


MEMORANDUM

January 15, 2016

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Senior Legislative Analyst
SUBJECT: Zoning Text Amendment 15-12, Overlay Zone - Montgomery Village

Zoning Text Amendment (ZTA) 15-12, introduced on December 1, 2015, would establish a new Overlay zone to implement the recommendation of the Montgomery Village Sector Plan. The Council President is the lead sponsor of ZTA 15-12, at the request of the Planning Board.

The purpose of the Overlay zone is to preserve the unique character of Montgomery Village, protect existing open space and conservation areas, and ensure a compatible relationship between new and existing development. As introduced, ZTA 15-12 would:

- 1) Grandfather existing development from changes to development standards in the new zone;
- 2) Grandfather existing uses, permitted as of right under the TS zone, to continue; redevelopment or expansion would be subject to the new zoning requirements;
- 3) Preserve the character of Montgomery Village Foundation and Homeowner Association land and facilities; and
- 4) Address compatibility issues.

The Council conducted a public hearing on January 12, 2016. The Planning Board and the Montgomery Village foundation spoke in favor of ZTA 15-12; however, the Foundation recommended revisions to allow greater flexibility in the recreational and institutional uses.

Issues

- 1) *Are the uses allowed in the RE-1 zone within the Overlay zone broad enough to accommodate the aspirations of the Montgomery Village Foundation?*

The Montgomery Village Foundation asked for assurance that activities and facilities such as a dog park, skate park, ice skating rink, athletic fields for any sport (including Frisbee golf or cricket) or game, paths, public art, or tree planting are allowed.

Allowed uses in the RE-1 zone

1. In the RE-1 zone, all uses are prohibited except the following, which are permitted:
 - a. Agricultural Vending;
 - b. Recreation and Entertainment Facility, Outdoor (Capacity up to 1,000 Persons), such as an amphitheater or a swimming pool;
 - c. Recreation and Entertainment Facility, Indoor (Capacity up to 1,000 persons), such as an indoor swimming pool;
 - d. Distribution Line (Below Ground);
 - e. Pipeline (Below Ground);
 - f. Playground, Outdoor (Private);
 - g. Seasonal Outdoor Sales;
 - h. Solar Collection System;
 - i. Child Day Care in Community Centers; and
 - j. An Accessory Use associated with any of the above uses.

All of these uses are defined terms in the zoning code. The central question from the Foundation is whether “Recreation and Entertainment Facility, Outdoor (Capacity up to 1,000 Persons)” is broad enough to include any future recreation type use or facility it could imagine. The code defines this use as:

Recreation and Entertainment Facility, Outdoor (Capacity up to 1,000 Persons) means a **structure or land with a capacity up to 1,000 people providing recreation activities outside of a building**. Recreation and Entertainment Facility, Outdoor includes golf driving range, but does not include Golf Course, Country Club (see Section 3.5.10.D, Golf Course, Country Club), or Shooting Range (Outdoor) (see Section 3.5.10.J, Shooting Range (Outdoor)). [Emphases added.]

The definition is, without amendment, far broader than the particular uses identified as possibilities by the Montgomery Village Foundation. The Department of Permitting Services is the final interpreter of the zoning code. The Zoning Officer expressed the opinion that the uses listed by Montgomery Village would be allowed uses (as would driving ranges, athletic tournaments, rope courses, swimming pools, and water parks).

Staff recommends noting the broad interpretation by DPS in the Council’s opinion but not making a particular list of outdoor recreation activities in the ZTA. Staff recommends deleting the phrase “such as an amphitheater or a swimming pool” to make it clear that the Council intends to allow the full breadth of uses within the use’s definition.

The Montgomery Village Foundation also expressed concern about the use inside a community center. Child Day Care is listed in the allowed uses, but the Foundation may want recreational camps or health clubs in those centers as well.

The use category of “Recreation and Entertainment Facility, Indoor (Capacity up to 1,000 persons)” is also a defined term in the current code:

Recreation and Entertainment Facility, Indoor (Capacity up to 1,000 Persons) means a building with a capacity up to 1,000 people that provides recreation or entertainment activities such as

sport facilities, theaters, and dance clubs. Recreation and Entertainment Facility, Indoor does not include Shooting Range (Indoor) (see Section 3.5.10.I, Shooting Range (Indoor)) or Health Clubs and Facilities (see Section 3.5.10.E, Health Clubs and Facilities).

