

**M E M O R A N D U M**

July 6, 2022

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 22-02, Density and Height Limits, Parking – Biohealth

PURPOSE: Worksession #1

**Expected Attendees**

- Casey Anderson, Chair, Planning Board
- Gwen Wright, Director, Planning Department
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner Coordinator, Countywide Planning & Policy, Planning Department
- Victor Salazar, Chief, Division of Zoning and Code Compliance, Department of Permitting Services (DPS)
- Linda Kobylski, Chief, Division of Land Development, Department of Permitting Services (DPS)
- Mark Etheridge, Manager, Sediment & Stormwater Plan Review, Department of Permitting Services (DPS)

**Background**

Zoning Text Amendment (ZTA) 22-02, Density and Height Limits, Parking – Biohealth, lead sponsor Councilmember Friedson, was introduced on March 15, 2022. Councilmembers Hucker, Katz, Navarro, Council President Alborno, Council Vice-President Glass, and Councilmember Riemer are co-sponsors of this ZTA.

As introduced, ZTA 22-02 would have allowed additional height and increased flexibility in density for urban biohealth facilities in the CR, LSC, and EOF zones in recognition of the unique mechanical challenges of biohealth buildings. ZTA 22-02 would also have allowed consolidation of certain facilities and provide parking provisions for Biohealth Priority Campuses. Lead Sponsor Councilmember Friedson has shared with Councilmembers and the public an amended version of the ZTA that would remove the provisions related to Biohealth Priority Campuses and provide more modest increases in height for urban biohealth facilities in the CR, LSC, and EOF zones.

## Public Hearing

A public hearing was held on June 14, 2022. Three speakers testified in support of ZTA 22-02. Bob Dalrymple, an attorney on behalf of Stonebridge, testified that this ZTA would help the County attract the bioscience industry. Doug Firstenberg, a principal at Stonebridge, testified that this ZTA would create urban opportunities for tenants in the life sciences industry. He testified that this ZTA would be beneficial to the industry because this type of user needs higher ceilings. Casey Anderson, Planning Board Chair, also testified in support of the ZTA.

The Council also received a letter in support from the representatives of Stonebridge, as well as a letter from Warren Avenue Investors requesting industrial zones be added to the ZTA.

## Planning Board Recommendation

The Planning Board met and discussed ZTA 22-02 at its hearing on June 9, 2022. The Board supported the ZTA as amended by the lead sponsor.

## Lead Sponsor's Changes Since Introduction

### *Remove Biohealth Priority Campus Provisions*

The first amendment Councilmember Friedson proposes is removing the first section of the ZTA, which would have allowed consolidation of certain facilities and provided parking provisions for Biohealth Priority Campuses.

### *Move Language from "Density and Height Allocation" to "Optional Method Development"*

As introduced, ZTA 22-02 allowed additional height and flexibility in density "with Planning Board approval". Moving the amendments to the optional method section makes it clear what triggers Planning Board approval and under what process Planning should review these applications.

### *Remove Life Sciences*

The intent of ZTA 22-02 is to encourage urban biohealth facilities by accommodating the additional ceiling heights often needed for manufacturing and laboratories. Therefore, there is an amendment to narrow the ZTA to applications where the use is Research and Development or Medical/Scientific Manufacturing and Production. The definitions of each use are as follows:

- **Medical/Scientific Manufacturing and Production** – a building used for the manufacturing, compounding, processing, assembly, or packaging, including incidental storage, sales, and distribution, of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, synthetic molecules, products resulting from biotechnical and biogenetic research and medical, scientific, or technical instruments, devices, and equipment. *Section 3.6.4.D.*
- **Research and Development** – the study, research, and experimentation in one or more scientific fields such as life sciences, biomedical research, communications, chemistry,

computer science, electronics, medicine, and physics. Research and Development also includes the development of prototypes and the marketing of resultant products and related activities, including administrative offices, educational facilities, libraries, and data services, and the manufacturing, mixing, fermentation, treatment, assembly, packaging, and servicing of products. *Section 3.5.8.C.*

- **Life Sciences** – the research, development, and manufacturing activities in one or more of the following scientific fields: biology, biophysics, biochemistry, bioelectronics, biotechnology, biomedical engineering, bioinformatics, medicine, immunology, embryology, clinical engineering, diagnostics, therapeutics, nutraceuticals, pharmacogenomics, drug production, genetic testing, or gene therapy activities. Life Sciences also includes a Hospital and uses accessory to a Hospital, other than medical/dental clinic. For a business, institution, or government agency conducting such activities in a Life Sciences Center, Life Sciences also includes related activities and supporting services, such as administrative offices, educational facilities, libraries, data services, nanotechnology, informational technology, and robotics. *Section 3.5.8.A.*

While there is some overlap in these definitions, Research and Development and Medical/Scientific Manufacturing and Production are the closest to the intent of the ZTA, with their emphasis on creation, manufacturing, and processing. Further, developers report that biohealth and laboratory buildings have historically been classified by DPS as Research and Development, or as Medical/Scientific Manufacturing and Production where there is a strong manufacturing component. In addition, Research and Development includes life sciences as a scientific field in its definition, as well as ancillary offices.

#### *Remove Reallocation of Density from the LSC and EOF Zones*

The proposed amended ZTA removes the reallocation of density language from the LSC and EOF zones for two reasons. First, residential FAR is not mapped in the employment zones. Second, these zones generally encourage commercial FAR, with limitations on residential gross floor area.

#### *Require the Development to Achieve Adaptive Buildings Public Benefit Points*

“Adaptive Buildings” is one of the categories of public benefit points under Section 4.7.2.D. As detailed in Section 4.7.3.D.1, an applicant may receive up to 15 points 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. The “public benefit” is an adaptive building can adjust to a diversity of uses over time, which makes the building more sustainable and more embedded in the pattern of a community.

#### *Limit to Properties Abutting or Confronting Major Roads / Exclude Properties Abutting or Confronting Residential or Agricultural Uses*

In order to reduce the impact of taller buildings on neighboring homes, two additional provisions were added regarding location. First, limiting the additional height and flexibility in density to properties abutting or confronting major roads; and second, not allowing application of these provisions on sites that abut or confront a property in an Agricultural, Rural Residential,

Residential Detached, or Residential Townhouse zone that is vacant or improved with an agricultural or residential use.

*Limit Additional Height to a Multiplier of 1.5 Times / Allow Height Averaging*

ZTA 22-02, as introduced, allowed buildings under 100 feet to double their height while buildings between 100 and 200 feet could multiply their height by 1.5. The proposed amended ZTA would only allow buildings of 100 feet or less to multiply their height; and that multiplier would be limited to 1.5 times the mapped height, up to 150 feet. Applicants will also be able to use two methods of height averaging.<sup>1</sup>

First, the height of any section of a building can vary, as long as the average height of each section does not exceed the mapped height. For example, a building with a mapped height of 150 feet could have one portion of the building be 125 feet high in exchange for another portion of the building being 175 feet high. This accomplishes the intent of the ZTA, which is to allow for the unique engineering needs of the biohealth industry, while not increasing the overall bulk of the building.

Second, height averaging would be allowed across a site with different mapped heights. This would mean a development site could have higher-than-mapped buildings on one portion of the site in exchange for lower-than-mapped buildings on another portion of the site.<sup>2</sup> If a development site has mapped heights of 75 feet and 125 feet, those heights could be averaged so that some buildings are as high as 150 feet while some are as low as 50 feet. Again, the overall effect is that the average mapped height is not exceeded, but the mechanical needs can still be met.

Lastly, an applicant would not have to choose between these two methods of achieving additional height. While most applicants would likely get the height they need from the 1.5 times multiplier, marginal additional height could be obtained by doing height averaging first. For example, a development site with parcels mapped at 50 feet could use height averaging to construct a 25-foot building and a 75-foot building. The multiplier could then be used to achieve heights of 38 feet and 112 feet. Without averaging the heights first, the maximum height of a building mapped at 50 feet would have been 75 feet.

*Remove Reference to Overlay Zones*

ZTA 22-02, as introduced, made the additional height and flexibility in density provisions apply regardless of contrary or more restrictive provisions in an Overlay zone. Given the concerns about the effect that this might have on the master plan process, Councilmember Friedson proposes removing this provision as well.

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<sup>1</sup> Height averaging is not a new concept in the zoning ordinance. A similar method is used in Section 4.5.2.D, “Special Provisions for ‘T’ Zones Translated from Certain Zones Existing Before October 30, 2014.”

<sup>2</sup> The ZTA uses “tract area” to calculate the average height. A tract is defined in Section 4.1.7.A.1, as “a contiguous area of land, including all proposed and existing rights-of-way, lots, parcels, and other land dedicated by the owner or a predecessor in title.”

## Requested Amendment – Industrial Zones

The Council received a letter from Warren Avenue Investors. The letter requests that the industrial zones be added to ZTA 22-02. The letter argues that the industrial zones are well-suited for biohealth since many buildings in this zone have dedicated loading areas and high ceilings.

The industrial zones have the following heights:

| Zone                     | Total FAR (max) | Height (max) |
|--------------------------|-----------------|--------------|
| Light Industrial (IL)    | 0.25 to 1.5     | 25' to 50'   |
| Moderate Industrial (IM) | 0.25 to 2.5     | 25' to 120'  |
| Heavy Industrial (IH)    | 0.5 to 4.0      | 35' to 200'  |

Council Staff reviewed the County's zoning maps and found the following:<sup>3</sup>

- The majority of IL properties are mapped at IL-1.0 H-50, with one zoning block mapped at IL-0.5 H-45.
- The majority of IM properties are mapped at IM-2.5 H-50. Of the 50+ IM zoning blocks, fewer than 10 are mapped between 70 to 80 feet. One IM property is mapped at 100 feet.
- All IH properties in the County are mapped at IH-2.5 H-70.

In summary, the current mapped heights in the County's industrial-zoned areas are around 50-70 feet, with very few outliers. This is likely because uses such as warehouses or light manufacturing tend to be lower buildings. A 50-foot building with a 15-foot-high ceiling would result in a three-story lab building.

Despite the existence of already-established loading docks and the tendency towards high ceilings in the industrial zones, there is a policy concern with allowing additional height in these zones through ZTA 22-02. There is limited industrial space in Montgomery County. Zoning regulations are set up to limit the amount of commercial development in these zones, so that the land does not become too expensive. An influx of commercial uses or additional height and changes to density could raise the value of the land and risk pushing out industrial uses for nonindustrial ones.<sup>4</sup> While Council Staff agrees that the biohealth industry has an "industrial" aspect, the addition of the industrial zones to this ZTA would need to be balanced with overarching policy goals.

