



**Committee:** PH  
**Committee Review:** At a future date  
**Staff:** Livhu Ndou, Legislative Attorney  
**Purpose:** To receive testimony – no vote expected  
**Keywords:** #ClarksburgOverlay #ClarksburgEast  
#ClarksburgWest #EnvironmentalOverlay #TenMileCreek

AGENDA ITEM #7  
January 17, 2023  
**Public Hearing**

## SUBJECT

Zoning Text Amendment (ZTA) 22-12, Overlay Zones – Clarksburg East & West Environmental Overlay – Exemptions

Lead Sponsor: Council President Glass at the Request of the Planning Board

## EXPECTED ATTENDEES

Members of the public

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

## DESCRIPTION/ISSUE

ZTA 22-12 would clarify that any master-planned bikeway located in the Clarksburg East or West Environmental Overlay Zone is exempt from the impervious surface restrictions.

## SUMMARY OF KEY DISCUSSION POINTS

- On April 1, 2014, the County Council approved the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. The Ten Mile Creek Limited Amendment recommended limiting imperviousness, establishing open space requirements for new development both east and west of I-270, and changing development standards of the underlying zones to maximize development flexibility and protect sensitive natural resources.
- The Planning Board believes the intent of the language exempting bikeways from impervious surface limits was to exempt impervious surface restrictions on any publicly-funded roads as well as bikeways identified in the master plan.
- As currently written, the exemption language for bikeways could be read as allowing only publicly-funded bikeways to be exempt from impervious surface restrictions. ZTA 22-12 would clarify that the term “publicly-funded” applies to roadways only.
- ZTA 22-12 also clarifies that the exemption from the impervious surface limits applies to any bikeways depicted in the Bicycle Master Plan.

## This report contains:

|                                           |      |
|-------------------------------------------|------|
| ZTA 22-12                                 | © 1  |
| Planning Board Recommendation, April 2020 | © 5  |
| Planning Staff Memorandum, March 2020     | © 7  |
| County Executive Memorandum, July 2020    | © 32 |

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Zoning Text Amendment No.: 22-12  
Concerning: Zoning Text Amendment  
(ZTA) 22-12, Overlay  
Zones – Clarksburg East  
& West Environmental  
Overlay – Exemptions  
Draft No. & Date: 1 – 12/6/2022  
Introduced: December 13, 2022  
Public Hearing:  
Adopted:  
Effective:

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

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Lead Sponsor: Council President Glass at the Request of the Planning Board

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- clarify that any master-planned bikeway is exempt from the overlay zones' impervious surface restrictions;
- and generally amend the Clarksburg East & West Environmental Overlay Zones.

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

|                |                                                    |
|----------------|----------------------------------------------------|
| Division 4.9.  | “Overlay Zones”                                    |
| Section 4.9.5. | “Clarksburg East Environmental (CEE) Overlay Zone” |
| Section 4.9.6. | “Clarksburg West Environmental (CWE) 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.*

## **OPINION**

## *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:*

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

**Division 4.9. Overlay Zones**

\* \* \*

**Section 4.9.5. Clarksburg East Environmental (CEE) Overlay Zone**

\* \* \*

**B. Exemptions**

1. Any impervious surface lawfully existing under a building permit or sediment control permit issued before August 4, 2014, that exceeds the applicable impervious surface restriction may continue or be reconstructed with the same or less impervious surface area under the development standards in effect when the building permit or sediment control permit was issued.
2. An impervious surface resulting from an addition to an existing detached house or an accessory structure to a detached house, not approved as part of a site plan under Section 7.3.4, is exempt from this Overlay zone's impervious surface restriction.
3. On any lot or parcel with an area less than 2 acres as of January 1, 2014, any development is exempt from this Overlay zone's impervious surface restriction.
4. Impervious surface for any publicly-funded road or any master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlay zone's impervious surface restriction.

\* \* \*

**Section 4.9.6. Clarksburg West Environmental (CWE) Overlay Zone**

\* \* \*

**B. Exemptions**

1. Any impervious surface lawfully existing under a building permit or sediment control permit issued before August 4, 2014, that exceeds the applicable impervious surface restriction may continue or be reconstructed with the same or less impervious surface area under the development standards in effect when the building permit or sediment control permit was issued.
2. An impervious surface resulting from an addition to an existing detached house or an accessory structure to a detached house, not approved as part of a site plan under Section 7.3.4, is exempt from this Overlay zone's impervious surface restriction.
3. On any lot or parcel with an area less than 2 acres as of January 1, 2014, any development is exempt from this Overlay zone's impervious surface restriction.
4. Impervious surface for any publicly-funded road or any master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlay zone's impervious surface restriction.

\* \* \*

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



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

**OFFICE OF THE CHAIR**

April 2, 2020

The Honorable Sidney Katz  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

Re: Planning Board Recommendation to County Council for Introduction of Zoning Text Amendment to amend the Clarksburg East & West Environmental Overlay zones.

Dear Mr. Katz:

On March 26, 2020, by a vote of 5-0, the Planning Board recommended transmitting the attached Zoning Text Amendment (ZTA) to the County Council for introduction. The ZTA would clarify that any master-planned bikeway located in the Clarksburg East & West Environmental Overlay zones is exempt from the overlay zones' impervious surface restrictions.

**Background**

On April 1, 2014, the County Council approved the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (Ten Mile Creek Limited Amendment).

The Ten Mile Creek Limited Amendment recommended limiting imperviousness, establishing open space requirements for new development both east and west of I-270 and changing some development standards of the underlying zones in order to maximize development flexibility and protect sensitive natural resources.

The Amendment also recommended creation of two overlay zones to: establish a 15 percent imperviousness limit on new development east of I-270 (Clarksburg East Environmental Overlay); establish a six percent imperviousness limit west of I-270 (Clarksburg West Environmental Overlay); and not allow any additional imperviousness on County-owned land. Very small properties (less than two acres), additions to houses, and publicly-funded roads and master-planned bikeways were to be exempt from imperviousness limits in the overlay zones. ZTA 14-03 was adopted July 15, 2014, to implement these recommendations.

Since the adoption of ZTA 14-03 creating the two overlay zones, our staff recognized the need for clarification of the overlay zones' provision exempting bikeways from impervious surface caps. The Board believes that the intent of the language was to exempt from the Overlay

zones' impervious surface restriction any publicly funded roads and any bikeways identified in the master plan. As currently written in the Zoning Ordinance, the exemption language for bikeways could be read as allowing only publicly-funded bikeways identified in the master plan to be exempt from the impervious surface restrictions. While the Clarksburg East and West Environmental Overlay Zones' language does mention "publicly-funded roadways or bikepaths," the Board's belief is that "publicly-funded" was meant to apply to roadways only.

A second clarification to the exemption provisions pertains to the overlay zones' language specifically tying the exemption from impervious surface restrictions for bikeways to those locations identified by the Ten Mile Creek Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. The goal of exempting the master-planned bikeways was not to have the impervious surfaces count as part of the development because these paths benefit the entire region, beyond the development.

Although the Bicycle Master Plan was adopted subsequent to the adoption of the Ten Mile Creek Limited Amendment and the two overlay zones, the bikeways in it have the same objective as the bikeways in the Ten Mile Creek Limited Amendment. Therefore, expanding the exemption provisions to include bikeways depicted in the Bicycle Master Plan, meets the goal of exempting bikeways that benefit the region, not just the development. As such, the Planning Board believes that the Zoning Code text should clarify that an exemption from the impervious surface cap should apply to any master-planned bikeway located in the Plan area.

