


Public Hearing

MEMORANDUM

September 7, 2018

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst 

SUBJECT: Zoning Text Amendment 18-09, Landscape Contractors -- Rural Cluster Zone

PURPOSE: Receive testimony on ZTA 18-09

Zoning Text Amendment (ZTA) 18-09, lead sponsor Councilmembers Hucker and Floreen, was introduced on July 17, 2018. ZTA 18-09 would amend the definition of Landscape Contractor. It would also allow landscape contractors existing before October 31, 2014 in the Rural Cluster Zone to be a permitted use under certain circumstances.

Last year, Councilmembers Hucker and Floreen asked the Planning Department to examine land uses and activities in the Burtonsville area. The Planning Director responded to that request on May 16, 2018. A master plan amendment was not recommended because the only logical outcome of such an amendment would be the reaffirmation of the existing zones. The Director suggested that "a narrowly targeted zoning text amendment may be the only appropriate way to resolve inconsistencies among land uses along Sandy Spring Road." ZTA 18-09 responds to that recommendation.

ZTA 18-09 is scheduled for a Planning, Housing, and Economic Development worksession on September 13, 2018.

This Packet Contains

ZTA 18-09
Planning Director's letter, May 16, 2018

© number

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Zoning Text Amendment No.: 18-09
Concerning: Landscape Contractors –
Rural Cluster Zone
Draft No. & Date: 2 – 7/11/2018
Introduced: July 17, 2018
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Councilmembers Hucker and Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the definition of landscape contractors;
- amend the provision for exempted lots, parcels, and buildings in the Rural Cluster zone as it affects landscape contractors; and
- generally amend the provisions for landscape contractors

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

Division 3.5.	“Commercial Uses”
Section 3.5.5.	“Landscape Contractors”
Division 7.7.	“Exemptions and Nonconformities”
Section 7.7.1.	“Exemptions”

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.*

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 59-3.5 is amended as follows:**

2 **Division 3.5. Commercial Uses**

3 * * *

4 **Section 3.5.5. Landscape Contractor**

5 * * *

6 **A. Defined**

7 Landscape Contractor means the business of designing, installing, planting,
8 or maintaining lawns, gardens, hardscapes, water features, outdoor
9 structures, decorative features, stormwater and drainage features, or other
10 [landscaping] activities intended to enhance the appearance or usefulness of
11 outdoor areas [and]. Landscape Contractor also means providing snow
12 removal services with vehicles, equipment, and supplies that are stored,
13 parked, serviced, or loaded at the business location. Landscape Contractor
14 includes tree installation, maintenance, or removal. Landscape Contractor
15 does not include Lawn Maintenance Service (see Section 3.5.14.G, Lawn
16 Maintenance Service).

17 * * *

18 **Sec. 2. DIVISION 59-7.7 is amended as follows:**

19 **DIVISION 7.7. Exemptions and Nonconformities**

20 **Section 7.7.1. Exemptions**

21 * * *

22 **D. Residential Lots and Parcels**

23 * * *

24 **8. Exempted Lots, Parcels, and Buildings in the Rural Cluster Zone**

25 * * *

- 26 c. Any parcel with an existing building on October 30, 2014 is
27 exempt from the minimum lot area and frontage requirement.

28 Any existing building located on any lot or parcel on October
29 30, 2014 is exempt from the minimum side setbacks of the
30 zone.

31 d. Any landscape contractor in the RC zone in operation on
32 October 30, 2014 is a permitted use if it satisfies any master
33 plan or zoning impervious surface limits and is not required to
34 obtain a conditional use, unless:

35 i. the on-site operation as of October 30, 2014 is expanded
36 or enlarged;

37 ii. the on-site operation is diversified to include retail
38 facilities or related uses not in operation before October
39 30, 2014; or

40 iii. the operation is discontinued for a period of 6 months or
41 more.

42 * * *

43 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
44 date of Council adoption.

