

Ordinance No.: 19-38
Zoning Text Amendment No.: 22-03
Concerning: Overlay Zone -
Downtown Silver Spring
Draft No. & Date: 2 – 9/27/2022
Introduced: April 19, 2022
Public Hearing: June 14, 2022
Adopted: October 18, 2022
Effective: November 7, 2022

**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 Alborno at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- remove the Ripley/South Silver Spring (RSS) Overlay Zone;
- modify the Fenton Village (FV) Overlay Zone;
- establish the Downtown Silver Spring Overlay Zone; and
- generally amend the provisions for overlay zones.

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

Division 4.5	“Commercial/Residential Zones
Section 4.5.2	“Density and Height Allocation
Division 4.9	“Overlay Zones”
Section 4.9.8	“Fenton Village (FV) Overlay Zone”
Section 4.9.9	“Garrett Park (GP) Overlay Zone”
Section 4.9.10	“Germantown-Churchill Village (GCV) Overlay Zone”
Section 4.9.11	“Germantown Transit Mixed Use (GTMU) Overlay Zone”
Section 4.9.12	“Montgomery Village (MV) Overlay Zone”
Section 4.9.13	“Regional Shopping Center (RSC) Overlay Zone”
Section 4.9.14	“Ripley/South Silver Spring (RSS) Overlay Zone”

And adding the following section:

Division 4.9	“Overlay Zones”
Section 4.9.8	“Downtown Silver Spring 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) 22-03, Overlay Zone – Downtown Silver Spring (DSS), lead sponsor Council President Albornoz at the request of the Planning Board, was introduced on April 19, 2022. ZTA 22-03 will establish the Downtown Silver Spring (DSS) Overlay Zone; remove the Ripley/South Silver Spring (RSS) Overlay Zone; and modify the Fenton Village (FV) Overlay Zone.

The Office of Legislative Oversight transmitted a racial equity and social justice (RESJ) impact statement on May 20, 2022. OLO found that ZTA 22-03 “could narrow disparities by race, ethnicity, and income in affordable housing. Overall, OLO anticipates a small impact of ZTA 22-03 on racial equity and social justice in the County if its affordable housing provisions are enacted as currently drafted.”

A public hearing was held on June 14, 2022. The Planning Board testified in support of ZTA 22-03. A local property owner testified that the ZTA would reduce the value of density transfers by private property owners because the density can now be bought from the County.

The PHED Committee held a worksession on October 3, 2022. The PHED Committee recommended amendments to make ZTA 22-03 consistent with the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan adopted by Council on May 26, 2022. The PHED Committee recommended an amendment to allow developments with at least 25% MPDUs to not have to make a payment for their residential DSS Density. The PHED Committee also recommended minor clarifying amendments.

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. 22-03 will be approved as amended.

ORDINANCE

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

Sec. 1. DIVISION 59-4.5 is amended as follows:

Division 4.5. Commercial/Residential Zones

* * *

Section 4.5.2. Density and Height Allocation

A. Density and Height Limits

* * *

3. The following limits apply unless additional total FAR, residential FAR, or height are allowed under Section 4.5.2.C, Section 4.5.2.D, Section 4.5.2.A.2.e, [[or]] Section 4.5.4.B.5., or an Overlay Zone:

Zone	Total FAR (max)	C FAR (max)	R FAR (max)	Height (max)
CRN	0.25 to 1.5	0.00 to 1.5	0.00 to 1.5	25' to 65'
CRT	0.25 to 4.0	0.25 to 3.5	0.25 to 3.5	35' to 150'
CR	0.5 to 8.0	0.25 to 7.5	0.25 to 7.5	35' to 300'

* * *

Sec. 2. DIVISION 59-4.9 is amended as follows:

Division 4.9. Overlay Zones

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Section 4.9.8 Downtown Silver Spring (DSS) Overlay Zone

A. Purpose

The purpose of the DSS Overlay Zone is to implement the recommendations of the Silver Spring Downtown and Adjacent Communities Plan as it relates to land use, [[building height,]]density, affordable housing, public benefit points, design, and public open space.

