

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MCPB
ITEM # 19
09/09/04

MEMORANDUM

DATE: September 3, 2004
TO: Montgomery County Planning Board
VIA: Jeff Zyontz, Chief
Countywide Planning Division
John Carter, Chief
Community-Based Planning Division
Carlton Gilbert, Zoning Supervisor *CG*
Development Review Division
FROM: Mary Dolan, Environmental Planning *MD*
Countywide Planning
Fred Vernon Boyd, Community Planner *FVB*
Georgia Avenue Team
Greg Russ, Planner Coordinator *GR*
Development Review Division
PURPOSE: To amend the Zoning Ordinance to create an Environmental Overlay Zone for the Upper Rock Creek Special Protection Area
TEXT AMENDMENT: No. 04-18
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance
INTRODUCED BY: District Council at the request of the Planning Board
INTRODUCED DATE: July 27, 2004
PLANNING BOARD REVIEW: September 9, 2004
PUBLIC HEARING: September 14, 2004; 7:30 p.m.

STAFF RECOMMENDATION APPROVAL with modifications

BACKGROUND

During the District Council review of the Upper Rock Creek Area Master Plan, the Planning, Housing and Economic Development Committee and the full Council extensively discussed the appropriate tools for the protection of stream quality in the Use III portion of the Upper Rock Creek watershed (north of Muncaster Mill Road).

Although the Planning Board Draft reflected the Planning's Board's conclusion that low zoning densities would result in imperviousness levels sufficient to protect stream quality without Special Protection Area (SPA) designation, the Council recommended an SPA along with an imperviousness limit of 8 percent on properties with community sewer service. This Zoning Text Amendment has been drafted to implement the District Council's decision with respect to the imperviousness cap (see Attachment 1 for the ZTA language and Attachment 2 for Special Protection Area and Overlay Zone coverage).

The Council's discussion and consideration of an overlay zone responded to concerns that, while the staff's projections assumed levels of imperviousness based on existing subdivisions, an additional amount of imperviousness should be anticipated as landowners continue to improve their property over time and as remaining vacant parcels develop. Councilmember Praisner requested that the Committee recommend an 8 percent imperviousness cap to allow space for impervious surfaces that are added after new homeowners take possession of their properties.

ANALYSIS

Applicability

The PHED Committee and the Council debated the imposition of a cap and whether it should be 10 percent or 8 percent. The Council ultimately recommended the 8 percent cap. After this decision, the Council received comments from property owners of parcels zoned RE-1 and RE-2 in areas outside the sewer envelope that the 8 percent cap would represent a substantial reduction of their zoning yield. Their inability to cluster development on these properties due to zoning regulations (in the RE-2 zone) and to the standards for septic system design and location, would likely result in higher levels of imperviousness (6.8-12.5 percent) because of the long roads and driveways sometimes necessary to reach areas of the properties that can accommodate septic field percolation. The Council then amended its recommendation to limit the imperviousness cap to properties with community sewer service. The properties most likely to be affected by the 8 percent imperviousness cap would be those close to the edges of the Upper Rock Creek Planning Area (as indicated by the sewer envelope in Attachment 3). ***Staff recommends adding an applicability section to deal with the focus on properties served by sewer.***

The language regarding applicability (page 3, lines 25-26) includes wording that dedicated road rights of way are included in the imperviousness cap as part of subdivisions. Substituting parentheses for commas in this sentence would clarify that this refers to the rights of way dedicated from the original parcel being subdivided, **not** all road projects. ***The staff recommends this grammatical correction.***

An additional clarifying change is recommended to the Development Standards, Section (c) 1, to assist with the flow of the section. ***The staff recommends the addition of the words "except as noted below" to the end of line 19 on page 4 of the ZTA.***

Public Uses

The Upper Rock Creek Area Master Plan includes a provision that public uses and road improvements not be precluded by the imperviousness cap. While some agency representatives argued for exempting these uses altogether, the Council decided that not including these uses in the exemption would require them to keep imperviousness as low as possible. Subsequently, the Council's amendment to apply the imperviousness cap only to development requiring sewer removes the application of the imperviousness cap to road projects that are independent of subdivisions. These projects are covered only under the provisions of the Water Quality Review Regulations and *Environmental Guidelines* applying to all Special Protection Areas. Other public uses, such as Muncaster and Laytonia Recreation Parks, the Pope Farm, the proposed library and public school would be required to apply for a waiver if these uses exceed the 8 percent cap.

