

PROPOSED ZONING TEXT AMENDMENT FOR THE BETHESDA (B) OVERLAY ZONE

Description

This ZTA would amend the Bethesda (B) Overlay Zone, consistent with the recommendations in the draft Bethesda Downtown Plan Minor Master Plan Amendment.

ZTA 25-##

Completed: 1-24-25

MCPB

Item No. 7

1-30-25

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Countywide Planning and Policy on behalf of
Downcounty Planning

PLANNING BOARD HEARING DATE

January 30, 2025

REVIEW BASIS

Chapter 59

Summary

- On December 19, 2024, the Planning Board approved transmitting the Planning Board Draft of the *Bethesda Downtown Plan Minor Master Plan* to the Council.
- A Council public hearing on the minor master plan update will be held on February 26, 2025, and will be followed by Planning, Housing, and Parks committee work sessions on the plan, and this accompanying ZTA for the Bethesda Overlay Zone.
- This ZTA would amend the Bethesda Overlay Zone to implement recommendations of the *Bethesda Downtown Plan Minor Master Plan* by adding incentives for applicants to provide space or funding for a new recreation center, to provide more family sized and deeply affordable Moderately Priced Dwelling Units (MPDUs), and to remove the development cap, along with other small technical updates.

TABLE OF CONTENTS

SECTION 1 – BACKGROUND	2
SECTION 2 – AMENDMENTS TO THE BETHESDA OVERLAY ZONE	2
SECTION 3 – CONCLUSION	7
SECTION 4 – ATTACHMENTS	8

SECTION 1 – BACKGROUND

This draft Zoning Text Amendment (ZTA) would amend the [Bethesda \(B\) Overlay Zone](#) (BOZ) in Section 59-4.9.2 of the zoning code to be consistent with the recommendations in the Planning Board draft of the [Bethesda Downtown Plan Minor Master Plan Amendment](#), which was approved by the Planning Board for transmittal to the District Council on December 19, 2024. The minor master plan amendment covers the entire area of the approved 2017 *Bethesda Downtown Plan*, and includes various updates to remove the development cap, ensure development continues to provide needed transportation and parks improvements, and increase incentives for priorities such as affordable housing, open spaces, and a recreation center.

Introduction of this draft ZTA is intended to coincide with the review of minor master plan amendment by the District Council. The District Council is expected to hold a public hearing on the minor master plan on February 26th, and will have subsequent Planning, Housing, and Parks (PHP) Committee work sessions to discuss the draft plan and public comments. Because this draft ZTA will be sent to the Council with a request for introduction, the Planning Board will have an additional opportunity to review this ZTA once the District Council officially introduces the ZTA.

SECTION 2 – AMENDMENTS TO THE BETHESDA OVERLAY ZONE

BUILDING HEIGHT

The first section of the proposed ZTA is to the Building Height section of the BOZ, starting on line 14 of the draft ZTA (attachment A). The ZTA would give the Planning Board approval to increase building heights above the mapped height for a development application that provides a new county recreation center. The additional height is equal to the amount necessary to provide for the facility and any above grade structured parking, up to 24 feet in total (lines 18-22). Incentivizing the creation of a new recreation center within the BOZ area is one of the new priorities of the minor master plan amendment and this is one of multiple ways the BOZ will be amended to incentivize a recreation center.

DENSITY

Several changes to the Density section of the BOZ are proposed with this ZTA.

[BOZ DENSITY](#) (line 32 – 37): Development applications within the BOZ are eligible, under certain conditions, to request BOZ Density, which is density that exceeds that otherwise allowed by the underlying zone. The first change to this section eliminates the provisions that BOZ density only be awarded if total development within the BOZ is under 32.4 million square feet. The amendment also removes the requirement that the Board periodically publish how much density is remaining under

this development cap. Elimination of the development cap and the associated reporting is one of the major recommendations of the minor master plan amendment.

