

M E M O R A N D U M

October 6, 2009

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, ^{JZ} Legislative Attorney

SUBJECT: Zoning Text Amendment 09-01, Sandy Spring/Ashton Rural Village Overlay Zone – Prohibited Uses

Zoning Text Amendment (ZTA) 09-01, sponsored by Councilmember Elrich, was introduced on March 17, 2009. ZTA 09-01 would amend the Zoning Ordinance to prohibit additional uses in the zone. Councilmember Don Praisner requested staff to consult with Planning Board staff on a list of prohibited uses appropriate for a rural village. Councilmember Elrich agreed to sponsor this ZTA after Councilmember Praisner's untimely death.

Public Hearing

On April 21, 2009 the Council conducted a public hearing on ZTA 09-01. The Planning Board recommended approval of ZTA 09-01 with revisions to retain:

- 1) cable communication systems;
- 2) electrical power transmission and distribution lines;
- 3) railroad tracks;
- 4) roof top mounted antennas and related unmanned equipment buildings, equipment cabinets or equipment rooms; and
- 5) telephone offices and communication centers.

The Planning Board also recommended a grandfather clause for development that received a use and occupancy permit before the effective date of the ZTA. In the Planning Board's opinion, the ZTA would meet the original spirit and intent of the Sandy Spring/Ashton Master Plan. The Planning Board's opinion mirrors the recommendations of Planning Staff.

Executive Staff submitted testimony in favor of retaining the following permitted uses:

- 1) power lines and telecommunications facilities;
- 2) antique stores; and
- 3) small dry cleaning and laundry establishments.

Most public testimony generally favored the adoption of ZTA 09-01. The Sandy Spring Business Alliance agreed with the modifications recommended the Planning Board and Executive Staff but recommending allowing the following as permitted uses:

- 1) automobile repair and services;
- 2) parking lots, automobile, for off street uses;
- 3) racquetball, squash, indoor tennis courts, commercial; and
- 4) some degree of local storage.

The landowner and the contract purchaser of a proposed self-storage facility site urged the disapproval of ZTA 09-01. The contract purchaser obtained preliminary plan approval for a self-storage storage facility. In their opinion, the ZTA was proposed solely to prevent a self-storage facility on their site. Further, in their opinion the list of prohibited uses in ZTA 09-01 is arbitrary. They firmly believe that even if ZTA 09-01 is legal, it would be unfair for the Council to adopt it in a manner that affects their project.

Issue

How should the list of prohibited land uses be amended?

The purpose of the Sandy Spring Overlay zone is to implement the vision of the master plan. The Council justifiably relies on the Planning Board in matters of master plan interpretation. Staff recommends amending the uses allowed in the zone consistent with the Planning Board's recommendations.

Should a grandfathering provision be added to the ZTA?

The Maryland Court of Appeals has determined that vesting occurs when construction has started under a validly issued building permit.¹ The Siena Development Corporation has not vested its rights. The landowner could be held harmless from ZTA 09-01 by allowing any project with preliminary plan approval to proceed to construction as a matter of fairness. The Council has sometimes been persuaded by this argument in other situations. However, the Council is not required to grandfather any approved preliminary plans if the public interest is better served by a more absolute prohibition of the named uses. If the Planning Staff can identify current businesses that would be made non-conforming by ZTA 09-01, that could justify grandfathering that activity.

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¹ *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, (1975).

Zoning Text Amendment No: 09-01
Concerning: Sandy Spring/Ashton
Overlay Zone – Prohibited uses
Draft No. & Date: 1 - 3/5/09
Introduced: 03/17/09
Public Hearing: April 21, 2009
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: Councilmember Elrich

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the prohibited land uses in the Sandy Spring/Ashton Rural Village Overlay Zone

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

DIVISION 59-C-18	“Overlay Zones”
Section 59-C-18.18	“Sandy Spring/Ashton Overlay Zone”
59-C-18.182	“Regulations”

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

ORDINANCE

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

1 Sec. 1. DIVISION 59 - C-18 is amended as follows:

2

3 Division 59-C-18. Overlay Zones.

4 * * *

5 Sec. 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone.

6 * * *

7 59-C-18.182. Regulations.

8 * * *

9 (b) Commercial development. Where a lot is zoned either partially or totally in
10 a commercial zone, the following regulations apply:

11 (1) Land uses. All permitted or special exception uses allowed in the
12 underlying zones are allowed in the commercial portion of the overlay
13 zone. The following uses are prohibited in the overlay zones:

14

15 Adult entertainment business

16 Automobile filling station¹

17 Automobile fluid maintenance station

18 Automobile, light truck, and light trailer rentals, outdoor, except any
19 automobile rental business[,] in existence on October 13, 1998
20 may continue as a conforming use, and may be altered,
21 repaired, or replaced in accordance with provisions of the zone
22 in effect at the time the use was established.

