



Committee: Directly to Council
Committee Review: N/A
Staff: Livhu Ndou, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #ClarksburgOverlay #ClarksburgEast
#ClarksburgWest #EnvironmentalOverlay #TenMileCreek

AGENDA ITEM #6A
January 24, 2023
Action

SUBJECT

Zoning Text Amendment (ZTA) 22-12, Overlay Zones – Clarksburg East & West Environmental Overlay – Exemptions

Lead Sponsor: Council President Glass at the Request of the Planning Board

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

A motion to withdraw must be made by the original sponsor, followed by a roll call vote.

DESCRIPTION/ISSUE

Lead Sponsor Council President Glass requests to withdraw ZTA 22-12, at the request of the Planning Board. ZTA 22-12 would have clarified that any master-planned bikeway located in the Clarksburg East or West Environmental Overlay Zone is exempt from the impervious surface restrictions.

SUMMARY OF KEY DISCUSSION POINTS

- On April 1, 2014, the County Council approved the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. The Ten Mile Creek Limited Amendment recommended limiting imperviousness, establishing open space requirements for new development both east and west of I-270, and changing development standards of the underlying zones to maximize development flexibility and protect sensitive natural resources.
- As currently written, the exemption language for bikeways could be read as allowing only publicly-funded bikeways to be exempt from impervious surface restrictions. ZTA 22-12 would have clarified that the exemption applies to “publicly-funded roads” or “master-planned bikeways.” It would also have extended the master-planned bikeway exemption to any bikeway from any master plan and not just those identified in the Ten Mile Creek Amendment.
- The Planning Board now recommends the Council take no further action on ZTA 22-12. According to the Planning Board, “There is little remaining bikeway that has yet to be assigned or allocated most of which would likely be constructed through a publicly funded capital project given their locations. This has greatly reduced the need for this ZTA to proceed.”

This report contains:

ZTA 22-12
Planning Board Recommendation, January 2023

© 1
© 5

Planning Staff Memorandum, January 2023	© 7
Racial Equity & Social Justice (RESJ) Impact Statement	© 18
Planning Board Recommendation, April 2020	© 20
Planning Staff Memorandum, March 2020	© 22
County Executive Memorandum, July 2020	© 25

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Zoning Text Amendment No.: 22-12
Concerning: Zoning Text Amendment
(ZTA) 22-12, Overlay
Zones – Clarksburg East
& West Environmental
Overlay – Exemptions
Draft No. & Date: 1 – 12/6/2022
Introduced: December 13, 2022
Public Hearing:
Adopted:
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President Glass at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- clarify that any master-planned bikeway is exempt from the overlay zones' impervious surface restrictions;
- and generally amend the Clarksburg East & West Environmental Overlay Zones.

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

Division 4.9.	“Overlay Zones”
Section 4.9.5.	“Clarksburg East Environmental (CEE) Overlay Zone”
Section 4.9.6.	“Clarksburg West Environmental (CWE) Overlay Zone”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by 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

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:

Sec. 1. DIVISION 59-4.9 is amended as follows:

Division 4.9. Overlay Zones

* * *

Section 4.9.5. Clarksburg East Environmental (CEE) Overlay Zone

* * *

B. Exemptions

1. Any impervious surface lawfully existing under a building permit or sediment control permit issued before August 4, 2014, that exceeds the applicable impervious surface restriction may continue or be reconstructed with the same or less impervious surface area under the development standards in effect when the building permit or sediment control permit was issued.
2. An impervious surface resulting from an addition to an existing detached house or an accessory structure to a detached house, not approved as part of a site plan under Section 7.3.4, is exempt from this Overlay zone's impervious surface restriction.
3. On any lot or parcel with an area less than 2 acres as of January 1, 2014, any development is exempt from this Overlay zone's impervious surface restriction.
4. Impervious surface for any publicly-funded road or any master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlay zone's impervious surface restriction.

* * *

Section 4.9.6. Clarksburg West Environmental (CWE) Overlay Zone

* * *

28 **B. Exemptions**

- 29 1. Any impervious surface lawfully existing under a building permit or
30 sediment control permit issued before August 4, 2014, that exceeds
31 the applicable impervious surface restriction may continue or be
32 reconstructed with the same or less impervious surface area under the
33 development standards in effect when the building permit or sediment
34 control permit was issued.
- 35 2. An impervious surface resulting from an addition to an existing
36 detached house or an accessory structure to a detached house, not
37 approved as part of a site plan under Section 7.3.4, is exempt from this
38 Overlay zone’s impervious surface restriction.
- 39 3. On any lot or parcel with an area less than 2 acres as of January 1,
40 2014, any development is exempt from this Overlay zone’s
41 impervious surface restriction.
- 42 4. Impervious surface for any publicly-funded road or any master-
43 planned bikeway [identified by the Ten Mile Creek Area Limited
44 Amendment to the Clarksburg Master Plan and Hyattstown Special
45 Study Area] is exempt from this Overlay zone’s impervious surface
46 restriction.

47 * * *

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

January 16, 2022 2023

To: The Honorable Evan Glass
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment No. 22-12

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on January 12, 2023 and by a vote of 5:0 recommended the District Council take no further action on ZTA 22-12. This ZTA would modify the exemption language in the Clarksburg East and Clarksburg West Environmental Overlay Zones to clarify that impervious surface exemptions apply to any publicly-funded roadway project and any bikeway identified in any master plan.

Both Overlay Zones contain the same exemption language, which currently reads:

Impervious surface for any publicly funded road or bikeway identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area is exempt from this Overlay Zone's impervious surface restrictions.

