

Item 6 - Correspondence

From: [Cloverly Civic Association](#)
To: [MCP-Chair](#)
Subject: ZTA 24-01 Hearing Feb 13, 2024 Item 6
Date: Wednesday, February 14, 2024 12:04:11 PM
Attachments: [Cloverly Civic Review of ZTA 24-01.pdf](#)

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Testimony of Cloverly Civic Association
Quentin Remein
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Review of Zoning Text Amendment 24-01

Allow Multi-Unit Living and Townhouse Living on properties with a Religious Assembly or Educational Institution (Private) Use in Residential Zones

By Cloverly Civic Association

ZTA 24-01 would allow the Religious Assembly use and the Educational Institution (Private) use to build affordable townhouses and apartments in Residential Detached zones.

ZTA 24-01 Is Not Compatible with Thrive Montgomery 2050

ZTA 24-01 allows an unlimited amount of county-wide land to be treated as urban zoning of R30 in the Residential Detached Zones. The Thrive Montgomery Plan clearly states in *URBANISM AS ORGANIZING PRINCIPLE* section on page 11 the following:

“An urbanism-focused approach to the development of land and related infrastructure (such as roadways, transit systems, and parks) emphasizes the value of: (1) a compact form of development; (2) diverse uses and building types; and (3) transportation networks that take advantage of and complement these two land use strategies, at all densities and scales.

This approach calls for focusing growth in a limited number of locations rather than dispersing it, avoiding “sprawl.” It means encouraging in appropriate areas the agglomeration of different uses such as retail, housing, and office space as well as diversity within each type of use.

These principles of urbanism benefit rural, suburban, and urban areas. In fact, the preservation of land for agriculture in a place like Montgomery County depends on concentrating development in urban centers instead of permitting sprawl, and even suburban and rural areas benefit from a mix of uses and housing types – at appropriately calibrated intensity and scale – to serve their needs.”

The original section “D. Townhouse Living”, is already permitted in the Residential Zones regulated by the following requirements: public bus service is required, within 2 miles of a metro station, slope of less than 5%, minimum tract of 2 acres, minimum of one parking space per unit and TMD development standards. Although density is increased, it is only permitted in areas within 2 miles of a metro station, and provides for more urbanism where transportation is available. There is justification for this in Thrive Montgomery – focusing growth in a limited area. However, ZTA 24-01 goes further by allowing R30 zoning in all residential areas. This is not restricted to within 2 miles of a metro station for example. It is restricted to Religious Assembly and Education Institutions, but they are already permitted in all the Residential Zones. This weakens suburban and rural areas with increased urban zoning encouraging urban “sprawl”. All the ZTA 24-01 does not meet the requirements of Thrive Montgomery 2050. The regulations of “D. Townhouse Living” could be added, especially the regulation requiring a project to be within 2 miles of a metro station. **We urge the Planning Board to reject ZTA 24-01 and preserve in integrity of Thrive Montgomery 2050.**

Quentin Remein, President, Cloverly Civic Association, 201 Bryarts Nursery Road, Silver Spring MD

Additional Concerns Regarding ZTA 24-01

This high-density development creates smaller housing sites, less open space, more impervious surfaces, greater density, higher building heights, and closer setbacks to streets and other homes. Under current law a church wanting to develop 2 acres as housing could sell the property to build one home (RE-2). Under the ZTA the church could build on that two acres 29 townhouses or 29 apartment units.

Increasing the density impacts aspects of our lives in Cloverly. The character of our neighborhoods is no longer rural/suburban but is now urban. There is a loss of habitat for animals, birds, insects, and aquatic life. Cloverly would have more climate damage from trees being cut down, and loss of tree canopy. There would be more air and stream pollution and more stream erosion. Increased land use results in greater imperviousness leading to more stormwater runoff, more flooding, and erosion. There can be greater traffic congestion, greater costs for bussing and mass transit, crowded schools, crowded grocery, and other stores, shortages for medical care, more demand for repair and maintenance service providers, more fire and rescue, more recreational areas, and more of everything and greater costs for everything. Higher density will lead to more gentrification in Cloverly reducing the amount of affordable housing. We need to protect our affordable housing. Cloverly’s rural/suburban character is the major reason people choose to live here and the aspect of living here that is most reflected in the current Cloverly Master Plan.

