CITY OF ROCKVILLE PLANNING DIVISION
STAFF REPORT
July 2, 2009

SUBJECT: **Text Amendment TXT2009-00221**
Corrections and Clarifications to the Comprehensive Revision of the City Zoning Ordinance, adopted December 15, 2008

Applicant: Mayor and Council of Rockville

BACKGROUND

On December 15, 2008 the Mayor and Council adopted a comprehensive revision to the City's Zoning Ordinance, being Chapter 25 of the City Code. This action followed several years of work by the City staff, Planning Commission, and Mayor and Council to develop these revisions. In reviewing the text as adopted, staff has noted several additions and corrections that need to be made to the adopted text. These are essentially technical in nature, involving mostly typographic errors. The City Attorney advises that these types of corrections can only be made via a formal text amendment. Other modifications for purposes of formatting and preparation for final publication, do not need text amendment approval since the language itself is not changing.

ANALYSIS

Within the text amendment are a number of changes involving the usage of the percent (%) sign. By convention, the symbol should not be used in the body of the text; the word "percent" should be spelled out. There are a number of these changes shown in the body of the proposed amendment. These changes are not specifically identified below.

Also, when the final version of the revised Zoning Ordinance text is adopted, the locations where the term [effective date] appears will have the March 16, 2009 date inserted.

Finally, language has been added into the Zoning Ordinance that currently appears in Chapter 5, the Building Code. These provisions regarding building restriction lines appear to be out of place in Chapter 5, since they essentially regulate the placement of buildings and signs within these areas. The new language appears in Article 17.

The following is a summary of the recommended changes to the text:

In the Table of Contents, the reference to the Landscaping, Lighting and Screening Manual has been deleted. This document was included with the various drafts of the proposed Zoning Ordinance for convenience sake, but it is now a separate document approved by resolution, and is not a part of the Zoning Ordinance itself.

Section 25.01.04 – A new subsection b has been added at the recommendation of the Legal department that allows for some flexibility in approving projects where time or circumstances have overtaken the requirement for consistency with the master plan.

Section 25.01.06 – Typo

Section 25.01.09 – Subsection (c) is amended to add the word implementation. For multi-phase projects, there may be instances where the implementation period for the phases may be different than the overall validity period, so both terms should be included in this subsection.

Section 25.03.02 – Within the Definitions, several corrections need to be made:

Alteration, Structural – Subsection 5 has been deleted in order to be consistent with the intent of the language in Article 8 for development standards nonconformities. Exterior alterations, such as applying a new façade to a building are not normally structural in nature and should not be included within this definition.

Boardinghouse – This use is not permitted anywhere in the code. However, for enforcement purposes the definition has been retained and language added to clarify that such uses are violations subject to the requirements of Article 19.

Dwelling, Multiple-Unit – The parenthetical term Apartment Building is recommended for deletion since it could be construed as being in conflict with the term as used in Chapter 18 of the City Code regarding Rental Facilities and Landlord-Tenant Relations.

Easement – the term "property" is recommended to be replaced by the word "land" at the recommendation of the City Attorney.

Environmental Guidelines – The date of July 1999 is replaced by the resolution number for greater clarity.

Flea Market – Typo

Floodplain - Typo

Law – Typo

Lot, interior – Revise to clarify that the definition excludes corner lots and through lots.

Lot Coverage – deleted reference to accessory structures. This is a hold-over from proposals to regulate impervious surfaces over all of the residential lots.

With the change to only controlling imperviousness in the front yard, this definition needs to reflect current practice.

Person – Minor edit

Shooting Gallery or Range – This definition is proposed to delete the reference to a range. Staff does believe it is appropriate to consider an outdoor shooting range within the City limits. The definition also makes is clear that a shooting gallery must be indoors. As part of this recommended change, wherever this term appears in the use tables under Assembly and Entertainment, the reference to range is deleted.

Swimming Pool – Change made to specifically include the Planned Development zones within the regulation involving multi-unit and attached dwellings.

Section 25.03.03.a – Under the Rules of Measurement, a sentence has been added to clarify that in the case of parking space calculations, a fraction of a space is to be rounded up to the next higher number.

Section 25.04.03. – Correct typos in subsections b and new f. There is no subsection d in the adopted text, so the balance of this section is revised with the correct subsection designations, as follows:

[e] d. *Meetings and Hearings*

1. Meetings must be held when necessary to conduct business or at intervals as may be mandated by State law, this Chapter, or the adopted Rules of Procedure of the Board.

2. Hearings must be held when required by State law or other provision of this Chapter.

3. The Board must hold a hearing on an appeal from the decision of the Sign Review Board no later than 45 days from the date of the filing of the appeal, provided that a different date may be set with the consent of the party filing the appeal.

[f] e. *Decision on Appeal from Sign Review Board* – The Board shall render its decision on an appeal from the Sign Review Board within ten (10) business days following the completion of the hearing, provided that the time for rendering a decision may be extended with the consent of the party filing appeal.

[g] f. *Appeals* – Any person aggrieved by any final decision of the Board, including the failure of the Board to conduct a hearing or render a written decision within the time frames set forth in [Sections] subsections 25.04.03.[e] d.3 and [f] e of this Section, may appeal the same to the Circuit Court for the County. Such appeal

must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

Section 25.04.04 – Subsection (e) is redundant to the provisions set forth in subsection 1, which reads:

> *Generally* – The Historic District Commission has all those powers and duties conferred and imposed upon it by this Chapter and the provisions of State law, including but not limited to:

The reference to State law in the introductory section makes the reference to Article 66B in subsection (e) unnecessary.

Section 25.04.05 – Subsection c.5 has been modified to have the Chief of Planning be the Clerk to the Sign Review Board. This reflects a recent internal reorganization that moves sign regulation from Inspection Services to Planning.

Section 25.04.06 – Chief of Planning – Text changes have been made to reflect the sign regulation duties transferred from ISD, as noted above.

Section 25.05.07 – Chief of Inspection Services – Deleted references to sign review and enforcement.

Section 25.05.03. –

> Subsection c.1(b) is amended to make reference to the meeting notice procedures set forth in Article 7; a new subsection c.1(c) is added to make general reference to any other required public meetings or hearings held by any Approving Authority.
>
> Under subsection c.2(a), the word "mailing" is replaced with written notification since notice may be made in a number of ways. In subsection c.2(b), a clarification is added to specifically require that notice be provided to the resident of the property. This is to address the issue of absentee ownership, where the owner address is different than the property address. There is a typo correction in subsection c.3.
>
> Subsection d, relating to the notification signs that must be posted, has been modified to reflect actual procedures. The signs will not be issued until the application has been reviewed and deemed complete, and will be made available within five days following acceptance of the application. Also, staff recommends that the distance between signs be increased from 250 feet to 750 feet.
>
> Subsection 5 – Typo

Section 25.05.05 – The phrase if available is added, since there will be instances when electronic versions will not be available.

Section 25.05.07 - Amendments to Approved Development

Subsection a has been modified to delete reference to the Chief of Inspection Services for signs, since that function will belong to the Chief of Planning.

Subsection b.1 has been modified to clarify that minor amendments will be subject to the provisions for a Level 1 site plan review, and reference to the Chief of Inspection Services for signs has been deleted.

Subsection b.2(c) has been revised to clarify that maintenance of landscaping does not require a formal amendment procedure. There are also some corrections for minor punctuation errors. This text change will also require an amendment to the Landscaping, Screening and Lighting Manual, as discussed at the end of this report.

A new subsection b.3 has been added to cover cases where there may be modifications that reduce the density or development intensity on a site. In these cases, the original Approving Authority will act on the modification.

Subsection b.4 has been revised to not require pre-application notice or meetings for minor amendments. Given the limited scope of such changes, staff does not believe that the full site plan review requirements are necessary in these cases where the overall character of the project will not change.

Subsection c.2 has been amended to provide that major amendments to an approved development will be processed as either a Level 1 or Level 2 site plan, depending on which Approving Authority approved the original application. If the Chief of Planning approved the original project, the modification would be at a Level 1. If the Planning Commission was the Approving Authority, then it would be a Level 2 review.

Section 25.05.08 – Typos

Section 25.06.01 – The provisions for written notice in subsection e.4 have been modified to make it clear that all property owners subject to a map amendment must receive notice. Any homeowner's associations within the 750 feet of the affected properties must also receive notice.

Section 25.06.02 – Subsection b.3 has been added to reflect current practice that the Mayor and Council must review proposed text amendments prior to accepting them for processing. Subsection d.1 has been modified to further reflect the administration of the proposed text amendments.

Section 25.06.05 – Inserted a new a notice requirement in subsection c for adjoining and confronting property owners. For these minor adjustments, staff does not believe that notice with 500 feet of the site is necessary. Subsection e.4 has been deleted since there does not seem to be any need to provide notice of a decision in these cases.

Section 25.07.01 – A clarification has been added in subsection a.1(d) to make it clear that only structural alterations that affect the height, floor area, or other exterior changes are subject to site plan review. Structural changes within the building should not be included.

Section 25.07.02 – Subsection b has been modified to break it down into subsections 1 and 2. Subsection 1 contains the existing language in the ordinance. In addition, the point calculation table has been modified to add a footnote 1 in the first column. In cases where there are no new dwelling units, no non-residential square footage, or no increase in peak-hour trips, no points will be assigned. New subsection 2 clarifies that in the case of modifications to an existing development, the impact point calculation is based on the scope of the modification, not the entire development.

Section 25.07.04 – Added a requirement to post a sign for a Level 1 Site Plan application.

Section 25.07.05:

Deleted unnecessary phrase at the end of subsection 4, *Notice*

Added a new subsection 5 clarifying the requirement for post-application area meeting.

Deleted reference to aesthetics in new subsection 7.

As a result of adding the new subsection 5, the final subsection becomes 10 instead of 9.

Section 25.07.06 – Typo in subsection 2. Added specific requirement for post-application area meeting. As a result of adding the new subsection 5, the final subsection becomes 13 instead of 12.

Section 25.07.08 :

Added new subsection 5 with specific requirement for post-application area meeting.

In subsection 15 (to become 16) relocated the phrase by resolution for clarification.

Subsection 21 becomes 22 as a result of inserting the new subsection 5.

Section 25.07.09:

Added clarifying phrase "...the provisions of..." in subsection c.

Added new subsection f with specific requirement for post-application area meeting.

Subsection m (to become n) – The provisions and requirements for implementation of special exceptions have been inserted here. The reference to Sec. 25.07.07 was deemed not acceptable since that section refers only to variances.

Subsection p (to become q) – Clarifies that Level 2 site plan review is required only where development or redevelopment is required, and corrected reference to level 2 site plan section.

Section 25.07.12 – Added a provision that requires an occupancy permit when there is a tenant change for a commercial, mixed-use or industrial use. This is consistent with the former ordinance and current procedures.

Section 25.07.14 – Clarifies that an approved Certificate of Approval must be filed before a building permit can be issued.

Section 25.08.02 – Revised language to clarify conditions under which an approved variance must be implemented.

Section 25.08.05 - Typos

Sections 25.08.06, .07, and .08 – The Legal department has recommended revising and re-ordering the language in these sections to clarify what constitutes a development standards nonconformity, and under what circumstances these nonconformities may be modified. References have been added to Article 14 to cover cases where projects may be covered by a Planned Development Zone. In addition, modifications to those portions of a development that do conform may be processed under the provisions of Sec. 25.05.07. Modifications to the nonconforming portions are subject the provisions of Sec. 25.08.08. Where the existing language refers to alterations, the language has been changed to read structural alterations. The opportunity to improve nonconforming buildings through means such as installing a new "skin" should be allowed, so long as the nonconformity is not increased. Finally, corrections and clarifications have been made to the notice and processing requirements in Section 25.08.08.c.

Section 25.09.03 – Modified provision in the development standards table clarifying that the 12 foot height is the maximum allowed at the minimum setback of 3 feet. Also clarified that the Maximum Rear Yard Coverage provision applies to accessory buildings, but not structures, consistent with past provisions. Added language in Sec. 25.09.03.2(a) clarifying that the 3 feet for each added foot of height above 12 feet applies to fractions

of a foot; i.e., if the height is 12 feet, 6 inches, then the an additional 18 inches of setback is required.

Section 25.09.07 – Language clarification.

Section 25.09.08 – Wireless Communication Facility – Typos in subsections b.5 and e.1(a).

Section 25.10.03 – Land Use Tables:

Corrected designation of Dwelling, semi-detached to be consistent with definition.

Corrected letter designations in the use category column.

Corrected site plan requirement to Level 2 for publicly-owned or publicly-operated uses.

Section 25.10.05 – Footnote 1 to the Development Standards table revised to define what are deemed impervious surfaces.

Section 25.11.06 – Typo in subsection 6.

Section 25.12.03 – Land Use Tables:

Corrected letter designations in the use category column.

Deleted "Business equipment sales and service" from the land use table, since the use is not permitted in either industrial zone.

Added clarification to the "Office" use to include medical and professional offices.

Inserted section f, Assembly and Entertainment uses.

Section 25.13.03 – Land Use Tables:

Under the "Dwelling, one unit semi-detached" use, the phrase "one unit" has been deleted to be consistent with the definition in Article 3

Typos in last column regarding multiple-unit dwellings and commercial parking facilities.

Revised Publicly-owned and publicly-operated uses to allow as a permitted use in MXNC and MXT zones. By convention, public uses are permitted in all zones as being consistent with the public good.

Corrected typo for letter designation in conditional requirements for commercial parking facilities.

Twinbrook Neighborhood Plan Zoning Recommendations – The recently adopted Twinbrook Neighborhood Plan contains a number of recommended modifications to the land use tables for the Mixed Use Neighborhood Commercial (MXNC) Zone. These recommendations are as follows:

Uses	Proposed Revisions
Consumable goods to be used in the home	Revise to show as permitted use
Durable goods to be used in the home	Revise to show as permitted use
Flowers, except from outdoor garden or greenhouse	Revise to show as permitted use
Wearing apparel and related accessories	Revise to show as permitted use
Archival Record Storage	Revise to show as conditional use if located in a basement
Medical or dental laboratory	Revise to show as conditional use if located in a basement
Automobile parts sales, no installation or service	Revise to show as permitted use
Duplicating Service	Revise to show as permitted use
Health and fitness establishment	Revise condition to permit with no size limitation if located in the basement
Sports facility, multi-purpose, indoor commercial	Revise to show as condition use permit if located in the basement
Recreational establishment, indoor, commercial, except shooting gallery range	Revise to show as conditional use if located in the basement
Rental hall for meetings and social occasions	Revise condition to permit with no size limitation if located in the basement
Theatre including dinner theatre	Revise to show as permitted use

These recommended modifications have been made within the land use tables for Article 13.