The definition is very broad without listing individual types of recreation and entertainment facilities. A recreational camp is clearly within the definition. Health clubs are specifically excluded from the definition. **Staff recommends adding Health Clubs in Community Centers to the list of allowable uses.**

The Foundation also questioned whether public art would be allowed as a permitted use. Art is an accessory use to a park. Accessory uses are allowed in ZTA 15-12 as introduced.

As introduced, ZTA 15-12 would allow “Child Day Care in Community Centers”. The Zoning code defines Day Care Centers without limiting the age of participants. There are Day Care Centers for elderly people. Staff recommends allowing “Day Care” in Community Centers.

2) *Should the provision for recording protective easements be changed?*

As introduced, ZTA 15-12 includes the following provision:

Development Standards

In addition to any other requirements of Division 6.3 and Chapter 50, common and public open space in Montgomery Village must be recorded within a separate lot or parcel with a protective easement or covenant in the land records, in a form approved by the Planning Board.

Landowner testimony criticized this provision as follows:

This will be impossible in practice because of restrictions on permitting structures across lot or parcel lines, the creation of streetscapes with public open space – imagine a lot between the right-of-way and the front of your building; common open space surrounded by residential buildings – for example a courtyard for a multi-family building; etc. [The landowner’s representative is] Not sure why it’s necessary because all plans, with minor exceptions, will have a site plan and a record plat that controls open space – see D.2. & 3, below.

The landowner’s representative recommended that the provision be deleted or modified to read as follows:

In addition to any other requirements of Division 6.3 and Chapter 50, common and public open space in Montgomery Village must be protected by easement or covenant recorded by deed or plat approved by the Planning Board.

Staff does not agree with the statement of the problem. Structures such as sidewalks and other hardscapes may be constructed across lot lines. Buildings may not be constructed across lot lines. **Staff does not recommend this change.**

3) *Should the provision for grandfathering existing legal uses be amended?*

The Planning Board intended that, as a general matter, expansion of existing legal uses be accomplished under the standards of the property's new zones. Despite this intent, ZTA 15-12 references only "use standards".

The Planning Board also intended to allow the expansion of Charitable, Philanthropic Institutions and Storage Facilities without conditional use approval. In addition, the Board wanted to allow some expansion of existing storage facilities, despite the fact that it would not be an allowed use in the zone proposed for the property. As introduced, the exemption from the conditional use process would apply to all uses.

Staff recommends that the use grandfathering provision of the ZTA be revised to read as follows:

- a. A legal use existing on {DAY BEFORE EFFECTIVE DATE} is conforming and may be continued. Expansion of any such use must satisfy the standards of the current zone under Article 59-3.
- b. An existing Charitable, Philanthropic Institution (as defined by Section 3.4.2) may expand without conditional use approval but must satisfy Section 4.9.10.D.
- c. An existing Storage Facility (as defined by Section 3.6.8.e.1) owned and operated by a Charitable, Philanthropic Institution may expand by up to the lesser of 10% or 30,000 square feet without conditional use approval but must satisfy Section 4.9.10.D.

| <u>This Packet Contains</u> | <u>© number</u> |
|---|-----------------|
| ZTA 15-12 as amended | 1 – 12 |
| Planning Board Recommendation | 13 – 14 |
| Planning Staff Recommendation | 15 – 16 |
| Montgomery Village Foundation Testimony | 17 – 18 |
| Monument Realty Testimony | 19 – 21 |

CORRECTED

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 4.9.10. | “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 (MV)
- 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]] On properties in the RE-1 zone, all uses are prohibited except
43 the following, which 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
47 pool]];
48 c. Recreation and Entertainment Facility, Indoor (Capacity up to
49 1,000 persons)[[, such as an indoor swimming pool]];
50 d. Distribution Line (Below Ground);
51 e. Pipeline (Below Ground);
52 f. Playground, Outdoor (Private);
53 g. Seasonal Outdoor Sales;

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

63 **C. Development Standards**

64 In addition to any other requirements of Division 6.3 and Chapter 50,
65 common and public open space in Montgomery Village must be recorded
66 within a separate lot or parcel with a protective easement or covenant in the
67 land records, in a form approved by the Planning Board.

