



**Committee:** PHP  
**Committee Review:** Completed  
**Staff:** Livhu Ndou, Legislative Attorney  
**Purpose:** Final action – vote expected  
**Keywords:** #FentonVillage(FV)OverlayZone #SitePlan

AGENDA ITEM #2C  
December 12, 2023  
**Action**

## SUBJECT

Zoning Text Amendment (ZTA) 23-06, Fenton Village (FV) Overlay Zone – Site Plan Lead Sponsors: then Council President Glass and Councilmember Stewart

## INVITED ATTENDEES

- Lisa Govoni, Supervisor, Housing, Infrastructure and Zoning Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Planning, Housing, and Parks (PHP) Committee unanimously recommends approval without amendment.
- Roll call vote expected.

## DESCRIPTION/ISSUE

ZTA 23-06 will remove the site plan requirement for certain projects in the Fenton Village (FV) Overlay Zone.

## SUMMARY OF KEY DISCUSSION POINTS

- Under the current zoning ordinance, site plan approval is required for any development in the Fenton Village (FV) Overlay Zone. ZTA 23-06 will exempt minor developments from site plan approval. This exemption will include any addition, reconstruction, or exterior alteration that is one-story, up to a maximum of 15 feet, and/or that changes the gross floor area by less than 1,000 square feet. The minimum setbacks in the underlying zone will also need to be met.
- A PHP Committee worksession was held on December 11, 2023. The Committee unanimously recommended approval.

### This report contains:

ZTA 23-06	© 1
Planning Board Recommendation	© 4
Planning Staff Memorandum	© 6
Climate Assessment	© 12
RESJ Impact Statement	© 16

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**M E M O R A N D U M**

December 11, 2023

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 23-06, Fenton Village (FV) Overlay Zone – Site Plan

PURPOSE: Action

<p><b>Planning, Housing, and Parks (PHP) Committee Recommendation (3-0):</b> Approval without amendment</p>
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**Invited Attendees**

- Lisa Govoni, Supervisor, Housing, Infrastructure and Zoning Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department

**Introduction**

Zoning Text Amendment (ZTA) 23-06, Fenton Village (FV) Overlay Zone – Site Plan, lead sponsors then Council President Glass and Councilmember Stewart, was introduced on October 17, 2023. ZTA 23-06 will remove the site plan requirement for certain projects in the Fenton Village (FV) Overlay Zone.

**Public Hearing**

A public hearing was held on November 28, 2023. The Planning Board testified in support of the ZTA as introduced.

**Summary of Impact Statements**

***Planning Board Recommendation***

On November 16, 2023, the Planning Board unanimously recommended approval of ZTA 23-06 without amendment. The Planning Board noted that this ZTA “proposes reasonable regulatory relief from small building modifications that would have minimal to no impact on compatibility with adjacent development.”

## ***Climate Assessment***

The Planning Department’s Climate Assessment notes the following:

- ZTA 23-06 will result in “slight and indeterminant negative greenhouse gas emissions and sequestration rates.” The assessment notes that these increases are below what is allowed under existing zoning in the master plan and that all underlying zoning requirements and energy efficient building standards will apply.
- It is “possible that new construction may result in the loss of green lawns and trees which will have slight and limited impacts on Silver Springs sequestration and drawdown capacities.”
- ZTA 23-06 will result in “slightly positive impact on community resilience and adaptive capacity factors” because “[if] amended this ZTA will allow small business owners to avert the arduous and expensive site plan submittal process. It would encourage small business expansion in downtown Silver Spring resulting in increased community resources and benefits, reduced transportation demand, local jobs and enhance economic opportunities.”
- ZTA 23-06 “does not involve any GHG or sequestration activities that relate to the GHG reduction and sequestration actions from the County’s Climate Action Plan.”

