

M E M O R A N D U M

September 7, 2022

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 22-06, Exemptions – Historic Resources – Allowed Uses

PURPOSE: Worksession #1

Expected Attendees

- Casey Anderson, Chair, Planning Board
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner Coordinator, Countywide Planning & Policy, Planning Department
- Rebecca Ballo, Historic Preservation Supervisor, Planning Department
- Lynn Robeson Hannan, Director, Office of Zoning and Administrative Hearings (OZAH)
- Elaine Bonner-Tompkins, Senior Legislative Analyst, Office of Legislative Oversight (OLO)
- Elsabet Tesfaye, Performance Management and Data Analyst, Office of Legislative Oversight (OLO)

Introduction

Zoning Text Amendment (ZTA) 22-06, Exemptions – Historic Resources – Allowed Uses, lead sponsor Councilmember Rice, co-sponsors Councilmembers Navarro, Katz, and Friedson, was introduced on June 14, 2022. ZTA 22-04 will allow certain uses on residentially zoned properties that are designated as a historic site or resource on the Master Plan for Historic Preservation and have frontage along an arterial or higher classified road.

Public Hearing

A public hearing was held on July 26, 2022. Three speakers testified in support of ZTA 22-06. The pastor of Oakdale Church testified that this ZTA would allow the church to operate a coffee shop in its historic chapel. Speakers also testified that this ZTA would allow the public to better enjoy historic properties, and will support small businesses. Planning Staff testified on behalf of the

Planning Board in support of ZTA 22-06 with amendments, which will be discussed further below. The Historic Preservation Commission (HPC) also submitted a letter in support of ZTA 22-06.

Background

On January 18, 2022, this Council passed ZTA 21-06.¹ That ZTA established a new residential lot exemption for properties containing a historic resource that was protected from development by a density transfer.² ZTA 21-06 allowed the following commercial uses on the site containing the historic resource:

1. Any permitted use allowed in the underlying zone;
2. Clinic (up to 4 Medical Practitioners);
3. Office;
4. Retail/Service Establishment;
5. Rural Antique Shop; and
6. Drive-Thru as an accessory use to any other allowed principal use.

ZTA 22-06 would expand this list by adding Eating and Drinking Establishments. It would also add any historic site or resource that fronts on an arterial or higher classified roadway. The findings that the Planning Board and Historic Preservation Commission would need to make would remain the same.³

Summary of Impact Statements

Planning Board Recommendation

The Planning Board reviewed ZTA 22-06 at its meeting on July 14, 2022, and unanimously supported it. The Planning Board recommended an amendment that any use allowed by the exemption be subject to site plan review, and only those uses allowed in the underlying zone not identified by this exemption would go through the conditional use process. The intent of this amendment is to avoid having some of the identified uses go through the conditional use process while others go through site plan. The Planning Board also recommended changing the term “historic resource” to “individual historic site”, to clarify that individual sites are eligible for exemption, not an entire historic district.

¹ The staff report for ZTA 21-06 can be found here:

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20220118/20220118_13C.pdf.

² A density transfer is a process where, for land in a residential zone with a site, structure, or area of historic significance that is eligible for preservation, residential density could be transferred from the historic site to an adjacent residential site.

³ The Planning Board and Historic Preservation Commission need to make the following findings: 1) any modifications to buildings, structures or the land must be consistent with the intent of protection of the historic resource and consistent with Chapter 24A of the County Code; 2) any operational characteristics must not encroach upon or destroy the historical, archaeological, or architectural character or value of the site; and 3) the project must be recommended for approval by the HPC prior to approval of the Site Plan by the Planning Board.

Historic Preservation Commission

The HPC submitted a letter in support of ZTA 22-06 and concurred with the Planning Board's recommendation. The HPC noted that because conditional use review does not require HPC review until a Historic Area Work Permit (HAWP) is submitted, there could be a scenario where an applicant is granted conditional use approval, only to later have HPC find the proposal is incompatibly with the site's historic character at the permitting stage. The applicant would then have to restart the application process or appeal.

RESJ Impact Statement

The Office of Legislative Oversight (OLO) submitted a Racial Equity and Social Justice (RESJ) Impact Statement on July 1, 2022. OLO found that ZTA 22-06 could sustain or marginally widen racial and social inequities in the County as its benefits would disproportionately accrue to White and affluent residents. This is because researchers have found that historic preservation “favors certain historical narratives and assets over others and largely serves high-income and White communities,” and that “historically African American neighborhoods are underrepresented in historic designation programs.” However, OLO anticipates a negligible impact of this ZTA on racial equity and social justice as there are a limited number of properties eligible for the additional commercial uses allowed by this ZTA and fewer that will utilize this change in the Zoning Ordinance to extend their commercial uses.

During the PHED Committee worksession on ZTA 21-06, the Committee asked the Planning Department to continue to study and address why there are such large inequities in the County related to historic preservation.

Discussion

The intent of ZTA 22-06 is to encourage the maintenance and protection of historic sites by keeping them occupied and available for a limited number of less intrusive commercial uses. Encouraging use of these historic sites through commercial use both increases the public's enjoyment of them and helps property owners defray the costs associated with upkeep.

