

**MEMORANDUM**

June 11, 2013

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: Worksession 1 – Overview – Implementation - Agricultural Zone  
Zoning Text Amendment 13-04, Zoning Ordinance Rewrite; and  
District Map Amendment G-956

This memorandum, with significant contributions from Planning Staff (Pam Dunn and Jennifer Wise), covers 3 topics:

Zoning Rewrite Overview  
Preliminary Implementation  
Agricultural Zone (AR)

**Staff Recommendations:**

- 1) Authorize staff to propose plain English edits and redraft the grandfathering provisions;
- 2) Delete land use definitions from the definition section and retain the definitions with all substantive provisions in Article 3; and
- 3) Indicate “L/C”, or “P/C” where appropriate in the land use table.
- 4) Amend the intent statement for the AR zone.

**Overview**

*Subject Matter*

On May 7, 2013, the Council, at the request of the Planning Board, introduced a new Zoning Ordinance (Chapter 59) as Zoning Text Amendment (ZTA) 13-04 and a District Map Amendment. The Committee’s worksessions will concern both of these actions.

The ZTA would replace Chapter 59 in its entirety. The text of ZTA 13-04 (330 pages, compared to some 1,100 pages in the current draft) may be found on the Planning Department’s website: <http://www.zoningmontgomery.org>.

The current zoning maps of the County would be replaced by a District Map Amendment. This zoning map amendment would implement ZTA 13-04 and would make the GIS zoning layer, which is accessible online, the official zoning map of the County. The proposed zoning map and the current zoning also may be found on the Planning Department's website: <http://www.zoningmontgomery.org>.

The draft Ordinance has fewer zones than the current Ordinance, and collapses very particular land use categories (e.g., newspaper stand, flower shop) into more general land use categories (e.g., retail/service). Some examples of other significant substantive changes include:

- Mixed-use and commercial zones are different; these are all “new” zones, with the exception of the Council approved LSC, CR, CRT, and CRN zones.
- All floating zones are new and clearly identified as floating zones.
- The standards for the number of on-site parking spaces are often reduced and design standards are added.
- The amount of open space required in mixed-use and employment zones is generally reduced.

The one-family residential zones are retained with the same development standards. The names of the zones remain the same, except for the R-150 and RMH-200 zone, which are proposed to be included in the R-200 zone. The R-MH zone is proposed to be included in the R-60 zone. The desirability or undesirability of land use allowed by the draft Ordinance but prohibited in the current Ordinance will likely be raised in testimony.

### *Chapter Organization*

The proposed code is organized into articles by function. Article 59-1 contains introductory material and definitions used in the code. Article 59-2 establishes all of the zones and provides an intent statement for each zone or family of zones. Article 59-3 contains one land use table. This is a huge improvement over the current code, which contains 14 land use tables. Article 59-4 provides the development requirements for standard method development for all Euclidean zones; Article 59-5 contains the development requirements for all floating zones. This is significant because, in the current code, floating zones are indistinguishable from Euclidean zones. Article 59-6 contains regulations for the optional method of development for all Euclidean zones. Article 59-7 contains general development requirements such as parking, landscaping, and lighting. Article 59-8 establishes the administration and procedures of the code. Article 59-9 retains zones that may be eliminated by future master plans. Each chapter has provisions that apply to each zone.<sup>1</sup>

### *Permitted, Limited, and Conditional Land Uses*

The essential advantage of the new structure is the creation of a single land use table for all zones. The land use list and the zoning list in the table are comprehensive. Every zone indicates whether the use is prohibited (blank), permitted (without limitation), limited (permitted under specific objective standards which may be currently in footnotes), or conditional (requires discretionary special exception approval).

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<sup>1</sup> Agricultural zone references

3.1.6; 3.2.1-3.2.6; 3.2.7.A-3.2.8; 3.2.10; 3.2.11A-3.2.11C ; 3.2.12.B; 3.3.1.B; 3.3.2.E; 3.3.3.B-3.3.3.C; 3.3.3.E-3.3.3.H; 3.4.2; 3.4.4.C-3.4.4.F; 3.4.8-3.4.10; 3.5.1.B-3.5.1.C; 3.5.2.A-3.5.2.C; 3.5.4.A; 3.5.4.C; 3.5.10.J; 3.5.11.B-3.5.11.C; 3.5.14.A-3.5.14.C; 3.5.15.A; 3.5.15.C; 3.6.6; 3.6.6.C; 3.6.7.A-3.6.7.E; 3.7.1-3.7.3; 3.7.4.A-3.7.4.C; Division 4.2; 7.2.3; 7.2.4; 7.2.5.J.2; 7.4.2; 7.4.5.C.7; 7.7.7; 8.3.1.

### *Schedule for Review*

The Planning Board reviewed ZTA 13-04 by going through zoning classifications. Each zone requires a review of the land use table, definitions, particular methods of development (standard or optional), parking requirements, compatibility requirements, screening requirements, signs, and conditional use procedures (special exceptions). It allowed the Planning Board to review the policy issues in the proposed changes. It avoided treating the functional chapters independently and out of context to each major zoning classification. Staff intends to use the same approach to PHED Committee worksessions using the schedule below (subject to change as the Committee proceeds).

June 14	Overview/Preliminary Implementation/Agricultural zone
June 21	Rural and Residential zones
June 28	C/R zones
July 2	Employment and Industrial zones
July 12	Overlay zones
July 19	Floating zones
July 26	Parking/Signs
September 13	Administration and Procedure
September 20	Wrap-up, including any outstanding implementation issues

At the end of each worksession, staff will orally summarize the Committee's recommendations. Each subsequent staff memorandum will start with a written summary of the Committee's recommendations from the previous meeting.

### *Plain English Editing*

When the Council introduced ZTA 13-04, staff noted:

Staff has **not** reviewed the draft being introduced. Previous drafts that were reviewed included extraneous text, duplicative text, and text that did not satisfy the Council's standard for concise, precise, and decisive legislation. The Council should anticipate that staff will recommend numerous "plain English" edits.

Staff does not seek to use the Committee's time for "plain English" edits. By the first week in September, staff will distribute an edited code for the purpose of indicating plain English changes recommended by staff. Any substantive changes recommended by the Committee will also be included in that draft.

### **Public Hearing**

On June 11, 2013, the Council heard from 50 speakers. Some speakers thought the new code is an opportunity to modernize the code; however, a number of speakers viewed the totality of the proposed code as a threat to neighborhood preservation. No one spoke in favor of the proposed draft as introduced.

The Council's process for considering ZTA 13-04 and the District Map Amendment was called into question. A number of speakers recommended adopting a new code first and thereafter adopt a zoning

map to implement the code. These residents urged the Council to slow down its deliberations to allow more time for education and reflection on the Planning Board's proposal.

There was a near universal call for more MPDUs. In particular, the public benefit points in the CR zones were faulted for not producing more MPDUs above the minimum required for all residential development.

Those who thought that ZTA 13-04 would be a threat to neighborhood preservation pointed to the possibility of general buildings, floating zones, and the mapping of CR zones, all without a specific recommendation in a master plan. In the view of some residents, the proposed process for approving floating zones and special exceptions would be made easier for the applicant, to the detriment of residents opposed to the changes.

Representatives of the development industry pleaded for a faster process. They supported the creation of a limited use and a reduction in the number of uses that require a special exception. Building industry representatives also supported the provisions for floating zones.

The speakers on parking issues were at opposite ends of the spectrum. Smart growth advocates recommended having no parking minimum parking requirements; neighborhood preservationists recommended retaining current code requirements.

As a single land use, nothing received a greater amount of attention than animal husbandry. The proposed code would eliminate the current setback requirements for animal shelters, including shelter for fowl. While no one objected to a chicken in every pot, some residents objected to the possibility of 8 chickens in every back yard. Chickens certainly had their supporters. There was eloquent testimony by chicken owners about their benefits and, in their opinion, only unsubstantiated detriments.

Grandfathering provisions were raised as an issue for the council. The proposed code would allow grandfathered buildings to expand by the lesser of 10,000 square feet or 10% of their current FAR. The standard to amend an approval, in the opinion of some, is unclear. Some speakers wanted their buildings and use to be allowed under the code rather than only covered in the grandfathering provision.

There were individual requests for zoning changes or text changes. A country inn owner and representatives of a quarry and of a residential high-rise spoke about their particular circumstances. Two owners of industrial property requested an expanded menu of land uses. The owner of a small property in the Bethesda CBD asked for the ability to build a bigger building. A special exception applicant abutting Old Georgetown Road wanted a zoning change.

## **Preliminary Implementation Discussion**

### *Zoning Conversion*

ZTA 13-04 would create new zones and eliminate current zones. Each zone on the current paper zoning maps is described in the current Zoning Ordinance. If the current zoning ordinance is repealed, the official zoning maps must be changed. Some zones will no longer exist.<sup>2</sup> Some zones will be created.<sup>3</sup>

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<sup>2</sup> RMH, RMH-200, all RT zones, all "C" zones, all CBD zones, all RMX zones, all "I" zones, MXN, MXTC, TOMX-2, TSR, TSM, TMX-2, O-M, H-M, R&D, RS.

