

**CITYOF ROCKVILLE
COMMUNITY PLANNING & DEVELOPMENT SERVICES DEPARTMENT
STAFF REPORT
March 15, 2011**

TO: Planning Commission

FROM: Jim Wasilak, AICP, Chief of Planning

PLANNER: Deane Mellander, Zoning Administrator

DATE: March 16, 2011

SUBJECT: Zoning Text Amendment TXT2011-00230

RECOMMENDATION: Approval of the proposed text amendment with the revisions recommended by the staff.

REQUEST: The applicant, the Mayor and Council of Rockville, authorized the filing of this text amendment for the purposes of addressing certain policy issues and to make corrections and clarifications.

RELEVANT ISSUES:

- Revise certain definitions
- Revise the site plan review process to delete the Level 3 site plan review and modify the findings for site plans and project plans
- Modify or delete certain special exception uses in the residential zones

PREVIOUS RELATED ACTIONS: At their meeting on November 15, 2010, the Mayor and Council directed the staff to prepare this text amendment to address certain clarification and policy issues raised by Councilmember Pierzchala and also by the Communications Task Force.

BACKGROUND

The proposed zoning text amendment (Attachment A) combines two related objectives. The first is to make further corrections and clarifications to the

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ordinance that have been noted over the past year while administering this new code. Most of these are very minor technical corrections. The other objective is to address the issues and comments raised by Councilmember Pierzchala in his detailed review of the code (see Attachment B). The staff initially addressed these issues in a memo dated July 23, 2010 (see Attachment C). The Mayor and Council reviewed these issues at their meeting on November 15. At the November meeting, the Mayor and Council directed staff to prepare a text amendment for authorization to file. The staff prepared the draft text amendment and the Mayor and Council authorized the filing at its meeting on February 14, 2011.

ANALYSIS

The following proposed amendments are intended to address the general policy issues that were raised by Councilmember Pierzchala and reviewed by the Mayor and Council at the November meeting:

- Definition of “family” (Sec. 25.03.02): The staff had initially recommended that the definition be left as it currently appears in the code. However, we have noted that the definition of family in the Property Maintenance Code is not consistent with the zoning ordinance definition. Further, Mr. Howley, Supervisor of Community Enhancement and Code Enforcement, has requested that there be some clarification inserted into the definition to aid enforcement issues. The current definition in the Property Maintenance Code reads as follows:

Family: An individual, or two (2) or more persons related by blood or marriage, or a group of not more the five (5) persons (excluding servants) not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.

The two departments along with the City Attorney’s Office have worked together and recommend that the definitions in *both* codes be modified to read as follows:

Family – An individual, or two (2) or more persons, all of whom are related to each other by blood, marriage, domestic partnership, adoption, guardianship or other duly authorized custodial relationship and not more than two (2) other persons]; or a group of not more than five (5) persons all of whom are not related to each other by blood, marriage, domestic partnership, adoption,

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guardianship or other duly authorized custodial relationship, living together as a single housekeeping group in a dwelling unit.

The intent here is to allow a related family to rent a room (or rooms) to only two other persons. Renting to three or more persons becomes a boardinghouse by zoning ordinance definition, which has been a prohibited use since at least the prior ordinance. In the case of a family of unrelated persons living as a single housekeeping unit, the limitation remains at five persons total.

Please note that because the Property Maintenance Code is a part of Chapter 5 of the City Code, any amendment will be a separate action. Once the Mayor and Council take action on the final zoning text, an ordinance to amend Chapter 5 with the same definition will be introduced.

- Definition of "Dwelling Unit" and "Kitchen" (Sec. 25.03.02): In the discussion with the Mayor and Council in November, the staff had suggested that the definition of "kitchen" be amended to have the presence of a kitchen establish a dwelling unit. After further discussion, it did not seem to make sense to have a kitchen by itself establish a dwelling unit. The recommendation is to leave the "kitchen" definition as is, and make it more explicit in the definition of "dwelling unit" that a kitchen is one of the necessary items to meet the definition of a dwelling unit.
- The Site Plan Review Process – Revisions are recommended in four areas associated with the site plan review process and administration:

Sec. 25.05.07: The proposed amendment makes revisions in two related areas. The first is to allow for some clean-up and flexibility in reviewing minor amendments to existing developments administratively. As now written the text contains several inconsistencies. Currently, minor amendments may only be approved if they are for small adjustments due to site engineering or minor changes to site features, that don't alter the basic elements of the site plan. However, there is no provision to allow a permitted use in the zone to occupy an existing building without a site plan process even when no site improvements or additional parking are required.

Sec. 25.07.01: The second change revises the language for the findings for both site plan and project plan. The current language is essentially identical for both. However, due to the nature of the project plan, the findings should be more general and tied to the master plan and overall impact of the proposed

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development. Where a site plan implements a project plan (or portion thereof), there needs to be a cross-reference to the findings already made in approving the project plan. Also, a cross-reference to site plans implementing approved special exceptions is needed.

Sec. 25.07.02: The third change recommended is to eliminate the Level 3 site plan review process. The only real difference between the Level 2 and Level 3 processes is that the Level 3 process requires a second session before the Planning Commission before they can take action. If the Planning Commission determines that they need additional information or time for consideration, they already have the authority to defer action.

The fourth change involves revisions to the levels of site plan review and how the levels are determined. Based on experience with project reviews over the past year and a half, the staff is recommending that the project implementation points chart in Section 25.07.02.a (see page A-13) be revised to raise the threshold levels for the square footage on nonresidential uses and the percentages of single unit detached residential units within a quarter mile of the project. The recommended changes are as follows:

Square Footage of Non-Residential Space:

One point – 5,000 or fewer square feet (no change)

Two points – 5,001 to 25,000 square feet (raised from 10,000 square feet)

Three points – 25,001 square feet to 100,000 square feet (raised from 50,000 square feet)

Four points – 100,001 or greater square feet (raised from 50,001 square feet)

Residential Impact Area:

One point – Up to 10% residential development within ¼ mile

Two points – Up to 50% residential development within ¼ mile

Three points – Up to 75% residential development within ¼ mile

Four points – Development within single-unit detached residential area (no change)

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One example is the Kol Shalom synagogue project. Because of its size as a nonresidential use and location within a single unit detached residential neighborhood, the point count came to 13, which required project plan approval by the Mayor and Council under the current process. The current points table treats this project as if it were a King Farm or Fallsgrove sized project. The Kol Shalom building was 30,379 square feet on a 4.8 acre site. The proposed text revisions would allow such projects to proceed through the Level 2 site plan review process with Planning Commission review but not requiring Mayor and Council review.

- Secs. 25.07.04, 25.07.05, and 25.07.07: As a result of the Communications Task Force report and staff suggestions, revisions have also been made to the review process for site plans and special exception applications. We have reversed the order of the pre-application area meeting and pre-application staff meetings in order to more clearly reflect the change that is already being made administratively. This will require an applicant to meet with the community before meeting with the staff on a proposed project ahead of the formal application.
- Sec. 25.10.03: A number of revisions are proposed to the land use tables involving special exceptions, especially in the single unit detached residential zones. The proposed text amendment would eliminate from the R-40 Zone charitable or philanthropic institutions and private educational institutions. Hospitals are proposed to be deleted entirely from these residential zones. These nonresidential uses can have substantial impacts and should therefore be restricted or eliminated entirely.

The following is a summary of the rest of the recommended changes, most of which are technical or clarifying in nature:

In the Table of Contents, the sections in Article 7 are renumbered as a result of the recommendation to delete the Level 3 site plan review process.

Sec. 25.02.04: In 2009, the State revised the state code regarding the procedures for annexations. As a consequence, Section 25.02.04 has to be revised to reflect the new procedures set forth in the state code. The City Attorney's office has provided the revised language to effect these changes.

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Section 25.03.02 – Within the Definitions, several additions and corrections are proposed:

Add a new definition to clarify that a property owner may designate another party to be the applicant for a development action:

Applicant – The person who is authorized by the owner to file an application for any type of development application under this Chapter.

The definitions of Basement and Cellar are revised to provide cross-references to each other.

Revise the definition of Build-To Line to make it clear that the line is established by the applicable master plan and the encroachments are regulated in Sec. 25.09.05.

Dwelling Unit – Revise the definition to include the term kitchen, as opposed to cooking facilities. See the discussion above.

Established Setback – Revise the definition to refer to Sec. 25.10.05.a. (Table of Development Standards)

Definition of Family: See discussion above.

Add a cross-reference entry for Philanthropic Institution

Definition of Project Plan: Provide a reference to Sec. 25.07.02 (Application Procedure for Site Plans, Project Plans and Special Exceptions)

Definition of Use, Accessory: Revise the definition to be consistent with the terminology in Sec. 25.09.01

Section 25.04.02 – Subsection b.2(c) – add a reference to the Plan.

Section 25.04.04 – Correct subsection reference (b to c).

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Section 25.04.05 – Subsection c.5 is corrected to make reference to the Board instead of the Commission.

Section 25.04.07 – Chief of Inspection Services – Correct the reference for appeals to the Board of Adjustments and Appeals, as established in Chapter 5.

Section 25.05.07 – Amendments to Approved Development – See the discussion above.

Article 6 – Add the word “Zoning” ahead of the words “Text Amendments” for added clarity.

Sec. 25.06.03 – Subsection c is amended to require the posting of a sign in connection with a variance application. Subsection e is corrected to make the term “granted” rather than “approved” where it appears.

Section 25.06.05 – Subsections f and g are included in the listing, rather than have a separate subsection 4.

Section 25.07.01 – The findings for site plans and project plans have been revised to make it more clear what the differences are in the processes and the procedures to be used. See also the discussion above.

Section 25.07.02 – See the discussion above regarding the changes to the points table and the site plan review levels. This includes the deletion of the Level 3 site plan review process, which necessitates the renumbering of all the following sections (and the listing in the Table of Contents). See also the discussion above regarding the changes in Secs. 25.07.04,.05, .07, and .08 (former Sec. .09) regarding the pre-application process.

Section 25.07.08 : In subsection q, revise to indicate that the pre-application process is not required where a site plan is required following approval of a special exception. The pre-application process was required as part of the initial special exception process, so interested parties will have already been made aware of the application.

Section 25.08.02 – Revisions made for cross-references resulting from the deletion of the Level 3 site plan process.

Section 25.08.03 – Revisions made to make the reference consistent with the terminology in Secs. 25.10.02. and the definition of “Buildable Lot”.

Sections 25.08.08 – Correct typo in subsection a and cross-reference in subsection 2(b)ii.

Section 25.10.03 – Land Use Tables: As per the discussion above, certain uses have been revised or deleted from the tables. Child Care Home is revised to note that up to 8 children are permitted for clarity. Charitable or Philanthropic Institutions have been modified to refer to offices, to aid in limiting the scope of the use. This use is also recommended to be deleted from the R-40 zone. A typo is also corrected to delete the reference to “9 –12 children”. Private Educational Institutions are recommended to be deleted from the R-40 zone, and Hospitals are recommended to be deleted in their entirety from the residential zones. Other corrections are made for cross-references under the conditional requirements column.

Section 25.11.03 – Land Use Tables: Correct terminology of use types for consistency. Revise Child Care Home and Charitable and Philanthropic institutions as discussed above, and delete Hospitals. Make cross-reference corrections for conditional requirements.

Section 25.12.04 – Development Standards Table: Revise the side yard setbacks for nonresidential land abutting for consistency.

Section 25.13.03 – Land Use Tables:

Delete Hospital as a use in the MXT zone.

Add Flea Market as a temporary use.

Insert effective date of the ordinance for Funeral Home

Add Pet Sales as a use, to be consistent with the previous ordinance.

Section 25.13.05 – Revise the cross-references resulting from the deletion of the Level 3 site plan process.

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Section 25.14.01.d – Insert cross-references resulting from the deletion of the Level 3 site plan process.

Section 25.14.07.e – Correct the subsection lettering.

Section 25.15.01. – In subsection a.1, revise the cross-reference resulting from the deletion of the Level 3 site plan process.

Section 25.15.02 – Correct typos in subsections c., e., and f.

Section 25.16.03.d. In the parking tables, the residential uses are revised for consistency. A typo is corrected for fast-food restaurants and for supermarkets of more than 30,000 gross square feet or more. For outdoor recreational establishments, a typo is corrected for the additional requirements, and the parking standards for a multi-purpose sport facility is added to the code. This was inadvertently deleted when the revised code was adopted.

Section 25.16.05.b – Delete the word “public” from the language. Any parking space, private or public, must conform to the standards.

Section 25.16.09.c.2.(b)(v) – Typo corrected.

Section 25.17.01.d – Subsection lettering corrected.

Section 25.19.03.a – Typo corrected.

Sec. 25.21.03: The staff is recommending a revision to the process for recording existing single-unit detached residential properties. The intent of this section is to allow for the recordation of properties that have been under unified control since October 1957, when the ordinance was changed to prohibit building across lot lines. This includes old recorded lots that were only 25 feet wide, but have required at least two lots in order to be built upon, as well as deeded properties that meet at least the minimum standards of the original zoning ordinance. The proposed change is to specifically note that the property to be recorded has to have been in common ownership since October 1957.

