

MEMORANDUM

October 26, 2010

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Legislative Attorney
SUBJECT: Historic Preservation Amendment 10-1

This worksession is being held in advance of the Council's November 23, 2010 public hearing concerning HPA 10-1. If issues are raised at the Council's public hearing that warrant additional consideration by the Committee, the Committee may hold another worksession.

Background

Historic Preservation Amendment (HPA) 10-1, sponsored by Councilmember Knapp, would amend the Historic Preservation Ordinance provisions for amendments to the Master Plan for Historic Preservation. If the Planning Board recommended a historic district and the Council instead included some resources as individual sites in the Master Plan for Historic Preservation, this amendment would allow the removal of some of the sites from the Master Plan within four years from the Council's initial action.

On January 27, 2009 the Council approved an amendment to the Master Plan for Historic Preservation to include sites in the Damascus-Goshen area. The Planning Board recommended an area for the Woodfield Historic District. The Council approved a portion of the district but included some properties recommended as part of the district as individual sites instead of including them in the district. The Council took what it then thought was a more limited designation in response to the testimony it received. Concern has since been raised that some of these individual properties do not meet the criteria for historic designation. A resource that may be historic as part of a district may not be historic as an individual resource.

Councilmember Knapp consulted with the Planning Board Chair. He was advised that the best approach for the Council to revisit its action was to amend the historic preservation ordinance. HPA 10-1 would implement the Planning Board Chair's advice.

Issues

Would HPA 10-1 comply with Article 28?

Initiation

Under Article 28, the Commission (M-NCCPC) has the authority to initiate ANY plan if the Council has approved its work program to do so.¹ HPA 10-1 allows amendments where the Planning Board initiated an amendment to the Master for Historic Preservation; in all cases under HPA10-1, the initial Planning Board recommended amendment was to include a site in a historic district. HPA 10-1 allows a reconsideration of a Council's decision based on the amendment initiated by the Planning Board recommendation.

Staff finds that HPA 10-1 as introduced would not violate Article 28 regarding the initiation of a plan amendment.

Approving amendments

The plain language of Article 28 regarding adopting and amending the Master Plan for Historic Preservation leaves no role for the Council.² It only states that the Commission (M-NCPPC) may adopt and amend the Master Plan for Historic Preservation. The power is not absolute; it is stated as a permissive "may" rather than a command such as "shall" or "must". How does the Commission exercise this permissive authority? The general provisions for the initiation and adoption of ANY plan are also provided in Article 28. The District Council is authorized to establish the procedures.³ As a matter of practice and law, the Council must approve all plans and plan amendments before the Commission may adopt the plan or plan amendment.

¹ §7-108(d) Initiation and adoption of plans and amendments - (1) Initiation. The Commission may initiate any plan or part thereof with the concurrence of the district council of the county or counties in which the area of the proposed plan is located, provided that review of the Commission's proposed budget by the district council and approval of the planning schedule which shall be contained therein shall constitute concurrence in the initiation of plans proposed in the budget for any single fiscal year. The district council may modify or change the schedule contained in the proposed budget. Further, the district council may direct the Commission to initiate any plan or part thereof, and the Commission shall initiate the plan with reasonable promptness to the extent funds are available for this purpose.

² §7-108 (e) *Plans identifying historic sites, structures, etc.* - The Commission may make and adopt and, from time to time, amend a plan which shall identify and designate sites, structures with their appurtenances and environmental settings, or districts having a historical, archeological, architectural or cultural value, provided that the criteria for the designation or identification is not inconsistent with the criteria applicable to the Maryland Historical Trust under § 5A-323 of the State Finance and Procurement Article.

³ §7-108 (d)(2) The district council shall establish by ordinance or subsequent amendment thereto, after public hearing, (30 days' notice of the time and place of which shall be given by at least one publication in a newspaper of general circulation in the county), procedures for the submission, adoption, approval, and amendment of any plan or part thereof by the Commission. The procedures may include requirements for submission to and approval by the district council of preliminary concepts, guidelines, goals, or plans. The procedures shall include provision for adoption and amendment of plans by the Commission after at least one public hearing thereon, 30 days' notice of the time and place which shall be given by at least one publication in a newspaper of general circulation in the county. They may also include procedures for the approval of each plan or amendment thereto by the district council; and shall include a method for the certification and filing of the plan by the Commission in the office of the clerk of the

HPA 10-1 would establish procedures for the Council's reconsideration of a previous amendment. Although the District Council may **approve** a plan amendment, only the Commission may **adopt** such an amendment.

Staff recommends amending HPA 10-1 to provide for adoption by the Commission if the Council adopts an amendment to the Master Plan for Historic Preservation.

Should the HPA include criteria for the Council's action?

As introduced, HPA 10-1 would allow the Council to retain a designated site, remove a designated site, or include the site as part of a historic district. It does not require to Council to make any specific findings to approve these changes. Some residents may argue that there should be some specific finding that the subject site does not meet the Secretary of Interior's standards for the designation of an individual site.

There are no required findings for the Council to amend any another master plan. The Council adopts and amends master plans because it finds that it is in the public interest to do so. The Council cannot act in an arbitrary manner. There must be a rational basis to justify Council action. Staff does not recommend amending HPA 10-1 to require a specific finding by the Council.

Who should trigger an amendment under HPA 10-1?

An amendment under HPA10-1 would be triggered by the Council if inadequate notice was given to a property owner. An HPA 10-1 amendment is more like a reconsideration than a new issue for the Council.⁴ It is therefore appropriate for the Council to trigger the amendment process.

Planning Board

The Council got the benefit of the Planning Board's research and recommendation when the recommendation to place the subject site in a district was received. It does not require the Board to review its prior issue. It would be a waste of resources to require the Planning Board to repeat its recommendation to the Council.

Owner's Petition

In Montgomery County, the designation of a site as historic does not require an owner's consent. HPA 10-1 does not require a request from or the consent of an affected property owner to initiate an amendment. It only requires the Council to act. The appropriate role of owner's consent in

Circuit Court of Montgomery County and provisions for publication by the Commission of adopted and approved plans.

⁴ A review of a decision made within the last 4 years is not reconsideration. Under the Council's rules, reconsideration can only occur during the meeting after the Council's action. Local zoning map amendments may be reconsidered within 30 days. HPA 10-1 would subject 4 year decisions to reconsideration if the notice given to the property owner was inadequate.

the historic designation process is hotly contested. HPA 10-1 would allow Council triggered action on the basis of inadequate notice. This approach should keep clear of any aspect of owner's consent.

Can HPA 10-1 be made clearer?

The first section of HPA 10-1 was confusing to readers. Staff would clarify the time limit provisions as indicated in the proposed amendment.

This packet contains
HPA 10-1

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Historic Preservation Amendment No.: 10-1
Concerning: Historic Preservation Plan -
Amendments
Revised: 10/21/10 Draft No.: 2
Introduced: October 12, 2010
Effective:
Sunset Date:
Ch. , Laws of Mont. Co.

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

By: Councilmember Knapp

AN AMENDMENT to the Historic Resources Preservation Ordinance to:

- (1) amend the criteria to amend the Master Plan for Historic Preservation; and
- (2) generally amend the provisions for amending the Master Plan for Historic Preservation.

By amending the Historic Resources Preservation Ordinance, Chapter 24A, Section 24A-3, of the Montgomery County Code.

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| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

28 **Sec. 2. Effective Date.** This ordinance takes effect 20 days after the date of
29 Council adoption.

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31 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

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