AGENDA ITEM #6
February 24, 2009

Introduction

MEMORANDUM

February 20, 2009

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: Introduction – Historic Preservation Amendment 09-1 - Historic Resources Preservation - Amendments

Historic Preservation Amendment (HPA) 09-1, sponsored by Councilmember Knapp, would amend the Historic Preservation Ordinance. Councilmember Knapp believes that the current ordinance is not precise, concise, and decisive in its description of processes and its delegations of authority. He also recommends a number of substantive changes. The Council's public hearing on this matter will take place on March 31, 2009 at 7:30 p.m.

HPA 09-1 would clearly establish responsibilities concerning the *Locational Atlas and Index of Historic Sites* (Locational Atlas). The current historic preservation provisions are silent concerning the Council's role. This Ordinance would allow the Council to place a site on the Locational Atlas and to remove a site under curtain circumstances. Sites and districts that the Planning Board does not recommend for inclusion in the Master Plan for Historic Preservation would be removed from the Locational Atlas. The current alternative procedures for demolition and building permits for an owner whose property is designated on the Locational Atlas would be more clearly identified. The Historic Preservation staff would be obligated to inform the owners of Locational Atlas property of their status and their obligations every 5 years.

All of the criteria for the Planning Board to recommend designating a site would be retained except:

1) "High artistic value" would be removed as a criterion; and

2) If a property owner does not consent to the inclusion of his or her property on the Master Plan for Historic Preservation, then the proposed amendment would require a finding that the property satisfies at least 3 of the historic criteria, and the recommendation to designate must be approved by no less than 4 Planning Board members.

Sites or districts that the Planning Board does not recommend for inclusion in the Master Plan for Historic Preservation would not be submitted to the Council. The Ordinance would restate the Council's authority to amend the Planning Board's work program to consider particular properties for inclusion in the Master Plan for Historic Preservation; any such site or district would be submitted for the Council's consideration, even if the Planning Board recommends no change to the Master Plan.

This Ordinance would require leniency for granting a historic area work permit to alter a non-historic addition made before the property's inclusion in the Master Plan for Historic Preservation or the Locational Atlas. If the Historic Preservation Commission determines that a permit must be granted to allow the owner some reasonable use of their property, then the permit would be granted without further delay.

F:\Zyontz\Historic Master Plans\Historic Preservation Amendment to Law\intro Bill to amend Chapter 24A.doc

Historic Preservation Amendment No. 09-1
Concerning: Historic Resources Preservation - Amendments
Revised: 2/5/09_Draft No. 2
Introduced: February 24, 2009
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 definitions;
(2) require periodic notice for properties included on the Locational Atlas and Index of Historic Sites;
(3) amend the process for designating and a removing site or a district from the Locational Atlas and Index of Historic Sites;
(4) amend the process for allowing building permits for activity for a site or in a district included on the Locational Atlas and Index of Historic Sites;
(5) amend the criteria for designating a site or a district on the Master Plan for Historic Preservation;
(6) amend the process for designating a site or a district on the Master Plan for Historic Preservation;
(7) amend the criteria for approving historic area work permits; and
(8) generally amend the historic resources preservation ordinance.

By amending all the sections of the Historic Resources Preservation Ordinance, Chapter 24A of the Montgomery County Code.

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

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

Sec. 1. Chapter 24A is amended as follows:

24A-1. Purpose.

[It is the purpose of this chapter to provide for the identification, designation and regulation, for purposes of protection, preservation and continued use and enhancement, of] This Chapter establishes the method to identify, designate, and regulate historic resources and to protect, preserve, use, and enhance those sites[,] or structures with their appurtenances and environmental settings, and districts of historical, archeological, architectural, or cultural value [in that portion of the county which is within] in the Maryland-Washington Regional District. Its further purpose is to preserve and enhance the quality of life in the [county] County, safeguard the historical and cultural heritage of the [county] County, strengthen the local economy, stabilize and improve property values in and around such historical areas, foster civic beauty, and [to] preserve continued utilization and pleasure of the citizens of the [county] County, the state, and the United States of America.

24A-2. Definitions.

[For the purposes of] In this Chapter, the following words and phrases have the following meanings:

Appurtenances and environmental setting: The entire parcel, as of the date [on which] when the historic resource is designated on the master plan, and structures thereon, on which [is located an] a historic resource is located, unless reduced by the District Council or the [commission] Commission, and to which it relates physically and/or visually. Appurtenances and environmental settings [shall] must include[, but not be limited to,] walkways and driveways ([whether] paved or [not] unpaved), vegetation (including trees, gardens, lawns), rocks, pasture, cropland, and waterways.

Board: The County Board of Appeals [of Montgomery County].

Commission: The [historic preservation commission of Montgomery County as described hereinafter] County Historic Preservation Commission.

28 *Council*: The County Council, which sits as the District Council when
29 approving or amending master plans.
30 *Demolition by neglect*: The failure to provide ordinary and necessary
31 maintenance and repair to [an] a historic site or [an] a historic resource [within an] in
32 a historic district, whether by negligence or willful neglect, purpose, or design, by the
33 owner or any party [in possession of such] who controls a site, which results in any of
34 the following conditions:
35 (a) The deterioration of exterior features, [so as to create or permit] creating or
36 permitting a hazardous or unsafe condition to exist.
37 (b) The deterioration of exterior walls, roofs, chimneys, windows, the lack of
38 adequate waterproofing or deterioration of interior features or foundations
39 which will or could result in permanent damage[, injury] or loss of [or to] the
40 exterior features.
41 *Director*: The Director of the Department of Permitting Services, or the
42 Director's designee.
43 *Exterior features*: The architectural style, design, and general arrangement of
44 the exterior of [an] a historic resource, including the color, nature, and texture of
45 building materials, and the type of style of all windows, doors, light fixtures, signs, or
46 other similar items found on or related to the exterior of [an] a historic resource.
47 *Locational Atlas and Index of Historic Sites*: The list of sites and districts that
48 contribute to historic, architectural, archeological, or cultural values and may be
49 included in the Master Plan for Historic Preservation in the future. Sites and districts
50 on the Atlas are subject to regulations if the property owner applies for permits for
51 demolition or substantial alternations. The Atlas is referred to as the Locational
52 Atlas.
53 *Historic district*: A group of historic resources designated in the Master Plan
54 for Historic Preservation [which are] that is significant as a cohesive unit and

