

Ordinance No. _____

AN ORDINANCE TO AMEND CHAPTER 24 (CITY ZONING ORDINANCE), ARTICLE XII, § 24-224, ENTITLED "DEFINITIONS"; § 24-225.1 ENTITLED "POWERS AND DUTIES OF HISTORIC DISTRICT COMMISSION"; § 24-226 ENTITLED "DESIGNATION OF HISTORIC DISTRICTS AND HISTORIC SITES; CRITERIA"; AND § 24-231, ENTITLED "MORATORIUM ON ALTERATION OR DEMOLITION"; AND TO ADD § 24-233.1, ENTITLED "UNDUE ECONOMIC HARDSHIP."

Text Amendment CTAM-7359-2016

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance) Article XII is amended to read as follows:

Chapter 24

ZONING

ARTICLE XII. PRESERVATION OF HISTORIC RESOURCES

Sec. 24-224 – Definitions.

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Designated historic resource or site. Any designated historic resource outside the boundaries of a historic district of historic, archaeological, architectural, or cultural significance and which has been so designated by resolution of the mayor and city council.

Historic district. A significant concentration, linkage or continuity of sites, structures or objects which contributes to the historical, architectural, archaeological or cultural values within the city, and which have been so designated by the historic district commission.

~~*Designated historic resource or site.* Any designated historic resource outside the boundaries of a historic district of historic, archaeological, architectural, or cultural significance and which has been so designated by resolution of the mayor and city council.~~

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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Sec. 24-225.1. - Powers and duties of historic district commission.

The historic district commission shall have those powers, duties and authority assigned to it by Title 8 of the Md. Land Use Code Ann., §8-101 et seq, as amended from time to time Article 66B, MD. CODE ANN, the zoning ordinance of the City of Gaithersburg, and those acts or enactments of the city council of the City of Gaithersburg. The commission shall adopt such rules and regulations as may be necessary for the proper transaction of its business.

Sec. 24-226. - Designation and designation removal of historic districts and historic sites; criteria.

(a) The mayor and city council, on its own motion or by petition of either the property owners of record, the historic district commission, or the planning commission, may, after prescribed notice and public hearing, designate by ordinance or resolution historic districts, historic resources, and historic sites in the city which are deemed to be of historic, archaeological or architectural significance following the procedure applicable to classifications in zoning. These resources shall thereafter be subject to the provisions of this article and any rules and regulations promulgated by the commission. The procedures are substantially similar to those applicable to local map amendments, as provided in Article VIII of Chapter 24 of this Code.

(b) In considering historic resources for designation as historic districts and historic sites, the historic district commission shall apply the following criteria:

- (1) Historical and cultural significance. The historic resource:
 - (i) a. Has character, interest or value as part of the development, heritage or cultural characteristics of the city, county, state or nation;
 - (ii) b. Is the site of a significant historic event;
 - (iii) c. Is identified with a person or a group of persons who influenced society; or
 - (iv) d. Exemplifies the cultural, economic, social, political or historic heritage of the city and its communities.
- (2) Architectural and design significance. The historic resource:
 - (i) a. Embodies the distinctive characteristics of a type, period or method of construction;
 - (ii) b. Represents the work of a master;
 - (iii) c. Possesses high artistic values;
 - (iv) d. Represents a significant and distinguishable entity whose components may lack individual distinction;

- (v) e. Represents an established and familiar visual feature of the neighborhood, community or city due to its singular physical characteristic or landscape; or
- (vi) f. Embodies design, setting, materials, workmanship and ambience to the city's sense of time, place and historic development.

~~(c) Prior to the conduct of a public hearing by the mayor and city council on the designation of a historic district or historic site, the historic district commission shall investigate, research, and submit findings and recommendations to the mayor and city council on each request. Prior to the closing of the public hearing record:~~

- (1) The city planning department shall submit its findings and recommendations to the mayor and city council on the proposed designation; and
- (2) The city planning commission and historic district commission, after public hearing on the designation, shall make its their recommendations, ~~as set forth in Section 24-240 and~~ consistent with the city master plan, to the mayor and city council prior to the close of the mayor and city council's record. In formulating such recommendations, the planning commission and historic district commission may consider public hearing testimony ~~before the historic district commission, the recommendation of the historic district commission,~~ recommendations from the city planning department, including the staff report, and any other relevant and material matters.

(d) Historic districts, resources, and sites shall remain designated as historically, archaeologically or architecturally significant unless such designation is removed by subsequent resolution of the mayor and city council.

