

MEMORANDUM

January 8, 2016

TO: Planning, Housing, and Economic Development (PHED) Committee
FROM: Marlene Michaelson, ^{MDM} Senior Legislative Analyst
SUBJECT: Montgomery Village Master Plan Amendment

This is the Planning, Housing, and Economic Development (PHED) Committee's first worksession on the Montgomery Village Minor Master Plan Amendment. A separate memorandum from Glenn Orlin addresses the transportation issues in the Plan. This memorandum addresses all other Plan issues. At a later date, the Committee will consider the Montgomery Village Overlay Zone.

Councilmembers should bring their copy of the Plan to the meeting.

Background

The Montgomery Village Master Plan covers an area of 2,435 acres in the Gaithersburg area. Montgomery Village was created as a "planned community" by the Kettler Brothers 50 years ago. Their goal was to create a self-sufficient town that would provide opportunities to live, work, and play. The Introduction to the Master Plan describes the sense of community and identity felt by residents, and the Plan emphasizes the importance of retaining the essence of this planned community and its small town flavor.

In 2011, the Montgomery Village Foundation (MVF) conducted an extensive visioning process that resulted in the Visions 2030 Plan: Moving Montgomery Village Forward. The Master Plan effort benefited from the ideas and concepts developed through the Village's 2030 Plan. The Master Plan reinforces, and slightly expands upon, the priority areas identified for reinvestment and redevelopment in the Vision 2030 Plan (the Village Center, the Professional Center, the Former Golf Course, and the Gateway Site).

The four themes that compose the Master Plan Vision are described on pages 4-5:

- **Preserve the Village’s Character** – particularly by ensuring that the residential neighborhoods remain stable, enduring and appealing, and by supporting the ongoing operation of the Montgomery Village Foundation.
- **Maintain the Village’s Public Recreation and Open Spaces** – the Plan strongly recommends maintaining and preserving the Village’s publicly accessible recreation and open spaces.
- **Encourage Reinvestment in the Village** – the Plan targets a limited number of areas for reinvestment and redevelopment.
- **Enhance the Village’s Connectivity** – the Plan makes recommendations for missing links in connections for pedestrians and bicyclists.

Virtually all of the testimony supported these themes and revitalization, especially in the Village Center. The Plan, and some testimony, describe problems associated with aging housing (including foreclosures and some evidence of lack of upkeep and maintenance) and declining commercial centers (lacking reinvestment and with high vacancy rates in certain retail and office buildings). Although there appeared to be consensus regarding the need for new reinvestment, there was significant disagreement as to whether redevelopment of the golf course was an advantage or disadvantage in achieving this objective. The Council also received testimony regarding other properties recommended for redevelopment discussed below.

The Committee should note that only 233 acres – less than 10% of total land area – is proposed for a zone that would encourage redevelopment with a potential change in land use and/or density. (The map on page 51 of the Plan shows the locations recommended for redevelopment.) **More than 90% of the land area is proposed for a zone consistent with what is on the ground today.** If all Master Plan recommendations for redevelopment occur on every property (which is highly unlikely), there could be an increase of over 2,000 residential units. Redevelopment of the golf course is estimated to result in 300-500 new units.¹

Development Potential				
	Existing Development	Existing + Pipeline (1)	2015 MVMP	% Change
Residential Units	11,941	12,197	14,401	18.10%
Non-residential Square Feet	1,641,998	1,743,862	1,917,471	9.96%
Non-residential Square Feet (converted into jobs)	4,542	4,797	5,243	9.30%
(1) at this time is not possible to determine the amount of allowed FAR under the TS Zone, as density for non-residential development is not provided for the zone and determined at site plan, where compatibility is addressed. The 1985 Gaithersburg Master Plan assumed the land use plan (e.g., development plan) to be its development guidance for the area.				

¹ The Council received some testimony objecting to the thousands of new units that would be built on the golf course based on the incorrect assumption that all new residential development would be on the golf course. Owners of the golf course property are the only ones who have expressed any immediate interest in redeveloping other properties to add residential units.

The **Montgomery Village Overlay zone** will be the subject of a public hearing on January 12 and a Committee worksession on January 19 (see © 1 to 10). This Overlay zone proposes to limit uses allowed in the RE-1 zones. All quasi-public open spaces and recreational areas are proposed to be zoned RE-1. It further requires that common and public open space be recorded with a protective easement or covenant. The Overlay zone would also require site plan approval for most new development and would ensure that existing buildings and uses remain conforming uses. Staff notes that the Master Plan zoning map does not reflect the boundaries of the Overlay zone, and this information should be added prior to publication of the approved Master Plan.

OPEN SPACE IN MONTGOMERY VILLAGE

One of the Village's most unique features is its vast open spaces, with approximately **one-third** of the land area (807 acres) in **quasi-public** open space operated by the Montgomery Village Foundation. The former golf course added 147 acres of **private** open space. Preserving and enhancing open spaces is an important goal of the Plan. Existing quasi-public open space will be protected via the proposed Overlay zone. The Council received a significant amount of testimony regarding open space, and many of those who testified on this issue expressed concern about the loss of open space if the golf course were to redevelop.

There are three issues the Committee should consider regarding the golf course:

1. Whether there is a legal requirement that the golf course remain as private open space as stated in some testimony.
2. What are the policy issues associated with allowing the golf course to redevelop?
3. If the course is to redevelop, what is the appropriate zoning?

The first two questions are addressed below, and the third is under the discussion of land use issues below.

Legal Requirements

The Council received testimony suggesting that there is a legal requirement that the golf course be maintained as open space in perpetuity. Attached on © 11 to 17 is a memorandum from Council Attorney Jeff Zyontz addressing this issue. Mr. Zyontz concludes there is no such legal requirement for 6 reasons:

1. There are no restrictions in the land records.
2. The Council did not require restrictions when the property was rezoned.
3. Zoning itself is never in perpetuity.
4. The Development Plan Approval did not stop development on the golf course in perpetuity.
5. The Master Plan land use map did not prohibit development on the golf course in perpetuity.
6. The letter from Kettler Brothers to residents describing the sale of the golf course did not require the Council to prevent development on the golf course in perpetuity.

Staff notes that the Council has previously changed policies regarding private open space as it revises master plans and always makes zoning decisions without regard to private agreements between parties (especially since they can change over time). The Council received letters from individuals as well as from David Brown, representing the Montgomery Village Greenspace Alliance, who reached different

conclusions from Mr. Zyontz’s regarding the legal issues. Mr. Zyontz will be available at the worksession to address the Committee’s questions on this issue.

