

MEMORANDUM

January 20, 2011

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz,  Legislative Attorney

SUBJECT: Zoning Text Amendment 10-14, Rural Neighborhood Cluster/Transferable Development Rights (RNC/TDR) Zone - Land Uses

Zoning Text Amendment (ZTA) 10-14, sponsored by Councilmember Floreen, was introduced on December 14, 2010. This ZTA would conform the land uses allowed in the RNC/TDR zone to the land uses in the RNC zone. When the RNC/TDR zone was first recommended by the Planning Board, it was recommended with the same land uses that were allowed in the RNC zone. The Council approved the zone with different allowed land uses, although there is no evidence in the record that the Council's intent with regard to allowable land uses was different than the Planning Board's intent.

The Council held a public hearing on January 18, 2010. The Planning Board and Planning Board Staff favored approval of ZTA 10-14 as introduced. The Planning Board noted that ZTA 10-14 would conform the RNC/TDR zone to Planning Board's original intent. The representative of a property owner also spoke in favor of approval of ZTA 10-14. Another resident recommended making the proposed changes in the Zoning Ordinance Rewrite and not as a ZTA.

Newly allowable uses allowed in the RNC/TDR zone under the ZTA

The land uses to be added to the RNC/TDR zone by ZTA 10-14 are:

accessory dwelling	permitted with an approved special exception;
guest house, as accessory use	permitted by-right;
amateur radio facility	permitted by-right if 65 feet in height or lower; otherwise permitted with an approved special exception for additional height;
telecommunications facility	permitted with an approved special exception ; and
private riding stable	permitted by-right with an acreage requirement per horse—minimum two acre site).

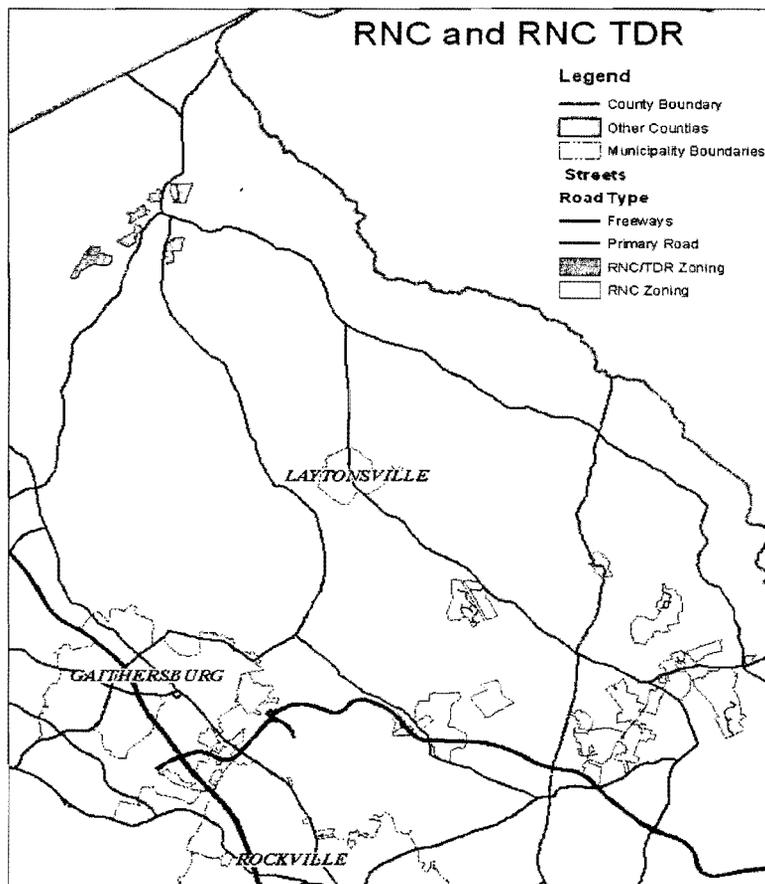
The only land use that was of any concern to the Planning Staff was Guest house because it is excluded from the calculation of density. The Planning Staff memorandum said the following:

