

ATTACHMENT 1

Zoning Text Amendment No.: 16-XX
Concerning: Overlay Zone – Bethesda
Draft No. & Date: 2-9/14/16
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:

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish the Bethesda Overlay Zone

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

ARTICLE 59-1	“General Zoning Ordinance Provisions”
Section 1.4.2.	“Specific Terms and Phrases Defined”
ARTICLE 59-2.	“Zones and Zoning Map”
Section 2.1.2.	“Zoning Categories”
ARTICLE 59-4.	“Development Standards for Euclidean Zones”
Section 59.4.9.	“Overlay Zones”
Section 4.9.2	“Burtonsville Employment Area (BEA) Overlay Zone”
Section 4.9.3	“Chevy Chase Neighborhood Retail (CCNR) Overlay Zone”
Section 4.9.4	“Clarksburg East Environmental (CEE) Overlay Zone”
Section 4.9.5	“Clarksburg West Environmental (CWE) Overlay Zone”
Section 4.9.6	“Community-serving Retail (CSR) Overlay Zone”
Section 4.9.7	“Fenton Village (FV) Overlay Zone”
Section 4.9.8	“Garrett Park (GP) Overlay Zone”
Section 4.9.9	“Germantown Transit Mixed Use (GTMU) Overlay Zone”
Section 4.9.10	“Montgomery Village (MV) Overlay Zone”
Section 4.9.11.	“Regional Shopping Center (RSC) Overlay Zone”
Section 4.9.12.	“Ripley/South Silver Spring (RSS) Overlay Zone”
Section 4.9.13.	“Rural Village Center (RVC) Overlay Zone”
Section 4.9.14.	“Sandy Spring/Ashton Rural Village (SSA) Overlay Zone”
Section 4.9.15.	“Takoma Park/East Silver Spring Commercial Revitalization (TPESS) Overlay Zone”
Section 4.9.16.	“Transferable Development Rights (TDR) Overlay Zone”

Section 4.9.17. Twinbrook (TB) Overlay Zone
Section 4.9.18. Upper Paint Branch (UPB) Overlay Zone
Section 4.9.19. Upper Rock Creek (URC) Overlay Zone

And adding

New defined term

Section 1.4.2 “Bonus Density”

Section 59.4.9.2. “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. ARTICLE 59-1 is amended as follows:**

2 * * *

3 **DIVISION 1.4. Defined Terms**

4 * * *

5 **Section 1.4.2. Specific Terms and Phrases Defined**

6 In this Chapter, terms that are not specifically defined have their ordinary meaning.

7 The following words and phrases have the meanings indicated.

8 * * *

9 **Bonus Density:** See Section 4.9.2.C.2.a

10 * * *

11 **Sec. 2. ARTICLE 59-2 is amended as follows:**

12 **DIVISION 2.1. Zones Established**

13 * * *

14 **Section 2.1.3. Establishment of Zones**

15 * * *

16 **G. Overlay Zones**

17 1. There are [18] 19 Overlay zone classifications:

18 a. Bethesda (B)

19 [a] b. Burtonsville Employment Area (BEA),

20 [b] c. Chevy Chase Neighborhood Retail (CCNR),

21 [c] d. Clarksburg East Environmental (CEE),

22 [d] e. Clarksburg West Environmental (CWE),

23 [e] f. Community-serving Retail (CSR),

24 [f] g. Fenton Village (FV),

25 [g] h. Garrett Park (GP),

26 [h] i. Germantown Transit Mixed Use (GTMU),

27 [i] j. Montgomery Village (MV)

- 28 [j] k. Regional Shopping Center (RSC),
- 29 [k] l. Ripley/South Silver Spring (RSS),
- 30 [l] m. Rural Village Center (RVC),
- 31 [m] n. Sandy Spring/Ashton Rural Village (SSA),
- 32 [n] o. Takoma Park/East Silver Spring Commercial Revitalization
- 33 (TPESS),
- 34 [o] p. Transferable Development Rights (TDR),
- 35 [p] q. Twinbrook (TB),
- 36 [q] r. Upper Paint Branch (UPB), and
- 37 [r] s. Upper Rock Creek (URC).

38 2. Building types, uses, density, height, and other standards and
39 requirements may be modified by the Overlay zones under Section
40 4.9.2 through Section [4.9.19] 4.9.20.