The Planning Board and its staff will be available to assist the Council in the review of the proposed zoning code revisions.

Sincerely,



Casey Anderson  
Chair

CA:GR:aj

Enclosures: Proposed ZTA to amend exemption provisions of the Clarksburg East & West  
Environmental Overlay zones

cc: Planning Board  
Gwen Wright, Director Montgomery Planning  
Tanya Stern, Deputy Director, Montgomery Planning



## Proposed Zoning Text Amendment (ZTA) Overlay Zones – Clarksburg East & West Environmental Exemptions

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GR

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

JS

Jason Sartori, Chief, FP&P, [jason.sartori@montgomeryplanning.org](mailto:jason.sartori@montgomeryplanning.org), 301-495-2172

Completed: 03/19/20

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### Description

The proposed Zoning Text Amendment (ZTA) would amend the Zoning Ordinance (Chapter 59) to clarify that any master-planned bikeway located in the Clarksburg East & West Environmental Overlay zones is exempt from the overlay zones' impervious surface restrictions.

### Summary

**Staff recommends approval to transmit the proposed Zoning Text Amendment to the County Council for introduction.**

### Background/Analysis

On April 1, 2014, the County Council approved the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (Ten Mile Creek Limited Amendment).

The Ten Mile Creek Limited Amendment recommended limiting imperviousness, establishing open space requirements for new development both east and west of I-270 and changing some development standards of the underlying zones in order to maximize development flexibility and protect sensitive natural resources.

The Amendment also recommended creation of two overlay zones: to establish a 15 percent imperviousness limit on new development east of I-270 (Clarksburg East Environmental Overlay); a six percent imperviousness limit west of I-270 (Clarksburg West Environmental Overlay); and no additional imperviousness on County owned land. Very small properties (less than two acres), additions to houses, and publicly-funded roads and master-planned bikeways were to be exempt from imperviousness limits in the overlay zones. ZTA 14-03 was adopted July 15, 2014, to implement these recommendations.

### Proposed ZTA

Since the adoption of ZTA 14-03 creating the two overlay zones, staff recognized the need for clarification of the overlay zones' provision exempting bikeways from impervious surface caps. **Staff believes that the intent of the language was to exempt from the Overlay zones' impervious surface restriction any publicly funded roads and any bikeways identified in the master plan.** As currently

written in the Zoning Ordinance, the exemption language for bikeways could be read as allowing only publicly-funded bikeways identified in the master plan to be exempt from the impervious surface restrictions. While the Clarksburg East and West Environmental Overlay Zones' language does mention "publicly-funded roadways or bikepaths," staff's belief is that "publicly-funded" was meant to apply to roadways only. The Ten Mile Creek Limited Amendment discusses bikepaths on page 52, where it says: "On the east side of I-270, all properties in Ten Mile Creek, except those in the Historic District, would be within an overlay zone, with exemptions for State and County roads and bikeways." The master plan doesn't mention a bikeway needing to be publicly-funded for it to be exempt.

To further corroborate staff's assertion, the "Action" memorandum accompanying the adoption of the Overlay zones (ZTA 14-03) dated July 11, 2014 (see Attachment 2), provides several comments, consistent with the intent as depicted by staff. On page 6, the memo breaks down each specific public use that was contemplated as being exempted from impervious limits. "Publicly-funded roads" is separated out as its own use. "Bikeways" is another use. Here the publicly-funded language is used only in reference to roads, not bikeways, and it goes on to say that the PHED Committee "recommended retaining the exemption for master planned bikeways." It does make sense for publicly-funded roads to be called out as its own category to clarify that developers needing to improve roads to accommodate their specific development requirements would not be able to utilize an exemption for those improvements.

**A second clarification to the exemption provisions (as recommended by staff) pertains to the overlay zones' language specifically tying the exemption from impervious surface restrictions for bikeways to those locations identified by the Ten Mile Creek Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area.** The goal of exempting the master-planned bikeways was not to have the impervious surfaces count as part of the development because these paths benefit the entire region, beyond the development. It did not exempt required road improvements such as acceleration/deceleration lanes because of their necessity specific to a development. Although the adoption of the Bicycle Master Plan was subsequent to the adoption of the Ten Mile Creek Limited Amendment and the two overlay zones, it has the same objective as the bikeways in the Ten Mile Creek Limited Amendment. Therefore, expanding the exemption provisions to include bikeways depicted in the Bicycle Master Plan, meets the goal of exempting bikeways that benefit the region, not just the development. As such, **staff believes that the text should clarify that an exemption from the impervious surface cap should apply to any master-planned bikeway located in the Plan area.**

Below is the proposed language clarification included in the "exemption" provisions of both overlay zones:

Impervious surface for any publicly funded road or any master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlay zone's impervious surface restriction.

## Conclusion

Staff recommends that the Planning Board transmit to the County Council for introduction the proposed ZTA, to clarify that any master-planned bikeway located in the Clarksburg East & West Environmental Overlay zones is exempt from the overlay zones' impervious surface restrictions.

**Attachments**

1. Proposed ZTA-Overlay Zones – Clarksburg East & West Environmental Exemptions
2. July 11, 2014, County Council Memorandum adopting ZTA 14-03

## ATTACHMENT 1

Zoning Text Amendment No.: 20-\*\*  
Concerning: Overlay Zones –  
                  Clarksburg East & West  
                  Environmental  
                  Exemptions  
Draft No. & Date: 1 – 3/18/20  
Introduced:  
Public Hearing:  
Adopted:  
Effective:

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

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Lead Sponsor:

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- Clarify that any master-planned bikeway is exempt from the overlay zones' impervious surface restrictions

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

|                |                                                    |
|----------------|----------------------------------------------------|
| ARTICLE 59-4.  | “Development Standards for Euclidean Zones”        |
| Section 4.9.5. | “Clarksburg East Environmental (CEE) Overlay Zone” |
| Section 4.9.6. | “Clarksburg West Environmental (CWE) 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.*

## OPINION

*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:*

**Sec. 1. ARTICLE 59-4 is amended as follows:**

**DIVISION 4.9. Overlay Zones**

\* \* \*

**Section 4.9.5. Clarksburg East Environmental (CEE) Overlay Zone**

\* \* \*

**B. Exemptions**

1. Any impervious surface lawfully existing under a building permit or sediment control permit issued before August 4, 2014 that exceeds the applicable impervious surface restriction may continue or be reconstructed with the same or less impervious surface area under the development standards in effect when the building permit or sediment control permit was issued.
2. An impervious surface resulting from an addition to an existing detached house or an accessory structure to a detached house, not approved as part of a site plan under Section 7.3.4, is exempt from this Overlay zone's impervious surface restriction.
3. On any lot or parcel with an area less than 2 acres as of January 1, 2014, any development is exempt from this Overlay zone's impervious surface restriction.
4. Impervious surface for any publicly funded road or any master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlay zone's impervious surface restriction.

