



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

GR

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

JS

Jason Sartori, Chief, FP&P, jason.sartori@montgomeryplanning.org, 301-495-2172

Completed: 03/19/20

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**

Lead Sponsor:

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.

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.¹ The approval of ZTA 14-03 will allow the approval of a Sectional Map Amendment consistent with the Plan’s recommendations.

¹ 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.

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.² Planning staff recommended using the definition of rural open space already in the code.³

² 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.

³ 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.⁴

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.⁵ 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

(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.

⁴ 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].

⁵ 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.⁶

⁶ 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

(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.⁷

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.

⁷ 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**

By: Council President at the request of the District Council

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:

- (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 {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. 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.

Linda M. Lauer, Clerk of the Council