QUALIFICATION SUBSECTION (lines 41 – 70): Within the Density section, there are three proposed to the Qualifications subsection:

- **Use of Mapped FAR:** Lines 43-44 clarify that an application may be eligible for BOZ Density if the application that uses all the mapped “C” and/or “R” components of the FAR. Currently, code states the application must use all the mapped FAR, and in most situations, the total FAR for a project can only be reached by providing some mix of both C and R components. This amendment allows the use of BOZ density so long as at least one of the components is used to the maximum.
- **Park Impact Payment Timing:** Lines 47-50 update the timing of the necessary Park Impact Payment (PIP) for utilizing BOZ density and updates the PIP rate. Currently, the PIP must be fully paid before the issuance of any building permit. The amendment proposes making only half the payment due before any building permit, with the other half being due at the time of the first use and occupancy permit. The amendment also increases the PIP rate from \$10 per square foot to \$15.57 per square foot. Allowing the PIP to be made in two parts helps development applications move forward given the increase both in the PIP rate, and in construction costs. The new PIP rate in the BOZ reflects that it has been adjusted for inflation three times since the BOZ took effect. The rate is adjusted to correct for previous adjustment errors that relied on annual average adjustments rather than cumulative adjustments.
- **Applications Eligible for Reduction in the PIP Payment:** Lines 63 through 68 update the applications eligible for a reduction in the PIP payment. Language is added that clarifies that private but publicly accessible open space, as well as land or space for a new county recreation center, are eligible for PIP reductions in addition to the existing reductions available for providing public park dedication.

MODERATELY PRICED DWELLING UNITS (MPDUS)

The next amendment to the BOZ is a change to the MPDU section (lines 71 – 80). The existing code provides numerous incentives and benefits for applications that provide more than the minimum 15% of MPDUs, including additional height to provide the MPDUs, reducing the PIP amount by not counting the extra floor area of the extra MPDUs toward BOZ Density, and modification to the required number of public benefits points and categories. This amendment would add language starting on line 76 that allows applications to reap these benefits if they either: 1) provide the minimum 15% MPDUs but provide more family-sized (3+ bedroom) units than required by Chapter 25A of the county

code¹ or 2) provide MPDUs more deeply affordable than required to take advantage of the same incentives and benefits.

The ZTA also proposes the addition of language in lines 87 – 90, limiting the amount of height incentive an application may receive to 24 feet for properties bound by Arlington Road to the west, Woodmont Avenue to the east, Moorland Avenue to the north and Montgomery Avenue to the south. This geography corresponds with the area of the BOZ added to the Height Incentive Map discussed later in this report.

PUBLIC BENEFITS

The public benefits section of the BOZ begins on line 96. The first provision amended are building energy standards. The ZTA would remove the existing standard that required applicants in the High-Performance area designated in the plan to achieve 15 public benefit points from Energy Conservation and Generation, replacing it with a more general requirement that buildings must exceed the applicable building and energy codes. The threshold for receiving those public benefits has grown more onerous as county codes have been updated, requiring higher standard levels of energy efficiency, necessitating the change.

Additionally, a new provision is added starting on line 109, adding the Bethesda Urban Partnership, the Bethesda Arts and Entertainment District, or any other civic arts organization accepted by the Board as potential recipients of any fee in lieu collected for the Public Art public benefit.

PUBLIC OPEN SPACE

There is one small amendment proposed to the Public Open Space section of the BOZ on lines 111-112. The amended text will specifically allow the Planning Board to reduce the required public open space requirements of a development application if it provides land for, or space for a county owned recreation center.

DEVELOPMENT PROCEDURES

The Development Procedures section of the BOZ is being substantially updated, removing subsections D.3. and D.4. from the text.

Subsection D.3. is the provision that implemented the development cap in the BOZ area to no more than 32,400,000 square feet of density. The development cap is an important part of the 2017 *Bethesda Downtown Plan* but is recommended for removal with the minor master plan update. The development cap was based on the motor vehicle adequacy test that was part of the 2016-2020 Subdivision Staging Policy when the *Bethesda Downtown Plan* was approved in 2017. The 2020-2024

¹ Currently, MPDU bedroom mixes are required to be proportional to the market rate bedroom mixes.

Growth and Infrastructure Policy removed the motor vehicle adequacy test for Red policy areas (including Downtown Bethesda) and therefore the development cap is no longer consistent with county policy.

Subsection D.4. is a provision that details that any application that received BOZ Density must apply for building permits within two years of plan approval and that within two years of the permit application, the permits must be obtained. The requirements that an applicant file for and then obtain permits in a timely manner were necessary to ensure developers did not tie up density in entitlements for extended periods of time. With no cap on development, there is no longer a concern that an applicant may tie up density from another project.