## ***RESJ Impact Statement***

The Office of Legislative Oversight (OLO) provided a Racial Equity and Social Justice (RESJ) Impact Statement on November 1, 2023. OLO found that they “cannot discern the anticipated impact of ZTA 23-06, Fenton Village (FV) Overlay Zone-Site Plan on racial equity and social justice (RESJ) in the County with available data.” OLO noted that the primary beneficiaries of ZTA 23-06 would be “building owners, contractors, developers, and the Planning Department, will benefit from ZTA 23-06 as it reduces the costs and time required to process minor developments exempted in Fenton Village.” OLO noted that “Black, Indigenous, and other People of Color (BIPOC) investors, especially Black investors, are under-represented among commercial property owners as they often have less wealth needed to start businesses than White investors.” However, OLO concluded that they “cannot discern the anticipated RESJ impact of ZTA 23-06 as demographic data regarding who owns nonresidential commercial buildings in Fenton Village that would benefit from this ZTA are not available.”

## **Discussion**

### ***Background***

The Fenton Village (FV) Overlay Zone was first established as part of the 2000 Silver Spring Central Business District (CBD) Sector Plan.<sup>1</sup> In that plan, this overlay zone was intended to “continue as a transitional mixed-use neighborhood of retail, residential, and office uses.” The

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<sup>1</sup> In September 2022, the District Council approved ZTA 22-03, Overlay Zone – Downtown Silver Spring (DSS). This ZTA made changes to the FV Overlay Zone, including removing outdated references, clarifying the major highway and roads, updating the development standards consistent with the CR zone, and streamlining open space requirements.

proposed zoning at the time allowed increased density, expanded uses, open space transfer incentives, and specific building heights. While increasing flexibility, the FV Overlay Zone was also concerned with ensuring new development was consistent with nearby uses, and thus required site plan approval for all development in the overlay zone.

### *Analysis*

Since 2000, several properties have been interested in minor expansions to existing structures. Despite the small scale of these projects, site plan review has been required due to the language in the Zoning Ordinance. ZTA 23-06 will remove the site plan requirement under certain conditions. This will include any addition, reconstruction, or exterior alteration that is one-story, up to a maximum of 15 feet. In addition, the addition, reconstruction, or exterior alteration must change the gross floor area by less than 1,000 square feet. Of note, any addition, reconstruction, or exterior alteration will be limited by the fact that the minimum setbacks in the underlying zone will need to be met. As noted by Planning Staff in its report, these limits on building height and gross floor area will provide flexibility to applicants while protecting adjacent owners and residents. Planning and Council Staff agree that this ZTA would not change the intent or physical characteristics of the FV Overlay Zone.

### **Committee Recommendation**

The Planning, Housing, and Parks (PHP) Committee held a worksession on this ZTA on December 11, 2023.<sup>2</sup> The Committee unanimously recommended approval of ZTA 23-06 without amendment.

#### This packet contains:

ZTA 23-06	© 1
Planning Board Recommendation	© 4
Planning Staff Memorandum	© 6
Climate Assessment	© 12
RESJ Impact Statement	© 16

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<sup>2</sup> The PHP worksession was originally scheduled for December 4, 2023.

Ordinance No.: \_\_\_\_\_  
Zoning Text Amendment No.: 23-06  
Concerning: Fenton Village (FV)  
Overlay Zone – Site Plan  
Revised: 12/06/2023 Draft No.: 2  
Introduced: October 17, 2023  
Public Hearing: November 28, 2023  
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**

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Lead Sponsors: then Council President Glass and Councilmember Stewart

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- (1) remove the site plan requirement for certain projects in the Fenton Village (FV) Overlay Zone; and
- (2) generally amend the development standards for the Fenton Village (FV) Overlay Zone.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 4.9.           “Overlay Zones”  
Section 4.9.9.        “Fenton Village (FV) Overlay Zone”

**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:*

**Sec. 1. DIVISION 59-4.9 is amended as follows:**

**Division 4.9. Overlay Zones**

\* \* \*

**Section 4.9.9. Fenton Village (FV) Overlay Zone**

\* \* \*

**C. Site Plan**

Site plan approval under Section 7.3.4 is required for any development in the FV Overlay zone, except for any addition, reconstruction, or exterior alteration that is one-story, up to a maximum of 15 feet, and that changes the gross floor area by less than 1,000 square feet and meets the minimum setbacks in the underlying zone.

