

*Clerk's note: On page 11, line 159, the name of the zone is changed to make it consistent with other Overlay zone names. On page 15, lines 263 and 267, technical corrections are made to the Section numbers. On page 16, line 268 and on page 17, line 320, typographical errors are corrected. On page 27, lines 544-551, Section 4.9.17.B.1.d.iii is added to the Ordinance to update the reference in lines 550-551.*

**SECOND CORRECTED**

Ordinance No.: 18-28

Zoning Text Amendment No.: 16-20

Concerning: Overlay Zone – Bethesda

Draft No. & Date: 5-7/11/17

Introduced: December 6, 2016

Public Hearing: June 13, 2017

Adopted: July 18, 2017

Effective: August 7, 2017

**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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By: 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 (TPESS) 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.*

## OPINION

Zoning Text Amendment (ZTA) 16-20, lead sponsor Council President at the request of the Planning Board, was introduced on December 6, 2016. ZTA 16-20 would establish a Bethesda Overlay zone with development standards, land use standards, and a process for the approval of development within the zone. ZTA 16-20, as introduced, implemented the Planning Board's recommended Bethesda Downtown Plan. The Council held a public hearing on February 7, 2017, while the Plan was still under consideration by the Council.

The Council approved changes to the Bethesda Downtown Plan that warrant changes to the proposed Overlay zone. Staff has amended the ZTA to mirror the changes made by Council to the Plan. Given the significance of the draft changes, the Council conducted a second public hearing on June 13, 2017.

In its report to the Council, the Montgomery County Planning Board had no objections to the approval of the text amendment. Planning Staff recommended approval. Testimony commented on all aspects of ZTA 16-20. A summary of testimony was included in the memorandum for the June 19, 2017 Planning, Housing, and Economic Development Committee meeting.

The Council referred the matter to the Planning, Housing, and Economic Development Committee. The Committee conducted worksessions on June 19 and June 26, 2017.

On June 26, 2017, the Committee recommended approval of ZTA 16-20 with the following revisions to the draft presented by Council staff:

- 1) Rename "Bonus Density" to "BOZ Density"; BOZ Density is a variable number, depending upon the status of approved projects.
- 2) Allow BOZ Density to be used for either commercial or residential land use; it may be added to either commercial or residential gross floor area allowed by the underlying zone.
- 3) In calculating BOZ Density remaining, all approved and existing development should be counted against the 32.4 million square foot floor area cap.
- 4) Exclude a property's mapped density from BOZ Density; the use of a property's mapped density is not subject to a Park Impact Payment.
- 5) Density transfers within the Bethesda Downtown Area are not included in BOZ Density and, to the extent of the transfer, are not subject to a Park Impact Payment.
- 6) Exempt all gross floor area used for MPDUs from the Park Impact Payment.
- 7) Exempt all the floor area in projects with 25% MPDUs (market rate and MPDUs) from the Park Impact Payment.
- 8) Allow additional building height over the mapped height for projects with at least 17.5% MPDUs (2-1; Councilmember Riemer opposed. The Councilmember favored a restricted area for allowing height above the height approved for the underlying zone.)
- 9) Only allow public benefit points for MPDUs above 15%.
- 10) Reduce the number of required public benefit point categories by one for projects with more than 15% MPDUs.

- 11) Eliminate the number of public benefit point categories for a project with 20% MPDUs, but still require exceptional design points and energy generation points in the High-Performance Area.
- 12) Increase the public benefit points allowed for MPDUs to 15 points for every 1% increase over 15% MPDUs.
- 13) Revise the MPDU requirements so that they only apply to projects with 20 or more dwelling units.
- 14) Increase the public benefit points allowed as follows:
 

Through Block Connection	30
Streetscape Improvement	30
Dwelling Unit Mix	20
Architectural Elevations	30
Exceptional Design	30
Public Open Space	30
Public Art	20
Tower Setback	20
Cool Roof	15
Energy Conservation	25
Vegetated Area	15
Vegetated Roof	20
- 15) Allow public benefit points for affordable rents, with the ability for DHCA to include income limits in affordable rent agreements.
- 16) If the Park Impact Payment exceeds the minimum required, the Committee recommended the following formula to calculate points:
 

