT Zone.

Only one-family dwelling unit per 25 acres is permitted, except as provided in this section and in Section 59-C-9.74(c). (See section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling in not excluded:

- (a) A farm tenant dwelling, farm tenant mobile home or guest house as defined in section 59-A02.1, title "Definitions."
- (b) An accessory apartment or accessory dwelling regulated by the special exception provisions of division 59-G-1 and 59-G-2.

* * *

59-C-9.7. Exempted lots and parcels and existing buildings and permits.

* * *

59-C-9.74. Exempted lots and parcels – Rural Density Transfer zone

- (a) The number of lots created for children in accordance with the Maryland Agricultural Land Preservation Program must not exceed the development rights assigned to the property.
- (b) The following lots are exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the Rural Density Transfer Zone.
 - (1) A recorded lot created by subdivision, if the record plat was approved for recordation by the Planning Board prior to the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.
 - (2) A [lot] parcel created by deed [executed] recorded in the land records on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.

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(3) A recorded lot having an area of less than 5 acres created after the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone by replatting 2 or more lots; provided that the resulting number of lots is not greater than the number which were replatted.

[(4) A lot created for use for a one-family residence by a child, or the spouse of a child, of the property owner, provided that the following conditions are met:

- (i) The property owner can establish that he had legal title on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone;
- (ii) This provision applies to only one such lot for each child of the property owner, and
- (iii) Any lots created for use for one-family residence by children of the property owner must not exceed the number of development rights for the property.]

(c) A lot created for use for a one-family residence by a child (as defined in this Chapter) or the spouse of a child of a property owner of a parcel of land that is assessed as agricultural land by the Maryland Department of Assessments and Taxation, and is in agricultural production (as determined by the Agricultural Preservation Board or its successor) is exempt from the density requirements of Section 59-C-9.41 but must meet the density requirements of the zone applicable prior to classification in the Rural Density Transfer Zone, subject to the following requirements and standards:

- (1) Requirements for creating a lot for the use of a one-family residence by a child or the spouse of a child of the property owner:
 - i. The property owner must establish that he or she had legal title to the subject property on or before January 6, 1981;
 - ii. Only one such lot may be approved in Montgomery County for each child or spouse of a child of the property owner, and the intended beneficiary must be 18 years of age or older;
 - iii. The property owner must submit with the application for a preliminary plan of subdivision a notarized affidavit stating the name(s) of each child or spouse of a child to receive a lot, a copy of the birth certificate or adoption documentation for each child

and, when applicable, a marriage certificate verifying status of the spouse of a child of the property owner.

- iv. The number of development rights used for any lots created shall be noted on the record plat along with the name of the child or spouse of a child who is the intended beneficiary;
- v. The subdivision of the lot(s) must be approved in the lifetime of the property owner;
- vi. At any time prior to issuance of a building permit for the construction of a one-family residence on a lot created under this provision, the intended beneficiary may sell or lease the lot; however the Department may not issue a building permit for the construction of any habitable structure to the grantee or lessee of the lot who has acquired a property interest prior to issuance of a building permit to the intended beneficiary.

The intended beneficiary of the lot shall file a declaration among the land records of Montgomery County, in a form approved by the Planning Board, agreeing to include a clause in any contract for the sale or lease of the lot prior to issuance of the building permit, notifying any potential grantee or lessee of the above prohibition against the construction of habitable structures on the lot. This restriction shall be noted on the record plat;

- vii. Following issuance of a building permit for the construction of a one-family residence on a lot created under this provision, the intended beneficiary may not sell or lease the lot or any improvements thereon until the fifth anniversary of the date of the final inspection for a single-family residence constructed on the lot, without the written consent of the Director, which may be provided upon a showing of good cause or in the event of foreclosure. The intended beneficiary shall file a declaration among the land records of Montgomery County in a form approved by the Planning Board, agreeing to the above restriction and acknowledging the potential penalties to the declarant and any grantee or lessee if the restriction is violated. This restriction shall be noted on the record plat.

- (2) A lot created for the use of a one-family residence by a child or the spouse of a child of the property owner must meet the following standards:

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- i. For the purposes of this provision, a “property owner” is defined as the person or persons who have held a continuous property interest in the subject property dating back to January 6, 1981. The definition includes persons jointly holding title, a family trust, family partnership or family-owned corporation; provided, however, that only those family trust, family partnership or family-owned corporation members who are clearly named on formation documents; and have held a continuous property interest in the subject property dating back to January 6, 1981 may benefit from this provision. A corporation or similar entity that is not controlled by, or consists solely of family members is not a property owner, as defined in this section;
- ii. When two or more family members hold an undivided interest in the property, the number of such lots allowed will be based on an equal division of the acres unless the percentage of ownership is otherwise established in a will or other legal document;
- iii. Lots created under this provision shall be included in the count of the permissible number of lots under the base density of the zone for the subject property. However, the number of lots created under this provision may exceed the base density, to the extent that development rights remain available for the subject property;
- iv. The lot(s) created shall be of such size determined to be the smallest area necessary to accommodate a dwelling plus a well and septic system;
- v. To the greatest extent possible lot(s) should be located to avoid the fragmentation of existing farmfields, pasture, or forest;
- vi. The number of such lots created may not exceed the number of development rights assigned to the property at the time of subdivision;
- vii. For any lot created after (the date of approval of these modifications) the **Department** may only issue a building permit for a dwelling on the lot to the child or the spouse of a child designated on the record plat;
- viii. Any building permit issued for construction of a one-family residence on a lot created under this provision shall be conditioned upon the restriction that the intended beneficiary may not sell or lease the dwelling for a period of at least 5 years from the date that the Department approved the final inspection for the dwelling. The **Director** may waive the requirements of

