



Committee: PHED
Committee Review: At a future date
Staff: Livhu Ndou, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #SilverSpring #SSDAC #RSSOverlayZone
#FentonVillageOverlayZone
#DowntownSilverSpringOverlayZone

AGENDA ITEM #5
June 14, 2022
Public Hearing

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 22-03 will establish the Downtown Silver Spring (DSS) Overlay Zone; remove the Ripley/South Silver Spring (RSS) Overlay Zone; and modify the Fenton Village (FV) Overlay Zone.

SUMMARY OF KEY DISCUSSION POINTS

- This Council approved the Silver Spring Downtown and Adjacent Communities Plan on May 26, 2022.
- ZTA 22-03, as introduced, implements provisions of the Planning Board draft of the Plan. These changes include:
 - removing the Ripley/South Silver Spring (RSS) Overlay Zone and modifying 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; and
 - adding a Height Incentive Area, additional allowed accessory uses, and a Design Advisory Panel.
- A PHED Committee worksession will be scheduled for fall 2022. ZTA 22-03 will be amended to reflect the Council-approved version of the Plan.

This report contains:

ZTA 22-03	© 1
Planning Board transmittal	© 15
Planning Staff report	© 17
RESJ Impact Statement	© 38

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

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

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

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

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

30 **C. Development Standards**

31 1. Building Height

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

35 b. Height Incentive Area

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

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

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

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

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

64 2. Density

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

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

81 d. Land Use

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

84 e. Qualification

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

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

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

95 3. Moderately Priced Dwelling Units (MPDUs)

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

100 4. Public Benefit Points

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

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

112 5. Public Open Space

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

119 **D. Height Incentive Area Map**

120 * * *

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

122 **A. Purpose**

123 The purpose of the FV Overlay zone is to:

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

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

132 5. Allow new uses.]

133 **[B. Land Uses**

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

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

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

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

141 1. Building Height

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

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

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

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

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

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

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

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

188 2. Retail Bays

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

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

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

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

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

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

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

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

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

216 * * *

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

218 * * *

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

220 * * *

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

222 * * *

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

224 * * *

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

226 * * *

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

228 **A. Purpose**

229 The purpose of the RSS Overlay zone is to:

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

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

239 **B. Land Uses**

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

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

246 **C. Development Standards**

247 1. Building Height

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

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

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

284 **D. Site Plan**

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

287 **E. Existing Buildings**

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

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

296 * * *

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

April 11, 2022

The Honorable Gabe Alborno

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. Alborno:

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 flourish at the end.

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

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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

