

**M E M O R A N D U M**

September 24, 2015

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz,  Senior Legislative Analyst  
SUBJECT: Zoning Text Amendment 15-06, Rural Cluster Zone – Land Use and Setbacks

Zoning Text Amendment (ZTA) 15-06 is sponsored by the District Council at the request of the County Executive. The Executive believes that the text amendment is business friendly, limited in scope, and furthers the principles of sustainable development.

ZTA 15-06 would allow Retail/Service Uses of less than 5,000 square feet of floor area in the Rural Cluster zone as a limited use. Only property at least as large as 2.5 acres that abuts or confronts Industrial zoned land would be allowed this use.

There are also provisions for grandfathering existing parcels and existing buildings. Existing parcels in the Rural Cluster zone would be exempted from minimum lot area and frontage requirements. Existing buildings would be exempt from minimum setbacks.

ZTA 15-06 is identical in content to ZTA 14-12. That ZTA expired without Council action.

The Council held a public hearing on ZTA 15-06 on May 5, 2015. The Planning Board and Planning Staff did not recommend the approval of ZTA 15-06 in any form. The Executive, who requested the introduction of ZTA 15-06, views the ZTA as a means to remove barriers to small business. One supporter of the ZTA recommended amendments to expand the meaning of confronting and limit the potential for making non-conforming buildings conforming. Two other speakers also supported the ZTA. There was testimony submitted to Council supporting the ZTA as a means to allow Pat's Outdoor Equipment to continue to operate at its current location. The Agricultural Advisory Committee wrote:

Farmers on the Eastern side of the County rely on Pat since she has the skill and expertise to work on and repair older farm equipment.

The Montgomery County Farm Bureau, Inc. noted that ZTA 15-06 would help Pat's Outdoor Equipment stay in business in her current location and urges support so that Pat Dunn can continue helping farmers. Some consumers who were satisfied with the service they received at Pat's Outdoor Equipment also support ZTA 15-06. There were a number of similarly situated people (Ms. Dunn's satisfied customers) who had supported ZTA 14-12 (the identical expired ZTA) as well.

## Issues

### *What is the scope of ZTA 15-06?*

There are a number of criteria involved in ZTA 15-06. Some criteria restrict where the Retail/Service use is allowed:

- RC zoned property
- Proximity to Industrial zoned land
- 2.5 acre minimum lot size

Some criteria provide exemptions from zoning standards:

- Minimum lot width
- Lot size
- Setbacks for pre-existing buildings

Burtonsville is the only area of the County that has RC zoning in proximity to Industrial zoning.<sup>1</sup> There are 5 sites in this area greater than 2.5 acres. Of the 5 sites that are greater than 2.5 acres (sites 1, 3, 8, 9, and 10 on the attached map on © 11), sites 8 and 10 adhere to the lot area requirement (minimum 5 acres) and all of the frontage and building setback parameters of the zone (according to GIS measurements). Parcel 3 meets the lot area requirement (minimum 5 acres) and does not meet the lot width at the front street (flag lot), but meets all other frontage and building setback requirements. Parcel 1 does not meet the lot width requirements, but meets all building setbacks. Parcel 9 does not meet the lot width requirements at the front. The building on Parcel 9 does not meet the side setback requirement. Parcel 9 is the only parcel that requires all of the provisions of ZTA 15-06. There is an existing service use of this property (Pat's Outdoor Equipment) that is not permitted by the current code but would be permitted under ZTA 15-06.

### *What is the intent of the RC zone?*

The intent of the RC zone is to provide designated areas of the County for a compatible mixture of agricultural uses and very low-density residential development, to promote agriculture, and to protect scenic and environmentally sensitive areas.<sup>2</sup> The RC zone permits an optional method Cluster Development alternative to provide greater flexibility in achieving a compatible mixture of agricultural and residential uses and to protect scenic and environmentally sensitive areas without jeopardizing farming or other agricultural uses.<sup>3</sup>

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<sup>1</sup> ZTA 15-06 as introduced would allow only RC zoned property "abutting or confronting" Industrial zoned property to have a Retail/Service use. There is no property in the County that would qualify for the use under this criteria. The definition of "confronting: exclude property on a right-of-way greater than 80 feet. An amendment to ZTA 15-06 would be necessary to be effective under the County's current zoning pattern. The last issue in this memorandum explains this issue.

