

**MEMORANDUM**

December 8, 2021

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 21-06, Exemptions – Density Transfer and Historic Resources

PURPOSE: Worksession

**Expected Attendees**

- Casey Anderson, Chair, Planning Board
- Benjamin Berbert, Planner Coordinator, Countywide Planning & Policy, Planning Department
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department

**Background**

Zoning Text Amendment (ZTA) 21-06, Exemptions – Density Transfer and Historic Resources, lead sponsor then-Council President Hucker at the request of the Planning Board, was introduced on September 28, 2021. ZTA 21-06 would establish a new residential lot exemption for properties containing a historic resource that were protected from development by a density transfer.

**Public Hearing**

A public hearing was held on November 2, 2021. There were 3 speakers in support of ZTA 21-06.

Casey Anderson, Chair of the Planning Board, testified that the prior Zoning Ordinance had a provision similar to the one in ZTA 21-06. He testified that ZTA 21-06 would bring back that provision, but with additional requirements in the form of necessary findings by the Historic Preservation Commission (HPC) and the Planning Board. He also testified in response to the RESJ impact statement, that this zoning change would only affect 1-2 properties and therefore the racial equity impacts would be minimal.

Larry Goodwin, principal of 1788 Holdings, testified that his company buys historic properties to put them to good use, and had purchased the Magruder House. He testified that it had been difficult

to find a tenant for the property, and that this ZTA would allow more uses that could be compatible with the historic nature of the house.

Phillip Hummel, of Miles & Stockbridge P.C., representing the owners of the Magruder House, testified in support. He testified that the Magruder House was previously a bank and had spent over 2 years trying to find a new bank tenant. He testified that ZTA 21-06 would reactivate the site by allowing other compatible commercial uses.

Lastly, the record contains a letter from HPC. The letter states that ZTA 21-06 would promote the protection and adaptive reuse of historic properties, and therefore HPC is in support.

### **Planning Board Recommendation**

The Planning Board transmitted ZTA 21-06 on June 24, 2021. ZTA 21-06 would allow a limited list of commercial uses on the site containing the historic resource. A recommendation from the Historic Preservation Commission (HPC) and site plan approval by the Planning Board would be required.

### **RESJ Impact Statement**

The Office of Legislative Oversight (OLO) transmitted a Racial Equity and Social Justice (RESJ) impact statement on November 2, 2021. OLO found that ZTA 21-06 would either sustain or exacerbate racial and social inequities in historic preservation in the County, because most historic preservation sites in the County are not where most of the County's low-income residents or people of color reside. However, the report notes that since the ZTA would likely impact a limited number of properties, this effect would be minimal.

### **Historical Background**

Under the prior Zoning Ordinance, section 59-A-6.21, was 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. Limited accessory structures and some commercial uses were allowed. The language read:

No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered, enlarged or maintained, except for one or more of the following uses:

- All those permitted uses set forth in the applicable zones.
- Gifts and antique shops, offices, professional and business, including banks and financial institutions, in existing structures and accessory facilities; provided, that the Planning Board finds that such uses and facilities are consistent with the purposes of this section.

In the 2014 rewrite of the Zoning Ordinance, this provision was left out. Planning Staff believe that this exclusion was not intentional. However, existing uses and structures were grandfathered.

ZTA 21-06 would allow the following commercial uses on the site containing the historic resource: uses allowed in the underlying zone; clinic (up to 4 medical practitioners); office; retail/service establishment; rural antique shop; and drive-through as an accessory use. In addition, the Planning Board and Historic Preservation Commission would 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.

### **Amendments Recommended by Council Staff**

Council Staff recommends one minor amendment to ZTA 21-06. The ZTA as introduced listed “any use permitted in the underlying zone” and “uses allowed by conditional use, subject to the provisions of Section 7.3.1.” as two separate uses. Council Staff recommends combining these into one use: “Any use allowed in the underlying zone, subject to the provisions of Section 7.3.1 where applicable.”

### **Council Staff Recommendation**

Council Staff recommends approval of ZTA 21-06 with amendments.

