

Clarksburg Limited Master Plan for the Ten Mile Creek Watershed – Proposed Zoning Recommendations Addressing Impervious Cover

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Description

The Planning Board transmitted the Planning Board Draft Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan on October 25, 2013. To protect water quality in the environmentally sensitive Ten Mile Creek watershed, the Amendment's Land Use and Zoning recommendations included specific limits on imperviousness. Planning Department staff has drafted language for an Environmental Overlay Zone to implement the recommended imperviousness limits. This recommendation, with any changes suggested by the Planning Board, will be forwarded to the County Council to consider along with the Planning Board Draft Plan.

Staff Recommendation

Convey the proposed Environmental Overlay Zone language to the County Council to accompany their review of Ten Mile Creek Limited Amendment.

Summary

The Limited Amendment's land use and zoning recommendations are based on an extensive evaluation and analysis of both existing conditions in the watershed and of a variety of potential development scenarios. The environmental analysis, undertaken by an independent consultant, concluded that "sustaining Ten Mile Creek's ecological health and water quality requires a combination of efforts: protecting the largest possible area of undisturbed natural vegetation, improving conditions in areas already developed or planned to remain in agricultural use, and instituting the highest standards of protection for future development areas." (Planning Board Draft, p 17)

The Amendment made recommendations for four major properties—the Egan-Mattlyn and Miles-Coppola properties east of I 270 and the Pulte-King and Montgomery County properties west of I 270. For each of them, the Amendment recommends a specific limit on imperviousness when new development occurs. East of I 270, the imperviousness limit is 25 percent of the total tract area; west of I 270, the limit is ten percent on the total tract area of the Pulte-King properties, eight percent on the portion of Montgomery County's property nearest the I 270/MD 121 interchange, and 4.5 percent on the portion of the County's property associated with the Montgomery County Correctional Facility.

Planning staff evaluated two options for implementing the imperviousness limit. The first was an amendment to the relevant text of the applicable zones' development standards, which would require new preliminary plans to propose total impervious areas that did not exceed any such limits imposed by an approved and adopted master plan. The second was an environmental overlay zone like the ones created for the Upper Paint Branch and Upper Rock Creek watersheds. Planning staff recommends preparation of an environmental overlay zone.

Analysis

The idea of amending specific elements of the existing ordinance arose following the Burtonsville Crossroads Neighborhood Plan. The Plan's primary aim was creation of a "complete" community in Burtonsville, with a clearly defined village center and a less-developed "Rural Edge." The Rural Edge, designated for the Rural Cluster Zone, is located in the Patuxent watershed and the Plan recommends that it retain its low density residential character to protect tributary headwaters and the drinking water resource. The Plan concluded that the 10 percent imperviousness limitation applied in the Patuxent watershed had not adequately protected the water supply or other environmentally sensitive resources. It recommended an imperviousness limit of eight percent. Rather than designing an overlay zone similar to those used elsewhere, the Planning Board and Council, recognizing that, at the time, the developing Zoning Rewrite project did not intend to include overlay zones, elected to amend the development standards section of the single zone—Rural Cluster—affected by the Burtonsville plan's recommendations.

The current draft of the Zoning Rewrite retains a number of overlay zones, including the Environmental Overlay Zones for Upper Paint Branch and Upper Rock Creek which were designed specifically to implement imperviousness limits established in master plans. Planning staff considers this approach preferable to a more narrowly targeted change in development standards that is applied to a single zone for the following reasons:

- The overlay zone is mapped, enabling all interested parties to learn from the zoning map and a single location in the zoning ordinance the purpose and requirements associated with the zone;
- The overlay zone can be applied across large areas that might include several underlying zones, as was done in Upper Rock Creek and Upper Paint Branch;
- The overlay zone allows a purpose—protecting water quantity, water quality, habitat and biodiversity—to be clearly articulated;
- The overlay zone can accommodate exemptions and waivers where they are warranted, neither of which can occur in an amendment to development standards.

Conclusion

Planning staff recommends that the attached draft Environmental Overlay Zone be forwarded to the County Council for review with the Planning Board Draft Ten Mile Creek Limited Amendment.

Draft Ten Mile Creek Environmental Overlay Zone

Purpose

It is the purpose of this overlay zone to:

- a) Protect the water quantity, water quality, habitat and biological diversity of the Ten Mile Creek watershed and its tributaries. The watershed consists of the main stem and headwaters tributaries north of Little Seneca Lake, as delineated by the Montgomery County Department of Environmental Protection.
- b) Regulate the amount and location of impervious surfaces in order to maintain levels of groundwater, control erosion and water temperature, and allow the ground to filter water naturally.
- c) Regulate land uses that could adversely affect this high quality, cold water stream system.

Regulations

- a) **Exemptions.** The following are exempted from the provisions of this overlay zone:
 - i. Properties outside the Stage 4 Special Protection Area;
 - ii. Properties expressly made exempt by the applicable master or sector plan;
 - iii. Properties in the Clarksburg Historic District.
- b) **Development Standards.** The development standards of the underlying zone apply, except as modified by the requirements of this overlay zone.
 - i. **Restriction on Impervious Surface.** New development on properties greater than five acres must not exceed these amounts of impervious surface, except as modified by the requirements of this overlay zone:

Twenty five percent in the portion of Ten Mile Creek east of I-270;

Ten percent in Ten Mile Creek west of I-270, except for Montgomery County property, which is limited to 8 percent and part of the Montgomery County Correctional Facility property, which is limited to 4.5 percent.

- a) Any impervious surface lawfully existing pursuant to a building permit or sediment control permit issued before **((date))** that exceeds the applicable impervious surface restriction may continue or be reconstructed under the development standards in effect when the building permit was issued.
- b) Any impervious surface that results from construction pursuant to a building permit or sediment control permit may be constructed or reconstructed under the development standards in effect on **((date))** if:
 - 1) the building permit application was pending before the Department of Permitting Services on **((date))**, or

- 2) the building permit is for a lot in a subdivision approved before **((date))**, if the subdivision was approved for fewer than 20 housing units,
 - c) Any expansion of an impervious surface above the restrictions in this overlay zone is not allowed, except in accordance with the waiver provisions of **((appropriate subsection))**, or as provided under **((appropriate subsection))**.
 - d) Any impervious surface from an addition or accessory structure to an existing one-family residential dwelling must not be counted against any calculation of the applicable impervious surface restriction.
- c) **Waiver.** The Planning Board, or if no Planning Board action is required, the Director, may grant a waiver from impervious surface restrictions subject to the following standards and procedures:
- i) **Written Request.** The request and basis for a waiver must be made in writing to the Planning Board or Director.
 - ii) **Review and Action.** The Planning Board or Director may grant a waiver from applicable impervious surface restrictions if the applicant shows by clear and convincing evidence that:
 - (1) the impervious surface restriction would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant, or that the restriction would prevent construction of the maximum number of affordable housing units otherwise allowed by the zone;
 - (2) the applicant complies with all applicable federal, state and county water quality standards; and
 - (3) the relief sought is the minimum needed to prevent the hardship and the applicant has applied all appropriate alternative techniques to minimize imperviousness.