

MEMORANDUM

September 18, 2014

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Zoning Text Amendment 14-10,
Upper Paint Branch Overlay Zone – Exemptions

Zoning Text Amendment (ZTA) 14-10, sponsored by Councilmember Leventhal, was introduced on July 29, 2014.

ZTA 14-10 would allow the use of pervious concrete in excess of the impervious surface limit at a place of public assembly if the area is already compacted by vehicular parking.

The Council held a public hearing on September 16, 2014. The Planning Board and Planning Staff recommended against the approval of ZTA 14-10. Testimony opposed the approval of ZTA 14-10 with the exception of a religious institution who wanted to build additional parking of compacted soil. The proposed parking would be in excess of the 8% maximum on impervious surface in the Upper Paint Branch Overlay Zone.

Issues

1) *Would ZTA 14-10 allow more intense development in addition to surface parking?*

Testimony suggested that ZTA 14-10 would allow an applicant to build a larger building than would be otherwise allowed by the overlay zone. The use of surface parking and the limits on impervious surfaces currently limits building size. Additional building floor area requires additional parking. Limiting the area that can be used for surface parking therefore limits the floor area that may be constructed.

The testimony failed to recognize that ZTA 14-10 applies to existing buildings that have a proven need for additional parking due to actual use. It would not apply when a building is first approved. The ZTA would exempt:

any impervious surface resulting from the use of pervious concrete where there is evidence that the unimproved ground being covered by pervious concrete has been used for parking vehicles on a regular basis at a place of public assembly.

Vacant land owned by places of public assembly would not have any evidence of ground used by parked vehicles on a regular basis. The Council could add the word “pre-existing” before “place of assembly”, but staff does not believe that is necessary.

2) *Would ZTA 14-10 be detrimental to water quality?*

There was no testimony that compared the water quality effects of soil compacted by vehicles compared to pervious concrete. As a man-made structure, impervious concrete will fail at some point in the future without maintenance or reconstruction. Nothing grows on pervious concrete, but for the period of its useful life it does infiltrate water without surface pooling that could add to thermal pollution. Compacted soils do not infiltrate any stormwater and do not sustain any plant life. The runoff from compacted soil is untreated for either stormwater quantity or quality.

At least pervious concrete has a chance of having some environmental benefit by allowing some infiltration. Continually compacted soil used for parking has no positive environmental attributes. Yet it is cheaper and easier to turn compacted soil back to its natural state than it is to do the same with pervious concrete.

Pervious concrete is expensive. The option to use it will not mean that many property owners will use it. ZTA 14-10 limits the class or users that can use its provisions. The Council could narrow that class if it believes that to be in the public interest.

The mostly likely users under ZTA 14-10 are places of worship. Public places of assembly typically prohibit parking on paved soil. There are 22 places of worship in the watershed that comprise approximately 1.9% of the land area.

Pervious concrete alone does not ensure water infiltration. If pipe is added to completely drain the subsurface layer (i.e., the drain is placed at the bottom of the structure), then the structure isn't doing much of anything other than detaining the release of runoff. The structure should be “sized” to limit the amount of the release of stored runoff. If pervious concrete is correctly designed, it is considered as meeting the requirements of Chapter 5 (Environmentally Sensitive Design) of the Maryland Stormwater Design Manual.

Staff recommends adding a requirement that the qualifying pervious concrete must satisfy the requirement of Chapter 5 of the Maryland Stormwater Design Manual.

3) *Would ZTA 14-10 open the floodgates for exceptions?*

There are 3 existing exemptions to the impervious surface limits currently in the Upper Paint Branch Overlay Zone. Two exemptions are grandfathering provisions. One existing exemption allows future expansion by homeowners. Whether or not the Council approves ZTA 14-10, it retains their power to do so. The Council has the authority to vastly increase exemptions, but it has shown the wisdom not to do so. Staff believes that the Council is and will be judicious now and in the future.

4) *Should property owners who are in the situation covered by ZTA 14-10 go through the waiver process?*

The advantage of a waiver process is that it allows decisions based on individual facts. Waivers are a Council delegation of authority with more general standards for review. Unlike exemption provisions, which automatically grant options under certain circumstances, waivers are discretionary.

There are current provisions for waiver in the Upper Paint Branch Overlay Zone. Waivers in the current code read in part as follows:

The Director may grant a waiver from the 8 percent impervious surface restriction if the applicant shows by clear and convincing evidence that:

- (i) the 8 percent impervious limitation would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant; ...¹

Under the circumstances contemplated by ZTA 14-10, applicants whose users park their vehicles on soil are causing the need for relief and therefore a waiver would not be approved. Very few waivers have been granted by Planning Staff, as one might expect. Planning Staff will be available at the Committee's worksession to ask about their past experience.

