

Ordinance No: 16-09
Zoning Text Amendment No: 07-11
Concerning: Upper Paint Branch- Standards
Draft No. & Date: 2 - 9/10/07
Introduced: July 31, 2007
Public Hearing: September 11, 2007; 1:30 pm
Adopted: October 2, 2007
Effective: October 2, 2007

**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: Council President Praisner and Councilmembers Trachtenberg, Andrews, Elrich, and Ervin

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the development standards in the Overlay zone for the Upper Paint Branch Special Protection Area; and
- generally amend the Overlay zone for the Upper Paint Branch Special Protection Area.

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

DIVISION 59-C-18 “OVERLAY ZONES”
Section 59-C-18.152 “Regulations”

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. 07-11 was introduced on July 31, 2007 to change the allowable impervious surface in the Upper Paint Branch Special Protection Area Overlay Zone from 10% to 8%.

The Montgomery County Planning Board recommended approval of ZTA 07-11 with a suggestion for future amendments.

The County Council held a public hearing on September 11, 2007 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 September 24 to review the text amendment. After careful review of the materials of record, the Committee recommended that ZTA 07-11 be approved with an amendment to allow building permits pending on July 31, 2007 and construction on approved subdivision lots, if the subdivision had fewer than 20 dwelling units, to proceed under the limits in place on July 31, 2007. The Committee believes that allowing all prior approved subdivision to proceed would result in unacceptable levels of impervious surface. The Committee believes that subdivisions with 20 or more dwelling units are large for the watershed and subdivisions of 20 or more dwelling units are already distinguished in the Zoning Ordinance for different obligations than smaller subdivisions.

The Committee concluded that the rationale in the Upper Paint Branch Technical Working Group's report, provided the Council with a substantial basis to adopt an 8 percent impervious surface limit. The Technical Working Group found that increases in impervious surfaces threaten the water quality of the Upper Paint Branch stream system. The Committee noted that reducing existing impervious surfaces in the watershed is an option for developments that want to add impervious surfaces.

The District Council reviewed Zoning Text Amendment No. 07-11 at a worksession held on October 2, 2007. The Council agreed with the Committee recommendation to approve ZTA 07-11.

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. 07-11 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:

Sec. 1. DIVISION 59-C-18 is amended as follows:

DIVISION 59-C-18. OVERLAY ZONES.

* * *

59-C-18.15. Environmental Overlay Zone for the Upper Paint Branch Special Protection Area.

59-C-18.151. Purpose.

It is the purpose of this overlay zone to:

- (a) Protect the water quality and quantity of the Upper Paint Branch Watershed and its tributaries, as well as the biodiversity situated in these resources. The resources consist of the headwater tributary areas—Good Hope, Gum Springs, Right Fork and Left Fork—and the segment of the main stem of the Paint Branch north of Fairland Road.
- (b) Regulate the amount and location of impervious surfaces in order to maintain levels of groundwater, control erosion, and allow the ground to filter water naturally and control temperature.
- (c) Regulate land uses that could adversely affect this very high quality, cold water stream system resource that is afforded the highest order of resource protection (Use III Waters) under the State of Maryland’s watershed classification system.

59-C-18.152. Regulations.

- (a) **Development standards.** The development standards of the underlying zone apply except as modified by the requirements of this overlay zone.
 - (1) **Restriction on Impervious Surface.** Any development must not result in more than [10] 8 percent impervious surface of the total area under application for development.

(A) Any impervious surface lawfully existing pursuant to a building permit issued before July 31, [1997] 2007 that exceeds the [10] 8 percent restriction, may continue or be reconstructed under the development standards in effect when the building permit was issued.

(B) Any impervious surface which results from construction pursuant to a building permit [[application pending before the Department of Permitting Services on July 1, 1997,]] may [[continue]] be constructed or [[be]] reconstructed under the development standards in effect [[when the building permit was issued.]] on July 31, 2007 if:

(i) the building permit application was pending before the Department of Permitting Services on July 31, 2007, or

(ii) the building permit is for a lot in a subdivision approved before July 31, 2007, if the subdivision was approved for fewer than 20 housing units,

(C) Any expansion of an impervious surface above the [10] 8 percent restriction is not allowed, except in accordance with the waiver provisions of Subsection (a)(2) or as provided under Subsection (a)(1)(D).

(D) Any impervious surface resulting from an addition or accessory structure to an existing one-family residential dwelling must not be counted against any calculation of the [10] 8 percent impervious surface restriction.

- (2) **Waiver.** The Director may grant a waiver from the [10] 8 percent impervious surface restriction subject to the following standards and procedures:
- (A) **Written Request.** An applicant may apply for a waiver from the [10] 8 percent impervious surface restriction if enforcement would result in undue hardship to the applicant. The request must be in writing to the Director.
 - (B) **Review and action.** The Director may grant a waiver from the [10] 8 percent impervious surface restriction if the applicant shows by clear and convincing evidence that:
 - (i) the [10] 8 percent impervious limitation would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant;
 - (ii) the applicant complies with all applicable federal, state, and county water quality standards; and
 - (iii) the relief sought is the minimum needed to prevent the hardship and the Director must consider alternative techniques.

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Sec. 2. Effective date. This ordinance takes effect immediately upon Council adoption.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council