55 [contribute] contributes to the historical, architectural, archeological, or cultural
56 values [within] in the Maryland-Washington Regional District [and which has been
57 so designated in the master plan for historic preservation].
58 *Historic resource*: A district, site, building, structure, or object, including its
59 appurtenances and environmental setting, which is significant in national, state, or
60 local history, architecture, archeology, or culture. This includes[, but is not limited
61 to, all properties on the "Locational Atlas and Index of Historic Sites in Montgomery
62 County."] any resource on the Locational Atlas or the Master Plan for Historic
63 Preservation.
64 *Historic site*: Any individual historic resource designated in the Master Plan
65 for Historic Preservation that is significant and contributes to the historical,
66 architectural, archeological, or cultural values [within] in the Maryland-Washington
67 Regional District [and which has been so designated in the master plan for historic
68 preservation].
69 *Permit*: [An] A historic area work permit issued by the Director, authorizing
70 work on [an] a historic site or [an] a historic resource located within [an] a historic
71 district.
72 *Planning Board*[;]: The [Montgomery] County Planning Board [of the
73 Maryland-National Capital Park and Planning Commission].
74 *Preservation easement* [means an]: An easement held by the County to
75 protect, maintain, or otherwise conserve [an] a historic resource.
76 **[24A-3. Master plan for historic preservation; criteria for designation of historic**
77 **sites or districts.**
78 (a) As part of the general plan for the physical development of that portion
79 of the county within the Maryland-Washington Regional District, there
80 shall be prepared, adopted and approved a master plan for historic
81 preservation which shall constitute an amendment to the general plan

82 for the Maryland-Washington Regional District. Such plan shall
83 designate historic sites and historic districts and describe their
84 boundaries; it shall propose means for the integration of historic
85 preservation into the planning process; and it shall suggest other
86 measures to advance the goals of historic preservation.
87 (b) In considering historic resources for designation as historic sites or
88 historic districts, the planning board shall apply the following criteria:
89 (1) Historical and cultural significance. The historic resource:
90 a. Has character, interest or value as part of the development,
91 heritage or cultural characteristics of the county, state or
92 nation;
93 b. Is the site of a significant historic event;
94 c. Is identified with a person or a group of persons who
95 influenced society; or
96 d. Exemplifies the cultural economic, social, political or historic
97 heritage of the county and its communities.
98 (2) Architectural and design significance. The historic resource:
99 a. Embodies the distinctive characteristics of a type, period or
100 method of construction;
101 b. Represents the work of a master;
102 c. Possesses high artistic values;
103 d. Represents a significant and distinguishable entity whose
104 components may lack individual distinction; or
105 e. Represents an established and familiar visual feature of the
106 neighborhood, community or county due to its singular
107 physical characteristic or landscape.]
108 **[24A-4] <u>24A-3</u>. Historic [preservation commission] <u>Preservation</u> <u>Commission</u>.**

109 (a) *Created.* [There is hereby created a commission to be known as the "historic
110 preservation commission of Montgomery County, Maryland."] The County
111 Executive must appoint, subject to confirmation by the County Council, a
112 Historic Preservation Commission.
113 (b) *Membership.* The [commission shall] Commission must consist of 9 members
114 [appointed by the county executive with the confirmation of the county
115 council]. Each member must be a resident of the [county] County. The [4]
116 fields of history, architecture, preservation, and urban design [shall] must each
117 be represented by [a minimum of] at least 1 member qualified by special
118 interest, knowledge, or training. The remaining members [of the commission
119 shall] must, to the extent possible, [be selected to] represent the geographical,
120 social, economic, and cultural concerns of the residents of the [county]
121 County.
122 (c) *Officers.* The [county executive shall] County Executive must appoint the
123 chairman and vice-chairman of the [commission] Commission, who [shall]
124 must serve at his pleasure[, but such appointments occurring after the
125 commission's first year of operation shall be made] after [due consideration
126 has been given to] considering the recommendation of the [commission]
127 Commission.
128 (d) *Term.* [The terms of the members of the commission shall be for] Each
129 member serves a three-year [period and members shall continue to serve] term.
130 A member serves until [their successors are] a successor is appointed and
131 [qualified] confirmed.
132 [(e) *Vacancy.* Any vacancy in the membership of the commission caused by the
133 expiration of a term, by resignation or death, by a superseding incapacity to
134 discharge duties, by a removal for cause, or by any other cause creating such
135 vacancy, shall be filled for a new term, or for the remainder of the term for

136 which there is a vacancy as the case may be, in the same manner as provided
137 herein for the nomination and appointment of the initial members of the
138 commission.]

139 [(f)] (e) *Removal for cause.* [A] The Executive may remove a member [may be
140 removed] for cause [from the commission by the county executive].

141 [(g)] (f) *Compensation.* The members [of the commission] serve without
142 compensation.

143 [(h)] (g) *Regulations.* The [commission] Commission must adopt, under method
144 (2) of Section 2A-15 [of this Code, rules], guidelines and regulations that are
145 necessary for:

146 (1) [the] proper transaction of [the] Commission business [of the
147 commission. This includes provisions governing contested cases before
148 the commission], including hearing and deciding contested cases; and

149 (2) carrying out its responsibilities under this Chapter.

150 [(1)](h) *Meetings.* The [commission shall] Commission must hold [such] regular
151 meetings [which, in its discretion, are] as necessary to discharge its duties.
152 [Such meetings shall] Each meeting must be open to the public except when
153 the state Open Meetings Law allows the meeting to be closed.

