



Zoning Text Amendment (ZTA) No. 14-03, Overlay Zones - Clarksburg



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Completed: 05/1/14

Description

ZTA No. 14-03 would create an overlay zone for Clarksburg East and an overlay zone for Clarksburg West to implement environmental recommendations established in the County Council Approved *10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area*.

Summary

Staff recommends approval, with mostly plain language modifications, of ZTA No. 14-03 to create an overlay zone for Clarksburg East and an overlay zone for Clarksburg West to implement environmental recommendations of the *10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area*. The one substantive change exempts existing properties (*less than 1 acre*) from the impervious surface provisions of the Clarksburg East overlay zone. The ZTA as introduced exempts properties *less than 2 acres* from this provision.

Background/Analysis

In October 2012, the Montgomery County Council directed the Planning Board to undertake a limited amendment of the 1994 Clarksburg Master Plan (the 1994 Plan) because environmental analyses showed continued uncertainty about the ability to protect sensitive resources in Ten Mile Creek if full development occurred under the original Plan recommendations. The Amendment includes the watershed of Ten Mile Creek, which is a high quality stream within the Plan area boundaries. Ten Mile Creek drains portions of Clarksburg west of I-270, as well as part of the Town Center, approximately between I-270 and MD 355, which is now the main route through Clarksburg. The Amendment also includes the entire Clarksburg Historic District, even though a portion of the District is outside of the Ten Mile Creek watershed.

The Amendment includes recommendations for achieving the desired community elements envisioned for Clarksburg in the 1994 Plan, while protecting the quality of Ten Mile Creek. These objectives required studying the extent to which land use and environmental site design could combine to help protect natural resources and maintain high water quality in the watershed. The Limited Amendment covers

only the Ten Mile Creek watershed and portions of the Historic District outside the watershed; the 1994 Plan, as amended in 2012, continues to guide land use development in the rest of Clarksburg.

Overlay Zones-Generally

The Limited Amendment recommends 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 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 (west of I-270), and no additional imperviousness on County-owned land. Very small properties will be exempt from imperviousness limits in the overlay zones.

The purpose of the overlay zones is to preserve and protect sensitive natural resources in the watershed by reducing the amount of land disturbed for development. Limiting impervious surfaces enables natural filtering of water runoff and creates undeveloped open space that can be forested, which can help support cooler water temperatures and a diverse population of insects and invertebrates within streams.

Overlay Zone Boundaries (See Attachment 2)

On the east side of I-270, all properties in Ten Mile Creek, except those in the Historic District, would be within the boundary with exemptions for State and County roads and bikeways. Park property within the Ten Mile Creek Watershed that was not within the Master Plan boundaries will also not be in the overlay zone. On the west side of I-270, all land draining to Ten Mile Creek not zoned Rural Density Transfer (RDT) would be included. In both zones, small properties (less than two acres) existing at the time of the Limited Amendment that develop without combining into larger developments would be exempted from the impervious restrictions of the zone.

The Clarksburg East Environmental Overlay Zone

The major elements for the overlay zone located east of I-270 include:

- 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 include all environmental buffers and sensitive areas identified in the Master Plan)
- Site plan approval is required for any development that must file a preliminary plan of subdivision under Chapter 50, unless a lot or parcel for a one-family dwelling that has not changed in size or shape since January 1, 2014
- All base zones other than R-90 must adhere to the standards of the underlying zones unless modified by the overlay zone.
- For properties with a base zoning of R-90, the requirements of the R-90 zone are 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 allowed. No requirements for a minimum percentage of any particular unit type.
 - Building height limits increased to 35 for single-family detached, 50 for townhouses, and 65 for multi-family.
 - When site plan approval is required, the minimum lot area, lot dimensions, 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.
- Exempts existing small properties (less than 2 acres) from the impervious surface provisions of the overlay zone. ***Staff is recommending that the impervious surface exemption be modified to apply to those properties that are “less than 1 acre” in size.***
 - Exemptions for limited public facilities, such as state and County roads and park facilities.