68 **D. ~~[[Site Plan and Record Plat]] Development Procedures~~**

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

- 80 4. Applications for a Floating zone on land classified in the RE-1 zone
81 are prohibited.

82 **E. Existing Buildings and Uses**

- 83 1. A legal structure or site design existing on {DAY BEFORE
84 EFFECTIVE DATE} that does not meet its current zoning is
85 conforming and may be continued, renovated, repaired, or
86 reconstructed if the floor area, height, and footprint of the structure
87 [[is]] are not increased, except as provided below.

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

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

- 96 3. a. A legal use existing on {DAY BEFORE EFFECTIVE DATE}
97 is conforming and may be continued. Expansion of any such
98 use must satisfy the [[use]] standards of the current zone under
99 Article 59-3[[, except the following:]]

- 100 [[a]]b. An existing Charitable, Philanthropic Institution (as defined by
101 Section 3.4.2)[[; or]] may expand without conditional use
102 approval, but must satisfy Section 4.9.10.D.

- 103 [[b]]c. [[an]]An existing Storage Facility (as defined by Section
104 3.6.8.e.1) owned and operated by a Charitable, Philanthropic
105 Institution may expand by up to the lesser of 10% or 30,000

106 square feet without conditional use approval, but must satisfy
107 Section 4.9.10.D.

108 [[Any expansion is exempt from the conditional use process, but must
109 satisfy Section 4.9.10.D.]]

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

111 * * *

112 **D. Site Plan**

113 Site plan approval under Section 7.3.4 is required for any increase in
114 building height under Section [[4.9.10.C.1]] 4.9.11.C.1.

115 **E. Parking**

116 * * *

117 **2. Pedestrian Access**

118 The major point of pedestrian access for an off-street parking facility
119 that occupies contiguous land area integral to the regional shopping
120 center property may extend more than 500 feet walking distance from
121 an entrance to the center to satisfy the number of spaces required
122 under Section [[4.9.10.E.1.a]] 4.9.11.E.1.a.

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

124 * * *

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

126 * * *

127 **C. Development Standards**

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

130 * * *

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

132 * * *

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

138 * * *

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

140 **Zone**

141 * * *

142

143 **Section [4.9.14] 4.9.15. Takoma Park/East Silver Spring Commercial**

144 **Revitalization (TPESS) Overlay Zone**

145 * * *

146 **D. Site Plan**

147 * * *

148 3. For any addition, reconstruction, or alteration that changes a building
149 by less than 1,000 square feet and does not require site plan approval
150 under Section [[4.9.14.D.1.c]] 4.9.15.D.1.c, the Planning Board or its
151 designee must review the building permit to determine compliance
152 with master plan recommendations and the provisions of this Overlay
153 zone.

154 * * *

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

156 * * *

157 **B. Optional Method**

158 1. In General

159 The TDR Overlay optional method of development permits an increase in
160 the maximum residential density, if the development satisfies the
161 requirements for optional method development using Transferable
162 Development Rights under Section ~~[[4.9.15.B]]~~ 4.9.16.B.

163 **a. Applicability**

164 The procedures and requirements in Section ~~[[4.9.15.B]]~~ 4.9.16.B
165 apply to the transfer of development rights from land in the AR zone
166 to land in a Transferable Development Rights (TDR) Overlay zone.

167 * * *

168 **c. Recording of Development Right**

169 * * *

170 ii. A final record plat for a subdivision using transferred
171 development rights must contain a statement including the
172 development proposed, the zoning classification of the
173 property, the number of development rights used, and a notation
174 of the recordation of the conveyance as required by Section
175 ~~[[4.9.15.B]]~~ 4.9.16.B.

176 **d. Development with Moderately Priced Dwelling Units**

177 i. A property developed under Section ~~[[4.9.15.B]]~~ 4.9.16.B must
178 satisfy Chapter 25A.

179 ii. A density bonus allowed under Chapter 25A is calculated after
180 the base density of the property has been increased under
181 Section ~~[[4.9.15.B]]~~ 4.9.16.B through TDRs.

182 * * *

183 **e. Additional Findings**

184 In addition to the findings required for approval of a site plan under
185 Section 7.3.4, for projects developed under Section ~~[[4.9.15.B]]~~

186 4.9.16.B, the Planning Board must find that the proposed development
187 provides an appropriate range of housing types that takes advantage of
188 existing topography and environmental features and achieves a
189 compatible ~~[[relation-ship]]~~ relationship between the proposed
190 development and adjoining land uses.

