

M E M O R A N D U M

June 7, 2023

TO: Planning, Housing, & Parks (PHP) Committee
FROM: Livhu Ndou, Legislative Attorney
SUBJECT: Zoning Text Amendment (ZTA) 23-03, Bethesda Overlay Zone – Extensions
PURPOSE: Worksession

EXPECTED ATTENDEES

- Tanya Stern, Director, Planning Department
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department

INTRODUCTION

Zoning Text Amendment (ZTA) 23-03, Bethesda Overlay Zone – Extensions, lead sponsor Council President Glass at the Request of the Planning Board, was introduced on April 11, 2023. ZTA 23-03 will grant a one-time one-year extension to existing deadlines within the Bethesda Overlay Zone (BOZ).

PUBLIC HEARING

A public hearing was held on May 16, 2023. The Planning Board Chair testified in support of the ZTA. Robert Dalrymple of Selzer Gurvitch Rabin Wertheimer & Polott, P.C. testified on behalf of Washington Property Company (“WPC”), also in support of the ZTA.¹ However, Mr. Dalrymple testified that one year would not be sufficient, and requested a one-time two-year extension instead.

SUMMARY OF IMPACT STATEMENTS

Climate Assessment

The Planning Board provided a Climate Assessment for ZTA 23-03. The Board found that since ZTA 23-03 provides a permit extension for an already-approved site plan, there will be no impacts

¹ Written testimony was also submitted, and can be found here:
<https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20230516/index.html>

on the categories of climate assessment, which include: transportation, embodied building emissions, energy, and land cover and management. ZTA 23-03 will also not affect density, location, or building use and design. Lastly, the Board anticipated no impacts on greenhouse gas emissions, sequestration rates, community resilience, or climate related adaptive capacities.

RESJ Impact Statement

The Office of Legislative Oversight (OLO) provided a Racial Equity and Social Justice (RESJ) impact statement. OLO anticipates that ZTA 23-03 will have little to no impact on racial equity and social justice in the County, because it will not establish new policies or practices that may impact RESJ in the County.

DISCUSSION

Background

In the Bethesda Overlay Zone, a development may exceed the mapped FAR on a site if the Planning Board approves a sketch plan or site plan with allocation of gross floor area from Bethesda Overlay Zone (BOZ) Density.² “BOZ Density” means:

the total square footage of gross floor area by which new development in the Bethesda Downtown Plan Area may cumulatively exceed the maximum square footage of gross floor area allowed under the mapped CR and CRT zones. BOZ Density is determined by subtracting the gross floor area of existing and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan). The Planning Board must periodically publish the gross floor area remaining in BOZ Density.³

If the Planning Board approves a site plan using BOZ Density, two separate deadlines are triggered. First, the applicant must have a building permit application accepted by the Department of Permitting Services (DPS) within 2 years of the date of the Planning Board resolution. Second, within 2 years of DPS accepting the building permit application – which must include the core and shell of the principal building – the applicant must obtain that building permit. Neither of these deadlines may be extended, and if an applicant fails to meet these deadlines the entire site plan approval is revoked.

The reason for these strict deadlines, and the inability to extend them, is that there is not unlimited BOZ Density. The intent was to make sure that development projects in the BOZ could not hoard the density since there is a limited amount of total BOZ Density available. If a project receives approval but is unable to meet the deadlines, then the approval will be revoked so that the density

² “FAR” stands for “Floor Area Ratio,” and is used to calculate density. FAR is the ratio between the gross floor area of all buildings on a tract divided by the area of the tract. A tract is defined 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.”

³ The Monitoring and Tracking Program can be found here:

<https://montgomeryplanning.org/planning/communities/downcounty/bethesda-downtown-plan/bethesda-downtown-development-tracking/>.

can be released and available to other applicants. The two deadlines in the zoning ordinance ensure that incomplete applications do not unnecessarily hold up the limited density, and that the applicant is actively working to successfully obtain a permit.

Planning Board Recommendation

ZTA 23-03 will grant a one-year one-time extension to have a building permit accepted by DPS to all applicants who have obtained site plan approval using BOZ Density as of the effective date of the ZTA. In other words, this ZTA would give an automatic extension of the first of the two deadlines. The ZTA focuses on the first deadline of filing for building permits because that is often the stage where developers resolve financing issues. ZTA 23-03 will provide the extension to all currently approved site plan applications that have not yet submitted a building permit application by the effective date of the ZTA and are within the two-year deadline.

The Planning Board recommends approval of ZTA 23-03 due to current market conditions. These conditions include the effects of the pandemic, continued inflation, rising interest rates, increased construction costs, and changes in commercial lending. According to the Board, a one-year extension “strikes a balance between providing some relief to active development applications without totally compromising the intent of the deadlines.”