As introduced, ZTA 22-06 requires site plan approval except for those uses that are a conditional use in the underlying zone. But a few of the identified uses are limited or conditional depending on which zone you are in. The below table shows the current zoning for the identified uses:

USE OR USE GROUP	Definitions and Standards	Residential												
		Residential Detached							Residential Townhouse			Residential Multi-Unit		
		RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10
Clinic (Up to 4 Medical Practitioners)	3.5.7.A	L	L	L	L/C	L/C	L/C		L	L	L	L	L	L
Eating and Drinking	3.5.3													
Country Inn	3.5.3.A	L/C		L/C	L/C									
Restaurant	3.5.3.B													
Office	3.5.8.B				C	C	C							
Retail/Service Establishment (Up to 5,000 SF)	3.5.11.B													L
Retail/Service Establishment (5,001 - 15,000 SF)	3.5.11.B													L
Retail/Service Establishment (15,001 - 50,000 SF)	3.5.11.B													
Retail/Service Establishment (50,001 - 85,000 SF)	3.5.11.B													
Retail/Service Establishment (85,001-120,000 SF)	3.5.11.B													
Retail/Service Establishment (120,001 SF and Over)	3.5.11.B													
Rural Antique Shop	3.5.11.C	C		C	C									
Drive-Thru	3.5.14.E													

Council Staff agrees with the Planning Board that there should be one process for all the identified uses. While Planning Board and HPC recommend that all identified uses be subject to site plan review, an alternative is to make them all conditional use. It is important to remember the difference between site plan review and conditional use. Site plan approval ensures the design is appropriate regarding siting, adequate public facilities, appearance, and landscaping. As stated in Section 7.3.4.A.4., “A site plan provides a detailed overview of the applicant’s development. Site

plan review will be used to determine if the proposed development satisfies current laws, regulations, and this Chapter, and substantially conforms with the recommendations of the applicable master plan and approved guidelines.” A conditional use, however, focuses on the use itself. The conditional use process ensures that there will be no undue harm to the neighborhood due to both the inherent and non-inherent effects of a use. The case law on conditional uses is extensive. Under state law, conditional uses are “presumed valid uses” of land but are subject to that presumption being rebutted by credible evidence indicating that “the proposed use has adverse effects above and beyond those inherently associated with such a [conditional use] irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981).

While there is much overlap in these review processes, such as compatibility and conformance with master plans, the focus is different. Under site plan review, the Planning Board can make sure that there is safe, well-integrated parking, circulation patterns, and open space. The focus of the review, as the name suggests, is on the characteristics of the site. However, for a conditional use, the Hearing Examiner can place conditions on hours of operation, number of employees or customers allowed on the premises at a time, and where vehicles may be parked. For example, ZTA 22-06 will allow Eating and Drinking Establishments in a historic property in a residential zone, which can include anything from a coffee shop to a tavern. While the Planning Board can make sure that there is sufficient parking and traffic circulation, the Hearing Examiner can make sure the restaurant will not be open 24 hours.

In its letter to Council, HPC noted that an applicant could get conditional use approval and only later have the HPC find it is not appropriate due to the site’s historic character. In that instance, the applicant would then have to begin the process again. However, the ZTA could just as easily be amended to state that the Hearing Examiner cannot grant approval until submission of a Historic Area Work Permit (HAWP) and a recommendation of approval from HPC, as it says for Planning Board.

Choosing site plan review for the identified uses can also lead to a situation where a use is conditional on one property (a non-historic property) and requires only a site plan just a few houses away. For example, per ZTA 22-06, a Rural Antique Shop in a historic site in the RE-2, RE-1, or R-200 zone would require a site plan approval, while a Rural Antique Shop down the street would require a conditional use approval. Whether this is a desirable result depends on the intent of ZTA 22-06 and the policy reasons behind it. If the intent is to encourage best use of historic properties no longer suitable for residential uses than this disparate result may be desirable.

Council Staff recommends approval of ZTA 22-06 with amendments.

First, Council Staff recommends adopting Planning Board’s amendment to change the term “historic resource” to “individual historic site”, to ensure the exemption does not apply to an entire district.

[Where a lot containing a site, structure, or area of historic significance in a Residential zone is protected from development through a density transfer] On a residentially zoned property that is designated as ~~[[a]]~~ **an individual** historic site ~~[[or resource]]~~ on the Master Plan for Historic Preservation and either has a

density transfer easement or density transfer deed, or has frontage along an arterial or higher classified roadway, the following provisions apply:

As to the approval process, Council Staff agrees with Planning Board's suggestion to choose one review process for all identified uses. However, as noted above, site plan review is limited in its ability to create conditions on the use itself. Therefore, Council Staff recommends adding an additional use standard to ZTA 22-06 that limits the hours of operation. Under section 7.3.4., site plan review must adhere to applicable use standards. This amendment would allow any listed use to go through the site plan process, while ensuring the use is not incompatible with a residential area. The amendment could read:

- a. The following uses are allowed with site plan approval under Section 7.3.4.:
 - ~~[[i.~~ Any use allowed in the underlying zone, subject to the provisions of Section 7.3.1 where applicable;]]
 - ~~i[[ii]].~~ Clinic (up to 4 Medical Practitioners);
 - ~~ii[[iii]].~~ Office;
 - ~~iii[[iv]].~~ Retail/Service Establishment;
 - ~~iv[[v]].~~ Eating and Drinking Establishment;
 - ~~[v] [[vi]].~~ Rural Antique Shop; and
 - ~~[vi] [[vii]].~~ Drive-Thru as an accessory use to any other allowed principal use.
- b. Any use listed in section 7.7.1.D.11.a above must be closed to the public between 10:00 p.m. and 7:00 a.m.
- ~~[b]c.~~ [[Site plan approval is required under Section 7.3.4, except for those uses requiring Conditional Use.]] Any other use allowed in the underlying zone not listed in section 7.7.1.D.11.a above is allowed, subject to the provisions of Section 7.3.1 where applicable.

