



FREDERICK COUNTY GOVERNMENT

DIVISION OF PLANNING & PERMITTING

Jan H. Gardner
County Executive

Steven C. Horn, Division Director

TO: Frederick County Council

FROM: Anne Bradley, Land Preservation Program Administrator AB

DATE: May 7, 2020

SUBJECT: Proposed Bill – Revise and clarify the requirements for the impact fee exemption for farm lots

ISSUE:

Should the County Council approve the attached amendments to the Development Impact Fee Ordinance (Chapter 1-22) regarding impact fee waivers for family farms?

BACKGROUND:

Effective December 1, 2014 an Ordinance was enacted that granted an Impact Fee Waiver for certain farm lots. The general goal of the waiver was to provide agricultural operators with a benefit to enable their family member to build a house near the farm in order to assist with the operation. Since the program’s inception, the County has received a total of 13 applications for the waiver, ten (10) of which were approved while three were denied because they did not meet all the criteria.

The purpose of the draft amendments to the ordinance are to fix issues with the language in an effort to make the administration of the waiver more transparent and predictable for applicants. As written, the following criteria must be met in order to grant a waiver:

- The farm from which the lot was subdivided must be a minimum of 25 acres in size.
- The house by which the waiver is granted must be on a legally subdivided lot off a farm.
- The lot must transfer directly from the farmer to the farmer’s child or grandchild.
- The waiver is only be available to immediate children or grandchildren of the farm owner.
- The waiver recipient agrees to live in the house for at least five (5) years.
- The waiver recipient must provide a description of how they support the farm operation.
- There must be an established agricultural activity on the farm and this activity must be conducted by the owner and not a lessee.

As required by §1-22-7(C) of the Impact Fee Ordinance, the waiver of the impact fee would require the County to make up for the waiver by paying the impact fee from the County's general funds.

Proposed Requirements and Eligibility

The following amendments are being proposed to ease the administration and make it easier to interpret eligibility:

1. Section (G) 1. DEFINITIONS- The definition of 'Farmer' was changed instead to 'Full-time Farmer'. This new criteria will require the applicant to submit proof that they earn a majority of their gross income from an agricultural profession of the past 3 years. This change will limit approvals to citizens that are agricultural operators.
2. Section (G) 1. DEFINITIONS – The size of the 'Farm lot' that is subdivided off the farm changed from being undefined to being a maximum of 2-acres maximum in size. As adopted originally, the lot subdivided off the farm could be any size. Requiring smaller lot sizes reduces the impact to the remainder of the farm operation. The Ag Preservation Program limits child's lots to 2-acres in size maximum.
3. Section (G) 1. DEFINITIONS- With input from the Frederick County Farm Bureau Board, 'Parents of the Farmer' and 'Siblings of the Farmer' were added to the eligibility list for the Waiver.
4. Section (G) 2. a – Language was added to clarify ownership so that staff could determine eligibility on applications that are owned by a Trust or a Limited Liability Corporation (LLC). In the past, staff had difficulty with interpreting eligibility on farms owned by an entity other than individuals and many agricultural operators own land in family LLC's.
5. Section (G) 2. b – Language was added requiring the child to provide support to the farm operation an average of 20 hours a week all year.

Staff presented the proposed amendments and received comments and recommendations from the Agricultural Preservation Advisory Board, the Agricultural Business Council and the Frederick County Farm Bureau that were taken into account while drafting the attached version of the Bill.

RE: Impact Fee Waiver for Family Farms- Proposed Ordinance Amendments
May 7, 2020

RECOMMENDATION:

Staff recommends approval of the Ordinance amendments as drafted.

Approve? Yes X No

Jan Gardner

5/11/2020

Jan H. Gardner, County Executive
Frederick County, Maryland

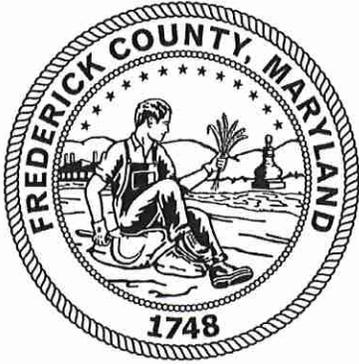
Date

FINANCIAL IMPACT: Yes- Direct

1. Fiscal Year of Financial Impact: 2020
2. Existing Account Unity/Activity & Account: TBD
3. New Account Unity/ Activity & Account:
4. Budget Balance as of March 11, 2020
5. Budget Journal Required:
6. Amount of County Funding Requested:
7. Other Pertinent Information: The General Fund will allocate funding to the impact fee fund at year end.

