

MEMORANDUM

June 22, 2017

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Senior Legislative Analyst
SUBJECT: Revised Zoning Text Amendment 16-20, Overlay Zone – Bethesda
Worksession #2

Notes from the June 19th PHED worksession

The Committee did not take any votes on recommendations for the Council.

The Committee requested a renaming of “Bonus Density” to Bethesda Overlay Zone (BOZ) Density and a redraft of BOZ Density provisions to include the following concepts:

- 1) Above mapped density provisions
 - A) Mapped density is not part of BOZ Density.
 - B) Projects that increase their density by a density transfer are not part of BOZ Density.
 - C) Projects that provide more than 15% MPDUs are not part of BOZ density to the extent of floor area required for MPDUs.
 - D) The key factor of BOZ density plus mapped density, existing and possible standard method density on lightly developed sites is that it prohibits development from exceeding 32.4 million square feet of floor area.
 - E) Remaining BOZ density is a variable number, depending upon the status of approved projects.
- 2) MPDUs
 - A) The Committee requested Planning staff recommendations on easing the burdens on MPDU providers.
 - B) The Committee wanted to confirm that all prior CR and CRT “T” zoned properties were allowed a 20% increase in height from their prior height limit.

3) Park Impact Payment

- A) Clarify that to the extent MPDUs are excluded from BOZ density, the floor area is also excluded from PIP, and provide options.
- B) Explain when MPDUs are subject to PIP and when they are not. (Look to how fee in lieu payments translate to points.)
- C) Provide greater clarity for public benefit points when PIP exceeds requirements.

4) Public Benefit points

Develop a table listing all point categories. For each point category, a column for the current maximum number of points and another column for proposed point increases.

5) Land Use

No instructions given.

6) Density Averaging

Remove the restriction on where density may go; any restriction will be on building height and not density transfers.

Defining BOZ density

Planning staff provided a diagram of the BOZ process, which is attached to the memorandum. The diagram reflects BOZ Density as drafted to date.

Upon reflection, excluding MPDUs from BOZ density, but including that floor area within the total floor area available within the Master Plan cap, is an unnecessary complication. The only effect of using BOZ Density is the requirement for a park impact payment. MPDUs can more easily be excluded from that payment when such floor area requires BOZ Density. Based on the Committee's conversation on June 19, Staff is suggesting some provisions, subject to the Committee's recommendations concerning MPDUs. MPDUs are treated in this draft, for the purposes of density, the same as they are outside the Overlay zone, except that the base is 15% and not 12.5%.

2. Density

- a. In the CR or CRT zone, a development may exceed the mapped FAR on a site if the Planning Board approves a sketch or site plan under Section 7.3.3 or Section 7.3.4 that includes the allocation of gross floor area from BOZ Density, FAR Averaging under Section 4.9.2.C.5.
- b. BOZ Density means 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.

BOZ Density is determined by subtracting the gross floor area of existing, potential standard method development on underdeveloped sites, approved development from 32.4 million (the

total gross floor area recommended by the Bethesda Downtown Plan). The Planning Board must publish the floor area remaining in BOZ Density periodically.

i. Land Use

The gross floor area allocated from Bonus Density may be developed as Commercial or Residential square footage.

ii. Qualification

To qualify for BOZ Density, a proposed development must:

- A. Use all gross floor area allowed by the mapped CR or CRT FAR. A property that was approved with Bonus Density may not transfer Bonus Density to any other property.
- B. Make a park impact payment before the filing of any building permit application at a rate of \$10 per square foot of approved BOZ Density gross floor area; however, if:
 - (1.) the development includes more than 15% MPDUs, a payment is not required for the floor required for the MPDUs that exceed 15%;
 - (2.) the development is at least 17.5% MPDUs, a payment is not required for the floor area required for all of the MPDUs; or
 - (3.) the development includes at least 25% MPDUs, a park impact payment is not required for any floor area;
 - (4.) a property owner dedicates land designated in the master plan as a recommended open space to the M-NCPPC Parks Department, the Planning Board may reduce the amount of square footage for which a park impact payment must be made.

MPDUs

Planning Staff was asked to suggest ideas to ease the burdens of providing MPDUs. To that end, Planning staff provided the following table.