Proposed Amendments

There are two proposed amendments before the Committee. Council Staff recommends approval of one of them.

I. Clarification

As introduced, ZTA 23-03 reads “the deadline to have a building permit that includes the core and shell of the principal building accepted by the Department of Permitting Services is automatically extended for one year.” However, it is the building permit *application* that should be extended. The Planning Board also recommends this amendment.

For any site plan using BOZ density that was valid on {insert effective date}, the deadline to have **an application for** a building permit that includes the core and shell of the principal building accepted by the Department of Permitting Services is automatically extended for one year.

II. Two-Year Extension

The Council received a request from Washington Property Company to amend ZTA 23-03 to grant a 2-year automatic extension, rather than a 1-year extension. The letter suggests that a 1-year extension is not sufficient given current economic challenges. Specifically, the letter states “[a] 2-year extension would provide greater opportunity for the financial markets to enter a more normal state such that projects with Site Plan approvals (a total of 6 that this ZTA would apply to) could obtain the necessary financing to deliver on those approvals and the important economic benefits to the County’s tax base (as well as increased affordable housing).” In addition, the Council has

previously granted blanket extensions for adequate public facility approvals and for preliminary plan validity periods. These extensions were for two years.⁴

However, the intent of the deadlines is to prevent the hoarding of density. Given their recommendation, Planning is confident that density will not run out in one year. As of May 2023, the status of BOZ Density is as follows:

- **Approved site plans not under construction:**
 - 4824 Edgemoor Lane (67,353 sq. ft. of BOZ)
 - Hampden East (129,995 sq. ft. of BOZ)
 - The Avondale (33,121 sq. ft. of BOZ)
 - 4725 Cheltenham Drive (28,385 sq. ft. of BOZ)
 - The Claiborne (36,273 sq. ft. of BOZ)
 - 4901 Battery Lane (277,713 sq. ft. of BOZ)

- **Current existing on the ground, built since 2017, and approved unbuilt:**
29,449,514 square feet⁵

- **Remaining BOZ Density:**
2,950,486 square feet

There may be a risk of running out of BOZ density if the automatic extension is for two years. Since adoption of the Bethesda Downtown Plan, development has been fast-paced. Planning Staff will be available at the worksession to provide an update on the speed of development in the BOZ and the likelihood of running out of density if the extension is for two years.

This packet contains:

ZTA 23-03	© 1
Planning Board Transmittal - May 8, 2023	© 5
Planning Staff Report – April 27, 2023	© 7
Planning Board Transmittal – March 13, 2023	© 13
Planning Staff Report – March 2, 2023	© 15
Racial Equity and Social Justice Impact Statement	© 23
Climate Assessment	© 25
Testimony	© 28

⁴ The July 2020 staff report for these extensions can be found here:

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2020/20200728/20200728_23.pdf

⁵ This number includes the list of approved site plans not under construction.

Ordinance No.: _____
Zoning Text Amendment No.: 23-03
Concerning: Bethesda Overlay Zone –
Extensions
Revised: 4/5/2023 Draft No.: 1
Introduced: April 11, 2023
Public Hearing: May 16, 2023
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**

Lead Sponsor: Council President Glass at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) grant a one-time one-year extension to existing deadlines within the Bethesda Overlay Zone; and
- (2) generally amend the development procedures of the Bethesda Overlay Zone.

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

Division 4.9. “Overlay Zones”
Section 4.9.2. “Bethesda (B) Overlay Zone”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

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

1 **Sec. 1. DIVISION 59-4.9 is amended as follows:**

2 **Division 4.9. Overlay Zones**

3 * * *

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

5 * * *

6 **D. Development Procedures**

7 1. Except as modified in this subsection, the development procedures of
8 the underlying zone apply.

9 2. Sketch plan and site plan approval under Section 7.3.3 and
10 Section 7.3.4, respectively, are required for all development in the
11 Bethesda Overlay zone that uses the FAR Averaging provisions of
12 Section 4.9.2.C.5.

13 3. To approve a site plan, the Planning Board must find that the proposed
14 allocation of gross floor area, in addition to the sum of previously
15 approved or built developments, does not exceed 32,400,000 square
16 feet of gross floor area.

17 4. If the Planning Board approves a site plan using BOZ Density, the
18 applicant must have a building permit application, accepted by the
19 Department of Permitting Services, that includes the core and shell of
20 the principal building within two years of the date of the Planning
21 Board's resolution. Within two years after the Department of
22 Permitting Services accepts the building permit application that
23 includes the core and shell of the principal building, the applicant
24 must obtain that building permit. [The deadlines under this section
25 may not be extended.] If an applicant fails to comply with any of the
26 deadlines under this section, the entire site plan approval is revoked.
27 For any site plan using BOZ density that was valid on {insert effective

28 date}, the deadline to have a building permit that includes the core and
29 shell of the principal building accepted by the Department of
30 Permitting Services is automatically extended for one year. The
31 deadlines under this section may not otherwise be extended.

