

Resolution No.: 17-1215
Introduced: September 16, 2014
Adopted: September 16, 2014

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: Sectional Map Amendment G 965: 10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area

OPINION

Sectional Map Amendment (SMA) G-965 was filed by the Maryland-National Capital Park and Planning Commission and is a comprehensive rezoning application for the purpose of implementing the zoning recommendations contained in the Approved and Adopted Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. The SMA application rezones approximately 1,853 acres and reconfirms the zoning on 2,098 acres.

The Planning Board Draft Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area amended the Approved and Adopted 1994 Clarksburg Master Plan and Hyattstown Special Study Area, as amended. It also amended the General Plan (on Wedges and Corridors) for the Physical Development of the Maryland-Washington Regional District in Montgomery and Prince George's Counties, as amended; the Master Plan of Highways and Transitways within Montgomery County, as amended; the Countywide Bikeways Functional Master Plan, as amended; and the Legacy Open Space Functional Master Plan, as amended.

The District Council approved the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area on April 1, 2014. The Amendment sets forth the specific land use and zoning objectives for the development of the Ten Mile Creek Area Limited Amendment area and was subject to extensive and detailed review by the District Council. The District Council held a public hearing on December 3 and 5, 2013 and on January 28, 2014, wherein testimony was received from interested parties, and the County Executive transmitted to the County Council his fiscal impact analysis for the Ten Mile Creek Area Limited Amendment on December 20, 2013.

Sectional Map Amendment (SMA) G-965 was filed on June 6, 2014 by the Montgomery County Planning Board to implement the specific zoning recommendations of the Ten Mile Creek Area Limited Amendment.

The Council held a public hearing on the SMA for the Ten Mile Creek Area Limited Amendment on July 22, 2014. Representatives of 2 property owners requested changes to the zoning map proposed by the Planning Board. The Council closed the record on August 8, 2014.

On September 8, 2014, the Planning, Housing, and Economic Development Committee recommended changes to SMA G-965 that were approved by the Council.

The Council considered the Sectional Map Amendment at a worksession held on September 16, 2014.

The evidence of record for Sectional Map Amendment G-965 consists of all record materials compiled in connection with the District Council public hearing, worksessions, and actions on the Planning Board Draft of the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area, dated October 25, 2013, and all record materials compiled in connection with the public hearing held by the Council on July 22, 2014 on Sectional Map Amendment G-965. The Council relied upon the entire record in rendering this decision. This opinion highlights below a few of the facts in the record upon which the Council relied.

Additional information not considered by the Planning Board about environmental conditions emerged during development of the Ten Mile Creek Area Limited Amendment. Information used in the development of the Amendment was received from independent consultants retained by M-NCPPC; verbal and written public testimony; and federal, state, and local government staff advice at Committee and Council worksessions. As a result, the Amendment's recommendations include substantial open space requirements and environmental buffers throughout the watershed. The Amendment's recommendations extended the maximum protection practicable to Ten Mile Creek and its tributaries while responding to the goal for Clarksburg to be a "complete" community.

The Council believes that there are a number of reasons to change its 1994 zoning and to make distinctions within subwatersheds. Methods to help protect water quality have changed significantly since 1994 and monitoring has been underway continuously since that time. The County Department of Environmental Protection reports annually on the results of monitoring in all the Special Protection Areas. These reports state that environmental protection measures, as applied to date in Clarksburg, have not prevented deterioration in the quality of Ten Mile Creek.

Even before additional development, three stream conditions changed from good to fair, as reported in the County's report on Special Protection Areas published in April 2013. One station in a tributary to Ten Mile Creek near the Montgomery County Detention Center had a small decline in the benthic index of biologic integrity (IBI) caused by a reduced number of shredders, mayflies, stoneflies, and caddisflies. These specialized benthic macroinvertebrates are very sensitive to anthropomorphic stressors and could have declined as a result of a small amount of construction occurring in the headwaters of that watershed. Another station that showed a decline in stream condition was in the Ten Mile Creek mainstem, just upstream from West Old

Baltimore Road. The benthic IBI condition was stable between 2010 and 2011, but the fish IBI declined. When this station was sampled in the summer of 2011, it was very low and near drought conditions within the station. These conditions likely caused the reduced fish IBI recorded in 2011. The third station, located near the intersection of Frederick Road (Route 355) and Newcut Road, is immediately downstream of the new construction associated with the final phases of the Newcut Road Neighborhood development.

Environmental Site Design (ESD) represents the state of the practice for site planning and post-construction stormwater runoff management. It is also now required throughout Maryland. However, rigorous and comprehensive implementation of ESD across or within watersheds has not occurred, nor has the practice been monitored, either in the County or elsewhere, at a scale large enough to establish likely expectations of post-development stream conditions. Impervious cover continues to be widely accepted as an indicator of the complex impacts that are difficult to model sufficiently, including pollutants such as oil, gasoline, and salt associated with roads and parking areas and impacts to groundwater quality and quantity, as well as heat island effects and the effects of more severe storms.

