

Ordinance No.: 18-10
Zoning Text Amendment No.: 15-12
Concerning: Overlay Zone –
Montgomery Village
Draft No. & Date: 2 – 01/19/16
Introduced: December 1, 2015
Public Hearing: January 12, 2016
Adopted: February 9, 2016
Effective: February 29, 2016

**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: The Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish the Montgomery Village Overlay Zone

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

ARTICLE 59-2.	“Zones and Zoning Map”
Section 2.1.2.	“Zoning Categories”
ARTICLE 59-4.	“Development Standards for Euclidean Zones”
Section 4.9.10.	“Regional Shopping Center (RSC) Overlay Zone”
Section 4.9.11.	“Ripley/South Silver Spring (RSS) Overlay Zone”
Section 4.9.12.	“Rural Village Center (RVC) Overlay Zone”
Section 4.9.13.	“Sandy Spring/Ashton Rural Village (SSA) Overlay Zone”
Section 4.9.14.	“Takoma Park/East Silver Spring Commercial Revitalization (TPESS) Overlay Zone”
Section 4.9.15.	“Transferable Development Rights (TDR) Overlay Zone”
Section 4.9.16.	“Twinbrook (TB) Overlay Zone”
Section 4.9.17.	“Upper Paint Branch (UPB) Overlay Zone”
Section 4.9.18.	“Upper Rock Creek (URC) Overlay Zone”

And adding

Section 4.9.10.	“Montgomery Village (MV) Overlay Zone”
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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

Zoning Text Amendment No. 15-12 was introduced on December 1, 2015 to establish an Overlay zone for TS-zoned property in Montgomery Village. The purpose of the Overlay zone is to preserve the unique character of Montgomery Village, protect existing open space and conservation areas owned by homeowner associations and the Montgomery Village Foundation, and ensure a compatible relationship between new and existing development. As introduced, ZTA 15-12 would:

- 1) grandfather existing development from changes to development standards in the new zone;
- 2) grandfather existing uses, permitted as of right under the TS zone, to continue; redevelopment or expansion would be subject to the new zoning requirements;
- 3) preserve the character of Montgomery Village Foundation and homeowner association land and facilities; and
- 4) address compatibility issues.

In its report to the Council, the Montgomery County Planning Board recommended that the text amendment be approved. Planning Board Staff also recommended approval.

The Council conducted a public hearing on January 12, 2016. The Montgomery Village Foundation recommended revisions to allow greater flexibility in the recreational and institutional uses.

The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

On January 19, 2016, the Committee recommended approval of ZTA 15-12 with revisions to:

- 1) the list of allowed uses in the RE-1 zone to allow health clubs in community centers, with the understanding that outdoor and indoor Recreation and Entertainment will be broadly interpreted by the Department of Permitting Services, and allowing day care for all age groups;

- 2) the Development Standards to not require recordation of a plat when the Subdivision Regulations (Chapter 50 of the Code) do not require recordation; and
- 3) the section on existing buildings to require satisfaction of all standards of the current zoning under certain circumstances and to make editorial changes.

The Montgomery Village Foundation asked for assurance that activities and facilities such as a dog park, skate park, ice skating rink, athletic fields for any sport (including Frisbee golf or cricket) or game, paths, public art, or tree planting are allowed. The Department of Permitting Services is the final interpreter of the zoning code. The Zoning Officer expressed the opinion that the uses listed by Montgomery Village would be allowed uses (as would driving ranges, athletic tournaments, rope courses, swimming pools, and water parks) within the definition of outdoor recreation and the accessory uses for that use. The Committee recommended deleting the phrase "such as an amphitheater or a swimming pool" to make it clear that the Council intends to allow the full breadth of uses within the use's definition.

The Montgomery Village Foundation also expressed concern about the use inside a community center. Child Day Care is listed in the allowed uses in ZTA 15-12 as introduced, but the Foundation may want recreational camps or health clubs in those centers as well. Because the definition of Indoor Recreation is very broad, the Committee did not see the need to specifically allow recreation camps; however, because health clubs are specifically excluded from the definition of indoor recreation, the Committee recommend specifically allowing health clubs in community centers.

The Committee did not want to require recordation when the Subdivision Regulations (Chapter 50) did not require a record plat. To that end, the Committee recommended an appropriate amendment to effect its opinion.

The Planning Board intended to allow the expansion of Charitable, Philanthropic Institutions and Storage Facilities without conditional use approval. In addition, the Board wanted to allow some expansion of existing storage facilities, despite the fact that it would not be an allowed use in the zone proposed for the property. As introduced, the exemption from the conditional use process would apply to all uses. The Committee recommended that the use grandfathering provision of the ZTA be revised to make the Board's intent clear.