B. Land Uses

The land uses of the underlying zones apply. The following uses are permitted on properties where the underlying zone is the CR Zone, as accessory uses under Section 3.7.4.B:

1. Light Manufacturing and Production for the purposes of food production, including any associated food service facility as defined in Chapter 15 of the County Code; and
2. Urban Farming, if done on a rooftop. [[The raising of roosters is not allowed.]]

C. Development Standards

1. Building Height

- a. Except as provided in Section 4.9.8.C.1.b[[,]] or Section 4.9.8.C.3.b, the maximum building height is limited to the height allowed in the underlying zone.

b. [[Height Incentive Area

- i. In the Height Incentive Area illustrated in Section 4.9.8.D, the maximum building height for optional method of development projects may be increased by the Planning Board up to 150 percent of the mapped maximum building height, to a maximum of 300 feet.]]

[[ii.]] Sites recommended in the Silver Spring Downtown and Adjacent Communities (SSDAC) sector plan to exceed the maximum building height of 300 feet may be approved by the Planning Board for up to 360 feet under optional method development.

[[iii. To qualify for additional height under this section, projects must provide greater than the minimum 15% MPDUs on-site, a contribution to the Montgomery County Housing Initiative Fund (HIF), or include an activating ground-floor Neighborhood Service including, but not limited to, small business, art gallery/venue, community meeting

space, educational or medical use, historic preservation, or non-ground-floor area dedicated to Design for Life residences.

- iv. Additional height under this section is subject to review by the Silver Spring Design Advisory Panel and must substantially conform to the Design Guidelines. The Planning Board must appoint a Design Advisory Panel composed of independent professionals with relevant design experience and expertise, representing the diversity of the community, including at least one resident of Silver Spring. The Board must consider the comments from that panel on all projects before making their determination concerning exceptional design points.]]

2. Density

- a. Properties in the CR zone with a mapped total FAR of 8.0 are not subject to the maximum C FAR or maximum R FAR limits under Section 59.4.5.2.A.3.
- b. In the CR or CRT zones, a development may exceed the mapped total FAR on a site if the Planning Board approves a sketch or site plan under Section 7.3.3 or Section 7.3.4, or a Bio-Health Priority Campus Plan under Section 7.3.6, that includes the allocation of gross floor area of Downtown Silver Spring Overlay Zone (DSS) Density, or FAR Averaging under Section 4.9.2.C.5.
- c. DSS Density is the gross floor area by which development on a site in the Overlay Zone may exceed the maximum gross floor area mapped on the site, consistent with the requirements of the

Overlay Zone, including design review, public benefits, and the qualifications set forth in Section 4.9.8.C.2.e below. DSS Density may not be transferred to any other property.

d. Land Use

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

e. Qualification

To qualify for DSS Density, a proposed development must:

i. Make a contribution to the Civic Improvement Fund before the issuance of any building permit at a rate of \$5 per square foot of approved residential DSS Density gross floor area and at a rate of \$3 per square foot of approved non-residential DSS Density gross floor area.

ii. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate by July 1 of each even-numbered year by the annual average increase or decrease in a published construction cost index for the two most recent calendar years.

3. Moderately Priced Dwelling Units (MPDUs)

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 15% MPDUs 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. Downtown Silver Spring Density

If a development includes at least 25% MPDUs, a DSS Density Payment is not required for any residential gross floor area.

4. Public Benefit Points

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

a. The Planning Board must not grant any public benefit points for transit proximity under Section 59.4.7.3.B. [[or structured parking under Section 59.4.7.3.E.6.]]

b. The Planning Board must determine that the development achieves 10 points for the exceptional design public benefit under Section 59.4.7.3.E.4. The Planning Board must appoint a Design Advisory Panel composed of independent professionals with relevant design experience and expertise, representing the diversity of the community, including at least one resident of Silver Spring. The Planning Board must consider the comments from the Design Advisory Panel on all projects before making [[their]]its determination concerning exceptional design points.

