



Committee: PHP
Committee Review: At a future date
Staff: Livhu Ndou, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #Cemetery #TDR #AgriculturalReserve

AGENDA ITEM #5
January 16, 2024
Public Hearing

SUBJECT

Zoning Text Amendment (ZTA) 23-08, Transferable Development Rights – Cemetery

Lead Sponsor: Councilmember Balcombe

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

To receive testimony – no vote expected

DESCRIPTION/ISSUE

ZTA 23-08 would allow a property owner in the AR zone to expand a cemetery onto land that currently has a TDR.

SUMMARY OF KEY DISCUSSION POINTS

- Under the current zoning ordinance, a Cemetery is prohibited if the lot or parcel on which the cemetery would be located is in the AR zone *and* is encumbered by a recorded Transfer of Development Rights easement.
- ZTA 23-08 would allow a property owner in the AR zone to expand a cemetery onto land that currently has a TDR.
- A Planning, Housing, and Parks (PHP) Committee worksession is tentatively scheduled for January 29, 2024.

This report contains:

ZTA 23-08	© 1
Planning Board recommendation	© 4
Planning Staff report	© 6
Climate Assessment	© 13
RESJ Impact Statement	© 18

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Ordinance No.: _____
Zoning Text Amendment No.: 23-08
Concerning: Transferable
Development Rights -
Cemetery
Revised: 10/17/2023 Draft No.: 1
Introduced: November 7, 2023
Public Hearing: January 16, 2024
Adopted: _____
Effective: _____

**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 Balcombe

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) allow certain parcels in the Agricultural Reserve (AR) zone that have Transfer of Development Rights (TDRs) to be allowed to be used as cemeteries; and
- (2) generally amend the provisions for TDRs.

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

Division 3.1. “Use Table”
Section 3.1.5. “Transferable Development Rights”

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 text that 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 59-3.1 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, unless expanding an existing Cemetery
- 13 d. Funeral Home, Undertaker
- 14 e. Lawn Maintenance Service
- 15 f. Rural Antique Shop
- 16 g. Shooting Range (Outdoor)

17 * * *

18 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
19 date of District Council adoption.



December 27, 2023

To: The Honorable Andrew Friedson
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment 23-08, Transferable Development Rights - Cemetery

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on December 21, 2023, and by a vote of 5:0 recommended support for Zoning Text Amendment (ZTA) 23-08 as introduced. This ZTA would allow the expansion of cemeteries in the AR zone onto land that is encumbered with a Transferable Development Right (TDR) easement.

Currently, the Zoning Code prohibits a substantial number of uses from being built in the AR zone on land that is encumbered with a TDR easement. This prohibition dates back to the pre-2014 Zoning Code and was intended to ensure that agriculture remains the primary focus of the Agricultural Reserve. Farmers with land under TDR easement have already been compensated for the protection of the land and diminished development capacity, and generally should not be able to pursue additional non-residential uses.

This ZTA would make a minor modification to the list of prohibited commercial uses in the AR zone on land encumbered by a TDR easement, by allowing expansions of existing cemeteries. New cemeteries would still only be possible on non-easement encumbered land. While the Planning Board continues to hold the preservation of agriculture as the most important aspect of the Agricultural Reserve, it believes the benefits of allowing this modest expansion of cemeteries outweigh the minimal amount of potential agricultural land loss. While Planning staff estimates that only about 20 existing cemeteries could benefit from this ZTA, the Board recognizes the importance that cemeteries can serve communities.

The Board also reviewed the climate assessment prepared by Planning staff for ZTA 23-08. The assessment found there may be very slight negative impacts on greenhouse gas emissions and sequestration, mostly through an increase in potential vehicle miles traveled if visitors to the expanded cemeteries are driving from more urban parts of the county. There also may be both slight positive and slight negative impacts on community resilience and adaptive capacity measures. The positive impacts from the ability for expanded cemeteries to aid in community cohesiveness, and the negative impacts comes from potential land cover changes that may locally exacerbate impacts of climate change especially on extreme storm events.