45

46 This is a correct copy of Council action.

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49 _____
Megan Davey Limarzi, Esq.
50 Clerk of the Council



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 16, 2018

The Honorable Nancy Floreen
The Honorable Tom Hucker
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850


Dear Councilmembers Floreen and Hucker:

Late last year you asked Planning Department staff to review land uses and activities in the Burtonsville area, with a focus on the north side of Sandy Spring Road east of the Burtonsville business district. We agreed to undertake an inventory and analysis of that area and report our findings to you.

I am attaching a brief analysis prepared by our Area 3 Planning team. The paper also reflects discussions with Department of Permitting Services enforcement staff and with a property owner whose properties have received civil citations from enforcement staff. These additional discussions added important context to the inventory and analysis. The paper concludes that narrowly targeted zoning text amendments may be the only appropriate way to resolve inconsistencies among land uses along Sandy Spring Road. As Area 3 staff finalized the analysis, we learned from the owner of the cited properties that he had removed several more intense uses that were particularly problematic under the existing Rural Cluster Zone. The paper reflects this new information and offers additional recommendations in response.

Thank you for the opportunity to evaluate this part of Burtonsville. If you have further questions about the issues and recommendations in this paper, please contact Fred Boyd of the Area 3 Planning team. You may reach Fred at 301 495 4654 or at fred.boyd@montgomeryplanning.org.

Sincerely,


Gwen Wright
Director

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This brief paper reviews existing land use conditions along Sandy Spring Road east of the Burtonsville business district. Area 3 planning staff undertook the review at the request of County Council members Tom Hucker and Nancy Floreen, who wrote the planning director seeking advice on an appropriate approach to evolving land uses in the area.

The paper reviews existing conditions and land uses in this area, including several properties whose activities are under evaluation by the Department of Permitting Services. The paper also provides an analysis of those activities and reviews several options for allowing the activities to continue at their location. It concludes that a narrowly targeted zoning text amendment is the most viable way to proceed, should councilmembers wish to allow these uses.

Existing Conditions

The area evaluated is shown on the accompanying map. It includes approximately 50 properties totaling about 240 acres on the north side of Sandy Spring Road from the US 29 interchange east to approximately Riding Stable Road. An existing PEPCO right-of-way divides the area; properties to the north of the right-of-way are included because they take access from Sandy Spring Road. Apart from a single commercially zoned parcel, this area has been rurally zoned for more than 40 years. Prior to 1981 it was in the county's Rural Zone; it was reclassified to the Rural Cluster Zone following recommendations of the 1981 Eastern Montgomery County Master Plan. In addition to agricultural and low density residential uses, the Rural Cluster Zone allows a modest inventory of other uses, some associated with agriculture. These uses include nurseries, agricultural processing, and landscape contractors. The entire area is also in the Patuxent River Watershed and is therefore under the jurisdiction of the Functional Master Plan for the Patuxent River Watershed.



The 1981 Plan recommended retention of the existing land use pattern north of Sandy Spring Road. It also identified protection of the Patuxent reservoirs as an important land use issue and recommended a series of watershed management actions, including cluster development, retention of natural vegetation and expanded floodplain buffers as ways to preserve the health of watersheds in the area. The 1997 Fairland and 2012 Burtonsville Crossroads plans confirmed land uses in the Patuxent Watershed. Following recommendations of the 1993 Functional Plan, the two plans also recommended limiting expansion of high imperviousness uses in Burtonsville and discouraged uses that would generate more than 10 percent imperviousness elsewhere in the watershed.

While the land use pattern along Sandy Spring Road generally conforms to the existing zoning, the area is not wholly residential in character. There are two farms, one along Sandy Spring Road and one north of the PEPCO right-of-way on Aitchison Road. Some small single family houses are occupied along Sandy Spring Road; others—"pipestem" lots with narrow frontage along the road and long driveways—are located north of the PEPCO right-of-way. Three churches—the Korean Antioch Church, the True Holiness Church, and the New Hope Korean Church—own property on Sandy Spring Road, and a fourth owns land on Riding Stable Road. Houses of worship are permitted by right. Remaining properties on Aitchison and Riding Stable Roads are in residential use.