Policy Issues Regarding Golf Course Development

Much of the testimony on this Master Plan focused on whether the golf course should be developed. Those opposed objected to the loss of open space, the impact on homes directly adjacent to the golf course (both in terms of monetary value and views), the impact on schools, and potential increases in traffic. Those who supported it believed it was an essential catalyst for redevelopment of commercial area, would provide new accessible public open space, and would improve the community and increase property values. In addition to correspondence on the Master Plan recommendations, the Council received a petition with over 1,500 signatures asking the Council to reject Development Plan Amendment 15-01 – which was already considered and rejected by the Council, because it believed the zoning decision should be made during its review of this Master Plan.²

Open Space. Montgomery Village is unique because most existing parks and recreation centers are operated by the Montgomery Village Foundation (MVF) or homeowners associations (HOAs) and are therefore quasi-public. The golf course was privately operated, and there are no County-operated parks or recreation centers. While the total land in open space will decrease if the golf course redevelops, the Plan’s recommendations will result in an 8.6 percent (70 acre) increase in the amount of land that is publicly accessible.

Ownership	Existing (acres)	Proposed in Master Plan (acres)
Public	0	40
Quasi-Public		
MVF Owned	311	311
HOA Owned	498	528
Total Public and Quasi-Public	809	879
Private	147	0

It appears that some of those who testified were under the mistaken impression that the golf course is a publicly-owned park accessible to the public. Although it is private property, there are no fences around most of the property, which has probably led to some of the confusion. However, it is private property and those who are using it are trespassing. The property owner could fence the entire site to prohibit access if he chose to do so. Staff believes there is a significant advantage to converting private open space with limited access to public open space. Some individuals have expressed the view that it should continue to be operated as a golf course, but golf courses in the County and throughout the country have been beset by financial difficulties and are closing, and **Staff**

² The petition reads: “We, the undersigned, petition the MVF Board, M-NCPPC, County OZAH, and Montgomery County Council to limit approval of any Development Plan Amendment or Zoning Text Amendment regarding the Montgomery Village Golf Course development to the front ‘Area 1’ part of the property. The proposed DPA 1501 should be rejected now. The open spaces should be preserved ‘in perpetuity’.”

does not believe there are any prospects of having this viably operate as a public or private golf course.

While there are generally advantages to having open space owned and operated by the M-NCPPC Department of Parks, there are specific advantages here, because new parkland would provide important connections between stream valley parkland both upstream and downstream, including the Lois Y. Green Conservation Park, Cabin Branch Stream Valley Park, and the Great Seneca Creek Stream Valley Park. In addition to providing important trail connections for park users recommended in the Countywide Park Trails Plan, it represents the last large area along the entirety of Cabin Branch not in public ownership or protected via conservation easements.

Some individuals have suggested that the entire site be acquired and kept in open space, but there has not been any entity (including the Department of Parks) with the financial resources and willingness to both purchase the site and maintain and operate it on an ongoing basis. Instead, the Department of Parks determined that the best strategy would be to have only those portions of the site that could provide critical trail connections (and environmental benefits as discussed below) in Park ownership.

Environment. Some of the most significant public benefits of the Plan's recommendations are the environmental benefits associated with the areas to be preserved on the golf course property and the decrease in harmful practices associated with golf course management. The Plan's proposals would accomplish the following:

- Eliminates pesticide and fertilizer applications needed to keep greens and fairways green and playable.
- Adds up to 40 acres of new forest, which is a very significant factor in helping improve water quality. The forest is to be created directly adjacent to both sides of the stream in the stream buffer. When the golf course was in operation, pesticides and fertilizers had no buffer to filter them out before they reached the stream channel. Creation of a forested buffer on both sides of the stream will allow pollutants to be filtered from the runoff as it makes its way through the buffer to the water table and the stream. New forest also benefits carbon storage and provides recreational benefits.
- Increases tree cover (street trees and neighborhood trees - approximately 25 acres), providing shade and reducing urban heat island effect and erosion. Planning staff estimate the combination of new forest plus tree cover should increase carbon sequestration over the current golf course. Forest areas will infiltrate and filter runoff better than the golf course. Houses, streets, and parking lots create runoff, but these areas must be controlled with stormwater management. The goal of Environmental Site Design (ESD) stormwater management is to replicate runoff from a forest in good condition. The result should be better water quality and reduced erosion as compared with what currently exists, even with the new development.
- Provides significant increases in areas that can support wildlife habitat.
- Adds publicly accessible natural areas for passive recreation.

Impact on Traffic and Schools. The new development will add to both traffic and the number of school-aged children, as is true of all new development. The Subdivision Staging Policy was created to assess these impacts at the time of development to make the appropriate accommodations. If traffic and school issues cannot be addressed, the Planning Board has the ability to deny development applications.

Economic Issues. The Council received conflicting testimony both suggesting that redevelopment of the golf course was an essential prerequisite to other commercial redevelopment and would increase the value of existing homes and, conversely, that it was not necessary and would decrease the value of homes. Staff concurs with those who believe that 70 acres of publicly accessible open space and the addition of new homes will help spur the demand for commercial uses elsewhere in the planning area and will increase the value of existing properties.

Impact on Properties Adjacent to Golf Course. The Council received testimony from several individuals directly adjacent to the golf course. Some welcome the redevelopment of the golf course and believe it to be preferable to private open space that will no longer be used or maintained (with some commenting that it has deteriorated significantly since the golf course closed), while others indicated that they believe redevelopment would negatively impact them. Planning Department staff estimate that only 15 percent of the new homes (60 of approximately 400 total) would be directly adjacent to existing homes, based on the open space recommendations and topography. The Plan also includes a number of recommendations for siting and design of the new community to ensure compatibility and the protection of viewsheds. Staff notes that any new development would undergo review by the Planning Department and Planning Board, as well as by the Montgomery Village Architectural Review Board.

Staff recommendation: Considering all of the policy issues, Staff believes that the Planning Board recommendation to allow redevelopment of the golf course, while preserving 70 acres, will provide greater public benefits than maintaining the existing private open space that is not accessible to the public and offers none of the environmental benefits of the Planning Board recommendation.