While gaining watershed-based knowledge on the efficacy of ESD for its ecological effects beyond hydrology will be valuable, given the current lack of corroborating studies at a comparable scale, it is only prudent to include safeguards in addition to ESD to help ensure that the high quality Ten Mile Creek watershed will continue to be able to sustain sensitive species and achieve high quality stream conditions over most of the watershed. Dr. Baker's testimony concluded in part, "despite the repeated promise of BMPs and ESD, no development is without substantial risk of [stream] degradation in both the short and the long term."

Environmental analyses of various development scenarios studied for the Ten Mile Creek Limited Amendment included hydrology (stream flow volumes), effects on specific natural resources, pollutant loadings, and effects on the imperviousness in each subwatershed. An analysis (see Appendices 3 and 4 of the Amendment) of building out the 1994 Plan showed the following impacts:

- the potential for significant increases in the total volumes of stream flow (Hydrologic Analysis);
- substantial impacts to specific natural biologic and water resources;
- the limited nutrient and sediment loading analysis showed that post development impacts of residential uses would be similar to existing agricultural uses. Stream bank erosion, a significant source sediment, was not accounted for in the Pollutant Loading Analysis;
- increases of up to 10 times in imperviousness in the most sensitive subwatersheds.

The degree of modeled impacts on stream flow volumes, the amount of imperviousness, and the impacts to natural resources in the most sensitive watersheds demonstrated the importance of recommending limits as part of the Ten Mile Creek Area Limited Amendment to ensure that imperviousness does not increase above that which is protective of this very good quality stream system. It is not necessarily the impervious cover *per se* that causes observed degradation; while imperviousness has a direct impact, it is also the strongest, most detectable indicator available for the many correlated and contributing factors associated with urbanization.

High quality subwatersheds with very low impervious cover are more sensitive to changes in impervious cover than other watersheds which already have a significant amount of existing impervious cover and are showing signs of degradation. Recent studies (see Appendix 9, Attachment R in the Amendment) have shown that impervious cover levels as low as 5 percent are correlated with significant degradation in water quality. Dr. Baker submitted testimony that summarized this phenomenon: "Biotic responses to impervious cover are nonlinear, and change is greatest at low levels of land development." The Amendment recommended a 6 percent impervious surface cap for new development in the most sensitive subwatersheds, to minimize risk as much as possible. The Amendment provided a combination of imperviousness limits and required open space protection that would keep the overall watershed imperviousness level at slightly more than 6 percent if all planned development occurs. The highest levels of imperviousness allowed in this Amendment for new development (15 percent) are permitted in the Town Center District, where existing imperviousness levels are already high. Various alternatives were analyzed, and the vast majority of environmental experts indicated that the impervious cover increases in this area would have a smaller environmental impact than in the subwatersheds with the most sensitive and highest quality streams and existing low levels of imperviousness.

The lowest levels of impervious cover for new development are allowed in the subwatersheds west of I-270 because the tributaries to Ten Mile Creek in this area are unique and among the highest quality streams in the County. Restricting imperviousness (combined with ESD and development at or near ridgelines and away from stream channels) provides the best chance of protecting these streams. In addition, the Amendment recommended expanding the environmental buffers around sensitive areas and protecting additional forest to preserve natural resources throughout Ten Mile Creek. The Amendment's recommendation reduces the total amount of area allowed to be disturbed.

The impervious surface starting point is important. Dr. Baker also addressed the Pulte site in particular. "In order to keep streams in good condition, any ecologist will tell you to keep impervious cover under 5% by as much as possible to minimize risk. However, when I was asked whether 6% or 8% or 12% was best for the Pulte property and the streams that drain it, the evidence is clear that due to their status among the best examples of stream condition in the County, restricting levels as close to 5% as possible stands the best chance (with LID, ESD, and development at or near the divide and away from stream channels) of protecting the valuable natural resources they represent."

The Amendment recommended a significant increase in required open space to protect sensitive resources and limits on impervious cover to ensure, in combination with Environmental Site Design, that environmental impacts are minimized in Ten Mile Creek and particularly sensitive tributaries (see Appendices in the Amendment for details of the environmental analysis). Sustaining Ten Mile Creek's ecological health and water quality requires a combination of actions: protecting the largest possible area of undisturbed natural vegetation; improving conditions in areas already developed or planned to remain in agricultural use; and instituting the highest standards of protection for future development areas.

In setting impervious surface limits, the Council was guided by the studies and testimony noted in the record of the 2014 Limited Amendment approval. Except for existing single-family residential lots, the zone applied allowed a use of property more intensive than its current use.

Public hearings were duly noticed. Staff memoranda and Council action addressed points raised in testimony.

The testimony submitted on behalf of the Pulte property objected to the change in zoning from RE-1/TDR-2 to Rural Neighborhood Cluster (RNC) at a density of 1 unit per acre and the 6 percent impervious surface area limit applied via the Environmental Overlay zone. The testimony also objected to master plan recommendations and changes in regulation that impact development, but the sole issue before the Council in the SMA is the recommended change in zoning.

The 1994 Master Plan recommended RE-1/TDR-2 on a 600-acre area west of I-270 and north of Clarksburg Road, but also recommended that development be limited to 900 units (1.5 units per acre). Pulte owns approximately 538 acres, which would have enabled them to apply for up to 807 units. The RNC zoning allows up to 656 units, including moderately priced dwelling units. The Council discussed at great length the reasons for the reduction in density on this property and the 6 percent limit on impervious surface area. The testimony did not provide any new information not previously considered by the Council.

A density of one unit per acre plus MPDUs conforms to the 2014 Limited Amendment recommendation. All regulations concerning minimum lot sizes would be removed. The developer would have the option to use all townhouses to achieve the allowable density. These recommendations provided additional flexibility to allow additional density. The Council has no reason to change its decision on this property from recommendations in the approved Ten Mile Creek Area Limited Amendment.

Testimony submitted on behalf of the Hammer Hill site requested consistent zoning (CRT 0.5, C 0.5, R 0.5, H 45) for property under common ownership. The Hammer Hill Tract includes two parcels: Parcel 311 is 2.83 acres within the Historic District (and therefore **not** included in the Environmental Overlay Zone) and adjacent Parcel N366 is 29,641 square feet and is not within the Historic District (it **was** included in the Environmental Overlay Zone). The rezoning as proposed in testimony would allow the property owner to put parking on Parcel N366 and away from MD 355, which would help preserve the historic setting. At the time the Council considered the Amendment, it did not realize that the Amendment recommendations would split zone the Hammer Hill Tract. The Planning Board and the Council agreed that the SMA as introduced should be changed; a single zone (CRT 0.5, C 0.5, R 0.5, H 45) will be used for the Hammer Hill property (Parcels 311 and N366).

The Council found that the SMA as introduced incorrectly included a portion of the Historic District (the area northwest of Parcel N366) in the Environmental Overlay Zone. This is contrary to the Council's decision in the course of the Ten Mile Creek Area Limited Amendment to exclude the entire Historic District from the overlay zone. The Council directed the Planning Department to fix this error.

The Council finds Sectional Map Amendment Application G-965 as amended to be consistent with the Approved and Adopted Ten Mile Creek Area Limited Amendment and necessary to implement the land use and development policies expressed in the Approved and Adopted Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. All zoning reclassifications approved by this Sectional Map Amendment supersede

the zoning approved under District Map Amendment G-956. On October 30, 2014, the approved District Map Amendment G-956 zoning will supersede SMA G-965 only for property where the zoning is reconfirmed by G-965.

For these reasons, and because to grant this application will aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, this application will be GRANTED.

ACTION

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 resolution:

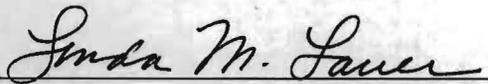
1. Application No. G-965, Maryland-National Capital Park and Planning Commission, Applicants for the Sectional Map Amendment covering the area of the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area consisting of approximately 3,951 acres, more or less, is GRANTED with the following revisions:
 - a. The entirety of the Hammer Hill property Parcels 311 and N366 are rezoned to CRT 0.5, C 0.5, R 0.5, H 45; and
 - b. The area northwest of Parcel N366, to the extent that it is in the Historic District, is excluded from the Environmental Overlay Zone.
2. Approximately 1,853 acres are rezoned as a result of this action. The remaining acreage is to be reconfirmed as currently zoned. All zoning reclassifications approved by this Sectional Map Amendment supersede the zoning approved under District Map Amendment G-956. On October 30, 2014, the approved District Map Amendment G-956 zoning will supersede SMA G-965 only for property where the zoning is reconfirmed by G-965.
3. The following areas are reclassified as part of this action, consistent with the recommendations in the Ten Mile Creek Area Limited Amendment.

Table 1: Parcels to be Rezoned¹

Area	Existing Zones	Proposed Zone	Acres
1	R-200	CRT 2.0 C 2.0 R 2.0 H 120	6.56
2	R-200 and C-1	CRT 0.5 C 0.5 R 0.5 H 45	15.61
3	R-200 and C-1	CRT 0.5, C 0.5, R 0.5 H 45	11.59
4	R-200 and C-1	CRT 0.5, C 0.5, R 0.5 H 45	2.52
5	R-200 and C-2	CRT 0.5, C 0.5, R 0.5 H 45	12.22
6	R-200 and C-2	CRN 0.25 C 0.25 R 0.25 H 35	11.47
7	R200	R-90	204.59
8	RE-1/TDR and Rural	RNC	540.73
9	RE-1/TDR	RE-1	1.93
10	RE-1/TDR	RE-1	4.21
11	RE-1/TDR	RE-1	9.34
12	RE-1/TDR	RE-1	1.13
13	RE-1/TDR	RE-1	11.09
14	RE-1/TDR	RE-1	4.07

Overlay Zone	Acres
Clarksburg East Environmental Overlay Zone	276.62
Clarksburg West Environmental Overlay Zone	1530.77

This is a correct copy of Council action.


 Linda M. Lauer, Clerk of the Council

¹ The acreages shown in this table are estimates of acreage to be rezoned; actual acreage will depend on future engineering. In approving the Zoning Maps, the District Council is approving the boundary lines, not a precise acreage amount.

