MEMORANDUM

To: Planning Commission

From: Deane Mellander, Zoning Administrator

Via: Jim Wasilak, Chief of Planning

Subject: Review of Comments and Public Hearing Testimony
Text Amendment TXT2007-00219 –
Proposed Comprehensive Revision
To Chapter 25 of the City Code –
Zoning and Planning Ordinance and
Map Amendment MAP2007-00101 –
Proposed Comprehensive
City-wide Rezoning to Implement the
Revised Zoning Ordinance

Applicant: Mayor and Council of Rockville

Location: City of Rockville

The Mayor and Council authorized the filing of text amendment TXT2007-00216 and comprehensive map amendment MAP2007-00101 on October 8, 2007. These two proposals were drafted by the RORZOR Committee and reflect the committee's general consensus on how the new zoning ordinance should be drafted and how the new zones proposed should be applied.

During the time the RORZOR Committee was meeting, as well as after, the staff has been meeting with citizens, developers, lawyers, and internal staff from other departments to gather input and comments on the proposals being set forth. Since the release of the draft documents, the staff has engaged in a formal public outreach program to obtain further input.

On January 23 and 30, 2007 the Planning Commission conducted a public hearing to gather formal public comment on the proposed ordinance and map. In preparation for the worksessions with the Planning Commission, the staff has reviewed all of the comments and testimony that have been received to date. In order to try and provide the Commission with a methodology for efficiently finalizing the recommended changes for consideration by the Mayor and Council, several approaches are suggested.

The January 11 staff report included at sizable tabular summary of many of the comments received ahead of the public hearing. The staff will be going through all of these items and provide staff comments and recommendations for the Commission's consideration. In general, the staff notations will be made in three ways: The first is termed a "Technical Correction". These are items such as typos, added references, graphics suggestions and the like. The Commission is requested to allow the staff to make these changes without need for specific review. The second way involves specific comments in the body of the table for the Commission to give direction. The third is where a reference is made to a separate staff memo. This third way generally involves overall policy decisions that the Commission will need to consider in order for the necessary changes to the text and/or map to be made.

Much of the testimony received at the public hearing involved three major topics— Nonconformities and their relation in particular to the North Stonestreet Avenue corridor; the proposed changes in Home-Based Business Enterprises (formerly Home Occupations); and the overall standards and requirements for development in the new Mixed-Use Zones. In order to better organize the discussions, the staff has prepared several staff memos on these major issue topics. They explain the background for the proposed changes, summarize the testimony and comments received, and set forth recommendations or alternative approaches for the Commission's consideration. It is hoped that in going through these staff memos, the Commission will give direction on the policy recommendations and specific issues. This will provide staff with the information needed to make proposed changes in the text or on the map for the Commission's consideration and to prepare the final draft submittal to the Mayor and Council.

The staff memos being prepared cover the following major issues:

- Nonconformities (Nonconforming uses; development standards nonconformities; grandfathering; amortization; etc.)
- Mansionization (including lot coverage, FAR, impervious surfaces)
- Development Standards and Mixed-Use Zones
- Home-Based Business Enterprises
- Historic District regulations

Those memos not attached here will be sent to the Commission over the next couple of weeks as these topics come up for review and discussion. The staff may provide additional information to the Commission as the worksessions progress where additional clarification is needed. The goal is to have the Commission's recommendations completed by March 26 so that the revisions to the draft can be made in time for the Mayor and Council public hearings, currently scheduled to begin on May 12, 2008.

The order of discussion is proposed as follows:

- Mansionization and related nonconformity issues; Home-Based Businesses
- Nonconformities, including Stonestreet Avenue issues; zoning map.
- Proposed development standards in Mixed-Use Zones
- Technical items; miscellaneous issues raised

General Comments

A number of smaller issues raised through the comments or public hearing can be addressed in this memo. These include comments relating to "green" requirements and some general comments by the Historic District Commission on suggested modifications. The Commission should also refer back to the staff report of January 8, which included some general policy issues and discussion of major areas of concern.

It should be emphasized once again that the zoning ordinance is only one tool in the development review process. Other aspects of the City Code are equally important, including regulations regarding building codes, sediment control and stormwater management, and streets and public improvements. The zoning code essentially controls the character of development—the types of uses allowed, the building envelope (height, floor area, setbacks, etc.), accessory facilities such as parking, and the subdivision of land.

"Green" Issues

A number of comments have been received suggesting that the proposed ordinance include incentives to aid in environmental protection or enhancement. In some respects, the proposed ordinance does do this, by requiring more public use space in the mixed-use zones and by creating a new Public Park zone. Also, a provision has been included in the Parking and Loading standards (Sec. 25.16.02.f.4.) that permits reductions in the amount of area actually paved where it can be demonstrated that the full parking requirement is not needed due to the nature of the use.

In general, however, most of the green standards involve building code standards and site development standards (tree preservation, sediment control and stormwater mangagement, etc.) that are regulated by other parts of the City Code. The City has adopted a comprehensive green policy in the form of a sustainability strategy. As this project moves forward and if there are any changes that need to be made to the zoning ordinance, they can be initiated through the normal text amendment process.

Historic Sites and Districts

The Historic District Commission has provided a number of suggestions and recommendations to clarify these provisions within the draft ordinance (see the minutes of the November 20, 2007 meeting in the Addendum to the January 11 Staff Report). Most of these are technical corrections that will be incorporated into the final draft.

However, there have been some issues raised that the Commission should consider and give direction on. These will be provided in a staff memo for the worksessions.

Board of Appeals

The Board of Appeals has provided a Memorandum with comments on the draft ordinance. Their memo is attached and will be discussed during the worksessions.

Attachments

1. Staff memorandum on Mansionzation and Impervious Surfaces
2. Staff memorandum on Nonconformities, Grandfathering and Related Issues
3. Staff memorandum on Home-Based Business Enterprises
4. February 6, 2008 Memorandum from the Board of Appeals

MANSIONIZATION AND
IMPERVIOUS SURFACES
February 8, 2008

Mansionization

In brief, the RORZOR Committee recommended that in the R-60, R-75 and R-90 zones that building heights be limited to 32 feet, measured from the pre-existing grade at the front of the house to the peak of the gable. The Chief of Planning may allow up to 35 feet to the peak if it is determined that the extra height will not adversely affect the surrounding properties. Further, the floor area ratio (FAR) of the house should be limited to FAR 0.35, or 3,000 square feet if that is the larger number. The Planning Commission may allow up to FAR 0.5 through site plan review to assess compatibility with the surrounding development.

This has been a difficult issue, since it directly impacts many properties in the City. Proponents of the regulation believe that it will help maintain the character of existing neighborhoods by limiting houses that would be considerably larger than those on the surrounding properties. Other feel that property values will be depressed. Some express concerns that such redevelopment will reduce their property value because of the perceived impact on their property. Others, conversely, complain that redevelopment will raise the assessments of other homes in the vicinity, thereby raising their taxes. There are the more general comments that the new houses just don't "fit" in the established neighborhood.