Section 25.21.10.b - Insert reference to existing and proposed public easements.

Section 25.21.11.d – Correct typo, and include the date of Planning Commission action in the initial notice requirement.

ADDITIONAL CHANGES RECOMMENDED

Subsequent to the filing of the text amendment, two additional suggested changes have been identified. The first has to do with signs. The second has to do with ownership plats.

When the zoning ordinance was revised, the sign regulations were revised to change the zoning designations to be consistent with the new zones. However, no provision was made to address signs in the Planned Development zones. It can be interpreted from the context that the designated equivalent zones shown with each PD zone in Article 14 defines which sign regulation applies. However, it would be more clear if a specific entry was provided in Article 18. The staff therefore recommends that Article 18 be amended to add the following new section:

25.18.18 - Signs in Planned Development Zones

Signs in any of the Planned Development zones as set forth in Article 14 will be regulated based on the applicable designated equivalent zones described in each planned development.

Also, an additional item regarding ownership plats has come to light that needs to be addressed. At present there is no limit on how long it can take to record an ownership plat. Recordation of a final record plat must occur within two years of the approval date, with 2 one-year extensions available. The staff recommends that this same implementation requirement apply to ownership plats. As such, the new language should be inserted as follows:

25.21.13 – Ownership Plats

* * *

f. Revocation of Approval – In the event that the ownership plat is not recorded within two (2) years after receiving approval, due to the failure of the subdivider to comply with any conditions, the application is considered withdrawn and any previous approval is revoked. For good cause shown, not more than two (2) extensions not exceeding one (1) year each may be granted by the Planning Commission; except that the Commission may extend the time for recording the ownership plat to the expiration date of any existing site plan or Project Plan approval.

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 TXT2011-00230.

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Attachments: A. Text Amendment Application
 B. Pierzchala memo of April 26, 2010
 C. Staff memo of July 23, 2010

February 16, 2011

MEMORANDUM

TO: Deane Mellander, Principal Planner
FROM: Brenda Bean, Deputy City Clerk 
RE: TXT2011-00230
Comprehensive amendments to the Zoning Ordinance

Attached is a date-stamped copy of Text Amendment Application TXT2011-00230 filed by you yesterday.

Per your timeline, I have scheduled this for the Mayor and Council public hearing on May 9, 2011. It will need to be advertised on April 20 and April 27, which means it will need to be submitted to the Gazette no later than Friday, April 15.

Thank you.

Cc: Susan Swift, Director, CPDS
Glenda P. Evans, City Clerk/Treasurer



Application for
Text Amendment

RECEIVED
CITY CLERKS OFFICE

TXT
2/09

2011 FEB 15 AM 10: 20

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 amendments to the zoning ordinance

Applicant Information:

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

Applicant Mayor and Council of Rockville, 111 Maryland Avenue, Rockville, MD 20850

Property Owner N/A

Architect N/A

Engineer N/A

Attorney N/A



February 14, 2011

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, 2008, and with an effective date of March 16, 2009, by inserting and replacing the following text (underlining indicates text to be added; [brackets] indicate text to be deleted; * * * indicates text not affected by the proposed amendment). Further amendments may be made following citizen input, Planning Commission review and Mayor and Council review.

Amend the Table of Contents as follows:

TABLE OF CONTENTS

* * *

Article 7 – Procedures for Site Plans and Project Plans, Special Exceptions, and Other Permits

- 25.07.01 – Site Plan, Project Plan, and Special Exception Approval Required
- 25.07.02 – Application Procedure for Site Plans, Project Plans, and Special Exceptions
- 25.07.03 - Notice Required; Procedure
- 25.07.04 – Level One (1) Site Plan Review
- 25.07.05 – Level Two (2) Site Plan Review
- [25.07.06 – Level Three (3) Site Plan Review]
- 25.07.[07] 06 – Site Plan Implementation Period
- 25.07.[08] 07 – Project Plan Review
- 25.07.[09] 08 –Special Exceptions
- 25.07.[10] 09 – Temporary Use Permit
- 25.07.[11] 10 – Sign Permit
- 25.07.[12] 11 – Occupancy Permit
- 25.07.[13] 12 – Temporary Occupancy Permit
- 25.07.[14] 13 – Certificate of Approval in Historic Districts
- 25.07.[15] 14 – Additional Permits and Approvals

Amend Article 1, General Information, as follows:

25.01.02. Purpose

The purposes of this Chapter are to:

* * *

8. Preserve sites, structures, and districts of historical, archeological, or architectural significance, and their appurtenances and environmental settings;

Amend Article 2, Zoning Map, as follows;

25.02.04 – Zoning of Annexed Land

- a. *Petition Filed* – When a petition to enlarge the corporate boundaries of the City is submitted to the Mayor and Council in accordance with the requirements of State law, the City Clerk must transmit a copy to the Chief of Planning.
- b. *Chief of Planning Review* – The Chief of Planning will review the application for conformance with annexation and land use policies of the Plan. The Chief of Planning will then transmit a copy of the petition to the Planning Commission.
- c. *[Preliminary Report] Annexation Plan*
 1. The Planning Commission will study the area proposed to be annexed and prepare a preliminary [report] annexation plan recommending the zoning classification or classifications of such property that would be appropriate if it were to be annexed.
- d. *Planning Commission Public Hearing and Notice* – The Planning Commission must:
 1. Hold at least one (1) public hearing on the preliminary [report] annexation plan, in accordance with the provisions of Section 25.04.02.e.2;
 2. Provide at least 15 days' notice of the time and place of the hearing to be published in a paper of general circulation in the City; and
 3. Provide written notice mailed in accordance with the provisions of Section 25.05.03.
- e. *Final [Report] Annexation Plan* – Following such hearing, the Planning Commission [shall] must submit its final [report] Annexation Plan to the Mayor and Council. The Mayor and Council must adopt the Annexation Plan.
- f. *Mayor and Council Public Hearing and Notice*
 1. The Mayor and Council must hold a public hearing on the zoning recommendation and [report] adopted Annexation Plan [of the Planning Commission] in accordance with State law simultaneously with its hearing on the proposed annexation.
 2. The City Clerk must send a copy of the adopted Annexation Plan and public hearing notice to the applicable state, county, and regional agencies required by law.

3. Public notice of the Mayor and Council's hearing on the final [report] adopted Annexation Plan must be given in accordance with the requirements of State law.

* * *

Amend Article 3 – Definitions; Terms of Measurement and Calculations, as follows:

25.03.02 – Words and Terms Defined

* * *

Applicant – The person who is authorized by the owner to file an application for any type of development application regulated under this Chapter.

* * *

Basement - That portion of a building below the first floor joists, at least half of whose clear ceiling height is above the level of the adjacent finished grade (compare with Cellar).

* * *

Build-To Line – [The line at which construction of a building, excluding permissible encroachments provided in Section 25.09.05, is required to occur on a lot.] A setback line established by the applicable master plan that sets the location of building construction on the lot. A build-to line typically runs parallel to the front property line and is established to create an even building façade line along a street. Encroachments may be allowed in accordance with the provisions of Section 25.09.05.

* * *

Cellar – That portion of a building below the first floor joists at least half of whose clear ceiling height is below the level of the adjacent ground (compare with Basement).

* * *

Dwelling Unit – A building or portion thereof providing complete living facilities for not more than one (1) family, including, at a minimum, a kitchen, and facilities for [cooking,] sanitation and sleeping.

* * *

Established Setback – Where the majority of lots located on one (1) side of a street between two (2) intersecting streets are occupied by buildings having a front setback different from the standard specified, all buildings must conform to the setback line thus established up to the maximum specified in the zone as set forth in Section 25.10.05.a.

* * *

Family – An individual, or two (2) or more persons, all of whom are related to each other by blood, marriage, domestic partnership, adoption, guardianship or other duly authorized custodial relationship and not more than two (2) other persons[,]; or a group of not more than five (5) persons all of whom are not related to each other by blood, marriage, domestic partnership, adoption, guardianship or other duly authorized custodial relationship, living together as a single housekeeping group in a dwelling unit.

* * *

Philanthropic Institution – See Charitable or Philanthropic Institution

* * *

Project Plan - A conceptual plan of development for a major project proposal as determined under the provisions of Section 25.07.02 that must be approved by the Mayor and Council and may encompass multiple buildings or multiple uses, and which may include a phasing plan for completion of the development over time.

* * *

Use - The purpose for which a lot or portion thereof or the building or structure thereon or part thereof is designed, arranged, or intended and for which it is or may be used, occupied or maintained.

1. *Use, Accessory* - A use customarily associated with and clearly incidental and subordinate to a permitted, conditional, or special exception use which complies with the conditions for an accessory use in Article 9 of this Chapter.

* * *

Amend Article 4, Approving Authorities, as follows:

25.04.02 – Planning Commission

* * *

b. *Powers and Duties*

* * *

2. *Responsibility Where Approval is Required* – Where Planning Commission approval is required under this Chapter or other applicable law, the Commission must:

- (a) Consider and act upon any request for approval,

- (b) Consider such request with regard to matters and facts pertinent and applicable thereto, and
- (c) Render its decision in accordance with the requirements, purpose, and intent of this Chapter and the Plan.

* * *

25.04.04 – Historic District Commission

* * *

b. Powers and Duties

1. *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:
 - (a) Identifying and recommending to the Mayor and Council properties and/or areas deemed eligible for historic designation due to their historic, archaeological, or architectural significance;
 - (b) Reviewing applications for Certificates of Approval for sites, buildings or structures within a Historic District zone;
 - ([b] c) Evaluating eligibility for historic designation of any sites, buildings or structures located outside a Historic District Zone which are proposed for demolition;

* * *

25.04.05 – Sign Review Board

* * *

c. Membership

* * *

5. *Clerk of Sign Review Board* – The Chief of Planning serves as the Clerk of the sign Review Board and will:
 - (a) Attend all meetings of the Sign Review Board;
 - (b) Keep a full and accurate account of the proceedings of the Sign Review Board, including but not limited to the official record of all matters filed with the [Commission] Board;

25.04.07 – Chief of Inspection Services

b. *Appeals*

1. 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 Adjustments and Appeals within 30 days of the date on the official letter of notification of the decision.

Amend Article 5, Application and Notification Generally, as follows:

25.05.07 – Amendments to Approved Development

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.
 - [2.] (a) 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 to [due] to site engineering, [; or (b) a] parking or loading areas, [; or (c)] landscaping, [a] sidewalks, recreational facilities, recreational areas, 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.] (b) 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].
2. A change in the types of uses on the site that is in conformance with the findings of the initial approval and does not increase the parking requirement may also be approved as a minor amendment.
- [4] 3. 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] 4. Where the Chief of Planning determines that the change is not minor, it is a major change and the application is referred to the Approving Authority for review.

5. Implementation Period – The approval of a minor amendment is subject to the implementation provisions of Section 25.07.06.

c. Major Amendments to Approved Development

* * *

4. Implementation Period – The approval of a major amendment is subject to the implementation provisions of Section 25.07.06.

Amend Article 6, Procedures for Map and Text Amendments, Variances, and Administrative Actions, as follows:

Article 6 – Procedures for Map and Zoning Text Amendments, Variances, and Administrative Actions.

* * *

25.06.02 – Zoning Text Amendments

a. Scope

* * *

3. Amendments to [the foregoing provisions] sections of this Chapter set forth in subsection a.2 above must be made by ordinance adopted in accordance with the procedures for [amendment] amending other Chapters of the Code.

* * *

25.06.03 – Variances

* * *

c. *Public Notification of Pending Application* – Written notice of a pending variance application must be provided by the Chief of Planning in accordance with the provisions of Section 25.05.03.c and the posting of a sign in accordance with Section 25.05.03.d.

* * *

e. *Findings* – A variance may be [approved] granted by the Board of Appeals if it finds that:

1. The variance would not be contrary to the public interest;
2. The request for the variance is the result of conditions peculiar to the property and not the result of any action taken by the applicant;
3. Literal application of this Chapter would result in practical difficulty; and
4. The [approval] granting of the variance is not inconsistent with the purposes of this Chapter.

* * *

25.06.05 – Administrative Adjustments in Single Dwelling Unit Residential Zones.

- a. *Purpose and Authority* – The Chief of Planning is authorized to determine and make administrative adjustments from the regulations of this Chapter when:
 1. It is found to be in harmony with its general purpose and intent provided in Section 25.01.02;
 2. [In] It complies with the specific instances set forth in this Section 25.06.05; and

* * *

25.06.05 – Administrative Adjustments in Single Dwelling Unit Residential Zones.

* * *

- 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:

* * *

- [4] f. *Notice of Decision* – The Chief of Planning must send notice of the decision in accordance with the provisions of Section 25.05.06.

- [f] g. 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.