32 * * *

33 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
34 date of Council adoption.

May 8, 2023

To: The Honorable Evan Glass
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment 23-03, Bethesda Overlay Zone - Extensions

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on May 4, 2023, and by a vote of 4:0 (Commissioner Pedoeem absent) recommended support for Zoning Text Amendment (ZTA) 23-03 with minor comments. This ZTA was recommended for introduction by the Planning Board in March 2023. The ZTA would amend the Development Procedures of the Bethesda Overlay Zone (BOZ) to grant a one-time, one year extension to the deadline that requires applicants to have a building permit application for the primary building core and shell accepted by the Department of Permitting Services (DPS) within two years of the mailing of an applicable site plan resolution.

This ZTA would create a one-time, one-year automatic extension for all currently approved site plan applications approved for BOZ Density that have not yet submitted a building permit application to DPS and are still within the two-year deadline. This type of automatic extension is similar to blanket extensions the Council has granted previously for adequate public facility approval and Preliminary Plan validity periods. The extension for only one year strikes a balance between providing some relief to active development applications without totally compromising the intent of the deadlines. BOZ Density is a finite resource, though adequate density remains such that a one-year extension is unlikely to cause any undo harm to other development applications in the pipeline.

The Board does make one recommendation to adjust the wording of the ZTA slightly. Currently, the language found on lines 28 and 29 of the ZTA state *the deadline to have a building permit that includes the core and shell of...* The Board recommends, for consistency with the wording of this section, that the language state *the deadline to have an application for a building permit that includes the core and shell of...*

The Honorable Evan Glass
May 8, 2023
Page Two

Other than this minor text insertion the Board has no additional comments and appreciates the continued support for this ZTA.

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, May 4, 2023.



Jeffrey Zyontz
Chair

Attachments:

A - Planning Board Staff Packet



BETHESDA OVERLAY ZONE - EXTENSIONS ZTA 23-03



Description

This ZTA modifies the development procedures in the Bethesda Overlay Zone (BOZ), by granting a one-time, one year extension to the existing deadlines applicable for projects that utilize BOZ density as part of their approval. The extension would apply to when an applicant must have accepted by the Department of Permitting Services (DPS) a building permit.

ZTA 23-03

Completed: 4-27-2023

MCPB

Item No. 13

5-04-2023

Montgomery County

Planning Board

2425 Reedie Drive, Floor 14

Wheaton, MD 20902

Planning Staff

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ZTA SPONSORS

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

INTRODUCTION DATE

April 11, 2023

REVIEW BASIS

Chapter 59



Summary:

- Currently, applications that are approved utilizing BOZ density must have a building permit application accepted by the Department of Permitting Services (DPS) within 24 months of site plan approval.
- The ZTA would grant a one-time, one-year extension to this deadline for any active project currently in this 24-month period.

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SECTION 1: BACKGROUND

RATIONALE FOR INTRODUCTION

Zoning Text Amendment (ZTA) 23-03, Bethesda Overlay Zone (BOZ) – Extensions, was introduced by Council President Glass at the request of the Planning Board on April 11, 2023 (Attachment A). The ZTA is scheduled for a tentative Council Public Hearing on May 16, 2023. The Planning Board on March 9, 2023 approved a request to have the Council introduce the ZTA and it was introduced as ZTA 23-03 with minor modifications to the version transmitted by the Board.

The BOZ is unique in that it establishes post approval deadlines on applicants for when they must apply for, and act on building permits. Within 24 months of plan approval, a development projects must have a building permit application accepted by DPS for the core and shell of the principal building. Projects are then required to obtain and act on that permit within an additional 24 months. These deadlines were established because the BOZ has a total development cap of 32,400,000 square feet of development. The intent was to not let development applications come through and receive plan approvals and then ‘sit’ on their approvals for many years, possibly prohibiting other development applications from moving forward.

The intent of this ZTA is to provide one-time relief to the building permit deadlines set forth in the BOZ code. The recent convergence of continued inflation, rising interest rates, and tightened commercial lending have created headwinds for large development projects facing these regulated deadlines to move forward.

SECTION 2: ZTA 23-03 AS INTRODUCED

ZTA NO. 23-02 AS INTRODUCED

The ZTA makes a minor addition to the Development Procedures Section 4.9.2.D. within the BOZ. These development procedures set forth the requirements for site plan review, require the Planning Board to find with each application that the total density within the BOZ does not exceed the 3.4 million square feet limit, and establishes the two deadlines that apply to development projects that utilized BOZ density in their approval. The ZTA modifies subsection 4 as shown below to provide a one time, one year extension for projects to have the building permit application accepted by DPS.