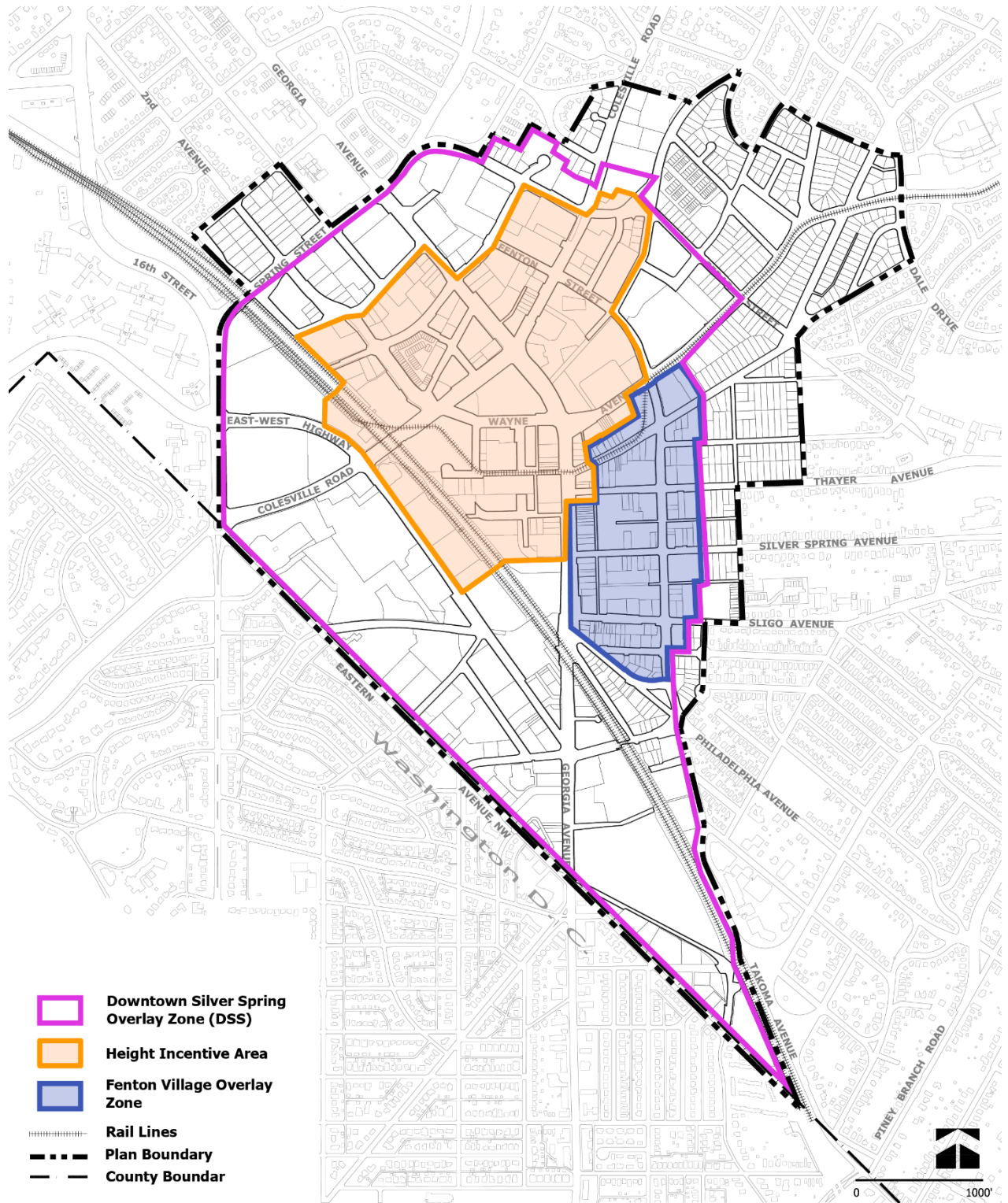
The development standards section is the largest of the sections in the proposed ZTA and includes five sub-sections; Building Height, Density, Moderately Priced Dwelling Units, Public Benefit Points, and Public Open Space.

- 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

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

* * *

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

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

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

31 **C. Development Standards**

32 1. Building Height

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

35 b. Height Incentive Area

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

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

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

60 2. Density

61 a. Properties in the CR zone with a mapped total FAR of 8 are not subject
62 to the maximum C FAR or maximum R FAR limits under section
63 59.4.5.2.A.3.

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

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

76 d. Land Use

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

79 e. Qualification

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

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

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

89 3. Moderately Priced Dwelling Units (MPDUs)

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

94 4. Public Benefit Points

95 The requirements for public benefit points are established by Division
96 59.4.7, and as follows:

97 a. The Planning Board must not grant any public benefit points for transit
98 proximity under Section 59.4.7.3.B. or structured parking under Section
99 59.4.7.3.E.6.

100 b. The Planning Board must determine that the development achieves 10
101 points in the exceptional design public benefit under Section
102 59.4.7.3.E.4. The Planning Board must consider the comments from the

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

105 5. Public Open Space

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

112 **D. Height Incentive Area Map**

113 * * *

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

115 **A. Purpose**

116 The purpose of the FV Overlay zone is to:

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

126 **[B. Land Uses**

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

- 129 1. The following Light Manufacturing and Production use: assembly of
130 computer components; and
- 131 2. The following Retail/Service Establishment uses: bakery, if less than
132 1,500 square feet of gross floor area; and catering facility.]