23 Automobile repair and services

24 Automobile, truck, and trailer rentals, outdoor

25 Automobile sales, indoor

26 Automobile sales, outdoor

27 Baseball driving range

- 28 Building materials and supplies
- 29 Cable communications system
- 30 Car wash
- 31 Combination retail store
- 32 Department stores
- 33 Dry cleaning and laundry establishments, consisting of no more than
- 34 3,000 square feet of gross floor area
- 35 Eating and drinking establishments, drive-in
- 36 Electrical power transmission and distribution lines
- 37 Fairgrounds, circuses, and amusement parks
- 38 Furniture stores, carpet, or related furnishing sales or service
- 39 Golf driving ranges
- 40 Heliports
- 41 Helistops
- 42 Ice storage
- 43 Laboratories
- 44 Multi-family dwellings, except when included in a structure
- 45 containing retail or commercial uses
- 46 Newspaper, printing and publishing shops
- 47 Parking garages, automobile, for off-site uses
- 48 Parking lots, automobile, for off-site uses
- 49 Pawnshops
- 50 Pipelines, above ground
- 51 Radio and television broadcasting stations and towers
- 52 Railroad tracks
- 53 Racquet ball, squash, indoor tennis and handball courts, commercial
- 54 Rifle or pistol ranges, indoor

- 55 Roller and ice skating rinks
- 56 Roof top mounted antennas and related unmanned equipment
- 57 building, equipment cabinets, or equipment room
- 58 Stadiums or arenas
- 59 Swimming pools, commercial
- 60 Telecommunications facility
- 61 Telephone offices and communication centers
- 62 Warehousing and storage service including:
- 63 (A) Industrial and commercial uses, wholly enclosed; or
- 64 (B) Self-storage facility

65 * * *

66 **Sec.2. Effective Date.** This ordinance takes effect immediately upon the
67 date of Council adoption.

68
69 This is a correct copy of Council action.

70
71 _____
72 Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

April 16, 2009

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 09-01

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 09-01 at its regular meeting on April 16, 2009. By a vote of 4:1, the Board recommends approval of the text amendment as modified by staff and included in the technical staff report.

The text amendment proposes to amend the list of prohibited land uses in the Sandy Spring/Ashton Rural Village Overlay Zone that can be located in the commercially designated areas of the overlay zone. Currently the overlay zone establishes certain development standards and prohibits certain uses from the commercially zoned areas to assist in maintaining and enhancing the rural, small scale character envisioned for the village centers. The subject text amendment recommends the prohibition of additional uses to further achieve the objectives of the overlay zone.

Overall, the proposed additional uses to be excluded from the overlay zone meet with the original spirit and intent of the rural village overlay recommendations of enhancing and maintaining the rural character of the villages by excluding new auto-oriented uses, storage/warehousing-type uses, and large scale retail, service or commercial recreation uses. The Board recommends that five of the proposed exclusions--cable communications systems, electrical power transmission and distribution lines, railroad tracks, roof top mounted antennas and related unmanned equipment buildings, equipment cabinets, or equipment rooms and telephone offices

and communication centers —be retained as permitted uses. The Board believes that the prohibition of cable communications systems, electrical power lines, railroad tracks or telephone offices and communication centers does little to negatively impact the intent of the overlay zone. In the case of roof top mounted antennas and related unmanned equipment buildings, the development standards governing the use (Section 59-A-6.14) minimize the impact of this use in the rural village overlay zone since the standards require that a building be at least 30 feet in height in any commercial zone in order to permit a roof top mounted antenna and related unmanned equipment building. The Sandy Spring/Ashton Rural Village Overlay Zone limits building height in underlying commercial zones to 24 feet except that at the time of site plan review the Planning Board may allow additional height up to 30 feet if the Board finds that the additional height is compatible with the adjoining uses and is consistent with the intent of the master plan.

The Planning Board further recommends that a grandfather provision be included that allows those new prohibited uses if they have received a use and occupancy permit prior to the effective date of the legislation. This policy has typically been used for projects that have gone that far in the development process.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on a motion by Vice-Chairman Robinson, seconded by Commissioner Cryor, with Vice-Chairman Robinson, Commissioners Cryor and Presley and Chairman Hanson voting in favor of the motion, and with Commissioner Alfandre in opposition, at its regular meeting held in Silver Spring, Maryland, on Thursday, April 16, 2009.



Royce Hanson
Chairman

RH: GR



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

MCPB
Item 7
4/17/09

DATE: April 3, 2009
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RK*
Ralph Wilson, Zoning Supervisor *RW*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the list of prohibited land uses in the Sandy Spring/Ashton Rural Village Overlay Zone.

TEXT AMENDMENT: No. 09-01
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Elrich
INTRODUCED DATE: March 17, 2009
PLANNING BOARD REVIEW: April 16, 2009
PUBLIC HEARING: April 21, 2009; 1:30pm

STAFF RECOMMENDATION: APPROVAL with modifications

Staff recommends approval of the proposed Zoning Text Amendment (ZTA) with modifications to:

- Make plain language clarifications;
- Continue to permit cable communication systems;
- Continue to permit electrical power transmission and distribution lines;
- Continue to permit railroad tracks; and
- Continue to permit roof top mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room
- Add a grandfather provision to permit uses that have received a use and occupancy permit prior to the effective date of the legislation.

Zoning Text Amendment 09-01 (Attachment 1) proposes revisions to Section 59-C-18.18 (Sandy Spring/Ashton Rural Village Overlay Zone) that amend the list of prohibited uses that can be located in the commercially designated areas of the overlay zone. Currently the overlay zone establishes certain development standards and prohibits certain uses from the commercially zoned areas to assist in maintaining and enhancing the rural, small scale character envisioned for the

village centers. The subject text amendment recommends the prohibition of additional uses to further achieve the objectives of the overlay zone.