The County Council resolution designating the Special Protection Area in Upper Paint Branch includes this provision but the Upper Paint Branch Environmental Overlay Zone does not include it in the zoning text. ***Staff recommends including wording in the applicability provisions for public uses in the Upper Rock Creek Overlay Zone.***

The wording of the applicability provisions (page 4, lines 2-4) does not clearly indicate that, if public facilities must exceed 8 percent to achieve their public purpose, that a waiver is necessary. ***Staff recommends that this language be amended to clarify the need for waivers for public uses on sewer that propose to exceed 8 percent imperviousness and that these projects must also comply with the Water Quality Review Law for Special Protection Areas.***

Catherine Fraley Property

The Council also asked that the Master Plan include a special provision for the Catherine Fraley property to exempt it from the overlay zone if the plans submitted included Moderately Priced Dwelling Units. A revised plan for this property, which includes MPDU's, is currently pending. ***Staff has included language in the overlay zone section on applicability to recognize the special conditions with respect to this property.***

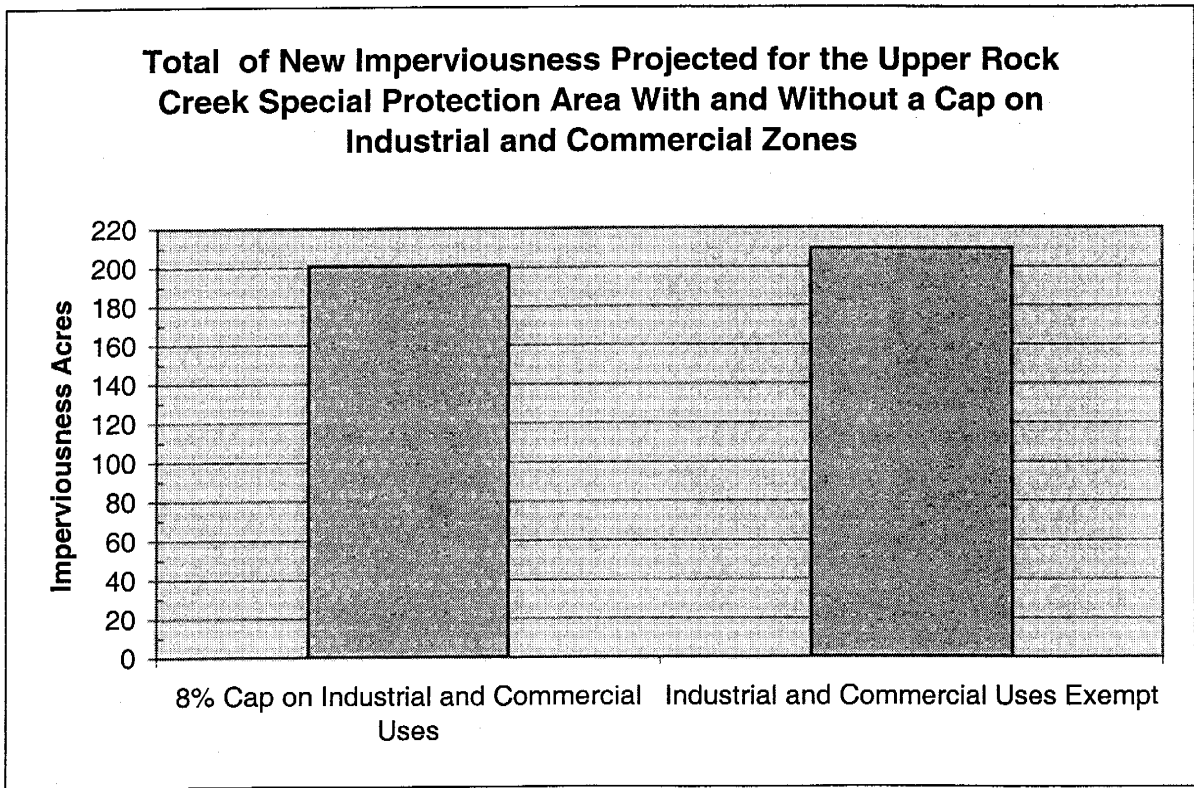
If the Planning Board wishes, one option would be to change the boundary of the proposed overlay zone to exclude this property. However, the boundary is

established in the master plan.

Concerns Not Discussed by District Council

The Council indicated that the overlay zone should be fashioned after the overlay used in the Upper Paint Branch. The District Council did not provide a comprehensive review of the Upper Paint Branch Environmental Overlay Zone, and there are a few concerns that emerge:

1. **Industrial and Commercial Properties** - The Upper Rock Creek Planning Area has three currently undeveloped parcels of I-1 and I-4 zoning within a larger, industrially zoned area. In addition, a small amount of commercial zoning also exists at the intersection of Muncaster Mill Road and Muncaster/Redland Road (see proposed zoning map, Attachment 4). There are approximately 12 acres that are vacant in these zones. Unlike the residential zones in Upper Rock Creek these zones permit densities far in excess of the 8% impervious surface. Placing an imperviousness cap of 8 percent on these areas will likely substantially constrain the use of these properties. To a large degree, having these zones within a Special Protection Area is inconsistent with an 8% impervious cap. The text proposes an exemption for properties in these zones. This exemption would potentially result in only a small increase in imperviousness in the Special Protection Area.



The other option would be to require them to apply for a waiver under the hardship provisions to develop uses allowed by the zone. **Staff recommends an exemption for these zones.**

2. **Limitations on Permitted Uses** - The Upper Paint Branch Environmental Overlay Zone (see Attachment 5) includes a list of uses that are permitted if they comply with certain requirements (organic certification, integrated pest management and soil and water conservation plans). These include landscape contractors, retail nurseries or garden centers, wholesale nursery or greenhouses, golf courses and country clubs and riding stables. Since the adoption of the Upper Paint Branch Environmental Overlay zone, these safeguards have been replaced by other zoning requirements, state regulations and standard industry practices. **Staff has not included this provision in the proposed Upper Rock Creek Environmental Overlay zone.**
3. **Prohibited Uses** - The Upper Paint Branch Environmental Overlay Zone includes a list of uses that are prohibited, including heliports, helistops, automobile filling stations, automobile repair facilities, underground and above ground petroleum pipelines. The Upper Rock Creek SPA has many of these uses already and the industrial zones permit many uses that could have materials that, if improperly handled, would adversely affect water quality. It would be difficult to include the same list as the Paint Branch without prohibiting a large number of uses permitted in the industrial zones (see attached tables). **Staff has not included this provision in the proposed Upper Rock Creek Environmental Overlay zone.**

RECOMMENDATION

Staff has prepared its adaptation of the Upper Paint Branch Environmental Overlay Zone to the unique conditions of Upper Rock Creek and our understanding of the District Council's intent. Staff believes that the proposed overlay zone meets the Upper Rock Creek Master Plan's goal of protecting water quality in this watershed. As such, staff recommends that Zoning Text Amendment No. 04-18 be approved as modified and included as Attachment 1.

Attachments

1. ZTA No. 04-18 (as modified by staff) for the Upper Rock Creek Environmental Overlay Zone
2. Upper Rock Creek Special Protection Area Map
3. Upper Rock Creek Sewer Envelope Map
4. Upper Rock Creek Proposed Zoning Map
5. Upper Paint Branch Environmental Overlay Zone

6. Tables of Permitted Uses in the I-1 and I-4 Zone