Amend Article 7, Procedures for Site Plans and Project Plans, Special Exceptions and Other Permits, as follows:

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

- a. *Site Plan Approval*

3. *Required Findings:* [-]

(a) A site plan application that does not implement a project plan or a special exception, may be approved only if the applicable Approving Authority finds that the application will not:

i. Adversely affect the health or safety of persons residing or working in the neighborhood of the proposed development;

ii. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood;

iii. Overburden existing and programmed public facilities as set forth in Article 20 of this Chapter and as provided in the adopted Adequate Public Facilities Standards;

iv. Adversely affect the natural resources or environment of the City or surrounding areas;

v. Be in conflict with the Plan;

vi. Constitute a violation of any provision of this Chapter or other applicable law[.] ; or

vii. Be incompatible with the surrounding uses or properties.

(b) A site plan that implements all or a portion of an approved project plan is deemed to meet the findings for approval so long as the site plan complies with the conditions and requirements of the approved project plan and where the application will not:

i. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood;

ii. Constitute a violation of any provision of this Chapter or other applicable law;
or

iii. Be incompatible with the surrounding uses or properties.

(c) A site plan that implements all or a portion of an approved special exception is deemed to meet the findings for approval so long as the site plan complies with the conditions and requirements of the approved special exception and where the application will not:

- i. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
- ii. Adversely affect the natural resources or environment of the City or surrounding areas; or
- iii. Constitute a violation of any provision of this Chapter or other applicable law.

b. *Project Plan Approval*

* * *

2. *Required Findings* – A Project Plan application[,] may be approved only if the Mayor and Council finds that approval of the application will not:

- (a) Adversely affect the health or safety of persons residing or working in the neighborhood of the proposed [use] project;
- (b) [Be detrimental to the public welfare or injurious to property or improvements in the neighborhood] Be in conflict with the Plan;
- (c) Overburden existing and programmed public facilities as set forth in Article 20 of this Chapter and as provided in the adopted Adequate Public Facilities Standards; [or]
- (d) Constitute a violation of any provision of this Code or other applicable law[.]; or [.]
- (e) Adversely affect the natural resources or environment of the City or surrounding areas[;] .
- [(f)Be in conflict with the Plan; or
- (g) Be incompatible with the surrounding uses or properties.]

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

* * *

a. *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	1¹	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	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] 25,000 square feet	[10] 25,001 to [50] 100,000 square feet	[50] 100,001 or greater square feet	—
Residential Area Impact	[No] Up to 10% residential development in a single dwelling unit residential zone within ¼ mile of the project	Up to [35] 50% of area within ¼ mile of the project area is comprised of single-unit detached residential units	Up to [65] 75% 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	—
<i>Points Total</i>					The total of the points determine the level of notification.

¹In calculating the level of review, where no dwelling units, no non-residential square footage or no increase in peak hour trips are proposed, and where there is no single unit residential development within ¼ mile, 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.

c. Site Plan Level of Review

2. *Level Two (2) – Site Plan Review:* If the elements of the proposed project total seven (7) to [nine (9)] 15 points, the Chief of Planning will review and make a recommendation to the Planning Commission and the Planning Commission will complete a final review of the site plan in accordance with Section 25.07.01.a.3 and 25.07.[04] 05. Site plans that implement an approved planned development as set forth in Article 14, and site plans that implement an approved project plan, will be processed as a Level 2 site plan.
3. *Level Three (3) – Site Plan Review:* If the elements of the proposed project total 10 to 12 points, the Chief of Planning will review and make a recommendation to the Planning Commission. The Planning Commission will complete a preliminary and a final review of the site plan in accordance with Section 25.07.01.a.3 and 25.07.05.]

- d. *Project Plan Review* – If the elements of the proposed project total [13] 16 or more points, the development is subject to Project Plan review. The Mayor and Council and Planning Commission will each hold a briefing session on the plan application, the Chief of Planning and Planning Commission will perform a preliminary review and make a recommendation to the Mayor and Council, and the Mayor and Council will then complete a final review of the plan in accordance with Sections 25.07.01.b.2 and 25.07.06. The Planning Commission will thereafter review subsequent site plans implementing the approved Project Plan in accordance with the level two (2) site plan review procedures under Section 25.07.04.

25.07.03. Notice Required; Procedure

The applicant for any site plan, Project Plan or special exception approval must provide notice of all area meetings and public meetings and public hearings of Approving Authorities (including continuance of a public hearing) relating to the subject application in accordance with the provisions of Section 25.05.03.c, and with the following:

- a. Notice must be provided at least 2 weeks prior to the meeting to all property owners, residents, civic associations and homeowner’s associations within the specified distance for each type of review as follows:
 - 1. Level 1 Site Plan – 750 feet.
 - 2. Level 2 Site Plan – 1,000 feet.
 - [3. Level 3 Site Plan – 1,250 feet.]
 - 3. Project Plan – 1,500 feet.

25.07.04 – Level One (1) Site Plan Review

An application for a site plan review with a total of six (6) points or fewer, as determined in Section 25.07.02.b above, is subject to the following provisions:

- 1. [*Pre-Application Staff Meeting* – The applicant must hold a meeting with staff of the City’s Development Review Committee prior to submitting an application, in order to outline the scope of the project and the scope of the Comprehensive Transportation Review. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.] *Pre-Application Area Meeting* – The applicant must hold an area meeting prior to submitting an application, to outline and receive comments on

the scope of the project. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03.

2. *[Pre-Application Area Meeting – The applicant must hold an area meeting prior to submitting an application, to outline the scope of the project. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03.]* *Pre-Application Staff Meeting – The applicant must hold a meeting with staff of the City’s Development Review Committee prior to submitting an application, in order to outline the scope of the project and the scope of the Comprehensive Transportation Review. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.*

25.07.05 – Level Two (2) Site Plan Review

An application for a site plan review with seven (7) to nine (9) points, as determined in Section 25.07.02.b above, is subject to the following provisions:

1. *[Pre-Application Staff Meeting – The applicant must hold a meeting with staff of the City’s Development Review Committee prior to submitting an application, in order to outline the scope of the project and the scope of the Comprehensive Transportation Review. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.]* *Pre-Application Area Meeting – The applicant must hold an area meeting prior to submitting an application, to outline and receive comments on the scope of the project. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03.*
2. *[Pre-Application Area Meeting – The applicant must hold an area meeting prior to submitting an application, to outline the scope of the project. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03.]* *Pre-Application Staff Meeting – The applicant must hold a meeting with staff of the City’s Development Review Committee prior to submitting an application, in order to outline the scope of the project and the scope of the Comprehensive Transportation Review. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.*

[25.07.06 – Level Three (3) Site Plan Review

An application for a site plan review with 10 to 12 points, as determined in Section 25.07.02.b, is subject to the following provisions:

1. ***Pre-Application Staff Meeting*** – The applicant must hold a meeting with staff of the City’s Development Review Committee prior to submitting an application to outline the scope of the project and the scope of the Comprehensive Transportation Review. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.
2. ***Pre-Application Area Meeting*** – The applicant must hold an area meeting in accordance with the provisions of Section 25.07.03 prior to submitting an application to outline the scope of the project and receive comments.
3. ***Application*** – The applicant must file an Level Three (3) site plan application and provide a date for a post-application area meeting in accordance with the provisions of Section 25.07.03 and Article 5.
4. ***Notice*** – The applicant must provide notice of the application filing in accordance with the provisions of Section 25.07.03.
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.
6. ***Planning Commission Preliminary Review*** – The Planning Commission must conduct a preliminary review of the application at a public meeting and provide an opportunity for public comment.
7. ***Revision to Application*** – The applicant must file a revision to the application, if needed, based on comments from the preliminary review, in accordance with the provision of Article 5.
8. ***Notice*** – The applicant must provide notice of the Planning Commission final review of the application in accordance with the provisions of Section 25.07.03
9. ***Planning Commission Final Review***– The Planning Commission must conduct a final review of the application at a public meeting and provide an opportunity for public comment.
10. ***Conditions of Approval*** – Approvals may be subject to any condition that the Planning Commission finds necessary to protect the public health, safety, 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.

11. *Implementation Period* – The approval of a Level Three (3) site plan is subject to the implementation provisions of Section 25.07.07.
12. *Notice of Decision* – The Chief of Planning must send notice of the Planning Commission's final decision on the Level 3 site plan in accordance with the provisions of Section 25.05.06.
13. *Appeals* – 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.]

25.07.[07] 06. Site Plan Implementation Period

- b. *Extensions* –Except as set forth in Section 25.07.[16] 15, the Planning Commission or the Chief of Planning may, for good cause shown, grant no more than two (2) extensions of not more than six (6) months each for any prior approval subject to the provisions of Section 25.05.08, "Extension of Implementation Period". The Planning Commission may require as a condition of approval of an extension that the applicant submit periodic progress reports to the Chief of Planning detailing efforts undertaken to implement the site plan approval.
- c. *Multi-Phase or Multi-Building Site Plan Approval* All phases of a multi-building or multi-phase project which has received site plan approval [has been approved] must be commenced within eight (8) years from the effective date of site plan approval unless another time frame is provided by this Chapter or by the terms of approval. A site plan approval will become void for those buildings or phases within a multiple building or phased development for which construction has not commenced within eight (8) years from the date of the site plan approval or within such other time frame provided by this Chapter or by the terms of approval. Unless otherwise specifically provided by the terms of approval, no extension may be granted from the implementation period set forth in this subsection c.

25.07.[08] 07. – Project Plan Review

An application for a site plan review with 13 or more points, as determined in Section 25.07.02.b above, is processed as a Project Plan review and is subject to the following provisions:

1. *[Pre-Application Staff Meeting* – The applicant must hold a meeting with staff of the City's Development Review Committee prior to submitting an application, in order to outline the scope of the project and the scope of the Comprehensive Transportation Review. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.] *Pre-Application Area Meeting* – The applicant must hold an area meeting prior to submitting an application, to outline and receive comments on

the scope of the project. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03.

- 2. [*Pre-Application Area Meeting* – The applicant must hold an area meeting prior to submitting an application, to outline the scope of the project. The applicant must provide notice of the meeting in accordance with the provisions of Section 25.07.03.] *Pre-Application Staff Meeting* – The applicant must hold a meeting with staff of the City’s Development Review Committee prior to submitting an application, in order to outline the scope of the project and the scope of the Comprehensive Transportation Review. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.

- 15. Findings - The Mayor and Council must make the findings required in Section 25.07.01.[a.3] b.2.

- 18. *Project Plan Implementation Period*– *A Project Plan approval expires if:*

- (b) Except as set forth in Section 25.07.[16] 15, construction on all phases of the approved Project Plan has not commenced within the time period set forth in the Project Plan approval, except that the approval does not terminate with respect to those phases of the Project Plan for which construction has commenced.

25.07.[09] 08 –Special Exceptions

- a. [*Pre-Application Staff Meeting* – The applicant must hold a meeting with the City’s Development Review Committee prior to submitting an application to outline the scope of the project. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.] *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 the meeting in accordance with the provisions of subsection 25.07.08.b above.
- 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 the meeting in accordance with the provisions of subsection 25.07.09.b above.] *Pre-Application Staff Meeting* – The applicant must hold a

meeting with the City's Development Review Committee prior to submitting an application to outline the scope of the project. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.

* * *

- q. *Subsequent Site Plan Review* – If site development or redevelopment is required, 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 25.07.05 except that the pre-application process is not required.

25.07.[10] 09 – Temporary Use Permit

* * *

25.07.[11] 10 – Sign Permit

* * *

25.07.[12] 11 – Occupancy Permit

* * *

25.07.[13] 12 – Temporary Occupancy Permit

* * *

25.07.[14] 13 – Certificate of Approval in Historic Districts

* * *

25.07.[15] 14 – Additional Permits and Approvals

* * *

25.07.[16] 15 – Extension of Implementation Period for Approved Projects

Amend Article 8, Transitional Provisions, Nonconformities, Nonconforming Alteration Approval, as follows:

25.08.02 – Transitional Provisions

b. *Previously Approved Developments*

2. *Use Permits for Multi-Phase Projects*

- (a) All phases of a multi-phase project for which a use permit or detailed application has been approved as of March 16, 2009 must be commenced within eight (8) years from the date of the approval letter of the Approving Authority or the use permit or detailed application will expire except as may be extended by the provisions of Section 25.07.[16] 15. A use permit or detailed application will become void for those buildings within a multiple building development for which construction has not commenced within eight (8) years from the date of the use permit or detailed application approval letter.
- (b) Any multi-phase project for which a use permit was approved prior to October 25, 1993 that has not commenced construction on all buildings as of March 16, 2009 must commence construction on all buildings within 8 years from March 16, 2009, or the use permit will expire.
- (c) Notwithstanding compliance with subsection 2.(a) above, and as may be extended by the provisions of Section 25.07.[16] 15 for any development located within the Town Center Performance District or within the Twinbrook Metro Performance District the following will apply:
 - ii. Where 30 percent or more of the total approved gross floor area has been constructed within eight (8) years from the date of the issuance of the use permit, the use permit becomes void with respect to any building for which construction has not commenced within 12 years from the date of issuance of the use permit.
 - iii. Where 60 percent or more of the total approved gross floor area has been constructed within 12 years from the date of the issuance of the use permit, the use permit becomes void with respect to any building for which construction has not commenced within 14 years from the date of issuance of the building permit.
- (d) Nothing herein shall affect the validity of a use permit for a building constructed in accordance with the requirements of the use permit prior to the expiration for the time frames set forth herein, and as may be extended by the provisions of Section 25.07.[16] 15.

