

Ordinance No: 15-32
Zoning Text Amendment No: 04-18
Concerning: Environmental Overlay
for the Upper Rock Creek SPA
Draft No. & Date: 5 – 10/26/04
Introduced: July 27, 2004
Public Hearing: 9/14/04; 7:30 p.m.
Adopted: October 26, 2004
Effective: November 15, 2004

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

By: District Council at the request of the Planning Board

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

- creating an Environmental Overlay Zone for the Upper Rock Creek Special Protection Area.

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

DIVISION 59-C-18
By adding a new section

“OVERLAY ZONES”

Section 59-C-18.24

“Environmental Overlay Zone for the Upper Rock Creek
Special Protection Area.”

*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. 04-18 was introduced on July 27, 2004, for the purpose of creating an Environmental Overlay zone for the Upper Rock Creek Special Protection Area. This overlay zone implements the recommendations of the Upper Rock Creek Master Plan to limit imperviousness in a portion of the planning area to protect the water quality and quantity of the Upper Rock Creek and its biodiversity.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with a revision to require public entities to obtain a waiver from the Planning Board if they are unable to comply with the requirements of the zone.

The County Council held a public hearing on September 14, 2004, to receive testimony concerning the proposed text amendment. 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 worksessions on October 11, October 18, and October 20, 2004 to review the amendment. It was the opinion of the Committee that the overlay zone was necessary to implement the recommendations of the Upper Rock Creek Master Plan. The Committee discussed and rejected testimony suggesting that the overlay zone include properties not served by public sewer. The Committee continued to support the decision of the Council during the Master Plan discussion that properties on septic systems should be exempt from the overlay zone, but subject to its requirements if the property is served by public sewer at a later date. The Committee also discussed private institutional facilities with approved preliminary plans that would be unable to construct their facilities due to the overlay zone. There are only a limited number of properties with approved preliminary plans that do not have building permits or sediment control permits, each with plans for expansion. The Committee determined that these properties should be exempt from the overlay zone so that they can complete their planned development or an alternative project with no greater than five percent additional total imperviousness. The Committee also revised the zone to indicate that properties requiring either a building permit or sediment control permit would be subject to the zone. The Committee did not accept the revision proposed by the Planning Board to require public entities to obtain a waiver from the Planning Board if the project exceeds 8 percent imperviousness, but clarified that all public projects are required to minimize imperviousness and conform to water quality plan submission and review requirements. The Committee added a waiver for applicants who can demonstrate that the requirements of the overlay zone would prevent the applicant from building the maximum number of affordable housing units otherwise allowed by the zone.

The Committee recommended approval of ZTA 04-18 with revisions to require developments that obtain a sediment control permit to be subject to the requirements of the overlay zone, to clarify that all public entities are required to minimize imperviousness and conform to water quality plan submission and review requirements, (but not to obtain a waiver from the Planning Board), to exempt private institutional facilities with approved preliminary plans (provided that they make every effort to minimize imperviousness and control runoff) and to include a waiver related to affordable housing.

The District Council reviewed Zoning Text Amendment No. 04-18 at a worksession held on October 26, 2004, 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. 04-18 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-18.24. Environmental Overlay Zone for the Upper Rock Creek Special**
5 **Protection Area.**

6 **59-C-18.241. Purpose.**

7 It is the purpose of this overlay zone to:

- 8 (a) Protect the water quality and quantity of the Upper Rock Creek and its
9 tributaries, as well as the biodiversity situated in these resources. The
10 resources consist of those tributaries of Rock Creek and the North Branch of
11 Rock Creek north of Muncaster Mill Road in the Upper Rock Creek
12 Planning Area.
- 13 (b) Regulate the amount and location of impervious surfaces in order to
14 maintain levels of groundwater, control erosion, and allow the ground to
15 filter water naturally and minimize the temperature and volume of
16 stormwater runoff.

17 **59-C-18.242. Regulations.**

- 18 (a) **Applicability.** All development or subdivisions [(including areas to be
19 dedicated to public rights-of-way)] requiring a building or sediment control
20 permit (except as noted below) and served by community sewer will be
21 subject to these regulations. All public projects are subject to the provisions
22 of this overlay zone, however, [The] these provisions [of this overlay
23 zone]] are not intended to preclude the development of public facilities.
24 Such facilities must conform to the water quality plan submission and
25 review requirements established in the Montgomery County Code, Chapter
26 19, Article V. and keep imperviousness to the minimum needed to
27 accomplish the public purpose intended.

(b) **Exemptions.** The following are exempted from the provisions of this overlay zone:

- i. Any property expressly exempt by the applicable approved and adopted master plan.
- ii. An addition or accessory structure to an existing one-family residential dwelling.
- iii. Any use in an industrial or commercial zone.
- iv. Development associated with a private institutional facility that has an approved preliminary plan as of November 15, 2004, provided that the development is consistent with the preliminary plan (or a landscaping plan approved as a condition of the preliminary plan) or with section v. below, and that every effort is made to minimize imperviousness and/or mitigate the impacts of runoff.
- v. Development on private institutional facilities that contains no more than 5 percent greater total imperviousness than shown on a preliminary plan (or a landscaping plan approved as a condition of the preliminary plan) approved as of November 15, 2004.

(c) **Development standards.** The development standards of the underlying zone apply except as modified by the requirements of this overlay zone.

- (1) **Restriction on Impervious Surface.** No development may result in more than 8 percent impervious surface of the total area under application for development, except as noted below.
 - (A) Any impervious surface lawfully existing pursuant to a building permit or sediment control permit issued before November 15, 2004 that exceeds the 8 percent restriction, may continue or be

54 reconstructed [using the original footprint] (provided that overall
55 imperviousness does not increase).

56 (B) Any impervious surface which results from construction pursuant
57 to a building or sediment control permit application filed with the
58 Department of Permitting Services as of November 15, 2004,
59 may continue or be reconstructed [using the original footprint]
60 (provided that overall imperviousness does not increase).

61 (C) No expansion of an impervious surface above the 8 percent
62 restriction is allowed, except in accordance with the waiver
63 provision of Subsection (c)(2).

64 (2) **Waiver.** The Planning Board, or if no Planning Board action is
65 required, the Director, may grant a waiver from the 8 percent
66 impervious surface restriction subject to the following standards and
67 procedures:

68 (A) **Written Request.** The request and basis for a waiver from the 8
69 percent impervious surface restriction must be made in writing to
70 the Planning Board or Director.

71 (B) **Review and action.** The Planning Board or Director may grant a
72 waiver from the 8 percent impervious surface restriction if the
73 applicant shows by clear and convincing evidence that:

74 (i) the 8 percent impervious surface restriction would result in
75 undue hardship to the applicant because of events or
76 circumstances not caused or facilitated by the applicant, or
77 the applicant can demonstrate that the impervious surface
78 restriction would prevent the applicant from building the
79 maximum number of affordable housing units otherwise
80 allowed by the zone

- (ii) the applicant complies with all applicable federal, state, and county water quality standards; and
- (iii) the relief sought is the minimum needed to prevent the hardship and the applicant has applied all appropriate alternative techniques to minimize imperviousness.

(C) **Limit on Imperviousness for Affordable Housing Waiver.** If the Planning Board grants a waiver for affordable housing, it must approve the minimum increase necessary to allow the affordable housing. In no event may the waiver result in development with more than 10 percent impervious surface area.

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

This is a correct copy of Council action.

Mary A. Edgar, CMC

Clerk of the Council