

Ordinance No. 29-09

ORDINANCE:

To grant Text Amendment
Application No. TXT2009-
00221, Mayor and Council of
Rockville, Applicant

WHEREAS, the Mayor and Council of Rockville, 111 Maryland Avenue, Rockville, Maryland, 20850, filed Text Amendment Application TXT2009-00221 for the purpose of amending various sections so as to make clarifications and corrections to the City Zoning Ordinance adopted December 15, 2008 and effective March 16, 2009; and

WHEREAS, the Planning Commission reviewed the proposed text amendment at its meeting of July 22, 2009, and recommended approval of the application, with certain additions and modifications, as set forth in a memorandum to the Mayor and Council dated August 25, 2009; and

WHEREAS, pursuant to Article 66B of the Annotated Code of Maryland, the Mayor and Council of Rockville gave notice that a hearing on said application would be held by the Mayor and Council in the Council Chambers at Rockville City Hall on September 14, 2009, at 7:00 p.m., or as soon thereafter as it may be heard; and

WHEREAS, on September 14, 2009, said application came on for hearing at the time and place provided for in said advertisement; and

WHEREAS, the Mayor and Council having considered the text amendment application and the entire file pertaining thereto, said Mayor and Council having decided that the granting of this application, as amended, in the form set forth below, would promote the health, safety and welfare of the citizens of the City of Rockville.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, that Text Amendment Application No. TXT2009-00221, be, and

the same is hereby, granted, as amended, by amending various sections of Chapter 25, "Zoning" as follows:

SECTION 1. That the Table of Contents be amended as follows:

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25.17.07 – Environmental Guidelines

25.17.08 - Building Restriction Lines

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25.21.24 – Erosion Area Regulations

25.21.25 – Monuments

[Landscaping, Screening and Lighting Manual]

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SECTION 2. That Article I, "General Information," be amended as follows:

Sec. 25.01.04 – Relation to Master Plan

- a. The provisions of this Chapter are adopted in accordance with the Master Plan, and as the Plan may be amended from time to time.
- b. Whenever there is a requirement in this Chapter that a finding be made that an application conforms to the Plan, such finding need not be made where the Approving Authority finds that events have occurred or circumstances exist to render such compliance inappropriate with respect to such application.

* * *

Sec. 25.01.06 – Compliance

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

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Sec. 25.01.09 – Vested Zoning Rights

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2. A property owner's right to a particular use of the property pursuant to the

provisions of this Chapter vest upon the occurrence of all of the following:

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

SECTION 3. That Article 3 "Definitions; Terms and Measurements and Calculations" be amended as follows:

Sec. 25.03.02 – Words and Terms Defined

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

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

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

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

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

* * *

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

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

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

* * *

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

* * *

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

* * *

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

* * *

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

* * *

Restaurant –

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

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

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

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

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

Sec. 25.03.03 – Terms of Measurement and Calculation

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

SECTION 4. That Article 4 “Approving Authorities” be amended as follows:

Sec. 25.04.03 – Board of Appeals

- b. *Powers and Duties*

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

* * *

e. *Meetings and Hearings*

1. Meetings must be held when necessary to conduct business or at intervals as may be mandated by State law, this Chapter, or the adopted Rules of Procedure of the Board.
2. Hearings must be held when required by State law or other provision of this Chapter.
3. The Board must hold a hearing on an appeal from the decision of the Sign Review Board no later than 45 days from the date of the filing of the appeal, provided that a different date may be set with the consent of the party filing the appeal.

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

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

Sec. 25.04.04 – Historic District Commission

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b. *Powers and Duties*

1. *Generally* -

* * *

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

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

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Sec. 25.04.05 – Sign Review Board

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c. Membership

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

* * *

Sec. 25.04.06 – Chief of Planning

a. Powers and Duties

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

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

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b. Appeals

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

Sec. 25.04.07 – Chief of Inspection Services

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

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

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

b. *Appeals*

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

[2.]

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SECTION 5. That Article 5 "Application and Notification Generally" be amended as follows:

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Sec. 25.05.03 – Public Notification

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c. *Written Notice*

1. Written notification must be provided by mail or other delivery for the following:
 - (a) The filing of a completed application;
 - (b) [A scheduled area meeting, public meeting or hearing of an Approving Authority on an application] Areas meetings required by this Chapter under the provisions of Article 7;
 - (c) Public meetings and hearings held by an Approving Authority;
 - (d) A decision of an Approving Authority on an application in accordance with Section 25.05.06; and
 - (e) For any other matter as may be required by this Chapter.
2. In order to accomplish the required [mailing] written notification, the following must be done:
 - (a) The mailing or delivery list for such notice must be compiled from the current tax assessment listing all properties located within at least 500 feet of the boundaries

of the subject property, unless another notification area is specified within this Chapter;

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

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

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

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

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

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

(a) Within ten feet (10') of each boundary line that abuts a public or private road or street. If the property boundary line is more than 250 feet long, one (1) sign is required every [250] 500 feet.