Staff notes that suburban development is market-driven, and has been from the beginning. Builders provide what the dominant market demands. The post-World War II baby boom created a huge demand for modestly-priced "starter" housing. Areas such as Twinbrook, Maryvale, East Rockville, Hungerford and others typify this growth—modest ramblers and Cape Cods with 3 bedrooms, 1 ½ baths, maybe a dining room. These houses served the residents well for decades. They did not, however, come close to filling up the potential building envelope allowed in the zones.

Today, however, homebuyers are looking for more in a house—great rooms, media rooms, recreation rooms, larger bedrooms, more and larger bathrooms—in convenient locations. In recent years the real estate market has made it economical in many instances for people to buy an older home, demolish it, and build a new house with the amenities they desire. These houses may well approach the maximums for lot coverage and building height, resulting in a structure that may be three times the floor area and twice the height of the neighboring homes.

The committee recommendation would have the effect of lowering the potential height of a house by about eight to ten feet over what is currently permitted (35 feet from the street grade to the mid-point of the gable; see diagram below). Thirty-two feet to the roof peak will allow for two stories with a reasonable roof pitch. The Chief of Planning may authorize a height up to 35 feet to the peak if compatibility is determined.

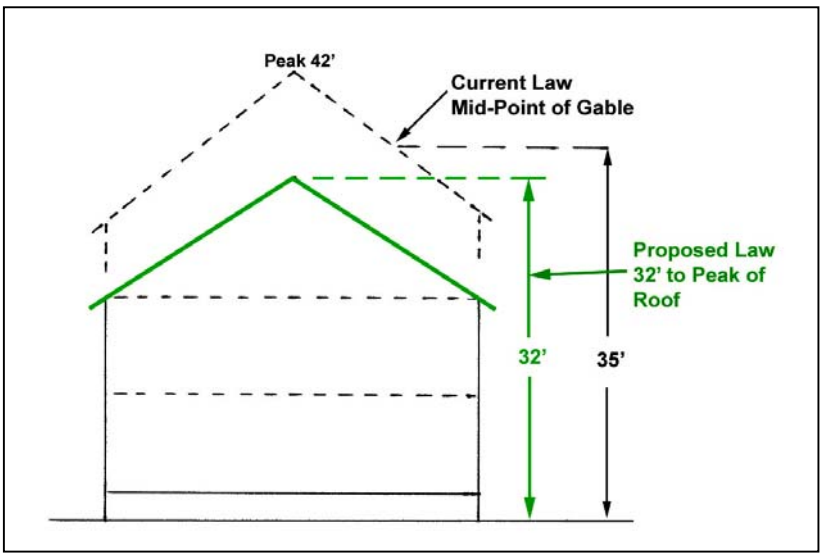


Diagram of Current and Proposed House Height Regulation

The FAR limitation is intended to work with the height limit to reduce the overall bulk of potential new construction. A typical 7,500 square foot lot in the R-60 Zone under today's regulations (35 percent maximum building coverage) would allow a footprint of 2,625 square feet. Built to three stories, that could result in a floor area of 7,875 square feet. The proposed regulation limits the floor area to 0.35 or 3,000 square feet, whichever is greater. The Planning Commission could allow an FAR of up to 0.5. This would allow a floor area for our sample 7,500 square foot lot of 3,750 square feet. This could still be accomplished with two stories, and a footprint of 1,875 square feet, still under the 35 percent maximum building coverage.

Kevin Gallagher spoke at the public hearing regarding his house at 1200 Highwood Road and how it fits in with the Twinbrook neighborhood. The diagram below was prepared for the RORZOR Committee discussions of this issue, and illustrates his house:

As can be seen, his house is well within the current height standard of 35 feet, measured to the mid-point of the gable. It does not meet the proposed standard of 32 feet to the peak, but could be considered for approval by the Chief of Planning with a minor change in roof pitch to achieve the maximum of 35 feet to the peak.

The building footprint (not counting the porches) of Mr. Gallagher's house is approximately 1,050 square feet. Adding the second story and the half-story under the roof would take his floor area to about 2,635 square feet. His lot area is 8,694 square feet, meaning his FAR is 0.30 which complies with the proposed standards.

A more typical "pop-up" (or second-story addition), such as the one below located near Mr. Gallagher, would easily comply with the proposed standards:

This issue essentially boils down to a compromise between maintaining the character of existing neighborhoods that were developed well below the zoning allowances, and responding to today's market demands for larger homes with more features in convenient locations. The questions the Commission should address are:

- Are the committee's recommendations reasonable?
- Should they be applied generally, throughout the zoning districts? There was testimony that the R-90 Zone should be excluded from the regulations.
- If the regulations should not be applied generally, are the neighborhood conservation district provisions in Article 14 appropriate as an avenue for addressing the issue on a neighborhood-by-neighborhood basis?
- Do we need an FAR limit if the issue is really height and bulk, rather than just size of living area?