154 [(2)](i) *Staff.* [There may be appointed and assigned to the commission such
155 employees, and the chief administrative officer shall make available to the
156 commission such services and facilities of the county, as are necessary or
157 appropriate for the proper performance of its duties, and the county attorney
158 shall serve as counsel to the commission.] The County Executive must submit
159 a budget request to the Council to provide the Commission with staff,
160 facilities, materials, and contract services that the Executive finds are needed
161 to administer this Chapter.

162 (j) *Counsel.* The County Attorney must serve as counsel to the Commission.

163 **[24A-5] 24A-4. [Same-] Powers and duties of the Commission.**

164 The [commission has the following powers and duties] Commission must:

165 (a) [To] research historic resources, and [to] recommend to the [planning board
166 that certain of them] Planning Board which resources should be designated as
167 historic sites or historic districts on the [master plan for historic preservation
168 and, hence, be subject to the provisions of this chapter.] Master Plan for
169 Historic Preservation;

170 (b) [To] recommend to the [planning board] Planning Board, as needed, any
171 update to the inventory of historic resources [which is] contained in the
172 ["Locational Atlas and Index of Historic Sites in Montgomery County."]
173 Locational Atlas;

174 (c) [To act upon] consider applications for historic area work permits and other
175 matters referred to it [for action pursuant to the provisions of] under this
176 Chapter[.];

177 (d) [To] appoint members to local advisory panels where necessary to assist and
178 advise the [commission on the performance of its functions.] Commission;

179 (e) [To] recommend programs and legislation to the [council] Council and [the
180 planning board] Planning Board where necessary to encourage historic
181 preservation [in the Maryland-Washington Regional District.];

182 (f) [To] review any legislation and proposals affecting historic preservation,
183 including preparation of master plans, and [to make] offer recommendations
184 [on such legislation and proposals] to appropriate authorities[.];

185 (g) [To] serve as a clearinghouse for information on historic preservation for
186 [county] County government, individuals, [citizens' associations] civic
187 organizations, historic societies, and local advisory committees; [to] provide
188 information and educational materials for the public; and [to] undertake
189 activities to advance the goals of historic preservation in the [county.] County;

190 (h) [To] employ or hire consultants or other temporary personnel, subject to
191 appropriation and consistent with [county] County contract provisions, as
192 [deemed] necessary to assist the [commission in the accomplishment of its
193 functions] Commission; [such consultants or other personnel shall be
194 compensated as may be provided for in the county budget.]
195 (i) [To] administer [an] a historic preservation easement program and any
196 revolving funds or grant programs to assist in historic preservation[.];
197 (j) [To] advise the [planning board] Planning Board, [in the event of] if
198 subdivision of land [containing an] would affect a historic resource, on the
199 appurtenances and environmental setting necessary to preserve [it.] the
200 resource; and
201 (k) [To delineate] recommend the extent of appurtenances and environmental
202 setting associated with [an] a historic site or resource proposed for the Master
203 Plan for Historic Preservation.
204 **24A-5. Historic preservation easement program.**
205 (a) The Commission must administer an easement program to preserve historic
206 resources.
207 (b) (1) An owner of a historic resource may offer the County a preservation
208 easement to protect or conserve interior or exterior features of the
209 historic resource and its environmental setting or appurtenances by
210 filing an application with the Commission.
211 (2) After receiving an application, the Commission must immediately
212 forward it for review and comment to:
213 (A) the Planning Board, if the historic resource is located in the
214 Regional District; and
215 (B) the appropriate municipal agency, if the historic resource is
216 located in a municipality.

217 The Board and the municipal agency should submit their
218 comments within 45 days after it receives the application. The
219 Board and agency should evaluate the proposal, using the criteria
220 specified in this Section, identify competing or supporting land
221 use priorities and other relevant factors, and recommend any
222 necessary easement terms and conditions.
223 (3) The Commission must review each application and decide if accepting
224 the preservation easement would further the County's historic
225 preservation goals. The Commission must consider, among other
226 relevant factors:
227 (A) the relative significance of the historic resource;
228 (B) its structural condition;
229 (C) the owner's planned or completed preservation efforts;
230 (D) the existing zoning and nature of the surrounding neighborhood;
231 and
232 (E) whether an easement will promote long-term survival of the
233 historic resource.
234 (c) If the historic resource is designated as a historic site in the County Master
235 Plan for Historic Preservation as an individual site or is located in a historic
236 district, the Executive may acquire an easement if the Commission
237 recommends it. If the historic resource is not designated as a historic site in
238 the master plan, the Council must also approve the easement. The
239 Commission must forward any comments received under subsection (b)(2) to
240 the Executive and Council as appropriate.
241 (d) A preservation easement under this Section should be granted in perpetuity,
242 and should include appropriate terms and conditions that:
243 (1) restrict changes and alterations in the property;

244 (2) require sufficient maintenance, repairs, and administration;
245 (3) authorize public access;
246 (4) give the appropriate government agencies the right to inspect the
247 property;
248 (5) allow the easement to be assigned to the Maryland Historical Trust or
249 other entity; and
250 (6) establish enforcement remedies.
251 (e) The County may hold a preservation easement jointly with the Maryland
252 Historical Trust.
253 (f) The grantor must record each preservation easement in the County land
254 records at the grantor's cost. The grantor must notify the state assessments
255 office that the easement was recorded.
256 (g) A preservation easement may be extinguished by court action if an unexpected
257 change in conditions applicable to the property makes it impossible or
258 impractical to continue to preserve it. The terms of an easement regarding
259 extinguishment should identify which changes in condition would suffice,
260 require that the County share in any proceeds from a sale or exchange of the
261 property after the easement is extinguished, and satisfy any applicable
262 regulations. Sharing the proceeds may include recapture of some or all
263 property taxes not paid by the grantor or its successor in interest as a result of
264 the easement.
265 (h) The Commission may enter into a cooperative agreement with the Maryland
266 Historical Trust or another government agency or private entity for technical
267 assistance in administering the historic easement program. This agreement
268 may include property evaluation, negotiation, and inspection.
269 (i) (1) The easement program authorized by this Section is in addition to, and
270 does not supersede or otherwise affect, any other County or municipal

