

LINOWES
AND BLOCHER LLP
 ATTORNEYS AT LAW

July 18, 2019

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Via Email and First-Class Mail

Ms. Grace Bogdan
 Planner Coordinator, Area 1
 Maryland-National Capital Park and Planning Commission
 Montgomery County Planning Department
 8787 Georgia Avenue
 Silver Spring, MD 20910

Re: Response to David Brown's Memorandum dated June 20, 2019 regarding Sketch Plan No. 320190100 (the "Sketch Plan")

Dear Ms. Bogdan:

On behalf of JLB Realty LLC (the "Applicant"), the purpose of this letter is to respond to David Brown's June 20, 2019 Memorandum to you regarding the Sketch Plan ("Memorandum"). While the Memorandum purportedly identifies two "threshold" zoning issues with the Sketch Plan, Mr. Brown's contentions are unsupported both factually and legally, as detailed further below:

1. The Gross Tract Area is Accurately Identified by the Sketch Plan

The Memorandum asserts that the gross tract area of the 8015 Old Georgetown Road property (the "Property") was established as 87,417 square feet as part of the approval of Local Map Amendment Application No. G-864 (the "Prior Rezoning"), and that this number should properly be used as the basis for the density calculations for the Sketch Plan. Contrary to Mr. Brown's assertions, however, the density calculations for the Prior Rezoning involved the *net* tract area of the Property rather than the *gross* tract area. The Prior Rezoning rezoned the Property to the Planned Development, 44 dwelling units per acre, Zone ("PD-44"). The PD family of zones called for the measurement of density "per acre," which was consistently interpreted as being measured off "net tract area." *See, e.g.,* Report and Recommendation for LMA No. G-910, p. 3. (explicitly stating that "Density Permitted in the [PD-35] Zone Requested" was "based on the net tract area.") *See also* Resolution No. 16-1540 (stating that the approximate 2-acre net area of the Property "is used to calculate density"). The CR family of zones, on the other hand, measures density off tract area, which includes "all proposed and existing rights-of-way, lots, parcels, and other land dedicated by the owner or a predecessor in title." Therefore, the basis for the calculation of density in the Property's current CR zone is different than in the Prior Rezoning.

In support of his position, Mr. Brown claims that the Loiederman Soltesz Associates, Inc. Memorandum, included as Exhibit 2 to the Memorandum, as well as the survey included as



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Exhibit 3 to the Memorandum, relate to and established the gross tract area for the Property.¹ On their face, however, neither document does so. Instead, these documents clearly relate only to the net area calculations, as they neither analyze nor attempt to include in the Property's area any land dedicated by the owner or a predecessor in title to a governmental entity for nominal consideration or less, which areas are properly included in a tract area calculation.

In contrast, the Tract Area Exhibit submitted with the Sketch Plan (Sheet No. SK507), a copy of which is attached for your ease of reference, details both the existing lot area of the Property as well as the previous dedications for right-of-way along Old Georgetown Road, Glenbrook Road and Rugby Avenue, all of which result in a gross tract area of 109,694 square feet in accordance with Section 59-4.1.7.A.1 of Montgomery County Zoning Ordinance (the "Zoning Ordinance"). These calculations were initially made by the project engineer, VIKa, and then verified by William Hoffman, a title attorney in our firm. To address specific issues raised by Mr. Brown both in his Memorandum and in his subsequent correspondence to you, below please find additional information in support of the tract area calculations for the areas apparently in dispute:

- Tract 2 (Glenbrook Road). Per Plat 407, Glenbrook Road has a 60-foot right-of-way, and the Property's frontage in this area is approximately 183.57 feet. Per VIKa's calculations, approximately half of the dedicated area, or 5,501 square feet, is attributable to the Property. Plat 407 documents this dedication.
- Tract 3 (Rugby Avenue). Per Plat 407, Rugby Avenue has a 50-foot right-of-way, and the Property's frontage in this area is approximately 45.29 feet. Per VIKa's calculations, approximately half of the dedicated area, or 1,132 square feet, is attributable to the Property. Plat 407 documents this dedication.
- Tract 4 (Old Georgetown Road). Per the SHA deed recorded at Liber 3575, folio 505, the conveyance was made from the Property of 1,625 square feet. A nominal consideration amount of \$1.00 is listed on the deed, and there are no treasury stamps present, indicating a conveyance for no actual value.
- Tract 5 (Old Georgetown Road). Per SRC Plat 21637, the total Old Georgetown Road right-of-way (including the Washington and Rockville Electric Railroad) is understood to be at least 72 feet, and it is likely that the properties on the north side of Old

¹ While Mr. Brown also asserts that the gross tract area of the Property was a subject of discussion in the hearings associated with the Prior Rezoning, we note that those proceedings are separate and distinct from the instant application and involved different parties and a different project engineer. As explained herein, the tract area, as currently shown, is fully supported by historical evidence and is justifiable. It would be unreasonable to expect the Applicant to go back and rebut any and all alleged statements to the contrary made in the Prior Rezoning case.

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Georgetown Road dedicated more than half of the right-of-way due to the presence of the railroad. The Property's frontage along Old Georgetown Road in this area is approximately 125 feet. Per VIKa's calculations, a little more than half of the dedicated area, or 3,929 square feet, is attributable to the Property. *See also* SHA deed at Liber 3575, folio 505, which has only a nominal consideration amount of \$1.00 listed and no treasury stamps present.

- Tract 6 (Old Georgetown Road). Per SRC Plat 21637, the total Old Georgetown Road right-of-way (including the Washington and Rockville Electric Railroad) is understood to be at least 72 feet, and it is likely that the properties on the north side of Old Georgetown Road dedicated more than half of the right-of-way due to the presence of the railroad. The Property's frontage along Old Georgetown Road in this area is approximately 125 feet. Per VIKa's calculations, a little more than half of the dedicated area, or 5,524 square feet, is attributable to the Property. The corresponding SHA deed at Liber 3577, folio 350 only lists a nominal consideration amount of \$1.00 and no treasury stamps present, indicating a conveyance for no or nominal consideration.
- Tract 7 (Old Georgetown Road). Per SRC Plat 21637, the total Old Georgetown Road right-of-way (including the Washington and Rockville Electric Railroad) is understood to be at least 72 feet, although it appears to vary, and it is likely that the properties on the north side of Old Georgetown Road dedicated more than half of the right-of-way due to the presence of the railroad. The Property's frontage along Old Georgetown Road in this area is approximately 104.85 feet. Per VIKa's calculations, a little more than half of the dedicated area, or 4,576 square feet, is attributable to the Property. The corresponding SHA deed at Liber 3575, folio 502 only lists a nominal consideration amount of \$1.00 and no treasury stamps present, indicating a conveyance for no actual value.
- Tract 8 (Old Georgetown Road and Glenbrook). Per the SHA deed recorded at Liber 3575, folio 502, a conveyance was made from the Property of 275 square feet. Only a nominal consideration amount of \$1.00 is listed on the deed, and there are no treasury stamps present, indicating a conveyance for no actual value.

