Zoning Text Amendment No. 16-20, Overlay Zone – Bethesda

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Description

ZTA 16-20 would establish the Bethesda Overlay Zone (BOZ) to implement recommendations of the Planning Board Draft of the Bethesda Downtown Plan. The overlay zone would include defined terms, development and land use standards, and procedures for development approvals.

Summary

Staff recommends approval, with minor modifications of ZTA 16-20 to implement the recommendations of the Planning Board Draft of the Bethesda Downtown Plan by establishing the Bethesda Overlay Zone. The minor changes recommended by staff are to clarify the intent that once a site plan using bonus density is approved by the Planning Board, the applicant must have a core and shell building permit application accepted by DPS within two years. In addition, a core and shell building permit must be obtained within two years of acceptance by DPS of the core and shell building permit application (lines 148-160 of the ZTA).

Background/Analysis

On October 6, 2016, the Board unanimously recommended transmitting a Zoning Text Amendment (later introduced by County Council as ZTA 16-20) to the County Council for introduction that would establish the Bethesda Overlay Zone to implement recommendations and goals of the Planning Board Draft Bethesda Downtown Plan.

The County’s Zoning Text Amendment Advisers reviewed the Planning Board draft ZTA and provided minor plain language edits to the text. These edits are included in ZTA 16-20 as introduced by the County Council.

The aim of the Plan is not to radically transform the community but to achieve a sustainable downtown through incremental measures addressing its economic, social and environmental future. The recommendations work to increase:
1. **Parks and open spaces**, including new civic greens at Veteran’s Park, Bethesda Farm Women’s Cooperative Market, Capital Crescent Trail and new urban parks, pathways and gateways.

2. **Affordable housing**, including the preservation of existing market-rate affordable housing, providing a mix of housing options and the provision of Moderately Priced Dwelling Units in exchange for development incentives.

3. **Environmental innovation**, including more energy-efficient buildings, better stormwater management, improved sidewalks and bicycle routes, and other measures to enhance community health and quality of life.

4. **Economic competitiveness**, based on new development, public amenities and proximity to public transit to attract businesses and visitors from throughout the region, and foster entrepreneurship and innovation.

Montgomery County’s new Zoning Ordinance, enacted in October 2014, provides valuable tools for developing a mix of residential and non-residential uses within the Commercial Residential (CR) or Commercial Residential Town (CRT) zones, such as those of Downtown Bethesda. At the same time, these zones allow for public amenities and benefits, including affordable housing, energy conservation, public open space and high quality designs of streetscapes and buildings. One of the proposed methods for achieving several of these benefits is ZTA 16-20 to establish the Bethesda Overlay Zone: This new overlay zone would provide a planning and zoning strategy that implements the recommendations outlined in the Plan while providing a comprehensive zoning scheme that does not exceed the densities recommended in the land use vision.

Generally, the Bethesda Overlay Zone:

- Establishes a funding mechanism for parks and open space critical to support additional development
- Expands the County’s affordable housing inventory
- Ensures high quality design through the use of a Design Review Advisory Panel.
- Modifies the density averaging rules for certain priority sites in the Plan area. The Sector Plan designates Open Space Priority Sending Sites, Historic/Community Resources Priority Sending Sites and Affordable Housing Sending Sites. Density transfers from these sites are encouraged to facilitate, respectively, the creation or enlargement of urban parks, protection of significant landmarks and retention of affordable housing.