271 program or policy requiring the donation of a preservation easement as
272 a condition of financial assistance. This program must be coordinated
273 with other County and municipal easement programs.
274 (2) A grant of an easement under this Section does not waive or otherwise
275 alter any County or municipal regulatory requirement applicable to the
276 historic resource, including any requirement to obtain a historic area
277 work permit.
278 (j) The Commission may adopt regulations under method (2) to administer this
279 program.
280 **24A-6. Historic area work permits [- Generally].**
281 (a) *Required.* [An] A historic area work permit for work on public or private
282 property containing [an] a historic resource must be [issuedpursuant to the
283 provisions of] issued under this [chapter] Chapter before any person:
284 (1) [Constructing, reconstructing, moving, relocating, demolishing] builds,
285 rebuilds, moves, or demolishes, or in any manner [modifying, changing
286 or altering] alters the exterior features of any historic site or any historic
287 resource located [within any] in a historic district[.];
288 (2) [Performing any grading, excavating, construction] grades, excavates,
289 builds, or substantially [modifying, changing or altering] alters the
290 environmental setting of [an] a historic site or [an] a historic resource
291 located [within an] in a historic district; or
292 (3) [Erecting or causing to be erected] erects any sign or advertisement
293 ([with the exception of those signs which] except a sign that temporarily
294 [advertise] advertises the property for sale [an historic site or an historic
295 resource located within an historic district, or which for] or advertises a
296 political viewpoint) on the exterior or on the environmental setting of

297 any historic site or any historic resource located [within any] in a
298 historic district.
299 (b) *Exceptions.*[Nothing in this section shall be construed to require the issuance
300 of an] A historic area work permit is not required for any ordinary
301 maintenance, repair of exterior features, [any] customary farming operations,
302 or [any] landscaping [, which will have no material effect on historic resource
303 located within an historic district, of which such features are a part]. [For the
304 purposes of clarification of] To interpret this section, the [commission shall
305 develop and publish guidelines regarding what activities constitute]
306 Commission must define ordinary maintenance in published guidelines and
307 [shall send] must retain evidence that a copy of these guidelines [by registered
308 mail] was sent to [all owners] each owner of a historic [resources] resource
309 designated on the master plan.
310 (c) *Disclosure [requirements].*
311 (1) [Applicants for permits] Each applicant for a permit to demolish or
312 substantially alter the exterior features of any historic site or historic
313 resource located [within an] in a historic district [are required to disclose
314 its identification as such in writing on any application therefor] must
315 identify the site as historic in the application.
316 (2) Any person who [shall undertake] undertakes any work [as stated]
317 defined in subsection (a) [of this section] without first obtaining [an] a
318 historic area work permit [shall be] is subject to the penalties
319 [established] specified in Section 24A-11.
320 (d) *Advice of [commission prior to application] Commission before applying.* The
321 [commission shall] Commission must adopt procedures to encourage owners
322 of historic [resourcesto] resources to seek the Commission's advice [of the
323 commission prior to] before filing an application for [an] a historic area work

324 permit, on the appurtenances and environmental setting appropriate to the
325 resource, construction methods and materials, financial information
326 concerning historic preservation, or any other [matter under this chapter
327 affecting] factor that would affect the issuance of a permit.

328 **24A-7. Historic area work permits -Application procedures; appeals.**

329 (a) *Applications*. An applicant for [an] a historic area work permit must file an
330 application with the Director. The application must contain all information the
331 Commission requires to evaluate the application under this Chapter.

332 (b) *Referral of application*. Within 3 days after the application is complete, the
333 Director must forward the application to the Commission for review.

334 (c) *Public meeting*. When the Commission receives the application, the
335 Commission must schedule a public meeting to consider the application.

336 (d) *Notice*. The Commission must notify the Director and any citizen or
337 organization that the Commission reasonably determines has an interest in the
338 application of the time and place of the public meeting.

339 (e) *Conduct of Commission meeting*. The public meeting on the application must
340 be informal, and formal rules of evidence do not apply. The Commission must
341 encourage interested parties to comment and must keep minutes of the
342 proceedings on the application.

343 (f) *Action by the Commission*.

344 (1) The Commission must make a public decision on the application [under
345 paragraph (2)] not later than 45 days after the applicant files the
346 application or 15 days after the Commission closes the record on the
347 application, whichever is earlier.

348 (2) The Commission must [instruct] order the Director to issue or deny the
349 permit. The Commission may require the Director to issue the permit
350 with reasonable conditions necessary to assure that work under the

351 permit does not harm the historical, architectural, archeological, or
352 cultural value of the historic resource.
353 (3) If the Commission [instructs] orders the Director to deny the permit, the
354 Commission must notify the applicant in writing why the Commission
355 denied the application.
356 (4) The [commission] Commission must [instruct] order the Director to
357 issue the permit if the Commission finds that[:]
358 [(A)] denial of the permit would prevent the reasonable use of the
359 property or impose undue hardship on the owner[; and]
360 [(B) within 120 days after the finding in subparagraph (A), no person
361 seeking preservation has submitted an economically feasible plan
362 for preserving the structure].
363 (5) [If the Commission does not act on an application within the time
364 periods provided in this subsection, the application is approved,] The
365 Director must approve any application which the Commission does not
366 act on within the time limits of this Section unless the applicant agrees
367 to extend the deadline for Commission action.
368 (g) [*Miscellaneous provisions*] *Procedures*.
369 (1) The applicant for a permit has the burden of production and persuasion
370 on all issues the Commission determines. If another historic
371 preservation organization holds a deed of easement for the property in
372 the application, the applicant must submit proof to the Commission that
373 the organization conducted an exterior architectural review and
374 approved the action for which the applicant is seeking a permit.
375 (2) (A) The Commission may, by regulations [issued under method (2)],
376 delegate authority to a County employee qualified in historic
377 preservation and assigned to staff the Commission to review and

approve an application for work that commonly has no more than an insignificant effect on [an] a historic resource.