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

- 134 1. Building Height
 - 135 a. Maximum building height is 90 feet along [a major highway] Georgia
136 Avenue;
 - 137 b. Maximum building height is [60] 65 feet along [any street confronting
138 any block that includes property in a Residential Detached zone and,]
139 Fenton Street. [w]When a building is allowed to be higher than [60]
140 65 feet under Section 4.9.8.[C]B.1.c, each additional foot in building
141 height above 65 feet requires at least an additional one-foot setback
142 from the front of the building along Fenton Street;
 - 143 [c. Within the area between a major highway and a street that confronts a
144 block that includes property in a Residential Detached zone,
145 maximum building height is
 - 146 i. 60 feet but may increase to a maximum of 90 feet if at least 33% of
147 a project's floor area is residential;
 - 148 ii. 110 feet if additional building height is necessary to accommodate
149 workforce housing units, at least 33% of the project's floor area is
150 residential, and the additional height is placed near a major
151 highway and decreases in the direction of the closest property in a
152 Residential Detached zone;
 - 153 d. For property located in a block that includes property in a Residential
154 Detached zone maximum building height is 45 feet for all uses, except
155 maximum building height is 60 feet for:

- 156 i. residential use; or
- 157 ii. mixed-use optional method project, if at least 33% of the project's
- 158 floor area is residential and the project includes a hotel;
- 159 e. For properties with frontage on both Wayne Avenue and Fenton
- 160 Street, in spite of the height limitations in Section 4.9.8.C.1.b through
- 161 Section 4.9.8.C.1.d, maximum building height may be increased by 15
- 162 feet for a building that includes residential uses or a mix of residential
- 163 and commercial uses, if such additional height is not more than 200
- 164 feet from the right-of-way line for Fenton Street as recommended in
- 165 the Approved and Adopted 2000 Silver Spring CBD Sector Plan;
- 166 however, any building using additional height must be set back from
- 167 abutting Residentially zoned land no less than the setback required in
- 168 the abutting Residential zone or the height of the building, whichever
- 169 is greater.
- 170 f. Building heights may be approved under the standards of
- 171 Section 4.9.8.C.1 without regard to the building height
- 172 recommendations of the master plan.
- 173 2. Parking between the street and the front building line of properties
- 174 fronting on Georgia Avenue is prohibited.
- 175 3. Costs associated with meeting the public open space off-site may be
- 176 shared by multiple property owners.]
- 177 2. Retail Bays
- 178 a. Limit the frontage of any storefront bay to 60 feet in façade width for
- 179 large and combination retailers, except grocery stores and basement-
- 180 level retail with a street-level entrance.

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

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

186 [4]3. In the CR zone, under the standard method of development the
187 maximum FAR is 2.0 if approved by site plan under Section 7.3.4.

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

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

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

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

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

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

203 * * *

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

205 * * *

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

207 * * *

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

209 * * *

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

211 * * *

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

213 * * *

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

215 **A. Purpose**

216 The purpose of the RSS Overlay zone is to:

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

226 **B. Land Uses**

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

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

233 **C. Development Standards**

- 234 1. Building Height

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

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

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

266 **D. Site Plan**

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

269 **E. Existing Buildings**

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

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

276 * * *

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

279

280 This is a correct copy of Council action.

281

282 _____

283 Selena M. Singleton, Esq.

284 Clerk of the Council

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

Office of Legislative Oversight

ZTA 22-03: OVERLAY ZONE – DOWNTOWN SILVER SPRING (DSS)

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 22-03 could narrow disparities by race, ethnicity, and income in affordable housing. Overall, OLO anticipates a small impact of ZTA 22-03 on racial equity and social justice in the County if its affordable housing provisions are enacted as currently drafted.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a process that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a goal of eliminating racial and social inequities.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 22-03

The purpose of ZTA 22-03, Overlay Zone - Downtown Silver Spring, is to implement the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan currently under review by the County Council. As drafted, ZTA 22-03 establishes a new Downtown Silver Spring (DSS) Overlay Zone, removes the Ripley/South Silver Spring Overlay Zone, and modifies the Fenton Village Overlay Zone.