ATTACHMENT(S):

Attachment 1- Proposed Bill- Revise and clarify the requirements for the impact fee exemption for farm lots



Bill No. _____
Concerning: Revisions to Clarify and Update the
Impact Fee Exemption for Farm Lots

Introduced: _____

Revised: _____ Draft No. _____

Enacted: _____

Effective: _____

Expires: _____

Frederick County Code, Chapter 1-22

Section(s) 7 (G)

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member M. C. Keegan-Ayer on behalf of County Executive Jan Gardner

AN ACT to: Amend §1-22-7(G) of the Frederick County Code to update and clarify the requirements for farm lot impact fee waivers.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-22 Section(s) 7 (G)

Other: _____

Boldface

Underlining

[Single boldface brackets]

* * *

Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

Bill No. _____

In 2014, the former Board of County Commissioners of Frederick County adopted Ordinance No. 14-19-674, which added §1-22-7(G) to the County Code. Subsection 1-22-7(G) provides for an impact fee waiver for certain farm lots when transferred directly from a farmer to the farmer's child or grandchild, if certain conditions were met.

In the years since §1-22-7(G) was adopted, certain questions related to the conditions of this waiver have been raised. The attached Bill updates and amends §1-22-7(G) to answer those questions, specifically related to the activities of the farmer and the farmer's child or grandchild in connection with the farm. In addition, language has been added to allow for transfers from and to trusts or similar entities, so long as these entities are controlled by the farmer or the farmer's child or grandchild.

The County Council held a duly advertised public hearing concerning this Bill on _____, 2020, during which the public had an opportunity to comment on this Bill.

The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend §1-22-7(G) of the Frederick County Code to update and clarify the requirements for farm lot impact fee waivers.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

M. C. Keegan-Ayer, President
County Council of Frederick County,
Maryland

§ 1-22-7. EXEMPTIONS/WAIVERS.

(G) *Impact fee waiver for farm lots.*

(1) *Definitions.* For the purposes of this subsection, the following terms shall have the designated definitions:

CHILD. A Full-Time Farmer's [person's] offspring, whether natural or legally adopted.

FARM. A parcel of land not less than 25 acres in size on which an agricultural activity, as defined in § 1-19-11.100 of the Zoning Ordinance, is being actively conducted as of the date of application for the farm lot waiver.

FULL-TIME FARMER. An individual who owns and operates a farm, and who has derived the majority of his or her gross income from agricultural activity during each of the three (3) years prior to filing an application for the farm lot waiver.

FARM LOT. A lot which is a maximum of two (2) acres in size and has been legally subdivided from a farm by a full-time farmer. Lot size modifications may be approved by the County based on subdivision, percolation and other governmental requirements.

GRANDCHILD. The offspring of a child, as defined herein, whether natural or legally adopted.

PARENT. The parent of a full-time farmer.

SIBLING. The sibling of a full-time farmer.

(2) Impact fees collected under this chapter may be waived for farm lots if the following conditions are met at the time that the waiver is applied for:

(a) The farm lot must have been transferred directly from a full-time farmer or a trust or similar entity controlled (more than 50%) by the full-time farmer to the full-time farmer's parent, sibling, child or grandchild or to a trust or similar entity controlled (more than 50%) by the full-time farmer's parent, sibling, child or grandchild; and

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

(b) The full-time farmer's parent, sibling, child or grandchild must show proof that he or she currently provides substantial support to the farm, whether by physical or administrative work, or by significant financial support. In this subsection, "substantial support", as it applies to physical or administrative support, must equate to an average of at least 20 hours per week for all weeks in the calendar year.

(3) If the full-time farmer's parent, sibling, child or grandchild sells or otherwise transfers the farm lot (except by reason of his or her death) within 5 years after the date of issuance of the building permit to which the impact fee waiver has been applied, then the full-time farmer's parent, sibling, child or grandchild shall be obligated to repay the total amount of the waived impact fees to the county.

(4) If the full-time farmer's parent, sibling, child or grandchild sells or otherwise transfers the farm lot more than 5 years after the date of issuance of the building permit to which the impact fee waiver has been applied, then the obligation to repay the waived impact fees to the county shall not apply.

(5) The obligation to repay the waived impact fees to the county shall be memorialized by a recorded lien on the farm lot, which shall, by its terms, expire 5 years after the date of issuance of the building permit to which the impact fee waiver has been applied.

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