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5. *Affidavit Required*

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

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

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Sec. 25.05.07 – Amendments to Approved Development

- a. *Application Required* – Except as otherwise provided, an application to amend any previously approved development must be filed with the Chief of Planning[, or the Chief of Inspection Services where approval of the Sign Review Board is involved,] in accordance with the provisions of this Article.
- b. *Minor Amendments to Approved Development*
 - 1. Any application for an amendment which does not significantly deviate from the terms and conditions of the original approval and would effectively carry out the intent of the Approving Authority's original approval may be considered and acted upon by the Chief of Planning under the provisions for a Level 1 site plan as set forth in Sec. 25.07.04 [, or the Chief of Inspection Services where approval of the Sign Review Board is involved].
 - 2. Such application may only be approved if it results in a minimal effect on the overall design, layout, quality, or intent of the plan and is limited to a change in:
 - (a) minor adjustments due to site engineering; or
 - (b) a parking or loading area; or
 - (c) landscaping, a sidewalk, recreational facilities, recreational area, public use space, or open area in a manner that does not alter basic elements of the site plan[.]. Landscaping maintenance does not require an amendment application under this section.
 - 3. Modifications that result in a reduction of floor area or other development intensity may be approved by the Chief of Planning under a Level 1 site plan review process.
 - 4. Minor changes are not subject to the provisions for pre-application staff meetings, area meetings, and the notice provisions of Section 25.05.03 or Article 7.
 - 5. Where the Chief of Planning determines that the change is not minor, the application is referred to the Approving Authority for review

c. *Major Amendments to Approved Development*

1. Where the Chief of Planning determines that a requested change is too significant to be a minor change but is not so substantial as to require an entirely new application for approval, the requested change must be reviewed and approved by the original Approving Authority as an amendment to the original development approval. Major amendments may include:
 - (a) an increase in the height of any building
 - (b) an increase the floor area of any non-residential portion of a building
 - (c) an increase the number of dwelling units[.]; or
 - (d) any other significant change to the site that results in an increase in the parking requirement, and requires the construction of additional parking spaces.
2. An application for a major amendment is subject to [such] the notice and procedural requirements as set forth in [Articles 5, 6, and 7] Sec. 25.07.03. The application will be processed under the procedures for either a Level 1 or a Level 2 site plan, depending on the initial Approving Authority.

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Sec. 25.05.08—Extension of Implementation Period

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- c. Extensions may be granted only upon good cause. In determining whether good cause has been shown, the Approving Authority must consider:
 1. [t] The actions taken by the applicant to diligently pursue implementation of the approval, including but not limited to execution of required documents and pursuing other required approvals, and
 2. [w] Whether the approved development complies with all the[n] current provisions of this chapter and other applicable laws and with the current Plan recommendations, and
 3. [s] Such other factors deemed to be relevant.

* * *

SECTION 6. That Article 6 "Procedures for Map and Text amendments, Variances, Special Exceptions and Administrative Actions," be amended as follows:

25.06.01 – Zoning Map Amendments

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e. Public Notification of Pending Application

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

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

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

* * *

k. Notification of Decision and Appeal

1. Notification of decisions must be in accordance with Section 25.05.06.
2. Appeals – Any person aggrieved by any decision of the Mayor and Council made on a map amendment application may appeal the same to the Circuit Court for the County. Such appeal must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.
3. The time limitation for appeals will run from the date of the ordinance or resolution adopted by Mayor and Council.

25.06.02 – Text Amendments

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b. Applications

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* * *

d. *Referring Application to the Planning Commission*

1. *City Clerk Responsibility* – Within five (5) days after acceptance of any text amendment application, the Clerk must transmit a copy of the application to the Planning Commission. The Commission may submit a written recommendation to the Mayor and Council, which will be placed in the application file by the Clerk and become a part of the record on the application.

* * *

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

* * *

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

* * *

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

* * *

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

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SECTION 7. That Article 7, "Procedures for Site Plans and Project Plans, Special Exceptions, and Other Permits," be amended as follows:

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

a. *Site Plan Approval*

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

- (a) Used;
- (b) Constructed;
- (c) Converted, wholly or in part, to any other use; or
- (d) Structurally altered so as to increase or decrease the height, floor area or have modifications made to the site.

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

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b. Application Procedure, in General

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

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

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

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

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

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

Following subsections to be renumbered in sequence.