GENERAL LAND USE ISSUES

The entire Master Plan area was formerly zoned Town Sector (T-S), one of the County's oldest and most complex mixed-use zones. It requires a minimum of 1,500 acres, did not have specific standards regarding height, bulk, density, and uses, and limited residential density based on outdated assumptions regarding population. When the Council reviewed the Germantown Sector Plan in 2009, it found that the T-S zone was an antiquated zone that should be replaced. When the Council considered the rewrite of the Zoning Ordinance, it concluded that the T-S zone should be phased out. **Therefore it is necessary to rezone the entire planning area, all of which is currently zoned T-S.**

The Master Plan recommends 15 different zones for the planning area. The zoning strategy is as follows:

- Existing residential communities are rezoned to the residential zones that reflect the existing pattern of development. The R-10 (Multi-Unit High Density), R-20 (Multi-Unit Medium Density), R-30 (Multi-Unit Low Density), THD (Townhouse High Density), TMD (Townhouse Medium Density), R-60 (Residential - 60), R-90 (Residential - 90), and R-200 (Residential - 200) are recommended at different locations (see zoning map on page 25).
- The Plan recommends the low-density RE-1 (Residential Estate, 1 Acre) zone for all Montgomery Village Foundation's community amenities, including parks, trails, and recreation centers. **The proposed Overlay zone significantly restricts what can occur on these properties, to ensure the preservation of open space.**

- The Village’s public facilities, institutional and philanthropic uses, an assisted-living facility, schools, libraries, and religious institutions are recommended for the R-200 (One Family Detached, large lot) zone.
- For single use commercial properties not expected to redevelop, the Plan’s zoning recommendations reflect what is currently built, in terms of both use and density. The NR (Neighborhood Retail), EOF (Employment Office), and IL (Light Industrial) zones are recommended for these properties.
- For commercial properties where mixed-use redevelopment is encouraged, the Plan recommends the CRT (Commercial/Residential Town) zones; where residential development is encouraged, it recommends a combination of the CRN zone and single-use residential zones. As noted earlier, less than 10% of the land area is recommended to be redeveloped.

The Council did not receive any testimony on areas recommended for single-use residential or commercial zoning (with one exception noted below) and Staff supports the recommendations for these properties. The Plan divides the area into the Lower Village (map on page 52), the Middle Village (map on page 55), and the Upper Village (map on page 62). Properties targeted for redevelopment (all of which are in the Lower Village or Middle Village) are addressed below.

The Boulevard on Lost Knife Road (Lower Village)

The Lower Village and Lost Knife Road area are discussed on pages 52-53. The Lower Village has the highest residential densities in the community. Lost Knife Road forms the boundary between Montgomery Village and the City of Gaithersburg. The portion in Gaithersburg has Lakeforest Mall. On the County side are a vacant site where it meets Montgomery Village Avenue (referred to as the “Gateway” site), a day care center, Cider Mill Apartments, and two retail centers. This area has the potential to change over time, and the Plan encourages coordinated development on both sides of Lost Knife Road, if possible. (The Plan recommends EOF zoning for the two existing office buildings on Lost Knife Road.)

To encourage redevelopment here, the Plan recommends rezoning to the CRT zone for properties along Lost Knife Road: CRT 1.5, C 0.75, R 1.0, H 75³ on area 1 (see map on page 53); CRT 1.5, C 0.25, R 1.25, H 75 on area 2; and CRT 1.5, C 0.25, R 1.0, H 75 on area 3. The Plan recommends reconfirming the residential zones between these properties and Midcounty Highway and does not encourage redevelopment of these residential properties.

The Council received testimony from Lerch, Early and Brewer representing AG-TDG Cider Mill Owner, L.L.C., a joint venture including the owners of the Cider Mill Apartments. A portion of their property is recommended for CRT 1.5, C 0.25, R 1.25, H 75 (Area 2 on page 53), and a portion is retained in the R-20 zone. They have asked that the entire property be rezoned to CRT rather than have it split zoned. Although they are not anticipating redeveloping the portion zoned R-20, they believe that undeveloped areas could be used to meet the open space requirements of the CRT zone. They are requesting CRT 0.5, C 0.25, R 0.5, H 40 to match the residential development that currently exists on site. (There is no existing commercial development, but the CRT zone requires a minimum of 0.25 of commercial floor area ratio – FAR.)

³ In the CRT and CRN zones, the C indicates the Commercial Floor Area Ratio (FAR), the R indicates the Residential FAR, and the H indicates the Height.

Planning staff reviewed the proposed zoning change and conclude that the best way to implement the vision for Lost Knife Boulevard is keep the R-20 zone recommended in the Planning Board Draft. They believe that the development standards in the Zoning Ordinance allow enough flexibility to accomplish the Master Plan's goals, even if split zoned. The concept for the Boulevard on Lost Knife (as described on pages 53-54 of the MVMP) is to concentrate a mix of commercial/residential uses along Lost Knife (hopefully creating synergies with Lakeforest Mall if and when this site redevelops) and not encourage redevelopment of the remainder of these sites (as shown on the Illustrative concept on page 52).

If a mixed-use zone is desired to address the concerns raised in the letter, Planning staff suggest that the preferable alternative zone to maintain the Plan's redevelopment goals, as well as the purpose of the CR family of zones, is CRN 0.5, C 0.0, R 0.5, H 40. CRN is only developable at the density listed on the official zoning map; the commercial FAR can be limited to 0.0 and CRN is a zone that is intended for pedestrian-scale, neighborhood-serving mixed-use centers and transitional edges. Retail tenant ground floor footprints are limited to preserve community scale.

The property owner also asked for additional language to indicate that recreational amenity and public benefits can be provided offsite. Planning staff believe the Zoning Ordinance already makes allowances for using nearby/adjacent properties to satisfy public benefits and the recreation guidelines already allow for off-site credits and, therefore, the suggested language is duplicative. Given the concerns expressed by the property owner, Council Staff suggests adding this language so there are no conflicting interpretations at the time of development.

Staff supports the R-20 zone with the clarification regarding off-site public benefits and recreational amenities requested by the property owner.

Village Center (Middle Village)

The middle part of Montgomery Village is the area where most redevelopment is proposed. There has been widespread agreement that some redevelopment should occur in the 42-acre Village Center, the area's largest commercial center. The Center has struggled to maintain tenants and faces significant competition from retail offerings in the surrounding area. Fragmented ownership and multiple land owners will make comprehensive redevelopment challenging.

The Plan's recommendations for the Village Center are described on pages 55-57 of the Plan. The Master Plan endorses the Vision 2030 recommendation that the Village Center be redeveloped into a mixed-use town center with housing, retail, offices and open space. The Plan recommends the CRT 1.5, C 075, R 1.0, H 75 (see area 1 on map on page 55).

Staff supports the Plan-recommended zoning.

Professional Center (Middle Village)

The Professional Center is a cluster of two-story office buildings located directly across Montgomery Village Avenue from the Village Center. The Plan's recommendations for the Professional Center are described on pages 57-58 of the Plan. This site also struggles to maintain occupancy and went into bankruptcy as the Planning Department worked on the Plan. Vision 2030 identified it as needing an

infusion of new businesses. The Plan recommends CRT 1.25, C 1.0, R 1.0, H 75 (see area 3 on map on page 55). It recommends that the maximum densities and height be concentrated along Montgomery Village Avenue, where the property will directly face the Village Center (also recommended for 75 feet). It further recommends providing adequate transitions between new development and existing neighborhoods.