ANALYSIS

Applicable Master Plan Guidance

The Approved and Adopted Sandy Spring/Ashton Master Plan envisioned the Sandy Spring and Ashton rural villages as remaining in land use patterns that characterize the existing rural settlement. To fulfill this goal for the commercial areas it recommended, amongst other objectives, the following:

Flexibility to create better design with site plan review;

Height limits consistent with the Sandy Spring Historic District and an appropriate FAR limit for the size and scale of the village centers;

Exclusion of new auto-oriented or typically large-scale uses that are inconsistent with traditional rural development patterns; and

Flexibility for on-street parking to count toward the parking requirement.

In addition to the provisions above, the Plan recommends a number of development guidelines that, with design review, will help ensure that new development maintain the small scale envisioned for the village centers. These guidelines include:

Encouraging “active fronts” on buildings (porches and street entrances);

Creating pedestrian “traffic” with uses and designs that invite frequent visits;

Encouraging uses that provide services to local residents at a compatible scale; and

Placing most off-street parking out of view of common space and active fronts, rather than between buildings and the street.

Commercial Uses

As currently adopted, the overlay zone allows all permitted or special exception uses allowed in the underlying zones for the commercial portion of the overlay zone except for the following uses: automobile filling stations; automobile fluid maintenance stations; outdoor automobile, light truck and light trailer rentals except any automobile rental business in existence on October 13, 1998; automobile sales; baseball driving ranges; building materials and supplies;

department stores; drive-in eating and drinking establishments; fairgrounds, circuses and amusement parks; heliports and helistops; ice storage; laboratories; multi-family dwellings, except when included in a structure containing retail or commercial uses; newspaper printing and publishing shops; indoor rifle or pistol ranges; roller and ice skating rinks; stadiums or arenas; and commercial swimming pools. It should be noted that the O-M, C-1 and C-2 zones are the only underlying commercial zones located in the overlay zone.

The sponsor of ZTA 09-01 proposes to exclude the following additional land uses from the rural village overlay zone: adult entertainment businesses; automobile repair and services; automobile, truck, and trailer rentals, outdoor; cable communications systems; car wash; combination retail store ("big box retail"); dry cleaning and laundry establishments, consisting of no more than 3,000 square feet of gross floor area; electrical power transmission and distribution lines; furniture stores, carpet, or related furnishing sales or service; golf driving ranges; parking garages, automobile, for off-site uses; parking lots, automobile, for off-site uses; pawnshops; pipelines, above ground; radio and television broadcasting stations and towers; railroad tracks; racquet ball, squash, indoor tennis and handball courts, commercial; roof top mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room; telecommunications facility; telephone offices and communication centers; warehousing and storage service including:(A) industrial and commercial uses, wholly enclosed; or (B) self-storage facilities.

Overall, the proposed additional uses to be excluded from the overlay zone meet with the original spirit and intent of the rural village overlay recommendations of enhancing and maintaining the rural character of the villages by excluding new auto-oriented uses, storage/warehousing-type uses, and large scale retail, service or commercial recreation uses. **Staff recommends that five of the proposed exclusions--cable communications systems, electrical power transmission and distribution lines, railroad tracks, roof top mounted antennas and related unmanned equipment buildings, equipment cabinets, or equipment rooms and telephone offices and communication centers — be retained as permitted uses.** Staff does not believe that cable communications systems, electrical power lines, railroad tracks or telephone offices and communication centers impact the intent of the overlay zone. In the case of roof top mounted antennas and related unmanned equipment buildings, staff believes that development standards governing the use (Section 59-A-6.14) minimize the impact of this use in the rural village overlay zone. Specifically, Section 59-A-6.14 states that a building must be at least 30 feet in height in any commercial zone in order to permit a roof top mounted antenna and related unmanned equipment building. The Sandy Spring/Ashton Rural Village Overlay Zone limits building height in underlying commercial zones to 24 feet except that at the time of site plan review the Planning Board may allow additional height up to 30 feet if the Board finds that the additional height is compatible with the adjoining uses and is consistent with the intent of the master plan.

RECOMMENDATION

Based on the above analysis, staff recommends that ZTA 09-01 be approved as amended. In addition to the modifications discussed above, staff recommends that a grandfather provision be included that allows those new prohibited uses if they have received a use and occupancy permit prior to the effective date of the legislation. This policy has typically been used for projects that have gone that far in the development process.