This packet contains:

ZTA 22-06, as introduced	© 1
ZTA 22-06, with Planning Board amendments	© 5
Planning Board Recommendation	© 9
Planning Staff Memorandum	© 15
RESJ Impact Statement	© 17
Letter from Historic Preservation Commission	© 21
Map of Effected Properties	© 23

Ordinance No.:
Zoning Text Amendment No.: 22-06
Concerning: Exemptions – Historic
Resources – Allowed
Uses
Draft No. & Date: 1 – 5/25/2022
Introduced: June 14, 2022
Public Hearing: July 26, 2022
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 Rice
Co-Sponsors: Councilmembers Navarro, Katz, and Friedson

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow certain uses on certain historic properties; and
- generally amend the provisions for historic resources.

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

Division 7.7. “Exemptions and Nonconformities”
Section 7.7.1. “Exemptions”

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.*

OPINION

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:

Sec. 1. DIVISION 59-7.7 is amended as follows:

Section 7.7.1. Exemptions

* * *

D. Residential Lots and Parcels

* * *

11. [Density Transfer and]Historic Resources

[Where a lot containing a site, structure, or area of historic significance in a Residential zone is protected from development through a density transfer]On a residentially zoned property that is designated as a historic site or resource on the Master Plan for Historic Preservation and either has a density transfer easement or density transfer deed, or has frontage along an arterial or higher classified roadway, the following provisions apply:

a. The following uses are allowed:

- i. Any use allowed in the underlying zone, subject to the provisions of Section 7.3.1 where applicable;
- ii. Clinic (up to 4 Medical Practitioners);
- iii. Office;
- iv. Retail/Service Establishment;
- v. Eating and Drinking Establishment;
- [v]vi. Rural Antique Shop; and
- [vi]vii. Drive-Thru as an accessory use to any other allowed principal use.

b. Site plan approval is required under Section 7.3.4, except for those uses requiring Conditional Use.

c. The Planning Board and the Historic Preservation Commission must make the following findings:

- i. any modifications to buildings, structures, or the land must protect the intent of the historic resource and be consistent with Chapter 24A of the County Code; and
 - ii. any operational characteristics must not encroach upon or destroy the historical, archaeological, or architectural character or value of the site.
- d. The project must be recommended for approval by the Historic Preservation Commission prior to approval of the Site Plan by the Planning Board.

* * *

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

Attachment A

Ordinance No.:
Zoning Text Amendment No.: 22-06
Concerning: Exemptions – Historic
Resources – Allowed
Uses
Draft No. & Date: 1 – 5/25/2022
Introduced: June 14, 2022
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
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Sec. 1. DIVISION 59-7.7 is amended as follows:

Section 7.7.1. Exemptions

* * *

D. Residential Lots and Parcels

* * *

11. [Density Transfer and]Historic [[Resources]] Sites

[Where a lot containing a site, structure, or area of historic significance in a Residential zone is protected from development through a density transfer] On a residentially zoned property that is designated as [[a]] an individual historic site [[or resource]] on the Master Plan for Historic Preservation and either has a density transfer easement or density transfer deed, or has frontage along an arterial or higher classified roadway, the following provisions apply:

a. The following uses are allowed with site plan approval under Section 7.3.4.:

[[i. Any use allowed in the underlying zone, subject to the provisions of Section 7.3.1 where applicable;]]

i[[ii]]. Clinic (up to 4 Medical Practitioners);

ii[[iii]]. Office;

iii[[iv]]. Retail/Service Establishment;

iv[[v]]. Eating and Drinking Establishment;

[v][[vi]]v. Rural Antique Shop; and

[vi][[vii]]vi. Drive-Thru as an accessory use to any other allowed principal use.

b. [[Site plan approval is required under Section 7.3.4, except for those uses requiring Conditional Use.]] Any other use allowed in the underlying zone not listed in section 7.7.1.D.11.a above

is allowed, subject to the provisions of Section 7.3.1 where
applicable.

c. The Planning Board and the Historic Preservation Commission
must make the following findings:

- i. Any modifications to buildings, structures, or the land
must protect the intent of the historic resource and be
consistent with Chapter 24A of the County Code; and
- ii. Any operational characteristics must not encroach upon
or destroy the historical, archaeological, or architectural
character or value of the site.

d. The project must be recommended for approval by the Historic
Preservation Commission prior to approval of the Site Plan by
the Planning Board.

* * *

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

ZTA 22-06 – EXEMPTIONS – HISTORIC RESOURCES – ALLOWED USES

Description

ZTA 22-06 would allow certain non-residential uses on residentially zoned properties that are designated as a historic site or resource on the Master Plan for Historic Preservation that have frontage along an arterial or higher classified roadway.