* * *

25.08.03 – R-60 Qualifying [Substandard] Undersized Lots

Any lot legally recorded by subdivision plat that is at least [40] 35 feet wide but less than 60 feet wide at the building line is deemed to be a buildable lot even though it may have less than the minimum area required in any current residential zone. Such lots may be developed under the zoning development standards in effect when the lot was recorded except that:

* * *

25.08.08 – Nonconforming Alteration Approval

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

* * *

2. Planning Commission Review -

* * *

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

* * *

- ii The proposed nonconformity alteration does not exceed that amount reasonably necessary to accomplish the purpose of the structural alteration, expansion, or enlargement as permitted by Section 25.08.06.b.[2] 3(b).

Amend Article 10, Single Dwelling Unit Residential Zones, as follows:

* * *


25.10.03. Land Use Tables

The uses permitted in the Single Unit Residential Zones are shown in the table below. All special exceptions are subject to the requirements of Article 15.

* * *

	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)
e. Institutional uses (cont.) A-ZZ	Adult day care	S	S	S	S	S	S	S	
	Charitable or philanthropic [institution] office	S	S	S	[9 - 12 children] S	S	S	[S] N	See Sec. 25.15.02.e
	Child care home up to 8 children	P	P	P	P	P	P	P	
	Child care center:								Special exception subject to the requirements of Sec. 25.15.02.f
	9 - 12 children	P	P	S	S	S	S	S	
	More than 12 children	S	S	S	S	S	S	S	
	Educational institution, private	S	S	S	S	S	S	[S] N	See Sec. 25.15.02.f
	Group home:								
	Small	P	P	P	P	P	P	P	
	Large	S	S	S	S	S	S	S	

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)		
[Hospital	S	S	S	S	S	S	S	See 25.15.02.i]	

g. Temporary Uses 	Christmas tree sale	C	C	C	C	C	C	C	Subject to the requirements of Sec. 25.09.04
	Garden produce	C	C	C	C	C	C	C	
	Portable Storage Units	C	C	C	C	C	C	C	
	Temporary building or yard for construction materials or equipment	C	C	C	C	C	C	C	
	Temporary office or model home	C	C	C	C	C	C	C	
Temporary carnival	C	C	C	C	C	C	C	See Secs. 25.09.01[&] 02, & 03.	
h. Accessory Uses	P	P	P	P	P	P	P		

Amend Article 11, Residential Medium Density Zones, as follows:

25.11.03 – Land Use Tables

The uses permitted in the Residential Medium Density Zones are shown in the table below. Uses are subject to applicable conditions of site plan approval, and all special exceptions are subject to the requirements of Article 15.

	Uses	Zones			Conditional requirements or related regulations
		Residential Medium Density RMD-10	Residential Medium Density RMD-15	Residential Medium Density RMD-25	
a. Residential uses	Dwelling, attached	N	P	P	
	Dwelling, semi-detached (duplex)	P	P	P	
	Dwelling, single unit detached	P	C	C	Conditional use subject to the development standards of the R-60 Zone
	Dwelling, [Multi-] multiple-unit [dwelling]	N	P	P	
	Dwelling, Townhouse	P	P	P	

d. Institutional uses	Charitable or philanthropic [institution] office	S	S	S	See Sec. 25.15.02.e
	Child care home up to 8 children	P	P	P	
	[Hospital	S	S	S	See Sec. 25.15.02.i]

g. Accessory uses		P	P	P	See Secs. 25.09.01[&] 02_& 03.

Amend Article 12, Industrial Zones, as follows:

25.12.04 – Development Standards

a. *Table of Development Standards-*

	Max zone area (acres)	Min. Zone Area (square feet)	Lot Coverage		Front Yard	Setback Requirements				Maximum Height	Conditional requirements or related regulations	
			Max. Lot coverage (%)	Min. open area (%)		Front Yard	Side Yard					Rear Yard
							Minimum 1 Side	Side Street abutting (feet)	Nonresidential land abutting (feet)			
one					Min. Front (feet)	Side Street abutting (feet)	Nonresidential land abutting (feet)	Residential land abutting (feet)	Residential land abutting (feet)	Nonresidential land abutting (feet)		
I-L	N/A	N/A	50	10	25'	10'	[0] None or [at least] 10' if provided	Building height, but not less than 30'	Building height, but not less than 30'	0 or at least 10' if provided	40'	
I-H	N/A	N/A	N/A	10	25'	10' from ROW, or 60' from center-line	[0] None or [at least] 10' if provided	Building height, but not less than 30'	Building height, but not less than 30'	0 or at least 10' if provided	70'	

Amend Article 13, Mixed-Use Zones, as follows:

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 Employment (MXE)	Mixed-Use Business (MXB)	Mixed-Use Neighborhood Commercial (MXNC)	Mixed-Use Commercial (MXC)	Mixed-Use Transition (MXT)	

e. Medical services	Hospital	S	S	P	S	S	N	[P] N	Special exception subject to Sec. 25.15.02.i

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
	Portable Storage Units	C	C	C	C	C	C	C	
	Temporary office or model home	C	C	C	C	C	C	C	
	Christmas tree sales	C	C	C	C	C	C	C	
	Sale of Garden produce	C	C	C	C	C	C	C	
	Temporary carnival, <u>flea market</u> , or local festival	C	C	C	N	N	C	N	
h. Commercial, office, and industrial uses	Retail sales and services:								

Commercial, office, and industrial uses (con't)	Funeral home	C	C	C	C	C	C	C	Cremations permitted only where existing as of [(date of adoption)] <u>March 16, 2009</u>
	Garden supplies	C	C	C	C	C	C	C	Indoor sales only

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)	
Pet grooming	N	P	P	P	P	P	P	
Pet Sales	N	P	P	P	P	N	N	
* * *								

25.13.05. – Development Standards

b. Development Standards

* * *

2. Building Height

(a) MXTD Zone–

- i. Building facades should have a range of heights of between 45 and 65 feet at the street. Additional height up to 120 feet at the street may be allowed where recommended by the Plan or where approved by the Mayor and Council as part of a Project Plan under Section 25.07.[06] 07. Building facades that exceed 250 feet in length should vary the façade height by at least ten feet (10') for some distance along the length of the facade in order to avoid a monotonous, monolithic appearance.
- ii. Where recommended in the Plan, or if approved by the Mayor and Council as part of a Project Plan approval in accordance with Section 25.07.[06] 07, building height may be increased beyond 120 feet up to 150 feet under the following conditions:

Amend Article 14, Special Zones, as follows:

25.14.01 – Historic District Zones

* * *

d. Designation of Properties

* * *

- 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 provisions of Section 25.07.[14]

13. 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.

25.14.06 – Park Zone

c. *Land Use Table* – The uses allowed in the Park Zone 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	Zone	Conditional requirements or related regulations
		Park Zone	

c. Institutional uses	Cemetery	P	
	Charitable or philanthropic institution	S	See Sec. 25.15.02.e
	Private club	S	
	Public utility building and/or structure	S	See Sec. 25.15.02.n
	Publicly-owned or publicly-operated buildings and uses, excluding sanitary landfills	C	Subject to a Level [3] 2 Site Plan (Sec. 25.07.05) and the landscaping and screening provisions of Art. 17.

Key: P = Permitted Use; S = Special Exception; C = Conditional Use;
Blank = Not Permitted

25.14.07 – Planned Development Zones

e. Amendment of a Planned Development

1. *Required, General* – The following are Planned Development amendments subject to the Equivalent Zone development standards and will require approval of an amendment to the Planned Development Governing Documents by the Mayor and Council.

(a) Any increase in the intensity of the development (dwelling units, gross square footage, etc.) beyond what is authorized in the Planned Development Governing Documents;

- (b) Any increase in building heights beyond what is authorized in the Planned Development Governing Documents;
- (c) Addition of new uses not approved in the Planned Development Governing Documents;
- ([e] d) A major relocation of public streets;
- ([f] e) A material reduction in the cumulative amount of public or private open space; and
- ([g] f) Such other proposed change in the project that the Planning Commission determines to be of such significance as to be a substantial deviation from the Planned Development Governing Documents and therefore require an amendment to the Planned Development Governing Documents.

Amend Article 15, Special Exceptions, as follows:

25.15.01 – Special Exceptions

a. *Generally*

- 1. *Application Procedure* – Applications for Special Exceptions must be filed in accordance with Section 25.07.02 and reviewed in accordance with the provisions of Section 25.07.[09] 08.

25.15.02 – Additional Requirements for Certain Special Exceptions

- c. *Automobile Filling Station, Class I; Automobile Filling Station, Class II; Restaurant with Drive-Through and Mechanical Carwash*

- 6. *Special Development and Use Requirements for Automobile Filling Station, Class I and Class II*

- (vi) Extinguish all floodlights at the close of business or 11:00 p.m., whichever is [.] earlier.

e. *Charitable [and] or Philanthropic Institutions*

1. *Scope* – This Section applies to charitable [and] or philanthropic institutions.

f. *Child Care Centers*

2. *Additional Findings and Conditions*

(a) The Board must make the following additional findings:

i. The site provides ample outdoor play space, free from hazard and appropriately equipped for the age and number of children being cared for;

Amend Article 16, Parking and Loading, as follows:

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		
Residential	Dwelling, [S] single unit detached	Per dwelling unit	2	Dwelling unit	0	0		
	Dwelling, [S] single unit semi-detached	Per dwelling unit	2	Dwelling unit	0	0		
	Dwelling, townhouse	For 1 or 2 bedrooms		1.5	Dwelling unit	0	0	
		For 3 or more bedrooms		2				
	Dwelling, single unit attached	Per dwelling unit	2	Dwelling unit	0	0		
	Dwelling, multiple-unit	For 0 (zero) bedrooms		1	Dwelling unit	1 per 50	1 per 3	
For 1 bedroom			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	
	Live-work unit	For 2 or more bedrooms	1.5	Unit	1 per 5	1 per 3	
		For 1 or 2 bedrooms	2				
		For 3 or more bedrooms	2				
		Per 2 employees	1				

Commercial (con't)	Restaurant, fast food	If located in a free-standing or multi-tenant building	50 and	Square feet of gross floor area	2 per 5,000 SF	2 per 12,000 SF	See Sec. 25.16.03.f Reservoir spaces cannot impede other traffic in the parking lot. Facilities serving only via drive-through windows must provide the same reservoir spaces as a standard fast food restaurant.
		Reservoir spaces for each [prick] pick-up window					
		Reservoir spaces for windows with separate order and pick-up windows					
		Per 2 employees					

	Retail sales, trade or merchandizing (except furniture stores and supermarkets less than 30,000 SF of GFA)	Per 200 SF GFA	1	Square feet of gross floor area	2 per 5,000 SF	2 per 12,000 SF	See Sec. 25.16.03.f
	Supermarkets, 30,000 SF of GFA or [less] more	Per 200 SF	1 and	Square feet of gross floor area	2 per 5,000 SF	2 per 12,000 SF	See Sec. 25.16.03.f

Use Category	Use	Auto Parking Spaces		Bicycle Parking Spaces			Additional Requirements
		Unit Measure	Base Number Required	Unit Measure	Short Term Space	Long Term Space	
* * *							
Miscellaneous	Recreational establishment, outdoor, commercial	Per every 2 employees	1	Auto spaces	1 per 10	1 per 20	See Sec. 25.16.03.f Additional spaces as determined at the time of Site Plan Review depending [of] on the character of the use. Bicycle parking may also be determined by staff review.
Miscellaneous	<u>Sport facility, multi-purpose, indoor commercial</u>	<u>Per 3 participants based on the legal capacity of the facility; and Per every 2 employees</u>	1	<u>Partici-pants</u>	<u>1 per 30</u>	<u>10 total or 1 per 60</u>	<u>Additional spaces as determined at the time of Site Plan Review depending on the character of the use. Bicycle parking may also be determined by staff review.</u>

* * *

25.16.05 – Parking Design Standards

* * *

b. Parking Spaces

* * *

4. For purposes of computing the area of any [public] parking space hereunder, a parking space may extend beyond a wheel bumper or curb provided that:

25.16.09 – Bicycle Parking

c. Standards

2. Long Term Bicycle Parking Standards

(b) Standards -

- (v) Where long-term bicycle parking spaces [is] are required for office use categories, a minimum of one (1) clothes storage locker per gender must be installed for every long-term bicycle parking space. The lockers must be installed adjacent to the showers in a safe and secured area and be accessible to all tenants.

