



Committee: PHP
Committee Review: At a future date
Staff: Livhu Ndou, Senior Legislative Attorney
Purpose: To introduce agenda item – no vote expected

Attachment A

AGENDA ITEM #4A
April 28, 2026
Introduction

SUBJECT

Zoning Text Amendment (ZTA) 26-08, Nonconforming Use – Reinstatement

Lead Sponsor: Councilmember Friedson

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce agenda item – no vote expected

DESCRIPTION/ISSUE

ZTA 26-08 will allow the reinstatement of a nonconforming use under certain conditions.

SUMMARY OF KEY DISCUSSION POINTS

- A nonconforming use is a use that was lawful when established but no longer conforms to the requirements of the zone in which it is located. For example, the use may no longer be allowed in the zone. Under the current Zoning Ordinance, a nonconforming use is considered abandoned if it ceases operations for at least 6 consecutive months; and may not be reestablished.
- ZTA 26-08 will allow the reinstatement of a nonconforming use that has been abandoned for less than 5 years. In order to reinstate a nonconforming use, the ZTA will require approval by the Hearing Examiner, with the opportunity for a hearing if objections are raised.
- The Department of Permitting Services (DPS) and Planning Department will be required to submit information to the Hearing Examiner to assist in the decision-making, including whether reinstatement conflicts with the relevant master plan area and information about the prior use.
- The Hearing Examiner may approve reinstatement of the nonconforming use if reinstatement would not change the nature, character, or intensity of the prior use. Minimal changes will be allowed for compatibility.
- A public hearing is tentatively scheduled for June 16, 2026.

This report contains:

ZTA 26-08

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Ordinance No.: _____
Zoning Text Amendment No.: 26-08
Concerning: Nonconforming Use –
Reinstatement
Revised: 4/22/2026 Draft No.: 1
Introduced: April 28, 2026
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: Councilmember Friedson

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) allow the reinstatement of a nonconforming use under certain conditions; and
- (2) generally amend the nonconforming use requirements.

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 7.7.2. “Nonconforming Use”

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.*

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:

27 2. consistent with the historic use of the property as documented in the
 28 Locational Atlas of Historic Sites, the Master Plan for Historic
 29 Preservation, or the land records.

30 **D. Lawful Nonconforming Use Certification**

31 The owner of property who wishes to establish that a use on the property is
 32 lawfully nonconforming, under the provision of this Chapter, must submit an
 33 application in a form provided by DPS. A nonconforming use certification must be
 34 issued by DPS if DPS determines that the use of the property is a nonconforming
 35 use as defined herein.

36 **E. Reinstatement of a Nonconforming Use**

37 **1. Applicability**

38 a. A nonconforming use may only be reinstated if it has been
 39 abandoned for less than 5 years, as of the date of the submission
 40 of the application under Section 7.7.2.E.2.

41 b. A nonconforming use may only be reinstated if it has not been
 42 previously reinstated under Section 7.7.2.E.

43 **2. Application and Notice**

44 a. The applicant must own the subject property or be authorized
 45 by the owner to file the application.

46 b. An application to reinstate a nonconforming use must follow
 47 the requirements of Section 7.3.1.B, Conditional Use, except
 48 that a hearing is only required under Section 7.7.2.E.3.

49 c. The applicant must provide notice consistent with Section
 50 7.5.2.D, Application Notice, and the requirements of Section
 51 7.5.2.C, Application Sign. Where standards vary based on the
 52 type of application, the applicant must follow the notice
 53 requirements for a conditional use.

d. The Hearing Examiner must provide DPS with notice that an accepted application has been filed within 5 days of receipt.

3. Hearing

a. A municipality, property owner, homeowners association, civic association, condominium association, or renter association entitled to notice under Section 7.5.2.E. may file an objection and request a hearing with the Office of Zoning and Administrative Hearings. An objection must be filed within 30 days of when notice was mailed. A request for a hearing must concisely state the matters requested to be presented at the hearing.

b. The Hearing Examiner may grant or deny the request for a hearing.

i. If the request is granted, the Hearing Examiner must send notice of the hearing to the applicant and any person who filed an objection, consistent with Section 7.5.2.E, Hearing Notice. The hearing must be scheduled within 60 days of the date the application was accepted. Objections received may be consolidated into one hearing.

ii. If a request for hearing is denied, the Hearing Examiner must explain why in the final report and decision.

c. If additional information is needed to issue a decision, the Hearing Examiner may schedule a hearing without a written request for a hearing or request additional information from the applicant.

d. Within 30 days of the acceptance of the application, DPS must submit written comments to the Hearing Examiner. The

81 comments should include the prior use and layout of the
 82 property, and any complaints received related to the property
 83 and its prior use.