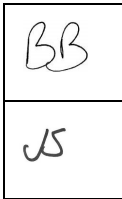
ZTA 22-06

COMPLETED: 7-7-2022

MCPB

Item No. 09
7-14-2022

2425 Reedie Drive
Floor 14
Wheaton, MD 20902



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Jason Sartori, Chief, Countywide Planning and Policy
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Summary

- This ZTA would modify Section 7.7.1.D.11 to expand the properties eligible for limited non-residential uses to include any property designated as a historic site or resource by the Master Plan for Historic Preservation that has frontage on an arterial or higher classified roadway.
- Eating and Drinking Establishments would be added to the list of allowed non-residential uses.
- Approval by the Historic Planning Commission and the Planning Board would be required.
- A Council Public Hearing is scheduled for July 26, 2022.

LEAD SPONSORS

Councilmember Rice

Co-Sponsored by Councilmembers
Navarro, Katz, and Friedson

INTRODUCTION DATE:

June 14, 2022

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for ZTA 22-06

ZTA 22-06 was introduced on June 14, 2022 by Councilmember Rice, and cosponsored by Councilmembers Navarro, Katz, and Friedson. The ZTA is scheduled for a Council Public Hearing on Tuesday, July 26, 2022. This ZTA is intended to allow certain non-residential uses on residentially zoned properties that contain a designated historic resource or site from the Master Plan for Historic Preservation, that also have frontage along an arterial or higher classification of roadway. Often, historic properties that may have once been built as a house are no longer suitable for residential uses by today's standards, but could be used by commercial users. This ZTA would provide opportunity to adaptively reuse historic properties to ensure they are maintained. Limiting these provisions to arterial or higher classified roadways is intended to minimize the disruption this ZTA may have on residential communities because of the more intense uses allowed.

SECTION TWO

ANALYSIS

ZTA 22-06 as introduced

ZTA 22-06 builds upon the Density Transfer section added to the code through ZTA 21-06, enacted by Ordinance 19-25 in the fall of 2021. ZTA 21-06 established an exemption for certain residential lots if they were protected through a density transfer easement, allowing certain non-residential uses with site plan approval. ZTA 22-06 expands the eligible properties to include any historic resource designated by the Master Plan for Historic Preservation if the site has frontage on an arterial or higher classified roadway. This ZTA also adds one additional commercial use – Eating and Drinking Establishment – to the list of allowed uses.

Analysis of ZTA 22-06

This ZTA finds a creative solution to the issue of what to do with small residential historic properties along highways that have limited utility as a residential dwelling. The county has 454 master plan identified historic sites. That number reduces to 96 sites that would be impacted by this ZTA when you filter out properties without frontage on arterial or higher roadways or not on residentially zoned land (RE-2 to R-10 zoning). These properties face unique challenges making them less conducive for residential use including the high volumes of traffic on the roadways, and the often smaller size of these historic buildings. As currently written, the ZTA would also impact an additional 376 properties meeting the criteria within master planned historic districts.

This ZTA would provide additional economic opportunities to this subset of historic properties by permitting a limited number of commercial uses that are generally less intrusive, including small professional or medical offices, or specialty retail or restaurant uses that can be accommodated by the constraints of these sites. Having these resources occupied, maintained and protected is the primary end goal of the historic preservation program and these new non-residential uses help provide a mechanism for that.

The ZTA would ensure adequate protection to both the historic resource, and the adjacent residential areas with both Historic Preservation Commission (HPC) and Planning Board approval. Both the Board and HPC would have to make findings that any site modifications must protect the intent of the historic resource, and that any operational characteristics of the non-residential use must not encroach upon or destroy the character or value of the site. The site plan process also provides the opportunity to ensure characteristics of the site such as access, on-site circulation, and lighting are not impactful to adjacent residential uses. In addition, HPC would need to issue a Historic Area Work Permit for any approved modifications to the site or the historic resource offering an additional level of protection. In many instances, adding non-residential uses on these properties also provides for local serving neighborhood retail and service opportunities absent from these communities today.

Planning staff did identify a potential point of confusion in the ZTA as written. The ZTA identifies a list of allowed uses in subsection a., including stating that any use allowed by the underlying zone is still allowed, following any Conditional Use provisions, if applicable. The ZTA then says site plan is required except for the uses requiring Conditional Use. This is clear, however there are a few uses listed under subsection a. that in some residential zones are currently allowed as conditional use such as Clinic (up to 4 Medical Practitioners), or Rural Antique Shop, and in other zones are not currently permitted or are permitted as a limited use. The result is that some of the listed uses, in some of the zones will follow the conditional use process while other uses (or the same use in other zones) would follow the site plan process and include the two new findings required of the Board/HPC. Planning staff believe it is more appropriate to have all the uses listed in subsection a. follow one process for these historic sites, and suggest it should be the site plan process to enable the HPC to make the two findings under subsection c.

Therefore, as a point of clarity, Planning staff is recommending changes to the ZTA making this distinction clearer. The changes can be seen in Attachment B, but in summary would amend subsection a. to clearly state the following uses are allowed with site plan approval under Section 7.3.4. The changes would then remove subsection i. stating other uses allowed by the underlying zone are allowed subject to Section 7.3.1 where applicable. Subsection b. which currently says site plan is required except for those uses requiring conditional use would be replaced with any other use allowed in the underlying zone not listed in 7.7.1.D.11.a above is allowed, subject to the provisions of Section 7.3.1 where applicable. This combination of edits would clearly permit all six non-residential

uses from subsection a. as a site plan, and would then allow other uses allowed by the respective zone to continue, subject to whatever process they are currently allowed under.