41 * * *

42 **Sec. 3. ARTICLE 59-4 is amended as follows:**

43 **DIVISION 4.9. Overlay Zones**

44 * * *

45 **Section 4.9.2. Bethesda Overlay Zone**

46 **A. Purpose**

47 The purpose of the Bethesda Overlay Zone is to appropriately allocate
48 density within the Bethesda Downtown area that will protect existing
49 residential neighborhoods, establish a funding mechanism for parks
50 and open space critical to support additional development, expand the
51 County’s affordable housing inventory, ensure high quality design
52 through the use of a Design Review Advisory Panel, and modify
53 density averaging rules for Priority Sending Sites.

54 **B. Land Uses**

- 55 1. The land uses of the Commercial Residential (CR) and the
56 Commercial Residential Town (CRT) zones are applicable.
57 2. Surface Parking for Use Allowed in the Zone is not allowed on a
58 Priority Sending Site from which density has been transferred.

59 **C. Development Standards**

- 60 1. Building Height
61 Outside of the High Performance Area designated in the Bethesda
62 Downtown Plan, development may not exceed the mapped height limit in
63 order to facilitate the provision of MPDUs under Section 4.7.3.D.6.b.
- 64 2. Density
- 65 a. A development may exceed the mapped CR or CRT FAR on a site if
66 the Planning Board approves on a sketch and site plan the allocation
67 of FAR from Bonus Density. Bonus Density is the total square
68 footage by which approved development in the Downtown Bethesda
69 plan area may cumulatively exceed the maximum square footage
70 allowed under the mapped CR and CRT zones. Bonus Density is
71 limited to 3,289,000 square feet.
- 72 b. FAR allocated from Bonus Density may be developed with any
73 Commercial or Residential use allowed in the underlying zone.
- 74 c. In order to qualify for Bonus Density FAR, a proposed development
75 must:
- 76 1. Use all mapped CR or CRT FAR associated with the property.
77 Density may not be transferred from the property.
- 78 2. Provide a minimum of 15 percent MPDUs.
- 79 3. Make a Park Impact Payment before the filing of any building
80 permit application at a rate of \$10 per square foot of approved Bonus

81 Density FAR. If a property owner dedicates land designated in the
82 master plan as a recommended/enhanced open space to the M-NCPPC
83 Parks Department, the Planning Board may proportionally reduce the
84 amount of square footage for which a Park Impact Payment must be
85 made. If a property owner dedicates land designated as an Open Space
86 Priority Sending Site to the M-NCPPC Parks Department, the
87 Planning Board may reduce the amount of square footage for which a
88 Park Impact Payment must be made in proportion to the dedicated
89 area.

90 4. Be reviewed by the Design Review Advisory Panel at sketch plan
91 and site plan review to help ensure the development achieves the
92 highest level design quality, consistent with the master plan, design
93 guidelines, and other applicable requirements. The Design Review
94 Advisory Panel must consist of at least five members appointed by the
95 Planning Director.

96 d. The Public Use Space requirement under Section 4.5.4.b.1.a may be
97 reduced in proportion to the Bonus Density FAR in a project.

98 e. A project that makes a Park Impact Payment may qualify for up to 10
99 incentive density points under the category of major public facility.

100 f. A project that includes at least 20 percent Bonus Density FAR
101 qualifies for the Department of Permitting Services' Green Tape
102 Program.

103 **3. FAR Averaging**

104 a. The Bethesda Downtown Plan designates certain properties as Priority
105 Sending Sites to encourage the creation or enlargement of urban
106 parks, protect significant historic and community resources, and to
107 retain existing affordable housing.

- 108 b. Density transferred from a Priority Sending Site may be included in a
109 development application for any CR or CRT-zoned site within the
110 Sector Plan Area boundary.
- 111 c. Density transferred from a Priority Sending Site may be used on
112 another site without the Priority Sending Site being under the same
113 sketch plan or site plan.
- 114 d. Density transferred from a Priority Sending Site is exempt from the
115 BLT purchase requirements of Section 4.7.3.F.1.a.
- 116 e. Density transferred from a Priority Sending Site is exempt from any
117 requirement to provide MPDUs above the 12.5 percent minimum.
- 118 f. Before a certified site plan for a development using density transferred
119 from an Open Space Priority Sending Site may be approved, all
120 development rights must be extinguished on the Open Space Priority
121 Sending Site by a recorded instrument approved by the M-NCPPC.
- 122 g. Before a certified site plan for a development using density transferred
123 from an Affordable Housing Priority Sending Site may be approved,
124 the owner of the sending site must enter into a rental agreement with
125 the Department of Housing and Community Affairs to retain a
126 minimum of 30% of the existing affordable housing units, defined as
127 65 percent of Area Median Income (AMI) or below, for 20 years.
- 128 h. Before a certified site plan for a development using density transferred
129 from a Historic/Community Resource Priority Sending Site may be
130 approved, all development rights not associated with an existing
131 structure, and any amount of square footage determined by the
132 Planning Board in reviewing a Sketch Plan to be necessary for
133 operational purposes, must be extinguished on the

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Historic/Community Resource Priority Sending Site by a recorded instrument approved by the M-NCPPC.