- (1) The designation may be removed from a historic resource only if information not available at the time of designation shows that the subject resource no longer meets the applicable criteria for designation.
- (2) Applications for removal of historic or archaeological designation may be made by the property owner or the city, and shall be filed with the city. The removal process shall terminate if the applicant withdraws the request for removal at any time prior to the mayor and city council adopting the resolution removing the designation. Review of applications for removal of designation shall include:
 - (i) Analysis of the application by the city planning department regarding criteria listed in Section 24-226(b).
 - (ii) Review of the application and analysis by the planning commission and historic district commission, which shall conduct a public hearing to review the proposed designation. The planning commission and historic district commission's recommendations shall be forwarded to the mayor and city council.
 - (iii) The mayor and city council shall review the application to remove designation, the written staff analysis, and the recommendations of

the planning commission and historic district commission. After a public hearing, the mayor and city council shall approve or deny the removal of designation by resolution.

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Sec. 24-231 – ~~Moratorium on alteration or demolition~~ Demolition procedures for non-designated buildings and structures.

(a) Applications for issuance of a demolition permit for non-designated buildings and structures shall be filed with the city manager, or designee. The application shall be in a form and contain such information as may be required to provide information as shall be necessary for the historic district commission to evaluate and act upon such applications in accordance with the provisions of this article.

(b) Prior to issuance of each demolition permit, the historic district commission shall review each structure or building more than 50 years old for potential historic or architectural significance under the criteria specified in Sec. 24-226 of the City Code. The historic district commission shall schedule and conduct a public meeting on the application, giving notice pursuant to subsection (c) below.

(c) After scheduling a public meeting notice thereof shall be accomplished by city staff, by ordinary mail, being given to property owners within two hundred (200) feet of the property, not less than seven (7) days prior to the meeting at which the matter is to be heard, and to those citizens or organizations the city manager or designee determines may have an interest in the proceedings. In addition, notice shall be accomplished by posting an appropriate sign on the site and publication at least once, not less than seven (7) days prior to the meeting.

(d) The historic district commission may instruct the city manager or designee to:

(1) Issue the demolition permit.

(2) ~~(a)~~ Where the historic district commission determines that any site, group of sites, structure or object is undergoing active consideration as a historic district, historic site or historic resource, or has the reasonable probability of being so designated or has been so designated, it may direct the city manager to withhold issuance of any permit to demolish, grade or substantially alter the exterior features of any such site, structure or object. The city manager shall withhold such permit for a maximum of six (6) months from the date of the directive of the commission.

(i) ~~(b)~~ The commission may withdraw its directive to the city manager if it determines that failure to grant the permit applied for will have the effect of denying the property owner all reasonable use of ~~his~~ the property or would cause the property owner to suffer undue economic hardship.

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Sec. 24-231.1. – Undue economic hardship for designated buildings and structures.

(a) In the case of a proposed demolition of a historic resource or property within a historic district, the historic district commission may consider an application for demolition if:

- (1) The site or structure is a deterrent to a major improvement program that will be of substantial benefit to the city, or
- (2) The retention of the site or structure would:
 - (i) Cause undue financial hardship to the owner, or
 - (ii) Not be in the best interests of a majority of persons in the community.

(b) The historic district commission may not grant any such application unless the commission makes specific findings demonstrating that the standards have been met. In addition, as detailed under subsections (c) and (d) below, the commission may not approve an application for demolition based in whole or part on undue economic hardship unless the commission makes specific findings that:

- (1) An undue economic hardship exists, and
- (2) The historic resource cannot be relocated, restored, repaired or rehabilitated in a manner that would allow any reasonable use of the property by the applicant or anyone else.

(c) The historic district commission must not approve demolition of a historic resource or property within a historic district unless the property owner provides verifiable evidence and data which shows that:

- (1) Undue economic hardship exists, based on the totality of the evidence, including but not limited to the documents and data specified in subsection (d) below, and
- (2) The historic resource cannot be relocated, restored, repaired or rehabilitated in any manner that would allow any reasonable use of the property by the applicant or anyone else.

(d) An owner who seeks to demolish a historic resource must provide adequate information to demonstrate the presence of an undue economic hardship, including but not limited to the following:

(1) For all property:

- (i) Form of ownership of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other method;
- (ii) The amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;
- (iii) Remaining balance on any mortgage or other financing secured by the property;
- (iv) Estimated market value of the property, both in its current condition, and after completion of demolition and reuse of the existing structure, to be presented by an appraisal by a qualified professional expert;
- (v) A report from a licensed engineer or architect with experience in historic architecture as to the structural soundness of the structure and its suitability for reuse;
- (vi) An estimate from a professional experienced as to the economic feasibility for reuse of the existing structure;
- (vii) An estimate from a demolition professional as to the cost of tearing down the existing structure and removal of the debris;
- (viii) The assessed value of the land and improvements most recent assessments;
- (ix) Real estate taxes for the previous two (2) years;
- (x) Annual debt service, if any, for the previous two (2) years;
- (xi) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with his purchase, financing, or ownership of the property;
- (xii) All listing of the property for sale or rent, price asked and offers received, if any; and
- (xiii) Any consideration by the owner as to profitable adaptive uses for the property.