Planning staff is also concerned that as written, this ZTA would make the additional commercial uses available to not just individual historic sites, but all properties with frontage on arterial or higher roadways within all historic districts (including non-contributing resources and many currently actively used for residential purposes). Section 24A-2 of County Code defines “historic resource” as follows:

A district, site, building, structure or object, including its appurtenances and environmental setting, which is significant in national, state or local history, architecture, archeology or culture. This includes, but is not limited to, all properties on the “Locational Atlas and Index of Historic Sites in Montgomery County.”

Also, identifying all historic resources includes properties identified on the Locational Atlas, which includes properties that may have historic significance but have not been designated to the Master Plan for Historic Preservation by the County Council. Therefore, Planning staff is recommending modifying the provision identifying eligible properties to retitle subsection 11. as “Historic Sites” rather than “Historic Resources,” and to modify the criteria to state “On a residentially zoned property that is designated as a an individual historic site or resource on the Master Plan for Historic Preservation...” This clarifies which specific properties are eligible, and no longer includes districts, or other sites on the Locational Atlas that are not designated on the Master Plan for Historic Preservation.

ZTA 22-06 will be presented to the Historic Preservation Commission (HPC) at its meeting on July 13 for its formal review. The HPC’s recommendations will be shared with the Planning Board at the hearing for this item. Historic Preservation staff are supportive of this ZTA for the reasons listed above and expect a favorable recommendation from the HPC.

SECTION THREE

CONCLUSION

Planning staff supports the concept for ZTA 22-06 and recommends the Planning Board transmit comments in support of the ZTA with the modified language discussed above to the District Council. The code changes provide an opportunity for adaptive reuse and economic development to some of our designated historic sites in a way that has minimal impacts to surrounding communities and helps ensure the maintenance and protection of our historic resources.

Attachment A – ZTA 22-06 introduction packet

Attachment B – ZTA 22-06 with suggested modifications

July 22, 2022

To: The Honorable Gabe Albornoz
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment No. 22-06

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on July 14, 2022 and by a vote of 5:0 supported Zoning Text Amendment (ZTA) 22-06, with revisions. This ZTA expands on the existing exemption for historic sites to allow any master planned historic site in a residential zone along an arterial or higher classification roadway to apply for a limited number of non-residential uses. The Planning Board strongly supports any efforts to provide greater flexibility for the continued preservation and economic vitality of our historic resources. The Historic Preservation Commission also met to discuss this ZTA on July 13, 2022 and voted unanimously to support it with Planning staff's recommended revisions.

The ZTA builds upon the Historic Exemption in Section 7.7.1.D.11 added to the Code in 2021 by ZTA 21-06 by expanding the applicability to any master plan identified historic site in a residential zone, located along an arterial or higher classified roadway. The ZTA also adds one additional use, eating and drinking establishment, to the list of uses otherwise allowed in these residential zones.

As introduced, ZTA 22-06 continues to require a conditional use application for any use identified as conditional by the underlying zone, and otherwise allows for a site plan review for any other use allowed by this exemption section. The Planning Board is concerned it is burdensome and confusing to have some uses identified within this exemption follow the conditional use process while others can follow the site plan process. The Board recommends revising the ZTA (Attachment A) to clarify that any use allowed by this exemption will be reviewed by a site plan, and only those uses allowed in the underlying zone not identified by this exemption will still follow the conditional use process. This creates a simpler process for Planning and Historic Preservation staff, and for potential applicants. Because the exemption includes findings the Historic Preservation Commission must make prior to site plan approval, it also ensures early and detailed review by that commission for all applications.

An additional change recommended by the Board would replace the term “Historic Resource” with “Individual Historic Site,” to clarify that individual historic sites are eligible for the exemption, but not entire historic districts.

The understood intent of this ZTA is to provide a predictable, rigorous, but fair process for allowing additional uses in these historic resources to ensure their use and future protection, and the Board believes the amended version of ZTA 22-06 achieves this goal. The Board appreciates the Council’s consideration of these comments and Planning staff is available to work with the Council through the review of this ZTA as needed.

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 Wheaton, Maryland, on Thursday, July 14, 2022.



Casey Anderson
Chair

Attachment A: Revised ZTA 22-06
Attachment B: Staff Staff Report Packet

CA:BB:aj

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 22-06: EXEMPTIONS - HISTORIC RESOURCES – ALLOWED USES

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that ZTA 22-06 could sustain or marginally widen racial and social inequities in the County as its benefits would disproportionately accrue to White and affluent residents. OLO, however, anticipates a negligible impact of this ZTA on racial equity and social justice as there are a limited number of properties eligible for the additional commercial uses allowed by this ZTA and fewer that will utilize this change in the Zoning Ordinance to extend their commercial uses.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a process that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a goal of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 22-06

On January 18, 2022, the Council passed ZTA 21-06 enacting Ordinance No. 19-25 that allows limited commercial uses on residentially zoned properties limited in development by a density transfer due to historical site designation.³ The additional limited uses allowed on historic properties under ZTA 21-06 include:

