



Committee: PHED

Committee Review: At a future date

Staff: Livhu Ndou, Legislative Attorney

Purpose: To introduce agenda item – no vote expected

Keywords: #SilverSpring #SSDAC #RSSOverlayZone

#FentonVillageOverlayZone

#DowntownSilverSpringOverlayZone

AGENDA ITEM #25A

April 19, 2022

Introduction

SUBJECT

Zoning Text Amendment (ZTA) 22-03, Overlay Zone – Downtown Silver Spring (DSS)

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

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

ZTA 22-02 will establish the Downtown Silver Spring (DSS) Overlay Zone; remove the Ripley/South Silver Spring (RSS) Overlay Zone; and modify the Fenton Village (FV) Overlay Zone.

SUMMARY OF KEY DISCUSSION POINTS

- ZTA 22-03 will remove the Ripley/South Silver Spring (RSS) Overlay Zone and modify the Fenton Village (FV) Overlay Zone since most of these provisions are now covered by the underlying CR zone or by provisions of the proposed Downtown Silver Spring (DSS) Overlay Zone.
- The new Downtown Silver Spring (DSS) Overlay Zone will cover all the districts included in the Silver Spring Downtown and Adjacent Communities (SSDAC) plan except for the Adjacent Communities District. It includes language for a Height Incentive Area, additional allowed accessory uses, and a Design Advisory Panel.
- This ZTA will be scheduled for PHED Committee worksession after action on the Silver Spring Downtown and Adjacent Communities (SSDAC) plan.

This report contains:

ZTA 22-03

© 1

Planning Board recommendation

© 15

Planning Staff report

© 17

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Zoning Text Amendment No.: 22-03
Concerning: Overlay Zone -
Downtown Silver Spring
Draft No. & Date: 1 – 4/12/2022
Introduced: April 19, 2022
Public Hearing:
Adopted:
Effective:
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: Council President Alborno at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

And adding the following section:

Division 4.9	“Overlay Zones”
Section 4.9.8	“Downtown Silver Spring Overlay Zone”

EXPLANATION: **Boldface** indicates a Heading or a defined term.

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

* * * indicates existing law unaffected by the text amendment.

ORDINANCE

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

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

Division 4.5. Commercial/Residential Zones

* * *

Section 4.5.2. Density and Height Allocation

A. Density and Height Limits

* * *

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

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

* * *

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

Division 4.9. Overlay Zones

* * *

Section 4.9.8 Downtown Silver Spring (DSS) Overlay Zone

A. Purpose

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

B. Land Uses

The land uses of the underlying zones apply. The following uses are permitted on properties where the underlying zone is the CR Zone, as

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

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

C. Development Standards

1. Building Height

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

b. Height Incentive Area

- i. In the Height Incentive Area illustrated in Section 4.9.8.D, the maximum building height for optional method of development projects may be increased by the Planning Board up to 150 percent of the mapped maximum building height, to a maximum of 300 feet.
- ii. Sites recommended in the Silver Spring Downtown and Adjacent Communities (SSDAC) sector plan to exceed the maximum building height of 300 feet may be approved by the Planning Board for up to 360 feet.
- iii. To qualify for additional height under this section, projects must provide greater than the minimum 15% MPDUs on-site, a contribution to the Montgomery County Housing Initiative Fund (HIF), or include an activating ground-floor Neighborhood Service including, but not limited to, small business, art gallery/venue,

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

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

2. Density

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

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

d. Land Use

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

e. Qualification

To qualify for DSS Density, a proposed development must:

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

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

3. Moderately Priced Dwelling Units (MPDUs)

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

4. Public Benefit Points

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

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

5. Public Open Space

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

D. Height Incentive Area Map

* * *

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

A. Purpose

The purpose of the FV Overlay zone is to:

