



Committee: PHED
Committee Review: Completed
Staff: Livhu Ndou, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #SilverSpring #SSDAC #RSSOverlayZone
#FentonVillageOverlayZone
#DowntownSilverSpringOverlayZone

AGENDA ITEM #9B
October 18, 2022
Worksession/Action

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

- Tanya Stern, Acting Director, Planning Department
- Robert Kronenberg, Deputy Director, Planning Department
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department
- Elza Hisel-McCoy, Chief, Downcounty Planning, Planning Department
- Larissa Klevan, Master Plan Supervisor, Downcounty Planning, Planning Department
- Atara Margolies, Planner III, Downcounty Planning, Planning Department

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The PHED Committee (3-0) recommends approval with amendments.

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.
- The PHED Committee recommended amendments to ZTA 22-03 so that it reflects the Council-approved version of the Plan.

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MEMORANDUM

October 13, 2022

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 22-03, Overlay Zone – Downtown Silver Spring (DSS)¹

PURPOSE: Worksession/Action

Committee recommendation (3-0): approval of the ZTA with amendments
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Expected Attendees

- Tanya Stern, Acting Director, Planning Department
- Robert Kronenberg, Deputy Director, Planning Department
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- Atara Margolies, Planner III, Downcounty Planning, Planning Department

Introduction

Zoning Text Amendment (ZTA) 22-03, Overlay Zone – Downtown Silver Spring (DSS), lead sponsor Council President Albornoz at the request of the Planning Board, was introduced on April 19, 2022. 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.

¹ Council will also be reviewing Sectional Map Amendment (SMA) H-146, which amends the official zoning map and implements the recommendations in the approved and adopted 2022 Silver Spring Downtown and Adjacent Communities Plan.

Public Hearing

A public hearing was held on June 14, 2022. Planning Board testified in support of ZTA 22-03, noting that Planning had recommended amendments based on the plan as adopted by Council. A local property owner testified that the ZTA would reduce the value of density transfers by private property owners because the density can now be bought from the County.²

Summary of Impact Statements

Planning Board Recommendation

ZTA 22-03, transmitted by the Planning Board, was introduced by Council on April 19, 2022. The District Council approved the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan on May 26, 2022.³ Planning Board reviewed the originally introduced ZTA on June 2, 2022, and transmitted additional comments and modifications needed to bring the introduced ZTA in line with the sector plan approved by Council.

RESJ Impact Statement

The Office of Legislative Oversight transmitted a racial equity and social justice (RESJ) impact statement on May 20, 2022. OLO found that ZTA 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.” OLO noted that the favorable RESJ impact of ZTA 22-03 could be improved if the MPDUs built 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 MPDUs built were large enough to serve families with multiple children.

Discussion

Background

The PHED Committee held 8 worksessions on the SSDAC Plan from March through May 2022. The District Council reviewed the Plan on April 19, April 26, and May 3, 2022; and approved the Plan on May 26, 2022. The Plan includes many recommendations, such as:

- the creation of a capital project fund for contributions collected in exchange for additional density;

² The approval of DSS Density, a critical element of the Plan designed to provide flexibility and promote economic development, was decided by the Council upon approval of the Plan and is not under consideration now. ZTA 22-03 addresses the language needed to implement it.

³ A copy of the final resolution can be found here:

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20220526/20220526_4A.pdf

- revisions to the Fenton Village Overlay Zone, removal of the South Silver Spring/Ripley Overlay Zone, and coordination of public use space for Optional Method Development projects;
- the creation of a Design Advisory Panel;
- support for the full renovation of the Jesup Blair House;
- encouragement of more diverse housing types and the preservation of existing affordable units;
- improved bike and pedestrian infrastructure; and
- increased tree canopy cover, green cover, and native plantings.⁴

PHED Committee

The PHED Committee held a worksession on ZTA 22-03 on October 3, 2022. The PHED Committee recommended approval of ZTA 22-03 with amendments.