Finally, while Mr. Brown asserts that "there is no point in further proceeding" until the tract area is confirmed, we note that, unlike in other areas of the County where the amount of density achievable is directly tied to the tract area, the Property lies within the Bethesda Overlay Zone (the "BOZ") and, as such, can purchase density in order to exceed mapped FAR limits. In this respect, the tract area calculation is not a "threshold" issue as alleged, as the proposed density could be achieved regardless of the tract area calculation. Nonetheless, based on the foregoing, the tract area for the Property of 109,694 square feet is correct and justifiable.



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2. The Applicant is Lawfully Permitted to Exceed the Property's Mapped Residential Density in Accordance with the Bethesda Overlay Zone

Mr. Brown's Memorandum also argues that, under the BOZ, the Applicant cannot exceed the Property's mapped residential density without also using all of the Property's mapped commercial density. Mr. Brown's interpretation of Section 59-4.9.2.C.2.b.ii.A of the Zoning Ordinance is, however, contrary to the clear intent of the Zoning Ordinance, the Planning Department's consistent application of the relevant provisions, and the legislative history of the BOZ.

The BOZ was established through the Council's adoption of Zoning Text Amendment No. 16-20 as an implementation tool for the Bethesda Downtown Sector Plan. Pursuant to the provisions of the BOZ set forth in Section 59.4.9.2 of the Zoning Ordinance, "In the CR . . . zone, a development may exceed the mapped FAR on a site if the Planning Board approves a sketch or site plan . . . that includes the allocation of gross floor area from [the BOZ]." See Section 59.4.9.2.C.2.a of the Zoning Ordinance. To qualify for BOZ density, a project must "use all gross floor area allowed by the mapped CR." See Section 59.4.9.2.C.b.ii.A. As you are aware, within an overall CR zone classification there are sub-classifications setting forth the maximum nonresidential and residential FARs. These sub-classifications cannot be exceeded, even if the overall CR classification establishes a higher overall FAR. Therefore, when the provisions of the BOZ discuss the maximum areas allowed "by the mapped CR," they are necessarily referring to the individual sub-classification limits when such are lower than the overall FAR limit. As noted in your June 27, 2019 email to Mr. Brown, this interpretation is consistent with the Planning Department's practice and current position.

Additionally, the legislative history of the BOZ further supports this interpretation. As noted in the July 11, 2017 Council Staff Report, the "BOZ Density as recommended by the PHED Committee would be flexible regarding uses. ***It may be added to the commercial or residential density allowed by the underlying zone.***" (emphasis provided). See attached Council Staff Report, Page 6. The Council Staff Report also plainly states that the PHED Committee recommended allowing "BOZ Density to be used for either commercial or residential land use; it may be added to either the commercial or residential gross floor area allowed by the underlying zone." See attached, Page 1. Based on the foregoing, the Zoning Ordinance authorizes the Applicant to exceed the Property's mapped residential density through an allocation of density from the BOZ without the need to include any mapped commercial density.

In summary, we respectfully request that Staff accept and support the tract area proposed as part of the Sketch Plan, as well as the Applicant's proposal to exceed the Property's mapped residential density through an allocation of density from the BOZ.



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Thank you for your time and consideration reviewing this response. Please do not hesitate to call us if you have questions or would like to discuss these issues in greater detail.

Very truly yours,

LINOWES AND BLOCHER LLP

A handwritten signature in cursive script, appearing to read "Erin Girard".

Erin Girard

Enclosures

cc: Elza Hisel-McCoy
David Brown
Graham Brock
Marty Mankowski

8015 OLD
GEORGETOWN
ROAD

Master Developer:

Applicant:

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Δ	Date	Revision

TRACT AREA
EXHIBIT

SHEET NO.