The introduced ZTA would add the phrase 'any master-planned' before the word bikeway and delete the specific reference to the Ten Mile Creek amendment. This ZTA was initially requested by the Planning Board in April 2020 to provide clarity to the existing code language prior to reviewing anticipated development applications in the Clarksburg area. Since the Planning Board's request, nearly three years have transpired. The area's major development projects have been reviewed and approved, accounting for much of the master-planned bikeways in this part of Clarksburg. There is little remaining bikeway that has yet to be assigned or allocated most of which would likely be constructed through a publicly funded capital project given their locations. This has greatly reduced the need for this ZTA to proceed.

The Honorable Evan Glass
January 16, 2022
Page Two

The Planning Board appreciates the opportunity to review and provide comment on ZTA 22-12. The Board believes the greatly diminished need for clarification supports the recommendation to not take further action on ZTA 22-12.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, January 12, 2023.



Jeffrey Zyontz

Chair

Attachment A: Staff Report Packet

ZTA 22-12

OVERLAY ZONES – CLARKSBURG EAST & WEST
ENVIRONMENTAL OVERLAY – EXEMPTIONS



Description

ZTA 22-12 clarifies that any master-planned bikeway located in the Clarksburg East or Clarksburg West Environmental Overlay Zone is exempt from impervious surface restrictions.

ZTA 22-12

Completed: 01-05-2023

MCPB

Item No. 8

01-12-2023

Montgomery County

Planning Board

2425 Reedie Drive, Floor 14

Wheaton, MD 20902

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INTRODUCED BY

Council President Glass
on behalf of the Planning Board

INTRODUCTION DATE

12/13/2022

REVIEW BASIS

Chapter 59



Summary:

- Staff recommends the Planning Board transmit a memo to the District Council recommending no action be taken on ZTA 22-12 at this time.
- The Clarksburg East and Clarksburg West overlay zones have impervious surface exemptions for certain roads and bikeways, however it is unclear whether the modifiers of ‘publicly funded’ and ‘identified by the Ten Mile Creek [Amendment]’ apply to both roads and bikeways.
- The 2018 *Bicycle Master Plan* called for additional bikeways in the Ten Mile Creek area of Clarksburg that were not included in the 2014 Ten Mile Creek Amendment to the Clarksburg Plan.
- On April 2, 2020 the Planning Board transmitted to the District Council a request to introduce a ZTA to clarify that ‘publicly funded’ did not apply to bikeways, and that any master planned bikeway, not just those identified in the Ten Mile Creek Amendment, be exempt.
- The intent of the overlay zone language, and the limited areas of remaining bikeway not obligated by an existing CIP or development project diminish the need for the clarification offered by the ZTA.

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SECTION 1: BACKGROUND

ZONING HISTORY

The Clarksburg East Environmental Overlay Zone (Section 4.9.5.) and the Clarksburg West Environmental Overlay Zone (Section 4.9.6.) were both created through ZTA 14-03 and the adoption of Ordinance 17-46 on July 14, 2014. These two overlay zones were created to implement the environmental recommendations of the *Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (Ten Mile Creek Amendment)*. A map depicting the boundary of the two overlay zones is shown below in Figure 1.