The Honorable Andrew Friedson

December 27, 2023

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The Planning Board appreciates the opportunity to review ZTA 23-08 and recommends the District Council adopt the zoning changes. Planning staff is available to assist if the Council has any questions.

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 Wheaton, Maryland, on Thursday, December 21, 2023.



Artie L. Harris

Chair

Attachments:

A - Planning Board Staff Packet

ZTA 23-08

TRANSFERABLE DEVELOPMENT RIGHTS - CEMETERY

Description

This ZTA would modify the list of prohibited commercial uses on lots or parcels which are encumbered by a recorded Transfer of Development Right (TDR) easement, to allow for the expansion of an existing cemetery.

ZTA 23-08

Completed: 12-14-2023

MCPB

Item No. 06

12-21-2023

2425 Reddie Drive

Floor 14

Wheaton, MD 20902

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ZTA SPONSORS

Lead Sponsor:
Councilmember Balcombe

INTRODUCTION DATE

November 7, 2023

COUNCIL PUBLIC HEARING DATE

January 16, 2024

REVIEW BASIS

Chapter 59

Summary

- Currently, the code identifies numerous uses that are prohibited on lots or parcels within the AR zone that are encumbered by a Transfer of Development right easement.
- ZTA 23-08 would amend the list of prohibited commercial uses to permit cemeteries, if an expansion of an existing cemetery.
- Montgomery Planning Staff recommends supporting the ZTA as introduced, but provides background information Staff considered in reaching this conclusion.

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SECTION 1 – BACKGROUND

Rationale For Introduction

Zoning Text Amendment (ZTA) 23-08, Transferable Development Rights - Cemetery, was introduced by Councilmember Balcombe on November 7, 2023 (Attachment A). The ZTA is scheduled for a District Council Public Hearing on January 16, 2024. The ZTA modifies the list of prohibited uses on a lot or parcel located in the AR zone and encumbered by a recorded Transfer of Development Rights (TDR) easement. Currently, cemetery is a prohibited commercial use. While this ZTA would continue to prohibit new cemeteries, it would allow an existing cemetery to expand onto TDR easement encumbered land.

The restriction on uses on lots or parcels in the AR Zone and encumbered by a recorded TDR easement, including cemeteries, was first adopted by the Council with ZTA 07-07, and enacted by Ordinance 16-08 effective October 22, 2007. Just prior to when this ZTA was adopted, the uses allowed in the Rural Density Transfer (RDT) were largely limited to agriculture and residential detached uses, however a number of uses were also allowed by Special Exception (now known as Conditional Use). ZTA 07-07 added a footnote to the use table for Agricultural Zones prohibiting most non-residential uses in the RDT zone if the site is under a TDR easement. The intent was to limit over-development and commercialization of the Agricultural Reserve and to adhere to the land preservation intent of TDRs.

During the 2014 zoning rewrite, footnotes were not included as part of the zoning code, however the intent of ZTA 07-07 was captured as Section 59-3.1.5 Transferable Development Rights, which lists all of the uses prohibited on land encumbered by TDR easements, organized by use category, including cemeteries. Per the Council Sponsor, at least one existing cemetery in the AR zone has expressed concern that they are unable to expand because the adjacent parcels they own are encumbered with a TDR easement.

SECTION 2 – TEXT AS INTRODUCED

ZTA 23-08 As Introduced

ZTA 23-08 modifies section 59-3.1.5. Transferable Development Rights, subsection 4. Commercial, as follows:

4. Commercial

- a. Veterinary Office/Hospital
- b. Bed and Breakfast (if not accessory to Farming)

- c. Cemetery, unless expanding an existing Cemetery
- d. Funeral Home, Undertaker
- e. Lawn Maintenance Service
- f. Rural Antique Shop
- g. Shooting Range (Outdoor)

SECTION 3 – ANALYSIS AND RECOMMENDATIONS

ZTA 23-08 Analysis and Recommendations

Planning Staff recommends the Planning Board support ZTA 23-08 as introduced. Planning Staff considered numerous factors before reaching this recommendation, including whether to exempt cemeteries entirely, whether to allow any prohibited use to expand onto TDR easement land, and whether limits should be placed on the cemetery expansion.

