

Testimony to the Montgomery County Council:

ZTA 23-09, Farming – Incidental Outdoor Stays

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While the long-term public benefits of the preservation of open spaces are well recognized, the challenge of keeping open spaces in place when “highest and best use” valuations are placed on them, results in the land being converted to the use that pays the most in the short-term. That is what happens when cities, towns and businesses expand onto the “open” land that surrounds them. Zoning is used to place some controls on how those open spaces are developed and governmental bodies require some land to be set aside for public services. Governments also purchase land for recreational use but are limited in how much they can afford to spend on buying and maintain open space.

However, some forward-thinking folks in Montgomery County figured out a way to preserve open space without the County Government having to buy or maintain that land. In October of 1980, the Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County was approved and adopted. The implementation of the plan resulted in the creation of the Agricultural Reserve (AR). There were private residences, businesses and parkland inside the AR, but most of the land was farmland. Farmland is open space and keeping it as farmland preserves open space...

To remain as open space, the number of new residences built in the AR had to be minimized. To do that, the zoning was changed from one house every 5 acres to one house every 25 acres. As you might guess, the new zoning change reduced development potential and the dollar value of the land.

To compensate farmland owners, they were permitted to keep one “buildable” Transferrable Development Right (TDR) for each 25 acres (basically a large building lot they could sell) and sell the other 4 TDRs (1 for each 5 acres) to developers who could use those TDRs to up zone in certain receiving areas down county. Farmland owners could choose when they sold their building lots and their extra TDRs and TDR values fluctuated widely. As you may guess, many farmers were not happy with the implementation of the new zoning and some likely didn’t end up being compensated adequately if they had to sell their TDRs when the value was low. That could have happened to farmers who needed retirement income, for instance.

The other way that residential development was reduced even further was the use of several programs that paid, or gave tax benefits, to farmland owners to extinguish some of the “buildable” TDRs on those 25-acre pieces of land or preserve entire

parcels of land from development altogether. Many potentially buildable lots have been “extinguished”, at considerable expense, with the land being permanently zoned agricultural.

Putting motel units (the definition of a motel is an establishment which provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area) onto preserved parcels of farmland will likely create legal challenges for the landowners as that would violate their contract to keep the land agricultural. And if they should get permission to pull their land out of agricultural preservation, landowners will have to pay back the benefits previously received. Even if Montgomery County decides to designate operating a motel as a “farming activity”, that doesn’t mean that farmland preservation programs, that are not county-based, will buy into such nonsense.

County farmers have generally adapted to the establishment of the AR and its zoning configuration , but continue to struggle, as all farmers do, with the ups and downs of agricultural product prices. In the ensuing 40 plus years, farmers have looked for ways to stay profitable, and Zoning Text Amendments (ZTAs) have been passed to accommodate those efforts. But all those ZTAs have been predicated on the new activities being accessories to farming.

Agritourism is one increasingly popular way to show people where their food comes from while generating additional income for farmers. Growing grapes and producing wine has become popular and wedding venues are permitted at wineries that grow significant quantities of their own grapes. The Farm Alcohol ZTA allows for the establishment of breweries, distilleries and cideries, along with sales and tasting rooms, on farmland where some of the input materials are grown, although the required connection to products grown on the farm where these businesses are located has been minimized.

Existing law states that farming includes the following accessory uses: “Accessory agricultural education and tourism activities conducted as part of a farm’s regular operations, with emphasis on hands-on experiences and events that foster increased knowledge of agriculture, including cultivation methods, animal care, water conservation, Maryland’s farming history, the importance of healthy eating and locally grown foods. Allowed activities include corn mazes, hay rides, and educational tours, classes and workshops.” ZTA 23-09 proposes to include overnight stays in up to 10 detached motel units as a farming activity. If running a commercial motel operation can be redefined as farming, then what isn’t farming???

Besides, since nearly all of a farm’s “regular operations” are carried out during daylight hours, overnight stays become somewhat superfluous with regard to education and marketing activities.

In addition, by eliminating the existing requirement for a relationship between the square footage of buildings used for farm operations and the maximum amount of

building space allowed for education or tourism (current maximum is 10%) the tie between the farm size and the motel business is totally broken. Anyone could buy a small piece of AR land, grow a few plants or install a small petting zoo, and put in a 10-unit motel! So after spending years and a lot of money reducing residential density in the AR, this ZTA would create the equivalent of almost six (4/7 of 10) new residences in the AR. And that's just on one "farm". Interestingly, these 10-unit neighborhoods would be larger than many small subdivisions...

Farmers weren't the only MOCO citizens who incurred a financial burden by the establishment of the AR. County residents living outside the AR also pay a price for the preservation of open space due to at least a perceived loss of revenue from the reduced tax base on rural lands. (of course, there is also a much-reduced need for county-provided services on rural land, as well!) In addition to the long-term environmental benefits and the preservation of water, air, land and energy resources for all MOCO residents, they should also be the primary beneficiaries of the immediate benefits from the AR. All Montgomery County residents are just a short drive from the AR so increasing residential density in the AR is not necessary for our county residents to take advantage of the benefits offered there.

Where were you in 1980 when the **Functional Master Plan for the Preservation of Agriculture and Rural Open Space** <https://montgomeryplanning.org/wp-content/uploads/2016/09/PreservationAgricultureRuralOpenSpaceFunctionalMasterPlan1980ocr300.pdf> was approved and adopted? I ask that question because a number of the current County Council members were either too young at that time to be aware of county government activities or weren't yet living in Montgomery County. This document is the basis for the zoning regulations for the AR and is the starting point for understanding how subsequent ZTAs, including the one being discussed presently, fit into the Master Plan process and Montgomery County's effort to balance land use and preserve open space.

I could be considered a "poster boy" for the Agricultural Reserve because in the early 1980's, I was in the process of buying a farm. The one I bought bordered Little Bennett Regional Park's northeastern edge. I purchased it from speculators who had hoped to flip it to the county for a profit. But that didn't happen, so they were non-farmers who were stuck with a farm... The down zoning that occurred with the establishment of the AR reduced land values enough so that I was able to purchase the 129-acre farm. I negotiated with the sellers to keep one TDR for each 25 acres (a total of 5 "buildable" TDRs) and the sellers kept the other 20, and presumably sold them at some point in the future. The TDRs that were separated from my farm were some of the first TDRs to be recorded.

I sold 26 acres of the farm to my good friends (how often do you get to pick your neighbors!) and we partner in the business of pasture-raising beef cattle and hay. I then "sold" 2 of my remaining TDRs through the county's Building Lot Termination (BLT) program, reserving the last two TDRs, one for my home and one for a possible

future home for one of my children. My BLT contract requires that, except for a lot reserved for one of my children, the rest of the farm is to remain as farmland in perpetuity.

I will refer you to one more document, which was published as part of a 2013 conference called Farming At Metro's Edge.
https://www.mocoalliance.org/uploads/4/8/8/6/48867647/fame_report.pdf The document is titled "Local Agriculture: Where We've Been, Where We Are and Where We're Headed, co-authored by Jeremy Criss, former head of the county's Office of Agriculture. Although it is dated, it will familiarize you with the process, programs and progress involved in agricultural land preservation in Montgomery and adjoining Frederick County.

Montgomery County's Agricultural Reserve is a practical, elegantly simple and relatively inexpensive way for the county to preserve open space. And although farming will not usually be the "highest and best use" in terms of land values and profit potential, covering our open spaces with the green plants that are nature's solar collectors results in the production of local food and feed without covering the land with impervious surfaces and rooftops.

There will always be those who see the land in these open spaces, kept relatively inexpensive by the lack of development, as an opportunity for a "higher" economic purpose. And it takes real discipline to resist the temptation to develop a little here and a little there. But imagine for a moment what would have become of New York's Central Park, the DC Metro area's Rock Creek Park or our own county parks and recreation areas if a ZTA like this one had been applied to those parcels of land before they could be permanently protected.

Let's not allow the ZTA process to destroy over 40 years of solid, long-term planning designed to make Montgomery County a great place to live for future generations. I oppose ZTA 23-09 and believe it should be withdrawn.