The Clarksburg West Environmental Overlay Zone

The major elements in the overlay zone proposed for the west side of I-270 include:

- All standards and requirements of the underlying zone apply, except as modified by this overlay zone.
- 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, Impervious Surface Area is limited to 6 percent of the area within a development application. County owned land or land under a conservation easement granted to the benefit of the County may not add any impervious surface (a grandfathering provision is provided for properties already exceeding the recommended impervious surface limit).
- 80 percent open space (which includes all environmental buffers and sensitive areas identified in the Master Plan).
- Exempt small properties (less than 2 acres) from the impervious surface provisions of the overlay zone.
- Consider limited potential exemptions for public facilities, such as state and County roads and park facilities associated with conservation parks (e.g., small parking lots).

It should be noted that the Limited Amendment discusses the possibility that the overlay zone may be amended at a future time to accommodate less than 1 acre of Correctional Facility expansion.

Overall, staff believes that the proposed overlay zones consistently implement the environmental recommendations of the County Council Approved *10 Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area*. A two-acre exemption cutoff in the residential zones covers those properties on the west side of I-270 with true subdivision potential along Clarksburg Road zoned RE-1. These properties are likely to be eligible for sewer service, if they redevelop, which would permit maximum development potential in the RE-1 Zone. The prospect of sewer service might also increase the attractiveness of these properties for private institutions or conditional use small businesses whose imperviousness could be substantial. These properties have never undergone subdivision. With the exemption, the smaller properties will be able to rebuild or renovate without requiring subdivision while the larger ones would not be exempt, requiring site plans

as well as preliminary plans under the requirements of the overlay zone. Consolidation of adjacent properties would also require preliminary and site plan review.

The one-acre exemption cutoff (as proposed by staff) in the residential zones on the east side of I-270 has the same effect: subdividable properties, particularly several contiguous and redevelopable properties on Frederick Road in the RMX-2 zone, would be required to go through preliminary and site plan review, as would consolidation of adjacent properties. Like the properties west of I-270, the availability of sewer service could also attract institutional uses. All properties in the CRN zone would be subject to the imperviousness limits without exception.

Conclusion

With the proposed changes to the ZTA language as depicted in Attachment 1 (plain language clarifications and the modification of the exemption clause cutoff for Clarksburg East from two acres to one acre), staff recommends approval of ZTA 14-03. Staff believes that the overlay zones provide the most effective way to protect the unique environmental resources in the Ten Mile Creek watershed.

Attachments

1. ZTA No. 14-03 as modified by staff
2. Maps-Proposed Overlay Zoning & Limited Amendment Boundaries

ATTACHMENT 1

Zoning Text Amendment No.: 14-03
Concerning: Overlay Zone -
 Clarksburg
Draft No. & Date: 1 – 4/3/14
Introduced: April 8, 2014
Public Hearing:
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.*

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

4 * * *

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

6 **59-C-18.251. Purpose.**

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

8 (a) protect the water quantity, water quality, habitat, and biological diversity
9 of the Ten Mile Creek watershed and its tributaries;

10 (b) regulate the amount and location of impervious surfaces to maintain
11 levels of groundwater, control erosion and water temperature, and retain
12 as many of the functions provided by natural land as possible;

13 (c) regulate development that could adversely affect this high quality stream
14 system; and

15 (d) implement the recommendations of the 2014 Ten Mile Creek Area
16 Limited Amendment to the Clarksburg Master Plan and Hyattstown
17 Special Study Area.

18 **59-C-18.252. Procedure for approval.**

19 (a) A site plan must be approved by the Planning Board under the
20 provisions of Division 59-D-3 for any development that must file a
21 preliminary plan of subdivision under Chapter 50, unless excluded under
22 Subsection (b).

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

26 **59-C-18.253. Regulations.**

27 (a) Land Use.

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

30 (b) Development standards.

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

33 (2) Except ~~[[for development]]~~ as allowed under Section 59-C-
34 18.254, the total impervious surface area for any development
35 after {EFFECTIVE DATE} may be a maximum of 15% of the
36 total area in the application for development.