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

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

5. Allow new uses.]

[B. Land Uses

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

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

[C]B. Development Standards

1. Building Height

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

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

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

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

ii. 110 feet if additional building height is necessary to accommodate workforce housing units, at least 33% of the project's floor area is residential, and the additional height is placed near a major highway and decreases in the direction of the closest property in a Residential Detached zone;

d. For property located in a block that includes property in a Residential Detached zone maximum building height is 45 feet for all uses, except maximum building height is 60 feet for:

i. residential use; or

ii. mixed-use optional method project, if at least 33% of the project's floor area is residential and the project includes a hotel;

e. For properties with frontage on both Wayne Avenue and Fenton Street, in spite of the height limitations in Section 4.9.8.C.1.b through Section 4.9.8.C.1.d, maximum building height may be increased by 15 feet for a building that includes residential uses or a mix of residential and commercial uses, if such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan; however, any building using additional height must be set back from abutting Residentially zoned land no less than the setback required in the abutting Residential zone or the height of the building, whichever is greater.

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

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

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

2. Retail Bays

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

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

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

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

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

[D]C. Site Plan

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

[E]D. Existing Buildings

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

* * *

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

* * *

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

* * *

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

* * *

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

* * *

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

* * *

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

A. Purpose

The purpose of the RSS Overlay zone is to:

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

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

B. Land Uses

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

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

C. Development Standards

1. Building Height

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

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

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

D. Site Plan

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

E. Existing Buildings

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

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

* * *

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

April 11, 2022

The Honorable Gabe Albornoz

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

Subject: Planning Board Recommendation to County Council for introduction of a Zoning Text Amendment to implement the recommendations of the Silver Spring Downtown and Adjacent Communities Plan.

Dear Mr. Albornoz:

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission met on April 7, 2022 and by a vote of 5:0 requested introduction of the attached draft Zoning Text Amendment (ZTA) to make changes necessary to implement the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan. The draft ZTA text is based on the Planning Board draft of the plan and has not included any changes recommended by the Planning, Housing, and Economic Development (PHED) committee.

The proposed ZTA touches on three different Overlay Zones by recommending removal of the Ripley/South Silver Spring (RSS) Overlay Zone, modifying the Fenton Village (FV) Overlay Zone, and establishing a new Downtown Silver Spring (DSS) Overlay Zone. In addition, a minor change is made to the CR Density and Height Allocation section to enable recommendations from the DSS Overlay Zone to occur.

The removal of the RSS Overlay Zone, and the modifications to the FV Overlay Zone are largely the result of provisions now captured by the CR Zone, provisions better suited to the upcoming design guidelines, or provisions covered by the proposed DSS Overlay Zone. The new DSS Overlay Zone covers all of the districts from the SSDAC Plan except the Adjacent Communities District. Some of the more impactful recommendations from the Planning Board Draft that are in the DSS Overlay Zone include the implementation language for a new Height Incentive Area closer to the center of Silver Spring, the creation and allotment of Downtown Silver Spring Density, the requirement for at least 15% MPDUS and the requirement that development projects contribute to improvements at existing or proposed parks rather than provide their own pockets of open space on sites that are not recommended for green space in the Plan.

The Honorable Gabe Albornoz

April 11, 2022

Page Two

Because the draft ZTA is based on the Planning Board draft of the plan, there are elements in it that may no longer be relevant depending on the final vote the Council takes. As an example, if the final version of the SSDAC Plan removes the Height Incentive Area, lines 32-51 of the draft ZTA could be removed, and lines 52-60 which define the Silver Spring Design Advisory Panel could be relocated to section 4 (Public Benefit Points) starting on line 95 where the advisory panel is also given a role. To help facilitate the tight deadlines the SSDAC Plan is under, the Planning Board offers the full cooperation of its staff to help with any changes that are necessary to this draft ZTA as the process moves forward.

The Board appreciates the Council's consideration of the attached draft ZTA to implement the SSDAC Plan, based on the Planning Board draft. The Board looks forward to working with the District Council to finalize recommendations of the SSDAC Plan, and subsequently update the draft ZTA as necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Casey Anderson', with a stylized, cursive script.

Casey Anderson

Chair

PROPOSED ZTA – SILVER SPRING DOWNTOWN AND ADJACENT COMMUNITIES, OVERLAY ZONE MODIFICATIONS

Description

The proposed zoning text amendment would implement the recommendations of the Silver Spring Downtown and Adjacent Communities (SSDAC) Plan by removing the Ripley/South Silver Spring Overlay Zone, modifying the Fenton Village Overlay Zone, and creating a new Downtown Silver Spring Overlay Zone.