Section 25.13.04 – Corrected subsection identifiers.

Section 25.13.05 –

In subsection a, language has been added to make reference to the building restriction line provisions being added in Article 17.

In the final version of the adopted code, the wording within the Development Standards table shifted to the left so that some of the words were hidden behind the table. The table will be replaced with the one shown in the proposed text amendment. None of the regulations within the table have changed.

Under subsection c, "Other Standards and Requirements for New Development or Redevelopment," a new subsection 6 has been added that limits the footprint of any one single retail tenant to 65,000 square feet of floor area. This reflects in part the intent of the former Zoning Ordinance to limit "big box" developments. Under the old ordinance, any one project was limited to a total of 65,000 square feet. Staff suggests that the limitation be on the footprint, so as to avoid large one-level building expanses devoted only to one retailer, but not limit the amount of total retail space, which can be provided on upper or lower floors.

Section 25.13.06 – Typo

Section 25.13.07 – The term "guidelines" is changed to standards in subsections a.3 and b.3, and typos corrected.

Section 25.14.01 – Added the phrase on the property to subsection d.1(d) for clarification; added section cross-reference to subsection 6.

Section 25.14.02 - Typos

Section 25.14.03 - Typo

Section 25.14.07 – Typo in subsection d.3(a); changed "project" to Planned Development in subsection d.4.(a); deleted the words "types of" in subsection e.1(c) as redundant.

Section 25.15.02. – Added specific cross-reference to the Home-Base Business provisions in Article 9. Added the word information in subsection 2(b); replaced the word "sells" with vacates in subsection 3(a), so that it is clear that the use terminates when the operator leaves the premises. Corrected typos.

Section 25.16.02 – Subsection a.1(c) has been modified to make cross-reference to Section 25.05.07.b.

Section 25.16.03.d. In the parking tables, insert parking standards for a life care facility. These standards are broken out for independent living in either free-standing detached units (single-unit, duplex, triplex or quadraplex) or multi-unit dwellings; assisted living units; and nursing care facilities. The parking standards are derived from similar types of uses in the code, such as multiple-unit dwellings, housing for senior adults, and nursing homes.

Section 25.16.03.g.1 - Added reference to subsection h.6 to make it clear that the option to use the shared use provisions is available under this provision.

Section 25.16.03.h.1 – Added the PD and MXE zones as those that may be allowed parking flexibility under this subsection. There are a number of PD Zones, including Town Square, Metro Center, and Twinbrook Station that would likely qualify for one or more of the provisions of this section. Given the range of use possibilities in the MXE Zone, some projects may also be eligible for parking flexibility.

Section 25.16.03.i.1(c) - Typo

Section 25.16.04.c – Deleted the word "area" from the language. In this context the word is confusing since the computation is for the number of spaces required.

Section 25.16.06.b.6 – Revised the language to make it clear that these provisions refer to surface parking facilities. Section 25.16.07, Parking Structure Design, refers back to this section, and the provisions for landscaping and number of spaces do not apply within a parking structure.

Section 25.17.02 – Subsection d has been modified to include emergency generators in the screening requirements.

Section 25.17.03 – Subsection b has been amended to exclude emergency generators for the requirements for placement underground. These are internal combustion units that must operate in open air.

Section 25.17.08 – This new section brings into the Zoning Ordinance provisions that currently are in Chapter 5 of the City Code, the Building Code. It is unclear why the provisions for building restriction lines were placed in Chapter 5, but the staff believes that they more properly belong in the Zoning Ordinance. The current language in Chapter 5 establishes building restriction lines along West Montgomery Avenue between North Adams Street and I-270, along Rockville Pike between the south city boundary and Dodge Street, and along Hungerford Driver/Frederick Road between North Washington Street and Gude Drive. In addition, this section includes restrictions on the placement of signs within these BRL's.

In reviewing the language from Chapter 5, staff recommends that the building restriction lines along West Montgomery Avenue be deleted. The provisions for established

building line requirements in Section 25.10.05.e.2 will control development along the street in the residential zones.

With regard to the building restriction lines along Rockville Pike, they reflect the BRL's that have been established by the 1989 Rockville Pike Master Plan. For this reason, staff recommends that these provisions be retained for the present. Once the comprehensive revisions to the Pike plan are adopted, these restrictions may be revised or deleted.

The building restriction lines along Hungerford Drive/Frederick Road are also recommended to be retained until such time as a master plan revision is done.

Under the Exceptions provisions, the language from Chapter 5 regarding setbacks near the Metro/CSX right-of-way are retained for narrow properties. Staff does recommend adding a new waiver provision allowing the Approving Authority some flexibility in administering the BRL's in cases where the waiver would be consistent with any master plan recommendations or with the purpose and intent of the applicable zone.

Finally, the provisions for signs within the BRL areas are also retained from Chapter 5. Staff has made some clarifying changes to the exhibits, but the intent of the original language has been retained.

Sec. 25.18.08 – References to Chief of Inspection Services changed to Chief of Planning, as noted earlier above.

Sec. 25.18.13 – In discussions with the enforcement staff, it the recommendation that the provisions for signs in the MXNC Zone be made consistent with the regulations for signs in the MXCD Zone. This reflects the current conditions, and also reflects the fact that the MXNC Zone has changed in character and intent as the Zoning Ordinance review process went forward. As a result, the recommendation is that references to signs in the MXNC Zone be deleted from Sec. 25.18.13.

Sec. 25.18.14. – Reference to the MXNC Zone is added in this section in place of 25.18.13, as noted above.

Section 25.18.14.b.2 – A new subsection (c) has been added to make reference to the special provisions for sign setbacks contained in Sec. 25.17.08.

Section 25.20.03 – Revised subsection 3 and subsection b to more clearly identify which types of developments are covered by these provisions.

Section 25.21.13 -

> The Purpose provisions need to be modified to more clearly indicate the intent of this section. Clarifying language has been added.

The proposed text amendment incorrectly proposes to modify subsection 2. The change should be to subsection 4, which has been revised for better clarity.

ADDITONAL CHANGES RECOMMENDED

Subsequent to the filing of the text amendment, a few additional items have come to light that need to be addressed. These are as follows:

Sec. 25.16.06.d.1 – There needs to be an "or" added to this subsection, to read as follows:

d. *Paving Specifications*

All off-street parking and loading areas must be so drained as to prevent damage to abutting properties or public streets and must be paved with a minimum of:

1. A pervious paving material as approved by the Director of the Department of Public Works; <u>or</u>

* * *

As part of the ongoing reorganization of duties and responsibilities, the regulation of temporary uses will be transferred from the Inspection Services Division to the Planning Division. As a consequence the responsibility for permitting and enforcement will be under the Chief of Planning. This requires that Section 25.09.04.b be modified as follows:

25.09.04 – Temporary Uses

a. *Permit Required* – A temporary use permit must be issued prior to the use of a building, other structure, or land allowed by temporary approval and demarked in the individual use charts of Articles 10 through 14. Temporary uses do not include uses that are regulated by Chapter 12, *Licenses, Permits, and Miscellaneous Business Regulations*, of this Code, such as hawkers and peddlers.

b. *Issuance* – A temporary use permit may be issued if the [Chief of Inspection Services] <u>Chief of Planning</u> or designee finds that the use proposed in the application will not:

* * *

The proposed text amendment modifies the provisions for application and notice for Administrative Adjustments in Section 24.06.05. This includes a provisions that notice is only required for the adjoining and confronting property owners. However, it should explicitly say that the applicant for the adjustment should provide the notice. Therefore, this provision should be further modified as follows (double underlining indicates added new text added; double brackets indicate new text to be deleted):

c. *Application* – Applications for administrative adjustments must be submitted and processed in accordance with the provisions of [Article 5, including but not limited to amendments, notice of decisions and appeal of decisions] Section 25.05.02. The applicant is required to provide notice [[is required only]] to the adjoining and confronting property owners.

* * *

The Historic Preservation staff recommends that Section 25.07.14 be amended to simplify the language. Their concern is that by including a list of actions, there may be some future argument that some activity not listed would note be subject to historic review. The deletion of the this list also means that the definition for "Alteration, Substantial Exterior" should be deleted. Therefore, the following modifications should be made:

25.03.02 – Words and Terms Defined

* * *

[*Alteration, Substantial Exterior – For purposes of this Chapter, an exterior alteration is deemed to be substantial if one or more of the following conditions results:*

1. The removal of more than 50% of the total exterior wall surfaces from the grade up; or

2. The removal of more than 50% of the roof area (as measured in vertical plan view); or

2. The removal of any wall facing a public street.]

* * *

25.07.14 – Certificate of Approval in Historic Districts

a. *Requirement* – A Certificate of Approval issued by the Historic District Commission is required prior to any [of the following] actions affecting a site or the exterior of a building or structure in a Historic District Zone[:].

[1. Construction;

2. Structural Alteration;

3. Substantial Exterior Alteration;

4. Relocation;

5. Demolition,

6. Reconstruction, or

7. Demolition by neglect.]

On page 49 of the proposed text amendment, there is an extraneous entry for Section 25.18.13. This is correctly shown on the bottom of page 50, so the entry on page 49 should be deleted.

The staff recommends that these additional modifications be included in the final draft version of the proposed text amendment

ADDITIONAL AMENDMENTS REQUESTS

Interested parties have submitted or proposed some additional modifications for inclusion in the proposed text amendment as it goes forward for consideration by the Planning Commission and City Council. These additional requests are discussed below.

Ancillary Restaurant

A request has been made to create a new use category entitled "Ancillary Restaurant." The intent is to allow a restaurant within an office building in a Planned Development Zone. The floor area of the restaurant would limited to either 8,000 gross square feet or no more than 5 percent of the gross square footage of the building, whichever is smaller. The office building must have at least 190,000 gross square feet of floor area. This use would be different than an "Accessory Restaurant," which is a similar use, but does not allow exterior signs or a separate outside entrance. The ancillary restaurant would have a separate parking standard that assumes sharing of spaces with the office use in the evening hours.

As proposed by the letter of June 25, 2009 from Mr. Kominers, this new use would be limited to office buildings within PD zones. Several office buildings in Tower Oaks, King Farm and Fallsgrove could qualify under this proposal.

This proposal falls within the spirit of the new zoning ordinance to encourage a mix of uses. In reviewing this proposal, the staff recommends that it be expanded to apply to other mixed-use zones that would allow major office development. Consequently, the staff recommends that this proposed additional amendment be modified as follows:

- Allow the ancillary restaurant in office buildings of 150,000 square feet or more. With a normal floor plate of 20,000 to 25,000 square feet, these buildings would be six or more stories tall.
- Do not limit the restaurant to the ground floor. There may be instances where a roof-top restaurant may be a desirable option.
- Allow this use in the MXTD, MXCD, and MXE zones, along with the PD zones.

- Maintain the parking standard of 1 per 300 gross square feet of restaurant use as proposed in the June 25 letter. The sharing of parking with the office use make sense since during the day most business will come from the office building, and during the evenings parking will be available after working hours.
- Add a provision in Article 14 for the Planned Development uses that will allow this use in planned office buildings without the need for an amendment to the development plan.

A draft of the proposed alternative text language is attached to this staff report.

Parking Standards for Life Care Facilities

The proposed text amendment would add a new parking standard for a Life Care Facility, a new use that was added at the time the new zoning ordinance was adopted. Representatives for the National Lutheran Home have suggested a change in the parking standard requirement for skilled care facilities within the Life Care Facility parking proposal. Under the previous zoning ordinance, the parking requirement for hospitals and nursing homes was one space for each 1,000 square feet of floor area, plus one space for each participating staff doctor, and one space for each two employees. This standard has been carried over into the new ordinance, and has also been proposed for the nursing and assisted living portion of a life care facility in the proposed text amendment. As of the date of this staff report, no formal proposal has been received. Supporting data is needed before the staff can provide a recommendation on this subject.

Banks in the I-L Zone

In a letter dated June 11, 2009 from Stephen Orens, a request is made to consider adding Bank or Financial Institution (including the provision allowing for a drive-through) as an allowable use in the I-L, Light Industrial Zone. Currently the code only allows offices (which may include banks) to occupy no more than 25 percent of the floor area of a building (meaning free-standing bank would not be permitted), and would not allow a drive-through. Banks are permitted in all of the mixed-use zones. In those zones banks with drive-throughs are allowed as a conditional use, the condition relating to how the drive-throughs are to be installed and managed.

There are a few banks in the industrial areas of the City, where they had previously been allowed by special exception in the I-1 Zone. At least one of these banks does have a drive-through. The bank that is the subject of the correspondence is in a shopping center that is partly within and partly outside the City boundary. Since this bank does not occupy more than 25 percent of the building floor area, it is a permitted office use. However, the area behind the building where the stacking lanes for the proposed drive-through would be located is in the County.

The staff believes that this request for a change in the land uses for the I-L Zone is a substantive policy change that is beyond the intended scope of this text amendment. The staff therefore recommends that this proposal not be included, but should rather be the

subject of a separate text amendment application where the overall policy issues regarding appropriate uses in the I-L Zone would be better addressed. Further, in the particular case of the subject bank, the entire site ought to be annexed into the City to avoid problems with joint jurisdiction over site plan review and enforcement.

Landscaping, Screening and Lighting Manual

The proposed text amendment recommends that Section 25.05.07.b.2(c) be modified to add a new sentence that reads: Landscaping maintenance does not require an amendment application under this section. Many projects in the City have landscaping that is decades old, and in need of upgrading or replacement. Associated with this text change, staff will propose an amendment to the Landscaping, Screening and Lighting Manual that would add the following language under the Maintenance provisions in Section 4 c:

> As part of maintenance, the species of landscaping materials may be changed, so long as the resulting materials will meet the design and intent of the original approved landscaping plan. Where such changes are proposed, a revised landscaping plan must be approved by the Chief of Planning and maintained in the file with the original project approval.