Amend Article 17, Public Use Space, Landscaping and Screening, Utility Placement and Screening, Lighting, Sidewalks, and Shadows, as follows:

25.17.01 – Public Use Space

d. Fee in Lieu of Public Use Space Requirements

- 1. The Approving Authority may approve the payment of a fee in lieu of some or all of the public use space requirement under any of the following circumstances:
 - (a) The City could use the fee to provide and/or improve another more usable public space in the vicinity of the project;
 - [a.] (b) The site cannot realistically provide the required area for public use and meet all of the other City development standard requirements; or
 - [b.] (c) The applicable master plan makes specific recommendations on how and where public use space is to be provided on or in the vicinity of the site.

Amend Article 19, Enforcement, as follows:

25.19.03 – Violations

a. *Violations Generally* – A violation of this Chapter will occur upon the failure to comply with:

Amend Article 21, Plats and Subdivision Regulations, as follows:

**25.21.03 – Recordation of an Existing Single Unit Detached Dwelling Residential Lot
or [Property]**

b. *Required Criteria* – The Planning Commission must approve a plat, only when one or more of the following conditions are met and the plat has frontage as required in the zone or public access to a public street:

1. The property being platted is a deeded lot that has existed in the same configuration since at least October, 1957;
2. The property being platted is:
 - (a) a multiple-lot property that required a minimum of two (2) lots for development at the time the substandard lots were created,
 - (b) the property has been under common ownership since at least October, 1957, and
 - (c) the plat seeks to consolidate the lots into a single record lot; or
3. The property being platted is a multiple-lot property that contains an existing house that straddles the common lot line and the plat seeks to consolidate the property into a single record lot.

25.21.10 – Plats and Data for Final Approval

b. *Information to Include* -

4. The tract boundary lines, right-of-way lines of streets, existing and proposed public easements, and other rights-of-way and property lines of residential lots and other sites with accurate dimensions, bearings, and distances. A curve table indicating

central angle, radius, tangent, arc, chord, and chord bearings for all curves; name and right-of-way width of each street or other right-of-way;

* * *

9. The lot, block and subdivision name of adjacent [plotted] platted land.

* * *

25.21.11 – Final Record Plat Approval Procedures – Generally

* * *

- d. *Notice* – The applicant [most] must send notice of the application of a Final Record Plat in accordance with the provisions of Section 25.05.03.c to all property owners and residents within 750 feet from the boundaries of the area described in the application. Notification must include the date for action on the plat by the Planning Commission and state that all interested parties have 15 days from the date of the letter to provide comments. [A second notice must be sent ten (10) days prior to Planning Commission scheduled action date.]

Potential Zoning Revisions

In reviewing the zoning ordinance, I noted anything that seemed unclear, or a typo, or similar problem. Some of what follows are just questions for my own edification. I have underscored areas where I think the zoning ordinance needs to be revised, or where there needs to be a thorough discussion on a topic.

Mark Pierzchala, 4/26/2010

Definitions and related

1. Section 25.03.01.7: What is meant by *common dictionary meaning*?
2. Section 25.03.02 – Words and Terms Defined
 - a. *Adult Day Care Center* – Why 4 people, why not 3 for example?
 - b. Need to define *Grade*
 - c. *Automobile Filling Station*: The definition is okay once it says what is being dispensed or selling for retail sale
 - d. *Basement*: Put note in parentheses that says (See cellar.)
 - e. *Boardinghouse*: Why 3? Why not 1 or 2?
 - f. *Build-To-Line*: Awkwardly defined, especially the bit “is required to occur on”
 - g. *Cellar*: Put note in parentheses that says (See basement.)
 - h. Need a definition for a *Cooking Facility* which is any device that cooks food.
 - i. Need a definition for DRC
 - j. Need a definition for *de novo*
 - k. *Established Setback*: Last line, maximum what?
 - l. *Family*: Take out the whole last part of the definition where you have up to five (5) unrelated persons.
 - m. Need a definition for *Fee Simple*
 - n. *Kitchen*: The phrase “The presence of a range or oven” should be replaced by “The presence of any cooking facility or device”.
 - o. *Live/Work Unit* – There are a number of living arrangements, such as *Work/Live* and others that should all be defined in this section. Additionally, it would help if there is a table of such terms where the distinction between all of these can be made clearer.
 - p. Need a definition for *Lot, deeded*

- q. *Lot, Qualifying*: The technical definition is okay, but what is it for?
- r. Need a few pictures to illustrate the whole concept of *Lot Line*
- s. Need a definition for *Low Income*
- t. Need a definition for MPDU
- u. *Overlay zone*: Can the phrase “that either add to or modify the requirements of” be construed to mean “or substitute for”?
- v. *Parking Facility*: Why the number 7?
- w. *Petitioner*: Says “See ‘Applicant’”, but there is no definition for *Applicant*.
- x. Need a definition for *Planned Development*.
- y. *Project Plan*: Suggest that after “a major project proposal” that the qualifier is added “as determined by the point system in 25.07.02
- z. Need definition for *Residential*
- aa. Need a definition of the kinds of roofs. I know there is a diagram somewhere that is very nice, but it should be here.
- bb. *Senior Adult*: Why age 62? Why not 60?
- cc. *Shopping Center*: Why 6?
- dd. Need to add a definition for *Sign, Bicycle*
- ee. *Single Housekeeping Group*: Why is this here?
- ff. *Special Exception*: Do we need a definition of “compatibility”?
- gg. *Story*: part 3 of definition: See the definition of mezzanine, especially the 1/3 number. Seems that between these two definitions, you will get nothing in reality that is a mezzanine
- hh. *Story, Half*: need pictures
- ii. *Stream Buffer*: July 1999, is this some sort of valid date?
- jj. Need definition for *Town Center Management District*
- kk. *Use*: part 2 of the definition, *Use, Conditional*: where are the specified conditions stated?
- ll. Need a definition for *Work/Live Unit*
- mm. Section 25.03.03 – Terms of Measurement and Calculation

- i. Under c. Terms of Measurement, part 3, Height of building, there should be a provision where it is prohibited to raise the grade post construction, in order to meet the height requirement.
- ii. Also under c. Terms of Measurement, there should be a definition or mention of *Maximum Height* where the measurement is to the peak of the roof. This is used in Article 10, Single Dwelling Unit Residential Zones.
- iii. Section 25.03.03.c.4 *Lot Area*: Need pictures for these lot areas.

Zoning Ordinance Text Items

1. Section 25.01.04 .b: Does this give the Approving Authority to disregard the whole zoning ordinance?
2. Section 25.04.02.(c) “. . . and intent of this Chapter” should be “. . . and intent of this Chapter and the Plan”.
3. Section 25.04.05.c.5.(b) – Replace “Commission” with “Board”
4. Section 25.04.06.1.(c) and (d): Do *administrative interpretations* and *administrative adjustments* need to be defined?
5. Section 25.04.06.b.1.(b), should “Planning Commission” be replaced by “Approving Body”
6. Section 25.05.03.c.3 – Does the Chief of Planning have to certify the acceptability of the list?
7. Section 25.05.05 – Should the applications be put on the web?
8. Section 25.05.06 – What is the “official record”? Whatever it is, it should be put on the web.
9. Section 25.05.07.b.5: “. . . determines that the change is not minor” should be “. . . determines that the change is not minor, it is a major change and the”
10. Section 25.05.10: Need a definition for *jurisdictional defect*
11. Section 25.06.02 – Modify the heading Text Amendments to Zoning Text Amendments (ZTA)
12. Section 25.06.04 – Administrative Interpretation. The Chief of Planning has final interpretation authority; should a citizen group have the capability to ask the Department Head to review, and potentially reverse or modify an interpretation? Sort of like a home-plate umpire having to check with the 3rd base umpire on a checked swing.
13. 25.06.05.2, lead this off with “It is”
14. Section 25.07.01.b.2.(d) “. . . of this Code” should be “. . . of the City Code”
15. Section 25.07.02.a.2: Need to have some definition around *Pre-Application Area Meeting*. See **Notes on the Review Process** below.

16. Section 25.07.02.a.4, *Historic Review* Don't we have an existing inventory of historic properties? Why is there always this continual review for historic significance?
17. Section 25.07.02.b.1, Need a definition for *residential impact area*. Also, need a definition for *peak hour trips*
18. Section 25.07.04.6: At the end: "... and intent of this Chapter" should be "... and intent of this Chapter and the Plan"
19. Section 25.07.05.2 *Pre-Application Area Meeting*: "... to outline the scope of the project, and to receive and seriously consider comments.
20. Section 25.07.08.7, why isn't this provision in 25.07.06?
21. Section 25.07.09, some of this process is too much for lower-point applications.
22. General note: Throughout the chapter, the term "... intent of this Chapter" should be amended "... intent of this Chapter and the Plan".
23. Section 25.09.03.a.1, footnote 1 after the table. "finished grade"; shouldn't this be the grade prior to the construction?
24. Section 25.09.05.1.(f).ii: I just don't get this whole paragraph on canopies
25. Section 25.10.05.b.2, why is there this exception for housing for senior adults and persons with disabilities and life care facilities?
26. Section 25.10.09.b, I can't read this because the picture is on top of it
27. Section 25.11.03.d – Child care center: Are these intended for private homes?
28. Section 25.11.05, why is this section only for RMD-10 zones? Why not RMD-15 or RMD-25?
29. Section 25.12.04, the I- H row; would a grain elevator fit under this definition?
30. Figure 12.1, the Layback Slope Example is all askew
31. Section 25.13.02- Zones Established; The table of Mixed Use zones
 - a. All these rows refer to *density* where this term is not defined. There needs to be explicit definitions for these kinds of density
 - b. All rows of this table should refer to the applicable master plan such as we see for MXB.
32. Section 25.13.03 – Land Use Tables; It is possible to have 100% of any use in these mixed-used zones. This needs to be revised so that these areas end up as mixed use. The only thing I could find in the Chapter that seems to require true mixed use is that some of the commercial mixed-use zones call for ground-floor commercial.

33. We also need to assess whether some of the smaller commercial areas in the City should be re-zoned as a true commercial zone, re-establishing what we had in the prior zoning ordinance.
34. Section 25.13.05.2.(a).ii.C: Why?
35. Section 25.13.05.2.(a).ii.D: I don't get this.
36. Section 25.13.05.2.(d).i. (From the last sentence above: "This layback slope requirement does not apply to i. Areas adjacent to the MXT zone. Why not?)
37. Section 25.13.05.2.(d).vi: same as above but for the MXC zone. Why not?
38. Section 25.13.06.c.9, need to define *ancillary uses*
39. Section 25.13.07.a.6: Parking, is this requirement too inflexible? What would the business community say?
40. Section 25.14.01.d.1.(a).(v): Why is "Any other person" allowed to apply?
41. Section 25.14.02.c.3: Should "in writing" include email?
42. Section 25.14.07 – Planned Development Zones: are new ones allowed?
43. Section 25.14.10 – PD-FM2 (Fallsmead 2) and other subsequent sections, why is the designated equivalent residential zone R-60?
44. Section 25.05.01.b.1.(b): Who are "all parties entitled to notice"?
45. Section 25.15.02.c.6.(a).(vi), spelling error at end
46. Section 25.15.02.f.2.(a).i: "ppropriately" needs a leading 'a'
47. Section 25.15.02.j.2: There should be reference to *density*.
48. Section 25.15.02.j.3.(c): Why is the MXT zone singled out?
49. Section 25.15.02.j.3.(e): We need to take the allowed 50-foot height down to 35 feet. Here and in other places such as Section 25.15.02.k.3.(e) Life Care Facility
50. Section 25.17.02.d.2, the Fee in Lieu resolution, where is this recorded?
51. Section 25.17.02.e: What is an *affordable dwelling unit*?
52. Section 25.17.05.b.3; the table of Sidewalk Design Standards: Are these reasonable?
53. Section 25.17.06.a: Include the MXT zone.
54. Article 18 – Signs: I know that some areas of the City, e.g., King Farm, would like to see some restrictions reduced in order to get traffic into shopping areas. How would this be done?

55. Section 25.21.10.e, I think we shouldn't be explicit about forms of digital media. 3.5" diskettes are out and CD-ROM disks will be sooner or later.

