

Chapter 59 – Montgomery County Zoning Ordinance

Effective Date: October 30, 2014
Updated Effective: February 4, 2020

Section 4.9.17. Transferable Development Rights (TDR) Overlay Zone

A. Standard Method

Development in the TDR Overlay zone is allowed under the standard method of development without the use of Transferable Development Rights and must satisfy the development and density limitations in the underlying zone (see Division 4.3 through Division 4.6). In addition, standard method development in the TDR Overlay zone may be approved under the optional method Cluster Development procedures or the optional method MPDU Development procedures, if the property satisfies the minimum requirements for these development options in the underlying zone.

B. Optional Method

1. In General

The TDR Overlay optional method of development permits an increase in the maximum residential density, if the development satisfies the requirements for optional method development using Transferable Development Rights under Section 4.9.17.B.

a. Applicability

The procedures and requirements in Section 4.9.17.B apply to the transfer of development rights from land in the AR zone to land in a Transferable Development Rights (TDR) Overlay zone. The Planning Board may approve subdivision of such land at densities up to the maximum density allowed in the applicable TDR Overlay zone and substantially conforming to the recommendations in the applicable master plan.

b. General Provisions

A request to use TDRs on a property under the optional method must be in the form of a preliminary subdivision plan submitted under Chapter 50.

c. Recording of Development Right

- i. An easement to the Montgomery County government limiting future construction of dwellings on a property in the AR zone by the number of development rights received must be recorded among the land records of the County before recordation of a final record plat for a subdivision using transferred development rights.
- ii. A final record plat for a subdivision using transferred development rights must contain a statement including the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance as required by Section 4.9.17.B.

d. Development with Moderately Priced Dwelling Units

- i. A property developed under Section 4.9.17.B must satisfy Chapter 25A.
- ii. Any increase in density allowed under the optional method of development for the provision of MPDUs is calculated after the base density of the property has been increased under Section 4.9.17.B through TDRs.

iii. In a Rural Residential or Residential zone with a TDR density designation of less than three units per acre, development using TDRs and providing MPDUs above 12.5% must follow the requirements under optional method MPDU Development. Any other optional method development in a Rural Residential or Residential zone must satisfy the requirements of Section 4.9.17.B.

e. Additional Findings

In addition to the findings required for approval of a site plan under Section 7.3.4, for projects developed under Section 4.9.17.B, the Planning Board must find that the proposed development provides an appropriate range of housing types that takes advantage of existing topography and environmental features and achieves a compatible relationship between the proposed development and adjoining land uses.

2. Rural Residential and Residential Zones

a. Density Designation

i. Land in a TDR Overlay zone is assigned a density number, as recommended in the applicable master plan, that states the maximum number of units per acre that may be built through the purchase of TDRs, up to the following limits:

Zones	Base Density for the Calculation of Required TDRs (max units/acre)	TDR Density (max units/acre)
RNC	0.2	1
RE-2	0.4	4
RE-2C	0.4	2
RE-1	1	2
R-200	2	11
R-90	3.6	28
R-60	5	28
R-30	14.5	40
R-20	21.7	50
R-10	43.5	100

ii. TDR Overlay zones are shown on the zoning map with the symbol (TDR) followed by the TDR density designation (1 through 100, including fractions), (TDR-#).

b. Calculation of TDRs Required in the Rural Residential or Residential Zones

Development using TDRs must include at least 2/3 of the maximum number of development rights unless the Planning Board finds that a lower density is more appropriate for environmental or compatibility reasons.

i. In the Rural Residential and Residential zones, the following building types require a minimum percent of total units indicated, and where applicable a maximum allowed number of units (noted in parentheses). In addition, the minimum amount of common open space required is indicated:

