

Introduction

MEMORANDUM

July 26, 2010

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Introduction – Zoning Text Amendment 10-12, RDT Zone – Child Lot Standards

Zoning Text Amendment (ZTA) 10-12, sponsored by Councilmember Knapp, is scheduled to be introduced on July 27, 2010. Currently, property owners who owned property before 1981 are entitled to create building lots for their children or their spouse's children without any limitations. Although the number of properties that qualify for child lots is decreasing over time, the potential for abuse remains. This ZTA would:

- 1) add a provision for child lots to the intent of the RDT zone;
- 2) explicitly allow child lots in addition to the density otherwise allowable;
- 3) clarify the requirement to retain a development right for each child lot;
- 4) require the owner to personally establish continuous ownership since 1981;
- 5) allow up to 3 child lots for each qualified owner with a provision for hardships;
- 6) require a minimum tract size based on the number of child lots created;
- 7) establish a maximum lot size for a child lot; and
- 8) require the child for whom the lot was created to own the child lot for at least 5 years, with a provision for hardships.

A public hearing will be held on September 21, 2010 at 1:30 p.m. if the Council approves the attached resolution.

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ZTA 10-12
Resolution

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Zoning Text Amendment No.: 10-12
Concerning: RDT Zone - Child Lot
Standards
Draft No. & Date: 1 – 7/26/10
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 Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the density calculations in the RDT Zone to exclude a child lot under specified conditions;
- amend the standards to approve a child lot in the RDT Zone; and
- generally amend the child lot provisions in the RDT Zone

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

DIVISION 59-A-2 “DEFINITIONS AND INTERPRETATIONS”
Section 59-A-2.1 “Definitions”
DIVISION 59-C-9 “AGRICULTURAL ZONES”
Section 59-C-9.41 “Density in RDT zone”
Section 59-C-9.74 “Exempted lots and parcels-Rural Density Transfer zone”

And adding:

Section 59-C-41.1 “Child Lots in the RDT Zone”

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

ORDINANCE

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

1 **Sec. 1. DIVISION 59-A-2 is amended as follows:**

2 **59-A-2.1. Definitions.**

3 In this Chapter, the following words and phrases have the meanings indicated:

4 * * *

5 **Child Lot:** A lot created for use for a one-family dwelling unit by a child, or the
6 spouse of a child, of a property owner.

7 * * *

8 **Immediate Family Member:** A person's parents, spouse, children, and siblings.

9 * * *

10 **Sec. 2. DIVISION 59-C-9 is amended as follows:**

11 DIVISION 59-C-9. AGRICULTURAL ZONES.

12 * * *

13 **Sec. 59-C-9.2. Purposes or intent of the zones.**

14 * * *

15 **59-C-9.23. Intent of the Rural Density Transfer zone.**

16 The intent of this zone is to promote agriculture as the primary land use in sections
17 of the County designated for agricultural preservation in the General Plan and the
18 Functional Master Plan for Preservation of Agriculture and Rural Open Space.
19 This is to be accomplished by providing large areas of generally contiguous
20 properties suitable for agricultural and related uses and permitting the transfer of
21 development rights from properties in this zone to properties in designated
22 receiving areas.

23
24 Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural
25 operations are permitted at any time, including the operation of farm machinery.
26 No agricultural use can be subject to restriction on the grounds that it interferes
27 with other uses permitted in the zone, but uses that are not exclusively agricultural

28 in nature are subject to the regulations [prescribed] in this [division] Division 59-
29 C-9 and in [division] Division 59-G-2, "Special Exceptions-Standards and
30 Requirements."

31

32 The intent of the child lot option in the Rural Density Transfer zone is to facilitate
33 the continuation of the family farming unit or to otherwise meet the purposes of the
34 RDT zone.

35 * * *

36 **59-C-9.4. Development standards.**

37 The following requirements apply in all cases, except as specified in the optional
38 standards for cluster development set forth in sections 59-C-9.5 and 59-C-9.57 and
39 the exemption provisions of section 59-C-9.7.

40 **59-C-9.41. Density in RDT zone.**

41 [Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-
42 9.6 for permitted transferable density.) The following dwelling units on land in the
43 RDT zone are excluded from this calculation, provided that the use remains
44 accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- 45 (a) A farm tenant dwelling, farm tenant mobile home or guest house as defined
46 in section 59-A-2.1, title "Definitions."
- 47 (b) An accessory apartment or accessory dwelling regulated by the special
48 exception provisions of division 59-G-1 and 59-G-2.]

49 Except as provided in subsection (a) or (b), only one one-family dwelling unit per
50 25 acres is permitted. (See Section 59-C-9.6 for permitted transferable density.)
51 Density above one one-family dwelling unit per 25 acres is allowed if:

- 52 (a) the dwelling unit is accessory to a farm, is not on a separate parcel or lot,
53 and is either:

- 54 (1) a farm tenant dwelling, farm tenant mobile home, or guest house; or

- 55 (2) an accessory apartment or accessory dwelling regulated by the special
56 exception provisions of Division 59-G-1 and 59-G-2;
57 (b) the lot is a child lot under Section 59-C-9.41.1; and
58 (c) a building right is retained for each dwelling unit.

59

60 **59-C-9.41.1. Child Lots in the RDT Zone.**

61 (a) Applicability. A child lot above the density of one one-family dwelling unit
62 per 25 acres is allowed in the RDT zone only if the following requirements
63 are satisfied.