- Any use allowed in the underlying zone, subject to the provisions of Section 7.3.1 where applicable;
- Clinic (up to 4 practitioners;
- Office; Medical Practitioners);
- Retail/ Service Establishment;
- Rural Antique shops; and
- Drive-Thru as an accessory use to any other allowed principal use

ZTA 22-06 proposes to amend Ordinance No. 19-25 by allowing limited commercial uses on historic “sites or resources on the Master Plan for Historic Preservation”⁴ that have frontages along arterials or higher classified roadways and adding a new limited commercial use for “eating and drinking establishments.” The site plan approval by the Planning Board and approval and review by the Historic Preservation Commission would still be required for historic properties eligible for limited commercial uses. ZTA 22-06 was introduced to the Council on June 14, 2022.

HISTORIC PRESERVATION AND RACIAL EQUITY

Historic preservation aims to provide a tangible link to our past.⁵ The benefits of preserving historic assets can include deepening community identity, attracting visitors, and ensuring a rich, diverse building stock.⁶ Empirical studies have also sought to document community-wide benefits of historic preservation that may offset the economic constraints that limit development and potentially harm property values to individual historic property owners.⁷

RESJ Impact Statement

Zoning Text Amendment 22-06

Some researchers contend that historic preservation too often favors certain historical narratives and assets over others and largely serves high-income and White communities.⁸ This includes a recognition among some researchers that “the preservation movement in the U.S. has primarily invested in maintaining White spaces, and for much of American history, little was done to protect Black and other spaces historically significant to people of color.”⁹ They further note that the “persistence of certain structures or sites and the effects of decisions over time can perpetuate patterns of segregation and exacerbate injustice.”¹⁰ As experts recognize how exclusive land use policies have inequities by race and ethnicity, they note that decisions about historical preservation can contribute to racial inequities as well.

For example, Marisa Brown finds that “federal, state, and local regulations that govern many of the most important preservation mechanisms reflect bias against communities of color.”¹¹ Her research finds that “of the nearly 95,000 entries in the National Register of Historic Places, only 2% (focus) on the experience of Black-Americans” and “of the more than \$100 billion awarded from the Federal Historic Preservation Fund since 1968, the majority has benefited White Americans.”¹² Similarly, other researchers have found that historically African American neighborhoods are underrepresented in historic designation programs.¹³

ANTICIPATED RESJ IMPACTS

One way to consider the potential impact of ZTA 22-06 on racial equity and social justice in the County is to consider where historic properties in the County are located. A review of available data describing historic preservation resources in Equity Focus Areas and across the County suggests that racial disparities in historic preservation exist.

Montgomery Planning defines Equity Focus Areas as census tracts with high concentrations of low-income households, people of color, and individuals who may speak English less than very well.¹⁴ These areas are primarily found along the I-270 Corridor, the Route 29 Corridor, and the eastern portion of Down County.¹⁵ A majority of the County’s low-income and people of color population reside in these areas compared to a quarter (26.5 percent) of all residents.¹⁶ Yet, of the County’s 1,215 historic preservation resources, only 79 (6.5 percent) are located in Equity Focus Areas.¹⁷

A review of historic preservation data across the County also demonstrates racial disparities. Of more than one thousand historic preservation sites in the County, only 27 are designated as sites of historical significance to African Americans,¹⁸ and only one site is associated with the Asian American and Pacific Islander heritage.¹⁹ Additionally, available data suggests that properties in several high-income historic districts could benefit from ZTA 22-06:²⁰ Takoma Park Historic District, Chevy Chase Village Historic District, Kensington Historic District, Garrett Park Historic District, Clarksburg Historic District, Hyattstown Historic District, and Sandy Spring Historic District. Each of these historic districts are located in zip codes that rank among the most expensive in Maryland,²¹ suggesting that affluent property owners are more likely to benefit from this ZTA.

Available data on property and business ownership further suggests White residents are the most likely to benefit from ZTA 22-06. According to the National Equity Atlas 2019, 75 percent of White, 73 percent of Asian or Pacific Islanders, 41 percent of Black, 50 percent of Latinx, and 51 percent of Other Montgomery County residents were owner-occupants of homes.²² Whereas Latinx and Black residents account for nearly 40 percent of the County’s population, businesses owned by Latinx and Black residents accounted for less than five percent of all business revenue in 2012.²³ These racial and ethnic disparities in home and business ownership suggest that people of color, and Black and Latinx residents in particular, would be the least likely to benefit from the expanded commercial uses for historic properties proposed in ZTA 22-06.

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Based on a review of available data and information, OLO anticipates that ZTA 22-06 could either sustain or marginally widen racial and social inequities in the County as its benefits will disproportionately accrue to White and affluent residents. OLO, however, anticipates a negligible impact of this ZTA on racial equity and social justice in the County as there are a limited number of properties eligible for additional commercial uses allowed by this ZTA and fewer that will utilize this change in the Zoning Ordinance to extend their commercial uses.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffers Elsabett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools.

<https://www.racialequitytools.org/glossary>

² Ibid

³ Ordinance Number 19-25 <https://www.montgomerycountymd.gov/COUNCIL/leg/zta/2021.html>

⁴ The Master Plan for Historic Preservation is the County's preservation planning document. It includes the list of all officially designated historic sites and districts and a system for protecting them, namely the Historic Preservation Ordinance.