If the Council wants to address the issue raised by ZTA 14-10 through a waiver with the possibility that the waiver could be approved, then the conditions that allow a waiver require an amendment. Councilmember Leventhal, after listening to the September 16 public hearing, is sponsoring a ZTA to that effect.² It will be on the Council's September 23 agenda for introduction and is attached at © 22-23. It would allow a waiver when the result of granting the waiver is better water quality. The conditions that will meet that criterion would be up to the Planning Board to decide.

Staff views the exemption as being more precise; applicants and residents will have a clear understanding of when the exception applies. The waiver as drafted will allow the Planning Board more discretion. Staff would recommend the exemption.

<u>This Packet Contains</u>	<u>© number</u>
ZTA 14-10	1 – 4
Planning Board Recommendation	5 – 6
Planning Staff Recommendation	7 – 13
Testimony	
Islamic Society of the Washington Area	14 – 15
Audubon Naturalist Society	16 – 17
Timber Oak Citizens' Association	18
Gary Buton	19
Friends of Ten Mile Creek	20 – 21
ZTA 14-11 (to be introduced September 23)	22 – 23

¹ As a matter of practice, the Planning Department has issued waivers for the impervious surface aspects of a water quality plan. The Zoning Rewrite allows the allocable deciding authority to grant waivers under the same conditions.

² ZTA 14-10 was advertised as an amendment to exemption in the Upper Paint Branch Overlay Zone. Waivers are a separate provision. Staff advised Councilmember Leventhal to introduce another ZTA to ensure proper notice.

Zoning Text Amendment No.: 14-10
Concerning: Upper Paint Branch
Overlay Zone –
Exemptions
Draft No. & Date: 1 – 7/29/14
Introduced: July 29, 2014
Public Hearing: September 16, 2014
Adopted:
Effective:
Ordinance No.:

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

By: Councilmember Leventhal

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- exempt permeable pavement at places of public assembly in the Upper Paint Branch Overlay zone from impervious surface area limits under certain circumstances; and
- generally amend the exemption in the Upper Paint Branch Overlay zone.

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

DIVISION 59-4.9. “Overlay Zones.”
Section 59-4.9.15. “Upper Paint Branch (UPB) Overlay Zone.”

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

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-4.9 is amended as follows:**

2 **DIVISION 59-4.9. Overlay Zones.**

3 * * *

4 **Section [4.9.15.] 4.9.17. Upper Paint Branch (UPB) Overlay Zone**

5 * * *

6 **B. Exemptions**

7 The following are exempt from Section [4.9.15] 4.9.17:

- 8 1. Any [impervious surface] lawfully existing impervious surface
9 allowed by a building permit issued before July 1, 2007 may continue
10 or be reconstructed under the development standards in effect when
11 the building permit was issued.
- 12 2. Any impervious surface that results from construction under a
13 building permit may be constructed or reconstructed under the
14 development standards in effect on July 31, 2007 if:
- 15 a. the building permit application was pending before DPS on July
16 31, 2007; or
- 17 b. the building permit is for a lot in a subdivision approved before
18 July 31, 2007, if the subdivision was approved for fewer than
19 20 housing units.
- 20 3. Any impervious surface resulting from an addition or accessory
21 structure to an existing detached house must not be counted against
22 any calculation of the 8% impervious surface restriction.
- 23 4. Any impervious surface resulting from the use of pervious concrete
24 where there is evidence that the unimproved ground being covered by
25 pervious concrete has been used for parking vehicles on a regular
26 basis at a place of public assembly.

27 * * *

28 **Sec. 2. Effective date.** This ordinance becomes effective on October 30,
29 2014.

30

31 This is a correct copy of Council action.

32

33

34 _____
Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIR

September 12, 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. 14-10

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 14-10 at our regular meeting on September 11, 2014. By a vote of 3:1, the Planning Board recommends denial of the text amendment to exempt permeable pavement (pervious concrete) at places of public assembly in the Upper Paint Branch Overlay zone from impervious surface area limits where there is evidence that the unimproved ground being covered by pervious concrete has been used for parking vehicles on a regular basis. The ZTA would open the door to allow the effective impervious cover of a development site to be approved beyond the regulatory limit. It would be a first step in weakening an important environmental land use tool to help preserve high quality aquatic resources in the County: the ability to limit artificial land cover on a new development site.

Currently, impervious area or surface is defined in the Montgomery County Code, Chapter 19, Erosion, Sediment Control, and Storm Water Management, Sec. 19-21. This definition does not prevent permeable pavements from receiving full credit under the County's Stormwater Management Regulations, but prevents permeable pavements from being credited towards impervious limits set by the County Zoning Ordinance.

The purpose of limiting impervious surfaces on a development site is to minimize the amount of engineered, artificial land surfaces in sensitive watersheds and maximize the preservation of natural soils and vegetation, and their functions in fostering high quality conditions of a watershed's aquatic resources.

