

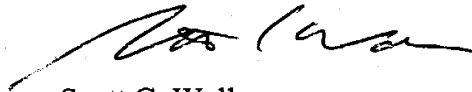
Mr. Derick Berlage, Chairman
and Members of the Montgomery County Planning Board
May 12, 2006
Page 4

Notwithstanding the above, we do note that on April 18, 2006, the County Council approved Zoning Text Amendment 06-04 (the "ZTA"), which amended the RNC Zone provisions to require that all publicly held rural open space for RNC developments must be preserved in perpetuity by recordation of an easement or covenant. The ZTA was *not* made retroactive to approved preliminary plans, including the subject Preliminary Plan, and does *not* impose any obligation on Pulte to record an easement on the Parkland Dedication required as a condition of the Preliminary Plan Opinion. However, if the Planning Board desires to grant the Reconsideration Request, it should be for the sole purpose of considering the ZTA with regard to the Parkland Dedication required by the Preliminary Plan Opinion.

Upon review of this letter, please contact us if any additional information is needed. Thank you.

Sincerely yours,

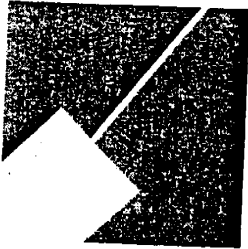
LINOWES AND BLOCHER LLP



Scott C. Wallace

cc: Mr. Greg May
Ms. Debra Daniel
Ms. Catherine Conlon
Barbara A. Sears, Esquire
Joseph Lapan, Esquire

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

**MCPB
ITEM #9
3/31/05**



MEMORANDUM

DATE: March 24, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Acting Supervisor (301-495-4542)
Development Review Division *CC*

REVIEW TYPE: Preliminary Plan of Subdivision and Preliminary Water Quality Plan

APPLYING FOR: Preliminary Plan and Preliminary Water Quality Plan Approval for 133 dwelling units, including 113 one-family detached dwelling units and 20 one-family semi-detached (duplex) units which will be Moderately Priced Dwelling Units

PROJECT NAME: Reserve at Fair Hill

CASE NO. 1-04011

REVIEW BASIS: Pursuant to Chapter 50, the Subdivision Regulations and Chapter 59, the Zoning Ordinance

ZONE: RNC

LOCATION: On both sides of Wickham Road southwest of Laytonsville Road (MD 108)

MASTER PLAN: Upper Rock Creek

APPLICANT: Pulte Homes, Inc.

ENGINEER: Rodgers Consulting

ATTORNEY: Linowes and Blocher

HEARING DATE: March 31, 2005

Based on staff recommendations, the Historic Preservation Commission approved the subdivision proposal with the conditions included above.

CITIZEN CONCERNS:

Two letters were received by staff regarding the proposed development. The first was from an adjacent property owner directly across the North Branch Stream Valley Park from the proposed development. Concerns raised included opposition to the inclusion of moderately priced dwelling units in this subdivision and proposed location of houses on certain lots. As discussed above, the County Council decided to expand the MPDU program to include lower density and large lot subdivisions on sewer. Therefore, MPDUs are required for this subdivision. Although the preliminary plan shows possible house locations and sizes, the exact layout of houses will not be determined until site plan review. At that time, further consideration will be given to providing adequate yard areas and edge tree protection.

The main concern raised in the second letter from Mr. David Troutner on behalf of the Muncaster Area Civic Association was the need for documentation that the rural open space area proposed as part of the subdivision will be preserved in perpetuity. To that end, he believes the Planning Board should review and approve easement or covenant language (including specific covenants on proposed parkland dedication) prior to the approval of the preliminary plan. Staff is recommending Condition #27 which requires the recordation of appropriate preservation agreements at the time of record plat review. Site plan approval is required for this property, and detailed easement language will be reviewed at that time.

CONCLUSION:

Staff's review of Preliminary Plan #1-04110, Reserve at Fair Hill, indicates that the plan conforms to the recommendations of the Upper Rock Creek Master Plan. The proposed preliminary plan is consistent with the master plan goal to maintain the area's residential character. The proposed preliminary plan complies with Chapter 50 of the Montgomery County Code, Subdivision Regulations, in that public facilities will be adequate to support and service the area of the proposed subdivision. Staff further believes that the size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision. As such, Staff recommends approval of the preliminary plan with the specified conditions.

Attachments:

Attachment A – Vicinity Map
Attachment B – Preliminary Plan

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

TRANSCRIPT OF
PRELIMINARY PLAN AND PRELIMINARY WATER QUALITY PLAN
REVIEW NO. 1-04110, THE RESERVE AT FAIR HILL

BEFORE THE
MONTGOMERY COUNTY PLANNING BOARD
MARCH 31, 2005

COMMISSIONERS PRESENT:

DERICK P. BERLAGE, CHAIRMAN

ALLISON BRYANT

JOHN ROBINSON

MEREDITH WELLINGTON

COMMISSIONERS ABSENT:

WENDY COLLINS PERDUE, VICE CHAIR

1 only one side of all of the tertiary streets. As I said in the
2 previous item of finding, these roads will be safe to cross in
3 order to access that sidewalk. We do believe they will.