56. Section 25.21.11.d: replace 'most' with 'must'

Notes on the Review Process, draft for wider discussion by the Communications Task Force

1. Area meetings should be of a form where:
 - a. Minutes can be taken. The reason is to have a meeting where everyone can hear the same commentary, and hear the same questions and answers.
 - i. A series of meetings with individuals does not count as an area meeting.
 - ii. A charette-style meeting does not count as an area meeting.
 - b. A private minute-taking organization should be hired by the developer to take the minutes and the minutes should be available to anyone.
 - c. Copies of the materials used in the meeting should be available to anyone. These can be in digital form using commonly available file formats such as PDF files.
 - d. The roster of 'interested parties' should be made available to anyone who asks, including the required mailing lists
 - e. At the beginning of the meeting, a City-produced DVD should be played (maybe 5 or 7 minutes) that explains the development process. In particular, the DVD should specifically indicate the criteria under which area citizens can object to a project or attempt to modify it. For example, it doesn't do any good for citizens to just say they don't like it. The zoning ordinance relationship to The Plan and its role in determinations should be part of the DVD. The DVD should explain how the City Staff review developer's applications according to explicit tests and methodologies. Citizens should be encouraged to engage responsibly.
2. A short document should be produced giving examples of how objection criteria are evaluated. For example, what does it mean to "Change the character of the neighborhood"? How do citizens show this?
3. City staff briefing materials to an Approving Authority must explicitly address citizen concerns.
4. The Approving Authority should must explicitly address all citizen concerns.
5. Any staff report should be available X days before the Planning Commission meeting to all interested parties. Citizen comments must be included.
6. Tightly scheduled successive meetings are hard for a neighborhood group to deal with and to have meaningful involvement.
7. Modifications to an application must be given in a timely manner to all interested parties.

8. Advanced review of other parties' materials should be afforded to all parties or none at all.
9. The Approving Authority should follow the order of the published agenda.

MEMORANDUM

TO: Scott Ullery, City Manager

VIA: Susan Swift, Director, Community Planning and Development Services

FROM: Deane Mellander, Zoning Administrator

DATE: July 23, 2010

SUBJECT: Response to Zoning Issues

This memorandum is in response to the discussions between Councilmember Pierzchala, CPDS staff and the City Attorney on May 13, 2010 and again on July 16. In the memo of April 26, Mr. Pierzchala detailed a list of questions, suggested modifications and policy matters for consideration to further revise the Zoning Ordinance.

Among the items were several that were deemed a significant policy priority and should be analyzed in detail. Each of these major policy items are discussed at the beginning of this memo. We have included a reference to the section of Councilmember Pierzchala's memo (attached) that refers to this item.

Following the detailed discussion, the memo will provide a summary of comments on the other specific technical items noted in Councilmember Pierzchala's memo. In addition, attached to this memo is a concept for suggested changes to the development review process, based on recent staff experience, Mr. Peirzchala's memo, and the recommendations of the Communications Task Force.

I. ZONING POLICY ISSUES

Article 3 – General Rules of Interpretation; Words and Terms Defined

Family (from item 2-1 under Definitions and related)

Staff Recommendation: Keep the definition as it is.

The current definition reads as follows:

Family - An individual, or two (2) or more persons, all of whom are related to each other by blood, marriage, domestic partnership, adoption, guardianship or other duly authorized custodial relationship, or a group of not more than five (5)

persons all of whom are not related to each other by blood, marriage, domestic partnership, adoption, guardianship, or other duly authorized custodial relationship, living together as a single housekeeping group in a dwelling unit.

The RORZOR Committee spent a good deal of time working on this definition. The definition is tied to what constitutes a family in terms of dwelling unit occupancy. The original City zoning ordinance adopted in 1932 defined a family as follows:

Any number of individuals living and cooking together on the premises as a single housekeeping unit.

By the 1960's, the definition had been revised read as follows:

An individual, or two (2) or more persons related by blood or marriage, or a group of not more than five (5) persons (excluding servants) not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.

This definition has been carried forward until the ordinance was comprehensively revised in 2008. In developing the current code language, the committee took note of the changing circumstances under which familial ties may be arranged. The allowance for up to five unrelated individuals living as a single housekeeping unit was carried forward. For comparison, the County Zoning Ordinance defines "family" as follows:

Family: An individual or 2 or more persons related by blood or marriage, or a group of not more than 5 persons, excluding servant, not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.

The United States Supreme Court has, in essence, held that the limitation on the number of residents in a home can be a valid legislative exercise, but the legislature cannot select certain categories of relatives who may or may not live with each other.

The City's Code also prohibits discrimination, in general, and, in particular, related to housing practices. "Discrimination" is defined generally under the City's Code, in relevant part, as "acting, or failing to act, or unduly delaying any action, regarding any person because of age (except as provided by other applicable law), ancestry, color, creed, disability, marital status, national origin, presence of children, race, sex, or sexual orientation, and failing to make reasonable accommodations for a qualified person with a disability." (Emphasis added.) "Discrimination" in connection with residential real estate transactions is defined under the City Code's "Discrimination in Housing" section as "A person whose business includes engaging in residential real estate-related transactions may not discriminate against any person in making available a transaction, or in the terms or conditions of a transaction, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, or national origin." (Emphasis added.)

Zoning is intended to regulate uses for purposes of controlling the impacts of these uses within each of the different zoning districts. In a single unit detached home in one of the

residential zones, you may have a family with eight children, three of whom may be of driving age. The potential neighborhood impact may be no different than if you have five unrelated persons living in the same house. We would note that under the previous code, the number of persons living in the house excluded servants (see the County definition), which could have added one or two more unrelated people in the house.

There was agreement in general with Councilmember Pierzchala that the overall intent of the definition is acceptable. He still has concern about the number of unrelated persons that may be allowed, and this can be a topic of further discussion at the worksession with the Mayor and Council

Kitchen (from item 2-n under Definitions and related)

The staff recommends adding some clarifying language to the definitions of both Dwelling Unit and Kitchen, as follows:

Dwelling Unit – A building or portion thereof providing complete living facilities for not more than one (1) family, including, at a minimum, ~~facilities for cooking a kitchen, and facilities for~~ sanitation and sleeping.

Kitchen – Any room or area used or intended to be used for the preparation and cooking of food. The presence of a range or oven, or utility connections suitable for servicing a range or oven establishes a kitchen and thereby also establishes a dwelling unit.

Based on the discussions with Councilmember Pierzchala, there is general agreement that the current regulations regarding kitchens are acceptable with some minor changes in the definitions for “kitchen” and “dwelling unit”.

The current definition reads as follows:

Kitchen – Any room or area used or intended to be used for the preparation and cooking of food. The presence of a range or oven, or utility connections suitable for servicing a range or oven establishes a kitchen.

This definition is tied to the definition of Dwelling Unit, which reads as follows:

Dwelling Unit – A building or portion thereof providing complete living facilities for not more than one (1) family, including, at a minimum, facilities for cooking, sanitation and sleeping.

By long policy and practice, the City has interpreted the presence of a kitchen as defining a dwelling unit. By extension, the installation of a second stove or range has been interpreted to create a second dwelling unit. Over the years, this has resulted in complaints from residents who only wish to upgrade a recreation room with a sink, refrigerator, and another stove. However, if the second stove is allowed, then it possible

for the homeowner to create an undocumented accessory apartment, effectively turning the house into a two-family dwelling.

The issue now is that with today's modern portable appliances such as microwave or convection ovens, along with portable hot plates, a person no longer may need a formal stove or range for cooking purposes. Absent a specific complaint, the City does not have the right to randomly inspect for such violations. The homeowner can deny access to the property.

The code is attempting to thwart the creation of unregulated dwelling units/accessory apartments. The installation of a standard range or stove can foster separate living arrangements, especially if there is also ready access to a bathroom. We regulate accessory apartments for two reasons – (1) to provide a record that there is in fact an accessory dwelling on the site, and (2) that it meets the fire and health safety code requirements. Unlike most other special exceptions, accessory apartments run with the owner, not the land. When the property changes hands, the special exception expires and must be re-applied for. Because this is a special exception, the code does give the City specific authority to inspect the accessory apartment for compliance with all code requirements.

Heights of Buildings (from item 2-mm-i under Definitions and related)

The staff recommends retaining the existing provisions for measuring height for the following reasons:

The measurement of building heights did not change from the previous ordinance, with the exception of houses in the R-60, R-75 and R-90 zones. Traditionally, building heights have been measured from the finished street grade at the front lot line. Heights have been measured to the mid-point of the roof for angled roofs (gable, mansard, gambrel, etc.) and to the top surface of a flat roof. The theory behind this is to provide sufficient light and air. The angled roofs provide a bit more light by their nature, which is the reason for measuring the mid-point. A flat-roofed building will have higher side walls than a building with any angled roof under this scenario.

Going through the revision process, the City did not want to create any inadvertent development standards nonconformities by altering the height regulations for most development, especially commercial and industrial. The issue really revolved around “mansionization” in the single unit detached residential zones, especially the smaller-lot zones. The final decision by the Mayor and Council in the R-60, R-75 and R-90 zones was to measure the height of houses in these zones from the mid-point of building at the pre-existing grade level, rather than from the street grade. Height is still measured to the mid-point of the gable, but in addition the maximum height to the peak of the roof is limited to 40 feet. For houses in the larger lot zones, it was felt that the combination of larger lot size and greater setbacks mitigated the need for special regulation. No changes are recommended in the building height provisions.

The staff recommends eliminating the height waiver for senior housing (Sec. 25.15.02.j) in the smaller lot zones but retaining it for the larger lot zones that would have more land to accommodate increased setbacks.

Article 7 – Procedures for Site Plans, Project Plans, Special Exceptions

Site Plan Notice and Process Requirements (from item 15 under Zoning Ordinance Text Items)

The staff makes the following recommendations on the project review process:

The specific issue raised here has to do with perhaps simplifying the notice requirements and review process for small-scale special exceptions. This led to a more general discussion regarding the calculation of the project impact points for purposes of determining what level of review will be required for each type of application. There is agreement that it is worth considering a simpler process for certain types of applications, especially those that will not involve any substantive changes on the site. These changes might include eliminating the pre-application review and notice requirements, and also reducing the area required for notice of the application filing.

There does need to be a review of the Project Impact Points chart. The experience of requiring a synagogue to go through the Project Plan process highlights the fact that some adjustment is necessary. We did modify the table with the comprehensive text amendment revisions earlier to not count points where there are no dwelling units, no non-residential square footage or no increase in peak-hour trips, but we should really review the point allocation for what level of plan review is appropriate. However, for the Level 2, Level 3 and Project Plan reviews, the point spread between the various levels should probably be expanded and consider eliminating the Level 3 since it is so similar to the Level 2. One suggestion would be to have the Level 2 be between 7 and 14 points, and Project Plans at 15 or more points.

Related to the review of project plans, the findings for a project plan (approved by the Mayor and Council) should be revised. Currently, the findings for a project plan are the same as they are for a site plan. There needs to be a clearer difference and direction to the Approving Authority for the two different levels of review. The staff and City Attorney will propose some modifications to the project plan findings in Sec. 25.07.01.b.2.

Article 13 – Mixed-Use Zones

Mixed-Use Zones (from items 31 to 39 under Zoning Ordinance Text Items)

The staff recommends retaining the existing provisions.

Another issue raised was how to define “density” in the context of the various mixed-use zones. In developing the mixed-use zones, the RORZOR Committee was using the

principles of form-based zoning, wherein the type and scale of development is closely tied to the master plan. However, because these zones were intended to be used City-wide to replace the traditional commercial and office zones, they had to be crafted in somewhat the same way as the traditional Euclidean zones. See the discussion under item 32 on page 17 for further discussion on this matter.

It is possible to build single-use projects in many cases in these zones. The specific regulations for providing ground floor retail apply in the MXTD and MXCD zones where there is frontage on a major pedestrian spine as shown the relevant master plan. The MXB zone requires commercial or service uses on the ground floor, with other allowed uses on the upper floors. The MXC zone requires commercial uses on the ground floor except in the case where the building is a single unit detached residence.

The MXT zone is intended principally for houses that have been converted to some type of office use at the edge of the town center area. As a transitional zone, the development standards are very similar to the R-60 residential zone. This includes the 35-foot height limit, which is why the zone is exempt from the layback slope requirements.

The location of parking in the mixed-use zones is regulated under Sec. 25.13.07. These regulations were tailored to the intent of the individual zones. The requirements under the MXTD Zone in 25.13.07.a.6 were worked out by the Mayor and Council to address some of concerns of the business community about the need for convenient parking for ground floor retail uses.

Article 15 – Special Exceptions

Senior/Disabled Housing and Life Care Facilities (from item 49 under Zoning Ordinance Text Items)

The staff recommends revisiting certain institutional uses (hospitals, private schools, senior housing, etc.) and temporary uses in the single-family zones to determine if they are conducive to large lot zones or any single-family zones.

The provisions for these uses in the residential zones are essentially a policy matter. The Mayor and Council should consider whether it is the use, the height, or both that need revision. Typically, senior/disabled housing and life care facilities do not generate the same levels of peak hour traffic as standard residential development, and there is virtually no impact on local schools. By allowing these uses in the residential districts, residents who wish or need to move into a more protected living environment have to opportunity to live in or near the neighborhood where they have resided or at least remain in a residential setting. The trade-off is that these types of facilities need to take advantage of the economies of scale. As mentioned on page 4, the staff recommends revisiting in which zones the height waiver should be allowed.

The additional development standards for these special exceptions were largely carried over from the prior ordinance. The Life Care Facility is a new use in the new ordinance,

but generally reflects many of the same standards as the senior/disabled housing use since the uses are very similar. The provision for the smaller front yard setback in the MXT Zone was included to recognize that it was in fact a mixed-use zone in a transitional area. A large front yard setback may be appropriate in an exclusively residential area, but it may not be necessary or appropriate in an area where the use does not confront detached residential houses.