(2) Additionally, for income-producing property:

- (i) Annual gross income from the property for the previous two (2) years;
- (ii) Itemized operating and maintenance expenses from the previous two (2) years;
- (iii) Annual cash flow, if any, for the previous two (2) years.

(e) The City may hire an outside consultant for additional reports on the property and economic hardship, including to verify or further consider any information provided by the applicant.

DRAFT

ADOPTED this ___ day of ___, 2016 by the City Council of Gaithersburg, Maryland.

—
JUD ASHMAN, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ___ day of ___, 2016. APPROVED by the Mayor of the City of Gaithersburg, this ___ day of ___, 2016.

—
JUD ASHMAN, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ___ day of ___, 2016 and that the same was approved by the Mayor of the city of Gaithersburg on the ___ day of ___, 2016. This ordinance will become effective in accordance with the provisions of this ordinance.

Tony Tomasello, City Manager

MEMO TO: Mayor and City Council
Planning Commission

VIA: Tony Tomasello, City Manager

FROM: Chris Berger, Planner II and Liaison to the Historic District Commission
Frank Johnson, Assistant City Attorney

DATE: July 13, 2016

SUBJECT: Proposed Text Amendment CTAM-7359-2016

During the Mayor and City Council's July 5, 2016, regular session, Staff received sponsorship for a proposed Text Amendment to Chapter 24, Article XII, of the City Code entitled "Preservation of Historic Resources" subsequently designated as CTAM-7359-2016. Specifically, Staff is proposing to amend § 24-224 entitled "Definitions"; § 24-225.1 entitled "Powers and Duties of Historic District Commission"; § 24-226 entitled "Designation of Historic Districts and Historic Sites; Criteria"; and § 24-231, entitled "Moratorium on Alteration or Demolition" and to add § 24-233.1, entitled "Undue Economic Hardship." Updating the HP ordinance is one of the Mayor and City Council's adopted Action Items in the Strategic Plan included as part of the City's FY2015 and FY2016 Budgets.

Here is a summary of the proposed text amendments:

- The proposed amendment to Sec. 24-224 is to remove a repeated definition for "designated historic resource or site."
- The proposed amendment to Sec. 24-225.1 seeks to update a legal reference to a Maryland regulation.
- The proposed amendment to Sec. 24-226 seeks to codify a process for the removal of historic designation. The proposed removal of designation would follow the same procedures as designation: the application would first be reviewed by the HDC and Planning Commission, both of which would make a recommendation to the Mayor and City Council. The Mayor and City Council would then vote on a resolution to remove designation.
- The proposed amendment to Sec. 24-231 seeks to codify a process for the demolition of non-designated buildings or structures 50 years or older. HDC review is a procedure but is not currently codified.
- Sec 24-231.1 on undue economic hardship would be an addition to the City Code. The proposed language lays out a clear process for demolition of a designated historic resource should the owner cite finances as the reason to tear down. Assistant City Attorney Johnson is concerned that local ordinances that do not contain a measure allowing an exception for economic hardship, based on recent Federal court decisions, may not be enforceable, when based on a constitutional takings claim under the 5th Amendment to the U.S. Constitution.

The Historic District Commission (HDC) members discussed the proposed text amendments at their March 23, 2016, April 27, 2016, and May 25, 2016, meetings. Some HDC commissioners expressed concern at the March 23 and April 27 meetings that addition of Sec 24-233.1 on undue economic hardship could limit the powers of the HDC to preserve property, and could be applied to any designated resource in the City to potentially “open the door” to any property being made subject to the exception.

However, further analysis by Assistant City Attorney Johnson revealed that a section of the State Land Use Article authorizing historic commissions and historic preservation, specifically Md. Land Use Code Ann., Sec. 8-305(d), specifies that financial hardship on the part of the owner may already be considered. But while leaving the door open to that consideration, it gives no guidelines, no standards, and does not specify any evidence to be considered. City Code Sec. 24-225.1 specifies that such State law does apply in its delineation of “powers, duties, and authorities” of the HDC.

Because a financial hardship provision is already in effect, the concerns are not that having such a provision could “open the door,” but the fact that the door is, accordingly, already open. Staff believes a provision limiting application of that provision would be appropriate, and believes it is possible to specify that the exception is quite limited and can only be applied when the specified evidence is presented. Staff revised the economic hardship provision to reflect the HDC’s concerns, and the commissioners endorsed all the proposed text amendment changes to ordinance at its May 25 meeting.



PLANNING AND CODE ADMINISTRATION

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plancode@gaitthersburgmd.gov · www.gaithersburgmd.gov

TEXT AMENDMENT APPLICATION

All information must be complete to initiate processing of application

APPLICANT

Name Chris Berger

Street Address 31 South Summit Avenue

City Gaithersburg State MD Zip Code 20877

Telephone Numbers: Work 301-258-6330 Cell _____ E-mail Address cberger@gaitthersburgmd.gov

REQUESTED SPONSOR

Mayor and City Council Planning Commission

This change involves Article Chapter, Article XII, Section see below of the City Code.