<sup>2</sup> Agricultural includes only the following listed land uses: Agricultural Auction Facility, Agricultural Processing, Community Garden, Equestrian Facility, Farm Supply, "Machinery Sales, Storage, and Service", Farming, Nursery, Slaughterhouse, Urban Farming, Winery. There are also listed accessory uses for Agricultural: Farm Airstrip, Helistop, Farm Market, On-site, Agricultural Vending, and Seasonal Outdoor Sales.

<sup>3</sup> Section 59-4.

The RC zone is in the general “Rural Residential” category. There is nothing in the purpose clause of the RC zone to indicate its intent to provide opportunities for businesses other than agriculture. Currently, only two types of retail sales and service uses are allowed in the RC zone: a Rural Antique Shop and a Rural Country Market—both uses requiring conditional use approval. Also, Nursery (retail)—defined as an establishment for selling plants and plant materials to the public as well as garden supplies, equipment, and related items—is an agricultural use allowed only through conditional use approval. A Nursery (retail) prohibits the sale of general hardware or power equipment.<sup>4</sup>

*What would be allowed in the RC zone by adding retail establishments as a permitted use?*

A Retail/Service Establishment is defined as a business providing personal services or sale of goods to the public. ZTA 15-06 would allow a Retail/Service Establishment (up to 5,000 SF) as a limited use if a number of other limiting conditions discussed elsewhere in this memorandum are satisfied. A Retail/Service Establishment would allow Pat’s Outdoor Equipment business, assuming it satisfies the limited use provisions.<sup>5</sup> The use would also be allowed on 5 other neighboring sites.

The Council took great care to avoid adding non-residential uses in Residential zones in its work on the Zoning Rewrite. This ZTA would go in the opposite direction. Zoning implements the fundamental land use recommendations of the applicable master plan.

*Would the approval of ZTA 15-06 be consistent with the Fairland Master Plan?*

The only RC zoned land across a right-of-way from industrially zoned land is in the Burtonsville area. This area is covered by the 1997 Fairland Master Plan. The area that retained RC zoning is in the lower portion of the Patuxent Watershed. The stormwater from this area goes into WSSC’s drinking water reservoir. Large lot zoning for this area has been recommended for this area since 1968. The land use recommendation in 1997 was to retain RC zoning and to prohibit land uses that result in more than 10 percent impervious surfaces. The ZTA would allow 5,000 square feet of Retail/Service use on any of the 5 parcels along Spencerville Road. Parking is required for that use. The use is more intense than the uses currently allowed.

The area for business opportunities was just to the west on Spencerville Road (Burtonsville Crossing and the Burtonsville Shopping Center). The Master Plan identified those areas as a neighborhood retail center. The RC zoned land across from industrial zoning was identified as a low density community.

Planning staff concluded that ZTA 15-06 “is in conflict with the policies established in the master plan that include environmental protections recommending low impervious surface and low intensity land uses.” ZTA 15-06 would allow a non-residential use at a greater intensity of use than that anticipated in the plan. Staff agrees with Planning staff’s conclusion.

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<sup>4</sup> Section 59.3.2.7.A.2.

<sup>5</sup> Pat’s Outdoor Equipment is not currently an allowed use in the RC zone. The District Court issued an abatement order. Enforcing that order has been delayed at the request of the County Attorney pending the outcome of ZTA 15-06. Pat’s Outdoor Equipment is not “confronting” Industrial zoning as required by ZTA 15-06 as introduced.

*How does ZTA 15-06 compare with current lot size requirements in the RC zone?*

The minimum lot size in the RC zone is 5 acres. ZTA 15-06 would expand the allowable uses for a substandard 2.5 acre sized lot. Allowing smaller lots at more intensive uses is contrary to the zone's intent of providing a place for agricultural and very low density residential development.

The logic of allowing more intensive uses on smaller lots is questionable. Lots and parcels that have not changed size or shape since 1958 are allowed a building permit for an allowable use (residential or agricultural), but currently such lots are not allowed a different use. Whereas the current code holds landowners harmless from their small lot status, ZTA 15-06 would make it advantageous to be a small lot or parcel.

*Should currently illegal buildings be made legal?*

ZTA 15-06 would make buildings that have substandard setbacks, on substandard sized lots with substandard frontage, legal.<sup>6</sup> This is counter to the Council's action on the Zoning Rewrite. Under the Zoning Rewrite, only buildings that were legal when the new code became effective retained their legal status. The Council did **not** make illegal buildings legal.

**Staff Recommendation:** Disapprove ZTA 15-06. The ZTA, particularly in expanding the uses available for undersized parcels, is not consistent with the intent of the RC zone in that it would revise the relevant master plan that recommended RC zoning.