\* \* \*

**Section 4.9.6. Clarksburg West Environmental (CWE) Overlay Zone**

\* \* \*

**B. Exemptions**

1. Any impervious surface lawfully existing under a building permit or sediment control permit issued before August 4, 2014 that exceeds the applicable impervious surface restriction may continue or be reconstructed with the same or less impervious surface area under the development standards in effect when the building permit or sediment control permit was issued.
2. An impervious surface resulting from an addition to an existing detached house or an accessory structure to a detached house, not approved as part of a site plan under Section 7.3.4, is exempt from this Overlay zone's impervious surface restriction.
3. On any lot or parcel with an area less than 2 acres as of January 1, 2014, any development is exempt from this Overlay zone's impervious surface restriction.
4. Impervious surface for any publicly funded road or any master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlay zone's impervious surface restriction.

\* \* \*

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

This is a correct copy of Council action.

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Selena Mendy Singleton, Esq.  
Clerk of the Council

# Attachment 2

AGENDA ITEM #6B  
July 15, 2014

## Action

### MEMORANDUM

July 11, 2014

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action – Zoning Text Amendment 14-03, Overlay Zone – Clarksburg

On July 10, the Planning, Housing, and Economic Development Committee recommended approval of ZTA 14-03 with the following revisions:

- Exempt septic development from the requirement for site plan.
- Remove the requirement for the 30 percent building coverage limit for R-90 zoned property.
- Define open space as “rural open space”, which retains the most natural features.
- Allow an exemption only for publicly funded and master planned roads and bikeways.
- Delete the exemption for paths, trailheads, and associated parking.
- Allow a public utility facility on County owned land.

The Committee considered and rejected reducing the exemption for small lots from 2 acres to 1 acre (2-1, Councilmember Elrich opposed).

### BACKGROUND

Zoning Text Amendment (ZTA) 14-03, sponsored by Council President Rice at the request of the District Council, was introduced on April 8, 2014.

The Council’s April 1, 2014 approval of the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (the Plan) recommended the approval of floating zones for the Ten Mile Creek area. ZTA 14-03 would create the zones recommended by that Plan.<sup>1</sup> The approval of ZTA 14-03 will allow the approval of a Sectional Map Amendment consistent with the Plan’s recommendations.

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

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

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

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

A public hearing on ZTA 14-03 was held on May 13, 2014. The Planning Board recommended approval of ZTA 14-03 with amendments (see © 9-18). The Audubon Naturalist Society spoke generally in favor of the ZTA, but would not have exemptions for new development of any public facility. The Society favors the Planning Board waiver process in place for Upper Paint Branch rather than exemptions (see © 23-24). One representative of several landowners spoke in favor of the public utility exemption recommended by the Planning Board (see © 25-26). The representative of the Egan property had a variety of concerns (see © 27-29). The representative of the Hammer Hill property objects to the Planning Board revisions that would only exempt existing development on parcels smaller than 2 acres (see 30-35).

## ISSUES

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

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

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

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

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#### Overlay Zones

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

*The Committee agreed that removing building coverage as a development standard is appropriate where the concern is for total impervious surface.*

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

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

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

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

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

Recreational facilities in the rural open space are limited to trails and related amenities or other facilities recommended in the master plan. The following classes of uses are not permitted in the rural open space area. The exceptions noted in subsections (d) and (f) are not excluded from this area; they are permitted by right or special exception, as stated in section 59-C-9.3:

- (a) Agricultural-industrial;
  - (b) Agricultural-commercial;
  - (c) Resource production and extraction;
  - (d) Residential, with the following exceptions:
    - a one-family detached dwelling located on a lot, 10 acres or greater in size, that contributes to the overall total of rural open space, and is a logical extension of the existing open space area;
    - accessory apartment that is part of a one-family detached dwelling located on a lot, 10 acres or greater in size, that contributes to the overall total of rural open space;
    - a farm tenant dwelling in existence prior to application of the Rural Neighborhood Cluster zone, or a structure converted to a farm tenant dwelling included as part of a historic site designated in the Historic Master Plan;
    - a one family semidetached dwelling and townhouse as part of a moderately-priced dwelling unit development;
  - (e) Commercial; and
  - (f) Services, except a home occupation associated with an otherwise permitted residential use.
- 59-C-9.574. Optional method of development.

\* \* \*

- (h) Rural open space design guidelines.
  - (1) Rural open space should be a contiguous area and be located and designed to:
    - (A) Protect rural features and other sensitive areas identified in the applicable master or sector plan;
    - (B) Maximize common boundaries with rural open space on adjacent tracts where recommended in the applicable master or sector plan, or as otherwise required by the Planning Board.
  - (2) Rural open space must comprise a sizeable contiguous area must be within a range of 65 percent to 85 percent of the tract area and must be consistent with the recommendations and guidelines of the applicable master plan. When a property includes rights-of-way for roads classified as major highways or freeways, rural open space is calculated on the net tract area by deducting those rights-of-way from the gross area of the property. The Planning Board may approve a minor variation in the master plan-recommended rural open space if the Board finds that the variation would retain both the quality and character of the open space as set forth in the guidelines of the master plan.
  - (3) Rural open space may be managed and maintained but may be modified to improve its appearance, function or overall condition by using the following techniques:
    - (A) Reforestation
    - (B) Woodland management
    - (C) Meadow management

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

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

As introduced, ZTA 14-03 would exempt from the impervious surface area limit: 1) pre-existing impervious surface; 2) additions to existing one-family dwellings; 3) development on existing lots or parcels 2 acres in size or smaller; and 4) publicly funded roads, bikeways, paths, driveways, or parking areas. (The Planning Board recommended adding public utilities and modifying the parking exemption so that it only applied to trailhead parking.) The Audubon Naturalist Society recommended using the Planning Board waiver provisions established in the Upper Paint Branch Overlay zone for a narrower class of properties than ZTA 14-03 as introduced would exempt.<sup>4</sup>

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

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(D) Stream bank protection

(E) Non-structural stormwater best management practices as defined by the most recent edition of the Maryland Stormwater Design Manual adopted for use by Montgomery County.

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

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

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

<sup>5</sup> Approved Plan:

The Clarksburg East Environmental Overlay Zone

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

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

removing existing pavement off-site at considerable public expense in some cases for some public projects.

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

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

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

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

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

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

#### **Public uses**

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

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

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

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

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

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

\* \* \*

### ***Publicly funded roads***

The MD 355 bypass is the only Plan-recommended new road in the area covered by the proposed overlay zones. (The impervious surface for the roadway was assumed in the Plan's impervious surface analysis.) The bypass could be 2 lanes and a transitway within a 130-foot minimum right-of-way. Assuming 12 feet for each traffic lane and 10 feet for each transit lane, the proposed travel ways would cover 44 feet within the right-of-way (34 percent of the right-of-way without sidewalks or bike accommodations). In the absence of an exemption (or a waiver), a right-of-way of 293 feet (or an equivalent land area in the overlay zone) would be required to assure that the roadway would not exceed 15 percent impervious surface.

*The Committee recommended retaining the exemption for master planned publicly funded roads.*

### ***Bikeways***

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

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

*The Committee recommended retaining the exemption for master planned bikeways.*

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

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

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(d) Condition of approval.

\* \* \*

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

the neighborhood parks. Their intent is to put the public on notice that trailheads are planned and may be put on current or future parkland.

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

Staff notes that Parks Department staff may wish to discuss this revision with the full Council.