REASON FOR REQUEST

Mayor and City Council sponsored a text amendment to amend Chapter 24 (City Zoning Ordinance), of the City Code, Article XII, § 24-224 entitled “Definitions”; § 24-225.1 entitled “Powers and Duties of Historic District Commission”; § 24-226 entitled “Designation of Historic Districts and Historic Sites; Criteria”; and § 24-231, entitled “Moratorium on Alteration or Demolition”; and to add § 24-233.1, entitled “Undue Economic Hardship.”

SUBMISSION REQUIREMENTS

- Draft Ordinance of Proposed Change
- Supporting Material (*optional*)

Joint Hearing - MCC & PC
CTAM-7359-2016
Exhibit 3

Sec. 24-224. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Appurtenances and environmental setting. The entire parcel, as of the date on which the historic resource is designated by resolution of the mayor and city council and structures thereon, on which is located a historic resource. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), vegetation (including trees, garden and lawns), rocks, pasture, cropland, and waterways.

City manager. The city manager or designee.

Commission. The historic district commission of the city, as described hereinafter.

Demolition by neglect. The willful failure to provide ordinary and necessary maintenance and repair to a designated historic site or a historic resource, not including appurtenances and

environmental settings within the city, whether by willful neglect, purpose or design, by the owner, agent or contractor thereof, or any party in possession of such a site, not caused by financial inability, which results in any of the following conditions:

- (a) The deterioration of exterior features so as to create or permit a hazardous or unsafe condition to exist.
- (b) The deterioration of exterior walls, roofs, chimneys or windows, the lack of adequate waterproofing or deterioration of interior features or foundations which will or could result in permanent damage, injury or loss of or to the exterior features.

Exterior features. The architectural style, design and general arrangement of the exterior of a historic resource, including the nature and texture of building materials and the type of style of all windows, doors, light fixtures, signs or other similar items found on or related to the exterior of a historic resource.

Designated historic resource or site. Any designated historic resource outside the boundaries of a historic district of historic, archaeological, architectural, or cultural significance and which has been so designated by resolution of the mayor and city council.

Historic district. A significant concentration, linkage or continuity of sites, structures or objects which contributes to the historical, architectural, archaeological or cultural values within the city, and which have been so designated by the historic district commission.

Designated historic resource or site. Any designated historic resource outside the boundaries of a historic district of historic, archaeological, architectural, or cultural significance and which has been so designated by resolution of the mayor and city council.

Historic resource. A site or group of sites, buildings, structures or objects, including appurtenances and environmental setting, which is significant in national, state or local history, architecture, archaeology or culture.

Historic site. The location of an event of historic significance or a structure, whether standing or ruined, which possesses historic, archaeological or cultural significance.

Permit. A historic area work permit issued by the historic district commission authorizing work on a designated historic site or a historic resource located within the city.

Planning commission. The planning commission for the city.

Routine maintenance. Work that does not alter the exterior material or features of a site or structure and has no material effect on the historical, archaeological or architectural significance of the historical site or structure, including tree trimming on private property. (Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-225. Historic district commission.

Historic district commission, commission. The mayor and city council shall appoint a commission of at least five (5) members and one alternate member all of whom are qualified consistent with the provisions of Chapter 426, § 8-202, Md. Code Ann., as established by the following criteria:

- (a) Persons who have demonstrated special interest, specific knowledge or professional or academic training in such fields as history, architecture, architectural history, planning, archaeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design or related disciplines and agree to serve on this commission, and a majority of whom are residents of the city. At least two (2) members of the commission shall possess professional or academic training in one (1) or more of the above listed fields in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under 36 C.F.R. Part 61.
- (b) The members of the commission shall be appointed for terms of three (3) years each, except that, in making the initial appointments, some appointments shall be established for less than three (3) years in order that, as these initial terms expire, all appointments shall be for three (3) years, and shall not expire at the same time. Members of the commission are eligible for reappointment and any vacancy on the commission shall be filled by the appointing authority for the unexpired term of the particular position.
- (c) Members of the historic district commission are appointed by the mayor and confirmed by the city council. Members may be recommended by local organizations to the mayor for consideration. A councilmember may be appointed as a liaison to the historic district commission. The liaison will serve in non-voting capacity.
- (d) Members of the commission may be removed after public hearing by the city council for inefficiency, neglect of duty or malfeasance in office.
- (e) The commission shall adopt rules and regulations as may be necessary for the proper transaction of its business. Rules and regulations of the commission shall be subject to approval by resolution of the historic district commission.
- (f) Members of the historic district commission shall receive such compensation as deemed appropriate by the city council.

(Ord. No. O-23-10, 9-7-2010; Ord. No. O-10-12, 12-17-2012)

Sec. 24-225.1. Powers and duties of historic district commission.

The historic district commission shall have those powers, duties and authority assigned to it by Article 66B, MD. CODE ANN., the zoning ordinance of the City of Gaithersburg, and

those acts or enactments of the city council of the City of Gaithersburg. The commission shall adopt such rules and regulations as may be necessary for the proper transaction of its business.

(Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-226. Designation of historic districts and historic sites; criteria.

(a) The mayor and city council, on its own motion or by petition of either the property owners of record, the historic district commission, or the planning commission, may, after prescribed notice and public hearing, designate by ordinance or resolution historic districts, historic resources, and historic sites in the city which are deemed to be of historic, archaeological or architectural significance following the procedure applicable to classifications in zoning. These resources shall thereafter be subject to the provisions of this article and any rules and regulations promulgated by the commission. The procedures are substantially similar to those applicable to local map amendments, as provided in Article VIII of Chapter 24 of this Code.

(b) In considering historic resources for designation as historic districts and historic sites, the historic district commission shall apply the following criteria:

- (1) *Historical and cultural significance.* The historic resource:
 - a. Has character, interest or value as part of the development, heritage or cultural characteristics of the city, county, state or nation;
 - b. Is the site of a significant historic event;
 - c. Is identified with a person or a group of persons who influenced society; or
 - d. Exemplifies the cultural, economic, social, political or historic heritage of the city and its communities.
- (2) *Architectural and design significance.* The historic resource:
 - a. Embodies the distinctive characteristics of a type, period or method of construction;
 - b. Represents the work of a master;
 - c. Possesses high artistic values;
 - d. Represents a significant and distinguishable entity whose components may lack individual distinction;
 - e. Represents an established and familiar visual feature of the neighborhood, community or city due to its singular physical characteristic or landscape; or
 - f. Embodies design, setting, materials, workmanship and ambience to the city's sense of time, place and historic development.

(c) Prior to the conduct of a public hearing by the mayor and city council on the designation of a historic district or historic site, the historic district commission shall investigate, research, and submit findings and recommendations to the mayor and city council on each request. Prior to the closing of the public hearing record:

- (1) The city planning department shall submit its findings and recommendations to the mayor and city council on the proposed designation; and
- (2) The city planning commission, after public hearing on the designation, shall make its recommendation, as set forth in Section 24-240 of this Chapter 24 and consistent with the city master plan, to the mayor and city council prior to the close of the mayor and city council's record. In formulating such recommendation, the planning commission may consider public hearing testimony before the historic district commission, the recommendation of the historic district commission, the city planning department, and any other relevant and material matters.

(Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-227. Historic area work permit; when required.

(a) A historic area work permit for work on public or private property which would affect the historic, archaeological or architectural significance of a designated historic resource, any portion of which is visible or intended to be visible from a public way, must be issued pursuant to the provisions of this chapter before:

- (1) Constructing, reconstructing, moving, relocating, demolishing or in any manner modifying, changing or altering the exterior features of any designated historic site or historic resource located within the city;
- (2) Performing any grading, excavating, constructing or substantially modifying, changing or altering the environmental setting of a historic site or a historic resource located within the city;
- (3) Erecting or causing to be erected any sign or advertisement (with the exception of those signs which temporarily advertise for sale, lease or rental a historic site or a historic resource located within the city, or which for a temporary period advertise a political viewpoint) on the exterior or on the environmental setting of any historic site or any historic resource located within the city.

(b) Nothing in this section shall be construed to require the issuance of a historic area work permit for any routine maintenance or repair of exterior features, any customary farming operations or any landscaping, which will have no material effect on historic resources located within the city, of which such features are a part. For the purposes of clarification of this section, the mayor and city council, in consultation with the historic district commission shall adopt, develop and publish standards and guidelines for the rehabilitation and new construction of designated sites that are consistent with those generally recognized by the Maryland

Historical Trust and that will be used by the historic district commission to review applications. In addition, these guidelines may include standards for the demolition and relocation of historic resources, and interpret and decide what activities constitute routine maintenance.

(c) Applicants for permits to demolish or substantially alter the exterior features of any historic site or historic resource located within the city are required to disclose its identification as such in writing on any application therefor.

(d) Work undertaken by the city or any other governmental entity or by any public utility or cable company within any historic district shall be subject to the provisions of this article; provided, however, in lieu of obtaining an individual certificate of approval for each activity in the district, the city or other governmental entity, or public utility or cable company may obtain a master certificate of approval from the historic district commission. A master certificate of approval shall be valid only for one year from the date of issuance, and for each historic district in which work is to be undertaken.

(e) An application for a work permit which is identical to a rejected application shall not be resubmitted within a period of one year after the rejection, including any appeals of the decision to reject. No permit for any such change may be granted until the commission has acted thereon, as hereinafter provided.

(Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-227.1. Historic area work permit; application procedure.

