

The Report of the Garrett Park Land Use Task Force

Summary Report

7/12/2010

Note: The full text of the recommendations, with motions and votes, are included in this Summary Report. Please see the full Report of the Garrett Park Land Use Task Force for the complete appendices, including the Task Force minutes and other supporting documents.

Introduction

The Task Force affirms the principles that led to the passage of the Town's land use ordinance – preservation of the historic quality and character of Garrett Park and a desire to maintain control of its growth and development. However, the Task Force believes the existence of two distinct codes, the Town's Ordinances and Montgomery County's Overlay Zone for Garrett Park (the "Overlay Zone"), has created confusion and led to the breakdown of comity in the Town. To address these issues and provide the clarity desired by all Garrett Park citizens, the Task Force recommends as a first option amending the Overlay Zone to meet the Town's objective of preserving its unique, special character including open space, architectural diversity, and community oversight.

Further, should the Town Council accept these recommendations and choose to work with the County to amend the Overlay Zone, the Task Force recommends that the Council appoint a committee to work with representatives of the County to accomplish this. Since the County is in the process of revising the entire zoning code, the timing for such collaboration is propitious. The Task Force also recommends that the Council revise Town ordinances to remove any language that conflicts with or duplicates an appropriately amended Overlay Zone.

In addition to these overarching recommendations, this report addresses how and why the Overlay Zone should be amended to better achieve these objectives. For many of the recommendations we considered, the Task Force came to a clear consensus. For others, the convictions on both sides of the issue remain unchanged. The Task Force strongly urges the Council to accept and act on those recommendations for which there was clear consensus and support for the recommended changes.

The Task Force also looked at ways the Town may wish to improve its administrative oversight and control. These recommendations are offered for the Council's consideration.

There were aspects of its charge that the Task Force was not able to consider. These include encouraging homeowners to use green materials and reduce impervious surfaces. While the Task Force seemed to favor these actions, it did not have time to research and develop recommendations.

Appendices provide supplementary material to support or clarify the recommendations and or document the work product of the Task Force.

Recommended Amendments to the Montgomery County Overlay Zone for Garrett Park

It is a given that Garrett Park is a town of many opinions, and many of them strongly held. We on the Task Force are not recommending revolutionary changes to the current regulations in the Town's Code of Ordinances or in the County's Overlay Zone for Garrett Park. Rather, we identified areas of concern, areas where we could address the balance of individuals' needs with the desire to maintain the open and green space, the architectural diversity, and the existing housing that adds to the unique character that is Garrett Park.

We do recommend several specific changes to our land use rules, offer some ideas that will need further investigation, and make some procedural and administrative recommendations to ease management and add clarity.

Land Use Recommendations

We see no reason to change the current side and rear setbacks. To reduce confusion, we do recommend that the Town Ordinance on Lot Coverage, Section 402(b)(4), be changed to match the language in the Overlay Zone. Both have equivalent results, but the Town's ordinance is confusing. Both texts are included in Appendix II for comparison.

We recommend that additions and renovations to existing houses be allowed up to the existing front building line, so long as it's no closer than 25 feet from the Town's right of way. Many houses that were built under both A and R-60 zoning were built with a 25 foot front setback. Allowing additions and renovations up to the existing front wall, rather than restricting them to 30 feet back or further, will encourage renovation of existing homes, help maintain the Town's historic streetscape, and help protect mature trees that would be lost to demolitions.

For setbacks in general, the County has a list of "Exemptions for Projections", specific items that are allowed to cross a property's setback lines. For example, a bay window can extend 3 feet into the front setback and a chimney can jut 2 feet into a side setback. Appendix III includes the complete list of exemptions and their limits. At our request and on behalf of the Council, Suellen Ferguson, a property attorney with Council, Baradel, Kosmerl & Nolan, researched whether these exemptions applied in Garrett Park. Ms. Ferguson suggested two interpretations were possible, but the one she thought more apt was that by inference they were adopted by the Town. The Town is now permitting these exemptions - with the notable exception being the Town's greater restriction of covered porches. Other than porches, we recommend the Town explicitly recognize these exemptions in the Town's Ordinances. Ms. Ferguson's opinion is included in Appendix V, appended to the January 28 minutes.

We recommend that open porches added to existing houses may project up to, but no more than, 9 feet into the front setback, including the roof. This would apply only to existing homes; new homes would not be permitted porches that extend beyond the current 30 foot front setback. By adding the roof measurement, the actual size of a porch is unlikely to change much, since most porches are built with a roof overhang. This change would remove some differences between the County's and the Town's regulations, reducing confusion caused by their inconsistency.

We recommend that long, flat walls should include a visual break. Long, flat walls tend to make houses appear boxy, and lessen the architectural diversity in Town. The exemptions currently allow for a chimney to jut two feet into a side setback. To encourage aesthetic variety, we recommend the Town also permit a bay window or oriel to jut two feet into a side setback to meet this requirement.