When deciding whether cemeteries should remain as a prohibited use in the AR zone on TDR easement encumbered land, Planning Staff considered why they were added to the list originally. From a visual standpoint, cemeteries can be attractive and fit with an agricultural setting and are often landscaped with lawns of grass and canopy trees. This presumes a primary intent of the Agricultural Reserve is for open space protection rather than agricultural protection. However, the main intent of the Agricultural Reserve, and the subsequent TDR program is to protect land for agriculture. Arguably, cemeteries are the only land use that can never be removed and have the land restored to agricultural land. Once land is used for a burial site, it is forever a protected burial site, permanently removing that land from agricultural use. For this reason, Planning Staff decided it made sense to keep cemeteries generally prohibited from TDR easement lands.

Planning Staff also considered the viability of recommending that all uses prohibited in the AR zone when encumbered by a TDR easement be allowed to expand onto adjacent TDR easement encumbered land. From a use parity perspective, this recommendation makes sense, however it would dramatically increase the scope of impact of the ZTA in a way not intended. From a practical site development standpoint, other non-residential uses looking to expand have more options to redevelop and reconfigure existing sites to fit expanded operations, whereas a cemetery running out of space only has one option to grow. Also, while visually protecting open space may not be the primary intent of the Agricultural Reserve, it is a consideration, and cemeteries are less impactful visually than most other types of non-residential use. Therefore, it makes sense to keep the scope of this ZTA to cemeteries.

Finally, Planning Staff considered whether limitations on the expansion of cemeteries should be included in the Board's recommendation. The limits considered included the size of the expansion,

either in total area or as a percent of the original cemetery, limits on what categories of soil can be expanded upon, and whether the expansion should only be allowed once. Enforcement of these potential limitations would complicate the review and approval process and must be weighed against the potential benefits. Staff ran an analysis looking at all the known cemeteries that are in or adjacent to an existing TDR easement. A total of 90 unique sites exists, however only 21 were considered active based on a 2018 survey by Montgomery Preservation, Inc. This shows the scope of possible future applicants to be quite small. There is an undetermined number of new cemeteries that could be established on non-TDR easement land that could later expand onto TDR easement land, but based on recent applications for new cemeteries, this also seems unlikely to result in any substantial number of properties. Ultimately Planning Staff do not find it useful or necessary to recommend limitations to the proposed expansion provisions since the expected scope of change is very small.

SECTION 4 – CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to prepare a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and upon community resilience and adaptive capacity. The full climate impact assessment for ZTA 23-08 is attached in Attachment B with a brief summary provided below.

ZTA 23-08 is anticipated to have slight negative impacts on greenhouse gas (GHG) emissions and sequestration factors, and a mix of slight negative and positive impacts on adaptive capacity factors. Negative impacts on GHG emissions are caused by a combination of increased vehicle miles traveled by expanding a land use in the AR zone, away from population centers, an increase in embodied emissions from new infrastructure serving the cemetery, and changes in land cover that may reduce the capacity for plants or the soil to store carbon. Negative impacts to adaptive capacity and community resilience come from a slight increase in flood risks if the expanded cemeteries greatly replace natural ground covers resulting in urban runoff, and due to the potential for taking productive farmland out of food production with a cemetery expansion. Slight positive impacts may result from enhancements of community connections and cohesiveness with an expanded local cemetery. The potential for forest loss with cemetery expansion is also a concern, however any land disturbance greater than 5,000 square feet in size is required to follow the Forest Conservation Law which is a potential mitigating factor.

