

Ordinance No.: 17-46
Zoning Text Amendment No.: 14-03
Concerning: Overlay Zone –
Clarksburg
Draft No. & Date: 4 – 7/15/14
Introduced: April 8, 2014
Public Hearing: May 13, 2014
Adopted: July 15, 2015
Effective: August 4, 2014

**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: Council President at the request of the District Council

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

- Creating an overlay zone for Clarksburg East; and
- Creating an overlay zone for Clarksburg West.

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

DIVISION 59-C-18. “OVERLAY ZONES.”

By adding new sections:

Section 59-C-18.25. “Clarksburg East Environmental Overlay Zone.”
Section 59-C-18.26. “Clarksburg West Environmental Overlay Zone.”

*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.*

OPINION

Zoning Text Amendment No. 14-03 was introduced on April 8, 2014.

The Council's April 1, 2014 approval of the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (the Plan) recommended the approval of floating zones for the Ten Mile Creek area. ZTA 14-03 would create the zones recommended by that Plan. The approval of ZTA 14-03 will allow the approval of a Sectional Map Amendment consistent with the Plan's recommendations.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved with amendments.

A public hearing on ZTA 14-03 was held on May 13, 2014. The Audubon Naturalist Society spoke generally in favor of the ZTA, but would not have exemptions for new development of any public facility. The Society favors the Planning Board waiver process in place for Upper Paint Branch rather than exemptions. One representative of several landowners spoke in favor of the public utility exemption recommended by the Planning Board. The representative of the Egan property had a variety of concerns. The representative of the Hammer Hill property objects to the Planning Board revisions that would only exempt existing development on parcels smaller than 2 acres.

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 July 10, 2014 to review the amendment. The Committee recommended approval of ZTA 14-03 with the following revisions:

- Exempt septic development from the requirement for site plan.
- Remove the requirement for the 30 percent building coverage limit for R-90 zoned property.
- Define open space as "rural open space", which retains the most natural features.
- Allow an exemption only for publicly funded and master planned roads and bikeways.
- Delete the exemption for paths, trailheads, and associated parking.
- Allow a public utility facility on County owned land.

The Committee considered and rejected reducing the exemption for small lots from 2 acres to 1 acre.

The District Council reviewed Zoning Text Amendment No. 14-03 at a worksession held on July 15, 2014 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee, with a revision that would not exempt from the impervious surface limit County owned land managed by the Maryland-National Capital Park and Planning Commission as parkland. The Council also removed the Committee's recommended text for a

public utility facility on County owned land at the request of Executive staff; Executive staff indicated that the facility can be accommodated by removing some existing impervious surface.

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. 14-03 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-18 is amended as follows:**

2 **DIVISION 59-C-18. OVERLAY ZONES.**

3 * * *

4 **Sec. 59-C-18.25. Clarksburg East Environmental Overlay Zone.**

5 **59-C-18.251. Purpose.**

6 The purpose of the Clarksburg East Environmental Overlay Zone is to:

- 7 (a) protect the water quantity, water quality, habitat, and biological diversity
8 of the Ten Mile Creek watershed and its tributaries;
9 (b) regulate the amount and location of impervious surfaces to maintain
10 levels of groundwater, control erosion and water temperature, and retain
11 as many of the functions provided by natural land as possible;
12 (c) regulate development that could adversely affect this high quality stream
13 system; and
14 (d) implement the recommendations of the 2014 Ten Mile Creek Area
15 Limited Amendment to the Clarksburg Master Plan and Hyattstown
16 Special Study Area.

17 **59-C-18.252. Procedure for approval.**

- 18 (a) [[A site plan must be approved by the Planning Board under the
19 provisions of Division 59-D-3 for any]] Any development that must file
20 a preliminary plan of subdivision under Chapter 50 requires approval of
21 a site plan by the Planning Board under Division 59-D-3, unless
22 excluded under Subsection (b).
23 (b) A lot or parcel [[for]] that is occupied by a one-family dwelling and that
24 has not changed in size or shape since January 1, 2014 is excluded from
25 the site plan approval requirement.

26 **59-C-18.253. Regulations.**

27 (a) Land Use.