We recommend additional areas for further investigation, areas where we lacked sufficient expertise but think the issues need addressing. In Montgomery County, Floor Area Ratio (FAR) is primarily a commercial tool, and is poorly defined for residential properties. We recommend working with the County to have the Overlay Zone include more appropriate residential definitions, which also may require revisiting the current .375 limit for FAR.

The Task Force was unable to reach a clear consensus on a recommendation for any single number for lot coverage, be it 18 percent or 20 percent or some other number, and note that no single number will fit the wide variety of lots in Town. Instead, we recommend the Town adopt a sliding scale for lot coverage. While we do not propose any specific numbers for this sliding scale, we have included an example, Appendix IV. Garrett Park's Ordinances currently recognize that small lots are a hardship, and include provisions which can allow for a variance. There is no equivalent recognition in the Overlay Zone, and County variances for small lots have become rare. A sliding scale could give a more balanced process for these owners.

Procedural and Administrative Recommendations

The members of the Task Force have been quite concerned that the permitting and building process in Garrett Park should be more open and clear. We have several recommendations addressing the administrative and regulatory process.

We recommend that the Town work towards amending the Overlay Zone to incorporate setback and lot coverage, while retaining land use authority granted by the State. Currently, residents must navigate two separate, inconsistent, and overlapping codes – the Town's Ordinances and the County's Code, which incorporates both R-90 and the Overlay Zone. The County has a much more extensive system to manage the process than does Garrett Park. To avoid conflicting land use regulations, we should work with the County to amend the Overlay Zone appropriately to meet our needs and then remove the affected portions of the Town Ordinance.

Towards this effort, we recommend the Town Council appoint a committee that will work with representatives of the County to draft the specific language for these Overlay Zone amendments.

If Garrett Park does transfer a substantial portion of the permitting process into the Overlay Zone, the Town may wish to consider retaining the services of a qualified individual to review permit applications for compliance with the Overlay Zone. This person, presumably an outside expert hired by the town, would communicate any concerns to the County, and ensure the County clearly understands those concerns. The position would not have regulatory authority or make binding determinations but rather would represent the Town's interests to the County, and assure applicants must follow only one permitting process, not two potentially conflicting or inconsistent ones.

The Town should require bonds be posted or fines levied to protect or restore Town trees, curbs, paving, etc., and to regulate and/or prohibit portable toilets, dumpsters, construction materials, temporary storage facilities, and mud carried from the construction site on any Town right of way. Builders shouldn't be excused from taking care of our Town.

The Town should post an ongoing list of all active town building permits on the Penn Place bulletin board and on the Town website. This would make it much easier for residents to be aware of proposed or ongoing work.

We found it difficult to collect and analyze permits and variance requests from prior years. We recommend the Town adapt a commercial software application for collecting, processing, and reporting permits in a clear and unambiguous way. This application should parallel the Town's permit workflow, and should have a web component available to the appropriate town members - the Council, staff, setback committee, historic preservation committee, etc. The system would collect permit information consistently over time, and could generate accurate and complete historical reporting.

The Town may wish to consider encouraging owner-built homes and additions and discourage the demolition of existing homes for new construction by speculative builders. One possible way to achieve this would be a limited property tax credit for living in a home newly built by the owner, and for the increased value of an addition newly built by the owner. This would drive a more personal stake in changes to the Town.

Our recommendations reflect a clear consensus of the Task Force, with many votes unanimous or near-unanimous. We strongly urge the Council to act on these recommendations. Our suggestions represent much closer votes, votes without a clear consensus, that the Council may wish to consider or investigate further. Appendix I includes a list of the full motions and votes recorded for all of the recommendations and suggestions we're proposing tonight.

Respectfully submitted,

Suzanne Grefsheim, Chair

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Note: Only the first appendix is included in this Summary Report. Please see the full Report of the Garrett Park Land Use Task Force for the complete text of the appendices listed here.

Appendix 1

Motions Upon Which the Land Use Task Force Recommendations Are Based

Introduction

Moved: That the Town Work with Montgomery County to amend the Garrett Park Overlay Zone, which is part of the Montgomery County Zoning Ordinance, in preference to amending the Garrett Park Setback Ordinance. After the Garrett Park Overlay Zone has been satisfactorily amended, repeal Section 402 Building Setback Lines and Lot Coverage of the Garrett Park Code of Ordinances, while retaining the land use authority granted to the Town by the State.

Passed by a vote of 13 in favor, none opposed. March 25, 2010

Land Use Recommendations

Moved that the Town delete the complicated verbiage of Section 402 (b) (4) Adjustments of setback and lot coverage requirements, and simply state that the actual side and rear setbacks are the same as the Montgomery County Garrett Park Overlay Zone.

Passed by a vote of 13 in favor, none opposed and the Chair abstaining. April 22, 2010

Moved that additions or renovations to existing buildings may extend up to the front of the existing building so long as the existing building line is a minimum of 25 feet from the street right of way.

Passed by a vote of 10 in favor, three opposed and one abstention. May 27, 2010

Moved that the Town Council add in Section 402 (b) of the Setback Ordinance that Division 59-B-3 Exemptions For Projections of the Montgomery County Zoning Ordinance, with the exception of the 9 foot exemption for front porches, applies in Garrett Park.

Passed by a vote of 12 in favor, none opposed, and one abstention. April 22, 2010

Moved that the wording of the existing Garrett Park ordinance 402.(b) (1.3) and the Montgomery County Garrett Park Overlay 59-C-18.113 be amended as follows:

402.(b) (1.3) Notwithstanding the above, open porches added to structures existing as of the effective date of this ordinance may extend up to **nine (9) feet including roof** beyond the established or required front setback line. [Ordinance 99-3, adopted 9/13/99]

59-C-18.133 (1)....A front porch added to a main building existing as of February 15, 2000 may extend up to **nine feet including roof** into the minimum front yard setback. Any front porch extending into the minimum front yard setback, under this provision, may be covered, but not enclosed.

Passed by a vote of 14 in favor, none opposed. April 22, 2010

Moved: No wall plane on any facade of any structure shall exceed 34 feet in length unless there is an offset or articulation in the wall plane that measures at least two (2) feet deep and five (5) feet long, so that no section of wall plane continues for more than 34 feet without an offset or articulation. A chimney or a side-wall bay window or oriel measuring no

less than 5 feet long and no more than 8 feet long and projecting 2 feet into the side setback is permitted to meet this requirement.

Passed by a vote of 11 in favor, two opposed. June 24, 2010

Moved that the Garrett Park Overlay Zone, included in the Montgomery County Zoning Code, be amended to include clearer residential definitions of floor area ratio and related definitions, along with an examination of the current floor area ratio of 0.375.

Passed by a vote of 13 in favor, none opposed. April 22, 2010

Moved that Garrett Park accept the language in the Montgomery County Garrett Park Overlay limiting lot coverage – 59-C-18.112(4) “maximum percentage of net lot area that may be covered by buildings, including accessory buildings, is 20 percent.”

The vote was seven in favor, five opposed and one abstention. June 24, 2010

Moved that a sliding lot scale similar to the one developed by Pam Morgan should be incorporated into the Montgomery County Garrett Park Overlay.

Passed by a vote of 14 in favor, none opposed. May 27, 2010

Procedural and Administrative Recommendations

Moved that the Mayor and Town Council appoint a committee to work with County representatives to work out the details and actual language of amending the Garrett Park Overlay Zone included in the Montgomery County Zoning Ordinance in preference to amending the Garrett Park Setback Ordinance.

Passed by a vote of 12 in favor, none opposed, one abstention. June 16, 2010.

Moved that, should Garrett Park transfer a substantial portion of the permitting process into the Garrett Park Overlay Zone, the Town should retain the services of a qualified individual to review permit applications before submission to Montgomery County. Anyone doing work in Garrett Park that would require a County permit shall first submit the application to the Town Administrator who shall then, as quickly as practical, forward the application to this qualified individual for review.

Within two weeks of the Administrator's receipt of the application, the qualified individual shall communicate to the County Permitting Services office any concerns about the application's compliance with the Garrett Park Overlay Zone. Subsequently, the qualified individual shall verify with the County that the review was received and any concerns were clearly understood.

The vote was six in favor, three opposed, three abstentions. June 16, 2010.

Moved: The Mayor and Town Council protect the town right of way by:

- requiring bonds to be posted or fines to be levied to help to ensure that town trees, curbs, paving, etc. are protected during construction and/or restored upon completion of construction.
- **regulation of and/or prohibition of**
 - portable toilets,
 - dumpsters,
 - construction materials,

- temporary storage facilities, and
- mud carried from the construction site into the town right of way.

Passed by a vote of 12 in favor, none opposed. June 16, 2010.

Moved: The Town should post a continuing list of all **active** town building permits on the Penn Place bulletin board and on the Town website.

Passed by a vote of 12 in favor, none opposed. June 16, 2010.

Moved that the town consider adapting one of the many commercial software applications available for tracking permit requests, processing of permits, and final results. There should be a web component that allows for online entry of permit requests and allows appropriate town members (town council, staff, setback committee, historic preservation etc.) to view comment on, and track applications. The application used by the town should match the desired work flow process of permit application, review and results.

Passed by a vote of 11 in favor, one opposed and one abstention. June 24, 2010

Moved: The Mayor and Town Council encourage owner-built homes and additions by:

- establishing a town property tax credit for a number of years for living in a home newly built by the owner.
- establishing a town property tax credit for a number of years on the increased value of a newly built addition by the owner.

The vote was six in favor, four opposed and two abstentions. June 16, 2010.