

**MEMORANDUM**

July 8, 2014

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz, Legislative Attorney  
SUBJECT: Zoning Text Amendment 14-03, Overlay Zone - Clarksburg

**BACKGROUND**

Zoning Text Amendment (ZTA) 14-03, sponsored by Council President Rice at the request of the District Council, 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.<sup>1</sup> The approval of ZTA 14-03 will allow the approval of a Sectional Map Amendment consistent with the Plan's recommendations.

ZTA 14-03 matches the restrictions recommended by the Ten Mile Creek Area amendment. ZTA 14-03 would limit impervious surface area and increase the minimum required open space in the area covered by the overlay zones. The overlay zones would require all environmentally sensitive areas be identified as open space and counted toward the required minimum open space. Minimum lot area, lot dimensions, and building setback would be determined by the Planning Board during the site plan approval process in order to provide a maximum of flexibility for new development.

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<sup>1</sup> Approved Ten Mile Creek Limited Amendment:  
Implementation

Although this Amendment is limited in scope and geography, its implementation nonetheless requires cooperative efforts by a number of private and public actors. This chapter indicates follow-up efforts that are needed once the Plan is adopted.

**Overlay Zones**

This Amendment recommends limiting imperviousness, establishing open space requirements for new development both east and west of 1-270 and changing some development standards of the underlying zones in order to maximize development flexibility and protect sensitive natural resources. This Amendment recommends creation of overlay zones to establish a 15 percent imperviousness limit on new development in the Town Center portion of the watershed, a six percent limit on the Pulte-King properties, and no additional imperviousness on County owned land. Very small properties will be exempt from imperviousness limits in the overlay zones.

As introduced, ZTA 14-03 would provide exceptions to impervious surface area restrictions. The exception provisions were the subject of much of the public testimony.

A public hearing on ZTA 14-03 was held on May 13, 2014. The Planning Board recommended approval of ZTA 14-03 with amendments (see © 9-18). 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 (see © 23-24). One representative of several landowners spoke in favor of the public utility exemption recommended by the Planning Board (See © 25-26). The representative of the Egan property had a variety of concerns (See © 27-29). 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 (See 30-35).

## ISSUES

### ***Should septic development be exempt from a site plan requirement (if the area outside the sewer envelope is covered by the overlay zone)?***

*If the overlay zone covers land that will be served by septic systems, Staff agrees that an exemption from the site plan requirement is in order.* The exemption from site plan approval is not an exemption from impervious surface area limits. All land in the Special Protection Area will be required to get an approved Water Quality Plan. That should be a sufficient safeguard against excessive impervious surface without site plan approval.

### ***Should the building coverage limit of 30 percent be removed in R-90 zoned property covered by the overlay zone?***

This issue was raised by the representative of the Egan property, who argues that the impervious surface area limit is the essential control and that there is otherwise no reason to limit the number of dwelling units. To the landowner, the 30% building coverage limit would reduce his flexibility without reducing impervious surface further. There are provisions in ZTA 14-03 as introduced to allow any type of dwelling units, any lot size, and flexible setbacks. Eliminating building coverage is consistent with that approach.

*Staff agrees that removing building coverage as a development standard is appropriate where the concern is for total impervious surface.*

### ***Should open space be defined?***

Defining open space was suggested by the testimony presented on behalf of the Egan property.<sup>2</sup> Planning staff recommended using the definition of rural open space already in the code.<sup>3</sup>

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<sup>2</sup> Not everything is easily defined. When asked to define herself, Britney Spears said, "I don't like defining myself, I just am." Staff does not intend to either define Ms. Spears or to create a new definition for open space.

<sup>3</sup> 59-C-9.572. Rural Open Space.

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

Staff agrees that the rural open space definition is in line with the Plan intent. The suggestion by Egan's representatives to allow open space on private property and less than 80 percent open space area of the tract would be contrary to the intent of the Plan.

***Should the proposed overlay zone provide any exemptions beyond pre-existing impervious surface and additions to existing one-family dwellings?***

As introduced, ZTA 14-03 would exempt from the impervious surface area limit: 1) pre-existing impervious surface; 2) additions to existing one-family dwellings; 3) development on existing lots or parcels 2 acres in size or smaller; and 4) publicly funded roads, bikeways, paths, driveways, or parking areas. (The Planning Board recommended adding public utilities and modifying the parking exemption

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Recreational facilities in the rural open space are limited to trails and related amenities or other facilities recommended in the master plan. 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:

- (a) Agricultural-industrial;
  - (b) Agricultural-commercial;
  - (c) Resource production and extraction;
  - (d) Residential, with the following exceptions:
    - 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, and is a logical extension of the existing open space area;
    - accessory apartment that is part of 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;
    - a farm tenant dwelling in existence prior to application of the Rural Neighborhood Cluster zone, or a structure converted to a farm tenant dwelling included as part of a historic site designated in the Historic Master Plan;
    - a one family semidetached dwelling and townhouse as part of a moderately-priced dwelling unit development;
  - (e) Commercial; and
  - (f) Services, except a home occupation associated with an otherwise permitted residential use.
- 59-C-9.574.  
\* \* \*
- (h) Rural open space design guidelines.
    - (1) Rural open space should be a contiguous area and be located and designed to:
      - (A) Protect rural features and other sensitive areas identified in the applicable master or sector plan;
      - (B) Maximize common boundaries with rural open space on adjacent tracts where recommended in the applicable master or sector plan, or as otherwise required by the Planning Board.
    - (2) Rural open space must comprise a sizeable contiguous area must be within a range of 65 percent to 85 percent of the tract area and must be consistent with the recommendations and guidelines of the applicable master plan. When a property includes rights-of-way for roads classified as major highways or freeways, rural open space is calculated on the net tract area by deducting those rights-of-way from the gross area of the property. The Planning Board may approve a minor variation in the master plan-recommended rural open space if the Board finds that the variation would retain both the quality and character of the open space as set forth in the guidelines of the master plan.
    - (3) Rural open space may be managed and maintained but may be modified to improve its appearance, function or overall condition by using the following techniques:
      - (A) Reforestation
      - (B) Woodland management
      - (C) Meadow management
      - (D) Stream bank protection
    - (E) Non-structural stormwater best management practices as defined by the most recent edition of the Maryland Stormwater Design Manual adopted for use by Montgomery County.

so that it only applied to trailhead parking.) The Audubon Naturalist Society recommended using the Planning Board waiver provisions established in the Upper Paint Branch Overlay zone for a narrower class of properties than ZTA 14-03 as introduced would exempt.<sup>4</sup>

It does not escape Staff's notice that the Planning Board **did not** recommend a waiver process to the Council. The Plan did not contemplate waivers, but instead recommended exemptions for small properties without specifying the size.<sup>5</sup> If the Council were to consider waivers on private property, hardship determination might only exist if the impervious surface area limit leaves a footprint too small for any economic use. The attached document from Planning staff (Candy Bunnag) indicate their experience with waivers given in the Upper Paint Branch (See © 36-38). The Planning Board required removing existing pavement off-site at considerable public expense in some cases for some public projects.

One would expect that a waiver would cover unforeseen circumstances and avoid an unintended "taking" of private property. In Ten Mile Creek, the category of circumstances under which a waiver would be granted is foreseeable. Establishing waivers allows a determination by the Council on what should be excluded from impervious surface area limits. A waiver provision would delegate that authority to the Planning Board. In the absence of a small lot exemption (as recommended by the recently approved Plan), a waiver provision would be advisable to avoid leaving the owner with no economically viable use of the property.

*Staff does not recommend a waiver process but does recommend narrowing the universe of development exempt from impervious surface area limits.*

If the Council agrees with allowing the Planning Board to grant waivers instead of defining exemptions, then the scope of what may receive a waiver is still important.

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<sup>4</sup> Waiver provisions in the Upper Paint Branch Overlay zone (Zoning Rewrite)

The applicable review body may grant a waiver of the development standards ... if it finds that:

1. The 8% impervious surface limit would cause an undue hardship on the applicant because of events or circumstances not caused or facilitated by the applicant;
2. The application otherwise complies with all applicable Federal, State, and County water quality provisions;
3. The relief sought is the minimum needed to prevent the undue hardship; and
4. Alternative water quality and control techniques are used to meet the purposes of ... [the overlay zone].

