

Ordinance No.: 18-39  
Zoning Text Amendment No.: 17-06  
Concerning: Agricultural Zone –  
Transfer of Development  
Rights Requirements  
Draft No. & Date: 3 - 1/23/18  
Introduced: July 25, 2017  
Public Hearing: September 19, 2017  
Adopted: January 23, 2018  
Effective: February 12, 2018

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

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Lead Sponsor: Councilmember Floreen

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- exempt certain dwellings in the Agricultural Zone from the calculation of density under certain circumstances;
- change the name of “Farm Tenant Dwelling” to “Farm Labor Housing Unit”; and
- generally amend the provisions concerning the special requirements for the transfer of density

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

DIVISION 59-1.4.	“Defined Terms”
Section 1.4.2.	“Specific Terms and Phrases Defined”
Division 3.1.	“Use Table”
Division 3.3.	“Residential Uses”
Section 3.3.3.	“Accessory Residential Uses”
Section 3.5.6.	“Lodging”
DIVISION 59-4.	“Development Standards for Euclidean Zones”
DIVISION 59-4.2.	“Agricultural Zone”
Section 4.2.1.	“Agricultural Reserve Zone (AR)”
Section 6.2.4.	“Parking Requirements”
Section 6.3.4.	“Rural Open Space”

OLD ZONING ORDINANCE TO NEW ZONING ORDINANCE SECTION CROSS  
REFERENCE

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

*Underlining indicates text that is added to existing law by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from existing law by 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 No. 17-06, Lead sponsor Councilmember Floreen, was introduced on July 25, 2017. ZTA 17-06 would amend the Agricultural Reserve (AR) zone, replace the “Farm Tenant Dwelling” use with “Farm Labor Housing Unit”, and establish conditions for those units.

In its report to the Council, the Montgomery County Planning Board recommended approval as introduced. ZTA 17-06 was the product of the Planning Department’s re-work of ZTA 16-02.

The September 19, 2017 public hearing was rescheduled from September 12, 2017. There were five speakers, including the Planning Board Chair. The public hearing generally supported the approval of ZTA 17-06.

The Agricultural Preservation Advisory Board asked for three amendments:

- 1) In the event that a Farm Labor Housing Unit in existence before June 1, 1958 is rebuilt, the rebuilt unit may be rented to a tenant other than an agricultural worker.
- 2) A covenant should only be required after a building permit application for the Farm Labor Housing Unit is approved.
- 3) Delete the limitation on the number of mobile homes that may be approved as Farm Labor Housing Units.<sup>1</sup>

One landowner objected to any requirement for a covenant for Farm Labor Housing Units as an undefined requirement. In his opinion, if a covenant is required, all aspects of the covenant should be defined in code and should not be required before a building permit. He also believes that a TDR for an existing dwelling should not be required.

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

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<sup>1</sup> The Planning Department worked with the agricultural industry and the agricultural preservation interest to propose the provisions of ZTA 17-06. These ideas were proposed after the Planning Board transmitted ZTA 17-06 to the Council.

On November 27, 2017, the PHED Committee (3-0) recommended approval of ZTA 17-06 with three amendments:

- 1) Delete the limit on the number of Farm Labor Housing Units that may be mobile homes.
- 2) Add the following provision, consistent with the grandfathering provision for other structures: "In the event a Farm Labor Housing Unit in existence before June 1, 1958 is rebuilt, the rebuilt unit may be rented to a tenant other than an agricultural worker. The rebuilt dwelling cannot exceed the size of the existing unit."
- 3) Revise the provision concerning the filing of a covenant so that it must be filed before the issuance of a building permit (not before an application for a building permit is filed).

The Committee recommended retaining the current provision that allows a shared septic system for Farm Labor Housing Units.

The District Council reviewed Zoning Text Amendment No. 17-06 at a worksession held on January 23, 2018. The Council agreed with the Committee's recommendation to approve ZTA 17-06 as amended.

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. 17-06 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:*

**Sec. 1. ARTICLE 59-1 is amended as follows:**

**Division 1.4. Defined Terms**

\* \* \*

**Section 1.4.2. Specific Terms and Phrases Defined**

In this Chapter, terms that are not specifically defined have their ordinary meaning.