28 All permitted and special exception uses allowed in the underlying zones
29 are allowed in the Clarksburg East Environmental Overlay Zone.

30 (b) Development standards.

31 (1) The development standards of the underlying zone apply, except
32 as modified by this overlay zone.

33 (2) Except [[for development]] as allowed under Section 59-C-
34 18.254, the total impervious surface area for any development
35 after August 4, 2014 [[may]] must be a maximum of 15% of the
36 total area [[in the]] under application for development.

37 (3) All environmental buffer areas or natural resources recommended
38 for protection in the Ten Mile Creek Area Limited Amendment to
39 the Clarksburg Master Plan and Hyattstown Special Study Area
40 must be [[treated]] regulated as environmentally sensitive areas,
41 [[in addition to]] just as other areas identified [[as]]
42 environmentally sensitive in law, regulations, or in the Planning
43 Board's Guidelines for the Environmental Management of
44 Development, as amended.

45 (4) All environmentally sensitive areas must be included in the
46 required open space area.

47 (5) The minimum area devoted to open space [[is]] must be 80% of
48 the total area under application for development. For the purpose
49 of this overlay zone, open space is defined as rural open space as
50 described and managed under Sections 59-C-9.572 and 59-C-
51 9.74(h).

52 (6) If the underlying zone is R-90:

- 53 (A) the maximum density without MPDU bonus density is 3.0
54 dwelling units per acre;
- 55 (B) the maximum density with MPDU bonus density is 3.66
56 dwelling units per acre;
- 57 (C) [[a development may include]] any type of dwelling unit is
58 permitted, up to the maximum number [[of dwelling units]]
59 allowed;
- 60 (D) the maximum building height is:
- 61 (i) 35 feet for a one-family detached dwelling;
62 (ii) 50 feet for a one-family attached dwelling; and
63 (iii) 65 feet for a multiple-family dwelling or any non-
64 residential building; and
- 65 (E) when site plan approval is required, the minimum lot area,
66 lot dimensions, building coverage, and building setbacks of
67 the R-90 zone do not apply. Any such requirements must
68 be determined by the Planning Board during site plan
69 approval process.

70 **59-C-18.254. Exemptions from impervious surface area restrictions.**

- 71 (a) Any impervious surface lawfully existing under a building permit or
72 sediment control permit issued before August 4, 2014 that exceeds the
73 applicable impervious surface restriction may continue or be
74 reconstructed with the same or less impervious surface area under the
75 development standards in effect when the building permit or sediment
76 control permit was issued.
- 77 (b) [[Any]] An impervious surface [[not approved as part of a site plan
78 under Section 59-D-3]] resulting from an addition to an existing one-
79 family residential dwelling or an accessory structure to a one-family

80 dwelling, not approved as part of a site plan under Section 59-D-3, is
81 exempt from this overlay zone's impervious surface restriction.

82 (c) [[Impervious surfaces associated with development on]] On any lot or
83 parcel with an area less than 2.0 acres as of January 1, 2014 [[are]], any
84 development is exempt from this overlay zone's impervious surface
85 restriction.

86 (d) Impervious surface for any publicly funded road[[,]] or bikeway [[, path,
87 driveway, or parking area]] identified by the Ten Mile Creek Area
88 Limited Amendment to the Clarksburg Master Plan and Hyattstown
89 Special Study Area is exempt from this overlay zone's impervious
90 surface restriction.

91 **Sec. 59-C-18.26. Clarksburg West Environmental Overlay Zone.**

92 **59-C-18.261. Purpose.**

93 The purpose of the Clarksburg West Environmental Overlay Zone is to:

94 (a) protect the water quantity, water quality, habitat, and biological diversity
95 of the Ten Mile Creek watershed and its tributaries;

96 (b) regulate the amount and location of impervious surfaces to maintain
97 levels of groundwater, control erosion and water temperature, and retain
98 as many of the functions provided by natural land as possible;

99 (c) regulate development that could adversely affect this high quality stream
100 system; and

101 (d) implement the recommendations of the 2014 Ten Mile Creek Area
102 Limited Amendment to the Clarksburg Master Plan and Hyattstown
103 Special Study Area.