1) Consistency with approved plan

The PHED Committee recommended amendments to make ZTA 22-03 consistent with the approved SSDAC Sector Plan, such as:

- removing mention of the Height Incentive Area;
- modifying the Downtown Silver Spring (DSS) Density to keep residential density at \$5 per square foot but lower nonresidential density to \$3 per square foot;
- clarifying that projects exceeding 15% MPDUs are eligible for additional building height;
- not removing structured parking as a category eligible for public benefit points;
- adding language ensuring diversity and community participation in the selection of a Design Advisory Panel; and
- clarifying that the Planning Board will make the determination of the Park contributions in lieu of open space.

2) MPDU exemption for DSS Density

The PHED Committee recommended allowing developments with at least 25% MPDUs to not have to make a payment for their residential DSS Density. This is consistent with language in the Bethesda Overlay zone and satisfies the intent to incentivize MPDUs in mixed-use areas.⁵

3) Minor corrections for clarification

The PHED Committee recommended the following minor amendments:

⁴ The County’s press release, summarizing the Plan, can be found here:

<https://mocoshow.com/blog/montgomery-county-council-passes-resolution-approving-the-silver-spring-downtown-and-adjacent-communities-plan/>

⁵ Section 4.9.2.C.3.c.iii., Bethesda Overlay Zone, reads “If the development includes at least 25% MPDUs, a Park Impact Payment is not required for any residential gross floor area.”

- Removing the phrase “the raising of roosters is not allowed” from the Urban Farming use, since roosters are already prohibited under that use.

2. Urban Farming, if done on a rooftop. ~~[[The raising of roosters is not allowed.]]~~

- Clarifying that the additional height for buildings recommended for 300 to 360 feet in height in the plan must be approved under the optional method development.

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 under optional method development.

This packet contains:

ZTA 22-03, with proposed amendments	© 1
Planning Board transmittal – April 11, 2022	© 16
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Written testimony/correspondence	© 32

Ordinance No.:
Zoning Text Amendment No.: 22-03
Concerning: Overlay Zone -
Downtown Silver Spring
Draft No. & Date: 2 – 9/27/2022
Introduced: April 19, 2022
Public Hearing: June 14, 2022
Adopted:
Effective:

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

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.*

OPINION

Zoning Text Amendment (ZTA) 22-03, Overlay Zone – Downtown Silver Spring (DSS), lead sponsor Council President Albornoz at the request of the Planning Board, was introduced on April 19, 2022. 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.

The Office of Legislative Oversight transmitted a racial equity and social justice (RESJ) impact statement on May 20, 2022. OLO found that ZTA 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.”

A public hearing was held on June 14, 2022. The Planning Board testified in support of ZTA 22-03. A local property owner testified that the ZTA would reduce the value of density transfers by private property owners because the density can now be bought from the County.

The PHED Committee held a worksession on October 3, 2022. The PHED Committee recommended amendments to make ZTA 22-03 consistent with the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan adopted by Council on May 26, 2022. The PHED Committee recommended an amendment to allow developments with at least 25% MPDUs to not have to make a payment for their residential DSS Density. The PHED Committee also recommended minor clarifying amendments.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 22-03 will be approved as amended.

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, Section 4.5.2.A.2.e, ~~[[or]]~~ Section 4.5.4.B.5., 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 under Section 3.7.4.B:

- 25 1. Light Manufacturing and Production for the purposes of food
26 production, including any associated food service facility as defined in
27 Chapter 15 of the County Code; and
- 28 2. Urban Farming, if done on a rooftop. [[The raising of roosters is not
29 allowed.]]

30 **C. Development Standards**

- 31 1. Building Height
 - 32 a. Except as provided in Section 4.9.8.C.1.b[[,]] or Section
33 4.9.8.C.3.b., the maximum building height is limited to the
34 height allowed in the 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 under
45 optional method development.
 - 46 [[iii. To qualify for additional height under this section,
47 projects must provide greater than the minimum 15%
48 MPDUs on-site, a contribution to the Montgomery
49 County Housing Initiative Fund (HIF), or include an
50 activating ground-floor Neighborhood Service including,
51 but not limited to, small business, art gallery/venue,

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

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

66 2. Density

67 a. Properties in the CR zone with a mapped total FAR of 8.0 are
68 not subject to the maximum C FAR or maximum R FAR limits
69 under Section 59.4.5.2.A.3.

