

AGENDA ITEM#16
April 18, 2006

Action

MEMORANDUM

April 14, 2006

TO: County Council

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: Action– ZTA 06-04, Rural Neighborhood Cluster (RNC) Zone – Rural Open Space

PHED Recommendation: The Committee recommends (3-0) that ZTA 06-04 be approved with amendments. As recommended by the Committee, all publicly or privately held land in the rural open space area of the RNC zone must be preserved in perpetuity as rural open space by application of an easement or covenant in a recordable form. The Committee also agreed that 10-acre conservancy lots would not be required to be identified in an approved and adopted master or sector plan provided the conservancy lot contributes to the overall total of rural open space and is a logical extension of the existing open space area.

Background

ZTA 06-04, Rural Neighborhood Cluster Zone – Rural Open Space, was sponsored by Councilmember Praisner. The ZTA clarifies that all publicly or privately held land in the rural open space area must be preserved in perpetuity as rural open space through an easement or covenant. The ZTA establishes that subdivision for a one-family lot in the rural open space area of the Rural Neighborhood Cluster zone is allowed only if recommended in an approved and adopted master or sector plan. A public hearing on the ZTA was held on February 28, 2006.

The Montgomery County Planning Board recommended (4-1) that the ZTA not be approved. The Board's position is that it's unwise to cede public control over public land in an easement or covenant to a private entity. Planning Board staff suggested that if the ZTA is adopted, the Commission may determine that a particular easement or covenant is too burdensome and decide that rural open space lands would be better left in private hands.

The ZTA was endorsed by several civic association and individuals. It's argued that without an easement or covenant on rural open space land conveyed to the Planning Board, there

is no guarantee that it will remain in its natural state. The testimony from the February 28 public hearing and other written correspondence is attached.

Issues reviewed by the Committee

ZTA 06-04 would ensure that land dedicated to rural open space under the requirements of the Rural Neighborhood Cluster (RNC) zone remain in perpetuity as rural open space, whether in public or private ownership. A distinction may be made between the dedication of parkland and the dedication of rural open space. Under the Planning Board and Planning staff's analysis the term parkland and rural open space are used interchangeably. Rural open space is defined as land that is managed or unmanaged, which means that it's returning to its natural state without human intervention. Contiguous rural open space shares a contiguous boundary with a residential cluster neighborhood. Rural open space preserves sensitive natural resources, other sensitive areas and associated habitats. Public use facilities in rural open space are limited to trails and related amenities of other facilities recommended in a master plan.

The Rural Neighborhood zone now requires that land in rural open space that will be privately owned must be protected from inappropriate uses by recordation of an easement or covenant. The Planning Board argues that applying the same requirement to a public agency is problematic, since the ZTA does not specify the entity or individuals who would receive the legal authority to enforce the easement, and if the easement runs to a public agency, the protection is superfluous.

Notwithstanding the policy argument presented by the Planning Board that it is not necessary to restrict public control by requiring a covenant or easement, ensuring that rural open space dedications are retained as such in perpetuity is a stated public policy objective of several rural master plans and the Rural Neighborhood Cluster zone. ZTA 06-04 was supported by the Committee to clarify this important public policy objective.

Conservancy Lots

The RNC zone currently prohibits residential subdivision in the rural open space area, with the exception of "a one-family detached dwelling located on a lot, 10 acres or greater in size, that contributes to the overall total of the rural open space." ZTA 06-04 would eliminate the ability to create a 10-acre, one-family residential lot in the open space area of the RNC zone, unless recommended in an approved and adopted master or sector plan. The Planning Board does not support this proposed change to the RNC zone. In the Board's view, a 10-acre conservancy lot helps achieve the lot size diversity requirements of the RNC zone and rural open space objectives.

It's noted in the Board report that to date there are no master or sector plans that specifically recommend 10-acre, conservancy lots in the rural open space area. The Planning Board makes a reasonable argument that the practical effect of the ZTA would be to prevent future development of 10-acre conservancy lots, since a master plan cannot predict where 10-acre conservancy lots would be located, and that conservancy lots are important in achieving lot size

diversity and flexibility in site planning, which is an objective of the Rural Neighborhood Cluster zone.

For the reasons expressed by the Planning Board, the Committee agreed that the rural open space objectives are best served by not tying the 10-acre conservancy lot exception to a master plan recommendation requirement provided the conservancy lot contributes to the overall total of rural open space and is a logical extension of the existing rural open space area.

Zoning Text Amendment No: 06-04
Concerning: Rural Neighborhood Cluster –
Rural Open Space
Draft No. & Date: 3 – 4/14/06
Introduced: January 24, 2005
Public Hearing: 3/7/06; 1:30 p.m.
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**

By: Councilmember Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- clarifying the circumstances for subdivision of a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone, and
- requiring all publicly held or privately held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant; and
- generally amending the Rural Neighborhood Cluster zone.

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

DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.57	“Special regulations for development in the Rural Neighborhood Zone”
Section 59-C-9.572	“Rural Open Space”
Section 59-C-9.574	“Optional method of development”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the 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.*

Zoning Text Amendment No. 06-04 was introduced on January 24, 2005, to clarify that all publicly or privately held land in the rural open space area must be preserved in perpetuity as rural open space through an easement or covenant. The ZTA would also establish that subdivision for a one-family lot in the rural open space area of the Rural Neighborhood Cluster zone is allowed only if recommended in an approved and adopted master or sector plan..

The Montgomery County Planning Board in its report to the Council recommended that the text amendment not be approved. The Board's position was that it's unwise to cede public control over public land in an easement or covenant to a private entity.

The County Council held a public hearing on March 7, 2006, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on April 3, 2006, to review the Zoning Text Amendment. The Committee recommended that ZTA 06-04 be approved, with revisions. As recommended by the Committee, all publicly held or privately land in the rural open space area of the RNC zone must be preserved in perpetuity as rural open space by application of an easement or covenant in a recordable form. The Committee also agreed that 10-acre conservancy lots would not be required to be identified in an approved and adopted master or sector plan provided the conservancy lot contributes to the overall total of rural open space and is a logical extension of the existing open space area

The District Council reviewed Zoning Text Amendment No. 05-09 at a meeting held on April 3, 2006, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

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. 05-09 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:

1 **Sec. 1. DIVISION 59-C-9. is amended as follows:**

2 **DIVISION 59-C-9. AGRICULTURAL ZONES.**

3 * * *

4 **59-C-9.57. Special regulations for development in the Rural Neighborhood**
5 **Cluster zone.**

6 **59-C-9.571. Purpose.**

7 The cluster method of development is intended to preserve large areas of
8 contiguous rural open space, consistent with the recommendations and
9 guidelines of the applicable master or sector plan. Cluster development is
10 required under both the standard and optional methods of development.
11 Cluster development requires the setting aside of rural open space. Under
12 the optional method of development the maximum development unit density
13 allowed may be increased to accommodate the construction of Moderately
14 Priced Dwelling Units in accordance with Chapter 25A.

15 **59-C-9.572. Rural Open Space.**

16 Rural open space is land that is managed, as described in Section 59-C-
17 9.574(g)(3), or is unmanaged, which means that it is returning to its natural
18 state without human intervention. Contiguous rural open space shares an
19 extended boundary with a residential cluster neighborhood. The open space
20 may preserve sensitive natural resources, other sensitive areas and associated
21 habitat.

22 Recreational facilities in the rural open space are limited to trails and related
23 amenities or other facilities recommended in the master plan. The following
24 classes of uses are not permitted in the rural open space area. The
25 exceptions noted in subsections (d) and (f) are not excluded from this area;
26 they are permitted by right or special exception, as stated in section 59-C-
27 9.3:

- 28 (a) Agricultural-industrial;
- 29 (b) Agricultural-commercial;
- 30 (c) Resource production and extraction;
- 31 (d) Residential, with the following exceptions:
 - 32 - [[If recommended in an approved and adopted master or sector
 - 33 plan,]] a one-family detached dwelling located on a lot, 10 acres
 - 34 or greater in size, that contributes to the overall total of rural
 - 35 open space, and is a logical extension of the existing open space
 - 36 area;
 - 37 - accessory apartment that is part of a one-family detached
 - 38 dwelling located on a lot, 10 acres or greater in size, that
 - 39 contributes to the overall total of rural open space;
 - 40 - a farm tenant dwelling in existence prior to application of the
 - 41 Rural Neighborhood Cluster zone, or a structure converted to a
 - 42 farm tenant dwelling included as part of a historic site
 - 43 designated in the Historic Master Plan;
 - 44 - a one-family semidetached dwelling and townhouse as part of a
 - 45 moderately-priced dwelling unit development;
- 46 (e) Commercial; and
- 47 (f) Services, except a home occupation associated with an otherwise
- 48 permitted residential use.

49 * * *

50 **59-C-9.574. Optional method of development.**

51 * * *

- 52 (h) Rural open space design guidelines

53 * * *

54 (4) All publicly held or privately held land in the rural open space
55 area must be preserved in perpetuity as rural open space [,
56 either by dedication to parkland or] by application of an
57 easement or covenant in a recordable form approved by the
58 Planning Board. The easement or covenant must restrict uses in
59 the rural open space area to those [set forth in this zone] uses
60 allowed under 59-C9.572, [establish procedures] provide for the
61 management of any natural or agricultural features [as set forth]
62 in accordance with the approved site plan, and prohibit any
63 [further] development or subdivision within the rural open
64 space area not expressly authorized.

65 * * *

66 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
67 date of Council adoption.

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69 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

March 2, 2006

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board on Zoning Ordinance Text Amendment No. 06-04

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("MNCPPC") reviewed Zoning Ordinance Text Amendment No 06-04, at its regular meeting on March 2, 2006. By a vote of 4-1, the Planning Board recommends denial of the zoning text amendment ("ZTA"). The ZTA seeks to require all publicly held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant, and also changes the ability to create a subdivision for a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone.

The RNC zone already requires that land in the rural open space area that will be privately owned must be protected from inappropriate uses by recordation of an easement or covenant. The ZTA seeks to apply the same requirement to dedicated parkland. Title to dedicated parkland is held by either MNCPPC or Montgomery County Government. In either case, the parkland is managed by MNCPPC, and the Commission diligently protects that parkland from non-park uses. Dedicated parkland is public land and is owned and controlled by the duly elected or duly appointed representatives of the taxpayers. The ZTA seeks to constrain that public control by adding an easement or covenant prohibiting non-park uses. The ZTA does not specify the entity or individuals who would receive the legal power to enforce these easements. If the easement is intended to run to a public agency, its protection is superfluous, because the public already controls the land. If the easement is intended to run to a private party, such as a conservation or land trust, it represents a surrender of control over public land by the government, and gives a measure of control over that land to a private party. The Board believes that ceding public control over public land in this way is unwise. Land trusts, even if created for salutary purposes, are still private entities. Over time, such entities may experience leadership changes, contests over control,

financial or legal difficulties, and even dissolution. It is unwise to confer on such organizations perpetual control over public land.

The zoning text amendment also proposes to change the ability to create a subdivision for a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone. Current law allows a one-family detached dwelling in the rural open space under certain conditions. These dwellings must be located on "conservancy lots" of at least 10 acres. The ZTA would add a new requirement that conservancy lots must be recommended in the adopted master or sector plan. Conceptually, it is unclear what the conservancy lot amendment is trying to fix. It raises new problems such as: 1) what happens to existing master plans; 2) what happens to already approved developments; and 3) what criteria will be used to authorize these lots in future master plans. To date, there are no master plans or sector plans that designate specifically the conservancy lot exception in the rural open space area. From a design perspective, a minimum 10-acre conservancy lot is a good idea since it is a technique that is in line with the concept of providing flexibility in site planning of RNC developments. It assists in achieving a better plan more suited to the individual site conditions-- a major part of how the RNC is supposed to work--rural area, large development sites, visual impacts, etc. From a technical standpoint, 10-acre conservancy lots that are included in a site plan help achieve the lot size diversity requirement of the RNC zone. Therefore, the Board does not recommend limiting the use of conservancy lots in the manner proposed by the ZTA.

Commissioner Wellington dissented from the Board's recommendation of denial. She believes that parkland in the RNC zone should be subjected to easements limiting its future use notwithstanding its public ownership.

