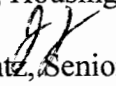


**MEMORANDUM**

June 15, 2017

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz,  Senior Legislative Analyst

SUBJECT: Revised Zoning Text Amendment 16-20, Overlay Zone – Bethesda

**Process**

ZTA 16-20 was introduced at the request of the Planning Board, to implement the Bethesda Downtown Plan as proposed by the Board. The Council's approved changes to the Plan warrant changes to the proposed Overlay zone. Staff has amended the ZTA to mirror the changes made by Council to the Plan. The intent of amended ZTA 16-20 is to implement the Bethesda Downtown Plan as amended by the Council.

The Council held a public hearing on Staff's amended draft ZTA 16-20 on June 13, 2017. The Committee has the opportunity to conduct as many as 3 additional worksessions on the ZTA: June 26, June 29, and June 30.

**Expectations for July 19**

Staff classified the major issues raised into the following somewhat overlapping categories:

- 1) Bonus Density
- 2) The treatment of MPDUs
- 3) Public Benefit Points
- 4) Land Use
- 5) Density Averaging
- 6) Small Projects

Staff has no expectation of going through all issues at the Committee's June 19 worksession. If the Committee is prepared to get through the issues raised by Bonus Density and the treatment of MPDUs, it would be a significant achievement. If the Committee members can direct Staff to any additional research that it may want, that would be helpful for future worksessions.

The following major issues were raised in testimony, with some Staff commentary.

## 1. Bonus Density

### A. Calculation

In part, the Staff-revised ZTA defined “Bonus Density” as “the square footage of gross floor area determined by subtracting the gross floor area of existing and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan)”.

#### i. Treatment of mapped density

Testimony recommended increased clarity. In particular, under the proposed calculation, any density above existing and approved development, including mapped density, would be considered Bonus Density. All Bonus Density would be subject to the Park Impact Payment (PIP). Testimony suggested, in part, the following:

*Bonus Density is the total square footage of gross floor area by which new development in the Bethesda Downtown Plan Area may cumulatively exceed the maximum square footage of gross floor area allowed under the mapped CR and CRT Zones.*

Staff agrees with this suggestion.

#### ii. Specific number for Bonus Density floor area

The Staff draft ZTA would establish the amount of available Bonus Density by subtracting the amount of existing and approved development from the total floor area recommended by the Bethesda Plan (32.4 million square feet of gross floor area). Some testimony wanted the definition of Bonus Density to include a specific gross floor area amount. Staff disagrees. The amount of development allowed as Bonus Density changes with approvals and the expiration of approvals.

#### iii. There is a need for added clarity on whether or not MPDUs above 15% for any project count against the total floor area recommended by the Bethesda Plan. (Some testimony recommended that all MPDUs be excluded from counting against the Plan’s limit.)

It is Staff’s understanding that the total recommended gross floor area is a firm cap and all floor area counts against it.

#### iv. Staff is concerned about the undeveloped site that comes in for site plan approval under standard method development once the 32.4 million square foot limit is reached. Staff believes that Bonus Density should only be allowed as long as all private sites can still develop under the standard method.

## B. Tracking

Testimony requested publication of the Planning Department's development tracking to provide notice to the community and potential applicants for any remaining Bonus Density.

Planning staff should respond to this request.

## C. Using the term "Bonus Density"

ZTA 16-20 used the term "Bonus Density" to describe an amount of additional floor area available within the BOZ. Bonus density is a term already used in the code to describe additional floor area allowed for the provision of more than 12.5% Moderate Priced Dwelling Units (MPDUs). Testimony suggested confusion with the dual use of the term.

Staff uses the term Bonus Density in the memorandum to mean a method for a project to exceed its mapped density without transferring density from another site or providing more than 17.5% MPDUs. If the Council thinks a new name is in order, Staff has some alternatives:

- Additional Density;
- Above Mapped Density;
- Density Pool;
- Voluntary Density; or
- BOZ Density.

## 2. Treatment of MPDUs

### A. Background

The code currently requires projects with more than 20 dwelling units to provide at least 12.5% MPDUs. The code offers incentives to exceed that percentage in CR and CRT zones. Above 15% MPDUs, but less than 20%, may satisfy one less benefit category than otherwise required. A project with 20% MPDUs or more need not satisfy any benefit category other than affordable housing.

Some CR and CRT zones were approved by the Council's District Map Amendment without the benefit of a master plan recommendation. Those zones have a "T" designation. In those areas, the density may be increased over the mapped density for all MPDUs above 12.5%; the height may also be increased to the extent necessary for the additional MPDUs.

The rule for CR and CRT zones without a "T" are different for projects with more than 12.5% MPDUs. Mapped height limits would not apply to the extent required to provide the MPDUs. The floor area required for the increment of housing between 12.5% and 15% MPDUs may be above the floor area limit of the zone. For projects providing more than 15% MPDUs, all of the floor area used for MPDUs may exceed the zoned floor area limit for the site.

In the approval process for the Bethesda Downtown Plan, the Council agreed with the Planning Board that, given the 15% MPDU requirement, additional building height should be allowed in

the base zone. Essentially, the base height was raised by at least 20% on all properties. In addition, the Council approved other significant height increases on some properties.

B. Treatment of MPDUs between 12.5% and 15%

The Staff proposed draft does not allow public benefit points or exclusion for building height or mapped density. Testimony suggested that this was overly burdensome.

Staff thought that the Council was clear in approving the Bethesda Plan that 15% MPDUs was a baseline for the approval of optional method projects in Bethesda. As such, the Staff proposed draft excluded benefits for projects providing 15% or less MPDUs. Although Chapter 25A allows “Bonus Density” for the provision of 15% MPDUs, the BOZ as proposed would not allow additional market rate units.