If the Council is intent on approving ZTA 15-06 and wants the ZTA to affect property in Burtonsville, it must consider the next issue.

*Is the requirement to allow retail uses only when it is "abutting or conforming" an industrial zone appropriate?*

The recommendation to zone one side of a street industrial and the other side RC was a decision made in the Fairland Master Plan. The street dividing the 2 uses is Spencerville Road, also known as Route 198. The Master Plan required a 120 foot right-of-way for this 4 lane divided road. The Council believed that this separation was adequate for the shift in land use when it approved the master plan.

Confronting is a defined term in the zoning code:

Confronting: Properties that are directly across a right-of-way **with a master plan width of less than 80 feet** from each other based on a line between the 2 properties that is drawn perpendicular to the right-of-way. Properties within a 45 degree diagonal across an intersection are also confronting.

There is no property in the County in the RC zone that qualifies for retail uses under ZTA 15-06. This issue was raised by David Brown at the Council's public hearing. **If the Council wants property on the north side of Spencerville Road to qualify, it must make the following revision to ZTA 15-06 as introduced:**

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<sup>6</sup> Pat's Outdoor Equipment operates in the only building in the RC zone and across a right-of-way from industrially zoned land with substandard setbacks, on a substandard sized lot with substandard frontage.

2. Use Standards

- a. Where a Retail/Service Establishment is allowed as a limited use, it must satisfy the following standards:

\* \* \*

- ix. In the RC zone, a Retail Service Establishment is allowed only if the site is:  
(a) larger than 2.5 acres; and  
(b) abutting or [[confronting]] perpendicularly across a right-of-way from Industrial zoned land.

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Zoning Text Amendment No.: 15-06  
Concerning: Rural Cluster Zone –  
Land Use and Setbacks  
Draft No. & Date: 1 – 3/16/15  
Introduced: 3/24/15  
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**

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Lead Sponsor: The District Council at the Request of the County Executive

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

- expand the land uses allowed in the RC zone under certain circumstances; and
- revise the setbacks in the RC zone.

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

DIVISION 59-3.1. “Use Table”  
Section 59-3.1.6. “Use Table”  
DIVISION 59-3.5. “Commercial Uses”  
Section 59-3.5.11. “Retail Sales and Service”  
DIVISION 59-7.7. “Exemptions and Nonconformities”  
Section 59-7.7.1. “Exemptions”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

*Underlining indicates text that is added to existing law by the original text amendment or by ZTA 14-09.*

*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*

*Double underlining indicates text that is added to the text amendment by amendment or text added by this amendment in addition to ZTA 14-09.*

*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment or indicates a change from ZTA 14-09.*

*\* \* \* 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 59-3.1 is amended as follows:**

2 **DIVISION 59-3.1. Use Table**

3 \* \* \*

4 **Section 3.1.6. Use Table**

5 The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay  
6 zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential		Residential									Commercial/Residential			Employment				Industrial							
							Residential Detached				Residential Townhouse			Residential Multi-Unit														
			AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM
* * *																												
<b>COMMERCIAL</b>																												
* * *																												
RETAIL SALES AND SERVICE	3.5.11																											
Combination Retail	3.5.11.A																		C	C	C	C						
Retail/Service Establishment (Up to 5,000 SF)	3.5.11.B			L												L			P	P	P	P	P	L	L	L	L	L
Retail/Service Establishment (5,001 - 15,000 SF)	3.5.11.B																		L	P	P	P	P	L	L	L	L	L
Retail/Service Establishment (15,001 - 50,000 SF)	3.5.11.B																		L	P	P	P	P	L	L	L	L	L
* * *																												
<b>Key:</b> P = Permitted Use    L = Limited Use    C = Conditional Use    Blank Cell = Use Not Allowed																												

7 \* \* \*

8 **Sec. 2. DIVISION 59-3.5 is amended as follows:**

10 **DIVISION 59-3.5. Commercial Uses**

11 \* \* \*

12 **Section 3.5.11. Retail Sales and Service**

13 \* \* \*

14 **B. Retail/Service Establishment**

15 1. Defined

16 Retail/Service Establishment means a business providing personal  
17 services or sale of goods to the public. Retail/Service Establishment  
18 does not include Animal Services (see Section 3.5.1, Animal Services)  
19 or Drive-Thru (see Section 3.5.14.E, Drive-Thru).