104 **59-C-18.262. Procedure for approval.**

105 (a) [[A site plan must be approved by the Planning Board under the
106 provisions of Division 59-D-3 for any]] Any development that must file

107 a preliminary plan of subdivision under Chapter 50 requires approval of
108 a site plan by the Planning Board under Division 59-D-3, unless
109 excluded under Subsection (b) or (c).

110 (b) A lot or parcel [[for]] that is occupied by a one-family dwelling and that
111 has not changed in size or shape since January 1, 2014 is excluded from
112 the site plan approval requirement.

113 (c) Any one-family detached residential development that is served by a
114 septic facility is excluded from the site plan approval requirement.

115 **59-C-18.263. Regulations.**

116 (a) Land Use.

117 All permitted and special exception uses allowed in the underlying zones
118 are allowed in the Clarksburg West Environmental Cluster Zone.

119 (b) Development standards.

120 (1) The development standards of the underlying zone apply, except
121 as modified by this overlay zone.

122 (2) Except for County owned land or land under a conservation
123 easement granted to the benefit of the County and development
124 exempted under Section 59-C-18.264, the total impervious surface
125 area for any development after August 4, 2014 [[may]] must be a
126 maximum of 6% of the total area [[in the]] under application for
127 development.

128 (3) County owned land or land under a conservation easement granted
129 to the benefit of the County that is not managed as parkland by the
130 Maryland-National Capital Park and Planning Commission may
131 not add any impervious surface.

132 (4) Any number of lots may be of any size, without regard to varying
133 lot size requirements in the underlying zone.

- 134 (5) [[The minimum lot area, lot dimensions, and building setbacks
135 must be determined by the Planning Board during the site plan
136 approval process.]] When site plan approval is required, the
137 minimum lot area, lot dimensions, building coverage, and building
138 setbacks do not apply. Any such requirements must be
139 determined by the Planning Board during the site plan approval
140 process.
- 141 (6) All environmental buffer areas or natural resources recommended
142 for protection in the Ten Mile Creek Area Limited Amendment to
143 the Clarksburg Master Plan and Hyattstown Special Study Area
144 must be [[treated]] regulated as environmentally sensitive areas,
145 [[in addition to]] just as other areas identified [[as]]
146 environmentally sensitive in law, regulations, or in the Planning
147 Board’s Guidelines for the Environmental Management of
148 Development, as amended.
- 149 (7) All environmentally sensitive areas must be included in the
150 required open space area.
- 151 (8) The minimum area devoted to open space [[is]] must be 80% of
152 the total area under application for development. For the purpose
153 of this overlay zone, open space is defined as rural open space as
154 described and managed under Sections 59-C-9.572 and 59-C-
155 9.74(h).

156 **[[59-C-18.262.]] 59-C-18.264. Exemptions from impervious surface**
157 **restrictions.**

- 158 (a) Any impervious surface lawfully existing under a building permit or
159 sediment control permit issued before August 4, 2014 that exceeds the
160 applicable impervious surface restriction may continue or be

161 reconstructed with the same or less impervious surface area under the
162 development standards in effect when the building permit or sediment
163 control permit was issued.

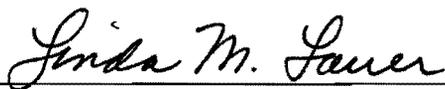
164 (b) [[Any]] An impervious surface [[not approved as part of a site plan
165 under Section 59-D-3]] resulting from an addition to an existing one-
166 family residential dwelling or an accessory structure to a one-family
167 dwelling, not approved as part of a site plan under Section 59-D-3, is
168 exempt from this overlay zone’s impervious surface restriction.

169 (c) [[Impervious surfaces associated with development on]] On any lot or
170 parcel with an area less than 2.0 acres as of January 1, 2014 [[are]], any
171 development is exempt from this overlay zone’s impervious surface
172 restriction.

173 (d) Impervious surface for any publicly funded road[[,]] or bikeway[[, path,
174 driveway, or parking area]] identified by the Ten Mile Creek Area
175 Limited Amendment to the Clarksburg Master Plan and Hyattstown
176 Special Study Area is exempt from this overlay zone’s impervious
177 surface restriction.

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

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182 This is a correct copy of Council action.

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185 Linda M. Lauer, Clerk of the Council