

ZTA 26-08

NONCONFORMING USE – REINSTATEMENT

Description

ZTA 26-08 creates a new application and process to reinstate certain nonconforming uses that have been abandoned for more than six months but less than five years.

ZTA 26-08

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MCPB

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ZTA SPONSORS

Sponsors:
Councilmember Friedson

INTRODUCTION DATE

April 28, 2026

COUNCIL PUBLIC HEARING DATE

June 16, 2026

REVIEW BASIS

Chapter 59

Summary

- Nonconforming uses are uses that were lawful when established but no longer conform to current zoning requirements. A nonconforming use is considered to be abandoned if it has not been in operation for at least six months.
- This ZTA would allow an applicant to apply to the Hearing Examiner to have an abandoned use reinstated if the use is abandoned for less than five years, and meets certain criteria
- The Department of Permitting Services and the Planning Department will have a role in reviewing the reinstatement request.

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SECTION 1 – BACKGROUND

Introduction

Zoning Text Amendment (ZTA) 26-08, ZTA 26-08, Nonconforming Use - Reinstatement was introduced on April 28, 2026, by Councilmember Friedson (Attachment A). The ZTA is scheduled for a District Council Public Hearing on June 16, 2026.

Nonconforming Uses

ZTA 26-08 amends the nonconforming use Section 7.7.2. in the Zoning Code. A nonconforming use is defined as a use that was lawful when established but no longer conforms to the requirements of the zone in which it is located. This can happen for a few reasons, including uses being removed or use standards being modified through a ZTA or a zoning code rewrite, or a property being rezoned through a sectional map amendment following a master plan update.

Section 7.7.2. places limits on the rights of nonconforming uses. Generally, they are allowed to continue operating in the same size and condition, but are not allowed to expand unless a health or safety law or regulation recommends the expansion to address safety. Additionally, nonconforming uses must remain in operation to retain their status. Nonconforming uses are considered abandoned if they cease operations for at least six consecutive months. Abandoned uses may not be reestablished unless it is a historic resource. ZTA 26-08 would add an alternative path for reestablishing an abandoned nonconforming use, which is the subject of the analysis of this Staff Report.

SECTION 2 – ZTA 26-08 ANALYSIS AND RECOMMENDATIONS

ZTA 26-08 As Introduced

ZTA 26-08 establishes an entirely new section, 7.7.2.E Reinstatement of a Nonconforming Use. This section stretches from lines 36 to 155 of the ZTA. Included are code provisions on applicability, application and notice, hearing, decision, appeal, and compliance and enforcement. The Staff Report will provide a high-level summary of each section below and includes a couple of recommended specific amendments.

1. APPLICABILITY

The applicability section of the ZTA proposes two provisions: that the nonconforming use may be reinstated if abandoned for less than five years as of the date of submission of the application, and that a nonconforming use may only be reinstated once.

Planning Staff does not object to these two applicability requirements but recommends a third. Part of what allows a nonconforming use to remain legally operating is the continuation of the use, and the use is not allowed to increase in size or make major site modifications except for safety. Given the period of abandonment is extending to five years, Planning Staff recommend also requiring that the property requesting reinstatement have actually remained ‘abandoned’ and that the nonconforming use be the last known use of the property. If there were an intervening legal use, it may have made changes to the size or intensity of the structures and circulation on the property, which may result in the nonconforming use being reinstated at a different size and circulation pattern than it previously operated under. By requiring that the abandoned nonconforming use be the last known use, it's much more likely that the reinstated nonconforming use would resume in a similar size and form as it existed before, and would be more in keeping with the intent that a nonconforming use remain active and not be allowed to expand.

To achieve this, Planning Staff recommend slightly reformatting Section E.1. for better flow, and adding a new standard under E.1.b. stating that the last use of the property was the nonconforming use requesting reinstatement. Planning Staff also recommend reducing the repetitive statement “A nonconforming use may only be reinstated if” seen on lines 38 and 41 by shifting that directly under Applicability (new line 38). These changes would look as follows:

1. Applicability

A nonconforming use may only be reinstated if:

- a. ~~A nonconforming use may only be reinstated if~~ it has been abandoned for less than 5 years, as of the date of the submission of the application under Section 7.7.3.E.2.;
- b. the last use of the property was the nonconforming use requesting reinstatement;
and
- c. ~~A nonconforming use may only be reinstated if~~ it has not been previously reinstated under Section 7.7.2.E.

Recommendation: Support the Applicability section as modified to include the requirement that the last use of the property was the same as the nonconforming use requesting reinstatement.

2. APPLICATION AND NOTICE

The Application and Notice section E.2. directs applicants for reinstatement to be the owner or authorized agent of the property, and follows the application and notice requirements of conditional

use applications. The Hearing Examiner would then be responsible for notifying DPS that an application has been filed within five days of acceptance. Because Montgomery Planning Staff do intake for the Hearing Examiner, we would not need specific notice of an application.

Recommendation: Support the contents of the Application and Notice section.

3. HEARING

Section E.3, as proposed in the ZTA, outlines the conditions under which a hearing may be necessary and how to conduct the hearing. The intent of the reinstatement application is for the Hearing Examiner to be able to approve it administratively. However, if an objection and a request for a hearing are received within 30 days of the application being accepted, a hearing may be scheduled.

