

Action

M E M O R A N D U M

February 18, 2014

TO: County Council
FROM: Jeffrey L. Zyontz, Legislative Attorney
SUBJECT: Action - Zoning Text Amendment 13-04, Zoning Ordinance Rewrite; and District Map Amendment G-956

The Council approved ZTA 13-04 by straw vote on January 15, 2014. The attached resolution and revised code conforms to that straw vote. Every change from the Planning, Housing, and Economic Development Committee recommended draft is documented in this memorandum. The code was reorganized to make it more zone-centric. Text from Article 59-2 and the prior Article 59-6 was moved into Article 59-4. Without a separate article for optional method development, the new code is one article shorter.

Future Zoning Text Amendments

Despite Planning Staff's diligent efforts, there may be a future need for clarifications or corrections to the code being approved. In addition, the Council has pending zoning text amendments that may change the code before it becomes effective on October 30, 2014. Any future zoning text amendments approved by the Council before October 30, 2014 may affect only the new code or may affect both the new code and the current code.

District Map Amendment G-956

The Council has been clear on its actions regarding Zoning Text Amendment 13-04. The Planning, Housing, and Economic Development Committee recommended deferring action on District Map Amendment G-956. The Council has not taken action on the map amendment and may wish to acknowledge that it agrees with the Committee recommendation.

Future Local Map Amendments

The new code allows local map amendments filed before April 1, 2014 to be treated under the new code. There are 2 issues: 1) Staff anticipated a February approval when it recommended the April 1 date; 2) If a local map amendment filed before the grandfathering date is approved after October 30, 2014, it may

be approved for a zone that no longer exists in the code. Staff recommends 2 changes: 1) Extend the deadline for applications to May 1; 2) Add a provision to the grandfather provisions under B.1 as follows:

Any complete Local Map Amendment application submitted to the Hearing Examiner by May 1, 2014 must be reviewed under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014. If the District Council approves such an application after October 30, 2014 for a zone that is not retained in Chapter 59, then the zoning will automatically convert to the equivalent zone in Chapter 59 when the Local Map Amendment is approved.

Conformance to current code provisions

In 3 instances, staff is recommending retaining provisions of the current code that would be changed by the draft as it was reviewed by the Council.

- 1) Currently, a 5 foot front setback encroachment for HVAC units is allowed. Staff added this provision back into the new code in Section 4.1.7.B.6.b.
- 2) The building permit notice requirements were debated by Council when it approved the recent revisions for accessory apartments. The draft review by the Council would have required increased signage requirements. Staff replaced the notice standards for a building permit sign under Division 7.5 (previously Division 8.5) with a reference to Chapter 8.
- 3) There are currently unique grandfather provisions for a 1945 government housing projects, R-60 lots rezoned to R-90, and pre-1958 lots and parcels that were not adequately addressed in the draft before the Council. Staff corrected those omissions in Section 7.7.1.

Background

Zoning Text Amendment No. 13-04 was introduced on May 7, 2013 by the Council President at the request of the Planning Board.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved.

The County Council held a public hearing on June 11, 2013 to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Committee conducted 11 worksessions fully devoted to ZTA 13-04 and District Map Amendment (DMA) G-956 during 2013 (June 14, 21, 28; July 2, 12, 19, 26, 30; September 13, 17, and 20) before publishing a draft with their initial recommendations on October 16. The Council conducted a second public hearing on November 12 and November 14 to allow the public an opportunity to comment on the Committee's draft. Thereafter, the Committee held an additional two worksessions on December 1 and 9, 2013. The Committee revised some of its initial recommendations in a draft published on December 16, 2014. In total, the Committee recommended some 120 changes to ZTA 13-04 as it was introduced. Every article in the Planning Board proposed draft has PHED recommended changes. The essential themes of the Committee's amendments can be characterized as:

- Neighborhood protection – revising development standards, land uses, the treatment of current binding elements and floating zone limitations