<sup>3</sup> AR,GR,NR,EOF, IL, IM,IH, TLD,TMD,THD.

Some “old” zones are retained.<sup>4</sup> Except for RDT, R-150, RMH-200 and R-MH, agricultural, rural, and residential zones retain their names and zoning mapped areas. Almost all commercial, mixed-use, and industrial zones change in name to fit within the new code but are not intended to stray from the density recommended by the applicable master plan. The discussion of each zone in ZTA 13-04 will include information concerning how the current zones fit into the new zones as warranted. Staff will alert the Committee to individual problems raised in testimony.

The Planning Board anticipates the adoption of the District Map Amendment immediately after the Council approves ZTA 13-04.

*Grandfathering (First do no harm)*

ZTA 13-04 as introduced includes 7 pages of old and new text.<sup>5</sup> There is a preoccupation of avoiding making existing buildings non-conforming. Complex current provisions concerning pre-1958 property, the area of Takoma Park annexed into Montgomery County in 1997, and non-conforming uses created by post 1958 zoning ordinances are repeated. New provisions concern exemptions from the new code.

The overlapping nature of these provisions and their conditional application could employ attorneys for years to come.<sup>6</sup> It will ensure that every zoning practitioner will have to keep every previously adopted zoning ordinance nearby to answer questions. It is and will continue to be an administrative nightmare for landowners, Planning Staff, and DPS. Staff believes that the core idea behind these provisions can be articulated with greater precision and hopefully without the need to reference the current code.

The Planning Board indicated that when drafting the grandfathering sections of the code, they had a simple and clear goal used by physicians; first do no harm. If the Council wants to start the new age of zoning, it can:

- 1) make every existing building, not subject to current enforcement actions, conforming without a requirement to consult prior codes;
- 2) allow every approved and pending plan submitted X months after the ordinance is approved (development plan, concept plan, project plan, sketch plan, preliminary plan, site plan, special exception, and building permit) to complete that approved plan without regard to the requirements of the new zone;
- 3) allow residential parcels and lots that have not changed in size or shape since 1958 to build a house on the lot or parcel without regard to the minimum lot size and frontage requirements in their new zone – setbacks could be match the setbacks of neighboring houses to avoid reference to prior codes;
- 4) allow some amount of expansion for non-residential properties (the lesser of 10 percent of the current building or 30,000 square feet of floor area) with only the applicability of the density and height standards of the new zone.<sup>7</sup>

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<sup>4</sup> PD, TS, PNZ, PRC and PCC.

<sup>5</sup> ZTA 13-04, pages 8-44 to 8-50.

<sup>6</sup> Talmudic scholars would be challenged to discern the comprehensive meaning of all grandfathering provisions in ZTA 13-04 as introduced. In accord with Talmudic tradition, any answer to a question on grandfathering will undoubtedly lead to another question.

<sup>7</sup> According to Planning Staff, the height and density of the current zoning and master plan recommendations are the basis for the density and height in the proposed zoning. Using the proposed zone standards does not require going back to the current zoning ordinance.

Staff will be working on this concept in advance of the Committee's consideration of this issue.

### *Land Use Discretion*

Currently, every land use table starts with the following sentence: "No use is allowed except as indicated in the following table". The proposed code would give DPS far more discretion with regard to unlisted land uses:

Any use not specifically listed is prohibited unless DPS determines that the use is similar in impact, nature, function, and duration to an allowed use listed in this Division. Where the similar allowed use must satisfy a limited or conditional use standard and approval, the proposed use must meet such standard and obtain such approval.<sup>8</sup>

Despite the prohibition in the current code, the proposed rule of interpretation represents the current practice of DPS. As the Committee reviews the details of the land use tables and the provision for each land use, it will be in a better position to determine if it agrees with this codification of discretion.

### Definitions

All new definitions, deleted definitions and amended definitions related to the AR zone are noted on pages 24-32 of this memorandum.

Every land use is defined in Article 1. That definition is then repeated in Article 3. A number of land use definitions include substantive provisions concerning that land use. The repetition is a trap for the unwary if future changes are made to the definition section. Hiding substantive provisions in definitions does not meet the mandate of the County's legislative drafting manual.<sup>9</sup>

**Staff recommends deleting land use definitions from the definition section and retaining the definition with all substantive provisions in Article 3 under the heading "Definition and requirements".** An alternative to this recommendation is editing the definitions to remove substantive standards and retain the substantive standards in Article 3.

### Building Height

The measurement of building height for any building type in the Agricultural, Rural Residential, and Residential zones would conform to the measurement currently used for the R-90 and R-60 zones. The measurement in the Agricultural, Rural Residential, and Residential zones will be from the average grade along the front of the building. The current code measures building height from the level of approved street grade opposite the middle of the front of a building if the development is less than 35 feet from the street line. In addition, terracing would no longer be allowed in the Agricultural, Rural Residential, or other Residential zones. This was done for consistency and clarity in measurement of building height in zones that are predominantly agricultural or residential in nature and to remove the ability to terrace; the height of a building on a terrace lot is a common complaint about the current code.

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<sup>8</sup> ZTA 13-04, page 3-3.

<sup>9</sup> Section 503. Definitions (a)(2):  
Substantive content.

Do not place substantive content in a definition. For example, avoid including a duty or prohibition within a definition.

ZTA 13-04 would not have any standards for the number of allowed stories. Currently, there are limits on the number of stories in residential zones to 2½ stories.<sup>10</sup> Height limits would act as the only limit on the number of stories in a detached house; a general building would have an FAR limit.

#### Notice in the Land Use table

Unlike the current code, when a use is permitted under some circumstance but must be approved as a special exception in other circumstances, the proposed land use table does not indicate P/C or L/C. There are 4 land uses that are indicated as an L in the Land Use table with text that indicates that conditional use approval may be required under certain circumstances.<sup>11</sup> In one instance, a use is listed as a conditional use, but may be a permitted use under certain circumstances.<sup>12</sup> **Staff recommends indicating “L/C”, or “P/C” where appropriate in the land use table.**

#### Minimum Street Frontage

Many zones in the current code require minimum street frontage. Street frontage would no longer be required under ZTA 13-04. The standard would be for “minimum lot width at the front lot line”. Frontage would be defined as “a property line shared with an existing or master planned public or private street, highway or alley right-of-way or easement boundary”. As a matter of practice, the Planning Board has waived the minimum street frontage requirement, particularly for townhouse development. If the Council approves this change, a conforming amendment to the subdivision chapter is warranted.

#### Site Plan Approval Procedures

As a general matter, ZTA 13-04 would subject more development to site plan approval. Site plans would still be a discretionary process with approval by the Planning Board. There are 3 discretionary findings that the Planning Board must make under ZTA 13-04.

- 1) *Compatibility.* Currently the Planning Board may only approve a site plan if it finds “a maximum of compatibility, safety, efficiency and effectiveness”. The current code states that meeting the specific requirements of a zone does not itself create a presumption that the proposed site plan is compatible with surrounding land uses. ZTA 13-04 would require a finding that the proposed development “is compatible with existing and approved development”.
- 2) *Safe, well integrated circulation.* The Board would be required to make a separate finding that is currently imbedded in the Board’s compatibility finding. This finding would include a review of building massing and, where required, open space and site amenities.
- 3) *Substantial conformance with the applicable master plan.* This conformance requirement is not currently in the code.

Discretionary findings require public input and Planning Board approval. Approval by staff would be a more efficient process. The Board did not wish to reduce the amount of public involvement in the development process. The Council may wish look at alternatives for a more streamlined process that

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<sup>10</sup> §59-C-1.327(a).

<sup>11</sup> Winery, Telecommunications Tower, Equestrian Facility, and Accessory Apartment land uses are allowed as conditional uses under certain circumstances, but that possibility is not indicated in the land use table.

<sup>12</sup> An Educational Institution is permitted if it is on the site of a place of worship.

would require changing the discretionary findings. The Committee will have a worksession in September regarding all aspects of the administration article.

### Registered Living Unit

A Registered Living Unit is a second dwelling unit that is part of an owner occupied one-family detached house. The physical aspects of these units are identical to accessory apartments. The new code removes these units as a separate use and would treat registered living units as an accessory apartment. The current code allows registered living units without a special exception. The Council's recent change to the accessory apartment approval process now also allows approval through a license without the need for a special exception. Combining these uses would simplify the administration of these provisions.

### Agricultural Zone - AR Zone

ZTA 13-04 would only have one zone within the Agricultural classification. That zone would be the Agricultural Reserve zone (AR). AR zone, in concept and by its proposed zoning map area, is an updated RDT zone. It is the Agricultural Reserve of the County. The agricultural community wanted the name of the zone to reflect the primary land use in the zone. All RDT zoned land is proposed to be classified as AR zoned land.