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

An exemption for public utilities was recommended by the Planning Board after it became aware of the need for a 4,000 square foot Potomac Edison substation that may need to be on public land to service development to the south. This exemption was not in ZTA 14-03 as introduced. To the contrary, County owned land in Clarksburg West would be prohibited from adding any impervious surface under ZTA 14-03 as introduced.<sup>7</sup>

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

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

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

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

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

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

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

*The Committee recommended retaining the 2 acre exemption as introduced.*

| <u>This Packet Contains</u>              | <u>© number</u> |
|------------------------------------------|-----------------|
| ZTA 14-03 with staff recommended changes | 1 – 10          |
| Planning Board recommendation            | 11 – 20         |
| Planning Staff recommendation            | 21 – 24         |
| Audubon Naturalist Society               | 25 – 26         |
| Utility facility                         | 27 – 28         |
| Egan property                            | 29 – 31         |
| Hammer Hill property                     | 32 – 37         |
| Waivers in practice                      | 38 – 40         |

F:\Land Use\ZTAS\ZYONTZ\2014 ZTAs\ZTA 14-03 Overlay zones - Clarksburg\ZTA 14-0 Council action July 15.doc

Zoning Text Amendment No.: 14-03  
Concerning: Overlay Zone –  
                  Clarksburg  
Draft No. & Date: 3 – 7/10/14  
Introduced: April 8, 2014  
Public Hearing: May 13, 2014  
Adopted:  
Effective:  
Ordinance No.:

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

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By: Council President at the request of the District Council

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- Creating an overlay zone for Clarksburg East; and
- Creating an overlay zone for Clarksburg West.

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

DIVISION 59-C-18.                   “OVERLAY ZONES.”

By adding new sections:

Section 59-C-18.25.               “Clarksburg East Environmental Overlay Zone.”  
Section 59-C-18.26.               “Clarksburg West Environmental Overlay Zone.”

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

## OPINION

Zoning Text Amendment No. 14-03 was introduced on April 8, 2014.

The Council's April 1, 2014 approval of the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (the Plan) recommended the approval of floating zones for the Ten Mile Creek area. ZTA 14-03 would create the zones recommended by that Plan. The approval of ZTA 14-03 will allow the approval of a Sectional Map Amendment consistent with the Plan's recommendations.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved with amendments.

A public hearing on ZTA 14-03 was held on May 13, 2014. The Audubon Naturalist Society spoke generally in favor of the ZTA, but would not have exemptions for new development of any public facility. The Society favors the Planning Board waiver process in place for Upper Paint Branch rather than exemptions. One representative of several landowners spoke in favor of the public utility exemption recommended by the Planning Board. The representative of the Egan property had a variety of concerns. The representative of the Hammer Hill property objects to the Planning Board revisions that would only exempt existing development on parcels smaller than 2 acres.

The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on July 10, 2014 to review the amendment. The Committee recommended approval of ZTA 14-03 with the following revisions:

- Exempt septic development from the requirement for site plan.
- Remove the requirement for the 30 percent building coverage limit for R-90 zoned property.
- Define open space as "rural open space", which retains the most natural features.
- Allow an exemption only for publicly funded and master planned roads and bikeways.
- Delete the exemption for paths, trailheads, and associated parking.
- Allow a public utility facility on County owned land.

The Committee considered and rejected reducing the exemption for small lots from 2 acres to 1 acre.

The District Council reviewed Zoning Text Amendment No. 14-03 at a worksession held on July 15, 2014 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 14-03 will be approved as amended.

*ORDINANCE*

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

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

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

3       \* \* \*

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

5       **59-C-18.251. Purpose.**

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

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

17       **59-C-18.252. Procedure for approval.**

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

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

**(a) Land Use.**

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

**(b) Development standards.**

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

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

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

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

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

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

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

70                   **59-C-18.254. Exemptions from impervious surface area restrictions.**

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

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

- (c) [[Impervious surfaces associated with development on]] On any lot or parcel with an area less than 2.0 acres as of January 1, 2014 [[are]], any development is exempt from this overlay zone's impervious surface restriction.
- (d) Impervious surface for any publicly funded road[[,]] or bikeway [[, path, driveway, or parking area]] identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area is exempt from this overlay zone's impervious surface restriction.

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

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

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

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

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

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

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

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

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

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

(a) Land Use.

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

(b) Development standards.

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

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

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

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

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

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

- (a) Any impervious surface lawfully existing under a building permit or sediment control permit issued before {EFFECTIVE DATE} that exceeds the applicable impervious surface restriction may continue or be reconstructed with the same or less impervious surface area under the

development standards in effect when the building permit or sediment control permit was issued.

- (b) [[Any]] An impervious surface [[not approved as part of a site plan under Section 59-D-3]] resulting from an addition to an existing one-family residential dwelling or an accessory structure to a one-family dwelling, not approved as part of a site plan under Section 59-D-3, is exempt from this overlay zone's impervious surface restriction.
- (c) [[Impervious surfaces associated with development on]] On any lot or parcel with an area less than 2.0 acres as of January 1, 2014 [[are]], any development is exempt from this overlay zone's impervious surface restriction.
- (d) Impervious surface for any publicly funded road[[,]] or bikeway[[, path, driveway, or parking area]] identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area is exempt from this overlay zone's impervious surface restriction.

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

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

**MEMORANDUM**

Marc Elrich  
*County Executive*

July 30, 2020

TO: Montgomery County Council

FROM: Marc Elrich, County Executive 

RE: Proposed ZTA to amend the Clarksburg Environmental Overlay Zones

When I learned that the Planning Board was sending a proposal to councilmembers seeking to amend the Clarksburg Environmental Overlay Zones, I asked the Department of Environmental Protection to evaluate the proposed ZTA and its potential effects on the Ten Mile Creek watershed. Their response, attached, strongly recommends maintaining the levels of imperviousness within the caps set in the Overlay Zones adopted in 2014.

DEP played a crucial role in assessing the environmental impacts of development in this high-quality benchmark stream system in 2014. The Department joined a broad coalition of environmental organizations, federal and state government staff, and independent consultants retained by M-NCPPC in gathering and analyzing scientific data obtained from long-term monitoring programs around the country and in Montgomery County, including multiple monitoring sites throughout Ten Mile Creek. When the evidence clearly established the fact that greater levels of imperviousness led to greater harm to the health of a watershed, the coalition recommended several protection measures for Ten Mile Creek, including impervious caps for the most sensitive subwatersheds. The County Council unanimously adopted these recommendations in the Ten Mile Creek Limited Amendment and the Clarksburg East and West Overlay Zones.

DEP's memo challenges the Planning Board's assertion that the changes proposed to the overlay zones are mere clarifications. Page 2 of the memo cites language in ZTA 14-03 Overlay Zone – Clarksburg (attached) that clearly states only bikeways identified in the Ten Mile Creek Limited Amendment are exempt from the impervious limits adopted in the overlay zones. This was intentional language, and the attempt to "clarify" it now to allow exemption of master-planned bikeways not identified in the Limited Amendment is a marked policy change, not a clarification. A fair reading of ZTA 14-03 provides further evidence of Council's clear intent. The "Opinion" page provides background on the Council's actions, stating that prior to adopting the overlay zones, councilmembers voted to delete proposed exemptions for paths, trailheads, and associated parking (see lines 86-90 of the East Overlay Zone and lines 173-177 of the West Overlay Zone). In addition, lines 128-131 say "County owned land or land under a conservation easement granted to the benefit of the County that is not managed as parkland by M-NCPPC may not add any impervious surface." The Council was well aware of the regional benefits of bikeways and other uses. Yet when faced with competing benefits, the Council chose to strictly limit imperviousness in critical areas of Ten Mile Creek, even on county owned land. This extraordinary commitment to water quality in Ten Mile Creek was subsequently successfully defended in court.