SK507
320190100

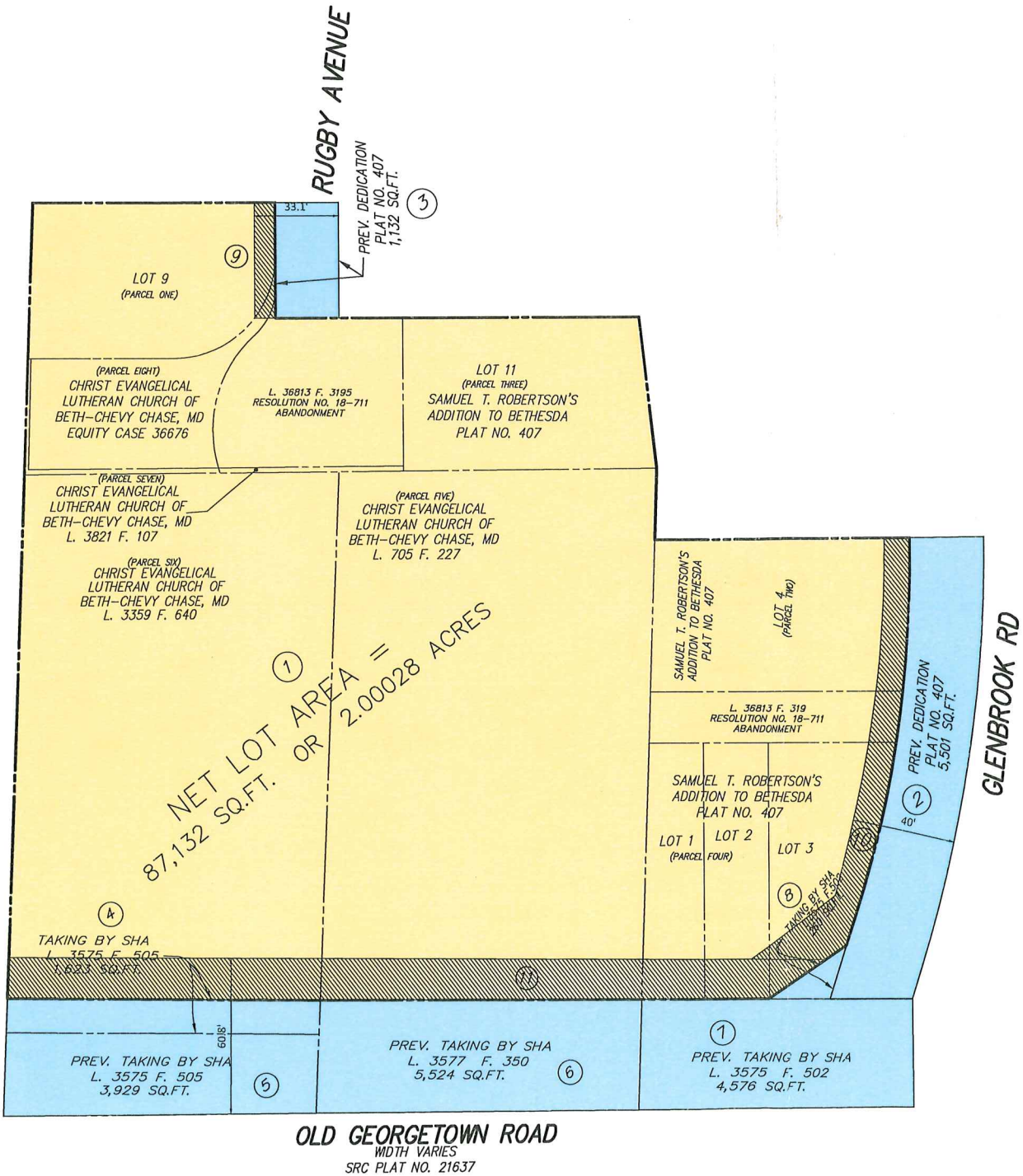


VICINITY MAP
SCALE: 1" = 2000'

LEGEND

Subject Property Limits

①	NET LOT AREA	87,132 SF.	OR	2.00028 AC.
②	PREV. DEDICATION GLENBROOK RD.	5,501 SF.	OR	0.12628 AC.
③	PREV. CONVEYANCE RUGBY AVE.	1,132 SF.	OR	0.02598 AC.
④	PREV. TAKING OLD GEORGETOWN RD	1,625 SF.	OR	0.03730 AC.
⑤	PREV. TAKING OLD GEORGETOWN RD	3,929 SF.	OR	0.09020 AC.
⑥	PREV. TAKING OLD GEORGETOWN RD	5,524 SF.	OR	0.12681 AC.
⑦	PREV. TAKING OLD GEORGETOWN RD	4,576 SF.	OR	0.10505 AC.
⑧	PREV. TAKING OLD GEORGETOWN RD	275 SF.	OR	0.00631 AC.
GROSS TRACT AREA		109,694 SF.	OR	2.51823 AC.
①	EX. NET LOT AREA	87,132 SF.	OR	2.00028 AC.
⑨	(-) PROPOSED DEDICATION FOR RUGBY	370 SF.	OR	0.00849 AC.
⑩	(-) PROPOSED DEDICATION FOR GLENBROOK	1,990 SF.	OR	0.04568 AC.
⑪	(-) PROPOSED DEDICATION FOR OLD GEORGETOWN	4,970 SF.	OR	0.11409 AC.
PROPOSED NET LOT AREA		79,802 SF.	OR	1.83200 AC.



0 15' 30' 60'
SCALE: 1" = 30'



Note: The Sketch Plan drawings are conceptual and represent proposed development in an illustrative manner. Final building locations, dimensions, heights, floor plans, layouts, materials, uses, phasing, density, development standards and programs shall be determined at time of site plan application.

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AGENDA ITEM #7
July 11, 2017

Action

MEMORANDUM

July 7, 2017

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst 

SUBJECT: Action – Revised Zoning Text Amendment 16-20, Overlay Zone – Bethesda

PHED Recommendation: The Committee (3-0) recommended approval of ZTA 16-20, with amendments for consistency with the Bethesda Downtown Plan and the following recommendations:

Density

(the Bethesda Downtown Plan recommended density above the mapped zone limits)

- 1) Rename “Bonus Density” to “BOZ Density”; BOZ Density is a variable number, depending upon the status of approved projects. (3-0)
- 2) Allow BOZ Density to be used for either commercial or residential land use; it may be added to either commercial or residential gross floor area allowed by the underlying zone.
- 3) In calculating BOZ Density remaining, all approved and existing development should be counted against the 32.4 million square foot floor area cap. (2-1; Councilmember Riemer would reserve some capacity for the approval of standard method projects within the cap.)
- 4) Exclude a property’s mapped density from BOZ Density; the use of a property’s mapped density is not subject to a Park Impact Payment. (3-0)
- 5) Density transfers within the Bethesda Downtown Area are not included in BOZ Density and to the extent of the transfer, are not subject to a Park Impact Payment. (3-0)

MPDUs

(the Bethesda Downtown Plan recommended 15% MPDUs as a base requirement)

- 6) Exempt all gross floor area used for MPDUs from the Park Impact Payment. (2-1; Councilmember Riemer opposed.)
- 7) Exempt all the floor area in projects with 25% MPDUs (market rate and MPDUs) from the Park Impact Payment. (3-0)
- 8) Allow additional building height over the mapped height for projects with at least 17.5% MPDUs (2-1; Councilmember Riemer opposed. The Councilmember favored a restricted area for allowing height above the height approved for the underlying zone.)

- 9) Only allow public benefit points for MPDUs above 15%. (3-0)
- 10) Reduce the number of required public benefit point categories by one for projects with more than 15% MPDUs. (3-0)
- 11) Eliminate the number of public benefit point categories for a project with 20% MPDUs, but still require exceptional design points and energy generation points in the High-Performance Area. (3-0)
- 12) Increase the public benefit points allowed for MPDUs to 15 points for every 1% increase over 15% MPDUs. (3-0)
- 13) Revise the MPDU requirements so that it only applies to projects with 20 or more dwelling units. (3-0)

Public Benefit Points

(the Bethesda Downtown Plan recommended no points for transit proximity)

- 14) Increase the public benefit points allowed as follows (3-0):

<i>Through Block Connection</i>	30
<i>Streetscape Improvement</i>	30
<i>Dwelling Unit Mix</i>	20
<i>Architectural Elevations</i>	30
<i>Exceptional Design</i>	30
<i>Public Open Space</i>	30
<i>Public Art</i>	20
<i>Tower Setback</i>	20
<i>Cool Roof</i>	15
<i>Energy Conservation</i>	25
<i>Vegetated Area</i>	15
<i>Vegetated Roof</i>	20
- 15) Allow public benefit points for affordable rents with the ability for DHCA to include income limits in affordable rent agreements. (3-0)
- 16) If the Park Impark Payment exceeds the minimum required, the Committee (3-0) recommended the following formula to calculate points:

The number of public benefit points that the Planning Board may grant is determined by dividing the amount of the payment greater than the required payment by the product of the required payment amount times 100.