In order to accomplish these objectives, the Plan recommends zoning individual properties CR with the currently mapped density limit and with the building heights recommended in the Sector Plan. These properties will also be covered under the Bethesda Overlay Zone.
Specifically, the Bethesda Overlay Zone under ZTA 16-20 will:

- Cover all properties within the Sector Plan boundary.
- Set a cap on development to ensure that additional density in the Plan Area (excluding mapped CR and CRT density) does not exceed 3,289,000 square feet. (Lines 63-69)
- Allow development to exceed the mapped CR density limit on a property if overlay zone density is available and the proposed development meets certain requirements. (Lines 62-96)
- Allow the Planning Board to reduce the public use space requirement (lines 92-93)
- Allow a project that makes a Park Impact Payment to qualify for up to 10 incentive density points under the category of major public facility (lines 94-96)
- Establish the requirements for additional density received through the Bethesda Overlay Zone, including a requirement to provide a Park Impact Payment, provide 15 percent MPDUs and participate in a Design Review Advisory Panel at the Concept Plan and/or Sketch Plan application phase. (Lines 72-91)
- Not give additional building height for projects with MPDUs located outside of the High Performance Area. (Lines 57-61)
- Establish the process for obtaining approval of a development with overlay zone density and using it in a timely manner so that unused density is not hoarded. (Lines 139-160)
- Modify the density averaging rules to encourage transfers of density from the Priority Sending Sites identified in the Sector Plan. (Lines 97-138)

Overall, staff believes that the proposed overlay zone consistently implements the recommendations of Planning Board Draft Bethesda Downtown Plan which intends to create a truly sustainable downtown by focusing on components that will bolster the elements most in need of enhancement. Staff is recommending a few minor editorial changes. The minor changes are to clarify the intent that once a site plan using bonus density is approved by the Planning Board, the applicant must have a core and shell building permit application accepted by DPS within two years. In addition, a core and shell building permit must be obtained within two years of acceptance by DPS of the core and shell building permit application (lines 148-160).

Attachments

1. ZTA No. 16-20
2. Map-Proposed Overlay Zone Boundary
ATTACHMENT 1

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 at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish the Bethesda Overlay zone with defined terms, development and land use standards, and procedures for development approvals; and
- generally amend provisions concerning Overlay zones

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”
Division 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:

Section 1.4.2  “Bonus Density”
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. ARTICLE 59-1 is amended as follows:

Division 1.4. Defined Terms

Section 1.4.2. Specific Terms and Phrases Defined

In this Chapter, terms that are not specifically defined have their ordinary meaning.
The following words and phrases have the meanings indicated.

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

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

Division 2.1. Zones Established

Section 2.1.3. Establishment of Zones

G. Overlay Zones

1. There are Overlay zone classifications:
   a. Bethesda (B),
   [a] b. Burtonsville Employment Area (BEA),
   [b] c. Chevy Chase Neighborhood Retail (CCNR),
   [c] d. Clarksburg East Environmental (CEE),
   [d] e. Clarksburg West Environmental (CWE),
   [e] f. Community-serving Retail (CSR),
   [f] g. Fenton Village (FV),
   [g] h. Garrett Park (GP),
   [h] i. Germantown Transit Mixed Use (GTMU),
   [i] j. Montgomery Village (MV),
Regional Shopping Center (RSC),
Ripley/South Silver Spring (RSS),
Rural Village Center (RVC),
Sandy Spring/Ashton Rural Village (SSA),
Takoma Park/East Silver Spring Commercial Revitalization (TPESS),
Transferable Development Rights (TDR),
Twinbrook (TB),
Upper Paint Branch (UPB), and
Upper Rock Creek (URC).

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

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

Division 4.9. Overlay Zones

Section 4.9.2. Bethesda (B)

A. Purpose

The purpose of the Bethesda Overlay Zone is to appropriately allocate density within the Bethesda Downtown area that will protect existing residential neighborhoods, provide additional land for parks and open space, expand the County’s affordable housing inventory, promote high quality design, and modify density averaging provisions for Priority Sending Sites.

B. Land Uses

1. The land uses of the underlying zones are applicable.
2. Surface Parking for Use Allowed in the Zone is not allowed on a Priority Sending Site from which density has been transferred.

C. Development Standards

1. Building Height
   a. Except as provided in subsection b, the maximum building height is limited to the height allowed in the underlying zone.
   b. Subsection 4.7.3.D.6.c.i. only applies within the High Performance Area designated in the Bethesda Downtown Plan.