As stated above, the Planning Board recommends that Zoning Text Amendment 06-04 be denied.

CERTIFICATION

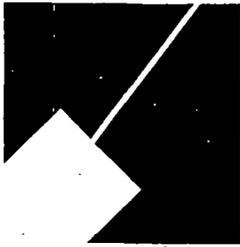
This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on a motion of Commissioner Bryant, seconded by Commissioner Robinson, with Commissioners Bryant and Robinson, Vice-Chair Perdue and Chairman Berlage voting in favor of the motion, and with Commissioner Wellington dissenting, at its regular meeting held in Silver Spring, Maryland on Thursday, March 2, 2006.



Derick P. Berlage
Chairman

DB:gr

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THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB
Item #5
3-2-06

DATE: February 24, 2006
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RKZ*
Carlton Gilbert, Zoning Supervisor
FROM: Greg Russ, Planner-Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: Amend the Zoning Ordinance to clarify the circumstances for subdivision of a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone, and to require all publicly held or privately held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant

TEXT AMENDMENT: No. 06-04
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance
INTRODUCED BY: Councilmember Praisner
INTRODUCED DATE: January 24, 2006
PLANNING BOARD REVIEW: March 2, 2006
PUBLIC HEARING: March 7, 2006; 1:30 p.m.

STAFF RECOMMENDATION Denial

PURPOSE OF THE TEXT AMENDMENT

Amend the Zoning Ordinance to clarify the circumstances for subdivision of a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone, and to require all publicly held or privately held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant

BACKGROUND

The RNC zone was originally created in 1998 for application in the Sandy Spring/Ashton Master Plan. The intent of the zone was to preserve open space for historic (Rural Legacy Trail), visual and farming purposes. Specific properties zoned RE-2 that contained conditions unique to the master plan area, such as having historical importance or being actively used in agriculture, were rezoned to the RNC.

The RNC zone allows development with public water and sewer (the properties were formerly zoned RE-2 and not eligible for public water and sewer) to encourage clustering. This zone also requires the vast majority of the property (70 – 85%) to be set aside as rural open space to be used for farming, as an historic setting for the Rural Legacy Trail or to preserve the agricultural character of the master plan area.

The zone allows a range of lots, from conservancy lots to 6,000 square foot lots. Conservancy lots are lots for which the total acreage, minus the area designated for a house, can be used as part of the rural open space calculation. The master plan did not distinguish where the different types of lots needed to be used on which property. As part of the Upper Rock Creek Master Plan, the RNC Zone was modified to clarify that any one-family residential exception in the rural open space area must encompass at least 10 acres of property. *The subject zoning text amendment proposes to further restrict residential uses in this rural open space by requiring a master or sector plan recommendation to allow a one-family lot of at least 10 acres within the rural open space.*

Currently, all land in the rural open space area must be preserved in perpetuity, either by dedication to parkland or by application of an easement or covenant in a recordable form approved by the Planning Board. *The second area of Councilmember Praisner's proposed text amendment would require publicly held land as well as privately held land in the rural open space area to be preserved by an easement or covenant.* This differs from the current language in that it would require that any publicly held parkland located in the rural open space be placed in an easement or covenant that restricts the areas.

ANALYSIS

Rural Open Space

Rural open space is land that is managed, as described in Section 59-C-9.574(h)(3), or is unmanaged, which means that it is returning to its natural state without human intervention. As stated in Section 59-C-572, any recreational facilities in the rural open space are limited to trails and related amenities or other facilities recommended in the master plan. In a case where dedication of public

parkland counts toward the rural open space requirement, the master plan typically designates the land as such, with the understanding of the types of uses that would be appropriate on the land in keeping in character with the purpose of the zone. The public entity tasked with deciding what uses to place on the site takes into account the master plan and zoning ordinance provisions in order to protect the integrity of the overall planning/zoning process.

Excerpts from the zoning text amendment language are depicted below.

59-C-9.572. Rural Open Space.

* * *

The following classes of uses are not permitted in the rural open space area. The exceptions noted in subsections (d) and (f) are not excluded from this area; they are permitted by right or special exception, as stated in section 59-C-9.3:

* * *

(d) Residential, with the following exceptions:

- If recommended in an approved and adopted master or sector plan, a one-family detached dwelling located on a lot, 10 acres or greater in size, that contributes to the overall total of rural open space;

* * *

59-C-9.574. Optional method of development.

* * *

(h) Rural open space design guidelines

* * *

- (4) All publicly held or privately held land in the rural open space area must be preserved in perpetuity as rural open space [either by dedication to parkland or] by application of an easement or covenant in a recordable form approved by the Planning Board. The easement or covenant must restrict uses in the rural open space area to those [set forth in this zone] uses allowed under 59-C-9.572, [establish procedures] provide for the management of any natural or agricultural features [as set forth] in accordance with the approved site plan, and prohibit any [further] development or subdivision within the rural open space area not expressly authorized.

Community-Based Planning Analysis

The Rural Neighborhood Cluster Zone has been recommended in four approved or draft master plans: Potomac, Upper Rock Creek, Olney, Damascus and Sandy Spring/Ashton.

Sandy Spring/Ashton Master Plan

There was always an issue with the Sandy Spring community as to the future viability of rural open space. There was a concern that dedication as parkland was not the best possible way to ensure perpetuity as rural open space. The master plan did not recommend any rural open space for parkland but rather suggested that other mechanisms be considered to preserve the rural open space such as easements to a third party to insure that the rural open space would be forever protected.

The master plan did propose parkland on one property in the RNC zone, which was adjacent to Sherwood High School and Historic Sandy Spring (Alfandre Property). However, it was clearly stated that in this case the purpose was to provide ball fields (10 acres) and to buy down density (30 acres) on the property. MNCPPC purchased 40 acres to achieve that master plan goal. The land was acquired by payment and not through dedication.

Potomac

The Potomac Subregion Master Plan, approved in March 2002, makes a single recommendation for the Rural Neighborhood Cluster Zone. The Plan recommends the RNC Zone for four contiguous parcels, the Tipton, Piney Grove, Weihe and Semmes properties, which total almost 145 acres and are located along Glen and Piney Meetinghouse roads in the Travilah section of the subregion. The Plan recommends that 70 percent of the properties be retained as open space and that larger than minimum stream buffers be provided wherever feasible. The Plan also recommends a maximum of 62 lots on the properties and that 60 acres in the Lower Greenbriar Branch stream valley be dedicated as parkland.

The properties have passed through the development process and two lots, totaling 64 acres, are shown for dedication as parkland, as the Plan recommended. Both lots are included in the rural open space calculations required as part of the development process. They have not been formally conveyed for public parkland, pending resolution of several violations of Department of Permitting services regulations and the removal of temporary facilities, such as sediment traps.

Upper Rock Creek

The 2004 Upper Rock Creek Area Master Plan recommended four properties for the Rural Neighborhood Cluster Zone. The Plan specified a density of 0.33 units to the acre, with a recommended density of 0.4 units to the acre if Moderately Priced Dwelling Units were required as part of a development. The Plan did not recommend specific percentages of open space for the four properties.

All four properties recommended for the RNC Zone are adjacent to existing stream valley parks. The Plan recommends dedication as public parkland for the entire Dungan property, as well as parts of the Casey and Freeman properties, which are adjacent to North Branch Stream Valley Park. Areas of the Woodlawn property are adjacent to Rock Creek Stream Valley Park and are recommended for dedication as public parkland as well.

Two of the four properties have passed through the development process. The Freeman and Woodlawn properties include a total of approximately 264 acres of parkland dedication. This land is included in the rural open space calculations. The combined Casey and Dungan properties have begun, but not yet completed, the preliminary and site plan processes. These properties include about 262 acres of parkland, all of which is included in the rural open space calculations.

Olney

The Olney Master Plan, approved in 2005, recommends the Rural Neighborhood Cluster Zone for 35 properties. The Plan recommends a density of 0.33 units to the acre for the majority of those properties. For six properties, the Plan recommends the RNC Zone, but does not recommend community sewer service, which limits allowable density to 0.2 units to the acre. For one property, the Norbeck Country Club, the Plan recommends a density of 0.45 units to the acre.

The Plan recommends parkland acquisition on four properties. One, the Simms property, is designated for acquisition through the Legacy Open Space program. The Plan recommends that a portion of the Casey property adjacent to Farquhar Middle School be designated as rural open space and dedicated as parkland for active recreation. Two other properties are adjacent to Olney Manor Park and are recommended for complete or partial acquisition as parkland. They have not been identified as rural open space.

Damascus

The Planning Board Draft Damascus Master Plan makes extensive use of the Rural Neighborhood Cluster Zone, and recommends creation of a separate RNC/TDR Zone so that transferable development rights can be used in the resulting development. The Plan recommends the RNC/TDR Zone for six

properties—the Burdette, Stanley-Leishear-Day, Casey-Lewis, Warfield, Kingstead-Leishear and Smart-Miner-Rice-Conway properties. For each, the Planning Board Draft plan recommends a base density of 0.4 units to the acre. Densities of one unit to the acre would be permitted with the purchase of TDRs.

The Draft Master Plan delineates specific areas for dedication as public parkland on the Kingstead-Leishear and Warfield properties.

Summary of Master/Sector Plan Impacts of the Zoning Text Amendment

Sec. 59.C.9.572 (Residential, One-Family Detached Dwelling Unit Exception in Rural Open Space Areas-Conservancy Lots):

This language change (requiring a master or sector plan recommendation to allow one family detached residential uses on 10 acres or more of rural open space) affects RNC zone properties in the Sandy Spring/Ashton Master Plan. The Sandy Spring/Ashton Master Plan does not designate the use of conservancy lots to specific properties. The use of conservancy lots on property derives from the provision of the zone as approved in 1998, not the master plan. Therefore, the proposed language change would make it impossible to have any new conservancy lots in the Sandy Spring/Ashton Master Plan area.

The approved Potomac, Upper Rock Creek and Olney Master Plans do not recommend residential development using large lots that would contribute to the open space. Nor does the draft Damascus Master Plan. Already approved development plans in Potomac and Upper Rock Creek would not be affected by this text amendment since they were approved based on the zoning language in place at the time of approval. Should the text amendment be approved, the Council would have to evaluate the individual proposals in Damascus and determine which, if any, are appropriate for large lot residences. In the absence of detailed development plans, which may not be available, it is not immediately clear how this would be done. In Olney, future subdivisions in the RNC zone would be precluded from using conservancy lots because the Olney plan does not recommend them.

Sec. 59 C-9.574(h)(4) (Preservation of Parkland in Perpetuity as Rural Open Space)

In general, public parkland should not be restricted with easements if it is designated as parkland in a master plan. The purpose of designating parkland in a master plan is to provide for future acquisition of parkland for public use and purpose. Our role as public servants and stewards of the land is to implement both the master plans and the zoning ordinance to ensure that the character and uses as described and limited by these documents are adhered to. The requirement for an easement or covenant to restrict the uses on parkland to the uses allowed in the RNC zone is, therefore, redundant and unnecessary.

Moreover, this zoning text amendment fails to identify who this covenant or easement would run to. In the Sandy Spring/Ashton area, the easements on private rural open space have run to the Greater Sandy Spring Green Space, Inc. ("GSSGSI"), which is a land trust that was organized to accept these types of easements in that area.¹ However, there has been no indication that similar organizations exist in other master plan areas that are ready, willing, and able to accept such easements. Moreover, there are questions that need to be addressed related to the long-term viability and enforcement obligations of any such organization. Planning Staff does not recommend that MNCPPC cede any authority over parkland – which is already held for the benefit of the public – through a covenant or easement to a private group that may not even exist in the future.

As stated previously, the only parkland designated in the Sandy Spring/Ashton Master Plan area was purchased by Park and Planning and not designated as rural open space.

Of the five properties recommended for the RNC Zone in the approved Potomac and Upper Rock Creek master plans, two of them—the Potomac properties and the Freeman property in Upper Rock Creek—have been approved for development. The Potomac properties are well into the construction phase; approvals for the Freeman property are under legal challenge precisely because no easements have been recommended for rural open space dedicated as parkland. The Woodlawn property in Upper Rock Creek, which also has approved development plans, is being considered for purchase by the State Highway Administration; refinements to the design for the Intercounty Connector have resulted in a proposed alignment that bisects the property and greatly reduces its development potential.