TDR Density Designation	Size of Development	Building Type (minimum required as a percentage of total units)				Common Open Space (min)
		Detached House	Duplex	Townhouse	Apartment	
1	Any size	100%	0%	0%	Not permitted	0%
2	Any size	100%	0%	0%	Not permitted	0%
3-5	< 800 units	30%	0%	0%	Not permitted	20%
	800+ units	30%	0%	0%	0% (20% max)	20%
6-10	< 200 units	15%	0%	0%	Not permitted	20%
	200+ units	15%	0%	0%	0% (35% max)	20%
11-15	< 200 units	0%	0%	0%	0%	25%
	200+ units	0%	0%	0%	35% (60% max)	25%
16-28 <	200 units	0%	0%	0%	0%	25%
	200+ units	0%	0%	0%	25% (60% max)	25%
> 28	Any size	0%	0%	0%	25%	25%

(a) The apartment building type is permitted only where specifically recommended in the area master plan for the receiving area. Where the minimum percentage requirement would yield a total of 150 units or fewer, no such units are required. Where the minimum percentage would yield 151 units or greater, the full number must be required unless the Planning Board finds that a lower density is more appropriate for environmental or compatibility reasons.

(b) A duplex or townhouse building type may be substituted for all or part of the apartment requirement.

(c) An apartment building type is limited to a maximum building height of 40 feet. The height limit may be waived by the Planning Board if it finds that the proposed development can achieve greater compatibility with adjacent development than would result from adherence to the standards.

ii. Each single TDR purchased allows the construction of the following number of units up to the TDR density designation:

(a) In a Metro Station Policy Area:

- (1) 2 detached houses;
- (2) 2 units in a duplex building type;
- (3) 2 units in a townhouse building type; or
- (4) 3 units in an apartment building type.

(b) In a Non-Metro Station Policy Area:

- (1) one detached house unit;
- (2) one unit in a duplex building type;

- (3) one unit in a townhouse building type; or
 - (4) 2 units in an apartment building type.
- iii. The Planning Board may waive the minimum required or maximum allowed number of units of a particular building type if it finds that a different mix of building types is appropriate for environmental or compatibility reasons.

c. Development Standards

The following table indicates the required development standards for each TDR density designation:

TDR Density Designation	Development Standards
1	In a Rural Residential zone, same as for a detached house building type under standard method in the RNC zone, see Division 4.3 In a Residential zone, same as for a detached house building type under standard method in the RE-1 zone, see Division 4.4
2	Same as for a detached house building type under standard method in the R-200 zone, see Division 4.4
3-5	May utilize the R-60 optional method MPDU Development standards, see Division 4.4. The minimum usable area does not apply.
6 or more	Determined at site plan

3. Commercial/Residential and Employment Zones

a. Density Designation

- i. Land in a TDR Overlay zone is assigned a residential density number, as recommend in the applicable master plan, that states the maximum residential FAR that may be built through the purchase of TDRs. Total density may be increased by the amount of additional residential FAR achieved through the purchase of TDRs.
- ii. TDR Overlay zones are shown on the zoning map with the symbol (TDR) followed by the TDR density designation in FAR (1 through 10, including fractions), (TDR-#).

b. Calculation of TDRs Required in the Commercial/Residential or Employment Zones

- i. TDRs may be purchased to achieve the maximum residential FAR indicated under the TDR Overlay zone. A fraction of a TDR cannot be purchased; any fraction of a TDR must be rounded up to the next whole number.
- ii. Each TDR purchased allows the construction of 2,400 square feet of residential density, except for in a Metro Station Policy Area, which allows the construction of 4,400 square feet of residential density. To determine the number of TDRs required per acre, subtract the residential FAR in the base zone from the requested residential FAR up to the maximum allowed under the TDR Overlay. Multiply the difference by 43,560 to get the additional number of residential square feet per acre allowed through the purchase of TDRs. Divide the residential square feet per acre by 2,400 or 4,400, as applicable, to determine the required number of TDRs per acre that must be purchased.

iii. For optional method development, the Planning Board may grant a maximum of 20 public benefit points for TDRs under Section 4.7.3.F.6.

(Legislative History: Ord. No. 18-08, §14; Ord. No. 18-10, §2; Ord. No. 18-21, §1; Ord. No. 18-28, §3; Ord. No. 18-52, §6.)

Link to online Zoning Code: [Transfer of Development Rights \(TDR\) Overlay Zone](#)