There needs to be an overall discussion of the role of certain special exceptions within these zoning districts. This should focus on which uses should remain special exceptions, which zones they are to be allowed, and the development standards (heights, setbacks, lot coverage, etc.) that will be applied if different from the standards of the zone.

In addition, there are several other special exception uses in the residential zones that the staff recommends revisiting. There are very few differences in the uses allowed in the various single-family zones. Looking across the use tables the permitted, special exception, and conditional uses are virtually identical in all zones except the R-40 despite the range of lot sizes.

The staff recommends revisiting certain institutional uses (hospitals, etc.) and temporary uses currently listed in these zones to determine if they are conducive to any single-family zone – or perhaps to larger lot zones that have a different lot pattern and character – and can provide sufficient buffers and setbacks.

II. COMMENTS ON OTHER TECHNICAL ZONING ISSUES RAISED IN THE APRIL 26 MEMO (Note: Those numbers missing below are addressed above as a major policy issue)

Definitions and related terms

The staff suggests that some words need to be defined or clarified, but in general words should remain undefined to allow flexibility for the Approving Authority

The numbers correspond to the numbers in Mr. Peirzchala's April 26 memo.

1. Section 25.03.01.7: What is meant by common dictionary meaning?

This means the common definition of the term as it appears in a standard dictionary. We did not want to specify a certain edition of a dictionary since they do get edited, revised, or go out of print.

2. Section 25.03.02 – Words and Terms Defined

2.a. Adult Day Care Center – Why 4 people, why not 3 for example?

Need to do some additional research. May have to do with licensing requirements.

2.b Need to define Grade

Not recommended. This is a contextual term – grade can mean the percentage of rise or fall from a defined point, or it can mean the moving of earth on a site.

2.c. Automobile Filling Station: The definition is okay once it says what is being dispensed or selling for retail sale

OK

2.d. Basement: Put note in parentheses that says (See cellar.)

OK

2.e. Boardinghouse: Why 3? Why not 1 or 2?

By definition, a family may have one or two boarders in addition to the family members. Any more than 2 and the presumption is that the dwelling is no longer a single family dwelling, but rather becomes either a boardinghouse or a multi-family dwelling.

2.f. Build-To-Line: Awkwardly defined, especially the bit “is required to occur on”

We can clarify the wording.

2.g. Cellar: Put note in parentheses that says (See basement.)

OK

2.h. Need a definition for a Cooking Facility which is any device that cooks food.

Not recommended. See our discussion of Kitchen above.

2.i. Need a definition for DRC

Can be added if deemed necessary.

2.j. Need a definition for de novo

Not recommended. It is a legal term of art.

2.k. Established Setback: Last line, maximum what?

The maximum as shown in the development standards tables for the single unit detached residential zones. We could insert a cross-reference to Sec. 25.10.05.a.

2.m. Need a definition for Fee Simple

Not recommended. This is a legal term of art.

2.o. Live/Work Unit – There are a number of living arrangements, such as Work/Live and others that should all be defined in this section. Additionally, it would help if there is a table of such terms where the distinction between all of these can be made clearer.

We only use the term live/work unit in the ordinance – it is allowed in the Industrial zones and the Mixed-Use zones. In the discussions leading up to the adoption of the new ordinance, a live/work unit and a work/live unit seemed to be a distinction without a difference.

2.p. Need a definition for Lot, deeded

Not recommended. This is a legal term of art.

2.q. Lot, Qualifying: The technical definition is okay, but what is it for?

There are a good number of lots in the City that were created under the original 1932 zoning ordinance, which only required lots to be 5,000 square feet with 50 feet of frontage. They don't meet the current R-60 standards, but since they were legally recorded they are deemed buildable as defined by this term.

2.r. Need a few pictures to illustrate the whole concept of Lot Line

We can do this if needed.

2.s. Need a definition for Low Income

This term does not appear in the ordinance. The only related reference is in Sec. 25.17.01.e, which reads in part as follows: Projects that consist entirely of affordable dwelling units, defined as units designated for households with incomes at or below the area median income limits;.

2.t. Need a definition for MPDU

Not recommended. The ordinance requires the provision of MPDU's, but what they are is in Chapter 13.5 of the City Code.

2.u. Overlay zone: Can the phrase “that either add to or modify the requirements of” be construed to mean “or substitute for”?

Not recommended. “Substitute for” implies that all of the base standards are

changed, which would in effect be a new, different zone.

2.v. Parking Facility: Why the number 7?

This is based on County practice, which deems parking lots up to 6 spaces not to be a “parking facility” which must meet all of the landscaping and screening requirements. It is intended to not place a burden on very small uses that may not be able to fit all the landscaping and screening requirements and still provide the necessary parking.

2.w. Petitioner: Says “See ‘Applicant’”, but there is no definition for Applicant.

We will correct this.

2.x. Need a definition for Planned Development.

Not recommended. Term of art and described in detail in Article 14.

2.y. Project Plan: Suggest that after “a major project proposal” that the qualifier is added “as determined by the point system in 25.07.02

We can insert the cross-reference.

2.z. Need definition for Residential

This gets back to the issue of using the common dictionary definitions and the fact that it is “defined” by the regulations adopted in the Code.

2.aa. Need a definition of the kinds of roofs. I know there is a diagram somewhere that is very nice, but it should be here.

Same comment as above.

2.bb. Senior Adult: Why age 62? Why not 60?

It is used commonly in Federal regulations.

2.cc. Shopping Center: Why 6?

This is a carry-over from the prior ordinance.

2.dd. Need to add a definition for Sign, Bicycle

This should be included within Traffic Control signs.

2.ee. Single Housekeeping Group: Why is this here?

Because the term appears in the definition of “family”.

2.ff. Special Exception: Do we need a definition of “compatibility”?

No. Compatibility is a judgment decision based on the relevant facts and circumstances in each individual case. If we try to define it, we will likely either leave something out, or make it so broad that it doesn't mean much. See also, common dictionary definition.

2.gg. Story: part 3 of definition: See the definition of mezzanine, especially the 1/3 number. Seems that between these two definitions, you will get nothing in reality that is a mezzanine

A mezzanine is intended to be a very narrow use, essentially a walkway area partially extending out over the floor below. Generally you find these in hotels or some office buildings.

2.hh. Story, Half: need pictures

We can do this.

2.ii. Stream Buffer: July 1999, is this some sort of valid date?

It is the date the Environmental Guidelines were adopted by the Mayor and Council

2.jj. Need definition for Town Center Management District

Not recommended. The management district is an administrative area established by resolution which may change from time to time. It is not formally delineated in the master plan like the performance district is.

2.kk. Use: part 2 of the definition, Use, Conditional: where are the specified conditions stated?

The conditions are listed in the land use tables for each zone.

2.ll. Need a definition for Work/Live Unit

See the comments on live-work units above.

2.mm. Section 25.03.03 – Terms of Measurement and Calculation

Under c. Terms of Measurement, part 3, Height of building, there should be a provision where it is prohibited to raise the grade post construction, in order to meet the height

requirement.

In this instance, since the height is measured from the finished street grade, what they do in the way of grading on the lot does not really affect the measurement.

Also under c. Terms of Measurement, there should be a definition or mention of Maximum Height where the measurement is to the peak of the roof. This is used in Article 10, Single Dwelling Unit Residential Zones.

The maximum height relates to the provisions for single family houses in Article 10 specifically.

Section 25.03.03.c.4 Lot Area: Need pictures for these lot areas.

We can try this, if it will not be too complex a drawing.

III. OTHER ZONING ORDINANCE TEXT ITEMS

1. Section 25.01.04 .b: Does this give the Approving Authority to disregard the whole zoning ordinance?

No, it gives the Approving Authority the ability to consider changed circumstances since the Plan was done that may obviate the requirement to comply with the Plan recommendations. It does not give authority to disregard the zoning ordinance.

2. Section 25.04.02.b.2(c) “. . . and intent of this Chapter” should be “. . . and intent of this Chapter and the Plan”.

Not recommended. We need to be specific as to the references to the regulations in the zoning chapter. We do make the general reference to the Master Plan in the overall purposes cited in Sec. 25.01.02.5.

3. Section 25.04.05.c.5.(b) – Replace “Commission” with “Board”

Yes

4. Section 25.04.06.1.(c) and (d): Do administrative interpretations and administrative adjustments need to be defined?

Not recommended. The usage of the terms is clear in the referenced sections of the ordinance.

5. Section 25.04.06.b.1.(b), should “Planning Commission” be replaced by “Approving Body”

“Planning Commission” should be replaced with “Approving Authority” to track with the provisions of Sec. 25.04.06.b.1.

6. Section 25.05.03.c.3 – Does the Chief of Planning have to certify the acceptability of the list?

No, that’s why the applicant must provide the affidavit.

7. Section 25.05.05 – Should the applications be put on the web?

At this time the application form, notification information and a reduced version of the site plan are posted on the web. The staffing and technology resources are not conducive to posting all application materials which would include the application, large drawings, studies, and revisions to them. Citizens with questions would be better served if they asked the staff to copy pertinent pages (or all, if desired) and would be encouraged to discuss these with the staff. The data provided would then be more likely to be in proper context and the most up-to-date.

8. Section 25.05.06 – What is the “official record”? Whatever it is, it should be put on the web.

The official record is the collection of all pertinent materials submitted to the file. It is not practical to post all of these materials on the web, but we can post the most relevant portions, and Granicus provides a mechanism for posting the actual public proceedings. We have few requests for files or materials.

9. Section 25.05.07.b.5: “. . . determines that the change is not minor” should be “. . . determines that the change is not minor, it is a major change and the..”

Probably OK to change. However, staff recommends that this section be revisited to clarify what constitutes a minor amendment and what the process should be.

10. Section 25.05.10: Need a definition for jurisdictional defect

This is a legal term of art. It indicates that minor omissions do not invalidate the decision of the Approving Authority.

11. Section 25.06.02 – Modify the heading Text Amendments to Zoning Text Amendments (ZTA)

We can change the term to Zoning Text Amendment where it appears in the title and in the body of the text. ZTA is a shorthand that should not be in the code.

12. Section 25.06.04 – Administrative Interpretation. The Chief of Planning has final interpretation authority; should a citizen group have the capability to ask the

Department Head to review, and potentially reverse or modify an interpretation? Sort of like a home-plate umpire having to check with the 3rd base umpire on a checked swing.

It's a question of who has the final decision – If the Department Head has to be consulted, then that person should be the final interpreter; or the City Manager; or whomever. This is not to say that the Chief of Planning can't or won't consult with other staff. It is just that the Chief of Planning is the designated person, and any appeals go to the Board of Appeals. An interpretation can be appealed to the Board of Appeals in accordance with Sec. 25.04.06.b.2.

13. 25.06.05.a.2, leads off with “It is..” Suggest that it be reworded to say “It complies with the specific instances...”

We will look at revising the language

14. Section 25.07.01.b.2.(d) “. . . of this Code” should be “. . . of the City Code”

Not needed. “Any applicable law” covers all of the City codes as well as any other applicable laws.

15. Section 25.07.02.a.2: Need to have some definition around Pre-Application Area Meeting. See Notes on the Review Process below.

There are written guidelines and they are being enforced by the staff. Changes have been suggested by the Communications Task Force and can be added to the guidelines if desired.

16. Section 25.07.02.a.4, Historic Review Don't we have an existing inventory of historic properties?

No. The City has Building Catalog that has been updated and going to print next month. It is not an exhaustive survey of all eligible buildings.

Why is there always this continual review for historic significance?

We haven't had the resources to evaluate every potential site in the City for possible historic designation but as the City review areas such as Rockville Park, or as property owners request evaluation, more data is added to our inventory.

17. Section 25.07.02.b.1, Need a definition for residential impact area.

Not recommended. That should be implicit in the context of the table.

Also, need a definition for peak hour trips

Not recommended. This comes from the Comprehensive Transportation Review, and may change periodically.

18. Section 25.07.04.6: At the end: “. . . and intent of this Chapter” should be “. . . and intent of this Chapter and the Plan”

See the previous comments on this subject.

19. Section 25.07.05.2 Pre-Application Area Meeting: “. . . to outline the scope of the project, and to receive and seriously consider comments. This can put us in the position of trying to tell the applicant what to do without any way to know if they complied.

The applicant must provide the City with an affidavit that they held the meeting, and also submit a summary of the results of the meeting.

20. Section 25.07.08.7, why isn't this provision in 25.07.06?

There is no requirement under the Level 3 site plan process for a briefing session. In Level 3, the applicant goes before the Planning Commission for initial review, and must return for final action, with or without having to make any revisions.

21. Section 25.07.09, some of this process is too much for lower-point applications.

That may well be the case. We can certainly consider simplifying the process for small-scale projects. For example, the Mayor and Council may want to consider eliminating the second area meeting, or changing the Planning Commission's role to opine on the Master Plan compliance so it is at the request of the Board of Appeals if they desire.