\* \* \*

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



**November 22, 2023**

**To:** The Honorable Evan Glass  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

**From:** Montgomery County Planning Board

**Subject:** Zoning Text Amendment 23-06, Fenton Village Overlay Zone – site plans

### **BOARD RECOMMENDATION**

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on November 16, 2023, and by a vote of 5:0 recommended support for Zoning Text Amendment (ZTA) 23-06 as introduced. This ZTA would amend the site plan requirements for development projects in the Fenton Village Overlay to exempt certain small additions and modifications from requiring a site plan application.

Currently, the Fenton Village Overlay Zone requires site plan approval for any development activity within the overlay zone. Typically, in CR zones, site plans are not required unless the development is adjacent to residential zones, or if the application exceeds a floor area ratio of 0.5. The more restrictive requirement in the Fenton Village Overlay Zone was established with the onset of the overlay zone following the 2000 Silver Spring CBD Sector Plan, which has recommendations to allow more flexibility in development standards in exchange for more stringent requirements for compatibility, height, and design elements. Recently, property owners looking to do minor expansions to existing commercial properties have raised concerns that the site plan process is overly burdensome for such small changes.

This ZTA would exempt additions, reconstructions, or exterior alterations that are up to one-story and 15 feet in height, and change the gross floor area by less than 1,000 square feet. The Board agrees that this ZTA proposes reasonable regulatory relief from small building modifications that would have minimal to no impact on compatibility with adjacent development and recommends adoption of the ZTA as introduced.

The Board also reviewed the Climate assessment prepared by Planning staff for ZTA 23-06. The assessment found there may be indeterminant, negative impacts to greenhouse gas emissions and sequestration, if the effect of the ZTA is to increase construction within the overlay zone above what it would have been without the ZTA. The actual impact is negligible compared to the county's greenhouse gas emissions as a whole. There also may be a slight positive impact on community resilience and adaptive



capacity measures since this ZTA may aid in modest business expansion creating local jobs and economic opportunities.

The Planning Board appreciates the opportunity to review ZTA 23-06 and recommends the District Council adopt the zoning changes. Planning staff is available to assist if the Council has any questions.

### **CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, November 16, 2023.



**Artie L. Harris**  
Chair

Attachments:

A - Planning Board Staff Packet

FENTON VILLAGE OVERLAY ZONE – SITE PLANS



Description

This ZTA modifies the site plan requirements of the Fenton Village Overlay Zone to exempt certain small modifications that are one-story, up to 15 feet in height, less than 1,000 square feet in size and still meet the setbacks of the zone.

ZTA 23-06

Completed: 11-09-2023

MCPB

Item No. 11

11-16-2023

Montgomery County

Planning Board

2425 Reedie Drive, Floor 14

Wheaton, MD 20902

## Planning Staff



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### ZTA SPONSORS

Lead Sponsor:  
Council President Glass  
Councilmember Stewart

### INTRODUCTION DATE

October 17, 2023

### REVIEW BASIS

Chapter 59



### Summary:

- Currently, any development or development amendment in the Fenton Village Overlay Zone requires a site plan approval
- ZTA 23-06 would allow certain, small scale modifications that are under 15 feet in height and less than 1,000 square feet in size to be exempt from site plan requirements

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## SECTION 1: BACKGROUND

### RATIONALE FOR INTRODUCTION

Zoning Text Amendment (ZTA) 23-06, Fenton Village (FV) Overlay Zone – site plan, was introduced by Council President Glass and co-sponsored by Councilmember Stewart on October 17, 2023 (Attachment A). The ZTA is scheduled for a District Council Public Hearing on November 28th. The ZTA modifies the site plan requirements within the Fenton Village Overlay Zone to exempt small modifications and additions from having to go through the site plan process. The Fenton Village overlay zone was established as a recommendation of the 2000 Silver Spring CBD Sector Plan which wanted to allow more flexibility in the development standards and range of permitted uses, while ensuring compatibility of new uses through limits on height and design elements. Requiring all sites developed or modified in Fenton Village to go through site plan was one mechanism enacted to ensure this. Fenton Village and its corresponding overlay zone were looked at as part of the 2022 Silver Spring Downtown and Adjacent Communities Plan. That plan did make some modifications to the Fenton Village Overlay Zone, largely to remove provisions for uses and open spaces that were less relevant as a result of the CR zoning that was implemented in the area.