Other Issues Raised by Testimony

- 17) Require the Design Advisory Panel to be comprised of independent professionals. (3-0)
- 18) Prohibit surface parking as a primary use when density is transferred off the site. (2-1; Councilmember Floreen would not recommend any use restriction.)
- 19) Do not require restrictions on land use when a project's access is from a residential street. (3-0)
- 20) Add the following provision from page 151 of the Planning Board Draft Plan:

Any project whose open space requirement is 10% or less may be required to make an improvement or contribution to off-site public open space under Section 6.3.6.C instead of providing the open space. (3-0)
- 21) No revision to the zone is necessary for the public benefit points required for small projects. (3-0)

- 22) Refer to the base MINIMUM parking required in the current code to determine the parking requirements. (3-0)
- 23) No revision to the zone is necessary to require that the “greenway” in private ownership should be treated as “public open space”. (3-0)
- 24) No revision to the zone is necessary to increase loading areas, as that will be a site plan issue. (3-0)
- 25) Delete the provision to require applicants to notify the Planning Department about actions taken by the Department of Permitting Services. (3-0)

Organization of this Memorandum

The topics in this memorandum follow the order of topics in the Committee-revised ZTA 16-20.¹ To make the proposed revisions more readable, all of the introduced text for the Bethesda Overlay Zone (BOZ) is deleted and a completely rewritten version is proposed as a single addition.

The revised ZTA is organized into the following sections and subsections:

- A. Purpose
- B. Land Uses
 - 1. Surface Parking
 - 2. Use Limits with residential road access
- C. Development Standards
 - 1. Building Height
 - 2. Density (includes the BOZ Density definition and a Park Impact Payment requirement)
 - 3. Moderately Priced Dwelling Units (includes exclusions from the Park Impact Payment)
 - 4. Public Benefit Points
 - 5. FAR Averaging
 - 6. Parking Standards
 - 7. Public Open Space
- D. Development Procedures

Issues

- A. Purpose

At the recommendation of Staff, the Committee did not object to simplifying the purpose of the Overlay Zone. As recommended, the purpose provision would say that the zone implements “the recommendations of the Bethesda Downtown Plan as it relates to density, building heights, affordable housing, parks, and design”.

¹ ZTA 16-20 was introduced at the request of the Planning Board, to implement the Bethesda Downtown Plan as proposed by the Board. The Council’s approved changes to the Plan warrant changes to the proposed Overlay zone. Staff amended the ZTA to mirror the changes made by Council to the Plan. The intent of Staff-amended ZTA 16-20 was to implement the Bethesda Downtown Plan as amended by the Council. The Council held a public hearing on Staff’s amended draft ZTA 16-20 on June 13, 2017. The Committee conducted worksessions on June 19 and June 26. Staff incorporated all of the Committee’s recommendations in the attached draft.

B. Land Uses

1. Surface Parking

The Staff-revised provision on Land Uses stated “Surface Parking for Use Allowed in the Zone is not allowed as a use on a site from which density has been transferred.” Testimony suggested that this provision was overly restrictive in that this would prevent surface parking on any site that transfers density. The surface parking restriction, as transmitted by the Planning Board, prevented parking on Priority Sending Sites, which were intended as open space areas. The Council eliminated Priority Sending Sites when it revised and approved the Bethesda Downtown Plan. Some testimony suggested that, with the elimination of Priority Sending Sites, this provision should be deleted. Planning staff recommended retaining the provision proposed by Staff but did not object to clarifying that the restriction applied only to parking as a primary use.

The Committee recommended clarifying the provision to indicate that surface parking is prohibited as a principle use. Promoting surface parking (allowing the transfer of all density) would not create the urban area intended by the Bethesda Downtown Plan.

2. Use Limits with Residential Road Access

Testimony suggested limiting uses to those allowed in the CRN zone if a project uses a residential road as access. The following uses allowed in the CRT zone, but not allowed in the CRN zone, include: car washes, hotels, health clubs, automobile sales, and filling stations.

The Committee considered, but did not recommend, changes in land use from those uses allowed in the underlying zone. The Committee was persuaded that the Planning Board had authority to address any compatibility issues in the site plan approval process.

C. Development Standards

1. Building Height

Except as provided for MPDUs, the maximum building height is limited to the height allowed in the underlying zone. This concept in ZTA 16-20 was not changed by the Committee, but all provisions related to MPDUs in the Overlay zone were reorganized into a separate code section.

2. Density

a. Calculation of the amount of density allowed over mapped density

As a general matter in the CR family of zones, density is limited by the mapped zone.² The Bethesda Downtown Plan recommended allowing density above the

² Each CRN, CRT, and CR zone classification is followed by a number and a sequence of 3 additional symbols: C, R, and H, each followed by another number where:

mapped density up to the limits of the area's infrastructure (32.4 million square feet of gross floor area). The Committee recommended calling the density above mapped density BOZ Density. BOZ Density excludes density transfers. (Transferred density does not increase the total gross floor area allowed by the sum of density mapped on sending and receiving sites combined.)

The BOZ Density available for new projects is a number that varies with the amount of existing development and the status of approved development. To calculate the amount of BOZ Density, the sum of existing and approved square footage of development is subtracted from 32.4 million square feet. The amount of gross floor area allowed by BOZ Density changes with every Planning Board approval or plan expiration. Transparency is desired by all stakeholders. The Committee recommended a revision to the ZTA to require the Planning Board to periodically post the remaining BOZ Density.

BOZ Density includes the gross floor area necessary to provide MPDUs if a developer wants to go above a property's mapped density. The only effect of using BOZ Density is the requirement for a Park Impact Payment. In the provisions concerning MPDUs, the Committee recommends that MPDUs be excluded from that payment when such floor area exceeds the property's mapped density.

In the Bethesda Overlay zone, there is no absolute limit on the floor area allowed on any site. The density limit on any site when an applicant uses BOZ Density is determined by its height limitation, in addition to design and compatibility constraints. In other zones, some uses are excluded from the calculation of density used to determine if the gross floor area limit on the site is exceeded. The phrase "excluded from density" has no meaning in the BOZ world. The BOZ world issue is determining what, if any, land uses are exempt from an otherwise required Park Impact Payment. In the BOZ world, a use that is excluded from the Park Impact Payment is the same as a use excluded from density, as long as there is remaining BOZ Density.

b. Park Impact Payment (PIP)

As proposed, a PIP is required for a project using BOZ Density before the filing of any building permit application, at a rate of \$10 per square foot of approved BOZ Density gross floor area. All the exemptions from this payment are found in the MPDU provisions that are discussed elsewhere in this memorandum.

The Council may want to index this amount of required PIP to inflation (consumer price index). This issue was not raised in Committee.