The Council received testimony from the property owner supporting the Plan's recommendations, and from the Whetstone Homes Corporation Board of Directors and individuals opposing the height recommendation and suggesting that it be maintained at the 65 feet recommended in the Public Hearing Draft. The Council also received testimony from an individual who opposed both the height and the recommendation for a mix of uses (suggesting it either be entirely residential or a redesign of the existing professional center).

Staff believes the best way to encourage redevelopment on this site is to provide flexibility by allowing a mix of uses. Given the glut of office space in the County (and regionally), it is very unlikely that the site would redevelop as a new professional center. Allowing additional height along Montgomery Village Avenue, while maintaining the same total FAR, means that the property owner will be required to decrease density (or increase setbacks) closest to the adjoining residential neighborhood. The Master Plan specifically addresses the importance of adequate transitions to existing neighborhoods (page 58) and the Zoning Ordinance limits the height of CRT properties adjacent to residential neighborhoods. Where the Professional Center Property adjoins the Whetstone community, the height will be limited to 35 feet and a setback will be required. Staff believes that allowing greater height along Montgomery Village Avenue can actually provide greater protections to the adjacent neighborhood and asked Planning Staff to be able to speak to this further at the worksession.

Staff supports the Plan-recommended zoning.

Golf Course (Middle Village)

Issues associated with the development of the golf course are discussed above. This section addresses the zoning recommendations, which are discussed on page 60 of the Plan. The Plan recommends both the TLD (Townhouse Low Density) and CRN (Commercial/Residential Neighborhood) zones for the golf course. The CRN would allow a total of 0.5 FAR with no commercial development and height limit of 65 feet (CRN 0.5, C 0, R 0.5, H 65).

The Plan recommends split zoning for the golf course so that there is greater flexibility in the building types that could be used closest to the Village Center (CRN can have apartment building types, which the TLD does not allow). The zoning allows "like dwelling units next to like dwelling units" and the CRN zone is a good transitional zone between the lower densities to the north and the Village Center and can be mapped to a zero commercial FAR (the Master Plan purpose is to focus any commercial redevelopment at the limited sites listed in the plan).

Staff supports the Plan-recommended zoning for the golf course.

Montgomery Village Foundation Offices

The Master Plan discusses the current location of the Montgomery Village Foundation Offices on page 61. The Plan concurs with the recommendation of the Vision 2030 Plan to relocate the MVF offices to the Village Center as the civic component of a redeveloped center. Should this occur, the Plan supports the adaptive reuse of the existing building to serve another nonprofit, office use, a daycare facility, or a similar low-intensity use. Alternatively, the Plan supports a floating zone application for townhouse development. The recommended zoning is R-90.

Staff supports the Plan-recommended zoning.

ENVIRONMENT

The Village's Natural Environment is discussed in the chapter on maintaining the Village's public recreation and open spaces on pages 34-37. This section focuses on water quality issues and energy and carbon emissions. As noted above, the redevelopment of the golf course presents the opportunity to preserve and restore 70 acres, adding forest and new stream buffer and decreasing the use of pesticides.

COMMUNITY FACILITIES

Community Facilities (including schools, parks, recreation, and libraries) are addressed under the theme of preserving the village character (see pages 27-31). The Plan notes that, depending on the actual development that occurs, there may be a need for a new elementary school and it suggests the consideration of a combined school/park site at Centerway Local Park, as well as other potential sites. Growth could also impact middle and high schools and the Master Plan includes different options for addressing this, including potential sites for new schools in the general vicinity. **Montgomery County Public Schools staff support these recommendations, but they have technical changes to the Master Plan language they will forward before the full Council worksession.**

The Plan also notes plans for new police and fire stations. The proposed police station has been sited and designed (but is not yet funded for construction). The Plan recommends a general location for the Fire Station, but Montgomery County Fire and Rescue Service (MCFRS) has not yet gone through site selection. The Council received testimony objecting to the proposed location of the Fire Station as shown on page 29 of the Plan, since it is shown on land owned by North Village Homes Corporation. This is a general location, and a note should be added to the map to clarify this. The Council also received technical comments from the County Executive that Staff recommends be incorporated in the Plan (see © 18 to 19).

MONTGOMERY VILLAGE ARCHITECTURAL REVIEW BOARD

The Master Plan describes the Montgomery Village Foundation Architectural Review Board (ARB) on pages 22-23, providing a more detailed description of an ARB than is typically found in a Master Plan. The Council received testimony asking for an even stronger statement recognizing the continuing authority of the MVF ARB. Nothing written in the Master Plan could strengthen or diminish the

authority or legal status of any public, quasi-public, or private entity and Staff is concerned that some would interpret meaning to such language that would not exist.

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Zoning Text Amendment No.: 15-12
Concerning: Overlay Zone –
Montgomery Village
Draft No. & Date: 1-11/16/15
Introduced: December 1, 2015
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**

Lead Sponsor: The Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish the Montgomery Village Overlay Zone

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

ARTICLE 59-2.	“Zones and Zoning Map”
Section 2.1.2.	“Zoning Categories”
ARTICLE 59-4.	“Development Standards for Euclidean Zones”
Section 4.9.	“Overlay Zones”
Section 4.9.10.	“Regional Shopping Center (RSC) Overlay Zone”
Section 4.9.11.	“Ripley/South Silver Spring (RSS) Overlay Zone”
Section 4.9.12.	“Rural Village Center (RVC) Overlay Zone”
Section 4.9.13.	“Sandy Spring/Ashton Rural Village (SSA) Overlay Zone”
Section 4.9.14.	“Takoma Park/East Silver Spring Commercial Revitalization (TPESS) Overlay Zone”
Section 4.9.15.	“Transferable Development Rights (TDR) Overlay Zone”
Section 4.9.16.	“Twinbrook (TB) Overlay Zone”
Section 4.9.17.	“Upper Paint Branch (UPB) Overlay Zone”
Section 4.9.18.	“Upper Rock Creek (URC) Overlay Zone”

And adding

Section 4.9.10. “Montgomery Village (MV) 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. ARTICLE 59-2 is amended as follows:**

2 **DIVISION 2.1. Zones Established**

3 * * *

4 **Section 2.1.2. Zoning Categories**

5 * * *

6 **G. Overlay Zones**

7 1. There are [17] 18 Overlay zone classifications:

- 8 a. Burtonsville Employment Area (BEA),
- 9 b. Chevy Chase Neighborhood Retail (CCNR),
- 10 c. Clarksburg East Environmental (CEE),
- 11 d. Clarksburg West Environmental (CWE),
- 12 e. Community-serving Retail (CSR),
- 13 f. Fenton Village (FV),
- 14 g. Garrett Park (GP),
- 15 h. Germantown Transit Mixed Use (GTMU),
- 16 i. Montgomery Village
- 17 [i] j. Regional Shopping Center (RSC),
- 18 [j] k. Ripley/South Silver Spring (RSS),
- 19 [k] l. Rural Village Center (RVC),
- 20 [l] m. Sandy Spring/Ashton Rural Village (SSA),
- 21 [m] n. Takoma Park/East Silver Spring Commercial Revitalization
- 22 (TPESS),
- 23 [n] o. Transferable Development Rights (TDR),
- 24 [o] p. Twinbrook (TB),
- 25 [p] q. Upper Paint Branch (UPB), and
- 26 [q] r. Upper Rock Creek (URC).