84 e. Within 30 days of the acceptance of the application, the
 85 Planning Director must provide a written recommendation to
 86 the Hearing Examiner. The recommendation must address:

87 i. whether the application conflicts with the most recent
 88 master plan for the area within which the application is
 89 located, including a ZTA specifically prohibiting the use
 90 in the relevant Overlay Zone or language in the master
 91 plan regarding the phasing out of the use in the master
 92 plan area; or

93 ii. any substantial adverse effects that could result from
 94 reinstatement of the use, including impacts on traffic
 95 circulation and parking.

96 **4. Decision**

97 a. The Hearing Examiner must issue a final decision within 60
 98 days from the date of application acceptance if no hearing is
 99 held, and within 45 days of the close of hearing if one is held.
 100 The Hearing Examiner may by order extend the time to issue
 101 the report and decision.

102 b. To approve the reinstatement of a nonconforming use, the
 103 Hearing Examiner must find that:

104 i. reinstatement would not change the nature, character, or
 105 intensity of the prior use to an extent that substantial
 106 adverse effects on the surrounding neighborhood could
 107 reasonably be expected; and

- 108 ii. the use does not conflict with the most recent master plan
109 for the area within which the application is located.
- 110 c. The Hearing Examiner may allow minimal changes to the size,
111 layout, vehicle circulation, and on-street parking of the prior
112 use to address compatibility, including conditions for
113 landscaping, lighting, number of employees, and hours of
114 operation.
- 115 d. The Hearing Examiner must issue notice on the day the report
116 and decision is issued to DPS, the Planning Department, the
117 Board of Appeals, the applicant, and all parties of record that
118 the report and decision has been issued and is available for
119 review. The Hearing Examiner’s report and decision is effective
120 on the date issued.

121 **5. Appeal**

- 122 a. A person aggrieved by the decision of the Hearing Examiner
123 may appeal the Hearing Examiner’s decision by filing a written
124 request to present oral argument before the Board of Appeals
125 within 10 days after the Office of Zoning and Administrative
126 Hearings issues the Hearing Examiner’s report and decision.
127 The filing of such a request transfers jurisdiction over the
128 matter while on appeal from the Hearing Examiner to the Board
129 of Appeals. A person requesting an appeal must send a copy of
130 that request to the Hearing Examiner, the Board of Appeals, and
131 all parties of record before the Hearing Examiner.
- 132 b. The Board of Appeals may, in its discretion, grant or deny an
133 oral argument request. If the Board of Appeals grants a request

134 for oral argument, the argument must be limited to matters
135 contained in the record compiled by the Hearing Examiner.

136 c. The Board of Appeals may approve, approve with conditions,
137 deny, or remand the application to the Hearing Examiner for
138 additional evidence or clarification.

139 d. The Board of Appeals must issue its resolution no later than 30
140 days after voting on the matter, unless such time is extended by
141 the Board of Appeals. The appeal must be decided on the basis
142 of the evidence of record, but the Board of Appeals may decide
143 any matter heard by the Hearing Examiner and appealed to the
144 Board of Appeals solely on the basis of the Hearing Examiner’s
145 report and decision.

146 **6. Compliance and Enforcement**

147 a. After approval, the applicant must submit an annual report to
148 DPS by July 30 of each year confirming that the use continues
149 to operate consistent with any conditions imposed in the
150 Hearing Examiner’s report and decision.

151 b. If the annual report is not received by January 1 of the
152 following year, and a DPS inspection confirms cessation of
153 operations for 6 consecutive months, the reinstated
154 nonconforming use will be deemed abandoned and no longer
155 eligible for reinstatement.

156 * * *

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

This is a correct copy of Council action.

Sara R. Tenenbaum
Clerk of the Council