

June 30, 2017

Council President Roger Berliner
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Ave.
Rockville, MD 20850



Dear Council President Berliner and honorable members of the Council,

I'm writing on behalf of CBAR communities to urge the Council to establish that "the heights are the heights" for specific properties near residential neighborhoods, and to address points of confusion and conflict that emerged at the June 26 PHED committee meeting regarding height bonuses. Compatible heights in the transition zones between the built-up core and single family homes is a legitimate community concern. We believe that the mischaracterization of this concern during the PHED committee meeting was misplaced, and we are dedicated to doing what we can to help the Council resolve competing public interests.

We also believe that the process by which the discussion of height bonuses was brought to the floor lacked the level of transparency we are accustomed to from this Council. We reference the public record below to help Councilmembers understand why we are troubled by these turns of events, and ask you to consider our communities' targeted request for a height incentive area as presented in our January 17 and June 14 letters.

Planning Board Draft

Planning Staff discussed using the High Performance Area as an MPDU height incentive area at three Planning Board worksessions, starting on May 19, 2016. All five Planning Board commissioners weighed in: Anderson, Dreyfuss, Wells-Harley, Presley, and Fani-Gonzalez. The language below was introduced at worksession #13 on [slide 5](#) and discussed at [05:53-05:55](#):

- *No additional height given with MPDUs outside of the HPA or no height increases in areas adjacent to single family neighborhoods*

The text was revised and reinforced at worksessions #14 on June 9, 2016 and #15 on June 30, 2016. The Board's approved text appears in the [July 2016 Planning Board draft](#) as highlighted below on p 145:

- Establish the requirements for additional density received through the Bethesda Overlay Zone, including a requirement to provide a Park Impact Payment, provide 15 percent MPDUs and participate in a Design Review Advisory Panel at the Concept Plan and/or Sketch Plan application phase.
- No additional building height will be given with MPDUs outside of the High Performance Area.
- Establish the process for obtaining approval of a development with overlay zone density and using it in a timely manner so that unused density is not hoarded.
- Modify the density averaging rules to encourage transfers of density from the Priority Sending Sites identified in this Sector Plan.

F. South Bethesda:

- Connections to Norwood Local Park.

4.1.4 Public Benefits in the CR Zone

A. Top Priority Benefits

The following public benefits are of highest priority in all optional method projects:

1. Affordable Housing

This Plan recommends that optional method development in the Sector Plan Area should be allowed only if it delivers certain affordable housing benefits. An optional method project that includes residential dwellings should provide a minimum of 15 percent Moderately Priced

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CBAR Communications

In the CBAR joint community letter dated [January 17, 2017](#), we requested the following on the bottom of page 4 (emphasis added):

b. The recommended maximum building heights *for properties on the list* in the Attachment should be the absolute maximum heights permitted, inclusive of any and all allowances for public benefits such as MPDU's. *The Plan adheres to this principle in regard to properties outside the High Performance Area, but it should be expanded to include the properties on our list that lie within the High Performance Area.*

Council Staff Recommendations

Council staff introduced two significant changes in the [staff memo \(page 2\)](#) prepared for the final May 25, 2017 full Council vote on the resolution. First, staff deleted the Planning Board's text (see previous page) from the resolution, even though they made clear that the *Council had not made any decisions on this issue*. Second, staff presented the possibility that the High Performance Area could be replaced with another mechanism.

- If there is a height bonus for providing more than 15% MPDUs, should the location be limited? The Sector Plan specifically indicated that there should be no height bonus outside the high-performance area. Staff deleted this specific language because the Council has not decided on

this issue and because if the Council decides to limit the height bonus to specific areas, there may be a better way to define that area (e.g., proximity to single-family homes). It was not Staff's intent to imply that a decision had been made on this issue.

Community members were surprised that the deletion of this important protection was introduced by staff for the day of the full Council vote. We spoke with staff several times to understand the intent of this

exclusion. We concluded these conversations with the impression that (1) staff was of the opinion that height bonuses should be addressed in the ZTA rather than in the Plan and (2) in their opinion, the High Performance Area boundary approved by the Planning Board was an inappropriate proxy for a height incentive area.