Pervious concrete or other forms of pervious pavements are identified by state and local stormwater management regulatory agencies as a stormwater management best management practice. These pavement types are designed to allow the infiltration of water through these surfaces and into the natural groundwater system underneath. Although such surfaces may possess one of the beneficial characteristics of a natural vegetated surface (i.e., infiltration of precipitation), other environmental benefits are not present. Replacing vegetated surfaces with pervious concrete will result in the loss of

5

most beneficial environmental characteristics found in vegetated surfaces. In addition, pervious pavements can create environmental impacts themselves, such as increasing the level of pollutant-generating activities on a property (i.e., providing additional area that motor vehicles may park on; such vehicles may drip oil or grease onto the pavement, which may then infiltrate into underlying groundwater); or, creating reflective surfaces that may contribute to the heat island effect of the immediate area. Therefore, the Board believes that in those areas of the County where there are regulatory impervious surface limits applied to new development projects, pervious pavements should not be excluded from the category of impervious surfaces. All pervious pavements, including pervious concrete, need to remain in the category of an impervious surface cover that is subject to the regulatory limit.

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, September 11, 2014.



Casey Anderson
Chair

CA:GR

6

Zoning Text Amendment No. 14-10, Upper Paint Branch Overlay Zone – Exemptions

- Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174
- Candy Bunnag, Planner Coordinator, DARC, candy.bunnag@montgomeryplanning.org, 301-495-4543
- Pamela Dunn, Acting Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

Completed: 09/4/2014

Description

Currently, impervious area or surface is defined in the Montgomery County Code, Chapter 19, Erosion, Sediment Control, and Storm Water Management, Sec. 19-21. This definition does not prevent permeable pavements from receiving full credit under the County's Stormwater Management Regulations, but prevents permeable pavements from being credited towards impervious limits set by the County zoning ordinance.

ZTA 14-10 proposes to exempt permeable pavement (pervious concrete) at places of public assembly in the Upper Paint Branch Overlay zone from impervious surface area limits where there is evidence that the unimproved ground being covered by pervious concrete has been used for parking vehicles on a regular basis. Impervious surfaces are restricted to a maximum of 8% of the tract of any application for development.

Summary

Staff recommends denial of ZTA 14-10 to exempt permeable pavement from impervious surface area limits at places of "public assembly" in the Upper Paint Branch Special Protection Area Environmental Overlay Zone. Creation of an exemption category to allow a type of concrete surface to be excluded from the zone-imposed imperviousness limits is contrary to the intent of this environmental overlay zone. The ZTA would open the door to allow the effective impervious cover of a development site to be approved beyond the regulatory limit. It would be a first step in weakening an important environmental land use tool to help preserve high quality aquatic resources in the County: the ability to limit artificial land cover on a new development site.

Analysis

Purpose of limiting impervious surfaces

The purpose of limiting impervious surfaces on a development site is to minimize the amount of engineered, artificial land surfaces in sensitive watersheds and maximize the preservation of natural soils and vegetation, and their functions in fostering high quality conditions of a watershed's aquatic

resources. Vegetation cover provides important functions that are not present in engineered, artificial land surfaces, such as the following:

- Treatment and pollutant uptake by natural vegetation and soils
- Infiltration of precipitation into soils and groundwater systems
- Sequestration of carbon by vegetative growth
- Release of oxygen
- Moderation of air and water temperatures
- Preservation of habitat and food sources for plant and animals

Pervious concrete or other forms of pervious pavements are identified by state and local stormwater management regulatory agencies as a stormwater management best management practice. These pavement types are designed to allow the infiltration of water through these surfaces and into the natural groundwater system underneath. Although such surfaces may possess one of the beneficial characteristics of a natural vegetated surface (i.e., infiltration of precipitation), other environmental benefits are not present. ***Replacing vegetated surfaces with pervious concrete will result in the loss of most beneficial environmental characteristics found in vegetated surfaces.*** In addition, ***pervious pavements can create environmental impacts themselves, such as increasing the level of pollutant-generating activities on a property*** (i.e., providing additional area that motor vehicles may park on; such vehicles may drip oil or grease onto the pavement, which may then infiltrate into underlying groundwater); or, creating reflective surfaces that may contribute to the heat island effect of the immediate area. Therefore, in those areas of the County where there are regulatory impervious surface limits applied to new development projects, pervious pavements should not be excluded from the category of impervious surfaces. All pervious pavements, including pervious concrete, need to remain in the category of an impervious surface cover that is subject to the regulatory limit.

Places of Assembly Limitation

Although the new exemption created by ZTA 14-10 would apply to only a very limited situation, staff is very concerned that, if adopted, this new exemption could be expanded to allow pervious concrete to be excluded from an impervious surface limit in many other situations:

- The ZTA proposes to limit the exclusion of pervious pavement to sites that are “places of public assembly”. What is the definition of a “place of public assembly” that would apply in the Zoning Ordinance? Does it include religious institutions, libraries, community centers, private and public schools, and parkland? It should be noted that in Chapter 57 (“Weapons”) of the County Code, a “place of public assembly is defined as:

“... a government owned park identified by the Maryland-National Capital Park and Planning Commission; place of worship; elementary or secondary school; public library; government-owned or -operated recreational facility; or multipurpose exhibition facility, such as a fairgrounds or conference center. A place of public assembly includes all property associated with the place, such as a parking lot or grounds of a building.”

