

PROPOSED ZTA – BETHESDA OVERLAY ZONE – EXTENSIONS



Description

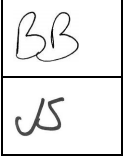
The proposed zoning text amendment would modify the development procedures of the Bethesda Overlay Zone (BOZ) by granting a one-time, one (1) year extension to the existing deadlines within the overlay zone that apply to projects that utilized BOZ Density in their approval.

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

MCPB
Item No. 7
03-09-2023

Montgomery County
Planning Board
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LEAD TEAM

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REVIEW BASIS

Chapter 59 – Zoning



Summary:

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

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SECTION 1: BACKGROUND

RATIONALE FOR THE PROPOSED ZTA

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

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

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

SECTION 2: ANALYSIS

PROPOSED ZTA

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

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

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

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

SECTION 3: CONCLUSION

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

ATTACHMENTS

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

Attachment A

Zoning Text Amendment No.: 23-##
Concerning: Bethesda Overlay Zone -
Extensions
Draft No. & Date: 1 – 2/14/23
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Councilmember ***

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

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