This change will allow the Chief of Planning to review and approve landscaping revisions that meet the intent of the original approval, without having to go through a full amendment process. Since the Manual was adopted by resolution, the Mayor and Council can amend it in the same manner.

RECOMMENDATION

Staff finds that the proposed text amendment, with the additional modifications recommended in this staff report, will provide the necessary additions, clarifications and corrections to meet the intent of the comprehensive revisions to the Zoning Ordinance, and therefore recommends approval of text amendment TXT2009-00221.

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Attachments: Text Amendment Application
Letter of June 11, 2009 from Steve Orens
Letter of June 25, 2009 from William Kominers
Draft Text Amendment for Ancillary Restaurants

RECEIVED Attach A

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Application for

Text Amendment

City of Rockville

Department of Community Planning and Development Services

111 Maryland Avenue, Rockville, Maryland 20850
Phone: 240-314-8200 • **Fax:** 240-314-8210 • **E-mail:** Cpds@rockvillemd.gov • **Web site:** www.rockvillemd.gov

Application Information:

Is this an Amendment to Existing Text ? ☑ YES ☐ NO

Add New Zone Classes: ☐ YES ☑ NO **Add New Uses:** ☐ YES ☑ NO

Number of new uses: _____ Ordinance # _____

Please Print Clearly or Type

Property Address information N/A

Project Description Comprehensive Corrections to the Zoning Ordinance

Applicant Information:

Please supply Name, Address, Phone Number and E-mail Address

Applicant City of Rockville; 111 Maryland Avenue, Rockville, MD 20850

Property Owner N/A

Architect N/A

Engineer N/A

Attorney N/A

STAFF USE ONLY

Application Acceptance:

Application # _____

Date Accepted _____

Staff Contact _____

OR

Application Intake:

Date Received _____

Reviewed by _____

Date of Checklist Review _____

Deemed Complete: Yes ☐ No ☐

Application is hereby made with the Rockville Mayor and Council for Approval of a change in the text of the Zoning and Plannin Ordinance of Rockville, Maryland.

Page _____ Article _____ Section _____

FROM: Which reads as follows See Attachment

TO: Reads as follows See Attachment

By: _____
(Signature of Applicant)

Subscribed and sworn before this _____ day of _____, 20____

My Commission Expires _____
Notary Public

The following documents are furnished as part of the application:

☑ A Complete Application

☐ Filing Fee

Comments on Submittal: (For Staff Use Only)

June 12, 2009

ATTACHMENT TO APPLICATION
TO THE CITY OF ROCKVILLE FOR A
TEXT AMENDMENT TO THE ZONING ORDINANCE

Applicant: Mayor and Council of the City of Rockville

The applicant proposes to amend the zoning ordinance adopted on December 15, 2009, and with an effective date of March 16, 2009, by inserting and replacing the follow text (underlining indicates text to added; [brackets] indicate text to be deleted; * * * indicates text not affected by the proposed text amendment). Where the term [effective date] appears, the date March 16, 2009 will be inserted in the final version of the zoning text amendment. Further amendments may be made following citizen input, Planning Commission review and Mayor and Council review:

Amend the **Table of Contents** as follows:

* * *

25.17. 07 – Environmental Guidelines
25.17.08 - Building Restriction Lines

* * *
25.21.24 – Erosion Area Regulations
25.21.25 – Monuments

[Landscaping, Screening and Lighting Manual]

* * *

Sec. 25.01.04 – Relation to Master Plan

a. The provisions of this Chapter are adopted in accordance with the Master Plan, and as the Plan may be amended from time to time.

b. Whenever there is a requirement in this Chapter that a finding be made that an application conforms the Plan, such finding need not be made where the Approving Authority finds that events have occurred or circumstances exist to render such compliance inappropriate with respect to such application.

* * *

Sec. 25.01.06 – Compliance

A person cannot use or develop any land or structure within the City without complying with [all] the applicable provisions of this Chapter.

* * *

Sec. 25.01.09 – Vested Zoning Rights

* * *

2. A property owner's right to a particular use of the property pursuant to the provisions of this Chapter vest upon the occurrence of all of the following:

* * *

(c) The implementation and validity periods of all permits and approvals has not expired.

* * *

Sec. 25.03.02 – Words and Terms Defined

* * *

Alteration, Structural - Any change to a building or structure including:

1. Bearing walls;
2. Load-bearing columns;
3. Beams or girders;
4. An enlargement or reduction in the gross floor area or building height[; and/or
5. Any substantial exterior alteration].

* * *

Boardinghouse - A dwelling in which lodging or meals, or both, are furnished to three (3) or more guests for compensation. A boarding house is not considered a home-based business enterprise. This use is not permitted within the City, and violations will be subject to the Enforcement provisions of Article 19 of this Chapter.

* * *

Dwelling, Multiple-Unit [*Apartment Building*] – A building containing three (3) or more dwelling units which may or may not share a common entry. This term includes apartment buildings, condominiums and cooperatives.

* * *

Easement – A grant or reservation by the owner of land for the use of all or apportion of such [property] land to the public or others, for a specific purpose.

* * *

Environmental Guidelines – A document adopted [in July, 1999] by Resolution number 11-99 by the Mayor and Council establishing guidelines for the protection and enhancement of the City's natural resources, as that document may be amended or revised.

* * *

Flea Market – A group of vendors assembled in an open area or a structure on an occasional or periodic basis to [and] offer goods for trade or sale to the general public.

Floodplain – The normally dry land adjoining a river, stream or watercourse that is temporarily subject to partial or complete inundation by storms that exceed the capacity of the channel. Floodplains are delineated by the expected frequency of flooding. The 100-year floodplain delineates the area subject to flooding, on average, once every 100 years; thus it has a [1] one [%] percent chance of flooding any given year.

* * *

Law - Any law, ordinance, [or] resolution or regulation having the effect of law, whether adopted by the Federal, State, County, City, or other unit of government or agency thereof.

* * *

Lot – A parcel or quantity of land. Lots include the following:

* * *

3. *Lot, interior* – Any lot other than a corner lot, [including] or a through lot.

* * *

Lot Coverage – The percentage of lot area covered by buildings [(or structures)], including covered porches and accessory buildings.

* * *

Person - An individual, association, firm, partnership, corporation, or government agency, [but does] not [include] including the City.

* * *

Shooting Gallery[*or* Range] - Any establishment which, as part of its activities, provides a location in which firearms are discharged indoors.

* * *

Swimming Pool - A pool for swimming by human beings having adequate legal capacity and deck size.

1. *Swimming Pool, Accessory* - Swimming pools or wading pool, including buildings necessary or incidental thereto, conducted as an accessory use:

   (a) Maintained and operated by the management of any multiple-dwelling unit[,] or attached development in any Residential Medium Density or Mixed-Use zone or [development] within any Planned Development Zone. An accessory swimming pool may provide memberships to persons residing in single-[family] unit dwellings if the pool was originally approved under a special exception for a private, non-commercial community swimming pool for use by residents in a development containing both single-dwelling unit and multiple-dwelling unit residences;

* * *

Sec. 25.03.03 – Terms of Measurement and Calculation

a. *Rules of Measurement* - All measured distances are to be measured to the nearest integral foot. Measurements up to 0.49 feet are rounded down; measurements of 0.5 feet or more are rounded up. In the case of parking calculations, any fraction of a parking space requirement is rounded up to the next higher number.

* * *

Sec. 25.04.03 – Board of Appeals

* * *

b. *Powers and Duties*

* * *

(c) Reviewing and acting upon appeals from [a] decisions of the Sign Review Board.

* * *

[e] d. *Meetings and Hearings*

1. Meetings must be held when necessary to conduct business or at intervals as may be mandated by State law, this Chapter, or the adopted Rules of Procedure of the Board.

2. Hearings must be held when required by State law or other provision of this Chapter.

3. The Board must hold a hearing on an appeal from the decision of the Sign Review Board no later than 45 days from the date of the filing of the appeal, provided that a different date may be set with the consent of the party filing the appeal.

[f] e. *Decision on Appeal from Sign Review Board* – The Board shall render its decision on an appeal from the Sign Review Board within ten (10) business days following the completion of the hearing, provided that the time for rendering a decision may be extended with the consent of the party filing appeal.

[g] f. *Appeals* – Any person aggrieved by any final decision of the Board, including the failure of the Board to conduct a hearing or render a written decision within the time frames set forth in [Sections] subsections 25.04.03.[e] d.3 and [f] e of this Section, may appeal the same to the Circuit Court for the County. Such appeal must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

g. *Appeals* – Any person aggrieved by any final decision of the Board, including the failure of the Board to conduct a hearing or render a written decision within the time frames set forth in [Sections] subsections 25.04.03.e.3 and f of this Section, may appeal the same to the Circuit Court for the County. Such appeal must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

Sec. 25.04.04 – Historic District Commission

* * *

b. *Powers and Duties*

1. *Generally* -

* * *

(d) Providing courtesy review to the Planning Commission and Mayor and Council as requested, for projects within or adjacent to historic resources[; and].

[(e) All other powers granted to the Historic District Commission by Article 66B of the Annotated Code of Maryland.]

* * *

Sec. 25.04.05 – Sign Review Board

* * *

c. *Membership*

* * *

5. *Clerk of Sign Review Board* – The Chief of [Inspection Services] Planning serves as the Clerk of the Sign Review Board and will:

* * *

Sec. 25.04.06 – Chief of Planning

a. *Powers and Duties*

1. *Generally* – The Chief of Planning has all those powers and duties conferred and imposed upon the Chief of Planning by this Chapter including but not limited to:

* * *

(e) Reviewing applications for building permits, occupancy permits, sign permits, and temporary occupancy permits for purposes of determining, and so advising the Chief of Inspection Services, whether all zoning requirements have been met; and

* * *

b. *Appeals*

* * *

3. Any person aggrieved by a decision of the Chief of Planning pertaining to signs may appeal said decision to the Sign Review Board in accordance with the provisions of Article 18 of this Chapter.

Sec. 25.04.07 – Chief of Inspections Services

a. *Powers and Duties* – The Chief of Inspection Services has all those powers and duties conferred and imposed upon it by this Chapter, including but not limited to:

1. [Acting as clerk of the Sign Review Board;] Coordinating the authorization by City departments for the issuance of permits administered by the Building Code, as contained in Chapter 5 of the Code; including but not limited to occupancy permits; and

2. Administering temporary use permits [and sign permits] in accordance with Section 25.09.04 [and Article 18, respectively].

[3.]

b. *Appeals*

1. [Any person aggrieved by a decision of the Chief of Inspection Services pertaining to signs may appeal said decision to the Sign Review Board in accordance with the provisions of Article 18 of this Chapter.] Any person aggrieved by any other final decision of the Chief of Inspection Services under the provisions of this Chapter may appeal the same to the Board of Appeals within 30 days of the date on the official letter of notification of the decision.

[2.]

* * *

Sec. 25.05.03 – Public Notification

* * *

c. Written Notice

1. Written notification must be provided by mail or other delivery for the following:

(a) The filing of a completed application;

(b) [A scheduled area meeting, public meeting or hearing of an Approving Authority on an application] <u>Areas meetings required by this Chapter under the provisions of Article 7;</u>

(c) <u>Public meetings and hearings held by an Approving Authority;</u>

(d) A decision of an Approving Authority on an application in accordance with Section 25.05.06; and

<u>(e)</u> For any other matter as may be required by this Chapter.

2. In order to accomplish the required [mailing] written notification, the following must be done:

   (a) The mailing or delivery list for such notice must be compiled from the current tax assessment listing all properties located within at least 500 feet of the boundaries of the subject property, unless another notification area is specified within this Chapter;

   (b) [Mail] Deliver notice, by hand delivery or first class mail, to each owner at the mailing address on the current tax assessment list, and also to the resident at the property location address, if addresses are different on the tax roll.

   (c) Mail notice, by first class mail, to civic associations and homeowners associations within 500 feet of the boundaries of the subject property unless another notification area is specified by this Chapter.

3. Affidavit required. At least one week prior to any meeting for which the applicant is required to provide written notice, the applicant must file an affidavit stating that notice has been mailed or delivered in [acccordand] accordance with the requirements of this Chapter, and must provide the mailing [list] or delivery list in a format acceptable to the Chief of Planning.

d. *Signs* – Except as otherwise provided, signs must be posted in accordance with the following provisions:

   1. *Sign to be Furnished by the City* – The required sign(s) will be prepared and furnished to the applicant by the Chief of Planning within [two (2)] five (5) business days [after the filing] of acceptance by the City of the complete application, unless otherwise specified in this Chapter.

   * * *

   3. *Location of Sign* – The required sign must be erected by the applicant as follows:

      (a) Within ten feet (10') of each boundary line that abuts a public or private road or street. If the property boundary line is more than 250 feet long, one (1) sign is required every [250] 750 feet.

* * *

   5. *Affidavit Required*

(a) On the day of the final hearing on any application the applicant must file an affidavit stating that the sign required by this [Section] subsection d was continuously maintained in accordance with these requirements through the date of the [last] final hearing on such application.

* * *

Sec. 25.05.05 – Access to Application Files

* * *

c. Copies of material in the files will be provided upon payment of copying charges in accordance with City policy or may be provided electronically, if available, upon request.

* * *

Sec. 25.05.07 – Amendments to Approved Development

a. *Application Required* – Except as otherwise provided, an application to amend any previously approved development must be filed with the Chief of Planning[, or the Chief of Inspection Services where approval of the Sign Review Board is involved,] in accordance with the provisions of this Article.

b. *Minor Amendments to Approved Development*

1. Any application for an amendment which does not significantly deviate from the terms and conditions of the original approval and would effectively carry out the intent of the Approving Authority's original approval may be considered and acted upon by the Chief of Planning under the provisions for a Level 1 site plan as set forth in Sec. 25.07.04 [, or the Chief of Inspection Services where approval of the Sign Review Board is involved].

2. Such application may only be approved if it results in a minimal effect on the overall design, layout, quality, or intent of the plan and is limited to a change in:

(a) minor adjustments due to site engineering; or

(b) a parking or loading area; or

(c) landscaping, a sidewalk, recreational facilities, recreational area, public use space, or open area in a manner that does not alter basic elements of the site plan[;]. Landscaping maintenance does not require an amendment application under this section.

3. Modifications that result in a reduction of floor area or other development intensity may be approved by the Chief of Planning under a Level 1 site plan review process.

