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-l 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 gives 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 is 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 may 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 uses 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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