

MEMORANDUM

July 7, 2011

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, ^{JZ} Legislative Attorney

SUBJECT: Zoning Text Amendment 11-05, U.S. 29/Cherry Hill Employment Area Overlay Zone –
Automobile Sales and Service

Zoning Text Amendment (ZTA) 11-05, sponsored by Council President Ervin, Councilmember Leventhal, and Councilmember Floreen, was introduced on May 10, 2011.

ZTA 11-05 would delete certain automobile-related uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone and require existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

In a May 27, 2011 memorandum to the Planning Board, Planning Staff supported ZTA 11-05 as introduced:

Area 2 staff believes that the proposed changes to the overlay zone are consistent with the Fairland Master Plan and with the purpose of the overlay zone to provide development that supports current and future employment in the vicinity...

Staff believes that ZTA 11-05 provides an opportunity for an existing, long standing employment generator within the Cherry Hill Road Employment area to continue to thrive in an environment consistent with the overlay zone's purpose to create development containing a compatible mix of employment uses.

On June 14, the Council held a public hearing on ZTA 11-05; all of the testimony, including testimony from the County Executive, supported the amendment. Mr. Gordon requested an amendment to ZTA 11-05 to allow transfers of trip capacity between qualifying properties.

On June 16, 2011, the Planning Board supported Planning Staff's recommendation and recommended ZTA 11-05 as introduced.

Issues

Should the ZTA include a provision concerning the transferability of trip capacity?

Under §50-35(k), new development must demonstrate that existing and proposed public facilities will be adequate to handle the proposed development. That test is generally applied at the time subdivisions are

approved, but may be applied at building permit application under some circumstances. The test is only valid for a specified time period.

Testimony indicates that a property owner with automobile-related uses has approval for more car trips than it wants to use on one lot and for too few trips on another lot. In addition, the approved validity period expired for the “rights” to those trips.

Transferring trip capacity is NOT a zoning issue. It is a subdivision issue or a building permit issue.¹ If the Council is to address this issue, it should be done as an amendment to the Council’s resolution concerning subdivision staging policy. Even if the Council were inclined to want to address transportation capacity in ZTA 11-05, it would need to amend the scope of ZTA 11-05, re-advertise, and hold an additional public hearing.²

¹ Although trip reduction is a provision in the zoning ordinance, trip transfers are not. The provision for trip reduction in the I-1 zone is as follows:

59-C-5.436. Special Trip Reduction Guidelines.

It is the intent of the special trip reduction guidelines to achieve as a goal a reduction in auto trips for I-3 projects of 10 percent below the peak hour trip generation rates adopted by the Planning Board for the administration of the Adequate Public Facilities Ordinance. To help achieve the trip reduction goal, design measures should be incorporated in the project to meet trip reduction objectives established in this section, as well as non-design measures for the purpose of reducing dependence on single-occupant automobiles. The Planning Board may establish a schedule for achieving the goal and time periods during which the trip reduction measures will be in effect.

Any or all of the following trip reduction guidelines or other measures proposed by an applicant are to be considered and implemented by the Planning Board as appropriate on a case-by-case basis taking into consideration specific circumstances of the project:

(a) Design Guidelines.

- (1) Buildings clustered near internal streets to minimize walking distances and to promote an attractive, active and safe pedestrian-oriented streetscape within a project, to accommodate bus service, carpooling, and vanpooling within a project.
- (2) An uninterrupted pedestrian circulation system linking the various uses within a project. The pedestrian system should provide convenient connections to transit service and employee convenience services, to reduce dependence on single-occupant automobiles and to promote an active streetscape.
- (3) Space on the first or ground floor of a building to on-site convenience services for employees of this and other nearby buildings to reduce the need for private vehicle trips for convenience shopping and meals during the day.

(b) Non-design guidelines.

- (1) Trip reduction programs such as limiting off-street parking after consideration of market demand, flex time, the provision of or participation in Share-A-Ride programs, transit/vanpool fare discounts, bus shelters, emergency ride home programs, reserved carpool/vanpool spaces, or other acceptable measures that may be proposed, provided, however, that a limitation on off-street parking below the applicable requirements of article 59-E, shall not be required in order to achieve trip reduction goals.
- (2) Development phased in accordance with public or private transit availability.

