

MEMORANDUM

February 24, 2011

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Zoning Text Amendment 10-15, Agricultural Zones - Airstrips

Zoning Text Amendment (ZTA) 10-15, sponsored by Councilmembers Elrich and Rice, was introduced on December 14, 2010. This ZTA would clarify when airstrips are permitted in Agricultural zones. Although special exceptions for airstrips have been an option for landowners of RDT zone property since 1977, one application is in the approval process; no applicants were approved. According to the Maryland Aviation Administration, the County has no private/non-commercial airstrips or airports.¹

The Council held a public hearing on January 18, 2011. The Planning Board thought that the Council would benefit from the opinion of the County Attorney on whether ZTA 10-15 was preempted by the Federal Aviation Act. In addition, the Board opposed the amortization provision for approved airstrips. Most testimony supported ZTA 10-15. The issue of preemption by the Federal Aviation Act was raised by several speakers. The Council left the record open until January 31, 2011 to receive additional testimony.

The Agricultural Preservation Advisory Board recommended against the adoption of ZTA 10-15. In its opinion, the ZTA would be too restrictive and did not recognize that the 1964 General Plan emphasized the need “to provide and protect large open spaces for recreational opportunities”. The majority of written testimony supported ZTA 10-15 as a method to protect agriculture. Some testimony opposed ZTA 10-15, emphasizing that airstrips are not harmful to agriculture.

How has the Planning Board interpreted the current provision for airstrips?

There is a row in the land use table for agricultural zones in the Zoning Ordinance called “airstrip associated with a farm”. It is an allowed use that requires the approval of a special exception. The special exception provision currently reads as follows:

¹ There are no such airstrips in Prince George’s County and Allegany County either. The County does have 2 public/commercial airports - the County Airpark and Davis Airport. Statewide, there are 103 private/non-commercial airstrips.

Sec. 59-G-2.00.4. Airstrip associated with farm.

A special exception may be granted for an *airstrip on a farm*, as defined² in section 59-A-2.1, subject to the following requirements:

- (a) Only one airplane is permitted to be permanently housed at the airstrip.
- (b) The applicant must obtain a favorable air space determination from the Federal Aviation Agency (FAA) in response to an application filed on Form FAA 7480.1, titled "Notice of Proposed Landing Area Established," or whatever form number and title the FAA may require. {emphases added}

In the Planning Staff's opinion, the words in the title "**Airstrip associated with farm**" do not have any legal substance; therefore, the description of the use as an "airstrip on a farm" is the operative text. Their analysis failed to notice that the use allowed by the land use table was "airstrip associated with a farm". The phrase in the land use table is not an inoperative title.

The "Airstrip associated with farm" use is in the uses categorized as "Transportation, Communication, and Utilities". Testimony suggested that this expressed the Council's original intent to not require that the airstrip be associated with farm operations. In the opinion of some testimony, the Council would have put the use under an Agricultural use if an airstrip was meant to only be a use associated with farm operations.

Court rules for statutory interpretation would look to the plain language of the code before looking for intent. The phrase "associated with a farm" is different from the phrase "on a farm". In any event, ZTA 10-15 would clarify whether an airstrip must be associated with a farm.

How many airstrip special exceptions has the Board of Appeals approved?

The Board of Appeals has not approved any airstrip special exceptions. The Maryland Aviation Administration has no known private/non-commercial airstrips in the County. The County Airpark and Davis Airport are registered as public/commercial airports.³ Neither airport has a special exception. There is one special exception application pending before the Board of Appeals.

Are the current and proposed airstrip provisions preempted by the Federal Aviation Act?

Zoning is not preempted by the Federal Aviation Act. The Maryland Aviation Administration agrees with this conclusion. The Associate County Attorney, Cliff Royalty, provided the following analysis and opinion:

The Federal Aviation Act (on its face and as interpreted by the Supreme Court in *City of Burbank v. Lockheed Air Terminal*) has preempted local regulation of airspace and aircraft operations. Federal law does not preempt local zoning and land use regulations unless those regulations impinge upon aircraft operations. And there seems to be a consensus that local governments retain the ability to determine whether (and where) an airport may be established. See *Harrison v. Schwartz*; *Lucas v. People's Counsel for Baltimore County*; *Gustafson v. City of Lake Angelus*, 76 F.3d 778; *Broadbent v. Allison*, 155 F.Supp.2d 520. The cases provide less than clear guidance on when a purported land use regulation affects air operations. Compare *Harrison v. Schwartz* to *Faux-Burhans v.*

² An airport is defined in §59-A-2.1; however, an "airstrip" is not defined.