C. Height for project with more than 15% MPDUs

The Staff proposed draft includes the following provision:

If more than 15% of the number of the dwelling units in a residential development are MPDUs under Chapter 25A, the height limit of the applicable zone does not apply to the extent required to provide MPDUs above 15%.

- i. Some testimony requested limitations on where the additional height may be allowed, to protect neighboring single-family detached residential communities.

As drafted, there is no limitation on where extra height may be allowed. This is consistent with the current code’s allowances. As introduced, ZTA 16-20 limited additional building height to the High Performance Area of Bethesda. (The Staff proposed revision allows **density** to be transferred to any site in the High Performance Area identified in the Bethesda Plan.) Testimony recommended prohibiting increases in heights near single-family detached homes.

Planning staff recommends that additional building height be limited to the High Performance Area identified in the Plan. Some parts of the High Performance Area confront single-family neighborhoods. Council staff thought proximity to those neighbors may be better.

- ii. Should the height allowed for MPDUs allow a full additional floor?

Testimony indicated that the provision of MPDUs recommended a revision to allow full floors when a part of the floor is needed for MPDUs. Currently, language contained in Section 4.7.3.D.6.c.i has been interpreted such that it does not allow a full floor in most instances. In the opinion of testimony, construction of a partial floor is not efficient in most cases, and the ability to accommodate more MPDUs in projects in Bethesda should be supported. Testimony recommended that text should be added to the section to clarify this point:

*The additional height is calculated as the floor area provided for all MPDUs divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.*

Planning staff has not seen this issue in practice, but does not have a problem with the allowance for a full floor.

D. Density for projects with more than 17.5% MPDUs

The Staff revised ZTA includes the following provision:

*For a project providing a minimum of 17.5% MPDUs, the gross floor area of all the MPDUs provided is exempt from the calculation of FAR.*

This was modeled after the current exception for providing 2.5% more than the required MPDUs. The BOZ requires 15% MPDUs. Testimony requested that the allowance for exempting MPDUs from density apply for all projects above 15% MPDUs.

In addition, testimony requested that if a project exceeds 15% MPDUs, all MPDUs should be exempt from the PIP. This issue is discussed below.

E. Park Impact Payment (PIP)

As proposed, the Park Impact Payment is required for a project using Bonus Density to:

*make a park impact payment before the filing of any building permit application at a rate of \$10 per square foot of approved Bonus Density gross floor area; however, if the development includes at least 25% MPDUs, a park impact payment is not required.*

This is where the intersection of ideas gets complicated. As proposed, the floor area of MPDUs in a project with 17.5% MPDUs is exempt from the calculation of FAR. There is a need to clarify whether such a project may exceed its mapped density without triggering the need for Bonus Density. The Council may choose to allow the increment of floor area necessary to provide more than 15% MPDUs without a requirement for the PIP for the increment of floor area above 15%.

- i. Testimony suggested that the PIP, in addition to the financial burden of 15% MPDUs, is excessive.

In approving the Bethesda Downtown Plan, the Council was specific on only allowing an exemption from the Park Impact Payment for Bonus Density projects with 25% or more MPDUs. Exempting projects with 15% MPDU would greatly reduce expected revenue from the PIP. Exempting the floor area of MPDUs from the PIP would also reduce revenues.

Planning staff does not believe that the payment is excessive.

- ii. Testimony requested that public benefit points be allowed for park impact payments.

The proposed ZTA did not allow for public benefit points because the PIP was required for the use of Bonus Density.

- iii. For payment in excess of any required payment, some testimony requested a formula to determine how points would be calculated (for this and the provision of open space).

Staff would defer to Planning staff for a recommendation on a formula.

#### F. Public Benefit Points

- i. Testimony suggested allowing points for affordable housing above 12.5%. Testimony cited the example of the BLT provision, which is required by the code but points are allowed.
- ii. Testimony recommended removing the requirement for points from other public benefit categories for projects with more than 15% MPDUs

The BOZ as drafted requires public benefit points for exceptional design and energy conservation and generation. This type of provision that would allow all public benefit points for affordable housing could override these other provisions.

- iii. Testimony requests public benefit points for MPDUs as a major public facility or increasing the points awarded for each percent of MPDUs from 12 to 15.

A major public benefit (Section 59.4.7.3.A) includes parks as a facility. It allows the Board to grant as many as 70 points of the 100 required points.

### 3. Public Benefit Points Generally

Testimony recommended increasing the points allowed for various public benefits in the Overlay zone, because the points for transit proximity and MPDUs between 12.5% and 15% would be removed by the proposed changes to ZTA 16-20. Given the Bethesda Plan's emphasis on public green space and particularly the greenway, some suggested more points for providing land and (at some level) County contributions to open space as a major public facility.

Testimony recommended that the Overlay zone should allow the Planning Board to assign additional points for these other desired features. Specifically, the maximum number of public benefit points for the following categories might be:

- for architectural elevations – 30 points;
- for public open space – 30 points (additional parks are a plan goal);
- for public art – 20 points;
- for tower step-back – 20 points;
- for minimum parking – 20 points;
- for off-site streetscape improvements – 30 points;
- for through block connection – 30 points;
- for dwelling unit mix – 20 points;
- for cool roof – 15 points;
- for energy conservation and generation – 25 points;
- for vegetated area – 15 points; and
- for vegetated roof – 20 points.

Given that the provision of affordable housing is a priority of the Bethesda Plan, 15 points for every percent of MPDUs over 15% should be given instead of 12 points.

Planning staff has no objections to the proposed increased benefit points for the BOZ (except for public art, which already has a 15-point maximum). All other benefits are within the major goals of the Bethesda Plan.

Some testimony suggested retaining some transit proximity points for sites abutting the Metro station.

#### **4. Land uses**

##### **A. Surface Parking**

The revised provision on Land Uses states “Surface Parking for Use Allowed in the Zone is not allowed as a use on a site from which density has been transferred.” (lines 57-59)

Testimony suggested that this provision was overly restrictive in that this would prevent surface parking on any site that transfers density. This section originally prevented parking on Priority Sending Sites, which were intended as open space areas. Some testimony suggested that, with the elimination of Priority Sending Sites, this provision should be deleted.

Staff would recommend clarifying the provision to indicate that surface parking is prohibited as a primary use. Promoting surface parking (allowing the transfer of all density) would not create the urban area intended by the Bethesda Downtown Plan. Planning staff agrees with this recommendation.

##### **B. Use Limits with Residential Road Access**

Testimony suggested limiting uses to those allowed in CRN if a project uses a residential road as access. The following uses allowed in the CRT zone, but not allowed in the CRN zone, include: car washes, hotels, health clubs, automobile sales, and filling stations.

This issue was raised during the Bethesda Plan’s approval. The Council did not include a recommendation to so limit uses in the plan.

#### **5. Density Averaging**

Testimony suggested that the density averaging (floor area transfers) should not be limited. The revised ZTA reads as follows:

*Any floor area allowed by the underlying zone may be transferred to any site located in the High Performance Area designated in the Bethesda Downtown Plan.*

In the opinion of testimony, the maximum heights for all properties were established by the Bethesda Plan and therefore there is no need to limit FAR averaging to within the High Performance Area. Other testimony wanted protection for single-family residential neighborhoods.

In Staff's opinion, if the Council wants to encourage density away from residential areas, there should be some restriction on where density should go. In the current code, transfers are limited to within ¼ mile of the transferring sites. The Council should be guided by its treatment of where additional height is allowed for MPDUs.

## **6. Small Projects**

Testimony suggested that small projects were particularly disadvantaged by the reduction in ways to earn public benefit points. To correct the problem, testimony suggests that fewer public benefit points be required for small optional method projects.

Standard method projects have a 10% open space requirement. Testimony suggested that this is excessive for a small site.

### **Detailed summary of all issues raised in testimony**

#### **Bonus Density**

- Name - Confusion between "Bonus Density" and "density pool"
  - Should it be "common density pool"?
- Placement
  - Should this be in the definition section of code?
- Calculation (tracking)
  - Exclude mapped density from "Bonus Density"
  - The effective time of an allocation (PB resolution of certified site plan)
  - Tracking of remaining floor area (take-downs and put-backs by expiration)
  - Exclusions? (Projects with more than XX% MPDUs)
- Park Impact Payment obligation (should MPDUs be excluded?).

#### **Treatment of MPDUs**

- Scope
  - Should the 15% MPDU obligation apply to projects with less than 20 units?
  - When a property is exempt from PIP, is the entire project exempt, or only the MPDUs?
- Height
  - Should additional height be limited near single-family units?
  - Should no additional height (and density) be given for development with more than 15% MPDUs?
- FAR
  - When can MPDUs exceed mapped density without needing Bonus Density?
- Park Impact Payment
  - Should all or some MPDU floor area be excluded from payment below 25% MPDUs?
- If 25% or more, should the project be excluded from other public benefit requirements?
- If more than 25%, should the project be excluded from Bonus Density?
- Clarify that points for MPDUs are awarded proportionally.

#### **Affordable Rents**

- Variable points depending upon the % of AMI?



#### Park Impact Payment

- Should any contribution be awarded public benefit points?
- Clarify that the payment is only applicable with the use of Bonus Density
- Clarify that the “greenway” is recommended open space (to reduce payment)
- Quantify
  - How much voluntary payment gets how many points?
  - How much land contribution reduces payment?
- When is payment due – at building permit application or at issuance?
- Refunds if plans expire?

#### Public Benefit Points

- Number should be based on total gross floor area (not mapped FAR)
- Building design
- Energy production
- Increased Park Impact Payment (should there be a formula for points)
- Open space (allow more points – count as a major public facility – specifically include the greenway – only allow if in the Sector Plan area, not “near”)
- Market rate rent retention
- Allow transit proximity points if a project provides more than 15% MPDUs (Planning Board idea)
- Count MPDUs above 15% as a major public facility
- Park Impact Payment – should any payment get public benefit points?
- Without transit proximity – allow more points for other attributes?
- Allow transit proximity points for sites on top of Metro.

#### Same projects

- Make fewer points required for small projects (less than .5 acre)
- Reduce the open space requirement for standard method.

#### Density Transfers

- Location restriction (if any...HOC wants no restrictions)
- Surface parking limit.

#### Parking

- Clarify the standard for parking from which 80% is calculated (baseline minimum 59.6.2.4).

#### Use limitation

- Should direct access to a residential street limit uses?
- Should the use allowed by Bonus Density be limited to those “consistent with the Plan”?

#### Greenway

- Allow public access
- No or minimized driveways across.

#### Loading

- Require more loading areas than 1 space for every 50 units.

#### Design review panel

- Panel composition (number and membership/qualifications)
- Appointment
- Conflict of interest avoidance (Ethics Section 5-101)
- Scope of responsibilities (sketch plan and site plan?)
- Clarify that recommendations of the panel are not binding?

