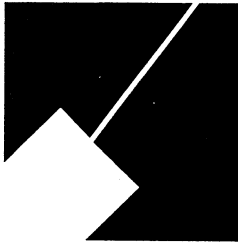


M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

**MCPB**  
**Item #5**  
3/2/06

**DATE:** February 24, 2006  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
Carlton Gilbert, Zoning Supervisor  
**FROM:** Greg Russ, Planner-Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** Amend the Zoning Ordinance to clarify the circumstances for subdivision of a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone, and to require all publicly held or privately held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant

**TEXT AMENDMENT:** No. 06-04  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Praisner  
**INTRODUCED DATE:** January 24, 2006

**PLANNING BOARD REVIEW:** March 2, 2006  
**PUBLIC HEARING:** March 7, 2006; 1:30 p.m.

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**STAFF RECOMMENDATION** Denial

**PURPOSE OF THE TEXT AMENDMENT**

Amend the Zoning Ordinance to clarify the circumstances for subdivision of a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone, and to require all publicly held or privately held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant

## **BACKGROUND**

The RNC zone was originally created in 1998 for application in the Sandy Spring/Ashton Master Plan. The intent of the zone was to preserve open space for historic (Rural Legacy Trail), visual and farming purposes. Specific properties zoned RE-2 that contained conditions unique to the master plan area, such as having historical importance or being actively used in agriculture, were rezoned to the RNC.

The RNC zone allows development with public water and sewer (the properties were formerly zoned RE-2 and not eligible for public water and sewer) to encourage clustering. This zone also requires the vast majority of the property (70 – 85%) to be set aside as rural open space to be used for farming, as an historic setting for the Rural Legacy Trail or to preserve the agricultural character of the master plan area.

The zone allows a range of lots, from conservancy lots to 6,000 square foot lots. Conservancy lots are lots for which the total acreage, minus the area designated for a house, can be used as part of the rural open space calculation. The master plan did not distinguish where the different types of lots needed to be used on which property. As part of the Upper Rock Creek Master Plan, the RNC Zone was modified to clarify that any one-family residential exception in the rural open space area must encompass at least 10 acres of property. *The subject zoning text amendment proposes to further restrict residential uses in this rural open space by requiring a master or sector plan recommendation to allow a one-family lot of at least 10 acres within the rural open space.*

Currently, all land in the rural open space area must be preserved in perpetuity, either by dedication to parkland or by application of an easement or covenant in a recordable form approved by the Planning Board. *The second area of Councilmember Praisner's proposed text amendment would require publicly held land as well as privately held land in the rural open space area to be preserved by an easement or covenant.* This differs from the current language in that it would require that any publicly held parkland located in the rural open space be placed in an easement or covenant that restricts the areas.

## **ANALYSIS**

### **Rural Open Space**

Rural open space is land that is managed, as described in Section 59-C-9.574(h)(3), or is unmanaged, which means that it is returning to its natural state without human intervention. As stated in Section 59-C-572, any recreational facilities in the rural open space are limited to trails and related amenities or other facilities recommended in the master plan. In a case where dedication of public

parkland counts toward the rural open space requirement, the master plan typically designates the land as such, with the understanding of the types of uses that would be appropriate on the land in keeping in character with the purpose of the zone. The public entity tasked with deciding what uses to place on the site takes into account the master plan and zoning ordinance provisions in order to protect the integrity of the overall planning/zoning process.

Excerpts from the zoning text amendment language are depicted below.

**59-C-9.572. Rural Open Space.**

\* \* \*

*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:*

\* \* \*

(d) *Residential, with the following exceptions:*

- *If recommended in an approved and adopted master or sector plan, 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;*

\* \* \*

**59-C-9.574. Optional method of development.**

\* \* \*

(h) *Rural open space design guidelines*

\* \* \*

- (4) *All publicly held or privately held land in the rural open space area must be preserved in perpetuity as rural open space [, either by dedication to parkland or] by application of an easement or covenant in a recordable form approved by the Planning Board. The easement or covenant must restrict uses in the rural open space area to those [set forth in this zone] uses allowed under 59-C-9.572, [establish procedures] provide for the management of any natural or agricultural features [as set forth] in accordance with the approved site plan, and prohibit any [further] development or subdivision within the rural open space area not expressly authorized.*

## **Community-Based Planning Analysis**

The Rural Neighborhood Cluster Zone has been recommended in four approved or draft master plans: Potomac, Upper Rock Creek, Olney, Damascus and Sandy Spring/Ashton.