## RESJ Impact Statement

The Office of Legislative Oversight (OLO) transmitted a Racial Equity and Social Justice (RESJ) impact statement on April 22, 2022. OLO found that ZTA 22-02 could have a small negative impact racial equity and social justice as its benefits would disproportionately accrue to white business owners and employees. To narrow the inequities, OLO recommended: 1) requiring or encouraging biohealth firms to report workforce and vendor data by race, ethnicity, and gender; 2)

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<sup>3</sup> <https://mcatlas.org/viewer/>

<sup>4</sup> While Medical/Scientific Manufacturing and Production is listed as an industrial use under the zoning ordinance, Research and Development is a commercial use  
<https://www.montgomerycountymd.gov/DPS/Resources/Files/ZSPE/UseTable.pdf>

investing in workforce development opportunities, particularly for BIPOC residents; and 3) investing in local small businesses, especially underrepresented BIPOC small businesses. Council Staff agrees that these recommendations would benefit the County by narrowing racial equity gaps. However, they would need to be done using different methods than a ZTA.

### **Council Staff Recommendation**

Council Staff recommends approval of ZTA 22-02 with Councilmember Friedson's proposed amendments.

#### This packet contains:

|                                  |      |
|----------------------------------|------|
| ZTA 22-02                        | © 1  |
| Councilmember Friedson Letter    | © 15 |
| Planning Board Recommendation    | © 16 |
| Planning Staff Memorandum        | © 26 |
| RESJ Impact Statement            | © 28 |
| Map of Affected Areas            | © 35 |
| Letter – Warren Avenue Investors | © 37 |
| Letter – Stonebridge             | © 39 |

Ordinance No.:  
Zoning Text Amendment No.: 22-02  
Concerning: Density and Height  
Limits, Parking –  
Biohealth  
Draft No. & Date: 3 – 6/28/2022  
Introduced: March 15, 2022  
Public Hearing: June 14, 2022  
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: Councilmember Friedson  
Co-Sponsors: Councilmembers Hucker, Katz, Navarro, Council President Albornoz, Council  
Vice-President Glass, Councilmember Riemer

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

- allow additional height for certain scientific uses;
- allow greater flexibility in density allocation for certain scientific uses;
- ~~[[amend the use standards for Biohealth Priority Campuses; ]]~~and
- generally amend the provisions for certain scientific uses.

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

|                             |   |
|-----------------------------|---|
| <del>[[</del> Division 3.5. | “Commercial Uses”                       |
| Section 3.5.8.              | “Office and Professional” <del>]]</del> |
| Division 4.5.               | “Commercial/Residential Zones”          |
| Section 4.5.2.              | “Density and Height Allocation”         |
| <u>Division 4.5.</u>        | <u>“Commercial/Residential Zones”</u>   |
| <u>Section 4.5.4.</u>       | <u>“Optional Method Development”</u>    |
| Division 4.6.               | “Employment Zones “                     |
| Section 4.6.2.              | “Density and Height Allocation”         |
| <u>Division 4.6.</u>        | <u>“Employment Zones “</u>              |
| <u>Section 4.6.4.</u>       | <u>“Density and Height Allocation”</u>  |

[[Division 6.2.                   “Parking, Queuing, and Loading”  
Section 6.2.4.               “Parking Requirements”]]

**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 3.5 is amended as follows:**

**Division 3.5. Commercial Uses**

\* \* \*

**Section 3.5.8. Office and Professional**

\* \* \*

**E. Biohealth Priority Campus**

\* \* \*

**3. Use Standards**

- a. Residential FAR limits on the subject property may be reallocated to commercial FAR if the total FAR does not exceed the maximum total mapped FAR of the property and the building height does not exceed the maximum mapped height, including any increases in each allowed by this Chapter.
- b. A mechanical penthouse, and the roof structures listed in Section 4.1.7.C.3, may occupy a maximum of 50% of the roof area of any individual building.
- c. The subject property may utilize FAR averaging under Sections 4.5.2.B. and 4.6.2.B.
- d. Facilities serving a Biohealth Priority Campus may be consolidated and located on one or more properties inside the area subject to the Biohealth Priority Campus plan. Such facilities may include utilities, open space, and parking.

**4. Parking**

- a. In a Parking Lot District, an applicant may provide fewer parking spaces than required, after all adjustments are made under Section 6.2.3.I, only if a parking waiver under Section 3.5.8.E.4.c is approved.

- b. In a Parking Lot District, an applicant may provide more than the maximum number of parking spaces allowed provided the excess parking spaces are made available to the public and are not reserved, or if a parking waiver under Section 3.5.8.E.4.c is approved.
- c. The deciding body may waive any requirement of Section 6.2.5 if the alternative design satisfies Section 6.2.1.

\* \* \*]]

**Sec. [[2]]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**

1. Density is calculated as an allowed floor area ratio (FAR).
2. Each CRN, CRT, and CR zone classification is followed by a number and a sequence of 3 additional symbols: C, R, and H, each followed by another number where:
  - a. The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.5.2.C or Section 4.5.2.D;
  - b. The number following the C is the maximum nonresidential FAR allowed, unless additional FAR is allowed under Section 3.5.8.D or Section 4.5.4.B.5;
  - c. The number following the R is the maximum residential FAR allowed, unless additional residential FAR is allowed under Section 3.5.8.D, Section 4.5.2.C, or Section 4.5.2.D; and

- d. The number following the H is the maximum building height in feet allowed unless additional height is allowed under Section 3.5.8.D, Section 4.5.2.C, Section 4.5.2.D, [[or ]]Section 4.5.2.A.2.e. or Section 4.5.4.B.5.
- e. With Planning Board approval any Optional Method project in a CR zone that includes the provision of a major public facility under Section 4.7.3.A may add the height of any floor mostly used for above grade parking to the maximum height otherwise allowed, when the major public facility diminishes the ability of the applicant to provide parking at or below grade.
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 Section 4.5.4.B.5.:

| 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'  |

4. Zones are established at density increments of 0.25 FAR and height increments of 5 feet up to the maximums in Section 4.5.2.A.3.
- [[5. For a Life Sciences or Research and Development Use under Section 3.5.8 or a Medical/Scientific Manufacturing and Production Use under Section 3.6.4.D in the CR zone that is within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or opportunity zone only by a public right-of-way; or within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway:

- a. with Planning Board approval, a property with a maximum building height of 100 feet or less may exceed the maximum building height allowed in the mapped zone by 2.0 times, and a property with a maximum building height of 100 to 200 feet may exceed the maximum building height allowed in the mapped zone by 1.5 times; and
- b. nonresidential FAR may be increased above the number following the C on the zoning map if the total FAR does not exceed the maximum total mapped FAR of the property, including any increases allowed under this Chapter, and the building height does not exceed the height allowed under Section 4.5.2.A.5.a.
- c. Where the provisions of any Overlay zone are contrary or more restrictive, Section 4.5.2.A.5. applies.]]

#### **Section 4.5.4. Optional Method Development**

#### **B. Development Standards**

### **5. Development of Certain Biohealth Uses**

- a. Additional height is permitted for any application in the CR zone where the primary use is Research and Development under Section 3.5.8 or Medical/Scientific Manufacturing and Production under Section 3.6.4.D, if:
  1. the development site is located within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or

opportunity zone only by a public right-of-way; or  
within ½ mile of a planned or existing Bus Rapid  
Transit route including the Corridor Cities  
Transitway;

2. the development site fronts on a street classified as  
an arterial roadway or higher classification;

3. the development site does not abut or confront a  
property in an Agricultural, Rural Residential,  
Residential Detached, or Residential Townhouse  
zone that is vacant or improved with an  
agricultural or residential use; and

5. the application achieves public benefit points for  
Adaptive Buildings under Sec. 4.7.3.D.1.

b. In order to achieve additional height under Section  
4.5.4.B.5.a, the following provisions apply:

1. A development site that includes a property with a  
mapped height of 100 feet or less may achieve 1.5  
times the mapped height. A development site that  
uses averaged height under Section 4.5.4.B.5.b.2  
may achieve 1.5 times the resulting averaged  
height, provided the maximum building height  
does not exceed 150 feet.

2. Building height for a portion of a building or  
buildings across a development site may be  
increased above the number following the H on the  
zoning map so long as the average height of all

buildings is no greater than the maximum height  
allowed by the mapped zone.

i. Average building height is calculated as the  
sum of each area of each section of roof  
having a different height multiplied by that  
height, divided by the total roof area. Height  
is measured at the midpoint of each roof  
section along each frontage.

ii. If the development site has more than one  
mapped height, the maximum height is  
based on the proportion of the tract area  
within each mapped zone. It is calculated as  
the sum of the tract square footage within  
each mapped zone multiplied by the mapped  
height, divided by the total tract area.

c. For properties that satisfy the requirements of Section  
4.5.4.B.5.a., residential FAR may be reallocated to  
nonresidential FAR if the total FAR does not exceed the  
maximum total mapped FAR for the property.

\* \* \*

**Sec. [[3]]2. DIVISION 59-4.6 is amended as follows:**

**Division 4.6. Employment Zones**

\* \* \*

**Section 4.6.2. Density and Height Allocation**

**A. Density and Height Limits**

1. Density is calculated as an allowed floor area ratio (FAR).

2. Each GR, NR, LSC, and EOF zone classification is followed by a number and symbol: H, which is followed by another number where:
  - a. The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.6.2.C and Section 4.6.2.D; and
  - b. The number following the H is the maximum building height in feet allowed unless additional height is allowed under Section 4.6.2.D or Section [[4.6.2.A.5.]]4.6.4.B.5.
3. The following limits apply unless additional total FAR, residential FAR, or height are allowed under [[Section 4.6.2.A.5, ]]Section 4.6.2.C, [[ and ]]or Section 4.6.2.D.

| Zone | Total FAR (max) | Height (max) |
|------|-----------------|--------------|
| GR   | 0.5 to 2.5      | 25' to 120'  |
| NR   | 0.25 to 1.5     | 25' to 50'   |
| LSC  | 0.5 to 2.5      | 35' to 200'  |
| EOF  | 0.5 to 4.0      | 35' to 200'  |

4. Zones are established at density increments of 0.25 FAR and height increments of 5 feet up to the maximums in Section 4.6.2.A.3.
- [[5. For a Life Sciences or Research and Development Use under Section 3.5.8 or a Medical/Scientific Manufacturing and Production Use under Section 3.6.4.D in the LSC or EOF zone that is within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or opportunity zone only by a public right-of-way; or within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway:

- a. with Planning Board approval, a property with a maximum building height of 100 feet or less may exceed the maximum building height allowed in the mapped zone by 2.0 times, and a property with a maximum building height of 100 to 200 feet may exceed the maximum building height allowed in the mapped zone by 1.5 times; and
- b. nonresidential FAR may be increased above the number following the C on the zoning map if the total FAR does not exceed the maximum total mapped FAR of the property, including any increases allowed under this Chapter, and the building height does not exceed the height allowed under Section 4.6.2.A.5.a.
- c. Where the provisions of any Overlay zone are contrary or more restrictive, Section 4.6.2.A.5. applies.]]