27 2. Building types, uses, density, height, and other standards and
28 requirements may be modified by the Overlay zones under Section
29 4.9.2 through Section [4.9.18] 4.9.19.

30 * * *

31 **Sec. 2. ARTICLE 59-4 is amended as follows:**

32 **DIVISION 4.9. Overlay Zones**

33 * * *

34 **Section 4.9.10. Montgomery Village (MV) Overlay Zone**

35 **A. Purpose**

36 The purpose of the MV Overlay zone is to:

- 37 1. Preserve the unique character of Montgomery Village.
- 38 2. Protect existing open space and conservation areas.
- 39 3. Ensure a compatible relationship between new and existing
40 development.

41 **B. Land Uses**

- 42 1. In the RE-1 zone, all uses are prohibited except the following, which
43 are permitted:
 - 44 a. Agricultural Vending;
 - 45 b. Recreation and Entertainment Facility, Outdoor (Capacity up to
46 1,000 Persons), such as an amphitheater or a swimming pool;
 - 47 c. Recreation and Entertainment Facility, Indoor (Capacity up to
48 1,000 persons), such as an indoor swimming pool;
 - 49 d. Distribution Line (Below Ground);
 - 50 e. Pipeline (Below Ground);
 - 51 f. Playground, Outdoor (Private);
 - 52 g. Seasonal Outdoor Sales;
 - 53 h. Solar Collection System;

- 54 i. Child Day Care in Community Centers; and
- 55 j. An Accessory Use associated with any of the above uses.
- 56 2. In the RE-1 zone, any of the allowed features in open space under
- 57 Section 6.3.3.A are permitted, except for above-ground utility rights-
- 58 of-way.
- 59 3. Applications for a Floating zone on land classified in the RE-1 zone
- 60 are prohibited.

61 **C. Development Standards**

62 In addition to any other requirements of Division 6.3 and Chapter 50,

63 common and public open space in Montgomery Village must be recorded

64 within a separate lot or parcel with a protective easement or covenant in the

65 land records, in a form approved by the Planning Board.

66 **D. Site Plan and Record Plat**

- 67 1. Site plan approval under Section 7.3.4 is required for all development
- 68 in the MV Overlay zone, except for:
 - 69 a. construction of an accessory structure;
 - 70 b. construction of a structure less than 5,000 square feet in size in
 - 71 the RE-1 zone;
 - 72 c. the modification or expansion of an existing detached house,
 - 73 duplex, townhouse, or accessory structure; or
 - 74 d. a conditional use.
- 75 2. Record plats must show all land designated for open space and have a
- 76 statement on the plat granting public access to those lands.
- 77 3. A certified site plan must show all land designated for open space.

78 **E. Existing Buildings and Uses**

- 79 1. A legal structure or site design existing on {DAY BEFORE
- 80 EFFECTIVE DATE} that does not meet its current zoning is

81 conforming and may be continued, renovated, repaired, or
82 reconstructed if the floor area, height, and footprint of the structure is
83 not increased, except as provided below.

84 2. On a lot that has not changed in size or shape since {INSERT THE
85 EFFECTIVE DATE}, a detached house, duplex, or townhouse may
86 be constructed, reconstructed, or expanded:

- 87 a. without regard to the minimum lot size or lot width at the front
- 88 building line; and
- 89 b. in a manner that satisfies the maximum building height and lot
- 90 coverage of its current zone and the side, front, and rear setback
- 91 that was required when the lot was first created.

92 3. A legal use existing on {DAY BEFORE EFFECTIVE DATE} is
93 conforming and may be continued. Expansion of any such use must
94 satisfy the use standards of the current zone under Article 59-3, except
95 the following:

- 96 a. An existing Charitable, Philanthropic Institution (as defined by
- 97 Section 3.4.2); or
- 98 b. an existing Storage Facility (as defined by Section 3.6.8.e.1)
- 99 owned and operated by a Charitable, Philanthropic Institution
- 100 may expand by up to the lesser of 10% or 30,000 square feet.

101 Any expansion is exempt from the conditional use process, but must
102 satisfy Section 4.9.10.D.

103 **Section [4.9.10] 4.9.11. Regional Shopping Center (RSC) Overlay Zone**

104 * * *

105 **Section [4.9.11] 4.9.12. Ripley/South Silver Spring (RSS) Overlay Zone**

106 * * *

107 **Section [4.9.12] 4.9.13. Rural Village Center (RVC) Overlay Zone**

108 * * *

109 **C. Development Standards**

110 1. Where a lot is either partially or totally in a Commercial/Residential
111 zone:

112 * * *

113 e. In addition to the parking requirements in Division 6.2:

114 * * *

115 iii. For any cumulative enlargement of a surface parking
116 facility that is greater than 50% of the total parking area
117 approved before November 4, 2002, the entire off-street
118 parking facility must be brought into conformance with
119 Section [4.9.12] 4.9.13.

120 * * *

121 **Section [4.9.13] 4.9.14. Sandy Spring/Ashton Rural Village (SSA) Overlay
122 Zone**

123 * * *

124 **Section [4.9.14] 4.9.15. Takoma Park/East Silver Spring Commercial
125 Revitalization (TPRESS) Overlay Zone**

126 * * *

127 **Section [4.9.15] 4.9.16. Transferable Development Rights (TDR) Overlay Zone**

128 * * *

129 **Section [4.9.16] 4.9.17. Twinbrook (TB) Overlay Zone**

130 * * *

131 **Section [4.9.17] 4.9.18. Upper Paint Branch (UPB) Overlay Zone**

132 * * *

133 **B. Exemptions**

134 The following are exempt from Section [4.9.17] 4.9.18:

135 * * *

136 **C. Land Uses**

137 1. Except as listed in Section [4.9.17.C.2] 4.9.18.C.2 and Section
138 [4.9.17.C.3] 4.9.18.C.3, the land uses of the underlying zone apply.
139 The use standards of the underlying zone apply unless the
140 development standards in Section [4.9.17.D] 4.9.18.D are more
141 restrictive, in which case Section [4.9.17.D] 4.9.18.D must be
142 followed.

143 * * *

144 3. If validly existing on July 1, 1997, the uses in Section [4.9.17.C.2]
145 4.9.18.C.2 may be continued under the requirements in effect at the
146 time the use was established. Any expansion requires compliance with
147 the UPB Overlay zone.

148 * * *

149 **E. Waiver**

150 The applicable review body may grant a waiver of the development
151 standards in Section [4.9.17.D] 4.9.18.D if it finds that:

152 * * *

153 4. Alternative water quality and control techniques are used to meet the
154 purposes of Section [4.9.17] 4.9.18.

155 **Section [4.9.18] 4.9.19. Upper Rock Creek (URC) Overlay Zone**

156 * * *

157 **B. Exemptions**

158 1. The following are exempt from Section [4.9.18] 4.9.19:

159 * * *

160 **D. Waiver**

161 The applicable review body may grant a waiver of the development
 162 standards in Section [4.9.18.C] 4.9.19.C if it finds that:

163 * * *

164 4. Alternative water quality and quantity control techniques are used to
 165 meet the purposes of Section [4.9.18] 4.9.19.

166 * * *

167 **Sec. 3. OLD ZONING ORDINANCE TO NEW ZONING**
 168 **ORDINANCE SECTION CROSS REFERENCE is amended as follows:**

Old ZONING ORDINANCE Article 59-C: Zoning Districts; Regulations.	New ZONING ORDINANCE
* * *	
Division 59-C-18. Overlay Zones.	
* * *	
Sec. 59-C-18.15. Environmental Overlay Zone for the Upper Paint Branch Special Protection Area.	Sec. [4.9.17] <u>4.9.18</u> . Upper Paint Branch (UPB) Overlay Zone
* * *	
Sec. 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone.	Sec. [4.9.13] <u>4.9.14</u> . Sandy Spring/ Ashton Rural Village (SSA) Overlay Zone
* * *	
Sec. 59-C-18.20. Ripley/South Silver Spring Overlay Zone.	Sec. [4.9.11] <u>4.9.12</u> . Ripley/South Silver Spring (RSS) Overlay Zone
Sec. 59-C-18.21. Takoma Park/East Silver Spring commercial revitalization overlay zone.	Sec. [4.9.14] <u>4.9.15</u> . Takoma Park/ East Silver Spring Commercial Revitalizations (TPESS) Overlay Zone
* * *	
Sec. 59-C-18.23. Rural village center overlay zone.	Sec. [4.9.12] <u>4.9.13</u> . Rural Village Center (RVC) Overlay Zone
Sec. 59-C-18.24. Environmental overlay zone for the Upper Rock Creek Special Protection Area.	Sec. [4.9.18] <u>4.9.19</u> . Upper Rock Creek (URC) Overlay Zone

169

170 **Sec. 4. Effective date.** This ordinance becomes effective 20 days after the
171 date of Council adoption.

172

173 This is a correct copy of Council action.

174

175

176 _____
Linda M. Lauer, Clerk of the Council

MEMORANDUM

December 24, 2015

TO: Marlene Michelson
FROM: Jeff Zyontz, Senior Legislative Analyst
SUBJECT: Montgomery Village Golf Course development status

The development status of the Montgomery Village Golf Course was raised in testimony concerning The Montgomery Village Master Plan Amendment. In particular, Mr. Lechner's testimony provided documentation to advance the position that the golf course is or should be open space in perpetuity. The following analysis addresses its current legal status. The question of what its future status should be is the subject of the Montgomery Village Master Plan and not the subject of this memorandum.

I attached Planning Staff's response to Mr. Lechner's concerns for background information. The redevelopment of the golf course was the subject of DPA 15-01. In that application, the Council denied a change to the Montgomery Village Development Plan because it was inconsistent with the 1985 Master Plan. The Hearing Examiner's report and recommendation on DPA 15-01 provided excellent background material; it is used in this memorandum.

Issue: Is the Montgomery Village golf course required to be open space in perpetuity?

No, it is not for the following 6 reasons.

1) **There are no restrictions in the land records.**

The golf course was never been included in any preliminary plan or record plat, so there are no record plat restrictions or any covenants in the land record required by a conditional approval.

The developer of Montgomery Village was permitted to record land all around the golf course but was never required to plat the golf course itself. If it were platted, one could speculate that covenants may have been required. At a minimum, it may have been recorded as an unbuildable outlot or parcel. Both of these alternative futures never occurred.



2) **The Council did not require restrictions when the property was rezoned.**

When the Council approved the TS zoning (E-327) on August 24, 1965, it did not impose any conditions on the rezoning. It simply granted the rezoning request.

When the property was first zoned TS in 1965, the zone required that any **record plats** must have:

“an appropriate statement concerning all of the land which is designated for common or quasi-public use but not to be in public ownership. This statement shall grant to the public, on such land, easements covering all rights of development, construction, or use other than the recreation or other quasi-public uses adopted in the preliminary plan.” Section 11-25 h(4).

This provision is moot because there are no record plats for the golf course property and there were subsequent changes in the Zoning Ordinance.

Over time, the Zoning Ordinance was amended to include the following provision:

Privately **owned roads and community open** spaces may be held in perpetuity by the developer or by an approved home owners association with substantial membership and duration if the Planning Board approves easements for such uses granted to the County and recorded in the land records of the County. (59-8.3.3.B.7).

There are 2 conditional aspects of this provision; the Planning Board must approve the easement AND it must be recorded in the land records. There are no easements recorded in the land records to effectuate this provision of the zone.

There is a requirement for a minimum 10% of land in the TS zone devoted to open space (publicly owned or devoted to community use). The determination that the development satisfied this requirement was established during the Development Plan procedures and amendments to that plan. Currently, Montgomery Village includes 2,434.8 acres. The land use table in the Village’s last DPA indicated 696 acres of open space, including the golf course. (The first rezoning in 1965 was for 1,767.3 acres. Since then, additional land was rezoned TS to increase the Montgomery Village development.)

3) **Zoning itself is never in perpetuity.**

Zoning is a legislative judgment subject to change by future Councils. In *Norbeck Village Joint Venture v. Montgomery County Council*, the Court of Appeals found that a property owner has no vested right in the continuance of the zoning status of his or neighboring property. The landowner only had the right to rely on the rule that a change will not be made unless it is required for the public good. (254 Md. 59 (1969)).