More Details on the Impact of ZTA 24-01

The development standards allow for 14.5 units per acre. The other standards are in the Townhouse The current law already allows anyone to develop high-density Townhouse Living (3.3.1.D.2.b.i) in the RE-1 (minimum lot 1 acre), R-200, R-90, and R-60 (minimum lot 6,000 sq ft) zones. However, a Metro Station needs to be within 2 miles of the property. So, properties in the County more than two miles away from a Metro Station do not qualify for providing affordable housing from this provision. This would include the Cloverly Area. However, the ZTA has a provision that allows churches and private educational institutions to build high-density Townhouses living in the RE-2 Zone (minimum lot 2 acres). There is no provision that the property needs to be within 2 miles of a Metro Station, so the ZTA applies to everyone including Cloverly. They would require 35% common open space, the site must be served by water and sewer, and

B. R-30 Zone, Standard Method Development Standards

1. Site	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone	Duplex - Side	Duplex - Over	Townhouse	Apartment
Site Area (min)					
Site	3,000 SF	3,000 SF	3,000 SF	n/a	n/a
Site per unit	n/a	n/a	n/a	3,000 SF	3,000 SF
Open Space (min)					
Common open space (% of site) (See Section 6.3.5)	n/a	n/a	n/a	35%	50%
Site Coverage (max)					
Site coverage	n/a	n/a	n/a	25%	18%

Specification for Site Coverage
 a. In a development with townhouse or apartment building types, site coverage is calculated based on the area of the site minus any area for detached house and duplex lots.

2. Lot and Density

Lot (min)					
Lot area	3,000 SF	1,500 SF	3,000 SF	1,000 SF	12,000 SF
Lot width at front building line	30'	15'	30'	n/a	75'
Lot width at front lot line	10'	10'	10'	n/a	n/a
Frontage on street or open space	Required				
Density (max)					
Density (units/acre)	14.50	14.50	14.50	14.50	14.50
Coverage (max)					
Lot	50%	50%	50%	n/a	n/a

they must meet one of four methods that limit the prices of the properties. Generally, the affordable prices are limited to only 30% to 50% of the properties for at least 30 years. column of the “B. R-30” chart (below) from section 4.4.14.B. The last condition 3.3.1.D2.b.ii.(h) reads “Height, density, coverage, and parking standards must be compatible with surrounding uses. The Hearing Examiner may modify any development standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.” Since there is little compatibility between the two how can these standards be compatible with each other?

The ZTA impacts everyone for the Multi-Unit Living Units (apartments) and covers all of the residential zones – RE-2(minimum lot 2 acre), RE-2C, RE-1, R-200, R-90, and R-60 (minimum lot 6,000 sq ft) zones. Churches and Private Education Institutions would be allowed to build more densely in each of the residential zones. Maximum building heights would be 60 feet, and 35% common open space would be required. The development standards allow for 14.5 units per acre regardless of what residential zone they are built in. The other standards are in the Apartment column of the “B. R-30” chart (above) from section 4.4.14.B. Generally, the affordable prices are limited only to 30% to 50% of the properties for at least 30 years. Affordable apartments in the RE-2, RE-2C, and RE-1 zones must be served by existing water and sewer.