Since the passage of the 2022 Silver Spring Downtown and Adjacent Communities Plan, there have been a few properties in Fenton Village that have wanted to do small expansions to existing structures to accommodate expanded restaurant and entertainment uses. These requests have been very small in scale, but because of the existing overlay zone language, would still require a site plan review to proceed. This ZTA was introduced to address the burden the site plan process places on small modifications and expansions.

## SECTION 2: ZTA 23-06 AS INTRODUCED

### ZTA NO. 23-06 AS INTRODUCED

ZTA 23-06 modifies subsection 59-4.9.9.C. Site Plan, in the Fenton Village (FV) Overlay Zone by making the following addition:

#### **C. Site Plan**

Site Plan approval under Section 7.3.4 is required for any development in the FV Overlay zone, except for any addition, reconstruction, or exterior alteration that is one-story, up to a maximum of 15 feet, and that changes the gross floor area by less than 1,000 square feet and meets the minimum setbacks in the underling zone.

## SECTION 3: ZTA ANALYSIS AND RECOMMENDATIONS

### ZTA 23-06 ANALYSIS AND RECOMMENDATIONS

Planning staff recommends the Planning Board support ZTA 23-06 as introduced. The ZTA language will exempt small modifications and additions from the site plan process. Limits on building height and area of expansion provide both reasonable flexibility to potential applicants and reasonable protections to adjacent owners and residents. This is a reasonable means of providing relief to small applicants without significantly impacting the intent of the overlay zone or the physical characteristics of Fenton Village.

## SECTION 4: LEGISLATED ANALYSIS

### 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 upon community resilience and adaptive capacity. The climate impact assessment for ZTA 23-06 is attached in Attachment B.

The ZTA is anticipated to have indeterminate negative greenhouse gas emissions and sequestration rates that are insignificant compared to the county's overall greenhouse emissions, and which would only be realized if this ZTA were to increase the likelihood of redevelopment activities. There are anticipated slightly positive impacts on community resilience and adaptive capacity factors because this ZTA would enable small business owners to avoid an often expensive site plan review process, encouraging business expansion, which could increase community resources, local jobs, and economic opportunities.

### RACIAL EQUITY AND SOCIAL JUSTICE (RESJ)

As of the posting of this staff report, the Office of Legislative Oversight has not completed a Racial Equity and Social Justice analysis for ZTA 23-06.

## SECTION 5: CONCLUSION

Planning staff recommends the Planning Board support ZTA 23-06 as introduced. This ZTA removes the site plan requirements for small applications that propose modifications or additions that are 15 feet in height and under 1,000 square feet in size. This is a reasonable change to provide applicants

flexibility while holding to the intent of scale and compatibility from the Fenton Village Overlay Zone and the 2022 Silver Spring Downtown and Adjacent Communities Plan.

## ATTACHMENTS

*Attachment A: Zoning Text Amendment 23-06 Intro Packet*

*Attachment B: Climate Assessment 23-06*

# Montgomery Planning

## CLIMATE ASSESSMENT FOR 23-06, FENTON VILLAGE

### PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the county's contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs, at the county level. The scope of the Climate Assessments is limited to addressing climate change, specifically the effect of land use recommendations in master plans and ZTAs on greenhouse gas (GHG) emissions and sequestration, and how actions proposed by master plans and ZTAs could improve the county's adaptive capacity to climate change and increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed master plans and ZTAs may impact GHG emissions and community resilience.

### SUMMARY

Montgomery Planning anticipates that ZTA 23-06, Fenton Village Overlay Zone will result in very slight and indeterminate impacts on the county's goals of addressing greenhouse gas emissions, carbon sequestration, and the resilience and adaptive capacity to our communities. ZTA 23-06 will remove site plan submittal requirements for projects under 1,000 square feet within the Fenton Village Overlay Zone located within the boundaries of the Silver Spring Downtown and Adjacent Communities Plan. Due to the large size of most existing buildings and lot sizes, this submittal exemption would apply to only a few properties within the overlay zone. Carbon impacts associated with 1,000 square feet of new construction will be slight in relation to the local and county's overall carbon footprint and sequestration rates. There will be an indeterminate yet slightly positive benefit on several community adaptive capacity-related variables. It is unknown but likely that there will be improved building energy efficiency, enhanced commercial and community vibrancy, and increased economic development in underdeveloped portions of the Plan area.