- If it is acceptable to add pervious concrete in the specific situation described in ZTA 14-10, then, what is to keep other ZTAs from being introduced and adopted that would allow

pervious concrete to be included in any new project in the Upper Paint Branch SPA without being subject to a limit?

- If pervious concrete is allowed to be exempt from the regulatory impervious cover limits in the Upper Paint Branch SPA, what is to prevent this exemption category from being added to other SPAs or other watersheds with regulatory imperviousness caps?

Impervious Surface Limitations-Practices

The Upper Paint Branch Watershed is recognized by the County as a stream system that has a high quality aquatic resource. Land use recommendations have been crafted to help preserve the high quality aquatic conditions since the 1981 Eastern Montgomery County Master Plan. With the long history and extensive efforts by the County to protect this natural resource, the impervious surface limitation has continued to remain a priority and been recognized as a critical tool in protecting this resource. In addition, the County has strengthened the limitations of impervious cover for new developments in this watershed: the Environmental Overlay Zone for this SPA was originally created (in 1997) with a 10 percent imperviousness limit; in 2007, the overlay was amended to lower the limit to 8 percent. ZTA 14-10 to exempt pervious concrete from being counted as part of a project's impervious cover limit "loosens" the control of impervious cover within the watershed and is counter to the County's long history of using the strict impervious cover limitation as a watershed protection tool.

It should be noted that over the past several years, there have been requests made by applicants of different types of projects in watersheds to allow either regulatory impervious surface limits to be exceeded or to allow "offsets" of proposed exceedances of impervious surface limits with stormwater management practices. In response, at several Planning Board roundtable sessions (December 13, 2007, November 20, 2008, March 25, 2010, and September 15, 2011), staff have presented the applicants' requests and their rationale, as well as information on the environmental benefits of limiting impervious surface cover in a watershed. At each of these sessions, the Planning Board has agreed with staff on the following points:

- Impervious surface coverage in a watershed is a well-documented indicator of general watershed health.
- For the purposes of limiting impervious surface coverage in a new development project, pervious pavement is considered to be an impervious surface.
- Pervious pavement, including pervious concrete, cannot be given "credits" to offset or reduce a project's impervious surface coverage amount, for purposes of determining whether the project conforms to an impervious surface limitation.

The Planning Board and County Council continue to use limitations on impervious surfaces as a land use tool in sensitive watersheds with high quality aquatic resources. In the recently adopted Ten Mile Creek Limited Amendment to the Clarksburg Master Plan, imperviousness limits have been placed on properties that previously did not have one to provide better protection of the high quality aquatic resources of Ten Mile Creek.

It should be noted that at the state level, the Chesapeake Bay Critical Area program is designed to help protect the natural resources of the Chesapeake Bay through land use controls along the bay's

shoreline. Several years ago, the critical area program was faced with issues related to pervious pavements that were similar to those associated with ZTA 14-10. The original definition of imperviousness in the Critical Area law allowed perviousness credits for the use of pervious pavements. Although the program has an imperviousness limit on new development within the Bay's Critical Area, *the allowance of credits for pervious pavements resulted in negative impacts to the receiving aquatic resources*. As a result, in 2008, Maryland House Bill 1253 was passed to redefine imperviousness as "lot coverage". "Lot coverage" includes pervious pavements, as well as other man-made, impervious surfaces, and there are limits (without the use of "credits") on the "lot coverage" that can occur in certain types of new development projects.

Impervious Surface Limitations-Locations in the County

The County has enacted regulatory imperviousness limits for new development projects in specific parts of specific watersheds as a tool to aid in the preservation of high quality water resources of these watersheds. The inverse link between the health and quality of a watershed's aquatic resources and the extent of impervious surface coverage in the watershed is recognized in the natural resources field as a primary basis for using impervious cover limitations as a land use tool to help protect high quality aquatic resources.

Specific imperviousness limits have been put in place in certain areas of the County. Such limits occur in the following watersheds:

A. Portions of Little Seneca Watershed:

- The streams that flow into and out of Little Seneca Lake and the lake itself exhibit high water quality conditions. To help protect these streams and the lake, the 1989 Germantown Master Plan recommended that two analysis areas, KI-2 (771 acres) and NE-1 (378 acres), be subject to specific watershed development guidelines to aid in preserving the high water quality conditions. One of the master plan recommendations for these two areas is an imperviousness limit of 20%.
- The 1994 Clarksburg Master Plan recommended an imperviousness limit of 15 percent for two employment sites (CLV Property) and the County-owned Site 30, all lying within the Ten Mile Creek watershed.
- 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 recommends the approval of floating zones for the Ten Mile Creek area. The County Council is in the process of creating overlay zones to establish a 15 percent imperviousness limit on new development in the Town Center portion of the watershed, a 6 percent limit on the Pulte-King properties, and no additional imperviousness on the County-owned land.