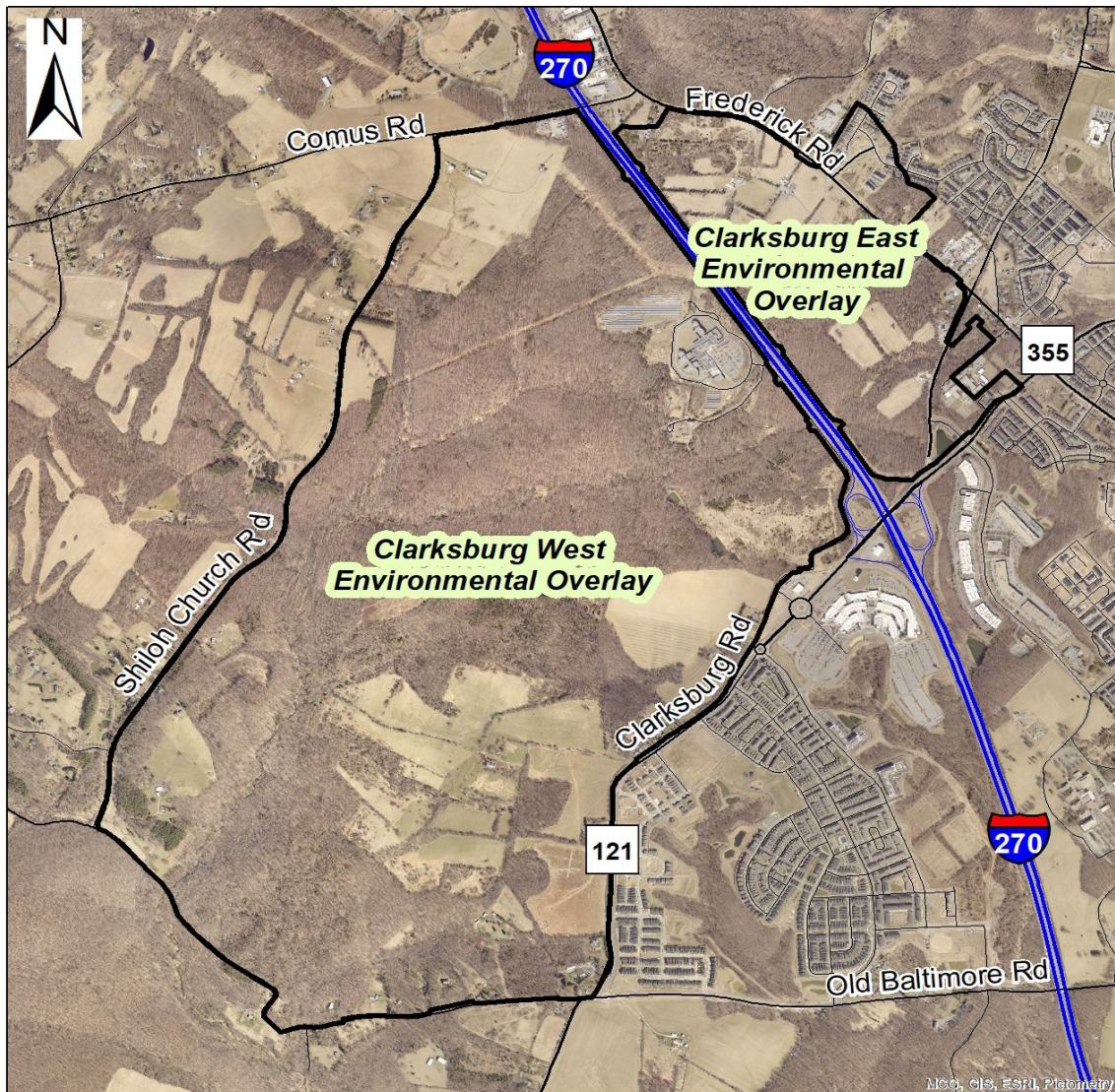


Figure 1 – Map of East and West Overlay Zones

RATIONALE FOR INTRODUCTION

The Clarksburg East Environmental Overlay Zone has a Master Plan recommended and zoning mandated 15 percent impervious cap for all new development projects within that overlay. The Clarksburg West Environmental Overlay has a required 6 percent impervious cap for all new developments. The East overlay was allowed a higher impervious level because of its proximity to the Clarksburg Town Center, and because the most sensitive of all the sub-watersheds within the area are located in the West overlay. These impervious restrictions apply to all new construction, with the exception of a short list of exemptions for:

- Any impervious surface existing or under a building or sediment control permit issued before August 4, 2014,
- Any imperviousness resulting from an addition to an existing detached house or an accessory structure for a detached house, not approved as part of a site plan,
- Any lot or parcel less than 2 acres in size, as of January 1, 2014, and
- Impervious surface for any publicly funded road or bikeway identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area.

It is this last exemption for roads and bikeways that has been difficult to interpret, and which resulted in the Planning Board's request for Zoning Text Amendment (ZTA) 22-12 nearly three years ago.

ZTA 22-12 was introduced by Council President Glass, on behalf of the Planning Board, on December 13, 2022. The Planning Board transmitted a memo requesting introduction of the ZTA on April 2, 2020 (Attachment A-2) to:

- clarify the exemptions from impervious surface limitations as it relates to roadways and bikeways within the two overlay zones, and
- remove language restricting the exemptions to bikeways identified by the Ten Mile Creek Amendment, thus allowing any master-planned bikeway in the two overlay zones to be exempt.

Over 2½ years transpired between transmission of the Board's request and the introduction of ZTA 22-12. The request was transmitted to the Council following a work session held during the Board's first all-digital session resulting from the COVID-19 Pandemic. The Council initially paused on introducing the ZTA because of the COVID-19 lockdowns and was delayed further due to concerns about the ability for the Council to review and take a vote on the ZTA before the elections in November 2022. The introduced ZTA today is the same ZTA considered by the Board in 2020 and is back before the Board for a formal recommendation as required by code.

SECTION 2: ZTA ANALYSIS

ZTA NO. 22-12 AS INTRODUCED

ZTA 22-12 clarifies that any master-planned bikeway located in the Clarksburg East or Clarksburg West Environmental Overlay zones would be exempt from the overlay zones' applicable impervious surface restrictions. The ZTA, as introduced, modifies Section 4.9.5.B.4. and Section 4.9.6.B.4. with the same language as shown below with red text emphasis added for clarity:

4. Impervious surface for any publicly-funded road or **any master-planned** bikeway **[identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area]** is exempt from this Overlay zone's impervious surface restriction.

There are two distinct changes with the ZTA. One clarifies that the exemption for publicly-funded only applies to roadways and the exemption for master-planned only applies to bikeways. This would allow any roadway regardless of master plan status to be exempt, and allow any bikeway identified in the Ten Mile Creek Amendment regardless of funding mechanism to be exempt. The second is a policy recommendation to extend the master-planned bikeway exemption to any bikeway from any master plan and not just those identified in the Ten Mile Creek Amendment.

CLARIFICATION OF INTENT

The first purpose of ZTA 22-12 is to clarify the intent of the code when it says *publicly-funded road or bikeway*. The question Planning staff raised in 2020 was whether 'publicly-funded' applied to only roads, or whether it applied to both roads and bikeways. Staff interpretation, described in the staff report completed on March 19, 2020 (Attachment A-3), was that 'publicly-funded' only applied to roads, and that bikeways was a separate clause that was not subject to being publicly-funded. The Ten Mile Creek Amendment itself references providing exemptions for all State and County roads and bikeways without an explicit statement that they needed to be publicly-funded. The publicly-funded requirement was added in the exemptions section of the two overlay zones' text. Alternative interpretations of the existing code suggested publicly-funded applied to both roads and bikeways, but the master plan requirement only applied to bikeways, or that the publicly-funded and master plan requirements both applied to roads and bikeways.