### Sandy Spring/Ashton Master Plan

There was always an issue with the Sandy Spring community as to the future viability of rural open space. There was a concern that dedication as parkland was not the best possible way to ensure perpetuity as rural open space. The master plan did not recommend any rural open space for parkland but rather suggested that other mechanisms be considered to preserve the rural open space such as easements to a third party to insure that the rural open space would be forever protected.

The master plan did propose parkland on one property in the RNC zone, which was adjacent to Sherwood High School and Historic Sandy Spring (Alfandre Property). However, it was clearly stated that in this case the purpose was to provide ball fields (10 acres) and to buy down density (30 acres) on the property. MNCPPC purchased 40 acres to achieve that master plan goal. The land was acquired by payment and not through dedication.

### Potomac

The Potomac Subregion Master Plan, approved in March 2002, makes a single recommendation for the Rural Neighborhood Cluster Zone. The Plan recommends the RNC Zone for four contiguous parcels, the Tipton, Piney Grove, Weihe and Semmes properties, which total almost 145 acres and are located along Glen and Piney Meetinghouse roads in the Travilah section of the subregion. The Plan recommends that 70 percent of the properties be retained as open space and that larger than minimum stream buffers be provided wherever feasible. The Plan also recommends a maximum of 62 lots on the properties and that 60 acres in the Lower Greenbriar Branch stream valley be dedicated as parkland.

The properties have passed through the development process and two lots, totaling 64 acres, are shown for dedication as parkland, as the Plan recommended. Both lots are included in the rural open space calculations required as part of the development process. They have not been formally conveyed for public parkland, pending resolution of several violations of Department of Permitting services regulations and the removal of temporary facilities, such as sediment traps.

## Upper Rock Creek

The 2004 Upper Rock Creek Area Master Plan recommended four properties for the Rural Neighborhood Cluster Zone. The Plan specified a density of 0.33 units to the acre, with a recommended density of 0.4 units to the acre if Moderately Priced Dwelling Units were required as part of a development. The Plan did not recommend specific percentages of open space for the four properties.

All four properties recommended for the RNC Zone are adjacent to existing stream valley parks. The Plan recommends dedication as public parkland for the entire Dungan property, as well as parts of the Casey and Freeman properties, which are adjacent to North Branch Stream Valley Park. Areas of the Woodlawn property are adjacent to Rock Creek Stream Valley Park and are recommended for dedication as public parkland as well.

Two of the four properties have passed through the development process. The Freeman and Woodlawn properties include a total of approximately 264 acres of parkland dedication. This land is included in the rural open space calculations. The combined Casey and Dungan properties have begun, but not yet completed, the preliminary and site plan processes. These properties include about 262 acres of parkland, all of which is included in the rural open space calculations.

## Olney

The Olney Master Plan, approved in 2005, recommends the Rural Neighborhood Cluster Zone for 35 properties. The Plan recommends a density of 0.33 units to the acre for the majority of those properties. For six properties, the Plan recommends the RNC Zone, but does not recommend community sewer service, which limits allowable density to 0.2 units to the acre. For one property, the Norbeck Country Club, the Plan recommends a density of 0.45 units to the acre.

The Plan recommends parkland acquisition on four properties. One, the Simms property, is designated for acquisition through the Legacy Open Space program. The Plan recommends that a portion of the Casey property adjacent to Farquhar Middle School be designated as rural open space and dedicated as parkland for active recreation. Two other properties are adjacent to Olney Manor Park and are recommended for complete or partial acquisition as parkland. They have not been identified as rural open space.

## Damascus

The Planning Board Draft Damascus Master Plan makes extensive use of the Rural Neighborhood Cluster Zone, and recommends creation of a separate RNC/TDR Zone so that transferable development rights can be used in the resulting development. The Plan recommends the RNC/TDR Zone for six

properties—the Burdette, Stanley-Leishear-Day, Casey-Lewis, Warfield, Kingstead-Leishear and Smart-Miner-Rice-Conway properties. For each, the Planning Board Draft plan recommends a base density of 0.4 units to the acre. Densities of one unit to the acre would be permitted with the purchase of TDRs.