In 2014, the Planning Board and its consultants strongly supported the science-based limitations of 6% imperviousness in the Overlay West and 15% in the Overlay East. DEP's reevaluation memo concludes there is no new information to warrant altering those caps. To the contrary, the chart on page 4 shows the dramatic increase in imperviousness that will occur even with these caps in place, pointing out that the two most sensitive subwatersheds, will see impervious levels increase by 300% – 500%. It cites new research on the Clarksburg Special Protection Area from the US Geological Survey, the University of Maryland, and US Environmental Protection Agency that has further reinforced the conclusion that even with Environmental Site Design (ESD) and Best Management Practices (BMPs) now being utilized in the watershed, stream conditions continue to deteriorate after development. DEP's conclusion is that further weakening of the caps will lead to even greater degradation.

There is no reason to set up a false choice between bikeways and clean water. On the one hand, we recognize the environmental and health benefits of biking on paths that protect cyclists' safety. On the other, we recognize the importance of protecting an extremely high-quality stream system that feeds into a major regional backup water supply and into an aquifer that provides water for the Agricultural Reserve's farmers and residents. We can do both – see DEP's recommendations to upgrade existing bikeways, use permeable pavements for the construction/reconstruction of bikeways, and update the "Guidelines for Environmental Management of Development in Montgomery County" to require developers to include bikeways' impervious surfaces in development calculations.

I urge you to read the attachments, and I hope you conclude that the Planning Board's proposed zoning text amendment should not be introduced by the County Council. It would reward developers who want maximum buildout to achieve that by allowing them to exceed the Ten Mile Creek impervious caps at the expense of a years-long effort to protect water quality in the last best stream in Montgomery County.

ME/ci

c: Jeffrey L. Zyontz, Senior Legislative Analyst



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Marc Elrich  
County Executive

Adam Ortiz  
Director

MEMORANDUM

July 10, 2020

TO: Marc Elrich, County Executive

FROM: Adam Ortiz, Director   
Department of Environmental Protection

SUBJECT: Evaluation and Recommendation of Proposed ZTA to amend the  
Clarksburg Environmental Overlays

**Purpose:** The purpose of this memorandum is to present DEP's review of the recommended amendment by the Planning Board to the Clarksburg East and West Environmental Overlay zones. In order to maintain the environmental protections implemented for the Ten Mile Creek Special Protection Area (SPA), the impervious surface caps must be maintained at the levels approved for the Clarksburg East and West Environmental Overlay zones with no exceptions for any master planned bikeways. All master planned bikeways proposed by private developers for public use must be included in the overall impervious surface determination for each developable parcel and should not exceed the impervious surface cap.

Expert and peer reviewed literature and local monitoring data have continued to indicate that increased impervious surface results in degraded stream conditions. Including all master planned bikeways in the impervious area cap ensures that the purpose of the Clarksburg Overlay Zones to protect the water quality, quantity, habitat, and biological diversity of Ten Mile Creek watershed and its tributaries are addressed. Additionally, all bikeways proposed (publicly or privately funded) should be constructed using alternative surfaces such as permeable pavements.

**Background:** Ten Mile Creek is a reference stream in Montgomery County, meaning that it serves as a high-quality benchmark against which other streams are compared. The complete watershed and ecosystem are made up of approximately 3,000 acres, 12 subwatersheds, and more than 22 miles of streams, tributaries, and drainage areas. Its headwaters, springs, seeps, and tributaries drain into Little Seneca Lake in Clarksburg. It is the cleanest source of water flowing into the lake, which serves as the DC region's only nearby emergency backup drinking water supply.

In 2014, the County Council assessed the environmental impacts of development in Clarksburg to determine whether further development could move forward in the most environmentally sensitive areas of the watershed, which had been the subject of extensive long-term monitoring by DEP. The Council conducted a months-long science-based review of DEP's monitoring results as well as verbal and written testimony from environmental organizations, federal, state, and local government staff, and independent consultants retained by M-NCPPC. On the basis of

the evidence that impervious surfaces are a leading cause of degradation to water resources, the Council adopted the Ten Mile Creek Area Limited Amendment designating the watershed as a Special Protection Area, stating the following on page 14: "As a result of its unique characteristics, Ten Mile Creek warrants extraordinary protection." Chief among the additional protections were overlay zones that capped impervious surfaces within the watershed. The Eastern overlay zone (east of I-270) capped new impervious surface at 15%, while the western overlay zone (west of I-270) cap was set at 6%. Page 17 of the Limited Amendment states: "Restricting imperviousness, combined with ESD and development at or near ridgelines and away from stream channels, provides the best chance of protecting these streams."

**Analysis:** On March 26th, the Planning Board approved a proposal from their staff to amend the Clarksburg East and West Environmental Overlay Zones to exempt all master-planned bikeways from the overlay zones' impervious surface restrictions. The overlay zones were adopted in 2014 along with the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan.

The proposed amendment is seeking to "clarify" the intent of language in the overlay zones that limits exemptions to public roadways and bikeways identified in the Plan. The language in the approved and adopted overlay zones (Sections 4.9.5 and 4.9.6 of ZTA 14-03) is as follows:

"Impervious surface for any publicly funded road or bikeways identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area is exempt from this Overlay zone's impervious surface restriction."

The proposed ZTA revises this sentence as follows:

"Impervious surface for any publicly funded road or any master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlay zone's impervious surface restriction."

The proposal by the Planning Board will amend the overlay zones to allow exemptions not only for bikeways identified in the Ten Mile Creek Limited Amendment (as specified in the Overlay language) but also those identified in the Bicycle Master Plan adopted subsequent to the Limited Amendment and overlay zones. MNCPPC Staff believes it was the intent of the Amendment to allow any master-planned bikeways, whether or not it was identified in the original Amendment. Exempting all master planned bikeways could significantly increase the impervious surface in the Ten Mile Creek SPA, which may result in an exceedance of the established impervious area caps in the East and West Overlays. The impervious area cap was put in place to prevent degradation to streams from development. The purpose of the Clarksburg East and West Environmental Overlay Zone is to:

1. Protect the water quantity, water quality, habitat, and biological diversity of the Ten Mile Creek watershed and its tributaries;
2. Regulate the amount and location of impervious surfaces to maintain levels of groundwater, control erosion and water temperature, and retain as many of the functions provided by natural land as possible;
3. Regulate development that could adversely affect this high-quality stream system; and
4. Implement the recommendations of the 2014 Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area.

The Department of Environmental Protection's (DEP) monitoring programs, as well as a number of other analyses around the country, have established the basic relationship that the greater the level of imperviousness, the greater the harm to the health of the watershed (Figure 1.)

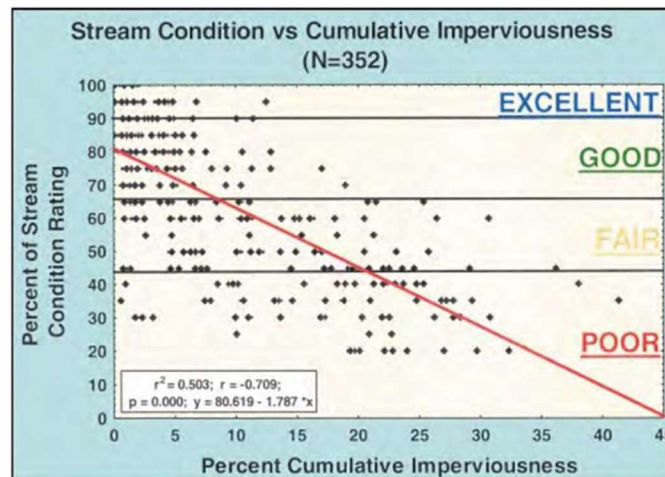


Figure 1. Stream Conditions vs. Cumulative Impervious Surface (by percent of watershed). Data provided by Montgomery County DEP

Several fundamental conclusions can be drawn from the analysis by these experts:

- There is a relationship between the amount of development in a watershed and the condition of the watershed. As a general rule, more development leads to greater degradation of the water resources.
- This effect is more pronounced in areas with low levels of preexisting development. The negative effect of small increases in development activity in these areas is much more significant relatively than the effects that occur in areas where there is already greater amount of preexisting development. The sensitive aquatic species and critical environmental habitat in essentially undisturbed watersheds are affected by small levels of development. Once a certain level of development occurs, the most sensitive species and critical habitat are significantly affected, and the habitat and sensitive species are lost.

The Maryland National Park and Planning Commission environmental analysis focused on those parcels within the study area most likely to undergo the most significant conversion from existing uses. These include portions of the Pulte Corporation parcels which are within the most sensitive subwatersheds of LSTM110 and LSTM111 (also within the Western Overlay). As pointed out on page 41 on the Approved and Adopted Ten Mile Creek Area Limited Amendment<sup>1</sup>.

"The subwatersheds that would be affected by building out these properties are largely undeveloped, have high overall stream quality, and support many sensitive species. Any development of these properties will have a negative impact on stream quality. It is on these properties that preserving more undeveloped and forested open space can, along with Environmental Site Design, limit the impact of development on water quality."

The DEP agrees that the largest changes in stream biology are likely to occur in tributaries LSTM110 and LSTM111, which currently have high quality stream conditions and the community of organisms that are very sensitive to changes in those conditions as land use changes. The downstream, main stem portions may not exhibit the same range of changes. As shown in the figure 2, LSTM110 and LSTM111 have by far the lowest level of existing impervious cover, as well as the greatest percent increase in imperviousness under the proposed development options.

Furthermore, the environmental information provided by DEP and other experts during the 2014 Council Committee hearings confirmed that it was appropriate to reduce the level of development outlined in the 1994 Plan on all subwatersheds in Ten Mile Creek to a level that will reduce the impact develop will have the subwatershed, as follows:

LSTM110/LSTM111—These subwatersheds currently have the least impervious (1.6% and 1.2 % respectively). The accepted overlay's cap of 6% across the development property could increase the impervious surface by more than 300% for LSTM110 and 500% for LSTM111. While 6% is a relatively small amount of impervious, environmental experts suggest it is necessary to reduce the negative impacts to stream conditions. Exempting bikeways from this calculation will increase the amount of impervious area, thereby leading to greater degradation of the watershed beyond the Council approved impervious cap.

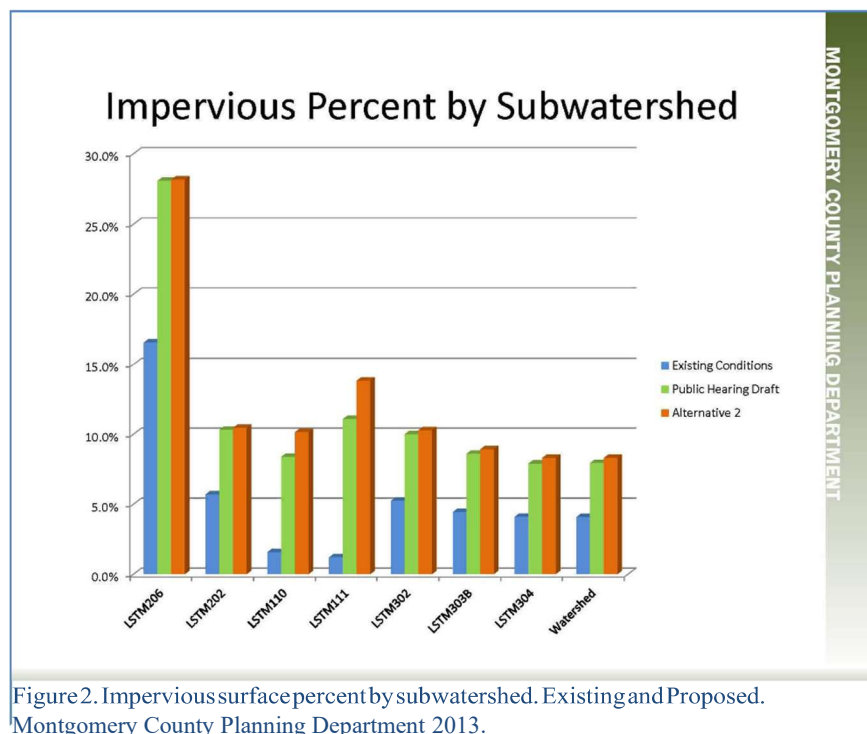


Figure 2. Impervious surface percent by subwatershed. Existing and Proposed.  
Montgomery County Planning Department 2013.

LSTM 201/LSTM 206 – These subwatersheds have greater levels of existing development, and some environmental features in these areas have already been affected by development and agricultural activities. In particular, portions of LSTM 206 were affected by earlier stages of Clarksburg development, and the overall level of existing imperviousness is the highest in the Ten Mile Creek watershed at 16.6%. The accepted Eastern Overlay Zone approach of applying a 15% imperviousness limit will increase the relative percentage level of imperviousness in these

subwatersheds by 67% and 42%, respectively, under the recommendations by Council in 2014.

Exempting bikeways from this calculation will increase the amount of impervious area, thereby leading to greater degradation of the watershed beyond the Council approved impervious cap.

Recent expert communications and presentations, peer reviewed literature, and local monitoring data have continued to indicate increased impervious surface results in degraded stream conditions, as was presented in the Ten Mile Creek Environmental Analysis Final Report in 2013<sup>2</sup>. New research on the Clarksburg SPA from USGS, University of Maryland, and US EPA has further reinforced the conclusion that even with ESD, high densities of stormwater management BMPS, and stream restoration, stream conditions continue to deteriorate after development. (Hopkins et al 2017, Hopkins et al 2020, Hilderbrand and Utz 2015, Wozniki et al 2018)

Recommendation: In order to maintain the environmental protections implemented under the Ten Mile Creek SPA, the impervious surface caps must be maintained at the levels approved for the Clarksburg East and West Environmental Overlay zones with no exceptions for any master planned bikeways. Any master planned bikeways proposed by private developers for public use must be included in the overall impervious surface determination for each developable parcel and should not exceed the impervious surface cap. Expert and peer reviewed literature, and local monitoring data have continued to indicate increased impervious surface results in degraded stream conditions. Including all master planned bikeways in the impervious area cap ensures that the purpose of the Clarksburg Overlay Zones to protect the water quality, quantity, habitat, and biological diversity of Ten Mile Creek watershed and its tributaries are addressed. Additionally, all bikeways proposed (publicly or privately funded) should be constructed using alternative surfaces such as permeable pavements.

Update the “Guidelines for Environmental Management of Development in Montgomery County” to require developers to include bikeways' impervious surface in development calculations. As with turn lanes and sidewalks, bikeways should be included in impervious surface area calculations for developable parcels. (see Section G.4, Guidelines for Calculating Impervious Areas Where Limits Apply, Page 26 in the Guidelines for Environmental Management of Development in Montgomery County<sup>3</sup>).

DEP reviewed the County’s Bicycle Master Plan. While impervious surface negatively affects water quality, it is important to acknowledge cyclists' safety and environmental benefits of bikeways. By reviewing pertinent Planning Board documents including the “Montgomery County Bicycle Master Plan,” the “Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan,” and several others, DEP has developed recommendations that would both protect water quality and allow for the existence of bikeways.

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[https://www.montgomeryplanning.org/community/plan\\_areas/I270\\_corridor/clarksburg/documents/Appendix%203%20TMC\\_Env\\_Analysis\\_Final\\_Report\\_070313.pdf](https://www.montgomeryplanning.org/community/plan_areas/I270_corridor/clarksburg/documents/Appendix%203%20TMC_Env_Analysis_Final_Report_070313.pdf)

<sup>3</sup> <https://montgomeryplanning.org/wp-content/uploads/2017/11/GuidelinesEnvironmentalManagement2000ocr300.pdf>

#### Western Overlay Zone

- Exceptions to this overlay zone are unnecessary. There is a separated bikeway on the east side of Clarksburg Road that runs the length of the SPA. Utilizing or upgrading this bikeway would prevent the need from any additional impervious in the Western Overlay Zone.

#### Eastern Overlay Zone

- Separated bikeway along Frederick Road could be moved to the other side of the street to reduce impervious draining to TMC. (Frederick Road is the watershed boundary for a portion of the NE boundary of the watershed. All bikeways proposed should be constructed using alternative surfaces such as permeable pavements.
- A cap of 15% impervious on new development is already very high, and damage to the headwater streams found in the Eastside Overlay Zone is likely, as well as negatively impacting the mainstem. With the cap only being applied to new development the net subwatershed impervious will far exceed the 15% cap. Streams with 15% impervious in their watersheds are generally in “Fair” condition, while streams with over 21% impervious generally fall into the “Poor” category (see Figure 2). All bikeways proposed should be constructed using alternative surfaces such as permeable pavements.

#### Work Cited

Hopkins, K.G., A.S. Bhaskar, S.A. Woznicki, R.M. Fanelli. 2020. Changes in event-based streamflow magnitude and timing after suburban development with infiltration-based stormwater management. *Hydrological Processes*, 34 (2): 387-403. <https://doi.org/10.1002/hyp.13593>.

K.G. Hopkins, J. Loperfido, L.S. Craig, G.B. Noe, D.M. Hogan 2017. Comparison of sediment and nutrient export and runoff characteristics from watersheds with centralized versus distributed stormwater management. *J. Environ. Manag.* 203 (2017), pp. 286-298

RH Hilderbrand, RM Utz Ecological thresholds and resilience in streams Rivers–Physical, fluvial and environmental processes, 2015

Woznicki, SA, Hondula, KL, Jarnagin, ST. Effectiveness of landscape-based green infrastructure for stormwater management in suburban catchments. *Hydrological Processes*. 2018; 32: 2346–2361. <https://doi.org/10.1002/hyp.13144>://doi.org/10.1002/hyp.1314

Ordinance No.: 17-46  
Zoning Text Amendment No.: 14-03  
Concerning: Overlay Zone –  
                    Clarksburg  
Draft No. & Date: 4 – 7/15/14  
Introduced: April 8, 2014  
Public Hearing: May 13, 2014  
Adopted: July 15, 2015  
Effective: August 4, 2014

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

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By: Council President at the request of the District Council

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- Creating an overlay zone for Clarksburg East; and
- Creating an overlay zone for Clarksburg West.

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

DIVISION 59-C-18.           “OVERLAY ZONES.”

By adding new sections:

Section 59-C-18.25.           “Clarksburg East Environmental Overlay Zone.”  
Section 59-C-18.26.           “Clarksburg West Environmental Overlay Zone.”

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

## OPINION

Zoning Text Amendment No. 14-03 was introduced on April 8, 2014.

The Council's April 1, 2014 approval of the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (the Plan) recommended the approval of floating zones for the Ten Mile Creek area. ZTA 14-03 would create the zones recommended by that Plan. The approval of ZTA 14-03 will allow the approval of a Sectional Map Amendment consistent with the Plan's recommendations.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved with amendments.

A public hearing on ZTA 14-03 was held on May 13, 2014. The Audubon Naturalist Society spoke generally in favor of the ZTA, but would not have exemptions for new development of any public facility. The Society favors the Planning Board waiver process in place for Upper Paint Branch rather than exemptions. One representative of several landowners spoke in favor of the public utility exemption recommended by the Planning Board. The representative of the Egan property had a variety of concerns. The representative of the Hammer Hill property objects to the Planning Board revisions that would only exempt existing development on parcels smaller than 2 acres.

The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on July 10, 2014 to review the amendment. The Committee recommended approval of ZTA 14-03 with the following revisions:

- Exempt septic development from the requirement for site plan.
- Remove the requirement for the 30 percent building coverage limit for R-90 zoned property.
- Define open space as "rural open space", which retains the most natural features.
- Allow an exemption only for publicly funded and master planned roads and bikeways.
- Delete the exemption for paths, trailheads, and associated parking.
- Allow a public utility facility on County owned land.

The Committee considered and rejected reducing the exemption for small lots from 2 acres to 1 acre.

The District Council reviewed Zoning Text Amendment No. 14-03 at a worksession held on July 15, 2014 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee, with a revision that would not exempt from the impervious surface limit County owned land managed by the Maryland-National Capital Park and Planning Commission as parkland. The Council also removed the Committee's recommended text for a

public utility facility on County owned land at the request of Executive staff; Executive staff indicated that the facility can be accommodated by removing some existing impervious surface.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 14-03 will be approved as amended.

#### *ORDINANCE*

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

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

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

3       \* \* \*

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

5               **59-C-18.251. Purpose.**

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

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

17               **59-C-18.252. Procedure for approval.**

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

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

**(a) Land Use.**

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

**(b) Development standards.**

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

(2) Except [[for development]] as allowed under Section 59-C-18.254, the total impervious surface area for any development after August 4, 2014 [[may]] must be a maximum of 15% of the total area [[in the]] under application for development.

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

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

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

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

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

(B) the maximum density with MPDU bonus density is 3.66 dwelling units per acre;

(C) [[a development may include]] any type of dwelling unit is permitted, up to the maximum number [[of dwelling units]] allowed;

(D) the maximum building height is:

(i) 35 feet for a one-family detached dwelling;

(ii) 50 feet for a one-family attached dwelling; and

(iii) 65 feet for a multiple-family dwelling or any non-residential building; and

(E) when site plan approval is required, the minimum lot area, lot dimensions, building coverage, and building setbacks of the R-90 zone do not apply. Any such requirements must be determined by the Planning Board during site plan approval process.

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

(a) Any impervious surface lawfully existing under a building permit or sediment control permit issued before August 4, 2014 that exceeds the applicable impervious surface restriction may continue or be reconstructed with the same or less impervious surface area under the development standards in effect when the building permit or sediment control permit was issued.