Zoning could be changed as part of a master plan recommended change. Such comprehensive rezonings are entitled to the same presumption of correctness as the original zoning (*Ark Readi-Mix Concrete Corp. v. Smith*, 251 Md. 1 (1968)).

4) **The Development Plan Approval did not stop development on the golf course in perpetuity.**

A Development Plan and amendments to that plan are part of the zoning process. The District Council approved the original development plan for Montgomery Village shortly after it adopted the Town Sector zone in 1965. Kettler Brothers, the owner, incorporated the golf course into its original development plan for Montgomery Village. In testimony, Clarence Kettler described part of the 557 acres of open space it promised to provide. Kettler represented that the open space for the Village would be in private ownership, including "private clubs" and homeowner's associations to better coordinate development with the provision of amenities.

The representation by Clarence Kettler did not legally bar future development plan amendments. Testimony is not a condition of approval. Only conditions of approval are conditions of approval. In the DPA chart describing land use allocations in 2006, the golf course is listed separately from community open space.

2006 analysis of Montgomery Village Uses

Existing Land Use Analysis from DPA								
Land Use	Lot and Private Streets	Commercial/ Employment	Schools and Churches	Public Use	Major Roads	Open Space	Totals per DPA	Corrected Totals
Residential Areas	1,220.03	33.30	24.06	7.47	21.45	0.00	1,306.30	1,306.30
Public Schools			54.40				85.18	54.40
Designated Commercial/ Employment								
- Village Center		43.10					43.10	43.10
- Goshen Center		10.00					10.00	10.00
- Shopping Centers		36.80					36.80	36.80
- CSAAC		10.76					10.76	10.76
Golf Course	148.44						148.44	148.44
PEPCO Substation				2.00			2.00	2.00
Local Open Space						481.80	481.80	481.80
Open Space	10.50					215.00	225.50	225.50
Major Roads					115.70		115.70	115.70
Totals	1,378.97	133.96	78.45	9.47	137.15	696.80	2,434.80	2,434.80
Corrected total							2,431.56	

Source: DPA 02-2, corrected 4-7-08

The approval of a Development Plan requires substantial conformance with the relevant master plan. Recently, the Council denied DPA 15-01, which was a request to change the Development Plan for the Montgomery Village Golf Course. The Council found, as did the Hearing Examiner, the Planning Board, and Technical Staff, that the DPA did not substantially comply with the land use and density recommended by the 1985 Master Plan

because it is not the “private conservation/recreation” land use recommended by the 1985 Plan. A change in the Master Plan would change this conclusion.

5) **The Master Plan land use map did not prohibit development on the golf course in perpetuity.**

The *1971 Gaithersburg and Vicinity Master Plan* (1971 Master Plan or 1971 Plan) mirrors the original development plan for Montgomery Village, recommending land uses that reflect the golf course, school sites, and residential uses that had been approved in the development plan. The land use recommended for the golf course was “conservation/private open space” and the property is labeled on the 1971 Plan as “Montgomery Village Golf Course.” The 1971 Master Plan also relied on joint use of the school sites to provide recreational facilities in the area.

The Land Use Plan (in the form of a fold out map) adopted with the *1985 Master Plan* continued the land use recommendations for Montgomery Village in the *1971 Plan*, retained the “golf course” label, and designated the property for “private conservation/recreation” use.

The term used in the TS zone’s perpetuity provision was “community open space”. The golf course was referred to in the 1971 and 1985 Master Plans as either the “Montgomery Village Golf Course” or a “conservation/private open space” area. It was never referred to as “community open space”, which would have arguably triggered the in perpetuity provision after 1985. (In any event, the golf course was never the subject of any regulatory process before the Planning Board. The golf course was never included in a Preliminary Plan approval and was never the subject of a record plat.)

The Master Plan is not a static document. It may be changed by the Council after following code-required procedural steps. The weight to be accorded a master plan depends upon the language in the zoning ordinance. (*Richmarr Holy Hills v. American PCS*, 117 Md. App. 607 (1997)). The County code does not allow the approval of a DPA unless it is substantially consistent with the master plan.

6) **The letter from Kettler Brothers to residents describing the sale of the golf course did not require the Council to prevent development on the golf course in perpetuity.**

Kettler sold the golf course in 1980 to a professional golf course operator. At the time, Kettler sent a letter to residents assuring them that “no homes can, nor will, be built on this property.” The sales contract for the golf course contained several clauses permitting, but not requiring, the purchaser to restrict the use of the property for a golf course. Although protective covenants were described in the letter, no such covenants were ever recorded in the land records. The letter to residents was not an agreement between the Council and the landowner. Lawyers would say the County lacks the vertical privity necessary to claim any interest in a covenant created out of contract claims. The County was not a party to this conveyance of property and the County was not a beneficiary of the letter. The

Assistant Attorney General's February 20, 2015 letter to Delegate Reznik is not relevant to the issue of the Council's authority, but may be relevant to private landowners.

Planning Staff was not the first to review this issue. The following is Planning Staff's unedited response to that issue to the Planning Board:

Good afternoon Board members.

For the record, my name is Renee Kamen, AICP, Senior Planner for Area 2. Since the Planning Board worksession on October 1, we have received several email correspondence regarding the topics discussed during the worksession.

First, on October 8, 2015, staff received correspondence from Mr. Garraffa asking the Planning Board to "not ignore zoning law that protects open space "in perpetuity." Additionally, he requested that the new "overlay" protect "all of the open spaces, including the MV Golf Course spaces, as they were in the original MV development plan."

The golf course property has never been part of a regulatory application and therefore is not open space that the zoning ordinance contemplates protecting in perpetuity. It is not existing common open space. There are no recorded easements granting public access to the golf course that staff is aware of, nor has the former golf course property been subject to a preliminary or site plan, in which developers may be required to record such documentation.

With regards to the protections provided in the overlay zone, for any open spaces owned by MVF, the proposed overlay zone protects existing common open spaces by limiting the permitted uses to only active and passive recreation uses and by not permitting floating zone applications. The former golf course is not owned by Montgomery Village Foundation; it is private property. If allowed to develop, it will provide some environmental protections that were not previously provided, such as forest protection and stream restoration-some of which may become Park land. In addition, the developer would have to provide 50% of lands as common open space, which is required by the zoning ordinance for the proposed zone as part of the regulatory process.