B. Upper Watershed of Paint Branch

- New development in the headwaters portion (north of Fairland Road) of the Paint Branch watershed is currently subject to an 8 percent imperviousness limit. This limit is part of the Upper Paint Branch Special Protection Area Environmental Overlay Zone. Attachment 2 of the staff report provides specific history of the Paint Branch Watershed in Montgomery County.

C. Upper Watershed of Rock Creek

- Certain types of new development in the headwaters portion (north of Muncaster Mill Road) of the Rock Creek watershed that lie within the Upper Rock Creek Master Plan boundary are subject to an 8 percent imperviousness limit. This limit is set by the Upper Rock Creek Special Protection Area Environmental Overlay Zone.

D. Patuxent River

- The Planning Board's Environmental Guidelines has a 10 percent imperviousness limit on land development projects that develop within certain zones and lie within a property covered by a Primary Management Area, as defined in the Guidelines.
- The Burtonsville Crossroads Neighborhood Plan (adopted December 2012) recommends that new development lying within the Rural Edge of the Patuxent River watershed be limited to 8 percent imperviousness.

For each of these specific areas, in the creation of a regulatory impervious cover limit that is applied as part of the review of new development projects, the County and Planning Board have carefully reviewed and determined that the impervious limit is a necessary watershed protection measure that complements, but does not replace, other, more standard environmental protection measures (e.g., sediment and erosion control and stormwater management measures). Similarly, "extra" stormwater management or sediment and erosion control measures cannot replace, either partly or entirely, limits on impervious surface coverage.

Conclusion:

Staff recommends denial of ZTA 14-10. The benefits provided by permeable pavements are already recognized and appropriately credited under the Stormwater Manual and County regulations.

Creation of an exemption category to allow a type of concrete surface to be excluded from the zone-imposed imperviousness limits is contrary to the intent of this environmental overlay zone. The ZTA would open the door to allow the effective impervious cover of a development site to be approved beyond the regulatory limit. It would be a first step in weakening an important environmental land use tool to help preserve high quality aquatic resources in the County: the ability to limit artificial land cover on a new development site.

ATTACHMENTS

1. Zoning Text Amendment 14-10, as introduced
2. History of the Paint Branch Watershed

PD/GR/CB/am

ATTACHMENT 2

History of the Paint Branch Watershed in Montgomery County

The Paint Branch watershed is part of the Anacostia River system. Its headwaters occur in Montgomery County (the portion designated as a Special Protection Area). Its streams flow into Prince Georges County. The Upper Paint Branch watershed has been recognized as a unique, high-quality, cold-water fisheries resource for almost 40 years:

- The first watershed in Montgomery County to be designated as Use III waters (natural trout waters, which are the highest quality waters) by the State of Maryland (1974).
- The first watershed in the State of Maryland to be designated as a "Special Trout Management Area" (1980). The designation applied to the watershed upstream of Fairland Road (the same area covered by the current SPA). It was designed to give the streams in this watershed special status and maximum protection afforded by state regulations.
- Home to the only viable and self-sustaining trout population in the Washington, D.C. metropolitan area.

Brown trout was stocked by the State of Maryland in Montgomery County in the 1930's. It is believed that by the late 1930's, the trout population in the County portion of Paint Branch was naturally reproducing. The presence of a naturally-reproducing trout population in a stream system of Montgomery County is an indicator that the stream resources have very high water quality conditions. Over the years, Montgomery County has implemented many environmental protection measures to preserve this high quality stream resource and related environmental features of the upper Paint Branch watershed:

- The 1981 Eastern Montgomery County Master Plan recognized the environmental sensitivity of Paint Branch, particularly its headwaters. The plan included recommendations on land uses, zoning (including downzoning), park acquisition, and development guidelines (including a 10 percent imperviousness limit) to help protect the high quality characteristics of the upper watershed.
- In 1987, the Anacostia Restoration Agreement established formal cooperation between Federal, State, and local government agencies to oversee the restoration of the Anacostia River. Paint Branch is one of 10 major watersheds that make up the Anacostia River basin. Extensive studies and work done under this agreement allowed technical expertise and other resources beyond those available in Montgomery County to be applied towards the preservation efforts in Paint Branch, as well as the other watersheds of the Anacostia River.
- A 1988 inventory developed by the Metropolitan Washington Council of Governments (COG) for possible stormwater management retrofit projects in the Anacostia River basin, including the Paint Branch. Over the years, these and other projects have been implemented in Paint Branch by COG, Montgomery County, and MNCPPC.