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

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

* * *

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

* * *

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

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

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

* * *

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

* * *

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

* * *

Sec. 25.07.08 – Project Plan Review

* * *

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

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

* * *

22. *Appeals* – Any person aggrieved by any decision of the Mayor and Council made on [a map amendment application or] a Project Plan application may appeal the same to

the Circuit Court for the County. Such appeal must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

Sec. 25.07.09 -- Special Exceptions

* * *

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

* * *

- f. *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.

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

1. *Site Plan Approval Required* – If site plan approval is required to exercise the rights granted by the Board's decision, application for such approval must be filed within six (6) months of the date of the Board's decision, or the approval shall expire. The filing of an application for site plan approval shall extend the rights granted by the Board's decision to a date one (1) year from the date of the Board's decision. The approval of a site plan shall extend the rights granted by the Board's decision for the same period of time that the rights granted by the site plan approval exist, including any extensions thereof;
2. *Building Permit Required* – If a building permit is required to exercise the rights granted by the Board's decision, such building permit must be issued and construction started within 12 months of the date of the Board's decision, or within the time limit as extended by the approval of a site plan, or the approval shall expire; and
3. *No Building Permit Required* – If a building permit is not required to exercise the rights granted by the Board's decision, such rights must be established within 12 months of the Board's decision, or the approval shall expire.
4. *Extension* – The Board may, for good cause shown, grant no more than two (2) extensions of the implementation period of not more than six (6) months each, subject to the provisions of Section 25.05.08.

* * *

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

* * *

Sec. 25.07.12 – Occupancy Permit

- a. *Requirement* – An occupancy permit is required prior to:
1. Occupancy and use of a building hereafter erected or structurally altered; and
 2. Occupancy or change in use of unimproved land.

* * *

Sec. 25.07.14 – Certificate of Approval in Historic Districts

- a. *Requirement* – A Certificate of Approval issued by the Historic District Commission is required prior to any [of the following] actions affecting a site or the exterior of a building or structure in an Historic District Zone consistent with the provisions of Article 66B of the Maryland Code for Historic Area Zoning[;].

* * *

- c. *Procedure for considering and approving Certificate of Approval*
1. *Administrative Approval* – The Chief of Planning is authorized to issue a Certificate of Approval for fences, signs, and [mature tree removal applications] removal of diseased and/or hazardous trees. The Chief of Planning is also authorized to issue a Certificate of Approval for accessory structures, consistent with the adopted Technical Guidelines for Exterior Alterations. Such activities must conform to the adopted design guidelines outlined in this section.

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

* * *

SECTION 8. That Article 8, "Transitional Provisions, Nonconformities, Nonconforming Alteration Approval" be amended as follows:

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Sec. 25.08.02 – Transitional Provisions

b. Previously Approved Developments -

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

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

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

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Sec. 25.08.05 – Nonconforming Uses

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

* * *

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

[b] *c. Termination*

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

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

* * *

25.08.06 – Development Standards Nonconformities

- a. Except as otherwise provided in Section 25.08.07 or Article 14 of this Chapter,
[T]his section applies to a building, structure, or site that was lawful when

established but no longer conforms to the development standards of the zone in which it is located[, except as otherwise provided in this section, Section 25.08.07, and Article 14 of this Chapter].

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

1. [If a building, structure or site contains a development standards nonconformity, then a] Alterations, expansions, and enlargements [may be] made to [the] a building, structure, or site that contains a development standards nonconformity [only if they do not] must not expand or extend the development standards nonconformity, except as provided in subsection b.3 below [set forth in Section 25.08.08].

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

[2]3. *Exceptions.*

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

- i. To maintain the building, structure or site in safe repair;
- ii. To improve the façade of the building or structure so as to enhance its appearance; or
- iii. To comply with the requirements of the Americans with Disabilities Act or other safety code requirements.

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

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

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

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

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

- i. is altered or reconstructed or
- ii. suffers damage or deterioration by fire, flood, explosion, or any other cause or casualty, whether voluntary or involuntary.

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

- i. In the event an existing single unit detached or semi-detached detached dwelling is damaged or destroyed by fire, flood, explosion or other cause or casualty outside the control of the property owner, the dwelling may be reconstructed to the configuration which existed immediately prior to the damage or destruction.
- ii. If there is a voluntary destruction of 50 percent or more of the exterior wall surfaces from the grade up, or an expansion of more than 100 percent of the existing floor area in a detached or semidetached single unit dwelling, the development standards nonconformity terminates and the dwelling must be brought into compliance with the provisions of Article 10 and any other applicable provisions of this Chapter.]

* * *

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

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

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

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

(a) is altered or reconstructed or

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

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

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

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

25.08.07 – Certain Existing Structures or Development.

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

1. In the event the building, structure, or site is damaged or destroyed by fire, flood, explosion, or other cause or casualty outside the control of the property owner, the building, structure or site may be reconstructed to the density and configuration which existed immediately prior to the damage or destruction.
2. If a building or structure is demolished, or a redevelopment of a site occurs, due to causes within the control of the property owner, all reconstruction and redevelopment must comply with the current development standards and requirements of the zone in which the property is located.