64 (1) The property owner must have:

65 (A) recorded title to the property before January 7, 1981;

66 (B) personally applied for approval to create the lot; and

67 (C) retained a development right for each lot.

68 (2) The Planning Board must not approve more than one child lot for each
69 child of the property owner, regardless of the number of properties
70 owned.

71 (3) Unless the Planning Board finds that a limit on the number of child
72 lots would be a hardship, a maximum of 3 child lots can be
73 established for a qualifying property owner under subsection (1):

74 (A) one child lot is allowed on a tract of land of at least 25 acres;

75 (B) two child lots are allowed on a tract of land of at least 70 acres;

76 (C) three child lots are allowed on a tract of land of at least 120
77 acres.

78 (4) A lot created for a child must be no larger than one acre, or the
79 minimum area necessary for approval of well and septic. The area of
80 the driveway stem on a flag lot must not be included in the maximum
81 area limit.

- 82 (5) When a child lot is initially recorded, the child for whom the lot is
83 created must be the listed owner of the lot in the County land records.
- 84 (b) **Building Permit Restricted.** A building permit for a one-family dwelling
85 unit on a child lot must be issued only to:
- 86 (1) a child of the property owner;
87 (2) the spouse of a child of the property owner;
88 (3) a contractor for a child of the property owner; or
89 (4) a contractor for the spouse of a child of the property owner.
- 90 (c) **Transfer restricted.** Except as provided in subsection (c)(1) and (c)(2),
91 ownership of a child lot must not be transferred or leased within 5 years of
92 the date of the Department of Permitting Services' final inspection of the
93 dwelling unit.
- 94 (1) The owner of the child lot may only lease the lot to an immediate
95 family member.
- 96 (2) Ownership of a child lot may be transferred if the Planning Board
97 finds a hardship after the date of final inspection, such as death of the
98 child or a bona fide foreclosure of the mortgage or deed of trust.
- 99 (d) **Penalty for Violations.**
- 100 (1) Except as provided in subsection (d)(2), any violation of this
101 subsection is subject to the penalty and enforcement provisions in
102 Section 59-A-1.3.
- 103 (2) The Planning Board may take legal action to stop or cancel any
104 transfer or building permit of a child lot if any party to the transfer or
105 the building permit does not comply with all requirements of Section
106 59-C-9.41.1. The Planning Board may recover any funds improperly
107 obtained from any sale or lease of a child lot in violation of this

108 subsection, plus costs and interest at the rate prescribed by law from
109 the date a violation occurred.

110 (e) **Covenant required.** A covenant between the property owner and the
111 Montgomery County Planning Board must be recorded in the Montgomery
112 County land records. The covenant must:

- 113 (1) be recorded simultaneously with the record plat;
114 (2) identify the transfer restrictions in subsection (c); and
115 (3) identify the penalties for violations as identified in subsection (d).

116 * * *

117 **59-C-9.7. Exempted lots and parcels and existing buildings and permits.**

118 * * *

119 **59-C-9.74. Exempted lots and parcels—Rural Density Transfer zone.**

120 (a) The number of lots created for children [in accordance with] under the
121 Maryland Agricultural Land Preservation Program must not exceed the
122 development rights assigned to the property and retained by the property
123 owner.

124 (b) The following lots are exempt from the area and dimensional requirements
125 of section 59-C-9.4 but must meet the requirements of the zone applicable to
126 them [prior to their classification in the Rural Density Transfer zone] before
127 January 7, 1981.

128 (1) A recorded lot created by subdivision, if the record plat was approved
129 for recordation by the Planning Board [prior to the approval date of
130 the sectional map amendment which initially zoned the property to the
131 Rural Density Transfer Zone] before January 7, 1981.

132 (2) A lot created by deed executed [on or] before [the approval date of the
133 sectional map amendment which initially zoned the property to the
134 Rural Density Transfer Zone] January 7, 1981.

- 135 (3) A [record] recorded lot having an area of less than 5 acres created
136 after [the approval date of the sectional map amendment which
137 initially zoned the property to the Rural Density Transfer Zone]
138 January 7, 1981 by replatting 2 or more lots; provided that the
139 resulting number of lots is not greater than the number which were
140 replatted.
- 141 (4) A lot created for use for a one-family [residence] dwelling by a child,
142 or the spouse of a child, of the property owner, [provided that the
143 following conditions are met] if the lot satisfies the requirements of
144 59-C-9.41.1. [:
- 145 (i) The property owner can establish that he had legal title on or
146 before the approval date of the sectional map amendment which
147 initially zoned the property to the Rural Density Transfer Zone;
- 148 (ii) This provision applies to only one such lot for each child of the
149 property owner; and
- 150 (iii) Any lots created for use for one-family residence by children of
151 the property owner must not exceed the number of development
152 rights for the property owner.]

153 * * *

154 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
155 Council adoption.

156
157 This is a correct copy of Council action.

158
159 _____
160 Linda M. Lauer, Clerk of the Council

Resolution No.: _____
Introduced: July 27, 2010
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: District Council

SUBJECT: Notice of Public Hearing on Zoning Text Amendment 10-12

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. 10-12, introduced on July 27, 2010, would amend the provisions for child lots in the Rural Density Transfer (RDT) Zone.
3. On May 20, 2010 the Council received a request from the Planning Board to introduce a ZTA concerning child lots in the Rural Density Transfer zone. Councilmember Knapp changed the ZTA sent by the Planning Board after consulting with the agricultural community.

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 September 21, 2010 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