The focus of this assessment is on how the ZTA may impact GHG emissions and community resilience.



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## BACKGROUND AND PURPOSE OF ZTA 23-06

Zoning Text Amendment (ZTA) 23-06, Fenton Village (FV) Overlay Zone – site plan, was introduced by Council President Glass and co-sponsored by Councilmember Stewart on October 17, 2023. The Fenton Village overlay zone was established as a recommendation of the 2000 Silver Spring CBD Sector Plan which wanted to allow more flexibility in the development standards and range of permitted uses, while ensuring compatibility of new uses through limits on height and design elements. Requiring all sites developed or modified in Fenton Village to go through site plan was one mechanism enacted to ensure this. Recently there have been a few properties in Fenton Village that have wanted to do small expansions to existing structures to accommodate expanded restaurant and entertainment uses. These requests have been very small in scale, but because of the existing overlay zone language, would still require a site plan review to proceed. This ZTA was introduced to address the burden the site plan process places on small modifications and expansions.

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## VARIABLES THAT COULD AFFECT THE ASSESSMENT

### CLIMATE-RELATED VARIABLES

The following variables were identified in Tables 1 and 8 of the *Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County*.

#### **GHG Emissions and Sequestration Checklist of Variables.**

##### **Greenhouse Gas:**

- Building embodied emissions: New additions will incur embodied emissions from new construction and/or deconstruction of existing buildings.
- Pavement infrastructure: It is ‘possible’ that new construction will increase impervious cover if the additions are placed in areas that are now in green cover.
- Material waste produced: New construction may require the deconstruction of existing build materials.

##### **Energy Related.**

- Electricity usage: New buildings will require energy use.
- Stationary fuel usage: New buildings will require energy use.

##### **Land Coverage Change.**

- Area of non-forest tree canopy: It’s possible that a few trees will be lost during new construction as the properties within the Fenton Village Overlay Zone impacted by this ZTA would likely qualify for a Forest Conservation Exemption under Chapter 22A-5(t) of the Forest Conservation Law. This exemption provides protection for areas of forest cover but does not include protection or mitigation for impact to individual trees.
- Area of green cover: It’s possible to have loss in lawn cover.

#### **Community Resilience and Adaptive Capacity Checklist of Variables.**

### Exposure-Related Factors.

- Activity in Urban Heat: New buildings could contribute to urban heat if they replace green cover or have darker surfaces than existing impervious surfaces.

### Sensitivity-Related Factors

- Change to non-forest tree canopy: Its possible individual trees will need to be removed for construction.
- Change to quality or quantity of other green areas: Its possible lawn will be lost due to construction.
- Change to impacts of heat: Its possible new buildings will increase urban heat island.
- Change in perviousness: Its possible new construction will increase impervious cover.

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## ANTICIPATED IMPACTS

### GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

Montgomery Planning anticipates ZTA 23-06 will result slight and indeterminant negative greenhouse gas emissions and sequestration rates. These increases are far below what would otherwise be allowed under the existing zoning within the master plan and all exclusions to site plan submittal must still meet underlying zoning requirements and energy efficient building standards. Relative to what is allowed under the current zone, the ZTA carbon and sequestration impacts for building construction less than 1,000 square feet is minimal. There will be slight embodied carbon emissions from material use, waste, and disposal during construction, and slight carbon emissions associated with energy demands for heating and cooling of new buildings.

It is possible that new construction may result in the loss of green lawns and trees which will have slight and limited impacts on Silver Springs sequestration and drawdown capacities.

### COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

Montgomery County Planning anticipates ZTA 23-06 to result in slightly positive impact on community resilience and adaptive capacity factors. If amended this ZTA will allow small business owners to avert the arduous and expensive site plan submittal process. It would encourage small business expansion in downtown Silver Spring resulting in increased community resources and benefits, reduced transportation demand, local jobs and enhance economic opportunities.

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## RELATIONSHIP TO GREENHOUSE GAS REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-06 does not involve any GHG or sequestration activities that relate to the GHG reduction and sequestration actions from the County's Climate Action Plan.

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## RECOMMENDED AMENDMENTS

Planning staff does not have any recommended climate-related amendments to ZTA 23-06 because it will likely result in unpredictable minor to insignificant impacts on the County’s greenhouse gas emissions and sequestration goals. It does not offer additional opportunities for enhancing positive climate change impacts as it will not have to implement Green Cover recommendations in the master plan, protect individual trees, or provide replacement plantings per the applicable requirements of the Forest Conservation Laws. However, as noted, there will be slightly positive community adaptive benefits by increasing local business expansion, resources, jobs, reduced travel demands, and social gatherings opportunities.

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## SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-06 was prepared using the methodology (Tables 1, 2, and 8, in particular) for ZTAs contained within the [\*Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022\*](#).

# Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

## ZTA 23-06: FENTON VILLAGE (FV) OVERLAY ZONE – SITE PLAN

### SUMMARY

The Office of Legislative Oversight (OLO) cannot discern the anticipated impact of ZTA 23-06, Fenton Village (FV) Overlay Zone-Site Plan on racial equity and social justice (RESJ) in the County with available data.

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### PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.<sup>1</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.<sup>2</sup>

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### PURPOSE OF ZTA 23-06

The purpose of ZTA 23-06 is to remove the site plan requirement for certain projects in the Fenton Village (FV) Overlay Zone exempting minor developments from site plan approval. This exemption will include any addition, reconstruction, or exterior alteration that is one-story, up to a maximum of 15 feet, and/or that changes the gross floor area by less than 1,000 square feet. The minimum setbacks in the underlying zone will also need to be met.<sup>3</sup>

ZTA 23-06 was introduced on October 17, 2023.

Of note, this RESJ impact statement (RESJIS) builds on the RESJIS for Expedited Bill 29-21, Contracts and Procurement – Minority-Owned Businesses – Sunset Date – Amendments, published on September 13, 2021,<sup>4</sup> and the RESJIS for Bill 38-21, Economic Development Fund – Local Business Child Care Grant Program – Established, published on November 15, 2021.<sup>5</sup> Refer to these RESJIS for background on entrepreneurship, economic development, and racial equity.

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### COMMERCIAL REAL ESTATE AND RACIAL EQUITY

Nonresidential commercial real estate generated \$512 billion in revenue in 2020.<sup>6</sup> Yet, Black, Indigenous, and other People of Color (BIPOC) investors, especially Black investors, are under-represented among commercial property owners as they often have less wealth needed to start businesses than White investors. As noted by the Brookings Institute:<sup>7</sup>

- Only three percent of Black households own nonresidential commercial real estate, compared to eight percent of White households.
- Among households that own commercial real estate, the average value of the real estate owned by White households was \$34,000 compared to \$3,600 for Black households.

Racial disparities in commercial real estate ownership are rooted in the legacy of racism. As noted by the Federal Reserve Bank of Boston:<sup>8</sup>

# RESJ Impact Statement

## Zoning Text Amendment 23-03

“(T)he practices and policies that laid the groundwork for and built the U.S. were explicitly designed to ensure an absolute accumulation of intergenerational wealth and concentrated power for white people, particularly men. A legacy of land theft, slavery, racial segregation, disenfranchisement, and other exclusive policies against Black and Indigenous people and people of color produced a racialized economy that decimated these communities and intentionally barred survivors and descendants from building wealth, socioeconomic well-being, and resilience.”

Current inequities in policies and practices also adversely impact BIPOC entrepreneurs. These include racial disparities in educational attainment, personal wealth, access to mainstream capital, and exposure to entrepreneurship in family and social networks.<sup>9</sup> They also include disparities by race and ethnicity in access to credit with Black- and Latinx-owned businesses more likely to have been denied credit, to receive only a portion of the funding requested, or to refrain from applying for needed funding out of fear their applications will be rejected.<sup>10</sup> Further, many businesses owned by Black and Latinx Americans still lack access to capital and technical assistance needed to qualify for commercial loans.<sup>11</sup>

### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 23-06 on racial equity and social justice, OLO considers two related questions:

Figure 1: Silver Spring Downtown and Adjacent Communities Plan<sup>12</sup>



- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

OLO anticipates that building owners, contractors, developers, and the Planning Department, will benefit from ZTA 23-06 as it reduces the costs and time required to process minor developments exempted in Fenton Village.