(B) The regulations:

(i) must describe the types of work that Commission staff can review and approve, and require the Commission to review any application that is not clearly subject to staff approval; and

(ii) may waive the public meeting and notice requirements of subsections (c) and (d) for any [applications] application that is clearly subject to staff approval.

(C) If the staff denies or does not act on an application within 5 days after the Commission received the application from the Director, the Commission must review the application *de novo*.

(D) Staff must report monthly to the Commission and each appropriate Local Advisory Panel about any application reviewed by the staff in the previous month, including the disposition of the application.

(3) A permit may impose conditions that require waiver of a provision of the building code if the waiver is allowed under the "historic structures" provision of the building code adopted under Section 8-14 and the code inspector determines that waiver is appropriate for the specific work covered by the permit.

(4) The Director must enforce this Chapter.

(h) *Appeal.*

(1) Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission's decision to the Board of Appeals, which must review the decision *de novo*. The

405 Board of Appeals may affirm, modify, or reverse any order or decision
406 of the Commission.
407 (2) A party may appeal a decision of the Board of Appeals under Section 2-
408 114.
409 **24A-8. [Same-] Historic area work permit - Criteria for issuance.**
410 (a) The [commission shall instruct] Commission must order the [director] Director
411 to deny a permit if it finds, based on the [evidence and information presented
412 to or] record before the [commission] Commission, that the alteration [for
413 which the permit is] sought by the applicant would be [inappropriate,
414 inconsistent with or] detrimental to the preservation[, enhancement] or
415 ultimate protection of the historic site or historic resource [within an] in a
416 historic district, and to the purposes of this Chapter.
417 (b) The [commission shall instruct] Commission must order the [director] Director
418 to issue a permit, or issue a permit subject to [such] conditions [as are found to
419 be] necessary to [insure] ensure conformity with the purposes and
420 requirements of this [chapter] Chapter, if it finds [that] one or more of the
421 following:
422 (1) [The] the proposal will not substantially alter the exterior features of
423 [an] a historic site or historic resource [within an] in a historic district;
424 [or]
425 (2) [The] the proposal is compatible in character and nature with
426 [thehistorical] the historical, archeological, architectural, or cultural
427 features of the historic site or the historic district [in which an] where a
428 historic resource is located, and would not be detrimental thereto or to
429 the achievement of the purposes of this [chapter] Chapter; [or]
430 (3) [The] the proposal would [enhance or] aid in the protection,
431 preservation, and public or private utilization of the historic site or

432 historic resource located [within an] in a historic district in a manner
433 compatible with the historical, archeological, architectural, or cultural
434 value of the historic site or historic district [in which an] where a
435 historic resource is located; [or]
436 (4) [The] the proposal is necessary [in order that] to remedy unsafe
437 conditions or health hazards [be remedied]; [or]
438 (5) [The] the proposal is necessary [in order] so that the owner of the
439 [subject] property is not [be] deprived of reasonable use of the property
440 or does not suffer undue hardship; or
441 (6) [In] in balancing the interests of the public in preserving the historic site
442 or historic resource located [within an] in a historic district[,] with the
443 interests of the public from the use and benefit of the alternative
444 proposal, the general public welfare is better served by granting the
445 permit.
446 (c) [It is not the intent of this chapter to] This Chapter does not limit new
447 construction, alteration, or repairs to any 1 period or architectural style.
448 (d) [In the case of an application for work on an historic resource located within
449 an historic district, the commission shall] The Commission must be lenient in
450 its judgment of [plans] historic area work permit applications for:
451 (1) structures of little historical or design significance, or for plans
452 involving new construction in a historic district, unless [such] the plans
453 would seriously impair the historic or architectural value of surrounding
454 historic resources or would impair the character of the historic district;
455 or
456 (2) altering a non-historic addition, if the addition was built before the
457 property was identified on the Locational Atlas or the Master Plan for
458 Historic Preservation.

459 **24A-9. Demolition by neglect.**

460 [In the event of a case of demolition by neglect of an] If a historic resource on
461 public or private property has suffered demolition by neglect, the following
462 provisions [shall] apply:

463 (a) If the historic resource has been designated on the master plan as [an] a
464 historic site or [an] a historic resource [within an] in a historic district, the
465 [director shall] Director must issue a written notice to [all persons] each person
466 of record with any [right, title or] interest in the subject property, or the person
467 occupying [such] the premises, of the conditions of deterioration, and [shall]
468 must specify the minimum items of repair or maintenance necessary to correct
469 or prevent further deterioration. The notice [shall provide] must require that
470 corrective action [shall commence] begin within 30 days [of the receipt of
471 such] after the recipient receives the notice and be completed within a
472 reasonable time [thereafter]. The notice [shall] must state that the owner of
473 record of the subject property, or any person of record with any [right, title or]
474 interest therein, may, within 10 days after [the receipt of] receiving the notice,
475 request a hearing on the necessity of the [items and conditions contained in
476 such] actions required by the notice. [In the event] If a public hearing is
477 requested, [it shall be held by] the [commission upon] Commission must hold
478 it after 30 days' written notice mailed to [all persons] each person of record
479 with any [right, title or] interest in the subject property and to [all citizens and
480 organizations] any other person or organization [which the director feels] that
481 the Director believes may have an interest in the proceedings.

482 (1) After a public hearing [on the issue of necessity of improvements to
483 prevent demolition by neglect], if the [commission] Commission finds
484 that [such] the improvements are necessary, it [shall instruct] must order
485 the [director] Director to issue a final notice to be mailed to the record

owners and [all parties] each party of record with any [right, title or] interest in the subject property, advising of the items of repair and maintenance necessary to correct or prevent further deterioration. The owners [shall institute] must take all necessary corrective action to comply with the final notice within 30 days [of receipt of] after receiving the [revised] notice.