- i. If all or part of an Open Space Priority Sending Site off of which no density has been transferred is dedicated to the M-NCPPC Parks Department, it may qualify for public benefit points as a major public facility.
- j. If all or part of a Historic/Community Resource Priority Sending Site off of which no density has been transferred is dedicated to the M-NCPPC Parks Department, it may qualify for public benefit points as a major public facility.

D. Development Procedures

- 1. 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.3.
- 2. To approve a site plan with Bonus Density FAR, the Planning Board must find that the proposed allocation of FAR from Bonus Density, in addition to all previously approved allocations, does not exceed 3,289,000 square feet.
- 3. If the Planning Board approves a site plan using Bonus Density, the applicant must have the Department of Permitting Services accept at least a core and shell building permit application no later than two years after the date the resolution is sent. The applicant must provide the Planning Department proof of acceptance of the core and shell building permit application no later than 15 days after the Department

161 of Permitting Services accepts it. No later than two years after the
162 Department of Permitting Services accepts the core and shell building
163 permit application, the applicant must obtain at least a core and shell
164 building permit. The deadlines for applying for and obtaining a core
165 and shell building permit under this section may not be extended. If
166 an applicant fails to apply for or obtain a building permit within the
167 time allowed under this section, the site plan approval is revoked.
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169
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171 **Section [4.9.2] 4.9.3. Burtonsville Employment Area (BEA),**

172 * * *

173 **B. Land Uses**

174 1. The following uses are prohibited:

175 * * *

176 k. Light Manufacturing and Production, except as noted in Section
177 [4.9.2.B.3] 4.9.3.B.3;

178 * * *

179 **Section [4.9.3] 4.9.4. Chevy Chase Neighborhood Retail (CCNR),**

180 * * *

181 **Section [4.9.4] 4.9.5. Clarksburg East Environmental (CEE),**

182 * * *

183 **D. Development Standards**

184 1 Except as allowed under Section [4.9.4.B] 4.9.5.B, the maximum total
185 impervious surface area for any development after August 4, 2014 is
186 15% of the total area under application for development.

187 * * *

188 **E. Site Plan**

189 1. Any development that must file a preliminary plan of subdivision under
190 Chapter 50 requires approval of a site plan by the Planning Board under
191 Section 7.3.4, unless excluded under Section [4.9.4.E.2] 4.9.5.E.2.

192 * * *

193 **Section [4.9.5] 4.9.6. Clarksburg West Environmental (CWE),**

194 * * *

195 **D. Development Standards**

196 1. Except for County owned land or land under a conservation easement
197 granted to the benefit of the County and development exempted under
198 Section [4.9.5.B] 4.9.6.B, the maximum total impervious surface area
199 for any development after August 4, 2014 is 6% of the total area under
200 application for development.

201 * * *

202 **E. Site Plan**

203 1. Any development that must file a preliminary plan of subdivision under
204 Chapter 50 requires approval of a site plan by the Planning Board under
205 Section 7.3.4, unless excluded under Section [4.9.5.E.2] 4.9.6.E.2 or
206 Section [4.9.5.E.3] 4.9.6.E.3.

207 * * *

208 **Section [4.9.6] 4.9.7. Community-serving Retail (CSR),**

209 * * *

210 **Section [4.9.7] 4.9.8. Fenton Village (FV),**

211 * * *

212 **C. Development Standards**

213 1. Building Height

214 * * *

215 b. Maximum building height is 60 feet along any street confronting
216 any block that includes property in a Residential Detached zone
217 and, when a building is allowed to be higher than 60 feet under
218 Section [4.9.7.C.1.c] 4.9.8.C.1.c, each additional foot in building
219 height above 60 feet requires at least an additional one foot
220 stepback from the front of the building along Fenton Street;

221 * * *

222 e. For properties with frontage on both Wayne Avenue and Fenton Street,
223 in spite of the height limitations in Section [4.9.7.C.1.b] 4.9.8.C.1.b
224 through Section [4.9.7.C.1.d] 4.9.8.C.1.d, maximum building height may
225 be increased by 15 feet for a building that includes residential uses or a
226 mix of residential and commercial uses, if such additional height is not
227 more than 200 feet from the right-of-way line for Fenton Street as
228 recommended in the Approved and Adopted 2000 Silver Spring CBD
229 Sector Plan; however, any building using additional height must be set
230 back from abutting Residentially zoned land no less than the setback
231 required in the abutting Residential zone or the height of the building,
232 whichever is greater.