<sup>5</sup> Approved Plan:

The Clarksburg East Environmental Overlay Zone

Details regarding the overlay zone are addressed in the overlay zone for the east side of 1-270. The major elements are as follows:

- Impervious surface area limit of 15 percent of the area within a development application (with a grandfathering provision for properties already exceeding the cap)
- 80 percent open space (which should include all environmental buffers and sensitive areas identified in the Master Plan)
- All base zones other than R-90 will adhere to the standards of the underlying zones.
- For properties with a base zoning of R-90, the requirements of the R-90 zone will be modified by the overlay as follows:
  - Density limited to 3 units per acre or 3.66 units per acre with the maximum MPDU bonus.
  - Any unit type with no requirements for any minimum percentages of unit type should be allowed.
  - Building height limits increased to 35 for single-family detached, 50 for townhouses, and 65 for multi-family.
  - Site plan approval should be required.
  - Setbacks and minimum lot size requirements should be eliminated.
- Exempt small properties from some or all provisions of the overlay zone.
- Consider limited potential exemptions for limited public facilities, such as state and county roads and park facilities.

***What impervious surface should be exempt from impervious surface area limits?***

**Existing impervious area and additions to existing one-family houses**

No testimony objected to exemptions for pre-existing impervious surface or additions to existing one-family dwellings.

**Public uses**

As introduced, ZTA 14-03 would exempt from the impervious surface area limit publicly funded roads, bikeways, paths, driveways, or parking areas. The Planning Board recommended adding public utilities necessary for existing and approved development and modifying the parking exemption so that it only applies to trailhead parking. With the exception of public utility facilities, master planned roads, bikeways, paths, and trailhead parking were included in the total impervious surface area estimates made in the course of the Sector Plan deliberations. Exempting these facilities from the impervious surface area cap would not add unanticipated impervious surface. All of these public projects would require a water quality plan that would minimize impervious surface.<sup>6</sup>

***Publicly funded roads***

The MD 355 bypass is the only Plan-recommended new road in the area covered by the proposed overlay zones. (The impervious surface for the roadway was assumed in the Plan's impervious surface analysis.) The bypass could be 2 lanes and a transitway within a 130-foot minimum right-of-way. Assuming 12 feet for each traffic lane and 10 feet for each transit lane, the proposed travel ways would cover 44 feet within the right-of-way (34 percent of the right-of-way without sidewalks or bike accommodations). In the absence of an exemption (or a waiver), a right-of-way of 293 feet (or an

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<sup>6</sup> Sec. 19-62. Applicability.

- (c) Publicly owned property. Before engaging in any land-disturbing on publicly owned property in an area designated as a special protection area, the applying agency or department should prepare a combined preliminary and final water quality plan.

Sec. 19-64. Water Quality Inventory Submittal; Water Quality Plans.

- (a) Water quality inventory submittal. A person who is required under Section 19-62 to comply with this Article must submit the following documents as part of a proposed development plan, diagrammatic plan, schematic development plan, project plan, preliminary plan of subdivision, site plan, or special exception, whichever is first required. Each submission must be reviewed by the receiving agency as part of the plan or permit application, as provided by law.
  - (1) Stormwater management concept plan;
  - (2) Erosion and sediment control concept plan;
  - (3) Documentation showing avoidance or minimization of impacts on environmentally sensitive areas and priority forest conservation areas as specified in the Planning Board's Environmental Guidelines, and an analysis of available alternatives.

Sec. 19-65. Application, review, and approval procedures.

\* \* \*

- (d) Condition of approval.

\* \* \*

- (4) For a water quality plan for a project on public property, the Planning Board, after public hearing which may be conducted when the Board considers a mandatory referral application, must determine if the plan meets the standards of this Article. The applying agency or department should not engage in land-disturbing activities that are inconsistent with the approved combined water quality plan unless the applying agency has found that the water quality protection measures it would otherwise use meet the purposes of this Chapter.

equivalent land area in the overlay zone) would be required to assure that the roadway would not exceed 15 percent impervious surface.

*Staff recommends retaining the exemption for master planned publicly funded roads.*

### ***Bikeways***

The Plan recommended in-road bike accommodations on Comus Road and on Clarksburg Road in addition to the previously recommended bikeway on MD 355. (Comus Road and its current right-of-way are not in the proposed overlay area). The southern boundary of the right-of way is the northern boundary of the Clarksburg West overlay zone. Some of Clarksburg Road between Stringtown Road and west of MD 355 are in the overlay zone. The impervious surface for these bike accommodations was assumed in the Plan's impervious surface analysis, except 1 acre for the path along MD 355. Because the Clarksburg Historic District will be excluded from the overlay zone, the exemption will cover only a portion of the area contributing to the additional impervious surface.

A 10 foot wide bike path on Clarksburg East would require an additional 67 feet of right-of-way width or an equivalent natural area unless bike paths are waived or exempted.

*Staff recommends retaining the exemption for master planned bikeways.*

### ***Paths and trailheads and the associated trail parking for the trailhead***

The impervious surface calculations for the Plan did not assume any impervious surface on parkland or County owned land. Trailheads and other facilities for implementing the neighborhood and conservation parks are anticipated to add approximately 1 acre of impervious surface. The Parks Department anticipates getting park dedications from which the allowed impervious surface has already been used or exchanging land with the County. The exemption was proposed in ZTA 14-03 as introduced to allow and invite public use of public land. The Planning Board recommended limiting publicly funded parking areas to only those associated with a trailhead in order to limit the scope of the exemption. Park staff acknowledged that impervious limits on parkland will not be exceeded even if trailheads are not exempt. There is current parkland with allowed impervious surface that can be transferred to new parkland in order to accommodate trails, trailheads and low-impervious facilities in the neighborhood parks. Their intent is to put the public on notice that trailheads are planned and may be put on current or future parkland.

*Staff recommends deleting the exemption of paths and parking associated with trailheads.* The legislative record can reflect the Parks Department's intent to build future trail heads and other facilities in the future neighborhood and conservation Parks without exempting such impervious surface additions.

### ***Public utilities necessary to serve existing or approved development***

An exemption for public utilities was recommended by the Planning Board after it became aware of the need for a 4,000 square foot Potomac Edison substation that may need to be on public land to service development to the south. This exemption was not in ZTA 14-03 as introduced. To the contrary,

County owned land in Clarksburg West would be prohibited from adding any impervious surface under ZTA 14-03 as introduced.<sup>7</sup>

*Staff recommends the exemption proposed by the Planning Board, not as an exemption but something that would be allowed on County property.* This would allow the County to retain control of the permitted impervious surface. If the Council wishes to be more restrictive, it could limit the area allowed under this exemption (5,000 square feet?). Any precise numeric limit may require a future amendment.

### **Lot size above which the impervious surface area limit applies**

The Plan states: “Very small properties will be exempt from imperviousness limits in the overlay zones.” In the detail for each overlay zone, it states: “Exempt small properties from some or all provisions of the overlay zone.” ZTA 14-03 as introduced would exempt development on existing lots or parcels 2 acres in size or smaller. (The ZTA as originally prepared by the Planning Board did not exempt new development on small properties.) The intent of the exemption was to ease the burden on small development and avoid regulatory takings. Such development in the Special Protection Area would still be required to minimize impervious surface in order to get an approved water quality plan. There are 19 parcels less than 2 acres on the east side of I-270 and 12 on the west side. All such lots on the west side of I-270 are developed with single-family homes. All of these west side properties are covered by the exemption for pre-existing conditions and additions to existing single-family dwellings. On the east side, there is the potential for new development. Planning staff estimate that the exemption could add 1.7 acres of impervious surface if all 2-acre or smaller sites are developed with the average impervious surface for their zone.

*Staff recommends reducing the lot size covered by this exemption to 1 acre lots.* This would allow 1.5 acres of unanticipated impervious surface and would require 5 additional lots (those greater than 1 acre but less than 2 acres) to satisfy the impervious surface area limit.

In addition, the Council could exempt only one-family development on small lots and require non-residential development to satisfy the impervious surface area limit. This would require non-residential special exception uses to satisfy impervious surface area limits.