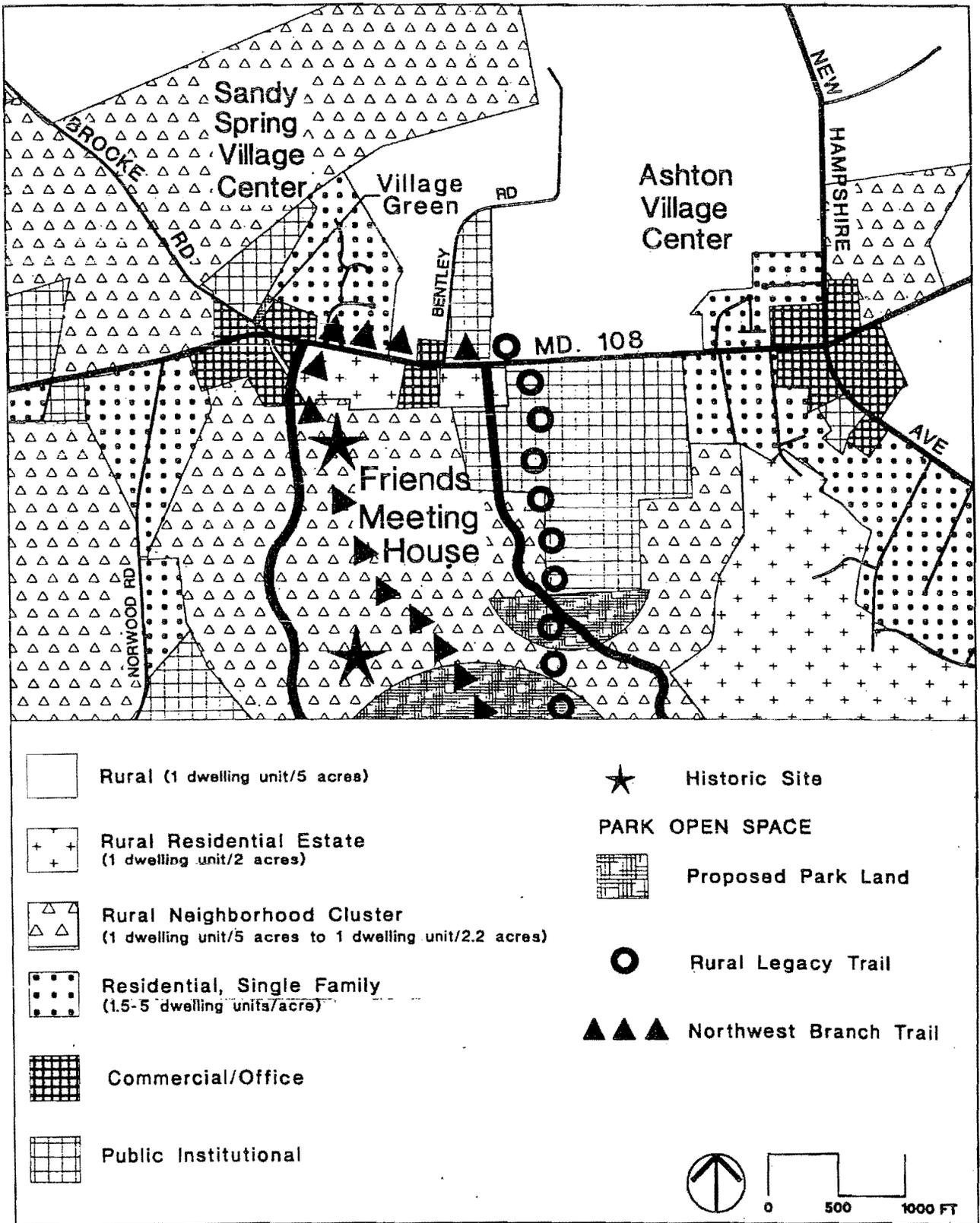
GR

Attachments

1. Proposed Text Amendment No. 09-01 as modified by staff
2. Maps from the Sandy Spring/Ashton Master Plan

VILLAGE CENTERS

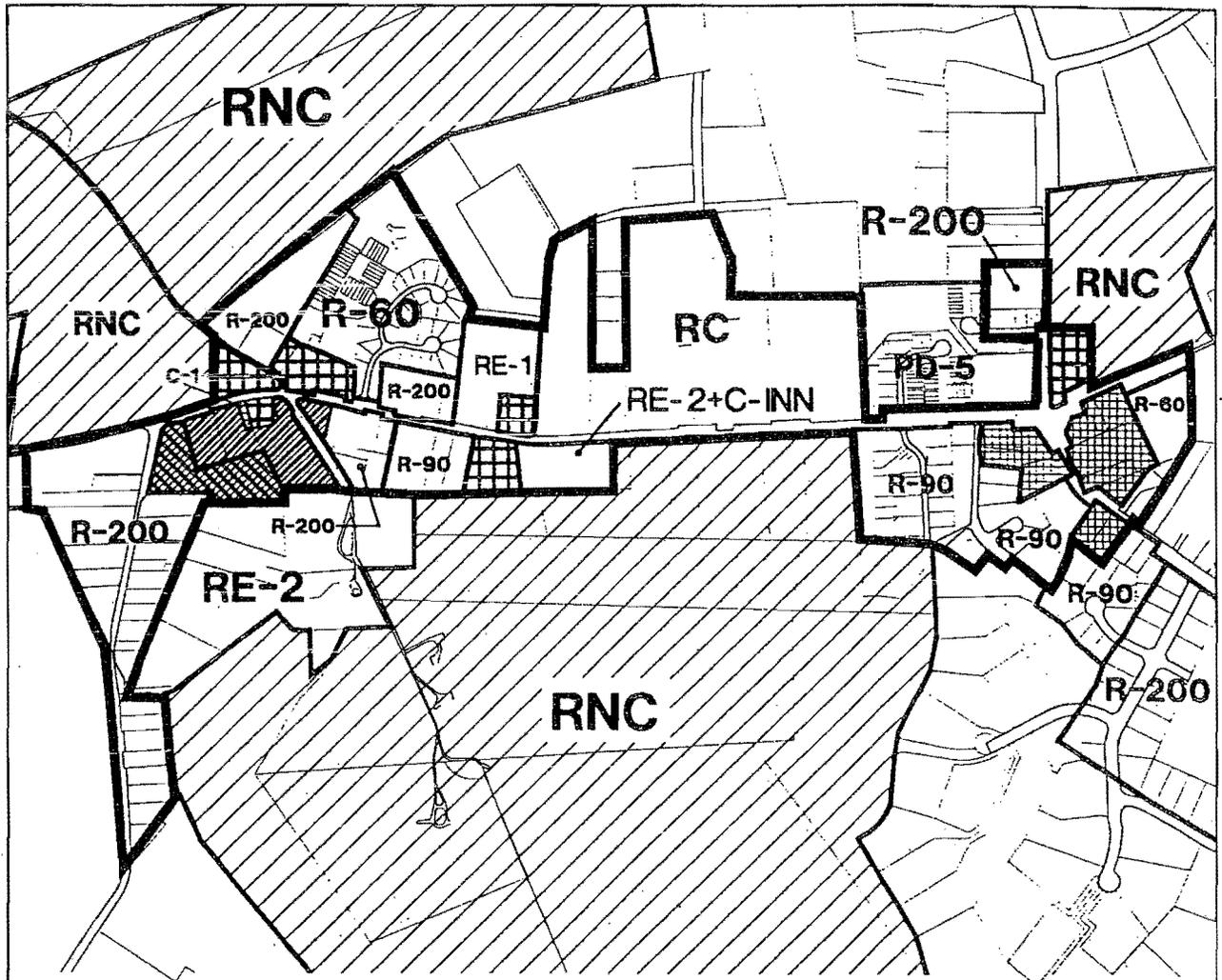
FIGURE 14

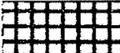


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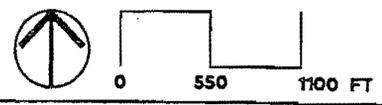
ZONING PLAN FOR THE VILLAGE CENTERS

FIGURE 15



RNC		Rural Neighborhood Cluster	C-2		General Commercial
RE-1		Residential, One Family	O-M		Office Building, Moderate Intensity
RE-2		Residential, One Family	RT-10		Residential, Townhouse
R-200+		Residential, One Family			Sandy Spring/Ashton Rural Neighborhood Overlay
RMH-200		Residential, One Family			
R-90+		Residential, One Family			
R-60+		Residential, One Family			
PD 5		Planned Development			
C-1		Commercial/Office			

* R-200, R-90 & R-60 can include attached units under the MPDU option, R-90 and R-60 can under the cluster option.



Good Evening.

2

For the record, my name is Michelle Layton. Along with Ms. Donna Selden, I co-chair the Sandy Spring Ashton Rural Preservation Consortium (SSARPC).

As our name implies, the SSARPC's mission is to support development in Ashton and Sandy Spring that conforms to the 1998 Sandy Spring/Ashton Master Plan, in order to preserve the historic rural villages of Sandy Spring and Ashton. We are, in fact, Pro-Master Plan, not anti development.

The SSARPC is made up of community volunteers who are energetically dedicated to ensuring that future development within the 1998 Sandy Spring/Ashton Master Plan boundaries recognizes the community's desire to remain rural and conforms to that Plan. We encourage appropriate business and commercial expansion. The proposed Zoning Text Amendment will contribute to the process by clarifying what uses are permitted in the Sandy Spring/Ashton Rural Village Overlay Zone and set the tone for future development in these rural towns.

The SSARPC believes that the ZTA proposed by Councilman Mark Elrich, on behalf of the late Don Praisner, is the right direction if the vision of the Sandy Spring/Ashton Master Plan and Rural Village Overlay Zone is to be respected. Former Councilman Praisner understood Sandy Spring and Ashton. He understood its desire to remain rural. He understood the Rural Overlay Zone and how important it is to this area. We are hopeful that today's election, where many of our members volunteered, results in another councilmember who understands where we live and why we live here.