³ The Department of Permitting Services indicated that ZTA 10-15 would not have any effect on those airports.

Frederick County, 674 F.Supp. 1172. It is clear that restrictions on flight times and frequency of flights (in order to reduce noise) are preempted. See *Harrison v. Schwartz*. It would also seem to be clear that the local government may consider the impacts of an airport (like noise) when deciding whether to allow one. See *Lucas v. People's Counsel for Baltimore County*. Also, in *Faux-Burhans*, the federal district court upheld a zoning law that regulated the "type of aircraft" that could use a private airport. The *Harrison* court cites the *Faux-Burhans* case approvingly.

I thus tentatively conclude that the County's special exception provision is not preempted on its face and would only be preempted if the special exception approval attached conditions that regulated air operations. Also, the County does have the authority to not allow airstrips (or airports). Therefore, the airstrip special exception could be deleted from the zoning ordinance altogether.

Please note that this analysis assumes that the courts would treat an "airstrip" (as regulated by the County zoning ordinance) like an "airport" (as defined in federal law).

Staff would summarize the situation as follows:

ZTA 10-15 as introduced is subject to challenge on the grounds that, by implication, it favors some aircraft over others; however, there is reason to believe that the County could win a challenge to ZTA 10-15 in federal court.

The ZTA would create an additional burden on the Department of Permitting Services to determine that an airstrip was operating in a manner that was associated with farming operations; however, that is similar in nature to enforcing other special exceptions. **Staff recommends approval of ZTA 10-15. Staff recommends a revision proposed by Planning Staff that any airstrip must not be paved.**

Options

The following options are clearly within the County's zoning powers:

- 1) Allow (as of right) or prohibit all airstrips;
- 2) Allow airstrips under specified non-aircraft conditions (e.g., distance for neighboring properties);
- 3) Allow airstrips as a special exception (provided the special exception does not limit hours of operation and flight frequency).

Prohibiting or allowing all airstrips is beyond the scope of the advertising for ZTA 10-15.⁴ Allowing all airstrips located at a specified distance from a property would also be beyond the scope of the advertisement for ZTA 10-15 if the airstrip were not associated with farming operations.

⁴ ZTA 10-15 was advertised as an amendment that would clarify that airstrips allowed in agricultural zones must be associated with farming operations; and provide an amortization period for certain approved airstrip special exceptions.

Should ZTA 10-15 include an amortization clause?

ZTA 10-15 provides the following:

Any approved special exception for an “airstrip associated with farm” but not associated with farming operations must cease operation before {6 months after the effective date}.

As noted by the Planning Board and others, the type of clause is not often applied to non-conforming uses. It is more typical that the uses that were once legal uses are allowed to continue; however, the Council has used amortization periods in the past to extinguish a use over time.⁵ If the Council believes that recreational airstrips would be detrimental to agriculture, then this provision is appropriate.

The amortization period must be appropriate to the investment in the use. An airstrip is little more than a mowed area that may have a windsock. Under this circumstance, a 6 month amortization period is appropriate.

An amortization period is unnecessary to prohibit airstrips not associated with farm operations if the Council makes ZTA 10-15 effective upon adoption. There are no approved airstrips. The Council’s action will occur before the Board of Appeals acts on the pending special exception. The Board of Appeals must apply the Zoning Ordinance as it exists at the time of its action.

Staff recommends deleting the amortization provision and making ZTA 10-15 effective upon adoption.

<u>This Packet Contains</u>	<u>© number</u>
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⁵ ZTA 09-03 used an amortization period for parking.