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<sup>7</sup> Section 59-C-18.263 (b)(3):

County owned land or land under a conservation easement granted to the benefit of the County may not add any impervious surface.

Zoning Text Amendment No.: 14-03  
Concerning: Overlay Zone -  
Clarksburg  
Draft No. & Date: 2 – 7/7/14  
Introduced: April 8, 2014  
Public Hearing:  
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**

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By: Council President at the request of the District Council

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**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.*

1           **Sec. 1. Division 59-C-18 is amended as follows:**

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

4           \* \* \*

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

6           **59-C-18.251. Purpose.**

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

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

18          **59-C-18.252. Procedure for approval.**

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

27 **59-C-18.253. Regulations.**

28 (a) Land Use.

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

31 (b) Development standards.

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

34 (2) Except ~~[[for development]]~~ as allowed under Section 59-C-  
35 18.254, the total impervious surface area for any development  
36 after {EFFECTIVE DATE} ~~[[may]]~~ must be a maximum of 15%  
37 of the total area ~~[[in the]]~~ under application for development.

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

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

48 (5) The minimum area devoted to open space ~~[[is]]~~ must be 80% of  
49 the total area under application for development. For the purpose  
50 of this overlay zone, open space is defined as rural open space as  
51 described and managed under Sections 59-C-9.572 and 59-C-  
52 9.74(h).

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

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

71           **59-C-18.254. Exemptions from impervious surface area restrictions.**

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

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

83 (c) [[Impervious surfaces associated with development on]]On any lot or  
84 parcel with an area less than [[2.0]] 1.0 acres as of January 1, 2014,  
85 [[are]]any development is exempt from this overlay zone's impervious  
86 surface restriction.

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

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

93 **59-C-18.261. Purpose.**

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

- 95 (a) protect the water quantity, water quality, habitat, and biological diversity  
96 of the Ten Mile Creek watershed and its tributaries;  
97 (b) regulate the amount and location of impervious surfaces to maintain  
98 levels of groundwater, control erosion and water temperature, and retain  
99 as many of the functions provided by natural land as possible;  
100 (c) regulate development that could adversely affect this high quality stream  
101 system; and  
102 (d) implement the recommendations of the 2014 Ten Mile Creek Area  
103 Limited Amendment to the Clarksburg Master Plan and Hyattstown  
104 Special Study Area.

105 **59-C-18.262. Procedure for approval.**

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

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

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

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

116 **59-C-18.263. Regulations.**

117 (a) Land Use.

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

120 (b) Development standards.

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

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

129 (3) County owned land or land under a conservation easement granted  
130 to the benefit of the County may not add any impervious surface  
131 with the exception of any public utility facility necessary to serve  
132 existing or approved development.

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

- 135 (5) [[The minimum lot area, lot dimensions, and building setbacks  
136 must be determined by the Planning Board during the site plan  
137 approval process.]] When site plan approval is required, the  
138 minimum lot area, lot dimensions, building coverage, and building  
139 setbacks do not apply. Any such requirements must be  
140 determined by the Planning Board during the site plan approval  
141 process.
- 142 (6) All environmental buffer areas or natural resources recommended  
143 for protection in the Ten Mile Creek Area Limited Amendment to  
144 the Clarksburg Master Plan and Hyattstown Special Study Area  
145 must be [[treated]] regulated as environmentally sensitive areas,  
146 [[in addition to]] just as other areas identified [[as]]  
147 environmentally sensitive in law, regulations, or in the Planning  
148 Board’s Guidelines for the Environmental Management of  
149 Development, as amended.
- 150 (7) All environmentally sensitive areas must be included in the  
151 required open space area.
- 152 (8) The minimum area devoted to open space [[is]] must be 80% of  
153 the total area under application for development. For the purpose  
154 of this overlay zone, open space is defined as rural open space as  
155 described and managed under Sections 59-C-9.572 and 59-C-  
156 9.74(h).

157 **59-C-18.262. Exemptions from impervious surface restrictions.**

- 158 (a) Any impervious surface lawfully existing under a building permit or  
159 sediment control permit issued before {EFFECTIVE DATE} that  
160 exceeds the 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, bikeway, [[path,  
174 driveway, or parking area ]] identified by the Ten Mile Creek Limited  
175 Amendment to the Clarksburg Master Plan and Hyattstown Special  
176 Study Area, is exempt from this overlay zone’s impervious surface  
177 restriction.

178

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

181

182 This is a correct copy of Council action.

183

184

185 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

The Maryland-National Capital Park and Planning Commission

May 9, 2014

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

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 14-03

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 14-03 at our regular meeting on May 8, 2014. By a vote of 5:0, the Planning Board recommends approval of the text amendment to implement environmental recommendations of the *10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area*, as modified by the Board for plain language clarifications. The Board further modified the text to recommend that the Clarksburg Special Protection Area be expanded to cover the entire area covered by the Clarksburg West Environmental Overlay zone, and that within that zone site plan approval not be required on a lot or parcel for one-family residential development using a septic system. The Board further modified the proposed exemption provisions to clarify that an exemption from the impervious surface restriction for any publicly funded parking area pertains only to parking areas associated with trailheads, and to include a public utility facility as a publicly funded structure exempted from the impervious surface restrictions of the overlay zones. The text amendment language as modified is included as an attachment to this memorandum, separate from the technical staff report.

ZTA No. 14-03 would create an overlay zone for Clarksburg East and an overlay zone for Clarksburg West to implement environmental recommendations established in the County Council Approved *10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area*. The Limited Amendment recommends limiting imperviousness, establishing open space requirements for new development both east and west of I-270 and changing some development standards of the underlying zones in order to maximize development flexibility and protect sensitive natural resources. The Amendment recommends creation of overlay zones to establish a 15 percent imperviousness limit on new development in the Town Center portion of the watershed (east of I-270), a six percent limit on the Pulte-King properties (west of I-270), and no additional imperviousness on County-owned land. Very small properties (less than two acres) will be exempt from imperviousness limits in the overlay zones.

In the Clarksburg West Environmental Overlay Zone, the Planning Board believes that the Council should add an exemption from the site plan requirement for properties with one-family detached development that use septic systems. The Board further recommends that, if exempted from the site plan requirement, these properties should be added to the existing Clarksburg Special Protection Area to assure

that they conform to the imperviousness limits set forth in the master plan. Including these properties in the Special Protection Area would require preparation of a Water Quality Plan that complies with the imperviousness limits of the master plan when landowners submit residential development plans. Thus, the Water Quality Plan requirement would retain the imperviousness limit recommended in the master plan while reducing the procedural burdens on one-family developments that use septic systems, which tend to be smaller developments.

The Board further recommends that, for both proposed overlay zones, the Council modify the exemption from the imperviousness limits to: clarify that an exemption from the impervious surface restriction for any publicly funded parking area pertains only to parking areas associated with trailheads; include a public utility facility as a publicly funded structure exempted from the impervious surface restrictions; and include language from the existing Upper Rock Creek Environmental Overlay Zone to assure that all these facilities keep imperviousness to the minimum needed to accomplish the public purpose intended.

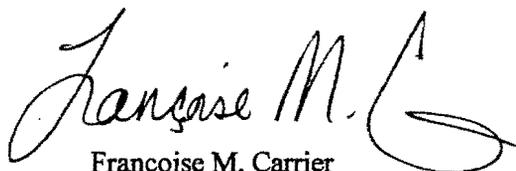
On balance, the Planning Board believes that the proposed overlay zones will consistently implement the environmental recommendations of the 10 Mile Creek Limited Amendment. We agree that existing development on small properties should be exempt from restrictions on imperviousness and properties smaller than two acres should be exempt. In the Clarksburg West Environmental Overlay Zone, this would cover smaller properties zoned RE-1 along Clarksburg Road. With the exemption, the smaller properties will be able to rebuild or renovate without requiring subdivision, while the larger ones would not be exempt under the requirements of the overlay zone. If adjacent properties are consolidated, the new, larger development areas would also be required to comply with the imperviousness limitations.

In the Clarksburg East Environmental Overlay Zone, smaller properties would be similarly treated. Properties larger than two acres would go through preliminary and site plan review, as would consolidation of adjacent properties.

The Planning Board believes that the overlay zones provide the most effective way to protect the unique natural resources in the Ten Mile Creek watershed and implement the Limited Amendment's land use recommendations in an environmentally sustainable way.

#### 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, at its regular meeting held in Silver Spring, Maryland, on Thursday, May 8, 2014.

  
Françoise M. Carrier  
Chair

FC:GR

Attachment

**Modifications as recommended by the Planning Board, May 8, 2014**

Zoning Text Amendment No.: 14-03  
Concerning: Overlay Zone -  
                  Clarksburg  
Draft No. & Date: 1 – 4/3/14  
Introduced: April 8, 2014  
Public Hearing:  
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**

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By: Council President at the request of the District Council

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**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.*

1           **Sec. 1. Division 59-C-18 is amended as follows:**

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

4   \* \* \*

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

6           **59-C-18.251. Purpose.**

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

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

18          **59-C-18.252. Procedure for approval.**

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

27 **59-C-18.253. Regulations.**

28 (a) Land Use.

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

31 (b) Development standards.

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

34 (2) Except ~~[[for development]]~~ as allowed under Section 59-C-  
35 18.254, the total impervious surface area for any development  
36 after {EFFECTIVE DATE} ~~[[may]]~~ must be ~~[[a maximum of]]~~ no  
37 greater than 15% of the total area ~~[[in the]]~~ under application for  
38 development.

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

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

49 (5) The minimum area devoted to open space ~~[[is]]~~ must be 80% of  
50 the total area under application for development.

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

52 (A) the maximum density without MPDU bonus density is 3.0  
53 dwelling units per acre;

- 54           (B) the maximum density with MPDU bonus density is 3.66  
55           dwelling units per acre;
- 56           (C) [[a development may include]] any type of dwelling unit is  
57           permitted, up to the maximum number allowed [[of  
58           dwelling units]];
- 59           (D) the maximum building height is:
- 60           (i) 35 feet for a one-family detached dwelling;  
61           (ii) 50 feet for a one-family attached dwelling; and  
62           (iii) 65 feet for a multiple-family dwelling or any non-  
63           residential building; and
- 64           (E) when site plan approval is required, the minimum lot area,  
65           lot dimensions, and building setbacks of the R-90 zone do  
66           not apply. Any such requirements must be determined by  
67           the Planning Board during site plan approval process.

68           **59-C-18.254. Exemptions from impervious surface area restrictions.**

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

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

84 (d) Impervious surface for any publicly funded road, bikeway, path,  
85 driveway, ~~[[or]]~~ trailhead and associated parking area or any public  
86 utility facility necessary to serve existing or approved development, is  
87 exempt from this overlay zone's impervious surface restriction. These  
88 provisions are not intended to preclude the development of public  
89 facilities. Such facilities must conform to the water quality plan  
90 submission and review requirements established in the Montgomery  
91 County Code, Chapter 19, Article V, and keep imperviousness to the  
92 minimum needed to accomplish the public purpose intended.

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

94 **59-C-18.261. Purpose.**

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

- 96 (a) protect the water quantity, water quality, habitat, and biological diversity  
97 of the Ten Mile Creek watershed and its tributaries;  
98 (b) regulate the amount and location of impervious surfaces to maintain  
99 levels of groundwater, control erosion and water temperature, and retain  
100 as many of the functions provided by natural land as possible;  
101 (c) regulate development that could adversely affect this high quality stream  
102 system; and  
103 (d) implement the recommendations of the 2014 Ten Mile Creek Area  
104 Limited Amendment to the Clarksburg Master Plan and Hyattstown  
105 Special Study Area.

106 **59-C-18.262. Procedure for approval.**

107 (a) [[A site plan must be approved by the Planning Board under the  
108 provisions of Division 59-D-3 for any]] Any development that must file  
109 a preliminary plan of subdivision under Chapter 50 requires approval of  
110 a site plan by the Planning Board under the provisions of Division 59-D-  
111 3, unless excluded under Subsection (b) or (c).

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

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

117 **59-C-18.263. Regulations.**

118 (a) Land Use.

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

121 (b) Development standards.

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

124 (2) Except for County owned land or land under a conservation  
125 easement granted to the benefit of the County and development  
126 exempted under Section 59-C-18.264, the total impervious surface  
127 area for any development after {EFFECTIVE DATE} [[may]]  
128 must be [[a maximum of]] no greater than 6% of the total area [[in  
129 the]] under application for development.

130 (3) County owned land or land under a conservation easement granted  
131 to the benefit of the County may 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, and building setbacks do not  
138                   apply. Any such requirements must be determined by the  
139                   Planning Board during the site plan approval process.
- 140           (6)   All environmental buffer areas or natural resources recommended  
141                   for protection in the Ten Mile Creek Area Limited Amendment to  
142                   the Clarksburg Master Plan and Hyattstown Special Study Area  
143                   must be [[treated]] considered and regulated as environmentally  
144                   sensitive areas, [[in addition to]] just as other areas identified  
145                   [[as]] environmentally sensitive in law, regulations, or in the  
146                   Planning Board's Guidelines for the Environmental Management  
147                   of Development, as amended.
- 148           (7)   All environmentally sensitive areas must be included in the  
149                   required open space area.
- 150           (8)   The minimum area devoted to open space [[is]] must be 80% of  
151                   the total area under application for development.

152           **59-C-18.262. Exemptions from impervious surface restrictions.**

- 153           (a)   Any impervious surface lawfully existing under a building permit or  
154                   sediment control permit issued before {EFFECTIVE DATE} that  
155                   exceeds the applicable impervious surface restriction may continue or be  
156                   reconstructed with the same or less impervious surface area under the  
157                   development standards in effect when the building permit or sediment  
158                   control permit was issued.

- 159        (b) [[Any]] An impervious surface [[not approved as part of a site plan  
160                under Section 59-D-3]] resulting from an addition to an existing one-  
161                family residential dwelling or an accessory structure to a one-family  
162                dwelling, not approved as part of a site plan under Section 59-D-3, is  
163                exempt from this overlay zone’s impervious surface restriction.
- 164        (c) [[Impervious surfaces associated with]] A development that lawfully  
165                existed as of January 1, 2014 on any lot or parcel with an area less than  
166                2.0 acres [[as of January 1, 2014 are]] is exempt from this overlay zone’s  
167                impervious surface restriction.
- 168        (d) Impervious surface for any publicly funded road, bikeway, path,  
169                driveway, [[or]] trailhead and associated parking area or any public  
170                utility facility necessary to serve existing or approved development, is  
171                exempt from this overlay zone’s impervious surface restriction. These  
172                provisions are not intended to preclude the development of public  
173                facilities. Such facilities must conform to the water quality plan  
174                submission and review requirements established in the Montgomery  
175                County Code, Chapter 19, Article V, and keep imperviousness to the  
176                minimum needed to accomplish the public purpose intended.

177

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

180

181        This is a correct copy of Council action.

182

183        \_\_\_\_\_

184        Linda M. Lauer, Clerk of the Council



**Zoning Text Amendment (ZTA) No. 14-03, Overlay Zones - Clarksburg**

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Gregory Russ, Planner Coordinator, FP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174



Mary Dolan, Chief, FP&P, [mary.dolan@montgomeryplanning.org](mailto:mary.dolan@montgomeryplanning.org), 301-495-4552

Completed: 05/1/14

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**Description**

ZTA No. 14-03 would create an overlay zone for Clarksburg East and an overlay zone for Clarksburg West to implement environmental recommendations established in the County Council Approved *10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area*.

**Summary**

Staff recommends approval, with mostly plain language modifications, of ZTA No. 14-03 to create an overlay zone for Clarksburg East and an overlay zone for Clarksburg West to implement environmental recommendations of the *10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area*. The one substantive change exempts existing properties (*less than 1 acre*) from the impervious surface provisions of the Clarksburg East overlay zone. The ZTA as introduced exempts properties *less than 2 acres* from this provision.

**Background/Analysis**

In October 2012, the Montgomery County Council directed the Planning Board to undertake a limited amendment of the 1994 Clarksburg Master Plan (the 1994 Plan) because environmental analyses showed continued uncertainty about the ability to protect sensitive resources in Ten Mile Creek if full development occurred under the original Plan recommendations. The Amendment includes the watershed of Ten Mile Creek, which is a high quality stream within the Plan area boundaries. Ten Mile Creek drains portions of Clarksburg west of I-270, as well as part of the Town Center, approximately between I-270 and MD 355, which is now the main route through Clarksburg. The Amendment also includes the entire Clarksburg Historic District, even though a portion of the District is outside of the Ten Mile Creek watershed.

The Amendment includes recommendations for achieving the desired community elements envisioned for Clarksburg in the 1994 Plan, while protecting the quality of Ten Mile Creek. These objectives required studying the extent to which land use and environmental site design could combine to help protect natural resources and maintain high water quality in the watershed. The Limited Amendment covers

only the Ten Mile Creek watershed and portions of the Historic District outside the watershed; the 1994 Plan, as amended in 2012, continues to guide land use development in the rest of Clarksburg.

### **Overlay Zones-Generally**

The Limited Amendment recommends limiting imperviousness, establishing open space requirements for new development both east and west of I-270 and changing some development standards of the underlying zones in order to maximize development flexibility and protect sensitive natural resources. The Amendment recommends creation of overlay zones to establish a 15 percent imperviousness limit on new development in the Town Center portion of the watershed, a six percent limit on the Pulte-King properties (west of I-270), and no additional imperviousness on County-owned land. Very small properties will be exempt from imperviousness limits in the overlay zones.

The purpose of the overlay zones is to preserve and protect sensitive natural resources in the watershed by reducing the amount of land disturbed for development. Limiting impervious surfaces enables natural filtering of water runoff and creates undeveloped open space that can be forested, which can help support cooler water temperatures and a diverse population of insects and invertebrates within streams.

### **Overlay Zone Boundaries (See Attachment 2)**

On the east side of I-270, all properties in Ten Mile Creek, except those in the Historic District, would be within the boundary with exemptions for State and County roads and bikeways. Park property within the Ten Mile Creek Watershed that was not within the Master Plan boundaries will also not be in the overlay zone. On the west side of I-270, all land draining to Ten Mile Creek not zoned Rural Density Transfer (RDT) would be included. In both zones, small properties (less than two acres) existing at the time of the Limited Amendment that develop without combining into larger developments would be exempted from the impervious restrictions of the zone.

### **The Clarksburg East Environmental Overlay Zone**

The major elements for the overlay zone located east of I-270 include:

- Impervious surface area limit of 15 percent of the area within a development application (with a grandfathering provision for properties already exceeding the cap)
- 80 percent open space (which include all environmental buffers and sensitive areas identified in the Master Plan)
- Site plan approval is required for any development that must file a preliminary plan of subdivision under Chapter 50, unless a lot or parcel for a one-family dwelling that has not changed in size or shape since January 1, 2014
- All base zones other than R-90 must adhere to the standards of the underlying zones unless modified by the overlay zone.
- For properties with a base zoning of R-90, the requirements of the R-90 zone are modified by the overlay as follows:
  - Density limited to 3 units per acre or 3.66 units per acre with the maximum MPDU bonus

- Any unit type allowed. No requirements for a minimum percentage of any particular unit type.
  - Building height limits increased to 35 for single-family detached, 50 for townhouses, and 65 for multi-family.
  - When site plan approval is required, the minimum lot area, lot dimensions, and building setbacks of the R-90 zone do not apply. Any such requirements must be determined by the Planning Board during site plan approval process.
- Exempts existing small properties (less than 2 acres) from the impervious surface provisions of the overlay zone. *Staff is recommending that the impervious surface exemption be modified to apply to those properties that are "less than 1 acre" in size.*
  - Exemptions for limited public facilities, such as state and County roads and park facilities.

### **The Clarksburg West Environmental Overlay Zone**

The major elements in the overlay zone proposed for the west side of I-270 include:

- All standards and requirements of the underlying zone apply, except as modified by this overlay zone.
- Except for County owned land or land under a conservation easement granted to the benefit of the County and development exempted under Section 59-C-18.264, Impervious Surface Area is limited to 6 percent of the area within a development application. County owned land or land under a conservation easement granted to the benefit of the County may not add any impervious surface (a grandfathering provision is provided for properties already exceeding the recommended impervious surface limit).
- 80 percent open space (which includes all environmental buffers and sensitive areas identified in the Master Plan).
- Exempt small properties (less than 2 acres) from the impervious surface provisions of the overlay zone.
- Consider limited potential exemptions for public facilities, such as state and County roads and park facilities associated with conservation parks (e.g., small parking lots).

It should be noted that the Limited Amendment discusses the possibility that the overlay zone may be amended at a future time to accommodate less than 1 acre of Correctional Facility expansion.

Overall, staff believes that the proposed overlay zones consistently implement the environmental recommendations of the County Council Approved *10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area*. A two-acre exemption cutoff in the residential zones covers those properties on the west side of I-270 with true subdivision potential along Clarksburg Road zoned RE-1. These properties are likely to be eligible for sewer service, if they redevelop, which would permit maximum development potential in the RE-1 Zone. The prospect of sewer service might also increase the attractiveness of these properties for private institutions or conditional use small businesses whose imperviousness could be substantial. These properties have never undergone subdivision. With the exemption, the smaller properties will be able to rebuild or renovate without requiring subdivision while the larger ones would not be exempt, requiring site plans

as well as preliminary plans under the requirements of the overlay zone. Consolidation of adjacent properties would also require preliminary and site plan review.

The one-acre exemption cutoff (as proposed by staff) in the residential zones on the east side of I-270 has the same effect: subdividable properties, particularly several contiguous and redevelopable properties on Frederick Road in the RMX-2 zone, would be required to go through preliminary and site plan review, as would consolidation of adjacent properties. Like the properties west of I-270, the availability of sewer service could also attract institutional uses. All properties in the CRN zone would be subject to the imperviousness limits without exception.

### Conclusion

With the proposed changes to the ZTA language as depicted in Attachment 1 (plain language clarifications and the modification of the exemption clause cutoff for Clarksburg East from two acres to one acre), staff recommends approval of ZTA 14-03. Staff believes that the overlay zones provide the most effective way to protect the unique environmental resources in the Ten Mile Creek watershed.

### **Attachments**

1. ZTA No. 14-03 as modified by staff
2. Maps-Proposed Overlay Zoning & Limited Amendment Boundaries

# AUDUBON NATURALIST SOCIETY

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**Testimony for Audubon Naturalist Society and the Save Ten Mile Creek Coalition, with co-signers: Montgomery Countryside Alliance, Clean Water Action; Timber Oak Citizens Association; UFCW Local 1994-MCGEO; the Safe Healthy Playing Fields Coalition; Conservation Montgomery and WeAreMoCo.**

Diane Cameron 5.8.14

Re: Proposed Zoning Amendment No. 14-03, the Environmental Overlay Zone for the Ten Mile Creek portion of the Clarksburg Special Protection Area.

Audubon Naturalist Society, on behalf of its more than 6000 members and supporters in the greater Washington, D.C. region, educates and mobilizes local residents to restore and protect their local waters. Audubon Naturalist Society is proud to be a founding member of The Save Ten Mile Creek Coalition comprised of 30 local organizations working together to protect our last, best creek. Together, we remain committed to ensuring that the most protective and science-based land use plan for Ten Mile Creek is enacted, codified, implemented and enforced.

**Overall we support the proposed Environmental Overlay Zone.**

Except for two of the proposed exemptions from the imperviousness caps, that would unacceptably weaken the Ten Mile Creek Limit Amendment described below, we support this proposed zoning amendment overall because it implements the agreed-upon imperviousness caps and other key restrictions outlined in the Council's April 1, 2014 approval of the Ten Mile Creek limited amendment.

This proposed Environmental Overlay Zone (EOZ) establishes 6% and 15% imperviousness caps for the Ten Mile Creek limited master plan amendment West side and East side respectively. We support this core element of this EOZ, as these imperviousness caps are the single most important restriction on development and, along with open space, forest and buffer protections, are the core science-based protections on which the Council based its approval of the Ten Mile Creek plan.

**We object to giving blanket exemptions from imperviousness caps to 2-acre lots and public projects.**

On the other hand, we object to certain exemptions from the imperviousness caps that were slipped into this EOZ that were not in the April 1 Council packet, not agreed to by the Council, and certainly not agreed to by our Coalition. Below we explain our objections, and offer an alternative approach:

There are a total of 4 categorical exemptions – for different types of properties - in this proposed EOZ: (see pp. 5-6 and p. 8 of the EOZ):

- 1) Sites with pre-existing imperviousness - could rebuild to the same imperviousness level, or less.
- 2) Single family homes wanting to build an addition.
- 3) Any lot or parcel less than 2 acres total size as of Jan. 1, 2014.
- 4) Publicly-funded roadways, bikelanes, driveways and pathways, and public parking areas.

Based on our discussions with planning staff and others, categories #1 and 2 have a more-solid rationale for being de-minimis in impact to Ten Mile Creek – because they are less likely to add large amounts of pavement and roofs that could add up to a significant impact over time, and/or because these particular categories of owners might face an unreasonable hardship if forced to adhere to imperviousness caps.

But, property categories #3 and 4 do not have strong rationales for being true hardship cases if such sites had to adhere to the caps. And, properties in categories #3 and #4, if given blanket exemptions as proposed, also could result in a significant, cumulative addition of imperviousness over time, that could contribute to a rapid decline in stream quality and streambank stability for Ten Mile Creek. One estimate is that proposed exemptions #3 and #4 could over time, amount to roughly 25 acres of additional imperviousness in Ten Mile Creek's watershed- a whole percentage-point increase on a watershed-wide basis.

On 5/8/14, the Planning Board added "public utility facilities" to item #4 as another property type they are recommending be exempted from imperviousness caps. They also narrowed and clarified that the public parking areas to be exempted are solely those that serve public park trailheads.

Therefore, ANS and the Save Ten Mile Creek Coalition propose the following as our alternative approach for addressing property categories #3 and #4:

- **Narrow the scope of categories #3 and 4;** We advocate that category #3 be narrowed to lots of less than one acre; and that category #4 exclude public parking lots and utility facilities; and
- **Subject those more-narrow categories to a waiver process,** such as the process the County already has in place for Upper Paint Branch.

Rather than allowing a property that falls into one of these categories to be automatically exempt from imperviousness caps, instead, if they fall into one of the categories, then they are simply eligible to apply for a waiver. They would still have to make a showing that they need the waiver and have otherwise acted to keep additional imperviousness, above the level of the cap, to an absolute minimum.

**We also request that staff provide a detailed analysis of the total cumulative resulting imperviousness level watershed-wide in Ten Mile Creek, if the proposed exemptions are used by all eligible landowners.**

2

Testimony

Before the Montgomery County Council

Zoning Text Amendment 14-03

Overlay Zones – Clarksburg

May 13, 2014

Good afternoon. For the record, I am Bob Harris of Lerch, Early & Brewer, testifying today on behalf of various property owners in Clarksburg not located within the Ten Mile Creek Watershed. You might ask why other property owners would be interested in this. The reason is that this ZTA could adversely affect planned electrical power service for new development on both sides of I-270.

By way of background, this area of Montgomery County is served by Potomac Edison power. As Clarksburg has continued to grow, Potomac Edison has concluded that its main power substation for the area, located along Route 355 north of Route 121, is inadequate to accommodate approved development in Clarksburg. This includes approved development on both the east side of 270 at Garnkirk Farm and Gallery Park, and future potential development on the COMSAT property, as well as approved development on the west side of I-270 including the Linthicum property, the Gosnell property and the Cabin Branch community. In order to address these power needs within the next year or so, Potomac Edison needs to install a new modular substation to supplement the main substation. They have planned to construct one on the north side of MD Route 121, at Whelan Lane. The project would involve a small, modular substation unit, approximately 80' x 50' which would be connected directly to the main substation directly

across I-270. It then would be part of a distribution loop that would cover future development on both the east and the west sides of I-270.

After reviewing various potential sites, Potomac Edison identified an ideal site on County owned land and has been working on plans for it. Although the impervious cover of this facility is extremely small (only about 4,000 sq. ft. which is smaller than this room), and would be located on the combined County property assemblage of more than 380 acres, the draft of the Zoning Text Amendment would not allow the County land to have any additional impervious cover on it, no matter how insignificant. The Zoning Text Amendment recognizes the need for various public facilities, irrespective of their impervious cover, and exempts publicly funded roads, bikeways, pathways, driveways and parking areas. On behalf of the various property owners in need of future electrical service, and Potomac Edison, and as recommended by the Planning Board, we ask that the ZTA also exempt public utility facilities such as this from the impervious cover restriction. As noted, the size of this facility is so small compared to the overall drainage area of nearly 4,000 acres that it would have no effect on the water quality of Ten Mile Creek. Its presence, however, is crucial for build-out of the approved and master planned development in Clarksburg. We support the Planning Board's proposed revision.

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

May 13, 2014

**Emily J. Vaias**  
evaias@linowes-law.com  
301.961.5174

**Via Email**  
**and Hand Delivery**

Craig Rice, President  
and Members of the Montgomery County Council  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Re: Clarksburg East Environmental Overlay Zone – ZTA 14-03

Dear President Rice and Councilmembers:

We represent Brookfield Homes (“Brookfield”), the contract purchaser of the 99-acre Egan Property located at 23720 Frederick Road in Clarksburg, east of I-270 and south of Comus Road (the “Egan Property” or the “Property”). As a result of the 10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area, approved by the Council on April 1, 2014 (the “Master Plan”), the Egan Property is proposed for rezoning from the R-200 zone to the R-90 zone with a new Clarksburg East Environmental Overlay Zone limiting imperviousness to 15 percent and requiring 80 percent open space (the “Overlay Zone”).

We respectfully request the following changes to the proposed Overlay Zone to better accommodate a marketable and environmentally sensitive development on the Property:

1) Building Coverage – There is a 30% building coverage limit for individual lots in the R-90 zone (see §59-C-1.328 and §59-C-1.53) which could conflict with more important impervious limitations for the overall Property; therefore, this requirement should be expressly eliminated.

2) Open Space – The proposed Overlay Zone states, “the minimum area devoted to open space is 80% of the total area under application.” An 80% open space requirement on top of the 15% impervious cap and expanded buffers leaves very little area for development that can help to support the Town Center or the public infrastructure needed to make the Property marketable. The enclosed conceptual Site Plan, which minimizes grading, provides sidewalks on only one side of the street, complies with the impervious cap, expanded buffers, density limitations, ESDs and other environmentally sensitive design techniques as suggested in the Master Plan (see pp 10-13 of County Council Resolution No. 17-1048 approving the Master Plan), achieves about 150 to 200 dwelling units with about 70% common open space. However, there has not been an in-depth study of all of the environmental features that could impact the developable area.

(27)

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Accordingly, we would request that the 80% requirement be reduced to 65% to allow for some flexibility.

Further, the term “open space” is not defined in the Overlay Zone, and we believe this term as used in this very special and environmentally-focused Overlay Zone should be specifically defined to allow for the best and most environmentally beneficial development practices to be used. Currently, the Zoning Ordinance defines “common open space” as “areas not included in individual record lots nor dedicated to public use.” (§59-A 2.1) The new Zoning Ordinance, approved on March 5, 2014 (the “Zoning Rewrite”) requires a minimum of 30% common open space in the R-90 cluster zone, and defines this to mean, “an outdoor area that is intended for recreational use by residents and their visitors. Common open space does not include private individual lots.” (§59-4.4.8 and 59-6.3.5) Although appropriate for a typical cluster development, in the Ten Mile Creek area, this open space requirement should be used to further the Master Plan’s goals of environmental protection, through additional buffers, forestation and mitigation measures. For instance, if certain areas are not required to be forested or are outside buffer areas, and the developer agrees to forest or protect these areas, they would receive a 1:2 acre ratio credit towards the open space requirement. This would be more aligned with the environmental protection goals of the Master Plan and the specific attributes of the individual properties. In addition, there may be instances where allowing this area to be on private lots would again serve the environmental goals of the Master Plan. This flexibility should be written into the Overlay Zone.

3) Ephemeral Streams – The Overlay Zone does not define “ephemeral streams” and the current guidance provided is within the Master Plan and simply requires that beyond the 200-foot stream buffer, there must also be an additional 50-foot buffer for “ephemeral streams, not including roadside drainage ditches.” (pg 11) This is a detail that could have a significant impact on the developable area of the Property, as there may be ephemeral channels that are the result of man-made features or are otherwise not truly connected to navigable waters, but may not be a ditch, that would not warrant additional buffers. We suggest that Staff follow the guidance from the US Army Corps of Engineers in assessing which of these areas would have an impact on the watershed and which would not.

The Egan Property is “largely open, with sparsely wooded areas in the stream valleys, and most of the property is in turf or meadow,” and the owners currently operate a catering/entertainment venue on the Property. (pg. 20). If Brookfield can achieve a reasonable unit yield on the Property, the ultimate outcome could be significant preservation of sensitive environmental features and the inclusion of residents to help support the Town Center. We are hopeful that with our suggested changes, the Overlay Zone will help to make this happen.

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Sincerely,

**LINOWES AND BLOCHER LLP**



Emily J. Vaias

Attachment

cc: Mr. Gregory Russ, MNCPPC  
Ms. Mary Dolan, MNCPPC  
Ms. Marlene Michaelson  
Mr. David Carro  
Mr. Neil Patel  
Mr. Brian Grzelak

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DIANE E. FEUERHERD

June 4, 2014

The Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Implications of ZTA 14-03 on Hammer Hill Property  
23310 Frederick Road, Clarksburg

Dear President Rice and Members of the County Council:

We are writing to inform you of a potential unintended consequence if the Planning Board's recommended language for ZTA 14-03 is adopted. The restoration and sensitive redevelopment of the historic Hammer Hill property may be frustrated by ZTA 14-03 if the overlay zone language is not crafted carefully.

The 10-Mile Creek Area Limited Master Plan Amendment, as well as the 1994 Clarksburg Master Plan, recommended the Clarksburg Historic District be the focal point of the Clarksburg Town Center and encouraged sensitive and appropriate infill development. The 10-Mile Creek Amendment recognized that existing zoning was not adequate to encourage infill development, and therefore recommended CRT zoning be implemented to allow densities and building heights that encourage infill development and invigorate the Historic District (Pages 33-34, 10-Mile Creek Area Limited Amendment).

Our client, Mr. Victor Peeke, owns the Hammer Hill property, which is comprised of two adjoining parcels. Parcel P311 is a 2.83 acre parcel where the historic Hammer Hill house is located today, and Parcel N366 is an adjoining 29,641 square foot vacant parcel that at one time housed a barn associated with the historic home (the barn was removed in the 1980s by a previous owner). Even though the Hammer Hill property is comprised of two separate parcels, when visiting the estate, it appears as one continuous property. The property's history also lends to thinking about the land as one uninterrupted estate.

To stimulate renovation and appropriate infill development on the Hammer Hill property, the 10-Mile Creek Master Plan recommends the CRT 0.5, C 0.5, R 0.5, H 45 zone for the larger

parcel. The smaller parcel remains in the R-200 zone. The larger parcel (P311) is located in the Historic District, while N366 is not. Similarly, because the Clarksburg East Environmental Overlay Zone follows the Historic District Boundary, P311 is outside the overlay zone, while N366 is not. The attached plan illustrates the various and conflicting designations of the two parcels that comprise the Hammer Hill property.

Last year, Mr. Peeke proposed the renovation of the Hammer Hill property as a private school. As part of this proposal, new buildings were proposed in the rear of the property to accommodate the adaptive reuse of the site. This proposal was submitted to the Montgomery County Historic Preservation Commission (HPC) for a preliminary consultation. Planning Staff, the Clarksburg Citizens Association, and HPC all preliminarily supported the proposed private school development as appropriate for the site and compatible with the Clarksburg Historic District. A conceptual plan and illustrative perspective of the proposal is attached. As you will see, the main vehicular access to the project and the parking facility accommodating the private school are located on the smaller parcel (N366) in an effort to preserve the historic character of the property's picturesque grand lawn and quaint driveway leading from Frederick Road. Mr. Peeke is committed to using the latest stormwater management technology to mitigate any adverse environmental impact the new development may have on the area.

Section 59-C-18.254(c) of the overlay zone, as introduced, recommends an exemption from the 15 percent imperviousness limit for "development on any lot or parcel with an area less than 2.0 acres as of January 1, 2014". We interpret this language, if adopted, to allow the proposed Hammer Hill development to move forward since the smaller parcel is only 29,641 square feet. However, the Planning Board's recommendations on ZTA 14-03 modify the exemption language of Section 59-C-18.254(c) to apply only to "a development that lawfully existed as of January 1, 2014 on any lot or parcel with an area less than 2.0 acres". This language would frustrate the proposed renovation and redevelopment of the Hammer Hill property. If the Council is inclined to adopt the Planning Board's recommended language, then we respectfully request that another exemption be added to ZTA 14-03 that states the following:

(e) Any lot or parcel that is included in this overlay zone that is less than 2.0 acres in size, that is subsequently subdivided into a lot or parcel located in the Clarksburg Historic District, will be exempt from this overlay zone's impervious surface restriction.

Inclusion of this narrow exemption would also allow the renovation and redevelopment of the Hammer Hill property to proceed, while limiting the ability to use this exemption as a means to overcome impervious surface restrictions in the area. We thank you for your review and consideration of this material. Please feel free to contact the undersigned with any questions.

Very truly yours,

MILLER, MILLER & CANBY

**Jody Kline**

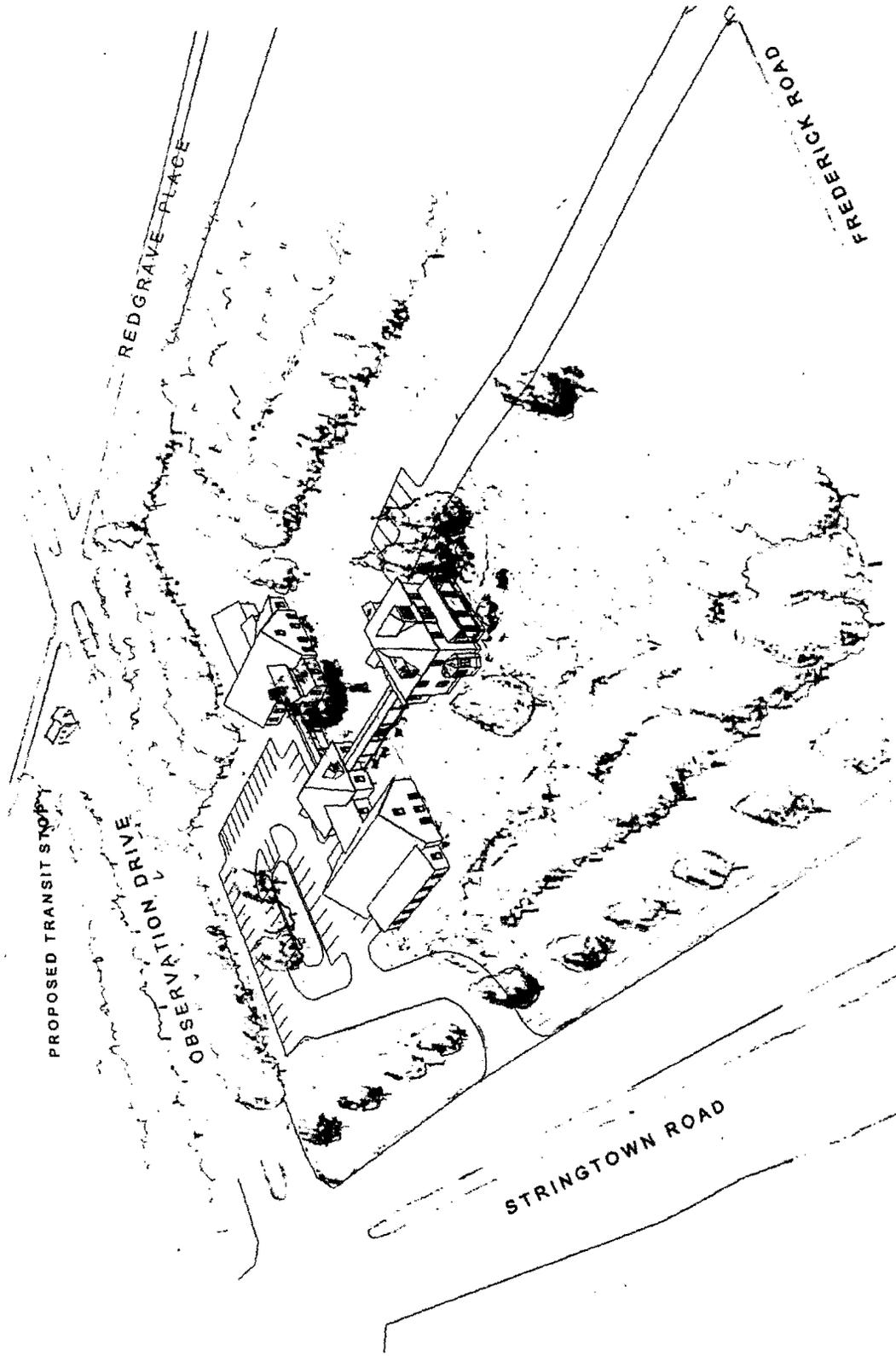
Jody S. Kline

**Damon Orobona**

Damon B. Orobona

cc: Jeff Zyontz, Esquire  
Tedi Osias, Esquire  
Patty Vitale, Esquire  
Fred Boyd  
Scott Whipple  
Greg Russ





