

Ordinance No: 16-41
Zoning Text Amendment No: 09-05
Concerning: Burtonsville Overlay Zone – Allowed
Uses
Draft No. & Date: 1 - June 17, 2009
Introduced: June 23, 2009
Public Hearing: July 28, 2009
Adopted: October 27, 2009
Effective: October 27, 2009

**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 Navarro

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the land uses allowed in the Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan; and
- generally amend the Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan.

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

DIVISION 59-C-18	“Overlay Zones”
Sec. 59-C-18.14.	“Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan”
59-C-18.142	“Regulations”

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.*

OPINION

Zoning Text Amendment (ZTA) 09-05, sponsored by Councilmember Navarro, was introduced on June 23, 2009. There are 3 zones beneath the Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan (Burtonsville Overlay zone): I-1, I-3, and OM. The permitted land uses in each zone are different. The Planning Board denied a preliminary plan for a self-storage facility because the Fairland Master Plan did not envision a self-storage use in the I-3 zone.¹ A recent Circuit Court opinion overturned the Planning Board's opinion. The Circuit Court determined that the Burtonsville Overlay zone gave a property owner the right to use any of the uses allowed in the I-1, I-3, and OM zones. ZTA 09-05 would sustain the Planning Board's interpretation of the allowable uses in the zone.

The Planning Board recommended approval of ZTA 09-05; it implements the intent of the 1997 Fairland Master Plan. The Planning Board suggested different text changes to accomplish the intent of ZTA 09-05.

On July 28, 2009 the Council held a public hearing on ZTA 09-05 to receive testimony concerning the proposed text amendment. The Executive recommended that ZTA 09-05 should only be approved if it includes a grandfathering provision for any preliminary plan or site plan application filed before September 1, 2009. The Executive is concerned about the fairness of removing allowable uses under the circumstances presented by the self-storage facility.

The representative of the self-storage facility (Siena Corporation) characterized ZTA 09-05 as "unlawful, unfair, unfortunate, and a textbook example of abuse of powers." In their opinion, it is targeted to one property and one specific use.

The East County Citizens Advisory Board urged support for ZTA 09-05. The Montgomery Civic Federation supported ZTA 09-05, but urged caution about reducing land for necessary industrial uses. The residents of Valley Stream Avenue urged approval of ZTA 09-05; they wanted attractive buildings not visible from highways, a diversity of businesses, safe access to Route 198, and the completion of Dino Drive by the County. Stuart Rochester urged support for ZTA 09-05.

The text amendment was referred to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation.

On October 8, 2009 the Planning, Housing, and Economic Development Committee held a worksession to review the amendment. At the conclusion of that worksession, the Committee (2-0-1; Councilmember Elrich generally approves of ZTA 09-05 but would recommend revisions to add to the list of uses prohibited in the zone) recommended approval of the proposed ZTA with revisions to allow recently approved preliminary plans to proceed under the conditions of their approval. The Committee (3-0) believed that the substantial investment made by the holder of a recently approved preliminary plan justified a grandfathering provision in this instance.

Councilmember Navarro recommended an additional amendment to ZTA 09-05. The amendment added to the list of prohibited uses in the Burtonsville Overlay zone; it also grandfathered current uses that would be made non-conforming by the adoption of her amendment.

¹ The approval of a preliminary plan requires a finding that the plan substantially conforms to the applicable master plan; §50-35(I).

The District Council reviewed ZTA 09-05 at a worksession held on October 27, 2009 and agreed with the recommendations of the PHED Committee and with the amendments proposed by Councilmember Navarro.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 09-05 will be approved as amended.

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-18 is amended as follows:

2
3 Division 59-C-18. Overlay Zones.

