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

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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.

Zoning Text Amendment No.: 21-**
Concerning: Exemptions – Density
Transfer and Historic
Resources

Draft No. & Date:
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:

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:

ARTICLE 59-7. “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 in a
9 Residential Zone was 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. Medical and Dental clinics up to 4 medical practitioners,

14 iii. Professional offices,

15 iv. Retail sales and services,

16 v. Antique shops,

17 vi. Drive-Thru as an accessory use to any other allowed primary use,
18 and

19 vii. Uses allowed by Conditional Use, subject to the provisions of Section
20 7.3.1.

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

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

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

- 28 ii. Shall not introduce operational characteristics that would encroach
- 29 upon or destroy the historical, archaeological, or architectural
- 30 character or value of the site, and
- 31 iii. The project must be recommended for approval by the Historic
- 32 Preservation Commission prior to approval of the Site Plan by the
- 33 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.

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41 Selena Mendy Singleton, Esq.
42 Clerk of the Council