191 * * *

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

193 * * *

194

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

196 * * *

197 **B. Exemptions**

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

199 * * *

200 **C. Land Uses**

201 1. Except as listed in Section [4.9.17.C.2] 4.9.18.C.2 and Section
202 [4.9.17.C.3] 4.9.18.C.3, the land uses of the underlying zone apply.
203 The use standards of the underlying zone apply unless the
204 development standards in Section [4.9.17.D] 4.9.18.D are more
205 restrictive, in which case Section [4.9.17.D] 4.9.18.D must be
206 followed.

207 * * *

208 3. If validly existing on July 1, 1997, the uses in Section [4.9.17.C.2]
209 4.9.18.C.2 may be continued under the requirements in effect at the
210 time the use was established. Any expansion requires compliance with
211 the UPB Overlay zone.

212 * * *

213 **E. Waiver**

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

216 * * *

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

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

220 * * *

221 **B. Exemptions**

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

223 * * *

224 **D. Waiver**

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

227 * * *

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

230 * * *

231
232

Sec. 3. OLD ZONING ORDINANCE TO NEW ZONING 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 (TPSS) 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 |

233

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

236

237 This is a correct copy of Council action.

238

239

240 _____
Linda M. Lauer, Clerk of the Council



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

OFFICE OF THE CHAIR

January 11, 2016

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. 15-12

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment (ZTA) No. 15-12 at our regular meeting on January 7, 2016. By a vote of 5:0, the Planning Board recommends approval of the text amendment, as modified by the Board for plain language consistency, to create an overlay zone to implement the recommendations of the Planning Board Draft of the Montgomery Village Master Plan. The Board’s only modification is the removal of the phrase “in the MV Overlay zone” in line 68 of the text amendment. It was determined that the depiction of the overlay zone’s name (aside from the overlay zone’s section title) was redundant.

In order to preserve and maintain the unique aspects of Montgomery Village that are most important to its residents – the residential character and open space system – the Master Plan recommended the creation of the Montgomery Village Overlay Zone, which would be coterminous with the areas formerly covered by the Town Sector Zone. Specifically, the Montgomery Village Overlay Zone:

- Addresses anomalies on some properties that will occur as a result of rezoning from the Town Sector Zone to the new zoning categories. Some properties that were built to development standards established during site plan (under the T-S zone) do not exactly match development standards (e.g., front or side setbacks) of their proposed new Euclidean zones. Such properties will be grandfathered since the existing, as-built development standards do not conform to the development standards in the proposed new zones (*Section 4.9.10.E*).

13

- Allows existing uses that were permitted by right when constructed under the T-S Zone to be grandfathered under the newly proposed zones. If expansion of the use or redevelopment occurs and the particular use is considered a limited or conditional use under the new zone, then the property owner must follow the review requirements for limited or conditional uses allowed (*Section 4.9.10.E*).
- Preserves the existing quasi-public open space and recreation areas owned and maintained by the Montgomery Village Foundation and other Montgomery Village homeowner associations (*Section 4.9.10.C & Section 4.9.10.D*).
- Addresses compatibility between existing and anticipated redevelopment of vacant parcels (*Section 4.9.10.*).

Overall, the Board believes that the proposed overlay zone consistently implements the recommendations of Planning Board Draft Montgomery Village Master Plan which intends to preserve the unique Village character; protect existing open space and conservation areas; and ensure a compatible relationship between new and existing development.

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, January 7, 2016.


Casey Anderson
Chair

CA:GR

Zoning Text Amendment (ZTA) No. 15-12, Overlay Zone - Montgomery Village



Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174



Pamela Dunn, Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

Completed: 12/31/15

Description

ZTA No. 15-12 would establish the Montgomery Village Overlay Zone to implement recommendations of the Planning Board Draft of the Montgomery Village Master Plan.

Summary

Staff recommends approval, as introduced, of ZTA No. 15-12 to create an overlay zone to implement the recommendations of the *Planning Board Draft of the Montgomery Village Master Plan*.

Background/Analysis

On October 22, 2015, the Planning Board unanimously voted to transmit to the County Council the *Planning Board Draft Montgomery Village Master Plan*. In addition to the Master Plan, the Planning Board transmitted an accompanying zoning text amendment for the proposed Montgomery Village Overlay Zone (the subject of ZTA No. 15-12).