SECTION 5 – CONCLUSION

Planning Staff recommends the Planning Board support ZTA 23-08 as introduced. This ZTA would allow existing cemeteries to expand onto land encumbered with a TDR easement. This ZTA is a reasonable amendment providing targeted relief to a unique land use that allows for reasonable expansion without jeopardizing the intent of the Agricultural Reserve.

SECTION 6 – ATTACHMENTS

Attachment A: Zoning Text Amendment 23-08 Intro Packet

Attachment B: Climate Assessment 23-08

CLIMATE ASSESSMENT FOR

ZTA # 23-08 Transferable Development Rights - Cemetery

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the county’s contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs, at the county level. The scope of the Climate Assessments is limited to addressing climate change, specifically the effect of land use recommendations in master plans and ZTAs on greenhouse gas (GHG) emissions and sequestration, and how actions proposed by master plans and ZTAs could improve the county’s adaptive capacity to climate change and increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed master plans and ZTAs may impact GHG emissions and community resilience.

SUMMARY

The Montgomery County Planning Board anticipates that ZTA 23-08 have both slight to moderate negative impacts as well as slight positive impacts on the county’s goals of addressing greenhouse gas emissions, carbon sequestration, and ensuring resilience and adaptive capacity of our communities, depending on the performance factor. Overall, more impacts are slightly negative than positive.

BACKGROUND AND PURPOSE OF ZTA 23-08

This ZTA would modify the current prohibition on building cemeteries in the AR zone on land encumbered with a TDR easement to all expansions of existing cemeteries to occur. The establishment of new cemeteries would still be prohibited.

VARIABLES THAT COULD AFFECT THE ASSESSMENT

[List the climate-related and non-climate related variables that were considered in the assessment. Climate related variables include the various GHG reduction, sequestration, resilience, and adaptive capacity activities in the climate assessment checklists (see Tables 1 and 8 and associated text) contained in the *Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, or other variables identified in the assessment.*]

CLIMATE-RELATED VARIABLES

Transportation- Vehicle miles traveled by type, Number of trips

Building Embodied Emissions – Pavement infrastructure, Material waste produced

Land Cover and Management – Area of forest, Area of non-forest tree canopy, Area of green cover

RESILIENCE-RELATED VARIABLES

Exposure-Related Factors – Activity in flood-risk areas, Exposure to other hazards

Sensitivity-Related Factors – Change to forest cover, Change to non-forest tree canopy, Change to quality or quantity of other green areas, Change in perviousness, Change in stormwater management system treatments, Change to water quality or quantity, Change to air quality

ADAPTIVE CAPACITY-RELATED VARIABLES

Change to accessibility or prevalence of community and public spaces, Change to accessibility or prevalence of local food sources and other goods, Change to community connectivity

OTHER VARIABLES

Other variables include the number and frequency of events at each permitted site, transportation options, and where the sites are located.

ANTICIPATED IMPACTS

The ZTA is anticipated to result in slight negative impacts on greenhouse gas emissions, sequestration, and community resilience, and a combination of negative and positive impacts on adaptive capacity as described in more detail below. Due to the uncertainty of the locations of the expanded cemetery sites and intensity of use, data are not obtainable to quantify the greenhouse gas emissions and sequestration impacts.

GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

ZTA 23-08 is anticipated to have slight negative impacts on greenhouse gas emissions and carbon sequestration. Note: The *Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County* indicates that carbon sequestration, drawdown, and reduction are generally used interchangeably. The *Recommendations* document uses the term sequestration.

The transportation-related impacts are primarily due to the ZTA activities occurring in the Agricultural areas of the county, which tend to be located farther away from population-centers that would be the origin points for many of the trips taken. In addition, transportation options to access the cemeteries are more limited in the agricultural zones, with travel by individual automobile likely the most prevalent form of transportation, increasing vehicle miles traveled. The expansion of the cemeteries could increase the number of burials at these sites, increasing the number of trips. Overall, these impacts are expected to be slight because the number of cemeteries adjacent to TDR easements in the agricultural zone are limited.