PROPOSED TRANSIT STOP

OBSERVATION DRIVE

REDGRAVE PLACE

STRINGTOWN ROAD

FREDRICK ROAD

HAMMER HILL AERIAL VIEW

Montgomery County

New Search (<http://sdat.resiusa.org/RealProperty>)

District: 02 Account Number: 00021673



**Summary of Environmental Overlay Zones in Upper Paint Branch SPA and Upper Rock Creek SPA:**

Candy Bunnag, DARC Division  
Montgomery Co. Planning Department  
June 25, 2014

**FOR UPPER PAINT BRANCH SPA:**

The Upper Paint Branch SPA Environmental Overlay Zone was created in 1997; it was established with a 10% imperviousness limit. It has a grandfather provision for lawfully existing impervious surfaces that exceed the 10% limit. It also exempts: an addition or accessory structure to an existing single-family house from the impervious limitations, or an impervious surface constructed from a building permit application that was pending before DPS on July 1, 1997. In 2007, the overlay zone was amended to reduce the imperviousness limit to 8%. In addition, the provision for exemption for certain types of projects was somewhat modified to also allow projects that had already gone through the regulatory review process with a 10% imperviousness requirement, or was already going through the building permit process at the time of the change to the overlay zone.

Both the Planning Department and DPS review projects to determine if the SPA Environmental Overlay Zone applies. There are some types of projects which do not require Planning Board review and are reviewed by DPS only (e.g., projects that require building permits and/or sediment and erosion control permits, but do not require subdivision plan approvals). So, some projects may be reviewed for conformance to the overlay zone's imperviousness limits by DPS only. Questions and information related to such projects should be directed to:

Mark Etheridge, Manager, Water Resources Plan Review, DPS  
[Mark.etheridge@montgomerycountymd.gov](mailto:Mark.etheridge@montgomerycountymd.gov)  
240-777-6338

There have been applicants who have come into the regulatory process with an interest in submitting an imperviousness waiver request. But, in most instances, staff has been able to work with the applicant to modify the proposed project so that a waiver is not required. So, there have been only a limited number of projects with imperviousness waiver requests that have been to the Planning Board for review:

For the Upper Paint Branch SPA, the following projects have proposed impervious surface coverage that exceeds the overlay zone's limit (either 10% or 8%, depending on the limit established in the overlay zone at the time of project application):

- Cloverly Safeway (site plan #819990040) was reviewed by the Planning Board with an imperviousness waiver request at site plan. There is also language in the Cloverly Master Plan that recognizes the importance of the Cloverly Commercial area, including the grocery store, as a longstanding feature for the Cloverly community, and that talks about a possible waiver for an "expanded commercial area" in that location (which is partly in the SPA).
- Good Hope Union United Methodist Church (119950670) was in the preliminary plan process when the Upper Paint Branch SPA was designated. The Planning Board opinion for the preliminary plan does not identify an imperviousness waiver because the Environmental Overlay Zone did not exist at the time (enacted July 1, 1997). At that time, the 10% imperviousness limit for new development in the upper Paint Branch watershed was a recommendation of the 1981

Eastern Montgomery County Master Plan. But the project did add adjoining land to the original preliminary plan property so that the project's total imperviousness would be reduced; but I don't think the project was able to achieve a 10% imperviousness cap.

- Edgewood Inn (720080220) submitted a pre-application package to request the Planning Board to approve an imperviousness waiver for their proposed project. The Board did give them an upper limit of imperviousness that was higher than the allowable limit provided in the overlay zone (lawfully existing impervious surfaces that already exceed the 8% limit + 8% of an adjoining developable vacant property that was added to the original Inn site). The Board granted an impervious limit of 13.9% over the total tract area, which is a waiver of 2.7%. The Board found that the application met the three overlay zone criteria for an imperviousness waiver. The Board found that if the waiver was not granted, preservation of this historic property as a country inn could not be achieved. As of this date, the Inn has not submitted a preliminary subdivision plan to follow through on the pre-application plan.

For public projects (at least in Upper Paint Branch SPA), staff and the Board have allowed the use of offsite pervious reserve land and offsite removal of legally existing impervious surfaces to count as "offsets" to a project's onsite imperviousness if the onsite imperviousness is proposed to exceed the overlay zone's limits. This has been done for DOT projects, a SHA project, MCPS projects (a formal MOU between MCPS and Planning Board was created for a vacant MCPS property that is now set up to be a pervious reserve site for more than one MCPS project in the SPA.) The use of offsite pervious reserve land and offsite removal of impervious surfaces is not written into the current environmental overlay zones; and up to now, the Planning Board has approved their use only on public projects. That is, if the onsite project imperviousness in combination with the offsite pervious reserve land/offsite impervious removal results in meeting the overlay zone's imperviousness limit, then the project is determined to meet the limit (i.e., the project is not subject to a waiver). This approach of allowing offsite properties to be included in the review of meeting imperviousness limits for a project has allowed public projects to move forward, but still be limited in impervious coverage as part of a bigger tract (than just the project site). I think this approach makes the applying agency take more care in designing a project site to minimize imperviousness; the agency works harder to create a project that avoids having to spend additional money to purchase offsite property to "offset" a project's onsite impervious coverage.

#### **FOR UPPER ROCK CREEK SPA:**

For the Upper Rock Creek SPA Environmental Overlay Zone, there are more types of projects that are exempt from the 8% imperviousness limit than in the Upper Paint Branch SPA Environmental Overlay Zone. In the Upper Rock Creek SPA Environmental Overlay Zone, the following types of projects are not subject to the 8% imperviousness limit:

- Addition or accessory structure to an existing one-family house (also not subject in Upper Paint Branch SPA)
- Lawfully existing impervious surfaces (also not subject in Upper Paint Branch SPA)
- Impervious surfaces resulting from a building permit or sediment control permit application filed with DPS as of Nov. 15, 2004 (similar "grandfathering" provisions in Upper Paint Branch SPA)
- Development or subdivision that is NOT served by community sewer
- Public projects -- not subject to the specific limit but must "keep imperviousness to the minimum needed to accomplish the public purpose intended..."

- Any use in an industrial or commercial zone
- Development associated with a private institutional facility that has an approved preliminary plan as of Nov. 15, 2004 provided that the development is consistent with the preliminary plan (or a landscaping plan approved as a condition of the preliminary plan) and that every effort is made to minimize imperviousness and/or mitigate the impacts of runoff.
- Development on private institutional facilities that contain no more than 5 percent greater total imperviousness than shown on a preliminary plan (or landscaping plan approved as a condition of the preliminary plan) approved as of November 15, 2004.

The Upper Rock Creek SPA Environmental Overlay Zone also has the following provision:

- If the Planning Board grants a waiver for affordable housing, it must approve the minimum increase necessary to allow the affordable housing. In no event may the waiver result in development with more than 10 percent impervious surface area.

In the Upper Rock Creek SPA, there have been no projects reviewed by Planning Board that were subject to the environmental overlay zone's 8% imperviousness limit and that required a waiver from the limit.