#### Design Guidelines

- Should they be specific or broad goals and objectives?
- Allow Planning Board override to meet goals and objectives of the Plan
- Should the zone make adherence to the guideline a condition of approval?

#### Expiration of Plans

- Is notice of a permit within 15 days to the Planning Department necessary?

#### Grandfathering

- Do not apply new rules to filed sketch plans.

#### This Packet Contains

ZTA 16-20 with draft revisions

#### © number

1 – 22

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## **STAFF PROPOSED AMENDMENTS**

Zoning Text Amendment No.: 16-20  
Concerning: Overlay Zone – Bethesda  
Draft No. & Date: 5-5/4/17  
Introduced: December 6, 2016  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

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

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Lead Sponsor: Council President at the request of the Planning Board

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- establish the Bethesda Overlay zone with defined terms, development and land use standards, and procedures for development approvals; and
- generally amend provisions concerning Overlay zones

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

ARTICLE 59-1.	"General Zoning Ordinance Provisions"
Section 1.4.2.	"Specific Terms and Phrases Defined"
ARTICLE 59-2.	"Zones and Zoning Map"
Section 2.1.2.	"Zoning Categories"
ARTICLE 59-4.	"Development Standards for Euclidean Zones"
Division 4.9.	"Overlay Zones"
Section 4.9.2.	"Burtonsville Employment Area (BEA) Overlay Zone"
Section 4.9.3.	"Chevy Chase Neighborhood Retail (CCNR) Overlay Zone"
Section 4.9.4.	"Clarksburg East Environmental (CEE) Overlay Zone"
Section 4.9.5.	"Clarksburg West Environmental (CWE) Overlay Zone"
Section 4.9.6.	"Community-serving Retail (CSR) Overlay Zone"
Section 4.9.7.	"Fenton Village (FV) Overlay Zone"
Section 4.9.8.	"Garrett Park (GP) Overlay Zone"
Section 4.9.9.	"Germantown Transit Mixed Use (GTMU) Overlay Zone"
Section 4.9.10.	"Montgomery Village (MV) Overlay Zone"
Section 4.9.11.	"Regional Shopping Center (RSC) Overlay Zone"
Section 4.9.12.	"Ripley/South Silver Spring (RSS) Overlay Zone"

Section 4.9.13.	"Rural Village Center (RVC) Overlay Zone"
Section 4.9.14.	"Sandy Spring/Ashton Rural Village (SSA) Overlay Zone"
Section 4.9.15.	"Takoma Park/East Silver Spring Commercial Revitalization (TPSS) Overlay Zone"
Section 4.9.16.	"Transferable Development Rights (TDR) Overlay Zone"
Section 4.9.17.	"Twinbrook (TB) Overlay Zone"
Section 4.9.18.	"Upper Paint Branch (UPB) Overlay Zone"
Section 4.9.19.	"Upper Rock Creek (URC) Overlay Zone"

And adding:

Section 1.4.2	"Bonus Density"
Section 4.9.2.	"Bethesda (B) 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.*

#### 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. ARTICLE 59-1 is amended as follows:**

\* \* \*

**Division 1.4. Defined Terms**

\* \* \*

**Section 1.4.2. Specific Terms and Phrases Defined**

In this Chapter, terms that are not specifically defined have their ordinary meaning.

The following words and phrases have the meanings indicated.

\* \* \*

**Bonus Density:** See Section 4.9.2.C.2.a

\* \* \*

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

**Division 2.1. Zones Established**

\* \* \*

**Section 2.1.3. Establishment of Zones**

\* \* \*

**G. Overlay Zones**

1. There are [18] 19 Overlay zone classifications:

a. Bethesda (B),

[a] b. Burtonsville Employment Area (BEA),

[b] c. Chevy Chase Neighborhood Retail (CCNR),

[c] d. Clarksburg East Environmental (CEE),

[d] e. Clarksburg West Environmental (CWE),

[e] f. Community-serving Retail (CSR),

[f] g. Fenton Village (FV),

[g] h. Garrett Park (GP),

[h] i. Germantown Transit Mixed Use (GTMU),

[i] j. Montgomery Village (MV),

[j] k. Regional Shopping Center (RSC),  
[k] l. Ripley/South Silver Spring (RSS),  
[l] m. Rural Village Center (RVC),  
[m] n. Sandy Spring/Ashton Rural Village (SSA),  
[n] o. Takoma Park/East Silver Spring Commercial Revitalization  
(TPESS),  
[o] p. Transferable Development Rights (TDR),  
[p] q. Twinbrook (TB),  
[q] r. Upper Paint Branch (UPB), and  
[r] s. Upper Rock Creek (URC).

2. Building types, uses, density, height, and other standards and requirements may be modified by the Overlay zones under Section 4.9.2 through Section [4.9.19] 4.9.20.

\* \* \*

**Sec. 3. ARTICLE 59-4 is amended as follows:**

**Division 4.9. Overlay Zones**

\* \* \*

**Section 4.9.2. Bethesda (B)**

**A. Purpose**

The purpose of the [[Bethesda]] B Overlay Zone is to [[appropriately allocate density within the Bethesda Downtown area that will protect existing residential neighborhoods, provide additional land for parks and open space, expand the County's affordable housing inventory, promote high quality design, and modify density averaging provisions for Priority Sending Sites]] implement the recommendations of the Bethesda Downtown

Plan as it relates to density, building heights, affordable housing goals, parks, and design.

**B. Land Uses**

1. The land uses of the underlying zones are applicable.
2. Surface Parking for Use Allowed in the Zone is not allowed as a use on a [[Priority Sending Site]] site from which density has been transferred.