233 f. Building heights may be approved under the standards of Section
234 [4.9.7.C.1] 4.9.8.C.1 without regard to the building height
235 recommendations of the master plan.

236 * * *

237 **Section [4.9.8] 4.9.9. Garrett Park (GP),**

238 * * *

239 **C. Land Uses**

240 The land uses and use standards of the underlying zone are applicable unless
241 the development standards in Section [4.9.8.D] 4.9.9.D are more restrictive,
242 in which case Section [4.9.8.D] 4.9.9.D must be followed.

243 * * *

244 **Section [4.9.9] 4.9.10. Germantown Transit Mixed Use (GTMU),**

245 * * *

246 **Section [4.9.10] 4.9.11. Montgomery Village (MV),**

247 * * *

248 **Section [4.9.11] 4.9.12. Regional Shopping Center (RSC) Overlay Zone**

249 * * *

250 **D. Site Plan**

251 Site plan approval under Section 7.3.4 is required for any increase in
252 building height under Section [4.9.11.C.1] 4.9.12.C.1.

253 **E. Parking**

254

255 **4. Pedestrian Access**

256 The major point of pedestrian access for an off-street parking facility that
257 occupies contiguous land area integral to the regional shopping center property
258 may extend more than 500 feet walking distance from an entrance to the center
259 to satisfy the number of spaces required under Section [4.9.11.E.1.a]

260 4.9.12.E.1.a.

261 * * *

262 **Section [4.9.12] 4.9.13. Ripley/South Silver Spring (RSS) Overlay Zone**

263 * * *

264 **Section [4.9.13] 4.9.14. Rural Village Center (RVC) Overlay Zone**

265 * * *

266 **C. Development Standards**

267 1. Where a lot is either partially or totally in a Commercial/Residential
268 zone:

269 * * *

270 e. In addition to the parking requirements in Division 6.2:

271 * * *

272 iii. For any cumulative enlargement of a surface parking
273 facility that is greater than 50% of the total parking area
274 approved before November 4, 2002, the entire off-street
275 parking facility must be brought into conformance with
276 Section [4.9.13] 4.9.14.

277 * * *

278 **Section [4.9.14] 4.9.15. Sandy Spring/Ashton Rural Village (SSA) Overlay**
279 **Zone**

280 * * *

281 **Section [4.9.15] 4.9.16. Takoma Park/East Silver Spring Commercial**
282 **Revitalization (TPESS) Overlay Zone**

283 * * *

284 **D. Site Plan**

285

286 3. For any addition, reconstruction, or alteration that changes a building by
287 less than 1,000 square feet and does not require site plan approval under
288 Section [4.9.15.D.1.c] 4.9.16.D.1.c, the Planning Board or its designee
289 must review the building permit to determine compliance with master
290 plan recommendations and the provisions of this Overlay zone. If an
291 existing building is located on the site or on an adjacent property, the
292 minimum setback of the zone may be reduced to conform to the existing
293 setback on the site or on the adjacent property.

294

295 **Section [4.9.16] 4.9.17. Transferable Development Rights (TDR) Overlay Zone**

296 * * *

297 **B. Optional Method**

298 **1. In General**

299 The TDR Overlay optional method of development permits an
300 increase in the maximum residential density, if the development
301 satisfies the requirements for optional method development using
302 Transferable Development Rights under Section [4.9.16.B] 4.9.17.B.

303 **a. Applicability**

304 The procedures and requirements in Section [4.9.16.B] 4.9.17.B
305 apply to the transfer of development rights from land in the AR
306 zone to land in a Transferable Development Rights (TDR)
307 Overlay zone. The Planning Board may approve subdivision of
308 such land at densities up to the maximum density allowed in the
309 applicable TDR Overlay zone and substantially conforming to
310 the recommendations in the applicable master plan.