Zoning Text Amendment No.: 10-15
Concerning: Agricultural Zones - Airstrips
Draft No. & Date: 1 – 12/02/10
Introduced: December 14, 2010
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: Councilmembers Elrich and Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- clarify that airstrips allowed in agricultural zones must be associated with farming operations; and
- provide an amortization period for certain approved airstrip special exceptions

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.
DIVISION 59-G-2 SPECIAL EXCEPTIONS--STANDARDS AND
REQUIREMENTS
Section 59-G-2.00.4 Airstrip Associated with farm

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-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 under Article 59-G.

8

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
* * *							
(f) Transportation, Communication and Utilities:							
Airstrip, associated with [farm] <u>farming</u> <u>operations</u> *		SE ²	SE	SE			
* * *							

9

10 * Any approved special exception for an “airstrip associated with farm” but not associated
11 with farming operations must cease operation before {6 months after the effective date}.

12

13 **Sec. 2. Division 59-G-2 Agricultural Zones is amended as follows:**

14 **DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND**
15 **REQUIREMENTS.**

16 The uses listed in this Division, as shown on the index table below, may be
17 allowed as special exceptions in any zone where they are so indicated, as provided
18 in this Article, subject to the standards and requirements in this Division and the
19 general conditions specified in Section 59-G-1.21.

<u>USE</u>	<u>SECTION</u>
20 Abattoir.....	G-2.00.2
21 Accessory apartment.....	G-2.00
22 Accessory dwelling.....	G-2.00.1
23 Airstrip associated with [a farm] <u>farming operations</u>	G-2.00.4

24

25 * * *

26 Sec. 59-G-2.00.4. Airstrip associated with [farm] farming operations.

27 A special exception may be granted for an airstrip on a farm, as defined in section
28 59-A-2.1, subject to the following requirements:

29 (a) Only one airplane is permitted to be permanently housed at the
30 airstrip.

31 (b) The applicant must obtain a favorable air space determination from
32 the Federal Aviation Agency (FAA) in response to an application filed
33 on Form FAA 7480.1, [title] titled "Notice of Proposed Landing Area
34 Established," or whatever form number and title the FAA may
35 require.

36 (c) The aircraft using the airstrip must aid farming operations.

37 * * *

38 **Sec. 3. Effective date. This ordinance becomes effective 20 days**
39 **after the date of Council adoption.**

40

41 This is a correct copy of Council action.

42

43

44 _____
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 14, 2010

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

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 10-15

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 10-15 at its regular meeting on January 13, 2011. After careful review of the material of record, including a letter received on January 12, 2011, from a concerned citizen, the Board unanimously (voting 4:0 with one Commissioner being absent) provides comments as outlined below.

Councilmembers Elrich and Rice sponsored ZTA 10-15 to clarify the meaning of the special exception set forth in Section 59-G-2.00.4, "Airstrip associated with farm", by proposing that any aircraft using such an airstrip must aid farming operations. The ZTA also includes a footnote that would require any approved special exception for an airstrip not associated with farming operations to be terminated within six months after the effective date of this ZTA.

Since the publication of the technical staff report (see attachment), the Board received a letter dated January 12, 2011 from citizens questioning the County's authority to impose certain conditions of use as proposed by the ZTA due to preemption by federal aviation law. The Board's Office of General Counsel provided case law analysis of local jurisdiction authority in governing airstrips and aircraft operation. The legal findings suggest a number of pre-emptive limitations that cannot be imposed on the operation of a privately owned airport. Among the limitations that cannot be imposed by the jurisdiction in approving or conditionally approving the location of an airstrip are

those conditions that are imposed in order to deal with noise abatement such as hours of operation for the aircraft and frequency of aircraft take-offs and landings. Although the Maryland case law specifically restricts local intrusion into the FAA's purview with regard to "efficient and safe use of airspace," the Maryland courts have refrained from extending such restrictions to conditions established through local land use and zoning rules.

With these findings in mind, Counsel recommends that the Office of the County Attorney provide the County Council with further analysis with regard to the proposed zoning approach that restricts aircraft operations to those that aid in farming operations. Should the County Attorney's Office agree with the Planning Board Counsel's opinion, we recommend that the County Council initiate a text amendment to eliminate "airstrips associated with farm" as a special exception use but consider allowing airstrips in certain zones by right based on clear land use and zoning rules such as greater setbacks and parcel size that would steer clear of possible challenges to such conditions based on preemption by federal law.