Admittedly, understanding the Council's original intent is difficult because the record includes conflicting references, and in the video archives of the relevant Planning, Housing, and Economic Development (PHED) Committee and District Council sessions, terms like 'public,' 'publicly-funded' and 'master-planned' were used interchangeably despite having different meanings. In its 2020 staff report, Planning staff based its arguments largely around Council staff's July 11, 2014 memo to the

Full Council (Attachment A-4). On page six of that memo (p. 19 of the Attachment), Council staff included a section dedicated to ‘Publicly funded roads.’ A second section was dedicated to ‘Bikeways,’ without the ‘publicly funded’ modifier.¹

But that same Council staff memo also indicated the PHED Committee recommended applying the exemption to ‘master planned publicly funded roads’ and then distinctly and separately recommended applying the exemption to ‘master-planned bikeways.’ Later, however, the memo indicates that the PHED Committee recommended allowing an exemption “for publicly funded and master planned roads and bikeways” (circle page 2 (p. 23) of Attachment A).

Regardless of original intent, the modification provided by the introduced ZTA would clarify the code by exempting any publicly-funded road (whether or not it is master-planned) and any master-planned bikeway (whether or not it is publicly-funded).

EXEMPTION FOR ALL MASTER PLANS

ZTA 22-12 has a second intended purpose, which would extend the exemptions from impervious surfaces for master-planned bikeways in the Ten Mile Creek Amendment to all master-planned bikeways. The reason for exempting bikeways in the initial overlay zone language was in part because these facilities were seen as benefiting the entire Clarksburg area and not just the properties specific to the Ten Mile Creek Amendment.

When ZTA 14-03 was originally introduced to create the two Clarksburg overlay zones, it did not include any language regarding a master plan requirement. During the July 10, 2014 PHED Committee work session, Council staff recommended an amendment to include a requirement that any exempted facility be included in the Ten Mile Creek Amendment. The committee agreed with having a master plan requirement, but discussed whether it was appropriate to limit the exemption only to those facilities identified in the Ten Mile Creek Amendment. Committee Chair Nancy Floren expressed concerns that additional facilities may be identified in the future as the Clarksburg area evolves and noted that the Bicycle Master Plan was in progress at the time. The committee ultimately recommended the specific language after assurances from Planning staff that the Ten Mile Creek Amendment included all potential bike facilities on applicable roads within the two overlay zone areas.

Additional bikeways ultimately were added to the geographies of the two overlay zones by the 2018 Bicycle Master Plan and Planning staff believed they should also be exempt from impervious restrictions for the same reasons the previous bikeways were provided an exemption. This expanded exemption is achieved by striking ‘identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area’ from the zoning text. This leaves

¹ The fact that master-planned facilities were included in projected impervious surface estimates and thus the setting of the impervious surface limits during the creation of the Ten Mile Creek Amendment, also contributed to Planning staff’s interpretation, in 2020, of original intent.

language, as modified by the ZTA, exempting any publicly-funded road or any master-planned bikeway.

ZTA NO. 22-12 ANALYSIS

When the Planning Board first requested introduction of this ZTA, it was done as a preemptive request for clarification anticipating forthcoming development applications that would potentially be required to construct sections of the master-planned bikeways. In the nearly three years since this ZTA was first requested by the Planning Board, Planning staff has had to review those development applications and had the opportunity to further assess the impacts and interpretation of the existing code language, as well as further investigate the intent behind these overlay zones. The modification requested in 2020 does provide clarity to the bikeways exemption (by exempting all master planned bikeways), but it does not fully address original intent and whether the roadway exemption needed to be master planned as well.

REMAINING MASTER PLANNED BIKEWAYS

Planning staff analyzed the bikeway recommendations in both the Ten Mile Creek Amendment and the Bicycle Master Plan, and found that the Bicycle Master Plan added 0.25 acres of additional impervious bikeways to the overlay zone areas beyond what was included in the Ten Mile Creek Amendment. The new bikeways are mostly along the Clarksburg Bypass with a small segment along Frederick Road, all of which in the Clarksburg East overlay zone. All of the added bikeways from the Bicycle Master Plan have been accounted for already. Additionally, of the 2.52 acres of impervious bikeways envisioned in the Ten Mile Creek Amendment, only 0.77 acres remain unclaimed at this time. Table 1 illustrates how much total and remaining impervious surface is generated by all master-planned bikeways in the two overlay zone areas.

Figure 2 shows approximately where these remaining unbuilt and unclaimed sections of bikeway are located. It is unlikely any of these remaining sections of bikeway would be the responsibility of a private developer. The section of bikeway along Gateway Center Drive, and the unclaimed half of Clarksburg Road is bordered by a school and a stormwater management facility. The bikeway portions that appear on either side of the school are unlikely to occur because that roadway alignment would require the removal of the school and presents severe topographical challenges. The northernmost portions of unclaimed bikeway are shown along the master-planned alignment of the Clarksburg Bypass. However, during the review of recent development applications west of Clarksburg Road, a better bypass alignment was identified, intersecting MD 355 further south to avoid environmental and topographical constraints.

Table 1 – Status of Unbuilt Bikeways in the Clarksburg Ten Mile Creek Amendment Area

Unbuilt Bikeways	Recommended in the Ten Mile Creek Amendment	Added with the Bicycle Master Plan
Unclaimed	0.77ac	0.00ac
Gateway Center Drive	0.23ac	0.00ac
Clarksburg Bypass	0.37ac	0.00ac
Clarksburg Road ²	0.17ac	0.00ac
Ashford Woods – Payment in lieu to MCDOT	0.89ac	0.00ac
Miles Coppola – to Construct ³	0.55ac	0.25ac
Other Developer to Construct	0.05ac	0.00ac
Publicly-funded Capital Project(s)	0.26ac	0.00ac
Total	2.52ac	0.25ac