This section of code also outlines DPS and Montgomery Planning's roles in the review of a reinstatement request. DPS must provide information on the prior use and layout of the property and any complaints received related to the prior use. Montgomery Planning's Director must provide a recommendation addressing any conflicts the reinstatement would have with the master plan for the area, including any overlay zones or specific zoning recommendations to explicitly prohibit the nonconforming use. The Planning Director must also address whether any adverse effects may result from the reinstatement of the use, including impacts to traffic, site circulation, and parking. Both agencies' recommendations are due within 30 days of the reinstatement application being accepted.

Planning Staff do not recommend any changes to this section as written, as it integrates well with the recommendations under the applicability section that the last use of the property must have been the nonconforming use. If ZTA 26-08 is passed without accepting this applicability language, Planning Staff would recommend clarity on DPS's role in providing comment on the 'prior use and layout' and 'any complaints received' (lines 81-83), as the prior use may not be the reinstated nonconforming use. In such an instance, Planning Staff would recommend providing comments based on the previous iteration of the nonconforming use.

Recommendation:

- Support the contents of the Hearing section as introduced, if the amendment recommended to the applicability section is accepted.
- Clarify DPS's role in providing comment on the prior use should be for the prior instance of the nonconforming use, if the applicability section is not amended, allowing a potential intervening use to occur on the property.

4. DECISION

The next section, E.4. Decision, outlines when the Hearing Examiner must make a final decision on the reinstatement request. The decision must be issued within 60 days of the application being accepted

if there is no hearing, and within 45 days of the hearing date if a hearing is held. This section also includes findings the Hearing Examiner should make in the decision, including:

- That reinstatement would not change the nature, character, or intensity of the prior use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected
- The use does not conflict with the most recent master plan

The Hearing Examiner may approve minimal changes to the size, layout, circulation, and parking to address compatibility, including landscaping and lighting, employees, and hours of operation. Notice of the final decision shall be provided to DPS, Montgomery Planning, the Board of Appeals, the applicant, and any party of record.

Planning Staff have some concerns with the findings that are required within the decision section. The first finding (lines 104-107) implies that the reinstatement of the nonconforming use could be done in a way that changes the size and character of the use, if a determination is made that it is not expected to create a substantial adverse effect on the neighborhood. Increasing any element of a nonconforming use that could be considered as increasing its size should not be allowed, as lawful nonconforming uses are currently prohibited from expanding except under very specific safety or historic circumstances. Making minor site modifications that do not expand the use but potentially improve it are already proposed in the code section E.4.c. (lines 110-114). Lastly, the same concern raised before about 'prior use' and whether that prior use is the nonconforming use or not is raised in the wording of the findings.

Recommendation: Planning Staff recommend revising the first finding the Hearing Examiner must make under Section E.4.b.i. as follows:

- i. reinstatement would not change the nature, character, or intensity of the prior ~~nonconforming use except as allowed under Section 7.7.2.E.4.c. to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected;~~ and

5. APPEAL

The Appeal section of the ZTA, under Section E.5, allows an aggrieved party 10 days from the date of the decision to appeal the decision to the Board of Appeals. The Board of Appeals must issue a resolution within 30 days of oral arguments and may uphold the approval, approve with new conditions, or remand the application back to the Hearing Examiner.

Recommendation: Support the content of the Appeal section

6. COMPLIANCE AND ENFORCEMENT

The final section of the ZTA is Section E.6. Compliance and Enforcement. This section requires the applicant of any reinstated nonconforming use to send an annual report by July 30 of each year to

DPS confirming it continues to operate consistently with the reinstatement approval. Failure to submit a report by January 1 of the following year, DPS shall inspect the property to determine if the use has been abandoned or is in violation.

Recommendation: Support the content of the Compliance and Enforcement section.

SECTION 3 – CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to prepare a climate assessment for each Zoning Text Amendment, Master Plan, and Master Plan Amendment, effective March 1, 2023. Each Climate Assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and on community resilience and adaptive capacity. The climate impact assessment for ZTA 26-08 is attached in Attachment B.

The Climate Assessment anticipates indeterminate impacts on greenhouse gas emissions, carbon sequestration, community resilience, and adaptive capacity. Due to the different types of potential non-conforming uses that may try to take advantage of this new process, and an unknown number or location of these potential uses, it is difficult to calculate benefits or harms on a county wide scale. There may be minor benefits associated with adaptively reusing existing structures, if the existing facilities are able to be renovated rather than reconstructed. The ZTA also does not directly impact any actions contained within the Climate Action Plan.

SECTION 4 – CONCLUSION

Planning Staff recommends the Planning Board support ZTA 26-08 with Planning Staff's proposed amendments that clarify that the prior use of the property should be the same as the nonconforming use requesting reinstatement. The ZTA creates a public process where abandoned nonconforming uses can apply to be reinstated.

SECTION 5 – ATTACHMENTS

Attachment A: Zoning Text Amendment 26-08 Intro Packet

Attachment B: Climate Assessment 26-08