Options for MPDUs:

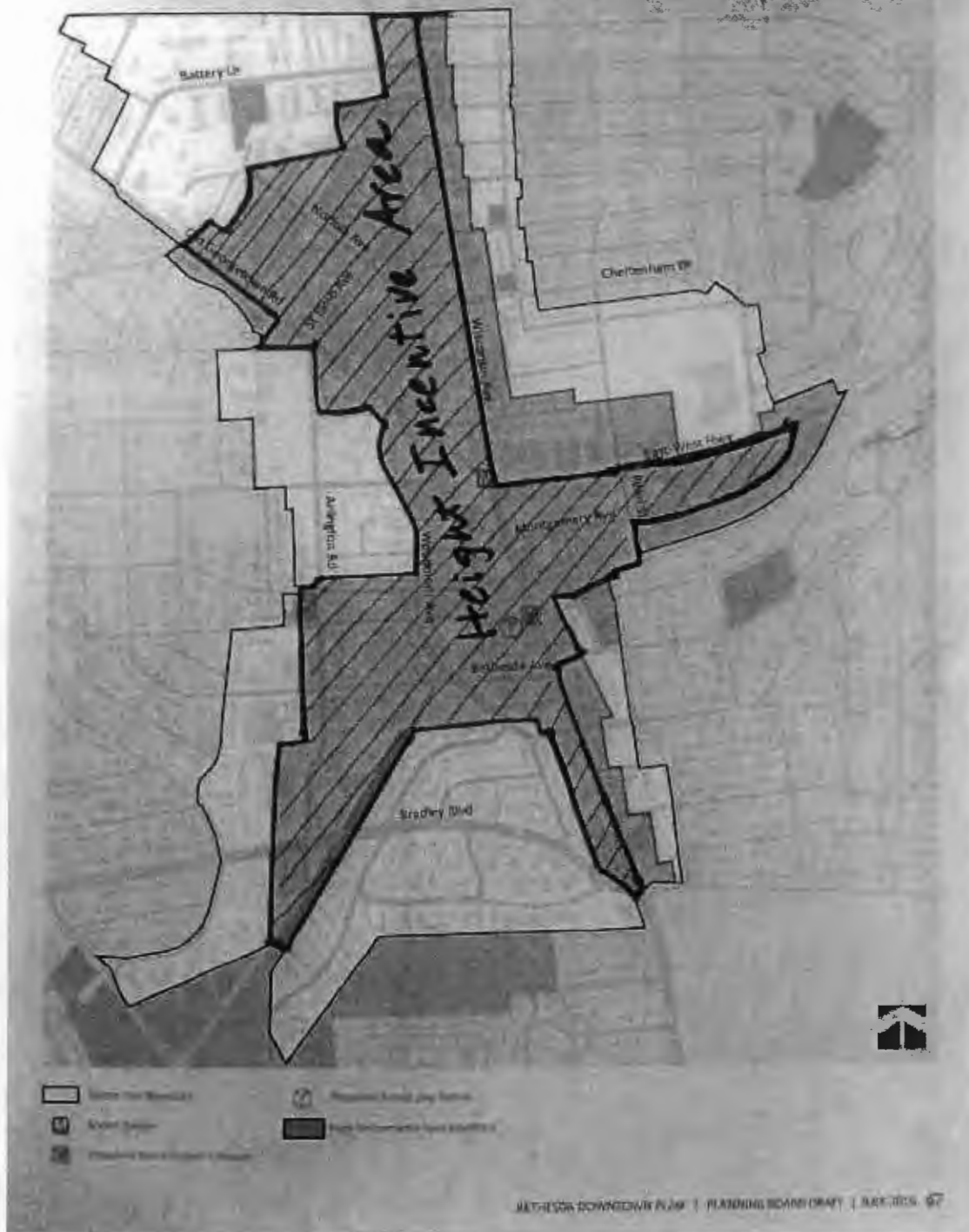
DENSITY	Park Impact Payment (PIP)
1. Follow current policy and allow an increase in height and density for providing 17.5% MPDUs and above. At 17.5%, all GFA for MPDUs is excluded from the Calculation of FAR.	1. No PIP is required on any MPDU density – Minimum \$6.3 million decrease in PIP Fund (not recommended).
2. Follow current policy and allow an increase in density with no additional height outside of the HPA Boundary for providing 17.5% MPDUs and above. At 17.5%, all GFA for MPDUs is excluded from the Calculation of FAR.	2. No PIP is required on MPDUs above 12.5%.
3. Phase in the 15% MPDU requirement by 1/2% per year, but continue to follow current policy in how density and height are treated.	3. No PIP is required on MPDUs above 15%.
	4. No PIP is required on MPDUs above 17.5%.
	4. In all cases, no PIP is required for anything if 25% MPDUs are provided.