4. If the Planning Board approves a site plan using BOZ Density, the applicant must have a building permit application, accepted by the Department of Permitting Services, that includes the core and shell of the principal building within two years of the date of the Planning Board's resolution. Within two years after the Department of Permitting Services

accepts the building permit application that includes the core and shell of the principal building, the applicant must obtain that building permit. ~~The deadlines under this section may not be extended.~~ If an applicant fails to comply with any of the deadlines under this section, the entire site plan approval is revoked. For any site plan using BOZ density that was valid on {insert effective date}, the deadline to have a building permit that includes the core and shell of the principal building accepted by the Department of Permitting Services is automatically extended for one year. The deadlines under this section may not otherwise be extended.

This language is substantially similar to what the Board approved transmitting to the Council in March, with only minor editing for clarity and brevity.

SECTION 3: ZTA & SRA ANALYSIS AND RECOMMENDATIONS

ZTA 23-03 ANALYSIS AND RECOMMENDATIONS

The language added by the ZTA would allow any site plan that has utilized BOZ Density in its approval and has yet to reach the first milestone of having a building permit application accepted by DPS to have an additional year. Planning staff have heard from developers that getting approval for financing has become a major hurdle with the ongoing inflation in construction and labor costs, and now the rapid rise in interest rates and tightening of bank lending adding additional squeezes. The ZTA focuses on the first deadline of filing for building permits because that is often the stage where developers resolve financing issues. Given the current availability of BOZ Density for additional new development applications, this one-year extension for any valid project is a fair and appropriate across-the-board way to provide some leeway to developers of approved projects facing financing challenges without sacrificing the intent of the deadlines in the BOZ. The format of the ZTA is similar to how the Subdivision Code (Chapter 50) has been updated in years past granting two-year extensions of adequate public facility validity, and plan validity as one time across the board extensions. Planning staff recommends the Board continue to support this ZTA for these identified reasons.

Planning staff does recommend one minor correction as shown in red and double underline below:

4. If the Planning Board approves a site plan using BOZ Density, the applicant must have a building permit application, accepted by the Department of Permitting Services, that includes the core and shell of the principal building within two years of the date of the Planning Board's resolution. Within two years after the Department of Permitting Services accepts the building permit application that includes the core and shell of the principal building, the applicant must obtain that building permit. [The deadlines under this section may not be extended.] If an applicant fails to comply with any of the deadlines under this section, the entire site plan approval is revoked. For any site plan using BOZ density that was valid on {effective date}, the deadline to have **an application for** a building permit that includes the core and shell of the principal building accepted by the Department of

Permitting Services is automatically extended for one year. The deadlines under this section may not otherwise be extended.

This minor addition does not change the intent of the ZTA but clarifies that the required action is an application.

SECTION 4: LEGISLATED ANALYSIS

CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to prepare a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and upon community resilience and adaptive capacity. The climate impact assessment for ZTA 23-03 is attached in Attachment B. Because ZTA 23-03 only grants a one-time, one-year extension to deadlines to file permits and has no other impact on development patterns or uses, there will be no impacts on the county's greenhouse gas emissions, or on adaptive capacity or resilience.

RACIAL EQUITY AND SOCIAL JUSTICE (RESJ)

As of the posting of this staff report, the Office of Legislative Oversight has not completed a Racial Equity and Social Justice analysis for ZTA 23-03.

SECTION 5: CONCLUSION

Planning staff recommends the Planning Board support ZTA 23-03 as introduced with minor modification, providing a one-time, one-year extension to when applications must have a building permit application accepted by DPS for the core and shell of the principal structure. The current economic situation is creating difficulties for active projects that received their Board approvals when economic conditions were much more favorable to construction. This one-time, one-year approach provides applicants relief, while still maintaining the intent of the BOZ to not let limited density become held up by development projects with no intent or path to move forward.

ATTACHMENTS

Attachment A: Zoning Text Amendment 23-03 Intro Packet

Attachment B: Environmental Impact Statement

March 13, 2023

To: The Honorable Evan Glass
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Proposed Zoning Text Amendment, Bethesda Overlay Zone – Extensions

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on March 9, 2023, and by a vote of 5:0 recommended transmitting a proposed Zoning Text Amendment (ZTA) (Attachment A-2) with a request for introduction. This ZTA would amend the Development Procedures of the Bethesda Overlay Zone (BOZ) to grant a one-time, one year extension to the deadline that requires applicants to have a building permit application for the primary building core and shell accepted by the Department of Permitting Services (DPS) within two years of the mailing of an applicable site plan resolution.