The number of public benefit points that the Planning Board may grant is determined by dividing the amount of the payment greater than the required payment by the product of the required payment amount times 100.
- 17) Require the Design Advisory Panel to be comprised of independent professionals.
- 18) Prohibit surface parking as a primary use when density is transferred off the site.
- 19) Do not require restrictions on land use when a project's access is from a residential street.
- 20) Add the following provision from page 151 of the Planning Board Draft Plan:
 

Any project whose open space requirement is 10% or less may be required to make an improvement or contribution to off-site public open space under Section 6.3.6.C instead of providing the open space.
- 21) No revision to the zone is necessary for the public benefit points required for small projects.
- 22) Refer to the base MINIMUM parking required in the current code to determine the parking requirements.
- 23) No revision to the zone is necessary to require that the "greenway" in private ownership should be treated as "public open space".
- 24) No revision to the zone is necessary to increase loading areas, as that will be a site plan issue.
- 25) Delete the provision to require applicants to notify the Planning Department about actions taken by the Department of Permitting Services.

The District Council reviewed Zoning Text Amendment No. 16-20 on July 11 and July 18, 2017. The Council agreed with the recommendations of the Committee with the following changes:

- The timing of the Park Impact Payment was changed from the filing of a building permit to the issuance of that permit;
- The Park Impact Payment was indexed to construction cost index;
- Additional building height for MPDUs was limited to a mapped Height Incentive Area;
- Outside of the Height Incentive Area, a project with 17.5% MPDUs or more may get some relief from the Park Impact Payment requirement;
- The relief from the Park Impact Payment for projects with 25% or more MPDUs was limited to the residential gross floor area of the project;
- The formula for granting public benefit points for Park Impact Payments was corrected;
- The number of benefit points for minimum parking was increased to 20 points;
- The number of points for Dwelling Unit Mix was increased to 30 points;
- Include a Bethesda resident in the membership of the Design Advisory Panel; and
- A map of the Height Incentive Area will be included.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 16-20 will be approved as amended.

#### *ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. 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.

\* \* \*

**BOZ 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 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.

**B. Land Uses**

1. The land uses of the underlying zones are applicable.

- 54 2. Surface Parking for Use Allowed in the Zone is not allowed on a  
55 Priority Sending Site from which density has been transferred.

56 C. **Development Standards**

57 1. Building Height

- 58 a. Except as provided in subsection b, the maximum building  
59 height is limited to the height allowed in the underlying zone.  
60 b. Subsection 4.7.3.D.6.c.i. only applies within the High  
61 Performance Area designated in the Bethesda Downtown Plan.

62 2. Density

- 63 a. A development may exceed the mapped CR or CRT FAR on a  
64 site if the Planning Board approves, on a sketch and site plan,  
65 the allocation of FAR from Bonus Density. Bonus Density is  
66 the total square footage by which approved development in the  
67 Downtown Bethesda plan area may cumulatively exceed the  
68 maximum square footage allowed under the mapped CR and  
69 CRT zones. Bonus Density is limited to 3,289,000 square feet.  
70 b. FAR allocated from Bonus Density may be developed with any  
71 Commercial or Residential use allowed in the underlying zone.  
72 c. To qualify for Bonus Density FAR, a proposed development  
73 must:  
74 1. Use all mapped CR or CRT FAR associated with the  
75 property. Density may not be transferred from the  
76 property.  
77 2. Provide a minimum of 15 percent MPDUs, excluding any  
78 Bonus Density transferred from a Priority Sending Site.  
79 3. Make a Park Impact Payment before the filing of any  
80 building permit application at a rate of \$10 per square



foot of approved Bonus Density FAR. 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 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.