⁵ This section references information originally cited in the OLO RESJ Statement for ZTA 21-06.

<https://www.montgomerycountymd.gov/OLO/resjis.html>

⁶ Ingrid Gould Ellen, Brian McCabe, and Gerard Torrats-Espinoza. *How Can Historic Preservation Be More Inclusive? Learning from New York City's Historic Districts*.

<https://www.arch.columbia.edu/books/reader/503-preservation-and-social-inclusion#reader-anchor-3>

⁷ Allison Arlotta and Erica Arvami, Preservation's Engagement in Questions of Inclusion: A Literature Review.

<https://www.arch.columbia.edu/books/reader/503-preservation-and-social-inclusion#reader-anchor-23>

⁸ Ingrid Gould Ellen, et al.

⁹ Kerry Young, Building a More Inclusive Preservation Movement, Heritage News, San Francisco Heritage, Volume XLVIII, No 4, October. – December 2020 - <https://www.sfheritage.org/wp-content/uploads/2020/10/OctoberHN2020-FINAL.pdf>

¹⁰ See Issues in Preservation and Policy edited by Erica Arvami and her chapter Preservation's Reckoning.

<https://www.arch.columbia.edu/books/reader/503-preservation-and-social-inclusion#reader-anchor-3>

¹¹ Marisa Brown in the June 2020 blog for the National Trust's Preservation Leadership Forum from “Preservation's Existential Crisis”.

<https://forum.savingplaces.org/blogs/marisa-brown1/2020/06/18/preservations-existential-crisis>

¹² Ibid.

¹³ Brent Leggs, Jenna Dublin, and Michael Powe, Telling the Full American Story: Insights from African American Cultural Heritage Action Fund - <https://www.arch.columbia.edu/books/reader/503-preservation-and-social-inclusion#reader-anchor-5>

¹⁴ The third Place A Montgomery Planning Department Blog. 2021. *A data-driven approach to addressing equity issues in Montgomery County*. July 29. <https://montgomeryplanning.org/blog-design/2021/07/a-data-driven-approach-to-addressing-equity-issues-in-montgomery-county/>

¹⁵ Ibid.

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¹⁶ Montgomery Planning. 2021. The Equity Focus Areas Analysis. Last updated April 26, 2022.

<https://montgomeryplanning.org/planning/equity-agenda-for-planning/the-equity-focus-areas-analysis/>

¹⁷ Montgomery Planning published and unpublished data.

¹⁸ Montgomery Planning Website. 2021. Montgomery County's Historic African American Places. January 28.

¹⁹ Montgomery County, MD Montgomery Planning. 2022. *Montgomery Planning Board briefed on County's first Asian American and Pacific Islander (AAPI) Heritage Project*. May 5. <https://montgomeryplanning.org/montgomery-planning-board-briefed-on-countys-first-asian-american-and-pacific-islander-aapi-heritage-project/>

²⁰ Dan Bruechert. Group Email, June 2022 *Historic Preservation Comments for ZTA 22-06*.

²¹ Property Shark. 2017. *Most Expensive Zip Codes in Maryland*. May 8. <https://www.propertyshark.com/Real-Estate-Reports/2017/05/08/expensive-zip-codes-maryland/>

²² National Equity Atlas. 2022. **Homeownership**: Homeownership can be a critical pathway to economic security and mobility. *Percent owner-occupied households by race/ethnicity: Montgomery, MD; Year:*

2019. <https://nationalequityatlas.org/indicators/Homeownership#/?geo=04000000000024031>

²³ OLO Report. 2019. *Racial Equity Profile, Montgomery County, Report Number 2019-7*. July 15



HISTORIC PRESERVATION COMMISSION

Marc Elrich
County Executive

Robert K. Sutton
Chair

July 21, 2022

Council President Gabe Albornoz
Council Office Building
100 Maryland Avenue - Room 217
Rockville, MD 20850

Dear Council President Albornoz,

I am writing in my capacity as Chair of the Historic Preservation Commission (HPC) to express the Commission's support for ZTA 22-06. At the July 13, 2022, HPC meeting we received a briefing from Planning Staff regarding the proposed "ZTA 22-06, Exemptions - Historic Resources - Allowed Uses". The HPC was unanimously supportive of the ZTA's objective to allow additional uses for historic properties in residential zones along arterial roads. This ZTA will add flexibility to the zoning ordinance that can assist in putting those historic properties into productive use, ensuring their long-term preservation.

The HPC's primary concern with the proposed ZTA is the procedural mechanism to change the use. Putting a historic property into a new use, not allowed as a conditional in the underlying zone, will require a Site Plan review only after the HPC reviews the proposal and recommends that the Planning Board approve it. However, several categories of uses identified in the underlying zone (in R-200, R-90, and R-60 Clinic (up to 4 Medical Practitioners) and Office, and Rural Antique Shops in RE-2, RE-1, and R-200) maintain a Conditional Use review to implement the use change, and this process does not expressly require HPC review until the applicant submits a Historic Area Work Permit (HAWP). It is conceivable that an applicant could get the conditional use approved, only to have the HPC find that the proposal is incompatible with the site's historic character at the permitting stage. The applicant would then have to begin the process from the beginning or go through the lengthy appeals process.