Approval of the text amendment would directly affect development of the remaining RNC parcel in Upper Rock Creek, the Casey-Dungan properties, which include 262 acres of land proposed for park dedication. As noted above, the land proposed for parkland is adjacent to existing stream valley parkland and is not envisioned for recreational uses beyond trails. It should also be noted that the areas proposed as parkland are not included in the sewer envelope; the Plan explicitly discourages sewer lines in the tributaries that drain these areas.

The majority of land recommended for parkland acquisition in Olney would be unaffected by this text amendment. Existing language in the Zoning Ordinance allows master plans to recommend areas that can be designated as rural open space and used for active recreation. The Legacy Open Space program may acquire a second property. Two properties are recommended for acquisition to

¹ There is also one parcel in the Sandy Spring/Ashton area that was not recommended as parkland in the Master Plan but was dedicated as parkland that is subject to a rural open space easement that runs to GSSGSI. This easement was placed on this parkland pursuant to a Planning Board condition of approval.

add to existing active parkland. These properties would be affected by the proposed text amendment only if they are included in an assemblage with adjoining properties also in the RNC Zone.

In Damascus, approval of the text amendment would directly affect areas on the Kingstead-Leishear and Warfield properties.

RECOMMENDATION

The staff recommends that Zoning Text Amendment 06-04 be denied. To date, there are no master plans or sector plans that designate specifically the conservancy lot exception in the rural open space area. In the Sandy Spring/Ashton Master Plan area, conservancy lots were designated based on the zoning ordinance provisions, not the master plan. Conceptually, it is unclear what the conservancy lot amendment is trying to fix, so it is hard to support it since it raises some new problems such as: 1) what happens to existing master plans; 2) what happens to already approved developments; and 3) how is the master plan to decide where these lots would be appropriate. From a design point, a minimum 10-acre conservancy lot is a good idea since it is a technique that is in line with the concept of providing flexibility in site planning of RNC developments. It assists in achieving a better plan more suited to the individual site conditions-- a major part of how the RNC is supposed to work--rural area, large development sites, visual impacts, etc. From a technical standpoint, 10-acre conservancy lots that are included in a site plan help achieve the lot size diversity requirement of the RNC zone. Although the impact may not be huge, not having conservancy lots in a development would make it harder to achieve lot size diversity. Also, the implementation of a RNC rural open space easement on a single property is consistent with how we implement a Category I forest conservation easement on a single lot in any other residential zone in the County.

In general, public parkland should not be restricted with easements if it is designated as parkland in a master plan. The purpose of designating parkland in a master plan is to provide for future acquisition of parkland for public use and purpose. Our role as public servants and stewards of the land is to implement both the master plans and the zoning ordinance to ensure that the character and uses as described and limited by these documents is adhered to. It is not necessary for MNCPPC to cede our authority over our own parkland -- parkland that is for the benefit of the public -- to a private group that may not even exist in the future. One of the unintended consequences of this text amendment could be that no further public parkland in the RNC zone is accepted by the Commission; even if it is designated in a master plan. The Commission, upon further deliberation, may determine that the easements and covenants are too burdensome, and that the rural open space lands would better be left in private hands. This would probably not be the best outcome for County residents.

Attachments:

1. Zoning Text Amendment as submitted
2. Community-Based Planning Memoranda

Zoning Text Amendment No: 06-04
Concerning: Rural Neighborhood Cluster –
Rural Open Space
Draft No. & Date: 2 – 1/19/06
Introduced: January 24, 2005
Public Hearing: 2/28/06; 1:30 p.m.
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**

By: Councilmember Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- clarifying the circumstances for subdivision of a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone, and
- requiring all publicly held or privately held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant; and
- generally amending the Rural Neighborhood Cluster zone.

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

DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.57	“Special regulations for development in the Rural Neighborhood Zone”
Section 59-C-9.572	“Rural Open Space”
Section 59-C-9.574	“Optional method of development”

EXPLANATION: *Boldface indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the 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-C-9. is amended as follows:**

2 **DIVISION 59-C-9. AGRICULTURAL ZONES.**

3 * * *

4 **59-C-9.57. Special regulations for development in the Rural Neighborhood**
5 **Cluster zone.**

6 **59-C-9.571. Purpose.**

7 The cluster method of development is intended to preserve large areas of
8 contiguous rural open space, consistent with the recommendations and
9 guidelines of the applicable master or sector plan. Cluster development is
10 required under both the standard and optional methods of development.
11 Cluster development requires the setting aside of rural open space. Under
12 the optional method of development the maximum development unit density
13 allowed may be increased to accommodate the construction of Moderately
14 Priced Dwelling Units in accordance with Chapter 25A.

15 **59-C-9.572. Rural Open Space.**

16 Rural open space is land that is managed, as described in Section 59-C-
17 9.574(g)(3), or is unmanaged, which means that it is returning to its natural
18 state without human intervention. Contiguous rural open space shares an
19 extended boundary with a residential cluster neighborhood. The open space
20 may preserve sensitive natural resources, other sensitive areas and associated
21 habitat.

22 Recreational facilities in the rural open space are limited to trails and related
23 amenities or other facilities recommended in the master plan. The following
24 classes of uses are not permitted in the rural open space area. The
25 exceptions noted in subsections (d) and (f) are not excluded from this area;
26 they are permitted by right or special exception, as stated in section 59-C-
27 9.3:

- 28 (a) Agricultural-industrial;
- 29 (b) Agricultural-commercial;
- 30 (c) Resource production and extraction;
- 31 (d) Residential, with the following exceptions:
 - 32 - If recommended in an approved and adopted master or sector
 - 33 plan, a one-family detached dwelling located on a lot, 10 acres
 - 34 or greater in size, that contributes to the overall total of rural
 - 35 open space;
 - 36 - accessory apartment that is part of a one-family detached
 - 37 dwelling located on a lot, 10 acres or greater in size, that
 - 38 contributes to the overall total of rural open space;
 - 39 - a farm tenant dwelling in existence prior to application of the
 - 40 Rural Neighborhood Cluster zone, or a structure converted to a
 - 41 farm tenant dwelling included as part of a historic site
 - 42 designated in the Historic Master Plan;
 - 43 - a one-family semidetached dwelling and townhouse as part of a
 - 44 moderately-priced dwelling unit development;
- 45 (e) Commercial; and
- 46 (f) Services, except a home occupation associated with an otherwise
- 47 permitted residential use.

48 * * *

49 **59-C-9.574. Optional method of development.**

50 * * *

- 51 (h) Rural open space design guidelines

52 * * *

- 53 (4) All publicly held or privately held land in the rural open space
- 54 area must be preserved in perpetuity as rural open space [,

15

55 either by dedication to parkland or] by application of an
56 easement or covenant in a recordable form approved by the
57 Planning Board. The easement or covenant must restrict uses in
58 the rural open space area to those [set forth in this zone] uses
59 allowed under 59-C9.572, [establish procedures] provide for the
60 management of any natural or agricultural features [as set forth]
61 in accordance with the approved site plan, and prohibit any
62 [further] development or subdivision within the rural open
63 space area not expressly authorized.

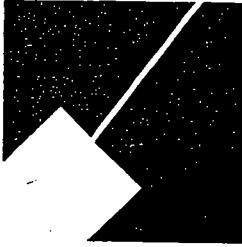
64 * * *

65 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
66 date of Council adoption.

67
68 This is a correct copy of Council action.

69
70
71
72 _____
73 Linda M. Lauer, Clerk of the Council

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

February 23, 2006

To: Greg Russ
Development Review Division

Via: John A. Carter, Chief *JAC*
Community-Based Planning Division

From: Frederick Vernon Boyd *FVB*
Community-Based Planning Division

Subject: Zoning Text Amendment 06-04—Rural Neighborhood Cluster Zone

Zoning text amendment 06-04 proposes two modifications of the Rural Neighborhood Cluster (RNC) Zone. The text amendment proposes to: 1) require that master plans recommend the use of rural open space for large one family lots; and 2) require easements for all land—private or public—that is included as rural open space. This memorandum offers background on the use of the Rural Neighborhood Cluster (RNC) Zone in four recently approved or pending master plans.

Background

This section offers a brief summary of the zone's use in Potomac, Olney, Upper Rock Creek and Damascus.

Potomac

The Potomac Subregion Master Plan, approved in March 2002, makes a single recommendation for the Rural Neighborhood Cluster Zone. The Plan recommends the RNC Zone for four contiguous parcels, the Tipton, Piney Grove, Weihe and Semmes properties, which total almost 145 acres and are located along Glen and Piney Meetinghouse roads in the Travilah section of the subregion. The Plan recommends that 70 percent of the properties be retained as open space and that larger than minimum stream buffers be provided wherever feasible. The Plan also recommends a maximum of 62 lots on the

(17)

properties and that 60 acres in the Lower Greenbriar Branch stream valley be dedicated as parkland.

The properties have passed through the development process and two lots, totaling 64 acres, are shown for dedication to parkland, as the Plan recommended. Both lots are included in the rural open space calculations required as part of the development process. They have not been formally conveyed for public parkland, pending resolution of several violations of Department of Permitting Services regulations and the removal of temporary facilities, such as sediment traps.

Upper Rock Creek

The 2004 Upper Rock Creek Area Master Plan recommended four properties for the Rural Neighborhood Cluster Zone. The Plan specified a density of 0.33 units to the acre, with a recommended density of 0.4 units to the acre if Moderately Priced Dwelling Units were required as part of a development. The Plan did not recommend specific percentages of open space for the four properties.

All four properties recommended for the RNC Zone are adjacent to existing stream valley parks. The Plan recommends dedication as public parkland for the entire Dungan property, as well as parts of the Casey and Freeman properties, which are adjacent to North Branch Stream Valley Park. Areas of the Woodlawn property are adjacent to Rock Creek Stream Valley Park and are recommended for dedication as public parkland as well.

Two of the four properties have passed through the development process. The Freeman and Woodlawn properties include a total of approximately 264 acres of parkland dedication. This land is included in the rural open space calculations. The combined Casey and Dungan properties have begun, but not yet completed, the preliminary and site plan processes. These properties include about 262 acres of parkland, all of which is included in the rural open space calculations.

Olney

The Olney Master Plan, approved in 2005, recommends the Rural Neighborhood Cluster Zone for 35 properties. The Plan recommends a density of 0.33 units to the acre for the majority of those properties. For six properties, the Plan recommends the RNC Zone, but does not recommend community sewer service, which limits allowable density to 0.2 units to the acre. For one property, the Norbeck Country Club, the Plan recommends a density of 0.45 units to the acre.

The Plan recommends parkland acquisition on four properties. One, the Simms property, is designated for acquisition through the Legacy Open Space program. The Plan recommends that a portion of the Casey property adjacent to Farquhar Middle School be designated as rural open space and dedicated as parkland for

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active recreation. Two other properties are adjacent to Olney Manor Park and are recommended for complete or partial acquisition as parkland. They have not been identified as rural open space.

Damascus

The Planning Board Draft Damascus Master Plan makes extensive use of the Rural Neighborhood Cluster Zone, and recommends creation of a separate RNC/TDR Zone so that transferable development rights can be used in the resulting development. The Plan recommends the RNC/TDR Zone for six properties—the Burdette, Stanley-Leishear-Day, Casey-Lewis, Warfield, Kingstead-Leishear and Smart-Miner-Rice-Conway properties. For each, the Planning Board Draft plan recommends a base density of 0.4 units to the acre. Densities of one unit to the acre would be permitted with the purchase of TDRs.

The Draft Master Plan delineates specific areas for dedication as public parkland on the Kingstead-Leishear and Warfield properties.

Analysis

Rural Open Space

Of the five properties recommended for the RNC Zone in the approved Potomac and Upper Rock Creek master plans, two of them—the Potomac properties and the Freeman property in Upper Rock Creek—have been approved for development. The Potomac properties are well into the construction phase; approvals for the Freeman property are under legal challenge precisely because no easements have been recommended for rural open space dedicated as parkland. The Woodlawn property in Upper Rock Creek, which also has approved development plans, is being considered for purchase by the State Highway Administration; refinements to the design for the Intercounty Connector have resulted in a proposed alignment that bisects the property and greatly reduces its development potential.