HEIGHT INCENTIVE AREA MAP

The last section of the BOZ ZTA is a replacement of the height incentive area map. This is a map showing which portions of the Bethesda Downtown Plan area are allowed to request additional building height under certain provisions. The minor master plan update adds two blocks previously excluded from the height incentive area. These two blocks are west of Woodmont Avenue, East of Arlington Road, south of Moorland Lane, and north of Hampden Lane. The added area is shown in dashed red outline on both the existing map (Figure 1) and the proposed map (Figure 2).

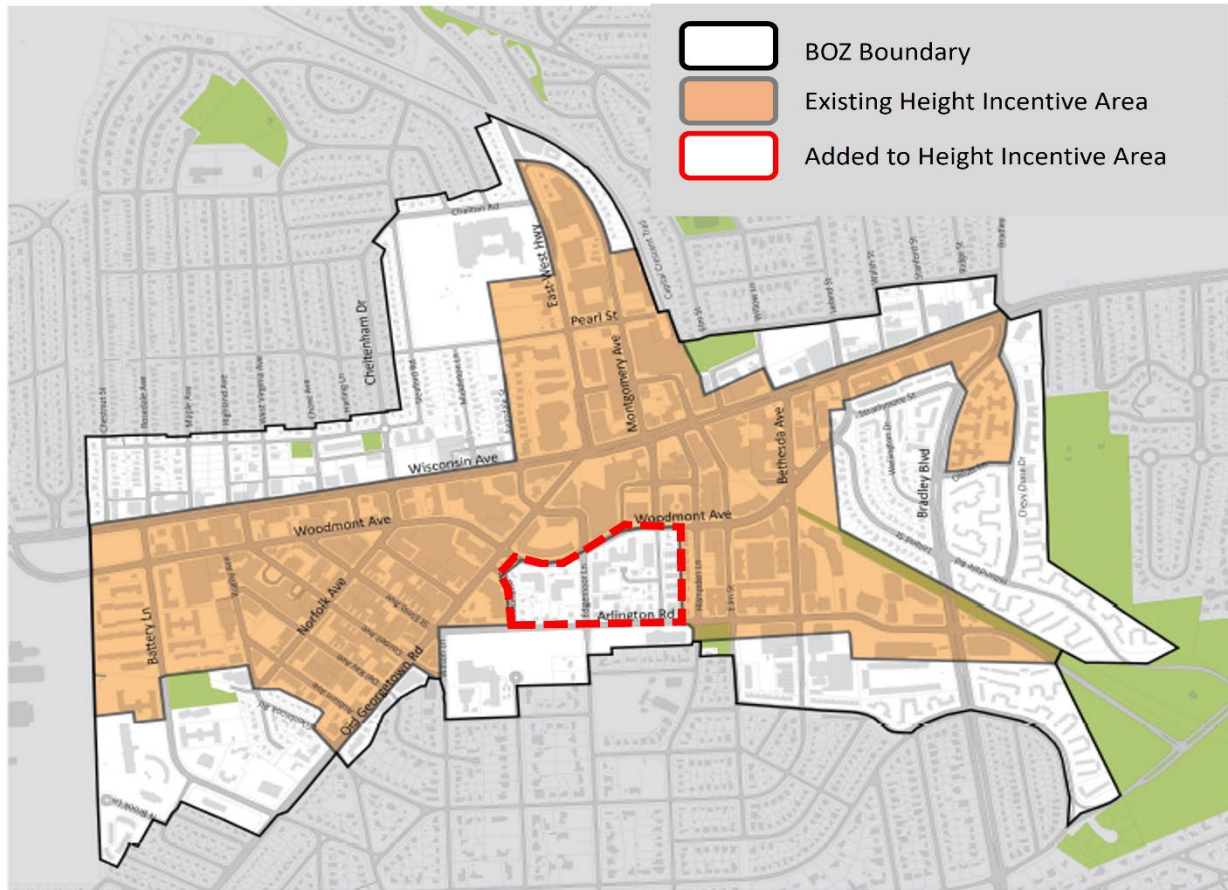


Figure 1 Existing Boundary of the Height Incentive Area

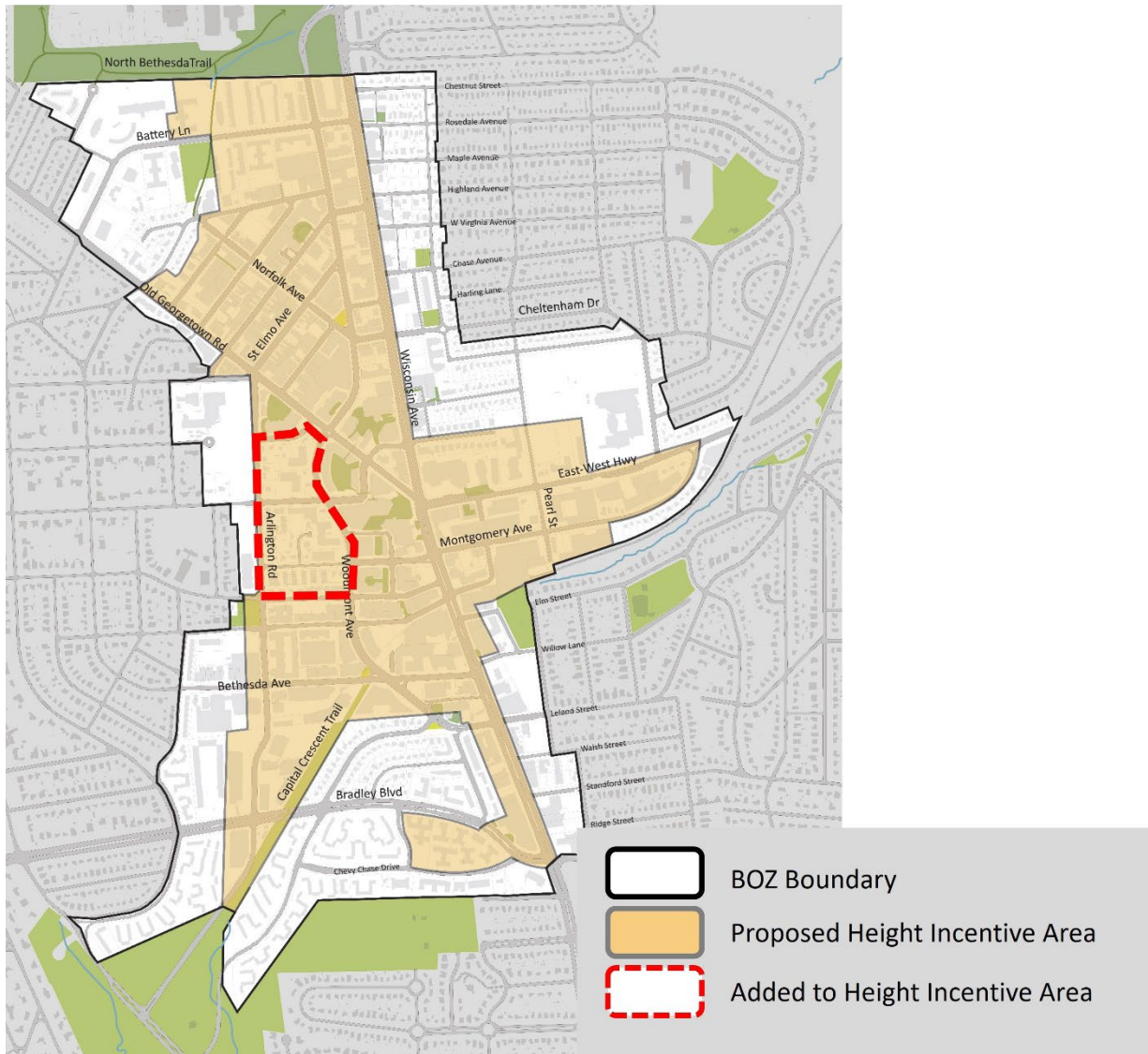


Figure 2 Proposed Boundary of the Height Incentive Area

HEIGHT INCENTIVE AREA MAP

The last section of the proposed ZTA is a new section titled Site Plan Validity. This section, from lines 130 – 134 would relieve certain applicants that received BOZ density under the current system from being bound by the statutory deadlines requiring applying for a building permit within two years of site plan approval and receiving that permit within two more years. The section of the BOZ that laid forth those requirements are recommended for removal as discussed in the Development Procedures section of this report on page five.

SECTION 3 – CONCLUSION

Planning Staff recommends the Planning Board support the draft amendments to the Bethesda Overlay Zone and to transmit the draft to the District Council for introduction. This ZTA will modify the BOZ to reflect certain recommendations from the Bethesda Downtown Minor Master Plan amendment including removing the cap on development, supporting the creation of a recreation center, and further incentivizing the creation of MPDUs.