At the June 19 PHED worksession, a question arose as to whether all properties had 20% more height than their prior zone to accommodate the 15% MPDU requirement. Planning staff checked. All zones recommended by the Council-approved Plan were increased in height from the properties' current zoning, but one property was identified as receiving a decrease in height (Map #96 – current zoning is 75T; resolution states height of 70 feet.)

Projects with MPDUs above some level (17.5%?) should be allowed to provide public benefit points in one less benefit category than otherwise required. Projects with MPDUs above some level (25%?) should be allowed to provide public benefit points only from the affordable housing category.

The Committee should make a recommendation on whether or not additional building height for MPDUs should be in a limited area of the Overlay zone. Council President Berliner proposed allowing additional height for MPDUs when the additional height is located at least 200 feet from a single-family dwelling unit. CBAR suggested an area with that type of buffer, but would further limit the area in the southern portion on the zone.

Proposed Height Incentive Area ☒ Height Incentive
 Figure 2.3.2: High Performance Area CBAR 6/14/17 ☐ Other: Public Benefit point bonus



Public Benefit Points

The Committee requested a table of the current public benefit point maximums and the revisions suggested by testimony. Planning staff provided the following, including a formula for public benefit points for park

impact payments made in excess of requirements. It does not include a suggestion for more points for each percentage of MPDUs above 15% (currently 12 points) or a variable rate for MPDUs depending upon the income target.

Public Benefit	Description of Criteria	Current Maximum		Suggested point maximums in testimony
		CR ZONE	CRT ZONE	
Major Public Facility	Major public facilities include, but are not limited to, such facilities as a school, library, recreation center, park, County service center, bikeshare station, public transportation or utility upgrade, or other resource delineated in an applicable master plan	70	40	
Transit Proximity	for proximity to existing or master planned transit stops based on transit service level	50	25	
Connectivity and Mobility				
Advanced Dedication of R.O.W.	for dedicating or providing a reservation for dedication for master-planned rights-of-way in advance of a preliminary or site plan application	30	30	
Minimum Parking	for providing fewer than the maximum allowed number of parking spaces, where a maximum is applicable	10	10	
Neighborhood Services	when fewer than 10 different basic services exist within 1/4 mile, up to 15 points for providing retail bays appropriate for at least 10 different basic services on-site or within 1/4 mile, of which at least 4 have a maximum retail bay floor area of 5,000 square feet	15	15	
Public Parking	for providing up to the maximum number of parking spaces allowed in the zone as public parking	25	25	
Through Block Connection	for providing safe and attractive pedestrian connections between streets	20	20	30
Transit Access Improvement	for constructing new or improving existing transit access	20	20	
Streetscape Improvement	for construction of off-site improvements	20	20	30
Trip Mitigation	for entering into a binding Traffic Mitigation Agreement to reduce the number of weekday morning and evening peak hour trips attributable to the site in excess of any other regulatory requirement; the agreement must result in a reduction of at least 50% for trips attributable to the site	20	20	
Way-Finding	for design and implementation of a way-finding system orienting pedestrians and cyclists to major open spaces, cultural facilities and transit opportunities	10	10	

Public Benefit	Description of Criteria	Current Maximum		Suggested point maximums in testimony
		CR ZONE	CRT ZONE	
Diversity of Uses & Activities				
Adaptive Buildings	for constructing commercial or mixed use buildings with minimum floor-to-floor heights of at least 15 feet on any floor that meets grade and 12 feet on all other floors. Internal structural systems must be able to accommodate various types of use with only minor modifications	15	15	
Care Centers	for constructing a child, teen, or adult day care facility accommodating at least 15 users that satisfies State standards	20	20	
Dwelling Unit Mix	for integrating a mix of residential market-rate unit types with at least 7.5% efficiency units, 8% one- and two-bedroom units, and 5% three- or more bedroom units; the proportional number of MPDUs for each unit type must satisfy Chapter 25A	10	10	20
Enhanced Accessibility for the Disabled	for constructing dwelling units with interiors that satisfy American National Standards Institute A117.1 Residential Type A standards or an equivalent County standard	20	20	
Live/Work	for developments of up to 2.0 FAR total allowed density that provide at least 3 units or, for developments allowed greater than 2.0 FAR, 10% of the total unit count as live/work units	15	15	
MPDU		no limit		
Rental Housing Preservation	for entering into an agreement with DHCA to retain or provide affordable housing rents for dwelling units in Bethesda Downtown Sector Plan for a minimum of 20 years	?	?	
Small Business Opportunities	for providing on-site space for small, neighborhood-oriented businesses	20	20	
Quality Building and Site Design				
Architectural Elevations	for providing elevations of architectural facades and agreeing to be bound by particular elements of design, such as minimum amount of transparency, maximum separation between doors, awning provisions, sign restrictions, or lighting parameters that affect the perception of mass, pedestrian comfort, or enhance neighborhood compatibility	20	20	30
Exceptional Design	for building or site design whose visual and functional impacts exceptionally enhance the character of a setting per the purposes listed in Section 4.7.3.E	10	10	