4. Minor changes are not subject to the provisions for pre-application staff meetings, area meetings, and the notice provisions of Section 25.05.03 or Article 7.

5. Where the Chief of Planning determines that the change is not minor, the application is referred to the Approving Authority for review

c. *Major Amendments to Approved Development*

1. Where the Chief of Planning determines that a requested change is too significant to be a minor change but is not so substantial as to require an entirely new application for approval, the requested change must be reviewed and approved by the original Approving Authority as an amendment to the original development approval. Major amendments may include:

(a) an increase in the height of any building,

(b) an increase the floor area of any non-residential portion of a building,

(c) an increase the number of dwelling units[.]; or

(d) any other significant change to the site or approved uses.

2. An application for a major amendment is subject to such notice and procedural requirements as set forth in Articles 5, 6, and 7. The application will be processed under the procedures for either a Level 1 or a Level 2 site plan, depending on the initial Approving Authority. The site plan modification will be subject to the notice and review requirements as set forth in Section 25.07.03 and either Section 25.07.04 or 25.07.05.

* * *

Sec. 25.05.08 – Extension of Implementation Period

* * *

c. Extensions may be granted only upon good cause. In determining whether good cause has been shown, the Approving Authority must consider:

1. [t] The actions taken by the applicant to diligently pursue implementation of the approval, including but not limited to execution of required documents and pursuing other required approvals, and

2. [w] Whether the approved development complies with all the[n] current provisions of this chapter and other applicable laws and with the current Plan recommendations, and

3. [s] Such other factors deemed to be relevant.

* * *

25.06.01 – Zoning Map Amendments

* * *

e. *Public Notification of Pending Application*

* * *

4. *Written Notification to Property Owners* – At least 15 days prior to the hearing on any application for a local or sectional amendment to the Zoning Map, the applicant in the case of a local amendment, and the City Clerk in the case of a sectional amendment, must send written notice of such hearing by first class mail in the following manner:

   (a) *Local Amendment* – In the case of a local amendment, each owner of property subject to the map amendment application at the mailing address on the current tax assessment list, and also the property location address, if addresses are different on the tax roll, and civic associations and homeowner's associations within 750 feet of the subject property.

   (b) *Sectional Amendment* – In the case of a sectional amendment, each owner of property subject to the map amendment application at the mailing address on the current tax assessment list, and also the property location address, if addresses are different on the tax roll, and civic associations and homeowner's associations within 750 feet of any property within such area.

* * *

25.06.02 – Text Amendments

* * *

b. *Applications*

* * *

3. *Preliminary Referral to Mayor and Council*

(a) Upon acceptance for filing of any such application, the City Clerk must set such application for preliminary review at a regular meeting of the Mayor and Council.

(b) If, upon preliminary review of an application filed under this Section, the Mayor and Council determines that it should be considered further, a resolution denying the application will be adopted.

* * *

d. *Referring Application to the Planning Commission*

1. [*City Clerk Responsibility* – Within five (5) days after acceptance of any text amendment application, the Clerk must] If, upon review of such application the Mayor and Council determine that further consideration of the application is appropriate then it will, by simple motion, transmit a copy of the application to the Planning Commission. The Commission may submit a written recommendation to the Mayor and Council, which will be placed in the application file by the Clerk and become a part of the record on the application.

Sec. 25.06.05 – Administrative Adjustments in Single Dwelling Unit Residential Zones.

* * *

c. *Application* – Applications for administrative adjustments must be submitted and processed in accordance with the provisions of [Article 5, including but not limited to amendments, notice of decisions and appeal of decisions] Section 25.05.02. Notice is required only to the adjoining and confronting property owners.

* * *

e. *Review Criteria and Findings* – An administrative adjustment may not be granted unless the Chief of Planning makes the following findings based upon the evidence of record:

* * *

f. Appeals to the decision of the Chief of Planning must be made to the Board of Appeals in accordance with the provisions of Section 25.04.06.b, except that any appeal must be filed within 10 days of the date of the decision letter.

* * *

Sec. 25.07.01 – Site Plan, Project Plan, and Special Exception Approval Required

a. *Site Plan Approval*

1. *General Requirement* – A site plan application, where required by this Chapter, must be approved before any building, other structure, or land may be:

(a) Used;

(b) Constructed;

(c) Converted, wholly or in part, to any other use; or

(d) Structurally altered so as to increase or decrease the height, floor area or have modifications made to the site.

Sec. 25.07.02 – Application Procedure for Site Plans, Project Plans, and Special Exceptions.

* * *

b. *Application Procedure, in General*

1. The level of review for each application is based on a point system, provided in the chart below. Each application must be evaluated on the acreage of the site, the number of dwelling units proposed, the square footage of non-residential space, the residential impact area, and the traffic impact of development proposed. Each of these items is allocated a number of points which are added together to determine the complete point valuation for the project.

Points / Elements	1[1]	2	3	4	Points
Tract size – Acres	1 or fewer	1.1 to 2.5	2.6 to 5	5.1 or greater	—
Dwelling Units	1 to 5 [or fewer]	6 to 50	51 to 150	151 or greater	—
Square Footage of Non-Residential Space	5,000 or fewer square feet	5,001 to 10,000 square feet	10,001 to 50,000 square feet	50,001 or greater square feet	—
Residential Area Impact	No residential development in a single dwelling unit residential zone within ¼ mile of the project	Up to 35% of area within ¼ mile of the project area is comprised of single-unit detached residential units	Up to 65% of area within ¼ mile of the project area is comprised of single-unit detached residential units	Development is within single-unit detached unit area.	—
Traffic Impact – Net new peak hour trips	Fewer than 30 trips	30 – 74 trips	75 – 149 trips	150 or more trips	—
Points Total					The total of the points determine the level of notification.

[1]In calculating the level of review, where no dwelling units, no non-residential square footage, or no increase in peak hour trips are proposed, no points are assigned to those categories.

2. In cases where a modification to an existing development is proposed, the point total is calculated only on the net additions to the development.

* * *

Sec. 25.07.04 – Level One (1) Site Plan Review

* * *

5. *Sign* – A sign must be posted in accordance with Section 25.05.03.d.

Following subsections to be renumbered in sequence.

* * *

Sec. 25.07.05 – Level Two (2) Site Plan Review

* * *

4. *Notice* – The applicant must provide notice of the application filing and the post-application area meeting in accordance with the provisions of Section 25.07.03 [and thepost-appliction area meeting].

5. *Post-Application Area Meeting* – The applicant must hold an area meeting following submittal of an application to outline the scope of the project and receive comments. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03 above.

* * *

7. *Conditions of Approval* – Approvals may be subject to any condition that the Planning Commission finds necessary to protect the public health, safety, [aesthetics,] and welfare of the community and to ensure that the proposed use or development will be consistent with the purpose and intent of this Chapter. The Planning Commission must make the findings in Section 25.07.01.a.3.

* * *

10. *Appeals* – Unless otherwise provided, any person aggrieved by any final decision of the Commission may appeal the same to the Circuit Court for the County. Such appeal must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

* * *

Sec. 25.07.06 – Level Three (3) Site Plan Review

* * *

2. *Pre-Application Area Meeting* – The applicant must hold an area meeting in accordance with the provisions of Section 25.07.[02] 03 prior to submitting an application to outline the scope of the project and receive comments.

* * *

5. *Post-Application Area Meeting* – The applicant must hold an area meeting following submittal of an application to outline the scope of the project and receive comments. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03 above.

* * *

13. *Appeals* – [Unless otherwise provided, a]Any person aggrieved by any final decision of the Commission may appeal the same to the Circuit Court for the County. Such appeal must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

* * *

Sec. 25.07.08 – Project Plan Review

* * *

5. *Post-Application Area Meeting* – The applicant must hold an area meeting following submittal of an application to outline the scope of the project and receive comments. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03 above.

* * *

16. *Decision; Project Plan Implementation Period* – Upon the close of the public hearing record, the Mayor and Council will render a final decision [by resolution] on the proposed Project Plan by resolution. If the application is approved, the Mayor and Council will establish a time period in which construction on all phases of the approved Project Plan must commence.

* * *

22. *Appeals* – Any person aggrieved by any decision of the Mayor and Council made on a map amendment application or a Project Plan application may appeal the same to the Circuit Court for the County. Such appeal must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

Sec. 25.07.09 – Special Exceptions

* * *

c. *Pre-Application Area Meeting* – The applicant must hold an area meeting prior to submitting an application to outline the scope of the project and receive comments. The applicant must provide notice of [any] the meeting in accordance with the provisions of [Section] subsection 25.07.09.b above.

* * *

m. *Implementation Period* – [The approval of a special exception is subject to the provisions of Section 25.07.07] A special exception approval expires under the following circumstances:

1. *Site Plan Approval Required* - If site plan approval is required to exercise the rights granted by the Board's decision, application for such approval must be filed within six (6) months of the date of the Board's decision, or the variance approval shall expire. The filing of an application for site plan approval shall extend the rights granted by the Board's decision to a date one (1) year from the date of the Board's decision. The approval of a site plan shall extend the rights granted by the Board's decision for the same period of time that the rights granted by the site plan approval exist, including any extensions thereof;

2. *Building Permit Required* - If a building permit is required to exercise the rights granted by the Board's decision, such building permit must be issued

and construction started within 12 months of the date of the Board's decision, or within the time limit as extended by the approval of a site plan, or the variance approval shall expire; and

3. *No Building Permit Required* - If a building permit is not required to exercise the rights granted by the Board's decision, such rights must be established within 12 months of the Board's decision, or the approval shall expire.

4. *Extension* - The Board may, for good cause shown, grant no more than two (2) extensions of the implementation period of not more than six (6) months each, subject to the provisions of Section 25.05.08.

* * *

p. *Subsequent Site Plan Review* – If site development or redevelopment is required, [A] all development approved under a special exception is subject to subsequent site plan approval in accordance with the level two (2) site plan review procedures under Section 25.07.0 [4] 5.

* * *

Sec. 25.07.12 – Occupancy Permit

a. *Requirement* – An occupancy permit is required prior to:

1. Occupancy and use of a building hereafter erected or structurally altered; [and]
2. Occupancy or change in use of unimproved land; or
3. Any change in tenancy of a mixed-use, commercial or industrial use.

* * *

Sec. 25.07.14 – Certificate of Approval in Historic Districts

* * *

f. *Building Permit* – No building permit may be issued for any exterior change to any property in the Historic District until [a] an approved Certificate of Approval has been filed with the Chief of Planning.

* * *

Sec. 25.08.02 – Transitional Provisions

b. *Previously Approved Developments* -

* * *

4. *Variances* – Variances approved but not fully implemented prior to March 16, 2009 [of this Chapter may continue in full force and effect, provided that the variance is] must be implemented in accordance with Section 25.06.03.h or the variance will expire.

c. *Expiration of Development Approval* – The requirements of this Chapter apply to:

1. Any [developoment] development approval that has expired prior to March 16, 2009; and

* * *

Sec. 25.08.05 – Nonconforming Uses

b. *Limitations on Expansion, Alteration, or Enlargement of Nonconforming Uses* -

* * *

3. *Nonconforming Alteration Approvals* – Any proposed alteration, expansion, or enlargement to a nonconforming use under this Section 25.08.05[.a] must comply with the nonconforming alteration approval requirements set forth in Section 25.08.08.

[b] c. *Termination*

1. The right to continue a nonconforming use terminates if:

(a) Damage or destruction of the building or structure encompassing the nonconforming use exceeds 50 [%] percent of the building or structure; or

* * *

25.08.06 – Development Standards Nonconformities

a. Except as otherwise provided in Section 25.08.07 or Article 14 of this Chapter, [T]this section applies to a building, structure, or site that was lawful when established but no longer conforms to the development standards of the zone in which it is located[, except as otherwise provided in this section, Section 25.08.07, and Article 14 of this Chapter].

b. *Expansion, Structural Alteration, or Enlargement of Development Standards*

1. [If a building, structure or site contains a development standards nonconformity, then a]Alterations, expansions, and enlargements [may be] made to [the] a building, structure, or site that contains a development standards nonconformity [only if they do not] must not expand or extend the development

standards nonconformity, except as provided in subsection b.3 below [set forth in Section 25.08.08].

2. Expansions, structural alterations, and enlargements to the conforming portions of a building, structure or site are subject to the amendment procedures set forth in Section 25.05.07.

[2]3. *Exceptions.*

(a[.]) Alterations, expansions, and enlargements to the portion of the building, structure or site that contains a development standards nonconformity may be made only for the following reasons:

i. To maintain the building, structure or site in safe repair;

ii. To improve the façade of the building or structure so as to enhance its appearance; or

iii. To comply with the requirements of the Americans with Disabilities Act or other safety code requirements.

(b) Such alteration or expansion must not exceed that amount reasonably necessary to accomplish the purpose of the alteration or expansion.

(c) Conversion of a carport to a garage does not constitute the expansion of a development nonconformity.

(d) Any proposed expansion, structural alteration, or enlargement to a development standards nonconformity under this Section 25.08.06.b.3 must comply with the nonconforming alteration approval requirements set forth in Section 25.08.08.

[3. *Termination of Development Standards Nonconformity* – The right to continue a development standards nonconformity terminates:

(a) Except for detached and semi-detached single unit dwellings, a development standards nonconformity terminates when more than 50% of the gross floor area of a building or structure, or more than 50% of the net lot area of a site, that includes a development standards nonconformity:

i. is altered or reconstructed or

ii. suffers damage or deterioration by fire, flood, explosion, or any other cause or casualty, whether voluntary or involuntary.

(b) *Provisions for Single Unit Detached and Semi-detached Dwellings* –

i. In the event an existing single unit detached or semi-datached detached dwelling is damaged or destroyed by fire, flood, explosion or other cause or casualty outside the control of the property owner, the dwelling may be reconstructed to the configuration which existed immediately prior to the damage or destruction.

ii. If there is a voluntary destruction of 50 percent or more of the exterior wall surfaces from the grade up, or an expansion of more than 100 percent of the existing floor area in a detached or semidetached single unit dwelling, the development standards nonconformity terminates and the dwelling must be brought into compliance with the provisions of Article 10 and any other applicable provisions of this Chapter.]

* * *

[e. *Nonconforming Alteration Approvals* – Any proposed alteration, expansion, or enlargement to a development standards nonconformity under this Section 25.08.06 must comply with the nonconforming alteration approval requirements set forth in Section 25.08.08.]

[f.] e. *Sidewalk Modifications* - Sidewalks on private property that do not meet the standards set forth in Section 25.17.05 are not nonconforming and may be repaired or replaced in kind. If the property is subject to development or redevelopment, then all sidewalks are subject to the guidelines set forth in Section 25.17.05.

f. *Termination of Development Standards Nonconformity* – The right to continue a development standards nonconformity terminates:

1. Except for detached and semi-detached single unit dwellings, a development standards nonconformity terminates when more than 50% of the gross floor area of a building or structure, or more than 50% of the net lot area of a site, that includes a development standards nonconformity:

(a) is altered or reconstructed or

(b) suffers damage or deterioration by fire, flood, explosion, or any other cause or casualty, whether voluntary or involuntary.

2. *Provisions for Single Unit Detached and Semi-detached Dwellings* –

(a) In the event an existing single unit detached or semi-detached dwelling is damaged or destroyed by fire, flood, explosion or other cause or casualty outside the control of the property owner, the dwelling may be reconstructed

to the configuration which existed immediately prior to the damage or destruction.

(b). If there is a voluntary destruction of 50 percent or more of the exterior wall surfaces from the grade up, or an expansion of more than 100 percent of the existing floor area in a detached or semi-detached single unit dwelling, the development standards nonconformity terminates and the dwelling must be brought into compliance with the provisions of Article 10 and any other applicable provisions of this Chapter.

25.08.07 – Certain Existing Structures or Development.

a. Any building, structure, or site existing [or approved but not built] as of March 16, 2009 that conforms to the development standards and requirements in effect immediately prior to March 16, 2009 but no longer conforms to the development standards of the zone in which it is located is deemed to be conforming, subject to the following:

1. In the event the building, structure, or site is damaged or destroyed by fire, flood, explosion, or other cause or casualty outside the control of the property owner, the building, structure or site may be reconstructed to the density and configuration which existed immediately prior to the damage or destruction.

2. If a building or structure is demolished, or a redevelopment of a site occurs, due to causes within the control of the property owner, all reconstruction and redevelopment must comply with the current development standards and requirements of the zone in which the property is located.

b. Any building, structure, or site approved but not built as of March 16, 2009 that conforms to the development standards and requirements in effect immediately prior to March 16, 2009, but no longer conforms to the development standards of the zone in which it is located, may be built or developed in accordance with the approval and is thereafter is deemed to be conforming, subject to the provisions of subsection a above.

[b] c. Any expansion, structural alteration or enlargement to the portion of the building, structure or site that no longer conforms to the development standards of the zone in which it is located is subject to the provisions of Section 25.08.06 [.] and Section 25.08.08.

[c] d. If extensions or additions to any portion of such an existing building, structure or site (whether conforming or nonconforming) cumulatively exceed 50 percent of the existing gross floor area or 50 percent of the net lot area, then the entire building, structure, or site must [comply] be brought into compliance with all of the current development standards contained in this Chapter.

e. Exception. [This section 25.08.07 does not apply to d] Detached or semi-detached single unit dwellings are subject to the provisions of Section 25.08.06.f.2.

25.08.08 – Nonconforming Alteration Approval

a. *Requirement.* Nonconforming alteration approvals are required for structural alterations, expansions, or enlargements to a building, structure, or site containing a nonconforming use or development standards nonconformity, as follows:

1. *Chief of Planning Review* – Nonconforming alteration approvals by the Chief of Planning are required [in order to maintain nonconforming zoning entitlements] for the following:

(a) Expansion of a nonconforming use to those parts of a building that were specifically designed or arranged for such use prior to the date when such use of a building became nonconforming; or

(b) The modification of any nonconformity on a lot improved with a detached or semi-detached single unit dwelling.

2. *Planning Commission Review* – Nonconforming alteration approvals by the Planning Commission are required [to maintain nonconforming zoning entitlements] for the following:

(a) Expansion, modification, or structural alteration of a structure or premises occupied by a nonconforming use other than a detached or semi-detached single unit dwelling, and/or

(b) Any change to a nonconforming building or structure in compliance with the requirements of [this Article] Sections 25.08.06 or 25.08.07 that involves a physical change to the exterior part of the building or structure that is nonconforming.

* * *

[c. *Public Notification of Pending Application* – The Chief of Planning must send written notification of the application filing in accordance with the provisions of Section 25.05.03.c.]

[d] c. *Procedure*

1. *Chief of Planning Review.* Nonconforming alterations requiring Chief of Planning review must be submitted and processed as a Level 1[.] Site Plan Review pursuant to Article 7 of this Chapter.

(a) *Public Notification of Pending Application* –

i. Sign. The applicant must post a [A] sign [must be posted] on the property that is the subject of the application [and written notice provided by the applicant] in accordance with the requirements in Sections 25.05.03.[c. and] d.

ii. Written notification. The Chief of Planning must provide written notification of applications filed requiring Chief of Planning Review in accordance with the provisions of Section 25.05.03.c.

(b) *Action on Application*

* * *

ii. The Chief of Planning may issue a [nonconformity] nonconforming alteration approval only if the findings set forth in Section 25.08.08.d.2.(b)(i) - (vi)[,] below[,] are made.

iii. The Chief of Planning's decision must be based on written findings of fact.

* * *

(b) *Decision* – The Planning Commission may issue a nonconforming alteration approval only if all of the following findings are made:

i. There exists documentation of the existence and extent of the nonconforming zoning [entitlement being requested] status of the use or development standard.

ii. The proposed nonconformity alteration does not exceed that amount reasonably necessary to accomplish the purpose of the structural alteration [or] expansion, or enlargement as permitted by Section 25.08.06b.2.(b).

iii. The proposed nonconforming alteration is compatible with the general character of the surrounding neighborhood or zone.

iv. The proposed nonconforming alteration will not have negative impacts on the public health, safety, aesthetics, and welfare of the nearby properties.

v. The proposed nonconforming alteration will be consistent with the purpose and intent of the zone in which the property is located and of the Plan.

vi. For nonconforming alteration approvals that trigger conformance with current parking requirements pursuant to Article 16, the Planning

Commission may waive the current parking requirement and allow the maintenance of the existing nonconforming parking [entitlements] status through the grant of the nonconformity alteration approval, if the Commission finds that:

A. It is not practicable to provide the required parking onsite in a manner that preserves neighborhood character;

B. Preserving the nonconforming parking [entitlements] status is the best solution to provide consistency with the goals, policies, and intent of the Plan.

* * *

Sec. 25.09.03 – Accessory Buildings and Structures

a. *Residential Accessory Buildings and Structures*

1. Residential accessory buildings and structures are subject to the following development standards:

Development Standards for Residential Accessory Buildings and Structures						
Zone	**Minimum Setback Requirements**				**Maximum Rear Yard Building Coverage**	**Maximum Height at Minimum Setback Not to Exceed[1]**
	Front	**Side**		**Rear**		
		Side - Street Abutting	**Land Abutting**			
R-400	All accessory buildings must be located in the rear yard except as provided in Sec. 25.09.0[5]3.a.2(g)	30'	3'	3'	15%	12'
R-200		25'	3'	3'	25%	12'
R-150		30'	3'	3'	15%	12'
R-90		20'	3'	3'	25%	12'
R-75		20'	3'	3'	25%	12'
R-60		20'	3'	3'	25%	12'
R-60 (Qualifying Undersized Lot)		20'	3'	3'	25%	12'
R-40		20'	3'	3'	25%	12'

[1]The height of an accessory building or structure is measured from the finished grade at the front of the building to the highest point of the roof. Additional height may be allowed in conformance with Section 25.09.03.a.2(a), below.

1. Residential accessory buildings are subject to the following additional provisions:

(a) *Accessory Buildings and Structures Greater than 12' High* - Accessory buildings and structures that exceed 12 feet in height must be set back from all lot lines an additional three (3) feet for each additional foot (or any portion thereof) of building height up to the maximum allowable height of 15 feet.

* * *

Sec. 25.09.07 – Home-Based Business Enterprise

a. *General Provisions* – The following requirements apply to all types of home-based business enterprises:

* * *

10. Other Licensing – a home-based business enterprise must meet all other applicable licensing requirements [that may apply].

* * *

Sec. 25.09.08 – Wireless Communication Facility

* * *

b. *Wireless Communication Facilities Attached to Existing Structures* – Wireless communication facilities attached to the roof or side of a building, or attached to an existing structure must comply with the following:

* * *

5. An equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy, in the aggregate, more than 25 [%] percent of the roof area.

* * *

e. *Waivers Permitted*

1. *Regulated Satellite Earth Station Antennas*

(a) Any person or entity seeking to install or erect a satellite earth station antenna subject to this Section, other than an antenna specified in subsection [ection] 25.09.08.e.1.(a)(ii) below, may apply for a waiver from one (1) or more of the provisions of this Section 25.09.08., and the Board of Appeals may grant such a waiver pursuant to applicable procedures and standards if it is shown that:

* * *

Sec. 25.10.03 – Land Use Tables

* * *

	Uses	Zones							Conditional requirements or related regulations
		Residential Estate Zone (R-400)	Suburban Residential Zone (R-200)	Low Density Residential Zone (R-150)	Single Unit Detached Dwelling, Restricted Residential Zone (R-90)	Single Unit Detached Dwelling, Residential Zone (R-75)	Single Unit Detached Dwelling, Residential Zone (R-60)	Single Unit Semi-detached Dwelling, Residential Zone (R-40)	
a. Residential uses	Dwelling, [two unit] semi-detached (duplex)	N	N	N	N	N	N	P	
* * *									
e. Institutional uses	Publicly-owned or publicly-operated building and use, excluding sanitary landfill	C	C	C	C	C	C	C	Conditional use subject to a Level [3] 2 Site Plan Review (Sec. 25.07.05)
* * *									
[f] g. Temporary uses	Temporary building or yard for construction materials or equipment	C	C	C	C	C	C	C	Conditional use subject to the requirements of Sec. 25.09.04
	Temporary office or model home	C	C	C	C	C	C	C	
	Portable Storage Units	C	C	C	C	C	C	C	Conditional use subject to the requirements of Sec. 25.09.04
	Christmas tree sale	C	C	C	C	C	C	C	
	Garden produce	C	C	C	C	C	C	C	
	Temporary carnival	C	C	C	C	C	C	C	
[g] h. Accessory Uses		P	P	P	P	P	P	P	See Secs. 25.09.01,&02.

* * *

Sec. 25.10.05 – Development Standards

Amend footnote 1 as follows:

[1]Impervious surfaces include driveways, parking areas and sidewalks. In cases where the Department of Public Works approves a pervious paving material, the area of the front

yard devoted to vehicle movement and parking is still limited to the percentage shown in the table above.

Sec. 25.11.06 – Special Provisions for Townhouse Development in the RMD Zones

The following applies to residential townhouse developments:

* * *

6. At least 50 **[%]** <u>percent</u> of the development must be open area.

* * *

Sec. 25.12.03 – Land Use Tables

* * *

	Uses	Zones		Conditional requirements or related regulations
		Light Industrial I-L	Heavy Industrial I-H	
a. Residential uses				
	Live/work unit	P	N	Includes dwelling unit for caretaker in connection with a self-storage warehouse.
	Personal living quarters	S	N	See Sec. 25.15.02.l
b. Institutional uses	Adult day care	P	N	
	Charitable or philanthropic institution	P	N	
	Child care center	P	N	
	Educational institution, private	P	N	
	Places of worship	P	N	
c. Medical services	Ambulance service	C	N	Conditional use must not adjoin residential uses
	Hospital	S	N	Sec 25.15.02.i
	Veterinary office and animal hospital	P	N	
[e] d. Temporary uses	Christmas tree sales	C	C	Conditional use subject to the requirements of Sec. 25.09.04
	Garden produce	C	N	
	Temporary building or yard for construction materials or equipment	C	C	Conditional use subject to the requirements of Sec. 25.09.04
	Temporary carnival, flea market, or festival	C	C	
	Temporary office or model home	C	C	
	Mobile uses	C	N	
	Portable Storage Units	C	C	
[f] e. Commercial, office, and industrial uses				
	Alcoholic beverages for consumption on the premises of any restaurant	P	N	
	Auctioneer and commercial gallery	P	N	
	Boats and marine supplies	P	N	
	Garden supplies	P	N	
	Home improvement service	P	P	
	Home maintenance services	P	P	
	[Business equipment sales and service]	[N	N]	
	Pawnbroker	S	N	See Section 25.15.02.m
Commercial, office, and industrial uses (con't)	Public transportation station	C	C	Conditional use must comply with any Plan recommendation
	Repair of household appliances, inc'l home electronic equipment	P	N	
	Taxicab service	P	N	
	Wearing apparel and related accessories	P	N	
	Wearing apparel services	P	N	

	Uses	Zones		Conditional requirements or related regulations
		Light Industrial I-L	Heavy Industrial I-H	
Commercial, office, and industrial uses (con't)	Caterer, no seating	P	N	
	Carry-out	P	N	
	Restaurant	S	N	See Sec. 25.15.02.o
	Duplicating service	P	N	
	Office	C	N	Conditional use limited to 25% of the gross floor area of a building
	Medical or dental laboratory	P	N	
	Automobile filling station (Class I and II)	S	S	See Sec. 25.15.02.c
	Automobile fluid maintenance station	P	N	
	Automotive repair garage	P	N	
	Mechanical car wash	P	N	
	Motor vehicle and trailer sales, including new and reconditioned parts and accessories and service incidental thereto	P	N	
	Motor vehicle towing service, without storage on the premises	P	N	
	Tires, batteries, and accessory sales, including service incidental thereto	P	N	
f. Assembly and entertainment	Adult oriented establishment	S	N	See Sec. 25.15.02.b
	Health and fitness establishment	P	N	
	Kennel	P	P	
	Outdoor recreational establishment, commercial, except shooting gallery [or range]	S	N	
	Private club	P	N	
	Public utility building and structure	P	P	
	Publicly-owned or publicly-operated building and use, excluding sanitary landfill	P	P	
	Recreational establishment, indoor, commercial, except shooting gallery [or range]	C	N	Conditional use cannot occupy more than 50% of any building.
	Shooting gallery [or range]	S	S	
	Sport facility, multi-purpose,	P	N	
	indoor, commercial			

	Uses	Zones		Conditional requirements or related regulations
		Light Industrial I-L	Heavy Industrial I-H	
Assembly and entertainment (con't)	Wireless communication facility entirely within an existing building or on the roof or side of a building, or attached to an existing structure	C	C	Conditional use subject to the requirements of Sec. 25.09.08
	Wireless communication freestanding ground mounted antenna support structure	S	S	Subject to the requirements of Sec. 25.09.08 and 25.15.02.s
	Renewable energy equipment, free standing	C	C	Special exception required for height in excess of 50 ft.
[h] g. Industrial and service uses	Heavy industrial use	N	P	
	Light industrial use	P	P	
	Lumberyard	C	P	Conditional Use shall not adjoin a Single Unit Development Residential Zone
	Service industrial use	P	P	

* * *

Sec. 25.13.03 – Land Use Tables

The uses permitted in the Mixed-Use Zones area as shown in the table below. Uses are subject to applicable conditions of site plan approval. All special exceptions are subject to the requirements of Article 15.