ATTACHMENT 2

- Two working groups (in 1993-94), under different programs (the interjurisdictional Anacostia Watershed Restoration Committee Upper Paint Branch Work Group and the Montgomery County Planning Board Upper Paint Branch Technical Work Group), were formed to identify specific measures that should be implemented to stop and reverse the trend of deteriorating aquatic habitat and resource conditions that were documented by Maryland Department of Natural Resources.
- The Montgomery County Council designated upper Paint Branch watershed (upstream of Fairland Road) as a Special Protection Area in 1995.
- In 1996, the County Council adopted the Limited Amendment to the Master Plan for the Eastern Montgomery County Planning Area. Consistent with the Upper Paint Branch Technical Work Group recommendations, the amendment recommends expanding acquisition of parkland in the Good Hope and Gum Springs tributaries for resource management and protection of the Paint Branch watershed. The expansion of park acquisition limits future increases of impervious surfaces in the upper watershed.
- In 1997, the Council adoption of the master plans for Cloverly, Fairland, and White Oak reconfirmed the value and uniqueness of the upper Paint Branch aquatic resource. These master plans include recommendations for land uses and expanded park acquisition which reinforce and refine the recommendations for aquatic resource protection of the 1981 Eastern Montgomery County Master Plan.
- Also in 1997, the Upper Paint Branch SPA Environmental Overlay Zone was adopted. It set a 10 percent imperviousness limit on new land development projects in the SPA.
- In 2007, the imperviousness limit in the overlay zone was reduced from 10 to 8 percent.

5

Testimony for Scott R. Wolford
for the
Montgomery County Council Hearing
September 16, 2014
Zoning Text Amendment 14-10

Introduction:

Good afternoon Council President Rice and the other Councilmembers. For the record my name is Scott Wolford, I am a Landscape Architect and Planner with Maser Consulting. I am here today representing the Islamic Society of the Washington Area (ISWA).

Also with me here today is Faizul Khan the Imam, Sheik Housein, President, Faizel Alie, former President, and Zaimoon Hassan, Vice President and Head of Women Affairs. In addition, there are several of the members of the Islamic Society here in support of this amendment.

ISWA Background:

ISWA was founded in 1974 in Montgomery County

ISWA purchased the property located at 2701 Briggs Channey Road Silver Spring, Maryland, in 1994/1995. At this time the Master Plan was in the process of being approved and included the 10% impervious cap in the Special Protection Area of the Upper Paint Branch.

The property is 5.28 acres, of which, 2.61 acres are in a Category I Forest Conservation Easement.

Currently there are up to 199 families/ 150-180 cars that worship at the Mosque.

Proposed Parking Expansion:

The existing Mosque allows for 36 parking stalls. While this met the requirements of the Montgomery County Ordinance and the Mosque when it was constructed, it does not meet the needs of the Mosque, as it exists today.

Today the Mosque has grown such that on certain Holy Days there are several calls for prayer services throughout the course of a day, to meet the needs of the community.

Worshippers park in the existing parking lot and in the overflow parking on the open lawn area at the rear of the parking lot, outside the Category I Easement. In

addition, they park along Briggs Chaney Road and on neighborhood streets. This practice has taken place for a substantial period of time.

The intent of this Zoning Text Amendment 14 – 10 is to meet several goals the Mosque has:

Safety:

Parking along Briggs Chaney Road has become a safety hazard for the members, as well as, the community. It is dangerous to have individuals exiting their cars into the traffic lanes and walking along the road and crossing Briggs Chaney Road to the Mosque.

Handicap Accessibility:

There is also a need for the elderly members and handicapped members to have better accessibility to the Mosque. Currently the overflow lot on the open space is not conducive to a handicapped individual, especially on a rainy day, and parking along the roadway is an extremely unsafe practice.

Emergency Access:

Additionally, there is a need to have improved circulation for emergency vehicles.

Good Neighbors:

In addition to the safety issues the offsite parking presents, the Mosque feels that it is not being good neighbors in their community.

Environmental Sensitivity:

The present condition of the site is not environmentally sensitive with the cars now parking on the open lawn, there is no stormwater, management and sediment and erosion control for the lawn parking.

Today the open grass area is being utilized for parking. The Mosque would like to improve the environmental quality of their parking area and provide a pervious concrete surface for the additional cars that would serve to improve the stormwater management and reduce sediment and erosion.

The parking area would be a pervious concrete surface that would increase groundwater recharge, reduce the sediment and erosion on the site and improve the water quality of the current parking overflow area. This would vastly improve the environmental condition that exists today on the site by parking on the lawn.

Thank you for your time and we appreciate your effort to understand the situation and help us.



AUDUBON NATURALIST SOCIETY
Connecting people with nature in the DC region



Testimony of Diane Cameron for the Save Ten Mile Creek Coalition and Audubon Naturalist Society

Re: ZTA 14-10

September 16, 2014

Today, I speak to you on behalf of The Save Ten Mile Creek Coalition, that includes 31 organizational members representing thousands of Montgomery County residents, and The Audubon Naturalist Society, with its more than 6000 members and supporters who take action to protect local clean water supplies, defend forest habitats, and provide nature education to children and adults across the DC metro region. Both the Save Ten Mile Creek Coalition and Audubon Naturalist Society have worked with the Council over the past year to enact a land use plan for Ten Mile Creek (the Ten Mile Creek Limited Master Plan Amendment) that protects clean water for our citizens by capping impervious surfaces. We oppose proposed ZTA 14-10 because it would undermine the Upper Paint Branch imperviousness cap of 8%. Specifically, ZTA 14-10 would allow public assemblies to exceed the impervious surface limit if they use pervious concrete in areas already compacted by vehicular parking. This categorical exemption threatens to unravel the clean water protections put in place by the Council for our high-quality streams.