Public Benefit	Description of Criteria	Current Maximum		Suggested point maximums in testimony
		CR ZONE	CRT ZONE	
Historic Resource Protection	for the preservation or enhancement of, or payment towards preservation or enhancement of, a historic resource or a contributing element within an historic district designated in the Master Plan for Historic Preservation	20	20	
Public Open Space	for providing, or making a payment for, public open space in excess of the minimum open space requirement of the zone	20	20	30
PIP Payment in Excess of Requirement	up to 20 points for providing a payment in excess of the required Park Impact Payment (Possible Formula: \$Amt. of payment in excess/\$Amt. Required x 100 = # of points achieved)	20	20	
Public Art	for installing public art reviewed for comment by the Art Review Panel under The Public Art Guidelines approved by the Planning Board, or for paying a fee accepted by the Public Arts Trust Steering Committee	15	15	20
Structured Parking	for placing parking in an above or below grade parking structure	20	20	
Tower Setback	for stepping back a building's upper floors by a minimum of 6 feet behind the first floor facade. The step-back must begin at a height no greater than 72 feet	10	10	20
Natural Environment Protection & Enhancement				
BLTs	for the purchase of BLT easements or payment to the Agricultural Land Preservation Fund (ALPF)	30	30	
Cool Roof	for constructing any roof area that is not covered by a vegetated roof with a minimum solar reflectance index (SRI) of 75 for roofs with a slope at or below a ratio of 2:12, and a minimum SRI of 25 for slopes above 2:12	10	10	15
Energy Conservation and Generation	for constructing buildings that exceed the energy-efficiency standards for the building type by 17.5% for new buildings or 10% for existing buildings. At least 15 points for providing renewable energy generation facilities on-site or within 1/2 mile of the site for a minimum of 2.5% of the projected energy requirement for the development	15	15	25
Habitat Preservation and Restoration	for protection, restoration or enhancement of natural habitats, on-site or within the same local watershed, which are in addition to requirements of the Forest Conservation Law or other County laws	20	20	

Public Benefit	Description of Criteria	Current Maximum		Suggested point maximums in testimony
		CR ZONE	CRT ZONE	
Recycling Facility Plan	for providing a recycling facility plan to be approved as part of a site plan for buildings that satisfies Montgomery County Executive Regulation 15-04AM or Montgomery County Executive Regulation 18-04	10	10	
Transferable Development Right	for every TDR purchased is worth 1 point	20	20	
Tree Canopy	for protecting tree canopy coverage with at least 15 years of growth per Trees Technical Manual approved by the Planning Board, as amended, on at least 25% of the on-site open space	15	15	
Vegetated Area	for installation of plantings in a minimum of 12 inches of soil, covering at least 5,000 square feet. This does not include vegetated roofs or stormwater management facilities	10	10	15
Vegetated Roof	for installation of a vegetated roof with a soil depth of at least 4 inches covering at least 33% of a building's roof, excluding space for mechanical equipment	15	15	20
Vegetated Wall	for the installation and maintenance of a vegetated wall that covers at least 30% of any blank wall or parking garage facade that is at least 300 square feet in area and is visible from a public street or open space	10	10	

1. Design Review Panel

The Staff-revised ZTA would require at least 10 public benefit points from the Exceptional Design category and then says only the following about a Design Review Panel:

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.

Testimony requested more specification on:

- 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?