The District Council reviewed Zoning Text Amendment No. 15-12 at a worksession held on February 2, 2016. The Council agreed with the Committee recommendations.

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. 15-12 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. ARTICLE 59-2 is amended as follows:**

2 **DIVISION 2.1. Zones Established**

3 * * *

4 **Section 2.1.2. Zoning Categories**

5 * * *

6 **G. Overlay Zones**

7 1. There are [17] 18 Overlay zone classifications:

- 8 a. Burtonsville Employment Area (BEA),
- 9 b. Chevy Chase Neighborhood Retail (CCNR),
- 10 c. Clarksburg East Environmental (CEE),
- 11 d. Clarksburg West Environmental (CWE),
- 12 e. Community-serving Retail (CSR),
- 13 f. Fenton Village (FV),
- 14 g. Garrett Park (GP),
- 15 h. Germantown Transit Mixed Use (GTMU),
- 16 i. Montgomery Village (MV),
- 17 [i] j. Regional Shopping Center (RSC),
- 18 [j] k. Ripley/South Silver Spring (RSS),
- 19 [k] l. Rural Village Center (RVC),
- 20 [l] m. Sandy Spring/Ashton Rural Village (SSA),
- 21 [m] n. Takoma Park/East Silver Spring Commercial Revitalization
- 22 (TPESS),
- 23 [n] o. Transferable Development Rights (TDR),
- 24 [o] p. Twinbrook (TB),
- 25 [p] q. Upper Paint Branch (UPB), and
- 26 [q] r. Upper Rock Creek (URC).

27 2. Building types, uses, density, height, and other standards and
28 requirements may be modified by the Overlay zones under Section
29 4.9.2 through Section [4.9.18] 4.9.19.

30 * * *

31 **Sec. 2. ARTICLE 59-4 is amended as follows:**

32 **DIVISION 4.9. Overlay Zones**

33 * * *

34 **Section 4.9.10. Montgomery Village (MV) Overlay Zone**

35 **A. Purpose**

36 The purpose of the MV Overlay zone is to:

- 37 1. ~~[[Preserve]]~~ preserve the unique character of Montgomery
38 Village[.];
39 2. ~~[[Protect]]~~ protect existing open space and conservation areas[.]; and
40 3. ~~[[Ensure]]~~ ensure a compatible relationship between new and existing
41 development.

42 **B. Land Uses**

- 43 1. ~~[[In]]~~ On properties in the RE-1 zone, all uses are prohibited except
44 the following, which are permitted:
- 45 a. Agricultural Vending;
 - 46 b. Recreation and Entertainment Facility, Outdoor (Capacity up to
47 1,000 Persons)[, such as an amphitheater or a swimming
48 pool]];
 - 49 c. Recreation and Entertainment Facility, Indoor (Capacity up to
50 1,000 persons)[, such as an indoor swimming pool]];
 - 51 d. Distribution Line (Below Ground);
 - 52 e. Pipeline (Below Ground);
 - 53 f. Playground, Outdoor (Private);

- 54 g. Seasonal Outdoor Sales;
- 55 h. Solar Collection System;
- 56 i. [[Child]] Day Care and Health Clubs in Community Centers;
- 57 and
- 58 j. An Accessory Use associated with any of the above uses.
- 59 2. [[In]] On properties in the RE-1 zone, any of the allowed features in
- 60 open space under Section 6.3.3.A are permitted, except for above-
- 61 ground utility rights-of-way.
- 62 [[3. Applications for a Floating zone on land classified in the RE-1 zone
- 63 are prohibited.]]

64 **C. Development Standards**

65 In addition to any other requirements of Division 6.3 and Chapter 50,

66 common and public open space in Montgomery Village must be recorded

67 within a separate lot or parcel with a protective easement or covenant in the

68 land records, in a form approved by the Planning Board, unless the parcel is

69 exempted from recordation under Chapter 50.

70 **D. [[Site Plan and Record Plat]] Development Procedures**

- 71 1. Site plan approval under Section 7.3.4 is required for all development
- 72 in the MV Overlay zone, except for:
 - 73 a. construction of an accessory structure;
 - 74 b. construction of a structure less than 5,000 square feet in size in
 - 75 the RE-1 zone;
 - 76 c. the modification or expansion of an existing detached house,
 - 77 duplex, townhouse, or accessory structure; or
 - 78 d. a conditional use.
- 79 2. Record plats must show all land designated for open space and have a
- 80 statement on the plat granting public access to those lands.

81 3. A certified site plan must show all land designated for open space.

82 4. Applications for a Floating zone on land classified in the RE-1 zone
83 are prohibited.

84 **E. Existing Buildings and Uses**

85 1. A legal structure or site design existing on {DAY BEFORE
86 EFFECTIVE DATE} that does not meet its current zoning is
87 conforming and may be continued, renovated, repaired, or
88 reconstructed if the floor area, height, and footprint of the structure
89 [[is]] are not increased, except as provided below.

90 2. On a lot that has not changed in size or shape since {INSERT THE
91 EFFECTIVE DATE}, a detached house, duplex, or townhouse may
92 be constructed, reconstructed, or expanded:

93 a. without regard to the minimum lot size or lot width at the front
94 building line; and

95 b. in a manner that satisfies the maximum building height and lot
96 coverage of its current zone and the side, front, and rear setback
97 that was required when the lot was first created.

98 3. a. A legal use existing on {DAY BEFORE EFFECTIVE DATE}
99 is conforming and may be continued. Expansion of any such
100 use must satisfy the [[use]] standards of the current zone under
101 Article 59-3[[, except the following:]]

102 [[a]]b. An existing Charitable, Philanthropic Institution (as defined by
103 Section 3.4.2)[[; or]] may expand without conditional use
104 approval, but must satisfy Section 4.9.10.D.

105 [[b]]c. [[an]]An existing Storage Facility (as defined by Section
106 3.6.8.e.1) owned and operated by a Charitable, Philanthropic
107 Institution may expand by up to the lesser of 10% or 30,000

108 square feet without conditional use approval, but must satisfy
109 Section 4.9.10.D.

110 [[Any expansion is exempt from the conditional use process, but must
111 satisfy Section 4.9.10.D.]]

112 **Section [4.9.10] 4.9.11. Regional Shopping Center (RSC) Overlay Zone**

113 * * *

114 **D. Site Plan**

115 Site plan approval under Section 7.3.4 is required for any increase in
116 building height under Section [[4.9.10.C.1]] 4.9.11.C.1.

117 **E. Parking**

118 * * *

119 **2. Pedestrian Access**

120 The major point of pedestrian access for an off-street parking facility
121 that occupies contiguous land area integral to the regional shopping
122 center property may extend more than 500 feet walking distance from
123 an entrance to the center to satisfy the number of spaces required
124 under Section [[4.9.10.E.1.a]] 4.9.11.E.1.a.

125 **Section [4.9.11] 4.9.12. Ripley/South Silver Spring (RSS) Overlay Zone**

126 * * *

127 **Section [4.9.12] 4.9.13. Rural Village Center (RVC) Overlay Zone**

128 * * *

129 **C. Development Standards**

130 1. Where a lot is either partially or totally in a Commercial/Residential
131 zone:

132 * * *

133 e. In addition to the parking requirements in Division 6.2:

134 * * *

135 iii. For any cumulative enlargement of a surface parking
136 facility that is greater than 50% of the total parking area
137 approved before November 4, 2002, the entire off-street
138 parking facility must be brought into conformance with
139 Section [4.9.12] 4.9.13.

140 * * *

141 **Section [4.9.13] 4.9.14. Sandy Spring/Ashton Rural Village (SSA) Overlay**
142 **Zone**

143 * * *

144

145 **Section [4.9.14] 4.9.15. Takoma Park/East Silver Spring Commercial**
146 **Revitalization (TPESS) Overlay Zone**

147 * * *

148 **D. Site Plan**

149 * * *

150 3. For any addition, reconstruction, or alteration that changes a building
151 by less than 1,000 square feet and does not require site plan approval
152 under Section [[4.9.14.D.1.c]] 4.9.15.D.1.c, the Planning Board or its
153 designee must review the building permit to determine compliance
154 with master plan recommendations and the provisions of this Overlay
155 zone.

156 * * *

157 **Section [4.9.15] 4.9.16. Transferable Development Rights (TDR) Overlay Zone**

158 * * *

159 **B. Optional Method**

160 **1. In General**

161 The TDR Overlay optional method of development permits an increase in
162 the maximum residential density, if the development satisfies the
163 requirements for optional method development using Transferable
164 Development Rights under Section ~~[[4.9.15.B]]~~ 4.9.16.B.

165 **a. Applicability**

166 The procedures and requirements in Section ~~[[4.9.15.B]]~~ 4.9.16.B
167 apply to the transfer of development rights from land in the AR zone
168 to land in a Transferable Development Rights (TDR) Overlay zone.

169 * * *

170 **c. Recording of Development Right**

171 * * *

172 ii. A final record plat for a subdivision using transferred
173 development rights must contain a statement including the
174 development proposed, the zoning classification of the
175 property, the number of development rights used, and a notation
176 of the recordation of the conveyance as required by Section
177 ~~[[4.9.15.B]]~~ 4.9.16.B.