PROPOSED ZTA 22-##

COMPLETED: 03-31-2022

MCPB

Item No. 11

04-07-2022

2425 Reedie Drive

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Wheaton, MD 20902



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Summary

- The proposed ZTA will implement the zoning recommendations from the SSDAC Plan including removing the Ripley/South Silver Spring Overlay, modifying the Fenton Village Overlay, and adding a new Downtown Silver Spring Overlay.
- Recommendations are based primarily on the Planning Board Draft, with some modifications made by the Planning, Housing and Economic Development Committee to date.
- The ZTA will be introduced prior to the SSDAC Plan being reviewed by the full Council with an anticipated public hearing in late spring or early summer.

LEAD TEAM

Downcounty Planning &

Countywide Planning and Policy

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for the Proposed Zoning Text Amendment

This proposed zoning text amendment (ZTA) is needed to implement the recommendations from the Silver Spring Downtown and Adjacent Communities (SSDAC) Plan. There are many recommendations around plan-specific regulations for height, density, design, open space and other elements which require the creation of a new Downtown Silver Spring overlay zone. Other overlay zones, such as the Fenton Village overlay, need amendments, while the Ripley/South Silver Spring overlay is recommended for full deletion.

SECTION TWO

ANALYSIS

ZTA As Proposed

This ZTA would make a small change to Section 4.5 Commercial/Residential Zones, and three changes to the Overlay Zone section (4.9) in the Zoning Ordinance. First, it removes the entire Ripley/South Silver Spring overlay, it amends the Fenton Village overlay, and proposes a new Downtown Silver Spring overlay. The following is more detail on these three changes.

Commercial/Residential Zones

The ZTA would add a small amount of language under Section 4.5.2.A. of the Code, where limits on the density and height of the CR family of zones is described. Currently, subsection 3 allows the total FAR, or height to be modified beyond the limits described within the section if its to accommodate MPDUs or FAR averaging. The ZTA would also add 'or an Overlay Zone' to the text, because it is the intent in the Downtown Silver Spring Overlay Zone discussed later in this report to make some modifications beyond what Section 4.5.2.A. allows.

Ripley/South Silver Spring (RSS) Overlay Zone

The proposed ZTA eliminates the existing RSS Overlay Zone in its entirety. The Ripley Silver Spring Overlay Zone was created as a result of the 2000 *Silver Spring Central Business District Sector Plan* to incentivize development in the Ripley District. The Ripley District has been transformed over the last 20 years and several of the provisions in the zone are outdated or unnecessary. The Sector Plan recommends increasing the maximum building height on the one property impacted by the provision allowing additional height for a supermarket. The overlay zone also constrains development on sites in South Silver Spring along Eastern Avenue by limiting height. With the removal of this overlay zone,

heights along Eastern Avenue will be controlled by the forthcoming Design Guidelines that will accompany this Sector Plan.

Fenton Village (FV) Overlay Zone

The proposed ZTA makes several modifications to the text of the existing FV Overlay Zone. This overlay zone is proposed to have its boundaries expanded slightly to the east as part of a future Sectional Map Amendment (SMA) process to encompass some commercial/residential properties in the plan area that are not currently in this overlay. The FV overlay will become an overlay zone within the larger Downtown Silver Spring overlay zone, which is proposed for the entire downtown area.

The changes to the FV Overlay include:

- *Removing the Land Use section* – This section was made obsolete with the uses allowed in the CR zone.
- *Updating text in the Development Standards section* – Clarification in subsection one that the major highway in the overlay is Georgia Avenue and that the eastern road near the residential blocks is Fenton Street.
- *Removing sections from the Development Standards section* – The second half of subsection one for building heights includes provisions that either no longer exist (blocks that include a detached zone), had provisions for extra height for specific properties that are recommended for the additional height through the pending sectional map amendment, or had requirements that are now standards with the CR zone. Additionally, sections regarding building height transitions will be addressed in the Sector Plan Design Guidelines and are not necessary here.
- *Adding a new Development Standards section two* – New provisions for retail bays limiting their width to 60 feet of façade except for grocery stores or basement level retailers, and a requirement that developments with retail provide two small bays (one less than 1,200 SF and another less than 2,000 SF). This is a recommendation that comes directly from the *Retail in Diverse Communities Study*.
- *Removing provision to transfer open space requirements* – The DSS Overlay Zone includes a provision addressing open spaces that are not identified in the Sector Plan. Any property not specifically recommended for open space by the SSDAC Plan should contribute instead to existing or planned public parks within the plan area.
- *Associated technical updates to section numbering*