* * *

	Uses	Zones							Conditional requirements or related regulations
		Mixed-Use Transit District (MXTD)	Mixed-Use Corridor District (MXCD)	Mixed-Use Employment (MXE)	Mixed-Use Business (MXB)	Mixed-Use Neighborhood Commercial (MXNC)	Mixed-Use Commercial (MXC)	Mixed-Use Transition (MXT)	
* * *									
a. Residen-tial uses	Dwelling, [one unit] semi-detached (duplex)	N	N	C	P	C	N	P	Conditional use subject to the requirements of Sec. 25.13.04.a
	* * *								
	Dwelling, Multiple-Unit	P	P	P	P	P	C	C	Conditional use subject to the requirements of Sec. 25.13.04.[b] a

	Uses	Zones							Conditional requirements or related regulations
		Mixed-Use Transit District (MXTD)	Mixed-Use Corridor District (MXCD)	Mixed-Use Employment (MXE)	Mixed-Use Business (MXB)	Mixed-Use Neighborhood Commercial (MXNC)	Mixed-Use Commercial (MXC)	Mixed-Use Transition (MXT)	
* * *									
f. Miscellan-eous Uses	Publicly-owned or publicly-operated building and use, excluding sanitary landfill	P	P	P	P	[S] P	P	[S] P	
* * *									
h. Commer-cial, office and industrial uses	**Retail sales and services:**								
	* * *								
	Consumable goods to be used in the home	P	P	P	P	[C] P	P	C	Conditional uses limited to 2,500 sq. ft. of gross floor area for each tenant, other than a grocery store or drug store
	Drug store with drive-through	C	C	C	C	C	C	C	See Sec. 25.13.04.c
	Durable goods to be used in the home	P	P	P	P	[C] P	C	N	For conditional use, tenant area is limited to 2,500 sq. ft. of gross floor area
	Flowers, except from outdoor garden or greenhouse	P	P	P	P	[C] P	C	C	For conditional use, tenant area is limited to 2,500 sq. ft. of gross floor area
	* * *								
	Wearing apparel and related accessories	P	P	P	P	[C] P	C	C	Conditional uses limited to 2,500 sq. ft. of gross floor area for each tenant
	* * *								
	Office Uses:								
	Archival Record Storage	N	N	P	P	[N] C	N	N	Conditional use allowed if located in a basement or cellar
	* * *								

	Uses	Zones							Conditional requirements or related regulations
		Mixed-Use Transit District (MXTD)	Mixed-Use Corridor District (MXCD)	Mixed-Use Employment (MXE)	Mixed-Use Business (MXB)	Mixed-Use Neighborhood Commercial (MXNC)	Mixed-Use Commercial (MXC)	Mixed-Use Transition (MXT)	
	Duplicating service	P	P	P	P	[C] P	C	C	Conditional uses limited to 2,500 sq. ft. of gross floor area
	* * *								
	Medical or dental laboratory	P	P	P	P	[N] C	N	N	Conditional use allowed if located in a basement or cellar
	Motor vehicle services:								
	Automobile parts sales; no installation or service	N	P	P	P	[N] P	N	N	
	* * *								
	Parking facilities:								
	Commercial parking facility	C	C	C	C	N	N	N	Conditional use subject to the requirements of Sec. 25.13.04.[e] d
i. Assembly and enetertain ment	* * *								
	Health and fitness establishment	P	P	P	P	C	C	C	Conditional use limited to 4,000 gross square feet of floor area. No floor area limit if located in a basement or cellar
	Hotel	P	P	P	P	S	N	N	
	Indoor entertainment establishment, commercial except shooting gallery [or range]	P	P	P	P	C	N	N	Conditional use subject to a Level 2 Site Plan Review
	Outdoor recreational establishment, commercial except shooting gallery [or range]	S	S	S	N	S	N	N	

	Uses	Zones							Conditional requirements or related regulations
		Mixed-Use Transit District (MXTD)	Mixed-Use Corridor District (MXCD)	Mixed-Use Employment (MXE)	Mixed-Use Business (MXB)	Mixed-Use Neighborhood Commercial (MXNC)	Mixed-Use Commercial (MXC)	Mixed-Use Transition (MXT)	
	Sports facility, multi-purpose, indoor commercial	P	P	P	P	[S] C	N	N	Conditional use allowed if located in a basement or cellar
	Recreational establishment, indoor, commercial, except shooting gallery [or range]	N	P	P	P	[S] C	N	N	Conditional use allowed if located in a basement or cellar
	Rental hall for meetings and social occasions	P	P	P	P	C	N	N	Conditional uses limited to a maximum of 4,000 square feet of gross floor area. No floor area limit if located in a basement or cellar
	Shooting gallery [or range]	N	N	S	N	N	N	N	
	Theater, including dinner theater	P	P	P	P	[N] P	N	N	

* * *

Sec. 25.13.04 – Special Regulations for Conditional Uses

[(a)] a. *Residential* – Where residential uses are permitted as conditional uses in a Mixed- Use Zone, other than the MXC Zone, they are only allowed in those areas of the zone recommended for such use in the Plan. The Planning Commission in approving such conditional uses shall establish such development standards as deemed necessary to render such uses suitable and compatible with the surrounding uses and in accordance with the intent of the Plan. In the Mixed-Use Commercial (MXC) Zone, multiple-unit dwellings are not permitted at the ground floor level.

[(b)] b. *Drug Store with Drive-Through Service Window* – In the MXTD Zone, the drive-through must be incorporated and enclosed within a building or structure. In the other zones where allowed, the drive-through must be arranged so as to not obstruct traffic circulation within the site. Sufficient reservoir spaces must be

provided and must be located so as not to obstruct vehicle or pedestrian circulation or parking within the site or accessing the site.

[(c)] c. *Banks and Financial Institutions with Drive-Through* – In the MXTD Zone, the drive-through must be incorporated and enclosed within a building or structure. In the other zones where allowed, the drive-through must be arranged so as to not obstruct traffic circulation within the site. Sufficient reservoir spaces must be provided and must be located so as not to obstruct vehicle or pedestrian circulation or parking within the site or accessing the site.

[(d)] d. *Commercial Parking Facility* – A commercial Parking Facility is only permitted in the form of a parking structure. At least 75 [%] percent of the ground level floor street frontage must be devoted to commercial uses.

Sec. 25.13.05 – Development Standards

a. *Build-To Lines* – Where a build-to line established in the Plan is required, at least 70 [%] percent of the length of the building wall facing that line must be set at the build-to line. Development must also comply with the building restriction line provisions set forth in Sec. 25.17.08.

b. *Development Standards*

1. The following table sets forth the development standards for each of the Mixed-Use Zones:

Zone	Maximum Height (in feet)[2]	Public Use Space (min. %)	Setbacks					Special Regulations
			Public Right-of-way Abutting	Side		Rear		
				Residential Land Abutting	Non-residential Land Abutting[1]	Residential Land Abutting	Non-residential Land Abutting	
MXTD	120	20	None	25' or height of building, whichever is greater	None. 10' min. if provided	25' or height of building, whichever is greater	None. 10' min. if provided	See Secs. 25.13.05.b.2(a) and 25.13.05.b.2(d)
MXCD	75	20	None	25' or height of building, whichever is greater	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	See Secs. 25.13.05.b.2(b) and 25.13.05.b.2(d)
MXE	120	20	None required. 10' min. if provided	25' or ½ height of building, whichever is greater	None required. 10' min. if provided	25' or ½ height of building, whichever is greater	None required. 10' min. if provided	See Sec. 25.13.05.b.2(d)
MXB	55	20	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	25' or ½ height of building, whichever is greater	None required. 10' min. if provided	
MXNC	45	20	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	See Sec. 25.13.05.b.2(d)
MXC	30	20	10'	15'	None required. 10' min. if provided	25' or height of building, whichever is greater	None required. 10' min. if provided	
MXT	35	20	10'	10'	None	20'	None required. 10' min. if provided	

* * *

c. *Other Standards and Requirements for New Development or Redevelopment*

* * *

6. *Floor Area Limitation* – Retail commercial uses by a single tenant cannot occupy more than 65,000 square feet of floor area at the ground level. This limit only applies to the ground area footprint, and does not limit additional floors devoted to the single tenant so long as each of the additional floors does not exceed 65,000 square feet.

Sec. 25.13.06 – Additional Design Guidelines

* * *

b. *Aesthetic and Visual Characteristics for All Zones*

1. *Facades and Exterior Walls Including Sides and Backs -*

* * *

(a) Along any public street frontage building, design should include windows, arcades, awnings or other acceptable features along at least 60 [%] <u>percent</u> of the building length. Arcades and other weather protection features must be of sufficient depth and height to provide a light-filled and open space along the building frontage. Architectural treatment, similar to that provided to the front facade must be provided to the sides and rear of the building to mitigate any negative view from any location off-site and any public area (e.g. parking lots, walkways, etc.) on site.

* * *

Sec. 25.13.07 – Special Design Regulations for Individual Mixed-Use Zones

a. *Mixed-Use Transit District Zone (MXTD)*

* * *

3. *Facade* – The façade design must be consistent with the [guidelines] <u>standards</u> set forth in Section 25.13.05.b.2(a). Where the façade height exceeds 35 feet, the façade should include an expression line above the first floor level and a defined cornice line at the top of the façade wall.

* * *

b. *Mixed-Use Corridor District Zone (MXCD)*

* * *

3. *Facades* – The façade design must be consistent with the [guidelines] <u>standards</u> set forth in Section 25.13.05.b.2(b). Where the façade height exceeds 35 feet, the façade should include an expression line above the first floor level and a defined cornice line at the top of the façade wall.

* * *

c. *Mixed-Use Employment Zone (MXE)*

* * *

6. *Special Regulations for Residential Development in the MXE Zone*

* * *

(b) Residential uses are permitted in buildings containing principally office uses, but are limited to no more than 20 [%] percent of the gross floor area.

* * *

Sec. 25.14.01 – Historic District Zones

* * *

d. *Designation of Properties*

1. *Initiation of Process*

* * *

(d) The filing of a Natural Resources Inventory identifying a potentially significant historic resource on the property.

* * *

6. *Restrictions on Property During Interim Historic Review Period* – No exterior change may be made to any property identified in the Historic Building Catalog, as revised, that is the subject of an application for nomination, historic evaluation, or a demolition permit under this Section 25.14.01 until the designation process is complete, unless the property owner first obtains a Certificate of Approval from the Historic District Commission in accordance with the provision of Section 25.07.1[3]4. The restriction of this subsection will not apply for more than 210 days from the date of the filing of the application that initiated the historic designation review period.

* * *

Sec. 25.14.07 – Planned Development Zones

* * *

d. *Development Standards*

* * *

3. *Equivalent Zone Development Standards*

(a) Except as provided in Section 25.14.07.d.4, the development standards of the equivalent zone designation for a Planned Development Zone apply:

* * *

4. *Waiver of Equivalent Zone Standards*

* * *

(a) Whether the development standard of the equivalent zone is compatible with the completed portions of the [project] Planned Development;

* * *

e. *Amendment of a Planned Development*

1. *Required, General*

* * *

(c) Addition of new [types of] uses not approved in the Planned Development Governing Documents;

* * *

Sec. 25.15.02 – Additional Requirements for Certain Special Exceptions

* * *

h. *Home-Based Business Enterprise (Major)*

* * *

2. *Major Home-Based Business Enterprises* – Except as provided in subsection 25.09.07.c.2, [M] major home-based business enterprises are subject to the following provisions:

* * *

(a) *Application Procedures* – As part of the special exception application, the applicant must provide of the following information plus such additional information required for special exceptions:

* * *

3. *Additional Restriction*

* * *

(a) The owner / applicant [sells] vacates the property; or

* * *

j. *Housing for Senior Adults and Persons with Disabilities*

* * *

3. *Special Development and Use Requirements*

* * *

(d) *Maximum Lot Coverage* - Notwithstanding the provisions of Sections 25.10.05.a and 25.10.05.b, in the R-400 and R-200 Zones, the maximum lot coverage is limited to 30 [%] percent; provided that the development of the facility does not exceed one (1) story and also does not exceed 20 feet in height, except as provided in subsection (e) below.

* * *

k. *Life Care Facility*

* * *

3. *Special Development and Use Requirements*

* * *

(d) *Lot Coverage in R-400 and R-200 Zones* - Notwithstanding the provisions of Sections 25.10.05.a and 25.10.05.b, in the R-400 and R-200 Zones, the maximum lot coverage is limited to 30 [%] percent.

* * *

o. *Restaurants in the I-L Zone*

The establishment of a restaurant in the I-L Zone:

1. Must be accessory to the main use of any lot;

2. Must be located within the main building; and

3. Must not occupy more than 25 [%] percent of the gross floor area of the building.

* * *

Section 25.16.02 – General Requirements

a. *General Provisions*

1. No land can be used or occupied, no structure can be designed, erected, attached, used, or occupied, and no use can be operated unless the required parking and loading facilities are provided:

(a) In the minimum or maximum amounts set forth in this Article;

(b) In accordance with the design standards set forth in this Article; and

(c) In accordance with this Article and may not be rearranged or altered without approval [of the Approving Authority] in accordance with the provisions of Section 25.05.07.b.

* * *

Section 25.16.03 – Number of Spaces Required

d. *Table of Space Requirements* - The number of parking spaces for both vehicles and bicycles required for each class of land use are as shown in the following table:

* * *

Use Category	Use	Auto Parking Spaces		Bicycle Parking Spaces			Additional Requirements
		Unit Measure	Base Number Required	Unit Measure	Short Term Space	Long Term Space	
Institutional	* * *						
	Housing for senior adults and persons with disabilities	Per every 3 dwelling units – all spaces to be located within 150 feet of the building served	1	Dwelling unit	1 per 100 dwelling units	1 per 50 dwelling units	Planning Commission to determine additional vehicle parking spaces required based on operational factors
	Life Care Facility	Per each free-standing independent living unit (up to 4 attached units)	1	Dwelling unit	1 per 100 dwelling units	1 per 50 dwelling units	Planning Commission to determine additional vehicle parking spaces required based on operational factors
		Per each independent dwelling unit within a multiple-unit dwelling	See requirements for multiple-unit dwelling as set forth above				
		Per each 1,000 gross square feet of floor area devoted to assisted living or nursing care	1				

Use Category	Use	Auto Parking Spaces		Bicycle Parking Spaces			Additional Requirements
		Unit Measure	Base Number Required	Unit Measure	Short Term Space	Long Term Space	
		Per each participating doctor and every 2 employees	1				
	Funeral home	Per each 50 SF of assembly area	1 and	Square feet of gross floor area	1 per 40,000 SF	2 per 40,000 SF	
		Per employee	1 and				
		Per each vehicle used in the business	1				

* * *

g. *Determination of Requirements for Multiple Uses*

1. Except as provided in paragraph 3 of this subsection and in subsections h.5 and h.6 below, when any land or building is used for two (2) or more purposes, the number of parking spaces required must be the sum of the requirements for the various individual uses, computed separately in accordance with this article. Parking facilities for one (1) use cannot be considered as providing the required parking facilities for any other use, except as otherwise provided.

* * *

h. *Flexible Parking Standards* – The Approving Authority may permit reductions in the number of parking spaces required, if certain standards and requirements are met as set forth below.

1. *Mayor and Council and Planning Commission Reductions*

The Mayor and Council, in the approval of a Project Plan, or the Planning Commission in the approval of a site plan within the MXTD, MXCD, [and] MXE, MXNC, and PD Zones, have the authority to reduce the required number of parking spaces for uses in the building or buildings to be constructed provided that:

* * *

i. *Deferral for Providing Spaces*

1. The Approving Authority, in considering a Project Plan or site plan, may approve a deferral of providing the number of parking spaces required where it can be demonstrated that the use served does not need the number of spaces otherwise required by this Section 25.16.03 due to one (1) or more of the following:

* * *

(c) Proximity to a transit station. [; and/or]

* * *

Sec. 25.16.04 – Location of Parking and Loading Facilities

* * *

c. All garages or other space allocated for parking of vehicles within buildings or in basements or open spaces on the roofs of buildings are considered part of the required off-street parking facilities and may be included as such in computing the [area] requirements outlined in this article.

* * *

Sec. 25.16.06 – Parking Design Standards

* * *

b. *Parking Spaces*

* * *

6. No off-street surface parking [area] facility can contain more than 150 spaces. If a greater number of spaces is required by this article, separate parking areas of not more than 150 spaces must be provided and must be separated by a landscaped area at least ten (10) feet in width.

* * *

e. *Internal Landscaping of Surface Parking* [*Areas*] *Facilities* -

* * *

Sec. 25.17.02 – Landscaping and Screening

* * *

d. *Screening of Mechanical Equipment Required in All Zones Other Than Single Dwelling Unit Residential Zones* – In all zones other than the Single Dwelling Unit Residential Zones, all air conditioning equipment, transformers, emergency generators, elevator equipment, and similar mechanical equipment on any roof, ground, or building must be screened from public view at ground level from the edge of the property. Such screening must be done in such a manner and with such materials as may be reasonably required. Mechanical equipment on roofs should be limited to the extent possible, and in no case can it exceed the coverage provisions of Section 25.09.06.b.

* * *

Sec. 25.17.03 – Underground Installation of Utility Lines Required; Screening or Underground Installation of Transformers[;] and Equipment Lockers Required

* * *

b. *Placement of Utility Equipment* – Except as otherwise provided, all electrical equipment (including transformers and equipment cabinets, but excluding emergency generators), telecommunications equipment, and television equipment (including cable television) must be located as follows:

Add a new Section 25.17.08

25.17.08. Building Restriction Lines

a. Subject to the exceptions provided herein, no building permit can be issued and no building or part thereof nor any fence, wall, sign or structure can be erected or structurally changed within the area between the building lines and the centerline of the particular street or highway referred to in establishing the building line. This section does not apply to underground parking facilities.

b. Building lines established.

1. Building restrictions lines along Rockville Pike

(a) Northeast side. Beginning for the same at a point on the southeasterly boundary of the City 135 feet northeasterly from the point of intersection of the centerline of Rockville Pike with the southeasterly boundary of the City and running thence northwesterly and parallel to the centerline of Rockville Pike and 135 feet therefrom to the southeasterly line of Dodge Street.

(b) Southwest side. . Beginning for the same at a point on the southeasterly boundary of the City 135 feet southwesterly from the point of intersection of the centerline of Rockville Pike with the southeasterly boundary of the City and running thence northwesterly and parallel to the centerline of Rockville

Pike and 135 feet therefrom to the southeasterly line of Richard Montgomery Drive.

2. Building restriction lines along Hungerford Drive.

(a) East side. Beginning for the same at a point on the northerly line of A Street 85 feet easterly from the point of intersection of the centerline of Hungerford Drive with the northerly line of A Street and running thence northerly and parallel to the centerline of Hungerford Drive and 85 feet therefrom to the northerly line of Gude Drive.

(b) West side. Beginning for the same at a point on the westerly line of North Washington Street 85 feet westerly from the point of intersection of the centerline of Hungerford Drive with the westerly line of North Washington Street and running thence northerly and parallel to the centerline of Hungerford Drive and 85 feet therefrom to the southerly line of College Parkway; thence still northerly and parallel with the centerline of Frederick Road and 95 feet westerly therefrom to the northerly line of Gude Drive.

3. Exceptions.

(b) Where the building restriction lines established by subsections a and b above reduces the buildable depth of any lot or parcel of land bounded by the W.M.A.T.A. right-of-way, to less than 300 feet, then such line must be adjusted by establishing same at a point three-quarters of the distance from the W.M.A.T.A. right-of-way and the right-of-way of Rockville Pike but, in no event, can such building restriction line be less than 85 feet from the centerline of Rockville Pike.

(c) Where the applicable master plan recommends a greater or lesser building restriction line than set forth herein, the plan recommendation takes precedence over the requirements set forth in subsections a and b above. Where there is no master plan recommendation, the Approving Authority may waive building restriction line requirements if the waiver will result in a better form of development consistent with the intent of the master plan and the development standards for mixed-use zones set forth in Article 13.

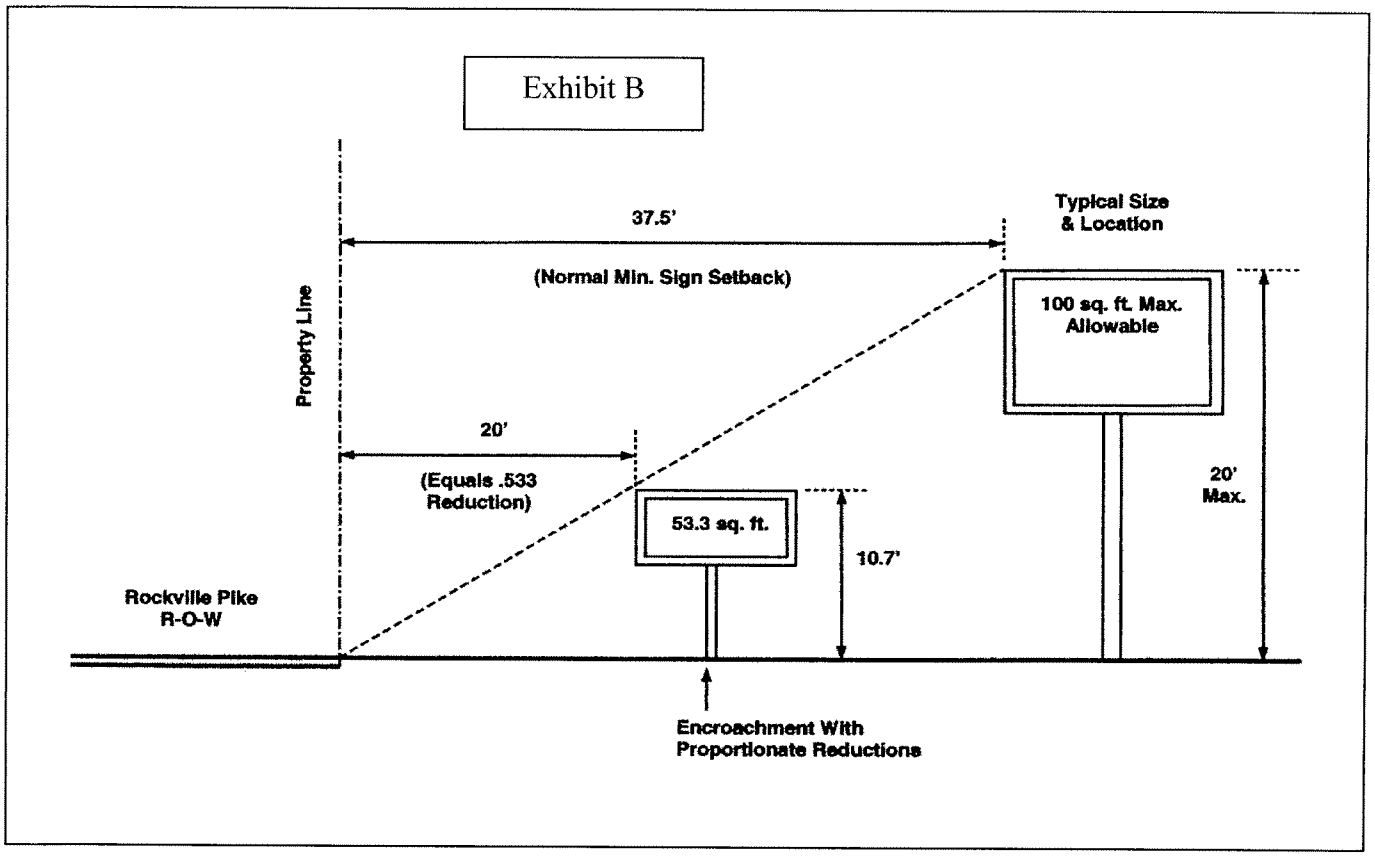
c. Signs. Notwithstanding any other provisions of this Chapter, one (1) sign which designates or identifies a use located on the same record lot may be erected and maintained within the building lines set forth in this section and the front line of the record lot provided that the size and height of any such sign must be reduced in direct proportion to the distance of the sign from Rockville Pike. Expressed in terms of mathematical formulas, the size and height reductions applicable to signs with the building restriction lines of Rockville Pike would be as shown in Exhibit A and are further illustrated in the graphic described in Exhibit B below:

(Insert Exhibits A and B as shown below)

Exhibit A

$$\frac{\text{Distance of sign From Rockville Pike}}{37.5} \times 20' = \text{Allowable height of sign}$$

$$\frac{\text{Distance of sign From Rockville Pike}}{37.5} \times 100' = \text{Allowable size of sign}$$



* * *

Sec. 25.18.13 – Signs Permitted in [MXNC,] MXC[,] and Industrial Zones

* * *

25.18.08 – Sign Permits; Appeals

a. Except as expressly exempted or otherwise provided in this Article, a sign permit must be obtained prior to the installation, erection, enlargement, illumination, or substantial alteration of any permanent or temporary sign allowed under this Article. The changing of the sign face is a substantial alteration requiring a new sign permit.

b. Applications shall be submitted to the Chief of [Inspection Services] Planning.

c. Each application shall be submitted on forms provided therefore by the Chief of [Inspection Services] Planning, and be accompanied by such fee as is established by resolution of the Council. The applicant shall furnish as part of the application the following information:

* * *

9. Such other information pertaining to the requirements of this Article as may reasonably be required by the Chief of [Inspection Services] Planning.

d. The Chief of [Inspection Services] Planning must review the application within 15 business days from the date of submission of the application and required fee and either approve or deny the application or return the application to the applicant if the application is incomplete as follows:

1. A sign permit must be issued if the Chief of [Inspection Services] Planning finds that the sign proposed in the application complies with the requirements of this Article.

2. If the permit is denied, the denial must be in writing and must specify the specific section or sections of this Article or other applicable law with which the proposed sign(s) is inconsistent.

3. If the application is returned due to incompleteness, the Chief of [Inspection Services] Planning must advise the applicant in writing as to the information needed to complete the application.

4. Failure of the Chief of [Inspection Services] Planning to take action on an application within the time frame set forth above is appealable to the Sign Review Board in the same manner as an appeal from a denial of a permit.

e. An applicant may appeal the denial of a sign permit by filing a sign permit review application with the Sign Review Board within ten (10) business days of the decision of the Chief of [Inspection Services] Planning.

* * *

25.18.13. Signs Permitted in [MXNC,] MXC[,] and Industrial Zones

a. *Permanent Building Signs* – Permanent building signs are permitted in the [Mixed- Use Neighborhood Commercial (MXNC),] Mixed-Use Commercial (MXC)[,] and Industrial (I-L and I-H) Zones in accordance with the following:

* * *

b. *Freestanding Signs*

* * *

[2. Freestanding signs are permitted in the MXNC Zone in accordance with the following:

(a) Freestanding signs that identify a single business/tenant shall be counted as a portion of the total aggregate sign area allowed for that business/tenant.