The Draft Master Plan delineates specific areas for dedication as public parkland on the Kingstead-Leishear and Warfield properties.

### **Summary of Master/Sector Plan Impacts of the Zoning Text Amendment**

#### **Sec. 59.C.9.572 (Residential, One-Family Detached Dwelling Unit Exception in Rural Open Space Areas-Conservancy Lots):**

This language change (requiring a master or sector plan recommendation to allow one family detached residential uses on 10 acres or more of rural open space) affects RNC zone properties in the Sandy Spring/Ashton Master Plan. The Sandy Spring/Ashton Master Plan does not designate the use of conservancy lots to specific properties. The use of conservancy lots on property derives from the provision of the zone as approved in 1998, not the master plan. Therefore, the proposed language change would make it impossible to have any new conservancy lots in the Sandy Spring/Ashton Master Plan area.

The approved Potomac, Upper Rock Creek and Olney Master Plans do not recommend residential development using large lots that would contribute to the open space. Nor does the draft Damascus Master Plan. Already approved development plans in Potomac and Upper Rock Creek would not be affected by this text amendment since they were approved based on the zoning language in place at the time of approval. Should the text amendment be approved, the Council would have to evaluate the individual proposals in Damascus and determine which, if any, are appropriate for large lot residences. In the absence of detailed development plans, which may not be available, it is not immediately clear how this would be done. In Olney, future subdivisions in the RNC zone would be precluded from using conservancy lots because the Olney plan does not recommend them.

#### **Sec. 59 C-9.574(h)(4) (Preservation of Parkland in Perpetuity as Rural Open Space)**

In general, public parkland should not be restricted with easements if it is designated as parkland in a master plan. The purpose of designating parkland in a master plan is to provide for future acquisition of parkland for public use and purpose. Our role as public servants and stewards of the land is to implement both the master plans and the zoning ordinance to ensure that the character and uses as described and limited by these documents are adhered to. The requirement for an easement or covenant to restrict the uses on parkland to the uses allowed in the RNC zone is, therefore, redundant and unnecessary.

Moreover, this zoning text amendment fails to identify who this covenant or easement would run to. In the Sandy Spring/Ashton area, the easements on private rural open space have run to the Greater Sandy Spring Green Space, Inc. ("GSSGSI"), which is a land trust that was organized to accept these types of easements in that area.<sup>1</sup> However, there has been no indication that similar organizations exist in other master plan areas that are ready, willing, and able to accept such easements. Moreover, there are questions that need to be addressed related to the long-term viability and enforcement obligations of any such organization. Planning Staff does not recommend that MNCPPC cede any authority over parkland – which is already held for the benefit of the public – through a covenant or easement to a private group that may not even exist in the future.

As stated previously, the only parkland designated in the Sandy Spring/Ashton Master Plan area was purchased by Park and Planning and not designated as rural open space.

Of the five properties recommended for the RNC Zone in the approved Potomac and Upper Rock Creek master plans, two of them—the Potomac properties and the Freeman property in Upper Rock Creek—have been approved for development. The Potomac properties are well into the construction phase; approvals for the Freeman property are under legal challenge precisely because no easements have been recommended for rural open space dedicated as parkland. The Woodlawn property in Upper Rock Creek, which also has approved development plans, is being considered for purchase by the State Highway Administration; refinements to the design for the Intercounty Connector have resulted in a proposed alignment that bisects the property and greatly reduces its development potential.

Approval of the text amendment would directly affect development of the remaining RNC parcel in Upper Rock Creek, the Casey-Dungan properties, which include 262 acres of land proposed for park dedication. As noted above, the land proposed for parkland is adjacent to existing stream valley parkland and is not envisioned for recreational uses beyond trails. It should also be noted that the areas proposed as parkland are not included in the sewer envelope; the Plan explicitly discourages sewer lines in the tributaries that drain these areas.

The majority of land recommended for parkland acquisition in Olney would be unaffected by this text amendment. Existing language in the Zoning Ordinance allows master plans to recommend areas that can be designated as rural open space and used for active recreation. The Legacy Open Space program may acquire a second property. Two properties are recommended for acquisition to

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<sup>1</sup> There is also one parcel in the Sandy Spring/Ashton area that was not recommended as parkland in the Master Plan but was dedicated as parkland that is subject to a rural open space easement that runs to GSSGSI. This easement was placed on this parkland pursuant to a Planning Board condition of approval.

add to existing active parkland. These properties would be affected by the proposed text amendment only if they are included in an assemblage with adjoining properties also in the RNC Zone.

