



**Committee:** PHED

**Committee Review:** At a future date

**Staff:** Livhu Ndou, Legislative Attorney

**Purpose:** To receive testimony – no vote expected

**Keywords:** #HistoricResources #AdaptiveReuse

AGENDA ITEM #13

July 26, 2022

**Public Hearing**

## SUBJECT

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

Lead Sponsor: Councilmember Rice

Co-Sponsors: Councilmembers Navarro, Katz, and Friedson

## EXPECTED ATTENDEES

Members of the public

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A; to receive testimony

## DESCRIPTION/ISSUE

ZTA 22-06 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.

## SUMMARY OF KEY DISCUSSION POINTS

- On January 18, 2022, this Council passed ZTA 21-06, which allowed certain uses on properties limited in development by a density transfer.<sup>1</sup> ZTA 22-06 will expand on ZTA 21-06 by allowing those uses on historic sites or resources that have an arterial or higher roadway.
- ZTA 22-06 will also add Eating and Drinking Establishments to the list of allowed uses.
- Site plan approval as well as approval by the Historic Preservation Commission will still be required.
- A Planning, Housing, and Economic Development Committee Worksession is tentatively scheduled for September 12, 2022.

### This report contains:

ZTA 22-06	© 1
Map of Effected Properties	© 5
Racial Equity and Social Justice Impact Statement	© 6

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<sup>1</sup> 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](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20220118/20220118_13C.pdf)

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  
MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: Councilmember Rice  
Co-Sponsors: Councilmembers Navarro, Katz, and Friedson

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**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.

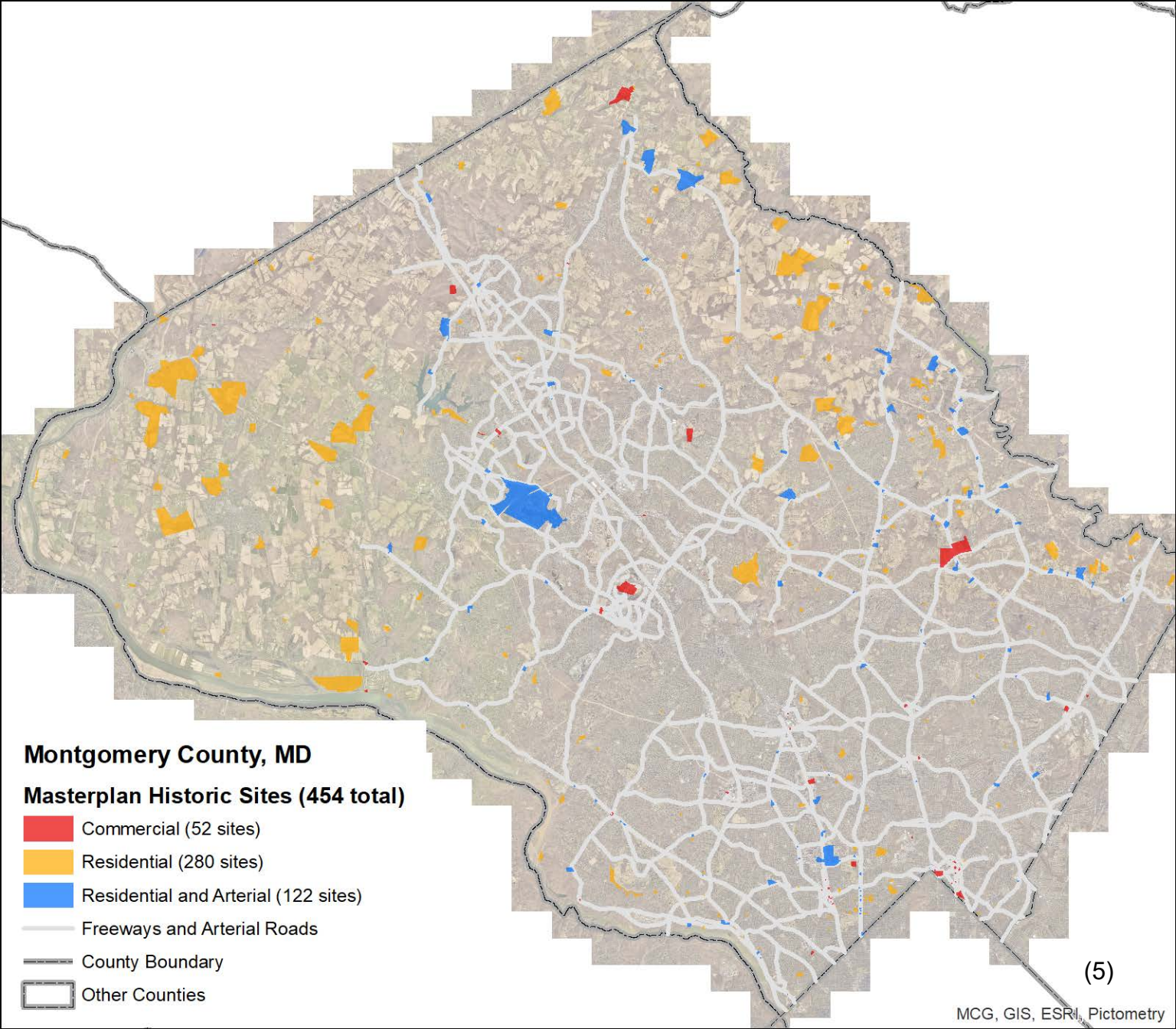
b. Site plan approval is required under Section 7.3.4, except for those uses requiring Conditional Use.

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.



## Montgomery County, MD

### Masterplan Historic Sites (454 total)

- Commercial (52 sites)
- Residential (280 sites)
- Residential and Arterial (122 sites)
- Freeways and Arterial Roads
- County Boundary
- Other Counties

# 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.

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### 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.<sup>1</sup> 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.<sup>2</sup>

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### 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.<sup>3</sup> 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”<sup>4</sup> 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.

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### HISTORIC PRESERVATION AND RACIAL EQUITY

Historic preservation aims to provide a tangible link to our past.<sup>5</sup> The benefits of preserving historic assets can include deepening community identity, attracting visitors, and ensuring a rich, diverse building stock.<sup>6</sup> 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.<sup>7</sup>



# 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.<sup>8</sup> 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.”<sup>9</sup> 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.”<sup>10</sup> 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.”<sup>11</sup> 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.”<sup>12</sup> Similarly, other researchers have found that historically African American neighborhoods are underrepresented in historic designation programs.<sup>13</sup>

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### 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.<sup>14</sup> These areas are primarily found along the I-270 Corridor, the Route 29 Corridor, and the eastern portion of Down County.<sup>15</sup> 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.<sup>16</sup> Yet, of the County’s 1,215 historic preservation resources, only 79 (6.5 percent) are located in Equity Focus Areas.<sup>17</sup>

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,<sup>18</sup> and only one site is associated with the Asian American and Pacific Islander heritage.<sup>19</sup> Additionally, available data suggests that properties in several high-income historic districts could benefit from ZTA 22-06:<sup>20</sup> 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,<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.



# RESJ Impact Statement

## Zoning Text Amendment 22-06

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.

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### 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.

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### CONTRIBUTIONS

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

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<sup>1</sup> 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>

<sup>2</sup> Ibid

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

<sup>4</sup> 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.

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

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

<sup>6</sup> 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>

<sup>7</sup> 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>

<sup>8</sup> Ingrid Gould Ellen, et al.

<sup>9</sup> 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>

<sup>10</sup> 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>

<sup>11</sup> 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>

<sup>12</sup> Ibid.

<sup>13</sup> 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>

<sup>14</sup> 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/>

<sup>15</sup> Ibid.

# RESJ Impact Statement

## Zoning Text Amendment 22-06

<sup>16</sup> 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/>

<sup>17</sup> Montgomery Planning published and unpublished data.

<sup>18</sup> Montgomery Planning Website. 2021. Montgomery County's Historic African American Places. January 28.

<sup>19</sup> 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/>

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

<sup>21</sup> 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/>

<sup>22</sup> 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>

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