Planning staff suggested looking at the Arts Advisory Panel (which was only detailed in Planning Board guidelines and not zoning code) as a model. The qualifications and functions for the Arts Panel are in part:

The review panel includes planners, architects, artists, developers, and curators who encourage placemaking techniques within public spaces. They analyze artworks and placement with an eye toward access, lighting, durability, and other factors. The panel works to grow the public art collection where it can be enjoyed and experienced throughout the County...

Lead planners coordinate with the Art Review Panel to evaluate the developers' public benefits package, provide professional guidance, and recommend conditions of approval for the consideration by the Planning Board. The Art Review Panel typically meets bimonthly.

The Art Review Panel seeks to review projects at the earliest possible design phase and may recommend that the applicant return with a revised concept or a more fully detailed design. After a thorough review of the artwork(s) within the public use space, the Art Review Panel must provide the Planning Board with its recommendations on the artwork(s) and specify recommended conditions of approval for the artwork(s) or the fee-in-lieu option.

The Historic Preservation Commission was established in legislation:

The commission shall consist of 9 members appointed by the county executive with the confirmation of the county council. Each member must be a resident of the county. The 4 fields of history, architecture, preservation and urban design shall be represented by a minimum of 1 member qualified by special interest, knowledge or training. The remaining members of the commission shall, to the extent possible, be selected to represent the geographical, social, economic and cultural concerns of the residents of the county...

The commission must adopt, under method (2) of Section 2A-15 of this Code, rules, guidelines and regulations that are necessary for the proper transaction of the business of the commission. This includes provisions governing contested cases before the commission.

Staff would not want to address member qualifications, appointment process, and scope of responsibilities in code beyond the text already recommended. Staff does view the panel as an opportunity for advice from people outside of the Planning Department. If the Council wants to be more involved in panel detail, it can do so by requiring that the panel be established by and governed by Planning Board regulations approved under the Method 2 process.

2. Design Guidelines

The Planning Board's design guidelines are not referenced in the Staff-revised draft of ZTA 16-20. Testimony raised the following concerns:

Should the guidelines:

- be specific or broad goals and objectives;
- allow Planning Board override to meet goals and objectives of the Plan; or
- be satisfied as a condition of approval?

If the Council wants to be more involved in guideline details, it can do so by requiring that the guidelines be established by Planning Board regulations approved by the Council under the Method 2 process.

3. 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 the CRN zone 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.

4. 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 remaining issues raised in testimony

Parking

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

Greenway

- Allow public access.
- No or minimized driveways across.

Loading

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

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.

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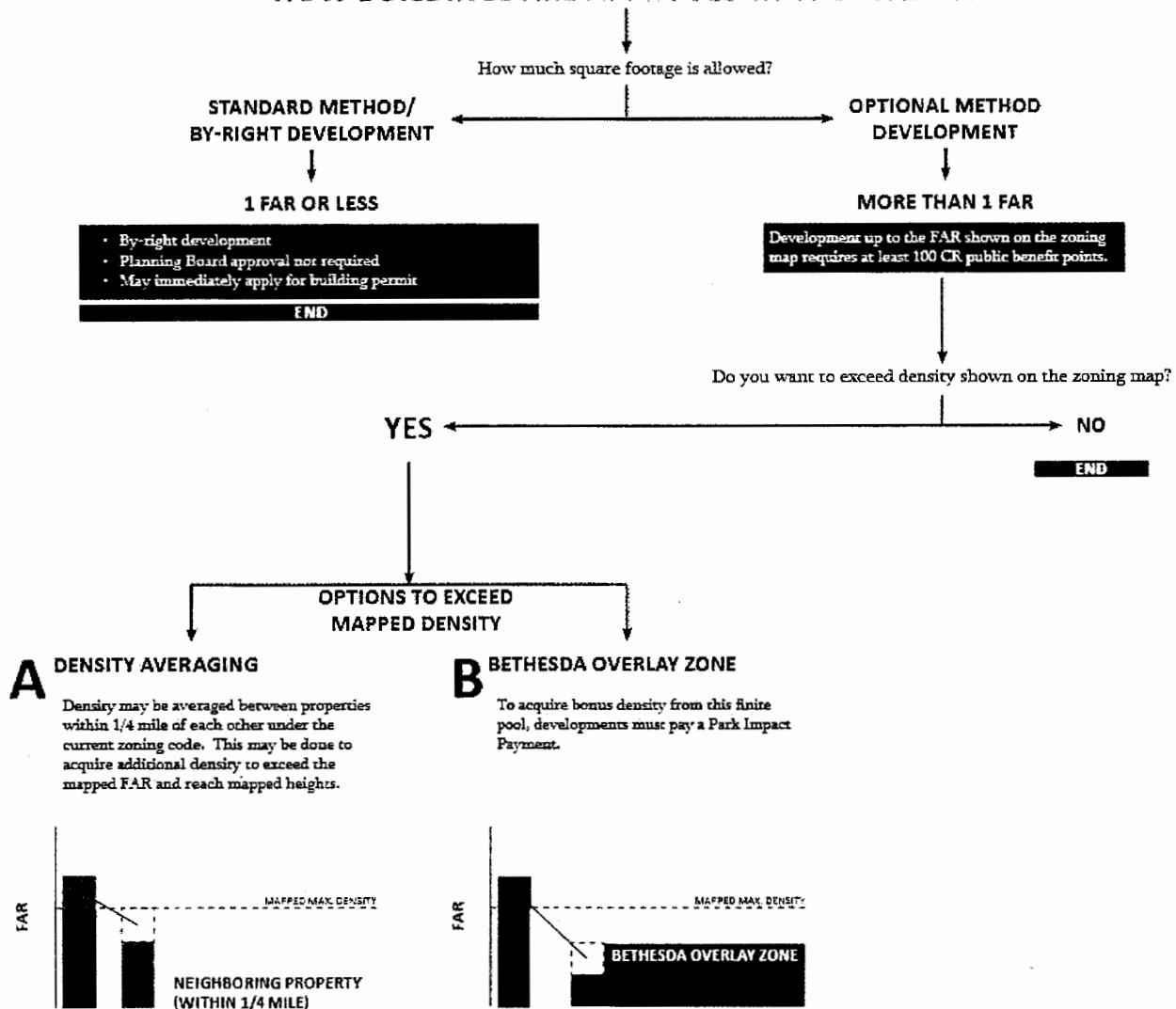
ZTA 16-20 with draft revisions previously published

