

**Action**

**MEMORANDUM**

April 30, 2010

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action – Zoning Text Amendment 09-11, Residential Zones - Agricultural Vending

**PHED Recommendation:** On April 22, 2010 the Committee (3-0) recommended approval of ZTA 09-11 with an amendment to reduce the minimum lot size where the use would be allowed from 4 acres to 2 acres. In the Committee's opinion, a 2 acre lot can accommodate a farmers market without significant interference to neighboring homes.

This ZTA would allow what most residents would call "farmers' markets" on larger parcels of land (more than 4 acres) adjacent to major roads (4 or more lanes), if the lot is in use for a non-residential purpose, the use is at least 100 feet from the nearest dwelling, and the structure or vehicle used for sales is temporary. Only a Certified Agricultural Producer would be allowed to sell products.

**Background**

Zoning Text Amendment (ZTA) 09-11, sponsored by Councilmembers Berliner, Leventhal, and Trachtenberg, was introduced on November 17, 2009. On January 12, 2010 the Council held a public hearing. The Planning Board Staff recommended approval of ZTA 09-11. The Planning Board recommended that the problem of farmers' markets be addressed comprehensively in the Zoning Ordinance Rewrite. The Board was particularly concerned that the large parcel size required would result in large scale produce vending.<sup>1</sup> A property owner and a vendor testified in support of ZTA 09-11 as introduced. Some testimony also favored allowing more lots to have farmers' markets.

On January 21, 2010 the Committee held a worksession on the ZTA. The Committee requested additional information on only using the distance from houses (to avoid incompatible situations) and deleting the minimum lot size requirement.

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<sup>1</sup> The sustainability audit in the Planning Board's "Zoning Montgomery" report recommended being more permissive with farmers' markets. Planning Staff recommended approval of ZTA 09-11 as introduced.

## **Wine sales now allowed at farmers' markets**

The Maryland Assembly passed legislation that will affect wine sales at farmers' markets. Every Maryland winery will be allowed 12 permits per year to sell wine by the bottle at farmers' markets in Montgomery County.<sup>2</sup> Each farmers' market will be limited to sales from 1 winery at a time. Samples of wine (1 ounce) may be distributed to adults.<sup>3</sup> The potential for wine sales may affect the Council's willingness to increase the opportunities for farmers' markets.

## **Why not use the term "farmers' market"?**

The Zoning Ordinance includes a very restrictive definition of a farm market:

**Farm market:** The display and retail sale from a farm of: (1) agricultural products produced on the farm where the farm market is located, or (2) agricultural products produced on another farm under the control of the owner or operator of that farm market...

This term is too restrictive to allow fruit and vegetable markets in suburban areas.

County regulations define a Certified Agricultural Producer as a vendor of produce from Maryland, Virginia, West Virginia, Delaware, Pennsylvania, or Washington, DC who complies with the following requirements:

- (a) A Certified Agricultural Producer must sell only fresh fruits, vegetables, herbs, cut flowers, small trees, or plants produced by the Agricultural Producer.
- (b) A Certified Agricultural Producer may sell non-potentially hazardous prepackaged goods and eggs. These products must be approved by the Montgomery County Health Department.
- (c) A point of sale license must be obtained before operating.
- (d) Regionally grown products must be sold only by the agricultural producer or a representative of the agricultural producer.
- (e) A Certified Agricultural Producer must be responsible for the conduct of anyone operating under a Point of Sale License issued by the Department of Permitting Services.

## **Are there any problems with allowing a commercial use in residential zones?**

There could be problems of compatibility anytime a commercial or institutional use is allowed in a single family neighborhood. This ZTA tries to avoid such problems by providing standards (a minimum lot size, distance to neighbors, and adjoining number of lanes) to assure that the market will be compatible without requiring a special exception. The requirement that the structure or vehicle used for sales remains in the same location for less than 24 hours will ensure temporary structures. The Planning Board's fear of massive produce stands is unwarranted. The Council could limit agricultural vending to a percentage of a parcel's land area if it determines that it is necessary.

Contrary to causing a problem, ZTA 09-11 can help solve a problem. Isolated land uses cause long car trips. A convenient market has the potential to reduce the distance residents must travel for fresh produce.

*The Committee did not believe that ZTA 09-11 would cause a problem for residential communities.*

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<sup>2</sup> HB823; the 12 permits are in addition to 4 permits allowed for special events.