Planning Staff provided the basis for a comprehensive review of all changes to the AR zone (on pages 11 to 23 in this memorandum) and changes to current definitions (pages 23 to 33 in this memorandum). Staff did not provide a detailed review of every change but will raise some issues for the Committee's attention.

#### *AR Zone Intent*

The proposed code includes this statement of the intent of the AR zone:

*The intent of the AR zone is to promote agriculture as the primary land use in areas of the County designated for agricultural preservation in the general plan, the Functional Master Plan for Preservation of Agriculture and Rural Open Space, and other current or future master plans. 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. Residential uses should be located and arranged to support agriculture as the primary use and to support the rural character of the area.*

The last sentence was called into question by public testimony. In staff's opinion, it expresses an aspiration that is out of character to an intent statement. The location and arrangement of residential lots is a matter of subdivision, not zoning. If it is intended to be a standard for subdivision approval, it is misplaced. *Staff recommends deleting the sentence.*

#### *General use building*

Article 4 would allow a general use building in the AR zone with development standards. Staff was informed that the Planning Board does not intend these standards to apply to buildings used in the

course of farming. A building permit may not be required for any building or structure used exclusively for agriculture, under state law.<sup>13</sup>

### *Child lots*

Article 4 has special provisions for child lots, including grandfathering provisions for child lots created before 2010. The provision of pending child lot subdivisions in 2010 may be moot, as these applications should have been acted upon. The Agricultural Advisory Board recommends allowing child lots to be larger than 3 acres if required for septic approval. Staff believes that the provision for expanded size applies to all child lots as drafted. (See page 4-12.)

### *AR Focused Land Uses*

#### Farming

Farming is defined as including accessory agricultural processing, storage and sale of “products grown or raised on-site or on property owned, rented, or controlled *within Montgomery or adjacent counties* by the farmer.” The Agricultural Advisory Committee (AAC) believes that this definition is an unnecessary and overly burdensome restriction on the operations of Montgomery County farms, by restricting farm properties and the use of agricultural products from outside of Montgomery and the adjacent counties. The AAC recommended deleting the phrase “*within Montgomery or adjacent counties*” from the definition.

The current code restricts “the sale of products of agriculture and agricultural processing to that grown on-site”. The proposed code expands this to include property owned, rented, or controlled by the farmer within the County and in adjacent counties.

#### Farm Tenant Dwelling

Farm Tenant Dwelling is a “new” use in that it would combine “Accessory Dwelling for Agricultural” and “Workers Farm Tenant Mobile Home more than one but less than 4” with other farm tenant dwellings. “Workers Farm Tenant Mobile Home more than one but less than 4” currently requires a special exception. The proposed code would make it a limited use; in that respect, Farm Tenant Dwelling would be more permissive than the current code.

#### Agricultural Processing

The AR zone would allow agricultural processing as a primary use of land NOT used for farming as a conditional use. This use is currently a special exception for non-farms and is allowed on farms.<sup>14</sup> Currently, agricultural processing is defined as the:

processing of an agricultural product that causes a change in the natural form or state of the product and that entails operations of a commercial or industrial character that must be regulated

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<sup>13</sup> Land Use Article §20-502(b).

<sup>14</sup> A farm is tract of land, with or without associated buildings, that is devoted to agriculture. Agriculture includes processing on the farm of an agricultural product in the course of preparing the product for market and may or may not cause a change in the natural form or state of the product. Staff believes that the published code includes an error concerning “agricultural processing, primary”. The use was deleted by the Council in 1985 by Ordinance 10-69.

to mitigate potential adverse external impacts. Agricultural processing includes, but is not limited to, an abattoir, milk plant and similar non-farm operations.

ZTA 13-04 would amend that definition to:

An operation that transforms, packages, sorts, or grades farm products into goods that are used for intermediate or final consumption, including goods for non-food use, such as the **products of forestry**. Agricultural Processing includes milk plant, grain elevator, and mulch or compost production and manufacturing, but does not include Slaughterhouse (see Sec. 3.2.8, Slaughterhouse)." [Emphases added]

ZTA 13-04 would include "products of forestry" within the scope of agricultural processing. DPS would interpret this change to allow firewood operations that truck in downed trees and truck out firewood as a conditional use. Currently that use is not allowed in the RDT zone.

#### Slaughterhouses

ZTA 13-04 would include on-farm animal slaughter as a part of the definition of farming. Slaughtering is specifically excluded from the definition of agricultural production on non-farm sites, but is allowed as a distinct land use (as a special exception use).

#### Educational Institutions

Currently, educational institutions are allowed in the RDT zone by special exception, but special exceptions are not allowed when TDRs are severed. ZTA 13-04 would not allow educational facilities in the AR zone. Existing schools (which may be conforming by virtue of existing before January 6, 1981 or receiving special exception approval) would be subject to the grandfathering provision (expansion of the lesser of 30,000 square feet of gross floor area or 10 percent of the existing gross floor area) but would be prohibited from amending their special exception to allow more expansion than the grandfathering provision would allow.

A footnote in the current code severely restricts educational institutions in the RDT zone:

Limited to individual or small class instruction provided within a dwelling or an accessory use, such as a swimming pool, by a resident of the dwelling. However, a private educational institution for persons with disabilities may be established subject to the special exception requirements of section 59-G-2.19, and provided (1) the site was previously used to provide educational services to persons with disabilities, (2) no more than 75 students are enrolled at any one time, (3) enrolled students are not boarded, and (4) improvements exist on the property (as of July 21, 2003) to accommodate the school's educational programs. A residence may be provided on site for use by a caretaker. Educational services to persons without disabilities are limited to enrichment activities related to providing educational services to persons with disabilities. A private educational institution lawfully existing prior to January 6, 1981, when the Rural Density Transfer Zone sectional map amendment was enacted is a conforming use, and may be extended, enlarged or modified by special exception subject to the provisions of section 59-G-2.19, "Educational Institutions, Private."

The Planning Board removed the allowance for the conditional use because it thought that was consistent with the intent of the current code.

The Council could (ordered from least permissive to most permissive):

- 1) approve the recommendations of the Planning Board (**recommended by staff**);
- 2) allow pre 1981 institutions on lots with retained TDRs to expand by getting conditional use approval; or
- 3) allow educational institutions as a conditional use in the AR zone to the extent that the use is currently allowed.

Representatives of the Barnesville School recommend option #2 by adding a new Section 59-3.4.5.C.2 as follows:

In the AR zone, only a private educational institution lawfully existing prior to January 6, 1981, when the Rural Density Transfer Zone sectional map amendment was enacted is a conforming use, and may be extended, enlarged or modified by special exception under Section 59-3.4.5.C.3 [revised number for current Section 59-3.4.5.C.2].

#### Bed and Breakfast

Currently, a Bed and Breakfast with 2 or fewer rooms is permitted in the RDT zone; with a special exception, up to 5 guest rooms are allowed. The use is not allowed if TDRs were severed.

ZTA 13-04 would allow Bed and Breakfasts as a limited use with the same objective standards currently required for a special exception. When the Bed and Breakfast is accessory to a farm, a use and occupancy permit may be granted, even if TDRs have been severed. Bed and Breakfasts can provide a supplementary income for farmers.

#### Family Day Care

The day care for seniors use is consolidated with the day care for children use. Family Day Care for up to 8 children is a permitted use under current zoning. Currently, day care for 4 or more adults requires a special exception. Day care for seniors is proposed as a permitted use up to 8 persons because the impact of a facility would be similar to a child day care facility.

## Comprehensive Changes to the Rural Density Transfer (RDT) zone

### **Recommended changes from the current code in name and the intent of the zone:**

- Changed zone name from Rural Density Transfer (RDT) to Agricultural Reserve (AR).
- Separated the AR zone as the only agricultural zone.
- Modified the intent statement of the zone as follows:
  1. The intent of ~~this zone~~ the AR zone is to promote agriculture as the primary land use in ~~sections~~ areas of the County designated for agricultural preservation in the General Plan, the Functional Master Plan for Preservation of Agriculture and Rural Open Space, and other current or future master plans. 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. Residential uses should be located and arranged to support agriculture as the primary use and to support the rural character of the area.
  2. Agriculture is the preferred use in the ~~Rural Density Transfer~~ AR 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 in Division 59-C-9 and in Division 59-G-2, "Special Exceptions Standards and Requirements."~~ additional use standards or the conditional use approval process.
  3. The intent of the child lot option in the ~~Rural Density Transfer~~ AR zone is to facilitate the continuation of the family farming unit or to otherwise meet the purposes of the ~~RDT~~ AR zone.

### **Article 59-3: Uses and Use Standards**

Article 59-3 is significantly different in format from the current ordinance. It contains one use table showing all the zones and uses. Next to each use in the table is a section reference for both the definition and any use standards. New, too, is the concept of the limited use. Currently, uses are either permitted by-right, "P" in the use table, or require a special exception, denoted "SE". The proposed draft specifies uses as "P", permitted by-right, or "L", permitted by-right but limited by particular use standards, or "C", permitted conditioned on approval by the Board of Appeals or the Hearing Examiner.

The following table is a summary of Section 3.1.7, the single use table in the proposed code. It lists all uses allowed in the AR zone, the current use name(s), how the use is allowed, and a brief explanation for uses that would be consolidated or changed.

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
<b>AGRICULTURAL</b>				
Agricultural Auction Facility	Auction Facility	SE	C	
Agricultural Processing	Agricultural Processing, primary		C	Consolidates several agricultural processing uses – expands processing to include products of the forest. (This use is allowed as a permitted use in the course of farming.)
	Agricultural Processing	SE		
	Grain Elevator	SE		
	Manufacturing of Mulch and Composting	SE		
	Milk Plant	SE		
	Sawmill	SE		
Community Garden	Other Agricultural Use	P	L	Provides limited use standards specifying coverage (max 10%) and accessory structure height (12 ft).
Equestrian Facility	Equestrian Facility	P/SE	L	Incorporates current standards (min. size related to number of horses; limit on major events – 3 per year on 75 acre sites or larger). Conditional use requires satisfaction of limited use standards plus compatibility finding.
Farm Supply, Machinery Sales, Storage, and Service	Farm machinery: sales, storage, or service	SE	C	Consolidates two uses. Retains use standards associated with more intense use but now allows parking waiver. Removes prohibition on use for properties with severed TDRs.
	Farm supply: sales, storage, or service	SE		
Farming	Farm	P	P	Includes agricultural processing and provisions for the sale of produces.
	Fish Hatchery	P		
	Other Agricultural Uses	P		
Nursery (Retail)	Nursery, horticultural – Retail	SE	C	Reduces minimum setback for outdoor storage from 50 ft to 25 feet.
Nursery (Wholesale)	Nursery, horticultural – Wholesale	SE	C	Reduces minimum setback for outdoor storage from 50 ft to 25 feet.
Slaughter House	Abattoir	SE	C	
Winery	Winery	P/SE	L	Incorporates current limit on events into limited use standards. Retains ability to seek a special exception/conditional use to deviate from specific standards with increased minimum lot size.
<b>Accessory Agricultural Uses</b>				
Animal Husbandry	Farm	P	P	Including Animal Husbandry as a permitted use clarifies that the use is allowed – the more intense use of farming is a permitted use in the AR zone.
	Other Agricultural Uses	P		

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
Farm Airstrip, Helistop	Airstrip, Associated with Farming Operations Helistop	SE SE	C	Consolidates two uses. Retains restriction for use only when associated with agricultural operations.
Farm Market, On-Site	Farm Market	P	L	Incorporates current standards (25 ft. setback – at least 3 parking spaces – at least 75% on-site products).
<b>Temporary Agricultural Uses</b>				
Seasonal Outdoor Sales	Christmas Tree Sales between Dec. 5 and 25	P	L	Christmas Tree Sales are currently a permitted use. Limited to locations where the use is non-residential – the need for a primary standard road is not required for sites of Religious Assembly

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
<b>RESIDENTIAL</b>				
Single-Unit Living	Dwelling, one-family detached Mobile Home, double-wide	P P	P	
Group Living (Use Group)	(Use Group – see individual uses below)			
Residential Care Facility (up to 8)	Adult Foster Care Home Group Home, small Respite Care Home	P P P	L	Small group homes are a permitted use in this zone under state law. A small hospice care facility (up to 8 persons) functions in a similar manner to these other residential care facilities.
Residential Care Facility (9 to 16)	Group Home, large	SE	C	Site plan required; prohibited if TDRs are severed.
Residential Care Facility (over 16)	Domiciliary Care Home for more than 16 residents Hospice Care Facility Sanitarium	SE SE SE	C	Site Plan required; maximum density remains at 15 units per acre but no maximum height except a finding of compatibility.
<b>Accessory Residential Uses</b>				
Attached Accessory Apartment	Registered Living Unit Accessory Apartment, Attached	P P/SE	L	Current ZTA incorporated as limited use standards retaining ability to seek a special exception/conditional use approval if certain standards cannot be met. Registered Living Units are consolidated under the accessory apartment use. It would now be allowed even if TDRs are severed.

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
Detached Accessory Apartment	Accessory Apartment, Detached	SE	C	Minimum 1 acre lot area.
Farm Tenant Dwelling	Accessory Dwelling for Agricultural Workers	P	L	Restricts Farm Tenant Dwelling to less than 4 mobile homes but a conditional use is not required.
	Farm Tenant Dwelling	P		
	Farm Tenant Mobile Home, more than one but less than 4	SE		
Guest House	Guest house, as accessory use	P	L	Current limits are retained (lot owner must be resident – not permitted if TDRs are severed).
Home Health Practitioner (Low Impact)	Home Health Practitioner's office	P/SE	L	Separated use into low (one client at a time but no more than 5 vehicular trips at the same time) and major impact to clarify use standards and process. <b>§3.3.3.G.3.b.i needs editing.</b>
Home Health Practitioner (Major Impact)	Home Health Practitioner's office	P/SE	C	Increased trips allowed from low impact. It would now be allowed even if TDRs are severed.
Home Occupation (No Impact)	Home Occupation, no impact	P	L	Same standards as current code (no non-resident employees – 5 visits and deliveries per week).
Home Occupation (Major Impact)	Home Occupation, major	SE	C	

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
<b>CIVIC and INSTITUTIONAL</b>				
Charitable, Philanthropic Institution	Charitable or Philanthropic Institution	SE	C	If TDRs are severed, the use is prohibited (same as current limit).
Family Day Care (up to 8)	Child Day Care Facility: Family Day Care Home	P	P	The day care for seniors use is consolidated with the day care for children use. Family Day Care for up to 8 children is a permitted use under current zoning. Day care for seniors is proposed as a permitted use up to 8 persons because the impact of a facility would be similar to a child day care facility.
	Day Care Facility for not more than 4 Senior Adults and Persons with Disabilities	P		
	Day Care Facility for more than 4 Senior Adults and Person with Disabilities	SE		

Group Day Care (9 to 12)	Child Day Care Facility: Group Day Care Home	P	L	Day care for up to 12 children is permitted, subject to certain standards under current zoning regulations. Because the impact of a facility would be similar, this use is proposed as a permitted use up to 12 persons.
	Day Care Facility for more than 4 Senior Adults and Person with Disabilities	SE		
Day Care Center (13 to 30)	Child Day Care Facility: Child Day Care Center	SE	C	If TDRs are severed, the use is prohibited (same as current limit). Sec 3.4.4.E.2.d needs editing.
	Day Care Facility for more than 4 Senior Adults and Person with Disabilities	SE		
Day Care Center (over 30)	Child Day Care Facility: Child Day Care Center	SE	C	If TDRs are severed, the use is prohibited (same as current limit).
	Day Care Facility for more than 4 Senior Adults and Person with Disabilities	SE		
Private Club, Service Organization	Private Club or Service Organization	SE	C	If TDRs are severed, the use is prohibited (same as current limit).
Public Use (except Utilities)	Publicly Owned or Publicly Operated Use	P	P	
	Ambulance or Rescue Squad, publicly supported	P		
	Fire Station, publicly supported	P		
Religious Assembly	Church, memorial garden, convent, monastery and/or other place of worship	P	L	If TDRs are severed, the use is prohibited (same as current limit).

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
<b>COMMERCIAL</b>				
Animal Boarding and Care	Animal Boarding Place	SE	C	If TDRs are severed, the use is prohibited (same as current limit).
Veterinary Office/ Hospital	Hospital, Veterinary	SE	C	If TDRs are severed, the use is prohibited (same as current limit).
Cable Communications System	Cable Communication System	SE	C	
Telecommunications Tower	Telecommunications Facility	P/SE	L	Maximum height (199 ft.) and minimum distance from any residence (300 ft.) can be waived with conditional use approval. Currently every foot in height requires a foot in setback.

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
Media Broadcast Tower	Radio or Television Broadcasting Stations and Towers	SE	C	
Cemetery	Cemetery	SE	C	
	Family Burial Sites	SE		
Funeral Home, Undertaker	Funeral Parlor or Undertaking Establishments	SE	C	
Landscape Contractor	Landscape Contractor	SE	C	
Bed and Breakfast	Bed-and-breakfast lodging with one or 2 guest rooms	P	L	All non-discretionary Special Exception standards are retained as Limited Use standards. If TDRs are severed, the use is prohibited (same as current limit).
	Bed-and-breakfast lodging with 3, 4 or 5 guest rooms	SE		
Surface Parking for Commercial Uses in a Historic District	Parking of motor vehicles, off-street, in connection with commercial uses	P	L	Incorporates current limits – no parking allowed in front of a building. Clarified that the use is intended only for commercial uses in a historic district.
Shooting Range (Outdoor)	Rifle, pistol, or skeet shooting range, outdoor	SE	C	If TDRs are severed, the use is prohibited (same as current limit).
Rural Antique Shop	Antique Shop	SE	C	If TDRs are severed, the use is prohibited (same as current limit).
Rural Country Market	Country Market	SE	C	

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
<b>Accessory Commercial Uses</b>				
Amateur Radio Facility (up to 65')	Amateur Radio Facility	P/SE	P	An Amateur Radio Facility is permitted with a height up to 65 feet.
Amateur Radio Facility (over 65')	Amateur Radio Facility	P/SE	C	For height is greater than 65 feet.
Antenna on existing structure	Rooftop Mounted Antennas and related unmanned equipment building, equipment cabinets, or equipment room	P	L	Incorporates current limits (maximum 5 ft. high and 3 inch diameter or 8 feet diameter – 560 square foot equipment area).