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#### **Section 4.6.4. Optional Method Development**

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#### **B. Development Standards**

\* \* \*

#### **5. Development of Certain Biohealth Uses**

- a. Additional height is permitted for any application in the LSC or EOF zone where the primary use is Research and Development under Section 3.5.8 or Medical/Scientific Manufacturing and Production under Section 3.6.4.D, if:
  1. the development site is located within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or

opportunity zone only by a public right-of-way; or  
within ½ mile of a planned or existing Bus Rapid  
Transit route including the Corridor Cities  
Transitway;

2. the development site fronts on a street classified as  
an arterial roadway or higher classification;

3. the development site does not abut or confront a  
property in an Agricultural, Rural Residential,  
Residential Detached, or Residential Townhouse  
zone that is vacant or improved with an  
agricultural or residential use; and

5. the application achieves public benefit points for  
Adaptive Buildings under Sec. 4.7.3.D.1.

b. In order to achieve additional height under Section  
4.6.4.B.5.a, the following provisions apply:

1. A development site that includes a property with a  
mapped height of 100 feet or less may achieve 1.5  
times the mapped height. A development site that  
uses averaged height under Section 4.5.4.B.5.b.2  
may achieve 1.5 times the resulting averaged  
height, provided the maximum building height  
does not exceed 150 feet.

2. Building height for a portion of a building or  
buildings across a development site may be  
increased above the number following the H on the  
zoning map so long as the average height of all

buildings is no greater than the maximum height  
allowed by the mapped zone.

i. Average building height is calculated as the  
sum of each area of each section of roof  
having a different height multiplied by that  
height, divided by the total roof area. Height  
is measured at the midpoint of each roof  
section along each frontage.

ii. If the development site has more than one  
mapped height, the maximum height is  
based on the proportion of the tract area  
within each mapped zone. It is calculated as  
the sum of the tract square footage within  
each mapped zone multiplied by the mapped  
height, divided by the total tract area.

\* \* \*

**[[Sec. 4. DIVISION 59-6.2 is amended as follows:**

**Division 6.2. Parking, Queuing, and Loading**

\* \* \*

**Section 6.2.4. Parking Requirements**

\* \* \*

**B. Vehicle Parking Spaces**

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| USE or USE GROUP                       | Metric                 | Agricultural,<br>Rural<br>Residential,<br>Residential,<br>and Industrial<br>Zones | Commercial/Residential and Employment<br>Zones           |  |                     |
|--|------------------------|---|--|--|---------------------|
|  |                        |   | Within a Parking Lot District<br>or Reduced Parking Area | Outside a<br>Parking Lot<br>District or<br>Reduced<br>Parking Area |                     |
|  |                        | Baseline<br>Minimum   | Baseline<br>Minimum                                      | Baseline<br>Maximum  | Baseline<br>Minimum |
|  |                        |   |  |  |                     |
| * * *                                  |                        |   |  |  |                     |
| Office and Professional                |                        |   |  |  |                     |
| Office                                 | 1,000 SF of GFA        | 2.80  | 2.00   | 3.00   | 2.25                |
| Life Sciences Research and Development | 1,000 SF of GFA        | 1.50  | 1.00   | 3.00   | 1.50                |
| <u>Biohealth Priority Campus</u>       | <u>1,000 SF of GFA</u> | --  | <u>1.00</u>  | <u>3.00</u>  | <u>1.50</u>         |

253 ||\* \* \*


254           **Sec. ~~[[5]]~~3. Effective date.** This ordinance becomes effective 20 days after  
255   the date of Council adoption.



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

MEMORANDUM

TO: Tom, Sidney, Nancy, Gabe, Evan and Hans

FROM: Andrew 

SUBJECT: ZTA 22-02 Proposed Revisions

DATE: June 8, 2022

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I am writing to inform you of some amendments I plan to put forward at the PHED Committee work session on ZTA 22-02 -Density & Height Limits – Biohealth. I introduced this ZTA in March with your support as co-sponsors, and I am told a work session is tentatively scheduled for early July.

While still recognizing that ZTA 22-02 will serve as an important economic development tool for attracting and retaining biohealth companies here in the county, particularly in transit-oriented locations, and that this ZTA closely aligns with our [county's economic development strategic plan](#) recently updated and approved by the Council in April, based upon preliminary feedback and further examination I have decided to propose the following provisions:

- Limit eligibility to properties mapped at 100 feet or less
- Remove all references to Biohealth Priority Campus use – this includes the parking provision and the consolidation of public facilities provision
- Limit eligibility to properties abutting or confronting arterials and highways
- Prohibit/exclude properties abutting or confronting residential zones
- Limit additional height to a multiplier of 1.5
- Allow height averaging in certain circumstances
- Remove language referencing overlay zones
- Strengthen language to ensure Biohealth/Life Sciences R &D and/or manufacturing is primary use

I have attached a revised draft of the ZTA for your reference. Please let me or Cindy know if you have any questions.

## ZTA 22-02, DENSITY AND HEIGHT LIMITS, PARKING - BIOHEALTH

### Description

ZTA 22-02 would amend provisions of Biohealth Priority Campuses to allow consolidation of utilities and facilities, and to create parking standards. The ZTA would also allow Life Science, R&D, and Medical and Scientific Manufacturing and Production uses within certain geographies in the CR, EOF and LSC zones to convert residential FAR into commercial FAR, and would allow for height increases 2 times the mapped height for properties less than 100 feet in height, and 1.5 times the mapped height for buildings over 100 feet with Board approval.

ZTA 22-10

COMPLETED: 04-29-2022

MCPB

Item No. 10

05-05-2022

2425 Reedie Drive

Floor 14

Wheaton, MD 20902



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#### LEAD SPONSORS

Councilmember Friedson

Cosponsored by Councilmembers:

Hucker, Katz, Navarro, Glass, Reimer, and  
Council President Alborno

#### INTRODUCTION DATE:

March 15, 2022

#### REVIEW BASIS:

Chapter 59



#### Summary

- Planning staff does not support this ZTA as introduced and recommends the Board transmit comments to deny the ZTA or approve it only with significant changes.
- The provisions for allowing significantly increased building height for certain Life Science, Research & Development, and Medical Manufacturing users is in conflict with the master planning process for determining appropriate building heights, compatibility with surrounding communities, and other land use controls.
- The new parking waivers for Biohealth Priority Campus uses in the Parking Lot Districts is contrary to the intent of these districts.

## SECTION ONE

### BACKGROUND

#### Recommendation Summary

Staff recommends the Planning Board transmit a recommendation to the District Council of denial of ZTA 22-02 or approval only with significant changes that respond to the comments contained within this staff report.

#### Rationale for Zoning Text Amendment 22-02

Zoning Text Amendment (ZTA) 22-02 was introduced on March 15, 2022 by Councilmember Friedson, with Councilmembers Hucker, Katz, Navarro, Glass, and Council President Alborno as co-sponsors. The ZTA introduction packet (Attachment 1) states that the ZTA would allow additional height and increased flexibility in design for urban biohealth facilities in recognition of their unique mechanical challenges. The ZTA also adds parking requirements for Biohealth Priority Campuses where they were absent from the parking tables in the ordinance. The rapid growth of the life sciences industry has been an economic development success and this ZTA is one of multiple zoning or policy changes that have been considered by the Council in recent months to benefit additional life science growth.

## SECTION TWO

### ANALYSIS

#### ZTA 22-02 as introduced

##### BPC STANDARDS

ZTA 22-02, as introduced, proposes changes to the code for two similar but distinctly separate uses in the existing code. Some of the changes are specific to the new Biohealth Priority Campus (BPC) use, recently created through ZTA 21-09 and adopted by Ordinance 19-27. The first change to standards for BPCs is on lines 19-22 of the attached ZTA (Attachment 1) and is a new use standard under Section 3.5.8.E.3.d, clarifying that facilities including utilities, required open space, and parking may be located on one or more properties inside the boundary of a Biohealth Priority Campus. **This provision provides good direction for issues that arise in campus-like situations and staff supports it.**

##### PARKING WAIVRES FOR BPCs

Next, a new subsection 3.5.8.E.4. Parking, on lines 23-34 of the attached ZTA, contains three subsections. Subsection a. would allow an application in a Parking Lot District (PLD) to provide fewer parking spaces than required after making adjustments allowed under Section 6.2.3.I if a waiver under

new subsection c. is approved. New subsection b. conversely would allow an applicant to provide more than the maximum number of spaces allowed in a PLD if the excess parking is available to the public or if a waiver under new subsection c. is approved. **Staff has concerns with both proposed parking waivers which are discussed in more detail in the concerns section of this report.** New subsection c. is the new waiver referenced in subsections a. and b. above. However, the waiver in subsection c. would allow a deciding body to waive Section 6.2.5 of the parking standards, which **pertain to the parking design standards and not the amount of required parking or the standards of a PLD (which are under Section 6.2.3.H). Staff thinks this may be an error.**

#### REQUIRED VEHICLE PARKING FOR BPCs

The final BPC specific change proposed by the ZTA is a change to the Vehicle Parking Spaces table under Section 6.2.4.B. on line 140 of the ZTA. This adds Biohealth Priority Campus as a new use in the table and assigns corresponding values for the metric (1,000 SF of Gross Floor Area) and baseline minimums and maximums for vehicle parking. The proposed minimum and maximum parking proposed is consistent with parking requirements for the Life Sciences Research and Development use seen one row above in the table. **Staff supports this section of the ZTA.**

#### BUILDING HEIGHT FOR LIFE SCIENCES IN CR/EOF/LSC ZONES

The other changes proposed by this ZTA do not directly impact the Biohealth Priority Campus as a use, but rather modify provisions for development in the Commercial/Residential and Employment zones for applications with a Life Science, Research and Development, or Medical/Scientific Manufacturing use. These are the same uses that pertain to a Biohealth Priority Campus, but this portion of the ZTA would apply to applicants that are unable to meet the BPC size criteria of 150,000 SF of new space or 50,000 SF of expanded space for a single dedicated user and would include a very large number of properties in the county. The changes proposed for both sets of zones are the same and would apply to any property in a CR, EOF, or LSC zone that is within a red policy area or an opportunity zone including land contiguous to these properties or properties opposite them if only separated by a right-of-way, or properties within ½ mile of a planned or existing BRT route including the Corridor Cities Transitway (or Corridor Connectors).