The Plan focuses on four themes: preserving the Village's character, maintaining its open spaces, encouraging reinvestment and enhancing connectivity. The Plan made recommendations regarding land use, zoning, transportation, and environment and natural resources. When the new County Zoning Ordinance was adopted in 2014, certain zones, including the Village's Town Sector (TS) Zone, were retained from the previous ordinance, but are to be phased out and replaced through the master plan process. (See Article 59-8, Section 8.1.1.) In accordance with the 2014 Zoning Ordinance, the Montgomery Village Master Plan recommends 15 new zoning categories to replace the Town Sector Zone that currently covers the entire 2,435 acres of Montgomery Village.

In order to preserve and maintain the unique aspects of the Village that are most important to its residents – the residential character and open space system – the Master Plan recommended the

creation of the Montgomery Village Overlay Zone, which would be coterminous with the areas formerly covered by the Town Sector Zone.

The Montgomery Village Overlay Zone (ZTA No. 15-12):

- Addresses anomalies on some properties that will occur as a result of rezoning from the Town Sector Zone to the new zoning categories. Some properties that were built to development standards established during site plan (under the T-S zone) do not exactly match development standards (e.g., front or side setbacks) of their proposed new Euclidean zones. Such properties will be grandfathered since the existing, as-built development standards do not conform to the development standards in the proposed new zones (*Section 4.9.10.E*).
- Allows existing uses that were permitted by right when constructed under the T-S Zone to be grandfathered under the newly proposed zones. If expansion of the use or redevelopment occurs and the particular use is considered a limited or conditional use under the new zone, then the property owner must follow the review requirements for limited or conditional uses allowed (*Section 4.9.10.E*).
- Preserves the existing quasi-public open space and recreation areas owned and maintained by the Montgomery Village Foundation and other Montgomery Village homeowner associations (*Section 4.9.10.C & Section 4.9.10.D*).
- Addresses compatibility between existing and anticipated redevelopment of vacant parcels (*Section 4.9.10.*).

Overall, staff believes that the proposed overlay zone consistently implements the recommendations of *Planning Board Draft Montgomery Village Master Plan* which intends to preserve the unique Village character; protect existing open space and conservation areas; and ensure a compatible relationship between new and existing development. Minor modifications to the draft overlay zone text by the County Council staff prior to introduction of ZTA 15-12 reflect plain language clarifications necessary to implement the numbering system of the Code.

Attachments

1. ZTA No. 15-12 as introduced
2. Map-Proposed Overlay Zone Boundary



MONTGOMERY VILLAGE FOUNDATION, INC.

10120 APPLE RIDGE ROAD
MONTGOMERY VILLAGE, MARYLAND 20886-1000

(301) 948-0110 FAX (301) 990-7071 www.montgomeryvillage.com

January 12, 2016

County Council Hearing on Zoning Text Amendment 15-12, Overlay Zone - Montgomery Village

Testimony of

Dave Humpton **MVF Executive Vice President**

Good Afternoon, President Floreen and Members of the County Council:

I am DAVE HUMPTON, Executive Vice President of the Montgomery Village Foundation.

When John Driscoll, President of the MVF Board of Directors, testified in support of the Master Plan before the Council on December 1st, he explained that MVF supports the RE-1 zoning for MVF's park properties and community centers.

But he also testified that we believe that the Overlay Zone needs to list more recreational park and facility uses that would be clearly permitted, so that we avoid confusion in the future.

MVF wants the flexibility to modify its park and facility uses to accommodate trending activities and changing desires of Village residents, so that we can provide facilities such as dog parks and athletic fields and courts that reflect the recreational needs of our diverse population.

We are just not sure that the language in the Land Use section of the Overlay Zone provides the assurances we need.

Planning staff assures us that the zoning ordinance has a list of features that includes all of the park uses and facilities that we currently have and would need in the future. Section 6.3.3A is the section of the zoning ordinance that they refer us to, which is the section that describes four categories of open space and what can go in them. However, this section does not provide the assurance we are seeking, as we would like each use enumerated within the overlay zone. When we looked at it further, we decided that our property was best defined as "common open space", but

still could not determine what the zoning ordinance allows.