(b) Other freestanding signs, including those that identify a multi-tenant building or center, shall not be counted in the aggregate sign area allowed for any individual business/tenant. Such signs must be in accordance with the following:

(i) There shall be only one (1) freestanding sign per record lot;

(ii) Such signs must have a maximum area of 50 square feet and maximum height of then (10) feet;

(iii)The freestanding sign must be counted as a portion of the aggregate sign area of the most proximate exterior building wall;

(iv) Such signs must not be closer than 30 feet to any residential zone; and

(v) Freestanding signs that contain the name, logo, or trademark on more than one (1) business, place, organization, building, or person must in addition to the requirements above, satisfy the following additional requirements:

A. Lettering for the identification of the building /center must not be less than 18 inches in height;

B. Lettering for the identification of individual business/tenants and other copy must not be less than ten(10) inches in height;

C. The design of the sign must be internally consistent and harmonious in color, size, style, material, and mounting; and

D. The design of the sign must be consistent and harmonious with the sign plan and architecture for the entire building or center.]

[3]2. Freestanding signs are permitted in the I-L and I-H Zones in accordance with the following:

* * *

Sec. 25.18.14 – Signs Permitted in Other Mixed-Use Zones

* * *

b. Signs permitted in the MXTD, MXCD, MXNC, MXB and MXE Zones:

* * *

2. Freestanding Signs

(a) Freestanding signs are permitted in the MXTD Zone in accordance with the following:

* * *

(vi) Freestanding signs may also be subject to the provisions of Sec. 25.17.08.d for areas along Rockville Pike.

* * *

(b) Freestanding signs are permitted in the MXCD and MXNC Zones in accordance with the following:

* * *

E. A landscaped area must be provided at the base of the freestanding sign, with the landscaped area a minimum area of two (2) square feet for each square foot of sign area;[and]

F. The design of the sign shall be compatible and harmonious with the sign plan and architecture for the entire building or center[.] and

G. Freestanding signs are also subject to the provisions of Sec. 25.17.08.c for areas along Rockville Pike.

* * *

Sec. 25.20.03 - Adequate Public Facilities Determination: Validity Period; Extension; Redetermination

* * *

3. *Prior Approvals of Certain Developments* [*Procedures and Optional Method*] - A determination of adequate public facilities made prior to March 16, 2009 in connection with the approval of the following developments under the zoning

regulations in effect at the time[, is timely and] remains valid for [a] such period as may have been determined by the Mayor and Council or the Planning Commission, as applicable, at the time of approval: Comprehensive Planned Development, Variable Lot Size Development, Cluster Development, Residential Townhouse Development, Planned Residential Unit Development, I-3 Optional Method of Development, Preliminary Development Plan, development pursuant to an optional method of development requiring a Preliminary Development Plan.

* * *

b. *Extension*

1. *Extension of Development Implementation Period Is an Extension of Validity Period* - An extension of time granted for the implementation of any development approval or any amendment thereto, other than approval of a preliminary plan of subdivision or approval of any of the developments [Planned Development] identified in [Article 14 of this Chapter procedures] subsection 25.20.03.a.3 above prior to March 16, 2009 automatically extends the validity period for the determination of adequate public facilities.

* * *

Section 25.21.13 – Ownership Plats

Purpose – an ownership plat may be approved for the purpose of designating land as separate ownership lots within a single record lot where the requirements of this section are met [for purposes of ownership identification only]. Lots shown the plat must be depicted with metes and bounds descriptions and resemble a Final Record Plat but the lots shown on the ownership plat do not constitute a resubdivision of the original record lot or lots.

* * *

b. *Findings* - Where more than one (1) building or building component exists, or is to be located, on a tract of land, the Planning Commission may approve an ownership plat if the Commission finds all of the following:

* * *

2. The ownership plat [will not]:

(a) [Constitute] Will not constitute a violation of any provision of this Chapter or other applicable law;

(b) [Violate] Will not violate or adversely affect the Plan;

(c) [Be] Will not be unsuitable for the type of development, the use contemplated, and available public utilities and services; or

(d) [Affect] Will not adversely affect the health or safety of persons residing or working in the neighborhood.

Holland & Knight

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Holland & Knight LLP | www.hklaw.com

June 25, 2009

William Kominers
301 215 6610
William.kominers@hklaw.com

VIA UPS

Mr. Deane Mellander
Planning Department
City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850-2364

Re: Text Amendment No. TXT2009-00221 for Rockville Zoning Ordinance -- Proposed Amendment

Dear Mr. Mellander:

The purpose of this letter is to request that the City include the enclosed language as an amendment (the "Amendment") to the City's Text Amendment No. TXT2009-00221 that was introduced on June 22, 2009. The enclosed text would be added to amend Section 25.03.02, Section 25.16.03, and Section 25.14.27 of the City of Rockville Zoning Ordinance.

The proposed Amendment is intended to allow medium-sized, table-cloth restaurants to be located in an office building that is within an existing approved Planned Development project. This proposal would allow this use only in a large office building in this Planned Development Zone. Such a restaurant would serve the building occupants, other occupants of the office parks and the general public.

This type of use does not really fall within any of the three existing restaurant types in Section 25.03.02 (Full-Service; Accessory; Fast Food). The character of a commercial Planned Development, with its large internal population, but also external focus, is appropriate for a restaurant serving a more broad audience. Including a new restaurant category which can be located in an office building in the existing Planned Development zone, to serve office workers during the day and serve a broader audience in the evening hours when the office park is underutilized, makes good planning sense and is a more efficient use of resources.

The existing Accessory Restaurant category has restrictions that limit its visibility, and therefore the willingness of quality restaurants to accept such locations. This Amendment proposes a definition for a new type of restaurant, blending different aspects of full-service and accessory restaurants, while also keeping the restaurant size proportional to the scale of the office building. The proposed definition also restricts the size of the bar patron area, so that the restaurant element is not overwhelmed. This blend of standards is intended to fit the needs of the Planned Development character, as well as the restaurateur, so as to advance the interests of the City.

Adding this use category will further facilitate the integration of uses in the existing Planned Developments and allow better use of the ground level of office buildings. This is an appropriate ancillary use that will be a beneficial amenity both for the people within the Planned Development and for residents of the City generally. By creating the new restaurant classification in the definition section of the Ordinance, the City can then determine whether there are additional locations that may be appropriate for this use.

Please contact me with any questions you have regarding the proposed Amendment. Thank you for your consideration of this request.

Very truly yours,

HOLLAND & KNIGHT LLP

William Kominers

cc: Mr. Scott Ullery
Ms. Susan Swift
Mr. James Wasilak
Arnold Kohn, Esquire
Arthur N. Fuccillo, Esquire
Scott C. Wallace, Esquire
Cynthia M. Bar, Esquire

6395784_v1

PROPOSED AMENDMENT TO
ZONING TEXT AMENDMENT NO. TXT2009-00221

(June 25, 2009)

Purpose: Create a new use -- Ancillary Restaurant -- for use within office buildings of a certain size in the Planned Development (PD) Zone.

1. Add to Section 25.03.02 - Words and Terms defined:

Restaurant – An establishment that merchandises or dispenses food and drink and provides patron seating and/or drive-through facilities.

1. ***

2. ***

3. ***

4. *Restaurant, Ancillary* - A Restaurant that is ancillary to and located on the ground floor (and/or the floor immediately above or below) of an office building containing at least 190,000 gross square feet, that is within a mixed use or office planned development under Section 25.14.07. An Ancillary Restaurant offers food service for patrons already within the planned development and those patrons not already on the site. An Ancillary Restaurant can be no larger than 8,000 gross square feet or five percent (5%) of the total gross square footage of the building in which it is located, whichever is smaller. An Ancillary Restaurant cannot provide drive-through or walk-up services and the bar patron area cannot exceed 10% of the total patron use area.

2. Add to Section 25.16.03 Parking standards chart:

Use Category	Use	Auto Parking Spaces		Bicycle Parking Spaces			Additional Requirements
		Unit Measure	Base Number Required	Unit Measure	Short Term Space	Long Term Space	
	Restaurant, ancillary – within an office building	Per 300 s.f.	1 and	Square feet of gross floor area	2 per 5,000 s.f.	2 per 12,000 s.f.	
		Per 2 employees	1				

3. Add to Section 25.14.27, PD-TO Zone:

An Ancillary Restaurant use is permitted and need not be separately listed as a use for a particular parcel in the approved Concept Plan for the Planned Development, so long as the principal office use is listed for that parcel. Exterior signage as governed by the Planned Development Governing Documents, including any Comprehensive Signage Plan.

MILES & STOCKBRIDGE P.C.

RECEIVED
JUN 15 2009
COMMUNITY PLANNING
AND DEVELOPMENT SERVICES

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

June 11, 2009

Mr. James Wasilak, Chief of Planning
Department of Community Planning
& Development Services
City of Rockville
111 Maryland Ave.
Rockville, MD 20850-2364

Re: I-L Zone – Clarification of Use – M&T Bank - 1322 Gude Drive, Rockville, Maryland

Dear Jim:

Thank you for taking the time yesterday to review the draft Zoning Text Amendment that we prepared on behalf of our client M&T Bank. As we previously discussed, M&T Bank has an existing branch that is located at the Burgundy Park Shopping Center, within the corporate boundaries of the City of Rockville. Some time ago, when the comprehensive Zoning Ordinance Amendment was pending before the Mayor and Council we explored with you and your staff the feasibility of adding a drive/through to the Burgundy Park branch. The location of this branch, adjacent to an unused internal alley, presents the perfect opportunity to add drive/through capability with virtually no impact on the operation of the shopping center.

When we first discussed M&T's plans with City Staff there was a moratorium in effect and some uncertainty as to the specifics details of the then proposed Light Industrial –I-L - zoning intended for the shopping center property. We were then advised by Dean Mellander that the now enacted City Zoning Ordinance would classify drive/through banks as a "conditional use" in the I-L Zone, similar to its classification in the several MX zones. In the MX zones, financial institutions that do not include a drive/through are permitted uses and those that include a drive/though are allowed as a conditional use. Although financial institutions are classified as a commercial office use in the MX zones, the I-L zone contains no specific reference to such uses even though traditionally branch banks have been allowed in the "I" zones.

The proposed Zoning Text Amendment, a copy of which is attached, clarifies what we are told was intended by allowing financial institutions as a permitted use and classifying those with drive/through as a conditional use subject to the same conditions that apply to drive/through in the MX zones

Now that the moratorium has expired, M&T is anxious to move forward with its plans and is ready to submit those plans for approval by your Department. Recently you informed us that a comprehensive amendment was under consideration to deal with circumstances such as this but that the timing of the enactment of that amendment was uncertain. Accordingly, we volunteered to draft a specific Zoning Text Amendment that would address the bank and drive/through bank uses in the I-L zone.

I want to confirm that part of our discussion that relates to the timing of the Mayor and City Council's consideration of this text amendment and my request that M&T be permitted to initiate the permit review process as soon as the Zoning Text Amendment is introduced. While we recognize that final approval of the permits required for construction must await enactment of this amendment, a significant time savings will be realized by the completion of the review process while the amendment is pending, thereby enabling the City to release the permits upon enactment of the Zoning Text Amendment. We appreciate the City allowing this simultaneous review and look forward to working with you to secure the enactment of the Zoning Text Amendment. If I have in any way misunderstood our discussion, please let me know.

Sincerely,

Stephen J. Orens

cc: John Dillon, M&T Bank
Abram J. Kronsberg, Esquire
M&T Bank
Casey L. Moore, Esquire

Addendum to Zoning Text Amendment Application

Narrative Explanation:

The existing zoning text for the I-L Zone refers to an office use as a conditional use limited to 25% of the gross floor area of a building. See § 25.12.03. The City has historically included banks and financial institutions as "office" uses under the zoning ordinance. However, the mixed use zones specifically reference banks and financial institutions, whereas the existing I-L Zone does not.

The Applicant proposes to clarify explicitly that banks and financial institutions are "permitted" uses under the I-L Zone, and further that a bank or financial institution with a drive/through is a conditional use subject to the same restrictions set forth in the mixed use zones. See §25.13.04.c which states:

> "*Banks and Financial Institutions with Drive-Through* – In the MXTD Zone, the drive-through must be incorporated and enclosed within a building or structure. In the other zones where allowed, the drive-through must be arranged so as to not obstruct traffic circulation within the site. Sufficient reservoir spaces must be provided and must be located so as not to obstruct vehicle or pedestrian circulation or parking within the site or accessing the site."

Proposed Alternative Language for Ancillary Restaurant Use

Sec. 25.03.02 – Words and Terms Defined

* * *

Restaurant - .....

* * *

4. *Restaurant, Ancillary* – A restaurant that is ancillary to and located within an office building containing at least 150,000 gross square feet of floor area.

* * *

Sec. 25.13.03 – Land Use Tables

The uses permitted in the Mixed-Use Zones are as shown in the table below. Uses are subject to applicable conditions of site plan approval. All special exceptions are subject to the requirements of Article 15.

	Uses	Zones							Conditional requirements or related regulations
		Mixed-Use Transit District (MXTD)	Mixed-Use Corridor District (MXCD)	Mixed-Use Employ-ment (MXE)	Mixed-Use Business (MXB)	Mixed-Use Neighbor-hood Commercial (MXNC)	Mixed-Use Commercial (MXC)	Mixed-Use Transition (MXT)	
h. Commercial	* * *								
	Food Services:								
	Ancillary Restaurant	P	P	P	N	N	N	N	Use cannot exceed 5% of the total gross floor area of the building. No drive-through or walk-up service is permitted. The bar patron area cannot exceed 10% of the total patron use area.
	Carry-out	P	P	P	P	P	P	P	
	* * *								

Sec. 25.16.03 – Number of Spaces Required

* * *

d. *Table of Space Requirements* – The number parking spaces for both vehicles and bicycles required for each class of land use area as shown in the following table:

* * *

Use Category	Use	Auto Parking Spaces		Bicycle Parking Spaces			Additional Requirements
		Unit Measure	Base Number Required	Unit Measure	Short Term Space	Long Term Space	
* * *							
Commercial	Ancillary Restaurant	Per 300 s.f.	1 and	Square feet of gross floor area	2 per 5,000 s.f.	2 per 12,000 s.f.	
		Per 2 employees	1				
	* * *						

Sec. 25.14.07 – Planned Development Zones

b. *Uses*

* * *

3. An ancillary restaurant is permitted and need not be separately listed as a use for a particular parcel in the approved Planned Development Governing Documents, so long as the principal office use is listed for that parcel. Signs will be governed by the Governing Documents, including any comprehensive signage plan. This use cannot exceed 5% of the total gross floor area of the building. No drive-through or walk-up service is permitted. The bar patron area cannot exceed 10% of the total patron use area.