### **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.

- 108           d.   Density transferred from a Priority Sending Site is exempt from  
109                   the BLT purchase requirements of Section 4.7.3.F.1.a.
- 110           e.   Before a certified site plan for a development using density  
111                   transferred from an Open Space Priority Sending Site may be  
112                   approved, all development rights must be extinguished on the  
113                   Open Space Priority Sending Site by a recorded instrument  
114                   approved by the M-NCPPC.
- 115           f.   Before a certified site plan for a development using density  
116                   transferred from an Affordable Housing Priority Sending Site  
117                   may be approved, the owner of the sending site must enter into  
118                   an agreement with the Department of Housing and Community  
119                   Affairs to retain a minimum of 30 percent of the existing  
120                   affordable housing units, defined as 65 percent of Area Median  
121                   Income (AMI) or below, for 20 years.
- 122           g.   Before a certified site plan for a development using density  
123                   transferred from a Historic/Community Resource Priority  
124                   Sending Site may be approved, all development rights not  
125                   associated with an existing structure, and any amount of square  
126                   footage determined by the Planning Board in reviewing a  
127                   Sketch Plan to be necessary for operational purposes, must be  
128                   extinguished on the Historic/Community Resource Priority  
129                   Sending Site by a recorded instrument approved by the  
130                   M-NCPPC.
- 131           h.   If all or part of an Open Space Priority Sending Site off of  
132                   which no density has been transferred is dedicated to the M-  
133                   NCPPC Parks Department, it may qualify for public benefit  
134                   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.

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 provisions of Section 4.9.2.C.3.
2. To approve a site plan with Bonus Density FAR, the Planning Board must find that the proposed allocation of FAR from Bonus Density, in addition to all previously approved allocations, does not exceed 3,289,000 square feet.
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 accepts it. 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.]]

**Section 4.9.2. Bethesda (B) Overlay Zone**

**A. Purpose**

The purpose of the B Overlay Zone is to implement the recommendations of the Bethesda Downtown Plan as it relates to density, building heights, affordable housing, parks, and design.

**B. Land Uses**

The land uses of the underlying zones apply.

Surface Parking for Use Allowed in the Zone is not allowed as a principal use on a site from which density has been transferred.

**C. Development Standards**

**1. Building Height**

Except as provided in Subsection 3 concerning MPDUs, the maximum building height is limited to the height allowed in the underlying zone.

**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 Bethesda Overlay Zone (BOZ) Density, or 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 and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan). The Planning Board must periodically publish the gross floor area remaining in BOZ Density.

188            i.     Land Use

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

191            ii.    Qualification

192            To qualify for BOZ Density, a proposed development  
193            must:

194            A.    use all gross floor area allowed by the mapped CR  
195            or CRT FAR and may not transfer BOZ Density to  
196            any other property.

197            B.    except as provided under Subsection 3 concerning  
198            MPDUs, make a Park Impact Payment before the  
199            issuance of any building permit application at a  
200            rate of \$10 per square foot of approved BOZ  
201            Density gross floor area. The Planning Board, after  
202            advertising and holding a public hearing, must  
203            adjust this payment rate on July 1 of each odd-  
204            numbered year by the annual average increase or  
205            decrease in a published construction cost index for  
206            the two most recent calendar years. If a property  
207            owner dedicates land designated in the master plan  
208            as a recommended open space to the M-NCPPC  
209            Parks Department, the Planning Board may reduce  
210            the amount of square footage for which a Park  
211            Impact Payment must be made.

212            3.    Moderately Priced Dwelling Units (MPDUs)

213            a.    General Requirement

For any development application that includes 20 or more residential dwelling units, the Planning Board may only approve the application if the development provides at least 15% MPDUs under the provisions of Chapter 25A.

b. Building Height

If a project exceeds 17.5% MPDUs and is located in the Height Incentive Area as delineated in Subsection E, the height limit of the applicable zone does not apply to the extent required to provide MPDUs. The additional height is calculated as the floor area provided for MPDUs above 15% divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.

c. Park Impact Payment

i. A Park Impact Payment is not required for the gross floor area allocated for MPDUs.

ii. If a project provides at least 17.5% MPDUs and is located outside of the Height Incentive Area, any Park Impact Payment is reduced by subtracting the gross floor area used for MPDUs in excess of 15% from the gross floor area that is subject to a Park Impact Payment.

iii. If the development includes at least 25% MPDUs, a Park Impact Payment is not required for any residential gross floor area.