4 The second waiver that we're recommending is a waiver of
5 the centerline radii for this proposed street HH, and the
6 proposed street BB. This would permit a sharper turning radius
7 on these streets in a more compressed pattern enhances the
8 cluster and we are recommending that that waiver occur.

9 You did receive two letters, I'm sorry, staff received
10 two letters and we covered those, the concerns in those
11 letters in the staff report that you received. And you have
12 also with the revised conditions handed out today, received
13 written testimony from one of the individuals who wrote us a
14 previous letter, Mr. David Trephiner who is the President of
15 the Muncaster Area Civic Association. That testimony
16 reiterates Mr. Trephiner's and the neighborhoods concern that
17 the parkland dedication on this plan have an overlapping
18 easement or covenant, a written easement or covenant, much
19 like the private area as well. This covenant, he believes,
20 should be placed on it to protect the parkland as natural area
21 in perpetuity. And he also in his written testimony today
22 requested that the Board not approve this preliminary plan
23 until you have in front of you that covenant applying to both
24 the private and the public land. As I said, just a second ago,

1 we, I did hand out to you the revised conditions and condition
2 number 29, which is not a new condition, was placed in the
3 staff's recommendations of approval. It does cover the need
4 for the covenant. It applies to the private open space. The
5 staff did not recommend extension of a similar covenant to the
6 public open space, and we do believe that the language of the
7 covenant can be reviewed and approved either as part of the
8 site plan if the Board chooses, or as part of the record plat,
9 which does happen typically on most of the plans that we see.

10 We are recommending approval of this plan and the
11 associated preliminary water quality plan, and I can answer
12 any questions that you have.

13 CHM. BERLAGE: Ms. Sears?

14 MS. BARBARA SEARS: Yes, sir. Good afternoon, my name is
15 Barbara Sears of Linowes and Blocher, and I'm representing the
16 applicant. With me to my right is Robert Klein who is Vice
17 President of Pulte, who is representing Pulte, the applicant,
18 and to my left is Kim McKerry of Rogers Consulting, who has
19 worked with us through the land planning and engineering phase
20 of this project.

21 We appreciate all the hard work the staff has done. We
22 have worked through both the Upper Rock Creek master plan, and
23 all the activities that the Board was so intimately involved
24 in as well as through this preliminary plan to bring this plan



Ordinance No: 15-69
Zoning Text Amendment No: 06-04
Concerning: Rural Neighborhood Cluster –
Rural Open Space
Draft No. & Date: 3 – 4/14/06
Introduced: January 24, 2005
Public Hearing: 3/7/06; 1:30 p.m.
Adopted: April 18, 2006
Effective: May 8, 2006

**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: Councilmember Praisner

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.*

OPINION

Zoning Text Amendment No. 06-04 was introduced on January 24, 2005, to clarify that all publicly or privately held land in the rural open space area must be preserved in perpetuity as rural open space through an easement or covenant. The ZTA would also establish that subdivision for a one-family lot in the rural open space area of the Rural Neighborhood Cluster zone is allowed only if recommended in an approved and adopted master or sector plan..

The Montgomery County Planning Board in its report to the Council recommended that the text amendment not be approved. The Board's position was that it's unwise to cede public control over public land in an easement or covenant to a private entity.

The County Council held a public hearing on March 7, 2006, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on April 3, 2006, to review the Zoning Text Amendment. The Committee recommended that ZTA 06-04 be approved, with revisions. As recommended by the Committee, all publicly held or privately land in the rural open space area of the RNC zone must be preserved in perpetuity as rural open space by application of an easement or covenant in a recordable form. The Committee also agreed that 10-acre conservancy lots would not be required to be identified in an approved and adopted master or sector plan provided the conservancy lot contributes to the overall total of rural open space and is a logical extension of the existing open space area

The District Council reviewed Zoning Text Amendment No. 05-09 at a meeting held on April 3, 2006, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 05-09 will be approved as amended.

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, and is a logical extension of the existing open space
 - 36 area;
 - 37 - accessory apartment that is part of a one-family detached
 - 38 dwelling located on a lot, 10 acres or greater in size, that
 - 39 contributes to the overall total of rural open space;
 - 40 - a farm tenant dwelling in existence prior to application of the
 - 41 Rural Neighborhood Cluster zone, or a structure converted to a
 - 42 farm tenant dwelling included as part of a historic site
 - 43 designated in the Historic Master Plan;
 - 44 - a one-family semidetached dwelling and townhouse as part of a
 - 45 moderately-priced dwelling unit development;
- 46 (e) Commercial; and
- 47 (f) Services, except a home occupation associated with an otherwise
- 48 permitted residential use.

49 * * *

50 **59-C-9.574. Optional method of development.**

51 * * *

- 52 (h) Rural open space design guidelines

53 * * *

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

65 * * *

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

68

69 This is a correct copy of Council action.

70

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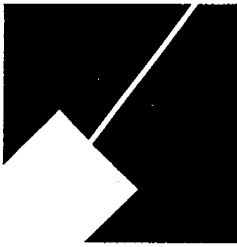
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74 _____
Linda M. Lauer, Clerk of the Council



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

MCPB
Item #5
3/2/06

DATE: February 24, 2006
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RKZ*
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.

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

ATTACHMENT FIVE

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.¹ 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

¹ 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**

By: Councilmember Praisner

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 [,