

A Zoning Rewrite Team Green Paper

**Initial ideas for discussion and testing
to create a simpler ordinance based
on sustainability and quality of place.**



8787 Georgia Avenue
Silver Spring, MD 20910
301.495.4500
www.MontgomeryPlanning.org

I. Allowed Land Uses: A Three-Tier System

*By Lois Villemaire, Project Manager
Damon Orobona
Joshua Sloan*

March 11, 2009

Contents

Introduction	2
Problem Statement	3
Background	3
Proposed Solution	3
Summary & Example	5
Selected Resources	6

Introduction

Allowed land uses are currently listed at the beginning of every division of Article 59-C of the Zoning Ordinance. Typically after the establishment and intents sections of the zones, land uses are listed in tables by group and specific use. For example, in the CBD division (59-C-6), Section 59-C-6.22. Land Uses states that, “No use is allowed except as indicated in the following table”. These tables then delineate *permitted uses* and *special exception uses*.

The diagnosis of the Zoning Ordinance, as summarized in the “Zoning Discovery” publication, has shown that many of our land uses are outdated, redundant, and unnecessarily confusing. Further, many special exception requirements are simply development standards that augment the underlying zone’s development standards. For example, a private ambulance or rescue squad is allowed if additional area, frontage, and setbacks are maintained.

This paper briefly outlines a method to consolidate, streamline, and rationalize the land uses allowed in Montgomery County. The guiding principle of further land use analysis is the impact – aesthetic and physical – of each use on adjacent and local properties.

Problem Statement

The Montgomery County Zoning Ordinance does not provide adequate, rational, or contemporary land use guidance. A concise and systematic format will ensure that the following objectives are met:

1. Allowed land uses should reflect current residential, commercial, industrial, and mixed development demands.
2. Allowed land uses should be accurately and concisely defined and illustrated.
3. Allowed land use regulation should reflect the impacts of the use on adjacent and local properties.

Background

Over time, the Zoning Ordinance has evolved from five zones with few uses elaborated to over one-hundred zones and over four-hundred allowed uses. In fact, the original commercial and industrial zones allowed all residential uses, but listed prohibited uses rather than allowed uses. This “cumulative” system was replaced by an intricately detailed system of listing minutely differentiated uses.

Each new zone was accompanied by a land use table and it seems rare that new tables were cross-checked with previous ones. Thus, use “groups” – such as residential, manufacturing, commercial, etc. – are not listed in the same order in each table. Further, uses are sometimes under

one group heading, sometimes in another. Last, redundancy in terminology such “shoe and hat repair shops” and “shoe repair shops” wastes space, time, and effort.

Zoning by minutely targeted text amendment and to accommodate extremes has led to a land use policy with no comprehensive vision and no ability to smoothly adapt to changes in technology or economic shifts.

Rewrite Team Solution

After diagnosis of the existing state of our land use policy and research into contemporary law and the efforts of several other jurisdictions, the zoning rewrite team has come to several conclusions:

1. Land uses should be rationalized into several groups and subgroups that will be consistent throughout each district.
2. Land uses should be broad enough to cover meaningless differences and narrow enough to ensure adverse impacts are regulated. Proper definitions, illustrations, and examples will help with this.
3. The differential impact of each use lends itself to a tiered system of permitted, conditional, and special uses that follow progressively rigorous reviews.

Each of these conclusions is discussed below.

Land Use Categories

First, a general provisions section will cover uses allowed in every district, such as public uses, parks, railroad rights-of-way, etc. Second, each district will have a land use

table that is consistent – maintaining the same categories, subcategories, and order of presentation.

Use groups:

- Agricultural
- Residential
- Institutional and Civic
- Commercial
- Industrial
- Other

Within these, various subgroups for more complicated uses will be established. For example, a broad category of “Household Living” will be broken into “Accessory Apartments”, “Dwellings, Detached”, “Dwellings, Semi-Attached”, “Live/Work Units,” etc.

An important feature of this system is that aspects of the cumulative ordinance of 1928 will return. As one moves from the agricultural through the low-density residential, medium-density residential, high-density residential, to the mixed commercial/residential districts, each district allows a greater diversity of uses. This is appropriate for a county that thrives on nodes of intense use along transportation corridors and saves wedges of rural landscape.