311 * * *

312 **c. Recording of Development Right**

313 * * *

314 ii. A final record plat for a subdivision using transferred
315 development rights must contain a statement including the
316 development proposed, the zoning classification of the
317 property, the number of development rights used, and a
318 notation of the recordation of the conveyance as required by
319 Section [4.9.16.B] 4.9.17.B.

320 **d. Development with Moderately Priced Dwelling Units**

- 321 i. A property developed under Section 4.9.16.B must satisfy
322 Chapter 25A.
323 ii. A density bonus allowed under Chapter 25A is calculated
324 after the base density of the property has been increased
325 under Section [4.9.16.B] 4.9.17.B through TDRs.

326 * * *

327 **e. Additional Findings**

328 In addition to the findings required for approval of a site plan
329 under Section 7.3.4, for projects developed under Section
330 [4.9.16.B] 4.9.17.B, the Planning Board must find that the
331 proposed development provides an appropriate range of
332 housing types that takes advantage of existing topography and
333 environmental features and achieves a compatible relationship
334 between the proposed development and adjoining land uses.

335 * * *

336 **Section [4.9.17] 4.9.18. Twinbrook (TB) Overlay Zone**

337 * * *

338 **Section [4.9.18] 4.9.19. Upper Paint Branch (UPB) Overlay Zone**

339 * * *

340 **B. Exemptions**

341 The following are exempt from Section [4.9.18] 4.9.19:

342 * * *

343 **C. Land Uses**

- 344 1. Except as listed in Section [4.9.18.C.2] 4.9.19.C.2 and Section
345 [4.9.18.C.3] 4.9.19.C.3, the land uses of the underlying zone apply.
346 The use standards of the underlying zone apply unless the
347 development standards in Section [4.9.18.D] 4.9.19.D are more

348 restrictive, in which case Section [4.9.18.D] 4.9.19.D must be
349 followed.

350 * * *

351 3. If validly existing on July 1, 1997, the uses in Section [4.9.18.C.2]
352 4.9.19.C.2 may be continued under the requirements in effect at the
353 time the use was established. Any expansion requires compliance with
354 the UPB Overlay zone.

355 * * *

356 **E. Waiver**

357 The applicable review body may grant a waiver of the development
358 standards in Section [4.9.18.D] 4.9.19.D if it finds that:

359 * * *

360 4. Alternative water quality and control techniques are used to meet the
361 purposes of Section [4.9.18] 4.9.19.

362 **Section [4.9.19] 4.9.20. Upper Rock Creek (URC) Overlay Zone**

363 * * *

364 **B. Exemptions**

365 1. The following are exempt from Section [4.9.19] 4.9.20:

366 * * *

367 **D. Waiver**

368 The applicable review body may grant a waiver of the development
369 standards in Section [4.9.19.C] 4.9.20.C if it finds that:

370 * * *

371 4. Alternative water quality and quantity control techniques are used to
372 meet the purposes of Section [4.9.19] 4.9.20.

373 * * *

374
375

Sec. 4. OLD ZONING ORDINANCE TO NEW ZONING ORDINANCE SECTION CROSS REFERENCE is amended as follows:

Old ZONING ORDINANCE	New ZONING ORDINANCE
Article 59-C: Zoning Districts; Regulations.	
* * *	
Division 59-C-18. Overlay Zones.	
* * *	
Sec. 59-C-18.15. Environmental Overlay Zone for the Upper Paint Branch Special Protection Area.	Sec. [4.9.18] <u>4.9.19</u> . Upper Paint Branch (UPB) Overlay Zone
* * *	
Sec. 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone.	Sec. [4.9.14] <u>4.9.15</u> . Sandy Spring/ Ashton Rural Village (SSA) Overlay Zone
* * *	
Sec. 59-C-18.20. Ripley/South Silver Spring Overlay Zone.	Sec. [4.9.12] <u>4.9.13</u> . Ripley/South Silver Spring (RSS) Overlay Zone
Sec. 59-C-18.21. Takoma Park/East Silver Spring commercial revitalization overlay zone.	Sec. [4.9.15] <u>4.9.16</u> . Takoma Park/ East Silver Spring Commercial Revitalizations (TPESS) Overlay Zone
* * *	
Sec. 59-C-18.23. Rural village center overlay zone.	Sec. [4.9.13] <u>4.9.14</u> . Rural Village Center (RVC) Overlay Zone
Sec. 59-C-18.24. Environmental overlay zone for the Upper Rock Creek Special Protection Area.	Sec. [4.9.19] <u>4.9.20</u> . Upper Rock Creek (URC) Overlay Zone

376

377

Sec. 5. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

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This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council