Impervious Surface Limits

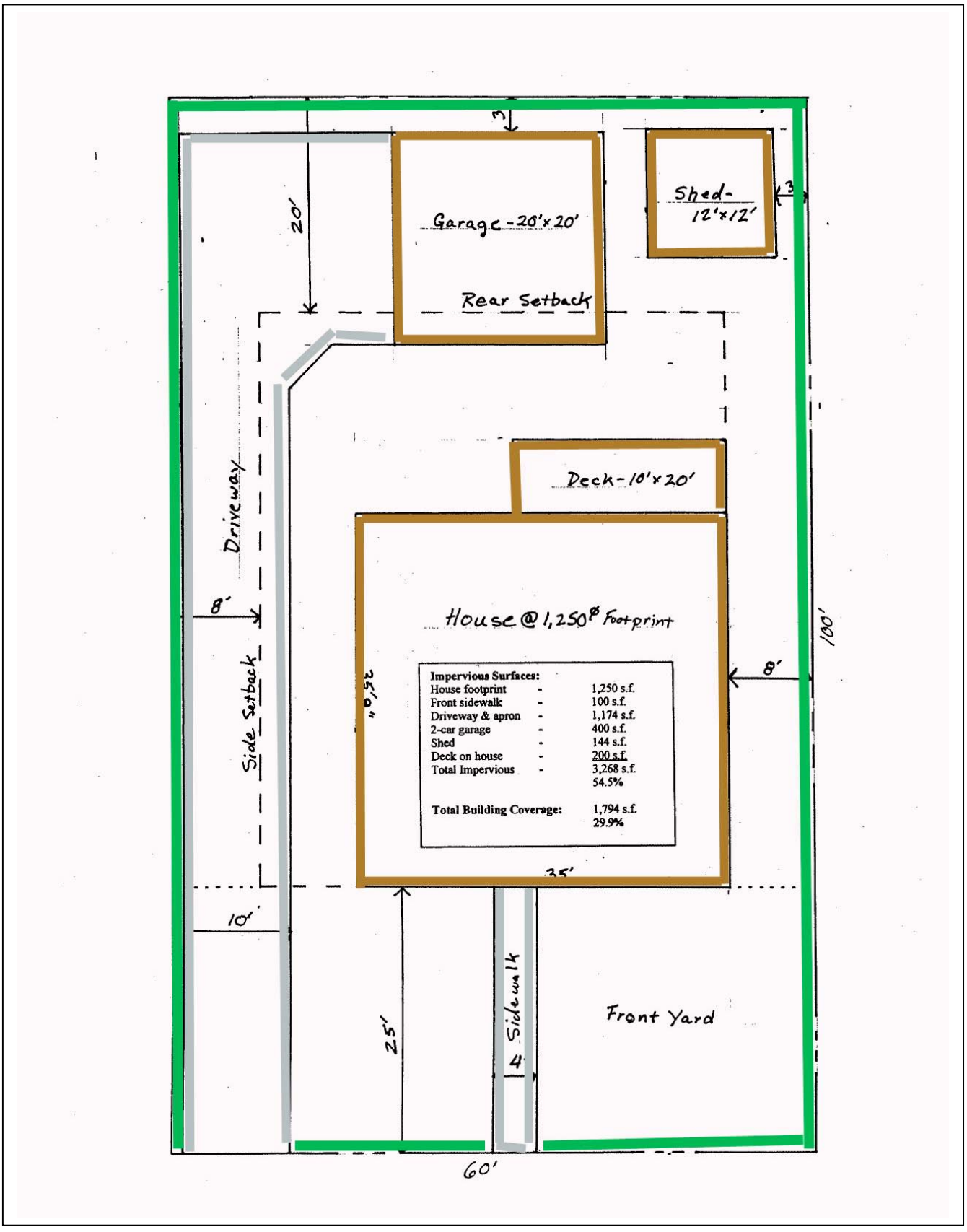
In addition to limitations on the size of houses in certain zones, the proposed ordinance also recommends limitations on the amount of impervious surface that would be allowed in the residential zones.

The committee has recommended imposing limits on impervious surfaces in the residential zones for two primary reasons—Maintain the essential residential character of the neighborhoods, especially the front yards; and reduce the potential environmental impact from uncontrolled stormwater runoff. The regulation is in two parts; the first requires that the overall pervious area on a lot be no less than 25 percent of the lot area. Impervious surfaces include essentially any improvement that does not allow for the percolation of rain water into the ground. This includes the main house and any accessory buildings; patios; driveways; decks; swimming pools; and any other structure with a roof or floor, other than play equipment or other decorative structures.

For reference purposes, the adopted Water Quality Protection Ordinance provides the following definition:

> *Impervious or Impervious Areas* means an area that prevents or severely restricts water from reaching the subsurface and recharging groundwater. This condition can be caused by a structure, paving, compacted soil or gravel or other features that forms a barrier between precipitation and the earth's surface. Impervious area also includes elevated structures, such as a bridge or deck, regardless of whether the land surface beneath it itself is porous or impervious.

The diagram below illustrates a "typical" R-60 lot of 6,000 square feet. It shows a house with a footprint of 1,250 square feet, a deck, two-car garage with driveway and an accessory shed. The total impervious surface area, based on the proposed regulations, would be 3,168 square feet (the front sidewalk would not count). This comes to 52.8% impervious surface coverage. The proposed regulation requires a minimum of 25% pervious area, or 1,500 square feet, leaving a difference of 1,300 square feet.


3'
Garage - 20'x20'
Shed-
12'x12'
3'
20'
Rear Setback
Deck - 10'x20'
Driveway
House @ 1,250# Footprint
8'
Side Setback
100'
8'
35'
10'
25'
Sidewalk
4'
Front Yard
60'
Impervious Surfaces:
House footprint - 1,250 s.f.
Front sidewalk - 100 s.f.
Driveway & apron - 1,174 s.f.
2-car garage - 400 s.f.
Shed - 144 s.f.
Deck on house - 200 s.f.
Total Impervious - 3,268 s.f.
54.5%
Total Building Coverage: 1,794 s.f.
29.9%

At this point, the building coverage limit comes into play. For the R-60 Zone, the building coverage limit is 35%, and in our example this would be 2,100 square feet (.35 x 6,000). On the sample diagram, the building coverage comes to 1,794 square feet, or 29.9% of the lot area. This leaves a potential for an additional 306 square feet of building coverage on the lot. This would allow for an addition to the house with a footprint about 17 feet square.

In addition to the overall requirement to maintain a minimum pervious area, the proposed ordinance also regulates the amount of impervious surface that can be in the front yard. This regulation provides a sliding scale from 40 percent maximum impervious in the R-60 Zone down to 10 percent in the R-400 Zone. This provision is primarily intended to prevent the paving over of entire front yards, while allowing enough area in the smaller-lot zones to provide two off-street parking spaces in those cases where it is not feasible to place a driveway alongside the house due to minimal side setbacks.

In our sample diagram above, the driveway within the front yard (the area between the front of the house and the front lot line) is 250 square feet. The front yard area (60 feet x 25 feet) is 1,500 square feet, and 40 percent of that is 600 square feet. This means that the homeowner could essentially pave the area between the existing driveway and the front sidewalk and meet the proposed standard.

The questions the Commission should address with regard to impervious limits include the following:

- Are the proposed standards a reasonable trade-off between use of the lot by the homeowner and maintaining the aesthetics of the neighborhood?
- Are there any items that should, or should not be counted towards the impervious surface limit? The RORZOR Committee recommended not counting minor sidewalks and other landscaping features as too burdensome on the homeowner for such minor items.
- There will be administrative issues with these provisions. In order to comply with these new regulations, a homeowner is going to have to provide the City with a diagram of their property with sufficient detail and accuracy to assure compliance with the new standards. Currently, no permits are required for installing paving on a lot, since driveways, patios and the like are not currently deemed to be structures. A permit is required to install a driveway apron in the public right-of-way, but that does not cover any paving on the private lot. The City is going to have to make a big effort to inform all the homeowners about the change in permitting requirements, since until now no paving permits have been required.

  While some homeowners have a wall check or other type of survey that they received when they bought their house, many others do not. In those cases, they may have to get a survey done, at considerable expense, in order to file for any improvement on their lot. The City's GIS data may be of some help, but it may

not show small improvements such as patios or sheds, and it does not show driveway paving, except on the aerial photos. Also, the dimensions on the GIS are usually about plus or minus five feet, which is going to be a problem where proposed improvements approach the limits set forth in the zone.