(a) *Generally.* Applications for issuance of a historic area work permit shall be filed with the city manager, or designee. The application shall be in a form and contain such information as may be required to provide information as shall be necessary for the historic district commission to evaluate and act upon such applications in accordance with the provisions of this article. Notwithstanding any other provision contained in this article, the city manager, or designee, may approve an application without referral or further approval for minor alterations or improvements which do not alter the design, historicity, archaeological or structural features of any historic building, structure, setting, if designated, or site.

(b) *Review and public meeting.* The historic district commission shall schedule and conduct a public meeting on the application, giving notice pursuant to subsection (c) below. The commission shall maintain minutes of its proceedings and a public file of all relevant correspondence, documents and other materials on the request for the historic area work permit.

(c) *Notice.* After scheduling a public meeting, notice thereof shall be accomplished by city staff, by ordinary mail, being given to property owners within two hundred (200) feet of the property, not less than seven (7) days prior to the meeting at which the matter is to be heard, and to those citizens or organizations which the city manager or designee determines may have an interest in the proceedings. In addition, notice shall be accomplished by posting an appropriate sign on the site and publication at least once, not less than seven (7) days prior to the meeting.

(d) *Action by historic district commission.*

- (1) The historic district commission may instruct the city manager or designee to:
 - a. Issue the permit.
 - b. Issue the permit subject to such conditions as are necessary to ensure conformity with the provisions and purposes of this article; or
 - c. Deny the permit.
- (2) In the event of a denial of a permit, the applicant shall receive a written notification of the reasons for such denial. An application which is identical to the denied application shall not be resubmitted within a period of one year after the denial or any appeal from such denial.
- (3) Failure of the historic district commission to act on a completed application within forty-five (45) days from the date the completed application was accepted for filing, or in the event the record is held open by the commission, within fifteen (15) days after the close of the record, shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five-day period is agreed upon mutually by the applicant and the commission or the application is withdrawn.

(e) If work on an approved project issuance has not been completed within two (2) years of the date of its issuance, or within time frames stated in the approval, the certificate of approval shall expire. A time extension for one more year is permissible through written request for extension to the historic district commission. If the extension is not approved, the historic area work permit becomes null and void.

(f) *Miscellaneous provisions.*

- (1) Properties subject to covenants or easements held by other historic preservation organizations shall submit proof of approval of exterior architectural review by the organizations holding the easement.
- (2) The commission may acquire easements in connection with individual sites or structures, or sites or structures located in or adjacent to a designated historic district to protect such structures or sites from changes which would affect its historic, archaeological or architectural significance. The city planning commission may condition an approval of a subdivision or site development plan upon a determination by the historic district commission as to whether such easement should be acquired.
- (3) Any permit issued by the city manager may be subject to such conditions imposed by the historic district commission as are reasonably necessary to assure that work in accordance with the permit shall proceed and be performed in a manner not injurious to those characteristics and qualities of the historic resource which are of historical, architectural, archaeological or cultural value.
- (4) In the event that there is a conflict between the permit and the requirements of the building code, the permit will control; provided, that all health and safety requirements are met.

(5) The city manager is responsible for the enforcement of this article. (Ord. No. O-12-96, 12-2-96; Ord. No. O-16-10, 8-2-2010, eff. 8-23-2010; Ord. No. O-23-10, 9-7-2010)

Sec. 24-227.2. Historic area work permits; criteria for decision.

(a) The historic district commission, in evaluating an application for a historic area work permit, shall consider and render its decision based on the following factors:

- (1) The preservation of the historic, archaeological, or architectural significance of the site or structure and its relationship to the historic, archaeological or architectural significance of the surrounding area;
- (2) Guidelines for rehabilitation and new construction design for designated sites, structures, and districts adopted by resolution of the mayor and city council, including criteria for construction, alteration, reconstruction, moving and demolition which are consistent with the Secretary of the Interior's *Standards for Rehabilitation*;
- (3) The relationship of the exterior architectural features of the structure to the remainder of the structure and surrounding area;
- (4) The general compatibility of the exterior design, scale, proportion, arrangement, texture and materials proposed to be used; and
- (5) Any other factors, including aesthetic factors, which the commission deems pertinent.

(b) In the case of an application for work on a historic resource, the commission shall be lenient in its judgment on plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural significance of surrounding historic resources. The historic district commission shall be strict in its judgment of plans for site or structures determined by research to be of historic, architectural or archaeological significance.

(c) Where the historic district commission deems a structure to be of unusual historic importance, it shall, prior to denial of a historic area work permit, attempt with the owner to formulate an economically feasible plan for its preservation. If no economically feasible plan can be formulated, the commission shall have ninety (90) days from the time it concludes that no economically feasible plan can be formulated to negotiate with the owner and other parties in an effort to find a means of preserving the structure. The ninety (90) day negotiating period may be extended only by mutual consent of all parties.