We believe that this updated list of prohibited uses is consistent with the ones already approved by the Planning Board and County Council. It also serves to "preserve and enhance the rural village character," as described in the Rural Overlay Zone's purpose clause. The SSARPC is appreciative that the Planning Board recommended approval of this ZTA and, that the County Council will have an opportunity to ensure that the Sandy Spring/Ashton area retains the rural atmosphere that the Master Plan so specifically describes, by limiting uses in the Overlay Zone that are not appropriate to a rural village.

The communities of Sandy Spring and Ashton had the foresight years ago to develop a Master Plan to protect its unique historical roots that go back 250 years. They hoped to ensure that development did not destroy the sense of community and history that has continuously existed all those years. Over the last 5 years, it has been shown that this is a talented community committed to whatever it takes to ensure that development adheres to our Master Plan. We need the proposed Zoning Text Amendment to help us with our struggle to ensure that the Master Plan is respected.

By approving the ZTA before you, the Council assures the Sandy Spring/Ashton community that you have heard the pleas of those who chose to live here because of its history and rural nature and it gives those new to the area confidence that what they see and feel today will remain true to the intent of the Sandy Spring/Ashton Master Plan and Rural Village Overlay Zone to keep this area rural forever.

Thank you.

April 21, 2009
18000 Bentley Road
Sandy Spring, MD 20860

Phil Andrews, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland, 20850

RE: ZTA 09-01

Dear President Andrews,

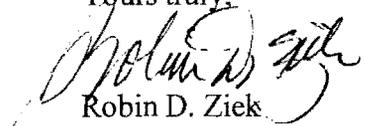
I am President of the Bentley Road Civic Association. Everyone I have talked with is supportive of this Amendment, but as we have not had a formal meeting, I will speak on my own behalf.