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

77 c. DSS Density is the gross floor area by which development on a
78 site in the Overlay Zone may exceed the maximum gross floor

79 area mapped on the site, consistent with the requirements of the
80 Overlay Zone, including design review, public benefits, and the
81 qualifications set forth in Section 4.9.8.C.2.e below. DSS
82 density may not be transferred to any other property.

83 d. Land Use

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

86 e. Qualification

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

88 i. Make a contribution to the Civic Improvement Fund
89 before the issuance of any building permit at a rate of \$5
90 per square foot of approved residential DSS Density
91 gross floor area and at a rate of \$3 per square foot of
92 approved non-residential DSS Density gross floor area.

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

98 3. Moderately Priced Dwelling Units (MPDUs)

99 a. General Requirement

100 For any development application that includes 20 or more
101 residential dwelling units, the Planning Board may only
102 approve the application if the development provides at least
103 15% MPDUs under the provisions of Chapter 25A.

104 b. Building Height

105 If a project exceeds 15% MPDUs the height limit of the
106 applicable zone does not apply to the extent required to provide
107 MPDUs. The additional height is calculated as the floor area
108 provided for MPDUs above 15% divided by the average
109 residential floor plate area, where each whole number and each
110 remaining fraction allows an increase of 12 feet.

111 c. Downtown Silver Spring Density

112 If a development includes at least 25% MPDUs, a DSS Density
113 Payment is not required for any residential gross floor area.

114 4. Public Benefit Points

115 The requirements for public benefit points are established by Division
116 59.4.7, and as follows:

117 a. The Planning Board must not grant any public benefit points for
118 transit proximity under Section 59.4.7.3.B. ~~[[or structured~~
119 parking under Section 59.4.7.3.E.6.]]

120 b. The Planning Board must determine that the development
121 achieves 10 points for the exceptional design public benefit
122 under Section 59.4.7.3.E.4. The Planning Board must appoint a
123 Design Advisory Panel composed of independent professionals
124 with relevant design experience and expertise, representing the
125 diversity of the community, including at least one resident of
126 Silver Spring. The Planning Board must consider the comments
127 from the Design Advisory Panel on all projects before making
128 ~~[[their]]~~its determination concerning exceptional design points.

129 5. Public Open Space

130 Any project required to provide public open space on a site not
131 recommended in the Sector Plan for a new public space must

132 contribute to the creation of new or improvement of existing public
133 parks recommended by the Sector Plan, preferably within the same
134 district as identified in the Downtown Silver Spring and Adjacent
135 Communities Plan, based on the cost per square foot of constructing
136 park area equivalent to the required public space, as determined by the
137 Planning Board during site plan review.

138 **[[D. Height Incentive Area Map]]**

139 * * *

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

141 **A. Purpose**

142 The purpose of the FV Overlay zone is to:

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

152 **[B. Land Uses**

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

- 155 1. The following Light Manufacturing and Production use: assembly of
156 computer components; and
- 157 2. The following Retail/Service Establishment uses: bakery, if less than
158 1,500 square feet of gross floor area; and catering facility.]

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

160 1. Building Height

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

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

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

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

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

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

184 i. residential use; or

- 185 ii. mixed-use optional method project, if at least 33% of the
186 project’s floor area is residential and the project includes
187 a hotel;
- 188 e. For properties with frontage on both Wayne Avenue and Fenton
189 Street, in spite of the height limitations in Section 4.9.8.C.1.b
190 through Section 4.9.8.C.1.d, maximum building height may be
191 increased by 15 feet for a building that includes residential uses
192 or a mix of residential and commercial uses, if such additional
193 height is not more than 200 feet from the right-of-way line for
194 Fenton Street as recommended in the Approved and Adopted
195 2000 Silver Spring CBD Sector Plan; however, any building
196 using additional height must be set back from abutting
197 Residentially zoned land no less than the setback required in the
198 abutting Residential zone or the height of the building,
199 whichever is greater.
- 200 f. Building heights may be approved under the standards of
201 Section 4.9.8.C.1 without regard to the building height
202 recommendations of the master plan.
- 203 2. Parking between the street and the front building line of properties
204 fronting on Georgia Avenue is prohibited.
- 205 3. Costs associated with meeting the public open space off-site may be
206 shared by multiple property owners.]
- 207 2. Retail Bays
- 208 a. Limit the frontage of any storefront bay to 60 feet in façade
209 width for large and combination retailers, except for a grocery
210 store and basement-level retail with a street-level entrance.

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

239 * * *

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

241 * * *

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

243 * * *

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

245 * * *

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

247 **A. Purpose**

248 The purpose of the RSS Overlay zone is to:

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

258 **B. Land Uses**

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

- 261 1. The following Light Manufacturing and Production use: assembly of
- 262 computer components; and
- 263 2. The following Retail/Service Establishment uses: bakery, if less than
- 264 1,500 square feet of gross floor area; and catering facility.

265 **C. Development Standards**

266 1. Building Height

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

271 i. a maximum of 90 feet for any building or portion of a
272 building that is set back a minimum of 60 feet from the
273 street; or

274 ii. a maximum of 125 feet for residential development that
275 is set back at least 100 feet from Eastern Avenue and
276 Newell Street and includes a public parking garage
277 constructed under a General Development Agreement
278 with the County.

279 b. For a property zoned CR and mapped at 200 feet, the Planning
280 Board may approve a maximum building height of 200 feet
281 only in an optional method development project that provides
282 ground floor retail. If no ground floor retail is provided, the
283 maximum building height is 145 feet. Any structure or device
284 used to collect or radiate electromagnetic waves, including a
285 satellite dish, must not be included in calculating building
286 height under this paragraph.

287 c. For a property zoned CR and mapped at 200 feet, the Planning
288 Board may approve a maximum building height of 270 feet, if
289 an optional method development project includes the provision
290 of an on-site or off-site major public facility under
291 Section 4.7.3.A and also provides a ground floor level grocery

292 store or other qualifying basic service under Section 4.7.3.C.3
293 of at least 10,000 square feet of floor area.

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

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

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

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

303 **D. Site Plan**

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

306 **E. Existing Buildings**

307 Any building for which a valid building permit was issued before February
308 1, 2000 is a conforming building and may be altered, repaired, or
309 reconstructed under the standards of the zone in effect when the building
310 was constructed, except:

311 If the building exceeds the standards of the underlying zone, any alteration,
312 repair, or reconstruction of the building must not increase the gross floor
313 area or the height of the building above that which existed on February 1,
314 2000.]

315 * * *

316 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
317 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 flourish at the end.

Casey Anderson

Chair

June 10, 2022

TO: The Honorable Gabe Albornoz, President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 22-03

Dear Mr. Albornoz:

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission met on June 2, 2022 and by a vote of 5:0 supported Zoning Text Amendment (ZTA) 22-03 with the following comments and modifications. ZTA 22-03, as originally introduced, was based upon the Planning Board Draft of the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan. The ZTA amends the Zoning Code to remove the Ripley South Silver Spring (RSS) Overlay Zone, modifies the text of the Fenton Village (FV) Overlay Zone, and adds a new Downtown Silver Spring (DSS) Overlay Zone. The Planning Board now offers a modified version of ZTA 22-03, which is more consistent with the approved SSDAC.

The removal of the RSS Overlay Zone and modifications to the FV Overlay Zone are largely a result of the CR Zone standards duplicating many of the requirements of these overlays. In addition, the area of south Silver Spring in the Ripley District has experienced robust development since 2000 when the RSS Overlay was created, limiting its future utility.

The DSS Overlay Zone is a new overlay intended to cover all districts of the SSDAC Plan area except for the Adjacent Communities district. The DSS Overlay Zone is substantially based on the Bethesda Overlay Zone and includes specific recommendations about building heights, density (including creating and implementing the DSS Density provisions), requiring 15% minimum MPDUs, modifying optional method public benefit points, and a provision to have applicants pay to improve or create public parks rather than provide private open space.

The changes the Board recommends to ZTA 22-03 to make it more consistent with the approved SSDAC are all within the DSS Overlay Zone and include:

- removing mention of the Height Incentive Area,
- modifying the DSS Density to keep residential density at \$5 per square foot but lower non-residential density to \$3 per square foot,

The Honorable Gabe Albornoz

June 10, 2022

Page Two

- clarifying that projects exceeding 15% MPDUs are eligible for additional building height, and
- clarifying that the Planning Board will make the determination of the park contributions in lieu of open space.

An additional change recommended by the Board but not explicitly discussed in the SSDAC Plan would allow developments with at least 25% MPDUs to not have to make a payment for their residential DSS Density. This is consistent to language in the Bethesda Overlay and fits the intent of incentivizing MPDUs in mixed use areas.

The Board appreciates the Council's consideration of ZTA 22-03 implementing the SSDAC Plan and hopes the Council accepts the provided modifications to the ZTA, which align the code with the adopted plan.

Sincerely,

A handwritten signature in black ink, appearing to read 'Casey Anderson', with a stylized flourish at the end.

Casey Anderson

Chair

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

Description

Zoning Text Amendment 22-03 would implement recommendations of the Downtown Silver Spring and Adjacent Communities (SSDAC) Sector Plan by implementing a new Downtown Silver Spring (DSS) Overlay Zone, amending the Fenton Village (FV) Overlay Zone, and removing the Ripley/South Silver Spring (RSS) Overlay Zone

ZTA 22-03

COMPLETED: 05-26-2022

MCPB

Item No. 8

06-02-2022

2425 Reddie Drive

Floor 14

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BB

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Summary

- ZTA 22-03 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.
- The ZTA as introduced was based upon the Planning Board Draft of the SSDAC Sector Plan. The Council has since voted on a final plan and staff has identified recommended changes to the ZTA to reflect the final version of the sector plan.
- The Public Hearing for ZTA 22-03 is scheduled for June 14, 2022.

LEAD SPONSORS

Council President Alborno at the request of the Planning Board

LEAD TEAM

Downcounty Planning &
Countywide Planning and Policy

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for ZTA 22-03

ZTA 22-03 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 Introduced With Suggested Modifications

This ZTA would make a small change to the Density and Height Allocation Section 4.5.2 within the 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 introduced ZTA is based on the Planning Board draft of the SSDAC Plan, which was modified by Council before adoption. The following provides more detail on each of the sections of the ZTA along with changes staff recommends to ensure the ZTA is consistent with the final SSDAC Plan.

[Commercial/Residential Zones](#)

The introduced 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 the additional height is 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 introduced 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 introduced ZTA makes several modifications to the text of the existing FV Overlay Zone. This overlay zone would 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 would apply to 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 change comes directly from recommendations in the 2021 [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 statement of the overlay zone is to implement specific recommendations from the SSDAC Plan including land use, building height, density, affordability, public benefits, design, and open spaces. **Staff recommends removing building height from the purpose statement because changes made by Council removed building height as a function of the DSS Overlay.** This change is shown on line 19 of the attached modified ZTA.

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 introduced ZTA and includes five sub-sections; Building Height, Density, Moderately Priced Dwelling Units, Public Benefit Points, and Public Open Space.

- Building Height – The Planning Board draft of the SSDAC Plan had discussion about creating a height incentive area for allowing the Board to increase building heights above the mapped heights with increased MPDUs, a contribution to the Housing Initiative Fund, or providing activating ground floor uses. **The Council ultimately removed much of this from the final version of the Sector Plan, therefore most of this first section is recommended for deletion.** The only section to remain is the old subsection ii on lines 41-44 of the modified ZTA document allowing for building heights up to 360 feet on select properties recommended for this in the Sector Plan.
- 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 Planning Board Draft of 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](#) – As introduced, 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. **During the Council review of the Plan it was decided to keep the restrictions on transit proximity but not remove them for structured parking, therefore staff recommends removing the text shown on lines 106 and 107 of the amended ZTA.**

In addition, all applications must achieve 10 points under the category of exceptional design. Part of this requirement would be based on comments from a newly created Design Advisory Panel (DAP) for Silver Spring. **The formation and makeup of the DAP was previously mentioned in the text that is now recommended for deletion under Building Height, therefore staff recommends that the DAP text be inserted into the Public Benefit Points section.** The inserted text is shown on lines 110 through 114.

- [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.

Height Incentive Area Map

The introduced ZTA has a section D. Height Incentive Area Map, where a map of the height incentive area would be located. **This section is recommended to be removed since the height incentive is no longer a part of the SSDAC Plan.** This removal is shown on line 124 of the modified ZTA document attached.

Conclusion

Staff recommends the Planning Board transmit comments to the District Council supporting the ZTA, with the modifications discussed here, which allow the ZTA to more accurately reflect the adopted SSDAC Plan.

Attachments

A – Introduction Packet ZTA 22-03

B – Recommended modifications to the ZTA

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

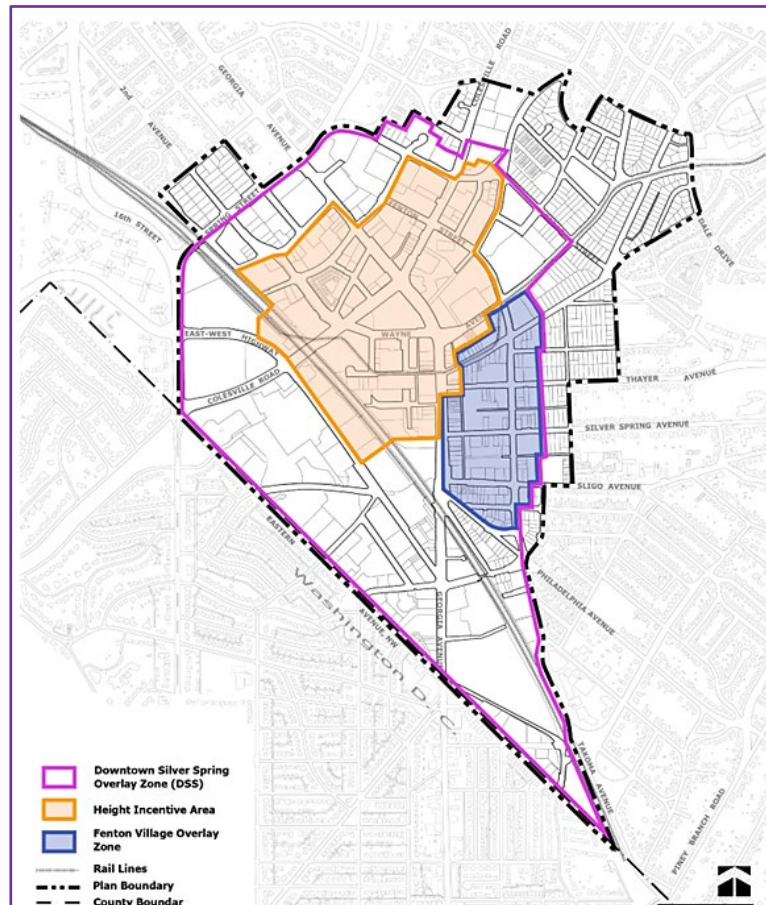
Other key components of ZTA 22-03 include the exclusion of transit proximity and structured parking in the awarding of public benefit points for optional method projects and the requirement that new projects contribute to existing or planned public parks in the SSDAC rather than set aside land for open 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 Area⁶



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.

RESJ Impact Statement

Zoning Text Amendment 22-03

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

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Elizabeth C. Rogers
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June 9, 2022

Council President Gabe Albornoz and
Members of the County Council Sitting as the District Council
100 Maryland Avenue, 4th Floor
Rockville, MD 20850

Re: ZTA 22-03, Downtown Silver Spring Overlay Zone

Dear Council President Albornoz and Members of the District Council,

Our firm represents Arlington Partnership for Affordable Housing ("APAH") who is the contract purchaser of property located at 900 Spring Street in Silver Spring, Maryland (the "Property"). The present owner of the Property is the National Ready Mixed Concrete Association. Since 1989, APAH has provided quality affordable housing for a significant number of individuals and families in the DC Metro region. APAH is looking forward to expanding its presence in Montgomery County, to provide needed, additional affordable housing opportunities to serve existing and future County residents.

We have closely followed the Master Plan process for the Downtown Silver Spring and Adjacent Communities Plan (the "Downtown Plan") and are supportive of the District Council's decisions as it relates to the Property and overall revitalization of the Downtown area. We would like to offer just one comment on ZTA 22-03 for the Downtown Silver Spring Overlay Zone. Our comment relates to a provision that is not included in the ZTA. We would suggest that the ZTA specifically exempt projects that provide 25% or more MPDUs from making any payment toward the Civic Improvement Fund for residential density needed to achieve the mapped heights on the property.

The Bethesda Overlay Zone includes a similar exemption. Specifically, Section 4.9.2.C.3.c.iii states that "[i]f the development includes at least 25% MPDUs, a Park Impact Payment is not required for any residential gross floor area." (*emphasis added*). The Civic Improvement Fund established for Silver Spring should be treated no differently. As such, we would respectfully request that the District Council recommend including a similar provision in the Downtown Silver Spring Overlay Zone. This additional language will promote and encourage the development of affordable housing, in excess of what is required by the Master Plan, in Silver Spring, just like such affordable housing is encouraged in Bethesda.

We provided similar testimony during the June 2nd Montgomery County Planning Board (the "Planning Board") public hearing on ZTA 22-03. The Planning Board was supportive of our testimony and unanimously voted to recommend the inclusion of this additional language in the ZTA, through their comments and recommendations being transmitted to the District Council. The Planning Board

agreed that the Silver Spring Overlay Zone should be treated the same as the Bethesda Overlay Zone with respect to this issue. Commissioner Carol Rubin noted during her remarks that eliminating the Civic Improvement Fund payment for any project providing at least 25% MDPUs would not be inconsistent with, or require any revisions to, the Downtown Plan. But instead, could be incorporated into the Overlay Zone through ZTA 22-03. We agree that the Overlay Zone is the appropriate mechanism to implement this exemption, just the same as the Bethesda Overlay Zone created the similar exemption from PIP payments for residential density in projects providing 25% or more MDPUs (not the Bethesda Downtown Plan).

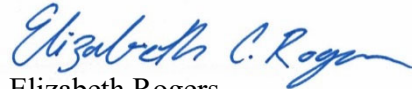
Adopting development incentives substantially similar to what is provided in the Bethesda Overlay Zone is sound policy. Thus, APAH urges the District Council to modify the proposed language in ZTA 22-03 to expressly exclude payments toward the Civic Improvement Fund for any residential density, in projects that provide 25% or more MDPUs.

Please include this letter in the official public record for this matter. Thank you for your consideration of our comments.

Sincerely,



Steven A. Robins



Elizabeth Rogers

William Kominers
Attorney
301-841-3829
wkominers@lercheearly.com

June 13, 2022

VIA ELECTRONIC MAIL

Gabe Albornoz, President and
Members of the District Council
Montgomery County Council
Stella B. Werner Council Office Bldg.
100 Maryland Avenue
Rockville, Maryland 20850

Re: Zoning Text Amendment 22-03, Downtown Silver Spring Overlay Zone
(the "Overlay Zone")

Dear President Albornoz and Members of the District Council:

The purpose of this letter is to present comments on the Zoning Text Amendment No. 22-03, the Downtown Silver Spring Overlay Zone, that is intended to implement the Downtown Silver Spring and Adjacent Communities Master Plan (the "SSDAC Plan").

The Overlay Zone was originally drafted prior to approval of the SSDAC Plan. As a result, there are a number of concepts included in the Overlay Zone that need to be excised or significantly modified based upon the Council's action on the SSDAC Plan. Generally, the Planning Board Staff revision, as set forth in its Memorandum of May 26, 2022, Attachment B, incorporates those major modifications. There remain several clarifications that I believe are appropriate to properly reflect the Council's action on the SSDAC Plan and other County policies generally. These clarifications are reflected below.

Line 32. The words "and Section 4.5.2.C" should be added on Line 32 after "Section 4.9.8.C.1.b." This is needed to make it clear that allowing additional height to accommodate an increased percentage of MPDUs above the minimum required, and their related bonus density, remains available in Silver Spring under the Overlay Zone. Being explicit is important, so as to continue to encourage higher MPDU percentages, knowing that expansion of the physical envelope is available to accommodate them.

Section 4.5.2.C deals with extra MPDUs and bonus density universally as to the CR Zones. But as currently written, Line 32 states that "except as provided in Section 4.9.8.C.1.6," the maximum height in the Overlay Zone is the underlying mapped height. This suggests that Section 4.9.8.C.1.6 would be the only way to increase the mapped height, and thus Section 4.5.2.C would not apply. This would mean that no accommodation would be made to enable a project to expand its envelop to fit extra MPDUs, thus discouraging providing them. This cannot have been the Council's intent. The Bethesda Overlay Zone is very clear that it continues to allow added height

for providing extra MPDUs. Bethesda's Section 4.9.2.C explicitly states: "Except as provided in Subsection 3 concerning MPDUs, the maximum building height is limited to the height allowed in the underlying zone."

At the Planning Board's discussion on June 2, 2022, the Planning Staff recognized the need for this clarification. I believe that the Staff made an appropriate modification to proposed Section 4.9.8.C.3 to confirm that additional height is available when providing additional MPDUs. However, that specific language has not been available as yet to confirm that the actual text as proposed solves the problem.

Either the suggestion of the Planning Board Staff, or my suggestion above, can be acceptable, so long as the revised text is clear that the existing provisions in Section 4.5.2.C that authorize added height based upon the area of additional MPDUs, will continue to apply within the Overlay Zone, as well as elsewhere in the County.

Line 116. The word "their" at the beginning of the line, should be replaced with either "its" or "a." The Planning Board, a collective entity, is making either "its" determination or "a" determination.

Lines 123 - 122. There should be a reference for the source of the "cost per square foot of constructing park area ..." The Ordinance should direct a reader to specific standards if they are referenced, but not included in the Ordinance. The ability to make a payment toward a greater goal, in lieu of providing small amounts of on-site public open space, makes sense in the context of avoiding unusable small, open space areas. But in doing so, the law should not provide an undefined, blank check to government for the amount of such a payment.

A careful analysis of the actual expected costs of constructing park area was made during the review of the Bethesda Downtown Plan and the Bethesda Overlay Zone, so as to support the Park Impact Payment. The Silver Spring Overlay Zone should have an amount or formula that has undergone the same rigorous review before being imposed through this ZTA. If there is data on which the payment is to be based, it should be transparent and vetted in daylight.

Added Provision. One provision that is not included in the ZTA, but should be, relates to projects with 25% or more MPDUs.

The Bethesda Overlay Zone (Section 4.9.2.C.3.c.iii), provides an exemption from the Park Impact Payment for any residential gross floor area in a project, if the development includes at least 25% MPDUs. The Civic Improvement Fund established in Silver Spring should be treated no differently. Thus, language similar to Bethesda should be included in the ZTA. For example, "if the development includes at least 25% MPDUs, a Civic Improvement Fund payment is not required for any residential gross floor area." This additional language will promote inclusion of affordable housing in excess of the Master Plan requirement in a similar way to the encouragement found Bethesda. In addition, such additional text will continue to level the playing field for development between Silver Spring and Bethesda.

Thank you for your consideration of these suggestions.

03. Please place this letter in the record of the June 14, 2022, Public Hearing on ZTA No. 22–

Please contact me if you have any questions on these suggestions.

Very truly yours,

LERCH, EARLY & BREWER

William Kominers

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cc: Livhu Ndou, Esquire
Mr. Benjamin Berbert