A related issue is going to be one of enforcement. In general, our inspectors cannot trespass on private property without permission or a warrant. Checking on compliance with the impervious surface regulations, particularly in rear yards, is going to be difficult. The aerial photos may be the only course of action in some cases, and they are only flown every couple of years.

NONCONFORMITIES, GRANDFATHERING AND RELATED ISSUES
February 8, 2008

Many of the speakers at the Planning Commission hearing on the proposed zoning ordinance raised issues with regard to the lack of grandfathering provisions to protect existing buildings and businesses. Related to this was the issue of creating nonconforming uses with the new zones, especially in the North Stonestreet Avenue corridor. Following is a discussion of these issues and suggested alternatives for the Commission to consider.

Nonconformities Explained

There are concepts in the proposed Draft Zoning Ordinance that are technical and often difficult to understand at first. Nonconformities (uses and structures) are one of these concepts. The following is an explanation of how nonconformities are addressed in the Draft Zoning Ordinance.

Nonconformities fall into two main categories: nonconforming uses and development standards nonconformities, typically involving buildings. Although the concepts are similar, they are not treated the same. This section focuses on one hypothetical example. The nonconforming use is a drive-thru bank. It was a permitted use until the City rezoned its lot to a residential zone, where only residential development is permitted and banks are not.

Nonconforming Uses

In the simplest terms, nonconforming uses are those uses (residential, commercial, industrial, institutions) that were at one time permitted, but due to changes in the zoning they are no longer permitted. Only those uses allowed as permitted, conditional, or with special exception approval can be developed in the zone. However, those uses that were once permitted can continue with some limitations.

The right to continue a nonconforming use can be passed on to another owner. If the business is sold, the new owner can choose to operate so long as the use does not cease to operate for more than 3 months. A nonconforming use cannot be replaced with another nonconforming use. Any new use must conform to the uses allowed in the current zone. Owners should also understand that if a nonconforming use is leasing the space and vacates, it could be replaced with the same nonconforming use, so long as this occurs within 90 days of the vacating of space.

Limitations

Having a nonconforming use in a building affects what can be done to the building. Maintenance and repair are permitted and encouraged. If the building was specifically

designed and built to accommodate the use, the use can be expanded to occupy that space. The building cannot be expanded in order to further expand the use.

Termination of Use

In the draft ordinance there are situations that would terminate the nonconforming use. Termination can occur voluntarily or involuntarily. Let's first look at how a use could be terminated voluntarily, meaning that the conditions for termination are within the building owner's control.

Voluntary Termination of Use:

As noted above, if the nonconforming use is replaced by a conforming use, the nonconforming use cannot be re-established. Only uses allowed in the zone may occupy the space once the nonconformity has ceased.

Another way that an owner could voluntarily terminate a nonconforming use would be to rebuild or reconstruct more than 50% of the original building's structure or structural integrity. This means that if the owner wanted to tear down half of the building, even if the owner intended to keep the original footprint of the building, the use would no longer be allowed to continue.

Finally, if the owner allows the use to cease (or become vacant) for more than 3 months, the use is terminated. However if the owner applies for permits that are required for renovation, or modification and construction begins within those 3 months, the use can continue, provided that the space is reoccupied within 12 months of becoming vacant.

Involuntary Termination of Use:

There are instances where the nonconforming use could be terminated outside of the control of the owner.

If a building is destroyed though any means beyond 50% of the building's structure or structural integrity, the use is terminated. This means that if a building catches fire and more than 50% of the structure or structural integrity is lost, the owner cannot rebuild and put the use back in that building.

If the building is vacant for more than 12 months the nonconforming use is terminated. This means that only permitted, conditional or special exception uses can occupy that building and/or lot. It is possible to apply for a 6-month extension, but the Mayor and Council must approve it. No more than 2 extensions will be granted.

Exceptions to Involuntary Termination of Use:

If an owner is actively marketing a building for sale, the owner does not have a 3-month deadline for the use to continue. This means posting the sale listings in media such as

newspapers and multiple listing services, and maintaining the property for potential buyers. However simply putting a "for sale" sign on the property is not enough to be considered "actively marketing". In such cases, the building can be vacant for up to 12 months. The Mayor and Council may grant 2 six-month extensions if good cause is demonstrated by the owner.

Development Standards Nonconformities (Buildings and Site Improvements)

A development standards nonconformity involves buildings, structures, or other site improvements that were built to standards and requirements that were permitted at one time, but due to changes in the zoning the site improvements are now considered nonconforming. Development standards nonconformities may include excess building height, setback encroachments, lack of required parking, or other requirements related to the development of the property. This does not relate to the use within the building, which may or may not be permitted. Nonconforming buildings and sites are allowed to remain and continue in operation as before. They can be repaired and maintained and with limitations they can even be expanded.

Permitted Alterations to a Nonconforming Building

A nonconforming building or structure may be kept in safe repair, have cosmetic improvements such as façade replacement, or modifications to comply with the accessibility requirements of the Americans with Disabilities Act. Such modifications cannot expand the total floor area by more than 5%.

Termination of Development Standard Nonconformities

Much like the nonconforming uses, the development standard nonconformities can be terminated voluntarily or involuntarily. Let's first look at how a development standard nonconformity could be terminated voluntarily, meaning that the conditions for termination are within the building owner's control.

Voluntary Termination of Nonconformity:

Major structural alterations or reconstruction involving more than 50% of the floor area will require the building or structure to be brought into compliance with the current code. Expansion of a building by up to 50% of the existing floor area may be allowed if the expansion meets all of the current standards.

Involuntary Termination of Nonconformity:

If the building or structure suffers damages from any act of nature or catastrophic event and the damage exceeds 50% of the replacement cost, any repair or replacement must conform to the new standards. As with nonconforming uses, if and when any or all of the development standards nonconformity is eliminated, it cannot be replaced.

Exceptions to Involuntary Termination of Use:

If the building or structure is located within a historic district zone, the house and any other contributing resource can be repaired or replaced in its original location, using the design and materials that were used in the original building, subject to approval by the Historic District Commission. Any additions or renovations beyond the scope of the original structure must comply with the current standards.

If the property is affected by a public taking, the improvements can be repaired and replaced in kind. An example would be if the government uses eminent domain to acquire a portion of a property for a project such as a road widening. The result might be that the building on the property no longer complies with the front setback requirement of the code. In such cases, the building can be repaired or replaced in kind to its original extent. However, if the entire site is totally redeveloped, then the requirements of the new code will apply.

Effect of Nonconformities

The issue with property owners when nonconformities are created involves insurance and financing, particularly with regard to commercial properties. The initial financing for development is predicated on the uses and standards of the zone. Over time, property owners will refinance the property to acquire capital for repairs, renovations, expansion or other uses. However, if the use and/or the building(s) become nonconforming, most financial institutions will no longer lend money on the property since value has been substantially reduced. In the same vein, insurance companies will often no longer provide coverage where the uses or buildings cannot be repaired or replaced.