#### This packet contains:

ZTA 21-06	© 1-4
Planning Board recommendation	© 5
Planning Staff memorandum	© 6-8
RESJ impact statement	© 9-12
Letter from Historic Preservation Commission	© 13
Letter from Miles & Stockbridge, P.C.	© 14-16

Zoning Text Amendment No.: 21-06  
Concerning: Exemptions – Density  
Transfer and Historic  
Resources  
Draft No. & Date: 2 – 10/6/2021  
Introduced: September 28, 2021  
Public Hearing: November 2, 2021  
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: Council President at the request of the Planning Board

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

- establish [[Establish]] a new Residential Lots and Parcels exemption for Density Transfer and Historic Resources; and
- generally amend the density transfer provisions.

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”
Section 7.7.1.D.	“Residential Lots and Parcels”

And adding

Section 7.7.1.D.11. “Density Transfer and Historic Resources”

**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:*

1           **Sec. 1. ARTICLE 59-7 is amended as follows:**

2           **DIVISION 7.7 Exemptions and Nonconformities**

3           **Section 7.7.1. Exemptions**

4           \*   \*   \*

5           **D.    Residential Lots and Parcels**

6           \*   \*   \*

7           **11.   Density Transfer and Historic Resources**

8           Where a lot containing a site, structure, or area of historic significance  
9           in a Residential zone is protected from development through a density  
10           transfer, the following provisions apply:

11           a.    The following uses are allowed:

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

15                   ii.   Clinic (up to 4 Medical Practitioners);

16                   iii.   Office;

17                   iv.   Retail/Service Establishment;

18                   v.    Rural Antique Shop; and

19                   vi.   Drive-Thru as an accessory use to any other allowed  
20                            principal use[[; and]].

21                   [[vii.   Uses allowed by Conditional Use, subject to the  
22                            provisions of Section 7.3.1.]]

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

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

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

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37                    **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the

38                    date of Council adoption.

39

40                    This is a correct copy of Council action.

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42                    \_\_\_\_\_

43                    Selena Mendy Singleton, Esq.

44                    Clerk of the Council



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

June 24, 2021

TO: The Honorable Tom Hucker, President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

FROM: Montgomery County Planning Board

SUBJECT: Planning Board Recommendation to District Council for introduction of a Zoning Text Amendment to establish a new exemption for residential properties subject to a density transfer for historic preservation.

Dear Mr. Hucker:

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission met on June 17, 2021 and by a vote of 5:0 recommended transmitting the attached draft Zoning Text Amendment (ZTA) to establish a new exemption under the residential lot exemption section of the code. This exemption would apply to properties that contain a historic resource which was protected from development by a density transfer.

The new exemption, 11. Density Transfer and Historic Resources would permit a limited list of commercial uses on the site containing the historic resource, with a recommendation of approval from the Historic Preservation Commission (HPC) and a Site Plan approval by the Planning Board. In addition, the HPC and the Planning Board would have three new findings to make which are intended to ensure the proposed commercial uses protect rather than detract from the historic resource.

This exemption is very similar to an exemption that existed in the old Zoning Ordinance under 59-A-6.21 – Density Transfer, within historic sites or historic districts. This provision was enabled by a ZTA in 1979 that allowed the limited commercial uses in existing or new structures with Site Plan approval. This provision was not carried forward into the 2014 update of the Zoning Code update, and this proposed ZTA would rectify that. While the formatting and language of the proposed ZTA is different than the original code language, the intent is the same.

The Board appreciates the Council’s consideration of the attached draft ZTA to establish a new exemption for density transfer and historic resources, and Planning Staff is able and willing to assist the Council as needed in the review of the proposed revisions.

Casey Anderson  
Chair

CA:BB:aj



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## Request to Introduce a Zoning Text Amendment, Exemptions - Density Transfer and Historic Resources

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 Benjamin Berbert, Planner Coordinator, CP&P, [Benjamin.Berbert@montgomeryplanning.org](mailto:Benjamin.Berbert@montgomeryplanning.org), 301.495.4644

 Jason Sartori, Chief, CP&P, [Jason.Sartori@montgomeryplanning.org](mailto:Jason.Sartori@montgomeryplanning.org), 301.495.2172

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**Completed: 6/10/2021**

### Staff Recommendation

Approval to submit a request to have the District Council introduce a zoning text amendment (ZTA) to create a new residential exemption under Section 7.7.1.D, creating special provisions for sites containing a structure or resource of historic significance within a residential zone that has been protected from development through a density transfer.