As the Planning Staff memo notes, pervious concrete is no substitute for protecting open, vegetated space. Even with infiltration, pervious concrete parking areas will contribute to the degradation of sensitive streams including Ten Mile Creek and Upper Paint Branch, through the multiple harms caused by land development and urbanization.

The science about stream health is clear. The more cleared and paved surfaces you add to a high-quality watershed, the more damage you will do to the life in the stream. For the past twenty years, Montgomery County has led the nation in using sound science to set land development limits in our Special Protection Areas. These limits restrict the clearing of vegetation, grading and leveling of the land, and compaction of the soil - all of which harm water quality. We urge that you not undo Montgomery County's national clean water leadership with a categorical exemption.

Last week, Caroline Taylor and I met with representatives of the mosque, the Islamic Society of the Washington Area, along with Councilmember Leventhal, to exchange information and perspectives on this issue. We also visited the mosque and appreciated the hospitality of its members and leaders. As a result of those meetings, the option arose for the ISWA to consider applying for a waiver from the Upper Paint Branch imperviousness cap, which is a far better option than a categorical exemption. We support ISWA availing themselves of the Upper Paint Branch Environmental Overlay Zone process, as part of exhausting available remedies to solving their parking needs.

As you know, Upper Paint Branch is located in the Anacostia watershed. The Anacostia River and its tributaries, including Paint Branch, have been the focus of a decades-long effort for restoration. Montgomery County has already invested many millions of dollars, and will invest millions more, in restoring the Anacostia. It would be self-defeating for the Council to bust a categorical hole in its clean water law, that would result in degradation of one of the few remaining healthy parts of the Anacostia and of Paint Branch stream. It's crucial that the areas that are still healthy - including Upper Paint Branch - remain healthy. Successful restoration of the Anacostia rests on this assumption.

We are concerned that this proposed ZTA if enacted, could serve as a precedent to set the stage for similar exemptions elsewhere, including in Ten Mile Creek. Thus we urge you to oppose this ZTA as counter to Montgomery's longstanding application of science-based caps on imperviousness to protect our highest-quality, most sensitive waters.

To: County Council

From: Anne James, Chair, Timber Oak Citizens' Association

Re: ZTA-14-10

Date: September 16, 2014

Testimony

I'm Anne James, Chair of Timber Oak Citizens' Association, one of many organizational members of the Save Ten Mile Creek Coalition. What would this Amendment do, if passed? Clearly, it would weaken the Special Protection Area by allowing more imperviousness into the Upper Paint Branch watershed.

Montgomery County has been a leader in water quality protection and the Special Protection Area program is a model for how to protect high-quality sensitive waterways. However, protections only work if enforced. By proposing exemptions to "places of public assembly," we weaken these clean water protections.

"Places of public assembly" is potentially a huge category that includes both faith-based and secular institutions. Naturally, we understand that faith-based groups would like more parking spaces for their communities. We respect the important role of faith communities in our county. Our objection to this proposed bill is based upon exemptions for **any** type of development within the Special Protection Area. We note, that in this particular case, proposed use of pervious concrete pavers for parking lots, still raises imperviousness levels, and this adversely affects the watershed. To paraphrase Gertrude Stein, "pavement is pavement is pavement" and as such, regardless of imperviousness/perviousness – **any** additional pavement threatens the water quality of the Special Protection Area in Upper Paint Branch. It makes no sense to add pavement in high quality sensitive waters – time and time again it has been proven that development runoff adversely affects clean water.

Special Protection Areas are created to protect clean water in these unique places, using science-based regulations. The Planning Staff got it right when they recommended denial of ZTA-14-10, and the Planning Board subsequently voted to reject the bill. The impervious surface limit has previously been set, and making exemptions for parking lots creates a dangerous precedent for all Special Protection Areas and puts clean water at risk. When the County Council designated the Upper Paint Branch watershed as a Special Protection Area, it noted specifically that its sensitive water would be threatened by proposed land development.

The goal of pervious concrete is to allow some infiltration of water during a storm event and thereby reduce runoff. It does not claim to eradicate it altogether. It can be an effective tool in mitigating the effects of development, but it is still pavement and should be regarded as such. The U.S. Geological Survey found in a major ten-year study that land development harms high-quality streams in a complex way. As Planning staff noted, even though pervious concrete pavers can allow infiltration of runoff, this does not in itself protect streams from the complex of harms caused by clearing, grading, and compaction. So, we must continue to apply the imperviousness caps across the board and not weaken them with categorical exemptions.

"Water is a public trust; it belongs to everyone. No one should have the right to appropriate it or profit from it at someone else's expense." (Council of Canadians, UN Assembly, 2010.)