22. General note: Throughout the chapter, the term “. . . intent of this Chapter” should be amended “. . . intent of this Chapter and the Plan”.

See previous comments on this subject.

23. Section 25.09.03.a.1, footnote 1 after the table. “finished grade”; shouldn't this be the grade prior to the construction?

Typically with accessory buildings, the lot will have had finished grading in order to build the main house. In this case, it is really best to consider the height from that finished grade.

24. Section 25.09.05.1.(f).ii: I just don't get this whole paragraph on canopies

This is a carry-over from the previous ordinance. This may take some research to see if the provisions are still needed based on the revised development standards

in the ordinance.

25. Section 25.10.05.b.2, why is there this exception for housing for senior adults and persons with disabilities and life care facilities?

It refers back to the special exceptions standards, which allow up to 30% lot coverage.

26. Section 25.10.09.b, I can't read this because the picture is on top of it

Have asked the web master to check the online version. Printed copies are OK.

27. Section 25.11.03.d – Child care center: Are these intended for private homes?

They are permitted for up to 12 children, which could be in a private residence. Typically, when you get past 12 children, these uses are either in a separate building, or may be housed in a larger building like an apartment building. In any case, the provider must meet the child care space standards established by the State and County.

28. Section 25.11.05, why is this section only for RMD-10 zones? Why not RMD-15 or RMD-25?

Townhouse densities can range from 6 to 10 units per acre. The master plan may recommend less than the maximum density in cases where the townhouse development is acting as a transition or where the characteristics of the site lend it better to townhouse development. When you get to the higher densities, these uses are generally located where compatibility with the surrounding areas is less of an issue.

29. Section 25.12.04, the I-H row; would a grain elevator fit under this definition?

The use would be covered under the definition of "Industrial, heavy". If it met the height and other development standards, it would be allowed.

30. Figure 12.1, the Layback Slope Example is all askew

Don't have an issue with recently printed copies. Have asked the web master to check the on-line version.

31. Section 25.13.02- Zones Established; The table of Mixed Use zones
All these rows refer to density where this term is not defined. There needs to be explicit definitions for these kinds of density

See the discussion regarding the definition of density above.

All rows of this table should refer to the applicable master plan such as we see for MXB.

The MXB Zone is sort of special in that it does have a provision (see Sec. 25.13.07.d) that permits some degree of regulation of the development consistent with the master plan recommendations. This zone was created primarily for the North Stonestreet Avenue corridor, which does have some development recommendations from the East Rockville plan.

32. Section 25.13.03 – Land Use Tables; It is possible to have 100% of any use in these mixed-used zones. This needs to be revised so that these areas end up as mixed use. The only thing I could find in the Chapter that seems to require true mixed use is that some of the commercial mixed-use zones call for ground-floor commercial.

The mixed-use zones try to encourage mixed uses and offer flexibility to respond to market conditions and individual site features. but it was felt that the City should not try to pre-suppose what the future demands of the market were going to be. The ground-floor retail provision was intended to help foster mixed uses in projects with more than one floor.

However, the City should not mandate all 3 uses in every building. The intent of such districts is to get uses within the same project or area – to minimize vehicle usage and maximize walking. Some sites are more conducive to residential versus office; some developers specialize in office or retail and not residential, and many sites will not redevelop to their maximum height or build-out potential. Although mixed uses should be encouraged, does the City want to go further and prohibit single use sites, i.e., a bank or restaurant, or office headquarters? Requiring all 3 uses in a building or project would not recognize these differences and market absorption rates.

33. We also need to assess whether some of the smaller commercial areas in the City should be re-zoned as a true commercial zone, re-establishing what we had in the prior zoning ordinance.

This can be a policy discussion.

34. Section 25.13.05.b.2.(a).ii.C: Why?

This might be worded better. The intent was to indicate that the building design was better than what was anticipated or recommended in the Plan.

35. Section 25.13.05.b.2.(a).ii.D: I don't get this.

This provision was in anticipation of the "Green Building" revisions to Ch.5, and if the design exceeded the minimum standards, it would meet this subsection's

provision.

36. Section 25.13.05.2.(d).i. (From the last sentence above: “This layback slope requirement does not apply to i. Areas adjacent to the MXT zone. Why not?)

The MXT Zone only allows heights up to 35 feet, which is the same height allowed in the higher-density single unit detached residential zones. Where there are matching heights, no layback is required.

37. Section 25.13.05.2.(d).vi: same as above but for the MXC zone. Why not?

Same answer as above, except that building height in the MXC Zone is only 30 feet, less than in the residential zones.

38. Section 25.13.06.c.9, need to define ancillary uses

We will consider this.

39. Section 25.13.07.a.6: Parking, is this requirement too inflexible? What would the business community say?

So far, the business community hasn't said anything too negative. They would prefer to be allowed to do what they've done for the past 60 years – put acres of surface parking out front and/or around the buildings. This does not comport with our vision for the Transit District development.

40. Section 25.14.01.d.1.(a).(v): Why is “Any other person” allowed to apply?

In the absence of a complete historic assessment of all properties, there may be a case where an individual or group (i.e., Peerless) may have done research and believes that the site should be nominated. See also the definition of “person”.

41. Section 25.14.02.c.3: Should “in writing” include email?

This is really an administrative policy decision by the Mayor and Council. We can deem correspondence received by the City to be “written”. However, there is the issue of how to verify that the material was actually sent by the party whose name appears on the document. There is the matter of determining the validity of such correspondence, and that is an administrative determination.

42. Section 25.14.07 – Planned Development Zones: are new ones allowed?

No. Staff asked for consideration of a process whereby new PD's might be created, but the decision-makers decided that was too risky. The intent was that if a proposal for a major new development came in, the Mayor and Council should evaluate it first for general compatibility with the Plan and the surrounding

neighborhood, and then do a text amendment to create the new PD.

43. Section 25.14.10 – PD-FM2 (Fallsmead 2) and other subsequent sections, why is the designated equivalent residential zone R-60?

In most of the old PRU's the development standards most closely matched the R-60 zone for either lot sizes or setbacks. Note the qualifier provisions in Sec. 25.14.07.d.3.

44. Section 25.15.01.b.1.(b): Who are “all parties entitled to notice”?

Anyone falling under the provisions of Sec. 25.05.03.c.

45. Section 25.15.02.c.6.(a).(vi), spelling error at end

OK

46. Section 25.15.02.f.2.(a).i: “ppropriately” needs a leading ‘a’

OK

47. Section 25.15.02.j.2: There should be reference to density.

No. Density should not be a factor in senior housing or life care facilities. As special exceptions, they are subject to consideration of compatibility and possible neighborhood impact issues. But the very nature of these uses is such that they normally have a much higher unit count than the underlying residential zone. But their overall impact on schools, traffic, and other factors are considerably different than would be the case for a typical multi-family project.

48. Section 25.15.02.j.3.(c): Why is the MXT zone singled out?

Because it is a mixed-use zone, not a residential zone.

49. Section 25.15.02.j.3.(e): We need to take the allowed 50-foot height down to 35 feet. Here and in other places such as Section 25.15.02.k.3.(e) Life Care Facility

This is a policy matter, as discussed above in the Special Exception section.

50. Section 25.17.02.d.2, the Fee in Lieu resolution, where is this recorded?

The Council deferred action on the fee in lieu resolution pending the outcome of the study and ZTA relating to public use space. The resolution will come back to the M&C at the time of final action on the pending ZTA.

51. Section 25.17.02.e: What is an affordable dwelling unit?

It is defined by City or the Feds, and can vary periodically.

52. Section 25.17.05.b.3; the table of Sidewalk Design Standards: Are these reasonable?

The RORZOR Committee spent a lot of time hashing out these figures. They are based mostly on the City street tree requirements and what we've determined ought to be the minimum widths for open passage in a particular area.

53. Section 25.17.06.a: Include the MXT zone.

Refer back to comments on heights in the MXT Zone.

54. Article 18 – Signs: I know that some areas of the City, e.g., King Farm, would like to see some restrictions reduced in order to get traffic into shopping areas. How would this be done?

As has been mentioned in the past, the Sign Provisions need a thorough study and update. This a substantial work program item. We can do piecemeal ZTA's if deemed necessary and desirable to address specific issues.

55. Section 25.21.10.e, I think we shouldn't be explicit about forms of digital media. 3.5" diskettes are out and CD-ROM disks will be sooner or later.

We qualified this subsection to accept other media as it becomes commonly used.

56. Section 25.21.11.d: replace 'most' with 'must'

OK

In addition to these specific items identified by Mr. Pierzchala, the staff has noted some additional minor technical and typographic errors that should be corrected. These will be included in any text amendment that will result from a worksession.

IV. IMPROVEMENTS TO THE REVIEW PROCESS

Per Councilmember Pierzchala's notes on the review process, draft for wider discussion by the Communications Task Force.

1. Area meetings should be of a form where:
 - a. Minutes can be taken. The reason is to have a meeting where everyone can hear the same commentary, and hear the same questions and answers.
 - i. A series of meetings with individuals does not count as an area meeting.
 - ii. A charette-style meeting does not count as an area meeting.

Agreed. Although we do think a charrette-style meeting may be appropriate for larger projects at the pre-application stage (with a willing applicant or it would not be meaningful).

- b. A private minute-taking organization should be hired by the developer to take the minutes and the minutes should be available to anyone.

Agreed.

- c. Copies of the materials used in the meeting should be available to anyone. These can be in digital form using commonly available file formats such as PDF files.

This is already spelled out in the Area Meeting Guidelines although it only requires a summary of the meeting and not minutes per se. It also specifies what other information is required. By general law, and by Section 25.05.05 (Access to Application Files) all aspects of the file is available for public record and copying.

- d. The roster of ‘interested parties’ should be made available to anyone who asks, including the required mailing lists.

The applicant is required to submit the sign-in sheet from the meeting.

- e. At the beginning of the meeting, a City-produced DVD should be played (maybe 5 or 7 minutes) that explains the development process. In particular, the DVD should specifically indicate the criteria under which area citizens can object to a project or attempt to modify it. For example, it doesn’t do any good for citizens to just say they don’t like it. The zoning ordinance relationship to The Plan and its role in determinations should be part of the DVD. The DVD should explain how the City Staff review developer’s applications according to explicit tests and methodologies. Citizens should be encouraged to engage responsibly.

This can be produced with proper time and resources.

- 2. A short document should be produced giving examples of how objection criteria are evaluated. For example, what does it mean to “Change the character of the neighborhood”? How do citizens show this?

There are many pre-existing resources from professional organizations that could probably be used but if not, a consultant could produce some helpful hints with adequate time and resources.

3. City staff briefing materials to an Approving Authority must explicitly address citizen concerns.

The staff reports do and will continue to include written comments received by mail or email from citizens. In most cases, there is no comment received prior to the staff report and briefbook distribution because the notice is mailed 14 days prior to the meeting and the briefbook for the Planning Commission now goes out 12 days before the meeting. Along with some other reformatting of the staff report format, we are adding a section of the staff report that highlights public comment received. This will be noted whether or not any comment is received.

4. The Approving Authority should must explicitly address all citizen concerns.
5. Any staff report should be available X days before the Planning Commission meeting to all interested parties. Citizen comments must be included.

This is part of the regular process, however, as noted above, comments are rarely received in advance of the agenda distribution. The staff report is posted the same day that the Commissions (or Boards) get their briefbook (12 days in advance for the Planning Commission, 1 week for the Historic District Commission and Board of Appeals).

6. Tightly scheduled successive meetings are hard for a neighborhood group to deal with and to have meaningful involvement.
7. Modifications to an application must be given in a timely manner to all interested parties.
8. Advanced review of other parties' materials should be afforded to all parties or none at all.
9. The Approving Authority should follow the order of the published agenda.

Other process changes suggested by the staff

In addition to the items above, the staff has reviewed the experiences of the first year of the new ordinance along with the recommendations of the Communications Task Force and the comments above. While we do not recommend designing the process for the worst projects or the applicant that does not want to cooperate, there are changes that could improve some of the primary criticisms of the current code.

The intent of these steps would be to insure that the pre-application area meeting is conducted sufficiently in advance of the DRC and the application submission, and that these meetings are attended by staff, and that minutes are taken by an objective source. In addition, it increases public education and resources to become more effective participants in the process. Additional details and code amendments would be required if the Mayor and Council are interested in such changes, with the concept including the following changes:

1. *The Pre-application Area Meeting must occur prior to the Pre-application DRC Meeting.*
2. *The Post-application Area Meeting is attended by City staff to answer questions but is conducted by the applicant.*
3. *Minutes of all Area Meetings are taken by an objective outside source and paid for by the applicant.*
4. *The notice of filing should include the date of the DRC meeting.*
5. *Notices should include: the brochure (already implemented), information on the Planning Academy, anticipated timeline, location map, site plan if appropriate, and a brief project description (i.e. 3-4 pages).*

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