Downtown Silver Spring (DSS) Overlay Zone

The Downtown Silver Spring (DSS) Overlay Zone is a new proposed overlay zone that would cover the downtown properties in the Plan (i.e., all plan districts as described in the Sector Plan except the Adjacent Communities district). The overlay is split into four primary sections: Purpose, Land Use, Development Standards, and Height Incentive Area Map.

Purpose

The purpose of the zone is to implement specific recommendations from the SSDAC Plan including land use, height, density, affordability, public benefits, design, and open spaces.

Land Uses

The DSS overlay would allow all uses currently permitted within the CR zone, plus allow the following uses as permitted uses accessory to larger developments to support the food security recommendations in the Plan:

- Light manufacturing if for the purposes of food processing, including a food service facility defined by Chapter 15 of the County Code
- Urban Farming, if located on a rooftop

Development Standards

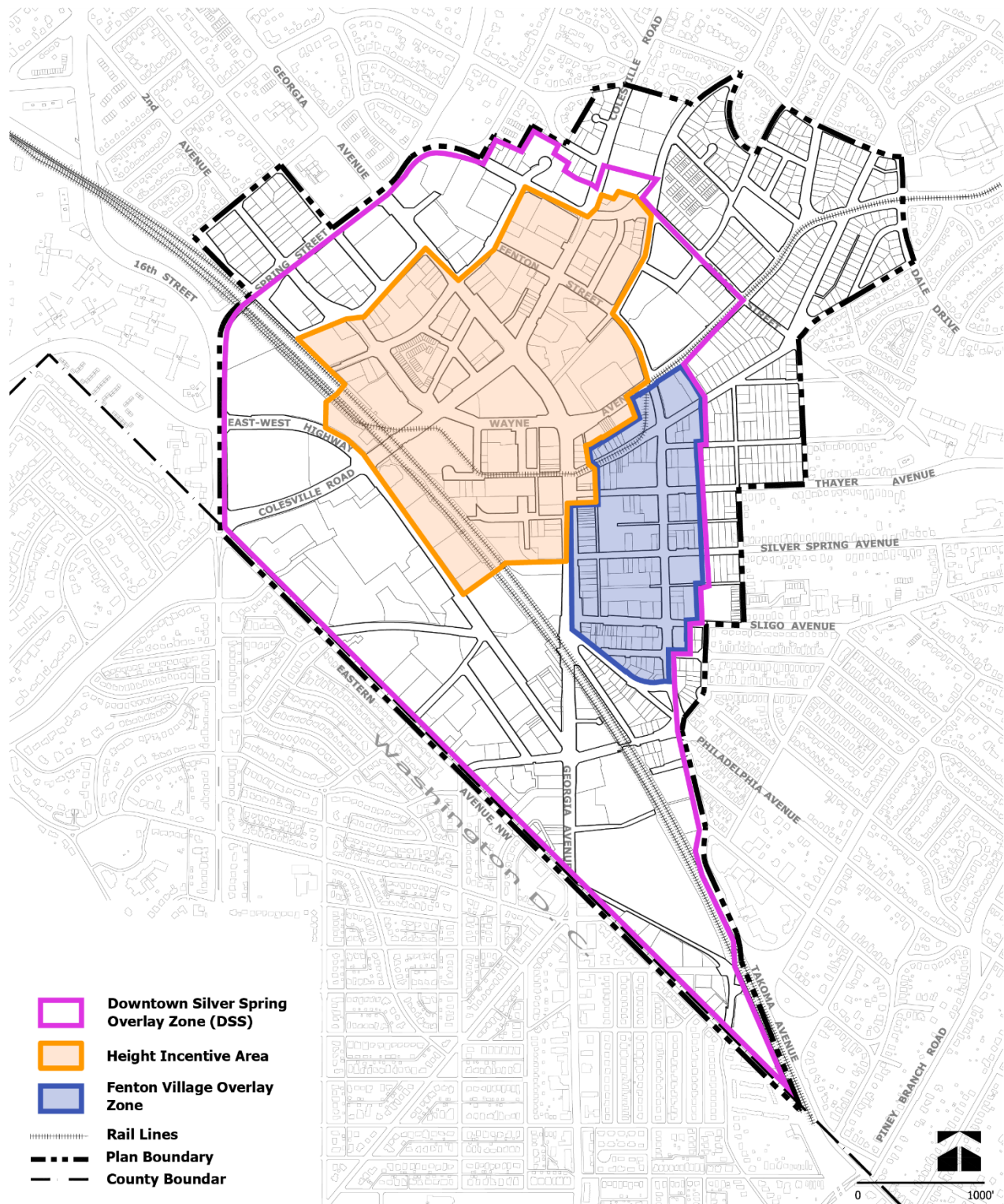
The development standards section is the largest of the sections in the proposed ZTA and includes five sub-sections; Building Height, Density, Moderately Priced Dwelling Units, Public Benefit Points, and Public Open Space.