d. Public Benefit Points

i. The Planning Board may only grant public benefit points for providing more than 15% of the residential units as MPDUs under Chapter 25A.

iv. For a project providing at least 20% MPDUs, other public benefit point categories are not required except for: 1) Exceptional Design, and 2) Energy Conservation and Generation in the High-Performance Area.

ii. If a Park Impact Payment is required under Section 59.4.9.2.C.2.b.ii, the Planning Board may grant public

benefit points only if the Park Impact Payment exceeds the minimum required. The number of public benefit points that the Planning Board may grant is determined by dividing the amount of the payment greater than the required payment by the required payment, and multiplying this result by 100.

iii. The maximum number of points from a Park Impact Payment is 30.

c. 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.

d. If the applicant reaches 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 may grant 6 public benefit points for every 1% of units in the project 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. The agreement with the Department of Housing and Community Affairs may include limits on the income of residents for the affordable dwelling units.



e. If an applicant reaches an agreement with the Department of Housing and Community Affairs and another property owner for the use of an off-site existing dwelling, within the Bethesda Downtown Area as an MPDU, the Planning Board may grant 15 public benefit points for every 1% of MPDU units in the project included in the MPDU agreement above the minimum required 15% MPDUs.

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 Advisory Panel composed of relevant independent professionals, including at least one resident of the Bethesda community, and consider the comments from that panel on all projects before making their determination concerning exceptional design points.

g. In addition to the other adjustment for maximum public benefit points made in this subsection, the number of maximum allowed public benefit points in the following categories are increased to the number of points indicated:

<u>Minimum Parking</u>	<u>20</u>
<u>Through Block Connection</u>	<u>30</u>
<u>Streetscape Improvement</u>	<u>30</u>
<u>Dwelling Unit Mix</u>	<u>30</u>
<u>Architectural Elevations</u>	<u>30</u>
<u>Exceptional Design</u>	<u>30</u>
<u>Public Open Space</u>	<u>30</u>

321	<u>Public Art</u>	<u>20</u>
322	<u>Tower Setback</u>	<u>20</u>
323	<u>Cool Roof</u>	<u>15</u>
324	<u>Energy Conservation</u>	<u>25</u>
325	<u>Vegetated Area</u>	<u>15</u>
326	<u>Vegetated Roof</u>	<u>20</u>

327 5. FAR Averaging (Density transfers)

- 328 a. Any gross floor area allowed by the underlying zone may be  
 329 transferred to any site in the Bethesda Downtown Plan.
- 330 b. Additional public benefit points above the minimum number  
 331 are not required for FAR Averaging.
- 332 c. Gross floor area increased above mapped density because of  
 333 FAR Averaging is not required to make a Park Impact Payment.