In Damascus, approval of the text amendment would directly affect areas on the Kingstead-Leishear and Warfield properties.

## **RECOMMENDATION**

The staff recommends that Zoning Text Amendment 06-04 be denied. To date, there are no master plans or sector plans that designate specifically the conservancy lot exception in the rural open space area. In the Sandy Spring/Ashton Master Plan area, conservancy lots were designated based on the zoning ordinance provisions, not the master plan. Conceptually, it is unclear what the conservancy lot amendment is trying to fix, so it is hard to support it since it raises some new problems such as: 1) what happens to existing master plans; 2) what happens to already approved developments; and 3) how is the master plan to decide where these lots would be appropriate. From a design point, a minimum 10-acre conservancy lot is a good idea since it is a technique that is in line with the concept of providing flexibility in site planning of RNC developments. It assists in achieving a better plan more suited to the individual site conditions-- a major part of how the RNC is supposed to work--rural area, large development sites, visual impacts, etc. From a technical standpoint, 10-acre conservancy lots that are included in a site plan help achieve the lot size diversity requirement of the RNC zone. Although the impact may not be huge, not having conservancy lots in a development would make it harder to achieve lot size diversity. Also, the implementation of a RNC rural open space easement on a single property is consistent with how we implement a Category I forest conservation easement on a single lot in any other residential zone in the County.

In general, public parkland should not be restricted with easements if it is designated as parkland in a master plan. The purpose of designating parkland in a master plan is to provide for future acquisition of parkland for public use and purpose. Our role as public servants and stewards of the land is to implement both the master plans and the zoning ordinance to ensure that the character and uses as described and limited by these documents is adhered to. It is not necessary for MNCPPC to cede our authority over our own parkland -- parkland that is for the benefit of the public -- to a private group that may not even exist in the future. One of the unintended consequences of this text amendment could be that no further public parkland in the RNC zone is accepted by the Commission; even if it is designated in a master plan. The Commission, upon further deliberation, may determine that the easements and covenants are too burdensome, and that the rural open space lands would better be left in private hands. This would probably not be the best outcome for County residents.



**Attachments:**

- 1. Zoning Text Amendment as submitted**
- 2. Community-Based Planning Memoranda**

# ATTACHMENT 1

Zoning Text Amendment No: 06-04  
Concerning: Rural Neighborhood Cluster –  
Rural Open Space  
Draft No. & Date: 2 – 1/19/06  
Introduced: January 24, 2005  
Public Hearing: 2/28/06; 1:30 p.m.  
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**

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By: Councilmember Praisner

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- clarifying the circumstances for subdivision of a one-family residential lot in the rural open space area of the Rural Neighborhood Cluster (RNC) zone, and
- requiring all publicly held or privately held land in the rural open space area of the Rural Neighborhood Cluster (RNC) zone to be preserved in perpetuity by easement or covenant; and
- generally amending the Rural Neighborhood Cluster zone.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.57	“Special regulations for development in the Rural Neighborhood Zone”
Section 59-C-9.572	“Rural Open Space”
Section 59-C-9.574	“Optional method of development”

**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-9. is amended as follows:**

2   **DIVISION 59-C-9.        AGRICULTURAL ZONES.**

3   \* \* \*

4   **59-C-9.57. Special regulations for development in the Rural Neighborhood**  
5   **Cluster zone.**

6           **59-C-9.571. Purpose.**

7           The cluster method of development is intended to preserve large areas of  
8           contiguous rural open space, consistent with the recommendations and  
9           guidelines of the applicable master or sector plan. Cluster development is  
10          required under both the standard and optional methods of development.  
11          Cluster development requires the setting aside of rural open space. Under  
12          the optional method of development the maximum development unit density  
13          allowed may be increased to accommodate the construction of Moderately  
14          Priced Dwelling Units in accordance with Chapter 25A.

15          **59-C-9.572. Rural Open Space.**

16          Rural open space is land that is managed, as described in Section 59-C-  
17          9.574(g)(3), or is unmanaged, which means that it is returning to its natural  
18          state without human intervention. Contiguous rural open space shares an  
19          extended boundary with a residential cluster neighborhood. The open space  
20          may preserve sensitive natural resources, other sensitive areas and associated  
21          habitat.