The BOZ is unique in requiring the applicants of a site plan that utilized BOZ Density to successfully file for a building permit within two years of plan approval. The code further requires the applicant to obtain said building permit within two years of DPS accepting the permit application. BOZ Density is a limited resource since the BOZ caps all development in Bethesda at 32.4 million SF. The purpose of the two-year deadlines is to avoid applicants sitting on approved but unused density in a competitive building market. The BOZ is unique in that site plan approvals elsewhere in the County have no building permit-related deadlines and are considered valid as long as the project's Preliminary Plan and Adequate Public Facilities (APF) determination have not expired.

Recently, Planning staff have received requests from applicants in Bethesda with recently approved site plans asking for an extension of the two-year building permit deadlines. Rising costs in labor and construction materials and the recent increase in interest rates have created a very tight construction loan market making it difficult for new projects to move forward. County code does not allow the Planning staff or the Planning Board to extend the BOZ deadlines on a case-by-case basis.

This proposed ZTA would create a one-time, one-year automatic extension for all currently approved site plan applications that have not yet submitted a building permit application to DPS, and are still within the two-year deadline. This type of automatic extension is similar to blanket extensions the Council has granted previously for APF and Preliminary Plan validity periods. The Planning Board

recommends this extension for only one year because it strikes a balance between providing some relief to active development applications without totally compromising the intent of the deadlines. BOZ Density is a finite resource, though adequate density remains such that a one-year extension is unlikely to cause any undo harm to other development applications in the pipeline.

Given the acute financial situation these applicants have encountered, the Board kindly requests the Council introduce this amendment to the Bethesda Overlay Zone. Planning staff are able and willing to work with Council staff or Councilmembers with any questions or concerns that may arise from consideration of this ZTA.

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, March 9, 2023.



Roberto R. Piñero
Vice Chair

Attachments:

- A 1 - Planning Staff Report
- A 2 - Draft BOZ ZTA



PROPOSED ZTA – BETHESDA OVERLAY ZONE – EXTENSIONS



Description

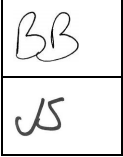
The proposed zoning text amendment would modify the development procedures of the Bethesda Overlay Zone (BOZ) by granting a one-time, one (1) year extension to the existing deadlines within the overlay zone that apply to projects that utilized BOZ Density in their approval.

Proposed ZTA 23-##
Completed: 03-02-2023

MCPB
Item No. 7
03-09-2023

Montgomery County
Planning Board
2425 Reedie Drive, Floor 14
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LEAD TEAM

Countywide Planning & Policy

REVIEW BASIS

Chapter 59 – Zoning



Summary:

- Staff recommends the Planning Board transmit the draft ZTA to the District Council, requesting its introduction.
- Planning staff have heard from the development community that the current high interest rates in conjunction with ongoing inflation are leading to difficulties in securing financing for new development projects.
- The proposed one (1) year extension would provide additional time for approved projects within the Bethesda Overlay Zone (BOZ) that utilized BOZ Density to arrange financing and construction contracts without fully dismantling the intent that development approvals utilizing BOZ Density should proceed in a timely manner or expire.

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SECTION 1: BACKGROUND

RATIONALE FOR THE PROPOSED ZTA

The Bethesda Overlay Zone (BOZ), Section 4.9.2. of the Zoning Code sets forth zoning recommendations to implement the Bethesda Downtown Plan. Included in the BOZ are provisions governing the use of BOZ Density, which is development density beyond what is mapped by the underlying zone that can be obtained by meeting certain standards including a payment to the Park Impact Fund. There is The Development Procedures under Section 4.9.2.D.4. provide specific guidance for projects that utilize BOZ Density:

- D. If the Planning Board approves a site plan using BOZ Density, the applicant must have a building permit application, accepted by the Department of Permitting Services, that includes the core and shell of the principal building within two years of the date of the Planning Board's resolution. Within two years after the Department of Permitting Services accepts the building permit application that includes the core and shell of the principal building, the applicant must obtain that building permit. The deadlines under this section may not be extended. If an applicant fails to comply with any of the deadlines under this section, the entire site plan approval is revoked.*

Concerns have been raised by the development community regarding the two-year deadlines contained in the Development Procedures provisions – both the requirement to file for a building permit for core and shell within two years of the resolution date and the requirement to obtain that building permit within two years of the filing. Given the rising economic burdens resulting from construction cost inflation and the sharp rise in interest rates, the development community is finding projects that were quickly moving through the process only months ago are now running into hurdles. This ZTA would provide some relief from the two-year deadlines without fundamentally altering the purpose of these deadlines, which is to ensure that applicable development approvals using the limited BOZ Density proceed in a timely manner.