Approval of the text amendment would directly affect development of the remaining RNC parcel in Upper Rock Creek, the Casey-Dungan properties, which include 262 acres of land proposed for park dedication. As noted above, the land proposed for parkland is adjacent to existing stream valley parkland and is not envisioned for recreational uses beyond trails. It should also be noted that the areas proposed as parkland are not included in the sewer envelope; the Plan explicitly discourages sewer lines in the tributaries that drain these areas.

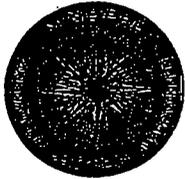
The majority of land recommended for parkland acquisition in Olney would be unaffected by this text amendment. Existing language in the Zoning Ordinance allows master plans to recommend areas that can be designated as rural open space and used for active recreation. The Legacy Open Space program may

acquire a second property. Two properties are recommended for acquisition to add to existing active parkland. These properties would be affected by the proposed text amendment only if they are included in an assemblage with adjoining properties also in the RNC Zone.

In Damascus, approval of the text amendment would directly affect areas on the Kingstead-Leishear and Warfield properties.

Conservancy Lots

The approved Potomac, Upper Rock Creek and Olney plans do not recommend residential development using large lots that would contribute to the open space. Nor does the draft Damascus Master Plan. Already approved development plans in Potomac and Upper Rock Creek cannot be affected by this text amendment. Should the text amendment be approved, the Council would have to evaluate the individual proposals in Damascus and determine which, if any, are appropriate for large lot residences. In the absence of detailed development plans, which may not be available, it is not immediately clear how this would be done. In Olney, future subdivisions in the RNC Zone would be precluded from using conservancy lots because the Olney plan does not recommend them.



Memorandum

To: Greg Russ, Zoning Analyst

From: Piera Weiss, Community-Based Planning

Subject: Text Amendment ZTA 06-04 *aw*

Date: 2/17/2006

The RNC zone was originally created in 1998 for application in the Sandy Spring/Ashton Master Plan. The intent of the zone was to preserve open space for historic (Rural Legacy Trail), visual and farming purposes. Specific properties zoned RE-2 that contained conditions unique to master plan area, such as having historical importance or were actively used in agriculture, were rezoned to the RNC.

The RNC zone allowed development with water and sewer (the properties were formerly zoned RE-2 and not eligible for public water and sewer) to encourage clustering and provide the vast majority (70 – 85%) of the property to be set aside as rural open space that could be used for farming or as an historic setting for the Rural Legacy Trail or to preserve the agricultural character of the master plan area. It was intended that the rural open space, created by the use of cluster, would be restricted in perpetuity to specific uses described in easements.

The amount of rural open space (described as a percentage) and the maximum number of housing units for the individual properties was expressly outlined in the master plan. The total number of units, in some cases less than would be expected, was placed in a table so that there would be no debate regarding number of units. MPDUS were specifically not included in the requirements of the zone since there was an inherent conflict between desired density, the arrangement of lots with respect to specific site features and environmental issues, and allowing for additional bonus densities.

The zone recommended a range of lots, from conservancy lots to 6,000 square feet. Conservancy lots were lots for which the total acreage, minus the area designated for a house, could be used to as part of the rural open space

calculation. The master plan did not distinguish where the different types of lots needed to be used on which property.

There was always an issue with the Sandy Spring community as to the future viability of rural open space. There was a concern that dedication as parkland was not the best possible way to ensure perpetuity as rural open space. The master plan did not recommend any rural open space for parkland but rather suggested that other mechanisms be considered to preserve the rural open space such as easements to a third party to insure that the rural open space would be forever protected.

The master plan did propose parkland on one property in the RNC zone, which was adjacent to Sherwood High School and the Historic Sandy Spring (Alfandre Property). However, it was clearly stated that in this case the purpose was to provide ball fields (10 acres) and to buy down density (30 acres) on the property. MNCPPC purchased 40 acres to achieve that master plan goal. The land was acquired by payment and not through dedication.

Since 1998, other master plans have used the RNC zone and have amended the zone to suit the intent of these master plans. This has created problems for the Sandy Spring/Ashton Master Plan. Properties embarking on the development process must conform to the current zone. On one property (Danshes), MPDUS had to be provided in excess of the maximum density recommended in the master plan.

The problem(s) this text amendment is addressing appears to have arisen from issues related to the other master plans that used and amended the zone since 1998. A better approach might be to understand the issues and then determine how those issues can be addressed through other mechanisms, not by wholesale changes to the RNC zone. All of the changes have negated the original intent and purpose of the zone as applied in Sandy Spring. Perhaps a better solution should have been a new zone for the subsequent master plans.

The following are specific points with respect to the proposed changes:

Sec 59.C.9.572:

This language change affects RNC zone properties in the Sandy Spring/Ashton Master Plan. The Sandy Spring/Ashton Master Plan does not restrict the use of conservancy lots to specific properties. The use of conservancy lots on property derives from the provision of the zone as approved in 1998, not the master plan.

Sec C-9.574 wishes to require easements on parkland. As stated before, the only parkland designated in the Sandy Spring/Ashton Master Plan area was purchased. In general, parkland should not be restricted with easements if it is designated as parkland in a master plan. The purpose of designating parkland in

a master plan is to provide for future acquisition of parkland for public use and purpose. The use and purpose may of change over time. Easements would present a future problem.

ZTA 06-04

Espy S. Driscoll
Bowie Mill Civic Association
5712 Foggy Lane
Derwood, MD 20855
(301) 869-9287 e-mail: espy-driscoll@verizon.net

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020602

Testimony for Zoning Text Amendment 06-04 - March 7, 2006; Agenda Item #10

President Leventhal, Vice-President Praisner and Members of the Council

We strongly endorse ZTA 06-04 concerning the Rural Neighborhood Cluster Zone and request that you support and approve this amendment. Upper Rock Creek is a watershed. The quality of our stream water depends on the health of the land surrounding those streams.

Under the existing RNC development code, the Rural Open Space land can be held by private ownership or by public ownership, e.g. Montgomery County. Privately held land must convey with a written conservation easement or covenant that establishes such land be preserved and held as Rural Open Space in perpetuity. However, the RNC zoning code is conflicting with regard for conservation easements or covenants for publicly held land that conveys to the county as dedicated Parkland. In one place the code states that all Rural Open Space land must have an instrument that assures permanent preservation, but in contradiction of itself, elsewhere in the code, it reads as if such an instrument is not required on Rural Open Space land that conveys to the County as dedicated parkland.

This is a significant loop hole in the RNC code that would enable the County to subdivide the Rural Open Space, sell it or develop it. There should be no distinction made between privately held land and publicly held land. Without an easement or covenant on the land conveyed to the County, there is no guarantee that it will remain in its natural state in perpetuity. Indeed, the Planning staff report states: "The purpose of designating parkland in a master plan is to provide for future acquisition of parkland for public use and purpose." (Bowie Mill Parkland, now Sequoyah School is an example.)

The RNC code must explicitly require that all privately held land AND publicly held land resulting from the Rural Open Space of the RNC zone be preserved in its natural state in perpetuity by application of an easement or covenant that not only restricts development or subdivision within the Rural Open Space area, but also any other use not specifically authorized.

This RNC ZTA 06-04 must be retroactive to include the two large properties that are currently going through the review process now: The Reserve at Fair Hill (Freeman property) and the Casey/Dungan properties.

Residents of the Upper Rock Creek fought long and hard to preserve the high quality of our water, to protect our environmentally sensitive resources and to maintain the semi rural character of the area. We believe that low density, RE-1 and RE-2 zoning with septic and well water is the best way to protect the Upper Rock Creek watershed. We did not achieve our goal. The Planning Board and County Council felt that the RNC zone was an alternative to large lot development for protecting environmental resources and

24

increasing the density. It was a trade off. We would have to accept sewer and higher density, particularly with MPDUs, but in return a minimum of 60% of the land would be held in its natural state as rural open space in perpetuity. This was the County's commitment to its residents. This is the reason for Rural Neighborhood Cluster, otherwise if the open space gets developed in the future it might as well be called Urban Neighborhood Cluster and no one has met their environmental goals.

Montgomery County has a severe water pollution problem. The lower part of Rock Creek is polluted, dying and dead. Restoration of lower Rock Creek stream quality depends on the County being able to preserve our Class III water quality in Upper Rock Creek. It is crucial that all Rural Open Space in the Upper Rock Creek water shed dedicated as parkland be protected forever by privately or publicly held, legally binding easements and covenants.

You told us during many individual meetings, working committee meetings and planning sessions that the RNC zone was a better way to protect our environmental resources in perpetuity. Clearly, this was your intent and it is well documented in the revised Upper Rock Creek Master Plan and in the RNC code.

For example: URC Master Plan, page 7: "A primary goal of this Plan is to protect environmental resources and maintain stream quality by keeping streams, forests and wetlands in a natural state." ---- "Increases open space through dedication, acquisition, or easement as land develops and recommends that options be explored to ensure that this land will be protected in perpetuity."

Montgomery County Zoning Ordinance, Section 59-C-9.23.1 states the intent of the Rural Neighborhood Cluster zone is for "...preserving environmentally sensitive natural resources to the maximum extent possible..." and defines Rural Open Space in Section 59-C-9.573(b) as "...land contiguous to the periphery of the residential portion of a rural neighborhood which is subject to an instrument assuring its preservation as permanent open space."

However, the Montgomery County Zoning Ordinance, RNC Section 59-C-9.574.(h).(4) Optional Method of Development, is in conflict with the intent and within itself: "All land in the rural open space must be preserved in perpetuity, either by dedication as parkland or by application of an easement or covenant in a recordable form approved by the Planning Board." This language must be amended.

Without the approval of RNC ZTA 06-04, there is no guarantee that future Planning Boards and Councils, under even greater pressures, would continue to protect the Rural Open Space dedicated to the county as parkland in perpetuity. Please stand behind your commitment to the Upper Rock Creek communities, and the intention and purpose of the RNC zone itself, and approve this amendment.

Thank you,

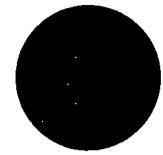
Espy S. Driscoll
Bowie Mill Civic Association

ZTA 06-04

RW
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GSSGS Greater Sandy Spring Green Space, Inc.
P O Box 92
Sandy Spring, MD 20860
301-869-5358
www.sandyspringgreenspace.org

020601



February 24, 2006

Council President, Mr. George Leventhal
The Montgomery County Council
100 Maryland Avenue, 6th floor
Rockville, MD 20850

RE: Support ZTA 06-04, Rural Neighborhood Cluster-Rural Open Space

Dear Mr. Leventhal:

Greater Sandy Spring Green Space (GSSGS) is a local land trust incorporated in 1998 to promote the preservation, protection, and balanced use of open space and natural resources within eastern Montgomery County. To date, we have easements on 135 acres of land. With these easements, we know that we have helped to preserve the heritage, beauty, and environmental health of our county.

In furtherance of these broad goals, we strongly support passage of the above-referenced ZTA, which amends the countywide Rural Neighborhood Zone to assure that rural open space, set aside through the development process, will remain as open space in perpetuity whether in private or public ownership.

GSSGS holds easements on private and public land, to support stewardship of the open space. Conservation easements that we hold are tailored to each specific property to reflect any unique elements on site, such as the presence of historic buildings, for example. This reflects our mission to promote environmental health and balance the built environment with the natural environment in Montgomery County. We are eager to talk with you more about the benefits of conservation easements for Montgomery County, to help achieve this balance.

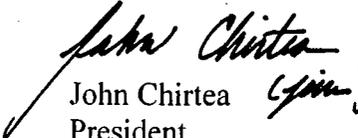
We strongly feel that, in this zone, the major public benefit is the rural open space. With assured development densities, public water and sewer, and bonuses for moderately-priced units, approvals for the development of each Rural Neighborhood Zoned property are sure to have a large impact on the immediate neighborhood and greater county, as well. The greatest public amenity is the setting aside of the rural open space. The idea that this open space, through public ownership, could ever come up again for re-development runs counter to the original zoning/ development contract.