(d) Notwithstanding anything to the contrary contained in subsection (c) of this section, the commission may approve a historic area work permit if the structure is a deterrent to a major improvement program of substantial benefit to the public or its retention would either cause substantial financial hardship to the owner or its retention would not be in the best interests of the citizens in the community.

(e) The historic district commission shall consider only exterior features of a structure, and shall not consider any interior features or arrangements.

(f) Failure to adhere to or comply with the requirements or conditions of a historic area work permit or any other provision of this article shall be grounds for revocation or suspension of the permit by the city manager. In addition thereto, the penalties and actions provided for in section 24-232 may be instituted against an alleged violator.
(Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-227.3. Administrative approvals.

The historic district commission may identify categories of work that may be approved by designated staff from the department of planning and code administration provided that the work conforms with the adopted guidelines. Staff shall submit the list of approvals to the commission at each historic district commission meeting. Notice shall be provided by ordinary mail, being given to property owners within two hundred (200) feet of the property, not less than seven (7) days prior to the review. In addition, notice shall be accomplished by posting an appropriate sign on the site and publication at least once, not less than seven (7) days prior to the review. Applications processed administratively do not need to be scheduled for hearings, unless written comments are received in response to the required written notice during the public comment period.
(Ord. No. O-23-10, 9-7-2010)

Sec. 24-227.4. Courtesy reviews.

(a) The historic district commission may review and make recommendations to the planning commission on applications for site development plan approvals, including amendments and modifications thereto, involving the construction, reconstruction of, or additions to existing buildings or structures or demolition thereof on a site located within courtesy review areas as stated in the historic preservation master plan element. The courtesy review areas include, but are not limited to, Olde Towne as defined by section 24-161, and the subdivisions of Observatory Heights and Realty Park.

(b) The historic district commission shall provide such recommendations at the concept plan and final plan approval stages, or amendment to final approved plans, within twenty (20) days from filing of said development plans. The historic district commission recommendations shall provide, where relevant, analysis and comment upon the following matters:

- (1) Architectural compatibility, including such elements as signs, masonry and architectural details, width and height of buildings and structures, roof, door and window styles, and other elements contained within the adopted guidelines of the historic district commission; and
- (2) The effect or impact upon the preservation and protection of buildings, structures or districts designated historic; and
- (3) The effect or impact upon historic appurtenances and environmental settings related to (b) above.

(Ord. No. O-23-10, 9-7-2010; Ord. No. O-12-11, 10-3-2011)

Sec. 24-228. Historic district commission recommendations on impact review areas.

(a) The historic district commission may review and make recommendations to the Planning Commission on applications for site development plan approvals, including amendments and modifications thereto, involving the construction, reconstruction of, or additions to existing buildings or structures or demolition thereof, or the erection, modification or removal of fences, signs, and trees on a site located within an impact review area, as defined in this section.

(b) The historic district commission shall provide such recommendations at the concept plan and final plan approval stages, or amendment to final approved plans, within twenty (20) days from filing of said development plans. The historic district commission recommendations shall provide, where relevant, analysis and comment upon the following matters:

- (1) Architectural compatibility, including such elements as signs, masonry and architectural details, width and height of buildings and structures, roof, door and window styles, and other elements contained within the adopted guidelines of the historic district commission; and
- (2) The effect or impact upon the preservation and protection of buildings, structures or districts designated historic; and
- (3) The effect or impact upon historic appurtenances and environmental settings related to (b) above.

Failure to provide the recommendation within the time set forth above shall be deemed a waiver of the requirement unless additional time for such recommendation is consented to by the applicant.

(c) The historic district commission may waive the requirement of providing the recommendations required by this section upon a finding by city staff of no significant adverse impacts upon any historic building, structure, site, resource, district or appurtenance, or environmental settings connected therewith.

(d) The term "impact review area" is defined as that area adjoining the perimeter boundaries of any historic district, historic site or resource which is determined by resolution of the mayor and city council and which shall be reflected upon the zoning maps of the city. (Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-229. Relocation of utility and cable facilities within historic districts.

The city council may enact by ordinance a requirement that utility and cable companies relocate underground, existing overhead lines and facilities within the defined part of the historic district or the entire historic district, and requiring the connection thereto to be placed underground, if necessary, by private owners then receiving service from the overhead lines and facilities. The ordinance shall provide:

- (a) The estimated cost to property owners for work to be performed on private property be determined and made available to affected property owners;

- (b) Financing of these costs to private owners be provided, including any charges for the amortization of bonds issued to initially cover such private costs. The city may enter into agreement with individual property owners whereupon it will advance funds to cover the property owner's costs involved in the conversion of the overhead lines and facilities, and may appropriate funds, levy taxes or assessments, or borrow funds to pay and advance the costs of such conversion. The city may also impose a benefit assessment against the property in the historic district for which the conversion is made in order to recapture such expended costs and make appropriate provisions for the collection thereof; and
- (c) Any other provisions reasonably related to the objective of placing underground, overhead lines and facilities, and the administration of such projects.
- (Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-230. Demolition by neglect.