<sup>3</sup> SB858.

**Should a provision for agricultural vending on residential property only be considered in the context of the Zoning Ordinance Rewrite?**

Current agricultural vending activity will be put out of business by the Department of Permitting Services in the absence of approving ZTA 09-11. If the Zoning Ordinance Rewrite determines that there is a better means to accomplish the same result, the Council can consider those recommendations at that time.

*The Committee did not recommend waiting for the Zoning Ordinance Rewrite to address the issue of agricultural vending on residential property.*

**What effect will ZTA 09-11 have on markets in public rights-of-way?**

ZTA 09-11 will have no effect on public rights-of-way. Markets in County rights-of-way are allowed by permit. Markets in Maryland Department of Transportation rights-of-way must have state approval. ZTA 09-11 will not change either of these situations.

**What impact will ZTA 09-11 have on existing farmers' markets in residential zones outside of public rights-of-way?**

Farmers' markets are not legal in residential single family zones unless the food is grown on the property conducting the sale. The only existing (and currently illegal) markets known to staff are on parcels that would satisfy the criteria found in ZTA 09-11 as introduced. Until this past year, these markets have existed without any complaints by their neighbors. Staff could not provide an inventory of illegal markets to determine lot size, the distance from houses, or the number of lanes in the road abutting the market.

Changing any of the standards in the ZTA (minimum lot size, distance to neighbors, and adjoining number of lanes) will change the number and location of parcels that can comply. Planning Staff, using GIS data, estimates that there are 293 privately owned parcels that satisfy the standards of ZTA 09-11. Reducing the parcel size standard to 2 acres or more would add another 253 parcels.

There are approximately 3,400 lots in the County that are vacant or non-residential lots abutting 4 lane roads. Approximately 200 lots are used for a non-residential purpose or are vacant, and are less than 20,400 square feet in area.<sup>4</sup> If the acreage requirement were removed from ZTA 09-11, approximately 3,200 lots would be allowed to host farmers' markets.

*The Committee recommended amending ZTA 09-11 to allow farmers' markets on 2 acre lots.*

**How will agricultural vending affect sites with special exceptions?**

Many special exceptions, but not all, include conditions concerning a limit on the total activity on the site. Agricultural vending on any such site would need to comply with such conditions. Failure to do so would jeopardize the special exception approval. If the parcel owner applies for a special exception after the start of agricultural vending on the site, the Board of Appeals would consider the ongoing use in developing appropriate conditions for a subsequent special exception.

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<sup>4</sup> 20,400 square feet is the minimum area that can satisfy the minimum setbacks in ZTA 09-11. Assuming a lot has houses on its 2 sides, and those neighboring houses are off their lot line by 8 feet, the minimum frontage of a lot used for vending must be 184 feet plus the width of the vending operation.

**Should agricultural vending only be allowed by special exception?**

ZTA 09-11 would allow agricultural vending as a permitted use under specific standards. Agricultural vending could be allowed in residential zones only as a special exception. This would allow for an examination of unique circumstances that may make the use incompatible with the surrounding community; however, it is a costly and time consuming process. The Council may well ask itself if “the juice is worth the squeeze” in this instance.

*The Committee recommended providing standards for agricultural vending as a permitted use rather than requiring a special exception.*

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Zoning Text Amendment No: 09-11  
Concerning: Residential Zones –  
Agricultural Vending  
Draft No. & Date: 2 – 04/22/10  
Introduced: November 17, 2009  
Public Hearing: January 12, 2010  
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**

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By: Councilmembers Berliner, Leventhal, and Trachtenberg

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- Allow the sale of farm produce by Certified Agricultural Producers in residential zones, under certain circumstances.

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

DIVISION 59-C-1     “RESIDENTIAL ZONES, ONE-FAMILY”  
Section 59-C-1.31   “Land uses”

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

## OPINION

Zoning Text Amendment No. 09-11, sponsored by Councilmembers Berliner, Leventhal, and Trachtenberg, was introduced on November 17, 2010. This ZTA would allow what most residents would call “farmers’ markets” on larger parcels of land (more than 4 acres) adjacent to major roads (4 or more lanes), if the lot is in use for a non-residential purpose, the use is at least 100 feet from the nearest dwelling, and the structure or vehicle used for sales is temporary. Only a Certified Agricultural Producer would be allowed to sell products.