The Board also expressed concern with the proposed footnote language that would rescind, within six months of the effective date of this text amendment, any approved special exception for an airstrip associated with a farm but not associated with farming operations. Typically, our recommendation would be to grandfather existing legally operating uses or to allow the use to become nonconforming pursuant to the limits of Section 59-G-4.1. If ZTA 10-15 is approved to limit airstrips to those that aid in farming operations, the Planning Board recommends that the proposed footnote be eliminated.

CERTIFICATION

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

Françoise Carrier
Chair

FC: GR



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

MCPB
Item #12
1/13/11

DATE: January 4, 2011
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Area 1 *RK*
FROM: Greg Russ, Zoning Coordinator, Functional Planning & Policy *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To clarify that airstrips allowed in agricultural zones must be associated with farming operations; and provide an amortization period for certain approved airstrip special exceptions

TEXT AMENDMENT: No. 10-15
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmembers Elrich and Rice
INTRODUCED DATE: December 14, 2010
PLANNING BOARD REVIEW: January 13, 2011
PUBLIC HEARING: January 18, 2011; 1:30 PM

STAFF RECOMMENDATION: APPROVAL with modifications to clarify that airstrips allowed in agricultural zones must be associated with farming operations. Staff recommends that language be included that requires any airstrip associated with a farming operation be unpaved, consistent with efforts to preserve farmland.

Although ZTA 10-15 is consistent with the preservation goals for the rural areas of the County, staff also believes that through the general and specific special exception conditions and requirements applied on a case by case basis for this type of use, the preservation goals of the County could still be maintained while also providing opportunities for housing small aircraft where appropriately allowed by the Federal Aviation Administration and the Maryland Aviation Administration.

Staff has concerns with the proposed footnote language that would rescind, within six months of the effective date of this text amendment, any approved special exception for an airstrip associated with a farm but not associated with farming operations. Typically, our recommendation would be to grandfather

existing legally operating uses or to allow the use to become nonconforming pursuant to the limits of Section 59-G-4.1. **Staff recommends that the proposed footnote be eliminated.**

BACKGROUND/ANALYSIS

Recently, there has been some confusion regarding the meaning of the special exception heading of Section 59-G-2.00.4, "Airstrip associated with farm". The existing special exception language in this section states that "a **special exception may be granted for an airstrip on a farm, as defined in Section 59-A-2.1, subject to the following requirements....**" The specific requirements associated with the use also do not differentiate as to the specific purpose of the airplane using the airstrip located on a farm. As such, there have been two viewpoints in interpreting the intent of the airstrip special exception use. One view places emphasis on the heading of Section 59-G-2.00.4 and interprets an airstrip "associated with farm" to mean the airplane must be used in conjunction with farming operations (i.e. crop dusting, etc.). The second view does not associate the use of the airplane with the farming operation but only requires that the airstrip be located on a farm.

Councilmembers Elrich and Rice sponsored ZTA 10-15 to clarify this issue by establishing that any aircraft using such an airstrip must aid farming operations. The ZTA also includes a footnote that would require any approved special exception for an airstrip not associated with farming operations to be terminated within six months after the effective date of this ZTA. To date there are no approved special exceptions for airstrips of *any kind* in Montgomery County. As depicted in the Master Plan Impacts section below, there is currently one airport in the RC zone (one of the three zones where this special exception use could be located) and one in the R-200 zone (not impacted by this legislation), but neither went through the special exception process. Also, there is one pending special exception application with the Hearing Examiner/Board of Appeals for an "airstrip associated with farm". This airstrip is located on a farm, but the aircraft would not be used to aid in farming operations. If the special exception is approved prior to the adoption of ZTA 10-15, then it would be subject to the amortization language of this legislation. Further, staff is unclear how the existing airport located in the RC zone (presumably a legal nonconforming use) would be impacted by the amortization language. **Staff does not recommend including the amortization language in the ZTA.**