22          Recreational facilities in the rural open space are limited to trails and related  
23          amenities or other facilities recommended in the master plan. The following  
24          classes of uses are not permitted in the rural open space area. The  
25          exceptions noted in subsections (d) and (f) are not excluded from this area;  
26          they are permitted by right or special exception, as stated in section 59-C-  
27          9.3:

- 28 (a) Agricultural-industrial;
- 29 (b) Agricultural-commercial;
- 30 (c) Resource production and extraction;
- 31 (d) Residential, with the following exceptions:
- 32 - If recommended in an approved and adopted master or sector
- 33 plan, a one-family detached dwelling located on a lot, 10 acres
- 34 or greater in size, that contributes to the overall total of rural
- 35 open space;
- 36 - accessory apartment that is part of a one-family detached
- 37 dwelling located on a lot, 10 acres or greater in size, that
- 38 contributes to the overall total of rural open space;
- 39 - a farm tenant dwelling in existence prior to application of the
- 40 Rural Neighborhood Cluster zone, or a structure converted to a
- 41 farm tenant dwelling included as part of a historic site
- 42 designated in the Historic Master Plan;
- 43 - a one-family semidetached dwelling and townhouse as part of a
- 44 moderately-priced dwelling unit development;
- 45 (e) Commercial; and
- 46 (f) Services, except a home occupation associated with an otherwise
- 47 permitted residential use.

48 \* \* \*

49 **59-C-9.574. Optional method of development.**

50 \* \* \*

- 51 (h) Rural open space design guidelines

52 \* \* \*

- 53 (4) All publicly held or privately held land in the rural open space
- 54 area must be preserved in perpetuity as rural open space [,

55 either by dedication to parkland or] by application of an  
56 easement or covenant in a recordable form approved by the  
57 Planning Board. The easement or covenant must restrict uses in  
58 the rural open space area to those [set forth in this zone] uses  
59 allowed under 59-C9.572, [establish procedures] provide for the  
60 management of any natural or agricultural features [as set forth]  
61 in accordance with the approved site plan, and prohibit any  
62 [further] development or subdivision within the rural open  
63 space area not expressly authorized.

64 \* \* \*

65 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
66 date of Council adoption.

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68 This is a correct copy of Council action.

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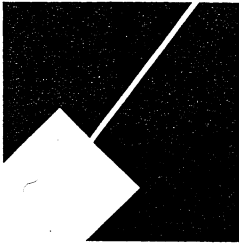
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Linda M. Lauer, Clerk of the Council

M-NCPPC



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.org

February 23, 2006

To: Greg Russ  
Development Review Division

Via: John A. Carter, Chief *JAC*  
Community-Based Planning Division

From: Frederick Vernon Boyd *FVB*  
Community-Based Planning Division

Subject: Zoning Text Amendment 06-04—Rural Neighborhood Cluster Zone

Zoning text amendment 06-04 proposes two modifications of the Rural Neighborhood Cluster (RNC) Zone. The text amendment proposes to: 1) require that master plans recommend the use of rural open space for large one family lots; and 2) require easements for all land—private or public—that is included as rural open space. This memorandum offers background on the use of the Rural Neighborhood Cluster (RNC) Zone in four recently approved or pending master plans.

### Background

This section offers a brief summary of the zone's use in Potomac, Olney, Upper Rock Creek and Damascus.

#### *Potomac*

The Potomac Subregion Master Plan, approved in March 2002, makes a single recommendation for the Rural Neighborhood Cluster Zone. The Plan recommends the RNC Zone for four contiguous parcels, the Tipton, Piney Grove, Weihe and Semmes properties, which total almost 145 acres and are located along Glen and Piney Meetinghouse roads in the Travilah section of the subregion. The Plan recommends that 70 percent of the properties be retained as open space and that larger than minimum stream buffers be provided wherever feasible. The Plan also recommends a maximum of 62 lots on the

properties and that 60 acres in the Lower Greenbriar Branch stream valley be dedicated as parkland.

The properties have passed through the development process and two lots, totaling 64 acres, are shown for dedication to parkland, as the Plan recommended. Both lots are included in the rural open space calculations required as part of the development process. They have not been formally conveyed for public parkland, pending resolution of several violations of Department of Permitting Services regulations and the removal of temporary facilities, such as sediment traps.

### *Upper Rock Creek*

The 2004 Upper Rock Creek Area Master Plan recommended four properties for the Rural Neighborhood Cluster Zone. The Plan specified a density of 0.33 units to the acre, with a recommended density of 0.4 units to the acre if Moderately Priced Dwelling Units were required as part of a development. The Plan did not recommend specific percentages of open space for the four properties.

All four properties recommended for the RNC Zone are adjacent to existing stream valley parks. The Plan recommends dedication as public parkland for the entire Dungan property, as well as parts of the Casey and Freeman properties, which are adjacent to North Branch Stream Valley Park. Areas of the Woodlawn property are adjacent to Rock Creek Stream Valley Park and are recommended for dedication as public parkland as well.

Two of the four properties have passed through the development process. The Freeman and Woodlawn properties include a total of approximately 264 acres of parkland dedication. This land is included in the rural open space calculations. The combined Casey and Dungan properties have begun, but not yet completed, the preliminary and site plan processes. These properties include about 262 acres of parkland, all of which is included in the rural open space calculations.

### *Olney*

The Olney Master Plan, approved in 2005, recommends the Rural Neighborhood Cluster Zone for 35 properties. The Plan recommends a density of 0.33 units to the acre for the majority of those properties. For six properties, the Plan recommends the RNC Zone, but does not recommend community sewer service, which limits allowable density to 0.2 units to the acre. For one property, the Norbeck Country Club, the Plan recommends a density of 0.45 units to the acre.

The Plan recommends parkland acquisition on four properties. One, the Simms property, is designated for acquisition through the Legacy Open Space program. The Plan recommends that a portion of the Casey property adjacent to Farquhar Middle School be designated as rural open space and dedicated as parkland for



active recreation. Two other properties are adjacent to Olney Manor Park and are recommended for complete or partial acquisition as parkland. They have not been identified as rural open space.

### *Damascus*

The Planning Board Draft Damascus Master Plan makes extensive use of the Rural Neighborhood Cluster Zone, and recommends creation of a separate RNC/TDR Zone so that transferable development rights can be used in the resulting development. The Plan recommends the RNC/TDR Zone for six properties—the Burdette, Stanley-Leishear-Day, Casey-Lewis, Warfield, Kingstead-Leishear and Smart-Miner-Rice-Conway properties. For each, the Planning Board Draft plan recommends a base density of 0.4 units to the acre. Densities of one unit to the acre would be permitted with the purchase of TDRs.

The Draft Master Plan delineates specific areas for dedication as public parkland on the Kingstead-Leishear and Warfield properties.

## **Analysis**

### *Rural Open Space*

Of the five properties recommended for the RNC Zone in the approved Potomac and Upper Rock Creek master plans, two of them—the Potomac properties and the Freeman property in Upper Rock Creek—have been approved for development. The Potomac properties are well into the construction phase; approvals for the Freeman property are under legal challenge precisely because no easements have been recommended for rural open space dedicated as parkland. The Woodlawn property in Upper Rock Creek, which also has approved development plans, is being considered for purchase by the State Highway Administration; refinements to the design for the Intercounty Connector have resulted in a proposed alignment that bisects the property and greatly reduces its development potential.

Approval of the text amendment would directly affect development of the remaining RNC parcel in Upper Rock Creek, the Casey-Dungan properties, which include 262 acres of land proposed for park dedication. As noted above, the land proposed for parkland is adjacent to existing stream valley parkland and is not envisioned for recreational uses beyond trails. It should also be noted that the areas proposed as parkland are not included in the sewer envelope; the Plan explicitly discourages sewer lines in the tributaries that drain these areas.

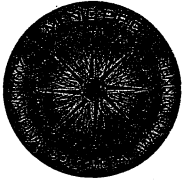
The majority of land recommended for parkland acquisition in Olney would be unaffected by this text amendment. Existing language in the Zoning Ordinance allows master plans to recommend areas that can be designated as rural open space and used for active recreation. The Legacy Open Space program may

acquire a second property. Two properties are recommended for acquisition to add to existing active parkland. These properties would be affected by the proposed text amendment only if they are included in an assemblage with adjoining properties also in the RNC Zone.

In Damascus, approval of the text amendment would directly affect areas on the Kingstead-Leishear and Warfield properties.

### *Conservancy Lots*

The approved Potomac, Upper Rock Creek and Olney plans do not recommend residential development using large lots that would contribute to the open space. Nor does the draft Damascus Master Plan. Already approved development plans in Potomac and Upper Rock Creek cannot be affected by this text amendment. Should the text amendment be approved, the Council would have to evaluate the individual proposals in Damascus and determine which, if any, are appropriate for large lot residences. In the absence of detailed development plans, which may not be available, it is not immediately clear how this would be done. In Olney, future subdivisions in the RNC Zone would be precluded from using conservancy lots because the Olney plan does not recommend them.



## Memorandum

To: Greg Russ, Zoning Analyst

From: Piera Weiss, Community-Based Planning

Subject: Text Amendment ZTA 06-04 *aw*

Date: 2/17/2006

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The RNC zone was originally created in 1998 for application in the Sandy Spring/Ashton Master Plan. The intent of the zone was to preserve open space for historic (Rural Legacy Trail), visual and farming purposes. Specific properties zoned RE-2 that contained conditions unique to master plan area, such as having historical importance or were actively used in agriculture, were rezoned to the RNC.

The RNC zone allowed development with water and sewer (the properties were formerly zoned RE-2 and not eligible for public water and sewer) to encourage clustering and provide the vast majority (70 – 85%) of the property to be set aside as rural open space that could be used for farming or as an historic setting for the Rural Legacy Trail or to preserve the agricultural character of the master plan area. It was intended that the rural open space, created by the use of cluster, would be restricted in perpetuity to specific uses described in easements.

The amount of rural open space (described as a percentage) and the maximum number of housing units for the individual properties was expressly outlined in the master plan. The total number of units, in some cases less than would be expected, was placed in a table so that there would be no debate regarding number of units. MPDUS were specifically not included in the requirements of the zone since there was an inherent conflict between desired density, the arrangement of lots with respect to specific site features and environmental issues, and allowing for additional bonus densities.

The zone recommended a range of lots, from conservancy lots to 6,000 square feet. Conservancy lots were lots for which the total acreage, minus the area designated for a house, could be used to as part of the rural open space

calculation. The master plan did not distinguish where the different types of lots needed to be used on which property.

There was always an issue with the Sandy Spring community as to the future viability of rural open space. There was a concern that dedication as parkland was not the best possible way to ensure perpetuity as rural open space. The master plan did not recommend any rural open space for parkland but rather suggested that other mechanisms be considered to preserve the rural open space such as easements to a third party to insure that the rural open space would be forever protected.

The master plan did propose parkland on one property in the RNC zone, which was adjacent to Sherwood High School and the Historic Sandy Spring (Alfandre Property). However, it was clearly stated that in this case the purpose was to provide ball fields (10 acres) and to buy down density (30 acres) on the property. MNCPPC purchased 40 acres to achieve that master plan goal. The land was acquired by payment and not through dedication.

Since 1998, other master plans have used the RNC zone and have amended the zone to suit the intent of these master plans. This has created problems for the Sandy Spring/Ashton Master Plan. Properties embarking on the development process must conform to the current zone. On one property (Danshes), MPDUS had to be provided in excess of the maximum density recommended in the master plan.

The problem(s) this text amendment is addressing appears to have arisen from issues related to the other master plans that used and amended the zone since 1998. A better approach might be to understand the issues and then determine how those issues can be addressed through other mechanisms, not by wholesale changes to the RNC zone. All of the changes have negated the original intent and purpose of the zone as applied in Sandy Spring. Perhaps a better solution should have been a new zone for the subsequent master plans.

The following are specific points with respect to the proposed changes:

Sec 59.C.9.572:

This language change affects RNC zone properties in the Sandy Spring/Ashton Master Plan. The Sandy Spring/Ashton Master Plan does not restrict the use of conservancy lots to specific properties. The use of conservancy lots on property derives from the provision of the zone as approved in 1998, not the master plan.

Sec C-9.574 wishes to require easements on parkland. As stated before, the only parkland designated in the Sandy Spring/Ashton Master Plan area was purchased. In general, parkland should not be restricted with easements if it is designated as parkland in a master plan. The purpose of designating parkland in

a master plan is to provide for future acquisition of parkland for public use and purpose. The use and purpose may of change over time. Easements would present a future problem.