Policy Considerations

The possible creation of nonconformities has always been a problem with planning and zoning. On the one hand, the implementation of a jurisdiction's ultimate vision may justify creating nonconformities, with the expectation that they will eventually disappear and be replaced with uses or structures that are consistent with the zoning that has been implemented to help achieve that vision. This can usually be justified if the nonconformities are completely out of step with that future vision.

On the other hand, the creation of a large number of nonconformities may actually thwart the achievement of the vision. This is especially true if the nonconformities relate to building standards and not just uses. Without the opportunity for refinancing, and the potential loss of insurance coverage, buildings may just be left to deteriorate over time, with no new investment potential. The policy makers need to carefully consider how best to move forward without having detrimental side effects.

In order to address some of these policy issues, a number of approaches have been applied in similar situations. One or more of them may be appropriate depending on the

particular situation. These include grandfathering, amortization, and modifications to the zoning regulations.

Specific Nonconformity Issues

North Stonestreet Avenue

Many of the speakers at the Planning Commission hearing raised concerns regarding potential nonconformities in the North Stonestreet Avenue corridor. The RORZOR Committee considered some of the concerns and directed the staff to develop what came to be the proposed MXB (Mixed-Use Business) Zone for the west side of the street. However, the Committee felt that maintaining the recommendation for the MXT Zone on the east side was still appropriate as a transition to the residential areas further east. Currently, this area is zoned I-1. Rezoning to MXT would make a number of the businesses, especially the auto-repair and service industrial related ones, nonconforming. In addition, a number of the existing buildings would become nonconforming by reason of not complying with the 30-degree layback slope requirement.

A windshield survey of the area east of North Stonestreet Avenue indicates that none of the existing buildings would be nonconforming be reason of height—all of them are in the range of about 20 feet high or less.

There are a number of different possible ways to address these issues. In part, the recommendations will depend on planning policy considerations. The following language is taken from the adopted East Rockville Neighborhood Plan:

> *Because of the existing I-1 zoning, the Stonestreet corridor is currently home to many service industrial businesses that serve the community. It is the intent of this Plan that these existing businesses not be displaced by zoning changes. The preferred approach is for existing legal I-1 uses and structures be granted grandfathered status, with incentives to achieve an enhanced grandfathered status by making property improvements in keeping with the Master Plan objectives. The physical appearance and operation of businesses that wish to continue operations in the corridor should be upgraded in order to assist in the desired change of character. A combination of consistent code enforcement and education, economic incentives and zoning changes should be developed and implemented to further this goal. The implementation strategy, as well as the exact zoning mechanism, to accomplish the desired change in character will be developed after the adoption of the Neighborhood Plan. This will be done with the participation of the residential and business community in the East Rockville area.*

The January 11 Staff Report, at page 15, suggests consideration for an amortization period wherein the uses would be considered conforming for a specified period (10 years was suggested) after which they would become nonconforming. A related suggestion, on page 16 of the Staff Report, is to exclude the MXT Zone from the 30-degree layback slope requirement.

At issue is how the intent of the master plan recommendations are to be accomplished. The language above suggests grandfathering with incentives to achieve the desired property improvements. This is the basis for the suggestion to consider an amortization period. Note that if the layback slope requirement is eliminated from the MXT zone, all of the existing buildings would remain conforming, meaning that the nonconformities issue is then only related to the uses. The proposed MXT Zone would allow general office uses with up to 4,000 square feet for each tenant, which is an expansion over the current I-1 Zone. The big issue seems to be auto repair shops. One approach to consider would be to allow these uses as a conditional use, the condition being that they be permitted if they were in existence as of the date of adoption of the new ordinance. However, if the site is totally redeveloped at the instigation of the property owner, then any new development must conform to the zoning standards. If some of the other service industrial uses are to be allowed, then the Commission should consider recommending the MXB Zone on the east side of Stonestreet as well as the west side.

Another issue raised at the public hearing had to do with uses that could be allowed under the current I-1 Zone. Testimony was received that the property owners could not lease their vacant space due to occupancy issues. This revolves around the issue of parking standards. A number of these existing buildings were approved as service industrial buildings. These currently only require 1 parking space per 500 gross square feet of floor area. Others may have been approved for wholesaling or warehousing, which requires only one parking space for each 1½ employees and one space for each company vehicle, plus some additional spaces for customers as approved by the Planning Commission. An automotive repair garage requires one space per 300 gross square feet and one space for each employee. What can happen is that if a building was approved as a service industrial building, but winds up with several auto repair shops in it, it may not have sufficient parking to accommodate any more uses, even if they are otherwise permitted. This is a result of the choices made by the initial developer as to how much parking to provide, and by the owners of the site in which tenants they accept and the resulting parking standards for each type of use.

Under the parking standards proposed in the new ordinance, the service industrial building requirement is raised from 1 per 500 square feet to 1 per 250 square feet. Wholesaling is raised from 1½ spaces per employee plus company vehicle and customer parking to one space per 1000 gross square feet of floor area plus company vehicle parking. These requirements are intended to recognize the current realities of these types of businesses. It will have the effect, though, of making it even harder to meet the parking requirements vs. what is currently provided.

Town Center and Rockville Pike

A number of potential nonconformities may be created under the new ordinance. In general, these relate to development standards nonconformities rather than to nonconforming uses. These potential nonconformities relate to building heights and setbacks.

There are several buildings in the Town Center area that would become nonconforming due to excess height. They include the Metro Square building at 51 Monroe Place, the high-rise apartment building at the Americana complex, both the County Executive and County Courthouse buildings, and a portion of the Victoria high-rise apartments. In addition, a number of buildings in the Town Center and along the Pike would not comply with the upper story setback requirements. Among them would be the Foulger-Pratt and Gateway office buildings, the Metro Square building, the County buildings, and perhaps several buildings in the Pike corridor.

In addition to height and upper story setbacks, a number of buildings are already nonconforming by virtue of being adjacent to residential development. Among the buildings affected are the office building at the southeast corner of Edmonston Drive and Rockville Pike and the Congressional Towers high-rise buildings nearest to the edge of the Woodmont Country Club property. The 30-degree layback slope requirement between residential and commercial/industrial uses has been in place since 2003. The current language is contained in footnotes in the development standards tables and reads as follows:

> Additional standards to mitigate the impact of development on adjoining residential development, excluding mixed use or optional method developments containing residential uses:
>
> (a) For new nonresidential development or total redevelopment, when abutting residential land is recommended to remain residential in the plan, the following standards apply:
>
> i. Building height cannot exceed a line formed by an angle of 30 degrees measured from a point beginning at the relevant side or rear property line of the adjoining residential property.
>
> ii. A building facade of 100 feet or more must have facade offsets of at least 2 feet for every 50 feet of facade length.
>
> iii. If a building facade exceeds 200 feet long facing a residential zone, the building must be set back one foot for each additional foot of length exceeding 200 feet.
>
> iv. Structured parking above grade is prohibited adjacent to residentially zoned property which permits residential development up to a building height of forty-five (45) feet.
>
> (b) For additions to existing development, the Planning Commission may adjust any of the requirements of (a) i through iii by up to 20% where it is demonstrated that strict application of these provisions for unique site characteristics such as, but not limited to existing building locations, topography, shape of property or site access, but excluding economic hardship, would result in an undue hardship to the property, so long as the intent of this provision is met.