(b) [[Any]] An impervious surface [[not approved as part of a site plan under Section 59-D-3]] resulting from an addition to an existing one-family residential dwelling or an accessory structure to a one-family

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

- (c) [[Impervious surfaces associated with development on]] On any lot or parcel with an area less than 2.0 acres as of January 1, 2014 [[are]], any development is exempt from this overlay zone's impervious surface restriction.
- (d) Impervious surface for any publicly funded road[[,]] or bikeway [[, path, driveway, or parking area]] identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area is exempt from this overlay zone's impervious surface restriction.

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

##### **59-C-18.261. Purpose.**

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

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

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

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

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

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

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

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

(a) Land Use.

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

(b) Development standards.

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

(2) Except for County owned land or land under a conservation easement granted to the benefit of the County and development exempted under Section 59-C-18.264, the total impervious surface area for any development after August 4, 2014 [[may]] must be a maximum of 6% of the total area [[in the]] under application for development.

(3) County owned land or land under a conservation easement granted to the benefit of the County that is not managed as parkland by the Maryland-National Capital Park and Planning Commission may not add any impervious surface.

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

(5) [[The minimum lot area, lot dimensions, and building setbacks must be determined by the Planning Board during the site plan approval process.]] When site plan approval is required, the minimum lot area, lot dimensions, building coverage, and building setbacks do not apply. Any such requirements must be determined by the Planning Board during the site plan approval process.

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

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

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

**[[59-C-18.262.]] 59-C-18.264. Exemptions from impervious surface restrictions.**

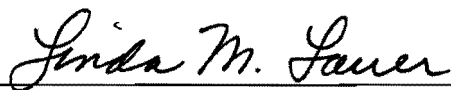
(a) Any impervious surface lawfully existing under a building permit or sediment control permit issued before August 4, 2014 that exceeds the applicable impervious surface restriction may continue or be

reconstructed with the same or less impervious surface area under the development standards in effect when the building permit or sediment control permit was issued.

- (b) [[Any]] An impervious surface [[not approved as part of a site plan under Section 59-D-3]] resulting from an addition to an existing one-family residential dwelling or an accessory structure to a one-family dwelling, not approved as part of a site plan under Section 59-D-3, is exempt from this overlay zone's impervious surface restriction.
- (c) [[Impervious surfaces associated with development on]] On any lot or parcel with an area less than 2.0 acres as of January 1, 2014 [[are]], any development is exempt from this overlay zone's impervious surface restriction.
- (d) Impervious surface for any publicly funded road[[,]] or bikeway[[, path, driveway, or parking area]] identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area is exempt from this overlay zone's impervious surface restriction.

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

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

# Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

## ZTA 22-12: OVERLAY ZONES - CLARKSBURG EAST AND WEST ENVIRONMENTAL OVERLAY - EXEMPTIONS

### SUMMARY

The Office of Legislative Oversight anticipates that Zoning Text Amendment 22-12 will have little to no impact on racial equity and social justice (RESJ) in the County.

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### PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.<sup>1</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.<sup>2</sup>

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### PURPOSE OF ZTA 22-12

The purpose of the ZTA 22-12, Overlay Zones - Clarksburg East and West Environmental Overlay - Exemptions, is to amend the Zoning Ordinance to clarify that any master-planned bikeway located in the Clarksburg East and West Environmental Overlay Zones is exempt from the overlay zones' impervious surface restrictions.<sup>3</sup>

In 2014, the County Council approved ZTA 14-03: the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area.<sup>4</sup> ZTA 14-03 limited imperviousness (paved surfaces impervious to water) and established both open space requirements for new development east and west of I-270 and development standards to maximize development flexibility and protect sensitive natural resources.<sup>5</sup> Toward this end, ZTA 14-03 created two environmental overlay zones, establishing a:

- 15 percent imperviousness limit on new development east of I-270 (Clarksburg East Environmental Overlay)
- 6 percent imperviousness limit west of I-270 (Clarksburg West Environmental Overlay)

ZTA 14-03 exempts County-owned land from these imperviousness limits as well as publicly funded roads, master-planned bikeways, properties less than two acres, and additions to houses. ZTA 14-03 was adopted July 15, 2014.<sup>6</sup>

In ZTA 22-12, the Planning Board proposes to clarify the Clarksburg Environmental Overlay Zones' provision exempting master planned bikeways from impervious surface caps.<sup>7</sup> The Planning Board believes that as currently written, the overlay zones' language could be interpreted as allowing only publicly funded bikeways to be exempt from the impervious surface restrictions. ZTA 22-12 was introduced on December 13, 2022.<sup>8</sup> A public hearing for this ZTA is tentatively scheduled for January 17, 2023.

# RESJ Impact Statement

## Zoning Text Amendment 22-12

### ANTICIPATED RESJ IMPACTS

OLO does not anticipate a racial equity and social justice impact for ZTA 22-12 because it clarifies provisions already adopted by the Council with ZTA 14-03, the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. ZTA 22-12 seeks to clarify ZTA 14-03's provisions exempting bikeways from impervious surface caps rather than establishing new policies or practices that may impact RESJ in the County. As such, OLO anticipates that ZTA 22-12 will have little to no impact on RESJ in the County.

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

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### CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

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<sup>1</sup> Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools.

<https://www.raciaequitytools.org/glossary>

<sup>2</sup> Ibid

<sup>3</sup> Chapter 59 Montgomery County Zoning Ordinance defines impervious surface as any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment regardless of surface type or material, any road, driveway, or parking area.

<sup>4</sup> Resolution 17-1167. Correction to Resolution 17-1048. Approval of Planning Board Draft Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. Montgomery County Council. July 15, 2014.

[montgomery county council - legislative information management system – resolution details \(montgomerycountymd.gov\)](https://www.montgomerycountymd.gov/council/legislative-information-management-system-resolution-details)

<sup>5</sup> Approved and Adopted Ten Mile Creek Area Limited Amendment-Clarksburg Master Plan Hyattstown Special Study Area. Montgomery County Planning Department, M-NCPPC. July 2014.

[https://www.montgomeryplanning.org/community/plan\\_areas/l270\\_corridor/clarksburg/documents/ten\\_mile\\_creek\\_approved.pdf](https://www.montgomeryplanning.org/community/plan_areas/l270_corridor/clarksburg/documents/ten_mile_creek_approved.pdf)

<sup>6</sup> Ordinance No. 17-46 (ZTA 14-03). Overlay Zone – Clarksburg. Montgomery County Council. July 15, 2014.

[https://www.montgomerycountymd.gov/council/resources/files/res/2014/20140715\\_17-46.pdf](https://www.montgomerycountymd.gov/council/resources/files/res/2014/20140715_17-46.pdf)

<sup>7</sup> Staff report: Proposed Zoning Text Amendment (ZTA) Overlay Zones – Clarksburg East and West Environmental Exemptions. Montgomery County Planning Department. March 19, 2020.

[https://montgomeryplanningboard.org/wp-content/uploads/2020/03/proposed-zta-on-clarksburg-east-west-environmental-overlays-jks\\_03-18-20\\_final.pdf](https://montgomeryplanningboard.org/wp-content/uploads/2020/03/proposed-zta-on-clarksburg-east-west-environmental-overlays-jks_03-18-20_final.pdf)