Properties that meet the use and location criteria that are in land zoned for building heights of 100 feet or less would be allowed to exceed the maximum mapped building height up to 200%, and properties with a building height over 100 feet but less than 200 feet may exceed the maximum mapped building height to 150%. These properties would also be able to increase the allowed amount of mapped C and reduce the amount of R, so long as the application stays within the mapped total FAR. The ZTA also adds a provision that if an overlay zone would enact contrary or more restrictive standards, that the overlay zone standards would not apply. **This section of the ZTA is of most concern to staff because it would create situations that are inconsistent with carefully considered issues that have been worked out in master plans.**

## Concerns with ZTA 22-02

As noted above, Planning staff has a number of concerns with the ZTA as introduced, which fall into three major concerns: Master Planning, Building Form Based on Use, and Parking Waivers. There are additional minor technical considerations as well. Staff feels that these concerns warrant a denial of the ZTA or further consideration only if significant changes are made that will address the concerns noted. In this report, staff offers some potential modifications to improve the ZTA.

### MASTER PLANNING

The deepest concern staff has with ZTA 22-02 is the conflict of the Density and Height Allocation changes with the current master planning process. The proposed changes to allow additional building height in both the Commercial/Residential and Employment Zones are in conflict with the importance and complexity that goes into recommending building height through the master planning process. Our concerns are furthered by specific provisions that explicitly nullify Overlay Zone requirements that may specifically and intentionally limit the ability to increase building heights or provide density flexibility.

Our master planning process is a deliberate, and engaging process that fundamentally relies on a shared vision between planners, elected officials, and the community that lives, works, and plays in the county. The recommendations that come from master plans are the result of months of coordinated outreach, education, listening and understanding. Building form elements – such as maximum building height, density, or building step-back requirements – are often some of the most controversial and critical determinations of the master plan process. Allowing certain applicants, notwithstanding the importance of the proposed use, to be exempt from these elements is a serious concern.

Further, by establishing a staggered provision where heights under 100 feet are given the option to double the mapped height, but buildings higher than 100 feet may only increase height 50% creates an odd situation where areas with mapped height in the 80-100 foot range may be approved for taller buildings than areas mapped in the 100-120 foot range. This further increases the impact of this ZTA on properties closer to the edge of our urban centers, most likely adjacent to residential or institutional uses, which warranted the intentionally lower mapped heights.

Getting building heights correct is something staff is particularly sensitive to because it has impact on many elements of a balanced plan, including density, compatibility, and community design. Adding to the uncertainty is the fact that any property in the CR, EOF or LSC zone could apply for this significant increase in height, making it impossible to implement a plan vision for sensitive transition areas in an unarbitrary way.

**If the ZTA moves forward, staff would recommend, at a minimum, including language that prohibits the increased heights on properties that are adjacent to, confronting, or within a particular buffer of any residentially zoned property (including multi-family residential, and**

**including properties in the CRN zone).** Otherwise, the only level of compatibility left is the standard height and setback compatibility standards already in the code, which are a poor stand-in for the more gradual height increases recommended by master plans and mapped in zoning.

#### BUILDING FORM BASED ON USE

Another concern staff has is that this ZTA would make the aforementioned building height modifications based on a presumed building occupant, without any long-term guarantee who the occupant of that building will be. **The modification to building height in this ZTA is intended to specifically benefit the larger life sciences industry, but there are no assurances the building will ultimately be occupied by a life science user, or that the initial user doesn't vacate after a few years.**

The only provisions in the code now that allows building height modification for a specific use is for Moderately Priced Dwelling Units (MPDUs), and a provision that allows extra building height in Silver Spring to support a grocery store. With the MPDUs, a building may exceed the mapped height only with a Planning Board finding that the additional height is needed to achieve the benefit, and when a 99-year agreement is established with the MPDUs guaranteeing the long-term continuation of the MPDU use. The consequence of allowing a taller building for a use without such a long-term agreement is already evident in Silver Spring where a mixed-use building was approved taller than the mapped height to accommodate a grocery store that has yet to commit to the space. Ultimately a decision will be needed to leave the space vacant only for a grocery store, or to fill the space with a non-grocery retailer. The introduced ZTA language has no safeguard or alternative mechanism to ensure the additional building height is going to the intended purpose and will not result in spec built, unoccupied construction that gets converted to a different use after construction.

#### PARKING WAIVERS

The new Section 3.5.8.4. Parking, on lines 23 – 34 of the introduced ZTA is problematic and redundant with other provisions within Chapter 59. As described earlier, the ZTA would establish provisions to provide less than the minimum parking required in a PLD without having to make a payment to the PLD, while also establishing provisions to provide more than the maximum parking. Both of these would be done by the deciding body approving a new parking waiver, also introduced within the section. Staff has major concerns in allowing so much flexibility to **provide either less parking than required or more parking than allowed, especially within the PLD which explicitly is not intended to have excess parking and relies on payments from applicants to support existing public facilities.**

Regarding the first waiver in subsection a. allowing less than the code required parking, there is existing code that currently allows applications in PLDs to provide less than the minimum required parking, with the caveat that the applicant pay into the PLD fund. As written this new waiver would

not require BPCs to pay into the PLD if it provides less than the required minimum, so it is staff's assumption that circumventing the PLD fund was the intent. Not requiring a payment to the PLD for any parking below the minimum required on-site would deprive these entities of a needed revenue source that is paid by every other user within the district. This waiver would effectively create no minimum parking requirement for the BPC use in a PLD if the Planning Board agrees to the reduced parking. **Staff supports minimizing parking in PLDs, but believes that all users should still be required to pay into the PLD fund if they have less than the minimum parking.**

Subsection b. is the waiver that would allow more than the maximum allowed parking within a PLD. Current requirements for parking in a PLD do not allow an applicant to exceed the maximum parking under any circumstance, thus this waiver would create a major change in existing policy. The ZTA would allow this if the excess parking provided is for the public, but does not require a determination that the extra public parking is needed and risks providing too much parking in a PLD. **Staff is concerned about allowing any users in a PLD to exceed the parking maximum – even if the spaces are available to the public as this would result in private garages being oversized and competing with the PLD.** If a site enters into an agreement with the PLD to provide excess parking, this excess should not count toward the application and would therefore not be an issue.

It is also unclear why, and presumed to be an error, that the new waiver provision added with this ZTA subsection c. would allow a deciding body to waive any requirements of Section 6.2.5 Vehicle Parking Design Standards, when the intent of the waivers above are targeted toward the minimum and maximum parking standards of the PLD. There is no direct connection to new Sections 3.5.8.E.4.a and b providing modifications to parking in a PLD, and the actual waiver in subsection c., which only would allow the parking design standards to be waived. Also, the design standards section may already be waived by the parking waiver under Section 6.2.10 making the text redundant as written. Staff wonders if this was a drafting error.

**Staff's recommendation is to eliminate the parking provisions and waiver proposed by the ZTA in its entirety. However, if the intent is still to change the parking policies for BPCs located within a PLD, staff suggests a much shorter and cleaner way would be to not include the new Section 3.5.8.E.4 and instead make any necessary amendments to Division 6.2 Parking, Queuing, and Loading instead. Section 6.2.3.H.1 Parking Lot District could be modified to create exceptions for the BPC use, or Section 6.2.10. Parking Waiver could be modified to allow a BPC use to request a waiver of the PLD provisions, which are currently not allowed to be waived.**

#### OTHER TECHNICAL COMMENTS

Building Height: The ZTA as introduced creates ambiguity around a mapped building height of 100 feet. The ZTA provides different treatments for two different ranges of mapped building heights ("100 feet or less" and "100 to 200 feet"), which are both inclusive of 100-foot heights. If this ZTA is ultimately to be adopted, the ZTA text should either identify building height thresholds as 'under 100

feet’ and’ heights of 100 to 200 feet’, or building ‘heights up to 100 feet’ and ‘heights of 101 feet up to 200 feet’.

Planning Board Approval: The ZTA explicitly indicates that a property may exceed the mapped height maximum only with Planning Board approval. However, the immediate subsequent text, pertaining to increasing the amount of nonresidential FAR does not explicitly require Planning Board approval, which staff believes should also be required. The recommended fix would be to rewrite the text of the new subsection 5 (in both the Commercial/Residential Zones section and the Employment Zones section) to start with the text “With Planning Board approval [For a] Life Science or...” which would then apply to both the increased heights and the increased nonresidential FAR.

Also, it is not clear what is meant by ‘Planning Board approval’. There is a presumption this takes the form of a Site Plan, but there may be situations where Site Plan is not required based on adjacent zones and the FAR density requested by the application. Staff recommends anywhere within the ZTA there is reference to Board approval, it be stated as Board approval of a site plan.