> (c) A building existing as of April 28, 2003, that exceeds this height requirement and is not damaged beyond 50 percent of its replacement cost may be repaired so long as the height is not increased beyond what was in existence as of April 28, 2003.
>
> (d) For purposes of this regulation, building height for the nonresidential use is measured at the mid-point of the common lot line with the residential use. The Planning Commission may vary this requirement by up to 20% in cases where unique site characteristics warrant, so long as the intent of this provision is met. Where steep slope conditions warrant, a minimum building height of 25 feet may be allowed.

By this provision any existing building that exceeds the height requirement of the layback slope has been made nonconforming by virtue of the language of subsection (c).

The Commission needs to look at the balance between achieving the ultimate vision for the City and the potential impact that results from creating a large number of nonconformities, especially in the commercial/industrial arena. There is precedent for addressing the issue of creating potential nonconformities. Staff notes that the current ordinance contains several special provisions to cover then-existing development. One example is Sec. 25-324, which reads as follows:

> Any development which lawfully existing prior to the rezoning of the land on which it is located to the RPC Zone, shall be regarded as a development nonconformity, but if damaged, can be rebuilt, repaired and/or reconstructed only to the extent of the original development existing on the date of the damage.

The Commission may wish to consider one or more of the following options:

- Do not require the layback slope between residential and the MXT Zone.
- Do not require the layback slope between nonresidential uses in residential zones and commercial/industrial/mixed use areas.
- Provide some form of grandfather provision that allows existing lawful buildings to remain and be repaired and/or replaced.
- Consider applying the MXB Zone to the area on the east side of Stonestreet Avenue.

Residential Areas

The great majority of one-family residential areas will not be affected by the nonconformity provisions. The exceptions would be those that exceed the mansionization provisions in the R-60, R-75 and R-90 zones, and those that would exceed the impervious surface limitations set forth in Article 10.

While exact records are not available, staff estimates that only about three dozen houses would exceed the 32-foot height and/or FAR limit proposed in the draft ordinance. By the same token, there are likely very few home sites that would exceed the impervious

surface limits. In both instances, if the standards are exceeded, they can remain, continue, and be maintained so long as the nonconformity is not increased.

Alternative Approaches to Address Nonconformity Issues

Grandfathering: "Grandfathering" is a term of art for adding specific exceptions in the ordinance. These exceptions would allow uses or development standards that would otherwise be nonconformities to continue and be considered conforming. Here are some examples of the way grandfathering might work:

- If a nonconforming building housing a use that is grandfathered is destroyed, the building can be only be rebuilt to the new zone standard, but the use can be re-established without regard for the 3-month rule.

- If the building itself is grandfathered (for instance, its height exceeds the limit in the new zone), it can be replaced if destroyed to its previous height. However, if the uses in the building were not grandfathered, they cannot be re-established.

- The otherwise nonconforming uses may be grandfathered so long as they continue, without regard for the 3-month vacancy rule. However, if the use is replaced with a conforming use, then the nonconforming use cannot be re-established.

- If the building and the uses within are nonconforming, they can be grandfathered indefinitely, and be repaired or replaced in kind if damaged or destroyed through no action by the owner. However, if the owner redevelops the property in conformance with the new ordinance requirements, then the former use cannot be re-established.

Again, these grandfathering provisions are usually provided for certain specific circumstances. They should be tailored carefully to deal with certain circumstances where the legislative body determines that such provisions are necessary and will not violate the spirit of the new zoning.

Amortization: The use could be considered a conforming use for a period of time, after which it would be considered nonconforming. For example, if the amortization period is 10 years, the building or uses can continue as conforming. There would be no issues regarding vacancies or replacement in kind. After 10 years the nonconformity provisions would begin to apply. The principal behind this approach is that the property owner would have that period of time to recoup most of the investment in the original development. This may make it more likely that redevelopment may occur once the site becomes nonconforming.

Consider a Different Zone: If the proposed zone would render a building or use non-conforming, apply a different zone that does permit the use to continue as conforming.

Amend a Provision of the Zone: If the zone is only problematic for one reason, (maximum height, uses permitted, design standards, etc.) consider revising the provision within the zone that is problematic.

Home Based Business Enterprises
February 8, 2008

Home Based Business Enterprises (HBBE) regulations and provisions are located in **Article 9, Accessory Buildings and Structures; Encroachments; Temporary Uses; Home-based Business Enterprises; Wireless Communication Facilities**. The following is an explanation of how HBBEs are addressed in the Draft Zoning Ordinance. The purpose of this paper is to explain how HBBEs would be interpreted using the proposed Draft *as it is currently written today* so that readers can submit informed and constructive comments.

What Is Included in the Proposed Home Based Business Enterprises Regulations?

The definition for HBBEs is located in **Article 3, Definitions**. The definition states that HBBEs are "any occupation that provides a service or product and is conducted within a dwelling unit by a resident or residents of the dwelling unit without diminishing its residential character" (25.03.02). This includes activities such as piano teachers, tutors, medical professionals, accountants, and lawyers and that work from their home.

The definition further explains characteristics of what a HBBE **is and is not**. The text states that the HBBE "is clearly subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit". The second part means that any additions or changes to the house must appear to be residential in nature. Residents can use accessory buildings or home additions for their business, so long as it is undetectable from the outside. The intention of this provision is that the residential character of the neighborhood will be maintained.

The text states that an HBBE "is conducted entirely within the dwelling unit and does not use any open yard area of the lot or parcel on which the dwelling unit is located or any building constructed on the lot or parcel specifically for the purpose of operating the home occupation. It may, however, involve off-site activities such as sales, client contact and other matters related to the home-based enterprise". This provision contains three important requirements. The first states that the HBBE cannot operate outside of the walls of the dwelling. The HBBE can be located anywhere within the home or within any existing accessory buildings such as garages, sheds, etc. It excludes the outside yards from this allowance. The second part pertains to the construction of detached accessory buildings that are built solely for the HBBE. An addition to the main building for the sole use of the HBBE is allowed; however the creation of a detached piano studio would not be permitted. Such a structure would be considered an accessory building, and accessory buildings are not allowed to be constructed for the sole purpose of the operation of a HBBE. However as stated in the first part, a piano studio can be located within an existing accessory structure, such as a converted detached garage. The third part states that the HBBE may have activities off site. This means that photographers who develop film at home but work in the field can operate their business from their

home. Basically this means that although there are limitations as to where the HBBE can operate on the residential lot, operations that occur outside of the lot are not limited.