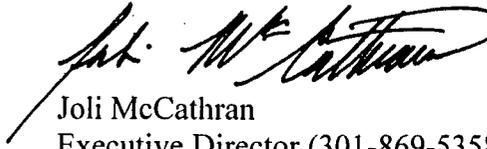
There are currently two large RNZ properties being considered for development by the Planning Board: the Reserve at Fair Hill (1-04110, 8-05028) and Bowie Mill Estates (1-06032). Please urge the Planning Board to provide the same assurances to all of us that the rural open space will be protected in perpetuity with easements on both park dedication and private lands.

26

Thank you for your consideration and please give your support to this proposed ZTA.

Sincerely yours,


John Chirtea (Jim)
President


Joli McCathran
Executive Director (301-869-5358)

Cc: The Honorable Marilyn Praisner

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ZTA 06-04

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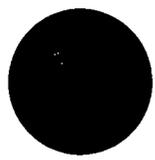
Guthrie, Lynn

From: Diane Cameron [dianemcameron@verizon.net]
Sent: Monday, March 06, 2006 10:52 AM
To: Montgomery County Council
Cc: 'Bonnie Bell'; 'Bill Howard (E-mail)'; burrgray@aol.com; 'Steve Dryden'; 'Steve Saari'; 'Edward Murtagh'; 'Kathy Michels'; anneambler@comcast.net; 'James Fary'; 'Ginny Barnes'; jhfay@comcast.net; 'Ann Hoffnar (2005) (E-mail)'; 'Robert Boone'; jim@anacostiaws.org; 'Masaya Meada'; carenmadsen@msn.com; 'BRIAN HENRY'; 'Wayne Goldstein'
Subject: Preserve the streams of Upper Rock Creek

2006 MAR -6 PM 1: 27

Monday March 6, 2006

020604



Dear Council President Leventhal and Councilmembers,

I am writing to ask you to approve Zoning Text Amendment 06-04, because it is crucial that all open space that is so designated in any site plan, including that used for stormwater absorption and infiltration and forest preservation, as well as for passive recreation, be legally preserved in perpetuity regardless of whether the ownership of the open space acreage is in public or in private hands. Accountability for stream protection in Upper Rock Creek depends in part on the strength of the legal protections afforded to the natural area preservation zones in this watershed. Also, the restoration of the degraded streams of Lower Rock Creek will depend in part on our ability to permanently preserve and protect the high-quality streams of Upper Rock Creek (designated a cold water trout stream by the State of Maryland)— and their contributing natural areas. When the Council changed the zoning in Upper Rock Creek from RE-1 and RE-2 on septic and well water to Rural Neighborhood Cluster (RNC), you in effect promised us that this open space would be kept in its natural state in perpetuity. Last week, the Planning Board voted against supporting this ZTA proposal, but the reasoning of the planning staff, that such easements or covenants for land owned by the County or by M-NCPPC are not legally required, is not convincing or compelling and is not consistent with the Maryland Department of the Environment's 2000 Maryland Stormwater Design Manual Volumes 1 & 2, Chapter 5.

I support ZTA 06-04, because it is consistent with the stream protections for new development that the Stormwater Partners Coalition, composed of 17 local, regional and national environmental and civic organizations, is seeking in its Eleven-Point Proposal for a stronger Montgomery County Stormwater permit (attached). (We are in the process of requesting meetings with each Councilmember, and the relevant Agency officials, to further present this proposal.)

Diane M. Cameron
Consultant to the Audubon Naturalist Society and
the Natural Resources Defense Council

Background

Chapter 5 of the 2000 Maryland stormwater manual is intended to encourage developers to shift away from "end-of-pipe" structural stormwater measures like detention ponds, towards environmentally sensitive development (ESD) techniques, such as directing runoff to forested buffers and naturally-vegetated infiltration zones. As an incentive to developers to adopt ESD techniques, stormwater "credits" are given – reductions in structural device sizing requirements – to the extent that a developer preserves natural forestlands, wetland, and meadows. To receive the stormwater structural device credit, a developer must not only set aside a part of the site for natural area preservation, but must also provide an easement or other permanent legal protection for that parcel. To donate such parcels to M-NCPPC or another public entity is not sufficient to satisfy the requirements of the 2000 Maryland stormwater manual.

Thus, the proposal of ZTA 06-04 is important not only for general open space preservation in Montgomery County, but also for compliance with the section of the State of Maryland's stormwater manual that governs the

28

use of these design techniques. ZTA 06-04 is also consistent with the stream protection goal of the Stormwater Partners Coalition, a 17-member coalition of local, regional, and national civic and environmental organizations, in our Eleven-Point Proposal for a stronger Montgomery County stormwater permit (a summary of the Eleven-Point proposal is attached here). This stormwater permit is the prime means of assuring accountability for stormwater management in Montgomery County, but to do so it must be revised to contain measurable goals that are enforceable and observable by the public.

Through the water quality standards and measurable action goals that we are seeking in the County's stormwater permit, we are seeking to protect our remaining high-quality streams – such as those in Upper Rock Creek – through much more stringent site design requirements for stream protection, and to restore our degraded streams through a more-ambitious, yet reasonable restoration program based on source prevention and ESD/LID. Restoration and Protection within a watershed are inextricably linked, as in the case of Rock Creek: the high-quality streams of Upper Rock Creek need to be preserved in order to aide in the restoration of Lower Rock Creek – the high-quality streams can serve as biological models for scientists, and as "safe harbors" for the fish and other species that are intolerant of the warmer temperatures, flash floods, toxics, and other problems in the downcounty streams.

A few statistics to illustrate what's at stake: According to estimates based on maps provided in the DEP's *Countywide Stream Protection Strategy, 2003 Update*, (available at: <http://www.montgomerycountymd.gov/content/dep/Publications/pdf/CSPS2003.pdf>) twelve, or roughly half, of the tributary streams of Upper Rock Creek still have diverse, healthy populations of fish and aquatic insects — some of which are termed "Excellent" quality by DEP, and some of which are termed "Good." In contrast, Lower Rock Creek is in very dire straits, with all of its streams deemed either "Fair" or "Poor" quality, some of which have declined quite recently due to intensified development in their watersheds, (this recent downcounty development has in places, lacked the use of stream buffers or steep slope protections, and has employed clear-cutting). Without permanent legal protections such as the easements or covenants that ZTA 06-04 would require, we'll continue to say goodbye to Montgomery's high-quality streams, converting them into the heavily-degraded streams such as those that we have in Lower Rock Creek. Indeed, Montgomery County has been rapidly losing ground overall for stream quality since the mid-1990s – according to the *Countywide Stream Protection Strategy, Stream Condition and Trends Report*, roughly 35% of monitored stream miles declined from the mid-1990s to 1999-2001, while 55% stayed the same (as measured by biological indicators – fish and insects) and 10% improved. A 35% decline in stream health countywide is not acceptable, and it's not what we want to witness for the cold water designated trout streams of Upper Rock Creek. (The source of these estimates is available at <http://www.montgomerycountymd.gov/content/dep/publications/pdf/trends.pdf>.)

29

**The Montgomery County, MD 2006-2011 Clean Water Act Stormwater Permit:
We must make a giant leap forward to protect and restore our drinking water sources, the
Anacostia River, local streams, and the Chesapeake Bay.**

Proposed by the *Montgomery County Stormwater Partners Coalition*: Anacostia Riverkeeper at Earth Conservation Corps, Anacostia Watershed Citizens Advisory Committee, Anacostia Watershed Society, Audubon Naturalist Society, Chesapeake Bay Foundation, Clean Water Action, Eyes of Paint Branch, Friends of Rock Creek's Environment, Friends of Sligo Creek, Friends of the Earth, Greater Goshen Civic Association, Montgomery County Civic Federation, Natural Resources Defense Council, Neighbors of Northwest Branch, Potomac Conservancy, Sierra Club Montgomery County Group, and the West Montgomery County Citizens Association.

For more information, contact Diane Cameron: dianemcameron@verizon.net; (301) 933-1210.

Attainment of Water Quality Standards and Goals

- 1) Require enforceable pollution reduction measures through numeric pollution caps, in order to meet standards for bacteria and other pollutants, for the Anacostia and other waters.
- 2) Protect high-quality and good-quality streams, and our drinking water sources including groundwater recharge areas, through zoning and planning changes reflecting the best science and technology for Environmentally Sound/ Low Impact Development (ESD/LID).
- 3) Restore degraded streams through measurable, enforceable goals. Apply stormwater ESD/LID measures cost-effectively on a whole-watershed and –subwatershed basis, to make progress in attaining water quality standards and protecting our drinking water sources from stormwater pollution.

Pollution Prevention at the Source

- 4) Apply off-the-shelf source reduction stormwater measures countywide, including pet waste education and enforcement, street sweeping, and ESD/LID techniques like rain barrels and rain gardens.
- 5) Identify and remediate stormwater “hotspots.”
- 6) Require actions to protect and restore forested stream buffers, and their associated wetlands, through measurable reforestation goals.
- 7) Establish numeric limits (maximum flow targets) for stream flows to address volume and velocity from already-developed and newly-developing areas, and enable measurable and enforceable regulation.

Accountability and Coordination, Public Involvement, and Program Support

- 8) Increase the level and frequency of public involvement and notification in the County's stormwater permit program development decisions, and in project implementation.
- 9) Require enforceable duties of each of four County agencies who have stormwater responsibilities (DEP; DPS; DPWT; and Park and Planning) to reduce fragmentation and increase accountability and transparency.
- 10) Shift stormwater monitoring to more-closely track the County's watershed protection and restoration goals and stormwater measures, and to cooperate with volunteer groups.
- 11) Increase program funding while sending a “price incentive” for more-protective stormwater measures through broadening use of the County's Water Quality Protection Charge.

Further Information on Each of the Eleven Items in our Proposal:

Attainment of Water Quality Standards and Goals

- 1) **Require enforceable pollution reduction measures through implementation of Total Maximum Daily Loads (TMDLs) in this stormwater permit.** *Goal:* Montgomery County's stormwater permit should have pollutant discharge limits designed to meet water quality standards, and where there is an approved TMDL in place, the permit must include a Waste Load Allocation (WLA) (a pollutant limit for a permitted discharger), either in the form of numeric pollutant discharge limits applied at specific, appropriate geographic points, or in the form of a specific, enforceable stormwater management measure application program. MDE has published proposed TMDLs in 2005 for bacteria for the Anacostia River tributaries Northwest Branch and Paint Branch; Rock Creek; and Cabin John Creek. The TMDL numbers for these waterbodies are expected to be published within the next few months and should be translated into ambitious but reasonable stormwater permit requirements.
- 2) **Protect high-quality and good-quality streams, and our drinking water sources, through zoning and planning changes reflecting the best science and technology for Environmentally Sensitive Development (ESD).** *Goal:* Require stormwater prevention for new development and redevelopment through natural area preservation, the prevention/reduction of stormwater flow through infiltration or re-use, and the use of environmentally-sound site design in full compliance with the stream, drinking water, and groundwater protection performance standards of the *2000 Maryland Stormwater Design Manual*.
- 3) **Restore degraded streams and watersheds** through strategic application of stormwater ESD measures as cost-effective retrofits on a whole-watershed and –subwatershed basis. *Goal:* Through this stormwater permit, Montgomery County should commit to specific watershed restoration goals, along with measurable, enforceable levels of BMP applications, towards attainment of water quality standards; drinking water source protection; and improving the biological status of degraded watersheds. (The current permit's requirement that the County apply restoration measures to 10% of the County's unmitigated impervious areas is inadequate.) Require that the primary emphasis of the program be on source prevention and reduction of stormwater flows through on-site controls to the maximum extent practicable. This program should also be accomplished through maximal public involvement, consultation and partnerships.

Pollution Prevention at the Source

- 4) **Apply off-the-shelf stormwater measures countywide**, including pet waste education and enforcement, street sweeping, and ESD techniques such as rain barrels and rain gardens through an upgraded and expanded "Rainscapes" program. *Goal:* Require that the Rainscapes Program, one of the most innovative and promising stormwater programs

initiated by DEP, be upgraded in staff levels and visibility. Increase the frequency and technology level of the County's street sweeping program. Apply the best models from elsewhere in the country for pet waste pollution prevention outreach and enforcement. Require that these management measures be applied according to enforceable application standards and measurable goals, and that the County document the pollutant loadings reductions achieved.

- 5) **Identify and remediate stormwater "hotspots."** *Goal:* Require that Montgomery County identify and remediate stormwater hotspots under a set schedule. This effort should include hotspots that are not already implementing a pollution prevention plan under the NPDES general industrial stormwater permit, (such as certain public and private materials storage yards, fleet facilities, and commercial or industrial sites) and those that may already be permitted, but are subject to inadequate controls and are likely to generate a disproportionate quantity of stormwater pollutants. For those hotspots not covered by an individual NPDES permit, Montgomery County will, by 2008, require and ensure the implementation of stormwater pollution prevention plans as required by the *Maryland 2000 Stormwater Design Manual*, Performance Standard No. 13 and Chapter 2, Section 2.8.
- 6) **Require actions to protect and restore forested stream buffers and forested uplands, through reforestation, easement acquisition and enforcement, and other programs.** Forested areas including forested stream buffers and upland sites are proven, cost-effective "natural stormwater infrastructure." *Goal:* The stormwater permit should require that the County ensure the integration of forest conservation techniques for riparian buffers and stormwater retention and infiltration into stormwater management plans. Enforceable forested stream buffer protections and measurable reforestation goals also need to be required in this stormwater permit.
- 7) **Establish numeric limits (maximum flow targets) for stream flows to address volume and velocity from already-developed and newly-developing areas, and enable measurable and enforceable regulation.** *Goal:* Protect streams from the destructive "flash floods" that occur in developed and newly-developing watersheds due to uncontrolled runoff from impervious surfaces. Apply numeric limits on peak flows and on total runoff through benchmarked BMP applications on a watershed and subwatershed basis, and measurable goals that use in-stream limits to define the use of widely distributed ESD measures for on-site source areas such as parking lots and rooftops.

Accountability and Coordination, Public Involvement, and Program Support

- 8) **Increase the level of public notification and involvement in the development, and implementation, of the County's stormwater permit programs, actions and policies.** Increase government and private accountability in the implementation of stormwater pollution prevention requirements. *Goal:* Require the County to semi-annually seek public comment and input on program development proposals for this stormwater permit program. Strengthen the existing stormwater rules to require that all applicants for development and redevelopment proposals document that they notified and sought the input of the public and surrounding neighbors, prior to the submittal of a stormwater management concept plan, integrated with applicable forest, stream buffer, and steep slope protection plans. Require a

public notification and comment process for any proposed changes to site plans, stormwater plans or forest conservation plans.

- 9) **Require enforceable duties of each of four County agencies which have stormwater responsibilities (DEP; DPS; DPWT; and Park and Planning), to advance the mission of stormwater management based on pollution prevention and environmentally sensitive design principles.** The current permit lacks specific departmental references or requirements. Require the County to analyze the extent to which the existing fragmentation of decisionmaking in stormwater management, watershed protection and restoration is contributing to avoidable resource damages and losses. Require that a report on this analysis be included in the August, 2008 Annual Report. *Goal:* Enforce full accountability for stormwater permit compliance among all responsible agencies.
- 10) **Expand the stormwater monitoring program to cooperate with citizen volunteer monitoring groups; to more-closely track progress in reaching the County's watershed protection and restoration goals; and to assess implementation of stormwater management measures.** *Goal:* Shift the stormwater monitoring and management practice assessment requirements to more closely meet the County's watershed and water quality needs. (Some of the current monitoring required by the permit is aimed at the State's needs, including assessment of the State's manual, and collection of data for a Statewide database.) Track implementation of pollutant reduction actions and BMP performance. Require the County to cooperate with and assist organized volunteer monitoring groups, and to utilize and present volunteer monitoring data and that available from the state.
- 11) **Increase program funding while sending a "price incentive" for more-protective stormwater measures through an amendment to the County's Water Quality Protection Charge.** The Water Quality Protection Charge has not achieved its maximum effectiveness as an incentive for ESD and as a revenue source, and is only used for stormwater facility maintenance; it generates less than \$4 million/yr. *Goal:* Require a report by 1/07 on the expansion and use of the Charge as an effective funding mechanism for the programs required in this permit, and to serve as a financial incentive to spur widespread implementation of on-site, distributed ESD techniques, and the implementation of the report's recommendations by the date of the subsequent property tax mailing to Montgomery County property owners. The law chartering this fund is broad, and would enable an expansion to meet more needs.

ZTA 06-04

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020605

Guthrie, Lynn

From: Nmcaprexy@aol.com
Sent: Monday, March 06, 2006 4:10 PM
To: Andrews' Office, Councilmember; Denis' Office, Councilmember; Floreen's Office, Councilmember; Knapp's Office, Councilmember; Leventhal's Office, Councilmember; Perez's Office, Councilmember; Praisner's Office, Councilmember; Silverman's Office, Councilmember; Subin's Office, Councilmember; Montgomery County Council
Cc: petrocci@erols.com; jlyons@goca.org; jolyons@skadden.com
Subject: Testimony re ZTA 06-04

Dear Councilmembers:

As Ms. Hairston will advise you, I have ceded my time to testify at the hearing on Tuesday to Mrs. Susan Petrocci who will represent not only my association, the Norbeck Meadows Civic Association, but the Greater Olney Civic Association. Please accept this as the written testimony of the Norbeck Meadows Civic Association, supplementary to such presentation, provide it your full consideration, and include it in the record.

ZTA 06-04 has been introduced to amend the Montgomery County Zoning Ordinance, Rural Neighborhood Cluster Zone, Section 59-C-9.574(h)(4), to clarify and make that section consistent with the law's purpose, intent and definitions. We urge its adoption. The language in Section 59-C-9.573(c)(3) should be similarly amended and adopted.

Section 59-C-9.23.1 sets forth the intent of the Rural Neighborhood Cluster zone for **"...preserving environmentally sensitive natural resources to the maximum extent possible..."**. Rural Open Space is defined in Section 59-C-9.573(b) as **"...land contiguous to the periphery of the residential portion of a rural neighborhood which is subject to an instrument assuring its preservation as permanent open space."** Any development plan opinion and approval by the Planning Board that does not require the maximum extent of protection by the placement of an instrument, such as a conservation easement, on designated Rural Open Space, whether privately or publicly owned, to assure its preservation is permanent, is violative of the intent of Sections 59-C-9.23.1 and 59-C-9.573 (b). The conveyance of Rural Open Space land to the Planning Board (MNCPPC) without a conservation easement does not serve to effectuate the legislative intent, because the designated Rural Open Space land would not be protected from any change in use by the current or future Planning Board.

The Planning Board has already violated this law, as they recently issued a final Opinion on The Reserve at Fair Hill site plan that takes the position that the language of the zoning text does not require a written instrument (easement or covenant) on the publicly owned land that will assure the Rural Open Space is permanent. In other words, the Planning Board is attempting to take hundreds of acres of Rural Open Space from RNC development without conservation easements, so that they can legally change their mind and trade, sell, or use the land for other purposes in the future.

Last week, in a three to one vote, the Planning Board disapproved of ZTA 06-04. They apparently want to receive parkland, free and clear of any obligation to preserve the property in its natural state and only for uses in accord with the RNC zone, thus evading the Rural

34

3/7/2006

Open Space intent and requirement to preserve environmentally sensitive resources in their natural state to the maximum extent possible through an instrument that assures permanency. Sadly, this does not come as a surprise. A year ago a group of concerned civic leaders, including myself, met with Planning Board staff attorneys. They told us that their opinion was that conservation easements were not required on the publicly owned RNC Rural Open Space. We asked them on what basis. They pointed to the poor wording in the zoning code that ZTA 06-04 will correct. The staff attorneys told us that the Planning Board would try to get away with it if they could. They were unable to add anything more to it than that. When pressed, they said their "legal opinion" would be contained in the Site Plan opinions. We asked that they provide us a draft of all RNC development Opinions before they go before the Planning Board for approvals so that we could comment. They said they would. This request was renewed in writing. In a letter dated November 1, 2005, they responded "that the Montgomery County Planning Board has changed its opinion policy. Draft opinions are not sent out for review any more prior to Board adoption."

They obviously mean that such opinions will not be sent to the interested communities, and are convinced that these drafts are still shared with affected developers prior to publication. Eventually Dave Troutner, President of the Muncaster Area Civic Association and a leader in this matter, obtained the Site Plan 1-04110 Opinion after it was approved and adopted. On page 12 it notes our assertion that written instruments are required to ensure that publicly owned land must be preserved in perpetuity. The Opinion states, *"To that end, he believes the Planning Board should review and approve easement or covenant language (including specific covenants on proposed parkland dedication) prior to the approval of the preliminary plan. Staff recommended against such an easement over the publicly held land as it is not required by law..."* Yet, again, no further explanation was provided. They are merely relying on the poorly written language that ZTA 06-04 will correct to make the "methods of development" language consistent and abiding to the "intent" language and the requirements within the actual definition language of "Rural Open Space" law.

Also, on several occasions, civic leaders have asked the Planning Board if RNC Rural Open Space land dedicated to the County as parkland could be included in the Legacy Open Space program. Sounds logical, yes? The answer was no. The only reason provided was that the County was technically not acquiring the RNC land through a LOS purchase.

The only precedent on property developed under RNC is in Ashton. The Ashton community organized Greater Sandy Spring Green Space, Inc. (GSSGS), a non-profit corporation established to promote the conservation and protection of natural resources within Montgomery County. GSSGS is the holder of a Deed Of Conservation Easement on the publicly owned Rural Open Space land within the Ashton Reserve development. GSSGS worked with the developer and the Planning Board staff on the written instrument that irrevocably granted to GSSGS, in perpetuity, the Conservation Easement on the Rural Open Space as passive recreational parkland consistent with the RNC code intention and the uses at the time of conveyance. Civic representatives from Upper Rock Creek have met with GSSGS. The Board of GSSGS resolved and are willing to hold easements on additional properties, including the pending Reserve At Fair Hill (Pulte / Freeman) and Bowie Mill Estates (Oxbridge / Casey - Dungan) developments. However, the developers have not, and one developer has providing in writing that it will not, take the initiative to assist the execution of third party conservation easements unless it is a condition of the site plan approval. And the Planning Board has obviously not lifted a finger to that end.

35

Given the Planning Board's position and actions, without ZTA 06-04 clarification, any use of RNC zoning is meaningless as to land conveyed to the MNCPPC.

Without a conservation easement, how will the public be assured the Rural Open Space land will never be subdivided, traded, sold, or further developed for uses, recreational or otherwise, that are currently prohibited by the RNC law or other unforeseen uses?

What basis is there for a double standard for private versus publicly owned land?

If RNC Rural Open Space land is conveyed to county ownership, but without a conservation easement placed upon it, how could the present Planning Board and County Council legally assure the land will never be subdivided, traded, sold, or further developed for uses that are currently prohibited by the RNC law?

In this context, can the present Planning Board and County Council promise the intentions or actions of any future government?

The Planning Board hearing deliberation last week concluded on a notion that if written instruments, such as conservation easements, were placed on publicly owned Rural Open Space, the County could still do whatever and whenever with the land it desires through invoking eminent domain, and therefore written instruments to permanently preserve the Rural Open Space are moot. We are again saddened by the disingenuousness of that argument. There can always be instances of eminent domain, but we all know that there is much more to that process to ensure that it would be in the public's best interest to take the property for a public purpose. That due process should weigh the proposed eminent domain use against the Rural Open Space written instrument, not against a free and clear ownership by the Planning Board, which is influenced by the economic and political pressures of the day that we know have and could continue to get the better of the Planning Board. So ask this: If written instruments for the permanent preservation of publicly held Rural Open Space is such a moot point due to the County's potential use of eminent domain, then why is the Planning Board fighting so hard against the use of conservation instruments and ZTA 06-04? We see through that smoke, and so should you.

This Council's votes and the adoption of ZTA 06-04 will uphold your bargain to **permanently** preserve environmentally sensitive areas as a *quis pro quo* for allowing new cluster developments with sewer (which is resulting in a doubling of home unit yields and builder profits) in the long-protected wetlands. It also provides you the opportunity to take real actions and provide tangible results to what would otherwise be demoted as mere rhetoric and spin. Specifically, this is an issue and moment in time for this Council to put some truth and appropriate **foreverness** into our "**Forever Green**" County.