MASTER PLAN IMPACTS

This ZTA would impact airstrips in the RC, LDRC and RDT zones. The majority of properties in these zones are covered by the Functional Master Plan for the Preservation of Agriculture and Rural Open Space (AROS, 1981), Clarksburg Master Plan and Hyattstown Special Study Area (1994), the Cloverly Master Plan

(1997), the Fairland Master Plan (1997), the Sandy Spring/Ashton Master Plan (1998), the Potomac Subregion Master Plan (2002), the Olney Master Plan (2005), and the Damascus Master Plan (2006). Of these plans, only the Damascus Master Plan provides explicit guidance on airports:

The Davis Airport is located in the southwest quadrant of the intersection of Laytonsville Road (MD 108) and Hawkins Creamery Road. This regional airport includes a single runway 2,000 feet in length and is one of Montgomery County's two public-use airports as established by the Maryland Aviation Administration. This Plan recognizes the airport as one element of the County's multi-modal transportation system (Transportation, p. 58).

Davis Airport is one of only two public use airports in the County; the other is Montgomery County Airpark near the intersection of Woodfield and Airpark Roads. Davis Airport was operational prior to the application of the RDT zone, and has never gone through the special exception process. According to DPS staff, there are no approved special exceptions for private airports or airstrips in the County, though a special exception application for one in the RDT zone is pending. The zoning ordinance does not differentiate between public and private airports or airstrips.

The other master plans have more general language that may be applicable to this ZTA as follows:

Functional Master Plan for the Preservation of Agriculture and Rural Open Space (1980)

This Plan focuses on the preservation of farmland but it also tries to establish a policy framework that will contribute to the continuation of farming in the County (Foreword, p. 1, emphasis original).

ZTA 10-15 narrows the allowed use to airstrips which are specifically associated with farming operations, which is consistent with the Master Plan. **In order to also be consistent with the preservation of farmland, it may be appropriate to specify that such airstrips should be unpaved.**

Clarksburg Master Plan and Hyattstown Special Study Area (1994)

This Plan is silent on airports or airstrips. Where the RC zone was applied, the Plan "recommend[s] large lot zoning as transition to neighboring rural and agricultural areas (5-acre and 2-acre lots)... [t]o create a suitable transition from other communities (Damascus/Germantown) to Clarksburg," and where the RDT zone was applied, it was to "encourage the preservation of agricultural (sic) and open space" (Zoning Plan, p. 105). The Plan did not recommend any LDRC zoning.

The proposed ZTA is consistent with the purpose of the RDT-zoned properties in this Plan area. However, for the RC-zoned properties, an airstrip would not be a suitable transition use under either the existing or proposed language.

Cloverly Master Plan (1997)

The Cloverly Master Plan slightly increased the acreage of the RC zone in the Plan area from 1,811 acres to 1,831 acres; no RDT or LDRC zoning is recommended.

The Implementation and Staging chapter of the Plan makes two specific recommendations that may be pertinent to the proposed ZTA:

"2. Allow only those uses in the rural zones that are consistent with rural character by their very nature, such as riding stables. Remove from consideration in Sandy Spring/Ashton and Cloverly any special exception uses that are not consistent with the preservation of rural character by evaluating the types of uses currently permitted in rural zones by special exception...."

"3. Allow only agricultural uses in the open space created through rural cluster development. Non-agricultural uses should not be counted as part of the required percentage of preserved open space. An evaluation of uses currently permitted in the Rural Cluster zone, particularly by special exception, should be undertaken" (Zoning Text Ordinance Amendments, p. 103).

This language does not indicate support for allowing airstrips in Cloverly's rural zones or in the preserved open space portion of rural cluster developments.

Fairland Master Plan (1997)

The Fairland Master Plan confirmed 704 acres of land in the RC zone, but did not recommend any properties for RDT or LDRC zoning. The RC zone was applied in the Patuxent Watershed community. The Plan recommended against uses that would result in more than ten percent imperviousness (Patuxent Watershed, p. 61). The Plan does not include recommendations for farming or farms.

Sandy Spring/Ashton Master Plan (1998)

The Sandy Spring/Ashton Master Plan is silent on airstrips. Some properties are in the RC zone, but there is no RDT- or LDRC-zoned property in the Plan area. Of the RC properties, the Plan says, *"Current clustering provisions would allow homes to be built on 40 percent of the property with the remaining 60 percent for farming, private recreation, or other uses allowed in the Rural Cluster Zone"*

(Rural/Open Space Area, p. 40). The proposed ZTA is consistent with this recommendation.