Finally, the definition explains what are *not* included in HBBEs. Those listed include the following: bed and breakfasts, day-care facilities, displays of furniture not made in the home for sale in the home or at an offsite location, landscape contractor, private educational institution, tourist home, or the repair and maintenance of motor vehicles. Bed and breakfasts are defined separately in Article 3. The other businesses are separately listed in the Use Tables for various Zones. The Use Table for the Residential zones R-400, R-200, R-150, R-90, R-60, and R-40 are located in **Article 10, Residential Low Density Zones.** Depending on the zone, some of these are permitted. Others require special exception approval and it may be necessary to obtain Site Plan approval before these businesses can operate in a residential zone.

Provisions for All Home Based Business Enterprises

The following is an explanation of what is proposed for **all** HBBEs.

All HBBEs must keep a log of visits made that pertain to the business. This includes deliveries, clients, patrons, etc. Although a log of unique visitors is required, it is not required that the list include names, social security numbers, or any other identifying information. A simple log or even a tally would suffice. This log is used only to determine if the number of visits is appropriate for either the minor or major classification. The purpose is not to generate a list of clients or patients. This log or tally must be available to the Chief of Planning or designee upon request for the purposes of enforcing the trip limitation.

HBBEs must not create a nuisance to the neighborhood. The ordinance draft requires that noise, vibration, glare, fumes, odors, electronic interference not be detectable at or beyond the lot line of a detached dwelling unit or the floor, ceiling, or party wall of an attached dwelling unit. HBBEs such as piano teachers, medical professionals, cosmetologists, accountants or lawyers would most likely not violate these provisions. This provision was put in place so that neighbors would not have to endure any noises that are not common with residential neighborhoods. Most HBBEs operate virtually undetected because they are quiet and do not cause any excess vibrations, odors, etc.

The second part of this provision states that no HBBE will involve the use, storage or disposal of hazardous material, except for disposal of medical waste regulated by the State medical laws and regulations. This means that cosmetologists and medical professionals can operate so long as they comply with State laws and licensing regulations that are not enforced by the City.

Truck deliveries are prohibited *except* for parcels delivered by public or private services that customarily make residential deliveries. This means that postal delivery services such as UPS, DHL, etc are permitted. The impact of these deliveries would be no different than if a person ordered products using the Internet or catalogues. Those

deliveries are permitted for residential uses and would be allowed for HBBEs as well. These deliveries **do** count towards the number of "visits to the site" provisions.

The next provision states, "The use must be subordinate and incidental to the main dwelling but shall not be deemed to be an accessory use". This means that HBBEs are not considered accessory uses. This provision allows for HBBEs to be permitted in residential zones without the limitations on accessory uses in general.

The exterior appearance requirement emphasizes that the impact of the HBBE on neighborhood character should be minimal. Therefore any alterations to the main building or accessory structures should be residential in character. Essentially the house should still look like a house and not a commercial or retail structure.

Finally, there are limitations on signage for HBBEs. These provisions are covered in **Article 18, Signs.** The owner would apply their residential zone's provisions for the HBBE sign.

Minor Home Based Business Enterprises

In the Draft Ordinance HBBEs would fall into two main categories: minor and major. Although this section focuses on how minor HBBE are classified and regulated, there is some overlap for major HBBEs.

To be considered a minor HBBE it must meet the following criteria:

- All Employees must reside in the home
- The maximum number of visits (includes deliveries, clients, etc) is 20 per week
- The maximum number of visits (includes deliveries, clients, etc) is 5 per day
- Only 1 motor vehicle from a "visitor" can be parked on the lot at a time
- The only goods sold in the home are produced on the premises
- Displays of goods are only allowed if they will be delivered off site of the premises
- The only permitted equipment that can be used are those that are
    - Domestic or household equipment
    - Office equipment (typewriters, computers, etc)
- The HBBE must have no discernable impact on the surrounding neighborhood
- The HBBE must be subordinate to the residential use of the house (this means a resident must to live there for at least 220 days out of the year)

If the business has a higher impact than what is listed above, such as more visits, employees that live outside the home, or use of non-domestic equipment, then the HBBE would be classified as major HBBE.

Minor Home-Based Business Enterprise Provisions

1.) Minor HBBEs must be registered with the Chief of Planning. The intention of this list is to provide the City with an estimation of how many of these businesses are in operation throughout the City and to aid in enforcement in case of complaints.

2.) Along with registering, minor HBBEs must submit an application. This application requires information concerning the manner in which the HBBE meets the minor classification criteria, location of the home, the zone of the property, the location and number of off-street parking spaces, hours of operation and other pertinent information. Other important information would include any unique characteristics of the HBBE such as if it is a medical profession, if there is a possibility of unscheduled or emergency visits, etc.

3.) In addition to the application, the applicant needs to sign an affidavit that affirms that he/she lives in the home 220 days in each calendar year. This requirement helps the applicant make the case that their business is subordinate to the primary use, which is residential. The affidavit also needs to affirm that the applicant agrees to comply with all of the requirements for operating a minor HBBE, and also agrees to take whatever action is required by the Chief of Planning to bring the HBBE into compliance if complaints of

noncompliance are received and verified. The intention of the section is to allow HBBEs to operate so long as they do not impose any negative impacts on the neighborhood.

If the Chief of Planning approves the application a Certificate of Registration will be issued and recorded in the HBBE Registry. The intention of the certification and the registry is to ensure that the City is aware of the business, and at the time of application it was anticipated that it would not impose any negative impacts on the community. Another benefit to having a registry is that if the City needs to communicate with the HBBEs, the City will have the necessary contact information.

Major Home-based Business Enterprises

Those HBBEs that do not qualify under the minor classification are considered major; meaning that they have some impact on the neighborhood, but that impact may not be negative or harmful if it can be mitigated.

The process for applying for a major HBBE requires the applicant to undergo approval process for a special exception. Special Exceptions are covered in **Article 15, Special Exceptions.**

It is important to note that there is a special exception for cosmetologists who need to apply for the major HBBE. This however does not mean that all cosmetologists are automatically classified as major. If the cosmetologist does not have more than 20 visits per week and 5 visits per day, then they are considered a minor HBBE.

The Special Exception process requires the applicant to provide similar information as the minor HBBE. The main difference with the special exception process is that it requires approval by the Board of Appeals, rather than the Chief of Planning. Filing a special exception for a major HBBE will require a fee, however the cost has yet to be determined at this time. The objective of the Board of Appeals is to determine if the major HBBE would impose any negative impacts on the health and safety of residents in the area, be detrimental to the adjacent properties, constitute a nuisance, or change the character of the neighborhood.