There are two key components of ZTA 22-03 and the SSDAC Sector Plan that could impact the supply of affordable housing through the Moderately Priced Dwelling Unit (MPDU) Program.³ If enacted, ZTA 22-03 would:

- Increase the MPDU requirement for the Downtown Silver Spring Overlap Zone from a minimum of 12.5 percent to 15 percent for new projects with 20 or more residential units.
- Create a new *Height Incentive Area* that allows eligible properties to increase their maximum heights to up to 300 feet or 150 percent of the mapped height if such properties/property owners increase their MPDU set aside to at least 15 percent, 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.”⁴

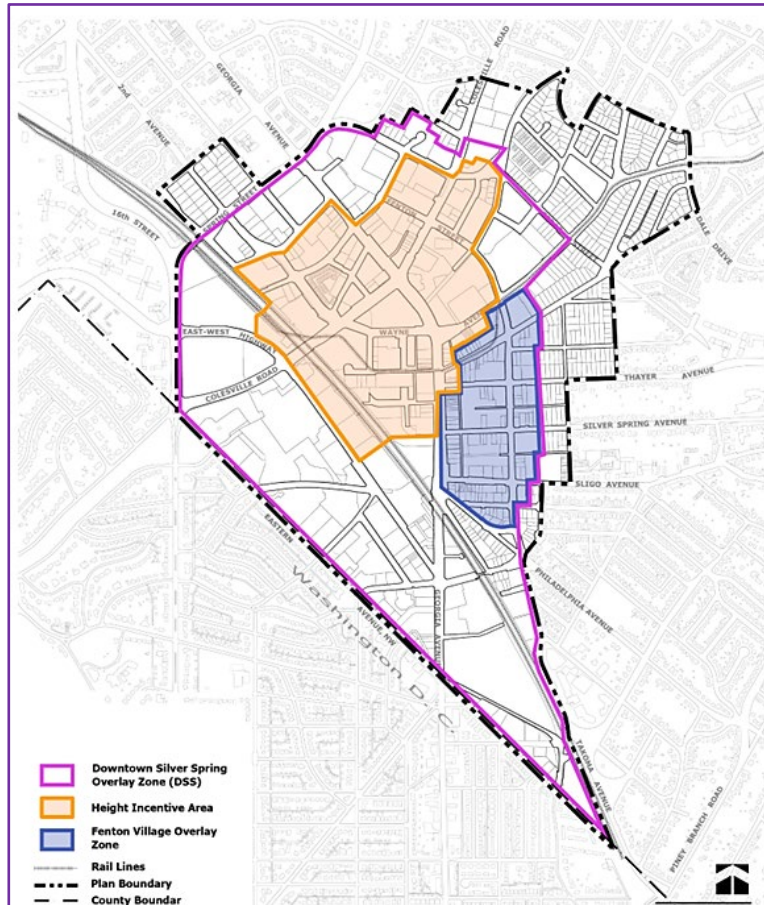
Other key components of ZTA 22-03 include the exclusion of transit proximity and structured parking in the awarding of public benefit points for optional method projects and the requirement that new projects contribute to existing or planned public parks in the SSDAC rather than set aside land for open spaces that are not aligned to the SSDAC.

ZTA 22-03 was introduced on April 19, 2022. Of note, the Council’s Planning, Housing, and Economic Development (PHED) Committee is scheduled to consider ZTA 22-03 after it completes its review and revision of the proposed SSDAC in late spring or early summer.⁵ Figure 1 on the following page provides a map of the proposed overlay zone for Downtown Silver Spring, including the Height Incentive Area.

RESJ Impact Statement

Zoning Text Amendment 22-03

Figure 1 - Proposed Overlay Zones and Height Incentive Area ⁶



AFFORDABLE HOUSING AND RACIAL EQUITY⁷

Historically, zoning laws and other government policies have restricted the supply of affordable housing and exacerbated the racial wealth gap.⁸ Collectively exclusionary zoning, restrictive covenants, redlining, New Deal housing policies, the Federal Housing Administration and the GI bill created two disparate housing systems where:⁹

- Government subsidized White-only enclaves enabled many White families to build home equity and inter-generational wealth; and
- Underinvested communities of color where residents actually paid more for lesser housing and fewer amenities and were in turn denied opportunities to build family wealth.