On January 12, 2010 the Council held a public hearing concerning the proposed text amendment. The Planning Board Staff recommended approval of ZTA 09-11. The Planning Board recommended that the problem of farmers’ markets be addressed comprehensively in the Zoning Ordinance Rewrite. The Board was particularly concerned that the large parcel size required would result in large scale produce vending.<sup>1</sup> A property owner and a vendor testified in support of ZTA 09-11 as introduced. Some testimony also favored allowing more lots to have a farmers’ market. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions on January 21, 2010 and April 22, 2010 to review the amendment. The Committee recommended approval of ZTA 09-11 with an amendment to allow agricultural vending on lots that are least 2 acres.

The District Council reviewed Zoning Text Amendment No. 09-11 at a worksession held on May 4, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 09-11 will be approved as amended.

## 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:*

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<sup>1</sup> The sustainability audit in the Planning Board’s “Zoning Montgomery” report recommended being more permissive with farmers’ markets. Planning Staff recommended approval of ZTA 09-11 as introduced.

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

2   **DIVISION 59-C-1.       RESIDENTIAL ZONES, ONE-FAMILY.**

3   \*   \*   \*

4   **59-C-1.31. Land uses.**

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<b>(g) Miscellaneous.</b>	<b>RE-2</b>	<b>RE-2C</b>	<b>RE-1</b>	<b>R-200</b>	<b>R-150</b>	<b>R-90</b>	<b>R-60</b>	<b>R-40</b>	<b>R-4plex</b>	<b>RMH 200</b>
Accessory buildings or structures for housing animals or fowl.	P	P	P	P	P	P	P			
Accessory buildings, structures, and uses. <sup>52</sup>	P	P	P	P	P	P	P	P	P	P
<u>Agricultural vending.*</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			
Kennels, noncommercial. <sup>31</sup>	P	P	P	P	P <sup>30</sup>					
Security pavilion.	P <sup>50</sup>		P <sup>50</sup>	P <sup>50</sup>						
Signs, in accordance with article 59-F.	P	P	P	P	P	P	P	P	P	P

- 6   \*       At least 100 feet from a dwelling, a vendor who is a Certified Agricultural Producer under Chapter 47  
7       regulations is permitted to sell produce on a lot or parcel:  
8       1) used for non-residential purposes other than agricultural vending;  
9       2) larger than ~~[[4]] 2~~ acres in size;  
10      3) abutting a roadway with 4 or more lanes[.]; and  
11      4) if the structure or vehicle used for sales remains in the same location for less than 24 hours.

12   \*   \*   \*

13           **Sec. 5.       Effective Date.** This ordinance takes effect immediately upon  
14 the date of Council adoption.

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16 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIRMAN

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

January 7, 2010

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

**FROM:** Montgomery County Planning Board

**SUBJECT:** Zoning Text Amendment No. 09-11

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 09-11 at its regular meeting on January 7, 2010. After careful review of the material of record, the Board voted 4:0 to provide the following comments.

Overall, the Board supports providing opportunities for vending of farm products near residential areas. The proposed text amendment would allow what residents might typically refer to as “farmers’ markets” to be established as “agricultural vending” with somewhat broader application in that they could be established in most one-family residential zones if: (1) located on a lot or parcel greater than 4 acres that is also used for non-residential purposes other than agricultural vending; (2) the lot or parcel abuts a roadway with 4 or more lanes, and (3) the structure or vehicle used for sales remains in the same location for less than 24 hours.

The Board believes that the parameters proposed for the establishment of agricultural vending help to mitigate some possible adverse impacts on surrounding residential development. However, we are concerned that the broadening of the farm market provisions in one-family residential zones could have more far-reaching impacts than anticipated by the sponsor and therefore should be addressed more comprehensively as part of the Zoning Ordinance Rewrite project. For example, the Board is concerned that requiring the location of agricultural vending on lots or parcels

greater than 4 acres could potentially result in a larger scale of farm produce vending that is out of character with the surrounding neighborhoods.

The Planning Board also questioned how the process would be handled for allowing agricultural vending "by-right" on non-residentially used parcels where the existing use is governed by a special exception.

### CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, January 7, 2010.



Royce Hanson  
Chairman

RH: GR



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

**MCPB**  
**Item #7**  
**1/7/10**

**DATE:** December 21, 2009  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
Ralph Wilson, Zoning Supervisor, Development Review *EDW*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To allow the sale of farm produce by Certified Agricultural Producers in residential zones, under certain circumstances

**TEXT AMENDMENT:** No. 09-11  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Berliner  
**INTRODUCED DATE:** November 17, 2009  
**PLANNING BOARD REVIEW:** January 7, 2010  
**PUBLIC HEARING:** January 12, 2010; 1:30 PM

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**STAFF RECOMMENDATION:** APPROVAL to allow the sale of farm produce by Certified Agricultural Producers by right in residential zones, under certain circumstances.

**BACKGROUND/ANALYSIS**

The proposed text amendment, as sponsored by Councilmember Berliner, would allow what residents might typically refer to as "farmers' markets". However, although similar to farmers' markets in many respects, "agricultural vending" as proposed under ZTA 09-11 has somewhat broader application in that it could be established in most one-family residential zones if: (1) located on a lot or parcel greater than 4 acres that is also used for non-residential purposes other than agricultural vending; (2) the lot or parcel abuts a roadway with 4 or more lanes, and (3) the structure or vehicle used for sales remains in the same location for less than 24 hours. Other limitations are proposed to regulate potential impacts in the smaller lot residential zones. Only a Certified Agricultural Producer would be allowed to sell products. Agricultural vending must be located at least 100 feet from any dwelling.

County regulations require that a Certified Agricultural Producer be a vendor of regionally grown products. Regionally grown products are those produced within the five state areas of Maryland, Virginia, West Virginia, Delaware, and Pennsylvania and the

city of Washington, DC. A Certified Agricultural Producer must comply with the following requirements.

- (a) A Certified Agricultural Producer must sell only fresh fruits, vegetables, herbs, cut flowers, small trees, or plants produced by the Agricultural Producer.
- (b) A Certified Agricultural Producer may sell non-potentially hazardous prepackaged goods and eggs. These products must be approved by the Montgomery County Health Department.
- (c) A point of sale license must be obtained before operating.
- (d) Regionally grown products must be sold only by the agricultural producer or a representative of the agricultural producer.
- (e) A Certified Agricultural Producer must be responsible for the conduct of anyone operating under a Point of Sale License issued by the Department of Permitting Services.

Although most, if not all, residents refer to agricultural vending as “farmers’ markets”, the Zoning Ordinance is very restrictive in its definition of a farm market:

***Farm market:** The display and retail sale from a farm of: (1) agricultural products produced on the farm where the farm market is located, or (2) agricultural products produced on another farm under the control of the owner or operator of that farm market. A farm market includes the display and sale of farm food products certified as non-potentially hazardous by the Department of Health and Human Services. Up to 25 percent of the farm market display and sales area may 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. In the event of crop failure due to drought, insect damage, disease, or other cause beyond the control of the owner or operator of the farm market, the Department of Permitting Services upon the recommendation of the Department of Economic Development and the Montgomery County Agricultural Advisory Committee may allow for a limited period of time more than 25 percent of the farm market display and sales area to be used for agricultural products from off the farm where the farm market is located.*

One of the key differences between the “agricultural vending” in the proposed new zoning category “agricultural vending” and a “farm market” is that the display and retail sale of agricultural products for a farm market must occur on a farm. In the one-family residential zones, a farm market is a permitted use in the RE-2, RE-2C, RE-1 and R-200 zones—zones with a typical minimum lot size ranging from 20,000 square feet to 2 acres. An agricultural vending use would be inclusive of the aforementioned zones as well as the R-60, R-90 and R-150 zones—with a caveat that the lot or parcel be a minimum size

of 4 acres. To further minimize the impact of an agricultural vending establishment on residential neighborhoods, such establishments could only be located on parcels or lots along major roadways of 4 lanes or greater (not typical of an internal subdivision street). Further, agricultural vending could not occur within 100 feet of any dwelling and the structure or vehicle used for sales cannot remain in the same location for more than 24 hours. Staff believes that the parameters proposed for the establishment of agricultural vending help to mitigate any possible adverse impacts on surrounding residential development while also allowing Certified Agricultural Producers to provide healthy, fresh local produce and goods for area residents.

## **RECOMMENDATION**

For the reasons stated above, staff recommends approval of the zoning text amendment to allow the sale of farm produce by Certified Agricultural Producers in residential zones, under certain circumstances.

Attachment 1 depicts the proposed text amendment as introduced.

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Attachments

1. Proposed Text Amendment 09-11