This is an example of a framework for analyzing agricultural uses:

AGRICULTURAL		
Agricultural processing	P	Need a good definition
Equestrian facility	C	

Farmer’s market	C	Combine farm & country markets
Farming	P	Need good definition
Grain elevator	C	P accessory to farming
Milk plant	C	P accessory to farming
Sawmill	C	P accessory to farming
Seasonal sales	P	Includes Xmas tree sales, pumpkins, etc
Nursery, horticultural, wholesale or retail	P	
Winery	SE	

Definitions and Illustrations

One important requirement of this system is that each use is given a definition with illustrations and examples to ensure that extremes do not have to be codified and reasonable interpretations can be made. Household living arrangements and dwelling unit types is an excellent example. Our current set of terms leaves many applicants and regulatory agencies scratching their heads as to the differences and exact intent of some dwelling types. Illustrations and examples of defined land uses clarify the meaning of a term and offer bases for deciphering the intent.

Permitted, Conditional, and Special Uses

Our current dualistic system of use regulation can easily overburden applicants of some uses and under-regulate others. In most cases, if only a further setback is required of a particular use, it is categorized as a special exception, which entails a far more burdensome application process than is necessary. Worse, to alleviate this

situation, development standards are placed in definitions, footnotes, or other sections of the code.

A *permitted use* is allowed in a district by right when that use is built in conformance with the standards of the zone. Some permitted uses will be approved by building permit, some by site plan.

A *conditional use* is a use that is permitted in a district, but that must comply with specific conditions and/or restrictions that may limit some aspect of that use. In some cases, this may require greater setbacks than typically required. In others, it may require greater regulation of visual buffering or aesthetic controls.

Thus, conditional uses could be split into two types: Type 1 (subject to additional non-discretionary standards) and Type 2 (subject to additional discretionary standards). The former requirement may proceed as a permitted use and can be regulated by the Department of Permitting Services. The latter requirements would require a site plan to be approved by the Planning Board.

The term “*special uses*” replaces special exceptions, because they are not “exceptions” to any rule. They are allowed uses if the Board of Appeals finds that they meet the most stringent requirements of regulatory review. But these special uses need to be reviewed, rationalized, and assured a process that ensures proper documentation,

zoning, and design review are analyzed.

Summary & Example

These methods work together to form a more cohesive and comprehensive approach to land use. Applicants, regulatory bodies, and citizens will have a clearer understanding of what is allowed where and under what circumstances.

An excellent example of a controversial topic that leads to many over-heated public hearings is provided by the general topic of “group living”. In this case, our current system has several terms that are hard to understand, overlap, and are not regulated by impact. They have arisen by an ad-hoc system based on which applicant wanted to build something or which neighborhood wanted to prohibit something. The first objective is to define and illustrate what each type of group living arrangement is. The second is to rationalize the table and assign reasonable regulatory processes to the uses.

The proposed system will ensure that any use that houses a number of unrelated individuals in one building will be placed within the same general category for ease of location. Then the uses will be listed and judged according to impact. In many cases, these uses have no more impact on a neighborhood than other permitted uses and, thus, will be permitted. In other cases, typically as the number of individuals increases, greater setbacks, parking mitigation requirements, etc. will be required – these would be appropriate as conditional uses that are publicly discussed during a site plan hearing. In more extreme cases, for example in low-density residential neighborhoods, it makes sense to allow certain group living arrangements (rather

than simply prohibit the use altogether) if the applicant can show the more rigorous standards of a special use permit can be met.

Systematic categorization, tiered regulatory review, and concise and illustrative definitions will serve as the foundation for the new zoning ordinance districts and standards.

Selected Resources for Green Papers I & II

Texts:

- Anderson, Robert, *Anderson's American Law of Zoning*, 4th ed, New York, Clark Boardman, Callaghan, 1996.
- "The Conditional Use Permit", Governor's Office of Planning and Research, The Planner's Training Series, Sacramento, CA, August, 2007.
- Easley, Gail, "Conditional Uses: Using Discretion, Hoping for Certainty", *Zoning Practice*, May 2006.
- Elliott, Donald, *A Better Way to Zone*, Washington DC, Island Press, 2008.
- Freilich, Robert, et.al, *21st Century Land Development Code*, Chicago, APA, 2008.
- Kushner, James, *Comparative Urban Planning Law*, Carolina Academic Press, 2003.
- Markham, Lynn, "Conditional Uses: Part 1", *The Land Use Tracker*, 2:4, Spring 2004.
- Rohan, Patrick, *Zoning and Land Use Controls*, Matthew Bender/Lexis Nexis, 2001.

Jurisdictions Researched:

- Stafford County, VA
City of Port Orange, FL
Ocean City, MD
Northbrook, IL
Hanover, PA
County of Chesterfield, VA
Town of Carrboro, NC