334 6. Parking Standards

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

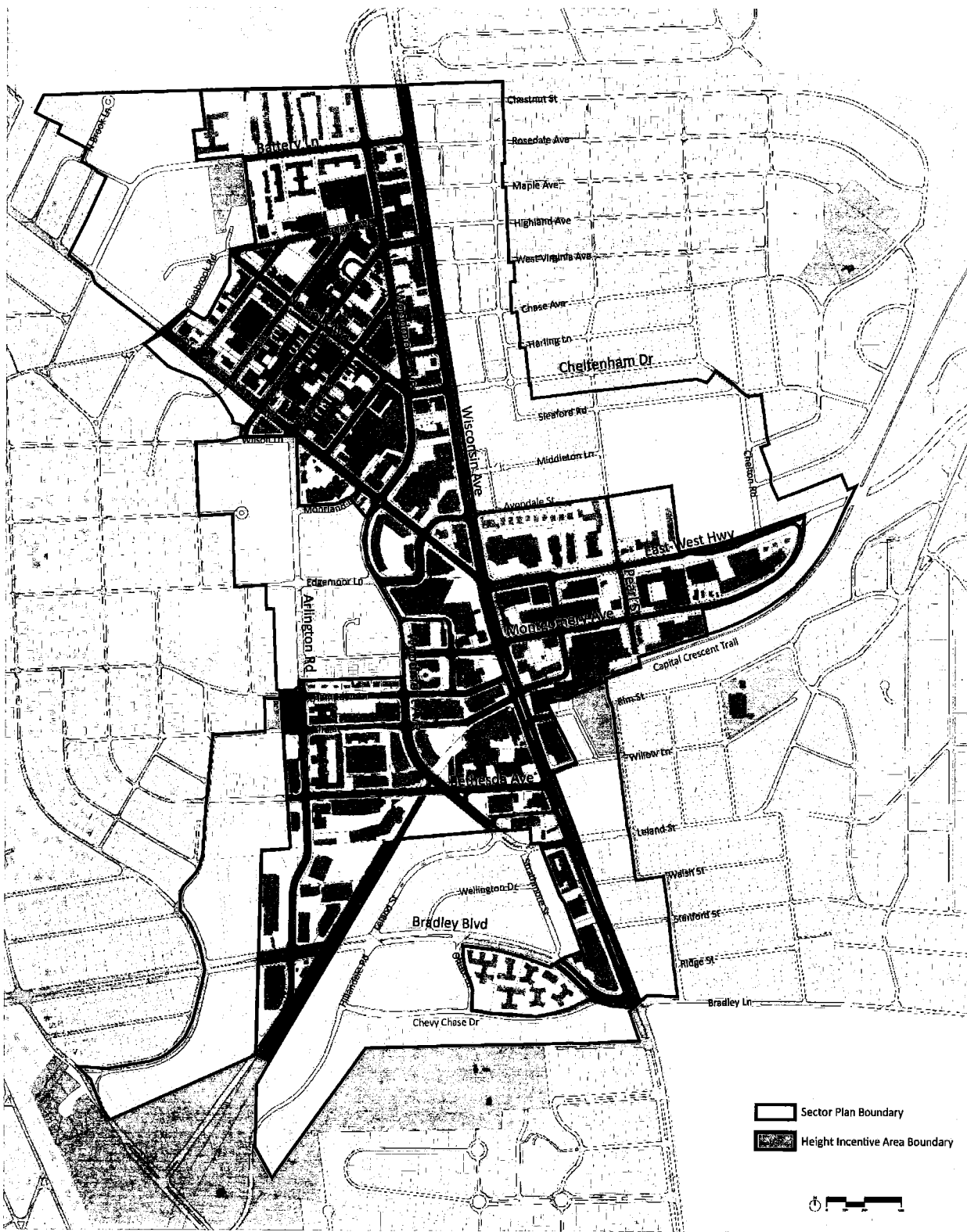
341 7. Public Open Space

- 342 a. The Public Open Space requirement under Section 4.5.4.B.1.a  
 343 may be reduced by the Planning Board.
- 344 b. Any project whose open space requirement is 10% or less may  
 345 be required to make an improvement or contribution to off-site  
 346 public open space under Section 6.3.6.C instead of providing  
 347 the open space.

**D. Development Procedures**

1. Except as modified in this subsection, the development procedures of the underlying zone apply.
2. 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 provisions of Section 4.9.2.C.5.
3. To approve a site plan, the Planning Board must find that the proposed allocation of gross floor area, in addition to the sum of previously approved or built developments, does not exceed 32,400,000 square feet of gross floor area.
4. If the Planning Board approves a site plan using BOZ 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 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.

**E. Height Incentive Area Map**



370  
371

\* \* \*

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

373 \* \* \*

374 **B. Land Uses**

375 1. The following uses are prohibited:

376 \* \* \*

377 k. Light Manufacturing and Production, except as noted in Section  
378 [4.9.2.B.3] 4.9.3.B.3;

379 \* \* \*

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

382 \* \* \*

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

384 \* \* \*

385 **D. Development Standards**

386 1. Except as allowed under Section [4.9.4.B] 4.9.5.B, the maximum total  
387 impervious surface area for any development after August 4, 2014 is  
388 15% of the total area under application for development.

