

Introduction

MEMORANDUM

June 19, 2009

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney *JLZ*

SUBJECT: **Introduction:** Zoning Text Amendment 09-05, Burtonsville Overlay Zone-
Allowed Uses

Zoning Text Amendment (ZTA) 09-05, sponsored by Councilmember Navarro, is scheduled to be introduced on June 22, 2009. A public hearing will be held on July 28, 2009 at 1:30 p.m. if the Council approves the attached resolution.

There are 3 zones beneath the Burtonsville Overlay zone: I-1, I-3, and OM. The permitted land uses in each zone are different. The Planning Board interpreted the current text of the Burtonsville Overlay zone to give a property owner right to the land uses permitted by the property's underlying zone. A recent court opinion interpreted the Burtonsville Overlay zone to give a property owner in the Overlay zone the right to use any of the uses allowed in the I-1, I-3, and OM zones. ZTA 09-05 would sustain the Planning Board's interpretation of the allowable uses in the zone.

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Zoning Text Amendment No: 09-05
Concerning: Burtonsville
Overlay Zone – Allowed uses
Draft No. & Date: 1- 6/17/09
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Navarro

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the land uses allowed in the Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan; and
- generally amend the Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan.

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

DIVISION 59-C-18	“Overlay Zones”
Sec. 59-C-18.14.	“Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan”
59-C-18.142	“Regulations”

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

ORDINANCE

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

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

2
3 Division 59-C-18. Overlay Zones.

4 * * *

5 Sec. 59-C-18.14. Overlay zone for the Burtonsville Employment Area of the
6 Fairland Master Plan.

7 * * *

8 59-C-18.142. Regulations.

9 (a) Land uses. [The following uses are allowed in the Burtonsville employment
10 overlay zone:]

11 (1) All permitted or special exception uses [in the I-1, I-3, and O-M zones
12 as shown in Sections 59-C-4.2 and 59-C-5.2 except] in a lot or
13 parcel's underlying zone are allowed; however, the following uses are
14 prohibited:

15 Automobile parts, sales and services, including but not limited
16 to tire sales and transmission service

17 Automobile filling stations

18 Automobile repair and services

19 Automobile sales, indoors and outdoors

20 Automobile, truck and trailer rentals, outdoor

21 Bakery

22 Blacksmith shops[,] and machinery shops

23 Bottling plant

24 Building materials and supplies, wholesale and retail

25 Confectionery production

26 Contractor's storage yards

27 Dry cleaning plants

- 28 Electroplating and manufacturing of small parts such as coils,
- 29 condensers, transformers, and crystal holders
- 30 Food production, packaging, packing and canning [of]
- 31 Fuel storage yards
- 32 Ice manufacturing and storage
- 33 Laundry plants
- 34 Lumberyards
- 35 Manufacturing of light sheet metal products
- 36 Manufacturing, compounding, assembling or treatment of
- 37 articles from the following previously prepared materials:
- 38 bone, cellophane, plastic, canvas cloth, cork, feathers,
- 39 felt, fiber, fur, hair, horn, leather textiles, yarns, glass,
- 40 precious or semi-precious metals or stones, and tobacco
- 41 Manufacturing, compounding, processing or packaging of
- 42 cosmetics, drugs, perfumes, pharmaceuticals, toiletries
- 43 and products resulting from biotechnical and biogenetic
- 44 research and development
- 45 Manufacturing, fabrication, and/or subassembly [or] of aircraft
- 46 or satellite parts, components, and equipment
- 47 Manufacturing of musical instruments, toys, novelties, and
- 48 rubber and metal stamps
- 49 Manufacturing of paint not employing a boiling or rendering
- 50 process
- 51 Manufacturing of pottery and figurines or other products using
- 52 previously pulverized clay and kilns fired only by
- 53 electricity or gas
- 54 Paper products manufacturing

- 55 Sawmills
- 56 Stoneworks
- 57 Tinsmith and roofing services
- 58 Wholesale trades limited to sale or rental of products intended
- 59 for industrial or commercial users
- 60 Wood products manufacturing

61 In cases where uses are [permitted in one zone but] allowed by special
62 exception [in another zone], the special exception [provision takes
63 precedence] provisions must be satisfied.

64 (2) The following retail commercial uses are [permitted] allowed without
65 regard to the underlying zone:

- 66 Antique shops, handicrafts, or art sales.
- 67 Barber or beauty shop.
- 68 Banks.
- 69 Bookstores.
- 70 Drugstore.
- 71 Eating and drinking establishment, excluding a drive-in.
- 72 Express or mailing offices.
- 73 Florist.
- 74 Food and beverage store.
- 75 Newsstand.
- 76 Photographic and art supply stores.
- 77 Shoe repair shops.

78 * * *

79 **Sec.2. Effective Date.** This ordinance takes effect immediately upon the
80 date of Council adoption.

81

82 This is a correct copy of Council action.

83

84 _____

85 Linda M. Lauer, Clerk of the Council

Resolution No.: _____
Introduced: June 23, 2009
Adopted: _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND

By: The District Council

Subject: Notice of Public Hearing on Zoning Text Amendment 09-05

Background

1. Section 59-H-9.3 of the Montgomery County Ordinance requires that, within 30 days of introduction of any text amendment, the Council act by resolution to set a date and time for public hearing on the proposed amendment.
2. Zoning Text Amendment No. 09-05, introduced on June 23, 2009 would amend provisions concerning land uses in the Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan.

Action

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 resolution:

Legal notice will be given of the public hearing to be held on July 28, 2009 at 1:30 p.m., in the Council Hearing Room, Stella Werner Council Office Building, Rockville, Maryland, for the purpose of giving the public an opportunity to comment on the proposed amendment.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council