

**MEMORANDUM**

July 7, 2011

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz, <sup>82</sup>Legislative Attorney  
SUBJECT: Zoning Text Amendment 11-02, Non-Conforming Uses – Historic Resources

**Background**

Zoning Text Amendment (ZTA) 11-02, sponsored by Councilmember Navarro, was introduced on April 12, 2011.

ZTA 11-02 would allow the reinstatement of non-conforming uses on historic resource sites. Vacant historic structures are detrimental to the historic resource and to the surrounding community. This ZTA would increase the land use options for historic buildings by allowing historic uses on the site without regard to the land uses allowed by its current zoning.

Keeping historic properties in productive use is a general problem in the County. There are approximately 430 individual properties in the Master Plan for Historic Preservation.<sup>1</sup> The current situation at the Aspin Hill Memorial Park (Pet Cemetery) illustrates a specific problem that ZTA 11-02 would solve.<sup>2</sup> The historic buildings on the cemetery grounds were once used for offices, educational programs, and animal care. In the absence of ZTA 11-02, those uses may not be reestablished, because the buildings were not continually used for that purpose. One of the buildings could be used for a house, but its historic setting in a pet cemetery makes that use undesirable and would not provide the money to support maintaining the pet cemetery.

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<sup>1</sup> The Planning Staff report listed all of the individually designated historic properties in the County. For the sake of saving trees, that list is NOT attached to this staff report.

<sup>2</sup> What happened to the *e* in *Aspin*? Richard and Bertha Birney, schnauzer breeders who established the kennel, supposedly named it after the famous Aspin Kennel in England. Those who named the site were faithful to the kennel's origins, not the location of the site. One would think that, after the defeat of the British in the Revolutionary War, we Colonials would have obtained the right to spell things as we saw fit.

## Testimony

On May 25, 2011, the Historic Preservation Commission supported ZTA 11-02. In the opinion of the Commission, ZTA 11-02 will advance the purposes of the County's historic preservation ordinance and the Master Plan for Historic Preservation.

On June 9, 2011, the Planning Board recommended approval of ZTA 11-02 with an amendment to delete the alternative to establish the historic use through land records. Planning Staff recommended ZTA 11-02 as introduced. In Planning Staff's opinion, ZTA 11-02 offers a reasonable response to competing public policy objectives.

On June 14, 2011, the Council held a public hearing. All of the testimony supported the approval of ZTA 11-02 as introduced. The Aspen Hill Civic Association submitted testimony in support of ZTA 11-02.

## Issues

*Should ZTA 11-02 be approved?*

Owners whose properties are in the Master Plan for Historic Preservation have greater burdens than other property owners. A historic area work permit must be approved before any exterior improvements are made. Demolitions are allowed only under limited circumstances. The neglect of the property could invoke governmental action. These burdens are offset to some degree by zoning provisions which allow greater latitude for historic properties.<sup>3</sup> ZTA 11-02 would be another way to allow economic uses of historic properties.

*Should ZTA 11-02 be amended to exclude the phrase "in the land records"?*

The land record for the County could conceivably go back to the establishment of the County in 1776. It is a valuable source of information. Staff recommends approval of ZTA 11-02 as introduced.

### This Packet Contains

ZTA 11-02

Planning Board Recommendation

Planning Staff Recommendation

### © number

1 – 3

4

5 – 8

<sup>3</sup> Non-resident professional office and parking waivers are allowed for historic properties.

Zoning Text Amendment No.: 11-02  
Concerning: Non-Conforming uses –  
Historic Resources  
Draft No. & Date: 1 – 03/23/11  
Introduced: April 12, 2011  
Public Hearing: June 14, 2011  
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**

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By: Councilmember Navarro

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- allow the reinstatement of non-conforming uses on historic resource sites; and
- generally amend the provisions for non-conforming uses

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

DIVISION 59-G-4      NON-CONFORMING USES, BUILDINGS, AND STRUCTURES  
Section 59-G-4.1      Continuation

**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 that text 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:*

1 **Sec. 1. 59-G-4.1 is amended as follows:**

2 **Sec. 59-G-4.1. Continuation.**

3 A nonconforming use may be continued, subject to the following limitations:

4 \* \* \*

5 **59-G-4.14. Abandonment of Use.**

6 If a nonconforming use is abandoned, it must not be reestablished, subject to  
7 Section 59-G-4.16. A nonconforming use is abandoned if the nonconforming use  
8 stops for at least 6 months.