178 **d. Development with Moderately Priced Dwelling Units**

- 179 i. A property developed under Section ~~[[4.9.15.B]]~~ 4.9.16.B must
- 180 satisfy Chapter 25A.
- 181 ii. A density bonus allowed under Chapter 25A is calculated after
- 182 the base density of the property has been increased under
- 183 Section ~~[[4.9.15.B]]~~ 4.9.16.B through TDRs.

184 * * *

185 **e. Additional Findings**

186 In addition to the findings required for approval of a site plan under
187 Section 7.3.4, for projects developed under Section ~~[[4.9.15.B]]~~

188 4.9.16.B, the Planning Board must find that the proposed development
189 provides an appropriate range of housing types that takes advantage of
190 existing topography and environmental features and achieves a
191 compatible ~~[[relation-ship]]~~ relationship between the proposed
192 development and adjoining land uses.

193 * * *

194 **Section [4.9.16] 4.9.17. Twinbrook (TB) Overlay Zone**

195 * * *

196

197 **Section [4.9.17] 4.9.18. Upper Paint Branch (UPB) Overlay Zone**

198 * * *

199 **B. Exemptions**

200 The following are exempt from Section [4.9.17] 4.9.18:

201 * * *

202 **C. Land Uses**

203 1. Except as listed in Section [4.9.17.C.2] 4.9.18.C.2 and Section
204 [4.9.17.C.3] 4.9.18.C.3, the land uses of the underlying zone apply.
205 The use standards of the underlying zone apply unless the
206 development standards in Section [4.9.17.D] 4.9.18.D are more
207 restrictive, in which case Section [4.9.17.D] 4.9.18.D must be
208 followed.

209 * * *

210 3. If validly existing on July 1, 1997, the uses in Section [4.9.17.C.2]
211 4.9.18.C.2 may be continued under the requirements in effect at the
212 time the use was established. Any expansion requires compliance with
213 the UPB Overlay zone.

214 * * *

215 **E. Waiver**

216 The applicable review body may grant a waiver of the development
217 standards in Section [4.9.17.D] 4.9.18.D if it finds that:

218 * * *

219 4. Alternative water quality and control techniques are used to meet the
220 purposes of Section [4.9.17] 4.9.18.

221 **Section [4.9.18] 4.9.19. Upper Rock Creek (URC) Overlay Zone**

222 * * *

223 **B. Exemptions**

224 1. The following are exempt from Section [4.9.18] 4.9.19:

225 * * *

226 **D. Waiver**

227 The applicable review body may grant a waiver of the development
228 standards in Section [4.9.18.C] 4.9.19.C if it finds that:

229 * * *

230 4. Alternative water quality and quantity control techniques are used to
231 meet the purposes of Section [4.9.18] 4.9.19.

232 * * *

233
234

**Sec. 3. OLD ZONING ORDINANCE TO NEW ZONING
ORDINANCE SECTION CROSS REFERENCE is amended as follows:**

Old ZONING ORDINANCE	New ZONING ORDINANCE
Article 59-C: Zoning Districts; Regulations.	
* * *	
Division 59-C-18. Overlay Zones.	
* * *	
Sec. 59-C-18.15. Environmental Overlay Zone for the Upper Paint Branch Special Protection Area.	Sec. [4.9.17] <u>4.9.18</u> . Upper Paint Branch (UPB) Overlay Zone
* * *	
Sec. 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone.	Sec. [4.9.13] <u>4.9.14</u> . Sandy Spring/Ashton Rural Village (SSA) Overlay Zone
* * *	
Sec. 59-C-18.20. Ripley/South Silver Spring Overlay Zone.	Sec. [4.9.11] <u>4.9.12</u> . Ripley/South Silver Spring (RSS) Overlay Zone
Sec. 59-C-18.21. Takoma Park/East Silver Spring commercial revitalization overlay zone.	Sec. [4.9.14] <u>4.9.15</u> . Takoma Park/East Silver Spring Commercial Revitalizations (TPESS) Overlay Zone
* * *	
Sec. 59-C-18.23. Rural village center overlay zone.	Sec. [4.9.12] <u>4.9.13</u> . Rural Village Center (RVC) Overlay Zone
Sec. 59-C-18.24. Environmental overlay zone for the Upper Rock Creek Special Protection Area.	Sec. [4.9.18] <u>4.9.19</u> . Upper Rock Creek (URC) Overlay Zone

235

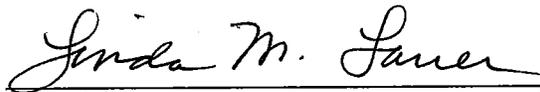
236 **Sec. 4. Effective date.** This ordinance becomes effective 20 days after the
237 date of Council adoption.

238

239 This is a correct copy of Council action.

240

241



242

Linda M. Lauer, Clerk of the Council