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- a. The number following the classification is the maximum total FAR allowed, unless additional FAR is allowed for MPDUs;
 - b. The number following the C is the maximum nonresidential FAR allowed;
 - c. The number following the R is the maximum residential FAR allowed, unless additional residential FAR is allowed for MPDUs; and
 - d. The number following the H is the maximum building height in feet allowed, unless additional height is allowed for MPDUs.

c. Allowed Land Use for Density Above Mapped Density

BOZ Density as recommended by the PHED Committee would be flexible regarding uses. It may be added to the commercial or residential density allowed by the underlying zone. The CR family of zones can be indifferent to the mix of commercial versus residential development. The indication of this indifference is applying a zone where the FAR allowed for Commercial and Residential development are the same and both are the same as the maximum allowed density. There are instances where the Bethesda Downtown Plan proposed zone allows more of one use than the other.

d. PHED Proposed Text

For the convenience of the reader, the PHED-recommended text for the topic identified above (Density) is as follows:

Density

- a. *In the CR or CRT zone, a development may exceed the mapped FAR on a site if the Planning Board approves a sketch or site plan under Section 7.3.3 or Section 7.3.4 that includes the allocation of gross floor area from Bethesda Overlay Zone (BOZ) Density, or FAR Averaging under Section 4.9.2.C.5.*
- b. *BOZ Density means the total square footage of gross floor area by which new development in the Bethesda Downtown Plan Area may cumulatively exceed the maximum square footage of gross floor area allowed under the mapped CR and CRT zones.*

BOZ Density is determined by subtracting the gross floor area of existing and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan). The Planning Board must periodically publish the gross floor area remaining in BOZ Density.

i. *Land Use*

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

ii. *Qualification*

To qualify for BOZ Density, a proposed development must:

- A. *use all gross floor area allowed by the mapped CR or CRT FAR and may not transfer BOZ Density to any other property.*
- B. *except as provided under Subsection 3 concerning MPDUs, make a Park Impact Payment before the filing of any building permit application at a rate of \$10 per square foot of approved BOZ Density gross floor area. If a property owner dedicates land*

designated in the master plan as a recommended 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.

3. Moderately Priced Dwelling Units (MPDUs)

a. Background

The code currently requires projects with more than 20 dwelling units to provide at least 12.5% MPDUs. The code offers incentives to exceed that percentage in CR and CRT zones. Above 15% MPDUs, but less than 20%, may satisfy one less benefit category than otherwise required. A project with 20% MPDUs or more need not satisfy any benefit category other than affordable housing.

Some CR and CRT zones were approved by the Council's District Map Amendment without the benefit of a master plan recommendation. Those zones have a "T" designation. In those areas, the density may be increased over the mapped density for all MPDUs above 12.5%; the height may also be increased to the extent necessary for the additional MPDUs.

The rules for CR and CRT zones without a "T" are different for projects with more than 12.5% MPDUs. Mapped height limits would not apply to the extent required to provide the MPDUs. The floor area required for the increment of housing between 12.5% and 15% MPDUs may be above the floor area limit of the zone. For projects providing more than 15% MPDUs, all the floor area used for MPDUs may exceed the zoned floor area limit for the site.

b. Basic requirement

The recommendation of the Council-approved Bethesda Downtown Plan was clear; all projects with residential units should be required to provide at least 15% MPDUs. The Committee recommended applying the requirement only to projects with 20 units or more, to mirror when Chapter 25A requirements are imposed.

The Committee-recommended draft does not allow public benefit points for any MPDUs at or below 15% of the units. The Committee recognized that 15% MPDUs was a baseline for the approval of optional method projects in Bethesda. As such, the recommended draft excluded public benefits points for projects providing 15% MPDUs.³

c. Height for voluntary MPDUs

i. General Rule

³ Granting points as a public benefit for any amenity or project feature otherwise required by law is prohibited under 59.4.7.1.B. A Master Plan may have the effect of law if the zoning grants the master plan that authority.

The current code allows additional height to the extent required for the MPDUs above the required 12.5% MPDUs. The Committee wanted to give a similar benefit when the applicant provided at least 17.5% MPDUs. The recommended draft copies the current code section available to other zones, but substitutes “exceeds 17.5%” for “in excess of 12.5%” and 15% for the starting point for additional height. The recommended text reads as follows:

If a project exceeds 17.5% MPDUs, the height limit of the applicable zone does not apply to the extent required to provide MPDUs. The additional height is calculated as the floor area provided for MPDUs above 15% divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.

Why not allow additional height for MPDUs at 15% and below? In the approval process for the Bethesda Downtown Plan, the Council agreed with the Planning Board that, given the 15% MPDU requirement, additional building height should be allowed in the base zone. Essentially, the base height was raised by at least 20% on all but a few properties.⁴ In addition, the Council approved other significant height increases on some properties.

ii. Limits on where additional height may go

Some testimony requested limitations on where the additional height may be allowed, to protect neighboring single-family detached residential communities.

As recommended by the Committee, there is no limitation on where extra height may be allowed. This is consistent with the current code’s allowances. Compatibility rules (the residential setback times 1.5, a starting height equal to the height of the abutting zone and height increase of 1 foot for every 1 foot of additional setback) would still apply to protect residential neighborhoods.⁵ Testimony recommended prohibiting increases in heights in a mapped area similar to the High-Performance Area.

Planning staff recommended that additional building height be limited to the High-Performance Area identified in the Plan. Some parts of the High-Performance Area confront single-family neighborhoods. Council President Berliner indicated that he would propose criteria to protect residential neighborhoods.

iii. Full floors

Testimony indicated that the provision of MPDUs recommended a revision to allow full floors when a part of the floor is needed for MPDUs. Currently, language contained in Section 4.7.3.D.6.c.i has been interpreted such that it

⁴ See page 72 of the Planning Board Draft Bethesda Downtown Plan.

⁵ See Section 59.4.1.8.

does not allow a full floor in most instances. In the opinion of testimony, construction of a partial floor is not efficient in most cases, and the ability to accommodate more MPDUs in projects in Bethesda should be supported. Testimony recommended that text should be added to the section to clarify this point:

The additional height is calculated as the floor area provided for all MPDUs divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.

Planning staff has not seen this issue in practice. The Committee did not recommend the change after being advised of Planning staff's practice.

d. Park Impact Payment Concerning MPDUs

The Committee recommended exempting the gross floor area for all MPDUs from the Park Impact Payment. The Committee did not wish to increase the price of MPDUs or the burden on developers by applying the payment to MPDUs. The exemption is in line with the current code provision that exempts a project with a minimum 15% MPDUs from the calculation of the project's floor area density limit. The project may use all its mapped FAR for market rate activity, and their FAR is increased to the extent required for MPDUs. It is also in line with the exemption of MPDUs from the transportation impact tax. Planning staff did not recommend this concept; by their calculations, it would reduce Park Impact Payment revenues by \$6.3 million. Planning staff does not believe that the payment is excessive.

In approving the Bethesda Downtown Plan, the Council was specific on allowing a complete exemption from the Park Impact Payment for all gross floor area (market and MPDU floor area) in projects with 25% or more MPDUs.