The following words and phrases have the meanings indicated.

\* \* \*

**Farm [Tenant Dwelling] Labor Housing Unit:** See Section 3.3.3.E.1

\* \* \*

**Sec. 2. ARTICLE 59-3 is amended as follows:**

**Division 3.1. Use Table**

\* \* \*

**Section 3.1.6. Use Table**

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

\* \* \*

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential												Commercial/ Residential			Employment				Industrial		
							Residential Detached								Residential Townhouse			Residential Multi-Unit										
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH
* * *																												
RESIDENTIAL																												
* * *																												
ACCESSORY RESIDENTIAL USES	3.3.3.																											
* * *																												
Farm [Tenant Dwelling] Labor Housing Unit	3.3.3.E	L	L	L	L	L	L	L	L																			

\* \* \*

## **Division 3.3. Residential Uses**

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### **Section 3.3.3. Accessory Residential Uses**

#### **A. Accessory Apartment, In General**

\* \* \*

#### **2. Use Standards for all Accessory Apartments**

- a. Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:

\* \* \*

- iv. An Accessory Apartment must not be located on a lot where any other allowed rental Residential use exists; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm [Tenant Dwelling] Labor Housing Unit or a Guest House.

\* \* \*

#### **E. Farm [Tenant Dwelling] Labor Housing Unit**

##### **1. Defined**

Farm [Tenant Dwelling] Labor Housing Unit means a dwelling unit accessory to the farm and under the control of the owner or operator of the farm on which the dwelling unit is located and occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis. Farm [Tenant Dwelling] Labor Housing Unit includes [[up to 3]] mobile homes. A Farm [Tenant Dwelling] Labor Housing Unit is not restricted by the definition of household or dwelling unit, and may share a well or septic system or both.

## 2. Use Standards

Where a Farm [Tenant Dwelling] Labor Housing Unit is allowed as a limited use, it must satisfy the following standards:

- a. In the Agricultural and Rural Residential zones, it is excluded from any density calculations[,] if it remains accessory to a farm. If the property associated with a Farm [Tenant Dwelling] Labor Housing Unit is subsequently subdivided so that it is no longer accessory to the farm as defined in Section 59.3.7.4.B, the Farm [Tenant Dwelling] Labor Housing Unit is included in the density calculations.
- b. The maximum number of tenants in a single dwelling is limited by well and septic capacity.
- c. In the RE-2C zone, only one Farm [Tenant Dwelling] Labor Housing Unit is allowed and it must be a mobile home.
- d. In the Agricultural, Rural Residential, RE-2, and RE-1 zones, a Farm [Tenant Dwelling] Labor Housing Unit in existence before June 1, 1958[,] may be rented to a tenant other than an agricultural worker, if the dwelling meets all applicable health and safety regulations. In the event a Farm Labor Housing Unit in existence before June 1, 1958 is rebuilt, the rebuilt unit may be rented to a tenant other than an agricultural worker. The rebuilt dwelling may not exceed the floor area of the pre-existing dwelling.
- e. In the RE-2, RE-1, and R-200 zones, only one mobile home is allowed.
- f. The owner must record a covenant against the property to which the Farm Labor Housing Unit is accessory, with

restrictions that satisfy Section 3.3.3.E. The covenant must be in a form approved by the County Attorney's Office, the County's Office of Agriculture, and the Planning Board. The owner must record the covenant before [[filing an application for]] the Department of Permit Services approves a building permit for the unit.

\* \* \*

### **Section 3.5.6. Lodging**

\* \* \*

### **B. Bed and Breakfast**

\* \* \*

#### **2. Use Standards**

a. Where a Bed and Breakfast is allowed as a limited use, it must satisfy the following standards:

i. A Bed and Breakfast is prohibited in a dwelling unit that also provides guest rooms for roomers, or in a Farm [Tenant Dwelling] Labor Housing Unit, or on a site that includes an Accessory Apartment.

\* \* \*

### **Sec. 3. Article 59-4 is amended as follows:**

#### **Division 4.1. Rules for All Zones**

\* \* \*

#### **Section 4.1.2. Compliance Required**

\* \* \*

C. In the Agricultural, Rural Residential, and Residential Detached zones, only one detached house is allowed per lot, except as allowed under Section 3.1.6 for a Detached Accessory Apartment, Farm [Tenant Dwelling] Labor



Housing Unit, or Guest House, or under Section 7.7.1.A.1 for an Existing Structure on October 30, 2014.