SECTION 2: ANALYSIS

PROPOSED ZTA

ZTA 23-## Bethesda Overlay Zone – Extensions would make a minor addition to the Development procedures, under Section 4.9.2.D.4 of the code. This ZTA adds the following language:

Notwithstanding the foregoing, for any site plan using BOZ Density that was valid on (effective date of the ZTA), the deadline to have a building permit that includes the core and shell of the principal building accepted by the Department of Permitting Services is automatically extended by one year.

The existing BOZ language, shown above on page 3 of this report, creates two clear deadlines. The first requires applicants to have a building permit application accepted by DPS for the core and shell of the principal building within two years of the Planning Board approval of the associated site plan. The second deadline requires the applicant to obtain the same building permit within two years of having the permit application accepted. The intent was to not allow development projects in the BOZ area to hoard the BOZ Density, since there is a limited amount of total BOZ Density available to development projects. If a project received approval utilizing BOZ Density and failed to meet the aforementioned deadlines, the site plan would be invalidated and the BOZ Density would be released back into the pool available to other applicants.

The language added by this proposed ZTA would allow any site plan that has utilized BOZ Density in its approval and has yet to reach the first milestone of having a building permit application accepted by DPS for core and shell of the principal building to have an additional year. Planning staff have heard from developers that getting approval for financing has become a major hurdle with the ongoing inflation in construction and labor costs, and now the rapid rise in interest rates. The ZTA focuses on the first deadline of filing for building permits because that is often stage developers get hung up on when trying to resolve financing issues. Given the current availability of BOZ Density for additional new development applications, this one-year extension for any valid project is a fair and appropriate, across the board way to provide some leeway to developers of approved projects facing financing challenges without sacrificing the intent of the deadlines in the BOZ. The format of the ZTA is similar to how the Subdivision Code (Chapter 50) has been updated in years past granting two-year extensions of adequate public facility validity, and plan validity as one time across the board extensions.

SECTION 3: CONCLUSION

Planning staff recommends the Planning Board transmit the draft ZTA modifying the Bethesda Overlay Zone to the District Council, requesting its introduction. This proposed ZTA strikes a balance between providing flexibility to developers of approved projects in the only part of the County with deadlines on implementing site plans, and the original intent of the deadlines to fairly distribute BOZ Density to development applications that are ready to start construction.

ATTACHMENTS

Attachment A – Proposed ZTA 23-## Bethesda Overlay Zone – Extensions

Zoning Text Amendment No.: 23-##
Concerning: Bethesda Overlay Zone -
Extensions
Draft No. & Date: 2 – 3/13/23
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Councilmember ***

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

Amend the development procedures of the Bethesda Overlay Zone, granting a one-time, one year extension to the existing deadlines within the Overlay Zone.

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

Division 4.9. “Overlay Zones”
Section 4.9.2. ‘Bethesda (B) Overlay Zone”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.*

ORDINANCE

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

1 **Sec. 1. DIVISION 59-4.9 is amended as follows:**

2 **Division 4.9 Overlay Zones**

3 * * *

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

5 * * *

6 **D. Development Procedures**

- 7 1. Except as modified in this subsection, the development procedures of
- 8 the underlying zone apply.
- 9 2. Sketch plan and site plan approval under Section 7.3.3 and
- 10 Section 7.3.4, respectively, are required for all development in the
- 11 Bethesda Overlay zone that uses the FAR Averaging provisions of
- 12 Section 4.9.2.C.5.
- 13 3. To approve a site plan, the Planning Board must find that the proposed
- 14 allocation of gross floor area, in addition to the sum of previously
- 15 approved or built developments, does not exceed 32,400,000 square
- 16 feet of gross floor area.
- 17 4. If the Planning Board approves a site plan using BOZ Density, the
- 18 applicant must have a building permit application, accepted by the
- 19 Department of Permitting Services, that includes the core and shell of
- 20 the principal building within two years of the date of the Planning
- 21 Board's resolution. Within two years after the Department of
- 22 Permitting Services accepts the building permit application that
- 23 includes the core and shell of the principal building, the applicant
- 24 must obtain that building permit. The deadlines under this section may
- 25 not be extended. If an applicant fails to comply with any of the
- 26 deadlines under this section, the entire site plan approval is revoked.
- 27 Notwithstanding the foregoing, for any site plan using BOZ density

28 that was valid on {effective date of the ZTA}, the deadline to have a
29 building permit that includes the core and shell of the principal
30 building accepted by the Department of Permitting Services is
31 automatically extended for one year.

32 * * *

33 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the date of
34 Council adoption.

35
36 This is a correct copy of Council action.