2. Density
   a. A development may exceed the mapped CR or CRT FAR on a site if the Planning Board approves, on a sketch and site plan, the allocation of FAR from Bonus Density. Bonus Density is the total square footage by which approved development in the Downtown Bethesda plan area may cumulatively exceed the maximum square footage allowed under the mapped CR and CRT zones. Bonus Density is limited to 3,289,000 square feet.
   b. FAR allocated from Bonus Density may be developed with any Commercial or Residential use allowed in the underlying zone.
   c. To qualify for Bonus Density FAR, a proposed development must:
      1. Use all mapped CR or CRT FAR associated with the property. Density may not be transferred from the property.
      2. Provide a minimum of 15 percent MPDUs, excluding any Bonus Density transferred from a Priority Sending Site.
      3. Make a Park Impact Payment before the filing of any building permit application at a rate of $10 per square
foot of approved Bonus Density FAR. If a property owner dedicates land designated in the master plan as a recommended/enhanced open space to the M-NCPPC Parks Department, the Planning Board may reduce the amount of square footage for which a Park Impact Payment must be made.

4. Be reviewed by the Design Review Advisory Panel at sketch plan and site plan review to help ensure the development achieves the highest level design quality, consistent with the master plan, design guidelines, and other applicable requirements.

d. The Public Use Space requirement under Section 4.5.4.B.1.a may be reduced by the Planning Board.

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

3. FAR Averaging

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

b. Density transferred from a Priority Sending Site may be included in a sketch plan or site plan application for any CR or CRT-zoned site within the Sector Plan Area boundary.

c. Density transferred from a Priority Sending Site may be used on another site without the Priority Sending Site being under the same sketch plan or site plan.
d. Density transferred from a Priority Sending Site is exempt from the BLT purchase requirements of Section 4.7.3.F.1.a.

e. Before a certified site plan for a development using density transferred from an Open Space Priority Sending Site may be approved, all development rights must be extinguished on the Open Space Priority Sending Site by a recorded instrument approved by the M-NCPPC.

f. Before a certified site plan for a development using density transferred from an Affordable Housing Priority Sending Site may be approved, the owner of the sending site must enter into an agreement with the Department of Housing and Community Affairs to retain a minimum of 30 percent of the existing affordable housing units, defined as 65 percent of Area Median Income (AMI) or below, for 20 years.

g. Before a certified site plan for a development using density transferred from a Historic/Community Resource Priority Sending Site may be approved, all development rights not associated with an existing structure, and any amount of square footage determined by the Planning Board in reviewing a Sketch Plan to be necessary for operational purposes, must be extinguished on the Historic/Community Resource Priority Sending Site by a recorded instrument approved by the M-NCPPC.

h. 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.
i. 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. Within [2] two years of when the Planning Board approves a site plan using Bonus Density, 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 of Permitting Services accepts it. No later than]] Within two years of when [[after]] the Department of Permitting Services accepts the core and shell building permit application, the applicant must provide the Planning Department proof of issuance of the [[obtain at least all]] core and shell building permit. The deadlines [[for applying for and obtaining a core and shell building permit]] under this section may not be extended. If an applicant fails to provide the proof of [[apply for or obtain]] applying for or obtaining a building permit within the time allowed under this section, the site plan approval is revoked.

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Section [4.9.2] 4.9.3. Burtonsville Employment Area (BEA) Overlay Zone

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B. Land Uses

1. The following uses are prohibited:

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

* * *

Section [4.9.3] 4.9.4. Chevy Chase Neighborhood Retail (CCNR) Overlay Zone

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Section [4.9.4] 4.9.5. Clarksburg East Environmental (CEE) Overlay Zone

* * *

D. Development Standards

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

* * *

E. Site Plan

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

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Section [4.9.5] 4.9.6. Clarksburg West Environmental (CWE) Overlay Zone