Temporary Commercial Uses				
Construction Administration or Sales Office	Temporary Construction Administration or Sales Office (listed as a use allowable in more than one zone but not listed in the land use table)	P	L	Currently allowed in all zones under certain conditions (on the site of construction, maximum 1 year plus extensions, landscaping, screening from building materials).
Transitory Use	Transitory Use	P/SE	L	Allows temporary uses allowed as a conditional use but some Transitory Uses are prohibited if TDRs were severed.

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
<b>INDUSTRIAL</b>				
Mining, Excavation	Rock or Stone Quarry, as a temporary use	SE	C	Consolidates two uses. Current special exception for Sand, Gravel or Clay Pits references the special exception standards for the Rock or Stone Quarry use.
	Sand, Gravel or Clay Pit, or extraction of other natural materials, as a temporary use	SE		
Railroad Track	Railroad Track	P	P	
Pipeline (Above Ground)	Pipelines, above ground	SE	C	
Pipeline (Below Ground)	Pipelines, underground	P	P	
Public Utility Structure	Public Utility Buildings and Structures	SE	C	
Distribution Line (Above Ground)	Electric Power Transmission and Distribution Lines, overhead, carrying 69,000 volts or less	P	P	Electric Power Transmission and Distribution Lines, overhead, carrying more than 69,000 volts cannot be regulated under the zoning ordinance.
	Telephone and Telegraph Lines	P		
Distribution Line (Below Ground)	Telephone and Telegraph Lines	P	P	
	Electric Power Transmission and Distribution Line, underground	P		
<b>MISCELLANEOUS</b>				
Noncommercial Kennel	Kennels, Noncommercial	P	P	
Solar Collection System	Accessory Buildings, Structures and Uses	P	L	Provides use standards specific to solar panels as an accessory use.

Proposed Use/Use Group	Current Use	Allowed in the RDT	Allowed in the AR	Notes
Wildlife, Game Preserve, and Other Conservation Areas	Wildlife or game preserve, regulated shooting ground licensed by the Maryland Wildlife Administration, and other conservation areas	P	P	
<b>ACCESSORY MISCELLANEOUS USES</b>				
Accessory Structures	Accessory Buildings, Structures and Uses	P	L	Incorporates restriction on size of accessory structures. Retains exemption for structures housing an agricultural use.
	Boathouse, Private	P		
	Hunting or Fishing Cabin, Private	P		
	Signs, in accordance with the provisions of Article 59-F	P		
Accessory Use	Accessory Buildings, Structures and Uses	P	P	
Security Pavilion	Security Pavilion	P	L	Incorporates current limits (maximum 14 X 14 on a minimum 2 acres lot –front setback 30 ft.)
<b>USES REMOVED</b>				
<b>Current Use</b>		<b>Rationale for Removal</b>		
Parking of Motor Vehicles, Off-street, in connection with commercial uses	P	Parking as the primary use of a parcel of land in the AR zone is not compatible with the preservation of agricultural land. Surface Parking for Commercial Uses in a Historic District has been retained.		
Parking of Motor Vehicles, Off-street, in connection with any use permitted	P	Parking as the primary use of a parcel of land in the AR zone is not compatible with the preservation of agricultural land. Surface Parking for Commercial Uses in a Historic District has been retained. Removal of this use does not affect parking on-site (accessory) for any use allowed in the zone.		
Swimming Pool, private	P	A Swimming Pool, private is a pool owned by not more than 10 families and used by only member families and their guests. Footnote 16 adds that a Swimming Pool, private is “for use of the property owner and nonpaying guests only”.		
Blacksmith	SE	This is no longer a primary use.		
Guest rooms, for not more than 2 roomers in any dwelling unit	P	This is the subject of a rental license, not zoning.		
Electric power transmission and distribution line, overhead, carrying more than 69,000 volts	SE	Electric Power Transmission and Distribution Lines, overhead, carrying more than 69,000 volts cannot be regulated under the zoning ordinance.		
Educational institution, private	SE	Currently not allowed if TDRs were severed.		
Golf course	SE	Footnotes in the current code do not allow new courses.		

## Uses Removed

1. **Parking of Motor Vehicles, off-street, in connection with commercial uses.**  
This use has been removed, except for surface parking for commercial uses in a historic district. This is a commercial use of agricultural/residential land. Once used for parking, the property becomes commercial. During subsequent master plan review such properties tend to be recommended for commercial zoning, thereby removing the property from the primary intended use of the zone.
2. **Parking of Motor Vehicles, other than heavy commercial vehicle, off-street in connection with any use permitted.**  
This use was removed as a primary use. Surface parking lots are not considered a compatible agricultural land use. This does not affect parking on-site (accessory) for any use allowed in the zone.
3. **Swimming Pool, private.**  
A Swimming Pool, private is a pool owned by not more than 10 families and used by only member families and their guests. In the RDT zone, however, footnote 16 adds that a Swimming Pool, private is “for use of the property owner and nonpaying guests only”.
4. **Blacksmith.**  
This is no longer a primary use.
5. **Guest rooms, for not more than 2 roomers in any dwelling unit.**  
This is covered by rental licensing requirements.
6. **Electric power transmission and distribution line, overhead, carrying more than 69,000 volts.**
7. **Educational institution, private.**  
This use is not currently allowed if TDRs were severed.
8. **Golf course.**  
Current footnotes do not allow new golf courses.

## Change from Permitted Use to a Limited Use

### **Bed-and-breakfast lodging with one or 2 guest rooms.**

Almost all nondiscretionary special exception standards have been retained as limited use standards. For the AR zone, this use is allowed as a limited use; it may be prohibited if not accessory to Farming under Sec. 3.1.5, Transferable Development Rights (current footnote 48).

## Change from Special Exception Use to a Limited Use

### **Bed-and-breakfast lodging with 3, 4 or 5 guest rooms.**

Almost all nondiscretionary special exception standards have been retained as limited use standards. For the AR zone, this use is allowed as a limited use; it may be prohibited if not accessory to Farming under Sec. 3.1.5 and if TDRs were severed.

## Changes from the current code land uses:

1. **Agricultural Processing.**
  - The proposed Agricultural Processing use is a consolidation of the following current agricultural processing uses: Agricultural Processing, Grain Elevator, Manufacturing of Mulch and Composting, Milk Plant, and Sawmill.
  - Proposed use standards require

- a minimum lot area of 10 acres, and
- minimum setback from any lot line of 75 feet.
- The current standards for the various agricultural processing uses are as follows:

Use	Minimum lot area in acres	Minimum setback in feet
Agricultural Processing	10	75
Grain elevator	5	75
Manufacturing of Mulch and Composting	5	50
Milk Plant	10	75
Saw Mill	n/a	50

**2. Farm Supply or Machinery Sales, Storage, and Service.**

- The proposed use Farm Supply or Machinery Sales, Storage and Service is a consolidation of Farm Machinery: Sales, Storage or Service, and Farm Supply: Sales, Storage or Service.
- Proposed use standards require
  - a minimum lot area of 5 acres, and
  - a minimum setback from any lot line of 75 feet.
- Currently, Farm Machinery: Sales, Storage or Service requires a minimum lot area of 5 acres, and a minimum setback from any lot line of 75 feet. Farm Supply: Sales, Storage or Service requires a minimum lot area of only 2 acres, and a minimum setback from any lot line of 50 feet.
- Under the current code, footnote 48 prohibits both the Farm Machinery and Farm Supply uses on a lot or parcel encumbered by a recorded Transfer of Development Rights easement. The proposed code removes this restriction.

**3. Farm Tenant Dwelling.**

- The proposed Farm Tenant Dwelling use is a consolidation of the following uses: Accessory Dwelling for Agricultural Workers, Farm Tenant Dwelling and Farm Tenant Mobile Home, more than one but less than 4.
- Both Accessory Dwelling for Agricultural Workers and Farm Tenant Dwelling are permitted uses. Farm Tenant Mobile Home, more than one but less than 4 is currently a special exception. The proposed code retains any non-discretionary special exception standards as limited use standards.