Despite our disappointment with the last-minute deletion, we felt encouraged in our conversations with staff to propose an alternative approach to protect our interest in compatible heights. We were assured that height bonuses would be discussed as part of ZTA 16-20, and that is where we directed our efforts.

Deliberations Regarding ZTA 16-20

We delivered a letter on [June 14](#) that, among other things, includes a "Height Incentive Area" map. This map is based on the original Planning Board recommendation of using the High Performance Area map, and modifies the boundary to exclude properties from our January 17 letter. We also proposed recommendations for compensatory incentives for properties outside the boundary, which had not been previously proposed by the Planning Board. We contributed ideas such as increased Public Benefit amenity points and tax relief for the development of incremental MPDUs (pages 3, 5-6).

We have since discovered that Council staff also "amended the ZTA to mirror the changes made by Council to the Plan" in the Public Hearing Announcement for ZTA 16-20 ([Council staff memo regarding Revised Zoning Text Amendment 16-20, page 1, paragraph 2](#)). Lines 64-66, which implement the Planning Board's recommendation, were struck, yet there is no apparent evidence in the public record that these changes did indeed mirror the Council's changes.

60 **C. Development Standards**
61 **1. Building Height**
62 **[[a.]] Except as provided in subsection b, the maximum building**
63 **height is limited to the height allowed in the underlying zone.**
64 **b. [[Subsection 4.7.3.D.6.c.i. only applies within the High**
65 **Performance Area designated in the Bethesda Downtown**
66 **Plan.]] If more than 15% of the number of the dwelling units in**
67 **a residential development are MPDUs under Chapter 25A, the**
68 **height limit of the applicable zone does not apply to the extent**
69 **required to provide MPDUs above 15%.**

This is increasingly problematic since we discovered that of the nine bullet points presented in the section dedicated to the Bethesda Overlay Zone in the earlier [April 18 staff memo](#) (page 13), none of them express concern with the Planning Board's recommendation that "No additional building height will be given with MPDUs outside the High Performance Area." Furthermore, the cover page of a letter submitted by Carrie McCarthy, Division Chief, Research and Special Projects for the [April 25 \(page 19\)](#) meeting *specifically recommends maintaining* the Planning Board recommendation, and goes further to recommend that properties that were subject to the "T" designation translation not receive additional bonus height:

Per your request, the following memorandum provides an overview of potential strategies for affordable housing in the Bethesda Plan that we have discussed. We relate each strategy to an affordable housing goal in the Bethesda Plan and provide considerations for implementation.

These strategies are in addition to the PHED Committee's direction that all properties in the proposed Bethesda Overlay Zone should be required to provide 15% MPDUs. Because of this direction, we also think it is important to note that any former sites with a "T" designation have already been translated to a height increase of approximately 20 percent – to reflect that the Plan is requiring 15% MPDUs as a requirement. Also, for this reason, we recommend that the Bethesda Overlay Zone specifically not allow properties that were subject to the "T" designation translation to receive additional bonus height for affordable housing, as they have already received a 20% increase through the Plan. This recommendation is in addition to the current Bethesda Overlay Zone recommendation of not allowing properties outside the High Performance Area to get additional height in exchange for provision of affordable units.

While it's possible that the Council did publicly discuss and provide instructions to Council staff to modify both the resolution and ZTA 16-20, we have been unable to find evidence of it.

Going Forward

CBAR communities stand by our [June 14 letter](#), in which we request maintaining agreed-upon heights for specific properties near our neighborhoods, and offer potential incentives to help the Bethesda Downtown Plan area surpass its goal of 15% MPDUs and achieve deeper levels of affordability.

As elected officials and representatives of our civic associations, we fully understand that as with almost everything in government, there are competing public interests at play. But that does not mean solutions are out of reach, nor does it justify arbitrary changes to the resolution and ZTA without public Council consideration on an issue of such deep importance to many thousands of households.

Thank you for your consideration.

Sincerely,



Mary Flynn
Founder, Coalition of Bethesda Area Residents

CC:
Jeff Zyontz
Marlene Michaelson
Casey Anderson
Gwen Wright
CBAR community leaders