Building embodied emissions are also expected to be slight. The primary sources of additional building embodied emissions are expected to come from additional pavement for drive aisles and parking, and from additional material waste generated by people attending the expanded number of burials that may be generated by expanding the cemeteries.

Impacts to sequestration from Land Cover Change and Management are also expected to be slight. There may be reductions in area of forest, area of non-forest tree canopy, and area of natural ground cover if these areas are cleared and graded to make room for the cemetery expansion, reducing the amount of carbon sequestered and stored.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

ZTA 23-08 is anticipated to have slight negative impacts to community resilience, and slight positive and potentially more significant negative impacts to community adaptive capacity.

Community resilience could be negatively impacted by increased exposure to the hazardous effects of climate change, including increased potential exposure to floods, storms, and temperature extremes. Changes to sensitivity-related factors may include changes (reductions) to forest cover and non-forest tree canopy, changes to the quality or quantity of other green areas, loss of some pervious land covers, increased stormwater management structures that alter natural flows and infiltration of precipitation runoff. The latter impacts have the potential to reduce water quality and quantity, affecting water supply and quality for both humans and natural systems. Slight negative impacts to air quality may result from increased motor vehicle trips and vehicle miles traveled generated by additional burials in the agricultural zones.

There could be slight positive impacts to community adaptive capacity as the expanded cemeteries create more opportunities for the public to gather and promote community connectedness and

cohesiveness, strengthening support networks and increasing communication. These are seen as helpful to building adaptive capacity to respond to climate disruptions. The availability or distribution of economic and financial resources may be increased if expanded cemeteries increase staffing levels needed for cemetery operations and maintenance, and if the number of commercially sold cemetery plots is increased.

ZTA 23-08 has a potential to have a more significant negative impact on the accessibility of local food sources and other goods if large areas of currently farmed lands are converted to expanded cemetery space. The severity of this loss of farmland and associated food crops depends on the extent to which the cemeteries that qualify for expansion under this ZTA take advantage of the opportunity, and how large each expansion becomes.

RELATIONSHIP TO GREENHOUSE GAS REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-08 does not involve any GHG activities that relate to the GHG reduction actions from the County's Climate Action Plan. The ZTA does relate to several of the sequestration actions, and the ZTA has the potential to negatively affect the ability of the County to achieve goals related to the following CAP actions:

- S-1 Retain and Increase Forests
- S-2 Retain and Increase Tree Canopy
- S-3 Restore and enhance meadows and wetlands
- S-5 Restore soil fertility, microbial activity, and moisture-holding capacity

None of these actions were rated for reduction potential as evaluated within the CAP.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires the Planning Board to offer appropriate recommendations such as amendments to the proposed ZTA 23-08 or other mitigating measures that could help counter any identified negative impacts through this Climate Assessment. Since any land disturbance greater than 5,000 square feet should initiate application of the Forest Conservation Law, the requirements of the Law might incentivize forest preservation, and provide mitigation for forest removal.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-08 was prepared using the methodology for ZTAs contained within the *Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022*.

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 23-08: TRANSFERABLE DEVELOPMENT RIGHTS – CEMETERY

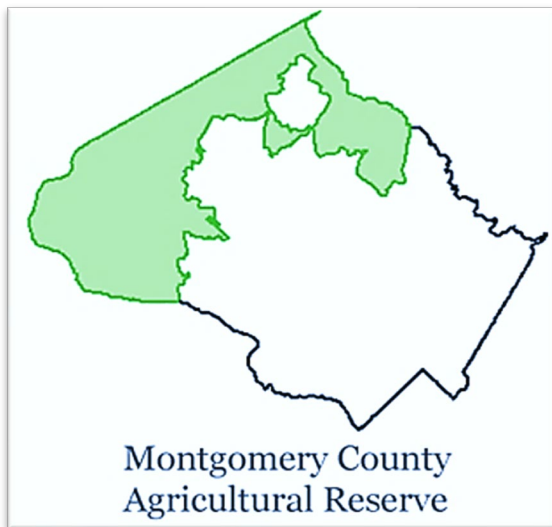
SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment ZTA 23-08, Transferable Development Rights (TDR) – Cemetery would have little or no impact on racial equity and social justice (RESJ) in the County.

PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 23-08



Source: Montgomery Planning

The purpose of ZTA 23-08 is to allow a property owner in the Agricultural Reserve (AR) zone to expand a cemetery onto land that currently has a TDR.³⁴

The Agricultural (Ag) Reserve in Montgomery County is a 93,000-acre designated land use zone that preserves farmland and rural open space in the northwestern part of the County.⁵ It was created in 1980 with the intent to prevent urban sprawl, protect farmland, and limit development.⁶ The Ag Reserve allows development only under the standard method with a density of 25 acre per dwelling unit.⁷ As observed on the map to the left, the Ag reserve is a contiguous rural area covering nearly a third of the County. It includes rural areas along with the larger rural communities of Damascus and Poolesville; small crossroad communities such as Beallsville, Sunshine, and Dickerson; and areas with mixed open land and housing.⁸

The Transferable Development Rights program is a zoning mechanism that grants property owners in the Ag Reserve one development right, or “TDR”, for each five acres of land. Property owners can receive compensation by selling their TDRs to landowners or developers who can use them to develop at a higher density in designated areas in the County.⁹

Under the current zoning ordinance, a cemetery is allowed in the AR zone by approval of a conditional use application. However, the use is prohibited on an AR zoned lot or parcel that has a recorded Transfer of Development Rights easement.¹⁰ If adopted, ZTA 23-08 would allow certain parcels in the AR zone that have recorded TDRs to be used for expansion of cemeteries. ZTA 23-08 was introduced on November 7, 2023

RESJ Impact Statement

Zoning Text Amendment 23-08

RACIAL INEQUITIES IN PROPERTY OWNERSHIP IN THE AGRICULTURAL RESERVE

Understanding the RESJ impact of ZTA 23-08 requires understanding the local history of racial inequity in land use that has fostered racial disparities in property ownership in the County and in the Ag Reserve in particular. Indigenous peoples affiliated with the Piscataway Conoy Tribal Nation lived in the area known as Montgomery County when Europeans first colonized the area in the 1600's.¹¹ This includes the Accohannock Indian Tribe, the Assateague Peoples Tribe, the Nause-Wawash Band of Indians, the Piscataway Conoy Confederacy and Sub-Tribes, the Cedarville Band of Piscataway Indians, the Pocomoke Indian Nation, and the Youghiogheny River Band of Shawnee Indians.¹²

In 1688, the earliest colonial land grants began to carve up the land and names were attached to large tracts that formed the spatial basis for a plantation economy reliant upon enslaved African labor that lasted until the Civil War. Under British and U.S. governments, the forced dispossession of land from Native peoples followed a "logic of economic profit and racial hierarchy that became institutionalized through law, establishing a thread of racial capitalism, which carries through to the more contemporary forms of racial exclusion in housing."¹³

In 1790, Montgomery County had 18,000 residents: about two-thirds were White and the remainder primarily Black and enslaved. Tobacco was the dominant crop and local transportation networks combined with the emergence of small towns and hamlets helped to support the antebellum economy. The Civil War and the collapse of the plantation system reconfigured the County.¹⁴ Racially- and class-segregated communities began emerging, which remained mostly rural and agricultural well into the 20th Century. White towns with names like Rockville, Poolesville, and Gaithersburg developed, while a small network of African American communities composed of people of African descent who were free before the Civil War and formerly enslaved people emerged in the former plantation landscape.¹⁵

In 1890, the County's population totaled 27,185 residents with White people accounting for 64 percent of the population and Black persons accounting for the remaining 36 percent.¹⁶ Between 1900 and 1960, the County's population grew 11-fold from 30,451 to 340,928 residents as it became a suburban bedroom community to Washington, D.C.¹⁷ With exclusionary zoning, redlining, racial covenants, and racial steering almost all the population growth in the County occurred exclusively among White households. For example, between 1940 and 1960 the White population increased more than four-fold from 74,986 to 327,663 residents.¹⁸ Yet, during this time frame, the County's Black population only increased from 8,926 to 13,265 residents.¹⁹

The Black population in the County stagnated during suburbanization because Black people were prevented from owning and renting homes in most parts of the County. Black people were limited to residing in the County's historically Black communities that increasingly became "rural ghettos" that lacked running water and paved streets while the County made extensive infrastructure investments in White communities.²⁰ Moreover, pressured by encroaching White suburbanization and industry, many rural Black communities in the County began disintegrating and experienced land loss, disinvestment, and displacement.²¹ By 1960, Black people accounted for only three percent of County residents.²²

Overall, Black people were systemically excluded from benefiting from the County's exponential growth and increasing property values resulting from suburbanization. It is within this context that the Ag Reserve became policy and cemented racial segregation within its borders as many historically Black rural communities within it had been depopulated by 1980 and the requirements of the AR zone effectively prohibits the development of new affordable multi-family housing units within it. As such, few Black residents benefit from TDRs or reduced development in the Ag Reserve despite Black people historically accounting for a third of the County's population when its economy was primarily agricultural and nearly a fifth of the population today. Data on farm operators and producers also shows that other communities of color are under-represented as property owners in the Ag Reserve.

RESJ Impact Statement

Zoning Text Amendment 23-08

Approximately 70 percent of the County's 93,000-acre Agriculture Reserve is used for farm operations.²³ In 2017, there were 558 farms operating in the County that employed more than 10,000 persons and generated \$281 million in revenue.²⁴ A total of 1,026 farm producers operated among the 558 farms in the County. Among farm producers:²⁵

- 93 percent were White (953 producers);
- 3 percent were Latinx (27 producers);
- 3 percent were Multiracial (26 producers);
- 2 percent were Black (22 producers);
- 2 percent were Asian (21 producers); and
- Less than one percent were Native American/Indigenous (4 producers).

Conversely, among County constituents in 2022, White people accounted for 42 percent of the population, Latinx people accounted for 20 percent of the population, Black people accounted for 19 percent of the population, Asian people accounted for 15 percent of the population, and Indigenous people accounted for less than one percent of the population.²⁶ Thus, White people are over-represented among farm producers in the County compared to their share of County constituents while Black, Indigenous, and Other People of Color are under-represented among farm producers.

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 23-08 on racial equity and social justice, OLO considers two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

White people accounting for 93 percent of farm producers in the County in 2017 suggests that they are over-represented among property owners in the Ag Reserve and could potentially benefit from ZTA 23-08. They would likely be the primary beneficiaries of this ZTA allowing the expansion of existing cemeteries in the AR zone on properties with recorded TDRs. Yet, the number of properties within the Ag Reserve with cemeteries and recorded TDRs is unknown as is the number of eligible properties that would likely take advantage of this ZTA. Moreover, the number of eligible properties that could expand existing cemeteries because of this ZTA is likely very small. As such, OLO anticipates that ZTA 23-08 will have little to no impact on racial and social inequities in the County.

RECOMMENDED AMENDMENTS

Bill 44-20 amending the County's Racial Equity and Social Justice Act²⁷ requires OLO to consider whether recommended amendments aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements for zoning text amendments. OLO anticipates that ZTA 23-08 will have little to no impact on existing disparities in property ownership by race and ethnicity in the County. As such, OLO does not offer recommended amendments.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

RESJ Impact Statement

Zoning Text Amendment 23-08

CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this racial equity and social justice impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools

<https://www.racialequitytools.org/glossary>

² Ibid

³ Ndou, Livhu. Montgomery County Council, Agenda Item #3A, October 17, 2023

https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&event_id=15931&meta_id=165992

⁴ The Montgomery County Zoning Ordinance (2014) defines Transfer of Development Rights (TDRs) as the conveyance of development rights, as authorized by law, to another tract of land and the recordation of that conveyance.

⁵ American Planning Association. 2017 National Planning Excellence Award: Planning Landmark-Montgomery County’s Agricultural Reserve

<https://www.planning.org/awards/2017/agriculturalreserve/>

⁶ Ibid.

⁷ American Legal Publishing. Chapter 59 Montgomery County Zoning Ordinance (2014). Agricultural. Section 4.2.1. Agricultural Reserve Zone (AR). A child lot above the density of one dwelling unit per 25 acres is also allowed in the AR zone.

https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-2471

⁸ Montgomery County, Maryland. Montgomery Planning. Agricultural Reserve

<https://montgomeryplanning.org/planning/agricultural-reserve/>

⁹ Carrizosa, Natalia and Aron Trombka. 2023. OLO Report-2023-1 Transferable Development Rights and Building Lot Termination Programs in Montgomery County. January 7.

https://www.montgomerycountymd.gov/OLO/Resources/Files/2023_reports/OLOREport2023-1.pdf

¹⁰ American Legal Publishing. Chapter 59 Montgomery County Zoning Ordinance (2014). Section 3.1.5. Transferable Development Rights.

https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-744

¹¹ David S. Rothstein, Baltimore and Ohio Railroad, Metropolitan Branch Bridge 9A (Talbot Avenue Bridge), Silver Spring, Maryland – Written Historical and Descriptive Data. Historic American Engineering Record (HAER No. MD-195), National Park Service, U.S. Department of the Interior, 2019

¹² RESJAC Position Statement on Land Acknowledgement, Racial Equity and Social Justice Advisory Committee, Montgomery County, Maryland <https://www.montgomerycountymd.gov/boards/sites/RESJ/land-acknowledgement.html>

¹³ Roots, Race & Place: A History of Racially Exclusionary Housing in the San Francisco Bay Area, Haas Institute for a Fair and Inclusive Society Public Education Report, UC Berkeley, June 2021 <https://belonging.berkeley.edu/sites/default/files/2021-09/Oct22019enews.html>

¹⁴ Rothstein

¹⁵ Ibid

¹⁶ Montgomery Planning, Attachment A: Working Draft of the Mapping Segregation Report: Racial Restrictive Covenants, Black Homeownership, and HOLC Loans in the Downcounty Planning Area, December 1, 2022 <https://montgomeryplanning.org/wp-content/uploads/2022/12/Mapping-Segregation-Staff-Report-Attachment-A.pdf>

¹⁷ Montgomery History, How Montgomery County Grew in the 1950’s, Online Exhibit, May 5, 2021

<https://montgomeryhistory.org/exhibit/how-montgomery-county-grew-in-the-1950s/>

¹⁸ Ibid

¹⁹ Ibid

²⁰ Rothstein

²¹ Ibid

²² Montgomery Planning, Attachment A

²³ Montgomery County 2017 Ag Census Fact Sheet. Montgomery County Maryland Government

<https://montgomerycountymd.gov/agsservices/Resources/Files/2017AGCensusMCFactSheetFINAL.pdf>

²⁴ Montgomery County Office of Agriculture Website. Ag Facts

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<https://www.montgomerycountymd.gov/agservices/ag-facts.html>

²⁵ 2017 Census of Agriculture. County Profile. Montgomery County, Maryland.

https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Maryland/cp24031.pdf

²⁶ Demographic and Housing Estimates, Table DP05, American Community Survey, 2022 – 1 year estimates for Montgomery County, Maryland, DP05, <https://data.census.gov/table/ACSDP1Y2022.DP05?q=DP05&g=050XX00US24031>

²⁷ Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020.

https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf