

MEMORANDUM

June 23, 2016

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Senior Legislative Analyst
SUBJECT: Zoning Text Amendment 16-04, Agricultural Reserve (AR) Zone – Transitory Uses

Zoning Text Amendment (ZTA) 16-04, introduced on April 26, 2016, would amend the Agricultural Reserve zone by deleting the transitory uses from the list of prohibited uses when transferable development rights (TDRs) are severed from a property. Councilmember Riemer is the lead sponsor of ZTA 16-04.

In the opinion of the sponsor, transitory uses should be allowed in the AR zone without regard to the TDR status of the property. Food trucks, which must move around, can enhance agricultural activities without increasing impervious surface. The temporary use of land for food trucks will never foreclose agricultural production and may provide an additional source of income for farmers holding farm markets.

Transitory Use is defined in the Zoning Ordinance as a use on private property or the public right-of-way conducted from a vehicle or from a movable structure that remains in the same location for less than 24 hours. Transitory Use includes a food service truck. The use is allowed as a limited use in the AR zone (although it is currently prohibited when TDRs are created from the site).¹

On June 3, 2016, the Agricultural Advisory Committee wrote in support of ZTA 16-04. In their opinion, ZTA 16-04 would make it possible for farmers to promote their farms more effectively by accommodating the food and refreshment needs of visitors. The Council conducted a public hearing on June 21, 2016. The Planning Board recommended approval of ZTA 16-04, stating that a transitory use could enhance agricultural activities without diminishing the County's land preservation goals. There

¹ The general limitations on the use are as follows:

- 1) A Transitory Use must be registered under Chapter 47.
- 2) A Transitory Use may be located in the public right-of-way where it satisfies Chapter 47.
- 3) A Transitory Use may be allowed on private property only if it would be allowed as a permanent use in the applicable zone under Section 3.1.6.
- 4) A Transitory Use is prohibited on any portion of the open space required by the zone in which the property is located.

Farm Market is an allowed "permanent use" use in the AR zone. Farm Markets allow for food trucks.

were no other speakers at the hearing. The Montgomery County Farm Bureau also supports ZTA 16-04 as a means to help connect residents to farming.

Issue

Does allowing transitory uses such as food trucks violate 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. The AR zone accomplishes this intent 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. Agriculture is the preferred use in the AR zone.

In the opinion of Planning Staff and the Planning Board, the short-term nature of transitory uses would not impede the intent of the AR zone.

Transitory uses do not have a permanent footprint on the landscape and should not focus the assembly of visitors at a single time and place. Staff recommends approval of ZTA 16-04 as introduced.

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Zoning Text Amendment No.: 16-04
Concerning: Agricultural Reserve
(AR) Zone – Transitory
Uses

Draft No. & Date: 1 – 4/20/16
Introduced: April 26, 2014
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**

Lead Sponsor: Councilmember Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow transitory uses in the Agricultural Reserve Zone on property with a recorded transferable development rights easement.

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 3.1.5. “Transferable Development Rights”

DIVISION 59-3.5. “Commercial Uses”

Section 3.5.15. “Temporary Commercial Uses”

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 3.1. Use Table**

3 * * *

4 **Section 3.1.5. Transferable Development Rights**

5 A. The following uses are prohibited if the lot or parcel on which the use is
6 located is in the AR zone and is encumbered by a recorded Transfer of
7 Development Rights easement:

8 * * *

9 **4. Commercial**

- 10 a. Veterinary Office/Hospital
- 11 b. Bed and Breakfast (if not accessory to Farming)
- 12 c. Cemetery
- 13 d. Funeral Home, Undertaker
- 14 e. Lawn Maintenance Service
- 15 f. Rural Antique Shop
- 16 g. Shooting Range (Outdoor)
- 17 [h. Transitory Use]

18 * * *

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

20 **DIVISION 3.5. Commercial Uses**

21 * * *

22 **Section 3.5.15. Temporary Commercial Uses**

23 * * *

24 **C. Transitory Use**

25 **1. Defined**

26 Transitory Use means a use on private property or the public right-of-
27 way conducted from a vehicle or from a movable structure that

28 remains in the same location for less than 24 hours. Transitory Use
29 includes a food service truck.

30 **2. Use Standards**

31 Where a Transitory Use is allowed as a limited use, it must satisfy the
32 following standards:

- 33 a. A Transitory Use must be registered under Chapter 47.
- 34 b. A Transitory Use may be located in the public right-of-way
35 where it satisfies Chapter 47.
- 36 c. A Transitory Use may be allowed on private property only if it
37 would be allowed as a permanent use in the applicable zone
38 under Section 3.1.6.
- 39 d. A Transitory Use is prohibited on any portion of the open space
40 required by the zone in which the property is located.
- 41 [e. In the AR zone, this use may be prohibited under Section 3.1.5,
42 Transferable Development Rights.]

43

44 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after
45 approval.

46

47 This is a correct copy of Council action.

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50 _____
Linda M. Lauer, Clerk of the Council



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

June 20, 2016

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. 16-04

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment (ZTA) No. 16-04 at our regular meeting on June 16, 2016. By a vote of 4:0 (Chair Anderson absent from the room), the Planning Board recommends approval of the text amendment as introduced to allow transitory uses in the Agricultural Reserve Zone on property encumbered with a recorded transferable development rights easement.

On October 2, 2007, the County Council adopted ZTA No. 07-07 (Ordinance No. 16-08-see Attachment 2), to clarify the long standing legislative intent that the development of RDT-zoned parcels (since renamed the AR zone) encumbered by TDR easements must be limited to single-family and agricultural and agricultural-related uses only. The ZTA was based on recommendations by a County Council Ad Hoc Agricultural Policy Working Group. The Ad Hoc Working Group's reason for restricting uses was to promote the intent of preserving agricultural land.

The sponsor of ZTA 16-04 is of the opinion that transitory uses should be allowed in the AR zone without regard to the TDR status of the property. Food trucks (included in the definition of a transitory use), which must move around, can enhance agricultural activities without increasing impervious surface. The temporary use of land for food trucks will never foreclose agricultural production and may provide an additional source of income for farmers holding farm markets.

Zoning Text Amendment (ZTA) 16-04 would amend the Agricultural Reserve zone by deleting transitory uses from the list of prohibited uses when transferable development rights (TDRs) are severed from a property. A Transitory Use is allowed as a limited use in all zones (including the AR zone) and must adhere to several limited use standards including: registration in accordance with Chapter 47 (Vendors); location in the public right-of-way only

⑤

where it satisfies Chapter 47; locating on private property only if it would be allowed as a permanent use in the applicable zone; and prohibition on any portion of the open space required by the zone in which the property is located.

The Board believes that a transitory use can enhance agricultural activities for farmers holding farm markets without restricting agricultural land preservation and/or development.

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, June 16, 2016.



Casey Anderson
Chair

CA:GR



Zoning Text Amendment (ZTA) No. 16-04, Agricultural Reserve (AR) Zone – Transitory Uses



Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174



Pam Dunn, Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

Completed: 6/8/16

Description

ZTA No. 16-04 would allow transitory uses in the Agricultural Reserve (AR) Zone on property with a recorded transferable development rights easement. Specifically, the ZTA would amend the Agricultural Reserve zone by deleting transitory uses from the list of prohibited uses when transferable development rights (TDRs) are severed from a property.

Summary

Staff recommends approval of ZTA 16-04 as introduced, to allow transitory uses in the Agricultural Reserve Zone on property with a recorded transferable development rights easement.

Background/Analysis

On October 2, 2007, the County Council adopted ZTA No. 07-07 (Ordinance No. 16-08-see Attachment 2), to clarify the long standing legislative intent that the *development* of RDT-zoned parcels (since renamed the AR zone) encumbered by TDR easements must be limited to single-family and agricultural and agricultural-related uses only. The ZTA was based on recommendations by a County Council Ad Hoc Agricultural Policy Working Group. The Ad Hoc Working Group’s reason for restricting uses was to promote the intent of preserving agricultural land.

Zoning Text Amendment (ZTA) 16-04 would amend the Agricultural Reserve zone by deleting transitory uses from the list of prohibited uses when transferable development rights (TDRs) are severed from a property.

In the opinion of the sponsor, transitory uses should be allowed in the AR zone without regard to the TDR status of the property. Food trucks (included in the definition of a transitory use), which must move around, can enhance agricultural activities without increasing impervious surface. The temporary use of land for food trucks will never foreclose agricultural production and may provide an additional source of income for farmers holding farm markets.

Transitory Use

Under Section 3.5.15. Temporary Commercial Uses, a Transitory Use means a use on private property or the public right-of-way conducted from a *vehicle or from a movable structure* that remains in the same location *for less than 24 hours. Transitory Use includes a food service truck.*

A Transitory Use is allowed as a limited use in all zones (including the AR zone) and must adhere to several limited use standards including: registration in accordance with Chapter 47 (Vendors); location in the public right-of-way only where it satisfies Chapter 47; locating on private property only if it would be allowed as a permanent use in the applicable zone; and prohibition on any portion of the open space required by the zone in which the property is located.

By definition, a transitory use is temporary and mobile and therefore does not impede agricultural development on AR property. Staff further believes (as does the sponsor) that a transitory use can enhance agricultural activities for farmers holding farm markets without restricting agricultural land preservation and/or development.

Comments from the Montgomery County Agricultural Advisory Committee (AAC)-Attachment 3

The AAC believes that ZTA 16-04 will help promote agricultural education and agricultural tourism opportunities in the Agricultural Reserve by removing the prohibition for Food Service Trucks stopping on properties encumbered by Transferable Development Rights-TDR easement.

The County has over 50,000 acres of farmland encumbered by TDR easements and many of the property owners would like to offer food and refreshments to residents that visit the farms. The ZTA 16-04 will go a long way by removing the restrictive requirements that inhibit farmers from promoting their farms to the general public.

Conclusion

Staff recommends approval of ZTA No. 16-04 as introduced, based on the discussion above. The intent of the AR zone is to promote agriculture as the primary land use in areas of the County designated for agricultural preservation. The AR zone accomplishes this intent 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. The restriction of the uses on properties encumbered by TDR easements promotes the intent of the AR Zone. Staff believes that the limited and short-term nature of transitory uses does not impede the intent of the zone.

Attachments



AGRICULTURAL ADVISORY COMMITTEE

June 3, 2016

The Honorable Nancy Floreen
Montgomery County Council President
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Floreen: ZTA 16-04 Agricultural Reserve (AR) Zone-
Transitory Uses

On behalf of the Montgomery County Agricultural Advisory Committee-AAC, please accept this letter as our comments in support of Zoning Text Amendment 16-04 Agricultural Reserve (AR) Zone-Transitory Uses.

The AAC believes the ZTA 16-04 will help promote agricultural education and agricultural tourism opportunities in the Agricultural Reserve by removing the prohibition for Food Service Trucks stopping on properties encumbered by Transferable Development Rights-TDR easements.

The County has over 50,000 acres of farmland encumbered by TDR easements and many of the property owners would like to offer food and refreshments to residents that visit the farms. The ZTA 16-04 will go a long way by removing the restrictive requirements that inhibit farmers from promoting their farms to the general public. It is not possible for farmers to promote their farms and accommodate the needs of visiting residents without providing some food and refreshments.

The AAC thanks the County Council for this opportunity to present our views in support of ZTA 16-04 and please let us know if you have any questions.

Sincerely,

David Weitzer, Chairman

Montgomery County Farm Bureau

PO Box 217, Damascus Maryland 20872

240-308-2978

mcfarmbureausecretary@gmail.com

www.montgomery.mdfarmbureau.com



June 20, 2016

The Honorable Nancy Floreen
Montgomery County Council President
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council President Floreen: RE: ZTA 16-04 Agricultural Reserve AR Zone-Transitory Uses

I am writing on behalf of the Board of Directors of the Montgomery County Farm Bureau-MCFB to express our support for the proposed ZTA 16-04 Agricultural Reserve (AR) Zone-Transitory Uses.

We understand the current zoning code prohibits transitory uses on properties encumbered by Transferable Development Rights easements and that food trucks are included in the definition of transitory uses. The proposed ZTA 16-04 will remove the prohibition of transitory uses and this will result in food trucks allowed on farms.

The MCFB actively participated in the Zoning Rewrite Process and advocated support for a new use accessory to farming-agricultural education and agricultural tourism that was included in the final adoption of the County Zoning Code in October 2014.

The proposed ZTA 16-04 will simultaneously help farmers to promote agricultural education and agricultural tourism and to improve the farm experience by providing food and beverage to County residents visiting the farms.

We have seen an increase in County residents wanting to visit the farms and learn more about agriculture and where their food comes from. We welcome this growing interest in agriculture because it helps our farmers and County residents connect with each other and to develop better awareness.

We encourage your support for ZTA 16-04 that can help to educate residents on the importance of our Agricultural Reserve and the farming industry in Montgomery County.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lonnie Luther".

Lonnie Luther, President
Montgomery County Farm Bureau

Cc: Montgomery County Council Members
Jillian Levine, Secretary, MCFB 240-308-2978
mcfarmbureausecretary@gmail.com
www.montgomery.mdfarmbureau.com