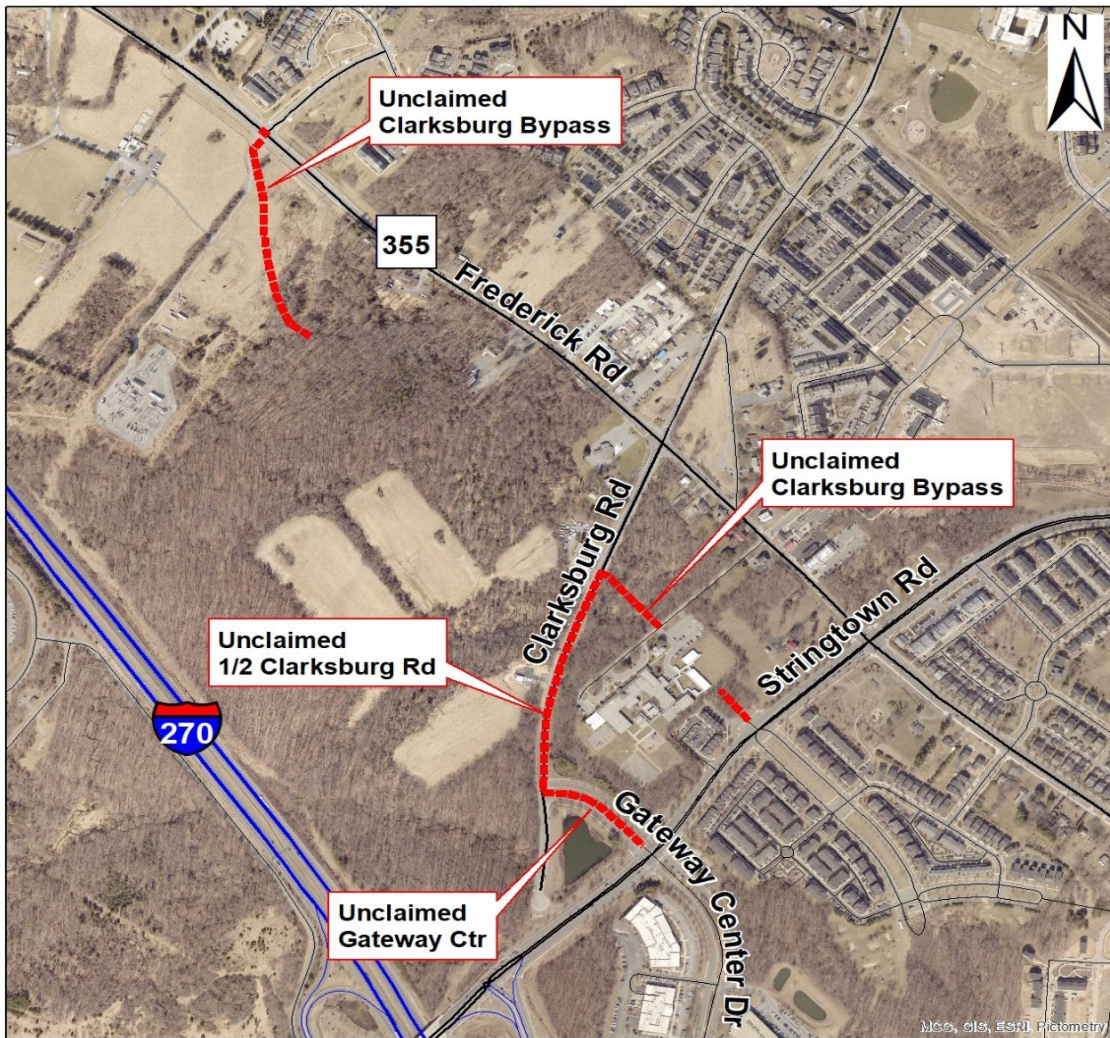


Figure 2 – Map of Unclaimed Bikeways

² Clarksburg Road is planned for on-road bike lanes of 6’ wide on each side of the road. The existing roadway has wide shoulders today therefore this may be an over-estimation of the necessary imperviousness.

³ Miles Coppola is based on the approved Preliminary Plan. The Site Plan and Final Water Quality Plan have not been submitted, reviewed, or approved yet.

ZTA NO. 22-12 STAFF RECOMMENDATIONS

The intent of the exemption language in the two overlay zones remains unclear, even after additional review of the written and video archives from 2014 during the review of ZTA 14-03. As noted above, there is also little remaining master-planned bikeways that have not been accounted for and those that do remain are either unlikely to be constructed, or are most likely a publicly-funded project.

Therefore, **Planning staff's recommendation is for the Board to recommend to the District Council that action on ZTA 22-12 is no longer necessary.** Given the remaining lack of clarity, the effort involved with adopting any ZTA, the limited need at this time for the clarification of the code, and the anticipated lack of community support, Planning staff no longer believes it is necessary to pursue this ZTA.

Should the Planning Board or the Council wish to pursue clarifying the exemption language, Planning staff believes the introduced ZTA language is fine and certainly provides the sought after clarity. However, staff would recommend further modifying the ZTA to exempt all master-planned or publicly-funded roadways, and all master-planned or publicly-funded bikeways. The modifications staff would make to the ZTA are emphasized in red as follows:

4. Impervious surface for any publicly-funded or master-planned road or any publicly-funded or master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlays zone's impervious surface restriction.

This language clearly provides exemptions for both roadways and bikeways that are either publicly-funded or master-planned, regardless of the master plan. This would ensure that private development is not penalized for building a master-planned public transportation facility that would otherwise be exempt if built as a publicly-funded project. This language also provides MCDOT or the State Highway Administration the ability to exempt currently unforeseen transportation infrastructure needs as Clarksburg builds out.

SECTION 3: LEGISLATED ANALYSIS

RACIAL EQUITY & SOCIAL JUSTICE

The Office of Legislative Oversight (OLO) completed a Racial Equity and Social Justice (RESJ) analysis for ZTA 22-12 dated January 4, 2023 (Attachment B). The analysis found that the ZTA would have little to no impact on RESJ in the County. The ZTA only clarifies provisions already in code adopted by the Council rather than establishing new policies.

