

(Attachment B.)

Criss, Jeremy

From: Criss, Jeremy
Sent: Thursday, July 21, 2011 4:07 PM
To: Zyontz, Jeffrey
Cc: Michaelson, Marlene; 'David Weitzer'; Zawitoski, John
Subject: RE: Answer to AAC Questions and Observations Surrounding the application of footnote 48

Jeff,

Thank you for the responses to the questions from the AAC.

They are very helpful.

The draft ZTA that you received represents a DED-staff draft prepared for the Horticultural Green Industry Work Group that Steve Silverman organized.

The AAC is not driving this draft ZTA although they are involved.

I am familiar with the Butler case you reference and it was discussed at the work group meeting last night.

We are not trying to reverse the case and I do not believe the Butler property would not meet the conditional standards that are proposed.

You are correct regarding the different views of folks as to what is complementary to agriculture.

Specifically the Work Group is looking at the Farm Machinery and Supply- Sales, Storage and Service SE use lines.

If the AAC decides to form a small group, I will make sure Council Member Rice is in the loop along with you and Marlene.

Thanks again. Jeremy

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-----Original Message-----

From: Zyontz, Jeffrey
Sent: Thursday, July 21, 2011 11:15 AM
To: Criss, Jeremy
Cc: Michaelson, Marlene
Subject: FW: Answer to AAC Questions and Observations Surrounding the application of footnote 48

Hi,

Below are your questions/ comments followed by my answers:

If a property is governed by a special exception-SE that predates October 2, 2007, and the owner makes application for modification of the SE today, how does footnote 48 apply and does the effect of footnote 48 prohibit the modification to the SE?

Answer: Footnote 48 is clear, "If property is encumbered by a recorded transfer of development rights easement, this use is prohibited. However any building

9/20/2011

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Criss, Jeremy

From: Zyontz, Jeffrey
Sent: Thursday, July 21, 2011 11:15 AM
To: Criss, Jeremy
Cc: Michaelson, Marlene
Subject: FW: Answer to AAC Questions and Observations Surrounding the application of footnote 48

Hi,

Below are your questions/ comments followed by my answers:

If a property is governed by a special exception-SE that predates October 2, 2007, and the owner makes application for modification of the SE today, how does footnote 48 apply and does the effect of footnote 48 prohibit the modification to the SE?

Answer: Footnote 48 is clear; "If property is encumbered by a recorded transfer of development rights easement, this use is prohibited. However any building existing on October 2, 2007 may be repaired or reconstructed if the floor area of the building is not increased and the use is not changed." A use covered by the footnote and that is subject to a special exception may get a modification of the special exception for the same use. The modifications for uses covered by footnote 48 may be for such things as changed hours or operation or parking configuration BUT the modification may not increase the floor area of a building.

An owner may seek a new special exception for a new use allowed by special exception that is not limited by footnote 48. This new special exception may be allowed to increase the floor area of a building.

If a property is encumbered by a TDR easement and the property owner wants to operate a Bed and Breakfast in an existing historic house does footnote 48 prohibit the Bed and Breakfast use (1-2 bed room) that is permitted by right under the Euclidian RDT zone?

Answer: The bed and breakfast use is limited by footnote 48. If it existed before 2007, it may continue but not expand. If it did not exist before 2007 it is prohibited. The same is true for all permitted uses with footnote 48.

The ZTA 07-07 states that "all agricultural uses" are to be allowed, while specifying that "if a property is under a recorded transfer of development rights easement, only the following uses are allowed. Then the ZTA 07-07 lists four uses: a) one-family dwellings, b) all agricultural uses, c) all agricultural-industrial uses and d) all agricultural-commercial uses. The ZTA 07-07 clarified when a landowner sold TDRs they also signed and agreed to the terms of a TDR easement. This clarification is important and should be maintained. However, in the process, footnote 48 has also been used to prevent some land uses that are complementary to agricultural uses.

Land uses that are complementary to agricultural uses would help county farmers to strengthen their

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agricultural operations or to provide additional support of their agricultural operation. Examples include: Bed and Breakfast 1-2 bed rooms, Farm machinery: sales, storage, or service, Farm supply: sales, storage, or service, and proposed ZTA for Solar structures. These unintended consequences occur now when these economic enhancements would be located on land that is recorded by a TDR easement.

The AAC suggests that somehow we consider a set of standards could be developed that would take these economic enhancements into account and allow them as an accessory use to the farm. These standards could first consider whether the use is permitted by right in the Euclidian RDT zone and complementary to agricultural uses as noted above. The suggested standards could also take into consideration the size, scale, and scope of the uses to determine a certain threshold that would be consistent with the legislative intent of the TDR easement.

Comment: ZTA 07-07 was very specific on the uses covered by footnote 48. Everything in the agriculture, agricultural-industrial, and agricultural-commercial categories were not covered by footnote 48. If the Executive or anyone else proposes amendments, the amendment would be considered. I agree that restrictions can be performance based (size, scale, and scope of the uses) rather than only use.

The draft ZTA I saw included a provision to be more permissive of landscaping companies. To what extent is the AAC trying to legislatively reverse *Montgomery County, Maryland, et al. v. Melody Butler d/b/a Butler Landscape Design*? The Council could do so if it believes it is in the public interest to do so, but it should have facts to act one way or the other. Reversing a case would be one such fact.

What some people might deem complementary to agriculture, other people might deem retail and manufacturing intrusions. I do not know of anyone that thinks vehicle storage, separate from the vehicles used for farming is an idea that promotes agriculture.

Does the Council staff have an understanding of how footnote 48 will be considered as part of the Zoning Rewrite process that MNCPPC is currently working on?

Answer: The footnote will be considered a complicating factor to an effort that is trying to simplify the code. First, I understand that there will be no footnotes in the Rewrite. Second, I suspect but do not know that there will be a revised list of uses. There will be 3 categories of permitted uses: 1) as of right, 2) limited by particular standards (such a minimum lot size or setbacks), or 3) allowed as a conditional use (special exception)

Does the Council staff support the application of footnote 48 to all properties in the RDT zone (May be renamed Agriculture Conservation zone) regardless of whether they are encumbered by a TDR easement?

Answer: Currently, a permitted use with the footnote may still be able to proceed if it has not created TRDS. Simply removing the limitation of the footnote (applying the prohibition of use to some properties) would leave the use prohibited. That would NOT be reasonable. For example, the application of footnote 48 to all properties in the RDT zone regardless of whether they are encumbered by a TDR easement would exclude ALL religious institutions.

The AAC also suggests that a small group of stakeholders could assist on this matter if needed and draft possible legislative recommendations to remedy the unintended consequences and impact all agricultural uses.

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Comment: A critical stakeholder is Councilmember Rice.

Jeff Zyontz
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