

Ordinance No.:  
Zoning Text Amendment No.: 22-03  
Concerning: Overlay Zone -  
Downtown Silver Spring  
Draft No. & Date: 1 – 4/12/2022  
Introduced: April 19, 2022  
Public Hearing:  
Adopted:  
Effective:

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

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

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**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.

*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, [or] Section 4.5.2.A.2.e, or an Overlay Zone:

<b>Zone</b>	<b>Total FAR (max)</b>	<b>C FAR (max)</b>	<b>R FAR (max)</b>	<b>Height (max)</b>
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**

\* \* \*

**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

24 accessory uses pursuant to Section 3.7.4.B, in addition to the uses allowed in  
25 the zone:

- 26 1. Light Manufacturing and Production for the purposes of food  
27 production, including any associated food service facility as defined in  
28 Chapter 15 of the County Code, and
- 29 2. Urban Farming, except the raising of roosters, if done on a rooftop.

30 **C. Development Standards**

31 1. Building Height

32 a. Except as provided in Section 4.9.8.C.1.b, the maximum  
33 building height is limited to the height allowed in the  
34 underlying zone.

35 b. Height Incentive Area

36 i. In the Height Incentive Area illustrated in Section  
37 4.9.8.D, the maximum building height for optional  
38 method of development projects may be increased by the  
39 Planning Board up to 150 percent of the mapped  
40 maximum building height, to a maximum of 300 feet.

41 ii. Sites recommended in the Silver Spring Downtown and  
42 Adjacent Communities (SSDAC) sector plan to exceed  
43 the maximum building height of 300 feet may be  
44 approved by the Planning Board for up to 360 feet.

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

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

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

64 2. Density

65 a. Properties in the CR zone with a mapped total 8.0 FAR are not  
66 subject to the maximum C FAR or maximum R FAR limits  
67 under section 59.4.5.2.A.3.

68 b. In the CR or CRT zones, a development may exceed the  
69 mapped total FAR on a site if the Planning Board approves a  
70 sketch or site plan under Section 7.3.3 or Section 7.3.4, or a  
71 Bio-Health Priority Campus Plan under Section 7.3.6, that  
72 includes the allocation of gross floor area of Downtown Silver  
73 Spring Overlay Zone (DSS) Density, or FAR Averaging under  
74 Section 4.9.2.C.5.

75 c. DSS Density is the gross floor area by which development on a  
76 site in the Overlay Zone may exceed the maximum gross floor  
77 area mapped on the site, consistent with the requirements of the

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

81 d. Land Use

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

84 e. Qualification

85 To qualify for DSS Density, a proposed development must:

86 i. Make a contribution to the Civic Improvement Fund  
87 before the issuance of any building permit at a rate of \$5  
88 per square foot of approved DSS Density gross floor  
89 area.

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

95 3. Moderately Priced Dwelling Units (MPDUs)

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

100 4. Public Benefit Points

101 The requirements for public benefit points are established by Division  
102 59.4.7, and as follows:

- 103           a.     The Planning Board must not grant any public benefit points for  
104                     transit proximity under Section 59.4.7.3.B. or structured  
105                     parking under Section 59.4.7.3.E.6.
- 106           b.     The Planning Board must determine that the development  
107                     achieves 10 points in the exceptional design public benefit  
108                     under Section 59.4.7.3.E.4. The Planning Board must consider  
109                     the comments from the Design Advisory Panel on all projects  
110                     before making their determination concerning exceptional  
111                     design points.

112       5.     Public Open Space

113           Any project required to provide public open space on a site not  
114           recommended in the Sector Plan for a new public space must  
115           contribute to the creation of new or improvement of existing public  
116           parks recommended by the Sector Plan, preferably within the same  
117           district, based on the cost per square foot of constructing park area  
118           equivalent to the required public space.

119   **D.    Height Incentive Area Map**

120   \*   \*   \*

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

122   **A.    Purpose**

123       The purpose of the FV Overlay zone is to:

- 124       1.     Facilitate the implementation of an organized and cohesive  
125               development pattern that is appropriate for an urban environment.
- 126       2.     Encourage attractive design and ensure compatibility with existing  
127               buildings and uses within and adjacent to the Overlay zone.
- 128       3.     Provide flexibility of development standards to encourage innovative  
129               design solutions.

130 [4. Allow for the transfer of the public open space requirement to other  
131 properties within the Overlay zone.

132 5. Allow new uses.]

133 **[B. Land Uses**

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

136 1. The following Light Manufacturing and Production use: assembly of  
137 computer components; and

138 2. The following Retail/Service Establishment uses: bakery, if less than  
139 1,500 square feet of gross floor area; and catering facility.]

140 **[C]B. Development Standards**

141 1. Building Height

142 a. Maximum building height is 90 feet along[ a major highway]  
143 Georgia Avenue;

144 b. Maximum building height is [60]65 feet along[ any street  
145 confronting any block that includes property in a Residential  
146 Detached zone and,] Fenton Street. [when]When a building is  
147 allowed to be higher than [60]65 feet under  
148 Section 4.9.8.[C]B.1.c, each additional foot in building height  
149 above [60]65 feet requires at least an additional one foot  
150 stepback from the front of the building along Fenton Street;

151 [c. Within the area between a major highway and a street that  
152 confronts a block that includes property in a Residential  
153 Detached zone, maximum building height is

154 i. 60 feet but may increase to a maximum of 90 feet if at  
155 least 33% of a project's floor area is residential;



- 156                   ii.     110 feet if additional building height is necessary to  
157                   accommodate workforce housing units, at least 33% of  
158                   the project's floor area is residential, and the additional  
159                   height is placed near a major highway and decreases in  
160                   the direction of the closest property in a Residential  
161                   Detached zone;
- 162           d.     For property located in a block that includes property in a  
163           Residential Detached zone maximum building height is 45 feet  
164           for all uses, except maximum building height is 60 feet for:
- 165                   i.     residential use; or
- 166                   ii.    mixed-use optional method project, if at least 33% of the  
167                   project's floor area is residential and the project includes  
168                   a hotel;
- 169           e.     For properties with frontage on both Wayne Avenue and Fenton  
170           Street, in spite of the height limitations in Section 4.9.8.C.1.b  
171           through Section 4.9.8.C.1.d, maximum building height may be  
172           increased by 15 feet for a building that includes residential uses  
173           or a mix of residential and commercial uses, if such additional  
174           height is not more than 200 feet from the right-of-way line for  
175           Fenton Street as recommended in the Approved and Adopted  
176           2000 Silver Spring CBD Sector Plan; however, any building  
177           using additional height must be set back from abutting  
178           Residentially zoned land no less than the setback required in the  
179           abutting Residential zone or the height of the building,  
180           whichever is greater.

181 f. Building heights may be approved under the standards of  
182 Section 4.9.8.C.1 without regard to the building height  
183 recommendations of the master plan.

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

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

188 2. Retail Bays

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

192 b. Developments with ground-floor retail (except grocery stores)  
193 must provide at least one retail bay of 1,200 square feet or less  
194 of leasable space, and another retail bay of 2,000 square feet or  
195 less.

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

199 [4]3. In the CR zone, under the standard method of development the  
200 maximum FAR is 2.0 if approved by site plan under Section 7.3.4.

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

204 **[D]C. Site Plan**

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

207 **[E]D. Existing Buildings**

208 Any building for which a valid building permit was issued before approval  
209 of the FV Overlay zone Sectional Map Amendment, is a conforming  
210 building and may be altered, repaired, or reconstructed under the standards  
211 of the zone in effect at the time the building was constructed, except:  
212 If the building exceeds the standards of the underlying zone, any alteration,  
213 repair, or reconstruction of the building must not increase the gross floor  
214 area or the height of the building above that which existed as of the date of  
215 application of the FV Overlay zone.

216 \* \* \*

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

218 \* \* \*

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

220 \* \* \*

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

222 \* \* \*

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

224 \* \* \*

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

226 \* \* \*

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

228 **A. Purpose**

229 The purpose of the RSS Overlay zone is to:

- 230 1. Facilitate the implementation of an organized and cohesive  
231 development pattern that is appropriate for an urban environment.
- 232 2. Encourage attractive design and ensure compatibility with existing  
233 buildings and uses within and adjacent to the Overlay zone.

- 234 3. Provide flexibility of development standards to encourage innovative  
235 design solutions.
- 236 4. Allow for the transfer of the public open space requirement to other  
237 properties within the Overlay zone.
- 238 5. Allow new uses.

239 **B. Land Uses**

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

- 242 1. The following Light Manufacturing and Production use: assembly of  
243 computer components; and
- 244 2. The following Retail/Service Establishment uses: bakery, if less than  
245 1,500 square feet of gross floor area; and catering facility.

246 **C. Development Standards**

247 1. Building Height

248 a. The maximum building height is 45 feet along Newell Street  
249 and Eastern Avenue that confronts a Residential zone in the  
250 District of Columbia; however, this building height may be  
251 increased to:

- 252 i. a maximum of 90 feet for any building or portion of a  
253 building that is set back a minimum of 60 feet from the  
254 street; or
- 255 ii. a maximum of 125 feet for residential development that  
256 is set back at least 100 feet from Eastern Avenue and  
257 Newell Street and includes a public parking garage  
258 constructed under a General Development Agreement  
259 with the County.

- 260           b.     For a property zoned CR and mapped at 200 feet, the Planning  
261           Board may approve a maximum building height of 200 feet  
262           only in an optional method development project that provides  
263           ground floor retail. If no ground floor retail is provided, the  
264           maximum building height is 145 feet. Any structure or device  
265           used to collect or radiate electromagnetic waves, including a  
266           satellite dish, must not be included in calculating building  
267           height under this paragraph.
- 268           c.     For a property zoned CR and mapped at 200 feet, the Planning  
269           Board may approve a maximum building height of 270 feet, if  
270           an optional method development project includes the provision  
271           of an on-site or off-site major public facility under  
272           Section 4.7.3.A and also provides a ground floor level grocery  
273           store or other qualifying basic service under Section 4.7.3.C.3  
274           of at least 10,000 square feet of floor area.
- 275           2.     Parking between the street and the front building line of properties  
276           fronting on Georgia Avenue is prohibited.
- 277           3.     Costs associated with meeting the public open space off-site may be  
278           shared by multiple property owners.
- 279           4.     In the CR zone, under the standard method of development, the  
280           maximum FAR is 1.0 if approved by site plan under Section 7.3.4.
- 281           5.     Under standard method development, the public open space  
282           requirement may be transferred to other properties within the Overlay  
283           zone if approved by a site plan under Section 7.3.4.

284   **D.    Site Plan**

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

287 **E. Existing Buildings**

288 Any building for which a valid building permit was issued before February  
289 1, 2000 is a conforming building and may be altered, repaired, or  
290 reconstructed under the standards of the zone in effect when the building  
291 was constructed, except:

292 If the building exceeds the standards of the underlying zone, any alteration,  
293 repair, or reconstruction of the building must not increase the gross floor  
294 area or the height of the building above that which existed on February 1,  
295 2000.]

296 \* \* \*

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

This is a correct copy of Council action.

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Selena M. Singleton, Esq.  
Clerk of the Council