SECTION 4: CONCLUSION

Planning staff recommends the Planning Board transmit comments to the District Council that no further action is necessary on ZTA 22-12. The intent of the ZTA is to clarify which roads and bikeways are exempt from impervious restrictions in the Clarksburg East and Clarksburg West Environmental Overlay Zones. However, the utility of this clarification has diminished since 2020 given the limited sections of unclaimed bikeway left in the overlay zones.

ATTACHMENTS

Attachment A – Introduction Packet for ZTA 22-12

Attachment A-2 – Planning Board Memo to Council Dated April 2, 2020

Attachment A-3 – Planning Staff Report Dated March 19, 2020

Attachment A-4 – Council Staff Memo to Full Council dated July 11, 2014

Attachment B – RESJ Statement for ZTA 22-12

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 22-12: OVERLAY ZONES - CLARKSBURG EAST AND WEST ENVIRONMENTAL OVERLAY - EXEMPTIONS

SUMMARY

The Office of Legislative Oversight anticipates that Zoning Text Amendment 22-12 will have little to no impact on racial equity and social justice (RESJ) in the County.

PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 22-12

The purpose of the ZTA 22-12, Overlay Zones - Clarksburg East and West Environmental Overlay - Exemptions, is to amend the Zoning Ordinance to clarify that any master-planned bikeway located in the Clarksburg East and West Environmental Overlay Zones is exempt from the overlay zones' impervious surface restrictions.³

In 2014, the County Council approved ZTA 14-03: the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area.⁴ ZTA 14-03 limited imperviousness (paved surfaces impervious to water) and established both open space requirements for new development east and west of I-270 and development standards to maximize development flexibility and protect sensitive natural resources.⁵ Toward this end, ZTA 14-03 created two environmental overlay zones, establishing a:

- 15 percent imperviousness limit on new development east of I-270 (Clarksburg East Environmental Overlay)
- 6 percent imperviousness limit west of I-270 (Clarksburg West Environmental Overlay)

ZTA 14-03 exempts County-owned land from these imperviousness limits as well as publicly funded roads, master-planned bikeways, properties less than two acres, and additions to houses. ZTA 14-03 was adopted July 15, 2014.⁶

In ZTA 22-12, the Planning Board proposes to clarify the Clarksburg Environmental Overlay Zones' provision exempting master planned bikeways from impervious surface caps.⁷ The Planning Board believes that as currently written, the overlay zones' language could be interpreted as allowing only publicly funded bikeways to be exempt from the impervious surface restrictions. ZTA 22-12 was introduced on December 13, 2022.⁸ A public hearing for this ZTA is tentatively scheduled for January 17, 2023.

RESJ Impact Statement

Zoning Text Amendment 22-12

ANTICIPATED RESJ IMPACTS

OLO does not anticipate a racial equity and social justice impact for ZTA 22-12 because it clarifies provisions already adopted by the Council with ZTA 14-03, the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. ZTA 22-12 seeks to clarify ZTA 14-03's provisions exempting bikeways from impervious surface caps rather than establishing new policies or practices that may impact RESJ in the County. As such, OLO anticipates that ZTA 22-12 will have little to no impact on RESJ in the County.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

¹ Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools.

<https://www.racialequitytools.org/glossary>

² Ibid

³ Chapter 59 Montgomery County Zoning Ordinance defines impervious surface as any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment regardless of surface type or material, any road, driveway, or parking area.

⁴ Resolution 17-1167. Correction to Resolution 17-1048. Approval of Planning Board Draft Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. Montgomery County Council. July 15, 2014.

[montgomery county council - legislative information management system – resolution details \(montgomerycountymd.gov\)](http://montgomerycountymd.gov/legislative-information-management-system-resolution-details)

⁵ Approved and Adopted Ten Mile Creek Area Limited Amendment-Clarksburg Master Plan Hyattstown Special Study Area. Montgomery County Planning Department, M-NCPPC. July 2014.

https://www.montgomeryplanning.org/community/plan_areas/l270_corridor/clarksburg/documents/ten_mile_creek_approved.pdf

⁶ Ordinance No. 17-46 (ZTA 14-03). Overlay Zone – Clarksburg. Montgomery County Council. July 15, 2014.

https://www.montgomerycountymd.gov/council/resources/files/res/2014/20140715_17-46.pdf

⁷ Staff report: Proposed Zoning Text Amendment (ZTA) Overlay Zones – Clarksburg East and West Environmental Exemptions. Montgomery County Planning Department. March 19, 2020.

https://montgomeryplanningboard.org/wp-content/uploads/2020/03/proposed-zta-on-clarksburg-east-west-environmental-overlays-jks_03-18-20_final.pdf



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

April 2, 2020

The Honorable Sidney Katz
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

Re: Planning Board Recommendation to County Council for Introduction of Zoning Text Amendment to amend the Clarksburg East & West Environmental Overlay zones.

Dear Mr. Katz:

On March 26, 2020, by a vote of 5-0, the Planning Board recommended transmitting the attached Zoning Text Amendment (ZTA) to the County Council for introduction. The ZTA would clarify that any master-planned bikeway located in the Clarksburg East & West Environmental Overlay zones is exempt from the overlay zones' impervious surface restrictions.

Background

On April 1, 2014, the County Council approved the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (Ten Mile Creek Limited Amendment).

The Ten Mile Creek Limited Amendment recommended limiting imperviousness, establishing open space requirements for new development both east and west of I-270 and changing some development standards of the underlying zones in order to maximize development flexibility and protect sensitive natural resources.