Thank you,

Arnold Gordon

President, Norbeck Meadows Civic Association

nmcaprexy@aol.com

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ZTA 06-04
Guthrie, Lynn

From: Leventhal's Office, Councilmember
Sent: Monday, March 06, 2006 10:11 AM
To: Montgomery County Council
Subject: FW: Permanent Protection for Rural Open Space Land

2006 MAR -6 PM 1: 26

020606

Patty Vitale

Policy Analyst to
Councilmember Leventhal
240-777-7972

-----Original Message-----

From: Bob DeGroot [mailto:Bobdegroot@comcast.net]

Sent: Monday, March 06, 2006 9:41 AM

To: Andrews' Office, Councilmember; Denis' Office, Councilmember; Floreen's Office, Councilmember; Knapp's Office, Councilmember; Leventhal's Office, Councilmember; Perez's Office, Councilmember; Praisner's Office, Councilmember; Silverman's Office, Councilmember

Subject: Permanent Protection for Rural Open Space Land

Dear Council Members:

ZTA 06-04 has been introduced to amend the Montgomery County Zoning Ordinance, Rural Neighborhood Cluster Zone. Specifically Section 59-C-9.574(h)(4) should be amended to clarify and make that section consistent with the law's purpose and intent

Any development plan opinion and approval by the Planning Board that does not require the maximum extent of protection by the placement of an instrument, such as a conservation easement, on a Rural Open Space tract, whether privately or publicly owned, that will assure its preservation is permanent, is a violation of the Sections 59-C-9.23.1 and 59-C-9.573(b).

Section 59-C-9.23.1 sets forth the intent of the Rural Neighborhood Cluster zone for **"...preserving environmentally sensitive natural resources to the maximum extent possible..."** and Rural Open Space is defined in Section 59-C-9.573(b) as **"...land contiguous to the periphery of the residential portion of a rural neighborhood which is subject to an instrument assuring its preservation as permanent open space."**

The conveyance of such tracts to the Planning Board (MNCPPC) without a conservation easement does not serve to effectuate the legislative intent, because the designated Rural Open Space land would not be protected from any desired change in use by the current or future Planning Board and/or County Council. The Planning Board has already violated this law, as they recently issued a final Opinion on The Reserve at Fair Hill site plan that takes the position that the language of the zoning text does not require a written instrument (easement or covenant) on the publicly owned land that will assure the Rural Open Space is permanent.

The County is attempting to take hundreds of acres of Rural Open Space from RNC development that, without conservation easements, can possible be traded, sold, or used for other purposes in the future.

3/6/2006

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The Maryland Alliance for Greenway Improvement and Conservation respectfully requests ZTA 06-04 be adopted, and any tract of land acquired by the County from developers for Rural Open Space have permanent conservation easements attached to it before title is conveyed to the county.

Sincerely,

Robert DeGroot, President

Maryland Alliance for Greenway Improvement and Conservation

301-340-8348

3/6/2006

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ZTA 06-04

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MONTGOMERY COUNTY
COUNCIL

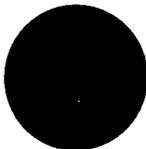
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Guthrie, Lynn

From: Leventhal's Office, Councilmember
Sent: Monday, March 06, 2006 8:47 AM
To: Montgomery County Council
Subject: FW: Revised / Final Testimony for ZTA 06-04 Hearing On March 7

2006 MAR -6 PM 1: 25

020603



Patty Vitale

Policy Analyst to
Councilmember Leventhal
240-777-7972

-----Original Message-----

From: Troutner, Dave [mailto:Dave.Troutner@nasd.com]

Sent: Sunday, March 05, 2006 7:25 PM

To: Leventhal's Office, Councilmember; Praisner's Office, Councilmember; Floreen's Office, Councilmember; Knapp's Office, Councilmember; Silverman's Office, Councilmember; Andrews' Office, Councilmember; Denis' Office, Councilmember; Subin's Office, Councilmember

Cc: espy-driscoll@verizon.net; bfcigno@olneycoalition.org; ljkeesey@comcast.net; 77petrocci6@integrity.com; EJagoda@cc.nih.gov; Bob.Kneisley@wnco.com; Nmcaprexy@aol.com; karen.ehrlich@sodexhousa.com; karenehrlich@erols.com; waynemgoldstein@hotmail.com; jolyons@skadden.com; cmoseclark@att.net; Carolescarlson@aol.com; snees@estart.com; MLC6@CDC.GOV; jimfary@earthlink.net; kirklandbuilders@juno.com; Trainster@aol.com; AleenSt@aol.com; oconn12@gmail.com; shadygrovecivicaliance@hotmail.com; artbrodsky@yahoo.com

Subject: Revised / Final Testimony for ZTA 06-04 Hearing On March 7

I corrected a few grammatical errors. I am all out of time, so this is my final. Sorry for the inconvenience. -- Dave

**President Leventhal
Vice-President Praisner
Members of the Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850**

Testimony for Zoning Text Amendment 06-04 - March 7, 2006, Agenda Item #10

Dear Councilmembers:

I apologize for not being able to appear in person to testify at the hearing on Tuesday, but I have been committed for some time to moderate a panel at a securities industry conference in New York. Please accept this as my written testimony, provide it your full consideration, and include it in the record.

ZTA 06-04 has been respectfully and prudently introduced to amend the Montgomery County Zoning Ordinance, Rural Neighborhood Cluster Zone, Section 59-C-9.574(h)(4), to clarify and make that section consistent with the law's purpose, intent and definitions. It must clearly be adopted. The language in Section 59-C-9.573(c)(3) should be similarly amended and

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adopted.

Section 59-C-9.23.1 sets forth the intent of the Rural Neighborhood Cluster zone for **"...preserving environmentally sensitive natural resources to the maximum extent possible..."**. Rural Open Space is defined in Section 59-C-9.573(b) as **"...land contiguous to the periphery of the residential portion of a rural neighborhood which is subject to an instrument assuring its preservation as permanent open space."** Any development plan opinion and approval by the Planning Board that does not require the maximum extent of protection by the placement of an instrument, such as a conservation easement, on designated Rural Open Space, whether privately or publicly owned, to assure its preservation is permanent, is a violation of the Sections 59-C-9.23.1 and 59-C-9.573(b). The conveyance of Rural Open Space land to the Planning Board (MNCPPC) without a conservation easement does not serve to effectuate the legislative intent, because the designated Rural Open Space land would not be protected from any change in use by the current or future Planning Board.

The Planning Board has already violated this law, as they recently issued a final Opinion on The Reserve at Fair Hill site plan that takes the position that the language of the zoning text does not require a written instrument (easement or covenant) on the publicly owned land that will assure the Rural Open Space is permanent. In other words, the Planning Board is attempting to take hundreds of acres of Rural Open Space from RNC development without conservation easements, so that they can legally change their mind and trade, sell, or use the land for other purposes in the future.

Last week, in a three to one vote, the Planning Board disapproved of ZTA 06-04. They apparently want to receive free and clear parkland while evading the Rural Open Space intent and requirement to preserve the environmentally sensitive resources in their natural state to the maximum extent possible through an instrument that assures permanency. Sadly, this does not come as a surprise. A year ago a group of concerned civic leaders met with Planning Board staff attorneys. They told us that they would opine that conservation easements were not required on the publicly owned RNC Rural Open Space. We asked them on what basis. They pointed to the poor wording in the zoning code that ZTA 06-04 will correct. The staff attorneys told us that the Planning Board would try to get away with it if they could. They were unable to add anything more to it than that. When pressed, they said their "legal opinion" would be contained in the Site Plan opinions. I asked that they provide us a draft of all RNC development Opinions before they go before the Planning Board for approvals so that we could comment. They said they would. After time passed on, I requested again, in writing. In a letter dated November 1, 2005, they responded "that the Montgomery County Planning Board has changed its opinion policy. Draft opinions are not sent out for review any more prior to Board adoption." However, I think they mean to communities, because I am pretty sure the developers continue to negotiate the drafts with the Planning Board staff. So eventually I obtained the Site Plan 1-04110 Opinion after it was approved and adopted. On page 12 it notes our assertion that written instruments are required to ensure that publicly owned land must be preserved in perpetuity. The Opinion states, *"To that end, he believes the Planning Board should review and approve easement or covenant language (including specific covenants on proposed parkland dedication) prior to the approval of the preliminary plan. Staff recommended against such an easement over the publicly held land as it is not required by law..."* Yet, again, no further explanation was provided. They are merely relying on the poorly written language that ZTA 06-04 will correct to make the "methods of development" language consistent and abiding to the "intent" language and the requirements within the actual definition language of "Rural Open Space" law.

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Also, on several occasions, civic leaders have asked the Planning Board if RNC Rural Open Space land dedicated to the County as parkland could be included in the Legacy Open Space program. Sounds logical, yes? The answer was no. The only reason provided was that the County was technically not acquiring the RNC land through a LOS purchase.

The only precedent on property developed under RNC is in Ashton. The Ashton community organized Greater Sandy Spring Green Space, Inc. (GSSGS), a non-profit corporation established to promote the conservation and protection of natural resources within Montgomery County. GSSGS is the holder of a Deed Of Conservation Easement on the publicly owned Rural Open Space land within the Ashton Reserve development. GSSGS worked with the developer and the Planning Board staff on the written instrument that irrevocably granted to GSSGS, in perpetuity, the Conservation Easement on the Rural Open Space as passive recreational parkland consistent with the RNC code intention and the uses at the time of conveyance. Civic representatives from Upper Rock Creek have met with GSSGS. The Board of GSSGS resolved and are willing to hold easement on additional properties, including the impending Reserve At Fair Hill (Pulte / Freeman) and Bowie Mill Estates (Oxbridge / Casey - Dungan). However, the developers have not, and one developer has providing in writing that it will not, take the initiative to assist the execution of third party conservation easements unless it is a condition of the site plan approval. And the Planning Board has obviously not lifted a finger to that end.

Given the Planning Board's position and actions, without ZTA 06-04 clarification, any use of RNC zoning is meaningless for the land conveyed to the County.

Without a conservation easement, how will the public be assured the Rural Open Space land will never be subdivided, traded, sold, or further developed for uses, recreational or otherwise, that are currently prohibited by the RNC law or other unforeseen uses?

What basis is there for a double standard for private versus publicly owned land? If RNC Rural Open Space land is conveyed to county ownership, but without a conservation easement placed upon it, how could the present Planning Board and County Council legally assure the land will never be subdivided, traded, sold, or further developed for uses that are currently prohibited by the RNC law?

In this context, can the present Planning Board and County Council promise the intentions or actions of any future government?

The Planning Board hearing deliberation last week concluded on a notion that if written instruments, such as conservation easements, were placed on publicly owned Rural Open Space, the County could still do whatever and whenever with the land it desires through evoking eminent domain, and therefore written instruments to permanently preserve the Rural Open Space are mute. We are again saddened by the disingenuousness of that argument. There can always be instances of eminent domain, but we all know that there is much more to that due process to ensure that it would be in the public's best interest. That due process should weigh the proposed eminent domain use against the Rural Open Space written instrument, not against a free and clear ownership by the Planning Board, which is influenced by the economic and political pressures of the day that we know have and could continue to get the better of the Planning Board. So ask this: If written instruments for the permanent preservation of publicly held Rural Open Space is such a mute point due to the County's potential use of eminent domain, then why is the Planning Board fighting so hard against the

use of conservation instruments and ZTA 06-04? We see through that smoke, and so should you.

This Council's votes and the adoption of ZTA 06-04 will uphold your bargain to **permanently** preserve environmentally sensitive areas in concession for allowing new cluster developments with sewer (which is resulting in a doubling of home unit yields and builder profits) in the long-protected wetlands. It also provides you the opportunity to take real actions and provide tangible results to what would otherwise be demoted as mere rhetoric and spin. Specifically, this is an issue and moment in time for this Council to put some truth and appropriate **foreverness** into our "Forever Green" County.

Thank you,
David R. Troutner
Montgomery County Resident, 41 years
Muncaster Area Civic Association, Pres.
Upper Rock Creek Coalition, Dir.
19101 Artesian Court
Derwood, MD 20855
301-351-3891
davetroutner@aol.com

<<Define Forever.pdf>>

Webster's Dictionary: **Forever** *adv.* 1. For eternity. 2. Without cease.

Washington Post

Thursday, June 17, 2004; Page GZ02

Staff Writers *Cameron Barr and David Snyder*

Floreen Strikes Back

It ain't easy being green.