**4. Day Care Facility.**

- Adult and child day care uses are consolidated under a broader day care use without differentiating the use based on recipient age.
- Currently, the use Day Care Facility for more than four Senior Adults and Persons with Disabilities allows for up to 40 persons.
- The proposed code distinguishes Day Care use based on number of clients. Family Day Care allows up to 8 persons. Group Day Care Home is for 9-12 persons. These are both currently permitted uses in the RDT zone and would be permitted in the AR zone. Day Care Center, currently a special exception, was

split into two uses by the number of clients: Day Care Center (13-30 persons); and Day Care Center (over 30 persons). Both are proposed as a conditional use.

**5. Residential Care Facility.**

- The proposed code would consolidate 9 residential care-type uses into one use, Residential Care Facility, which is differentiated by the maximum number of clients that can use the facility.
- Residential care homes that care for up to 8 persons are a permitted use in almost every zone. Currently, this includes Adult Foster Care Home, Respite Care Home, and Group Home, Small (up to 8 residents).
- Hospice Care Facility and Sanitarium have no stated limitation on capacity. Both uses are currently a special exception in the RDT. A Group Home, Large (9-16 residents), and Domiciliary Care Home for more than 16 persons also require a special exception in the RDT.
- In the proposed code, Residential Care Facility (up to 8) is a permitted use in the AR zone. Residential Care Facility (9-16 persons) and Residential Care Facility (over 16 persons) are proposed as conditional uses in the AR zone.

New Uses

**1. Community Garden.**

- A Community Garden is the cultivation of land by a group of people to grow products for personal use or distribution; not for sale on-site. The limited use standards restrict gross floor area of all structures to 10% of the lot or parcel, accessory structure height is limited to 12 feet, and only manual or walk-behind mechanical equipment and practices commonly used in residential gardening are allowed.

**2. Seasonal Outdoor Sales.**

- Seasonal Outdoor Sales is the temporary sale of seasonal farm products such as pumpkins and evergreen trees. The limited use standards require a temporary use permit from DPS, the sales site cannot be used for residential purposes, and if on the site of a Religious Assembly use, the site must front on and have access to a road built to primary or higher standards.

**3. Solar Collection System.**

- A Solar Collection System is allowed only as an accessory use; free-standing systems are limited to the production of 120% of the on-site energy consumption.

Deleted uses

**1. Parking of Motor Vehicles, off-street, in connection with commercial uses.**

This use has been deleted, except for surface parking for commercial uses in a historic district. This is a commercial use of agricultural/residential land. Once used for parking, the property becomes commercial. When reviewed in the master plan process, such properties tend to be recommended for commercial zoning, thereby removing the property from the primary intended use of the zone.

**2. Parking of Motor Vehicles, other than heavy commercial vehicle, off-street in connection with any use permitted.**

This use was deleted as a primary use. The Planning Board does not consider surface parking lots to be compatible with agricultural land use. This limitation on parking would not affect parking on-site (accessory) for any use allowed in the zone.

**3. Swimming Pool, private.**

A Swimming Pool, private is a pool owned by not more than 10 families and used by only member families and their guests. In the RDT zone, however, footnote 16 adds that a Swimming Pool, private is “for use of the property owner and nonpaying guests only”.

Change from Special Exception Use to a Limited Use

**Bed and Breakfast**

Almost all nondiscretionary special exception standards have been retained as limited use standards. For the AR zone, this use is allowed as a limited use; it may be prohibited if not accessory to Farming under Sec. 3.1.5, Transferable Development Rights (current footnote 48).

**Article 59-4: Euclidean Zone Requirements: General and Standard Method**

Standard method is the only development method in the AR zone, maintaining the status quo. Density, lot areas, and child lot provisions are not substantively changed from the current ordinance: only one unit is allowed per 25 acres.

**Changes from the current code:**

A flexible lot alternative, establishing a maximum lot size of 3 acres, is provided to encourage agricultural and conservation easements; coverage up to 15% is allowed for this alternative.

Building types are a new concept in all zones; the AR zone only allows detached houses and general buildings. Standards for the general building are entirely new, reflecting the need to address the development of uses other than residential living that are currently allowed in the RDT zone.

Rear setback for accessory structures is increased from 10 feet to 15 feet. The increased setback is proposed to provide a modest increase in protection for abutting lots as accessory structures used in agriculture are exempt from height restrictions.

**Article 59-7: General Development Requirements**

This article provides general requirements for all development concerning parking, open space, landscaping, outdoor lighting, screening, and signs. Many of the requirements are not new; however, the organization of these regulations into one section is new to the code.

### **Changes from the current code:**

Several requirements under this article do not apply to the AR zone, including regulations on site access, open space, recreation facilities, and signs.

Under Division 7.5 Landscaping and Outdoor Lighting, outdoor lighting for conditional uses is limited to a maximum 0.1 footcandle illumination level at any lot line abutting a lot with a detached house. Landscaping is required for parking areas for conditional uses requiring more than 3 parking spaces. Parking lot lighting and screening may also be required, depending on the level and type of development. Agricultural uses are exempt from the regulations on Outdoor Storage and Display.

### **Article 59-8: Administration and Procedures**

This article provides a summary of the review and approval authority for District Council approvals, regulatory approvals, and administrative approvals required under the zoning code.

#### **Changes from the current code:**

The majority of changes made to the administration and procedures of the code are general and not specific to a particular zone.

Changes to procedure that are zone specific include modifications in how a use is allowed within a zone. Some uses that are currently a special exception, requiring approval by the Hearing Examiner or the Board of Appeals, may be proposed as a limited use with the standards for approval listed in the code, and approval can be made by DPS. Some limited uses require site plan approval.

The only current special exception proposed to become a limited use in the AR zone is the Bed and Breakfast.

Several permitted uses are proposed to be limited use in order to incorporate existing footnotes. Most of these footnotes limit or specify standards that must be met in order for the use to be approved. Thus, changes from a permitted to a limited use rarely change the nature of the approval process.

### **Definitions: Changes from Current Code**

#### **AR ZONE**

##### *New Definitions*

- Animal Husbandry is a new definition. The current code allows this use as it is incorporated in the definition of agriculture and regulated through the development standards for the accessory structure that house the animal. For clarification, Animal Husbandry was pulled out as a distinct accessory use and, like all uses in the proposed code, was given a definition.

- Animal Services is the use group that includes Animal Boarding and Care and Veterinary Office/Hospital. This use group was given a definition.
- Antenna on Existing Structure is a use that exists in the current code and, like all uses in the proposed code, was given a definition.
- Community Garden is a new definition. Like all uses in the proposed code, it was given a definition.
- Day Care Center (Over 30 Persons) is allowed in the current code, but is wrapped into Day Care Center (which allows 13 or more people). The proposed draft breaks Day Care Center into two different sizes to better regulate this use. The Over 30 Persons is a new definition, as all uses in the proposed code have been given a definition. This use does not cover the Family Day Care or Group Day Care, where the provider is not a resident and cannot meet the non-resident provider requirement (that is accommodated in the Day Center 13-30 Persons).
- Day Care Facility is a use group that includes the day care uses (both child and senior/disabled from the current code). It is defined to provide additional information about who the care is provided for and over what period of time (less than 24 hours a day).
- dBA is a unit of measurement for sound that is used frequently in the current and proposed code. To aid the reader, a definition was provided that references Chapter 31B.
- Detached House is a new term in the zoning ordinance. The proposed draft distinguishes between uses and building types. A definition is provided for clarity.
- Encroachment is a term used in Article 59-4 in the context of setback and height encroachments; a definition is provided for clarity.
- Farm Airstrip, Helistop is a use that exists in the current code and, like all uses in the proposed code, was given a definition.
- Farm Supply or Machinery Sales, Storage, and Service is a use consolidation of farm machinery: sales, storage, or service and farm supply: sales, storage, or service. Like all uses in the proposed code, it was given a definition.
- Food Service Truck is a new definition. It is mentioned in the Transitory use definition, so a definition was provided for clarity.
- General Building is a new term in the zoning ordinance. The proposed draft distinguishes between uses and building types. A definition is provided for clarity.
- Greenhouse is a term used in the current code, but it is not defined. Since it is used in the proposed code as well, a definition is provided for clarity.
- Home Health Practitioner (Low Impact) and Home Health Practitioner (Major Impact) are new definitions. The current code allows both a Home Health Practitioner (Low Impact) and Home Health Practitioner (Major Impact) but doesn't distinguish between the two in the use standards.

For clarity, the proposed code differentiates between the two kinds of Home Health Practitioner and, like all uses in the proposed code, a definition is provided for clarity.

