

**MEMORANDUM**

April 20, 2010

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz,  Legislative Attorney  
SUBJECT: Zoning Text Amendment 09-11, Residential Zones - Agricultural Vending

**Background**

Zoning Text Amendment (ZTA) 09-11, sponsored by Councilmembers Berliner, Leventhal, and Trachtenberg, was introduced on November 17, 2009. This ZTA would allow what most residents would call “farmers’ markets” on larger parcels of land (more than 4 acres) adjacent to major roads (4 or more lanes), if the lot is in use for a non-residential purpose, the use is at least 100 feet from the nearest dwelling, and the structure or vehicle used for sales is temporary. Only a Certified Agricultural Producer would be allowed to sell products.

On January 12, 2010 the Council held a public hearing. The Planning Board Staff recommended approval of ZTA 09-11. The Planning Board recommended that the problem of farmers’ markets be addressed comprehensively in the Zoning Ordinance Rewrite. The Board was particularly concerned that the large parcel size required would result in large scale produce vending.<sup>1</sup> A property owner and a vender testified in support of ZTA 09-11 as introduced. Some testimony also favored allowing more lots to have a farmers’ market.

On January 21, 2010 the Committee held a worksession on the ZTA. The Committee requested additional information on only using the distance from houses (to avoid incompatible situations) and deleting the minimum lot size requirement. The Committee did not recommend any changes to the ZTA.

**Wine sales now allowed at farmers’ markets**

The Maryland Assembly passed legislation that will affect wine sales at farmers’ markets. Every Maryland winery will be allowed 12 permits per year to sell wine by the bottle at farmers’ markets in

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<sup>1</sup> The sustainability audit in the Planning Board’s “Zoning Montgomery” report recommended being more permissive with farmers’ markets. Planning Staff recommended approval of ZTA 09-11 as introduced.

Montgomery County.<sup>2</sup> Each farmers' market will be limited to 1 winery. Samples of wine (1 ounce) may be distributed to adults.<sup>3</sup> The potential for wine sales may affect the Council's willingness to increase the opportunities for farmers' markets.

**Alternatives to ZTA 09-11 as introduced**

1) Reduce lot size required

ZTA 09-11 would require a minimum lot size of 4 acres. Planning Staff, using GIS data, estimated that there are 293 privately owned parcels that satisfy the standards of ZTA 09-11 as introduced. Reducing the parcel size standard to 2 acres or more would add another 253 parcels. *If the Committee wants to allow agricultural vending more liberally, staff recommends this alternative.*

2) Eliminate lot size requirement

ZTA 09-11 would allow agricultural vending 100 feet from a dwelling unit. Assuming a lot has houses on its 2 sides, and those neighboring houses are set back off their lot line by 8 feet, the minimum frontage of a lot used for vending must be 184 feet plus the width of the vending operation.<sup>4</sup> If the vending operation was conducted on a 20 foot wide area, the minimum width would be 204 feet. Assuming a neighboring house behind the vending lot has a 20 foot setback, the minimum depth of a qualifying lot would be 100 feet. The minimum lot area required to meet the setbacks from dwellings in ZTA 09-11 would be 20,400 square feet. All RE-1, RE-2, and RE-2C lots would have the minimum area, but some of those lots could also lack the minimum frontage.

There are approximately 3,400 lots in the County that are vacant or non-residential lots abutting 4 lane roads. Approximately 200 lots are used for a non-residential purpose or vacant, and are less than 20,400 square feet in area. If the acreage requirement were removed from ZTA 09-11, approximately 3,200 lots would be allowed to host farmers' markets.

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<sup>2</sup> HB823; the permits are in addition to 4 permits allowed for special events.

<sup>3</sup> SB858.

<sup>4</sup> As the side yard setback of neighbors increases, the minimum width (frontage) decreases. In the RE-1, RE-2, and RE-2C zones, a minimum 17 foot side yard setback is required. Assuming 20 feet for the width of the vending area, the minimum frontage would be 186 feet.

Zoning Text Amendment No: 09-11  
Concerning: Residential zones –  
Agricultural vending  
Draft No. & Date: 1 – 11/10/09  
Introduced: November 17, 2009  
Public Hearing: January 19, 2010  
Adopted:  
Effective:  
Ordinance No:

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

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By: Councilmember Berliner

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

- Allow the sale of farm produce by Certified Agricultural Producers in residential zones, under certain circumstances.

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

DIVISION 59-C-1      “RESIDENTIAL ZONES, ONE-FAMILY”  
Section 59-C-1.31    “Land uses”

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

**ORDINANCE**

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

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

**DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

\* \* \*

**59-C-1.31. Land uses.**

\* \* \*

<b>(g) Miscellaneous.</b>	<b>RE-2</b>	<b>RE-2C</b>	<b>RE-1</b>	<b>R-200</b>	<b>R-150</b>	<b>R-90</b>	<b>R-60</b>	<b>R-40</b>	<b>R-4 plex</b>	<b>RMH 200</b>
Accessory buildings or structures for housing animals or fowl.	P	P	P	P	P	P	P			
Accessory buildings, structures, and uses. <sup>52</sup>	P	P	P	P	P	P	P	P	P	P
<u>Agricultural vending*</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			
Kennels, noncommercial. <sup>31</sup>	P	P	P	P	P <sup>30</sup>					
Security pavilion	P <sup>50</sup>		P <sup>50</sup>	P <sup>50</sup>						
Signs, in accordance with article 59-F.	P	P	P	P	P	P	P	P	P	P

\* At least 100 feet from a dwelling, a vendor who is a Certified Agricultural Producer under Chapter 47 regulations is permitted to sell produce on a lot or parcel:  
 1) used for non-residential purposes other than agricultural vending;  
 2) larger than 4 acres in size;  
 3) abutting a roadway with 4 or more lanes, and  
 4) the structure or vehicle used for sales remains in the same location for less than 24 hours.

\* \* \*

13           **Sec. 5.       Effective Date.** This ordinance takes effect immediately upon  
14 the date of Council adoption.

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16 This is a correct copy of Council action.

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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

January 7, 2010

**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. 09-11

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 09-11 at its regular meeting on January 7, 2010. After careful review of the material of record, the Board voted 4:0 to provide the following comments.

Overall, the Board supports providing opportunities for vending of farm products near residential areas. The proposed text amendment would allow what residents might typically refer to as “farmers’ markets” to be established as “agricultural vending” with somewhat broader application in that they could be established in most one-family residential zones if: (1) located on a lot or parcel greater than 4 acres that is also used for non-residential purposes other than agricultural vending; (2) the lot or parcel abuts a roadway with 4 or more lanes, and (3) the structure or vehicle used for sales remains in the same location for less than 24 hours.

The Board believes that the parameters proposed for the establishment of agricultural vending help to mitigate some possible adverse impacts on surrounding residential development. However, we are concerned that the broadening of the farm market provisions in one-family residential zones could have more far-reaching impacts than anticipated by the sponsor and therefore should be addressed more comprehensively as part of the Zoning Ordinance Rewrite project. For example, the Board is concerned that requiring the location of agricultural vending on lots or parcels

greater than 4 acres could potentially result in a larger scale of farm produce vending that is out of character with the surrounding neighborhoods.

The Planning Board also questioned how the process would be handled for allowing agricultural vending "by-right" on non-residentially used parcels where the existing use is governed by a special exception.

### 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 position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, January 7, 2010.



Royce Hanson  
Chairman

RH: GR



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

**MCPB**  
**Item #7**  
**1/7/10**

**DATE:** December 21, 2009  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
Ralph Wilson, Zoning Supervisor, Development Review *EDW*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To allow the sale of farm produce by Certified Agricultural Producers in residential zones, under certain circumstances

**TEXT AMENDMENT:** No. 09-11  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Berliner  
**INTRODUCED DATE:** November 17, 2009  
**PLANNING BOARD REVIEW:** January 7, 2010  
**PUBLIC HEARING:** January 12, 2010; 1:30 PM

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**STAFF RECOMMENDATION:** APPROVAL to allow the sale of farm produce by Certified Agricultural Producers by right in residential zones, under certain circumstances.

**BACKGROUND/ANALYSIS**

The proposed text amendment, as sponsored by Councilmember Berliner, would allow what residents might typically refer to as “farmers’ markets”. However, although similar to farmers’ markets in many respects, “agricultural vending” as proposed under ZTA 09-11 has somewhat broader application in that it could be established in most one-family residential zones if: (1) located on a lot or parcel greater than 4 acres that is also used for non-residential purposes other than agricultural vending; (2) the lot or parcel abuts a roadway with 4 or more lanes, and (3) the structure or vehicle used for sales remains in the same location for less than 24 hours. Other limitations are proposed to regulate potential impacts in the smaller lot residential zones. Only a Certified Agricultural Producer would be allowed to sell products. Agricultural vending must be located at least 100 feet from any dwelling.

County regulations require that a Certified Agricultural Producer be a vendor of regionally grown products. Regionally grown products are those produced within the five state areas of Maryland, Virginia, West Virginia, Delaware, and Pennsylvania and the

city of Washington, DC. A Certified Agricultural Producer must comply with the following requirements.

- (a) A Certified Agricultural Producer must sell only fresh fruits, vegetables, herbs, cut flowers, small trees, or plants produced by the Agricultural Producer.
- (b) A Certified Agricultural Producer may sell non-potentially hazardous prepackaged goods and eggs. These products must be approved by the Montgomery County Health Department.
- (c) A point of sale license must be obtained before operating.
- (d) Regionally grown products must be sold only by the agricultural producer or a representative of the agricultural producer.
- (e) A Certified Agricultural Producer must be responsible for the conduct of anyone operating under a Point of Sale License issued by the Department of Permitting Services.

Although most, if not all, residents refer to agricultural vending as “farmers’ markets”, the Zoning Ordinance is very restrictive in its definition of a farm market:

***Farm market:** The display and retail sale from a farm of: (1) agricultural products produced on the farm where the farm market is located, or (2) agricultural products produced on another farm under the control of the owner or operator of that farm market. A farm market includes the display and sale of farm food products certified as non-potentially hazardous by the Department of Health and Human Services. Up to 25 percent of the farm market display and sales area may be used for display and sale of agricultural products not produced on a farm under the control of the owner or operator of the farm market. In the event of crop failure due to drought, insect damage, disease, or other cause beyond the control of the owner or operator of the farm market, the Department of Permitting Services upon the recommendation of the Department of Economic Development and the Montgomery County Agricultural Advisory Committee may allow for a limited period of time more than 25 percent of the farm market display and sales area to be used for agricultural products from off the farm where the farm market is located.*

One of the key differences between the “agricultural vending” in the proposed new zoning category “agricultural vending” and a “farm market” is that the display and retail sale of agricultural products for a farm market must occur on a farm. In the one-family residential zones, a farm market is a permitted use in the RE-2, RE-2C, RE-1 and R-200 zones—zones with a typical minimum lot size ranging from 20,000 square feet to 2 acres. An agricultural vending use would be inclusive of the aforementioned zones as well as the R-60, R-90 and R-150 zones—with a caveat that the lot or parcel be a minimum size

of 4 acres. To further minimize the impact of an agricultural vending establishment on residential neighborhoods, such establishments could only be located on parcels or lots along major roadways of 4 lanes or greater (not typical of an internal subdivision street). Further, agricultural vending could not occur within 100 feet of any dwelling and the structure or vehicle used for sales cannot remain in the same location for more than 24 hours. Staff believes that the parameters proposed for the establishment of agricultural vending help to mitigate any possible adverse impacts on surrounding residential development while also allowing Certified Agricultural Producers to provide healthy, fresh local produce and goods for area residents.

### **RECOMMENDATION**

For the reasons stated above, staff recommends approval of the zoning text amendment to allow the sale of farm produce by Certified Agricultural Producers in residential zones, under certain circumstances.

Attachment 1 depicts the proposed text amendment as introduced.

GR

#### Attachments

1. Proposed Text Amendment 09-11