



Committee: PHED
Committee Review: At a future date
Staff: Livhu Ndou, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #DensityTransfer, #HistoricResources

AGENDA ITEM #6
November 2, 2021
Public Hearing

SUBJECT

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

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

ZTA 21-06 would establish a new residential lot exemption for properties containing a historic resource that was protected from development by a density transfer.

SUMMARY OF KEY DISCUSSION POINTS

- This exemption would permit a limited list of commercial uses on the site containing the historic resource.
- A recommendation of approval from the Historic Preservation Commission (HPC) and site plan approval by the Planning Board would be required.
- The HPC and the Planning Board would have three new findings to make, intended to ensure the proposed commercial uses protect rather than detract from the historic resource.

This report contains:

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Zoning Text Amendment No.: 21-06
Concerning: Exemptions – Density
Transfer and Historic
Resources
Draft No. & Date: 1 – 9/20/2021
Introduced:
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**

Lead Sponsor: Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Establish a new Residential Lots and Parcels exemption for Density Transfer and 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”
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 in the underlying zone;
- 13 ii. Clinic (up to 4 Medical Practitioners);
- 14 iii. Office;
- 15 iv. Retail/Service Establishment;
- 16 v. Rural Antique Shop;
- 17 vi. Drive-Thru as an accessory use to any other allowed
18 principal use; and
- 19 vii. Uses allowed by Conditional Use, subject to the
20 provisions of Section 7.3.1.

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

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

- 25 i. Any modifications to buildings, structures, or the land
26 must protect the intent of the historic resource and be
27 consistent with Chapter 24A of the County Code; and

28 ii. Any operational characteristics must not encroach upon
29 or destroy the historical, archaeological, or architectural
30 character or value of the site.

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

34

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

37

38 This is a correct copy of Council action.

39

40

41 _____
42 Selena Mendy Singleton, Esq.
 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

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

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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

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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.