\* \* \*

## **Division 4.2. Agricultural Zone**

### **Section 4.2.1. Agricultural Reserve Zone (AR)**

\* \* \*

## **D. Special Requirements for the Transfer of Density**

### **1. In General**

a. Under Section 4.9.15.B and in conformance with a general plan, master plan, or functional master plan, residential density may be transferred at the rate of one development right per 5 acres minus one development right for each existing dwelling unit, from the AR zone to a TDR Overlay zone. A development right is not required for the following dwelling units on land in the AR zone as long as the dwelling unit remains accessory to Farming and the principal dwelling:

[a] i. Farm [Tenant Dwelling] Labor Housing Unit[,] and

[b. Attached Accessory Apartment,]

[c] ii. Detached Accessory Apartment[,] and

d. Bed and Breakfast.]

b. If a property is subdivided so that any Farm Labor Housing Units or Detached Accessory Apartments are no longer accessory to the farm as defined in Section 59.3.7.4.B, [dwellings associated with these uses] any Farm Labor Housing Units or Detached Accessory Apartments are not excluded from the calculation of density and must have retained a development right in addition to the retained development right for any

newly created lot; however, these dwellings are excluded from  
the density calculation and need not have a retained  
development right if:

- i. the dwelling remains accessory to Farming and the  
principal dwelling; or
- ii. the subdivision is for the sole purpose of creating a child  
lot.

- c. The density transfer provisions are not applicable to publicly  
owned rights-of-way for roads, streets, alleys, easements, or  
rapid transit routes classified in the AR zone.

\* \* \*

**Sec. 4. DIVISION 59-6 is amended as follows:**

\* \* \*

**Section 6.2.4. Parking Requirements**

\* \* \*

**B. Vehicle Parking Spaces**

		Agricultural, Rural Residential, Residential, and Industrial Zones	Commercial/Residential and Employment Zones		
			Within a Parking Lot District or Reduced Parking Area	Outside a Parking Lot District or Reduced Parking Area	
USE or USE GROUP	Metric	Baseline Minimum	Baseline Minimum	Baseline Maximum	Baseline Minimum
* * *					
ACCESSORY RESIDENTIAL USES					
* * *					
Farm [Tenant Dwelling] <u>Labor Housing Unit</u>	Dwelling Unit	1.00	--	--	--
* * *					

#### Section 6.3.4. Rural Open Space

##### A. General Requirements

\* \* \*

#### 4. Uses in Rural Open Space

- a. In the RC zone, the following uses allowed under Article 59-3 are prohibited in any rural open space area:

\* \* \*

- vii. Farm [Tenant Dwelling] Labor Housing Unit not associated with a farm in the rural open space;

\* \* \*

#### Sec. 5. OLD ZONING ORDINANCE TO NEW ZONING

**ORDINANCE SECTION CROSS REFERENCE is amended as follows:**

Old ZONING ORDINANCE	New ZONING ORDINANCE
Article 59-G. Special Exceptions, Variances, and Nonconforming Uses.	
* * *	
Division 59-G-2. Special Exceptions— Standards and Requirements.	Division 3.2. thru Division 3.7.
* * *	
Sec. 59-G-2.00.1. Accessory dwelling.	Sec. 3.3.3.E.2. Use Standards [Farm [Tenant Dwelling] <u>Labor Housing Unit</u> ]
* * *	
Sec. 59-G-2.21.4. Farm tenant mobile home.	Sec. 3.3.3.E.2. Use Standards [Farm [Tenant Dwelling] <u>Labor Housing Unit</u> ]
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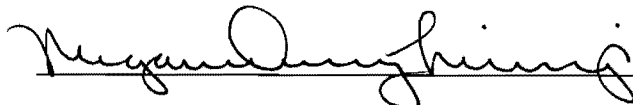
157       **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the  
158 date of Council adoption.

159

160 This is a correct copy of Council action.

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162



163 Megan Davey Limarzi, Esq.

164 Clerk of the Council