Staff would like to confirm that this exemption was intended to apply to the entirety of the development. The exemption may have been intended to apply to the residential portion of a mixed-use development.

e. Public Benefit Points Concerning MPDUs

As a requirement, the Committee recommended no public benefit points for the first 15% of MPDUs. The Committee did recommend increasing the public benefit points for MPDUs in excess of 15% to 15 points (up from 12 points) for every additional 1% more of MPDUs.

The Committee recommends that projects with MPDUs above 15% should be allowed to provide public benefit points in one less benefit category than otherwise required. Projects with MPDUs above 20% would be allowed to provide public benefit points only from the affordable housing category under the Committee's recommendation; however, all optional method projects in the Overlay zone would be required to earn points for Exceptional Design, and Energy Conservation and Generation in the High-Performance Area. These latter 2 public benefits are

recommended by the Bethesda Downtown Plan. The Committee's recommendation furthers the implementation of the Plan.

4. Public Benefit Points

a. Transit Proximity

Consistent with the Council's deliberations approving the Bethesda Downtown Plan, the Committee-recommended draft prohibits the Planning Board from granting any public benefit points for transit proximity.

b. Park Impact Payment

The Planning Board recommended allowing public benefit points for a developer contribution in excess of the any Park Impact Payment required. Testimony requested a formula for how public benefit points would be allowed for Park Impact Payments beyond those required for using BOZ Density. The Committee accepted Planning staff's recommendation on a way to calculate points for PIP above required payments:

If a Park Impact Payment is required under Section 59.4.9.2.C.2.c, the Planning Board may grant public benefit points only if the park impact payment exceeds the minimum required. The number of public benefit points that the Planning Board may grant is determined by dividing the amount of the payment greater than the required payment by the product of the amount of required payment times 100.

The accepted formula only works when a PIP is required. It does not work when it is completely voluntary. Planning staff recommended allowing 1 point for every \$5,000 when payments are completely voluntary.

c. Energy Conservation and Generation

Within the High-Performance Area designated in the Bethesda Downtown Plan, the Planning Board must determine that the development achieves 15 public benefit points from Energy Conservation and Generation. This is consistent with the recommendation of the Downtown Plan.⁶

d. Affordable Housing Rents

The Committee recommends adding a new public benefit point category for affordable rents. The Committee specifically recommended the following description:

If the applicant reaches an agreement with the Department of Housing and Community Affairs to retain or provide affordable housing rents for dwelling units located anywhere in the Overlay zone area, the Planning

⁶ See page 146 of the Planning Board-recommended Bethesda Downtown Plan.

Board may grant 6 public benefit points for every 1% of units included in the rental agreement. Any fraction of 1% increase in the number of units covered by the agreement entitles the applicant to an equal fraction of 6 points. For this purpose, affordable housing is defined as rents that are affordable to a household with a household income of 80 percent of Area Median Income (AMI) or below, for 20 years. The agreement with the Department of Housing and Community Affairs may include limits on the income of residents for the affordable dwelling units.

The Department of Housing and Community Affairs (DHCA) would be free to determine the circumstances under which it would agree to accept this offer from a developer. For example, the Department would want to create a minimum number of units at any location. To do otherwise would require a significant effort for insignificant results.

The Department suggested that affordable rents receive one point for every 1% of housing units. The Department believes that the 20-year term and the relatively high AMI makes the public value far less than the value of MPDUs above the required amount. The Committee did not have the opportunity to react to DHCA's recommendation.

e. Design

High quality design was emphasized in the Bethesda Downtown Plan.⁷ To that end, the Committee recommended the following provision for public benefit points:

The Planning Board must determine that the development achieves at least 10 points for exceptional design. The maximum number of public benefit points for exceptional design is 30. The Planning Board must appoint a Design Advisory Panel composed of relevant independent professionals, and consider the comments from that panel on all projects before making their determination concerning exceptional design points.

The Committee responded to testimony concerning the make-up of the Advisory Panel by adding the condition that the panel be "composed of relevant independent professionals". The Committee did not recommend any more specificity concerning the Panel or design guidelines in zoning code than their mere mention.

f. Increased Public Benefit Point Maximums

The Committee was sensitive that the fact that no public benefit points would be allowed for transit proximity and 15% MPDUs would be required under the Overlay zone, without points for those units. To account for those circumstances, the Committee recommended increasing the maximum number of points allowed in several benefit point categories. The number of maximum allowed public benefit points in the following categories are recommended to be increased as indicated:

⁷ See page 146 of the Planning Board-recommended Bethesda Downtown Plan.

<i>Through Block Connection</i>	30
<i>Streetscape Improvement</i>	30
<i>Dwelling Unit Mix</i>	20
<i>Architectural Elevations</i>	30
<i>Exceptional Design</i>	30
<i>Public Open Space</i>	30
<i>Public Art</i>	20
<i>Tower Setback</i>	20
<i>Cool Roof</i>	15
<i>Energy Conservation</i>	25
<i>Vegetated Area</i>	15
<i>Vegetated Roof</i>	20

After the PHED Committee meeting, Staff was made aware that testimony also suggested increasing the public benefit points from 10 to 20 for providing minimum parking. Staff notes that the minimum parking will be reduced under the Committee's recommendation. (See item #5 in this memorandum, "Parking Standards".)

g. FAR Averaging (Density Transfers)

The CR zone allows density transfer if the site is within 1/4 mile of the sites transferring and 50% more public benefit points are required. The Downtown Plan recommended easing the requirement for transferring. The Committee recommended the following provisions:

*Any gross floor area allowed by the underlying zone may be transferred to any site in the Bethesda Downtown Plan;
Additional public benefit points above the minimum number are not required for FAR Averaging; and
Gross floor area increased above mapped density because of FAR Averaging is not required to make a Park Impact Payment.*

h. Parking Standards

The Downtown Plan recommended avoiding excessive parking. To that end, the Committee recommended the following provision:

The minimum number of vehicle parking spaces required is 80% of the minimum number of spaces required by Section 59.6.2.4; however, the Planning Board may reduce this requirement further if the applicant provides evidence that less parking will not burden the surrounding residential neighborhood or Parking Lot District facilities.

i. Public Open Space

The Plan specifies desirable Greenway areas. The Planning Board will focus on implementing that recommendation as Public Open Space (a defined term in the

zoning code⁸) with minimal vehicular interference. The Committee did not believe that any changes to the zone were necessary to protect the integrity of greenways. (The Committee also was persuaded that any issues related to loading areas could be addressed by the Planning Board during the site plan approval process without revision to the Overlay zone.)

Testimony wanted flexibility to ensure that Public Open Space was located in appropriate places. Standard method projects have a 10% open space requirement. Testimony suggested that this is excessive for a small site.

To address these issues, the Committee recommended the following provision:

The Public Open Space requirement under Section 4.5.4.B.1.a may be reduced by the Planning Board. Any project whose open space requirement is 10% or less may be required to make an improvement or contribution to off-site public open space under Section 6.3.6.C instead of providing the open space.