SECTION 4 – ATTACHMENTS

Attachment A – Draft Bethesda Overlay Zone

Attachment A

Ordinance No.: _____
Zoning Text Amendment No.: 25-xx
Concerning: _____
Revised: _____ Draft No.: _____
Introduced: _____
Public Hearing: _____
Adopted: _____
Effective: _____

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

Lead Sponsor: Councilmember _____
Co-Sponsors: Councilmembers _____

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) Update the Bethesda (B) Overlay Zone consistent with the draft of the Bethesda Downtown Plan Minor Master Plan Update including incentives for additional MPDUs, a new recreation center, and lifting the development cap; and
- (2) generally amend the Bethesda (B) 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:

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 “C” and/or “R” components of CR or CRT FAR and may not transfer BOZ Density to any other property; and

B. except as provided under Subsection 3 concerning MPDUs, make a Park Impact Payment. Half of the payment must be made before the issuance of any building permit and half at the first use and occupancy permit, [application] at a rate of [\$10] \$15.57 per square foot of approved BOZ Density gross floor area. The Planning Board, after advertising and holding a public hearing, must adjust this payment rate on July 1 of each odd-numbered year by the cumulative increase or decrease in a

54 published construction cost index over the prior two calendar
 55 years. The Planning Board must cap the biennial Park Impact
 56 Payment rate adjustment not to exceed 20%. If the biennial tax
 57 rate adjustment exceeds 20%, the excess dollar amount must be
 58 carried over and added to the Park Impact Payment rate before
 59 calculating the next adjustment. If this total adjustment,
 60 including any carried over value, again exceeds 20%, the excess
 61 dollar amount must be carried over and added to the rate before
 62 calculating the next biennial adjustment. If a property owner
 63 dedicates, or makes publicly accessible, land designated in the
 64 master plan as a recommended open space to the M-NCPPC
 65 Parks Department, or land or space for a new recreation center,
 66 the Planning Board may reduce the amount of square footage
 67 for which a Park Impact Payment must be made.

68 **3. Moderately Priced Dwelling Units (MPDUs)**

69 a. General Requirement

70 For any development application that includes 20 or more residential
 71 dwelling units, the Planning Board may only approve the application if the
 72 development provides at least 15% MPDUs under the provisions of Chapter
 73 25 A. The provisions of Section 4.9.2.C.3.b through Section 4.9.2.C.3.d
 74 below also apply to any development application that is required to provide
 75 a minimum 15% MPDUs and that includes family-sized MPDUs that exceed
 76 the minimum number required under Chapter 25A and/or deeply affordable
 77 MPDUs as defined by Montgomery County DHCA.

78 b. Building Height

79 If a project exceeds 17.5% MPDUs and is located in the Height Incentive
 80 Area as delineated in Subsection E, the height limit of the applicable zone

81 does not apply to the extent required to provide MPDUs. The additional
82 height is calculated as the floor area provided for MPDUs above 15%
83 divided by the average residential floor plate area, where each whole number
84 and each remaining fraction allows an increase of 12 feet. In the portion of
85 the Height Incentive Area bound by Arlington Road, Woodmont Avenue,
86 Moorland Avenue, and Montgomery Avenue, this additional height is
87 limited to a maximum of 24 feet.

88 * * *

89 **d. Public Benefit Points**

90 * * *

91 c. Within the High-Performance Area designated in the Bethesda Down-
92 town Plan, the Planning Board must determine that the development
93 [achieves 15 public benefit points from Energy Conservation and Generation
94 under Section 59.4.7.3.F.3.] exceeds the applicable building and/or energy
95 code.

96 * * *

97 h. For the Public Art Public Benefit under Section 4.7.3.E.5., the fee may
98 also be accepted by the Bethesda Urban Partnership, the Bethesda Arts &
99 Entertainment District, or other civic arts organization accepted by the
100 Planning Board.

101 * * *

102 **7. Public Open Space**

103 a. The Public Open Space requirement under Section 4.5.4.B.1.a, may be
104 reduced by the Planning Board, including providing for land or built area for
105 a new recreation center.

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107 **D. Development Procedures**

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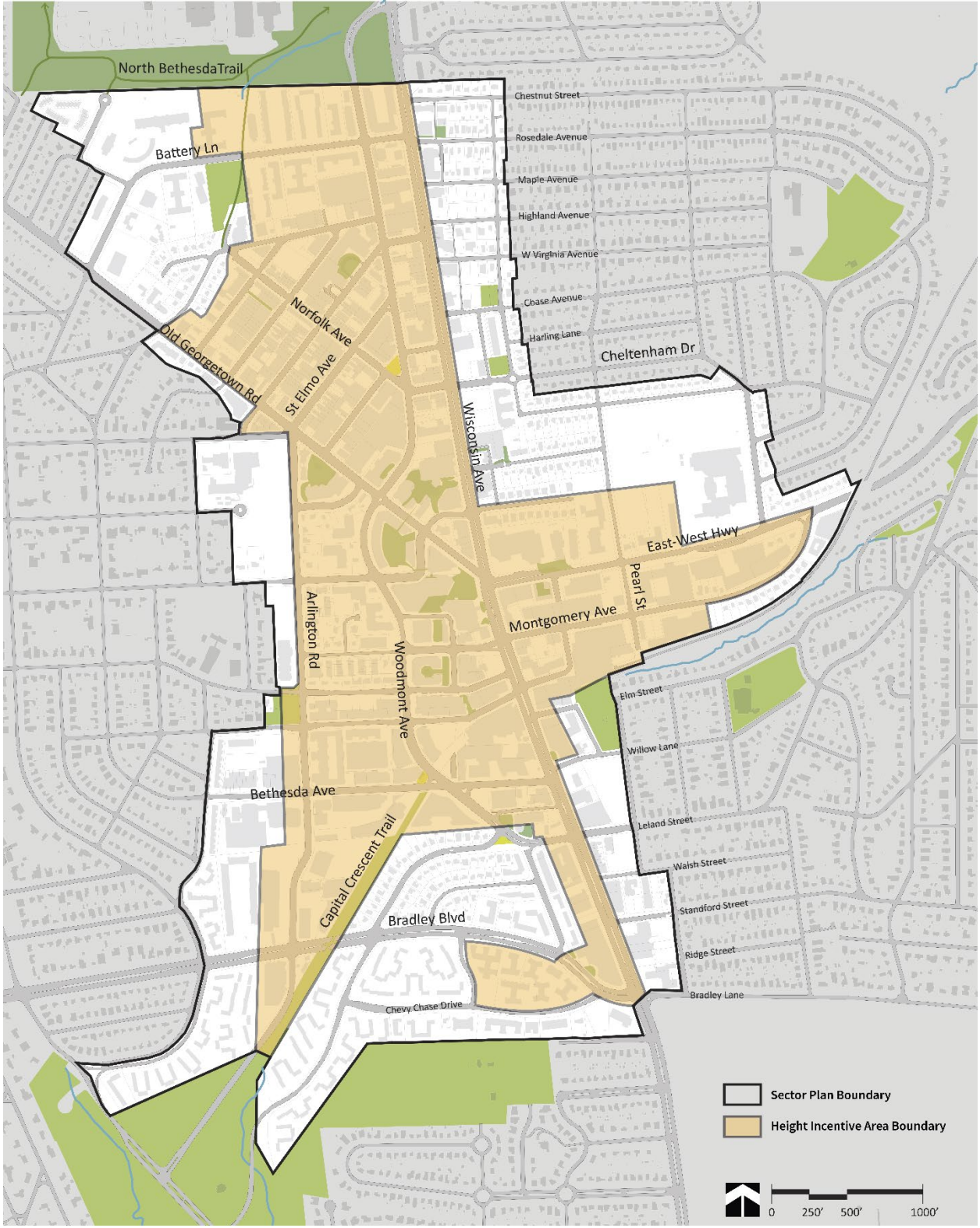
[3. To approve a site plan, the Planning Board must find that the proposed allocation of gross floor area, in addition to the sum of previously approved or built developments, does not exceed 32,400,000 square feet of gross floor area.

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. If an applicant fails to comply with any of the deadlines under this section, the entire site plan approval is revoked. For any site plan using BOZ density that was valid on July 17, 2023, the deadline to have an application for a building permit that includes the core and shell of the principal building accepted by the Department of Building Services is automatically extended for one year. The deadlines under this section may not otherwise be extended.]

E. Height Incentive Area Map



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129 **F. Site Plan Validity**

130 For any site plan using BOZ Density that was approved and valid on {effective
131 date} that as part of a condition of approval includes a deadline for applying for, or
132 receiving a building permit, shall have that deadline struck and the site plan instead
133 remain valid in accordance with Section 59-7.3.4.H.

134 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the date of
135 District Council adoption.

136

This is a correct copy of Council action.

Judy Rupp
Clerk of the Council