The Planning Board may establish a schedule for achieving the requirements and time periods during which the trip reduction measures will be in effect. The Planning Board may also require the applicant to enter into an agreement providing for the monitoring, enforcement, and other necessary terms of the trip reduction program. Provision shall be made in the agreement to allow for the inclusion of a maximum cost for the implementation of substitute components to the trip reduction measures in the event initial components do not achieve or maintain the requirements.

Results of on-site trip reduction programs implemented by the applicant to satisfy other traffic mitigation conditions of development approvals may be credited toward achieving the trip reduction requirement. All traffic mitigation requirements otherwise applicable to an I-3 project remain in effect. The Planning Board may phase implementation of some or all of the trip reduction in accordance with the build-out of the project and/or availability of transit so that the measures are feasible and effective, except that the Planning Board cannot defer such implementation for more than 10 years from the issuance of any initial use-and-occupancy permit for a building or structure in the project.

² ZTA 11-05 was not advertised to generally amend the U.S. 29/Cherry Hill Road Employment Area Overlay zone; it was advertised as follows:

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

Should ZTA 11-05 allow new auto-related uses?

ZTA 11-05 would delete certain automobile-related uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone. This change would affect existing uses and future land use. Existing auto-related uses would be allowed to expand and build under the provisions of the underlying zone. New auto-related uses would be allowed and would be required to develop under the provisions of the overlay zone.

The critical difference between the underlying zones and the overlay zone is that the overlay zone requires site plan approval and generally the underlying zones do not require site plan approval.³ To the best of staff's knowledge, 5 properties have auto-related uses that would escape the requirement for site plan approval.

Councilmember Elrich proposes to allow increased employment opportunities, but in a more limited manner. Councilmember Elrich would only allow existing auto-related uses to expand and rebuild. The list of prohibited uses would still include automobile repair, service, and sales; however, the footnote to those uses would be deleted and replaced with the following footnote to allow properties with those uses to expand on those properties without site plan approval.

These uses are permitted on any property improved before May 5, 2011 for the use of automobile repair, service, sales, or storage. Automobile repair, service, sales, or related office, automobile parking, or automobile storage use may be built, rebuilt, repaired, or expanded on these properties under the standards and procedures of the property's underlying zone.

Councilmember Elrich's amendment is more limiting than ZTA 11-05. It is within the scope of the ZTA advertised for public hearing.

The current grandfathering provision is facially non-discriminatory, even though it protected a limited class of property owners. The actions of a landowner (having auto-related uses before the overlay zone was applied) controlled who was advantaged by the original footnote and who will be advantaged by Councilmember Elrich's proposed amendment. Having established this class of properties (existing before July 16, 2001), the Council can give back the zoning rights to that class of property owners.

<u>This Packet Contains</u>	<u>© number</u>
ZTA 11-05 (as introduced)	1 – 3
Planning Board Recommendation	4 – 5
Planning Staff Recommendation	6 – 10
Testimony from Larry Gordon	11 – 16

F:\Land Use\ZTAS\ZYONTZ\2011 ZTAs\ZTA 11-05 US 29 Overlay zone - auto sales & svc\ZTA 11-05 PHED July 11.doc

-
- delete certain automobile related uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone; and
 - require existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

³ The I-1 zone requires site plan approval for any building that would be more than 3 stories tall.

Zoning Text Amendment No.: 11-05
Concerning: U.S. 29/Cherry Hill Road
Employment Area Overlay Zone –
Automobile Sales and Service
Draft No. & Date: 1 - May 5, 2011
Introduced: May 10, 2011
Public Hearing: June 14, 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: Council President Ervin, Councilmembers Leventhal and Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- delete certain automobile related uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone; and
- require existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

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

Division 59-C-18	“OVERLAY ZONES”
Section 59-C-18.132	“Regulations”

And by adding the following subsection to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Subsection 59-C-18.132(i)	“Special provisions for automobile repair, service, and sales”
---------------------------	----------------------------------------------------------------

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

ORDINANCE

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

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

* * *

59-C-18.132. Regulations.