### **Alternative ZTA language**

Understanding the sponsor’s intent to promote growth in the biohealth industry in Montgomery County, but recognizing the many concerns staff has with the introduced ZTA – particularly with how it is in conflict with the master plan process – staff has both made suggestions within this report on how to modify the introduced ZTA language and also offers the following alternative code language which could be added to Sections 4.5.2 (for Commercial/Residential Zones) and 4.6.2 (for Employment Zones):

#### **E. Development of certain Bio-Tech Applications**

For any application that includes buildings to be used by Life Sciences, Research and Development, or Medical/Scientific Manufacturing and Production users, the following provisions apply:

1. Residential FAR may be reallocated to nonresidential FAR if the total FAR does not exceed the maximum total mapped FAR for the property, and the building height does not exceed the mapped building height except as allowed under Section 4.5.2.E.2. or Section 4.5.2.E.3.
2. Building height for a portion of a building may be increased above the number following the H on the zoning map so long as the average height of the building is no greater than the maximum height allowed by the mapped zone. Average building height is calculated as the sum of the area of each section of the roof having a different height multiplied by that height, divided by the total roof area. Height is measured as the midpoint of each roof section along each frontage.
3. Building height for one or more buildings across a campus-like development site may be increased above the number following the H on the zoning map under the following circumstances:
  - a. The development site is one or more properties under joint application by the same applicant;

- b. The property or properties under application are adjacent or part of a campus;
  - c. The zoning within the development site may be mapped with different amounts of C, R and total FAR, and different maximum heights, provided they are within the same underlying zoning classification;
  - d. The average building height across a development site is no greater than the average maximum height allowed across the development site, based on the mapped zones.
    - i. Average building height across a development site is calculated as the sum of each area of each section of roof having a different height multiplied by that height, divided by the total roof area. Height is measured as the midpoint of each roof section along each frontage.
    - ii. If the development site has two or more different mapped heights, the average maximum height is based on the proportion of the development site within each mapped height area. It is calculated as the sum of site square footage within each mapped height area multiplied by the mapped height, divided by the total site area.
  - e. Increases in building height above the H on the zoning map under Section 4.5.2.E.3 is not allowed within 200 feet of a property in any of the Residential Zones, or the CRT Zone that is vacant or improved with an agricultural or residential use;
4. Any reallocation of residential FAR to nonresidential FAR under Section 4.5.2.E.1 or averaging of building heights under Section 4.5.2.E.2 or Section 4.5.2.E.3 require site plan approval under Section 7.3.4.

The height averaging approach proposed above is an alternative way to provide building height flexibility on a site of one or multiple zones based on the existing framework of building height averaging that exists across single properties within the same zone. This targets the added flexibility to larger properties that have more options to increase the height while incorporating design elements to increase compatibility. Subsection e. also incorporates Staff's concern about a lack of a buffer between the CR and Residential zones in some locations. In the provided example a simple distance buffer was chosen, but this could also be replaced with language about adjacent and confronting properties.

### **Racial Equity and Social Justice (RESJ)**

Staff received the Office of Legislative Oversight (OLO) RESJ statement on ZTA 22-02. Generally, it mirrored similar concerns expressed during the review of ZTA 21-09 for Biohealth Priority Campuses, namely noting inequities in the employment makeup and opportunities within the Biohealth industry. This report however did also highlight one of Planning Staff's stated concerns about this ZTA undermining the Master Planning process, breaking trust with communities and disadvantaging communities that are typically under-represented in public comment of development applications.

## SECTION THREE

### CONCLUSION

#### **Conclusion**

Staff recommends the Planning Board transmit comments recommending denial of introduced ZTA 22-02 to the District Council or consideration with significant revisions, highlighting the list of policy and technical concerns identified in this staff report. While staff understands the importance of supporting the growing biohealth industry and its unique difficulties developing in urban infill areas, we remain deeply concerned with the unintended consequences of these proposed modifications.

#### **Attachments**

- A – ZTA introduction Packet for ZTA 22-02
- B – RESJ Statement

**June 14, 2022**

**The Honorable Gabe Alborno**

President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

**Subject:** Zoning Text Amendment No. 22-02

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**BOARD RECOMMENDATION**

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on June 9, 2022 and by the vote of 5:0 supported Zoning Text Amendment (ZTA) 22-02, as presented in its revised form, which was circulated by the office of the lead sponsor, Councilmember Friedson, on May 26, 2022 (Attachment 1-B). The Planning Board also supported clarifying language presented in testimony received during its meeting (Attachment 2). The revised ZTA adds new height and density standards for certain Biohealth users under the Optional Method of Development for the Commercial/Residential and Employment zones.

The ZTA revision from May 26 provides flexibility to Research & Development and Medical Manufacturing businesses located in or adjacent to Red Policy Areas or within ½ mile of a planned or built BRT or CCT line. Tracts that front on arterial or higher classified roads and do not abut or confront residentially zoned properties have the option to utilize height averaging for buildings across the entire tract, and buildings located in areas mapped at or below 100 feet may increase the building height up to 1.5 times the mapped height.

Further refinement of the ZTA was presented to the Board at its hearing, clarifying that buildings in an underlying zone under 100 feet may utilize both the tract height averaging as well as the increase in building heights, and that averaging is across a tract and not a site. The Board is favorable to these changes to the May 26 version of the ZTA providing additional flexibility and language consistency (Attachment B).

The Board appreciates Council staff's collaboration with Planning staff in developing the revisions to the ZTA as well as efforts by the Council to provide regulatory flexibility to our economic development priorities around the Biohealth industry. We look forward to discussing the circulated revisions to ZTA 22-02 at future Council work sessions.

### **CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, June 9, 2022.



**Casey Anderson**  
Chair

Attachment 1: Planning Board Staff Report and Attachments  
Attachment A: Introduction Packet for ZTA 22-02  
Attachment B : Revised ZTA 22-02  
Attachment C: RESJ Statement for 22-02

Attachment 2: Additional Clarifying Modifications

CA:BB:aj

# Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

**ZTA 22-02:**

**DENSITY AND HEIGHT LIMITS, PARKING - BIOHEALTH**

## SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 22-02 could negatively impact racial equity and social justice as its benefits would disproportionately accrue to White business owners and employees. OLO anticipates a small impact of this ZTA on racial and social inequities. To improve racial equity and social justice, this statement offers a few recommended policy options for consideration.

## PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.<sup>1</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.<sup>2</sup>

## PURPOSE OF ZTA 22-02

The purpose of ZTA 22-02, Density and Height Limits, Parking – Biohealth, is to diminish current requirements for building height, density, and parking for biohealth facilities that locate in urban areas in the County. The underlying intent of ZTA 22-02 is to reduce building regulations for biohealth businesses that could grow the sector and advance economic development in the County.

Towards this end, ZTA 22-02 amends recent changes to the zoning code establishing Biohealth Priority Campuses to provide more building flexibility for facilities that locate on them and increases building height and density allocations for biohealth facilities that operate under the Life Sciences, Research and Development, and Medical/Scientific Manufacturing and Production uses.<sup>3</sup> More specifically, this ZTA allows the transfer of floor area ratios (FARs) for residential uses to commercial uses thus increasing densities for biohealth facilities beyond what is currently allocated on the zoning map for commercial uses in Commercial/Residential (C/R) zones.

If enacted, ZTA 22-02 would allow:

- Biohealth Priority Campuses to consolidate facilities for utilities, open space, parking and reduce parking space requirements.
- Higher building densities and height allocations for biohealth facilities located in C/R zones within a Red Policy Area<sup>4</sup> (or adjacent to it), within an Opportunity Zone,<sup>5</sup> or within ½ mile of a planned or existing Bus Rapid Transit route.<sup>6</sup> Increased building densities and height allocations established with this ZTA could supersede existing Overlay Zone requirements for building densities and height allocations.
- Higher building densities and height allocations for biohealth facilities located in Employment Zones. Increased building densities and height allocations established with this ZTA could also supersede existing Overlay Zone requirements for building densities and height allocations.

# RESJ Impact Statement

## Zoning Text Amendment 22-02

ZTA 22-02 was introduced on March 15, 2022.

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### LAND USE, ECONOMIC DEVELOPMENT, AND RACIAL EQUITY

Understanding the impact of ZTA 22-02 on racial equity and social justice requires understanding the historical context that shapes land use and economic development in Montgomery County today. To describe this historical context, this section describes the historical drivers of racial inequities in land use and economic development and available data on racial disparities, especially within the biohealth industry.<sup>7</sup>

**Inequities in Land Use.** The way land is used and regulated either helps or hinders people's access to opportunity. Throughout the 20<sup>th</sup> century, jurisdictions have used zoning to separate not only uses – like residential, commercial, and industrial – but also people according to wealth, class, and race.<sup>8</sup> More specifically, land use regulations have been used to exclude people of color and low-income residents from predominantly White and affluent residents in several ways. For example, by allowing single family homes or homes on large lots, both of which exclude more affordable housing.<sup>9</sup> This has resulted in the concentration of poverty, especially in BIPOC communities.<sup>10</sup> Because social determinants are so tightly connected to where one lives, the implications of zoning on inequality are large as where one lives determines where they go to school, their exposure to crime and policing, and where they can shop.<sup>11</sup> For homeowners, where one resides is perhaps the most important determinant of their family's wealth.<sup>12</sup>

Data show that many poor neighborhoods have disproportionately high people of color populations and lack access to jobs, good schools, and other opportunities necessary to help residents rise out of poverty.<sup>13</sup> The land use injustices and social inequities impacting localities are multi-faceted.<sup>14</sup> They manifest not only in housing segregation but also in disparities in exposure to pollution, health inequities, unequal access to green and blue infrastructure (e.g. parks, trees, well-functioning waterways), transportation infrastructure, and economic investment.<sup>15</sup> These inequities result from zoning and a variety of other government policies and private actions that include environmental laws, housing policies, transportation policies, restrictive covenants, housing-market discrimination, and redlining.<sup>16</sup>

Patterns of inequitable land use in Montgomery County manifest as racial and economic segregation by Council district, higher rates of unemployment, poverty, and housing burden among Black and Latinx residents, and as greater reliance on public transit and longer commutes for Black residents. More specifically, the data shows:

- Racial and economic segregation by Council district where 72 percent of District 1 (Bethesda, Poolesville, and Potomac) residents were White, average household income was \$205,600, and the poverty rate was 3 percent compared to 66 percent of District 5 residents (Burtonsville, Silver Spring, and Takoma Park) were BIPOC, average household income was \$102,500, and the poverty rate was 9 percent from 2011 to 2015.<sup>17</sup>
- Racial inequities in unemployment where 5 percent of Black residents and 4 percent of Latinx residents were unemployed compared to 3 percent of Asian and White residents in 2019.<sup>18</sup>
- Racial inequities in poverty where 13 percent of Latinx residents and 12 percent of Black residents lived in poverty compared to 6 percent of Asian residents and 3 percent of White residents in 2019.<sup>19</sup>
- Racial inequities in housing burden where 59 percent of Latinx renters and 54 percent of Black renters expended more than 30 percent of their household income on housing compared to 43 percent of Asian renters and 42 percent of White renters in 2019.<sup>20</sup>
- Racial inequities in public transit use where 21 percent of Black residents commuted to work via public transit compared to 14 percent of Asian residents, 13 percent of White residents and 11 percent of Latinx residents.<sup>21</sup>

# RESJ Impact Statement

## Zoning Text Amendment 22-02

- Racial inequities in commuting time where Black residents averaged 38 minutes commutes to work compared to 36 minutes commutes for Asian residents and 34 minutes commutes for both White and Latinx residents.<sup>22</sup>

**Inequities in Economic Development.** Historically inequitable policies have fostered racial and ethnic inequities in economic development among business owners and employees. As noted by the Federal Reserve Bank of Boston:<sup>23</sup>

“(T)he practices and policies that laid the groundwork for and built the U.S. were explicitly designed to ensure an absolute accumulation of intergenerational wealth and concentrated power for white people, particularly men. A legacy of land theft, slavery, racial segregation, disenfranchisement, and other exclusive policies against Black and Indigenous people and people of color produced a racialized economy that decimated these communities and intentionally barred survivors and descendants from building wealth, socioeconomic well-being, and resilience.”