I ask you to support the proposed amendment. This provides a much-needed refinement of the *Sandy Spring-Ashton Master Plan*, which you adopted in 1998. Since then, some have struggled with the concept of "Rural Village" that is promoted in the *Master Plan*. However, through various reviews over the past 11 years, we have all come to better understand of this concept as it applies to future growth and development in Sandy Spring. Small size and scale, with shopkeepers who become committed to the community, and uses that serve the needs of the local community are all facets of our Rural Village.

The Rural Village concept is crucial to maintain the historic character of Sandy Spring. We are an important component of the County's history and of the historic preservation program in general. Through efforts of private homeowners, business owners, and county agencies such as Park and Planning, we are the focus of several important county programs. This includes the Rachel Carson Trail, with our segment that focuses on important contributions to the Underground Railroad as people fleeing slavery passed through Sandy Spring. This also includes Woodlawn, the Red Door Store, and the Friends Meeting House, as well as the numerous private historic homes. Each site is linked with our historic roads such as Norwood Road, with the 1820s home of that name. Even with MD 108, a state road with a lot of traffic, our *Master Plan* required minimum road widening so that it can still serve as our Main Street.

Our history is very important to us, and the *1998 Master Plan* reflects an understanding that future growth should reinforce what everyone loves about Sandy Spring – that it is small and personal. This was distilled to the concept of "Rural Village" and we strongly support that concept today, as we look forward to more commercial growth in Sandy Spring. This proposed amendment will go a long way to clarifying the intent of the adopted *Master Plan*. Please give this your support.

Yours truly,


Robin D. Ziek



Sandy Spring Business Alliance
Promoting Smart Business Development in Sandy Spring

Historic Stabler Buildings
Sandy Spring, Maryland 20860

DATE: April 21, 2009
TO: Montgomery County Planning Board
FROM: Sandy Spring Business Alliance
PURPOSE: To amend the list of prohibited land uses in the Sandy Spring/Ashton Rural Overlay Zone
TEXT AMENDMENT: Zoning Text Amendment No. 09-01
INTRODUCED BY: Councilmember Elrich (March 17, 2009)

ALLIANCE RECOMMENDATION: APPROVAL with modifications

The Sandy Spring Business Alliance recommends approval of the proposed Zoning Text Amendment (ZTA) with modifications to:

- Continue to permit Automobile Repair and Services (23)
- Limit definition of Automobile, truck, and trailer rentals (24) to include only large retail endeavors, but allow small retail establishments (24)
- Redefine Furniture stores, carpet, or related furnishing sales or service(38) to allow small retail establishments offering items such as antiques, crafts, tapistry, and furnishings.
- Continue to permit Parking lots, automobile, for off-site uses(48) to allow parking sharing among all Sandy Spring businesses. We recommend prohibition Commercial Pay Parking
- Continue to permit Racquet ball, squash, indoor tennis courts, commercial(53) to help promote public health
- Redefine Roof top mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room(56) to ensure that small systems, such as providing local wireless access, is not prevented.
- Refine definition Warehousing and storage service including: a) Industrial uses, wholly enclosed; or b) self-storage facility (62) to allow some degree of local storage.

INTRODUCTION

The Sandy Spring Business Alliance (SSBA) is a group of 75 Sandy Spring Businesses (20860 zip code only) who are committed to the development and promotion of business within the Sandy Spring Business district. It is the overall concern of this group that impediments not be put in place which would stifle commerce in the area. The group is committed in keeping with the Preservation goals of the local community and wish to grow with those goals in mind.

Re: Zoning Text Amendment to Section 59-C-18.182
April 21, 2009

My name is David Hartge. I live at 136 Haviland Mill Road. My family has lived on our farm for seven generations. We have lived in the Sandy Spring area since the arrival of James Brooke in 1728.

I am here today to encourage the County Council to adopt the Zoning Text Amendment to the Rural Overlay Zone included in the Sandy Spring/Ashton Master Plan. One of the central tenants of the Sandy Spring/Ashton Master plan is the emphasis placed on preserving the area's "rural character." The rural character that was identified in 1980, when the master plan was first adopted, continues to be in great evidence today.

I would like to point out two measures of rural character that are significant: The first is the amount of open space in the Sandy Spring/Ashton area. When traveling by car from Ashton, particularly east and north, one is immediately surrounded by open fields and farmland. Before the Ashton traffic light disappears from the rearview mirror, one can see fields dotted with bales of hay every spring; across the road are grazing horses.

Our farm is about a mile north of Ashton. In 1994 we placed our 70 acres in a conservation easement in cooperation with the Maryland Environmental Trust. In keeping with our belief in the value of preserving the rural character of Sandy Spring and Ashton, we have guaranteed that our farm will remain open space for perpetuity. Other families in the area have taken similar measures.

Another measure of rural character is evident in the people who live in the Sandy Spring/Ashton area. The Sandy Spring farmers prospered in the early 19th century because of their innovative farming techniques. These methods were so effective that the farmland remained productive for generations. As the crops in the fields flourished, so did the families that raised them. That is why I am sitting here today. This is one of the truly unique aspects of the Sandy Spring/Ashton area. You can read about it in the Sandy Spring Museum. While you are there you can also learn about two of Sandy Spring's most enduring institutions: The Sharp Street Church, the first African-American Church in Montgomery County, and the Sandy Spring Friends Meeting House, which celebrated its 250th anniversary a few years ago.

My family tree is populated with names that have been here for many generations. We treasure the character of our community.. Many of those who have settled here more recently have been drawn to our area by exactly that quality of rural character.