I hope the Council will remember that "pavement is pavement is pavement" and not pass this Amendment. Let's keep our Special Protection Areas specially protected.

Thank you for your attention this afternoon.

Gary Butson
2721 Briggs Chaney Road
Silver Spring, MD 20905
301 802-2563
butson@cddi.net

September 12, 2014

RE: ZTA-NO 14-10
Montgomery County Council
100 Maryland Avenue
5th Floor
Rockville, MD 20805

This letter is written to oppose ZTA 14-10, which would allow "**PERVIOUS**" concrete for parking in the Upper Paint Branch Overlay Zone and NOT count it toward the impervious limit, now set at 8%. I live at the above address, located in the Paint Branch Overlay Zone.

The text amendment would allow pervious paving if the land were used for parking vehicles on a regular basis, but not count it toward the impervious limit. There are no limits on the number of parking spaces to be allowed with this type of paving. It could be several hundred parking spaces. By doing this the parking requirement for a building could be completely satisfied using "**pervious**" parking spaces thus allowing all impervious area to be covered by a structure. If an existing building covered 4% of land area, it could be doubled in size to 8% with no restrictions. A 5-acre lot would yield 17,424 square feet of building coverage. Two floors would yield 34,848 SF. With the doubling of a building size and several hundred parking spaces a project could take on the appearance of a shopping center in a residential area. In addition "severe" traffic problems would go with it.

The Planning Board understands these issues and I agree with the Planning Board in recommending denial of the ZTA 14-10.

Thank you,


Gary Butson

9

Testimony of Hamza Sarwar Khan,
Board member of the Friends of Ten Mile Creek and Little Seneca Reservoir
Montgomery County Council Hearing to Create a Special Exemption (ZTA 14-10)
Upper Paint Branch Special Protection Area
Tuesday, September 16, 2014

Dear Honorable Members of the County Council:

My name is Hamza Khan, and I am a board member of the newly formed Friends of Ten Mile Creek and Little Seneca Reservoir. I also serve on the boards of the UpCounty Outreach Project, which seeks to involve UpCounty Millennials of diverse heritage in the political process, and the Montgomery County Muslim Youth Council whose mission is to affect positive change in our county. My wife and I have also worshipped and celebrated high holidays at the Islamic Society of the Washington Area, and have close ties to several of its leading members. Today, my testimony is on behalf of the Friends of Ten Mile Creek and Little Seneca Reservoir.

While noble in purpose, ZTA 14-10 creates an unnecessary and largely inappropriate relief for the age-old problem of parking woes at ISWA. ISWA's physical location places it within the confines of the Upper Paint Branch Special Protection Area, greatly limiting the potential for further disturbance of the land currently owned by ISWA. This would be a serious problem were it not for the built-in option of applying for a special, site-specific waiver (Environmental Overlay Zone for Upper Paint Branch Special Protection Area, Sect. 59-C-18.15 http://www.montgomeryplanning.org/environment/spa/paint_overlay.shtm) after all other practical remedies are thoroughly exhausted.

The entire premise of a Special Protection Area is to create a series of safe guards to protect our county's highest quality waterways from degradation. The protections established under the SPA Program are science-based and can only be effective if strictly enforced and monitored.

We are county and nation of laws for the sake of good governance. Undermining good governance for the sake of convenience has in the past and will in the future have disastrous consequences for the few remaining healthy streams we have left in our county.

Instead of a special amendment to an already good law, we advocate for the application of site-specific remedies as needed, including as a last resort, the option of seeking a waiver for ISWA as is the legal right of ISWA as a landowner within the Upper Branch Special Protection Area. Religious freedom need not cede the day to environmental protection. Rather, the Islamic faith has built into it theological principles calling for the protection of nature as a *na'imat* or miraculous blessing from God. The Friends of Ten Mile Creek welcome with open arms our county's incredibly diverse religious communities, including our Muslim community, to which I personally belong.

As a frequent worshipper at ISWA's Friday services, I personally applaud members of our Council for their deft protection of freedom of religion. Last week, several of our members had a productive meeting with representatives of ISWA. At this meeting, the idea of a waiver was met with a positive response. We urge the Council to protect the integrity of our legal protections for

the Upper Paint Branch and all of our county's Special Protection Areas, and allow ISWA to instead proceed with applying for a waiver as allowed under current law.

Sincerely,

Hamza Sawar Khan
Friends of Ten Mile Creek and Little Seneca Reservoir

Zoning Text Amendment No.: 14-11
Concerning: Upper Paint Branch
Overlay Zone – Waiver
Draft No. & Date: 1 – 9/16/14
Introduced:
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**

By: Councilmember Leventhal

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- generally amend the standards for the approval of a waiver of development standards in the Upper Paint Branch Overlay zone.

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

DIVISION 59-4.9. “Overlay Zones.”
Section 59-4.9.15. “Upper Paint Branch (UPB) Overlay Zone.”

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

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