389 \* \* \*

390 **E. Site Plan**

391 1. Any development that must file a preliminary plan of subdivision  
392 under Chapter 50 requires approval of a site plan by the Planning  
393 Board under Section 7.3.4, unless excluded under Section [4.9.4.E.2]  
394 4.9.5.E.2.

395 \* \* \*

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

397 \* \* \*

398 **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 setback 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**

\* \* \*

**E. Existing Buildings and Uses**

\* \* \*

3. a. A legal use existing on February 28, 2016 is conforming and may be continued. Expansion of any such use must satisfy the standards of the current zone under Article 59-3.
- b. An existing Charitable, Philanthropic Institution (as defined by Section 3.4.2) may expand without conditional use approval, but must satisfy Section [4.9.10.D] 4.9.11.D.
- c. An existing Storage Facility (as defined by Section 3.6.8.e.1) owned and operated by a Charitable, Philanthropic Institution may expand by up to the lesser of 10% or 30,000 square feet without conditional use approval, but must satisfy Section [4.9.10.D] 4.9.11.D.

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

\* \* \*

**D. Site Plan**

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

**E. Parking**

\* \* \*

**2. Pedestrian Access**

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

\* \* \*



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

\* \* \*

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

\* \* \*

**C. Development Standards**

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

\* \* \*

**D. Site Plan**

\* \* \*

3. For any addition, reconstruction, or alteration that changes a building 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.
- iii. In a Rural Residential or Residential zone with a TDR density designation of less than three units per acre, development using TDRs and providing MPDUs above 12.5% must follow the requirements under optional method MPDU development. Any other optional method development in a Rural Residential or Residential zone must satisfy the requirements of Section [[4.9.16.B]] 4.9.17.B.

\* \* \*

**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.

561 \* \* \*

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

563 \* \* \*

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

565 \* \* \*

566 **B. Exemptions**

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

568 \* \* \*

569 **C. Land Uses**

570 1. Except as listed in Section [4.9.18.C.2] 4.9.19.C.2 and Section  
571 [4.9.18.C.3] 4.9.19.C.3, the land uses of the underlying zone apply.

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

576 \* \* \*

577 3. If validly existing on July 1, 1997, the uses in Section [4.9.18.C.2]  
578 4.9.19.C.2 may be continued under the requirements in effect at the  
579 time the use was established. Any expansion requires compliance with  
580 the UPB Overlay zone.

581 \* \* \*

582 **E. Waiver**

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

585 \* \* \*

586 4. Alternative water quality and control techniques are used to meet the  
587 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
* * *	
<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

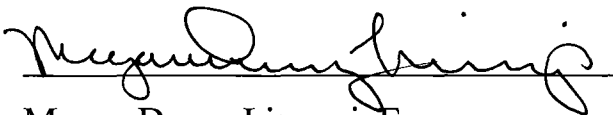
Old ZONING ORDINANCE Article 59-C: Zoning Districts; Regulations.	New ZONING ORDINANCE
Sec. 59-C-18.19. Fenton Village Overlay Zone.	Sec. [4.9.7] 4.9.8. Fenton Village (FV) Overlay Zone
Sec. 59-C-18.20. Ripley/South Silver Spring Overlay Zone.	Sec. [4.9.12] 4.9.13. Ripley/South Silver Spring (RSS) Overlay Zone
Sec. 59-C-18.21. Takoma Park/East Silver Spring commercial revitalization overlay zone.	Sec. [4.9.15] 4.9.16. Takoma Park/ East Silver Spring Commercial Revitalizations (TPESS) Overlay Zone
Sec. 59-C-18.22. Neighborhood retail overlay zone.	Sec. [4.9.6] 4.9.7. Community-serving Retail (CSR) Overlay Zone
Sec. 59-C-18.23. Rural village center overlay zone.	Sec. [4.9.13] 4.9.14. 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] 4.9.20. Upper Rock Creek (URC) Overlay Zone

\* \* \*

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

**Sec 5. Previously approved project.** An applicant for a sketch plan or site plan application, approved by the Planning Board before the effective date of this amendment, may proceed under the zone in effect on the date of the application's approval.

This is a correct copy of Council action.



Megan Davey Limarzi, Esq.  
Clerk of the Council