The Amendment also recommended creation of two overlay zones to: establish a 15 percent imperviousness limit on new development east of I-270 (Clarksburg East Environmental Overlay); establish a six percent imperviousness limit west of I-270 (Clarksburg West Environmental Overlay); and not allow any additional imperviousness on County-owned land. Very small properties (less than two acres), additions to houses, and publicly-funded roads and master-planned bikeways were to be exempt from imperviousness limits in the overlay zones. ZTA 14-03 was adopted July 15, 2014, to implement these recommendations.

Since the adoption of ZTA 14-03 creating the two overlay zones, our staff recognized the need for clarification of the overlay zones' provision exempting bikeways from impervious surface caps. The Board believes that the intent of the language was to exempt from the Overlay

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zones' impervious surface restriction any publicly funded roads and any bikeways identified in the master plan. As currently written in the Zoning Ordinance, the exemption language for bikeways could be read as allowing only publicly-funded bikeways identified in the master plan to be exempt from the impervious surface restrictions. While the Clarksburg East and West Environmental Overlay Zones' language does mention "publicly-funded roadways or bikepaths," the Board's belief is that "publicly-funded" was meant to apply to roadways only.

A second clarification to the exemption provisions pertains to the overlay zones' language specifically tying the exemption from impervious surface restrictions for bikeways to those locations identified by the Ten Mile Creek Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. The goal of exempting the master-planned bikeways was not to have the impervious surfaces count as part of the development because these paths benefit the entire region, beyond the development.

Although the Bicycle Master Plan was adopted subsequent to the adoption of the Ten Mile Creek Limited Amendment and the two overlay zones, the bikeways in it have the same objective as the bikeways in the Ten Mile Creek Limited Amendment. Therefore, expanding the exemption provisions to include bikeways depicted in the Bicycle Master Plan, meets the goal of exempting bikeways that benefit the region, not just the development. As such, the Planning Board believes that the Zoning Code text should clarify that an exemption from the impervious surface cap should apply to any master-planned bikeway located in the Plan area.

The Planning Board and its staff will be available to assist the Council in the review of the proposed zoning code revisions.

Sincerely,



Casey Anderson
Chair

CA:GR:aj

Enclosures: Proposed ZTA to amend exemption provisions of the Clarksburg East & West Environmental Overlay zones

cc: Planning Board
Gwen Wright, Director Montgomery Planning
Tanya Stern, Deputy Director, Montgomery Planning



Proposed Zoning Text Amendment (ZTA) Overlay Zones – Clarksburg East & West Environmental Exemptions

GR

Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174

JS

Jason Sartori, Chief, FP&P, jason.sartori@montgomeryplanning.org, 301-495-2172

Completed: 03/19/20

Description

The proposed Zoning Text Amendment (ZTA) would amend the Zoning Ordinance (Chapter 59) to clarify that any master-planned bikeway located in the Clarksburg East & West Environmental Overlay zones is exempt from the overlay zones’ impervious surface restrictions.

Summary

Staff recommends approval to transmit the proposed Zoning Text Amendment to the County Council for introduction.

Background/Analysis

On April 1, 2014, the County Council approved the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area (Ten Mile Creek Limited Amendment).

The Ten Mile Creek Limited Amendment recommended limiting imperviousness, establishing open space requirements for new development both east and west of I-270 and changing some development standards of the underlying zones in order to maximize development flexibility and protect sensitive natural resources.

The Amendment also recommended creation of two overlay zones: to establish a 15 percent imperviousness limit on new development east of I-270 (Clarksburg East Environmental Overlay); a six percent imperviousness limit west of I-270 (Clarksburg West Environmental Overlay); and no additional imperviousness on County owned land. Very small properties (less than two acres), additions to houses, and publicly-funded roads and master-planned bikeways were to be exempt from imperviousness limits in the overlay zones. ZTA 14-03 was adopted July 15, 2014, to implement these recommendations.

Proposed ZTA

Since the adoption of ZTA 14-03 creating the two overlay zones, staff recognized the need for clarification of the overlay zones’ provision exempting bikeways from impervious surface caps. **Staff believes that the intent of the language was to exempt from the Overlay zones’ impervious surface restriction any publicly funded roads and any bikeways identified in the master plan.** As currently

written in the Zoning Ordinance, the exemption language for bikeways could be read as allowing only publicly-funded bikeways identified in the master plan to be exempt from the impervious surface restrictions. While the Clarksburg East and West Environmental Overlay Zones' language does mention "publicly-funded roadways or bikepaths," staff's belief is that "publicly-funded" was meant to apply to roadways only. The Ten Mile Creek Limited Amendment discusses bikepaths on page 52, where it says: "On the east side of I-270, all properties in Ten Mile Creek, except those in the Historic District, would be within an overlay zone, with exemptions for State and County roads and bikeways." The master plan doesn't mention a bikeway needing to be publicly-funded for it to be exempt.

To further corroborate staff's assertion, the "Action" memorandum accompanying the adoption of the Overlay zones (ZTA 14-03) dated July 11, 2014 (see Attachment 2), provides several comments, consistent with the intent as depicted by staff. On page 6, the memo breaks down each specific public use that was contemplated as being exempted from impervious limits. "Publicly-funded roads" is separated out as its own use. "Bikeways" is another use. Here the publicly-funded language is used only in reference to roads, not bikeways, and it goes on to say that the PHED Committee "recommended retaining the exemption for master planned bikeways." It does make sense for publicly-funded roads to be called out as its own category to clarify that developers needing to improve roads to accommodate their specific development requirements would not be able to utilize an exemption for those improvements.