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

E. Site Plan

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

Section [4.9.6] 4.9.7. Community-serving Retail (CSR) Overlay Zone

Section [4.9.7] 4.9.8. Fenton Village (FV) Overlay Zone

C. Development Standards

1. Building Height

b. Maximum building height is 60 feet along any street confronting any block that includes property in a Residential Detached zone and, when a building is allowed to be higher than 60 feet under Section [4.9.7.C.1.c] 4.9.8.C.1.c, each additional foot in building height above 60 feet requires at least an additional one foot stepback from the front of the building along Fenton Street;
e. For properties with frontage on both Wayne Avenue and Fenton Street, in spite of the height limitations in Section [4.9.7.C.1.b] 4.9.8.C.1.b through Section [4.9.7.C.1.d] 4.9.8.C.1.d, maximum building height may be increased by 15 feet for a building that includes residential uses or a mix of residential and commercial uses, if such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan; however, any building using additional height must be set back from abutting Residentially zoned land no less than the setback required in the abutting Residential zone or the height of the building, whichever is greater.

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

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Section [4.9.8] 4.9.9. Garrett Park (GP) Overlay Zone

* * *

C. Land Uses


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Section [4.9.9] 4.9.10. Germantown Transit Mixed Use (GTMU) Overlay Zone

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Section [4.9.10] 4.9.11. Montgomery Village (MV) Overlay Zone

* * *
E. Existing Buildings and Uses

3. a. A legal use existing on February 28, 2016 is conforming and may be continued. Expansion of any such use must satisfy the standards of the current zone under Article 59-3.

b. An existing Charitable, Philanthropic Institution (as defined by Section 3.4.2) may expand without conditional use approval, but must satisfy Section [4.9.10.D] 4.9.11.D.

c. An existing Storage Facility (as defined by Section 3.6.8.e.1) owned and operated by a Charitable, Philanthropic Institution may expand by up to the lesser of 10% or 30,000 square feet without conditional use approval, but must satisfy Section [4.9.10.D] 4.9.11.D.

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

D. Site Plan

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

E. Parking

2. Pedestrian Access

The major point of pedestrian access for an off-street parking facility that occupies contiguous land area integral to the regional shopping center property may extend more than 500 feet walking distance from an entrance to the center to satisfy the number of spaces required under Section [4.9.11.E.1.a] 4.9.12.E.1.a.
Section [4.9.12] 4.9.13. Ripley/South Silver Spring (RSS) Overlay Zone


C. Development Standards

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

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

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

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

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

D. Site Plan

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

* * *

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

B. Optional Method

1. In General

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

a. Applicability

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

* * *

c. Recording of Development Right

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

d. Development with Moderately Priced Dwelling Units

i. A property developed under Section [4.9.16.B] 4.9.17.B
must satisfy Chapter 25A.

ii. A density bonus allowed under Chapter 25A is calculated
after the base density of the property has been increased

* * *

e. Additional Findings

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

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

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

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B. Exemptions

The following are exempt from Section [4.9.18] 4.9.19:

* * *
C. Land Uses


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

E. Waiver

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

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

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

B. Exemptions

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

D. Waiver

The applicable review body may grant a waiver of the development standards in Section [4.9.19.C] 4.9.20.C if it finds that:
Alternative water quality and quantity control techniques are used to meet the purposes of Section [4.9.19] 4.9.20.

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

<table>
<thead>
<tr>
<th>Old ZONING ORDINANCE</th>
<th>New ZONING ORDINANCE</th>
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<tbody>
<tr>
<td>Article 59-C: Zoning Districts; Regulations.</td>
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<td><strong>Division 59-C-18. Overlay Zones.</strong></td>
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<tr>
<td>Sec. 59-C-18.17. Chevy Chase neighborhood retail preservation overlay zone.</td>
<td>Sec. [4.9.3] 4.9.4. Chevy Chase Neighborhood Retail (CCNR) Overlay Zone</td>
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<td>Sec. 59-C-18.22. Neighborhood retail overlay zone.</td>
<td>Sec. [4.9.6] 4.9.7. Community-serving Retail (CSR) Overlay Zone</td>
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Sec. 4. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council