9 \* \* \*

10 **59-G-4.16. Historic Resources.**

11 Any nonconforming use that has ceased operations for more than 6 months may be  
12 reestablished if the use is:

13 (a) located in a historic structure or on a historic site identified in the Master  
14 Plan for Historic Preservation; and

15 (b) consistent with the historic use of the property as documented in the  
16 Locational Atlas of Historic Sites, the Master Plan for Historic Preservation,  
17 or the land records.

18 **59-G-4.17. Nonconforming Use Certification.**

19 \* \* \*

20 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of  
21 Council adoption.

22

23 This is a correct copy of Council action.

24

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26 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council



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**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

June 9, 2011

**TO:** The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

**FROM:** Montgomery County Planning Board

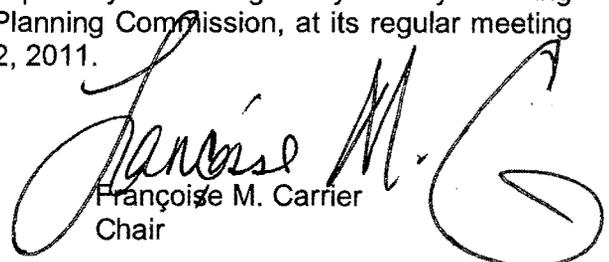
**SUBJECT:** Zoning Text Amendment No. 11-02

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 11-02 at its regular meeting on June 2, 2011. By a vote of 3:0, the Board recommends approval of the text amendment to allow any nonconforming use that has ceased operations for more than 6 months to be reestablished if the use is located in a historic structure or on a historic site and the use is consistent with the historic use of the property as documented in the Locational Atlas of Historic Sites or the Master Plan for Historic Preservation. The text amendment as introduced also permits the reestablishment of a nonconforming use as documented *in the land records*. The Planning Board recommended eliminating this provision, citing potential unintended consequences in interpreting the proposed objective. The Board further believes that eliminating this provision from the text amendment does not prohibit the Department of Permitting Services from using the land records as a tool in verifying the previous existence of the nonconforming use in a historic structure or on a historic site.

**CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, June 2, 2011.



Françoise M. Carrier  
Chair

FC: GR



MONTGOMERY COUNTY PLANNING DEPARTMENT  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item #9  
6/02/11

**DATE:** May 23, 2011  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Area 1 *pk*  
**FROM:** Greg Russ, Zoning Coordinator, Functional Planning & Policy *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To allow the reinstatement of non-conforming uses on historic resource sites under certain circumstances

**TEXT AMENDMENT:** No. 11-02  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Navarro  
**INTRODUCED DATE:** April 12, 2011

**PLANNING BOARD REVIEW:** June 2, 2011  
**PUBLIC HEARING:** June 14, 2011; 1:30 PM

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**STAFF RECOMMENDATION:** APPROVAL to allow any nonconforming use that has ceased operations for more than 6 months to be reestablished if the use is located in a historic structure or on a historic site and the use is consistent with the historic use of the property as documented in the Locational Atlas of Historic Sites, the Master Plan for Historic Preservation, or the land records.

Staff believes that on balance, ZTA 11-02 offers a reasonable response to competing public policy objectives and should be approved.

**BACKGROUND/ANALYSIS**

The "Master Plan for Historic Preservation" and the Historic Preservation Ordinance, Chapter 24A of the Montgomery County Code, are designed to protect and preserve Montgomery County's historic and architectural heritage. When a historic resource is placed on the "Master Plan for Historic Preservation", the adoption action officially designates the property as a historic site and subjects it to the further procedural requirements of the Historic Preservation Ordinance. Protection comes in the form of Historic Designation and inclusion in the "Locational Atlas and Index of Historic Sites in Montgomery County".