- CR zones revised – for developments that provide more than 12.5% of total dwelling units as MPDUs, increasing public benefit points allowed and more relaxed development standards
- Public Benefit point changes - deleting the Planning Board proposed public benefit point categories and a reduction in benefit points that could be awarded for various categories of public benefits
- Grandfathering provisions – revising a landowner’s ability to expand a building under the current code, increasing the time limit to amend plans under the current code to 25 years, and retaining the binding elements of current development plans

Council Approved Changes

The District Council reviewed Zoning Text Amendment No. 13-04 at worksessions held on January 14 and 15, 2014. For the most part, the Council agreed with the recommendations of the Planning, Housing, and Economic Development Committee. The Council made the following revisions to the Committee’s recommendations:

- Added height and open space to the definitions in Chapter 1 with the appropriate cross-references.
- Added a modification to the provisions for Urban Farming to allow beekeeping in all zones by providing that the limited use standard requiring a 2,500 square foot property does not apply to the keeping of bees in Section 3.2.9, and allowing Urban Farming in the IH zone in Section 3.1.6.
- Revised Section 3.2.12.A.2 to allow Agricultural Vending frontage on a 2-lane road and not a 4-lane road.
- Added a provision in the definition for Farming in Section 3.2.6 addressing agricultural education and tourism as an accessory use to Farming, limiting the footprint of structures that can be constructed primarily for the use of education and tourism, and deleting Agricultural Education and Tourism as a separate land use in Section 3.1.6.
- Added a provision to composting under Section 3.2.6 as an accessory use to a farm that allows up to 20% of the materials used in accessory processing to come from off-site sources.
- Reorganized the proposed code (Articles 59-2, 4, and 6) so the development standards are zone-centric in Article 59-4 and not function-centric in 3 separate Articles.
- Added a sentence at the end of the building type description of a Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or Conditional Use allowed in the zone In Section 4.1.3.A that states this building type includes buildings used for agriculture in association with Farming.
- Amended Division 4.7 (previously Section 6.6.3) to retain the public benefit categories and points as they currently exist in the Code for the CR zone, with the PHED Committee’s recommended amendments for Moderately Priced Dwelling Units (MPDUs) and the benefit points for Transferable Development Rights (TDRs).
- Revised the provisions for major public facility public benefit points for Section 4.7.3 (previously Section 6.6.3) to clarify the Planning Board’s discretion to approve major public facilities that are not specifically recommended by a master plan.

- Added a provision for site plan approval in Section 7.3.4.E.4, to require the Planning Board to take into consideration the availability of ground floor retail space in any redevelopment of a property that was formerly zoned C-1 or C-2.
- Modified key for table in Section 6.3.3 as follows: “A = Allowed” is now “A = Allowed in open space” and “x=Not allowed” is now “x= Not allowed in open space”
- Modified Section 6.6.1: [[The intent of]] [this] Division 6.6 [[7.6]] [(Div. 7.6)] [is to regulate]] regulates the size, location
- Added a requirement that the Planning Board adopt a development review schedule for a 120 day review cycle, including meetings and a hearing date, for both sketch plans and site plans in Section 7.6.3.C.
- Clarified language regarding the grandfathering provision in Section 7.7.1 (previously Section 8.7.1); allow at least all current grandfathered rights.
- Allowed staff to make additional editorial changes to the code (plain English, grammar, and punctuation).

Staff has included the following changes for clarification, retaining the current rights of property owners, correcting errors, and plain English:

- Replaced all {effective date} with October 30, 2014 and all {effective date minus one} with October 29, 2014;
- Deleted Section 1.1.2, Repeal of Existing Code; the existing code is addressed in the non-codified section of the Council’s resolution of adoption.
- Added definitions for front lot line, rear lot line, and nonresidential street to Article 59-1 in a manner consistent with the current code.
- Deleted the phrase “to the municipal corporations of” in Section 1.3.2.
- Added “open space” to the definition of frontage for clarity.
- Moved Live/Work Unit from Accessory Residential Uses to Accessory Commercial Uses in Section 3.1.6 as these units are built to commercial building standards and are counted as commercial FAR.
- Modified the “T” language in Division 4.5 and Division 4.6 (previously in Article 59-2) to make it compatible with the Council’s amendment to allow relaxed development standards for MPDUs.
- Clarified which zones are Euclidean versus Floating zones in Article 59-2.
- Matched the definition of Agriculture in 59-1 to the definition under Farming in 59-3.
- Corrected the effective date under Sec. 2.2.1.A.4; should be “on October 30, 2014” instead of “before October 30, 2014”
- Changed color in use table and building type table in Section 3.1.6 for Rural Residential zones.
- Removed “a” and “an” before uses definition in Chapter 3.
- Added sentence from Planning Board draft that “uses allowed within any building type are determined by the uses allowed within the zone under Section 3.1.6.” – in the description of building types allowed in each zone under Article 59-4 – to mitigate any confusion that stems from the building type in the AR, R, and RE-2C zones that reference a Cultural Institution, even though the use is not allowed in the zone.
- Removed the reference for hospitals to go over the FAR for a general building because general building was removed as a building type in residential zones (Section 3.4.6).
- Added the following PHED recommendations: 1) changed the wall or fence height requirement from 5 feet to 3 feet (Section 3.5.14.E.2.a.iv); 2) allow a Drive-Thru that cannot meet the limited use standards to apply for a conditional use approval (Section 3.5.14.E.2.a.vi); and 3) added

- conditional use standards (Section 3.5.14.E.2.b). All of this language was accidentally left out of the December 16 PHED draft and thus have been added to the Council draft.
- Corrected second (date of adoption) in the Country Inn zone (Section 3.5.3.A.2) to the date of adoption minus one.
 - Corrected the use standard (Section 3.5.11.A.2.b.vi) that deals with residential or office space in connection with the Combination Retail to match current code.
 - The road requirement for Clinic (up to 4 practitioners) was made consistent with other provisions: “Business, arterial, or higher roadway” was changed to “business district street or higher classification”.
 - Added Detached house in the R-40 zone to the Established Building Line language (EBL) in Article59-4 (accidentally left out from the Planning Board draft).
 - Added a cross-reference in the definition of “setback, side street” to the text concerning measuring setbacks for corner lots in Article59-4.
 - Added “Maryland” before “licensed engineer or surveyor” in EBL language in Subsection 4.4.1.A.3.f.
 - Added back in language to Section 4.1.2 requiring that every new building must be on a lot and only one detached house per lot is allowed in the Ag, Rural Residential, and Residential zones, with specific references to exceptions (deleted in error by plain English edits).
 - Clarified density provisions in the Agricultural and Rural Residential zones (R and RC density expressed in units/acre; AR and RNC zone expressed in lots/acre because there is a site size that’s different from lot size).
 - Added “front” setback encroachment for HVAC units under encroachment language in Section 4.1.7.B.6.b; allowed by the current code and accidentally removed in the Planning Board draft.
 - Added section references for open space to development standards tables in Article 59-4.
 - Added “or” to R-200 tables for Principal building height for the purpose of clarification.
 - Corrected the type of open space a developer must provide in the Optional Method (Article 59-4) Employment zones (LSC is public; EOF is amenity) under Article 59-4.
 - Removed section reference to 4.1.8.A under the optional method development tables in the R-20 and R-10 zones; these references were an incorrect carry over from an earlier draft
 - Corrected parking requirement for Self-Storage Facility (Section 6.2.4, previously Section 7.2.4); a row of numbers was accidentally left out and the metric was incorrect.
 - Replaced the notice standards for a building permit sign under Division 7.5 (previously Division 8.5) with a reference to Chapter 8 so that there is no conflict between Chapter 59 and Chapter 8
 - In Article 7, renamed the Hearing Examiners’ “propose decision” to “decision”; the right to appeal to the Board of Appeals is unchanged.