5. Public Open Space

Any project required to provide public open space on a site not recommended in the Sector Plan for a new public space must contribute to the creation of new or improvement of existing public parks recommended by the Sector Plan, preferably within the same district as

identified in the Silver Spring Downtown and Adjacent Communities Plan, based on the cost per square foot of constructing park area equivalent to the required public space, as determined by the Planning Board during site plan review.

[[D. Height Incentive Area Map]]

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Section 4.9.[8]9. Fenton Village (FV) Overlay Zone

A. Purpose

The purpose of the FV Overlay zone is to:

1. Facilitate the implementation of an organized and cohesive development pattern that is appropriate for an urban environment.
2. Encourage attractive design and ensure compatibility with existing buildings and uses within and adjacent to the Overlay zone.
3. Provide flexibility of development standards to encourage innovative design solutions.
- [4. Allow for the transfer of the public open space requirement to other properties within the Overlay zone.
5. Allow new uses.]

[B. Land Uses

The following uses are permitted in addition to the uses allowed in the underlying zone:

1. The following Light Manufacturing and Production use: assembly of computer components; and
2. The following Retail/Service Establishment uses: bakery, if less than 1,500 square feet of gross floor area; and catering facility.]

[C]B. Development Standards

1. Building Height

- 160 a. Maximum building height is 90 feet along[a major highway]
- 161 Georgia Avenue;
- 162 b. Maximum building height is [60]65 feet along[any street
- 163 confronting any block that includes property in a Residential
- 164 Detached zone and,] Fenton Street. [when][[When a building is
- 165 allowed to be higher than [60]65 feet under
- 166 Section 4.9.8.[C]B.1.c, each additional foot in building height
- 167 above [60]65 feet requires at least an additional one foot setback
- 168 from the front of the building along Fenton Street]];
- 169 [c. Within the area between a major highway and a street that
- 170 confronts a block that includes property in a Residential
- 171 Detached zone, maximum building height is
- 172 i. 60 feet but may increase to a maximum of 90 feet if at least
- 173 33% of a project's floor area is residential;
- 174 ii. 110 feet if additional building height is necessary to
- 175 accommodate workforce housing units, at least 33% of the
- 176 project's floor area is residential, and the additional height
- 177 is placed near a major highway and decreases in the
- 178 direction of the closest property in a Residential Detached
- 179 zone;
- 180 d. For property located in a block that includes property in a
- 181 Residential Detached zone maximum building height is 45 feet
- 182 for all uses, except maximum building height is 60 feet for:
- 183 i. residential use; or
- 184 ii. mixed-use optional method project, if at least 33% of the
- 185 project's floor area is residential and the project includes
- 186 a hotel;

e. For properties with frontage on both Wayne Avenue and Fenton Street, in spite of the height limitations in Section 4.9.8.C.1.b through Section 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 4.9.8.C.1 without regard to the building height recommendations of the master plan.

2. Parking between the street and the front building line of properties fronting on Georgia Avenue is prohibited.

3. Costs associated with meeting the public open space off-site may be shared by multiple property owners.]

2. Retail Bays

a. Limit the frontage of any storefront bay to 60 feet in façade width for large and combination retailers, except for a grocery store and basement-level retail with a street-level entrance.

b. Development with ground-floor retail (except a grocery store) must provide at least one retail bay of 1,200 square feet or less of leasable space, and another retail bay of 2,000 square feet or less.

c. The Planning Board may approve either or both an alternative retail bay width or retail bay size through a site plan under Section 7.3.4.

[4]3. In the CR zone, under the standard method of development the maximum FAR is 2.0 if approved by site plan under Section 7.3.4.

[5. Under standard method development, the public open space requirement may be transferred to other properties within the Overlay zone if approved by a site plan under Section 7.3.4.]

[D]C. Site Plan

Site plan approval under Section 7.3.4 is required for any development in the FV Overlay zone.