(a) Land uses.

* * *

- (2) The following uses are prohibited in the U.S. 29/Cherry Hill Road Employment Area overlay zone:
 - Adult entertainment business.
 - Automobile parts, sales and services, including but not limited to tire sales and transmission service.
 - [Automobile repair and service.¹]
 - [Automobile sales, indoors and outdoors.]
 - Bakery.

* * *

[¹ Except that an automobile repair and service use may be established in a warehouse and storage building constructed before July 16, 2001 if the automobile repair and service use is a permitted use in the underlying zone. The exterior dimensions of a warehouse and storage building may not be extended, or enlarged beyond the dimensions of the building that existed on July 16, 2001 for the purpose of accommodating an automobile repair and service use. The automobile repair and service use and building are conforming and may be structurally altered, repaired, or reconstructed, so long as the building is not increased, extended, or enlarged beyond the exterior dimensions of the building that existed on July 16, 2001.]

* * *

(i) Special provisions for automobile repair, service, and sales.

Any structure or improvement existing before May 5, 2011 and used for automobile repair, service, sales, or related office, automobile parking, or automobile storage use may be built, rebuilt, repaired, or expanded under the standards and procedures of the property's underlying zone.

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



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

OFFICE OF THE CHAIR

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

June 9, 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. 11-03

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 11-03 at its regular meeting on June 2, 2011. By a vote of 3:0, the Board recommends approval of the text amendment to amend the standards for allowing nonresidential professional offices in residential zones. Several plain language and technical clarifications are recommended and included in the attached technical staff report.

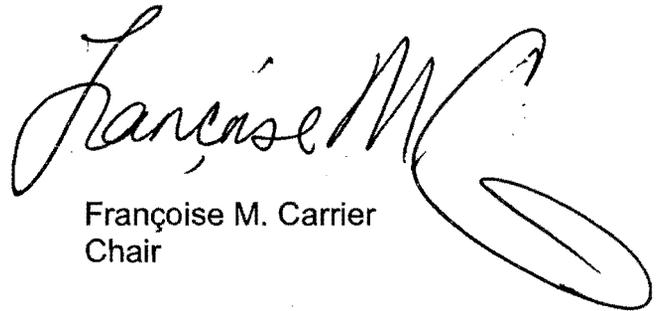
ZTA 11-03 proposes to allow nonresidential professional offices by special exception in the R-200 zone only where the property is encumbered on more than one property boundary by a public safety facility (fire station, police station, ambulance squad, or rescue squad). Currently under certain circumstances within the R-60 and R-90 zones, and with special exception approval, an existing single-family structure may be used for professional office purposes (nonresidential professional office) by any member or members of a recognized profession, such as a doctor, lawyer, architect, accountant, engineer, or veterinarian.

The Planning Board believes that the proposed parameters for permitting the subject use in the R-200 zone provide protection from encroachment of the use in established neighborhoods by limiting its locations to those most impacted by active emergency services. Further, the general and specific provisions and conditions of the Zoning Ordinance as well as the public hearing process provide additional protections to

neighborhoods when considering a special exception application. The Board also recognizes that the proposed land use-type is consistent with existing special exception uses allowed in the R-200 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, June 2, 2011.



Françoise M. Carrier
Chair

FC:GR



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

MCPB
Item #10
6/09/11

DATE: May 27, 2011
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Area 1
FROM: Greg Russ, Zoning Coordinator, Functional Planning & Policy
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To delete certain automobile related uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone; and require existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

TEXT AMENDMENT: No. 11-05
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Council President Ervin, Councilmembers Leventhal and Floreen
INTRODUCED DATE: May 10, 2011

PLANNING BOARD REVIEW: June 9, 2011
PUBLIC HEARING: June 14, 2011, 1:30pm

STAFF RECOMMENDATION: APPROVAL for automobile sales, indoors and outdoors, and automobile repair and service uses to be deleted from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone and to require automobile repair, service, and sales and related offices, storage, and parking uses existing as of May 5, 2011, to satisfy the requirements of the underlying zone.

DarCars auto sales and repair (located along Cherry Hill Road and along Prosperity Road within the Cherry Hill Road Employment Overlay zone) predates the employment overlay zone and is a permitted use in the underlying I-1 zone. Because the overlay zone prohibits auto sales and auto repair, expansion opportunities are limited. The Fairland Master Plan acknowledges the existence of the dealership and does not specify it as an incompatible use in the overlay zone. No apparent inconsistency with the overall purpose of the overlay zone is created by allowing these uses.

Staff believes the existing auto sales and repair service is an appropriate use in the overlay zone. The proposed ZTA would allow expansion of the existing dealership to occur, subject to the requirements of the underlying I-1 zone. This also appears reasonable, especially since the I-1 zone requires site plan review for auto sales uses and for any use over three stories in height (Section 59-C-5.41-Attachment 2) and further requires auto sales to adhere to special regulations established for automobile-related uses (Section 59-C-4.367—Attachment 2) pertaining to setbacks, lighting and building coverage.

BACKGROUND/ANALYSIS

In 1997 staff developed the US 29 Cherry Hill Employment Area Overlay Zone to implement the recommendations of the *1997 Approved and Adopted Fairland Master Plan*. The overlay zone was applied to a 500-acre area with four different industrial classifications including: light (I-1 and I-4); heavy (I-2); and research/development (I-3) zoning. During the 1980s the area developed with light industrial uses and some commercial and service uses such as a hardware store (Home Depot), DarCars auto sales and repair and a hotel (Courtyard by Marriott). One hundred acres served as the Site 2 WSSC composting facility (I-2 zone) and 180 acres contained the Percontee gravel washing facility (I-2). The area, which is strategically located at the intersection of US 29 and Cherry Hill Road and a mile or so from the Powder Mill/I-95 interchange, was adjoined to the south by the proposed Food and Drug Administration (FDA) site.

The idea of the overlay zone was to be able to provide services for the local residential communities and new development once the FDA relocated, Site II closed and Percontee ended gravel operations. The overlay zone intended to create a self-supporting employment area with on-site services. Commercial uses were to be added in two ways: by rezoning a forty-acre area to allow for large-scale regional retail (C-6 zoning located along Cherry Hill Road between Broadbirch Drive and Plum Orchard Drive) and allowing a smaller amount of commercial retail per underlying zone (50,000 square feet per zone, 15,000 square feet per lot—restaurant floor area is in addition to this maximum square footage) to provide for smaller scale goods and services throughout the 500 acre area. Restaurants, but not drive-ins, were especially desirable because that type of restaurant was lacking in the eastern part of the county, especially near the employment area.

Staff is now setting the stage for a new master plan in the eastern portion of the county (East County Science Center). The consolidation of the Food and Drug Administration (FDA) at the White Oak Federal Research Center (FRC) provides an opportunity for the county to re-examine its long-term goals and objectives for this area.

The East County Science Center planning effort will explore options for a new research and technology node that capitalizes on the growing presence of the FDA and is complemented by mixed-use development. The plan will address land uses, urban design, transportation, and environmental issues, including the future growth of sites within the Cherry Hill Road Employment area – particularly Site 2 and Percontee.

Staff believes that ZTA 11-05 provides an opportunity for an existing, long standing employment generator within the Cherry Hill Road Employment area to continue to thrive in an environment consistent with the overlay zone’s purpose to create development containing a compatible mix of employment uses.

U.S. 29/Cherry Hill Road Employment Area Overlay Zone of the Fairland Master Plan

The purpose of this overlay zone is to:

- (a) Develop a compatible mix of office, regional commercial, and light industrial uses within a designated employment area.
- (b) Establish a uniform set of development standards for the zone.
- (c) Allow local and regional retail and service uses.
- (d) Encourage the use of appropriate traffic-limiting measures, where such measures are not already in place, such as car pools and use of mass transit.
- (e) Eliminate uses not considered compatible with the intent of this overlay zone.

ZTA 11-05 requests that automobile sales, indoors and outdoors, and automobile repair and service uses be deleted from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone. Currently, the only auto sales establishment in the overlay zone is the DarCars establishment that predates the employment overlay zone. The existing dealership (which includes property located along Cherry Hill Road, Prosperity Terrace, Prosperity Drive and White Thorn Court—see Attachment 3) is a grandfathered use but it is limited in its ability to upgrade their facilities because both auto sales and auto repair and service land uses are prohibited in the overlay zone. The Fairland Master Plan mentions DarCars as an establishment existing prior to formulation of the master plan but provides no guidance on whether the use is appropriate in the overlay zone. Staff believes that the auto sales and auto repair and service uses are consistent with the purpose of the overlay zone as long standing employment generating uses within the area.

Adherence to I-1 Zone Standards vs. Overlay Requirements

ZTA 11-05 requests that the existing automobile repair, service, and sales and related offices, storage, and parking uses be permitted to satisfy the requirements of their underlying zone. The only existing dealership (DarCars) is



located in the I-1 zone. Although the I-1 zone is considered one of the more flexible industrial zones, it also requires a number of additional development standards applicable to new buildings over three stories. These requirements include site plan approval and more stringent green area and setback standards. The I-1 zone also requires site plan approval for auto sales uses and adherence to certain setback, building coverage and lighting special regulations (Section 59-C-4.367—Attachment 2) as they pertain to automobile-related uses. The overlay zone requires site plan review for all retail commercial development and for all other development where site plan review is required in the underlying zone.

The overlay zone requires a minimum building setback 100 feet from residentially zoned land that is recommended for residential use and development in the Fairland Master Plan. In the case of DarCars, this setback requirement is applicable along Cherry Hill Road where there is residential use on the other side of the road. However, since the auto sales use existed prior to establishment of the overlay zone, the existing setbacks along Cherry Hill Road are established based on the I-1 zone standards.

The overlay zone also requires certain trip reduction measures in accordance with Section 59-C-5.436. Under the I-1 zone, any expansion, redevelopment, etc. of the existing auto related uses that triggers site plan approval and/or preliminary plan approval/amendment will be required to address adequate public facilities requirements at that time.

Area 2 Comments

Area 2 staff believes that the proposed changes to the overlay zone are consistent with the Fairland Master Plan and with the purpose of the overlay zone to provide development that supports current and future employment in the vicinity.

RECOMMENDATION

Based on the analysis above, staff supports the proposed text amendment to delete automobile sales and automobile repair and service uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone; and require the existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

GR

Attachments

1. Proposed Text Amendment 11-05

2. Section 59-C-4.367. Special regulations applicable to designated automobile-related uses. & Section 59-C-5.41. Special regulations-I-1 zone
3. Locational Maps Depicting DarCars properties

TESTIMONY OF LARRY A. GORDON
SHULMAN, ROGERS, GANDAL, PORDY & ECKER, P.A.
IN SUPPORT OF ZONING TEXT AMENDMENT 11-05
MONTGOMERY COUNTY COUNCIL
JUNE 14, 2011

Good afternoon. I am Larry Gordon with the law firm of Shulman Rogers. Our Firm serves as land use counsel to DARCARs. I am testifying today in support of ZTA 11-05.

As drafted, the ZTA would allow auto sales and auto service uses within the 500 acre industrial park area encompassed by the U.S. 29/Cherry Hill Road Overlay Zone, all of which is located within Council President Ervin's District. The ZTA also contains language that would allow pre-existing auto uses to expand or be rebuilt in accordance with the standards of their underlying I-1 base zone.

Industrial parks and, in particular, properties such as DARCARs' which are located within the interior of an industrial park, are ideal and compatible locations for auto sales and service uses. There is very little industrial-zoned land remaining in the

County. Of this land, only those zoned I-1 and I-4 allow for auto sales and auto repair and service uses. For some 15 years, the Overlay has precluded these uses, even though the underlying industrial zone would otherwise have allowed them.

Although the Planning Board has deferred its consideration of ZTA 11-05, it is instructive to consider the Planning Staff's May 27, 2011 Report and Recommendation. The Staff Report fully supports ZTA 11-05 as drafted. Specifically, the Staff Report states at page 3,

"Staff believes that ZTA 11-05 provides an opportunity for an existing, long standing employment generator within the Cherry Hill Road Employment area to continue to thrive in an environment consistent with the Overlay Zone's purpose to create development containing a compatible mix of employment uses."

Further, through a recent consultant report prepared by Partners for Economic Solutions, the Planning Board was advised that redevelopment in the East County

Science Center area will require attracting a major research and/or higher education institution, provision of fixed station transit, and integrated use mixes. This combination of improvements will clearly take many years after adoption of the newly begun East County Master Plan to come to fruition. DARCARS simply cannot wait for all of these other stars to align before it can upgrade its now 15 to 20 year old facilities.

In closing, I would like to call your attention to Attachment "A" to my testimony.

This is a copy of ZTA 11-05 to which I have added proposed additional provisions (shown in italics and double underscoring) intended to legislatively resolve some recently expressed uncertainty among Planning Board Staff regarding the status and transferability of trip capacity for auto use properties in operation as of the May 5, 2011 ZTA trigger date.

Thank you. I will be happy to address any questions you might have.

Zoning Text Amendment No.: 11-05
Concerning: U.S. 29/Cherry Hill Road
Employment Area Overlay Zone -
Automobile Sales and Service
Draft No. & Date: 1 -May 5, 2011
Introduced: May 10, 2011
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: Council President Ervin, Councilmembers Leventhal and Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- delete certain automobile related uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone; and
- require existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

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

Division 59-C-18	"OVERLAY ZONES"
Section 59-C-18.132	"Regulations"

And by adding the following subsection to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Subsection 59-C-18.132(i)	"Special provisions for automobile repair, service, and sales"
---------------------------	----------------------------------------------------------------

ATTACHMENT "A"
(To LARRY GORDON TESTIMONY,
June 14, 2011)

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

ORDINANCE

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

**Sec. 1. Division 59-C-18 is amended as follows:
DIVISION 59-C-18. OVERLAY ZONES**

* * *

59-C-18.132. Regulations.

(a) Land uses.

* * *

- (2) The following uses are prohibited in the U.S. 29/Cherry Hill Road Employment Area overlay zone:
- Adult entertainment business.
 - Automobile parts, sales and services, including but not limited to tire sales and transmission service.
 - [Automobile repair and service. ¹]
 - [Automobile sales, indoors and outdoors.]
 - Bakery.

* * *

[¹ Except that an automobile repair and service use may be established in a warehouse and storage building constructed before July 16, 2001 if the automobile repair and service use is a permitted use in the underlying zone. The exterior dimensions of a warehouse and storage building may not be extended, or enlarged beyond the dimensions of the building that existed on July 16, 2001 for the purpose of accommodating an automobile repair and service use. The automobile repair and service use and building are conforming and may be structurally altered, repaired, or reconstructed, so long as the building is not increased, extended, or enlarged beyond the exterior dimensions of the building that existed on July 16, 2001.]

* * *

(i) **Special provisions for automobile repair, service, and sales.**

Any structure or improvement existing before May 5, 2011 and used for automobile repair, service, sales, or *for* related office, automobile parking, or automobile storage use, may be built, rebuilt, repaired, or expanded under the standards and procedures of the property's underlying zone.

Commencement of any such use prior to May 5, 2011 validates (including nunc pro tunc, as necessary) all trips and/or building square footage approved or purchased in conjunction with such property for the longer of the approval period or three (3) years from enactment of this Amendment. Property subject to these special provisions may apply trip and/or building square footage capacity transferred from other property subject to these special provisions in conjunction with preliminary plan of subdivision, Section 59-D-3 site plan and building permit review and approval provided that: (i) all properties involved are under the same ownership at the time of such allocations; and (ii) a declaration of such transfer is recorded in the land records for Montgomery County, Maryland.

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