

## News

### New Bethesda Overlay Zone Now in Effect in Downtown Bethesda

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After several years of community meetings, public hearings and worksessions, the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) staff, Montgomery County Planning Board and County Council completed the Bethesda Downtown Sector Plan earlier this year. In connection with this comprehensive study of land use and zoning recommendations for Downtown Bethesda, the County Council adopted the Bethesda Overlay Zone (referred to as the “BOZ”) in July of 2017.

The adoption of the BOZ allows for implementation of several of the primary policies identified in the Bethesda Downtown Sector Plan, including the establishment of a mechanism to allow for optional method projects to exceed the maximum density zoned for the respective property (and funding for parks and public open spaces through a Park Impact Payment – the “PIP”), subject to satisfying various criteria delineated in the BOZ. Generally, optional method projects in Downtown Bethesda may exceed the maximum zoned density for a particular site through an allocation of density from the BOZ or transferred density from another site in Downtown Bethesda. An applicant can seek an allocation of density to “fill up” the maximum building height established for the subject property through the Bethesda Downtown Sector Plan and subsequent comprehensive rezoning processes. The allocation of density from the BOZ may be approved by the Planning Board at the time of Site Plan approval and is subject to the payment of a PIP, with some exceptions relative to Moderately Priced Dwelling Units (“MPDUs”).

The Bethesda Downtown Sector Plan and BOZ established a development cap of 32.4 million square feet. M-NCPPC staff recently estimated that there is approximately 5.3 million square feet of density remaining under the BOZ in connection with a staff report for a project in Downtown Bethesda. M-NCPPC staff is anticipated to release an implementation and tracking database in 2018 so that all stakeholders can monitor the available density under the BOZ in the coming years.

In addition to the creation of a mechanism for additional density to be allocated through the BOZ, the County Council modified the allowable public benefit points for optional method projects in Downtown Bethesda. The Council increased the maximum allowable public benefit points in various

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categories and created new categories for the retention of market-rate affordable housing and the PIP. In some instances, the BOZ clearly lays out a new methodology or formula for calculating public benefit points in Downtown Bethesda. By way of example, the BOZ allows for 15 public benefit points for every 1% of the number of MPDUs in the project above 15%. However, in other instances, the BOZ does not clearly delineate new criteria for calculating public benefit points in Downtown Bethesda and the existing standards in the Commercial/Residential Zone Incentive Density Implementation Guidelines do not contemplate the increased public benefit points established by the BOZ. For example, while the BOZ allows for up to 20 public benefit points in the minimum parking category, the current CR Zone Incentive Density Implementation Guidelines do not provide a formula for how projects would attain these additional public benefit points. M-NCPPC staff is currently preparing implementation guidelines for the BOZ that will clarify standards for these increased public benefit point allowances and alleviate the current problems with public benefit point calculations.

In summary, the BOZ modifies Section 59.4.7.3 of the Zoning Ordinance and the CR Zone Incentive Density Implementation Guidelines in five primary ways (which will be further refined and clarified upon approval of the BOZ implementation guidelines next year):

- (1) The BOZ created two new public benefit categories, (i) Park Impact Payment, and (ii) Retention of Market-Rate Affordable housing;
- (2) The BOZ requires that for an development application that includes 20 or more residential dwelling units, the Planning Board may only approve the application if the development provides at least 15% MPDUs;
- (3) The BOZ deleted the availability of public benefit points for transit proximity (which results in a loss of up to 50 points for projects abutting the Bethesda Metro Station);
- (4) The BOZ increased the allowable public benefit points in the following categories:
  - (a) Minimum Parking: up to 20 points allowed (previously only up to 10 points);
  - (b) Through Block Connection: up to 30 points allowed (previously only up to 20 points);
  - (c) Streetscape Improvement: up to 30 points allowed (previously only up to 20 points);
  - (d) Dwelling Unit Mix: up to 30 points allowed (previously only up to 10 points);
  - (e) Architectural Elevations: up to 30 points allowed (previously only up to 20 points);
  - (f) Exceptional Design: up to 30 points allowed (previously only up to 10 points);
  - (g) Public Open Space: up to 30 points allowed (previously only up to 20 points);
  - (h) Public Art: up to 20 points allowed (previously only up to 15 points);
  - (i) Tower Setback: up to 20 points allowed (previously only up to 10 points);

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(j) Cool Roof: up to 15 points allowed (previously only up to 10 points);

(k) Energy Conservation: up to 25 points (previously only up to 15 points);

(l) Vegetated Area: up to 15 points (previously only up to 10 points); and

(m) Vegetated Roof: up to 20 points (previously only up to 15 points).

(5) The BOZ requires that all optional method projects achieve a minimum of 10 points in the exceptional design category and that all optional method projects in the High Performance Area achieve a minimum of 15 points for energy conservation and generation (which generally requires that the building exceed the 2013 ASHRAE 90.1 Standard by 17.5%).

While this post lays out the general framework and changes to the optional method development process in Downtown Bethesda, there are many other significant components introduced by the Sector Plan, BOZ and associated Design Guidelines that are not addressed here. Should you have any questions or wish to discuss a development project in Downtown Bethesda in greater detail, please contact one of our Land Use/Zoning Attorneys located in our Bethesda office:

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