

MEMORANDUM

October 7, 2010

TO: Planning, Housing, and Economic Development (PHED) Committee
FROM: Marlene Michaelson, Senior Legislative Analyst
SUBJECT: ZTA 10-12: Child Lots

Zoning Text Amendment (ZTA) 10-12, sponsored by Councilmember Knapp, was introduced on July 27, 2010 and was the subject of a public hearing on September 21, 2010. Currently, property owners with Rural Density Transfer (RDT) zoning who owned property before 1981 are entitled to create building lots for their children or their spouse's children without any limitations. While the zoning ordinance allows child lots, the language is unclear, leading to differing interpretations regarding the number of allowed child lots and whether the child is expected to live on the child lot. The Council's Ad Hoc Agricultural Advisory Group recommended amending the zoning ordinance to clarify these provisions and reduce the likelihood of having child lots transferred immediately after creation to someone other than the child. Although the number of properties that qualify for child lots is decreasing over time, it is important to clarify the intent of the child lot provisions in the zoning ordinance. This ZTA would:

- 1) add a provision for child lots to the intent of the RDT zone;
- 2) explicitly allow child lots in addition to the density otherwise allowable;
- 3) clarify the requirement to retain a development right for each child lot;
- 4) require the owner to personally establish continuous ownership since 1981;
- 5) allow up to 3 child lots for each qualified owner, with a provision for hardships;
- 6) require a minimum tract size based on the number of child lots created;
- 7) establish a maximum lot size for a child lot; and
- 8) require that the child for whom the lot was created own the child lot for at least 5 years, with a provision for hardships.

The Planning Board reviewed the ZTA and **recommended approval** of the ZTA with some modifications described in the attached memorandum (see © 13 to 16). Each of their suggested changes is discussed below and most are incorporated in the Staff recommendations which follow. Attached on © 2 to 12 is the ZTA with staff recommended changes shown with double underlines and double brackets.

Background

In 2006, the Council appointed an Ad Hoc Agricultural Policy Working Group to work on various issues related to the Agricultural Reserve, including Child Lots. At that time, there was a concern that there had been some abuses of the child lot provisions in the zoning ordinance leading to the creation of multi-house developments not occupied by the children. During its review, the Working Group determined that the zoning ordinance was unclear on a number of issues related to child lots, including whether the child was required to own the home and whether density for child lots was in addition to the general permissible “market” density of one house for every 25 acres. Additionally, the group noted that there were no restrictions on the transfer of child lots to third parties after building permits are issued. If child lots can be immediately transferred, they may provide an incentive to build more houses than may otherwise be built.

The Working Group made the following recommendations:

- The child must own the home constructed on the child lot for five years.
- Exceptions to the ownership requirement should be allowed for hardship cases.
- A child should not be allowed to lease the home or enter into a contract for sale for five years after construction. However, the landowner’s child should be allowed to lease the house to another immediate family member (e.g., the grandchild of the original owner).
- A landowner can only create one child lot for each child.
- Each child lot should require the use of one TDR.
- A child lot can be created after the death of the landowner if the landowner’s intent was to create the lot and is established in writing through a will or other document admissible in probate.
- A majority of land on any parcel with child lots must be reserved for agriculture and prohibited from developing.
- The record plat must indicate that the property contains a child lot.
- The building permit must be issued only in the child’s name.
- There should be substantial monetary penalties to discourage violation of these requirements.
- Whether there should be a minimum acreage requirement for child lots or a maximum size are appropriate issues for follow-up work.

In May 2007, the Council introduced a ZTA that reflected the Working Group’s recommendations (see © 24 to 31). Shortly after that, the Planning Board submitted an alternative ZTA that would have effectively eliminated child lots (since they would no longer be allowed in addition to base density, nor would there be any other benefit of designating a lot as a child lot. See © 32 to 36). The Planning Board submitted a revised ZTA in May 2010 that allowed 3 child lots in addition to base density and limited the size of the lot (see © 49 to 54). Although it did not include a requirement for ownership or any limit on the ability to transfer the lot, the cover memorandum from the Planning Board indicated its recommendation that this be added to the ZTA. This ZTA was not introduced by the Council. The ZTA introduced by Councilmember Knapp includes the limits on the number of child lots and lot size recommended by the Planning Board and the ownership requirements, limits on transfers, and penalties for violations as recommended by the Working Group. A chart comparing the key provisions of the 4 different versions of this text amendment is attached at © 1.

ISSUES

Farm Tenant Dwelling Unit and Accessory Units

The ZTA includes a **drafting error which inadvertently** would require a transferable development right for farm tenant dwellings and accessory units. This was not Councilmember Knapp's intent. There was virtually unanimous opposition to this provision, and Staff recommends that it be dropped and the original language restored. The staff-recommended change appears on © 6 at lines 59 to 66.

Size of Lot

The ZTA would limit units to "one acre or the minimum area necessary for approval of well and septic". The Planning Board reviewed this and believed it needed to revise the language to indicate it should be no larger than 3 acres unless a septic easement is not feasible and a larger lot is necessary for on-site well and septic. While Staff supports the Planning Board's intent, the specific language recommended on © 53 was somewhat contradictory, and Staff worked with the staff from the Planning Department and Executive to refine this language. The concept is to ensure that the Planning Board has the ability to limit lot size, but can allow an increase if necessary to accommodate a septic system, particularly if off-site septic easements are not allowed. Staff recommends the following language:

A lot created for a child must be no larger than [[one acre, or]] the minimum area necessary for approval of well and septic. The Planning Board may approve a lot larger than 3 acres only if an on-site well and septic system is not feasible and the lot cannot be served by a septic easement. The area of the driveway stem on a flag lot must not be included in the maximum area limit.

So that there is no confusion on the issue, Staff believes that the opinion adopting the ZTA should indicate that the State of Maryland does not currently allow off-site septic easements. Planning Board consideration of whether an off site septic easement is possible would only occur if the State changes its policy and specifically allows off-site septic easements.

The staff-recommended change appears on © 7 at lines 102 to 105.

Grandfathering Provisions

The Council received a significant amount of testimony both requesting grandfathering provisions for existing child lots and property owners who have already applied for child lots and also expressing concern that the grandfathering provision not be too broad. This is an important issue. Although there is ambiguity in the zoning ordinance language, there was no ambiguity in the Planning Department's implementation of the child lot provisions in the Ordinance for approximately 25 years. During that period, Planning Department staff assured property owners that they could have one child lot per child **in addition** to the base density (1 unit per 25 acres), provided that they retained a development right for each lot. Staff believes it is inappropriate to impose a new limit on the number of child lots for those who have already invested time and money seeking development approvals under the long standing interpretation of the ordinance.

Staff has identified 4 categories of property owners for whom grandfathering may be appropriate: platted lots with **existing built** child lots, deeded lots with **existing built** child lots, unbuilt child lots

with approved preliminary plans, and unbuilt child lots where the property owner has submitted a preliminary plan. (Staff does not recommend grandfathering for property owners of unbuilt child lots who have not yet submitted a preliminary plan.) The following chart summarizes the staff recommendation for the different categories of properties with the greatest exemption provided for those who have built lots and the fewest exemptions for those who do not yet have approved plans.

GRANDFATHERING PROVISIONS FOR CHILD LOT ZTA

	Limits on Number of Lots and Total Track Size	Limits on Size of lot	Requirement that the child owns the lot and limits on transfer
Existing child lots with approved record plats	Exempt (up to one unit per 25 acres and one additional unit for each child)	Exempt from restrictions on lot size	Exempt from ownership/transfer provisions
Existing deeded child lots that have not yet been platted	Exempt (up to one unit per 25 acres and one additional unit for each child) provided the lot is recorded on a plat by July 1, 2012 and there is a development right for each child lot	Exempt from restrictions on lot size	Exempt from ownership/transfer provisions
Approved Preliminary Plans	Exempt (up to one unit per 25 acres and one additional unit for each child)	Exempt from restrictions on lot size	Applies
Preliminary Plans submitted by October 1, 2010	Exempt (up to one unit per 25 acres and one additional unit for each child)	Applies	Applies

The Council received testimony asking that Maryland Agricultural Land Preservation Foundation (MALPF) easements be exempt from ZTA standards. Since most easements have similar or more stringent limitations than those proposed in the ZTA, there should be no need to grandfather most easements. However, one situation was brought to the Council’s attention in which a MALPF easement allowed fewer total units than would be allowed under this ZTA, but allowed 4 child lots. To make sure this property owner and others in similar situations are not prevented from obtaining the lots allowed under the MALPF easement, Staff recommends the following language be included in the ZTA:

For a tract of land encumbered by a State or County Agricultural Land Preservation Easement, the total number of lots, including child lots, is governed by the requirements of the easement recorded in the land records of Montgomery County, if there is a sufficient number of development rights and the total number of lots does not exceed the density of one residential dwelling unit for every 25 acres.

This provision, in legislative format, is on © 10 to 11, lines 185 to 191.

Enforcement and Penalties

Several of those who testified before the Council emphasized the need to enforce the provisions in the ZTA, particularly those related to ownership and limits on transferring ownership for 5 years. The joint

staffs worked on this provision to strengthen it and are recommending a new provision which requires deed restrictions and a certificate of compliance from the Planning Department if it determines that a child lot may be transferred under the provisions of the ZTA. If the property owner attempts to transfer the property before the 5 year period is over, the title search conducted as part of the closing will identify the limitations, and this may have a greater deterrent impact than a monetary penalty. The Staff revisions also clarify that every day a transfer restriction is violated is a new violation, which allows for a more significant monetary penalty. It is somewhat unclear whether M-NCPPC or the Executive will be responsible for enforcement (depending on whether the specific requirement is a condition of the subdivision approval or the building permit). Additional work may be necessary on this issue.

Hardships

The ZTA permits the Planning Board to allow more than 3 child lots if it finds that limiting the number of child lots to 3 “would be a hardship”. It does not define the term hardship. In its comments, the Planning Board indicated that it split 2-2 on this provision. Two members felt that there were situations that would constitute a hardship and there should be discretion for extenuating circumstances. The other two members considered that decisions regarding hardships were not an appropriate issue for the Planning Board. Staff was also concerned that there was no upper limit on the number of hardship child lots or a minimum requirement for lot size.

Staff reviewed this section with Staff from DED, the County Attorney’s Office, and the Planning Department and the combined staffs believed this section could be improved by providing greater detail on the parameters under which additional lots could be considered (e.g., the size of the property), a limit on additional lots (no more than 5 total), and requiring the Agricultural Preservation Advisory Board (APAB) to make a recommendation to the Planning Board as to whether the additional lot will promote the continuation of the family farm unit or otherwise meet the purposes of the RDT zone. The specific Staff recommended language appears on © 7 on lines 86 to 100.

Timing of Ownership

The ZTA indicates that the child be listed as the owner at the time of the lot creation. Since a child lot can be created well in advance of the time the lot is occupied, the Planning Board recommended changing this provision to indicate that the child should be listed as the owner of the lot **at the time of building permit, not lot creation**. Staff supports this recommendation.

The Planning Board recommended and staff-supported change appears on © 8 at lines 107 to 109.

Eligibility for Child Lots

The ZTA does not amend the current zoning ordinance requirement that only property owners who have owned their properties prior to 1981 are eligible for child lots. The Planning Board recommends that any land rezoned to RDT be eligible for a child lot, creating a much larger pool of potential property owners eligible for child lots (e.g., the new area rezoned to RDT as part of the Clarksburg Master Plan in 1994). This provision allows child lots to be created in perpetuity as long as the Council rezones land to the RDT zone. By contrast, the Working Group noted that the existing ordinance requirement for ownership prior to 1981 would mean that the potential for new child lots would end once the pre-1981

owners have created all eligible child lots or sold their property. Their recommendations were based on the assumption that the potential for new child lots would be extinguished relatively soon (in the next 20 to 40 years). Staff does not support the Planning Board provision, which could significantly increase the number of potential child lots.

BLT Exemption

The Agricultural Preservation Advisory Board asked that properties with Building Lot Termination (BLT) easements be exempt from the ZTA (so that retained residential dwelling units are not impacted). Since BLTs may not be used to purchase child lots and this ZTA is focused on child lots, Staff does not believe this is necessary. The ZTA does not impact market rate units that may be allowed under a BLT easement. Moreover, Staff notes that the text amendment advertisement does not address this issue. If the Committee believes a revision to the zoning ordinance is necessary related to BLT easements, it should be addressed in a new ZTA.

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COMPARISON OF CHILD LOT TEXT AMENDMENTS

	Ad Hoc Agricultural Working Group Recommendations (5/07)	Planning Board Draft (5/07)	Planning Board Draft (5/10)	Councilmember Knapp (7/10)
Requires that the child own the lot	Yes	No	See Footnote ¹	Yes
5-year limit on the ability to transfer ownership	Yes	No	See Footnote ¹	Yes
Limit on ability to lease child lot ²	Yes	No	No	Yes
Allows density above 1 per 25 acres	Yes	No	Yes	Yes
Number of Child Lots	One lot for each child who will own the lot for at least 5 years (in addition to base density). No limit on total number of child lots	None in addition to base density otherwise allowed by the zone	Up to 3 (in addition to base density) depending on the size of the farm and number of children	Up to 3 (in addition to base density) depending on the size of the farm and number of children, with provision for hardships
Size of Lot	No size restrictions, but the majority of the land in the subdivision must be reserved for agriculture	No restrictions	No larger than one acre, or the minimum area necessary for approval of well and septic but in no case greater than 3 acres	No larger than one acre, or the minimum area necessary for approval of well and septic (See staff recommended changes.)
Eligibility	The property owner must have recorded title before 1/7/81	Any property zoned RDT, if the owner had legal title before the date of the rezoning to RDT	Any property zoned RDT, if the owner had legal title before the date of the rezoning to RDT	The property owner must have recorded title before 1/7/81
Ability to create lot after death of owner	If intent is expressed in a will or codicil admissible in probate proceedings	No	No	No
Penalties for violations	Yes	No	See Footnote ³	Yes

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¹ Although the Draft submitted by the Planning Board in May 2010 **did not** include a requirement for ownership or a limit on transfers for 5 years, the cover letter and staff report indicate their support for such a provision.

² Both the Ad Hoc Agricultural Working Group and Councilmember Knapp's text amendment do not allow the owner to lease the house except to an immediate family member (defined as parents, spouse, children or siblings). The two Planning Board versions **do not** address leasing.

³ Although the Draft submitted by the Planning Board in May 2010 did not include enforcement provisions, Planning Department Staff indicate the Board supported a staff recommendation to add such a requirement.

Zoning Text Amendment No.: 10-12
Concerning: RDT Zone - Child Lot
Standards
Draft No. & Date: 2 – 10/1/10
Introduced: July 27, 2010
Public Hearing: September 21, 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**

By: Councilmember Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the density calculations in the RDT Zone to exclude a child lot under specified conditions;
- amend the standards to approve a child lot in the RDT Zone; and
- generally amend the child lot provisions in the RDT Zone

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

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATIONS”
Section 59-A-2.1	“Definitions”
DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.41	“Density in RDT zone”
Section 59-C-9.74	“Exempted lots and parcels-Rural Density Transfer zone”

And adding:

Section 59-C-41.1	“Child Lots in the RDT Zone”
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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:

1 **Sec. 1. DIVISION 59-A-2 is amended as follows:**

2 **59-A-2.1. Definitions.**

3 In this Chapter, the following words and phrases have the meanings indicated:

4 * * *

5 **Child Lot:** A lot created for use for a one-family dwelling unit by a child, or the
6 spouse of a child, of a property owner.

7 * * *

8 **Immediate Family Member:** A person's parents, spouse, children, and siblings.

9 * * *

10 **Sec. 2. DIVISION 59-C-9 is amended as follows:**

11 DIVISION 59-C-9. AGRICULTURAL ZONES.

12 * * *

13 **Sec. 59-C-9.2. Purposes or intent of the zones.**

14 * * *

15 **59-C-9.23. Intent of the Rural Density Transfer zone.**

16 The intent of this zone is to promote agriculture as the primary land use in sections
17 of the County designated for agricultural preservation in the General Plan, [[and]]
18 the Functional Master Plan for Preservation of Agriculture and Rural Open Space,
19 and other master plans. This is to be accomplished by providing large areas of
20 generally contiguous properties suitable for agricultural and related uses and
21 permitting the transfer of development rights from properties in this zone to
22 properties in designated receiving areas.

23
24 Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural
25 operations are permitted at any time, including the operation of farm machinery.
26 No agricultural use can be subject to restriction on the grounds that it interferes
27 with other uses permitted in the zone, but uses that are not exclusively agricultural

28 in nature are subject to the regulations [prescribed] in [[this]] [division] Division
29 59-C-9 and in [division] Division 59-G-2, "Special Exceptions-Standards and
30 Requirements."

31

32 The intent of the child lot option in the Rural Density Transfer zone is to facilitate
33 the continuation of the family farming unit or to otherwise meet the purposes of the
34 RDT zone.

35 * * *

36 **59-C-9.4. Development standards.**

37 The following requirements apply in all cases, except as specified in the optional
38 standards for cluster development set forth in sections 59-C-9.5 and 59-C-9.57 and
39 the exemption provisions of section 59-C-9.7.

40 **59-C-9.41. Density in RDT zone.**

41 [Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-
42 9.6 for permitted transferable density.) The following dwelling units on land in the
43 RDT zone are excluded from this calculation, provided that the use remains
44 accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- 45 (a) A farm tenant dwelling, farm tenant mobile home or guest house as defined
46 in section 59-A-2.1, title "Definitions."
- 47 (b) An accessory apartment or accessory dwelling regulated by the special
48 exception provisions of division 59-G-1 and 59-G-2.]

49 [[Except as provided in subsection (a) or (b), only one one-family dwelling unit per
50 25 acres is permitted. (See Section 59-C-9.6 for permitted transferable density.)
51 Density above one one-family dwelling unit per 25 acres is allowed if:

- 52 (a) the dwelling unit is accessory to a farm, is not on a separate parcel or lot,
53 and is either:

- 54 (1) a farm tenant dwelling, farm tenant mobile home, or guest house; or

- 55 (2) an accessory apartment or accessory dwelling regulated by the special
56 exception provisions of Division 59-G-1 and 59-G-2;
57 (b) the lot is a child lot under Section 59-C-9.41.1; and
58 (c) a building right is retained for each dwelling unit.]]
59 Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-9.6
60 for permitted transferable density.) The following dwelling units on land in the
61 RDT zone are excluded from this calculation, provided that the use remains
62 accessory to a farm. Once the property is subdivided, the dwelling is not excluded:
63 (a) A farm tenant dwelling, farm tenant mobile home, or guest house as defined
64 in section 59-A-2.1, title "Definitions."
65 (b) An accessory apartment or accessory dwelling regulated by the special
66 exception provisions of Division 59-G-1 and 59-G-2.

67 **59-C-9.41.1. Child Lots in the RDT Zone.**

- 68 (a) **Applicability.** A child lot above the density of one one-family dwelling unit
69 per 25 acres is allowed in the RDT zone only if the following requirements
70 are satisfied.
71 (1) The property owner must have:
72 (A) recorded title to the property before January 7, 1981;
73 (B) personally applied for approval to create the lot; and
74 (C) retained a development right for each lot.
75 (2) The Planning Board must not approve more than one child lot for each
76 child of the property owner, regardless of the number of properties
77 owned.
78 (3) [[Unless the Planning Board finds that a limit on the number of child
79 lots would be a hardship.]] Except as provided in subsection 59-C-
80 9.41.1(a)(4), a maximum of 3 child lots can be established for a
81 qualifying property owner under subsection (1):

- 82 (A) one child lot is allowed on a tract of land of at least 25 acres;
- 83 (B) two child lots are allowed on a tract of land of at least 70 acres;
- 84 (C) three child lots are allowed on a tract of land of at least 120
- 85 acres.

86 (4) The Planning Board may approve up to two additional child lots
87 above the maximum number allowed in Section 59-C-9.41.1(C)(3) if
88 the additional child lot:

- 89 (A) is not encumbered by a State or County Agricultural Land
- 90 Preservation Easement;
- 91 (B) meets the applicability requirements in Section 59-C-9.41.1;
- 92 (C) is on the landowner's only real property holdings in the County;
- 93 and
- 94 (D) the tract of land for four child lots is at least 170 acres and the
- 95 tract of land of land for five total child lots is at least 220 acres.

96 In determining whether to approve the additional child lots, the
97 Planning Board must consider any recommendation from the
98 Agricultural Preservation Advisory Board (APAB) about whether the
99 additional lot will promote the continuation of the family farm unit or
100 otherwise meet the purposes of the RDT zone.

101 ~~[(4)]~~(5) A lot created for a child must be no larger than [[one acre, or]]
102 the minimum area necessary for approval of well and septic. The
103 Planning Board may approve a lot larger than 3 acres only if an on-
104 site well and septic system is not feasible and the lot cannot be served
105 by a septic easement. The area of the driveway stem on a flag lot
106 must not be included in the maximum area limit.

107 ~~[[5]]~~(6) When a building permit application is initially filed ~~[[child lot~~
108 is initially recorded]], the child for whom the lot is created must be the
109 listed owner of the lot in the County land records.

110 (b) **Building Permit Restricted.** A building permit for a one-family dwelling
111 unit on a child lot must be issued only to:

- 112 (1) a child of the property owner;
- 113 (2) the spouse of a child of the property owner;
- 114 (3) a contractor for a child of the property owner; or
- 115 (4) a contractor for the spouse of a child of the property owner.

116 (c) **Transfer restricted.** Except as provided in ~~[[subsection]]~~ subsections (c)(1)
117 and (c)(2), ownership of a child lot must not be transferred or leased within 5
118 years of the date of the Department of Permitting Services' final inspection
119 of the dwelling unit.

- 120 (1) The owner of the child lot may only lease the lot to an immediate
121 family member.
- 122 (2) Ownership of a child lot may be transferred if the Planning Board
123 finds a hardship after the date of final inspection, such as death of the
124 child or a bona fide foreclosure of the mortgage or deed of trust.

125 ~~[[d)]~~ **Penalty for Violations.**

- 126 (1) Except as provided in subsection (d)(2), any violation of this
127 subsection is subject to the penalty and enforcement provisions in
128 Section 59-A-1.3.
- 129 (2) The Planning Board may take legal action to stop or cancel any
130 transfer or building permit of a child lot if any party to the transfer or
131 the building permit does not comply with all requirements of Section
132 59-C-9.41.1. The Planning Board may recover any funds improperly
133 obtained from any sale or lease of a child lot in violation of this

134 subsection, plus costs and interest at the rate prescribed by law from
135 the date a violation occurred.

136 (e) **Covenant required.** A covenant between the property owner and the
137 Montgomery County Planning Board must be recorded in the Montgomery
138 County land records. The covenant must:

- 139 (1) be recorded simultaneously with the record plat;
140 (2) identify the transfer restrictions in subsection (c); and
141 (3) identify the penalties for violations as identified in subsection (d).]]

142 (d) **Penalty for Violations.** Any violation of this subsection is subject to the
143 penalty and enforcement provisions in Section 59-A-1.3. Every day a
144 transfer restriction is violated is a new violation.

145 (e) **Deed Restrictions and Certificates of Compliance.**

146 (1) Any deed or other instrument conveying title from the owner of the
147 property to a child must be signed by both the grantor and the grantee.

148 (2) In any deed or other instrument conveying title from the owner of the
149 property to a child, the grantor must clearly and conspicuously state,
150 and the grantee must clearly and conspicuously acknowledge, that the
151 conveyed property is a child lot subject to the requirements of
152 subsection (c).

153 (3) If the Planning Director determines that a child lot may be transferred
154 under subsection (c)(2), the Director must issue a certificate of
155 compliance to the owner of the child lot in a form appropriate for
156 recordation in the land records. The certificate is conclusive evidence
157 of the owner's compliance with subsection (c).

158 (f) **Provisions for existing child lots and preliminary plan applications with**
159 child lots filed before October 1, 2010.

160 (1) A tract of land of any size with a child lot with an existing dwelling
161 unit on a plat recorded before {effective date} and an existing
162 dwelling on a deeded parcel that records an approved plat before July
163 1, 2012 may use the following provisions:

164 (A) one lot for every 25 acres plus one additional lot for each child
165 lot;

166 (B) a child lot of any size;

167 (C) no limitations on ownership.

168 (2) A tract of land of any size with a preliminary plan approved before
169 October 1, 2010 is subject to the ownership and transfer provisions of
170 Section 59-C-9.41.1 and may record a plat among the land records of
171 the County using the following provisions:

172 (A) one lot for every 25 acres plus one additional lot for each child
173 lot;

174 (B) a child lot of any size.

175 (3) A tract of land of any size with a preliminary plan application filed,
176 but not approved, before October 1, 2010 must satisfy all of the
177 provisions of Section 59-C-9.41.1 except it may be approved with a
178 density of one lot for every 25 acres plus one additional lot for each
179 child lot.

180 * * *

181 **59-C-9.7. Exempted lots and parcels and existing buildings and permits.**

182 * * *

183 **59-C-9.74. Exempted lots and parcels—Rural Density Transfer zone.**

184 (a) [[The number of lots created for children [in accordance with] under the
185 Maryland]] For a tract of land encumbered by a State or County Agricultural
186 Land Preservation Easement, [[Program must not exceed the development

187 rights assigned to the property and retained by the property owner]] the total
188 number of lots, including child lots, is governed by the requirements of the
189 easement recorded in the land records of Montgomery County, if there is a
190 sufficient number of development rights and the total number of lots does
191 not exceed the density of one residential dwelling unit for every 25 acres.

192 (b) The following lots are exempt from the area and dimensional requirements
193 of section 59-C-9.4 but must meet the requirements of the zone applicable to
194 them [prior to their classification in the Rural Density Transfer zone] before
195 [[January 7, 1981]] their classification in the Rural Density Transfer zone.

196 (1) A recorded lot created by subdivision, if the record plat was approved
197 for recordation by the Planning Board [prior to the approval date of
198 the sectional map amendment which initially zoned the property to the
199 Rural Density Transfer Zone] before [[January 7, 1981]] the approval
200 date of the sectional map amendment which initially zoned the
201 property to the Rural Density Transfer Zone.

202 (2) A lot created by deed executed [on or] before [the approval date of the
203 sectional map amendment which initially zoned the property to the
204 Rural Density Transfer Zone] [[January 7, 1981]] the approval date of
205 the sectional map amendment which initially zoned the property to the
206 Rural Density Transfer Zone.

207 (3) A [record] recorded lot having an area of less than 5 acres created
208 after [the approval date of the sectional map amendment which
209 initially zoned the property to the Rural Density Transfer Zone]
210 [[January 7, 1981]] the approval date of the sectional map amendment
211 which initially zoned the property to the Rural Density Transfer Zone
212 by replatting 2 or more lots; provided that the resulting number of lots
213 is not greater than the number which were replatted.

214 (4) A lot created for use for a one-family [residence] dwelling by a child,
215 or the spouse of a child, of the property owner, [provided that the
216 following conditions are met] if the lot satisfies the requirements of
217 59-C-9.41.1. [:

218 (i) The property owner can establish that he had legal title on or
219 before the approval date of the sectional map amendment which
220 initially zoned the property to the Rural Density Transfer Zone;

221 (ii) This provision applies to only one such lot for each child of the
222 property owner; and

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

226 * * *

227 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
228 Council adoption.

229

230 This is a correct copy of Council action.

231

232

233

Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIRMAN

September 20, 2010

The Honorable Nancy Floreen, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Dear Ms. Floreen:

At their regular meeting on Thursday, September 16, 2010, the Planning Board reviewed draft Zoning Text Amendment (ZTA) 10-12, sponsored by Councilmember Knapp, to amend the provisions for child lots in the Rural Density Transfer (RDT) Zone. The Planning Board unanimously approved the staff recommendation to approve ZTA 10-12, with modifications identified in the discussion.

Ms. Rebecca Walker and Ms. Katharine Sexton, representing the Barnesville Oaks property, Mr. Frank Jamison of Poolesville, Ms. Caroline Taylor, representing the Montgomery Countryside Alliance, Ms. Dolores Milmoie, representing the Audubon Naturalist Society, and Mr. William Moser of Damascus participated in the discussion.

The technical staff report is attached. Please note that Section 6 of the report was revised by staff. The Planning Board recommends that the portion of the ZTA discussed in Section 6 of the staff report, namely **59-C-9.41. "Density and TDR retention"**, not be included as part of the Child Lot provisions. The Board received testimony that the notice of the Council's public hearing did not make it clear that this was a topic under review.

The Planning Board's specific recommendations are as follows: (Unless stated, the Board's vote on modifications was a unanimous 4-0).

1) Applicability requirements and exempted lots and parcels 59-C-9.41.1.(a)(1)(A) and 59-C-9.74(b)

The proposed ZTA requires that, to create child lots, property owners establish ownership as of January 7, 1981, the date the RDT zone was applied to the major part of the Agricultural Reserve under SMA G-266. However, portions of the Damascus planning area were changed to RDT in 1982, and a significant portion of the Clarksburg planning area was changed from R-200 to RDT in 1994. The January 6, 1981 date only applies to the portions of the County that were rezoned under G-266 and it does not cover all of the lands currently zoned RDT in the County. The Planning Board recommends amending the January 7, 1981 date to "...the date of the adoption of the sectional map amendment that rezoned the Property to RDT."

(13)

2) Number and proportion of child lots 59-C-9.41.1.(a)(3)

The Planning Board endorses this entire Section with the following exception:
The Board was split 2-2 on Section 59-C-9.41.1 (a) (3) which would require the Board to decide whether the limit on the number of child lots would be a hardship. Two members felt that there were situations that would constitute a hardship and that there should be discretion for extenuating circumstances. The other two members considered that decisions regarding hardships were not an appropriate issue for the Planning Board.

3) Size of child lot 59-C-9.41.1.(a)(4)

The Planning Board recommends a modification (in bold) to this sub-section as follows:

*"A lot created for a child must be no larger than one acre, or the minimum necessary for approval of well and septic, **but in no case greater than 3 acres. The Planning Board may approve a child lot greater than 3 acres in the event that a septic easement is not feasible and if necessary for on-site well and septic. The area of the driveway stem on a flag lot shall not be included in the maximum area limit.**"*

The Planning Board understands that the reason the agricultural community wishes no maximum size limit for child lots is because the Department of the Environment for the State of Maryland contacted the Montgomery County Well and Septic Division of the Department of Permitting Services in 2008 regarding prohibiting the use of septic easements for purposes of installing septic systems. Legislation for exemption of this prohibition failed in Annapolis last year but will be resuscitated this year. The Department of Permitting Services, the Agricultural Advisory Committee (AAC) and the Agricultural Preservation Advisory Board (APAB) all support the exemption for several reasons. Lots (whether child lots or otherwise) can take valuable land from farms unless there is flexibility to reposition them and protect the land that would otherwise be consumed. It is possible to farm over deep trench septic systems with no loss of tillable land and septic easements have typically been used to reposition lots so as not to disturb agricultural operations.

It is worth noting that applicants for the last 6 subdivisions in the RDT Zone approved by the Planning Board have voluntarily restricted the size of residential lots to 3 acres or less. One of these applications included child lots. Since 25 acres is the minimum tract size necessary to qualify for a child lot in the proposed ZTA, lots greater than 3 acres would constitute a disproportionate fraction of the parent lot.

4) Ownership of child lot – 59-C-9.41.1(a)(5)

This section requires the child for whom the lot is created to be the owner of record when the lot is initially recorded. This is not possible since the ownership of the lot cannot be transferred by the parent until the plat is recorded. Further, it would not seem to be important that the time it takes a parent to transfer the lot be limited, provided that the child, or spouse of the child, owns the lot at the time the building permit is issued.

The Planning Board recommends modification of the language (in bold and strike-out) in this section as follows:

"(5) ~~When a child lot is initially recorded,~~ The child for whom the lot is created, **or the spouse of the child**, must be the listed owner of the lot in the County land records **at the time the initial building permit is issued for the lot.**

5) Penalty for Violations 59-C-9.41.1(d)(2)

59-C-9.41.1(d) (2) places enforcement of the restriction on child lot transfers in the Planning Board's hands. One Planning Board member recommended retention of the language in the draft ZTA. The majority recommended that the ownership requirement be enforced as follows:

1. The plat of subdivision must include an owner certification that the lot is being created for a child of the owner.
2. The deed for each child lot created must include a covenant, entered into and executed by both original grantor and child as grantee, enforceable by the Department of Permitting Services, that includes, at a minimum, the following provisions:
 - a) Title must remain with the child/grantee for five years from the date required under 59-C-9.41.1.(c); and
 - b) Upon the discovery of such violation, the grantor and grantee shall be jointly and severally liable for a financial penalty. The penalty shall be the amount of funds obtained on sale or lease of a child lot in violation of this subsection, plus costs and interest at the rate prescribed by law from the date the violation occurred.
3. Funds collected must be deposited into the Montgomery County Agricultural Land Preservation Fund.

Alternatively, the Planning Board recommends substitution of the word "shall" for "may" on Lines 103 and 106, and deletion of "improperly" on Line 106.

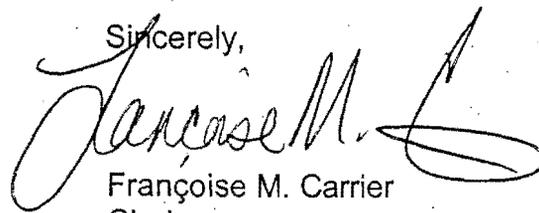
6) Density and TDR retention 59-C-9.41

The Planning Board recommends that this section not be included in the ZTA for Child Lot provisions, for the reasons stated above.

The Honorable Nancy Floreen
September 20, 2010
Page 4

The Planning Board looks forward to working with the County Council in work sessions on the ZTA and to passage of this important legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Françoise M. Carrier". The signature is written in black ink and is positioned above the printed name.

Françoise M. Carrier
Chair

FMC:cm:ha

Attachment: Staff report, August 26, 2010, as amended on September 15, 2010



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

MEMORANDUM:

DATE: August 26, 2010 (**amended 9/15/10**)
TO: Montgomery County Planning Board
VIA: Glenn Kreger, Acting Chief, Vision Division
FROM: Callum Murray, Team Leader, Potomac and Rural Area
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the provisions for child lots in the Rural Density Transfer (RDT) Zone
TEXT AMENDMENT: No. 10-12
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Knapp
INTRODUCED DATE: July 27, 2010
PLANNING BOARD REVIEW: September 16, 2010
PUBLIC HEARING: September 21, 2010; 1:30 PM

STAFF RECOMMENDATION: APPROVAL with modifications.

INTRODUCTION

Zoning Text Amendment (ZTA) 10-12, sponsored by Councilmember Knapp, was introduced on July 27, 2010 (Attachment 1).

According to the July 26, 2010 Council staff memorandum to the County Council, the ZTA would:

- 1) Add a provision for child lots to the intent of the RDT zone;
- 2) Explicitly allow child lots in addition to the density otherwise allowable;
- 3) Clarify the requirement to retain a development right for each lot;
- 4) Require the owner to personally establish continuous ownership since 1981;
- 5) Allow up to 3 child lots for each qualified owner with a provision for hardships;
- 6) Require a minimum tract size based on the number of child lots created;
- 7) Establish a maximum lot size for a child lot (see page 4); and
- 8) Require the child for whom the lot was created to own the child lot for at least 5 years, with a provision for hardships.

(17)

TIMELINE

For many years, there has been vigorous debate on how to interpret the existing language in the Zoning Ordinance pertaining to child lots.

In April 2006, the County Council appointed the Ad Hoc Agricultural Policy Working Group (Working Group) to "provide comprehensive advice on ways to ensure the long term protection of the Agricultural Reserve and preservation of the agricultural industry." In particular, the Council charged the Working Group with addressing a number of specific and inter-related issues, including a thorough review of the Child Lot program.

The Working Group produced their Final Report in January 2007. On March 12, 2007, the Planning Board transmitted their recommendations to the County Council.

In March 2007, the Planning, Housing and Economic Development (PHED) Committee discussed the Report, including the Board's comments, and instructed Council staff to prepare draft policy instruments, including zoning text amendments, which would implement the Working Group's recommendations via a series of short, mid and long term steps.

In June 2007, ZTA 07-06 was introduced to clarify that child lots would be permitted in addition to market lots and in excess of base density for the RDT Zone. The Board did not recommend approval of ZTA 07-06. An alternative ZTA 07-09 was introduced at the request of the Planning Board and supported the Board's position at that time that child lots would be allowed as long as the overall density of a parcel did not exceed the maximum residential density permitted in the RDT Zone (one dwelling unit per 25 acres). On July 19, 2007, the County Council held a public hearing on the alternative ZTAs but took no action on either.

The Ad Hoc Agricultural Policy Working Group (Working Group) believed that "Efforts to identify potential strategies should involve property owners and must be cognizant of the existing tensions between the Planning Department and rural property owners on this issue." The Working Group recommended that the Planning Department consider using existing agricultural advisory groups to help develop these strategies.

On March 4 and 18, 2010, the Planning Board considered an amended draft Zoning Text Amendment which had been discussed extensively with the Agricultural Advisory Committee (AAC), the Agricultural Preservation Advisory Board (APAB), and a sub-committee made up of members of both groups. The draft ZTA was also presented to the Upcounty Citizens Advisory Board on May 17, 2010.

The AAC and APAB were initially vigorously opposed to the Child Lot Standards ZTA, believing that it would adversely affect their property rights. Planning staff incorporated several amendments to preliminary drafts, based on constructive suggestions by members of both the AAC and APAB.

On May 19, 2010, the Planning Board transmitted a draft ZTA for child lot standards, with a request for introduction. Councilmember Knapp amended the ZTA forwarded by the Planning Board after consultation with the agricultural community. This ZTA (10-12) incorporates elements from the original ZTA 07-06 together with significant portions of the draft ZTA transmitted by the Board in May 2010.

ANALYSIS

The following sections address six issues, as follows:

- 1) Applicability requirements and exempted lots and parcels 59-C-9.41.1.(a)(1)(A) and 59-C-9.74(b)
- 2) Number and proportion of child lots 59-C-9.41.1.(a)(3)
- 3) Size of child lot 59-C-9.41.1.(a)(4)
- 4) Ownership of child lot – 59-C-9.41.1(a)(5)
- 5) Penalty for Violations 59.C-9.41.1(d)(2)
- 6) Density and TDR retention 59-C-9.41

1) Applicability requirements and exempted lots and parcels 59-C-9.41.1.(a)(1)(A) and 59-C-9.74(b)

The proposed ZTA changes the language of the current section to require that, to create child lots, property owners establish ownership as of January 7, 1981, the date the RDT zone was applied to the major part of the Agricultural Reserve under SMA G-266. However, portions of the Damascus planning area were changed to RDT in 1982, and a significant portion of the Clarksburg planning area was changed from R-200 to RDT in 1994. The January 6, 1981 date only applies to the portions of the County that were rezoned under G-266 and it does not cover all of the lands currently zoned RDT in the County. Staff recommends restoring the original language and amending the January 7, 1981 date to “... the date of the adoption of the sectional map amendment that rezoned the Property to RDT.”

2) Number and proportion of child lots 59-C-9.41.1.(a)(3)

The Planning Board’s former position, as articulated by the previous ZTA 07-09, was that the inclusion of child lots on land in an Agricultural Reserve essentially increased lot yields, compromised zoning as an effective land use management tool, and compromised preservation objectives for the area. At that time, the Board’s position was supported by over 60 organizations and individuals, but was opposed by the agricultural community, the Ad Hoc Agricultural Policy Working Group, Executive staff, and by County Council legislative staff. After a public hearing, no action has been taken by the County Council.

In March 2010, planning staff proposed a resolution to this impasse that would restrict the number, size and placement of lots created for children, paralleling the evolution of child lot policy and law of the Maryland Agricultural Land Preservation Foundation (MALPF). The legislative MALPF Task Force determined several years ago that the original intent of child lots under the State program – to encourage the continuation of family farming operations by allowing grown children to live and work on the farm – had become somewhat outdated, and that the provision was increasingly subject to subdivision for purposes other than long-term occupancy by members of the family farm.

(19)

The Task Force determined, and the legislature subsequently established, that the total number of family (child) lots allowed on otherwise preserved farms should be limited to a maximum of three: one for the first full 20 acres and one per full 50 acres thereafter, up to the maximum of three. It was also decided that the number of family lots could not exceed the number of lots that would have been allowed under County zoning at the time the easement was purchased; upon selling an easement, the owner of a farm with two development rights can never exclude more than two family lots. The idea was that development rights eliminated by the easement would be replaced by family lots up to a fairly stringent limit that would not subject the land to a residential presence that compromised the goals of the Program. Much of this reasoning was based on the fact that, ultimately, the owners and occupants of what were originally child lots would no longer be the children of the owners of the working farm.

MALPF easements restrict the number of child lots on any parcel to three, their location is subject to MALPF approval, and they must be no more than one acre in size. Although MALPF easements constitute a voluntary contractual agreement for compensation, staff suggested that they provided a successful and well accepted model on which to base zoning guidelines. It is both reasonable and proportionate. Staff suggested the following minor modification: a limit of one child lot for properties with a minimum of 25 acres in size, two child lots for properties with a minimum of 70 acres in size, and a limit of three for properties over 120 acres.

The maximum number and the proportions have been included in ZTA 10-12 under Sec. 59-C-9.41.1. (3) and planning staff recommends approval.

3) Size of child lot 59-C-9.41.1.(a)(4)

This section reads:

"A lot created for a child must be no larger than one acre, or the minimum necessary for approval of well and septic. The area of the driveway stem on a flag lot must not be included in the maximum area limit."

The draft ZTA transmitted by the Planning Board had *"but in no case greater than 3 acres,"* at the end of the first sentence. Without it, the section is a non sequitur.

Planning staff understands that the reason the agricultural community wishes the 3-acre limit to be removed is because in 2008 the Department of the Environment for the State of Maryland contacted Montgomery County Well and Septic Division of the Department of Permitting Services regarding prohibiting the use of septic easements for purposes of installing septic systems. Legislation for exemption of this prohibition failed in Annapolis last year but will be resuscitated this year with every prospect for success. The Department of Permitting Services, the Agricultural Advisory Committee (AAC) and the Agricultural Preservation Advisory Board (APAB) all support the exemption for several reasons. Lots (whether child lots or otherwise) can take valuable land from farms unless there is flexibility to reposition them and protect the land that would otherwise be consumed. It is possible to farm over deep trench septic systems with no loss of tillable land and septic easements have typically been used to reposition lots so as not to disturb agricultural operations.

20

In their letter to the Planning Board of March 17, 2010, the AAC stated that, "This legislation will authorize the use of septic easements in Montgomery County as another tool for rural property owners to achieve **smaller lot sizes...**" (Emphasis attached).

Given that MALPF easements restrict child lots to no more than one acre in size, planning staff recommends restoration of the original language, with an amendment (in bold) as follows:

"A lot created for a child must be no larger than one acre, or the minimum necessary for approval of well and septic, but in no case greater than 3 acres." In the event that a septic easement is not possible, the Planning Board may approve a child lot greater than 3 acres. The area of the driveway stem on a flag lot must not be included in the maximum area limit."

4) Ownership of child lot – 59-C-9.41.1(a)(5)

This section requires the child for whom the lot is created to be the owner of record when the lot is initially recorded. This is not possible since the ownership of the lot cannot be transferred by the parent until the plat is recorded. Further, it would not seem to be important that the time it takes a parent to transfer the lot be limited, provided that the child, or spouse of the child, owns the lot at the time the building permit is issued. Staff recommends modification of the language in this section as follows:

"(5) ~~When a child lot is initially recorded,~~ The child for whom the lot is created, or the spouse of the child, must be the listed owner of the lot in the County land records at the time the initial building permit is issued for the lot.

5) Penalty for Violations 59.C-9.41.1(d)(2)

On March 11, 2010, the Planning Board recommended that the ownership requirement be enforced as follows:

1. *The plat of subdivision must include an owner certification that the lot is being created for a child of the owner.*
2. *The deed for each child lot created must include a covenant, entered into and executed by both original grantor and child as grantee, enforceable by the Department of Permitting Services on the advice of the Agricultural Preservation Advisory Board, that includes, at a minimum, the following provisions:*
 - a) *Title must remain with the child/grantee for five years from the date of recordation of the deed;*
 - b) *Upon written request by either the grantor or grantee, the Agricultural Preservation Advisory Board may grant a written waiver of the five-year restriction for certain hardships as determined by guidelines adopted by the Agricultural Preservation Advisory Board;*

(21)

- c) *In the event of a violation of the covenant, whereby title is transferred within the five-year period, an easement must be recorded on the parent tract extinguishing a buildable lot; and*
 - d) *If a buildable lot is no longer available at the time of such transfer (or upon the discovery of such violation), the grantor and grantee shall be jointly and severally liable for liquidated damages based on the value of a BLT at the time of the transfer with pro-rata reduction for each year in the five-year covenant. (For example, 100% value if the transfer occurs during the first year of the covenant, 90% for the second year, 80% for the third year and no less than 10% for the last year.)*
3. *Funds collected as liquidated damages must be deposited into Montgomery County's Agricultural Land Preservation Fund; provided however, that the Agricultural Preservation Advisory Board may be reimbursed to cover any costs or expenses incurred to enforce the covenant.*

However, the AAC and APAB believe that enforcement proceedings are not one of the duties and responsibilities of the APAB outlined in Chapter 2B of the Montgomery County Code, and Title 2, Subtitle 5, of the Annotated Code of Maryland (see Attachments 2 and 3). APAB duties involve the implementation of State and County easement programs by serving in an advisory capacity, and the APAB believes that the legal opinion of the County Attorney's office would need to be ascertained as to the appropriateness of expanding their role.

THIS SECTION REPLACES SECTION 6 ON PAGES 6 AND 7 OF THE STAFF REPORT OF AUGUST 26, 2010.

6) Density and TDR retention 59-C-9.41

This language was not included in the draft ZTA submitted by the Planning Board in March, and is not limited to child lots. Most of the written testimony to date focuses on this Section, which may not have been referred to in the County Council notice regarding the public hearing on September 21. Staff believes it may be deleted from consideration altogether.

Staff believes that it is not necessary to include this Section in the ZTA pertaining to Child Lots, and that its inclusion may jeopardize adoption of the ZTA before the Council elections in November.

If it were to be included, staff recommends that it be redrafted to remove ambiguity in the discussion about retaining a building right. To remove ambiguity, the language should be revised to clarify whether the term "building right" means a TDR or a BLT. Staff believes it is the former, and that it should be referred to as a "development right," which is how a TDR is generally referred to elsewhere in the code. The reference to development rights should be relocated to clarify that it applies to all dwelling unit types.

Beginning on line 49, the language should be redrafted as follows:

22

Except as provided in subsection (a) or (b), only one one-family dwelling unit per 25 acres is permitted. (See Section 59-C-9.6 for permitted transferable density.) Density above one one-family dwelling unit per 25 acres is allowed if a development right is retained for each dwelling unit and:

- (a) The lot is a child lot under 59-C-9.41.1; or
- (b) The dwelling unit is accessory to a farm, is not on a separate lot or parcel or lot, and is either:
 - 1. A farm tenant dwelling, farm mobile home, or guest house; or
 - 2. An accessory apartment or accessory dwelling regulated by the special exception provisions of Division 59-G-1 and 59-G-2.

7) **Miscellaneous**

A grandfather clause should be added to include properties with existing subdivision approvals but which are not already vested.

Line 58 Planning staff recommends the following change... “a ~~building~~ *development* right is retained for each dwelling unit”

Line 106 Planning staff recommends striking the word “Improperly.”

RECOMMENDATIONS

Planning staff recommends approval of the zoning text amendment with the amendments discussed above.

CM/ha/G:/Murray/TA-10-12Child Lots.doc

Attachments

- 1. Zoning Text Amendment 10-12
- 2. Agricultural Preservation Advisory Board letter March 17, 2010
- 3. Agricultural Advisory Committee letter March 17, 2010

(23)

Zoning Text Amendment No: 07-06
Concerning: RDT - Child Lots Standards
Draft No. & Date: 1 - 5/22/07
Introduced: June 12, 2007
Public Hearing: July 19, 2007; 7:30 PM
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:

Council President Praisner at the request of the Ad Hoc Agricultural Policy Working Group

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

- amending the density calculations in the RDT Zone to exclude a lot for a child under specified conditions;
- amending the standards to approve a child lot in the RDT Zone;
- generally amending the child lot provisions in the RDT 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-9.41 “Density in RDT zone”
Section 59-C-9.74 “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:

25

1 **Sec. 1. DIVISION 59-A-2 is amended as follows:**

2 **59-A-2.1. Definitions.**

3 In this Chapter, the following words and phrases have the meanings indicated:

4 * * *

5 **Child Lot:** A lot created for use for a one-family dwelling unit by a child, or the
6 spouse of a child, of a property owner.

7 * * *

8 **Immediate Family Member:** A person's parents, spouse, children, and siblings

9 **Sec. 2. DIVISION 59-C-9 is amended as follows:**

10 **DIVISION 59-C-9. Agricultural Zones.**

11 * * *

12 **59-C-9.4. Development standards.**

13
14 The following requirements apply in all cases, except as specified in the optional
15 standards for cluster development set forth in sections 59-C-9.5 and 59-C-9.57 and
16 the exemption provisions of section 59-C-9.7. [The following dwelling units on
17 land in the RDT zone are excluded from this calculation, provided that the use
18 remains accessory to a farm. Once the property is subdivided, the dwelling is not
19 excluded:]

20 **59-C-9.41. Density in RDT zone.**

21 [Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-
22 9.6 for permitted transferable density.) The following dwelling units on land in the
23 RDT zone are excluded from this calculation, provided that the use remains
24 accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

25 (a) A farm tenant dwelling, farm tenant mobile home or guest house as
26 defined in section 59-A-2.1, title "Definitions."

27 (b) An accessory apartment or accessory dwelling regulated by the
28 special exception provisions of division 59-G-1 and 59-G-2.]

29 Except as provided in subsection (a) or (b), only one one-family dwelling unit per
30 25 acres is permitted. (See Section 59-C-9.6 for permitted transferable density.)

31 Density above one one-family dwelling unit per 25 acres is allowed if:

32 (a) the dwelling unit is accessory to a farm, is not on a separate parcel or
33 lot, and is either:

34 (1) a farm tenant dwelling, farm tenant mobile home, or guest
35 house; or

36 (2) an accessory apartment or accessory dwelling regulated by the
37 special exception provisions of Division 59-G-1 and 59-G-2.

38 (b) the lot satisfies the requirements of Section 59-C-9.41.1.

39 **59-C-9.41.1. Child Lots in the RDT Zone**

40 (a) **Applicability.** A child lot above the density of one one-family dwelling unit
41 per 25 acres is allowed in the RDT zone only if the following requirements
42 are satisfied.

43 (1) The property owner must have:

44 (A) recorded title to the property before January 7, 1981;

45 (B) applied for approval to create the lot or expressed the intent to
46 create the lot in a will or a codicil admissible in probate
47 proceedings; and

48 (C) retained a development right for each lot.

49 (2) The Planning Board must not approve more than one child lot for each
50 child of the property owner, regardless of the number of properties
51 owned.

52 (3) A child lot must be identified on a record plat.

53 (4) A majority of the land in the subdivision creating the lot must be
54 reserved for agriculture.

55 (b) **Building Permit Restricted.** A building permit for a one-family dwelling
56 unit on a child lot must be issued only to:

57 (1) a child of the property owner;

58 (2) the spouse of a child of the property owner;

59 (3) a contractor for a child of the property owner; or

60 (4) a contractor for the spouse of a child of the property owner.

61 (c) **Transfer restricted.** Except as provided in subsection (c)(1) and (c)(2),
62 ownership of the a child lot must not be transferred or leased within five
63 years of the date of final inspection of a one-family dwelling unit by the
64 Department of Permitting Services:

65 (1) The owner of the child lot may only lease the lot to an immediate
66 family member.

67 (2) Ownership of a child lot may be transferred if the Planning Board
68 finds a hardship after the date of final inspection, such as death of the
69 child or a bona fide foreclosure of the mortgage or deed of trust.

70 (d) **Penalty for Violations.**

71 (1) Except as provided in subsection (d)(2), any violation of this
72 subsection is subject to the penalty and enforcement provisions in
73 Section 59-A-1.3.

(28)

74 (2) The Planning Board may take legal action to stop or cancel any
75 transfer or building permit of a child lot if any party to the transfer or
76 the building permit does not comply with all requirements of Section
77 59-C-9.41.1. The Planning Board may recover any funds improperly
78 obtained from any sale or lease of child lot in violation of this
79 subsection, plus costs and interest at the rate prescribed by law from
80 the date a violation occurred.

81 (e) **Covenant required.** A covenant between the property owner and the
82 Montgomery County Planning Board must be recorded in the Montgomery
83 County land records. The covenant must:

- 84 (1) be recorded simultaneously with the record plat;
85 (2) identify the transfer restrictions in subsection (c); and
86 (3) identify the penalties for violations as identified in subsection (d).

87 * * *

88 **59-C-9.7. Exempted lots and parcels and existing buildings and permits.**

89 * * *

90 **59-C-9.74. Exempted lots and parcels—Rural Density Transfer zone.**

- 91 (a) The number of lots created for children in accordance with the
92 Maryland Agricultural Land Preservation Program must not exceed
93 the development rights assigned to the property and retained by the
94 property owner.
- 95 (b) The following lots are exempt from the area and dimensional
96 requirements of section 59- C-9.4 but must meet the requirements of
97 the zone applicable to them [prior to their classification in the Rural
98 Density Transfer zone] before January 7, 1981.

- 99 (1) A recorded lot created by subdivision, if the record plat was
100 approved for recordation by the Planning Board [prior to the
101 approval date of the sectional map amendment which initially
102 zoned the property to the Rural Density Transfer Zone] before
103 January 7, 1981.
- 104 (2) A lot created by deed executed [on or] before [the approval date
105 of the sectional map amendment which initially zoned the
106 property to the Rural Density Transfer Zone] January 7, 1981.
- 107 (3) A record lot having an area of less than 5 acres created after
108 [the approval date of the sectional map amendment which
109 initially zoned the property to the Rural Density Transfer Zone]
110 January 7, 1981 by replatting 2 or more lots; provided that the
111 resulting number of lots is not greater than the number which
112 were replatted.
- 113 (4) A lot created for use for a one-family [residence] dwelling by a
114 child, or the spouse of a child, of the property owner, [provided
115 that the following conditions are met] if the lot satisfies the
116 requirements of 59-C-9.41.1. [:
- 117 (i) The property owner can establish that he had legal title
118 on or before the approval date of the sectional map
119 amendment which initially zoned the property to the
120 Rural Density Transfer Zone;
- 121 (ii) This provision applies to only one such lot for each child
122 of the property owner; and

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

126 * * *

127 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
128 Council adoption.

129
130 This is a correct copy of Council action.

131

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134 _____

135 Linda M. Lauer, Clerk of the Council

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Zoning Text Amendment No: 07-09
Concerning: RDT - Child Lots Standards
Draft No. & Date: 1 – 5/31/07
Introduced: June 12, 2007
Public Hearing: 7/19/07; 7:30 PM
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:
Council President Praisner on behalf of the Maryland-National Capital
Park and Planning Commission

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

- amending the density calculations in the RDT Zone to clarify that the number of child lots must not exceed the allowable base density; and
- generally amending the conditions for creation of a child lot in the RDT 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-9.74 “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:

33

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

2 **DIVISION 59-C-9. Agricultural Zones.**

3 * * *

4 **59-C-9.4. Development standards.**

5
6 The following requirements apply in all cases, except as specified in the optional
7 standards for cluster development set forth in sections 59-C-9.5 and 59-C-9.57 and
8 the exemption provisions of section 59-C-9.7.

9 * * *

10 **59-C-9.7. Exempted lots and parcels and existing buildings and permits.**

11 * * *

12 **59-C-9.74. Exempted lots and parcels—Rural Density Transfer zone.**

13 (a) The number of lots created for children in accordance with the
14 Maryland Agricultural Land Preservation Program must not exceed
15 the development rights assigned to the property and retained by the
16 property owner.

17 (b) The following lots are exempt from the area and dimensional
18 requirements of section 59- C-9.4 but must meet the requirements of
19 the zone applicable to them [prior to their classification in the Rural
20 Density Transfer zone] before January 7, 1981.

21 (1) A recorded lot created by subdivision, if the record plat was
22 approved for recordation by the Planning Board [prior to the
23 approval date of the sectional map amendment which initially
24 zoned the property to the Rural Density Transfer Zone] before
25 January 7, 1981.

34

- 26 (2) A lot created by deed executed [on or] before [the approval date
27 of the sectional map amendment which initially zoned the
28 property to the Rural Density Transfer Zone] January 7, 1981.
- 29 (3) A record lot having an area of less than 5 acres created after
30 [the approval date of the sectional map amendment which
31 initially zoned the property to the Rural Density Transfer Zone]
32 January 6, 1981 by replatting 2 or more lots; provided that the
33 resulting number of lots is not greater than the number which
34 were replatted.
- 35 (4) A lot created for use for a one-family [residence] dwelling by a
36 child, or the spouse of a child, of the property owner, provided
37 that the following conditions are met:
- 38 (i) The property owner can establish that he had legal title
39 on or before the approval date of the sectional map
40 amendment which initially zoned the property to the
41 Rural Density Transfer Zone;
- 42 (ii) This provision applies to only one such lot for each child
43 of the property owner; [and]
- 44 (iii) Any lots created for use for one-family residence by
45 children of the property owner must not exceed the
46 number of development rights for the property owner[.];
47 and
- 48 (iv) The overall density of the property does not exceed one
49 dwelling unit per 25 acres in any subdivision recorded
50 after June 12, 2007.

35

51 * * *

52 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of
53 Council adoption.

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55 This is a correct copy of Council action.

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60 Linda M. Lauer, Clerk of the Council

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Planning Board Draft
(5/10)

May 19, 2010

The Honorable Nancy Floreen, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Dear Ms. Floreen:

The Montgomery County Planning Board has proposed two draft Zoning Text Amendments for lot area limitations and child lot standards respectively, for the Rural Density Transfer Zone. These amendments were reviewed at our regular meeting on Thursday, March 18, 2010. By a vote of 5-0, the Board approved the staff recommendation to transmit the draft Zoning Text Amendment for lot area limitations, with modifications identified in the discussion, with a request for introduction.

By a vote of 4-1, the Planning Board also approved the staff recommendation to transmit the draft Zoning Text Amendment for child lot standards, modified to reflect a 5-year ownership requirement, also with a request for introduction.

Mr. Jeremy Criss, representing the Agricultural Services Division of the Department of Economic Development, Ms. Margaret Chasson, a member of the Ad Hoc Agricultural Policy Working Group, Ms. Caroline Taylor, representing the Montgomery Countryside Alliance, Ms. Dolores Milmoie, representing the Audubon Naturalist Society, and Mr. William Moser of Damascus participated in the discussion of March 18, 2010.

The draft Zoning Text Amendments have been discussed extensively with the Agricultural Preservation Advisory Board and the Agricultural Advisory Committee, and were presented to the Upcounty Citizens Advisory Board on May 17, 2010.

This is to certify that the attached report is a true and correct copy of the revised technical staff report. The recommendation to transmit the draft Zoning Text Amendment on lot area limitations adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, was approved on the motion of Commissioner Presley, seconded by Commissioner Alfandre, with Commissioners Presley, Alfandre, Dreyfuss, Wells-Harley, and Chairman Hanson voting in favor of the motion. The recommendation to transmit the draft Zoning Text Amendment on child lot standards was approved on the motion of Commissioner Presley, seconded by Commissioner Wells-Harley, with Commissioners Presley, Wells-Harley, Alfandre, and Chairman Hanson voting in favor of the motion and Commissioner Dreyfuss voting against, at its regular meeting held in Silver Spring, Maryland, on Thursday, March 18, 2010.

Sincerely,

Royce Hanson
Chairman

RH:cm:kh:ha
Attachments

37

Revised 5/17/10

March 11, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief
Vision Division

FROM: Callum Murray, Team Leader, Potomac and Rural Area (301/495-4733)
Vision Division

SUBJECT: Draft Zoning Text Amendments - Rural Density Transfer Zone
(A.) Lot Area Limitations and Cluster Provisions
(B.) Child Lot Standards

(This is a continuation of Item 9 from March 4, 2010)

STAFF RECOMMENDATION: Submit two draft Zoning Text Amendments (ZTAs) to the District Council with a request for introduction.

REPORT CHANGES SINCE MARCH 4, 2010

The Planning Board discussed the draft ZTAs at their evening session on March 4, 2010. Shortly before the discussion, eleven emails were received (see Attachment 1) (Previous Attachments 1-3 are now Attachments 2-4). One correspondent argued that child lots should not be restricted to children actively engaged in agricultural activity on the property. The Planning Board agreed, and the language in Child Lot Guideline Five has been amended to reflect that change.

Ten of the eleven writers vigorously opposed the lack of a residency requirement for child lots, espousing enforcement language to be included in the Zoning Text Amendment on Child Lot Standards. The Planning Board agreed, and instructed staff to prepare such language. (See 1-3 below.) Should the Planning Board agree with the concepts expressed, staff will draft a covenant to be included in the Child Lot Standards ZTA.

Staff recommends that the ownership requirement be enforced as follows:

Deleted: residency

1. The plat of subdivision must include an owner certification that the lot is being created for a child of the owner.
2. The deed for each child lot created must include a covenant, entered into and executed by both original grantor and child as grantee, enforceable by the Department of Permitting Services on the advice of the Agricultural Preservation Advisory Board, that includes, at a minimum, the following provisions:
 - a) Title must remain with the child/grantee for five years from the date of recordation of the deed;
 - b) Upon written request by either the grantor or grantee, the Agricultural Preservation Advisory Board may grant a written waiver of the five-year restriction for certain hardships as determined by guidelines adopted by the Agricultural Preservation Advisory Board;
 - c) In the event of a violation of the covenant, whereby title is transferred within the five-year period, an easement must be recorded on the parent tract extinguishing a buildable lot; and
 - d) If a buildable lot is no longer available at the time of such transfer (or upon the discovery of such violation), the grantor and grantee shall be jointly and severally liable for liquidated damages based on the value of a BLT at the time of the transfer with pro-rata reduction for each year in the five-year covenant. (For example, 100% value if the transfer occurs during the first year of the covenant, 90% for the second year, 80% for the third year and no less than 10% for the last year.)
3. Funds collected as liquidated damages must be deposited into Montgomery County's Agricultural Land Preservation Fund; provided however, that the Agricultural Preservation Advisory Board may be reimbursed to cover any costs or expenses incurred to enforce the covenant.

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BACKGROUND

It is widely recognized that the agricultural productivity, distinctive character and natural beauty of the Agricultural Reserve are so outstanding that it is in Montgomery County's interest to safeguard them. The primary purposes of the proposed ZTAs are to promote sustainable agriculture by limiting fragmentation of farmland, to support local economic and social needs, and to conserve the natural beauty of the Reserve.

The landscape of the Agricultural Reserve has evolved through centuries of settlement and agriculture into a unique place, which often evokes strong feelings of remoteness from urban areas. The variety in landscape has been largely influenced by the underlying geology but also by the human activity of agriculture. The area continues to

be a living and working landscape where agriculture remains the primary land use despite increasing pressure from 'non-farming' interests. It would be a tragedy to diminish this wonderful and irreplaceable resource.

As the principal land use of the Reserve, agriculture has played a particularly important role in the development of the landscape. Without the continued stewardship by farmers and landowners, the characteristic landscape would be lost. A thriving agricultural economy must be encouraged and new agricultural and residential development must be considered. However, it is vital that any new development be a positive addition to the landscape, and not detract from the distinct qualities of the Reserve.

This staff report does the following:

1. Proposes a draft zoning text amendment (Attachment 2) to apply lot area limitations and cluster provisions in the RDT Zone for residences and non-agricultural structures to foster compatibility with the Agricultural Reserve and the retention of a working landscape.
2. Reviews the Planning Board's advice to the County Council from March 2007 relating to child lot standards, as articulated in draft ZTA 07-09. An alternative draft zoning text amendment (Attachment 3) is proposed for child lot policy provisions in order to achieve statutory clarity. The legislative intent of this ZTA is to encourage the continuation of the family farming unit and to facilitate the intergeneration transfer of the family farming unit by allowing children to live with their parents on the property.

Consultation with the Agricultural Community

The Ad Hoc Agricultural Policy Working Group (Working Group), appointed by the County Council in 2006, believed that "Efforts to identify potential strategies should involve property owners and must be cognizant of the existing tensions between the Planning Department and rural property owners on this issue." The Working Group recommended that the Planning Department consider using existing agricultural advisory groups to help develop these strategies. The attached two draft zoning text amendments have been discussed with the Agricultural Advisory Committee (AAC), the Agricultural Preservation Advisory Board (APAB), and a sub-committee made up of members of both groups. The sub-committee reviewed the proposed Child Lot Standards ZTA on April 29, 2009, and the proposed Lot Area Limitations/Cluster Provisions ZTAs on September 4, 2009.

The AAC and APAB were vigorously opposed to the Child Lot Standards ZTA, believing that it would adversely affect their property rights. They requested that consideration of the ZTA on Lot Area Limitations and Cluster Provisions be deferred until a decision was reached on pending State Bill MC11-10 in the General Assembly to allow septic easements in the rural zones of Montgomery County. Planning staff have included the following amendments to preliminary drafts, based on constructive suggestions by members of both the AAC and APAB:

1. The maximum lot size for residential lots, including child lots, is increased from two to three acres.
2. For flag lots needed to preserve farming operations, the acreage of the flag stem is discounted.
3. Addition of a footnote that the Planning Board may waive the cluster provision for small numbers of units if the alternative is preferable for agricultural preservation.
4. Addition of a clause that the Planning Board may waive the minimum size of 25 acres for a farm lot if it finds that a smaller size would better implement the purpose of the zone.
5. Amendments to cluster development guideline language emphasizing priority of agricultural preservation.

Timeline

In April 2006, the County Council appointed the Ad Hoc Agricultural Policy Working Group (Working Group) to "provide comprehensive advice on ways to ensure the long term protection of the Agricultural Reserve and preservation of the agricultural industry." In particular, the Council charged the Working Group with addressing a number of specific and inter-related issues by performing the following tasks:

- Undertake a thorough review of pending and potential legislation concerning the Rural Density Transfer (RDT) zone, the Child Lot program, the proposed Building Lot Termination (BLT) program, uses of sand mound technology, and technical tracking and use issues associated with the Transferable Development Rights (TDR) program;
- Assure that this review provides a clear understanding of how the individual proposals interact with each other and considers the potential for unanticipated negative consequences.

On March 12, 2007, the Planning Board transmitted their recommendations to the County Council (Attachment 4) regarding the Working Group Final Report.

In March 2007, the Planning, Housing and Economic Development (PHED) Committee discussed the Report, including the Board's comments, and instructed Council staff to prepare draft policy instruments, including zoning text amendments, which would implement the Working Group's recommendations via a series of short, mid and long term steps.

In June 2007, ZTA 07-06 was introduced to clarify that child lots would be permitted in addition to market lots and in excess of base density for the RDT Zone. The Board did not recommend approval of ZTA 07-06. ZTA 07-09 was introduced at the request of the Planning Board as an alternative and supported the Board's position at that time that child lots would be allowed as long as the overall density of a parcel did not exceed the maximum residential density permitted in the RDT Zone (one dwelling unit per 25 acres). On July 19, 2007, the County Council held a public hearing on the alternative ZTAs but took no action on either.

RESIDENTIAL SUBDIVISIONS IN THE AGRICULTURAL RESERVE

The County Council legislative staff report to the PHED Committee of September 8, 2007, regarding the BLT Component of the TMX Zone stated:

"Staff believes that the Planning Department should begin exploring strategies for making land in the Rural Density Transfer zone less attractive for residential development unrelated to farming, while still allowing for legitimate residential uses for farmers (e.g., limit the size of the residential portion of the lot, imperviousness, or house size in a way that discourages large estate homes)."

The Ad Hoc Agricultural Policy Working Group report included a recommendation that:

"Design strategies would guide the location of residential lots created in the RDT zone to maintain farmable areas and minimize the impact of residences. The size of the lot, the need for septic treatment and the ability to use private roads also impact location/design. Placement of homes on the land may have a more important impact on retaining rural character than lot size, especially at the low density of the RDT Zone."

The Working Group did not discuss specific options related to design strategies, but recommended that the Planning Department further explore options to reduce fragmentation of agricultural land by locating buildings to preserve viable farmland. Options could include design standards, clustering, the use of private roads, etc. The Group believed that, if developed properly, these strategies could be an important tool. If not developed properly, they could run counter to the underlying goal of reducing farmland fragmentation.

The proposed draft ZTAs are a response to these recommendations. In terms of the existing codes, the County does not currently have provisions for design standards for clustering, home placement, or for allowing more lots on private roads in the RDT zone. (Planning staff are also preparing a draft ZTA proposing Private Roads for Cluster and Minor Subdivisions in the RDT Zone.) Existing law requires that lots in the RDT zone be a minimum of 40,000 square feet. There is no maximum. The Rustic Roads Functional Master Plan recommends placement of buildings to protect view sheds.

The lot area limitations and cluster provisions have been produced to encourage those proposing and/or designing new agricultural/residential/non-residential developments to carefully consider their impact on the landscape. The open landscape of much of the Reserve means that new development can be particularly intrusive unless careful attention is paid to site location and design.

The main purposes of the Lot Area Limitations ZTA are:

1. To minimize the size of residential lots unrelated to farming.
2. To balance the functional needs of new development with the need for minimal fragmentation of farmland and minimal intrusion on the landscape.
3. To encourage farmers, owners, and their agents to design new development so that it can be practically integrated into the working landscape.

Draft Guidelines

Staff suggests the adoption of a set of guidelines following a public hearing, which can be published to guide applications and staff review.

1. Locate development to preserve a substantial contiguous portion of the tract containing prime or productive soils appropriate for farming or pasture use.
2. Locate development to minimize fragmentation of farmland.
3. Maximum lot size for residential lots unrelated to farming – three acres. (For 'flag lots', discount the area of the flag stem.)
4. Minimum lot size for agricultural lots – 25 acres (unless waived by the Planning Board).
5. Minimize the size of other non-agricultural lots (e.g. for special exceptions).
6. Reduce as much as possible the potential for nuisance or conflict between residential and agricultural uses (both within the tract and in relation to existing uses on adjoining or nearby tracts) by providing a substantial setback or buffer between designated farm fields and residential building sites.
7. Identify all important resources and related buffer areas that need to be preserved, as located on the required NRI/FSD and including location of prime and productive soils.
8. Avoid wetlands and stream valley buffers.
9. Limit the physical impact of any new roads on the natural and historic environment to the minimum extent possible. Roads should run with the contours of the land, rather than across slopes, and extensive cutting through wooded areas should be avoided.
10. Carefully consider the orientation and location of new buildings. Even if a building is well designed, it is likely to have a significant detrimental effect on the landscape if poorly sited. Avoid ridgelines, plateaus and sites where buildings may visually dominate the landscape.
11. Take advantage of any existing natural screening, such as natural depressions, hills or woodlands.
12. Locate building pads and roads to preserve scenic vistas and rural character to the maximum extent possible (especially along rustic or exceptional rustic roads). Where necessary to protect vistas, existing woodland buffers along the road should be preserved.

PLANNING BOARD POLICIES ON CHILD LOTS

In 2007, the Planning Board, while generally agreeing with the Working Group on the building lot termination and expanded TDR programs, arrived at different conclusions on the issues of child lots. At that time, the Planning Board recommended amending the language related to the child lot exemption in the RDT Zone to include the same provision that is in the Rural Zone, which limits the overall density of the property including all child lots to no more than the maximum density allowed in the zone. In order to implement this recommendation, the Planning Board submitted Zoning Text Amendment 07-09 to the District Council for introduction in June 2007. A public hearing was held on the ZTA, but no action was taken by the County Council.

The main substance of ZTA 07-09 added language to § 59-C-9.74(b)(4), to limit the overall density including child lots to no more than one dwelling unit per 25 acres. The proposed language was similar to the language that exists in § 59-C-9.71(d)(3), which limits the overall density of a property in the Rural Zone including child lots to no more than one dwelling unit per five acres.

The Planning Board stated in its March 12, 2007 letter to the Council President that the practice of interpreting the RDT Zone to allow child lots above the maximum density in the zone was contrary to the intent of the zone with regard to density, protection against fragmentation of the critical mass of agricultural land, and, especially, with regard to giving primacy to agricultural uses. ZTA 07-09 was intended to clarify and promote the intent of the RDT Zone by limiting the overall density, including child lots, to the maximum density allowed in the zone—one dwelling unit per 25 acres. The Planning Board recommended that the practice of allowing child lots above the maximum density in the zone be discontinued and stated its intention to do so in its review of applications for subdivisions that included child lots.

Rationale for New Child Lot Standards

The Planning Board's last formal position, as articulated by the previous ZTA 07-09, is that the inclusion of child lots on land in an Agricultural Reserve essentially increases lot yields, compromises zoning as an effective land use management tool, and compromises preservation objectives for the area. At that time, the Board's position was supported by over 60 organizations and individuals, but was opposed by the agricultural community, the Ad Hoc Agricultural Policy Working Group, Executive staff, and by County Council legislative staff. After a public hearing, no action has been taken by the County Council.

A resolution to this impasse would be to restrict the number, size and placement of lots created for children, paralleling the evolution of child lot policy and law of the Maryland Agricultural Land Preservation Foundation (MALPF). The legislative MALPF Task Force determined several years ago that the original intent of child lots under the State program – to encourage the continuation of family farming operations by allowing grown children to live and work on the farm – had become somewhat outdated, and that the provision was increasingly subject to subdivision for purposes other than long-term occupancy by members of the family farm.

The Task Force determined, and the legislature subsequently established, that the total number of family (child) lots allowed on otherwise preserved farms should be limited to a maximum of three: one for the first full 20 acres and one per full 50 acres thereafter, up to the maximum of three. It was also decided that the number of family lots could not exceed the number of lots that would have been allowed under County zoning at the time the easement was purchased; upon selling an easement, the owner of a farm with two development rights can never exclude more than two family lots. The idea was that development rights eliminated by the easement would be replaced by family lots up to a fairly stringent limit that would not subject the land to a residential presence that compromised the goals of the Program. Much of this reasoning was based on the fact that, ultimately, the owners and occupants of what were originally child lots will no longer be the children of the owners of the working farm.

MALPF easements restrict the number of child lots on any parcel to three, their location is subject to MALPF approval, and they must be no more than one acre in size. Although MALPF easements constitute a voluntary contractual agreement for compensation, staff suggests that they provide a successful and well accepted model on which to base zoning guidelines. It is both reasonable and proportionate. Staff suggests the following minor modification: a limit of one child lot for properties with a minimum of 25 acres in size, two child lots for properties with a minimum of 70 acres in size, and a limit of three for properties over 120 acres. The purpose of child lot provisions is not simply to allow a house for each child, regardless of the child's interest (or lack of it) in farming. While it is conceivable, it is highly unlikely that all children of farmers want to stay in the agricultural business. Such an outcome would run directly counter to several generations of evidence.

Approved Child Lots

101 child lots have been recorded by plat in the Rural Density Transfer (RDT) zone between 1980 and 2010. Eleven plans with child lots have been received and reviewed by staff or the Planning Board since September 2007, and five child lots have been recorded.

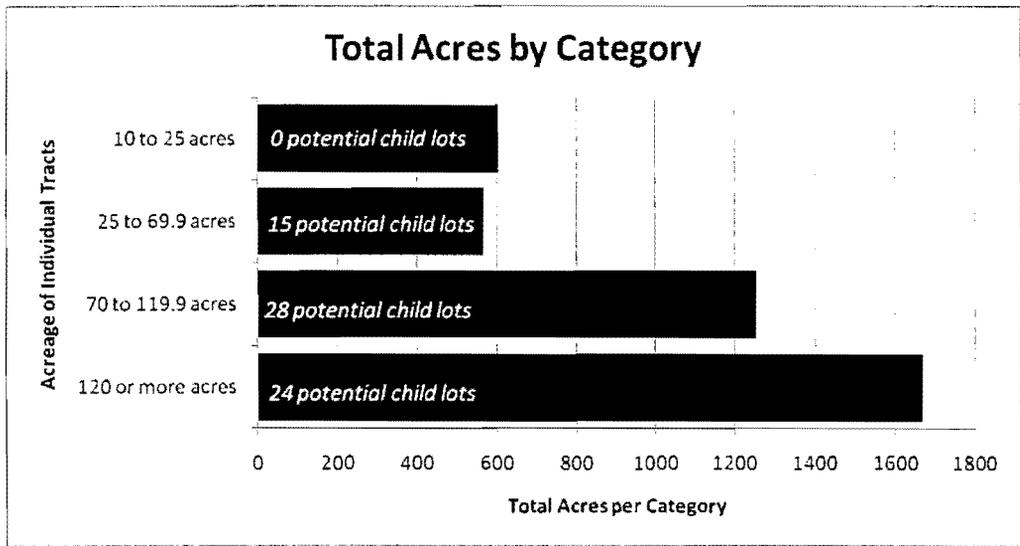
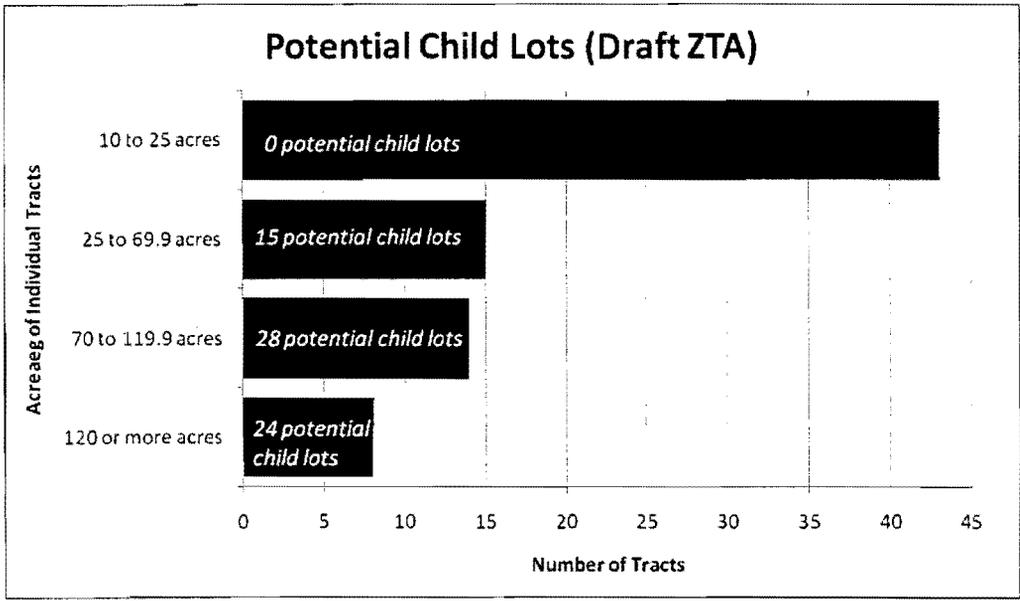
- Four pre-preliminary plans have been reviewed by staff and may be resubmitted at some point (Gladhill - 3 child lots, Cavanaugh - 2 child lots, Lechluder - 1 child lot, Keshishian - 2 child lots).
- One plan is pending (Ganassa - 5 child lots).
- Five plans have been approved (Kiplinger - 2 recorded child lots, Bruchie - 2 child lots, Allnutt - 1 child lot, Dufresne - 3 recorded child lots, Duck's End - 2 child lots).
- Two plans have been denied (Copenhaver - 5 child lots, Jones - 1 child lot).

Assuming all approved plans receive plat approval, there will be a total of 106 child lots in the RDT zone.

Potential Child Lots

In 2006, planning staff and the Department of Economic Development, Agricultural Services Division, reviewed County property tax records and agreed upon a list of 99 properties with the potential to develop with child lots. This list contained all properties in the Rural Density Transfer zone, 10 acres or more in size, which had not transferred ownership since January 6, 1981. Nineteen of the properties have subsequently transferred ownership, and staff's preliminary findings, again in coordination with the Agricultural Services Division, show that 80 of the 99 properties remain in the same ownership as in 1981.

Of the 80 properties, 43 are between 10 and 25 acres, 15 are between 25 and 70 acres, 14 are between 70 and 120 acres, and 8 exceed 120 acres. Historically, an average of two child lots per property have been created by those eligible properties. Assuming no change in policy, the potential therefore exists for a further 160 child lots. The variables include property size, the number of market lots, the size of child lot, the size of market lot, and the size of the remainder parcel (if any).



If the standards proposed by the new draft ZTA are adopted, the maximum number of child lots which could be generated from these properties would be 67. If one child lot were added for all parcels between 10 and 25 acres within the same ownership as in 1981, the potential child lot yield would rise by 43, for a maximum of 110.

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After review of all properties in the same ownership since 1981, fragmentation due to multiple lots on small parcels (10 to 25 acres) is a significant possibility. Some may argue that these small parcels are not productive, and that their subdivision represents a negligible impact on agriculture. Emphasis on protecting a majority of land for agriculture does not adequately address the problem of fragmentation of small properties. If child lots continue to be awarded in addition to base density for small parcels, a maximum lot size requirement for both child and market lots is essential to reduce the potential for further fragmentation of the Agricultural Reserve. Assuming approval of all potential child lots, the loss of farmland for properties over 120 acres would be a maximum of 72 acres (24 lots @ 3 acres) out of 1667 acres (4.3 percent.) Conversely, the loss of farmland for properties from 10 to 25 acres would be a maximum of 129 acres (43 lots @ 3 acres) out of 605 acres (21.3 percent).

The child lot should be a minimum of one acre and a maximum of three acres. Child lots should not be permitted on parcels on which the owner has no house. The Board's policy is that sand mounds or other technologies are acceptable for approved child lots if the lot cannot be created with a trench system.

The location should be carefully regulated per the following draft guidelines so that the child lot essentially supports the agricultural use of the land. This suggests reviewing its relationship to the existing farmstead, avoiding prime soils, and restricting the size of the lot to minimize fragmentation and loss of agricultural land; this has been the Planning Board's practice in reviewing recent applications.

As stated above, a number of preliminary plan applications including child lots are currently pending. Several owners are awaiting clarifying language from the County Council following the recommendations of the Ad Hoc Agricultural Policy Working Group on the issue. Staff suggests the adoption of a set of guidelines, following a public hearing, which can be published to guide applications and staff review of child lot cases.

Draft Child Lot Guidelines

1. The farm must have been owned by the applicant's family and continuously farmed by them since before 1981.
2. The farm must not have significantly changed in its configuration since before 1981 and must not have been fragmented with market rate lots.
3. A subdivision to create smaller (one- to three-acre) child lots must leave a larger remainder agricultural parcel to include the main farm house.
4. If the number of child lots exceeds the base density of the parcel, all surplus TDRs not reserved for the approved lots should be severed. Severance shall be by TDR easement or agricultural easement.
5. A subdivision application must include a written declaration by the titled landowners that child lots are only for the use of their children.
6. No child lots on property without an existing farm house. If an eligible farm with a farm house consists of two or more qualifying parcels, (contiguous or confronting) the child lots must be placed on the parcel with the least detriment to the farming operation.

7. Child lots must not exceed one acre unless it is necessary for septic capacity. In such cases the child lot must not exceed three acres. For 'flag lots', the area of the flag stem will be discounted. The first child lot requires a full twenty five acres. The second lot requires a full seventy acres. The third lot requires a full one hundred and twenty acres.
8. Child lots must be located to protect the farmable area and in scale with the main farmhouse. Lots may not be created for the same children on multiple properties. If the number of child lots plus the existing farmhouse equals or exceeds one per 25 acres, all remaining TDRs must be severed.
9. Child lots must be created during the 1981 owner's lifetime.
10. If there are joint owners, each with children, the number of child lots is as per Guideline #7, and limited to 1, 2 or 3 for the tract, not 1, 2 or 3 for each owner.

CM: ha G:\MURRAY\Draft ZTAs MCPB 3-18-10 final staff report.doc

Attachments:

1. Correspondence received on March 4, 2010
2. Draft Zoning Text Amendment - RDT Zone – Lot Area Standards
3. Draft Zoning Text Amendment - RDT Zone - Child Lot Standards
4. March 12, 2007 letter from the Planning Board to Council President Praisner

Zoning Text Amendment No: 10-
Concerning: RDT - Child Lots Standards
Draft No. & Date: 2/3/10
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:

- amending the density calculations in the RDT Zone to clarify the number of child lots allowable; and
- generally amending the conditions for creating a child lot in the RDT 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-9.23 "Intent of the Rural Density Transfer Zone"

Section 59-C-9.74 "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:

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

DIVISION 59-C-9. Agricultural Zones.

Sec. 59-C-9.2. Purposes or intent of the zones.

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59-C-9.23. Intent of the Rural Density Transfer zone.

The intent of this zone is to promote agriculture as the primary land use in sections of the County designated for agricultural preservation in the General Plan and the Functional Master Plan for Preservation of Agriculture and Rural Open Space. This is to be accomplished by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas.

Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural operations are permitted at any time, including the operation of farm machinery. No agricultural use can be subject to restriction on the grounds that it interferes with other uses permitted in the zone, but uses that are not exclusively agricultural in nature are subject to the regulations prescribed in this division 59-C-9 and in division 59-G-2, "Special Exceptions-Standards and Requirements."

The intent of the child lot option in the Rural Density Transfer zone is to facilitate the continuation of the family farming unit and to facilitate the intergenerational transfer of the farming operation.

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59-C-9.4. Development standards.

The following requirements apply in all cases, except as specified in the optional standards for cluster development set forth in sections 59-C-9.5 and 59-C-9.57 and the exemption provisions of section 59-C-9.7.

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

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

- (a) Each lot created for children in accordance with the Maryland Agricultural Land Preservation Program must [not exceed the] have a retained transferable development right[s] [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 re-platting 2 or more lots; provided that the resulting number of lots is not greater than the number which were re-platted.
- [(4) c] A lot created for use for 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, provided that the following conditions are met:

- (1) The property owner can establish that he had legal title to the entire tract on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.
- (2) Each lot created for children must have a retained transferable development right.
- (3) This provision applies to only one such lot for each child of the property owner.
- (4) A maximum of three child lots can be established.
- (5) To create one child lot, the lot must be created from a tract of land of at least 25 acres.
- (6) To create two child lots, the lots must be created from a tract of land of at least 70 acres.
- (7) To create three child lots, the lots must be created from a tract of land of at least 120 acres.
- (8) A lot created for a child must be no greater than one acre, or the minimum area necessary for approval of well and septic but in no case greater than 3 acres. For 'flag lots', the area of the driveway stem will be discounted.

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Sec. 2. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

54