We who live in Sandy Spring are proud of our community, our history, and the land that surrounds us, and we've taken great care to preserve each of these things in a number of ways, among them: by supporting the SS Museum, helping to shape the Sandy Spring/Ashton Master plan, participating in conservation easements, keeping the family down on the farm. Please help us continue in this worthy effort by adopting the Zoning Text Amendment. Thank you.

6

LINOWES |
AND | BLOCHER LLP
ATTORNEYS AT LAW

April 21, 2009

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com

The Honorable Phil Andrews
President
Montgomery County Council
100 Maryland Avenue, Sixth Floor
Rockville, Maryland 20850

Hand Delivered

Re: ZTA 09-01; Sandy Spring/Ashton Overlay Zone – Prohibited Uses (the “ZTA”)

Dear Mr. Andrews and Members of the County Council:

This firm represents Siena Development Corporation (“Siena”), owner and developer of ezStorage self-storage facilities in the region, including several in Montgomery County. Several months ago, after conducting thorough zoning due diligence analyses, Siena entered into a contract to purchase the property commonly referred to as the “Lansdale Property,” a 1.8± acre parcel of land located on Maryland Route 108 in Sandy Spring, located between the rural villages of Ashton and Sandy Spring (the “Property”). The Property is zoned C-2, and as a result of the Sandy Spring/Ashton Sector Plan it was also designated in the Sandy Spring/Ashton Overlay Zone. As a result of this comprehensive planning and zoning, self-storage use of the Property is permitted as a matter of right, subject to site plan approval by the Montgomery County Planning Board (the “Planning Board”).

While the Property was approved for retail use as part of the Auburn Village at Sandy Spring Subdivision in 2003, the Property was not platted and as a result the preliminary plan of subdivision expired for the Property. Upon entering into the purchase contract for the Property, Siena filed a preliminary plan of subdivision on June 18, 2008 (Preliminary Plan No. 120080410 – the “Preliminary Plan”), in order to gain entitlements to build an ezStorage self-storage facility on the Property. On January 8, 2009, and subsequently by Resolution dated February 10, 2009, the Planning Board approved the Preliminary Plan based upon the finding that the Preliminary Plan application met all statutory requirements, including consistency with the Sandy Spring/Ashton Sector Plan. In approving the Preliminary Plan, the Planning Board emphasized the need for Siena to further establish compatibility of the ezStorage facility with the surrounding area in subsequently seeking site plan approval for the Property.

(18)

The Honorable Phil Andrews
April 21, 2009
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At the time of Preliminary Plan approval, Siena had already made significant design modifications to its prototype ezStorage facility based upon Planning Staff and community input and a study of established architectural character in the area. Attached hereto as Attachment "1" is a photo of existing site conditions; attached as Attachment "2" and Attachment "3" are elevations and illustrative views from Maryland Route 108, respectively, prepared at the time of Preliminary Plan approval reflecting the efforts of Siena at that time to further establish compatibility by incorporating design characteristics intended to allow the self-storage facility to fit with the character of other uses in the area. These efforts notwithstanding, following Preliminary Plan approval Siena retained the services of a highly reputable architect and town land planner, Michael Watkins, to further assist in developing a site plan to present to the surrounding community and Planning Staff to address the required compatibility at this location.

While Siena has acted responsibly and in good faith in pursuing the established zoning entitlement processes for the Property (albeit not having great success in engaging the community in productive dialogue despite efforts to do so), the ZTA is proposed solely and directly to terminate the ability of Siena to continue with the entitlement process by proposing to eliminate self-storage use as a permitted use in the Sandy Spring/Ashton Overlay Zone. While other uses are proposed in the ZTA to also become prohibited, there is absolutely no question that this ZTA is directed at ezStorage (made obvious by the timing of the ZTA, the lack of any other relevant effects of the ZTA in this area, and it being proposed as a piecemeal amendment to the Zoning Ordinance at a time where targeted amendments to the code have been ridiculed by both the District Council and the Planning Board, especially in light of current efforts to comprehensively amend the Zoning Ordinance). Obviously, Siena is vehemently opposed to this ZTA.

Putting aside all legal arguments relative to the proposed ZTA, enactment of this ZTA should be judged in terms of whether this proposed act is fair, equitable, necessary and in advancement of "good government." Whether or not a site plan application for this ezStorage facility will meet the compatibility criteria allowing the Planning Board to approve a site plan for this use at this location is a question that should be left to be resolved by the Planning Board through its typical public hearing and review process. To stop this process in mid-stream and to deny Siena the ability to continue to proceed in good faith reliance upon the established processes is not only unfair and inequitable to this contract purchaser and the current owner of the Property, but it also serves to send a message to others wanting to invest in Montgomery County that the County is a risky and unpredictable jurisdiction. This is not a good message especially in the current economic climate.

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As indicated above, Siena is committed to work with planning staff and community in the site plan review process relating to establishing compatibility of this use at this location. The nature of the use itself, and in particular the manner in which ezStorage operates its facilities (and Councilmembers and anyone else is invited to visit any of the ezStorage facilities in the region to judge this on their own), is safe, clean, and of very low impact (with *de minimus* trip generation). With appropriate architecture, landscape and other aesthetic treatment, this use should be considered as an ideal commercial use of the Property to buffer the surrounding residential community from the busy Maryland Route 108 corridor, while also providing for an appropriate transition of uses between the two rural villages of Sandy Spring and Ashton. Another consideration for Siena in pursuing the site plan review process is whether a mix of uses can be added to the self-storage use that would be economically viable and considered to be in furtherance of establishing compatibility with surrounding uses and the transition of the bookend rural villages.