D. Development Procedures

Except as modified by the Overlay zone, the development procedures of the underlying zone apply. There were modifications to procedure in ZTA 16-20 as recommended by the Planning Board. As introduced, the failure of an applicant to provide notice within 15 days to the Planning Board of actions taken by the Department of Permitting Services would subject the applicant to a revocation of approvals. The Committee recommended deleting this provision. In the opinion of the Committee, the Planning Board is capable of communication with DPS.

Planning staff informed the Committee that there were no pending sketch plan applications in the Bethesda Downtown Area. The Committee recommended, as an uncodified provision, allowing all previously approved sketch plans to proceed under the zoning in place when the application was approved, but requiring all plans filed after the effective date of ZTA 16-20 to be subject to the Overlay zone provisions.

This Packet Contains

ZTA 16-20 with draft revisions previously published

© number

1 – 25

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⁸ Public open space means space devoted to public use or enjoyment that attracts public appreciation due to its location and amenities.

Zoning Text Amendment No.: 16-20
 Concerning: Overlay Zone – Bethesda
 Draft No. & Date: 4-7/3/17
 Introduced: December 6, 2016
 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: 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”
ARTICLE 59-4.	“Development Standards for Euclidean Zones”
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 (TPSS) 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 [18] 19 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),

- [j] k. Regional Shopping Center (RSC),
- [k] l. Ripley/South Silver Spring (RSS),
- [l] m. Rural Village Center (RVC),
- [m] n. Sandy Spring/Ashton Rural Village (SSA),
- [n] o. Takoma Park/East Silver Spring Commercial Revitalization (TPESS),
- [o] p. Transferable Development Rights (TDR),
- [p] q. Twinbrook (TB),
- [q] r. Upper Paint Branch (UPB), and
- [r] s. 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

81 foot of approved Bonus Density FAR. If a property
82 owner dedicates land designated in the master plan as a
83 recommended/enhanced open space to the M-NCPPC
84 Parks Department, the Planning Board may reduce the
85 amount of square footage for which a Park Impact
86 Payment must be made.

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

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

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

97 **3. FAR Averaging**

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

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

105 c. Density transferred from a Priority Sending Site may be used
106 on another site without the Priority Sending Site being under
107 the same sketch plan or site plan.

- 108 d. Density transferred from a Priority Sending Site is exempt from
109 the BLT purchase requirements of Section 4.7.3.F.1.a.
- 110 e. Before a certified site plan for a development using density
111 transferred from an Open Space Priority Sending Site may be
112 approved, all development rights must be extinguished on the
113 Open Space Priority Sending Site by a recorded instrument
114 approved by the M-NCPPC.
- 115 f. Before a certified site plan for a development using density
116 transferred from an Affordable Housing Priority Sending Site
117 may be approved, the owner of the sending site must enter into
118 an agreement with the Department of Housing and Community
119 Affairs to retain a minimum of 30 percent of the existing
120 affordable housing units, defined as 65 percent of Area Median
121 Income (AMI) or below, for 20 years.
- 122 g. Before a certified site plan for a development using density
123 transferred from a Historic/Community Resource Priority
124 Sending Site may be approved, all development rights not
125 associated with an existing structure, and any amount of square
126 footage determined by the Planning Board in reviewing a
127 Sketch Plan to be necessary for operational purposes, must be
128 extinguished on the Historic/Community Resource Priority
129 Sending Site by a recorded instrument approved by the
130 M-NCPPC.
- 131 h. If all or part of an Open Space Priority Sending Site off of
132 which no density has been transferred is dedicated to the M-
133 NCPPC Parks Department, it may qualify for public benefit
134 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 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 two years after the Department of Permitting Services accepts the core and shell building permit application, the applicant must obtain at least a 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 apply for or obtain a building permit within the time allowed under this section, the site plan approval is revoked.]]

Section 4.9.2. Bethesda (B)

A. Purpose

The purpose of the B Overlay Zone is to implement the recommendations of the Bethesda Downtown Plan as it relates to density, building heights, affordable housing, parks, and design.

B. Land Uses

The land uses of the underlying zones apply.

Surface Parking for Use Allowed in the Zone is not allowed as a principle use on a site from which density has been transferred.

C. Development Standards

1. Building Height

Except as provided in Subsection 3 concerning MPDUs, the maximum building height is limited to the height allowed in the underlying zone.

2. Density

a. In the CR or CRT zone, a development may exceed the mapped FAR on a site if the Planning Board approves a sketch or site plan under Section 7.3.3 or Section 7.3.4 that includes the allocation of gross floor area from Bethesda Overlay Zone (BOZ) Density, or FAR Averaging under Section 4.9.2.C.5.

b. BOZ Density means the total square footage of gross floor area by which new development in the Bethesda Downtown Plan Area may cumulatively exceed the maximum square footage of gross floor area allowed under the mapped CR and CRT zones. BOZ Density is determined by subtracting the gross floor area of existing and approved development from 32.4 million (the total gross floor area recommended by the Bethesda Downtown Plan). The Planning Board must periodically publish the gross floor area remaining in BOZ Density.

188 i. Land Use

189 The gross floor area allocated from BOZ Density may be
190 developed as Commercial or Residential square footage.

191 ii. Qualification

192 To qualify for BOZ Density, a proposed development
193 must:

194 A. use all gross floor area allowed by the mapped CR
195 or CRT FAR and may not transfer BOZ Density to
196 any other property.

197 B. except as provided under Subsection 3 concerning
198 MPDUs, make a Park Impact Payment before the
199 filing of any building permit application at a rate
200 of \$10 per square foot of approved BOZ Density
201 gross floor area. If a property owner dedicates land
202 designated in the master plan as a recommended
203 open space to the M-NCPPC Parks Department,
204 the Planning Board may reduce the amount of
205 square footage for which a Park Impact Payment
206 must be made.

207 3. Moderately Priced Dwelling Units (MPDUs)

208 a. General Requirement

209 For any development application that includes 20 or more
210 residential dwelling units, the Planning Board may only
211 approve the application if the development provides at least
212 15% MPDUs under the provisions of Chapter 25A.

213 b. Building Height

If a project exceeds 17.5% MPDUs, the height limit of the applicable zone does not apply to the extent required to provide MPDUs. The additional height is calculated as the floor area provided for MPDUs above 15% divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.

c. Park Impact Payment

- i. A Park Impact Payment is not required for the floor area allocated for MPDUs.
- ii. If the development includes at least 25% MPDUs, a Park Impact Payment is not required for any floor area.

d. Public Benefit Points

- i. The Planning Board may only grant public benefit points for providing more than 15% of the residential units as MPDUs under Chapter 25A.
- ii. The Planning Board may grant MPDU public benefit points for more than 15% MPDUs at the rate of 15 points for every 1% of additional MPDUs above 15%. Any fraction of 1% increase in MPDUs entitles the applicant to an equal fraction of 15 points. For points to be awarded, at least one more MPDU than would be required at 15% must be provided.
- iii. For a project providing more than 15% MPDUs, one less public benefit point category than required under Section 4.5.4.A.2 must be satisfied.
- iv. For a project providing at least 20% MPDUs, other public benefit point categories are not required except

for: 1) Exceptional Design, and 2) Energy Conservation and Generation in the High-Performance Area.