(2) [In the event] If the corrective action specified in the final notice is not [instituted] taken within the time allotted, the [director] Director may [institute, perform and] complete the necessary remedial work. [to prevent deterioration by neglect and the] All expenses incurred by the [director] Director for [such] the work, labor, and materials [shall] must be a lien against the property, [and] draw interest at the highest legal rate, [the amount to] and be amortized over [a period of] 10 years, subject to a public sale [if there is a] after any default in payment.

[(3) Failure to comply with the original or final notice shall constitute a violation of this chapter for each day that such violation continues and shall be punishable as set forth in section 24A-11.]

[(4)] (3) [In the event that] If the [commission] Commission finds that, notwithstanding the necessity for [such] the required improvements, taking the action [provided in] required under paragraphs (1) and (2) [of this subsection] would impose a substantial hardship on any [or all persons] person with any [right, title or] interest in the subject property, [then] the [commission shall] Commission must seek alternative methods to preserve the historic site or historic resource located [within an] in a historic district. If, [none are confirmed] after finding a substantial hardship, the Commission does not modify its order within a reasonable time, the [director shall] Director must not [proceed in

513 accordance with paragraphs (1) and (2)] enforce the original
514 Commission order.
515 (b) If the historic resource is listed in the ["Locational Atlas and Index of Historic
516 Sites in Montgomery County, Maryland," or the microfilmed addenda to such
517 atlas, published by the Maryland-National Capital Park and Planning
518 Commission] Locational Atlas, the [director shall] Director must advise the
519 [planning board] Planning Board which, after [receiving the] giving the
520 Commission a reasonable opportunity to submit a recommendation, [of the
521 commission, shall] must conduct a public hearing to determine whether the
522 historic resource will be [designated] recommended as [an] a historic site or
523 historic district in the [master plan for historic preservation] Master Plan for
524 Historic Preservation.
525 (1) [Where] If the [planning board determines] Planning Board finds that it
526 will not recommend that the historic resource [will not be included] for
527 inclusion in the [master plan for historic preservation] Master Plan for
528 Historic Preservation, the Planning Board must remove the resource
529 from the Locational Atlas and take no further action [will be taken].
530 (2) [Where] If the [planning board determines that the historic resource in
531 all likelihood will be included] Planning Board recommends the
532 resource for inclusion in the [master plan for historic preservation]
533 Master Plan for Historic Preservation, the [planning board shall]
534 Planning Board must initiate an amendment to the [master plan for
535 historic preservation pursuant to the provisions of article 28 of the
536 Annotated Code of Maryland] Master Plan for Historic Preservation
537 under Chapter 33A.
538 [a.] (A) [In the event that such] If the amendment is adopted and
539 the historic resource is [placed on the master plan for historic

540 preservation] included in the Master Plan for Historic
541 Preservation as [an] a historic site or [an] a historic resource
542 [within an] in a historic district, the [director shall] Director must
543 give written notice to [all persons] each person with any [right,
544 title, or] interest in the subject property of the conditions of
545 deterioration, and [shall] must specify the items of repair or
546 maintenance necessary to stabilize the condition of the historic
547 resource and prevent further deterioration.
548 [b.] (B) [Such] The notice [shall] must provide that [such] any
549 required stabilization work [shall commence] must start within 30
550 days [of receipt of] after the recipient receives the notice and
551 [shall] must be completed within a reasonable time [thereafter].
552 [c.] (C) [In the event that] If stabilization action is not [instituted
553 within the time allotted, or not] started or completed within a
554 reasonable time [thereafter], the [director] Director may [institute,
555 perform and] complete the necessary stabilization work. [and the]
556 Any expenses incurred by the [director] Director for [such] the
557 work, labor, or materials [shall] must be a lien against the
558 property, [and] draw interest at the highest legal rate, [the amount
559 to] and be amortized over [a period of] 10 years, subject to a
560 public sale [if there is a] after any default in payment.
561 **24A-10. [Moratorium on alteration or demolition] Locational Atlas and Index of**
562 **Historic Sites.**
563 (a) [*Application for permits for historic resources on locational atlas.*]
564 *Administration.*
565 The Planning Board must maintain the Locational Atlas.
566 (b) *Amendments.*

567 (1) The Planning Board may place or remove any site on the Locational
568 Atlas after:
569 (A) giving the Commission an opportunity to submit a
570 recommendation; and
571 (B) conducting a public hearing.
572 (2) If the Planning Board recommends a site for inclusion on the Master
573 Plan for Historic Preservation, the Planning Board must place that site
574 on the Locational Atlas.
575 (3) The Council may place or retain any site on the Locational Atlas that
576 the Planning Board has recommended for the Master Plan for Historic
577 Preservation.
578 (4) If the Council includes any site on the Master Plan for Historic
579 Preservation, then the Planning Board must remove the site from the
580 Locational Atlas.
581 (5) If the Planning Board recommends including a site on the Master Plan
582 for Historic Preservation but the Council does not place the site on the
583 Master Plan for Historic Preservation, the Planning Board must remove
584 the site from the Locational Atlas, unless the Council directs that the site
585 be retained on the Locational Atlas.
586 (6) During September 2009 and every 5 years thereafter, the Commission
587 or its designee must notify every property owner on the Locational
588 Atlas that:
589 (A) the property is on the Locational Atlas; and
590 (B) any demolition and alternative permit application will be
591 processed under subsection (c).
592 (c) *Demolition and alteration permits.*