Baltimore Gas & Electric Company maintains a substation on Sandy Spring Road. The substation operates as a conditional use; the right-of-way is a permitted distribution line. Three nursery or landscaping operations—Shemin Nurseries, Fehr Nurseries and Sundeck Supply—are also located along Sandy Spring Road and operate legally under various provisions of the zoning code. A tree service company has been granted legal nonconforming use status by DPS. Pat's Outdoor Equipment, a farm supply retailer, operates by right on Sandy Spring Road. Four adjoining properties—located between Fehr Nurseries and Sundeck Supply—are under single ownership and are engaged in a variety of commercial activities. These properties are the immediate reason for undertaking this area analysis.

Analysis

Each of the four properties has been the subject of a DPS Zoning and Site Plan Enforcement division evaluation. The Division has issued civil citations or violation notices for each but has taken no further action.

None of the four properties is a record lot; all were created by deed. Each has a main building that was initially constructed as a dwelling unit; the oldest was built in 1927 and the newest in 1960. None appears to be in use as a dwelling. DPS staff based their analysis on site visits and data searches, determining that a variety of commercial uses were operating on the properties. One property, 4500 Sandy Spring Road, houses a recycling facility, a dumpster rental service, and a law office. A second, 4408 Sandy Spring Road, houses a general contractor and a computer consulting business. Two other parcels are used to support these businesses.

DPS analysis determined that the activities on these properties fell into two categories: waste related uses and office and professional activities. No uses in these categories are permitted, either by right or as conditional uses, in the Rural Cluster Zone. *It is important to note that the property owner and his representatives have indicated to planning staff that the waste related uses no longer occupy the property and that remaining uses on the property are associated with landscape contracting. The property owner intends to inform DPS enforcement staff of this change in circumstances.*

The intent of the Rural Cluster Zone is to enable a mix of agricultural activities and low density residential uses; unlike the nurseries and contractors also located in this area, these uses are neither agricultural in nature or associated with agriculture, so adding them to the inventory of uses allowed in the zone is inappropriate. The uses are not conforming, so they cannot be grandfathered under the zoning code's exemptions and nonconformities section.

The owner of the four properties has argued that the generally non-residential character of this portion of Sandy Spring Road justifies a more comprehensive solution, such as a change in zoning. It is true that a portion of the south side of Sandy Spring Road is in a light industrial zone. It should be noted, however, that the 1997 Fairland Master Plan recommended an overlay zone for the area as a means of managing the type and intensity of non-residential uses allowed in the area. Were the area to be reclassified to an employment or light industrial zone, logic would suggest applying the same overlay zone to it. The overlay does not permit the waste related activities underway on the four properties; the employment or light industrial zones do not allow landscape contractors. Applying a light industrial zone with an overlay would still not permit the uses underway on the four properties and would create a series of nonconformities on other properties.

Finally, as noted above, this area is in the Patuxent watershed. The Functional Plan applied a primary management area to the river and its tributaries, and carefully manages activities within that PMA. The PMA covers 660 feet in each direction from any tributary. As the accompanying map shows, several tributaries reach a considerable distance into the study area, which means that the PMA could affect a number of properties. (The precise location of the streams would be determined as part of a natural resources inventory preceding a development submission.) The PMA, in addition to environmental buffers directly adjacent to a stream, includes a transition area, the distance from the edge of any buffer to the 660-foot maximum. Within the transition area, the PMA guidelines set a goal of 10 percent imperviousness, and apply that standard to any project reviewed by the Planning Board, which would include regulatory plans, conditional uses and mandatory referrals. For the four properties under discussion, their status as unrecorded parcels means that any activity requiring a building permit would trigger Planning Board review.

Conclusion

While it is true that the north side of Sandy Spring Road is largely non-residential in character, it is also true that, in the main, the uses in place are sufficiently related to the intent of the Rural Cluster Zone that they are allowed following conditional use review. DPS review has confirmed the appropriateness of those activities. Some properties are in agricultural uses also allowed in the zone and several residences remain. There remains the issue of the four properties. Their owner seeks an accommodation that will allow the uses to continue.

Area 3 planning staff considered several alternatives for this area. A master plan amendment is not appropriate in this area because, on balance, there is no change in this area that is broadly inconsistent with the land use pattern and the zones supporting that pattern. The non-residential uses, in general, are consistent with agricultural activities. There would be no logical outcome of a master plan amendment other than a reaffirmation of the existing zones.

The four properties under DPS evaluation could be reclassified to a zone that reflects their actual operation. The IL Zone might be a logical candidate, but in that zone, waste related activities (which one

of the properties contains) must have been legally existing before the approval of the zoning code rewrite, and these properties cannot meet that criteria.

The 1997 Fairland Master Plan recommended creation of an overlay zone for a light industrial area south of Sandy Spring Road, to manage the type and intensity of non-residential uses allowed in the area. Were the area on the north side of the road to be reclassified to an employment or light industrial zone, logic would suggest applying the same overlay zone to it. The overlay does not permit the waste related activities underway on the four properties; the employment or light industrial zones do not allow landscape contractors. Applying a light industrial zone with an overlay would still not permit the uses underway on the four properties and would create a series of nonconformities on other properties.

It may be that the only viable solution would be one that permitted these uses only on these properties, and only under their current arrangements. A text amendment could be prepared that allowed these uses in the Rural Cluster Zone only if they existed at the time of the amendment's approval, and only as long as they continuously operated. Alternatively, they could be allowed for a specified period; the zoning code previously contained two provisions that dealt with nonconforming uses. One section allowed junkyards and auto recycling facilities to continue for three years before requiring their termination. A similar section allowed central mixing plants to continue for four years before requiring termination. A similar provision could be developed for the waste related and general contracting uses. An amortization period of three or four years before termination would allow time for the owner to find alternative sites for these activities.

If, as the owner has asserted, the more intense waste-related uses have been removed from the property, and if the activities that remain include allowable uses like landscaping businesses, a text amendment refining the landscape contractor definition to include an appropriate number of ancillary or support activities could be prepared.

Burtonsville North Use Inventory

Number	Street	Use	Notes
0	COLUMBIA	Utility row	
0	COLUMBIA	Utility row	
0	COLUMBIA	Utility row	
0	SANDY SPRING	Utility row	
0	SANDY SPRING	Utility row	
0	SANDY SPRING	Utility substation	
0	SANDY SPRING	outbuilding	
0	SANDY SPRING	vacant	
4100	SANDY SPRING	nursery	
4120	SANDY SPRING	landscaping	Legal non-conforming use
4140	SANDY SPRING	Religious use	NR zone
4144	SANDY SPRING	Utility substation	
4150	SANDY SPRING	Farm machinery sales	
4200	SANDY SPRING	Religious use	
4220	SANDY SPRING	house	
4222	SANDY SPRING	Utility row	
4230	SANDY SPRING	house	
4234	SANDY SPRING	house	
4238	SANDY SPRING	house	
4246	SANDY SPRING	house	
4300	SANDY SPRING	Religious use	
4302	SANDY SPRING	Utility row	
4308	SANDY SPRING	house	Certified home occupation
4312	SANDY SPRING	house	
4320	SANDY SPRING	house	North of PEPCO row
4322	SANDY SPRING	house	
4324	SANDY SPRING	house	
4326	SANDY SPRING	house	North of PEPCO row
4328	SANDY SPRING	house	North of PEPCO row
4330	SANDY SPRING	house	North of PEPCO row
4340	SANDY SPRING	nursery	DPS evaluation
4400	SANDY SPRING	Contractor storage	DPS assessment
4404	SANDY SPRING	Contractor storage/office	DPS assessment
4408	SANDY SPRING	Contractor storage/office	DPS assessment
4500	SANDY SPRING	Waste related/office	DPS assessment

4512	SANDY SPRING	Landscape contractor	Grandfathered as pre-1985 use
4610	SANDY SPRING	unknown	
15310	RIDING STABLE	house	
Number	Street	Use	Notes
15400	RIDING STABLE	house	
15404	RIDING STABLE	house	
15412	RIDING STABLE	house	
15440	RIDING STABLE	house	
0	AITCHESON	agriculture	
15510	AITCHESON	house	
15620	AITCHESON	house	
15622	AITCHESON	house	
15700	AITCHESON	house	