On surface, it appears that allowing accessory dwellings and guest houses in the RNC/TDR zone could allow for additional development units without the additional density calculation. However, as with all other agricultural zones (including the RDT zone), an accessory dwelling must be located on a tract or parcel that is primarily agricultural in use, thereby limiting its impact on adjacent properties (generally located on larger tracts than the smaller RNC lots created through subdivision). Also, the special exception process would ensure that any adverse impacts of the use on surrounding properties would be addressed. A guest house, as defined and as codified under footnote 8, is excluded from the density calculations set forth in sections 59-C-9.41 only if it remains accessory to a farm. Otherwise, its density is calculated based on the applicable zoning requirements.

Telecommunications facilities may be of concern; however tall facilities require a special exception.

Where has the RNC/TDR zone been applied?

The Council applied RNC/TDR zoning only in an area around Damascus. There are approximately 406 acres of land zoned RNC/TDR. The Council applied the RNC zone to land around Olney. There are approximately 3,200 acres of land zoned RNC.



Should the proposed changes only be considered in the Zoning Ordinance Rewrite project?

The Zoning Ordinance Rewrite is a long way off. In its presentation to the Council on January 18, the Planning Director indicated that the Council could expect a Planning Board approved Ordinance in 2012. (That is one year later than previous time tables given the Council.) There is no reason to wait so long to correct an error.¹

Staff recommends approval of ZTA 10-14 as introduced.

<u>This Packet Contains</u>	<u>© number</u>
ZTA 10-14	1 – 3
Planning Board Recommendation	4 – 5
Planning Staff Recommendation	6 – 7

F:\Land Use\ZTAS\ZYONTZ\2010 ZTAs\ZTA 10-14 RNC TDR land uses\ZTA 10-14 PHED memo Jan 24.doc

¹ “The time is always right to do what is right.” Martin Luther King, Jr.

Zoning Text Amendment No.: 10-14
Concerning: RNC/TDR Zone – Land Uses
Draft No. & Date: 1 – 11/08/10
Introduced: December 14, 2010
Public Hearing: January 18, 2011
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 Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- conform the land uses allow in the RNC/TDR zone to the land uses allowed in the RNC zone

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

Section 59-C-9.3. Land uses.

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

ORDINANCE

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

1 **Sec. 1. Section 59-C-9 Agricultural Zones is amended as follows:**

2 **59-C-9.3. Land uses.**

3 No use is allowed except as indicated in the following table:

- 4 - **Permitted uses.** Uses designated by the letter “P” are permitted on
 5 any lot in the zones indicated, subject to all applicable regulations.
 6 - **Special exception uses.** Uses designated by the letters “SE” may be
 7 authorized as special exceptions, in accordance with the provisions of
 8 Article 59-G.
 9

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
* * *							
(e) Residential:²							
Accessory apartment. ^{6,7}	SE	SE	SE	SE ⁴⁸		SE	SE
Accessory dwelling. ⁷	SE	SE	SE	SE ⁴⁸	SE	SE	<u>SE</u>
* * *							
Guest house, as accessory use. ⁸	P	P	P	P ⁴⁸	P	P	<u>P</u>
* * *							
(f) Transportation, Communication and Utilities:							
* * *							
Amateur radio facility	P ⁴⁶ /SE	<u>P⁴⁶/SE</u>					
* * *							
Telecommunications facility	P ³³ /SE	P ³³ /SE	P ³³ /SE	P ³³ /SE	P ³² /SE	SE ²	<u>SE²</u>
* * *							
(i) Cultural, Entertainment and Recreational:							
* * *							
Riding stable, private. ¹⁷						P	<u>P</u>
* * *							

10

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

13

14 This is a correct copy of Council action.

15

16

17

18 Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

January 19, 2011

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

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 10-14

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 10-14 at its regular meeting on January 13, 2011. By a vote of 4:0, the Board recommends approval of the text amendment as introduced to conform the land uses allowed in the RNC/TDR zone to the land uses allowed in the RNC zone.