Potomac Subregion Master Plan (2002)

The Potomac Subregion Master Plan contains no airstrips or guidance for them. The Plan confirmed most of the existing RC zone in the Plan area, but made no new RC recommendations. The area contains no RDT- or LDRC-zoned properties, and does not address farming.

The Plan includes guidance on special exceptions, noise and imperviousness as follows:

- *"This Plan endorses guidelines for locating special exception uses in residential areas..."*
 - *"Limit the impacts of existing special exceptions in established neighborhoods. Increase the scrutiny in reviewing special exception applications for highly visible sites and properties adjacent to the Chesapeake & Ohio National Historical Park.*
 - *"Avoid an excessive concentration of special exceptions along major transportation corridors" (Special Exception Policy, p. 35).*
- *"Effective noise control helps maintain the community as a desirable place to live, work and conduct business. It is the public sector's responsibility to design roads, streetscapes, and public areas to minimize noise nuisances. As a minimum guideline, the private sector should plan and design development using the receiving property standards of the 1997 County Noise Control Ordinance" (Noise, p. 29).*
- *"To create environmentally sustainable development:"*
 - *"Design and locate parking lots and structures to minimize impervious surfaces" (Design Principles, p. 33).*

The proposed ZTA does not seek to address the compatibility and sustainability issues outlined in this Plan.

Olney Master Plan (2005)

One of the goals of the Olney Master Plan is to *"Protect the Patuxent Watershed including the drinking water reservoir, and agricultural and rural open space" (Land Use Plan, p. 15). "Agriculture and rural open space in the area west of Georgia Avenue and rural open space in the area east of Georgia Avenue are the recommended primary land uses (p. 18); the existing RDT and RC zones were confirmed in these areas to "maintain the character and existing scale of development in the rural communities of Northern Olney" (p. 20). In addition, the existing LDRC-zoned properties were recommended for rezoning to the RNC zone followed by the removal of the LDRC zone from the Zoning Ordinance (Zoning, pp. 137-140). The Plan supports the Patuxent River Watershed*

Functional Master Plan which limits impervious to ten percent in much of this area.

The proposed ZTA supports farming operations, which is consistent with the Plan. The impervious limit might place constraints on an airstrip if paving were proposed.

SUMMARY

There is no indication that airstrips are likely to proliferate in the three agricultural zones where they are allowed by special exception, given that no such special exceptions currently exist. Nevertheless, since the general and specific master plan guidance for the agriculturally zoned areas predictably supports preservation of farming operations, ZTA 10-15 is consistent and perhaps even enhances this goal. It should be noted, however, that staff believes that given the general and specific special exception conditions and requirements that are applied on a case by case basis through the special exception process, the preservation goals of the County could still be maintained while also providing opportunities for housing small aircraft where allowed by the Federal Aviation Administration and the Maryland Aviation Administration.

The unclear part of the ZTA stems from how the existing Davis Airport (nonconforming use) and any pending applicable special exception application would be impacted by the proposed amortization language. As drafted the amortization language appears to address only approved special exceptions for airstrips not associated with farming operations. As stated above, none are currently approved, although there is one pending special exception application that, if approved, would fit the criteria of the amortization language. Staff recommends that the amortization language be eliminated.
GR

Attachments

1. Proposed Text Amendment 10-15 as modified by staff

Good afternoon, members of the of the County Council. My name is Beth Gillespie and I am speaking to you today on behalf of my husband, Dr. Bob Gillespie, who is unable to attend this meeting as he has a full patient case load this afternoon and was only advised of the proposed amendment late Friday.

My husband has sought a special exception for an airstrip on our farm in Boyds since June of last year. He has complied with all of the requirements of this special exception ordinance and has received an affirmative recommendation of the Planning Board. Furthermore, the Technical Staff of the Park and Planning Commission correctly pointed out that the special exception for a farm airstrip in the Agricultural Reserve does not require that the airstrip be affiliated with any sort of farming operation, including crop dusting.

There are 137 airports in the state of Maryland. 102 of these airports are private farm airstrips. The vast majority of airports in our state are private farm airstrips located in agricultural communities and the same is true throughout the United States. Sadly, there are currently no farm airstrips in Montgomery County, even though the Agricultural Reserve is ideally suited for this purpose. Not a single one of the 102 private farm airstrips in the state of Maryland has any affiliation, whatsoever, with crop dusting or any other conceivable farming operation pertaining to aviation. In fact, every farm airstrip in Maryland is used for just one purpose: recreation. Additionally, not a single county in the state of Maryland requires that a farm airstrip be affiliated with any sort of farming operation.

Crop dusting operations are tightly-regulated commercial and industrial concerns. These companies use specialized aircraft to disperse chemicals. Crop dusting aircraft have large, powerful engines which generate tremendous horsepower and produce extremely high noise levels. These aircraft are vastly different from the small airplanes found on our farm airstrips. Indeed, the largest single-engine airplane in the world is a crop duster. Crop dusting operations also store hundreds of thousands of gallons of toxic chemicals at their facilities. It is hard to believe that any informed citizen of Montgomery County would advocate for crop dusting airstrips in the Agricultural Reserve. When we understand the true nature of these enterprises, it is immediately clear why the special exception pertaining to farm airstrips in the Agricultural Reserve does not require any affiliation with farming operations.

The special exception sought by my husband on our 40 acres farm is for a very limited, unobtrusive and non-intensive use. Like most farm airstrips, it consists of a simple mowed strip of grass. The airstrip has received all required approvals from the FAA and the Maryland Aviation Administration. There will be no improvements constructed, nor any equipment installed to accomodate the

airstrip. There will be no lighting, no grading, no paving and the land will be retained in its present natural condition. There will be no employees, nor any associated traffic. Moreover, use of the airstrip will be limited to my husband's single-engine plane and no more than 2 flights per week during daylight hours. Surely, this type of common, rural airstrip is more in keeping with the spirit and intentions of the Agricultural Reserve than noisy, industrial and intensive crop dusting operations.

Today, my husband has been in contact with aviation experts at the Aircraft Owners and Pilots Association, as well as the Maryland Aviation Administration. They will contact the Council Council in the next few days and are anxious to advise you on the matters which I have briefly touched upon today. We urge you to keep the record open in this matter for a minimum of 30 days to receive comments and testimony from authorities familiar with these uses in order to obtain a full and fair understanding of this issue. It is our sincere hope that the Council will heed the advice of these experts and deny the proposed zoning text amendment. In addition, and as a matter of minimal fairness, if the Council elects to proceed with any sort of amendment of the zoning ordinance, any special exception applications pending as of the time the ordinance is adopted should be grand-fathered in as lawful uses. Thank you very much for the opportunity to speak today.

Good Afternoon Council President and Council Members. My name is Anne Sturm and I am speaking today as President of Sugarloaf Citizens Association. SCA is grateful for this opportunity and grateful to Councilmember Elrich and Councilmember Rice for introducing this ZTA to clarify the use of air strips in the RDT zone.

SCA has been opposing recreational air strips in the Agriculture Reserve since the subject first came up in 2006. It has been clear to us that the original intent of the zoning code was to permit air strips if they were associated with the actual work of a farm.

Otherwise, why would the code have discriminated against private use air strips not associated with a farm?

In 2006 the existing zoning code seemed to be protecting us from non-farm use as air strip applications for recreational use did not move forward. However, a staff report by Park and Planning on a recent application before the Board of Appeals pointed out the need for clarification. We welcome ZTA 10-15 and the County Council's help; we hope you will pass it with amendments.

We recently learned that the FAA has exclusive authority to regulate any approved airstrip; once an air strip is approved anywhere, local conditions no longer apply. We do not think Montgomery County wants to relinquish the right to enforce our own time, noise or frequency restrictions.

1. SCA supports the position that the zoning code should only permit publicly owned or operated airstrips in the R.D.T. zone. Crop dusting has become a highly specialized and infrequent service that most farmers contract out. The most recent crop dusting operation in the Ag Reserve was for the gypsy moth outbreak, and none of these planes took off or landed in the Agriculture Reserve. Any farmer needing to travel on farm business has many choices of regional public transportation hubs. Thus, the need to have an air strip associated with farm work no longer exists.
2. If the County should decide to continue to allow air strips associated with farm work, the provision to add a distance requirement to protect homes and nearby farming operations is vital. SCA would support an amendment that would require a one thousand foot buffer between an air strip for farm use and any home.

What ever the exact wording of the final ZTA, we hope there will be no doubt on the following point—recreational air strips are not a permitted use in the RDT zone.

Thank you very much for your time and consideration.

Anne T. Sturm, President
Sugarloaf Citizens Association



AGRICULTURAL PRESERVATION ADVISORY BOARD

January 13, 2011

The Honorable Valerie Ervin, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Written Testimony – ZTA 10-15 Agricultural Zones Airstrips
Public Hearing: January 18, 2011

Dear Council President Ervin:

Please accept this letter as formal written testimony of the Montgomery County Agricultural Preservation Advisory Board (APAB) regarding Zoning Text Amendment 10-15 Agricultural Zones Airstrips so that it may be entered into the public record for the January 18, 2010 Public Hearing.

The APAB believes the proposed ZTA is too restrictive if the special exception use for airstrips can only be approved as part an agricultural operation and we therefore cannot support ZTA 10-15 for the following reasons. The APAB believes the intent if the Rural Density Transfer Zone (RDT) is to reserve through zoning opportunities for both Agricultural and Open Space uses. This important policy framework was part and parcel to the County's General Plan "On Wedges and Corridors of 1969" that envisioned four broad purposes within our rural areas. The one pertaining to recreational uses specifically states: "*To provide and protect large open spaces for recreational opportunities*" The 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space was designed to implement this vision contained within the County's General Plan.

The APAB believes it would be a mistake to only allow an airstrip in the RDT zone if it was associated with the farm operation. The RDT zone provides an oasis for a wide array of open space opportunities for our residents that might not otherwise be available. Whether enjoying the agricultural reserve by riding through it on horseback, canoeing down Seneca Creek, hiking or biking through the numerous trails that exist or flying a private aircraft over the reserve, all offer the participant a specific and individual recreational experience. The ZTA begs the question, if not in the RDT zone then where else in the County is this type of use most appropriate?

The APAB also considered other aspects regarding private airstrips that make having them in the RDT zone very important.

- a.) **Related to Agriculture:** Private Airstrips are important waypoints as staging areas for pest control operations for involving Agricultural and Forest lands to control important pests or for fertilizing cropland not accessible by roads. While this activity is related to an agricultural activity, it is more of a private commercial use because farmers and rural landowners would contract for these services and not part and parcel to the operation. These airstrips provide a staging area for the activity that otherwise would not be immediately available or economically practical.

- b.) **For Emergency Uses:** In times of crisis or when people are seriously injured in a rural area, emergency responders look for locations to land aircraft (including helicopters), where it is safe to put down. The timing and locations these responders must decide becomes a matter of life and death. Pilots manning these types of aircraft would prefer to land in areas where these airstrips exist rather than attempting to access the risk of landing on unknown lands.

Lastly, the non conforming use footnote would require any private airstrip that could not meet the requirements within 6 months of the adoption of this ZTA would be required to cease operations. The APAB feels that this non conforming use footnote is unreasonably restrictive for those airstrips that have been in place for numerous years. The APAB believes any airstrip that is identified as a non conforming use should be grandfathered and allowed to continue operations.

The APAB unfortunately cannot support ZTA 10-15 as we believe it is too restrictive and does not capture the spirit or intent for recreational opportunities outlined in both the County's 1969 General Plan and 1980 Master Plan for the Preservation of Agriculture and Rural Open Space. Thank you for considering our comments regarding ZTA 10-15 and we look forward to working with the PHED Committee during the ZTA's forthcoming work session.

Sincerely,



David O. Scott, Chairman
Agricultural Preservation Advisory Board

cc: County Council Members
Steven Silverman, Director, DED
Jeremy V. Criss, DED Agricultural Services Manager