[E]D. Existing Buildings

Any building for which a valid building permit was issued before approval of the FV Overlay zone Sectional Map Amendment, is a conforming building and may be altered, repaired, or reconstructed under the standards of the zone in effect at the time the building was constructed, except:

If the building exceeds the standards of the underlying zone, any alteration, repair, or reconstruction of the building must not increase the gross floor area or the height of the building above that which existed as of the date of application of the FV Overlay zone.

Section 4.9.[9]10. Garrett Park (GP) Overlay Zone

Section 4.9.[10]11. Germantown-Churchill Village (GCV) Overlay Zone

Section 4.9.[11]12. Germantown Transit Mixed Use (GTMU) Overlay Zone

Section 4.9.[12]13. Montgomery Village (MV) Overlay Zone

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Section 4.9.[13]14. Regional Shopping Center (RSC) Overlay Zone

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[Section 4.9.14. Ripley/South Silver Spring (RSS) Overlay Zone

A. Purpose

The purpose of the RSS Overlay zone is to:

1. Facilitate the implementation of an organized and cohesive development pattern that is appropriate for an urban environment.
2. Encourage attractive design and ensure compatibility with existing buildings and uses within and adjacent to the Overlay zone.
3. Provide flexibility of development standards to encourage innovative design solutions.
4. Allow for the transfer of the public open space requirement to other properties within the Overlay zone.
5. Allow new uses.

B. Land Uses

The following uses are permitted in addition to the uses allowed in the underlying zone:

1. The following Light Manufacturing and Production use: assembly of computer components; and
2. The following Retail/Service Establishment uses: bakery, if less than 1,500 square feet of gross floor area; and catering facility.

C. Development Standards

1. Building Height

- 266 a. The maximum building height is 45 feet along Newell Street and
267 Eastern Avenue that confronts a Residential zone in the District
268 of Columbia; however, this building height may be increased to:
- 269 i. a maximum of 90 feet for any building or portion of a
270 building that is set back a minimum of 60 feet from the
271 street; or
- 272 ii. a maximum of 125 feet for residential development that is
273 set back at least 100 feet from Eastern Avenue and Newell
274 Street and includes a public parking garage constructed
275 under a General Development Agreement with the
276 County.
- 277 b. For a property zoned CR and mapped at 200 feet, the Planning
278 Board may approve a maximum building height of 200 feet only
279 in an optional method development project that provides ground
280 floor retail. If no ground floor retail is provided, the maximum
281 building height is 145 feet. Any structure or device used to
282 collect or radiate electromagnetic waves, including a satellite
283 dish, must not be included in calculating building height under
284 this paragraph.
- 285 c. For a property zoned CR and mapped at 200 feet, the Planning
286 Board may approve a maximum building height of 270 feet, if an
287 optional method development project includes the provision of
288 an on-site or off-site major public facility under Section 4.7.3.A
289 and also provides a ground floor level grocery store or other
290 qualifying basic service under Section 4.7.3.C.3 of at least
291 10,000 square feet of floor area.

2. Parking between the street and the front building line of properties fronting on Georgia Avenue is prohibited.
3. Costs associated with meeting the public open space off-site may be shared by multiple property owners.
4. In the CR zone, under the standard method of development, the maximum FAR is 1.0 if approved by site plan under Section 7.3.4.
5. Under standard method development, the public open space requirement may be transferred to other properties within the Overlay zone if approved by a site plan under Section 7.3.4.

D. Site Plan

Site plan approval under Section 7.3.4 is required for any development in the RSS Overlay zone.

E. Existing Buildings

Any building for which a valid building permit was issued before February 1, 2000 is a conforming building and may be altered, repaired, or reconstructed under the standards of the zone in effect when the building was constructed, except:

If the building exceeds the standards of the underlying zone, any alteration, repair, or reconstruction of the building must not increase the gross floor area or the height of the building above that which existed on February 1, 2000.]

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Sec. 3. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.



Judy Rupp
Clerk of the Council