37
38 _____

39 Judy Rupp, Esq.
40 Clerk of the Council

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

Office of Legislative Oversight

ZTA 23-03: BETHESDA OVERLAY ZONE – EXTENSIONS

SUMMARY

The Office of Legislative Oversight anticipates Zoning Text Amendment 23-03: Bethesda Overlay Zone – Extensions, will have little to no impact on racial equity and social justice (RESJ) in the County.

PURPOSE OF RESJ 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, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ 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.²

PURPOSE OF ZTA 23-03

The purpose of ZTA 23-03 is to amend the Zoning Ordinance to grant a one-time, one-year extension to deadlines within the Bethesda Overlay Zone (BOZ)³ and to generally amend the development procedures of the BOZ as follows:⁴

- Currently, if the Planning Board approves a site plan using BOZ Density, the applicant must have a building permit application within 24 months of site plan approval by the Planning Board. No extensions are permitted.
- If adopted, ZTA 23-03 will allow a one-year, one-time extension to grant building permits to all applicants who have obtained site plan approval using BOZ Density as of the effective date of this ZTA.

The Planning Department, requesting the introduction of ZTA 23-03, has stated that developers faced hurdles in getting approved for financing because of inflation and rising interest rates, and therefore, this ZTA is needed.⁵

ZTA 23-03 was introduced on April 11, 2023.

ANTICIPATED RESJ IMPACTS

OLO does not anticipate a RESJ impact for ZTA 23-03 because it codifies regulations already adopted by the Council in the Bethesda Downtown Plan (approved and adopted in May of 2017). This ZTA would create a one-time, one-year automatic extension for all currently approved site plan applications that have not yet submitted a building permit application to the Department of Permitting Services (DPS) and are still within the two-year deadline.⁶ ZTA 23-03 offers technical corrections to allow some flexibility within the BOZ provisions of the Zoning Ordinance but does not establish new policies or practices that may impact RESJ in the County. As such, OLO anticipates that ZTA 23-03 will have little to no impact on RESJ in the County.

RESJ Impact Statement

Zoning Text Amendment 23-03

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

¹ 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>

² Ibid

³ Ibid

⁴ Ndou, Livhu. Montgomery County Council, Agenda Item #10A, April 11, 2023

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230411/20230411_10A.pdf

⁵ Ibid

⁶ Memorandum from Montgomery County Planning Board to Council President Evan Glass. March 13, 2023

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230411/20230411_10A.pdf

Montgomery Planning

CLIMATE ASSESSMENT FOR ZTA 23-03 BETHESDA OVERLAY ZONE

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the County's contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plan or ZTA at the County level. The scope of the Climate Assessments is limited to addressing climate change, specifically the effect of land use recommendations in master plans and ZTAs on greenhouse gas (GHG) emissions and sequestration, and how actions proposed by master plans and ZTAs could improve the County's adaptive capacity to climate change and increase community resilience. Climate assessments are conducted in accordance with the *Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022*.

While co-benefits such as health and cost savings may be discussed, the focus is on how the proposed master plan and ZTA may impact GHG emissions and community resilience.

SUMMARY

The Montgomery County Planning Board anticipates that the ZTA 23-03 Bethesda Overlay Zone will have no impacts on the County's greenhouse gas emissions or sequestration rates. Nor will the ZTA effect the County's goals of reducing greenhouse gas emissions or increasing carbon sequestration.

The proposed ZTA would amend the Development Procedures of the Bethesda Overlay Zone (BOZ) to grant a one-time, one year extension to the deadline that requires applicants to have a building permit application for the primary building core and shell accepted by the Department of Permitting Services (DPS) within two years of the mailing of an applicable site plan resolution. It will not have an impact on the density of buildings under the permit process, nor will it change Bethesda's density cap of 32.4 million square feet. For these reasons, it will not have an impact on the county's carbon emissions, sequestration, or the county/community capacity towards climate resiliency and adaptation.

BACKGROUND AND PURPOSE OF ZTA 23-03 BETHESDA OVERLAY ZONE

ZTA 23-03 was introduced at the request of the Planning Board to provide short, one-time relief for development projects within the BOZ that are facing difficulties obtaining construction financing because of ongoing inflation, rising interest rates, and a tightening credit market. The BOZ is unique in setting a 24-month deadline for development projects to apply for a building permit for the core and shell of the principal building. Because total development in the BOZ is capped, the 24-month deadline is intended to ensure developers do not receive approvals of BOZ density and then not move forward to construction, possibly keeping other development applications from receiving plan approvals. A one-year, one-time extension of this deadline provides equal, limited relief to projects currently in the post-approval stage, without compromising the intent of the deadlines.

VARIABLES THAT COULD AFFECT THE ASSESSMENT

CLIMATE-RELATED VARIABLES

The ZTA is strictly a permit extension for an already approved site plan and therefore there will be no impacts to any categories in the climate assessment including transportation, embodied building emissions, energy, and land cover and management.

OTHER VARIABLES

The ZTA will not affect other variables such as density, location, or building use and design.

ANTICIPATED IMPACTS

There are no anticipated impacts to greenhouse gas emissions, sequestration rates, community resilience, or climate related adaptive capacities.

GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN IMPACTS

None. See above.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY IMPACTS

None. See above.

RELATIONSHIP TO GREENHOUSE GAS REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-03 does not involve any increases or decreases in greenhouse gas or sequestration rates.

RECOMMENDED AMENDMENTS

The Climate Assessment Act (Bill 3-22) requires the Planning Board to offer appropriate recommendations, amendments or other greenhouse gas reduction measures that could help counter any identified negative impacts of the proposed ZTA. Since there will be no impacts, staff has no climate related recommendations.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-03 was prepared using the methodology for ZTAs (tables 1 and 8) for ZTAs contained within the [*Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022*](#).



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May 15, 2023

Via Email

The Honorable Evan Glass, Council President,
And Members of the County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, 4th Floor
Rockville, MD 20850

Re: May 16, 2023 County Council Public Hearing Regarding Zoning Text Amendment 23-03,
Bethesda Overlay Zone (“BOZ”) Extensions – (the “ZTA”); Washington Property
Company’s Written Testimony

Dear Council President Glass and Councilmembers:

On behalf of Washington Property Company (“WPC”), we offer one significant amendment request and the following comments in support of the ZTA. While the primary rationale for the strict validity period of a site plan approved pursuant to the BOZ was necessary (i.e., to prevent hoarding of BOZ density), the circumstances unique to the last several months, including volatile capital markets and heightened construction costs, makes necessary the extension to the validity period provided for with the ZTA to address and respond to the current inflationary period, heightened construction costs, and challenges in obtaining viable construction financing. As explained in greater detail below, WPC respectfully requests that the ZTA be modified to grant a 2-year extension for these projects to submit a completed building permit application because the currently proposed 1-year extension is insufficient given the ongoing economic challenges.

By way of background, WPC has developed over 1,000 multi-family dwelling units in the County (including over 200 MPDUs) over the past decade. Within Downtown Bethesda alone, WPC constructed Solaire Bethesda (a high-rise mixed-use residential project located between Miller Avenue and Woodmont Avenue on Wisconsin Avenue) and is presently developing Solaire 7607 Old Georgetown Road (another high-rise mixed-use residential project located at the corner of Commerce Lane and Old Georgetown Road). WPC received Site Plan approval from the Montgomery County Planning Board for construction of a mixed-use project with up to 340,000 square feet of office/retail uses and up to 150 multifamily dwelling units (including a minimum of {00535595;2 } *00450790;2

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17.6% MPDUs) for the assembled site that frames Hampden Lane, Montgomery Lane, and East Lane in July of 2021 (“Hampden East”). Hampden East will further many of the goals and priorities of the 2017 Bethesda Downtown Sector Plan at a strategic location in the urban core of Downtown Bethesda with proximity to both Metro and the future Purple Line stations.

WPC supports that the ZTA would modify, on a limited basis, the existing requirement in the BOZ that development projects file for building permit within 2 years of Site Plan approval to maintain Site Plan approval and an allocation of BOZ density. Absent the filing of a building permit within 2 years, the BOZ mandates that a developer’s Site Plan approval is automatically revoked. This timing constraint is unique to the BOZ, intended to prevent the hoarding of BOZ density, but it was established in 2017 with drastically different market and economic conditions at play. In the instance of Hampden East, prevailing capital markets and construction costs have made it infeasible to proceed to building permit application by the end of July 2023.

Given the foregoing, WPC respectfully requests that the ZTA be modified to grant a 2-year extension of time (rather than just 1 year). WPC believes that a 1-year extension is insufficient considering the ongoing market turbulence. A 2-year extension would provide greater opportunity for the financial markets to enter a more normal state such that projects with Site Plan approvals (a total of 6 that this ZTA would apply to) could obtain the necessary financing to deliver on those approvals and the important economic benefits to the County’s tax base (as well as increased affordable housing). Additionally, a 2-year automatic extension period is consistent with the Council’s past practice of providing for extensions of Preliminary Plan of Subdivision approvals so there is compelling rationale for applying that same standard to this ZTA.

We believe that this revision will further the goals and objectives of the ZTA. We thank you for your time and consideration reviewing these written comments and are encouraged by the ZTA as a positive policy change to support redevelopment opportunities during an economically changing time.

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 23-03 (County Council Public Hearing)
May 15, 2023
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cc: Ms. Livhu Ndou
Janel Kausner