Evaluation of the Purpose of the ZTA 2401

In a press release on January 17, 2024, Council Vice President Stewart stated “We are facing an affordable housing crisis. At the same time, houses of worship in our community find themselves with an oversupply of land, but too many barriers to easily put their land to use to support their mission and our broader community,” Often we think we have an oversupply of land that could be put to better use. When houses are built, we must provide land to protect the environment, healthy tree canopy, keep the public safe from flooding from excessive runoff, protect the public from water and air pollution, excessive noise, and traffic congestion, and protect them from other dangers. We cannot give up the land required by these protective measures to facilitate people getting affordable housing. Churches and other organizations, and anyone for that matter, can take unneeded land they own and donate it to organizations like Habitat Humanity to build or repair affordable homes. The Council could identify a quicker, less cumbersome process to increase housing at all levels for both renters and home-buyers that would assist everyone not just churches and educational institutions.

Is ZTA 24-01 Constitutional?

The Fourteenth Amendment’s Equal Protection Clause requires the states to practice equal protection [www.law.cornell.edu>Wex]. The 14th Amendment to the U.S. Constitution says “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,” and “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws” and “The Equal Protection Clause requires the government to have a valid reason for any law or official action that treats similarly-situated people or groups of people differently. For certain immutable

classifications and fundamental rights – e.g., race, religion, national origin, voting – the government’s reason must be compelling and the law or action must be narrowly tailored to it [Connecticut Supreme Court Historical Society.” Montgomery County has advanced no compelling reason why the beneficiaries of this ZTA need to be restricted to religious organizations and private educational institutions. The constitutional prohibitions extend to the laws of Montgomery County Maryland. For the above reasons alone, the ZTA is unacceptable.

From: [Mary Hemingway](#)
To: [MCP-Chair](#); [Michele Albornoz](#); [Ellen Mann](#)
Subject: ZTA 24-01
Date: Wednesday, February 14, 2024 9:50:22 AM

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Chair and members of the Planning Board,

The following are comments/concerns on the Planning Staff report dated 02/08/2024 by Benjamin Berbert, Planner III:

. Page 4 - Multi-Unit Living should not be allowed at all in RE-2 and RE-2C and RE-1. Townhouse Living should not be allowed in RE-2. The additional impervious and loss of greenery will be detrimental to the environment.

. Page 6 - The five elements of Thrive Montgomery 2050 that support this ZTA are general statements. However, the 5 'policy strategies' emphasize most how future housing development should be targeted. Growth should be along major growth corridors; where residents have jobs or educational opportunities; where public transportation is easily available; or be near transit (metro) hubs. Mr. Berbert states that the RE-2, RE-2C and RE-1 are easy places to construct affordable housing but there are potential negative impacts which need to be negated. Are there any RE-2, RE-2C or RE-1 zones that meet the above criteria for growth? If not, then these zones should not be included in this ZTA. Including them will lead to urban sprawl.

. Page 6 - Mr. Berbert assumes that the number of expected projects constructed under this ZTA will be low and likely distributed on sites across the county. This is an assumption, not a fact. How does he know that affordability thresholds will reduce the scale of any negative impacts? What is the percentage of available sites in the RE-2, RE-2C and RE-1 zones compared to the percentage of available sites in the remaining zones? PIF's have already increased the impervious level in RE-2, RE-2C and RE-1 because they are allowed a higher impervious level than a residential structure.

. Page 9 - In the RE-2, RE-2C and RE-1 zones many PIF's do have existing water and sewer infrastructure, some because of failing septic systems and some because they were allowed to hook into another PIF's sewer system

even though that was not allowed. Even if the proposed text rewording is incorporated, someone will find a way around it.

. Page 13 - The conditional use standards for Townhouse Living have location criteria, which are public bus service adjacent to the site, Metrorail station within 2 miles, etc. To those transportation criteria, a minimum of 19 continuous hours of available public bus service within 500 feet should be a requirement.

. Page 15 - We disagree that there will be a minor negative impact on the climate if ZTA 24-01 is enacted in RE-2, RE-2C and RE-1. While there may be minor negative impact on the entire county, that will not be the case in the large lot zones. The large lot zones are already suffering from the proliferations of PIF's. People choose to live here because of the space and the greenery and the air quality. Please do not destroy our way of life.

Thank you,

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