- [Building Height](#) – The DSS Overlay is proposing a new Height Incentive Area (HIA) (referred to in the Sector Plan as the Building Height Incentive Zone and shown in Figure 1 below) where the maximum building height for any optional method development project within the HIA may request at the Planning Board a height of up to 150% the mapped building height, not to exceed 300 feet. Additionally, selective properties recommended by the SSDAC Plan may have building heights up to 360 feet. To qualify for this increased height, projects must either provide greater than 15% MPDUs, contribute to the Housing Initiative Fund, or include activating ground-floor neighborhood serving uses which could include small commercial spaces, art galleries, meeting space, educational uses, medial uses, historic preservation, or non-ground-floor Design for Life residences. Any increase in height, in addition to Planning Board approval, would require the approval of a Silver Spring Design Advisory Panel.
- [Density](#) – The density section outlines two primary provisions. First, properties in the overlay mapped at an FAR of 8 would not be subject to the 7.5 FAR cap on commercial (C) or residential (R) spaces and instead be able to utilize the full 8 FAR for either use if desired. The second provision within the density section establishes provisions for Downtown Silver Spring Density (DSSD). DSSD is floor area that is available for purchase above the mapped floor area for a property. The density may be used as commercial or residential space. Any awarded DSSD is for the applying property only and may not be transferred to another site. The density can be purchased at a rate of \$5 per square foot and would support the Civic Improvement Fund (previously the Connectivity and Infrastructure Fund described in the Sector Plan) which will contribute to the implementation of several civic improvements in the Plan, including, but not limited to, the proposed bridge connection over the rail between South Silver Spring and

the Ripley District, improvements to the Transit Center to enhance the arrival experience, portions of the Green Loop and long-term public bike parking facilities as proposed in the Plan.

- [Moderately Priced Dwelling Units \(MPDUs\)](#) – The DSS Overlay will require MPDUs to be at least 15% of any qualifying project, rather than the County minimum of 12.5%.
- [Public Benefit Points](#) – The overlay zone would not allow the Planning Board to award public benefit points to optional method projects for the categories of transit proximity or structured parking. The presumption is almost every project would automatically qualify for these categories therefore limiting the actual public benefit being provided that justifies the optional method standards.
- [Public Open Space](#) – Rather than each development site providing its required public open space on site as a series of fragmented areas, any property not specifically recommended for open space by the SSDAC Plan instead should contribute to existing or planned public parks within the plan area, based on the provisions for providing off-site open space under the corresponding section of the Zoning Ordinance.

Figure 1: Proposed Overlay Zones and Height Incentive Area



Conclusion

Staff recommends the Planning Board transmit a request to the District Council to introduce the proposed ZTA implementing the SSDAC Plan. This draft will be part of the materials considered by the full Council when making their final recommendations on the plan. It is anticipated that a public hearing on this ZTA would be scheduled for early summer; Planning Staff will bring the ZTA back before the Board prior to that hearing.