20 2. Use Standards

21 a. Where a Retail/Service Establishment is allowed as a limited  
22 use, it must satisfy the following standards:

23 \* \* \*

24 ix. In the RC zone, a Retail Service Establishment is allowed  
25 only if the site is:

26 (a) larger than 2.5 acres; and

27 (b) abutting or confronting Industrial zoned land.

28 \* \* \*

29 **Sec. 3. DIVISION 59-7.7 is amended as follows:**

30 **Division 59-7.7. Exemptions and Nonconformities**

31 **Section 59-7.7.1. Exemptions**

32 \* \* \*

33 **D. Residential Lots and Parcels**

34 \* \* \*

35 **8. Exempted Lots, [and] Parcels, and Buildings in the Rural Cluster**  
36 **Zone**

- 37           a.    A lot or a parcel in the Rural Cluster (RC) zone, in addition to  
38           other exemptions in this subsection, is exempt from the  
39           minimum area requirements and dimension requirements of the  
40           Rural Cluster zone, but must satisfy the requirements of the  
41           zone applicable to it before its classification to the RC zone if:  
42           [a] i.   the property owner held title to the property before June  
43                 4, 1974;  
44           [b] ii. a reduced lot size is required for a lot created for a  
45                 detached house; and  
46           [c] iii. the child of the property owner, or the spouse of a child,  
47                 or the parents of the property owner will reside in the  
48                 house on the additional lot.
- 49           b.    Any parcel with an existing building on October 30, 2014 is  
50           exempt from the minimum lot area and frontage requirement.  
51           Any existing building located on any lot or parcel on October  
52           30, 2014 is exempt from the minimum side setbacks of the  
53           zone.

54   \*   \*   \*

55           **Sec. 4. Effective date.** This ordinance becomes effective on October 30,  
56   2014.

57  
58   This is a correct copy of Council action.

59  
60   \_\_\_\_\_  
61   Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIR

May 5, 2015

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. 15-06

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 15-06 at our regular meeting on April 30, 2015. By a vote of 4:0, (Commissioner Dreyfuss was absent), the Planning Board recommends denial of the text amendment to allow a Retail/Service Establishment (up to 5,000 SF) as a limited use in the RC zone if the site is larger than 2.5 acres and abuts or confronts industrially zoned land. The ZTA also exempts any parcel with an existing building on it as of October 30, 2014 from the minimum lot area and frontage requirement and exempts any existing building located on any lot or parcel on October 30, 2014 from the minimum side setbacks of the zone. The Board believes that the ZTA is inconsistent with the intent of the RC zone and is in conflict with policies established in master plans.

The intent of the RC zone is to provide designated areas of the County for a compatible mixture of agricultural uses and very low-density residential development, to promote agriculture, and to protect scenic and environmentally sensitive areas. The RC zone permits an optional method Cluster Development alternative to provide greater flexibility in achieving a compatible mixture of agricultural and residential uses and to protect scenic and environmentally sensitive areas without jeopardizing farming or other agricultural uses. The Board believes that relaxing the land use requirements to permit a retail service (regardless of the limitation on size) possibly unrelated to agriculture is inconsistent with the intent of the RC zone.

ZTA No 15-06 would allow a Retail/Service Establishment as a limited use on a minimum lot area of 2.5 acres—half the lot size required for any other use located on RC zoned property under the standard method of development unless the lot area is exempted

under the provisions of Section 59.7.7.1.D.8. ZTA No. 15-06 proposes to relax these provisions further by exempting a parcel that has an existing building on it (as of October 30, 2014) from the minimum lot area and frontage requirements of the RC zone (five acre minimum lot area and 300 feet frontage) and by exempting any existing building from the minimum side setbacks of the zone. The Board believes that the proposed relaxation of standards conflicts with policies established in master plans that have recommendations for low intensity land uses in watershed areas. The proposed language allowing any existing building to remain ignores the legal status of a building or a use (Section 7.7.1.A), and further exempts these buildings from certain development standards.

#### **CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, April 30, 2015.

Casey Anderson  
Chair

CA:GR



**Zoning Text Amendment (ZTA) No. 15-06, Rural Cluster Zone - Land Use and Setbacks**

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- Gregory Russ, Planner Coordinator, FP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174
- Pamela Dunn, Acting Chief, FP&P, [pamela.dunn@montgomeryplanning.org](mailto:pamela.dunn@montgomeryplanning.org), 301-650-5649

**Completed: 04/23/15**

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**Description**

ZTA No. 15-06 would expand the land uses allowed in the Rural Cluster (RC) zone under certain circumstances and revise the setbacks in the RC zone. There are also provisions for grandfathering existing parcels and existing buildings. Specifically, the ZTA would allow a Retail/Service Establishment (up to 5,000 SF) as a limited use in the RC zone if the site is larger than 2.5 acres and abuts or confronts industrially zoned land. Also, any parcel with an existing building on it as of October 30, 2014 would be exempt from the minimum lot area and frontage requirement. Any existing building located on any lot or parcel on October 30, 2014 would be exempt from the minimum side setbacks of the zone.