- Household Living is the use group that includes Single-Unit Living, Two-Unit Living, Townhouse Living, and Multi-Unit Living. This use group was given a definition.
- Lodging is the use group that includes Bed and Breakfast and Hotel, Motel. This use group was given a definition.
- Lot, Flag is a term used in the current code, but it is not defined.
- Lot Width is a term used in the current code, but it is not defined.
- Mining, Excavation is a consolidation of a number of uses, including rock or stone quarry as a temporary use; and sand, gravel or clay pit, or extraction of other natural materials as a temporary use. Like all uses in the proposed code, was given a definition.
- Parcel is a term used in the current code, but it is not defined. Since it is used in the proposed code a definition is provided.
- Pipeline is a use that exists in the current code and, like all uses in the proposed code, was given a definition.
- Principal Building is a term used in the current code, but it is not defined. Since it is used in the proposed code, a definition is provided.
- Property is a term used in the current code, but it is not defined. Since it is used in the proposed code as well, a definition is provided for clarity and to more clearly differentiate it from a lot, site, or tract. The terms lot, site, tract, and property are used very purposefully in the proposed code and, as such, a definition for each is provided.
- Public Use (Except Utilities) is a use that exists in the current code, and like all uses in the proposed code, was given a definition.
- Public Utility Structure is a use that exists in the current code and, like all uses in the proposed code, was given a definition.
- Railroad Tracks is a use that exists in the current code and, like all uses in the proposed code, was given a definition.
- Religious Assembly is a use that exists in the current code and, like all uses in the proposed code, was given a definition.
- Residential Care Facility is a consolidation of 10 different residential care-type uses into one use based on size and impact. Like all uses in the proposed code, it was given a definition.
- Rural Antique Shop is a use that exists in the current code and, like all uses in the proposed code, was given a definition.

- Seasonal Outdoor Sales is a new use that incorporates the Christmas Tree Sales between Dec. 5 and Dec. 25 and, like all uses in the proposed code, was given a definition.
- Site is a term used in the current code, but it is not defined. Since it is used in the proposed code, a definition is provided.
- Solar Collection System is allowed in the current code and is called out as a specific use in the proposed code. Like all uses in the proposed code, it was given a definition.
- Surface Parking for Commercial Uses in a Historic District is a use that incorporates the provisions for parking in a historic district. It is allowed in the current code and is called out as a specific use in the proposed code. Like all uses in the proposed code, it was given a definition.
- Tract is a term used in the current code, but it is not defined. Since it is used in the proposed code, a definition is provided.
- Wildlife, Game Preserve, and Other Conservation Areas is a use that exists in the current code and, like all uses in the proposed code, was given a definition.

#### *Modified Definitions*

- Accessory Apartment (Attached Accessory Apartment and Detached Accessory Apartment). The current code defines both attached and detached accessory apartments together under the definition for Accessory Apartment. For clarity, and because they are separated as two distinct accessory uses in the proposed code, a definition is provided for both an Attached Accessory Apartment (specifying that it is part of a detached house building type) and a Detached Accessory Apartment (specifying that it is in a separate accessory structure).
- Accessory Structure was modified from the current definition of Accessory Building to no longer include the following sentence: “In addition to any other meaning the word ‘subordinate’ may have in this definition, on a lot where the main building is a one-family detached residential dwelling, except for an accessory agricultural building, subordinate means that the footprint of the accessory building is smaller than the footprint of the main building.” As there are use standards for an Accessory Structure that limit the size of an accessory structure in the Agricultural, Rural Residential, and Residential Detached zones, this sentence, which is more vague than the specific standards, is redundant and unnecessary.
- Accessory Use was modified from the definition in the current code to no longer include the following sentence: “A temporary structure or trailer used for construction administration or real estate sales in conjunction with and during the period of development, construction or sales within the same site or subdivision in which it is located is an accessory use.” This sentence is no longer necessary as Construction Administration or Sales Office is separated out as a distinct temporary use in the use table.
- Agricultural Auction Facility was modified from the current definition of Auction Facility to clarify that this use is restricted to farm-related merchandise. As a result of this clarification, the definition no longer includes the following sentence: “This does not include a one-time sale such as a yard sale, estate sale or sale required by legal action.” Garage sales, yard sales, estate sales, etc. are covered under Sec. 3.1.4.A.4.b.

- Agricultural Processing consolidates a number of uses from the current code (Agricultural processing, milk plant, grain elevator, saw mill, etc.) and as a result, the definition was modified. Current definition: “Processing of an agricultural product that causes a change in the natural form or state of the product and that entails operations of a commercial or industrial character that must be regulated to mitigate potential adverse external impacts. Agricultural processing includes, but is not limited to, an abattoir, milk plant and similar non-farm operations.” Proposed definition: An operation that transforms, packages, sorts, or grades farm products into goods that are used for intermediate or final consumption, including goods for non-food use, such as the products of forestry. Agricultural Processing includes milk plant, grain elevator, and mulch or compost production and manufacturing, but does not include Slaughterhouse (see Sec. 3.2.8, Slaughterhouse).”
- Bed and Breakfast definition was modified to clarify that the maximum number of guest rooms is 5 while the language about remaining no longer than 2 weeks in any one visit was removed from the definition and placed in the use standards.
- Building Height definition was modified. The way building height was measured for a single family home in the R-90 and R-60 is now the measurement of building height for any building type in the Agricultural, Rural Residential, and Residential zones. As a result, the measurement in the Agricultural, Rural Residential, and Residential zones (not just the R-90 and R-60 zones) will be from average grade along the front of the building (as opposed to language in the current code that measures from the level of approved street grade opposite the middle of the front of a building if the development is less than 35 feet from the street line). In addition, terracing is no longer allowed in the Agricultural, Rural Residential, or other Residential zones. This was done for consistency and clarity in measurement of building height in zones that are predominantly agricultural or residential in nature and to remove the ability to terrace, which is a common complaint about the current code. Additionally, the current code says that building height (in the R-90 and R-60 zones) is measured to either the (1) highest point of roof surface regardless of roof type, or (2) the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof. In the proposed code, this language was modified to be “the mean height level between the eaves and ridge ... or the highest point of roof surface for a flat roof” for simplicity.
- In the Commercial/Residential, Employment, and Industrial zones, the measurement of height remains the same as the current code, with the exception that “measured from the level of approved street grade opposite the middle of the front of a building...” was changed to “measured from the level of approved curb grade opposite the middle of the front of a building...”
- Cable Communications System definition removes the following language from the current code and incorporates it in the use standards in the proposed code: “including the structures, buildings and facilities in which or on which said component elements are located or which otherwise support the system”. The following language was also deleted: “The term ‘cable communications system’ shall include studios and the administrative offices for the entity operating the cable communications system.”
- Cemetery definition combines the definitions of both human and animal cemeteries and removes the following language from the current code as it is unnecessary: “It may be either a burial park

for earth interments, a mausoleum for vault or crypt interments, a columbarium for cinerary interments or a combination of one or more thereof.”

- Child definition was modernized by removing reference to legitimate and illegitimate child and replaced with biological or adopted child.
- Conditional Use definition replaces the special exception definition. It was modified to remove reference to specific findings required (which are detailed in Article 59-8). Current code definition (special exception): The grant of a specific use that would not be appropriate generally or without restriction, which must be based on a finding that certain conditions governing special exceptions as detailed in Article 59-G exist, and that the use is consistent with the applicable master plan and is compatible with the existing neighborhood. Proposed definition: A use that must meet the conditional use standards in Div 3.2 through Div. 3.7 and requires approval by the Board of Appeals or Hearing Examiner, under the findings in Sec. 8.3.1. A conditional use is a special exception.
- Coverage definition was modified from the current Building Coverage definition to clarify what is included in coverage (e.g., structured parking, other roofed structures, etc.) and what is not included (e.g., paved areas such as driveways, pedestrian walkways, bay windows, etc.)
- Day Care Center (13 – 30) definition was modified from the current child day care center, as this use is now broken down by size in the proposed draft (13-30 and over 30).
- Distribution Line is a use consolidation of electric power transmission and distribution lines, telephone and telegraph lines, and cable lines. The definition incorporates these uses.
- Family Day Care definition was modified as the result of use consolidation to include both the child family day care and the day care for seniors and disabled persons (up to 8 max).
- Farm Market, On-site definition was modified. The language about the event of crop failure and the percent of the farm market that can be used for display and sale of agricultural products not produced on a farm under the control of the owner or operator of the farm market was moved to the use standards, as this component of the use is only allowed in certain zones.
- Farming definition was modified from the current definition of farm to include the full definition of agriculture (as opposed to just referencing it) at the request of the agricultural community. The definition has also been modified to include footnotes from the current code that identify the list of the uses considered accessory to a farm.
- Group Day Care (9-12 Persons) definition was modified as the result of use consolidation to include both the child group day care home and the day care for seniors and disabled persons. As a result, the definition is broader and the language related to regulations for a child group day care home that takes place in a dwelling was moved to the use standards.
- Home Occupation definition was modified. The reference to residential character and the list of characteristics have been moved to the use standards. In addition, the definitions for Home Occupation (No Impact), Home Occupation (Low Impact), and Home Occupation (Major Impact) have been modified to include the number of non-resident employees, to better distinguish between the three uses.