In the event of a case of demolition by neglect of a historic resource on public or private property, the following provisions shall apply:

If the historic resource has been designated a historic site or a historic resource, the city manager shall issue a written notice to all persons of record with any right, title or interest in the subject property, or the person occupying the premises, of the conditions of deterioration and shall specify the minimum items of repair or maintenance necessary to correct or prevent further deterioration. The notice shall provide that corrective action shall commence within thirty (30) days of the receipt of such notice and completed within a reasonable time thereafter. The notice shall state that the owner of record of the subject property or any person of record with any right, title or interest therein may, within ten (10) days after the receipt of such notice, request a meeting with the city manager on the necessity of the items and conditions contained in such notice. In the event a meeting is requested, it shall be held by the city manager upon written notice mailed to all persons of record with any right, title or interest in the subject property and to the planning commission and historic district commission, and any other person that the city manager feels may have an interest in the proceedings.

After such meeting on the issue of necessity of improvements to prevent demolition by neglect, if the city manager finds that such improvements are necessary, he shall issue a final notice to be mailed to the record owners and all parties of record with any right, title and interest in the subject property, advising of the items of repair and maintenance necessary to correct or prevent further deterioration. The owners shall institute corrective action to comply with the final notice within thirty (30) days of receipt of the revised notice.

In the event the corrective action specified in the final notice is not instituted within the time allotted, the city manager may institute, perform and complete the necessary remedial work to prevent deterioration by neglect, and the expenses, including administrative, legal, corrective and compensatory expenses, incurred by the city for such work, labor and materials shall be a lien against the property and draw interest at the same rate as delinquent property

taxes, the amount to be amortized over a period of ten (10) years subject to a public sale if there is a default in payment; or, in the alternative, the city may seek equitable relief in any court of competent jurisdiction to compel such corrective action.

(Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-231. Moratorium on alteration or demolition.

(a) Where the historic district commission determines that any site, group of sites, structure or object is undergoing active consideration as a historic district, historic site or historic resource, or has the reasonable probability of being so designated or has been so designated, it may direct the city manager to withhold issuance of any permit to demolish, grade or substantially alter the exterior features of any such site, structure or object. The city manager shall withhold such permit for a maximum of six (6) months from the date of the directive of the commission.

(b) The commission may withdraw its directive to the city manager if it determines that failure to grant the permit applied for will have the effect of denying the property owner all reasonable use of his property or would cause the property owner to suffer undue hardship. (Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010)

Sec. 24-232. Violations and penalties.

Any person who violates a provision of this article, or fails to comply with any of the requirements thereof, or disobeys or disregards a decision of the historic district commission or city manager, or fails to abide by the conditions of a permit, shall be guilty of a misdemeanor, punishable as provided in section 1-7 of this Code.

In addition thereto, the city may institute injunctive or other appropriate action or proceedings at law or equity for the enforcement of this chapter or to correct violations of this chapter, and any court of competent jurisdiction shall have the right to issue restraining orders, injunctions or other appropriate forms of remedy or relief.

(Ord. No. O-12-96, 12-2-96)

Sec. 24-233. Appeals.

In the event that any party is aggrieved by a decision of the historic district commission within seventeen (17) days from the date on which the decision is made public, such party aggrieved may appeal the same to the city board of appeals within the time provided by, and the requirements of, Article VII of this Chapter 24, and thereafter, to the circuit court of the county, which will review the decision based on the record of the proceedings before the historic district commission. Appeals shall be governed by the Maryland Rules of Procedure applicable to administrative appeals.

(Ord. No. O-12-96, 12-2-96; Ord. No. O-23-10, 9-7-2010; Ord. No. O-12-11, 10-3-2011)



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NOTICE OF JOINT PUBLIC HEARING

The Mayor and City Council and the Planning Commission of the City of Gaithersburg, Maryland, will conduct a joint public hearing on Zoning Ordinance Text Amendment CTAM-7359-2016 on

**MONDAY
AUGUST 1, 2016
AT 7:30 P.M.**

or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.

The amendment proposes to amend Chapter 24 (City Zoning Ordinance), of the City Code, Article XII, § 24-224, entitled "Definitions"; § 24-225.1 entitled "Powers and Duties of Historic District Commission"; § 24-226 entitled "Designation of Historic Districts and Historic Sites; Criteria"; and § 24-231, entitled "Moratorium on Alteration or Demolition"; and to Add § 24-233.1, entitled "Undue Economic Hardship." The purpose of the text amendments are to remove a repeated definition, update a legal reference, codify a process to remove designation, codify a process to demolish a non-designated building more than fifty (50) years old, and add a provision for undue economic hardship.

Further information may be obtained from the Planning and Code Administration Department at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday, or visit the City's website at:

<http://www.gaithersburgmd.gov/government/city-projects>.

Chris Berger, Planner
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Planning and Code Administration