Current inequities in policies and practices also adversely impact people of color as they consider starting and growing businesses. These include disparities by race and ethnicity in educational attainment, personal wealth, access to mainstream capital, and exposure to entrepreneurship in family and social networks.<sup>24</sup> They also include disparities by race and ethnicity in access to credit with Black - and Latinx-owned businesses more likely to have been denied credit, to receive only a portion of the funding requested, or to refrain from applying for needed funding out of fear their applications will be rejected.<sup>25</sup> Other factors that explain the disparity in capital include discriminatory lending practices, less wealth to leverage, recent financial challenges, and lower credit scores.

Historic and current inequities in economic opportunity result in sizable disparities in business ownership, employment, and income by race and ethnicity. More specifically:

- Despite Black and Latinx firms each accounting for 15 percent of local firms in 2012 and Asian firms accounting for 14 percent of local firms, Black and Latinx firms each accounted for less than 2 percent of business revenue, and Asian firms accounted for 4 percent of business revenue.<sup>26</sup>
- Nearly two-thirds (64 and 62 percent) of White and Asian residents in Montgomery County were employed in management, business, science and arts occupations in 2017 compared to less than half of Black residents (45 percent) and only a quarter of Latinx residents were employed in such positions.<sup>27</sup>
- The median household income for White families in Montgomery County was \$119,000 in 2017 and \$109,000 for Asian families compared to \$73,000 for Black households and \$72,000 for Latinx households.<sup>28</sup>

**Inequities in the Biohealth Industry.** Systemic racism has also fostered racial inequities in health care and the biohealth industry. The nation’s history of inequitable health care by race predates its founding with the near genocide of Indigenous people due to their exposure to small pox and other diseases from European colonists and the inhumane treatment of enslaved Africans that made them more susceptible to disease and death.<sup>29</sup> Post slavery, health care services remained segregated by race and it was not until the 1960’s with the passage of Medicare and Medicaid that health care services were integrated.<sup>30</sup>

Racial inequities have also characterized the biohealth industry where historically the medical community has exploited Black people through experimentation.<sup>31</sup> Additionally, educational and occupational segregation continue to limit the participation of Black and Latinx people as professionals in Science, Technology, Engineering, and Mathematics (STEM) fields that include the biohealth industry. Nationally, between 2017 and 2019:<sup>32</sup>

- Black people accounted for 11 percent of all jobs, 9 percent of STEM jobs, and 6 percent of life science jobs.
- Latinx people accounted for 17 percent of all jobs and 8 percent of STEM jobs and 8 percent of life science jobs.

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- Asian people accounted for 6 percent of all jobs, 13 percent of STEM jobs and 19 percent of life science jobs.
- White people accounted for 63 percent of all jobs, 67 percent of STEM jobs and 65 percent of life science jobs.

A study of personnel and executives in the biotech industry also finds an under-representation of Black, Latinx and Indigenous employees and executives. The 2020 survey of 18 biotech firms found that:<sup>33</sup>

- Black people accounted for 7 percent of biotech employees and 3 percent of executives;
- Latinx people accounted for 4 percent of biotech employees and 4 percent of executives;
- Asian people accounted for 18 percent of biotech employees and 14 percent of executives;
- Native Americans, Hawaiians and Pacific Islanders accounted for 0.4 percent of biotech employees and 0 percent of executives; and
- White people accounted for 65 percent of biotech employees and 78 percent of executives.

These racial and ethnic disparities in the biohealth workforce are significant because the industry offers high wages. In 2017, bioscience workers earned an average income of nearly \$99,000.<sup>34</sup> In Maryland, the average annual pay for biomedical positions was nearly \$70,000 with workers at the 25<sup>th</sup> percentile earning \$44,000 annually and those at the 90<sup>th</sup> percentile earning \$107,000 annually.<sup>35</sup>

The racial and ethnic disparities in the biohealth workforce are also significant because the industry is sizable. More than 800,000 people work in the biopharmaceutical industry in the U.S.; it is estimated that the biohealth industry supports another 4.7 million jobs across the country.<sup>36</sup> Of note, the Biohealth Capital Region of Maryland, the District of Columbia, and Virginia employs an estimated 75,000 workers and ranks fourth among U.S. biopharma hubs, behind Boston, San Francisco, and New Jersey/New York.<sup>37</sup> The United Therapeutic Corporation headquartered in Silver Spring, Maryland and the Research Training Park in North Carolina employs 950 people.<sup>38</sup>

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## ANTICIPATED RESJ IMPACTS

Understanding the impact of ZTA 22-02 on racial equity and social justice requires understanding the stakeholders most likely to be impacted by this zoning text amendment and their demographics. Since this ZTA is aimed at reducing building regulations and requirements for biohealth facilities, biotech firm owners, employees and residents located near biohealth facilities are the stakeholders most likely to be impacted by this ZTA as follows.

- **Biohealth Business Owners.** Available data on local business revenue suggest that White-owned firms predominate the biohealth industry and thus could disproportionately benefit from ZTA 22-02. While White-owned firms accounted for slightly more than half of all Montgomery County businesses in 2012, they accounted for more than 90 percent of local business revenue. If White-owned firms benefit more from ZTA 22-02 than BIPOC-owned firms, this ZTA could widen current racial and ethnic inequities in entrepreneurship.
- **Biohealth Workers.** Available data on occupations and the biohealth workforce from national and local sources suggests that Asian residents are significantly over-represented among local biohealth workers and thus could disproportionately benefit from growth in the local biotech industry fostered by ZTA 22-02. White people account for a majority of the biotech workforce and thus would benefit from biotech industry growth as well. Nationally, Asian people account for 18 percent of biotech positions compared to 6 percent of the overall workforce; White people account for 65 percent of biotech positions compared to 63 percent of the overall workforce. If Asian and White employees benefit more from ZTA 22-02 than Black, Latinx and Indigenous residents, this ZTA could widen current racial and ethnic inequities in biohealth employment

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- **Residents Near Biohealth Facilities.** County residents whose communities abut biohealth facilities are the residents potentially most impacted this ZTA. Currently, the master plans, sector plans, and overlay zone districts impacting the zones subject to ZTA 22-02 have been shaped with community engagement.<sup>39</sup> Every master plan, sector plan, functional plan, or plan amendment is submitted to a full public hearing.<sup>40</sup> Planning staff also initiates community participation in the development of master plan staff drafts that can include the formation of master plan citizens advisory committees to ensure that master plans reflect residents' interests.<sup>41</sup>

OLO anticipates a negative impact of ZTA 22-02 on the residential neighbors of biohealth facilities because it potentially overrides master plans, sector plans, and overlay plans shaped by community engagement. This ZTA also does not establish a process for community engagement per biohealth facility request to utilize the height, density, and parking provisions that it authorizes. The demographics of which residents could be most adversely impacted by this ZTA, however, remain unknown as it is unclear where biohealth facilities will locate, relocate, or expand in the County due to this ZTA.

Taken together, OLO finds that ZTA 22-02 could have a net impact of widening racial and ethnic inequities in the County as available data suggests that the two groups to benefit the most from this bill – biohealth business owners and employees – are disproportionately White and Asian. To narrow racial and social inequities, ZTA 22-02 would have to yield greater benefits for BIPOC groups under-represented in the biohealth industry as business owners and employees. Overall, OLO anticipates a small impact of ZTA 22-02 on racial and social inequity.

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### RECOMMENDED POLICY OPTIONS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.<sup>42</sup> For zoning text amendments, OLO offers recommended policy options rather than amendments to offset potentially racially or socially inequitable changes to the Zoning Ordinance.

Overall, OLO finds that ZTA 22-02 could widen racial and ethnic inequities because its provisions could exacerbate racial inequities in business revenue and employment in the biohealth sector. Should the Council seek to advance equitable growth in the biohealth industry that reduces racial and social inequities, the following policy options could be considered to require and/or encourage biohealth firms seeking to create or expand their facilities to:<sup>43</sup>

- **Report workforce and vendor data by race, ethnicity, and gender.** The rationale for public policies to support economic development is that their benefits exceed their costs to government. Yet, there is rarely any accountability for achieving favorable returns on public investments for economic development or equitable development that narrows gaps in outcomes by race and ethnicity. To track whether changes in the zoning code and/or other public policies enhance equitable economic development, the County Council could encourage and/or require biohealth firms to report data on their workforce and vendor demographics by race (Black, Asian, White, Indigenous, Other), ethnicity (Latinx), and gender (male, female, non-binary).
- **Invest in workforce development opportunities, particularly for BIPOC residents.**<sup>44</sup> To ensure that growth in the biohealth industry benefits a cross-section of communities and reduces disparities in the biohealth workforce by race and ethnicity, biohealth firms could be encouraged to enter into agreements to provide biohealth workforce development opportunities for underrepresented persons of color. Biohealth firms investing in biohealth workforce development programs could be encouraged to partner with community members, education institutions and non-profit partners to design and deliver programs. Career and technical education programs in secondary and post-secondary institutions, apprenticeships and targeted training could increase the pipeline of Latinx and Black residents into biohealth professions.

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- **Invest in local small businesses, especially underrepresented BIPOC small businesses.**<sup>45</sup> To ensure that local small businesses inclusive of BIPOC businesses benefit from the expansion of biotech business opportunities, biotech firms could be encouraged to (a) partner with underrepresented BIPOC businesses to increase the success of such firms in the biohealth industry; and (b) provide opportunities to BIPOC businesses that offer spillover benefits for industry expansion. For example, local biohealth firms could be encouraged to support an industry eco-system analogous to the Opportunity Hub Initiative in Atlanta that promotes “inclusive high-tech innovation, entrepreneurship, and investment eco-systems” to foster BIPOC entrepreneurship in technology.<sup>46</sup>

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

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### CONTRIBUTIONS

OLO staffers Elaine Bonner-Tompkins, Senior Legislative Analyst, and Elsabet Tesfaye, Performance Management and Data Analyst, drafted this RESJ impact statement.

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<sup>1</sup> Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

<sup>2</sup> Ibid

<sup>3</sup> Montgomery County Council, Zoning Text Amendment 22-02, Density and Height Limits, Parking – Biohealth, Introduced March 15, 2022

<sup>4</sup> Red Policy Areas, also known as Metro Station Areas Policy Areas (MSPA), are one of the four areas within the Transportation Policy Area. MSPAs are characterized by high-density development and the availability of premium transit service (Metrorail, MARC). Montgomery County Planning Department

<sup>5</sup> Opportunity Zones are designed to spur economic development by providing tax benefits to investors. They are part of a federal tax code that allow investors to roll capital gains into Opportunity Funds that invest in businesses, equipment, and real property in select census tracts. Montgomery County Planning Department: Montgomery County Economic Indicators Briefing 2019.

<sup>6</sup> Bus Rapid Transit is a high-quality and high-capacity bus-based transit system that delivers fast, comfortable, reliable and cost-effective transit service. Montgomery County Planning Department, Transportation.

<sup>7</sup> Information in this section originally referenced in OLO RESJ Impact Statement for ZTA 21-09, Office and Professional – Biohealth Priority Campus, December 2, 2021

<sup>8</sup> Tyler Quinn-Smith, Zoning for Equity: Raising All Boats. Smart Growth America

<sup>9</sup> Lance Freeman, Build Race Equity into Zoning Decisions, Brookings Institution

<sup>10</sup> Tyler Quinn-Smith

<sup>11</sup> Lance Freeman

<sup>12</sup> Ibid

<sup>13</sup> Kathleen McCormick, Planning for Social Equity, Land Lines, Winter 2017

<sup>14</sup> Tony Arnold, “Land-Use Regulation: What’s It Worth Anyway?” Urban Institute

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Leah Headey and Lily Posey, Racial Inequities in Montgomery County, 2011-15, Urban Institute, [https://www.urban.org/sites/default/files/publication/95386/2017.12.28\\_montgomery\\_county\\_finalized\\_7.pdf](https://www.urban.org/sites/default/files/publication/95386/2017.12.28_montgomery_county_finalized_7.pdf)

<sup>18</sup> National Equity Atlas, <https://nationalequityatlas.org/indicators/Unemployment#/?geo=04000000000024031>

<sup>19</sup> Ibid

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<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Field Note, 2020-2, December 2020 – Turning the Floodlights on the Root Causes of Today’s Racialized Economic Disparities: Community Development Work at the Boston Fed Post-2020, Regional and Community Outreach

<sup>24</sup> Stephen Roblin, COVID-19 Recovery Outlook: Minority-Owned Businesses, Office of Legislative Oversight, September 21, 2020

<sup>25</sup> Alicia Robb, "Minority-Owned Employer Businesses and their Credit Market Experiences in 2017," Office of Advocacy U.S. Small Business Administration, July 22, 2020 cited by Stephen Roblin

<sup>26</sup> Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019

<sup>27</sup> American Community Survey, 1 Year Estimates, 2019, Table S0201

<sup>28</sup> Jupiter Independent Research Group

<sup>29</sup> W.M. Byrd and L.A. Clayton, Race, medicine, and health care in the United States: a historical survey, 2001, National Medical Association. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/>

<sup>30</sup> Ibid

<sup>31</sup> Harriet Washington, Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present, Doubleday, 2007.

<sup>32</sup> Richard Fry, Brian Kennedy, and Cary Funk, STEM Jobs See Uneven Progress in Increasing Gender, Racial, and Ethnic Diversity, Pew Research Center, April 1, 2021

<sup>33</sup> Coqual/Bio: Measuring Diversity in the Biotech Industry: Advancing Equity and Inclusion, Second Annual Report, July 2021

<sup>34</sup> TEconomy/Bio: Investment, Innovation, and Job Creation is Growing in U.S. Bioscience Industry, 2018

<sup>35</sup> Biomedical Salary in Maryland, ZipRecruiter, November 2021. <https://www.ziprecruiter.com/Salaries/Biomedical-Salary--in-Maryland>

<sup>36</sup> SelectUSA, Biopharmaceutical Spotlight: The Biopharmaceutical Industry in the United States

<sup>37</sup> Genetic Engineering and Biotechnology News: The 10 U.S. Biopharma Clusters – Pandemic Reshuffles the Bottom of GEN’s Regional Rankings But Not the Top for Now, March 10, 2021

<sup>38</sup> Our People. United Therapeutics Corporation, 2020

<sup>39</sup> Montgomery Planning, Everything you always wanted to know about planning, zoning, and subdivision in Montgomery County, 1991

[http://montgomeryplanning.org/info/resident\\_guides/subdivision\\_process/documents/EverythingYouAlwaysWantedtoKnowBoutPlanningZoningandSubdivisioninMC.pdf](http://montgomeryplanning.org/info/resident_guides/subdivision_process/documents/EverythingYouAlwaysWantedtoKnowBoutPlanningZoningandSubdivisioninMC.pdf)

<sup>40</sup> Ibid

<sup>41</sup> Ibid

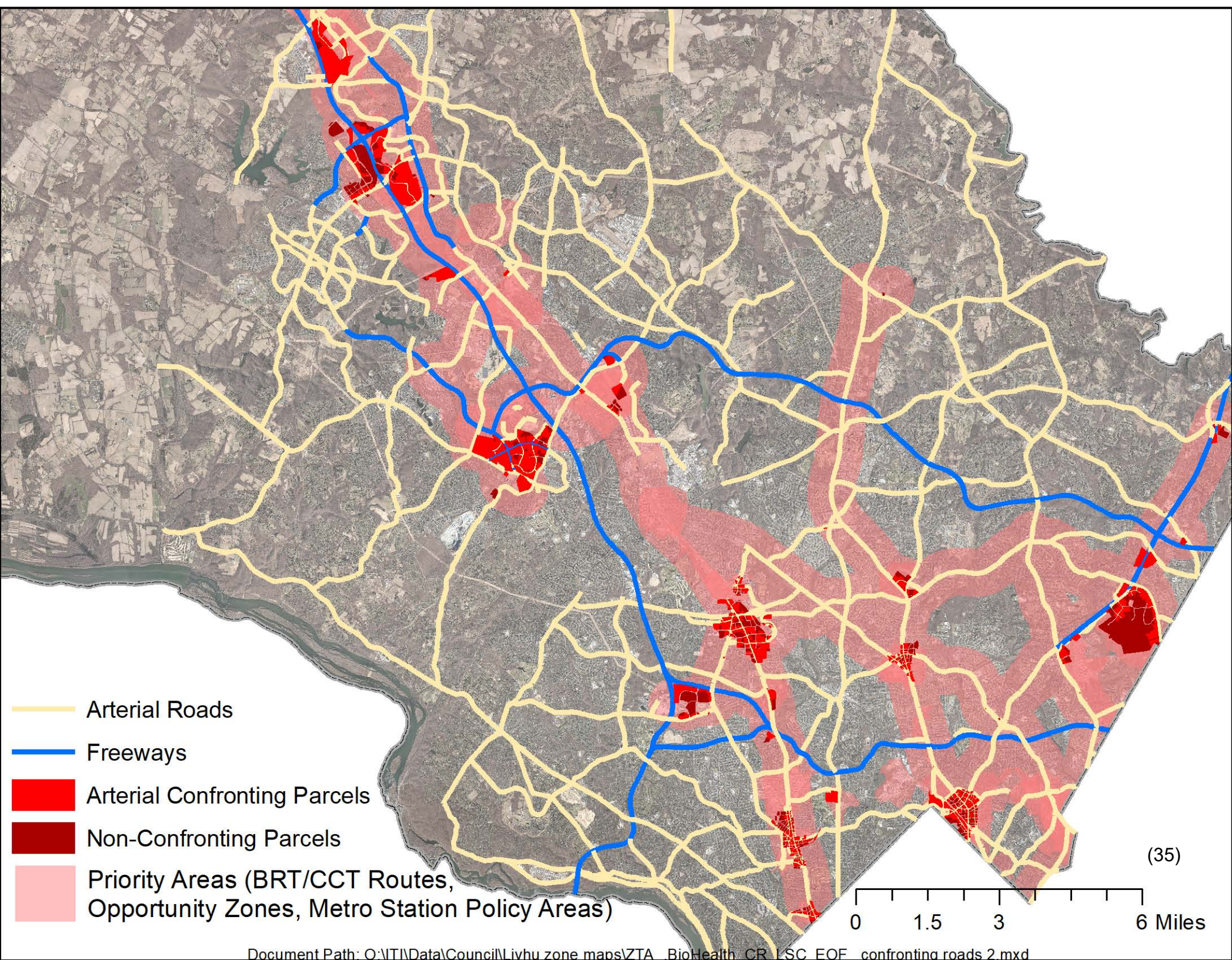
<sup>42</sup> Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established

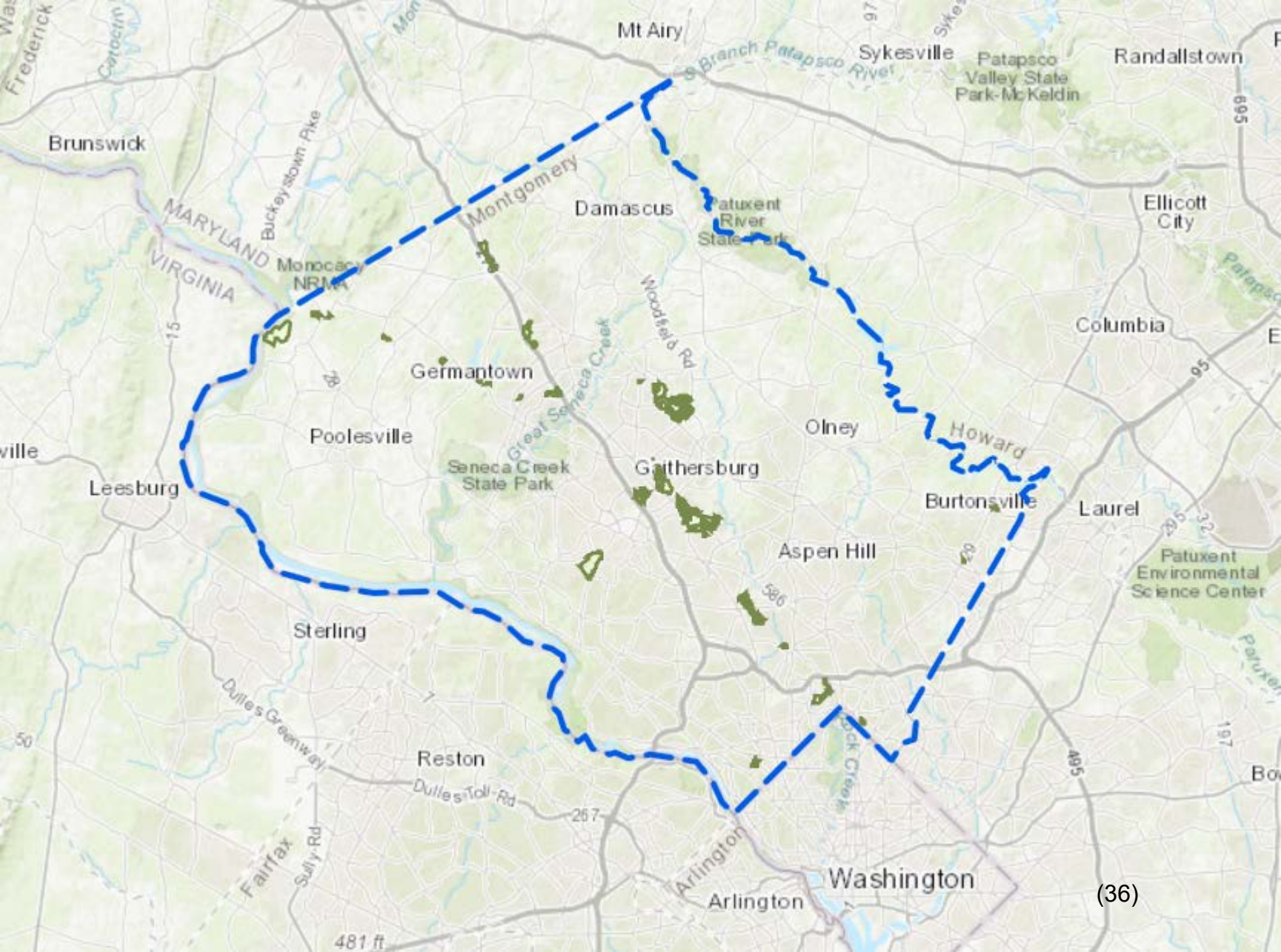
<sup>43</sup> Two of the three recommended amendments originally referenced in OLO RESJ Impact Statement for ZTA 21-09, Office and Professional – Biohealth Priority Campus, December 2, 2021

<sup>44</sup> Sarah Treuhart and Victor Rubin, Economic Inclusion: Advancing an Equity Driven Growth Model, Big Ideas for Jobs, Policy Link, 2012; and Donnie Charleston, “How States Can Support Shared Prosperity by Promoting Quality Jobs,” Shared Prosperity Partnership, Urban Institute, March 2020

<sup>45</sup> Ibid

<sup>46</sup> Mark Muro, Alan Berube, and Jacob Whiton, Black and Hispanic underrepresentation: It’s time to change the equation.” Brookings, March 28, 2018.





## **TESTIMONY OF WARREN AVENUE INVESTORS**

### **Zoning Text Amendment (ZTA) 22-02 – Biohealth Facilities – Development Standards**

June 14, 2022

- Good afternoon. I'm Mark Jackson with Warren Avenue Investors.
- Warren Avenue's principals have developed over 20 Million SF of life science uses in premier markets across the country over the last 30 years including Maryland, Boston, San Francisco, Seattle, and San Diego. Currently Warren Avenue has more than 100,000 SF of life science space in Montgomery County.
- Warren Avenue is teaming up with DSC Partners to convert an approximately 12.7-acre site located on Standish Place near the intersection of East Gude Drive and Crabbs Branch Way into a burgeoning life sciences campus.
- The property is zoned IM (Moderate Industrial) with a 50' mapped height limit
- Warren's development plan for the Standish site will cater to existing life science tenants and attract established companies to what is currently an underutilized flex park.
- Warren Avenue strongly supports the rationale for the ZTA to foster the development of life science facilities by providing flexible development standards that address the unique mechanical system and building design needs of such facilities.
- As introduced, the ZTA applies to properties in the CR, LSC and EOF Zones that meet certain criteria for compatibility with surrounding uses and proximity to transit. We understand the sponsor of the ZTA will be recommending changes to these criteria, which are supported by the Planning Board.

- Warren believes the Standish site meets all of the proposed criteria for proximity to transit, compatibility with adjacent uses, and the ability to develop the project with adaptive buildings.
- The same rationale for providing flexible development standards for life science uses in the CR, LSC and EOF Zones applies to IM zoned properties that meet the proposed compatibility and locational criteria.
- The IM Zone is well situated for life science companies, especially new and emerging companies that are coming out of an incubator space. The “flex use” building characteristics of the IM Zone are ideal for these initial lab spaces, which include (A) move-in ready office layouts; (B) dedicated loading areas and (C) high ceiling/roof heights. Of these 3 characteristics, the high ceiling/roof height is the most important (often 15’+ to the underside of roof structure for a single-story building).
  1. Heavy MEP Infrastructure: Laboratories require a large amount of MEP systems (Mechanical, Electrical, and Plumbing) to keep their lab running. The more space above the “finished” ceiling, the more efficiently and effectively these initial labs can be built.
  2. Flexibility: As life science companies grow and mature, the needs within their built labs also change. The more space above the finished ceiling, the easier and more cost-effective it is to add/modify their existing MEP systems instead of looking to re-design / build their modified labs in a different location.
- However, given these requirements for life science buildings, a 50’ height limit only allows for 3-story, purpose built, lab buildings.
- Therefore, as with similarly situated sites in the CR, LSC and EOF Zones, the flexible heights standards proposed in the ZTA are necessary to allow Warren to develop the Standish site with buildings optimally designed to retain and attract life science companies to the County.
- Accordingly, Warren respectfully requests the County Council to include the IM Zone in the ZTA.
- Thank you for your time and consideration of this request.



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June 14, 2022

**Via Email**

Mr. Gabe Alborno, Council President  
And Members of the County Council  
Council Office Building  
100 Maryland Avenue, 4th Floor  
Rockville, MD 20850

Re: June 14<sup>th</sup> County Council Public Hearing (Zoning Text Amendment 22-02, Density and Height Limits, Parking – Biohealth – the “ZTA”); Stonebridge Letter in Support

Dear Council President Alborno and Councilmembers:

On behalf of Stonebridge, we offer the following comments in support of revised ZTA 22-02. We will also be providing oral testimony during the County Council’s June 14 public hearing, and we will be available to participate in the anticipated early July PHED Committee worksession during which this ZTA will be discussed. Stonebridge supports the revised ZTA as it will create necessary flexibility to allow for more bioscience development sites to respond to the expanding market demand of prospective bioscience tenants in appropriate urban areas of Montgomery County. This further legislative response to create more zoning flexibility in attracting biotechnology tenants to the County’s urban areas is another critical step for Montgomery County in being a leading national hub serving the biohealth/life sciences sector.

Stonebridge has identified several urban redevelopment opportunities that are desirable for bioscience users, but additional flexibility for density and height are needed to bring these economic development opportunities to fruition in urban areas of the County not previously thought to be attractive to these prospective tenants. The ZTA, as originally introduced, provided comprehensive changes to the Zoning Ordinance to create additional flexibility for a greater range of bioscience projects (including Biohealth Priority Campuses). Upon further analyses, however, it was determined by the ZTA sponsor (and Stonebridge agrees) that the broader objectives of the original ZTA could be addressed in other ways and that the focus of this amended ZTA should be narrowed. As such, the revised ZTA eliminates changes applicable to Biohealth Priority Campuses

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and narrows the scope of development sites eligible for greater flexibility relative to density and building height to urban areas best suited to attract highly desirable biotechnology tenants. More specifically, the revised ZTA includes additional protections to ensure that increased building height is only achieved at development sites that are appropriately separated from single-family residential properties and limits the maximum additional building height achievable for bioscience projects through a multiplier (1.5x) to a maximum of 150 feet of building height. All of these changes result in a ZTA that carefully balances the hugely important economic development opportunities and employment and other ancillary benefits of bioscience projects against high quality urban design standards to ensure compatibility with adjacent development.

The revised ZTA will continue to embrace the Montgomery County Strategic Economic Development Plan (2021-2025, the “Economic Development Plan”). The ZTA is consistent with the Economic Development Plan’s recommendation to “[p]rioritize neighborhood-level land use planning to enhance infrastructure and locations that appeal to life sciences companies,” which in turn will allow the public and private sectors to “[a]ggressively recruit life sciences companies to Montgomery County to increase the density of its biohealth establishments.” *See* pp. 16-17. Given that the revised ZTA creates flexible opportunities for delivery of bioscience projects in the County’s urban core, Stonebridge fully supports the ZTA and looks forward to the opportunity to continue to collaborate with Council staff, M-NCPPC staff, and other public sector partners to implement bioscience projects in urban settings.

Again, we will be present at both the County Council public hearing and the PHED Committee worksession should any of you have any questions or need additional information relative to the desire and intention of Stonebridge to be a major stakeholder in the County’s fast-growing efforts to be a leading destination for the biohealth industry.

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer  
& Polott, P.C.**

*C. Robert Dalrymple*

By: \_\_\_\_\_  
C. Robert Dalrymple

*Matthew M. Gordon*

By: \_\_\_\_\_  
Matthew M. Gordon

ZTA 22-02 (County Council Public Hearing)

June 14, 2022

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cc: Ms. Livhu Ndou  
Ms. Cindy Gibson  
Doug Firstenberg  
Jane Mahaffie  
Chris Smith