Attachments

1 – Draft Proposed ZTA

Attachment 1

Zoning Text Amendment No.: 22-##

Concerning: Removal of the
Ripley/South Silver
Spring (RSS) Overlay
Zone; modifying Fenton
Village Overlay Zone;
and creation of a new
Downtown Silver Spring
Overlay Zone

Draft No. & Date: * - ***

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:

- Implement the recommendations of the Silver Spring Downtown and Adjacent Communities Plan by:
 - Removing the Ripley/South Silver Spring (RSS) Overlay Zone, and
 - Modifying Fenton Village Overlay Zone
 - Establishing the Downtown Silver Spring Overlay Zone

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

DIVISION 4.5	Commercial/Residential Zones
Section 4.5.2	Density and Height Allocation
DIVISION 4.9	Overlay Zones
Section 4.9.[8] <u>9</u>	Fenton Village (FV) Overlay Zone
Section 4.9.[9] <u>10</u>	Garret Park (GP) Overlay Zone
Section 4.9.[10] <u>11</u>	Germantown-Churchill Village (GCV) Overlay Zone
Section 4.9.[11] <u>12</u>	Germantown Transit Mixed Use (GTMU) Overlay zone
Section 4.9.[12] <u>13</u>	Montgomery Village (MV) Overlay Zone
Section 4.9.[13] <u>14</u>	Regional Shopping Center (RSC) Overlay Zone
[Section 4.9.14]	[Ripley/South Silver Spring (RSS) Overlay Zone]

And adding the following new sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 4.9
Section 4.9.8

Overlay Zones
Downtown Silver Spring Overlay Zone

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

ORDINANCE

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

Sec. 1. DIVISION 4.5 is amended as follows:**Division 4.5. Commercial/Residential Zones****Section 4.5.1. Intent Statements**

* * *

Section 4.5.2. Density and Height Allocation

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A. Density and Height Limits

* * *

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

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

* * *

Sec. 2. DIVISION 4.9 is amended as follows:**Division 4.9. Overlay Zones**

* * *

Section 4.9.8 Downtown Silver Spring (DSS) Overlay Zone**A. Purpose**

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

B. Land Uses

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

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

C. Development Standards

1. Building Height

- a. Except as provided in Subsection b. below, the maximum building height is limited to the height allowed in the underlying zone.

b. Height Incentive Area

- i. In the Height Incentive Area illustrated in Subsection D, the maximum building height for optional method of development projects may be increased by the Planning Board up to 150 percent of the mapped maximum building height, to a maximum of 300 feet.
- ii. Sites recommended in the Sector Plan to exceed the maximum building height of 300 feet may be approved by the Planning Board for up to 360 feet.
- iii. To qualify for additional height under this section, projects must provide greater than the minimum 15% MPDUs on-site, a contribution to the Montgomery County Housing Initiative Fund (HIF), or include an activating ground-floor Neighborhood Service including, but not limited to, small business, art gallery/venue, community meeting space, educational or medical use, historic

preservation, or non-ground-floor area dedicated to Design for Life residences.

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

2. Density

a. Properties in the CR zone with a mapped total FAR of 8 are not subject to the maximum C FAR or maximum R FAR limits under section 59.4.5.2.A.3.

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

c. DSS Density is the gross floor area by which development on a site in the Overlay Zone may exceed the maximum gross floor area mapped on the site, consistent with the requirements of the Overlay Zone, including design review, public benefits, and the qualifications set forth in paragraph e. below. DSS density may not be transferred to any other property.

d. Land Use

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

e. Qualification

To qualify for DSS Density, a proposed development must:

- i. Make a contribution to the Civic Improvement Fund before the issuance of any building permit at a rate of \$5 per square foot of approved DSS Density gross floor area.
- ii. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate by July 1 of each even-numbered year by the annual average increase or decrease in a published construction cost index for the two most recent calendar years.