### Summary

Staff recommends approval to transmit the proposed ZTA to the Montgomery County District Council requesting introduction. The proposed ZTA would create a new residential exemption, establishing special provisions including allowing limited commercial uses within existing or new structures on sites that contain a resource of historic significance, if the property is in a residential zone and is otherwise protected from development through a density transfer.

### Background

This proposed text amendment would add provisions into the current Zoning Ordinance that existed in the old Zoning Ordinance which allow for a wider range of adaptive reuses for historic sites and districts. At least one designated Master Plan Historic Site, Locust Grove I/Samuel Wade Magruder House, Master Plan Site #29/016-000A had already taken advantage of the provisions from the old Ordinance. This historic site has been adaptively reused as a bank since 1979 which was allowed after ZTA 75020 (Ordinance 8-22) allowed limited commercial uses to occur on historic sites that were part of a density transfer. The bank expanded further in 1984 after a site plan allowed for an accessory structure to serve as a teller window and drive-thru.

In the old Zoning Ordinance that was in effect until October 29, 2014, these expanded provisions for limited commercial uses were found in Division 59-A-6, Uses Permitted in More Than One Class of Zone, under subsection 59-A-6.2 Historic Sites; historic districts, subsection 6.21 - Density Transfer. This subsection established a process where tracts of land in a residential zone with a site, structure, or area of historic significance suitable for preservation the Planning Board may transfer residential density from the historic site to an adjacent residential site. To protect the historic resource with adaptive reuse, subsection (d) Uses Permitted, contained the following language which permitted limited construction of accessory structures and allowed some commercial uses to maintain viability on the site:

*No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered, enlarged or maintained, except for one or more of the following uses:*

*All those permitted uses set forth in the applicable zones.*

*Gifts and antique shops, offices, professional and business, including banks and financial institutions, in existing structures and accessory facilities; provided, that the Planning Board finds that such uses and facilities are consistent with the purposes of this section.*

The 2014 rewrite of Chapter 59 did not continue these provisions. Staff could find no evidence that excluding this provision from the new code was intentional. Existing uses and structures as they had existed as a result of Section 59-A-6.21 can and do remain grandfathered, but the site of the Samuel Wade Magruder House has been vacant for some time, which removed the grandfathered status to that property.

### **Recommendation**

Staff is recommending adding language to the current Zoning Ordinance that effectively adds the provisions allowed under the old code into the new code. The attached draft ZTA would create a new exemption section, under Section 7.7.1.D Residential Lots and Parcels. This new subsection (11. Density Transfer and Historic Resources) would once again permit a limited list of commercial retail and professional uses in existing or new structures, with site plan approval by the Planning Board and a favorable recommendation from the Historic Preservation Commission, on parcels that contain a site, structure or area of historic significance in a residential zone protected under a density transfer. In recognizing the original intent of allowing small, low impact commercial uses that were deemed compatible with a historic resource, staff is recommending one new use 'Medical and Dental clinics up to 4 medical practitioners' to the list of permitted uses. Also remaining an option is any allowed residential use in the underlying zone, subject to any remaining density not previously transferred off the site.

The ZTA also would establish three findings the Board and the HPC must make when approving proposed development on such a site:

- i. 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,
- ii. Shall not introduce operational characteristics that would encroach upon or destroy the historical, archaeological, or architectural character or value of the site, and
- iii. The project must be recommended for approval by the Historic Preservation Commission prior to approval of the Site Plan by the Planning Board.

The intent of the ZTA language is to allow sites that meet the subject criteria to have the same allowed uses and access to the same regulatory process for approving them as existed under the old code, while adding some focus to the Board and HPC review through the proposed findings.