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

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

47 (5) The minimum area devoted to open space ~~[[is]]~~ must be 80% of
48 the total area under application for development.

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

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

- 52 (B) the maximum density with MPDU bonus density is 3.66
53 dwelling units per acre;
- 54 (C) [[a development may include]] any type of dwelling unit is
55 permitted, up to the maximum number allowed [[of
56 dwelling units]];
- 57 (D) the maximum building height is:
- 58 (i) 35 feet for a one-family detached dwelling;
59 (ii) 50 feet for a one-family attached dwelling; and
60 (iii) 65 feet for a multiple-family dwelling or any non-
61 residential building; and
- 62 (E) when site plan approval is required, the minimum lot area,
63 lot dimensions, and building setbacks of the R-90 zone do
64 not apply. Any such requirements must be determined by
65 the Planning Board during site plan approval process.

66 **59-C-18.254. Exemptions from impervious surface area restrictions.**

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

- 78 (c) [[Impervious surfaces associated with]] A development that lawfully
79 existed as of January 1, 2014 on any lot or parcel with an area less than
80 2.0 acres [[as of January 1, 2014 are]] is exempt from this overlay zone’s
81 impervious surface restriction.
- 82 (d) Impervious surface for any publicly funded road, bikeway, path,
83 driveway, or parking area is exempt from this overlay zone’s impervious
84 surface restriction.

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

86 **59-C-18.261. Purpose.**

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

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

98 **59-C-18.262. Procedure for approval.**

- 99 (a) A site plan must be approved by the Planning Board under the
100 provisions of Division 59-D-3 for any development that must file a
101 preliminary plan of subdivision under Chapter 50, unless excluded under
102 Subsection (b).

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

106 **59-C-18.263. Regulations.**

107 (a) Land Use.

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

110 (b) Development standards.

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

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

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

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

123 (5) The minimum lot area, lot dimensions, and building setbacks must
124 be determined by the Planning Board during the site plan approval
125 process.

126 (6) All environmental buffer areas or natural resources recommended
127 for protection in the Ten Mile Creek Area Limited Amendment to
128 the Clarksburg Master Plan and Hyattstown Special Study Area
129 must be [[treated]] considered and regulated as environmentally

130 sensitive areas, ~~[[in addition to]]~~ just as other areas identified
 131 ~~[[as]]~~ environmentally sensitive in law, regulations, or in the
 132 Planning Board’s Guidelines for the Environmental Management
 133 of Development, as amended.

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

136 (8) The minimum area devoted to open space is 80% of the total area
 137 under application for development.

138 **59-C-18.262. Exemptions from impervious surface restrictions.**

139 (a) Any impervious surface lawfully existing under a building permit or
 140 sediment control permit issued before {EFFECTIVE DATE} that
 141 exceeds the applicable impervious surface restriction may continue or be
 142 reconstructed with the same or less impervious surface area under the
 143 development standards in effect when the building permit or sediment
 144 control permit was issued.

145 (b) ~~[[Any]]~~ An impervious surface ~~[[not approved as part of a site plan~~
 146 under Section 59-D-3]] resulting from an addition to an existing one-
 147 family residential dwelling or an accessory structure to a one-family
 148 dwelling, not approved as part of a site plan under Section 59-D-3, is
 149 exempt from this overlay zone’s impervious surface restriction.

150 (c) ~~[[Impervious surfaces associated with]]~~ A development that lawfully
 151 existed as of January 1, 2014 on any lot or parcel with an area less than
 152 ~~[[2.0 acres as of January 1, 2014 are]]~~ 1.0 acre is exempt from this
 153 overlay zone’s impervious surface restriction.

154 (d) Impervious surface for any publicly funded road, bikeway, path,
 155 driveway, or parking area is exempt from this overlay zone’s impervious
 156 surface restriction.

157
158 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
159 date of Council adoption.

160
161 This is a correct copy of Council action.

162
163 _____
164 Linda M. Lauer, Clerk of the Council

Location of Clarksburg Environmental Overlay Zones