**Summary**

**Staff recommends denial of ZTA No. 15-06 to expand the land uses allowed in the RC zone under certain circumstances and revise the setbacks in the RC zone. Staff believes that the ZTA is inconsistent with the intent of the RC zone and is in conflict with policies established in master plans that include environmental protections recommending low impervious limits and low intensity land uses in watershed areas.**

**Background/Analysis**

Zoning Text Amendment (ZTA) 15-06 is sponsored by the District Council at the request of the County Executive. The Executive believes that the text amendment is business friendly, limited in scope, and furthers the principles of sustainable development. Although limited in applicability, staff believes that the ZTA is inconsistent with the intent of the RC zone.

Intent of RC Zone

The intent of the RC zone is to provide designated areas of the County for a compatible mixture of agricultural uses and very low-density residential development, to promote agriculture, and to protect scenic and environmentally sensitive areas. The RC zone permits an optional method Cluster Development alternative to provide greater flexibility in achieving a compatible mixture of agricultural and residential uses and to protect scenic and environmentally sensitive areas without jeopardizing farming or other agricultural uses. Staff believes that relaxing the land use requirements to permit a

general retail service (regardless of the limitation on size) possibly unrelated to agriculture is inconsistent with the intent of the RC zone.

### Retail/Service Establishment

A Retail/Service Establishment is defined as *a business providing personal services or sale of goods to the public*. Currently, only two types of retail sales and service uses are allowed in the RC zone; a Rural Antique Shop and a Rural Country Market—both uses requiring conditional use approval. Also, Nursery (retail), defined as *an establishment for selling plants and plant materials to the public as well as garden supplies, equipment, and related items*—is an agricultural use allowed only through conditional use approval. A Nursery (retail) prohibits the sale of general hardware or power equipment.

ZTA No 15-06 would allow a Retail/Service Establishment (up to 5,000 SF) as a limited use on a minimum lot area of 2.5 acres—half the lot size required for any other use located on RC zoned property unless the lot area is exempted under the provisions of section 59.7.7.1.D.8.

The limited standards for allowing a Retail/Service Establishment also require the property to abut or confront industrially zoned property. Attachment 2 depicts the GIS analysis for the properties potentially impacted by ZTA No. 15-06. There are 10 RC zoned properties in Burtonsville and located along the north side of Sandy Spring Road (Route 198) across Route 198 from industrially zoned land (IM-2.5,H-50) to the south. Five of the properties are at least 2.5 acres. At first glance, these five properties could potentially fit the criteria of “confronting” industrially zoned land. However, as defined “confronting” properties are directly across a right-of-way with a master plan width of less than 80 feet. In this case, the master plan right-of-way width along Sandy Spring Road is approximately 120 feet. Therefore, no properties fit the criteria established for allowing a Retail/Service Establishment (up to 5,000 SF) in the RC zone.

### Exemption Provisions

A lot or a parcel in the Rural Cluster (RC) zone is exempt from the minimum area requirements and dimension requirements of the Rural Cluster zone, but must satisfy the requirements of the zone applicable to it before its classification to the RC zone if the property owner held title to the property before June 4, 1974; a reduced lot size is required for a lot created for a detached house; and the child of the property owner, or the spouse of a child, or the parents of the property owner provided they will reside in the house on the additional lot. These provisions address the ability to create child lots on the property.

ZTA No. 15-06 proposes to relax these provisions further by exempting a parcel that has an existing building on it (as of October 30, 2014) from the minimum lot area and frontage requirements of the RC zone (five acre minimum lot area and 300 feet frontage) and by exempting any existing building from the minimum side setbacks of the zone. Attachment 2 indicates that three of the properties are at least five acres in size, with two of the three having a frontage of at least 300 feet.

Staff believes that the proposed relaxation of standards conflicts with policies established in master plans that have recommendations for low impervious limits and low intensity land uses in watershed areas. Parts of Burtonsville (including the RC zoned parcels impacted by ZTA No. 15-06) are located in the Patuxent watershed and have recommended limits on imperviousness ranging from eight to 10

percent. The proposed language allowing any existing building to remain ignores the legal status of a building or a use (Section 7.7.1.A), and further exempts these buildings from certain development standards. Staff also has concerns with allowing a relaxation of the minimum lot size in a zone that typically does not allow public sewer and therefore might find it useful to have the five acre minimum lot size for locating a suitable septic system.

**Attachments**

1. ZTA No. 15-06
2. GIS Map of RC property

ID	ACCT	OWNERS NAME	PREMISE ADDRESS	LEGAL DESCRIPTION	ACRES	LANDUSE CODE	LU CATEGORY	LAND ASSMT	IMPROV ASSMT	SALES PRICE
1	00266368	NEW HOPE KOREAN CHURCH	4300 SANDY SPRING RD BURTONSVILLE 20866	RICKETTS ADD TO BURTONSVILLE	3.5	111	Single Family Detached	325,200	79,100	300,000
2	00256041	CONS GAS ELEC LIGHT & POWER	0 SANDY SPRING RD 0	NEW BIRMINGHAM MANOR	0.3	480	Utility	0	0	0
3	00282836	BERRA ROBERT J	4120 SANDY SPRING RD BURTONSVILLE 20866	WATERS GIFT 0830/330	8.2	111	Single Family Detached	426,200	47,400	280,000
5	00283192	LETHBRIDGE KENNETH ET AL	4220 SANDY SPRING RD BURTONSVILLE 20866	MAIDENS FANCY	0.4	111	Single Family Detached	246,000	60,800	220,000
6	00278220	TRUE HOLINESS CHURCH OF JESUS	4140 SANDY SPRING RD BURTONSVILLE 20866	JOS E SMITHS ADD	2.0	651	Office	784,000	190,300	850,000
7	02216491	AMMANN STEVEN H & LESLIE R	4230 SANDY SPRING RD BURTONSVILLE 20866	MAIDENS FANCY	1.4	111	Single Family Detached	292,600	67,000	245,000
8	02018175	SHEMIN REAL ESTATE L L C	4100 SANDY SPRING RD BURTONSVILLE 20866	PT PAR E BURTONSVILL E 582/422 SECTION 5	9.3	637	Warehouse	1,372,000	387,900	0
9	03846756	DUNN PATRICIA A	4150 SANDY SPRING RD BURTONSVILLE 20866	NEW BIRMINGHAM MANOR	3.3	910	Vacant	330,200	48,000	0
10	00252828	KOREAN ANTIOCH CHURCH	4200 SANDY SPRING RD BURTONSVILLE 20866	NEW BIRMINGHAM MANOR	9.1	111	Single Family Detached	437,500	55,700	350,000
11	01540237	BALTIMORE GAS & ELECTRIC CO	0 SANDY SPRING RD 0	NEW BIRMINGHAM MANOR	0.7	910	Vacant	0	0	0



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**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT  
ON ZONING TEXT AMENDMENT 15-06, RURAL CLUSTER ZONE – LAND USE AND  
SETBACKS**

Good afternoon. My name is Diane Schwartz Jones, Director, Montgomery County Department of Permitting Services. It is my pleasure to present this testimony on behalf of County Executive Isiah Leggett in support of Zoning Text Amendment 15-06 which is intended to allow small retail/service establishments (up to 5000 sf) as a limited use in the RC zone. This zoning text amendment is small business friendly, limited in scope and furthers principles of sustainable development.

While the zoning rewrite effort had many important objectives, a significant objective in the approach to zoning was to promote neighborhood/community conveniences in the location of services. Smaller retail/service establishments are allowed as a limited use in residential multi-unit zones and the attached zoning text amendment would extend that to the RC zone under limited conditions. There are uses such as personal equipment servicing or repairs that reasonably should be conveniently located and accessible under limited circumstances.

Ensuring that small retail/service establishments can remain convenient to the communities they serve promotes affordable entrepreneurship, reduces vehicle miles traveled to obtain services at other locations and reduces waste and consumption as, in the case of equipment service and repair, the equipment continues to be used rather than being discarded in favor of new equipment.

We are still emerging from challenging financial times and need to remove barriers to small business opportunities to serve local communities.

This Zoning Text Amendment is another step towards reducing barriers to business opportunities. Yet, it does so in a way that does not change the intent of the RC as it is limited to property that abuts or confronts industrial zoned land, thus providing for reasonable compatibility with the surrounding land uses.

Mr. Leggett urges the District Council to adopt Zoning Text Amendment 15-06. Thank you for the opportunity to testify today.

County Council members and President, first I would like to thank you all for serving this county, and protecting the American dream. My name is Patricia Dunn. I am a veteran of the United State Army. I was born and raised in the town of Burtonsville, and most know me as Pat of Pat's Outdoor Equipment. I have a very personal interest in this ZTA. My family business of all most 50 years hinges on this ZTA that will allow me to continue to provide a much needed and valued business service to my community.

I am fully aware that the council has been working on making Montgomery County an easier place to start and to do business. I would like to thank you for that . My own business, which my father started in 1974, is an example of a business that has become successful because Montgomery County is a great place to grow a business. But it is also expensive and not easy to locate close to the community that utilizes equipment repair services. My business allows East County residents and farmers to enjoy the convenience of taking their lawn equipment ,farm equipment , emergency back up equipment to a local business who they know they can depend on.

Our proximity to our customers is highly valued. When I had the chance to buy a piece of property less than a 1/2-mile away from my old place a prayer was answered. I was renting in Burtonsville, I said thank you Lord, the church located next to me sold this land to me. I am now at 4150 Sandy Spring Rd. Burtonsville Maryland 20866. The adjoining lots are a power station, a tree service company, a church, and across the street are industrial businesses. I have to say my shop fits like a glove there.

Back in 2012, you received over 6,000 letters in less than a week's time asking you to support my small business and to approve this ZTA, I have dropped off in the last month or so 2,000 more asking you to do the same. I know God had a hand in me being at my new location because you can't get that many people to agree on anything so quickly.

Equipment needs care and service to maintain its operating condition and to keep it out of landfills. That's what I do and I not only service my customer's equipment they also seek my guidance at times on their personal lives. God not only gave me a gift to repair equipment, but also a gift of praying and helping our fellow man walk in this

world. That is why I went back to school to receive a PHD in ministry which has been a true blessing not only for me but everyone that walks in my door. So you see I have what I like to call an Equipment ministry.

Feel free to look at my ratings with BBB, and consumer affairs and you will see that I have bent over backwards to build the best business I could to serve the people of East County. Small business is what made our County grow and I pray that we will not be forced out of it. I urge you to pass this ZTA, not only for me but for all us little people that want to keep serving our local customers. We want to keep the American dream alive. Small businesses that are Women ,veteran owned and operated are far and few between. Please help me to keep on dreaming. God Bless you all.

**TESTIMONY OF  
DAVID W. BROWN  
ON ZTA 15-06  
BEFORE THE  
MONTGOMERY COUNTY COUNCIL  
MAY 5, 2015**

President Leventhal and Members of Council:

Good afternoon; I am Dave Brown of the law firm of Knopf & Brown. I welcome the opportunity to speak in favor of passage of ZTA 15-06 in somewhat amended form. I am not speaking today as legal counsel for any party, even though I have done a fair amount of *pro bono* work in the past for the business person perhaps most interested in the ZTA.

The County Executive has sought this amendment to provide an opportunity for small retail establishments that serve the surrounding neighborhood to locate in the RC Zone under very limited circumstances that ensure that the intent of the RC is not compromised. This use category includes small businesses that, if allowed as a limited use in the RC zone, could provide retail services such as maintenance and repair of farm tractors, mowers and the like. At present, all that is allowed in the RC zone along these lines is the conditional use of a five or more acre site for the sale, storage and servicing of farm machinery. What ZTA 15-06 would allow, by contrast, is a much smaller, "mom and pop" repair-shop--where space to store and sell new machinery is not part of the operation. Rather, the concept is customers bringing their equipment in for quick turnaround servicing and repair.

As you may know, the provenance of this ZTA is the prospect that, without it, an existing repair shop of exactly this kind in the RC zone will have to be shut down as a non-permitted use in a non-permitted building. My *pro bono* work on that matter was attempting, ultimately without success, to keep this from happening under current law. But keeping this kind of small business up and running in the RC Zone is a goal County law should facilitate. The intent of the RC zone is to promote agriculture by providing “a compatible mixture of agricultural uses and very low-density residential development.” But there is little in the way of agricultural or residential use in the area actually impacted by the ZTA—less than a dozen parcels of ten acres or less in the northeast corner of one of the County’s major divided highway intersections: arterials Columbia Pike (U.S. 29) and Sandy Spring Road (Route 198). These properties front on Sandy Spring Road, where, on the other side of this divided highway, lies industrially zoned land.

The ZTA does not create a new, specialized use category for this particular form of retail service establishment—lawn machinery and tractor repair, even though such a business promotes agriculture. Rather, the ZTA makes the existing general category, at no more than 5,000 sq. ft., a limited use. In reviewing the ZTA, Planning Board staff, and the Board, were rightly concerned that the ZTA as drafted was too broad: it would allow some retail uses that do not directly support the surrounding local neighborhoods, and did not narrowly achieve the intent of the RC Zone. I attended the Board hearing last week and I agree with their concerns. The solution, however, is not to disapprove the ZTA, but to fix it. To that end, I have attached to my testimony language that I believe does the job. My changes clear up two points: First, the only land impacted by the ZTA will be that across Sandy Spring Road from industrially zoned land. Second, the only existing lots and buildings legitimized by the ZTA will be those in the limited

impact area identified by Planning Board Staff. They identified five lots as potentially eligible for a neighborhood-serving retail service establishment under the ZTA.

With my proposed changes, the ZTA would leave open the possibility that the other four parcels potentially eligible for retail service establishment use could later undergo change to this use. This might be a concern if use of these parcels could today be characterized as agricultural or residential. But that is not the case, and their change of use to small-scale, neighborhood-serving retail is at best a theoretical possibility, even if it were a reason for concern. Two of the parcels are churches; a third is a well-established commercial nursery on 9.3 acres—Shemin’s. The fourth parcel is an 8.2 acre pipestem lot with narrow frontage on the highway and a number of buildings in the back for a tree and landscape service company—another very unlikely candidate for conversion to a small, neighborhood-serving retail establishment.

In sum, if ZTA 15-06 is amended as proposed in the attachment to my testimony, it will not be inconsistent with the intent of the RC zone and will in fact further its purposes by legitimizing the continued operation of a small neighborhood shop for East County residents that services and repairs tractors, mowers and other like equipment. And it will do so in a manner that narrowly introduces into the RC zone a use that has little or no prospect of proliferating in an unintended fashion in a manner inconsistent with the RC zone. I urge you to so amend ZTA 15-06 and adopt it.

David W. Brown

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**ATTACHMENT TO TESTIMONY OF DAVID W. BROWN ON ZTA 15-06**

**Proposed Changes to ZTA 15-06**

1. Modify proposed § 3.5.11.B.2.a.ix. to read as follows:

“In the RC Zone:

- (a) The subject property must be larger than 2.5 acres and must abut or confront Industrial zoned land or confront Industrial zoned land where the intervening right-of-way has a master plan width of 80 feet or more.
  - (b) If the subject property meets the requirements of subparagraph (a) and a building is located on it that existed on October 30, 2014, the minimum lot area and frontage requirements for the zone may be waived, and the existing building is exempt from the minimum side yard setbacks of the zone.”
2. Delete the proposed change to § 7.7.1.D.8.



**Montgomery County Farm Bureau, Inc.**

May 31, 2015  
The Honorable George Leventhal, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Dear Council President Leventhal:                      RE: ZTA 15-06-Rural Cluster Zone-Land  
Use and Setbacks

On behalf of the Montgomery County Farm Bureau-MCFB, please accept this letter as our comments in support of ZTA 15-06 Rural Cluster Zone-Land Use and Setbacks.

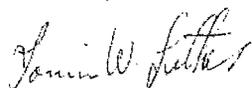
One of our members of the MCFB Board of Directors-Mike Heyser from Heyser Farms Inc. brought this ZTA 15-06 to our attention during the May 5, 2015 meeting. Unfortunately, the public hearing for the ZTA was earlier this same day and the MCFB was not able to testify.

It is our understanding the ZTA will help Patricia Dunn who owns Pat's Outdoor Equipment to stay in business at her current location in Burtonsville. The Montgomery County Farm Bureau always welcomes the opportunity to help any business owner that provides assistance and services to area farmers. The Farm Bureau has provided testimony to the County Council on the Zoning Rewrite Process ZTA 13-04 that became effective in October 2014. The Farm Bureau has gone on record that we encourage and support regulations that will help to promote farming families, farming activities and farming services in the County.

The MCFB supports the recommendations of the Montgomery County Agricultural Advisory Committee-AAC on ZTA 15-06 and we encourage the County Council to approve it so Patricia Dunn can continue helping farmers and residents with the equipment repair services that we need in many areas of the County.

Thank you for this opportunity for the Montgomery County Farm Bureau to provide these comments in support of ZTA 15-06.

Sincerely,



Lonnie Luther, President