this subsection for good cause or in the event of foreclosure. The Department may enforce the restriction against transfer of property interest under the provisions of Section 8-22 of the County Code.

- (3) This subsection will be valid until January 6, 2011 after which new applications for lots created for the use of a child or the spouse of a child of defined property owners will not be accepted.

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

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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DRAFT 12/2/05

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By:

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

- Eliminating the Child Lot Provision for the Rural Density Transfer Zone

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

DIVISION 59-C-9 "AGRICULTURAL ZONES"
Section 59-C-9.7. "Exempted lots and parcels and existing buildings and permits."
Section 59-C-9.74(b)(4). "Exempted lots and parcels – Rural Density Transfer Zone"

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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:

B-1

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

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

59-C-9.7. Exempted lots and parcels and existing buildings and permits.

* * *

59-C-9.74. Exempted lots and parcels – Rural Density Transfer zone

- (a) The number of lots created for children in accordance with the Maryland Agricultural Land Preservation Program must not exceed the development rights assigned to the property.
- (b) The following lots are exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the Rural Density Transfer Zone.
 - (1) A recorded lot created by subdivision, if the record plat was approved for recordation by the Planning Board prior to the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.
 - (2) A lot created by deed executed on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.
 - (3) A record lot having an area of less than 5 acres created after the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone by replatting 2 or more lots; provided that the resulting number of lots is not greater than the number which were replatted.
 - [(4) A lot created for use for a one-family residence by a child, or the spouse of a child, of the property owner, provided that the following conditions are met:
 - (i) The property owner can establish that he had legal title on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone;
 - (ii) This provision applies to only one such lot for each child of the property owner, and

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- (iii) Any lots created for use for one-family residence by children of the property owner must not exceed the number of development rights for the property.]

(c) Criteria for creating a lot for the use of a one-family residence by a child (as defined in this Chapter) or the spouse of a child, of the property owner:

(1) A lot for the use of a one-family residence by a child or the spouse of a child, of the property owner, is exempt from the density requirements of section 59-C-9.41 but must meet the density requirements of the zone applicable prior to classification in the Rural Density Transfer Zone provided that the following conditions are met:

- i. The property owner can establish that he had legal title on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone;
- ii. Only one such lot may be approved in Montgomery County for each child of the property owner;
- iii. The number of such lots created may not exceed the number of development rights existing on the property at the time of subdivision;
- iv. The property owner must submit with the application for a preliminary plan of subdivision a notarized affidavit stating the names of each child to receive a lot, a copy of the birth certificate or adoption documentation for each child or when applicable a marriage certificate verifying status of the spouse of a child of the property owner;

(2) Standards for creating a lot for the use of a one-family residence by a child or the spouse of a child, of the property owner:

- i. Recognizing that intent of the Rural Density Transfer Zone is to preserve farmland and agriculture, the Planning Board may deny an application for subdivision if the Planning Board finds that viable agricultural activity cannot be sustained on some portion of the subject property submitted for subdivision.
- ii. The number of development rights used for any lots created are to be noted on the record plat along with the name of the child or spouse of a child who is the intended beneficiary;

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iii. For the purposes of this provision, a "property owner" is defined as the person or persons who have held continuous property interest in the subject property. The definition includes persons jointly holding title, or a family trust or family partnership whose members are clearly named on proper supporting documents. A corporation is not a property owner, as defined in this section

iv. When two or more family members hold an undivided interest in the property, the number of such lots allowed will be based on an equal division of the acres unless the percentage of ownership is otherwise established in a will or other legal document.

v. The number of lots permitted under this provision are in addition to the base density of the zone; and

vi. The Department may only issue a building permit for a dwelling on the lot to the child designated on the record plat, and that child must retain ownership of the lot for a period of at least five years from the date that the Department approved the final inspection for the dwelling, unless an exemption is granted by the Director during that time for good cause or in the event of foreclosure. This restriction must be noted on the record plat along with other required information about the subdivision. The Department has exclusive authority to enforce the ownership requirement of this section.

vii. This subsection will be valid until January 6, 2011 after which child lot subdivisions will no longer be allowed in the RDT Zone.

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

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

12/2/05