

(Attachment B.)



AGRICULTURAL ADVISORY COMMITTEE

September 21, 2010

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

Dear Council President Floreen:

Re: ZTA 10-12 RDT Zone-Child Lot Standards

On behalf of the Montgomery County Agricultural Advisory Committee (AAC), thank you for this opportunity to express our views surrounding the proposed Zoning Text Amendment 10-12 RDT Zone-Child Lot Standards.

The AAC is conducting our regularly monthly meeting at 7:30 pm tonight and we will be discussing this ZTA and the specific amendments that I am providing to you now. The AAC is recommending several amendments that are needed before we can support this ZTA. The AAC wants to acknowledge the continuing efforts of the County Council to resolve the impasse surrounding Child lots and to change the environment so that landowners can make decisions and move forward with these standards.

For several years the environment surrounding the child lots has been controversial with different points of view and this environment prevented a new Child Lot policy and standards from being approved. The proposed ZTA represents the closest we have come to reach the ZTA 07-06 recommended by the Ad-Hoc Agricultural Policy Working Group. We want to thank the Montgomery County Planning Board and the County Council for resolving several items of contention that this ZTA has resolved and they are as follows.

The ZTA removes the requirement that a child be actively engaged in the farming operation.
The ZTA will allow child lots approved above base zone density.
The ZTA requires a 5 year restriction on the transfer of the child lot.
The ZTA allows the child lot to be leased to an immediate family member.

The agricultural community is appreciative for the items listed above as they help to demonstrate that policy officials are developing a better understanding of the needs of farmers and RDT landowners. The proposed ZTA needs additional amendments and they are as follows:

Lines 41 through 48 delete the existing policy surrounding 59-C-9.41 Density in the RDT zone. The AAC has reviewed the new wording that starts on line 49 through 58. We support that a

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building right needs to be retained for a dwelling approved as a child lot. We do not support the requirement that a building right is retained for each dwelling unit designated as a farm tenant dwelling, farm tenant mobile home, guest house or accessory apartment/dwelling. This new wording will in effect create hundreds of illegal dwellings in the Rural Density Transfer zone that exist today where a building right was not retained for the dwelling unit. Furthermore, there are over 100 agricultural preservation easement properties in the RDT zone where the easement permits dwellings for children and dwellings for farm tenants. These agricultural easements did not retain building rights for the farm tenant dwellings and the proposed wording would create hundreds of hardship cases of illegal dwellings and we need to completely avoid this outcome. The AAC suggests the wording on line 58 could be revised to state – a building right is retained for each child lot dwelling unit and the retention of a building right does not pertain to accessory dwellings such a farm tenant dwelling.

The AAC recommends that we need to add wording as part of line 57 that addresses when the size of a child lot would impact the base zone density on the remainder of the farm. The AAC suggests the following wording: Since one building right TDR is equivalent to 5 acres, this will be the standard when a child lot is 5 acres or less in size, there shall be no impact on the base density for the remainder of the farm. If a child lot is greater than 5 acres in size the child lot could have an impact on the base density depending on the total size of the farm.

The AAC supports the recommendations of the Agricultural Preservation Advisory Board regarding the section that begins on line 119 59-C-9.74 Exempted lots and parcel-RDT zone to be expanded on line 123 to include the other County (AEP and BLT) and State (RLP) farmland preservation programs. The AAC also suggests that a grandfather clause is needed to make sure that these new standards will not impact RDT property owners that are already in the pipeline for review and approval of child lots. It is not fair or appropriate for Montgomery County to apply new child lot standards on those folks that have invested time and money to achieve the existing standards. The AAC suggests the following wording should be added on line 145 as follows: 59-C-9.74(b)(5) Any application for subdivision for a child lot that was filed and assigned a preliminary subdivision plan number prior to July 26, 2010 shall be subject to the child lot standards in effect at the time the application was filed, and any record plat recorded before July 26, 2010 that contains child lots is presumed to be in compliance with those standards in effect at the time the plat was recorded.

Thank you for this opportunity to provide the views of the Montgomery County Agricultural Advisory Committee on the amendments to ZTA 10-12 for new Child Lot Standards in the RDT zone.

Sincerely,

David Weitzer, Chairman, Montgomery County Agricultural Advisory Committee

County Executive Testimony on Zoning Text Amendment 10-12 Child Lot Standards in the RDT Zone

County Council sitting as the District Council Public Hearing September 21, 2010

Testimony on Behalf of County Executive Isiah Leggett

Good afternoon, my name is Jeremy Criss, Agricultural Services Manager for the Department of Economic Development. I am pleased to provide testimony on behalf of County Executive Isiah Leggett regarding the proposed Zoning Text Amendment 10-12 which establishes new Standards for Child Lots in the Rural Density Transfer Zone. The County Executive supports the efforts of the Planning Board and the District Council to address this issue identified by the Ad Hoc Agricultural Policy Working Group. The draft legislation is a very positive beginning but still needs some work.

The overall purpose of the legislation is to relate building rights to child lots. The proposed bill however is oversweeping in its application to accessory dwellings and farm tenant houses which are necessary and incidental to farm operations – a key purpose of the RDT zone. As drafted the bill will result in hundreds of non-conforming existing farm tenant dwellings and accessory dwellings and is a concern for working farms.

Also, while the Executive Branch understands what the bill is trying to accomplish with respect to building permits and restraints on alienation of property, the zoning ordinance may not be the proper place to address these issues – or at least not in the manner currently presented in the ZTA. The subdivision regulations, Chapter 8 and other chapters may be more appropriate places for some of what is included in the draft ZTA.

The County Executive recommends that the District Council consider a grandfather clause be included in the draft Zoning Text Amendment that would apply to anyone that is already in the pipeline of review and approval for child lots. This would protect investments that have been made by not changing the rules and standards of child lots for anyone that has invested time and money in making application for preliminary plan of subdivision in accordance with the existing standards.

Executive Staff is available to work with the County Council and its staff, as well as the Planning Board and the agricultural community to address these issues so that the end result is a ZTA and related legislation that addresses the child lot issue while preserving the agricultural purpose of the RDT zone and further protects the Agricultural Reserve of which we are justly proud.

On Behalf of the County Executive, thank you for this opportunity to present these comments and Executive staff representatives will be available during the September 27, 2010 Planning Housing and Economic Development work session to offer assistance on this ZTA 10-12.

(Attachment B.)

Zoning Text Amendment No.: 10-12
Concerning: RDT Zone - Child Lot
Standards

Draft No. & Date: 1 – 7/26/10

Introduced:

Public Hearing:

Adopted:

Effective:

Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Knapp

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

And adding:

Section 59-C-41.1	“Child Lots in the RDT Zone”
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EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

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

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

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

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

4 * * *

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

7 * * *

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

9 * * *

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

11 DIVISION 59-C-9. AGRICULTURAL ZONES.

12 * * *

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

14 * * *

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

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

23

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

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

31

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

35 * * *

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

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

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

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

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

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

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

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

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

59

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

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

64 (1) The property owner must have:

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

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

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

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

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

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

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

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

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

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

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

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

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

116 * * *

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

118 * * *

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

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

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

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

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

135 (3) A [record] recorded lot having an area of less than 5 acres created
136 after [the approval date of the sectional map amendment which
137 initially zoned the property to the Rural Density Transfer Zone]
138 January 7, 1981 by replatting 2 or more lots; provided that the
139 resulting number of lots is not greater than the number which were
140 replatted.

141 (4) A lot created for use for a one-family [residence] dwelling by a child,
142 or the spouse of a child, of the property owner, [provided that the
143 following conditions are met] if the lot satisfies the requirements of
144 59-C-9.41.1. [:

- 145 (i) The property owner can establish that he had legal title on or
146 before the approval date of the sectional map amendment which
147 initially zoned the property to the Rural Density Transfer Zone;
- 148 (ii) This provision applies to only one such lot for each child of the
149 property owner; and
- 150 (iii) Any lots created for use for one-family residence by children of
151 the property owner must not exceed the number of development
152 rights for the property owner.]

153 * * *

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

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157 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council