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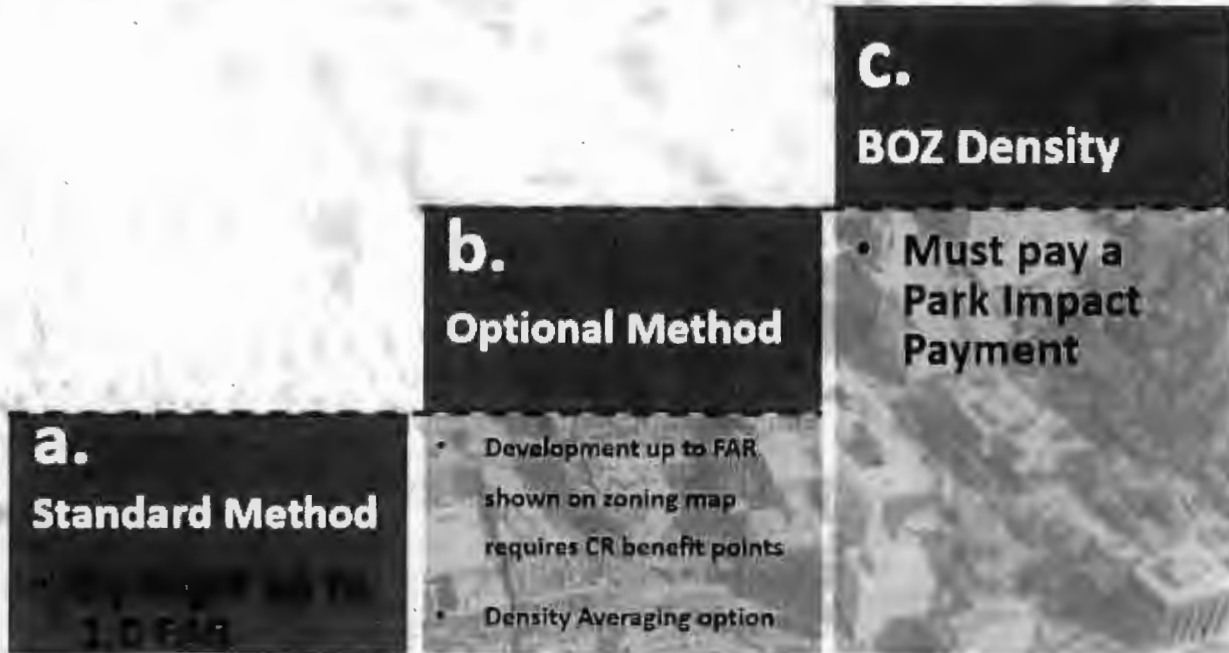
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HOW BUILDINGS ARE APPROVED IN THE CR ZONE