593 (1) Any applicant for a permit to demolish or substantially alter the exterior
594 features of any historic resource [which is] listed in the ["Locational
595 Atlas and Index of Historic Sites in Montgomery County, Maryland," or
596 the microfilmed addenda to that atlas, published by the Maryland-
597 National Capital Park and Planning Commission] Locational Atlas, but
598 which is not designated as [an] a historic site or historic district on the
599 [master plan for historic preservation] Master Plan for Historic
600 Preservation, must disclose that fact on the application.
601 (2) If the [historic resource] site or district is included in theLocational
602 Atlas or is located in an area under review for designation as [an] a
603 historic district and is not under review for designation as [an] a historic
604 site, the application must, at the option of the applicant, be:
605 (A) reviewed by the Commission under the historic area work permit
606 procedure [in Section 24A-7 if the applicant seeks review under
607 that Section] ; or
608 (B) referred to the Planning Board under subsection (d).
609 [(b)] (d) *Referral to the [planning board] Planning Board*. If the applicant does
610 not seek [review under Section 24A-7] a historic area work permit, the
611 Director must promptly forward the permit application to the Planning Board.
612 The Planning Board must decide whether to recommend the resource for
613 inclusion in the Master Plan for Historic Preservation after holding a public
614 hearing and considering any recommendation of the Commission [to make a
615 finding, after a public hearing, as to the significance of the historic resource
616 and to determine whether, after considering the recommendations of the
617 Commission, the property will be designated as an historic site or an historic
618 resource within an historic district, listed in the master plan for historic
619 preservation]. The Planning Board's public hearing on an application to

620 demolish or substantially alter any historic resource listed in the [locational
621 atlas] Locational Atlas satisfies the requirements of [section] Section 33A-6
622 for a public hearing on a preliminary draft amendment to the Master Plan for
623 Historic Preservation [historic preservation master plan] if all notice
624 requirements of [that section] Section 33A-6 are [met] satisfied.

625 [(c)](e) *[Determination] Decision by the [planning board] Planning Board.*

626 (1) [Where] If the [planning board determines] Planning Board decides that
627 the historic resource will not be [included] recommended for inclusion
628 in the [master plan for historic preservation] Master Plan for Historic
629 Preservation, the [director shall forthwith issue] Director must approve
630 the permit, and the Planning Board must remove the site from the
631 Locational Atlas.

632 (2) [Where] If the [planning board determines] Planning Board
633 recommends that the historic resource [in all likelihood will] should be
634 included in the [master plan for historic preservation] Master Plan for
635 Historic Preservation, the [director shall withhold issuance of the permit
636 once] Director must not approve the permit for [a maximum period of]
637 at least 195 days [from the date] after the application for demolition [is]
638 was filed. If [, as a result of the master plan process,] the property is
639 designated [an] a historic site or [an] a historic resource [within an] in a
640 historic district and the application was not previously approved, the
641 application [shall be governed by the procedures established in section
642 24A-7] must be processed as a historic area work permit.
643 [If, after a public appearance as provided for in section 24A-7, the
644 commission determines that failure to grant the permit applied for will
645 have the effect of denying the property owner of all reasonable use of
646 his property or causing him to suffer undue hardship, then the

647 commission must instruct the director to issue the permit subject to such
648 conditions, if any, as are found to be necessary to insure conformity
649 with the purposes and requirements of this chapter.]

650 [(d)](f) *Time limits for [planning board] Planning Board action.*

651 (1) Within 60 days after [the filing of] an application is filed, or within 15
652 days after the [closing of the record following a public hearing] hearing
653 record closes, whichever occurs later, the [planning board shall render
654 its findings and determinations with respect to an] Planning Board must
655 decide on the application.

656 (2) [Failure to adhere to the limits] If the Planning Board does not issue its
657 decision in the time specified in [section 24A-10 shall cause] paragraph
658 (1), the Director must issue the permit [to issue] by operation of law[,
659 except in the event of a finding and further proceedings as provided in]
660 unless issuance of the permit is stayed under subsection [(c)] (e)(2) [of
661 this section].

662 **24A-11. [Violations and Penalties] Master Plan for Historic Preservation.**

663 (a) (1) As an amendment to the General Plan for the County, the Planning
664 Board prepared and the Council adopted a Master Plan for Historic
665 Preservation. This plan designates historic sites and historic districts,
666 describes their boundaries, and integrates historic preservation into the
667 planning process.

668 (2) Amendments to the Master Plan for Historic Preservation must be
669 approved and adopted under Chapter 33A.

670 (A) If the Council approved work program for the Planning Board
671 includes the consideration of particular sites or districts for
672 inclusion in the Master Plan for Historic Preservation, such
673 amendments must be submitted for the Council's consideration.

674 (B) The Planning Board may also submit other amendments that it
675 recommends for Council approval.
676 (b) For all sites and districts considered for designation after {effective date}:
677 (1) If the property owner consents to the site's inclusion in the Master Plan
678 for Historic Preservation, then the Planning Board must find at least 1 of
679 the following criteria when it recommends a historic resource for
680 inclusion in the Master Plan for Historic Preservation:
681 (A) *Historical and cultural significance.* The historic resource:
682 (i) has character, interest, or value as part of the development,
683 heritage, or cultural characteristics of the County, state, or
684 nation;
685 (ii) is the site of a significant historic event;
686 (iii) is identified with a person or a group of persons who
687 influenced society; or
688 (iv) exemplifies the cultural, economic, social, political, or
689 historic heritage of the County and its communities.
690 (B) *Architectural and design significance.* The historic resource:
691 (i) embodies the distinctive characteristics of a type, period,
692 or method of construction;
693 (ii) represents the work of a master;
694 (iii) represents a significant and distinguishable entity whose
695 components may lack individual distinction; or
696 (iv) represents an established and familiar visual feature of the
697 neighborhood, community, or County because of its
698 singular physical characteristic or landscape.
699 (2) If the property owner does not consent to the site's inclusion in the
700 Master Plan for Historic Preservation, then 4 members of the Planning