A second clarification to the exemption provisions (as recommended by staff) pertains to the overlay zones' language specifically tying the exemption from impervious surface restrictions for bikeways to those locations identified by the Ten Mile Creek Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area. The goal of exempting the master-planned bikeways was not to have the impervious surfaces count as part of the development because these paths benefit the entire region, beyond the development. It did not exempt required road improvements such as acceleration/deceleration lanes because of their necessity specific to a development. Although the adoption of the Bicycle Master Plan was subsequent to the adoption of the Ten Mile Creek Limited Amendment and the two overlay zones, it has the same objective as the bikeways in the Ten Mile Creek Limited Amendment. Therefore, expanding the exemption provisions to include bikeways depicted in the Bicycle Master Plan, meets the goal of exempting bikeways that benefit the region, not just the development. As such, **staff believes that the text should clarify that an exemption from the impervious surface cap should apply to any master-planned bikeway located in the Plan area.**

Below is the proposed language clarification included in the "exemption" provisions of both overlay zones:

Impervious surface for any publicly funded road or any master-planned bikeway [identified by the Ten Mile Creek Area Limited Amendment to the Clarksburg Master Plan and Hyattstown Special Study Area] is exempt from this Overlay zone's impervious surface restriction.

Conclusion

Staff recommends that the Planning Board transmit to the County Council for introduction the proposed ZTA, to clarify that any master-planned bikeway located in the Clarksburg East & West Environmental Overlay zones is exempt from the overlay zones' impervious surface restrictions.

Attachments

1. Proposed ZTA-Overlay Zones – Clarksburg East & West Environmental Exemptions
2. July 11, 2014, County Council Memorandum adopting ZTA 14-03




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

Marc Elrich
County Executive

July 30, 2020

TO: Montgomery County Council

FROM: Marc Elrich, County Executive 

RE: Proposed ZTA to amend the Clarksburg Environmental Overlay Zones

When I learned that the Planning Board was sending a proposal to councilmembers seeking to amend the Clarksburg Environmental Overlay Zones, I asked the Department of Environmental Protection to evaluate the proposed ZTA and its potential effects on the Ten Mile Creek watershed. Their response, attached, strongly recommends maintaining the levels of imperviousness within the caps set in the Overlay Zones adopted in 2014.

DEP played a crucial role in assessing the environmental impacts of development in this high-quality benchmark stream system in 2014. The Department joined a broad coalition of environmental organizations, federal and state government staff, and independent consultants retained by M-NCPPC in gathering and analyzing scientific data obtained from long-term monitoring programs around the country and in Montgomery County, including multiple monitoring sites throughout Ten Mile Creek. When the evidence clearly established the fact that greater levels of imperviousness led to greater harm to the health of a watershed, the coalition recommended several protection measures for Ten Mile Creek, including impervious caps for the most sensitive subwatersheds. The County Council unanimously adopted these recommendations in the Ten Mile Creek Limited Amendment and the Clarksburg East and West Overlay Zones.

DEP's memo challenges the Planning Board's assertion that the changes proposed to the overlay zones are mere clarifications. Page 2 of the memo cites language in ZTA 14-03 Overlay Zone – Clarksburg (attached) that clearly states only bikeways identified in the Ten Mile Creek Limited Amendment are exempt from the impervious limits adopted in the overlay zones. This was intentional language, and the attempt to “clarify” it now to allow exemption of master-planned bikeways not identified in the Limited Amendment is a marked policy change, not a clarification. A fair reading of ZTA 14-03 provides further evidence of Council's clear intent. The “Opinion” page provides background on the Council's actions, stating that prior to adopting the overlay zones, councilmembers voted to delete proposed exemptions for paths, trailheads, and associated parking (see lines 86-90 of the East Overlay Zone and lines 173-177 of the West Overlay Zone). In addition, lines 128-131 say “County owned land or land under a conservation easement granted to the benefit of the County that is not managed as parkland by M-NCPPC may not add any impervious surface.” The Council was well aware of the regional benefits of bikeways and other uses. Yet when faced with competing benefits, the Council chose to strictly limit imperviousness in critical areas of Ten Mile Creek, even on county owned land. This extraordinary commitment to water quality in Ten Mile Creek was subsequently successfully defended in court.

In 2014, the Planning Board and its consultants strongly supported the science-based limitations of 6% imperviousness in the Overlay West and 15% in the Overlay East. DEP's reevaluation memo concludes there is no new information to warrant altering those caps. To the contrary, the chart on page 4 shows the dramatic increase in imperviousness that will occur even with these caps in place, pointing out that the two most sensitive subwatersheds, will see impervious levels increase by 300% – 500%. It cites new research on the Clarksburg Special Protection Area from the US Geological Survey, the University of Maryland, and US Environmental Protection Agency that has further reinforced the conclusion that even with Environmental Site Design (ESD) and Best Management Practices (BMPs) now being utilized in the watershed, stream conditions continue to deteriorate after development. DEP's conclusion is that further weakening of the caps will lead to even greater degradation.

There is no reason to set up a false choice between bikeways and clean water. On the one hand, we recognize the environmental and health benefits of biking on paths that protect cyclists' safety. On the other, we recognize the importance of protecting an extremely high-quality stream system that feeds into a major regional backup water supply and into an aquifer that provides water for the Agricultural Reserve's farmers and residents. We can do both – see DEP's recommendations to upgrade existing bikeways, use permeable pavements for the construction/reconstruction of bikeways, and update the "Guidelines for Environmental Management of Development in Montgomery County" to require developers to include bikeways' impervious surfaces in development calculations.

I urge you to read the attachments, and I hope you conclude that the Planning Board's proposed zoning text amendment should not be introduced by the County Council. It would reward developers who want maximum buildout to achieve that by allowing them to exceed the Ten Mile Creek impervious caps at the expense of a years-long effort to protect water quality in the last best stream in Montgomery County.

ME/ci

c: Jeffrey L. Zyontz, Senior Legislative Analyst