While the Fair Housing Act of 1968 eliminated racially explicit segregation in housing, the policies that built the segregated housing market “have never been remedied and their effects endure.”¹⁰ The wealth gap by race and ethnicity is staggering in the Metropolitan Washington region where White households had more than 80 times the wealth of Black households and 21 times the wealth of Latinx households in 2014.¹¹ Moreover, residents of color still experience discrimination in the housing market due to predatory lending practices and bias in the rental and real estate markets.¹² As such, racial disparities in housing security by race and ethnicity persist.

RESJ Impact Statement

Zoning Text Amendment 22-03

Housing Security. Local data on three metrics of housing insecurity - rent-burdened households, rental assistance during the pandemic, and homelessness - demonstrate that Black and Latinx households in Montgomery County are especially housing insecure. More specifically, in Montgomery County:

- Among renter households in 2019, rent-burden (expending 30 percent or more of income on rent) was experienced among 66 percent of Latinx renters and 60 percent of Black renters compared to 40 percent of White renters and 33 percent of Asian renters.¹³
- Among COVID Relief Rental Program clients, 43 percent of clients were Black and 37 percent were Latinx while 9 percent were White and 3 percent were Asian or Pacific Islander.¹⁴
- Among adults experiencing homelessness in 2020, 60 percent were Black, 30 percent were White, 17 percent were Latinx, and 5 percent were Asian and Pacific Islanders.¹⁵ Among families experiencing homelessness, 78 percent were Black, 15 percent were White, 9 percent were Latinx, and 2 percent were Asian.¹⁶

Data on homeownership also demonstrates housing inequities by race and ethnicity where 75 percent of White and Asian households in Montgomery County resided in owner-occupied units in 2019 compared to 50 percent of Latinx and Native American households and 42 percent of Black households.¹⁷ Data on homeownership also demonstrates housing inequities by nativity where the rate of homeownership is almost twice as high for White U.S.-born residents (76 percent) as it is for foreign-born Black residents (39 percent).¹⁸ Black, Latinx and other race mortgage holders were also more likely to experience housing cost burden, with 39 to 47 percent expending more than 30 percent of their income on their mortgage compared to 20 percent of White and 29 percent of Asian mortgage holders.¹⁹

Taken together, local data on racial and ethnic inequities in housing security demonstrates that Black, Latinx, and other race residents have a higher demand for affordable housing than White and Asian residents.

Affordable Housing. Among regions across the country, Metropolitan Washington is one of the most severely impacted by a shortage of affordable housing. In the 2017 VoicesDMV survey, nearly 20 percent of households reported being unable to pay for food or housing in the past 12 months.²⁰ According to the survey, most households in the region with incomes below \$54,300 (500,000+ households) experience housing cost-burden, paying more than 30 percent of their income toward rent or mortgage.²¹

Data from the Montgomery County Preservation Study also demonstrates a shortage of affordable housing in the County, especially for low-income households. It notes that “(t)he private market does not effectively provide rental housing options that are affordable to renters in the lower income bands, as 78 percent of households earning below 65 percent of AMI are housing cost-burdened.”²² In addition, the Preservation Study notes that “60 percent of households earning below 50 percent” of AMI are “severely housing cost-burdened – paying more than 50 percent of their gross household income on housing costs.”²³

The Preservation Study also finds that the County is at-risk of losing affordable housing units, particularly near public transit hubs that are essential to connecting residents to employment and other opportunities.²⁴ They note that 2,085 deed-restricted housing units that are set to expire in the 2020’s and 2030’s are located within one mile of existing and planned transit stations.²⁵ Many of these units are clustered around the Silver Spring, Bethesda, and Wheaton Metrorail stations. During this time frame, the study estimates that another 7,500 – 11,000 naturally occurring affordable housing (NOAH) units could also be loss and that approximately 2,300 of these NOAH units are at risk of become unaffordable for households earning up to 80 percent of AMI are also within one mile of public transit.²⁶

RESJ Impact Statement

Zoning Text Amendment 22-03

ANTICIPATED RESJ IMPACTS

Understanding the racial equity and social justice impact of ZTA 22-03 requires an awareness of the stakeholders most likely to be impacted by this ZTA. Since ZTA 22-03 is intended to implement the recommendations from the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan, understanding the anticipated RESJ impact of this ZTA also requires understanding the final provisions of this plan that are still being determined by the Council, as well as the implementation process for the plan and the specific areas that would be subject to the 15 percent MPDU provisions.