4 * * *

5 **Sec. 59-C-18.14. Overlay zone for the Burtonsville Employment Area of the**
6 **Fairland Master Plan.**

7 * * *

8 **59-C-18.142. Regulations.**

9 (a) **Land uses.** [The following uses are allowed in the Burtonsville employment
10 overlay zone:]

11 (1) All permitted or special exception uses [in the I-1, I-3, and O-M zones as
12 shown in Sections 59-C-4.2 and 59-C-5.2 except] in a lot or parcel's
13 underlying zone are allowed; however,

14 (a) all permitted uses in the I-1, I-3, and O-M zones are permitted for
15 any tract of land with a preliminary plan approved by the Planning
16 Board after October 27, 2006 but before October 27, 2009; and

17 (b) the following uses are prohibited:

18 Adult entertainment business

19 Agricultural uses

20 Aircraft parts, sales and services, including the sale of fuel for
21 aircraft only

22 Automobile parts, sales and services, including but not limited to tire
23 sales and transmission service

24 Automobile filling stations

25 Automobile repair and services

26 Automobile sales, indoors and outdoors

27 Automobile, truck and trailer rentals, outdoor

- 28 Bakery
- 29 Blacksmith shops[,] and machinery shops
- 30 Bottling plant
- 31 Building materials and supplies, wholesale and retail
- 32 Confectionery production
- 33 Contractor's storage yards
- 34 Dry cleaning plants
- 35 Electroplating and manufacturing of small parts such as coils,
36 condensers, transformers, and crystal holders
- 37 Food production, packaging, packing and canning [of]
- 38 Fuel storage yards
- 39 Highway fuel and food service
- 40 Ice manufacturing and storage
- 41 Laundry plants
- 42 Lumberyards
- 43 Manufacturing of light sheet metal products
- 44 Manufacturing, compounding, assembling or treatment of articles
45 from the following previously prepared materials: bone,
46 cellophane, plastic, canvas cloth, cork, feathers, felt, fiber, fur,
47 hair, horn, leather textiles, yarns, glass, precious or semi-
48 precious metals or stones, and tobacco
- 49 Manufacturing, compounding, processing or packaging of cosmetics,
50 drugs, perfumes, pharmaceuticals, toiletries and products
51 resulting from biotechnical and biogenetic research and
52 development
- 53 Manufacturing, fabrication, and/or subassembly [or] of aircraft or
54 satellite parts, components, and equipment

- 55 Manufacturing of musical instruments, toys, novelties, and rubber
- 56 and metal stamps
- 57 Manufacturing of paint not employing a boiling or rendering process
- 58 Manufacturing of pottery and figurines or other products using
- 59 previously pulverized clay and kilns fired only by electricity
- 60 or gas
- 61 Off-loading and transfer sites for storage of sand, gravel or rocks
- 62 Paper products manufacturing
- 63 Parking of motor vehicle, off-street, in connection with any use
- 64 permitted in a commercial zone
- 65 Recycling facility
- 66 Rifle or pistol ranges, indoor
- 67 Sawmills
- 68 Warehousing and storage services:
- 69 -Industrial and commercial users
- 70 -Self-storage facilities
- 71 Stockyards
- 72 Stoneworks
- 73 Storage, outdoor
- 74 Tinsmith and roofing services
- 75 Trucking terminals
- 76 Wholesale trades limited to sale or rental of products intended for
- 77 industrial or commercial users
- 78 Wood products manufacturing

79 In cases where uses are [permitted in one zone but] allowed by special
80 exception [in another zone], the special exception [provision takes
81 precedence] provisions must be satisfied. Any tract of land with a use-and-

82 occupancy permit issued before October 27, 2009 that otherwise would
83 have been made non-conforming because of Zoning Text Amendment
84 09-05 is a conforming use, and may be modified, repaired, or
85 reconstructed.

86 (2) The following retail commercial uses are [permitted] allowed without
87 regard to the underlying zone:

88 Antique shops, handicrafts, or art sales.

89 Barber or beauty shop.

90 Banks.

91 Bookstores.

92 Drugstore.

93 Eating and drinking establishment, excluding a drive-in.

94 Express or mailing offices.

95 Florist.

96 Food and beverage store.

97 Newsstand.

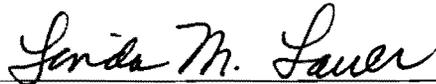
98 Photographic and art supply stores.

99 Shoe repair shops.

100 * * *

101 **Sec.2. Effective Date.** This ordinance takes effect immediately upon the date of
102 Council adoption.

103
104 This is a correct copy of Council action.

105
106 

107 Linda M. Lauer, Clerk of the Council