


AGENDA ITEM # 4.1
December 13, 2005

Introduction

MEMORANDUM

December 7, 2005

TO: County Council

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: Introduction – ZTA 05-23, TDR Easement – Nonresidential Uses

Councilmember Subin and Floreen will introduce ZTA 05-23 on Tuesday. Under current zoning regulations, a TDR easement must limit the construction of one-family dwellings on a property in the Rural Density Transfer (RDT) zone to the total number of development rights established by the zoning of the property minus all development rights previously transferred and the number of existing one-family detached dwellings on the property.

ZTA 05-23 would: (1) require that the TDR easement, in addition to limiting the construction of one-family dwellings, prohibit the construction of any non-residential use, other than agriculture as defined in Section 59-A-2; and (2) clarify that TDRs do not apply to property classified in the Rural Density Transfer zone that is developed with a non-residential use, other than agriculture as defined in 59-A-2.

A public hearing is scheduled for January 19, 2006.

Zoning Text Amendment No: 05-23
Concerning: TDR Easement-Nonresidential
uses
Draft No. & Date: 1 – 12/6/05
Introduced: December 13, 2005
Public Hearing: January 19, 2005; 7:00 pm
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: Councilmembers Subin and Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- requiring that a TDR easement limit future development of non-residential uses other than agriculture in the Rural Density Transfer (RDT) zone;
- clarifying that TDRs do not apply to property classified in the RDT zone developed with a non-residential use other than agriculture; and
- generally amending the TDR provisions.

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

DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.39	“Special regulations for optional method development using transferable development rights”
DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.6	“Transfer of density-Option in Rural Density Transfer zone”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the 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-C-1 is amended as follows:**

2 **DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

3 * * *

4 **59-C-1.39. Special regulations for optional method development using transferable**
5 **development rights.**

6 **59-C-1.391. Applicability.** The following procedures and regulations apply to the
7 transfer of development rights from land classified in the rural density transfer zone
8 (RDT) to land classified in the transferable development rights (TDR) zones. The
9 [planning board] Planning Board may approve subdivision of such land at densities
10 not to exceed the maximum density permitted in the applicable TDR zone and
11 conforming to the guidelines contained in the applicable master plan approved by the
12 district council. Any increase in density above the density applicable to the standard
13 method of development must be based on a ratio of one single-family dwelling unit
14 for each transferable development right (TDR), and 2 multi-family dwelling units for
15 each transferable development right (TDR).

16 **59-C-1.392. General Provisions.**

17 (a) A development right [shall] must be created, transferred and extinguished only by
18 means of documents, including an easement and appropriate releases, in a
19 recordable form approved by the [planning board] Planning Board. The easement
20 [shall] must limit the future construction of one-family dwellings on a property in
21 the RDT zone to the total number of development rights established by the zoning
22 of the property minus all development rights previously transferred in accordance
23 with this section, the number of development rights to be transferred by the
24 instant transaction, and the number of existing one-family detached dwellings on
25 the property. The easement must also prohibit the future development of any non-
26 residential use, other than agriculture as defined in 59-A-2, on the affected
27 property.

- 28 (b) The transfer of development rights [shall] must be recorded among the land
29 records of Montgomery County, Maryland.
- 30 (c) The development density of a property under the TDR optional method [may]
31 must not be increased above the maximum density permitted in the zone (section
32 59-C-1.332(c)) nor beyond the density or number of dwelling units
33 recommended for [such] the property by the land use plan of the applicable
34 master plan approved by the district council.
- 35 (d) A property developed with the transfer of development rights [shall] must
36 conform to the requirements of chapter 25A of the Montgomery County Code
37 requiring MPDU[']s. The applicability of chapter 25A and the MPDU density
38 increase provided by section 59-C-1.6 [shall] must be calculated after the base
39 density of a property has been increased by a transfer or development rights. The
40 density increase provided by section 59-C-1.6 may be made without [the
41 acquisition of] acquiring additional development rights.

42 * * *

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

44 **DIVISION 59-C-9. AGRICULTURAL ZONES.**

45 * * *

46 **59-C-9.6. Transfer of density—Option in Rural Density Transfer zone.**

47 In accordance with section 59-C-1.39 and in conformance with an approved and adopted
48 general, master, sector, or functional plan, residential density may be transferred at the rate
49 of one development right per 5 acres minus one development right for each existing
50 dwelling unit, from the Rural Density Transfer zone to a duly designated receiving zone,
51 pursuant to section 59-C-1.39. The density transfer provisions [are not applicable] do not
52 apply to publicly owned rights-of-way for roads, streets, alleys, easements, or rapid transit
53 routes classified in the Rural Density Transfer zone, or to property classified in the Rural
54 Density Transfer zone that is developed with a non-residential use, other than agriculture

55 as defined in 59-A-2. The following dwelling units on land in the RDT zone are excluded
56 from this calculation, provided that the use remains accessory to a farm. Once the
57 property is subdivided, the dwelling is not excluded:

58 (a) A farm tenant dwelling, farm tenant mobile home, or guest house as defined in
59 section 59-A-1.2, title "Definitions."

60 (b) An accessory apartment or accessory dwelling regulated by the special exception
61 provisions of divisions 59-G-1 and 59-G-2.

62

63 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
64 date of Council adoption.

65

66 This is a correct copy of Council action.

67

68

69

70

71 _____
Linda M. Lauer, Clerk of the Council

Resolution No:
Introduced: December 13, 2005
Adopted:

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

By: District Council

Subject: Notice of Public Hearing on Zoning Text Amendment 05-23

Background

1. Section 59-H-9.3 of the Montgomery County Ordinance requires that, within thirty days of introduction of any text amendment, the Council act by resolution to set a date and time for public hearing on the proposed amendment.
2. Zoning Text Amendment No. 05-23, which would amend the Zoning Ordinance to require a TDR easement to limit future development of non-residential uses other than agriculture in the Rural Density Transfer (RDT) Zone; clarify that TDRs do not apply to property classified in the RDT zone developed with a non-residential use other than agriculture; and generally amend the TDR provisions, was introduced on December 13, 2005.

Action

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 resolution:

Legal notice will be given of the public hearing to be held on January 19, 2006 at 7:00 p.m., in the Council Hearing Room, Stella Werner Council Office Building, Rockville, Maryland, for the purpose of giving the public an opportunity to comment on the proposed amendment.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

6