## **Current and Proposed Regulations**

Section 59-G-4.14, Abandonment of Use, currently prohibits the reestablishment of any nonconforming use if the use stops operation for at least six months. Under ZTA 11-02, any nonconforming use that has ceased operations for more than 6 months may be reestablished if the use is:

- (a) located in a historic structure or on a historic site identified in the Master Plan for Historic Preservation; and
- (b) consistent with the historic use of the property as documented in the Locational Atlas of Historic Sites, the Master Plan for Historic Preservation, or the land records.

The ZTA addresses an apparent policy conflict between the Historic Preservation Ordinance and the nonconforming use provisions of the Zoning Ordinance. Allowing the reestablishment of nonconforming uses that have ceased operation for more than six months could, in some instances, help maintain the historic significance of these properties. The ZTA would not allow new (therefore, non-historic) nonconforming use of historic resources.

The Historic Preservation Commission (HPC) supports the core purpose of ZTA 11-02 which is to preserve the continued use and enhancement of historic resources. At its May 25, 2011 meeting, the HPC found the ZTA to be consistent with the goal of maintaining the historic significance of certain designated historic resources. The Commission believes that under certain circumstances, exemption of certain historic properties from nonconforming and abandonment provisions of the zoning ordinance is necessary for the preservation of important historic resources. (Attachment 2)

Attachment 3 depicts a list of Master Plan for Historic Preservation sites in the County, identifying those properties that may be subject to ZTA 11-02. The Aspen Hill Memorial Park (#27/17), owned and operated by the Montgomery County Humane Society and located at 13630 Georgia Avenue (southwest quadrant of Georgia Avenue and Aspen Hill Road) is depicted as one of the historic properties that could benefit from the subject ZTA (There are approximately 14 sites according to the table). The property includes a nonconforming use- a pet cemetery- located on residentially zoned (R-60) land. Additionally, certain uses associated with the operation of the cemetery (offices, kennels for boarding of animals, space for outreach and education for the care and protection of animals, a veterinary clinic and a crematory) are no longer permitted under the existing zoning, having been previously abandoned for more than six months. The County Humane Society would like to reestablish the associated uses in the existing residential structure.

Staff believes that on balance, the proposed ZTA offers a reasonable response to competing public policy objectives and should be approved.



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

May 26, 2011

To: Greg Russ  
From: Scott Whipple *SW*  
Re: ZTA 11-02

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Historic Preservation staff concurs with the Montgomery County Historic Preservation Commission, which on May 25, 2011 considered ZTA 11-02 and found it will advance the purposes of the County's historic preservation ordinance, Chapter 24A of the County Code, and the Master Plan for Historic Preservation.

The ZTA would only allow the reestablishment of any nonconforming uses that were identified in the Locational Atlas, Master Plan for Historic Preservation, or land records as being in place and associated with the historical significance of the resource. The ZTA would not allow new (that is, non-historic) nonconforming use of historic resources. While this provision may have narrow application, the Commission and staff find that this amendment could support the preservation of a limited number of historic resources currently endangered by Zoning Ordinance Section 59-G-4.14 Abandonment of Use.

The Historic Preservation Commission have sent Council President Ervin a letter recommending Council adoption of ZTA 11-02 (circle 2).



HISTORIC PRESERVATION COMMISSION

Isiah Leggett  
County Executive

Leslie Miles  
Chair

May 26, 2011

The Honorable Valerie Ervin, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Re: ZTA 11-02: Non-Conforming Uses – Historic Resources

Dear Council President Ervin:

At its May 25, 2011 meeting, the Historic Preservation Commission reviewed ZTA 11-02 and voted unanimously to recommend to the Council adoption of this zoning text amendment.

Although the application of this amendment to the Zoning Code may be limited, the Historic Preservation Commission found that removing the abandonment provisions for certain historic resources as called for in the ZTA will advance the purposes of the County's historic preservation ordinance, Chapter 24A of the County Code, and the Master Plan for Historic Preservation. Therefore, the Commission supports adoption of ZTA 11-02.

On behalf of the Historic Preservation Commission, thank you for your consideration of our recommendation.

Sincerely yours,

Leslie Miles, Chair  
Historic Preservation Commission

cc: Councilmember Nancy Floreen, Chair, PHED Committee  
Françoise Carrier, Chair, Montgomery County Planning Board