3. Moderately Priced Dwelling Units (MPDUs)

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

4. Public Benefit Points

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

- a. The Planning Board must not grant any public benefit points for transit proximity under Section 59.4.7.3.B. or structured parking under Section 59.4.7.3.E.6.
- b. The Planning Board must determine that the development achieves 10 points in the exceptional design public benefit under Section 59.4.7.3.E.4. The Planning Board must consider the comments from the

Design Advisory Panel on all projects before making their determination concerning exceptional design points.

5. Public Open Space

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

D. Height Incentive Area Map

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

A. Purpose

The purpose of the FV Overlay zone is to:

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

[B. Land Uses

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

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

[C]B. Development Standards

1. Building Height

- a. Maximum building height is 90 feet along [a major highway] Georgia Avenue;
- b. Maximum building height is [60] 65 feet along [any street confronting any block that includes property in a Residential Detached zone and,] Fenton Street. [w]When a building is allowed to be higher than [60] 65 feet under Section 4.9.8.[C]B.1.c, each additional foot in building height above 65 feet requires at least an additional one-foot setback from the front of the building along Fenton Street;
- [c. Within the area between a major highway and a street that confronts a block that includes property in a Residential Detached zone, maximum building height is
 - i. 60 feet but may increase to a maximum of 90 feet if at least 33% of a project's floor area is residential;
 - ii. 110 feet if additional building height is necessary to accommodate workforce housing units, at least 33% of the project's floor area is residential, and the additional height is placed near a major highway and decreases in the direction of the closest property in a Residential Detached zone;
- d. For property located in a block that includes property in a Residential Detached zone maximum building height is 45 feet for all uses, except maximum building height is 60 feet for:

- i. residential use; or
- ii. mixed-use optional method project, if at least 33% of the project's floor area is residential and the project includes a hotel;
- e. For properties with frontage on both Wayne Avenue and Fenton Street, in spite of the height limitations in Section 4.9.8.C.1.b through Section 4.9.8.C.1.d, maximum building height may be increased by 15 feet for a building that includes residential uses or a mix of residential and commercial uses, if such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan; however, any building using additional height must be set back from abutting Residentially zoned land no less than the setback required in the abutting Residential zone or the height of the building, whichever is greater.
- f. Building heights may be approved under the standards of Section 4.9.8.C.1 without regard to the building height recommendations of the master plan.
- 2. Parking between the street and the front building line of properties fronting on Georgia Avenue is prohibited.
- 3. Costs associated with meeting the public open space off-site may be shared by multiple property owners.]

2. Retail Bays

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

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

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

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

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

[D]C. Site Plan

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

[E]D. Existing Buildings

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

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

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

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

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

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

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

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

A. Purpose

The purpose of the RSS Overlay zone is to:

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

B. Land Uses

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

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

C. Development Standards

1. Building Height

- a. The maximum building height is 45 feet along Newell Street and Eastern Avenue that confronts a Residential zone in the District of Columbia; however, this building height may be increased to:
 - i. a maximum of 90 feet for any building or portion of a building that is set back a minimum of 60 feet from the street; or
 - ii. a maximum of 125 feet for residential development that is set back at least 100 feet from Eastern Avenue and Newell Street and includes a public parking garage constructed under a General Development Agreement with the County.
 - b. For a property zoned CR and mapped at 200 feet, the Planning Board may approve a maximum building height of 200 feet only in an optional method development project that provides ground floor retail. If no ground floor retail is provided, the maximum building height is 145 feet. Any structure or device used to collect or radiate electromagnetic waves, including a satellite dish, must not be included in calculating building height under this paragraph.
 - c. For a property zoned CR and mapped at 200 feet, the Planning Board may approve a maximum building height of 270 feet, if an optional method development project includes the provision of an on-site or off-site major public facility under Section 4.7.3.A and also provides a ground floor level grocery store or other qualifying basic service under Section 4.7.3.C.3 of at least 10,000 square feet of floor area.
2. Parking between the street and the front building line of properties fronting on Georgia Avenue is prohibited.
 3. Costs associated with meeting the public open space off-site may be shared by multiple property owners.

4. In the CR zone, under the standard method of development, the maximum FAR is 1.0 if approved by site plan under Section 7.3.4.

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

D. Site Plan

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

E. Existing Buildings

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

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

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

This is a correct copy of Council action.

Selena M. Singleton, Esq.
Clerk of the Council