### **ZTA Process**

This proposed ZTA has not been introduced yet by the District Council and instead Staff is recommending the Board request introduction of the attached ZTA. A change in the text of the zoning ordinance undergoes a review process that culminates in the County Council (sitting as the District Council) approving a ZTA. Section 59.7.2.4 (Zoning Text Amendment) of the Montgomery County Zoning Ordinance enables the Planning Board to request the District Council or an individual District Council member to sponsor a zoning text amendment. After introduction of the ZTA, the District Council then transmits the official ZTA to the Planning Director with notification of the District Council's public hearing date. The Planning Director must publish a report and recommendation at least seven days

Staff Report  
ZTA for the Germantown Plan for the Town Sector Zone

before the Planning Board officially reviews the introduced ZTA in a public meeting. The District Council must hold a public hearing within 60 days after introduction of the ZTA, unless extended. Upon approval, a ZTA takes effect 20 days after adoption, unless a different date is specified.

**Conclusion**

Staff recommends the Planning Board transmit for introduction the proposed ZTA to the District Council, to create special provisions for sites containing a structure or resource of historic significance within a residential zone that has been protected from development through a density transfer.

**Attachment:**

A – Proposed ZTA - Density Transfer and Historic Resources ZTA.

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

Office of Legislative Oversight

## ZTA 21-06: EXEMPTIONS – DENSITY TRANSFER AND HISTORIC RESOURCES

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 21-06 will sustain or exacerbate racial and social inequities in historic preservation in Montgomery County. But because this ZTA will likely impact a limited number of properties in the County, OLO anticipates that this ZTA will have a minimal impact in the County.

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### PURPOSE OF RESJ STATEMENT

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, power, and leadership 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 21-06

If enacted, ZTA 21-06 will allow eligible property owners to pursue limited commercial uses in existing and new structures on historically preserved sites with site plan approval and a recommendation of support by the Historic Preservation Commission. The proposed limited commercial uses include:

1. Any use permitted in the underlying zone;
2. Medical and dental clinics for up to four practitioners;
3. Professional offices;
4. Retail sales and services;
5. Antique shops;
6. Drive-thru as an accessory use to any other allowed primary use; and
7. Uses allowed by Conditional Use, subject to the provisions of Section 7.3.1.

The primary purpose of ZTA 21-06 is to re-establish provisions to the former Zoning Ordinance that were omitted in the 2014 update. The proposed provisions provide incentives for property owners to renovate historic structures that make the properties economically viable while maintaining the character of historic sites and districts. Thus, in addition to receiving density transfer credits that they can sell to other property owners seeking higher residential densities, eligible historic property owners also benefit from the commercial uses allowed for their properties under ZTA 21-06.