Methods of Development in CR Zone



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

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

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

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

- b. Density transferred from a Priority Sending Site may be included in a sketch plan or site plan application for any CR or CRT-zoned site within the Sector Plan Area boundary.
- c. Density transferred from a Priority Sending Site may be used on another site without the Priority Sending Site being under the same sketch plan or site plan.
- d. Density transferred from a Priority Sending Site is exempt from the BLT purchase requirements of Section 4.7.3.F.1.a.
- e. Before a certified site plan for a development using density transferred from an Open Space Priority Sending Site may be approved, all development rights must be extinguished on the Open Space Priority Sending Site by a recorded instrument approved by the M-NCPPC.
- f. Before a certified site plan for a development using density transferred from an Affordable Housing Priority Sending Site may be approved, the owner of the sending site must enter into an agreement with the Department of Housing and Community Affairs to retain a minimum of 30 percent of the existing affordable housing units, defined as 65 percent of Area Median Income (AMI) or below, for 20 years.
- g. Before a certified site plan for a development using density transferred from a Historic/Community Resource Priority Sending Site may be approved, all development rights not associated with an existing structure, and any amount of square 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%.

- 185 b. The Planning Board must not grant any public benefit points for
186 transit proximity under Section 59.4.7.3.B.
- 187 c. If a park impact payment is not required under Section
188 59.4.9.2.C.2.c and the applicant makes a payment, the Planning
189 Board may grant up to 10 public benefit points under the
190 category of major public facility. If a park impact payment is
191 required under Section 59.4.9.2.C.2.c, the Planning Board may
192 grant public benefit points only if the park impact payment
193 exceeds the minimum required.
- 194 d. Within the High Performance Area designated in the Bethesda
195 Downtown Plan, the Planning Board must determine that the
196 development achieves 15 public benefit points from Energy
197 Conservation and Generation under Section 59.4.7.3.F.3.
- 198 e. If the applicant enters into an agreement with the Department of
199 Housing and Community Affairs to retain or provide affordable
200 housing rents for dwelling units located anywhere in the
201 Overlay zone area, the Planning Board must grant 6 public
202 benefit points for every 1% of units included in the rental
203 agreement. Any fraction of 1% increase in the number of units
204 covered by the agreement entitles the applicant to an equal
205 fraction of 6 points. For this purpose, affordable housing is
206 defined as rents that are affordable to a household with a
207 household income of 80 percent of Area Median Income (AMI)
208 or below, for 20 years.
- 209 f. The Planning Board must determine that the development
210 achieves at least 10 points for exceptional design under Section
211 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 (TPESS) 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

* * *

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

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

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

439 * * *

440 **e. Additional Findings**

441 In addition to the findings required for approval of a site plan
442 under Section 7.3.4, for projects developed under Section
443 [4.9.16.B] 4.9.17.B, the Planning Board must find that the
444 proposed development provides an appropriate range of
445 housing types that takes advantage of existing topography and
446 environmental features and achieves a compatible relationship
447 between the proposed development and adjoining land uses.

448 * * *

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

450 * * *

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

452 * * *

453 **B. Exemptions**

The following are exempt from Section [4.9.18] 4.9.19:

* * *

C. Land Uses

1. Except as listed in Section [4.9.18.C.2] 4.9.19.C.2 and Section [4.9.18.C.3] 4.9.19.C.3, the land uses of the underlying zone apply.

The use standards of the underlying zone apply unless the development standards in Section [4.9.18.D] 4.9.19.D are more restrictive, in which case Section [4.9.18.D] 4.9.19.D must be followed.

* * *

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

* * *

E. Waiver

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

* * *

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

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

* * *

B. Exemptions

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

* * *

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:

Old ZONING ORDINANCE Article 59-C: Zoning Districts; Regulations.	New ZONING ORDINANCE
* * *	
Division 59-C-18. Overlay Zones.	
* * *	
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

Zoning Text Amendment No.: 16-20 with Staff proposed amendments

Old ZONING ORDINANCE Article 59-C: Zoning Districts; Regulations.	New ZONING ORDINANCE
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 (TPESS) 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

* * *

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

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council