The HPC is composed of residents having extensive experience in history, architecture, historic preservation, and urban design. Because this ZTA applies only to sites on the Master Plan for Historic Preservation, the HPC strongly believes that any review for proposals that take advantage of the provisions in this ZTA should begin a Site Plan Review, which would produce comments from the HPC. By starting with the HPC, rather than through the standard Conditional Review process which doesn't explicitly require HPC review, the project can move forward with a degree of certainty that the alterations necessary to accommodate the new use are compatible with the site's historic character, and will have the HPC's support when the proposal returns for a HAWP. Applicants have the ability to come forward for a

preliminary consultation to receive the HPC's feedback on proposals at any time during our regularly scheduled public hearings.

Thus, the HPC supports applying the Site Plan review outlined in 7.7.1.D.11.b-d to all uses enumerated in 7.7.1.D.11.a, including those uses that are conditional in the underlying zoning. We believe this procedure is the best path forward to ensure the preservation of the individual site's historic character without increasing the regulatory burden on project applicants.

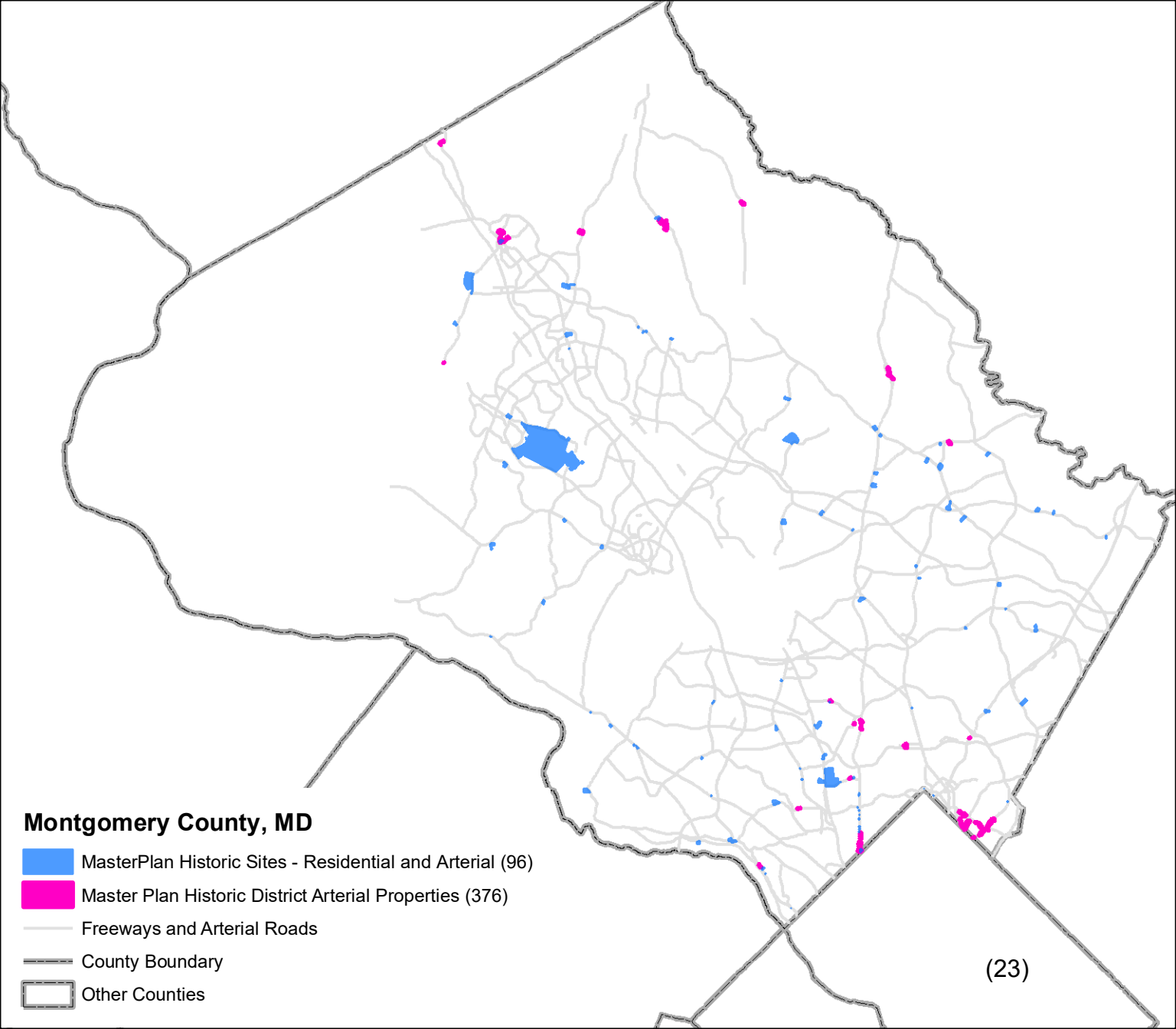
Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert K. Sutton", with a stylized flourish at the end.

Robert K. Sutton, Chair
Historic Preservation Commission


Cc: Members, Historic Preservation Commission





Montgomery County, MD

 MasterPlan Historic Sites - Residential and Arterial (96)

 Master Plan Historic District Arterial Properties (376)

 Freeways and Arterial Roads

 County Boundary

 Other Counties