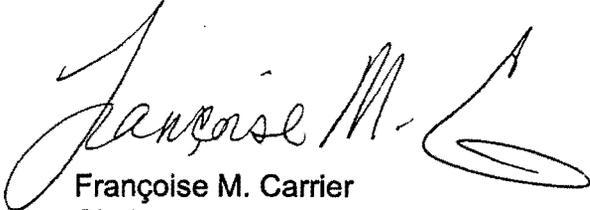
At the time that the RNC/TDR zone was established (as part of the Planning Board Draft of the Damascus Master Plan), the intent was to add to the tools available to establish TDR receiving capacity in the Damascus transitional areas and ultimately for properties in other master plans, allowing smaller lots and greater preservation of open space.

The Planning Board recommended that the RNC/TDR Zone include the same land uses as allowed in the RNC Zone. The County Council approved the zone but did not include several of the land uses allowed in the RNC Zone, although there is no evidence in the record that the Council's intent regarding allowable land uses was different from the Planning Board's recommendation.

The Board believes that the impact of establishing land uses in the RNC/TDR Zone that are consistent with those allowed in the RNC Zone should be minimal. ZTA 10-14 also appears to be in conformance with the RNC/TDR Zone's original intent of establishing land uses and development standards consistent with the RNC Zone.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, January 13, 2011.



Françoise M. Carrier
Chair

FC: GR



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

MCPB
Item #11
1/13/11

DATE: January 3, 2011
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Area 1 *RKX*
FROM: Greg Russ, Zoning Coordinator, Functional Planning & Policy *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To conform the land uses allow in the RNC/TDR zone to the land uses allowed in the RNC zone

TEXT AMENDMENT: No. 10-14
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Floreen
INTRODUCED DATE: December 14, 2010

PLANNING BOARD REVIEW: January 13, 2011
PUBLIC HEARING: January 18, 2011; 1:30pm

STAFF RECOMMENDATION: Approval as introduced to conform the land uses allow in the RNC/TDR zone to the land uses allowed in the RNC zone.

ANALYSIS

The RNC/TDR Zone was recommended by the Planning Board in January, 2006 to enable the realization of the recommendations contained in the Planning Board Draft of the Damascus Master Plan relating to properties in the Damascus transitional areas and ultimately for properties in other master plans. The intent was to add to the tools available to establish TDR receiving capacity, allowing smaller lots and greater preservation of open space.

The Planning Board recommended that the RNC/TDR Zone include the same land uses as allowed in the RNC Zone. The County Council approved the Zone but did not include several of the land uses allowed in the RNC Zone although there is no evidence in the record that the Council's intent regarding allowable land uses was different than the Planning Board's intent.

ZTA 10-14 proposes to rectify these omissions. The land uses to be added to the RNC/TDR zone include: accessory dwelling (requires special exception approval); guest house, as accessory use (permitted by-right); amateur radio

facility (permitted by-right if it does not exceed 65 feet in height; otherwise a special exception for additional height is required through the Board of Appeals); telecommunications facility (requires special exception approval); and a private riding stable (by-right based on acreage requirements per horse—minimum two acre site).

On surface, it appears that allowing accessory dwellings and guest houses in the RNC/TDR zone could allow for additional development units without the additional density calculation. However, as with all other agricultural zones (including the RDT zone), an accessory dwelling must be located on a tract or parcel that is primarily agricultural in use, thereby limiting its impact on adjacent properties (generally located on larger tracts than the smaller RNC lots created through subdivision). Also, the special exception process would ensure that any adverse impacts of the use on surrounding properties would be addressed. A guest house, as defined and as codified under footnote 8, is excluded from the density calculations set forth in sections 59-C-9.41 only if it remains accessory to a farm. Otherwise, its density is calculated based on the applicable zoning requirements.

In summary, the impact of establishing land uses in the RNC/TDR zone that are consistent with those allowed in the RNC zone should be minimal. It also appears to be in conformance with the RNC/TDR zone's original intent of establishing land uses and development standards consistent with the RNC zone.

GR

Attachments

1. Proposed Text Amendment No. 10-14