Given the higher need for affordable housing among Latinx and Black households, OLO anticipates that ZTA 22-03 could have a favorable impact on reducing housing inequities if it increases the supply of MPDU's. Further, OLO anticipates that the favorable RESJ impact of ZTA 22-03 could be improved if: MPDU's built under ZTA 23-03 were affordable for both lower-income (earning 30 - 50 percent of AMI) and moderate-income households (65 – 70 percent AMI); and a significant share of MPDU's built under ZTA 23-03 were large enough to serve families with multiple children.

CAVEATS

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

CONTRIBUTIONS

OLO staffers Elsabett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ 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 Montgomery County Code. Chapter 25A. Housing, Moderately Priced-Regulations.

⁴ Montgomery Planning. Staff report. ZTA proposal -changes to Overlay Zones to implement the SSDAC Plan. March 3, 2022.

⁵ Ibid

⁶ Ibid

⁷ OLO RESJ Impact Statement: Zoning Text Amendment 21-07(Ord. No. 19-26), Density and Height Allocation – Development with Moderately Priced Dwelling Unit

[2021 Zoning Text Amendments- Montgomery County Council \(montgomerycountymd.gov\)](https://www.montgomerycountymd.gov/2021-Zoning-Text-Amendments-Montgomery-County-Council)

⁸ Richard Rothstein, The Color of Law: A Forgotten History of How Government Segregated America, 2017

⁹ Melvin Oliver and Thomas Shapiro, “Disrupting the Racial Wealth Gap” Sociology for the Public, May 7, 2019; Kilolo Kijakazi, et. al, The Color of Wealth in the Nation’s Capitol, November 2016.

https://www.urban.org/sites/default/files/publication/85341/2000986-2-the-color-of-wealth-in-the-nations-capital_8.pdf

¹⁰ Rothstein

¹¹ Kijakazi

¹² Keeanga-Yamahtta Taylor, Race for Profit: How Banks and the Real Estate Industry Undermine Black Homeownership, 2019; Urban Institute, Exposing Housing Discrimination, <https://www.urban.org/features/exposing-housing-discrimination>.

¹³ American Community Survey, Gross Rent as a Percentage of Household Income, 2019 1-Year Estimates, United States Census Bureau. Table ID S0201.

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¹⁴ Linda McMillan memorandum to County Council regarding FY22 Operating Budget: Homeless Services, Rental Assistance, and Housing Initiative, May 11, 2021 (Agenda Item #30, Joint Committee Worksession), see page circle 13.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210512/20210512_30.pdf

¹⁵ Ibid, see page circle 8.

¹⁶ Ibid.

¹⁷ Calculations based on American Community Survey, 2019 1-Year Estimates, Table ID S2502.

¹⁸ Office of Racial Equity and Social Justice: Racial Equity Impact Assessment (REIA) for Supplemental Appropriation #22-82 – Transportation Services Improvement Fund Fuel Reimbursement Disbursement, Section III Data Analysis. *Based on Data from Policy Link. National Equity Atlas. Housing burden (owner) by race, ethnicity, and nativity: Montgomery, MD; 2019.* [draft 9/20/02 \(montgomerycountymd.gov\)](draft 9/20/02 (montgomerycountymd.gov)).

¹⁹ American Community Survey, Table ID. S0201.

²⁰ Tatian, Hende, and Bogle 2017 cited in Meeting the Washington Region’s future Housing Needs. *Urban Institute 2019.*

<https://www.urban.org/research/publication/meeting-washington-regions-future-housing-needs>

²¹ Ibid

²² Montgomery County Preservation Study, July 2020.

<https://montgomeryplanning.org/wp-content/uploads/2020/11/200914-Montgomery-County-Preservation-Study.pdf>

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid