



Committee: PHP
Committee Review: At a future date
Staff: Livhu Ndou, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #BethesdaOverlay #BOZ #Extensions

AGENDA ITEM #10A
April 11, 2023
Introduction

SUBJECT

Zoning Text Amendment (ZTA) 23-03, Bethesda Overlay Zone – Extensions

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

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

ZTA 23-03 will grant a one-time one-year extension to existing deadlines within the Bethesda Overlay Zone (BOZ).

SUMMARY OF KEY DISCUSSION POINTS

- Under the current zoning ordinance, if the Planning Board approves a site plan using BOZ Density, the applicant must have a building permit application within 2 years of the date of the Planning Board's resolution. No extensions are permitted.
- ZTA 23-03 will grant a one-year one-time extension to have a building permit to all applicants who have obtained site plan approval using BOZ Density as of the effective date of the ZTA.
- Planning's stated reason for this ZTA is that developers have faced hurdles getting approved for financing because of inflation and rising interest rates.
- A public hearing is tentatively scheduled for May 16, 2023.

This report contains:

ZTA 23-03	© 1
Planning Board Transmittal	© 5
Planning Staff Report	© 7

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

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

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

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

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

ORDINANCE

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

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

2 **Division 4.9. Overlay Zones**

3 * * *

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

5 * * *

6 **D. Development Procedures**

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

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

32 * * *

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

March 13, 2023

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

From: Montgomery County Planning Board

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

BOARD RECOMMENDATION

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

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

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

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

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

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

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, March 9, 2023.



Roberto R. Piñero
Vice Chair

Attachments:

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



PROPOSED ZTA – BETHESDA OVERLAY ZONE – EXTENSIONS



Description

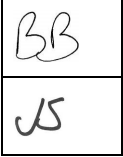
The proposed zoning text amendment would modify the development procedures of the Bethesda Overlay Zone (BOZ) by granting a one-time, one (1) year extension to the existing deadlines within the overlay zone that apply to projects that utilized BOZ Density in their approval.

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

MCPB
Item No. 7
03-09-2023

Montgomery County
Planning Board
2425 Reedie Drive, Floor 14
Wheaton, MD 20902

Planning Staff



Benjamin Berbert, Planner III, Countywide Planning and Policy
Benjamin.Berbert@montgomeryplanning.org, 301-495-4644

Jason Sartori, Chief, Countywide Planning and Policy
Jason.Sartori@montgomeryplanning.org, 301-495-2172

LEAD TEAM

Countywide Planning & Policy

REVIEW BASIS

Chapter 59 – Zoning

Summary:

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

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SECTION 1: BACKGROUND

RATIONALE FOR THE PROPOSED ZTA

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

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

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

SECTION 2: ANALYSIS

PROPOSED ZTA

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

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

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

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

SECTION 3: CONCLUSION

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

ATTACHMENTS

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

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

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

Lead Sponsor: Councilmember ***

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

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

ORDINANCE

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

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

Division 4.9 Overlay Zones

* * *

Section 4.9.2. Bethesda (B) Overlay Zone

* * *

D. Development Procedures

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

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

32 * * *

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

35
36 This is a correct copy of Council action.

37
38 _____

39 Judy Rupp, Esq.
40 Clerk of the Council