**C. Development Standards**

1. Building Height

- a. Except as provided in subsection b, the maximum building height is limited to the height allowed in the underlying zone.
- b. [[Subsection 4.7.3.D.6.c.i. only applies within the High Performance Area designated in the Bethesda Downtown Plan.]] If more than 15% of the number of the dwelling units in a residential development are MPDUs under Chapter 25A, the height limit of the applicable zone does not apply to the extent required to provide MPDUs above 15%.

2. Density

- a. [[A]] In the CR or CRT zone, a development may exceed the [[mapped CR or CRT]] mapped FAR on a site if the Planning Board approves[[, on]] a sketch [[and]] or site plan[[.]] under Section 7.3.3 or Section 7.3.4 that includes the allocation of [[FAR]] gross floor area from Bonus Density, FAR Averaging under Section 4.9.2.C.5, or the provision of more than 17.5% MPDUs.
- b. Bonus Density

Bonus Density is the total square footage of gross floor area by which approved development in the [[Downtown]] Bethesda [[plan]] Downtown Plan area may cumulatively exceed the maximum square footage of gross floor area allowed under the mapped CR and CRT zones. Bonus Density is [[limited to 3,289,000 square feet]] the square footage of gross floor area determined by subtracting the gross floor area of existing and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan).

[[b]]i. [[FAR]] The gross floor area allocated from Bonus Density may be developed [[with any]] as Commercial or Residential [[use allowed in the underlying zone]] square footage consistent with the Bethesda Downtown Plan's recommendation for the site.

[[c]]ii. To qualify for Bonus Density [[FAR]], a proposed development must:

[[1]]A. Use all gross floor area allowed by the mapped CR or CRT FAR [[associated with the property. Density may not be transferred from the property]]. A property that was approved with Bonus Density may not transfer Bonus Density to any other property.

[[2]]B. [[Provide a minimum of 15 percent MPDUs, excluding any Bonus Density transferred from a Priority Sending Site.

3.]] Make a [[Park Impact Payment]] park impact payment before the filing of any building permit



application at a rate of \$10 per square foot of approved Bonus Density [[FAR]] gross floor area; however, if the development includes at least 25% MPDUs, a park impact payment is not required. If a property owner dedicates land designated in the master plan as a recommended[[/enhanced]] open space to the M-NCPPC Parks Department, the Planning Board may reduce the amount of square footage for which a [[Park Impact Payment]] park impact payment must be made.

[[4. Be reviewed by the Design Review Advisory Panel at sketch plan and site plan review to help ensure the development achieves the highest level design quality, consistent with the master plan, design guidelines, and other applicable requirements.

d. The Public Use Space requirement under Section 4.5.4.B.1.a may be reduced by the Planning Board.

e. A project that makes a Park Impact Payment may qualify for up to 10 incentive density points under the category of major public facility.]]

iii. For a project providing a minimum of 17.5% MPDUs, the gross floor area of all of the MPDUs provided is exempt from the calculation of FAR.

3. [[FAR Averaging

a. The Bethesda Downtown Plan designates certain properties as Priority Sending Sites to encourage the creation or enlargement

133 of urban parks, protect significant historic and community  
134 resources, and retain existing affordable housing.

135 b. Density transferred from a Priority Sending Site may be  
136 included in a sketch plan or site plan application for any CR or  
137 CRT-zoned site within the Sector Plan Area boundary.

138 c. Density transferred from a Priority Sending Site may be used  
139 on another site without the Priority Sending Site being under  
140 the same sketch plan or site plan.

141 d. Density transferred from a Priority Sending Site is exempt from  
142 the BLT purchase requirements of Section 4.7.3.F.1.a.

143 e. Before a certified site plan for a development using density  
144 transferred from an Open Space Priority Sending Site may be  
145 approved, all development rights must be extinguished on the  
146 Open Space Priority Sending Site by a recorded instrument  
147 approved by the M-NCPPC.

148 f. Before a certified site plan for a development using density  
149 transferred from an Affordable Housing Priority Sending Site  
150 may be approved, the owner of the sending site must enter into  
151 an agreement with the Department of Housing and Community  
152 Affairs to retain a minimum of 30 percent of the existing  
153 affordable housing units, defined as 65 percent of Area Median  
154 Income (AMI) or below, for 20 years.

155 g. Before a certified site plan for a development using density  
156 transferred from a Historic/Community Resource Priority  
157 Sending Site may be approved, all development rights not  
158 associated with an existing structure, and any amount of square  
159 footage determined by the Planning Board in reviewing a

Sketch Plan to be necessary for operational purposes, must be extinguished on the Historic/Community Resource Priority Sending Site by a recorded instrument approved by the M-NCPPC.

- h. If all or part of an Open Space Priority Sending Site off of which no density has been transferred is dedicated to the M-NCPPC Parks Department, it may qualify for public benefit points as a major public facility.
- i. If all or part of a Historic/Community Resource Priority Sending Site off of which no density has been transferred is dedicated to the M-NCPPC Parks Department, it may qualify for public benefit points as a major public facility.]]

#### Moderately Priced Dwelling Units

For any application under Section 4.5.4 Optional Method Development that includes residential dwelling units, the Planning Board may only approve the application if the development will provide at least 15% MPDUs under Chapter 25A.

#### 4. Public Benefit Points

The requirements for public benefit points are established by Division 59.4.7, except as follows:

- a. The Planning Board may only grant public benefit points for providing more than 15% of the residential units as MPDUs under Chapter 25A. MPDU public benefit points for more than 15% MPDUs must be 12 points for every 1% of additional MPDUs above 15%.

- b. The Planning Board must not grant any public benefit points for transit proximity under Section 59.4.7.3.B.
- c. If a park impact payment is not required under Section 59.4.9.2.C.2.c and the applicant makes a payment, the Planning Board may grant up to 10 public benefit points under the category of major public facility. If a park impact payment is required under Section 59.4.9.2.C.2.c, the Planning Board may grant public benefit points only if the park impact payment exceeds the minimum required.
- d. Within the High Performance Area designated in the Bethesda Downtown Plan, the Planning Board must determine that the development achieves 15 public benefit points from Energy Conservation and Generation under Section 59.4.7.3.F.3.
- e. If the applicant enters into an agreement with the Department of Housing and Community Affairs to retain or provide affordable housing rents for dwelling units located anywhere in the Overlay zone area, the Planning Board must grant 6 public benefit points for every 1% of units included in the rental agreement. Any fraction of 1% increase in the number of units covered by the agreement entitles the applicant to an equal fraction of 6 points. For this purpose, affordable housing is defined as rents that are affordable to a household with a household income of 80 percent of Area Median Income (AMI) or below, for 20 years.
- f. The Planning Board must determine that the development achieves at least 10 points for exceptional design under Section 59.4.7.3.E.4. The maximum number of public benefit points

for exceptional design is 30. The Planning Board must appoint a Design Review Advisory Panel and consider the comments from that panel on all projects before making their determination concerning exceptional design points.

5. FAR Averaging (Density transfers)

- a. Any floor area allowed by the underlying zone may be transferred to any site located in the High Performance Area designated in the Bethesda Downtown Plan.
- b. Additional public benefit points above the minimum number are not required for FAR Averaging.

6. Parking Standards

The minimum number of vehicle parking spaces required is 80% of the number of spaces required by Section 59.6.2.4; however, the Planning Board may reduce this requirement further if the applicant provides evidence that less parking will not burden the surrounding residential neighborhood or Parking Lot District facilities.

7. Public Open Space

The Public Open Space requirement under Section 4.5.4.B.1.a may be reduced by the Planning Board.

**D. Development Procedures**

- 1. Sketch plan and site plan approval under Section 7.3.3 and Section 7.3.4, respectively, are required for all development in the Bethesda Overlay zone that uses the FAR [[averaging]] Averaging provisions of Section [[4.9.2.C.3.]] 4.9.2.C.5.
- 2. To approve a site plan [[with Bonus Density FAR]], the Planning Board must find that the proposed allocation of [[FAR from Bonus Density]] gross floor area, in addition to [[all]] the sum of previously

approved or built ~~[[allocations]]~~ developments, does not exceed  
~~[[3,289,000]]~~ 32,400,000 square feet of gross floor area.

3. [[Within 2 years of when the Planning Board approves a site plan using Bonus Density, the applicant must provide the Planning Department proof of acceptance of the core and shell building permit application no later than 15 days after the Department of Permitting Services. No later than two years after the Department of Permitting Services accepts the core and shell building permit application, the applicant must obtain at least a core and shell building permit. The deadlines for applying for and obtaining a core and shell building permit under this section may not be extended. If an applicant fails to apply for or obtain a building permit within the time allowed under this section, the site plan approval is revoked.]] If the Planning Board approves a site plan using bonus density, the applicant must have a building permit application, accepted by the Department of Permitting Services, that includes the core and shell of the principal building within two years of the date of the Planning Board's resolution. Within two years after the Department of Permitting Services accepts the building permit application that includes the core and shell of the principal building, the applicant must obtain that building permit. The applicant must provide the Planning Department proof of acceptance of the building permit application and issuance of the building permit within 15 days of the date that the Department of Permitting Services accepts the application and issues the permit, respectively. The deadlines under this section may not be extended. If an applicant fails to comply with any of the deadlines under this section, the entire site plan approval is revoked.

266 \* \* \*

267 **Section [4.9.2] 4.9.3. Burtonsville Employment Area (BEA) Overlay Zone**

268 \* \* \*

269 **B. Land Uses**

270 1. The following uses are prohibited:

271 \* \* \*

272 k. Light Manufacturing and Production, except as noted in Section  
273 [4.9.2.B.3] 4.9.3.B.3;

274 \* \* \*

275 **Section [4.9.3] 4.9.4. Chevy Chase Neighborhood Retail (CCNR) Overlay**  
276 **Zone**

277 \* \* \*

278 **Section [4.9.4] 4.9.5. Clarksburg East Environmental (CEE) Overlay Zone**

279 \* \* \*

280 **D. Development Standards**

281 1. Except as allowed under Section [4.9.4.B] 4.9.5.B, the maximum total  
282 impervious surface area for any development after August 4, 2014 is  
283 15% of the total area under application for development.

284 \* \* \*

285 **E. Site Plan**

286 1. Any development that must file a preliminary plan of subdivision  
287 under Chapter 50 requires approval of a site plan by the Planning  
288 Board under Section 7.3.4, unless excluded under Section [4.9.4.E.2]  
289 4.9.5.E.2.

290 \* \* \*

291 **Section [4.9.5] 4.9.6. Clarksburg West Environmental (CWE) Overlay Zone**

292 \* \* \*

**D. Development Standards**

1. Except for County owned land or land under a conservation easement granted to the benefit of the County and development exempted under Section [4.9.5.B] 4.9.6.B, the maximum total impervious surface area for any development after August 4, 2014 is 6% of the total area under application for development.