701 Board must find the following when it recommends a historic resource
702 for inclusion in the Master Plan for Historic Preservation:
703 (A) at least 3 criteria in subsection (b)(1); and
704 (B) the public interest in preserving the historic resource outweighs
705 the interests of the objecting property owner to recommend a site
706 for inclusion in the Master Plan for Historic Preservation.
707 (c) If the Planning Board does not recommend an amendment to the Master Plan
708 for Historic Preservation to include a site or district after receiving any
709 recommendation of the Commission, the Planning Board must not submit a
710 master plan amendment to the Council that includes that site or district;
711 however, the Planning Board must submit its recommendation to the Council
712 if the Council amended the Planning Board's work program to include
713 consideration of the subject site or district.
714 **[24A-11] 24A-12. Violations and penalties.**
715 Any person who violates [a provision of] this [chapter] Chapter, [or fails to
716 comply with any of the requirements thereof, or disobeys or] disregards a decision of
717 the [commission] Commission, or [fails to abide by] does not satisfy the conditions
718 of a permit, [shall be subject to punishment for] has committed a class A violation [as
719 set forth in section 1-19 of chapter 1 of the County Code]. Each day a violation
720 continues [to exist shall constitute] is a separate offense.
721 **[24A-12 Severability.**
722 The provisions of this chapter are severable and if any provisions, clause,
723 sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or
724 inapplicable to any person or circumstances, such illegality, invalidity or
725 unconstitutionality, or inapplicability shall not affect or impair any of the remaining
726 provisions, clauses, sentences, sections, words or parts of the chapter or their
727 applications to other persons or circumstances. It is hereby declared to be the

728 legislative intent that this chapter would have been adopted if such illegal, invalid or
729 unconstitutional provision, clause, sentence, section, word or part had not been
730 included therein, and if the person or circumstance to which the chapter or part
731 thereof is inapplicable had been specifically exempted therefrom.]

732 **[24A-13. Historic preservation easement program.**

733 (a) There is a county easement program to preserve historic resources in
734 Montgomery County. The commission must administer the program in
735 accordance with this section.

736 (b) (1) An owner of an historic resource may offer the county a
737 preservationeasement to protect or conserve interior or exterior features
738 of the historic resource and its environmental setting or appurtenances
739 by making application to the commission.

740 (2) Upon receipt of an application, the commission must
741 immediately forward the application for review and comment to:

742 (A) the planning board if the historic resource is located in the
743 Maryland-Washington Regional District; and

744 (B) the appropriate agency of a municipality if the historic
745 resource is located within a municipality.

746 Review and comment under this paragraph must be made within
747 45 days and should include an evaluation of the proposal using
748 the criteria specified in this section as well as identification of
749 competing or supporting land use priorities or other relevant
750 factors or issues. Recommendations may include proposed
751 easement terms and conditions.

752 (3) The commission must review the application to determine if
753 acceptance of the preservation easement would further the

754 county's historic preservation goals. In making its determination,
755 the commission should consider, among other relevant factors:
756 (A) the relative significance of the historic resource;
757 (B) the structural condition;
758 (C) the owner's planned or completed preservation efforts;
759 (D) the existing zoning and nature of the surrounding
760 neighborhood; and
761 (E) whether an easement will promote long-term survival of
762 the historic resource.
763 (c) If the historic resource is designated as an historic site in the county
764 master plan for historic preservation, either as an individual site or
765 located within an historic district, the county may acquire an easement
766 upon positive recommendation of the commission and approval of the
767 county executive. If the historic resource is not designated as an historic
768 site in the master plan, the additional approval of the county council is
769 required prior to any acceptance by the county. The commission must
770 forward any comments received under subsection (b)(2) to the county
771 executive and the county council, as appropriate.
772 (d) A preservation easement under this section should be granted in
773 perpetuity and include appropriate terms and conditions that:
774 (1) restrict changes and alterations;
775 (2) require maintenance, repairs, and administration;
776 (3) authorize public access;
777 (4) provide a right of governmental inspection;
778 (5) provide for a right of assignment to the Maryland Historical Trust
779 or other appropriate agency or entity; and
780 (6) establish enforcement remedies.

781 (e) The county may hold a preservation easement jointly with the Maryland
782 Historical Trust.
783 (f) A preservation easement must be recorded by the grantor among the
784 land records of the county at the grantor's cost. The grantor must notify
785 the supervisor of assessments and the Office of the Public Tax Advocate
786 of the recordation of the preservation easement.
787 (g) Reserved.
788 (h) A preservation easement may be extinguished by judicial proceeding if
789 an unexpected change in the conditions applicable to the property, such
790 as casualty, make it impossible or impractical to continue to use it for
791 preservation purposes. The terms of an easement related to
792 extinguishment should identify appropriate changes in condition,
793 provide that the county share in any proceeds from a subsequent sale or
794 exchange of the property after the easement is extinguished, and be in
795 accordance with any applicable executive regulations. The sharing in
796 proceeds may include the recapture of property taxes saved by the
797 grantor or its successor in interest, either in part or in full, as a result of
798 the easement.
799 (i) The commission may enter into a cooperative agreement with the
800 Maryland Historical Trust or other appropriate agencies or entities for
801 technical assistance in administering the historic easement program.
802 This may include assistance in property evaluation, negotiation, and
803 inspection.
804 (j) (1) The easement program authorized under this section is in addition
805 to, and does not supersede or otherwise affect, any other county or
806 municipal program or policy requiring the donation of a preservation

807 easement as a condition of financial assistance. It must operate in
808 conjunction with other county or municipal easement programs.
809 (2) The grant of an easement under this section does not eliminate or
810 otherwise alter any county or municipal regulatory requirement
811 applicable to the historic resource, including any requirement to
812 obtain an historic area work permit.
813 (k) The county executive, with the advice of the commission, may adopt
814 regulations under method (2) to administer the historic preservation
815 easement.]
816 **Sec. 2. Effective Date**. This ordinance takes effect 20 days after the date of
817 Council adoption.
818
819 This is a correct copy of Council action.
820
821
822 Linda M. Lauer, Clerk of the Council
823
824
825
826
827
828
829
830
831
832 F:\Zyontz\Historic Master Plans\Historic Preservation Amendment to Law\Bill to amend Chapter 24A post mike F 2.doc