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# RESJ Impact Statement

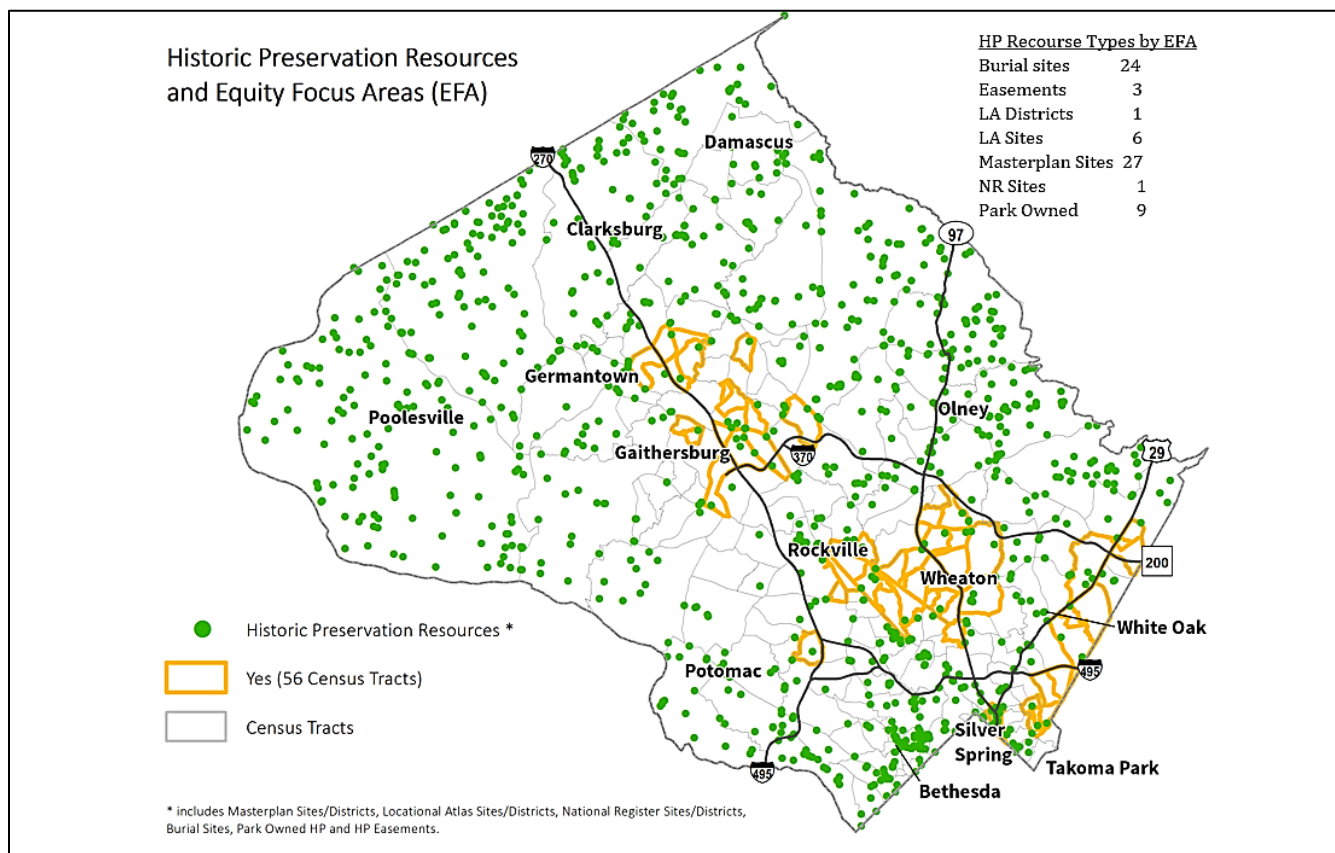
## Zoning Text Amendment 21-06

### HISTORIC PRESERVATION AND RACIAL EQUITY

Historic preservation aims to provide a tangible link to our past. The benefits of preserving historic assets can include deepening community identity, attracting visitors, and ensuring a rich, diverse building stock.<sup>3</sup> Empirical studies have also sought to document the community-wide benefits of historic preservation that offset the economic constraints that limit development and potentially harm property values to individual historic property owners.<sup>4</sup>

Critics of historic preservation often contend that historic preservation too often favors certain historical narratives and assets over others and largely serves high-income and White communities.<sup>5</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>6</sup>

**Figure 1: Historic Preservation Resources and Equity Focus Area**



Increasingly, inclusionary planners and preservationists 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>7</sup> They note that through decisions about land use, zoning, restrictive covenants, building codes, transportation, affordable housing, and financial lending, the U.S. has a long history of spatially marginalizing people of color, the foreign-born, and/or the poor.<sup>8</sup> As such, there is an increased understanding that legacies of exclusion are entrenched within the build environment and can contribute to inequitable decision-making about what constitutes “historic.”<sup>9</sup>

# RESJ Impact Statement

## Zoning Text Amendment 21-06

Marisa Brown in the June 2020 blog for the National Trust’s Preservation Leadership Forum finds that “federal, state, and local regulations that govern many of the most important preservation mechanisms reflect bias against communities of color.”<sup>10</sup> She further 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>11</sup> Similarly, researchers with the African American Cultural Heritage Action Fund find that historically African American neighborhoods are underrepresented in historic designation programs.<sup>12</sup>

A review of available local data demonstrates similar racial disparities in historic preservation resources. Of the 1,215 historic preservation resources in the County mapped in Figure 1, about 6.5 percent (79) are located in a quarter of the County’s census tracts (56 out of 215 tracts) where a majority of the County’s low-income residents and people of color reside. These census tracts are referred to as Equity Focus Areas by Montgomery Planning.<sup>13</sup> Further, less than one quarter of one percent of historic preservation sites in the County are designated as sites of historical significance to African Americans (25-26 sites) with many of these being parks owned by the County or state, or facilities owned by community-based groups and institutions rather than by individuals.<sup>14</sup>

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### ANTICIPATED RESJ IMPACTS

Available data on the location of historic properties across the County and the limited number of privately owned properties of historical significance to African Americans suggests the White and affluent historic property owners will disproportionately benefit from changes to the zoning ordinance proposed under ZTA 21-06.

If no eligible historic property owners take advantage of the commercial use options offered by ZTA 21-06, OLO anticipates that current racial and social inequities in historic preservation and economic development across the County will be sustained. However, if eligible historical property owners take advantage of the commercial use options offered by ZTA 21-06, OLO anticipates the racial and social inequities in historic preservation and economic development across the County will widen.

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council’s decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the ZTA under consideration.

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### CONTRIBUTIONS

OLO staffers Elsabett Tesfaye, Performance Management and Data Analyst, and Dr. Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this racial equity and social justice impact statement.

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<sup>1</sup> See the Government Alliance for Race and Equity’s “Advancing Racial Equity and Transforming Government” for understanding of government role in creating inequities [https://racialequityalliance.org/wp-content/uploads/2015/02/GARE-Resource\\_Guide.pdf](https://racialequityalliance.org/wp-content/uploads/2015/02/GARE-Resource_Guide.pdf)

<sup>2</sup> Adopted from racial equity definition provided by Racial Equity Tools. <https://www.racialequitytools.org/glossary>

# RESJ Impact Statement

## Zoning Text Amendment 21-06

<sup>3</sup> Ingrid Gould Ellen, Brian Mc Cabe, and Gerard Torratts-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>4</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>5</sup> Ingrid Gould Ellen, Brian Mc Cabe, and Gerard Torratts-Espinoza

<sup>6</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>7</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> -

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</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>11</sup> Ibid

<sup>12</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>13</sup> Montgomery Planning, published and unpublished data

<sup>14</sup> Ibid



## HISTORIC PRESERVATION COMMISSION

**Marc Elrich**  
*County Executive*

**Robert K. Sutton**  
*Chair*

October 19, 2021

Council President Tom Hucker  
Council Office Building  
100 Maryland Avenue - Room 217  
Rockville, MD 20850

RE: ZTA 21-06 Exemptions - Density Transfer and Historic Resources

Dear Council President Hucker and Members of the Council:

I am writing in my capacity as the Chair of the Historic Preservation Commission (HPC) in support of a Zoning Text Amendment that is being brought to the Council on November 2<sup>nd</sup> for consideration. The HPC heard a presentation from Planning Department staff on this item at our October 13<sup>th</sup> public hearing where the Commission moved to send this letter of support for the ZTA. ZTA 21-06 adds a new exemption to Section 7.7.1.D establishing a process for approving certain specified non-residential uses on historic sites protected through a density transfer.

According to the presentation by Planning Staff, this ZTA impacts one historic site known as the Locust Grove /Samuel Wade Magruder House. This property took advantage of a density transfer in the 1970s and was the subject of several text amendments allowing for a bank to adaptively reuse the historic house for its offices and bank branch. When the Zoning Ordinance was rewritten in 2014, the old provision allowing for limited commercial uses in certain historic properties was inadvertently left out; this ZTA would bring those uses back. The ZTA also creates an expanded role for the HPC so that we must approve any new project for the site and must find that the new use is compatible with Chapter 24A: Historic Resources Preservation.

The HPC believes that this ZTA will promote the protection and adaptive reuse of historic properties and we recommend it be adopted. Thank you for your consideration.

Sincerely,

Robert K. Sutton, Chair  
Historic Preservation Commission

Cc: Members, Historic Preservation Commission  
Casey Anderson, Planning Board Chair  
Members of the Planning Board



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November 1, 2021

Mr. Tom Hucker, President,  
And Montgomery County Councilmembers  
Montgomery County Council  
100 Maryland Avenue, Sixth Floor  
Rockville, MD 20850

Re: ZTA 21-06: Exemptions - Density Transfer and Historic Resources

Dear President Hucker and Councilmembers:

Our firm represents 1788 Holdings (“1788”), which is the owner of 7340 Westlake Terrace in Bethesda (the “Property”). 1788 fully supports ZTA 21-06 (the “ZTA”) and agrees with the consistent favorable recommendations for adoption. These recommendations are stated in Historic Preservation Commission’s (“HPC”) October 19, 2021 letter, Planning Staff’s October 22, 2021 report, and as discussed and unanimously voted on by the Planning Board at their October 28, 2021 meeting.<sup>1</sup> 1788 believes the ZTA will reinstate a provision inadvertently omitted from the current version of the Zoning Ordinance regarding sites containing a historic resource where there has been a density transfer off-site, allow a suitable range of uses on-site to support the adaptive reuse of such properties, and ensure appropriate oversight by the HPC and the Planning Board when reviewing development proposals at these locations.

## **Background**

1788’s Property contains a designated historic resource commonly known as Locust Grove/Magruder House, as well as a non-historic drive-thru bank teller building and drive-thru constructed in the 1970s. The Magruder House and the bank teller building/drive-thru are approximately 200 feet apart. As noted by Planning Staff in their October 22, 2021 report (the “Planning Staff Report”), the prior owner used a provision last codified at Section 59-A-6.21 of the previous version of the Zoning Ordinance (the “Old Zoning Ordinance”) regarding density transfer for historic sites. This allowed the establishment of a bank use that continued on the Property until approximately 2015. The owner at that time, Capital One, closed the branch and eventually sold the Property. 1788 purchased the Property from Capital One in 2018 as one asset

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<sup>1</sup> Planning Staff’s October 22, 2021 report (which includes HPC’s October 19, 2021 letter) is attached hereto as Exhibit “A”.

Mr. Tom Hucker, President,  
And Montgomery County Councilmembers  
November 1, 2021  
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in a portfolio that included several bank branch sites no longer needed by Capital One. Since that time, 1788 has aggressively and continuously marketed the Property for a new tenant, including a bank. 1788 has also diligently and constantly maintained the upkeep of the Property since the departure of Capital One.

1788's intent to reactivate the site has not been realized as potential bank tenants are not interested in using the Property due to the obsolescence of the existing improvements and unsuitability of the site layout for today's banking industry needs. After these unsuccessful attempts to re-tenant the existing structure for a bank, 1788 then designed a modern bank building in the location of the non-historic bank teller building and appeared before the HPC for a preliminary consultation on this new design. Once again, the efforts to find a bank willing to establish a branch at the Property were unsuccessful. Although the Property is well maintained by 1788, it remains unoccupied.

### **The ZTA**

1788 agrees with the analysis of the HPC, Planning Staff, and the Planning Board that the ZTA appropriately amends the Zoning Ordinance by adding the inadvertently omitted provision from the Old Zoning Ordinance to permit a limited number of compatible commercial uses on sites where there has been a previous density transfer. Additionally, 1788 agrees with the support of the HPC, Planning Staff, and the Planning Board to require site plan approval (except for conditional uses), as well as requiring both the HPC and the Planning Board to make certain findings regarding the proper preservation of the site. The HPC, Planning Staff, and the Planning Board correctly conclude that the ZTA would support the adaptive reuse of the Property and make it economically productive.

1788 also concurs with Planning Staff's comments presented in the Planning Staff Report, as well as the Planning Board's discussion at their October 28, 2021 meeting, on the Racial Equity and Social Justice Zoning Text Amendment Statement ("RESJ") prepared by the County's Office of Legislative Oversight ("OLO"). As reasoned by both Planning Staff and the Planning Board, the RESJ analysis identifies general concerns raised by critics of historic preservation without specifically demonstrating how the ZTA under review (with its very limited scope) would have the alleged impact of widening racial and social inequities. Instead, consistent with the reasoning of the HPC, Planning Staff, and the Planning Board, the adaptive reuse of the Magruder House allowed by the ZTA would support its maintenance. This, in turn, would increase public awareness of the Magruder House, which has an important connection to the African American experience in Montgomery County. The site, now vacant, would be activated and allow for greater public awareness.

In summary, 1788 fully supports the ZTA. We will testify at the November 2, 2021 public hearing before the County Council and look forward to participating in the County Council's review of the ZTA. Thank you for your consideration.

Mr. Tom Hucker, President,  
And Montgomery County Councilmembers  
November 1, 2021  
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Very truly yours,

**MILES & STOCKBRIDGE P.C.**

*Barbara A. Sears/KDM*

Barbara A. Sears

*Phillip A. Hummel/KDM*

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cc: Casey Anderson, Montgomery County Planning Board  
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