**E. Site Plan**

1. Any development that must file a preliminary plan of subdivision under Chapter 50 requires approval of a site plan by the Planning Board under Section 7.3.4, unless excluded under Section [4.9.5.E.2] 4.9.6.E.2 or Section [4.9.5.E.3] 4.9.6.E.3.

**Section [4.9.6] 4.9.7. Community-serving Retail (CSR) Overlay Zone**

**Section [4.9.7] 4.9.8. Fenton Village (FV) Overlay Zone**

**C. Development Standards**

1. Building Height

- b. Maximum building height is 60 feet along any street confronting any block that includes property in a Residential Detached zone and, when a building is allowed to be higher than 60 feet under Section [4.9.7.C.1.c] 4.9.8.C.1.c, each additional foot in building height above 60 feet requires at least an additional one foot stepback from the front of the building along Fenton Street;



\* \* \*

- e. For properties with frontage on both Wayne Avenue and Fenton Street, in spite of the height limitations in Section [4.9.7.C.1.b] 4.9.8.C.1.b through Section [4.9.7.C.1.d] 4.9.8.C.1.d, maximum building height may be increased by 15 feet for a building that includes residential uses or a mix of residential and commercial uses, if such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan; however, any building using additional height must be set back from abutting Residentially zoned land no less than the setback required in the abutting Residential zone or the height of the building, whichever is greater.
- f. Building heights may be approved under the standards of Section [4.9.7.C.1] 4.9.8.C.1 without regard to the building height recommendations of the master plan.

\* \* \*

**Section [4.9.8] 4.9.9. Garrett Park (GP) Overlay Zone**

\* \* \*

**C. Land Uses**

The land uses and use standards of the underlying zone are applicable unless the development standards in Section [4.9.8.D] 4.9.9.D are more restrictive, in which case Section [4.9.8.D] 4.9.9.D must be followed.

\* \* \*

**Section [4.9.9] 4.9.10. Germantown Transit Mixed Use (GTMU) Overlay Zone**

\* \* \*

**Section [4.9.10] 4.9.11. Montgomery Village (MV) Overlay Zone**

347 \* \* \*

348 **E. Existing Buildings and Uses**

349 \* \* \*

350 3. a. A legal use existing on February 28, 2016 is conforming and  
351 may be continued. Expansion of any such use must satisfy the  
352 standards of the current zone under Article 59-3.

353 b. An existing Charitable, Philanthropic Institution (as defined by  
354 Section 3.4.2) may expand without conditional use approval,  
355 but must satisfy Section [4.9.10.D] 4.9.11.D.

356 c. An existing Storage Facility (as defined by Section 3.6.8.e.1)  
357 owned and operated by a Charitable, Philanthropic Institution  
358 may expand by up to the lesser of 10% or 30,000 square feet  
359 without conditional use approval, but must satisfy Section  
360 [4.9.10.D] 4.9.11.D.

361 **Section [4.9.11] 4.9.12. Regional Shopping Center (RSC) Overlay Zone**

362 \* \* \*

363 **D. Site Plan**

364 Site plan approval under Section 7.3.4 is required for any increase in  
365 building height under Section [4.9.11.C.1] 4.9.12.C.1.

366 **E. Parking**

367 \* \* \*

368 **2. Pedestrian Access**

369 The major point of pedestrian access for an off-street parking facility  
370 that occupies contiguous land area integral to the regional shopping  
371 center property may extend more than 500 feet walking distance from  
372 an entrance to the center to satisfy the number of spaces required  
373 under Section [4.9.11.E.1.a] 4.9.12.E.1.a.

374 \* \* \*

375 **Section [4.9.12] 4.9.13. Ripley/South Silver Spring (RSS) Overlay Zone**

376 \* \* \*

377 **Section [4.9.13] 4.9.14. Rural Village Center (RVC) Overlay Zone**

378 \* \* \*

379 **C. Development Standards**

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

382 \* \* \*

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

384 \* \* \*

385 iii. For any cumulative enlargement of a surface parking  
386 facility that is greater than 50% of the total parking area  
387 approved before November 4, 2002, the entire off-street  
388 parking facility must be brought into conformance with  
389 Section [4.9.13] 4.9.14.

390 \* \* \*

391 **Section [4.9.14] 4.9.15. Sandy Spring/Ashton Rural Village (SSA) Overlay**  
392 **Zone**

393 \* \* \*

394 **Section [4.9.15] 4.9.16. Takoma Park/East Silver Spring Commercial**  
395 **Revitalization (TPRESS) Overlay Zone**

396 \* \* \*

397 **D. Site Plan**

398 \* \* \*

399 3. For any addition, reconstruction, or alteration that changes a building  
400 by less than 1,000 square feet and does not require site plan approval

under Section [4.9.15.D.1.c] 4.9.16.D.1.c, the Planning Board or its designee must review the building permit to determine compliance with master plan recommendations and the provisions of this Overlay zone. If an existing building is located on the site or on an adjacent property, the minimum setback of the zone may be reduced to conform to the existing setback on the site or on the adjacent property.

\* \* \*

**Section [4.9.16] 4.9.17. Transferable Development Rights (TDR) Overlay Zone**

\* \* \*

**B. Optional Method**

**1. In General**

The TDR Overlay optional method of development permits an increase in the maximum residential density, if the development satisfies the requirements for optional method development using Transferable Development Rights under Section [4.9.16.B] 4.9.17.B.

**a. Applicability**

The procedures and requirements in Section [4.9.16.B] 4.9.17.B apply to the transfer of development rights from land in the AR zone to land in a Transferable Development Rights (TDR) Overlay zone. The Planning Board may approve subdivision of such land at densities up to the maximum density allowed in the applicable TDR Overlay zone and substantially conforming to the recommendations in the applicable master plan.

\* \* \*

**c. Recording of Development Right**

\* \* \*

- ii. A final record plat for a subdivision using transferred development rights must contain a statement including the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance as required by Section [4.9.16.B] 4.9.17.B.

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

- i. A property developed under Section [4.9.16.B] 4.9.17.B must satisfy Chapter 25A.
- ii. A density bonus allowed under Chapter 25A is calculated after the base density of the property has been increased under Section [4.9.16.B] 4.9.17.B through TDRs.

\* \* \*

**e. Additional Findings**

In addition to the findings required for approval of a site plan under Section 7.3.4, for projects developed under Section [4.9.16.B] 4.9.17.B, the Planning Board must find that the proposed development provides an appropriate range of housing types that takes advantage of existing topography and environmental features and achieves a compatible relationship between the proposed development and adjoining land uses.

\* \* \*

**Section [4.9.17] 4.9.18. Twinbrook (TB) Overlay Zone**

\* \* \*

**Section [4.9.18] 4.9.19. Upper Paint Branch (UPB) Overlay Zone**

\* \* \*

**B. Exemptions**

454 The following are exempt from Section [4.9.18] 4.9.19:

455 \* \* \*

456 **C. Land Uses**

457 1. Except as listed in Section [4.9.18.C.2] 4.9.19.C.2 and Section  
458 [4.9.18.C.3] 4.9.19.C.3, the land uses of the underlying zone apply.  
459 The use standards of the underlying zone apply unless the  
460 development standards in Section [4.9.18.D] 4.9.19.D are more  
461 restrictive, in which case Section [4.9.18.D] 4.9.19.D must be  
462 followed.

463 \* \* \*

464 3. If validly existing on July 1, 1997, the uses in Section [4.9.18.C.2]  
465 4.9.19.C.2 may be continued under the requirements in effect at the  
466 time the use was established. Any expansion requires compliance with  
467 the UPB Overlay zone.

468 \* \* \*

469 **E. Waiver**

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

472 \* \* \*

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

475 **Section [4.9.19] 4.9.20. Upper Rock Creek (URC) Overlay Zone**

476 \* \* \*

477 **B. Exemptions**

478 1. The following are exempt from Section [4.9.19] 4.9.20:

479 \* \* \*

480 **D. Waiver**

The applicable review body may grant a waiver of the development standards in Section [4.9.19.C] 4.9.20.C if it finds that:

\* \* \*

4. Alternative water quality and quantity control techniques are used to meet the purposes of Section [4.9.19] 4.9.20.

\* \* \*

**Sec. 4. OLD ZONING ORDINANCE TO NEW ZONING ORDINANCE SECTION CROSS REFERENCE is amended as follows:**

<b>Old ZONING ORDINANCE Article 59-C: Zoning Districts; Regulations.</b>	<b>New ZONING ORDINANCE</b>
* * *	
<b>Division 59-C-18. Overlay Zones.</b>	
* * *	
Sec. 59-C-18.11. Residential and open space preservation overlay zone for the Town of Garrett Park.	Sec. [4.9.8] <u>4.9.9</u> . Garrett Park (GP) Overlay Zone
* * *	
Sec. 59-C-18.14. Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan.	Sec. [4.9.2] <u>4.9.3</u> . Burtonsville Employment Area (BEA) Overlay Zone
Sec. 59-C-18.15. Environmental Overlay Zone for the Upper Paint Branch Special Protection Area.	Sec. [4.9.18] <u>4.9.19</u> . Upper Paint Branch (UPB) Overlay Zone
* * *	
Sec. 59-C-18.17. Chevy Chase neighborhood retail preservation overlay zone.	Sec. [4.9.3] <u>4.9.4</u> . Chevy Chase Neighborhood Retail (CCNR) Overlay Zone
Sec. 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone.	Sec. [4.9.14] <u>4.9.15</u> . Sandy Spring/ Ashton Rural Village (SSA) Overlay Zone
Sec. 59-C-18.19. Fenton Village Overlay Zone.	Sec. [4.9.7] <u>4.9.8</u> . Fenton Village (FV) Overlay Zone

<b>Old ZONING ORDINANCE</b> <b>Article 59-C: Zoning Districts; Regulations.</b>	<b>New ZONING ORDINANCE</b>
Sec. 59-C-18.20. Ripley/South Silver Spring Overlay Zone.	Sec. [4.9.12] <u>4.9.13</u> . Ripley/South Silver Spring (RSS) Overlay Zone
Sec. 59-C-18.21. Takoma Park/East Silver Spring commercial revitalization overlay zone.	Sec. [4.9.15] <u>4.9.16</u> . Takoma Park/ East Silver Spring Commercial Revitalizations (TPSS) Overlay Zone
Sec. 59-C-18.22. Neighborhood retail overlay zone.	Sec. [4.9.6] <u>4.9.7</u> . Community-serving Retail (CSR) Overlay Zone
Sec. 59-C-18.23. Rural village center overlay zone.	Sec. [4.9.13] <u>4.9.14</u> . Rural Village Center (RVC) Overlay Zone
Sec. 59-C-18.24. Environmental overlay zone for the Upper Rock Creek Special Protection Area.	Sec. [4.9.19] <u>4.9.20</u> . Upper Rock Creek (URC) Overlay Zone

490

491 \* \* \*

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

494

495 This is a correct copy of Council action.

496

497

498 \_\_\_\_\_  
 Linda M. Lauer, Clerk of the Council