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

[b] c. Any expansion, structural alteration or enlargement to the portion of the building, structure or site that no longer conforms to the development standards of the zone in

which it is located is subject to the provisions of Section 25.08.06 [.] and Section 25.08.08.

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

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

25.08.08 – Nonconforming Alteration Approval

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

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

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

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

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

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

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

* * *

[c. *Public Notification of Pending Application* – The Chief of Planning must send

written notification of the application filing in accordance with the provisions of Section 25.05.03.c.]

[d] c. Procedure

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

(a) *Public Notification of Pending Application –*

- i. Sign. The applicant must post a [A] sign [must be posted] on the property that is the subject of the application [and written notice provided by the applicant] in accordance with the requirements in Sections 25.05.03.[c. and] d.
- ii. Written notification. The Chief of Planning must provide written notification of applications filed requiring Chief of Planning Review in accordance with the provisions of Section 25.05.03.c.

(b) *Action on Application*

* * *

- ii. The Chief of Planning may issue a [nonconformity] nonconforming alteration approval only if the findings set forth in Section 25.08.08.d.2.(b)(i) - (vi)[,] below[,], are made.
- iii. The Chief of Planning's decision must be based on written findings of fact.

* * *

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

- i. There exists documentation of the existence and extent of the nonconforming zoning [entitlement being requested] status of the use or development standard.
- ii. The proposed nonconformity alteration does not exceed that amount reasonably necessary to accomplish the purpose of the structural alteration [or] expansion, or enlargement as permitted by Section 25.08.06b.2.(b).
- iii. The proposed nonconforming alteration is compatible with the general character of the surrounding neighborhood or zone.
- iv. The proposed nonconforming alteration will not have negative impacts on the public health, safety, aesthetics, and welfare of the nearby properties.

- v. The proposed nonconforming alteration will be consistent with the purpose and intent of the zone in which the property is located and of the Plan.
- vi. For nonconforming alteration approvals that trigger conformance with current parking requirements pursuant to Article 16, the Planning Commission may waive the current parking requirement and allow the maintenance of the existing nonconforming parking [entitlements] status through the grant of the nonconformity alteration approval, if the Commission finds that:
- A. It is not practicable to provide the required parking onsite in a manner that preserves neighborhood character;
- B. Preserving the nonconforming parking [entitlements] status is the best solution to provide consistency with the goals, policies, and intent of the Plan.

* * *

SECTION 9. That Article 9, "Accessory Uses; Accessory Buildings and Structures; Encroachments; temporary Uses; Home-Based Business enterprises; Wireless Communication Facilities" be amended as follows:

* * *

Sec. 25.09.03 – Accessory Buildings and Structures

a. Residential Accessory Buildings and Structures

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

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

R-60 (Qualifying Undersized Lot)		20'	3'	3'	25%	12'
R-40		20'	3'	3'	25%	12'

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

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

- (a) *Accessory Buildings and Structures Greater than 12' High* - Accessory buildings and structures that exceed 12 feet in height must be set back from all lot lines an additional three (3) feet for each additional foot (or any portion thereof) of building height up to the maximum allowable height of 15 feet.
- (b) *Gross Floor Area* - The gross floor area of any detached accessory buildings must not exceed ten percent of the minimum lot area in the R-40 and R-60 Zones, nine percent of the minimum lot area in the R-75 Zone, and eight percent of the minimum lot area in the R-90 Zone. No single accessory building can have a gross floor area greater than 500 square feet.

* * *

Sec. 25.09.07 – Home-Based Business Enterprise

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

* * *

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

* * *

Sec. 25.09.08 – Wireless Communication Facility

* * *

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

* * *

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

* * *

e. *Waivers Permitted*

1. *Regulated Satellite Earth Station Antennas*

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

* * *

SECTION 10. That Article 10, "Single Dwelling Unit Residential Zones," be amended as follows:

* * *

Sec. 25.10.03 – Land Use Tables

* * *

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

* * *

Sec. 25.10.05 – Development Standards

* * *

Amend footnote 1 as follows:

¹Impervious surfaces include driveways, parking areas and sidewalks. In cases where the Department of Public Works approves a pervious paving material, the area of the front yard devoted to vehicle movement and parking is still limited to the percentage shown in the table above.

* * *

SECTION 11. That Article 11, “Residential Medium Density Zones” be amended as follows:

* * *

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

The following applies to residential townhouse developments:

* * *

6. At least 50 [%] percent of the development must be open area.

* * *

SECTION 12. That Article 12, “Industrial Zones” be amended as follows:

* * *

Sec. 25.12.03 – Land Use Tables

* * *