This month, the federal Census of Agriculture released figures showing that the amount of farmland in Montgomery County has continued to decline, despite an aggressive agricultural preservation program.

On word that the county's much-heralded agricultural preserve program -- one of the first of its kind in the country -- seemed to be losing ground, experts from around the region took some potshots, with one official from the National Center for Smart Growth Research calling agricultural preservation programs "just another form of NIMBY."

Those are fighting words in Montgomery government circles, where the county's efforts to preserve open space have taken on almost sacrosanct status.

County officials fired back this week with a report of their own, showing that 47 percent of the county's "forever green" open space has been protected. The report, compiled by the Montgomery County Planning Board at Floreen's request, defines "forever green" space as parkland, agriculturally zoned land, homeowner association open space and "other conservation land" -- a broad selection of protected open space.

The report represents the county's first effort to compile a comprehensive census of different types of protected open space, officials said.

42

"I really felt the word hadn't gotten out as to how much we really had done" to protect open space, Floreen told reporters Tuesday. The report, she said, "is a piece of information that I've felt has long been missing from the debate."

As if to emphasize the point, Floreen also introduced a resolution Tuesday to reaffirm the council's support for the county's agricultural preserve, thousands of acres of protected upcounty land, and to oppose the construction of a second Potomac River crossing, commonly known as the Techway, through the area.

Rating the Council

The Montgomery County chapter of the Sierra Club took some shots of its own this week. The group released an environmental scorecard that rated all nine County Council members based on how they voted on what the Sierra Club deemed to be issues "with significant environmental implications."

At the bottom of the list was Floreen, who received a 33 percent rating, meaning she voted in a way favorable to Sierra Club interests in just five of the 15 votes that the organization deemed to be important for environmental matters. The group focused in particular on council members' positions on transportation matters such as the intercounty connector and a proposed regional transportation authority.

Floreen played down the rating, saying she has taken many environmentally friendly positions on issues the Sierra Club didn't take into account.

"This is a group that is politically motivated," she said. "They're more focused on litmus-test issues rather than looking at the big picture."

Phil Andrews (D-Gaithersburg) topped the Sierra Club's list, scoring 100 percent. Tom Perez (D-Silver Spring) and Praisner also scored in the "excellent to outstanding" range, according to the Sierra Club.

In the middle range were Silverman and George L. Leventhal (D-At Large) with 53 percent, Michael L. Subin (D-At Large) and Michael Knapp (D-Upcounty) with 47 percent and Howard A. Denis (R-Potomac-Bethesda) with 38 percent.

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Contact: Marion Joyce, 301-495-4600
Patrick Lacefield, 240-777-7939

June 15, 2004
FOR IMMEDIATE RELEASE

Montgomery County Achieves Protection of Almost Half its Land as Open Space

Montgomery County Councilmember Nancy Fbreen and The Maryland-National Capital Park and Planning Commission's Montgomery County Planning Board Chairman Derick P. Berlage today announced that the County has achieved protection of 47 percent, or 148,000 acres, of the County's 318,000 total acres of land as "Forever Green" open space. Forever Green land includes National, State and M-NCPPC parkland, agriculturally-zoned land, homeowner association common open space and other conservation land. Compiled accurately and in great detail for the first time, the parcel-by-parcel data has been mapped and verified using M-NCPPC's sophisticated digital Geographic Information System to create a visual display of that data.

In Montgomery County, parkland totals 47,300 acres: 32,200 acres of M-NCPPC parkland, 12,000 acres of State parkland and 3,100 acres of National parkland. Of M-NCPPC's 32,200 acres of parkland, 78 percent was purchased, 15 percent was dedicated and the remaining land was donated or acquired in some other way. In recent years, parkland increases have come largely through the Legacy Open Space program acquisitions. M-NCPPC parks are mostly green space: Stream Valley and Conservation Parks comprise 51% of all parkland. In addition, Regional Parks comprise 20 percent of total parkland, of which 67 percent is maintained as natural areas. In the past 10 years, M-NCPPC has reforested more than 105 acres of parkland.

- more -

M-CRO-27-04

44

Agricultural Preservation policies and zoning in Montgomery County have led to the preservation of 91,000 acres of open space, excluding parkland. According to the national publication, Farmland Preservation Report, Montgomery County ranked first in the nation in preserving agricultural land.

Components of the agricultural preserve include:

- ξ 2,831 acres in the Maryland Agricultural Land Preservation Fund
- ξ 2,086 acres in the Maryland Environmental Trust
- ξ 6,678 acres in Montgomery County's Agricultural Easement Program
- ξ 43,145 acres in Transferable Development Rights (TDR) sold

Montgomery County has many residential developments with clustered housing and common open space owned and maintained by Homeowners Associations. This common open space includes more than 6,800 acres, many of which are wooded and protected by conservation easements.

The County Forest Conservation Law applies to most subdivisions built since 1993. Through 2002, more than 5,600 acres of forest have been preserved and more than 1,400 acres of trees have been planted on private property. In addition, the Washington Suburban Sanitary Commission owns and preserves 3,100 wooded acres in Montgomery County to protect our water supply reservoir.

"From my travels around the County over these past several years, I could see that we had a great deal of parkland and green space. But there was no comprehensive listing of all our open space," said Councilmember Nancy Floreen. "That's why I asked the Park and Planning Commission to prepare a complete, parcel-by-parcel map of green space in the County. These new figures show almost half the County preserved as 'Forever Green.' Preservation of open and green space contributes enormously to our quality of life. It didn't happen by accident; creative programs preserved most of it. We must stay vigilant and keep adding to this treasure."

“We’re proud of the amount of farmland, parkland and open space we’ve preserved in Montgomery County through a wide variety of policies and programs,” said Berlage. “Our TDR and our Legacy Open Space programs are models for the nation. However, we have many challenges ahead – rising cost of land, protecting the agricultural reserve, tight budgets and others.” Protection of open space, stream restoration and reforestation in Montgomery County are crucial to improving environmental quality of the air and water, to maintaining scenic agricultural vistas and to assuring a viable farm industry.

The Maryland-National Capital Park and Planning Commission encourages the participation of all individuals in its programs and facilities. For assistance with special needs, such as large print materials, sign language interpretation, listening devices, etc., please contact Marion Joyce, 301-495-4600, TTY 301-495-1331 or the Maryland Relay Service, 1-800-735-2258.

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(4/6)

RW

Guthrie, Lynn

From: Leventhal's Office, Councilmember
Sent: Sunday, March 05, 2006 6:53 AM
To: Montgomery County Council
Subject: FW:

020554

-----Original Message-----

From: Peter Boice [mailto:mdroadrunner32@hotmail.com]
Sent: Sat 3/4/2006 7:35 PM
To: Leventhal's Office, Councilmember
Cc:
Subject:

Dear Council President George Leventhal.

I am asking you and the Council to support Councilmember Praisner's RNC ZTA 06-04.

As you know, this amendment would clarify existing law (Rural Neighborhood Cluster (RNC) zoning) which requires developers building in sensitive areas of Upper Rock Creek to preserve "environmentally sensitive natural resources to the maximum extent possible" on a minimum of 60% of a given building lot. The amendment would allow some of our best natural forests and wetlands in the top branches of Rock Creek to be preserved forever by application of legally binding easement or covenant.

Without stringent, legally-enforceable restrictions and protections on natural forested lands in the now-high-quality waters of Montgomery County, we could lose both those high quality waters, and the chance to restore the degraded waters downstream.

As a 20 year resident of the county, I urge your support.

Sincerely,

Peter Boice
721 Harrington Road
Rockville, MD 20852

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MONTGOMERY COUNTY
COUNCIL
2006 MAR -6 AM 8:16

47

RW

Delgado, Annette

From: Ponydublin@aol.com
Sent: Tuesday, February 28, 2006 10:05 PM
To: Montgomery County Council
Subject: ZTA 06-04

020459

To: Montgomery Council Council Members

As a home owner and active voter in Montgomery County, Maryland, I urge you to adopt ZTA 06-04 introduced by Marilyn Praisener. L. Claudia Hanlon

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MONTGOMERY COUNTY
COUNCIL
2006 MAR -1 AM 8:38

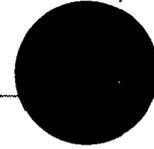
48

ZTA 06-04

RW
CC

Brogden, Karen

Tally 3 rec'd



From: Pease-Fye, Meg [meg.peasefye@fda.hhs.gov]
Sent: Wednesday, March 01, 2006 9:52 AM
To: Montgomery County Council
Subject: ZTA-06-04

020513

Good morning

I am writing today to urge all of your support to this County Council Legislation. I first moved to metro DC area in 1987 and lived in Alexandria, Virginia. The poor management of the the local infrastructure, constant development, and no thought to traffic management convinced me to move to Rockville, MD. I loved Rockville, until I saw the same things happening there as I'd witnessed in Virginia, so I moved to Olney (on Batchellors Forest Road). It grieves me to note that the same enthusiasm for development with no thought for what to do with all the additional people now occurring in upper Montgomery County. Please please please consider the necessity for open rural space. It is one of the things that should set Montgomery County apart from the area congestion that is chasing all of us.

Meg Pease-Fye, M.S.
Regulatory Health Project Manager
Division of Cardiovascular and Renal Products

Phone: 301.796.1130
Fax: 301.796.9841

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2006 MAR - 1 PM 4: 52

49

Delgado, Annette

From: Leventhal's Office, Councilmember
Sent: Thursday, March 02, 2006 8:45 AM
To: Montgomery County Council
Subject: FW: RNC Zoning Text Amendment

Patty Vitale

Policy Analyst to
Councilmember Leventhal
240-777-7972

-----Original Message-----

From: Bill Howard [mailto:bill.howard4@verizon.net]
Sent: Wednesday, March 01, 2006 9:46 PM
To: Leventhal's Office, Councilmember
Cc: Praisner's Office, Councilmember
Subject: RNC Zoning Text Amendment

Dear Councilmember Leventhal,

I support Councilmember Marilyn Praisner's proposed RNC Zoning Text Amendment (ZTA 06-04) that will clarify the inconsistent wording in the law by specifically requiring all publicly held land in the rural open space area of the RNC zone be preserved in perpetuity by application of easement or covenant. This is a very important provision to protect vital headwaters and other natural areas, and I trust that the Council will also support this amendment when it comes for a vote soon.

William F. Howard
528 Norcross Way
Silver Spring, MD 20904

President, Neighbors of the Northwest Branch
www.neighborsnwb.org

Vice-Chair, Anacostia Watershed Citizens Advisory Committee www.anacostia.net

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2006 MAR -2 AM 9:10

50

Delgado, Annette

From: Wayne Hsin [whsin1972@hotmail.com]
Sent: Thursday, March 02, 2006 8:33 AM
To: Montgomery County Council
Subject: support Councilmember Praisner's RNC ZTA 06-04

Dear Montgomery Councilmembers:

I would like to ask your support for Councilmember Prisner's RNC ZTA 06-04 amendment. I understand this amendment clarifies existing law (Rural Neighborhood Cluster (RNC) zoning) which requires developers building in sensitive areas of Upper Rock Creek to preserve "environmentally sensitive natural resources to the maximum extent possible" on a minimum of 60% of a given building lot. The amendment would allow some of our best natural forests and wetlands in the top branches of Rock Creek to be preserved forever by application of legally binding easement or covenant.

I believe this amendment would not only help to maintain the quality of water but also protect valuable forest and wetland. Further more, the amendment would clarify the inconsistent wording in the law by specifically requiring all publicly held land in the rural open space area of the RNC zone be preserved in perpetuity by application of easement or covenant that restricts the uses of the current law and provides and prohibits any development or subdivision within the rural open space area not expressly authorized.

I agree that Montgomery County needs to create as many housing opportunities as possible, that's why I support the new Shady Grove Master Plan. But it is also important to protect valuable environmental resources like Upper Rock Creek Area. It is not only reasonable but also responsible to create maximum extend of baffle and easement in order to protect the environmental sensitive area like Upper Rock Creek in perpetuity.

I urge Councilmembers to support Councilmember Prisner's RNC ZTA 06-04 amendment.

Sincerely,

Wayne Hsin
16008 SHADY STONE WAY
GAITHERSBURG, MD 20878

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51