We agree that the overlay zone is the vehicle to define what can be permitted in what we call our parks and community centers, but the dots are not connecting for us as the section is currently written. So let me talk briefly why this ZTA is not ready for Council action:

Section B in the Zoning Text Amendment before you sets out what is permitted. These are all uses that are taken from the Use Table, and our concern is not with the uses that are already listed.

But we envision lots of other uses, and we are concerned that the ordinance does not allow flexibility for future uses which are commonplace in other parks or community centers.

For example: We'd like to potentially provide other activities/uses like:

- A Dog Park

- A Skate Park

- An Ice Skating Rink

We don't know if those would be permitted in the category of Outdoor Recreation and Entertainment Facility.

Similarly, we want be able to re-develop our properties to put in new athletic fields for new games, such as Frisbee golf or even Cricket, as our residents may want. Or new paths or public art installations or tree plantings.

It's not clear to us that we have that right. There's no reference to athletic fields or paths in the Use Table.

The Overlay Zone lets us provide child care programs in our community centers, but we're not clear that we can use them for recreational camps, which we currently operate. We don't know whether we could put in a health club in a community center to provide exercise opportunities for our growing senior population. We need clarification that these uses would be encompassed as Accessory Uses or otherwise.

So we request that before the Council takes up the Overlay Zone again, we could work with Council staff, to ensure that this ordinance is revised to allow for more flexibility to address uses that are not already included in the Use Table and add them into the Overlay Zone. Just like with the county parks, we want to be able to address the current and future needs for our residents without cumbersome processes.

Thank you.

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January 13, 2016

Via E-mail

Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Comments on ZTA 15-12, Overlay Zone - Montgomery Village

Dear President Floreen and Councilmembers:

On behalf of Monument Realty ("Monument"), the owner of the former Montgomery Village Golf Course property, we submit the following comments on ZTA 15-12 (the "ZTA"). We believe that the Montgomery Village Overlay Zone will result in a compatible relationship between new development and the existing development in Montgomery Village and will effectively implement the goals and objectives of the Montgomery Village Master Plan.

After participation in many meetings conducted by the planning staff on the elements of the Master Plan and the overlay zone, we fully support and endorse the land use and zoning that the ZTA will establish, as it conforms the current uses and development standards and fosters the creation of open space and new housing options that can be fully integrated into the Montgomery Village community.

We have provided non-substantive, clarifying suggested revisions to the ZTA, attached.

We have been appreciative of the opportunity to work with Council staff, Planning Staff and the Planning Board on the Montgomery Village Master Plan, and the redevelopment of the former golf course. We look forward to working through any remaining issues with the District Council.

Very truly yours,



Erica A. Leatham

EAL/rdm

DMEAST #24183525 v1

Montgomery County Council
January 13, 2016
Page 2

cc: Yovi Sever
Russell Hines
Pam Frentzel-Beyme
David Humpton
Christopher Hitchens
Josh Sloan
Chanda Beaufort
Larry Brady
Erik Aulestia

A. Purpose

...

B. Land Uses

1. ~~In-On properties in~~ the RE-1 zone, all uses...
2. ~~In-On properties in~~ the RE-1 zone, any of the... [Move to section modifying general requirements, not land uses]
3. ... [Move to a renamed D.4., Approval Procedures]

C. Development Standards and General Requirements

1. On properties in the RE-1 zone, any of the allowed features in open space under Section 6.3.3.A are permitted, except for above-ground utility rights-of-way. (From B., above.)
2. In addition to any other requirements of Division 6.3 and Chapter 50, common and public open space in Montgomery Village must be protected by easement or covenant recorded within a separate lot or parcel by deed or plat approved by the Planning Board with a protective easement or covenant in the land records, in a form approved by the Planning Board. [As originally written, this will be impossible in practice because of restrictions on permitting structures across lot or parcel lines, the creation of streetscapes with public open space – imagine a lot between the right-of-way and the front of your building; common open space surrounded by residential buildings – for example a courtyard for a multi-family building; etc. Not sure why it's necessary because all plans, with minor exceptions, will have a site plan and a record plat that controls open space – see D.2. & 3, below. Should be removed or, at least, modified as noted.]

D. Site Plan and Record Plat [Should be renamed “Approval Procedures”]

1. Site plan approval...
2. Record plats...
3. A certified site plan must show all land designated for open space.
4. An application for a Floating zone on land classified in the RE-1 zone is prohibited.

* * * *