Additional correspondences from Mr. Lechner received on October 16 inquired whether the Board's session would include a discussion of "material corrections needed to the plan to bring it into compliance with the county code and policies requiring protection of open space "in perpetuity?" Mr. Lechner's correspondence further cites that for "50 years the county code included the following statement about development plans:

2004 Zoning Ordinance §59-D-1.3(c)(6) Contents of a Development Plan, the Zoning Ordinance states the that the development plan must include , "The location of the land which is intended for common or quasi-public use but not proposed to be in public

ownership, and proposed restrictions, agreements or other documents indicating the manner in which it will be held, owned and maintained in perpetuity for the indicated purposes.” Mr. Lechner specifically asks “why approve a new Master Plan that would remove over 140 acres of protected land from its open space status... while offering no compensating and similarly located open space in our community?”

The Development Plan for the Montgomery Village Town Sector zone shows this property as a golf course use and it is not listed as open space on the Development Plan. These are two different uses defined in the zoning ordinance. The 2014 Code states that the Town Sector zone, as well as other planned unit developments, is to be phased out during a master plan, and “cannot be requested by any property owner under a Local Map Amendment or applied to any additional property under a Sectional Map Amendment adopted after October 30, 2014.” The former golf course was never part of a subsequent regulatory process that would plat this land as a golf course or open space uses, nor could staff find a recorded document indicating the golf course would stay a golf course granting public access “in perpetuity.”

The fiftieth anniversary of the Town Sector Zone for this property has occurred, as it was zoned to T-S on August 24, 1965. The reason the 50th year is important is that private owners were restricted from requesting rezoning private properties thus allowing for the entirety of Montgomery Village to develop. The purpose of this draft Master Plan is to holistically review the land use and zoning rather than review piecemeal redevelopment of this planned community. With the subsequent adoption of the Sectional Map Amendment, and the application of the new zones, the development plan associated with Montgomery Village will no longer be valid, thus, this draft Master Plan evaluated the potential future uses of the golf course, and determined that allowing for limited single-family and conservation uses are consistent to and compatible with the surrounding existing single-family uses.

Mr. Lechner, in his email from October 16, 2015, refers also to the 2014 Zoning Ordinance Section 8.3.3.B.7, Land Uses states that “Privately owned roads and community open spaces may be held in perpetuity by the developer or by an approved home owners association with substantial membership and duration if the Planning Board approves easements for such uses granted to the County and recorded in the land records of the County.”

This property is a golf course, which is not considered either privately owned roads or community open spaces. A golf course was considered a recreational use under the previous code (now currently a commercial use in the 2014 Zoning Ordinance) and can be either publically or privately owned lands. Community open spaces are designated through the regulatory process on preliminary and site plans and required based on the development standards of the ordinance in place at the time of review and approval of the associated preliminary or site plan. The development review process puts into place conditions which must happen in order for development to occur, one of which may be (according to the Zoning Ordinance) holding “privately owned road and community open spaces in perpetuity, if the Planning Board approves easements for such uses granted to the County and recorded in the land records of the County.” The golf course property has

never been subject to the development review process or platted, and therefore, this provision of the Zoning Ordinance does not apply to it.

Lastly, Mr. Lechner refers to the 2014 Zoning Ordinance, Section 8.3.3.D.3, Procedures for Development that state that "Record plats must indicate that the land is in the T-S zone and include a notation with a statement:

a. Describing all of the land which is designated for common or quasi-public use, but not to be in public ownership. This statement must grant to the public, on such land, easements covering all rights of development, construction or use other than the recreational or other quasi-public uses indicated in the approved site plan, except that, at the time of site plan approval, utility easements may be excluded from specific areas; and

b. That the plat satisfies the approved site plan, that development of the land is permitted only if it satisfies the approved site plan, the accompanying agreements concerning the ownership and maintenance of common land are on file at the offices of the Planning Board, and that application for reclassification is prohibited until 50 years after the grant of the T-S zone.

The former Montgomery Village Golf course is not included in a record plat, nor the subject of a regulatory process, i.e., preliminary or site plan. There is no record of action regarding a record plat associated with this parcel of land; and therefore, this property is not subject to Section 8.3.3.D.3.



MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

Isiah Leggett
County Executive

Scott E. Goldstein
Fire Chief

MEMORANDUM

November 12, 2015

TO: Mr. Greg Ossont
Deputy Director, Department of General Services (DGS)

FROM: Fire Chief Scott E. Goldstein 
Montgomery County Fire and Rescue Service (MCFRS)

SUBJECT: Montgomery Village Master Plan – Planning Board Draft

Thank you for the opportunity to comment on the Planning Board Draft Montgomery Village Master Plan. Staff from the Planning Section and Office of the Fire Marshal reviewed the draft plan and provided comment.

I concur with the “Fire, Rescue, and Emergency Medical Services” narrative on page 31 of the draft plan (Section 3.3.3), including the recommendation for the siting of a new fire station in the vicinity of Goshen Road and Rothbury Drive. Existing fire, rescue, and EMS needs in the planning area, as well as future needs brought about by proposed redevelopment, support the need for this station. Apart from my overall concurrence with the fire/rescue-related narrative in Section 3.3.3, I believe the following edits would be appropriate:

- Page 31, 2nd paragraph: Add to the end of the paragraph the following sentence: “This station has also been recommended in the *2016-2022 Fire, Rescue, Emergency Medical Services, and Community Risk Reduction Master Plan*.”
- Page 31, 3rd paragraph, 1st sentence: Add “Battalion EMS Supervisor” to the listed resources to be deployed at the new fire station. Also in the 1st sentence, “future second ambulance” should be replaced with “future additional EMS Unit” as that future unit could be an ambulance or ALS chase unit depending upon future EMS needs in Montgomery Village.
- Page 31, 3rd paragraph, last sentence: “..... will be recommended by MCFRS” should be replaced with “will be recommended to the County Executive by the site evaluation committee.”

Office of the Fire Chief

100 Edison Park Drive, 2nd Floor • Gaithersburg, Maryland 20878-3204 • 240-777-2486 • 240-777-0725 TTY • 240-777-2443 FAX

www.montgomerycountymd.gov

Mr. Greg Ossont, Deputy Director, Department of General Services (DGS)
Montgomery Village Master Plan – Planning Board Draft
November 12, 2015
Page 2 of 2

I am concerned about the proposed downgrading of the functional classification of Montgomery Village Avenue from six lanes to four and proposed reduction of cross sections of other roadways (pages 67-71, Section 6.1.1) without further technical analysis of existing conditions and anticipated impacts. Reducing the number of through-lanes and narrowing of roadway cross sections will lead to greater traffic congestion; thus negatively affecting response times of fire-rescue vehicles.

If you need further information or have questions, please contact me on 240-777-2468 or Planning Section Manager Scott Gutschick on 240-777-2417.

SEG/sag

cc: Scott Gutschick, MCFRS Planning Section Manager
Amy Donin, DGS Planning Specialist,