None of these efforts and opportunities can be explored if the ZTA is approved by the District Council. Rather, approval of the ZTA is essentially a legislative statement that the Council does not believe that the Planning Board can adequately evaluate compatibility of uses through site plan review. This is an unnecessary and inappropriate result that is certainly not in keeping with the strong tradition of good government in Montgomery County.

For all of these reasons, we urge the District Council to deny this thinly veiled legislative effort to terminate the ongoing entitlement process for a proposed ezStorage facility on the Property. Legislative intervention in the Planning Board's site plan review process is an unnecessary and knee-jerk reaction to this proposed use of the Property, and objective evaluation of Siena's well-intended, but ignored, good faith efforts to date to develop and operate an attractive, low-intensity use of the Property that will generate additional tax base for Montgomery County should be applauded by the County Council, not summarily and prejudicially dismissed.

Thank you for your consideration of this position, and we have confidence that the Council will act in a responsible, predictable, and equitable manner in denying this ZTA.

Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple



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Testimony of Stuart Barr, Lerch Early & Brewer, Chtd. on behalf of The Lansdale Family, owners of property located at 500 Olney Sandy Spring Road (MD Route 108)

In Opposition to Zoning Text Amendment 09-01, Sandy Spring/Ashton Rural Village Overlay Zone – Prohibited Uses

April 21, 2009 Montgomery County Council Public Hearing

Good evening members of the Council. I am Stuart Barr with Lerch, Early & Brewer. I am honored to be here today representing the Lansdale Family and their property at 500 Olney Sandy Spring Road (MD Route 108) in Sandy Spring. The Lansdale property is zoned C-2 (General Commercial) and is located within the Sandy Spring/Ashton Rural Village Overlay Zone. The Lansdale family opposes this Zoning Text Amendment since it directly affects their property, its potential available uses, and its corresponding value.

The Lansdale Family has lived in Montgomery County and owned this and other property in Sandy Spring for almost 100 years. In the 1990s, prior to the adoption of the 1998 Sandy Spring/Ashton Master Plan, the Lansdale Family worked extensively and cooperatively with the planning staff, Planning Board, and County Council on the master plan recommendations for the Lansdale properties. The property that is the focus today was previously zoned industrial (I-1) and was rezoned to C-2 as part of the comprehensive Sectional Map Amendment following the adoption of the Master Plan in 1998. Shortly thereafter, the Council adopted the overlay zone in the same comprehensive fashion. The property is located between the Sandy Spring and Ashton village centers. For the past 10-15 years, the Lansdale Family has relied on the uses which are allowed in the C-2 zone and not prohibited by the overlay zone to determine the family's potential use of the property.

As everyone is aware, Siena Development Corporation has proposed a self-storage facility use on the Lansdale property, and a preliminary plan of subdivision was approved by the Planning Board earlier this year. Currently, self-storage is permitted by right in the C-2 zone and not prohibited by the overlay zone. This ZTA proposes to eliminate self-storage as a permitted use. While the ZTA applies to the entire overlay zone and addresses multiple uses, it directly targets the Lansdale property and is clearly a piecemeal attempt to stop the proposed self-storage facility project.

This Zoning Text Amendment should not be considered a referendum on the proposed use for the Lansdale property. The question is not whether a proposed self-storage facility use on the Lansdale property is a good idea or not. The question is whether this type of Zoning Text Amendment is a good idea or not. This type of Zoning Text Amendment is a poorly crafted bill for a variety of reasons.

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The list of prohibited uses does not make sense. What is wrong with a car wash in the overlay zone? Or a dry cleaner? Or a furniture store? Or a self-storage facility, if it is creatively and appropriately designed? The list is arbitrary.

The proposed ZTA interferes with the existing regulatory process. The proposed use on the Lansdale property still must undergo site plan review, which has demanding standards. Site plan review will address concerns about compatibility, scale, and design. We ask the Council to deny the ZTA and let the site plan review process go forward.

This is not good planning. The overlay zone is a byproduct and integral part of the master plan process. An amendment to the overlay zone also should be a product of a comprehensive master plan review process. The trend in the County does not favor the piecemeal Zoning Text Amendment approach as a way of conducting planning. When there has been a choice recently between planning by ZTA and planning by *bona fide* amendments to the master plan, master plans get amended.

This is not good for business. Adoption of this type of ZTA sends the message that when a project is controversial, the land use table becomes debatable and discretionary. Zoning law must have some reliability. Applicants and property owners rely on the use table to tell them how property can and cannot be used before undertaking the expensive and arduous entitlement process. This type of ZTA further erodes any level of confidence applicants have in a fair process.

In order of preference, we ask the Council to:

1. Reject the ZTA entirely as piecemeal legislation that would be more appropriate in the context of an amendment to the Master Plan, involving a comprehensive master plan process, or perhaps as part of the comprehensive Zoning Ordinance rewrite.
2. Adopt the ZTA but only with the addition of noxious uses, such as adult entertainment and pawn shops, and without the addition of self-storage use since the ZTA improperly targets a pending project.
3. Adopt the ZTA, as amended above, but with a more appropriate and realistic grandfathering provision. Grandfather projects either at submission or approval of a preliminary plan of subdivision, if subdivision is required, or at submission of a use and occupancy permit application if subdivision is not required.

Thank you very much for your consideration.