OLO, however, cannot discern the anticipated RESJ impact of ZTA 23-06 as demographic data regarding who owns nonresidential commercial buildings in Fenton Village that would benefit from this ZTA are not available. Thus, the anticipated impact of ZTA 23-06 on RESJ in the County is indeterminate.

# RESJ Impact Statement

## Zoning Text Amendment 23-03

### RECOMMENDED AMENDMENTS

Bill 44-20 amending the County's Racial Equity and Social Justice Act<sup>13</sup> requires OLO to consider whether recommended amendments aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements for zoning text amendments. OLO cannot discern the anticipated impact of ZTA 23-06 on RESJ in the County with available data. As such, OLO does not offer recommended amendments.

### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

### CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

<sup>1</sup> Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

<sup>2</sup> Ibid

<sup>3</sup> Ndou, Livhu. Montgomery County Council, Agenda Item #3A, October 17, 2023

[https://montgomerycountymd.granicus.com/MetaViewer.php?view\\_id=169&event\\_id=15931&meta\\_id=165992](https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&event_id=15931&meta_id=165992)

<sup>4</sup> RESJIS for Expedited Bill 29-21, Contracts and Procurement – Minority-Owned Businesses – Sunset Date – Amendments, Montgomery County Office of Legislative Oversight, September 13, 2021

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill29-21RESJ.pdf>

<sup>5</sup> RESJIS for Bill 38-21, Economic Development Fund – Local Business Child Care Grant Program – Established, Montgomery County Office of Legislative Oversight, November 15, 2021

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill38-21.pdf>

<sup>6</sup> Loh, Tracy and Perry, Andre. 2022. Commercial Real Estate Has an Equity Problem, City Lab Economy-Bloomberg. July 13.

[https://www.bloomberg.com/news/articles/2022-07-13/commercial-real-estate-has-an-equity-problem?utm\\_medium=social&utm\\_content=citylab&utm\\_source=twitter&utm\\_campaign=socialflow-organic](https://www.bloomberg.com/news/articles/2022-07-13/commercial-real-estate-has-an-equity-problem?utm_medium=social&utm_content=citylab&utm_source=twitter&utm_campaign=socialflow-organic)

<sup>7</sup> Rothwell, Jonathan, Tracy Hadden Loh, and Perry, Andre M: 2022. The Devaluation of Assets in Black Neighborhoods: The Case of Commercial Property. Brookings. July 11.

<https://www.brookings.edu/articles/the-devaluation-of-assets-in-black-neighborhoods-the-case-of-commercial-property/>

<sup>8</sup> Field Note, 2020-2, December 2020 – Turning the Floodlights on the Root Causes of Today's Racialized Economic Disparities: Community Development Work at the Boston Fed Post-2020, Regional and Community Outreach

<sup>9</sup> Stephen Roblin, COVID-19 Recovery Outlook: Minority-Owned Businesses, Office of Legislative Oversight, September 21, 2020

<sup>10</sup> Alicia Robb, "Minority-Owned Employer Businesses and their Credit Market Experiences in 2017," Office of Advocacy U.S. Small Business Administration, July 22, 2020 cited by Stephen Roblin

<sup>11</sup> Osemwengie, Prince, Hanna Love, and Tracy Hadden Loh. 2023. Five ways city leaders can support Black entrepreneurs' efforts to 'buy back the block', Brookings. January 9.

<https://www.brookings.edu/articles/five-ways-city-leaders-can-support-black-entrepreneurs-efforts-to-buy-back-the-block/>

<sup>12</sup> Montgomery Planning. 2022. Approved and adopted Silver Spring Downtown and Adjacent Communities Plan. June.

<https://montgomeryplanning.org/wp-content/uploads/2022/11/Silver-Spring-DAC-Approved-Adopted-web.pdf>

<sup>13</sup> Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020.

[https://apps.montgomerycountymd.gov/cclims/DownloadFilePage?FileName=2682\\_1\\_12149\\_Bill\\_44-20\\_Signed\\_20201211.pdf](https://apps.montgomerycountymd.gov/cclims/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf)