

Chapter 59 – Montgomery County Zoning Ordinance

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

Division 4.2. Agricultural Zone

Section 4.2.1. Agricultural Reserve Zone (AR)

A. Intent Statement

1. The intent of the AR zone is to promote agriculture as the primary land use in areas of the County designated for agricultural preservation in the general plan, the Functional Master Plan for Preservation of Agriculture and Rural Open Space, and other current or future master plans. The AR zone accomplishes this intent by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas.
2. Agriculture is the preferred use in the AR zone. All agricultural operations are permitted at any time, including the operation of farm machinery. An agricultural use cannot be restricted on the grounds that it interferes with other uses permitted in the zone, but uses that are not exclusively agricultural in nature must satisfy additional use standards or the conditional use approval process.
3. The intent of the child lot option in the AR zone is to facilitate the continuation of the family farming unit and to otherwise meet the purposes of the AR zone.

B. Standard Method Development

The AR zone allows development only under the standard method. A child lot above the density of one dwelling unit per 25 acres is allowed in the AR zone under standard method under Section 4.2.1.E. Standard method development is allowed under the development standards established in Section 4.2.1.E and Section 4.2.1.F.

C. General Requirements

Location of Residential Uses - Residential uses must be located and arranged to support agriculture as the primary use and to support the rural character of the area.

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:

- i. Farm Labor Housing Unit; and
 - ii. Detached Accessory Dwelling Unit.
- b. If a property is subdivided so that any Farm Labor Housing Units or Detached Accessory Dwelling Units are no longer accessory to the farm as defined in Section 59.3.7.4.B, any Farm Labor Housing Units or Detached Accessory Dwelling Units 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.

2. Recording of Development Right

- a. A development right may be created, transferred, and extinguished only by an easement and appropriate release, in a recordable form approved by the Planning Board. Any easement must limit the future construction of detached houses on land zoned AR to the total number of development rights allowed by zoning minus all development rights recorded prior to October 30, 2014, all development rights previously transferred under Section 4.2.1.D.1 and Section 4.9.15.B, the number of development rights to be transferred by the instant transaction, and the number of existing detached houses on the property.
- b. The transfer of development rights must be recorded in the land records of the County.

E. Special Requirements for Child Lots

1. Applicability

A child lot above the density of one detached house per 25 acres is allowed in the AR zone only if the property owner has:

- a. a recorded title to the property before January 7, 1981;
- b. personally applied for and obtained approval to create the lot; and
- c. retained a development right for each lot.

2. Density

- a. The Planning Board may approve no more than one child lot for each child of the property owner, regardless of the number of properties owned.
- b. A maximum of 3 child lots may be established for a qualifying property owner under Section 4.2.1.E.1. The Planning Board may approve up to two additional child lots above the maximum number allowed in Section 4.2.1.F.2, Child Lots, if the additional child lot:
 - i. is not encumbered by a State or County Agricultural Land Preservation Easement;
 - ii. meets the applicable requirements in Section 4.2.1.E;
 - iii. is on the landowner's only land holdings in the County; and

- iv. the area of the site for 4 child lots is at least 170 acres and the area of the site for 5 total child lots is at least 220 acres.
- c. In determining whether to approve any additional child lot, the Planning Board must consider any recommendation from the Agricultural Preservation Advisory Board (APAB) about whether the additional lot will promote the continuation of the family farm unit or otherwise meet the purposes of the AR zone.

3. Lot Area

A lot created for a child must be no larger than the minimum area necessary for approval of well and septic. The Planning Board may approve a lot larger than 3 acres only if an on-site well and septic system is not feasible and the lot cannot be served by a septic easement. The area of the driveway stem on a flag lot is not included in the maximum area limit.

4. Ownership Transfer

Ownership of a child lot cannot be transferred or leased within 5 years of the date of DPS' final inspection of the dwelling unit, with the exception that:

- a. The owner of the child lot may only lease the lot to an immediate family member.
- b. Ownership of a child lot may be transferred if the Planning Board finds a hardship after the date of final inspection, such as a death of the child or a bona fide foreclosure of the mortgage or deed of trust.

5. Penalty for Violations

The penalty and enforcement provisions in Section 7.6.3.B and Division 7.8 apply to any violation of Section 4.2.1.E. Every day a transfer restriction is violated is a new violation.

6. Deed Restrictions and Certificates of Compliance

- a. Any deed or other instrument conveying title from the owner of the property to a child must be signed by both the grantor and the grantee.
- b. In any deed or other instrument conveying title from the owner of the property to a child, the grantor must clearly and conspicuously state, and the grantee must clearly and conspicuously acknowledge, that the conveyed property is a child lot under Section 4.2.1.E.5.
- c. If the Planning Director determines that a child lot may be transferred under Section 4.2.1.E.5.b, the Planning Director must issue a certificate of compliance to the owner of the child lot in a form appropriate for recordation in the land records. The certificate is conclusive evidence of the owner's compliance with Section 4.2.1.E.5.

7. Existing Child Lots and Preliminary Plan Applications

- a. A child lot is permitted on an area of land of any size where the child lot has an existing dwelling unit and is either identified on a plat recorded before October 1, 2010 or held under a deed that indicates conveyance from parent to child and was recorded before October 1, 2010, under the following provisions:
 - i. one lot for every 25 acres plus one additional lot for each child lot;
 - ii. a child lot of any size; and
 - iii. no limitations on ownership.

b. A child lot is permitted on an area of land of any size with a preliminary plan approved before October 1, 2010, under the ownership and transfer provisions of Section 4.2.1.E and may be identified on a plat recorded among the land records of the County using the following provisions:

i. one lot for every 25 acres plus one additional lot for each child lot; and

ii. a child lot of any size.

c. A child lot is permitted on an area of land of any size with a preliminary plan application filed, but not approved, before October 1, 2010 and must satisfy Section 4.2.1.E, except it may be approved with a density of one lot for every 25 acres plus one additional lot for each child lot.

d. A child lot previously recorded by plat is exempt from the limit on number of child lots and the lot area, and size limits of Section 4.2.1.E, if the density does not exceed one lot for every 25 acres plus one additional lot for each child lot.

F. AR Zone, Standard Method Development Standards

	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone
1. Site	
Site Area	
Site (min)	25 acres
2. Lot and Density	
Lot	
Lot area (min)	40,000 SF
Lot width at front building line (min)	125'
Lot width at front lot line (min)	25'
Density (max)	
Density (lots/acre)	1/25
Coverage (max)	
Lot	10%
Specification for Coverage	
a. On a lot or parcel where agricultural products are grown predominantly in greenhouses, a maximum lot coverage of 40% is permitted if: (1) any increase above 10% lot coverage consists entirely of greenhouses; and (2) a site plan is approved under Section 7.3.4.	
Voluntary Conservation Lot	
Lot Area (max)	3 acres
Remainder of site must be placed in a conservation or agricultural easement or land trust	yes
Coverage (max)	15%
Specifications for Voluntary Conservation Lot	
a. The Planning Board may approve a lot larger than 3 acres only if an on-site well and septic system is not feasible on a lot of 3 acres or less and the lot cannot be served by a septic easement.	

b. On a lot or parcel where agricultural products are grown predominantly in greenhouses, a maximum lot coverage of 40% is permitted if: (1) any increase above 10% lot coverage consists entirely of greenhouses; and (2) a site plan is approved under Section 7.3.4.

Child Lots	
Lot area, excluding driveway stem on flag lot (max)	3 acres
Number of child lots allowed (max):	
On a site at least 25 acres up to 69 acres	1
On a site at least 70 acres up to 120 acres	2
On a site at least 121 acres	3

Specification for Child Lots

a. The Planning Board may approve a lot larger than 3 acres only if an on-site well and septic system is not feasible on a lot of 3 acres or less and the lot cannot be served by a septic easement.

3. Placement

Principal Building Setbacks (min)	
Front setback	50'
Side street setback	50'
Side setback	20'
Rear setback	35'
Accessory Structure Setbacks (min)	
Front setback	50'
Side street setback	50'
Side setback	15'
Rear setback	15'

Specification for Principal Building and Accessory Structure Setbacks

a. The front setback and side street setback must consist of any scenic setback recommended by a master plan or 50 feet, whichever is greater.

b. Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25' from a lot line and a minimum of 100' from a dwelling on another lot.

c. The maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the footprint of the main building. Buildings for an agricultural use are exempt from this size restriction.

4. Height

Height (max)	
Principal building	50'
Accessory structure	50'

5. Form

Allowed Building Elements	
Gallery/Awning	n/a
Porch/Stoop	yes
Balcony	yes

6. Buildings used for Agriculture Associated with Farming

Specification for Buildings used for Agriculture Associated with Farming

a. A building used for agriculture associated with Farming must satisfy the standards of an accessory structure, except a building used for agriculture is exempt from the height requirements under Section 4.2.1.F.4.

(Legislative History: Ord. No. 18-20, § 1; Ord. No. 18-39, §3; Ord. No. 19-06, §6.)

Link to online Zoning Code: [Agricultural Zones](#)