4. Public Benefit Points

The requirements for public benefit points are established by Division 59.4.7, except as provided in Subsection 3 concerning MPDUs and as follows:

a. The Planning Board must not grant any public benefit points for transit proximity under Section 59.4.7.3.B.

b. Park Impact Payment

i. If a Park Impact Payment is not required under Section 59.4.9.2.C.2.c and the applicant makes a payment, the Planning Board may grant one point for every \$5,000 payment up to 20 public benefit points.

ii. If a Park Impact Payment is required under Section 59.4.9.2.C.2.c, the Planning Board may grant public benefit points only if the park impact payment exceeds the minimum required. The number of public benefit points that the Planning Board may grant is determined by dividing the amount of the payment greater than the required payment by the product of the required payment amount times 100.

iii. The maximum number of points from a Park Impact Payment is 30.

c. Within the High-Performance Area designated in the Bethesda Downtown Plan, the Planning Board must determine that the development achieves 15 public benefit points from Energy Conservation and Generation under Section 59.4.7.3.F.3.

- d. If the applicant reaches an agreement with the Department of Housing and Community Affairs to retain or provide affordable housing rents for dwelling units located anywhere in the Overlay zone area, the Planning Board may grant 6 public benefit points for every 1% of units included in the rental agreement. Any fraction of 1% increase in the number of units covered by the agreement entitles the applicant to an equal fraction of 6 points. For this purpose, affordable housing is defined as rents that are affordable to a household with a household income of 80 percent of Area Median Income (AMI) or below, for 20 years. The agreement with the Department of Housing and Community Affairs may include limits on the income of residents for the affordable dwelling units.
- e. If an applicant reaches an agreement with the Department of Housing and Community Affairs and another property owner for the use of an off-site existing dwelling, within the Bethesda Downtown Area as an MPDU, the Planning Board may grant 15 public benefit points for every 1% of units included in the MPDU agreement above the minimum required 15% MPDUs.
- f. The Planning Board must determine that the development achieves at least 10 points for exceptional design under Section 59.4.7.3.E.4. The maximum number of public benefit points for exceptional design is 30. The Planning Board must appoint a Design Advisory Panel composed of relevant independent professionals, and consider the comments from that panel on all projects before making their determination concerning exceptional design points.

g. In addition to the other adjustment for maximum public benefit points made in this subsection, the number of maximum allowed public benefit points in the following categories are increased to the number of points indicated:

<u>Through Block Connection</u>	<u>30</u>
<u>Streetscape Improvement</u>	<u>30</u>
<u>Dwelling Unit Mix</u>	<u>20</u>
<u>Architectural Elevations</u>	<u>30</u>
<u>Exceptional Design</u>	<u>30</u>
<u>Public OpenSpace</u>	<u>30</u>
<u>Public Art</u>	<u>20</u>
<u>Tower Setback</u>	<u>20</u>
<u>Cool Roof</u>	<u>15</u>
<u>Energy Conservation</u>	<u>25</u>
<u>Vegetated Area</u>	<u>15</u>
<u>Vegetated Roof</u>	<u>20</u>

5. FAR Averaging (Density transfers)

- a. Any gross floor area allowed by the underlying zone may be transferred to any site in the Bethesda Downtown Plan.
- b. Additional public benefit points above the minimum number are not required for FAR Averaging.
- c. Gross floor area increased above mapped density because of FAR Averaging is not required to make a Park Impact Payment.

6. Parking Standards

The minimum number of vehicle parking spaces required is 80% of the minimum number of spaces required by Section 59.6.2.4; however, the Planning Board may reduce this requirement further if

the applicant provides evidence that less parking will not burden the surrounding residential neighborhood or Parking Lot District facilities.

7. Public Open Space

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

b. Any project whose open space requirement is 10% or less may be required to make an improvement or contribution to off-site public open space under Section 6.3.6.C instead of providing the open space.

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.

* * *

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

* * *

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

* * *

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.

* * *

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

* * *

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 setback 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.

* * *

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

* * *

C. Land Uses

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

* * *

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

* * *

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

* * *

Section [4.9.13] 4.9.14. Rural Village Center (RVC) 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 under Section [4.9.16.B] 4.9.17.B through TDRs.

* * *

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.

* * *

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

* * *

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

* * *

B. Exemptions

The following are exempt from Section [4.9.18] 4.9.19:

* * *

C. Land Uses

1. Except as listed in Section [4.9.18.C.2] 4.9.19.C.2 and Section [4.9.18.C.3] 4.9.19.C.3, the land uses of the underlying zone apply.

The use standards of the underlying zone apply unless the development standards in Section [4.9.18.D] 4.9.19.D are more restrictive, in which case Section [4.9.18.D] 4.9.19.D must be followed.

* * *

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:

* * *

4. 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:**

Old ZONING ORDINANCE Article 59-C: Zoning Districts; Regulations.	New ZONING ORDINANCE
* * *	
Division 59-C-18. Overlay Zones.	
* * *	
Sec. 59-C-18.11. Residential and open space preservation overlay zone for the Town of Garrett Park.	Sec. [4.9.8] <u>4.9.9</u> . Garrett Park (GP) Overlay Zone
* * *	
Sec. 59-C-18.14. Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan.	Sec. [4.9.2] <u>4.9.3</u> . Burtonsville Employment Area (BEA) Overlay Zone
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-18.17. Chevy Chase neighborhood retail preservation overlay zone.	Sec. [4.9.3] <u>4.9.4</u> . Chevy Chase Neighborhood Retail (CCNR) 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-18.19. Fenton Village Overlay	Sec. [4.9.7] <u>4.9.8</u> . Fenton Village (FV) Overlay

Old ZONING ORDINANCE Article 59-C: Zoning Districts; Regulations.	New ZONING ORDINANCE
Zone.	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 (TPSS) Overlay Zone
Sec. 59-C-18.22. Neighborhood retail overlay zone.	Sec. [4.9.6] <u>4.9.7</u> . Community-serving Retail (CSR) 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

* * *

Sec. 4. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

Sec 5. Previously approved project. An applicant for a sketch plan or site plan application approved by the Planning Board before the effective date of this amendment, may proceed under the zone in effect on the date of the applications approval.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council