- Household definition was modified from the definition of family to include people related by adoption or guardianship; two unrelated people and any children, parents, siblings, or other persons related to either of them by blood, adoption, or guardianship; and not more than 8 unrelated people who are “handicapped” as defined by the Fair Housing Act.
- Lawn Maintenance Service definition was modified to no longer include reference to it being run as a Home Occupation; however, the Planning Board recommended retaining language about having to meet the requirements of a Home Occupation (Low Impact).
- Lot definition was modified to more clearly differentiate it from a site or a tract. The terms lot, site, and tract are used very purposefully in the proposed code and, as such, the definition of lot was modified to fit into this scheme.
- Lot Area definition was modified from the current definition of lot area, net; the following language was removed: “excluding any street or highways, whether dedicated or not dedicated to public use, including off-street automobile parking areas and other accessory uses.”
- Mobile Home definition was modified because the proposed code distinguishes between a manufactured home (with a permanent foundation) and a mobile home (without a permanent foundation).
- Nursery definition was modified because the proposed code distinguishes between a Nursery (Retail) and a Nursery (Wholesale) use. In addition, the reference to the sale, from a farm, of horticultural products was moved to the definition of Farming, since it is describing a use that is accessory to a farm.
- Person with Disability definition was modified to remove the age restriction/adult reference.
- Pre-Development Level of Ground definition was modified from the current definition of pre-development grade. The following language was removed because it was determined to be incorrect: “or the grade necessary to implement an approved subdivision plan”.
- Receiving Area definition was modified to clarify that it is land designated on the zoning map (as opposed to on an approved and adopted general, master, sector or functional plan).
- Security Pavilion definition was modified. The language about not being designed or used as a dwelling unit or for the storage of goods, materials, or automobiles was taken out of the definition and moved to the use standards.
- Shooting Range (Outdoor) definition was modified to distinguish between an outdoor and indoor shooting range.
- Single-Unit Living definition was modified from the current definition of Dwelling, One-Family Detached to incorporate the concept of building type and how it differentiates from use.
- Structure definition was modified to clarify that it requires a permanent location on the ground or attachment to something having permanent location on the ground. The long list of examples was shortened to buildings and fences.

- Telecommunications Tower definition was modified from the current definition of Telecommunications Facility. The language about not being staffed and the types of antennas allowed was removed from the definition and placed in the use standards.
- Transfer of Development Rights definition was modified. Reference to “deed, easement, or other legal instrument” was removed as it is covered by “as authorized by law”. In addition, reference to the development right transferring to another parcel of land was changed to transferring to another tract of land. Changing parcel to tract was done because of the purposeful distinction that the proposed code makes between parcel, lot, site, and tract. The change will not impact how TDRs function.
- Transitory Use definition was modified by deleting the reference to Chapter 47 and moving it to the use standards. The language that is in the referenced Sec. 59-A-6.13 is incorporated in the use standards and, therefore, a section reference isn’t required in the definition.
- Veterinary Office/Hospital definition was modified to clarify that animals may stay overnight only for medical purposes.

*Removed Definitions*

- Accessory Dwelling definition was deleted because it was consolidated into Farm Tenant Dwelling.
- Adult Foster Care Home definition was removed, since this use was consolidated with the Residential Care Facility.
- Animal Cemetery definition was removed, since this use was consolidated with Cemetery.
- Blacksmith definition was removed, since the use was not retained – the agricultural community felt this use was not tied to property but, rather, a blacksmith typically travelled to the farm.
- Child Day Care Facility definition was removed, since it is replaced by the Day Care Facility definition (which doesn’t distinguish between children and senior adults or persons with disabilities).
- Day Care Facility for Senior Adults and Persons with Disabilities definition was removed, since this use was consolidated into the Day Care Facility uses (Family Day Care, Group Day Care, Day Care Center), which don’t distinguish between children and senior adults or persons with disabilities.
- Domiciliary Care Home definition was removed, since this use was consolidated with the Residential Care Facility.
- Dwelling, one-family definition was modified, replaced with the Single-Unit Living definition. As this is a use name, we moved away from terms that might be confused with the building type.

- Equestrian Event, Informal; Equestrian Event, Major; Equestrian Event, Minor definitions were removed and incorporated into the use standards, which specify requirements for each type of event.
- Farm Tenant Mobile Home definition was removed, since this use was consolidated with the Farm Tenant Dwelling.
- Grain Elevator definition was removed, since this use was consolidated with Agricultural Processing.
- Group Home; Group Home, Small; Group Home, Large definitions were removed, since these uses were consolidated with the Residential Care Facility.
- Hospice definition was removed, since this use was consolidated with the Residential Care Facility.
- Milk Plant definition was removed, since this use was consolidated with Agricultural Processing.
- Mobile Home, Double-Wide definition was removed, because it is consolidated into Single-Unit Living.
- Mulch Manufacturing and Composting definition was removed, since this use was consolidated with Agricultural Processing.
- Percentage of Lot Coverage definition was removed, as it is redundant with the definition of coverage.
- Registered Living Unit definition was removed, since the use can now be covered by the Attached Accessory Apartment as a Limited use.
- Respite Care Home definition was removed, since this use was consolidated with the Residential Care Facility.
- Sanitarium definition was removed, since this use was consolidated with the Residential Care Facility.
- Sawmill definition was removed, since this use was consolidated with Agricultural Processing.
- Service Organization definition was removed. In the current code, private club and service organization are defined separately, but used jointly as a single use “private club or service organization.” In the proposed draft, the definition of Private Club and Service Organization (taken from the current definition of private club) covers the activities/uses that would fall under both the private club and the service organization.
- Swimming Pool, Private definition was removed because the use was removed.

## MISCELLANEOUS

### *New Definitions*

- Abutting is a new definition. This term is used often for compatibility standards.
- Adjacent is a new definition to distinguish it from abutting and confronting.
- Awning is a term used in the current code, but it is not currently defined.
- Balcony is a term used in the current code, but it is not currently defined.
- Belt Course is a term used in the current code, but it is not currently defined.
- Berm is a term used in the current code, but it is not currently defined.
- Confronting is a term used in the current code, but it is not currently defined.
- Euclidean Zone is a term used in the current code, but it is not currently defined.
- Floating Zone is a term used current code, but it is not currently defined.
- Gallery is a new definition, to provide clarity. This term is used when discussing building form in Article 59-4.
- Leader is a term used in the current code, but it is not currently defined.
- Light Shelf is a new term. It would be allowed to encroach in a setback.
- Planning Department is a term used in the current code, but it is not currently defined.
- Porch is a term used in the current code, but but it is not currently defined (unenclosed and enclosed porch are defined, but not the general term of porch
- Rainwater Collection System is a new term. It would be allowed to encroach in a setback and exceed height.
- Right-of-Way is a term used in the current code, but it is not currently defined.
- Setback, Front; Setback, Rear; Setback, Side; Setback, Side Street are terms and concepts in the current code that are not currently defined.
- Sill is a term used in the current code, but it is not currently defined.
- Stoop is a term used in the current code, but it is not currently defined.

### *Modified Definitions*

- Frontage definition was modified from the “length of the front property line of the lot, lots or tract of land abutting...” to “a property line shared with...”. In addition, rural right-of-way was removed and alley right-of-way or easement boundary was added.
- Gross Floor Area (GFA) definition was modified from “buildings on a lot” to “buildings on a tract” as a result of the purposeful clarification of the terms lot, site, and tract. In addition, in the list of things GFA does not include, “outside balconies which do not exceed a projection of 6 feet beyond the exterior walls of the building” was modified to “unenclosed steps, balconies, and porches”. Also, the following were added to the list of things that GFA does not include:
  - o structured parking was added for clarification;
  - o floor area for publicly owned or operated uses or arts and entertainment uses provided as a public benefit under the optional method of development was added as it incorporates a footnote in the current code that excludes these items from the measurement of FAR in optional method development; this has expanded the eligible area to more than the CBDs.
  - o floor area for a historic resource recommended in the master plan to be preserved and reused, which does not occupy more than 10% of the GFA; this was added to incorporate a footnote from the current code excluding it from the measurement of FAR, which is based on GFA;
  - o interior balconies and mezzanines for common, non-leasable area in a regional shopping center;
  - o in the Commercial/Residential and Employment zones, floor area for all MPDUs that exceed the minimum 12.5% of required MPDUs was added as a way to encourage more affordable housing as a public benefit; and
  - o in the LSC and Industrial zones, floor space used for mechanical equipment was added to incorporate the current language in the development standards table for the Industrial zones.
- Zoning Map definition was modified to reflect that the official zoning map will be digital.

### *Removed Definitions*

- Alley definition was removed because it is defined in the Road Code (Chapter 49).
- Dairy Farm definition was removed because this term does not appear in the current or proposed code.
- Dwelling definition was removed because it is covered by the definition of dwelling unit.
- Floor Area of a Building, Total is basically covered by the definition of gross floor area.
- Foster Home definition was removed because the term is not used in the current or proposed code.
- Grade, Finished definition was removed because it is described within the definition of building height.
- Plan, Sector definition was removed since a sector plan is included in the definition of a master plan.