The Board of Appeals can impose terms, conditions or restrictions upon the grant of any special exception that are reasonably necessary to protect adjacent properties, the neighborhood, and the residents and workers in the vicinity. This could be as simple as allowing for more than 5 visits per day, but requiring that they occur during business hours on weekdays so as not to burden the residents on the weekends.

Furthermore, the special exception holder can request modifications on the Board of Appeals' terms and conditions in the future. This process is outlined in Sec. 25.15.02(b).

Provisions for Major Home-based Business Enterprises

The maximum number of visits (this includes deliveries, clients, patrons, etc) will be determined by the Board of Appeals through the Special Exception process. Visits are prohibited between the hours of 10pm and 7am. The Board of Appeals can modify this during the Special Exception process if the Board concludes that visits during these hours will not impose negative impacts on the neighborhood. Major HBBEs may sell goods (those made within the home or outside the home) so long as they are not hazardous items. Major HBBEs may include tailoring, massage, cosmetology, tutoring, music lessons, and professional services. However it should be clear that these uses do not automatically mean that the HBBE must file under the major classification. If these services meet the minor classification criteria, they can file as minor HBBEs. The specific provisions for a major HBBE include:

1) Display or storage goods as determined by the Board of Appeals

2) No equipment or facilities may be used other than what is reasonably related to the production of handmade products or services provided by the HBBE. (This is carried over from the minor HBBE criteria)

3) Up to 2 non-resident employees may be allowed.

4) Inspections must be readily made during business hours. A pre-approval is necessary before a Special Exception is approved. (Prior-approval inspections are not necessary for minor HBBEs)
   - If a complaint is filed, a City inspector must inspect the property and determine within 90 days if there is a violation of the provisions
     - If the Chief of Planning determines that there is no violation, the HBBE and the complainant must be notified of the determination in writing
     - If the Chief of Planning (or a City employee delegated by the Chief of Planning) is denied access, that denial is a violation.
     - If the Chief of Planning determines that there is a violation, enforcement will be carried out. Enforcement provisions are located in **Article 19, Enforcement**.
       - If the Chief of Planning has reason to believe that a violation of this Chapter has occurred, the Chief of Planning will notify those persons responsible for the property to which the suspected violation pertains in writing by first class mail and either hand delivery or posting of the property in a manner reasonably calculated to inform the responsible person of the alleged violations.
       - The Chief of Planning may grant additional time in which to abate the violation upon a showing of good cause. The Chief of Planning must establish procedures for the requesting and granting of additional time.
       - Upon the expiration of the period of time given in the notice to abate the violation or upon receipt of a written notification that

a responsible person disputes the existing of a violation, the Chief of Planning will determine whether a violation exists. If a violation is determined to exist the Chief of Planning or Chief of Inspection services may pursue additional remedies.

The Home-based Business Registry

It is the responsibility of the Chief of Planning to maintain the HBBE registry. The Registry must be readily available for public inspection.

Commission Recommendations

Among the issues the Planning Commission needs address the following:

- Consider adding a no-impact classification for the HBBEs that would be similar to Montgomery County's. This classification would have the same characteristics as a minor HBBE except that the trips would be limited to only 5 per week, including commercial deliveries. This classification would not require the owner to register the HBBE. This classification would be applicable for telecommuters, "Tupperware party" hosts, and other professionals who have few or no client visits.

- Allow licensed medical professionals to accept emergency site visits between the hours of 10:00 pm and 7:00 am. Medical professionals who currently operate within their home have testified that it would be unethical to deny a patient's call if it were an emergency. Emergency visits would not count towards the limit of 5 daily visits for a minor HBBE.

- There are two instances where language clarifications appear necessary. The first is under General Provisions, "The use must be subordinate and incidental to the main dwelling, but shall not be deemed to be an accessory use". Citizens are interpreting this to mean that if the HBBE is determined to be an accessory use, it will not be allowed. This is especially confusing because it is located in the Accessories Article.

    - A related issue is determining what constitutes "subordinate and incidental". The RORZOR Committee's position was that it didn't matter what went on inside the walls of the house, only the perceived impact on the neighborhood. The Commission may wish to consider adding a numerical limit as to how much of the floor area can be occupied by the HBBE. The current law allows 20% up to a limit of 300 square feet. One consideration is to not allow more than 49% of the floor area for the HBBE, which would still be deemed "subordinate".

- The second instance that has caused some confusion is under the major HBBE classification. The text states that, "The following activities are permitted in a major home-based business enterprise....(c) Services including but not limited to tailoring, cosmetology, tutoring, music lessons and professional services which are provided on site by a resident of the dwelling." Citizens have interpreted this to mean that if the business is any of those listed it is automatically classified as a major HBBE, regardless of whether the characteristics of the business would fit into the minor classification. Businesses should not have to file for a special exception, which is required for a major HBBE when they fit into the minor classification. Staff suggests including this language in the minor classification under what is permitted so that it mirrors that of the major HBBE section. This way it would be clear that the businesses are permitted HBBEs and that the characteristics of the business would determine which classification it falls into. Thus a cosmetologist could be classified as a minor HBBE so long as the technician did not receive visitors beyond the 5 daily and 20 weekly limit. However if the business expanded the number of visits, the business owner would need to apply for a special exception.

- The issue has been raised as to whether on not to allow new accessory structures can be built to support an HBBE. The draft ordinance does not permit this. However, it would be possible for an owner to file for a building permit to build a garage, but then use it in connection with the HBBE rather than sheltering vehicles. The question to be considered is: should the draft ordinance allow for the construction of such accessory buildings and regulate them, or continue to not allow new construction for that purpose, knowing that there is a potential loophole? Note that any accessory structures would still have to comply with all of the provisions in 25.09.02, and the lot coverage provisions of Article 10.

MEMORANDUM

TO: Planning Commission for the City of Rockville

FROM: Board of Appeals for the City of Rockville

RE: Comments on Draft Zoning Ordinance for the City of Rockville

DATE: February 6, 2008

On January 5, 2008, during a work session, Commissioner Hill, a former member of the Board of Appeals, briefed the Board on the Draft Zoning Ordinance generally and, more particularly, as it affects the subjects and procedures of the Board. Commissioner Tyner was also present for and assisted in the briefing and answering the Board's questions. After the briefing and through follow-up email, the Board reached a consensus on three matters worthy of comment about the substance of the Draft Zoning Ordinance. Together with a final and related observation concerning the Board's legal resources, the Board sets forth these three matters here:

1. Rather than being dispensed with, written Planning Commission recommendations to the Board regarding proposed Special Exceptions should continue. So as to be able to control its investment of time and resources, the Commission, however, should be given and exercise more latitude on the extent to which it will examine any particular matter, guiding itself, perhaps, by the amount of public interest displayed in an item on its agenda. It has been the Board's impression that the ventilation, by interested persons before the Commission, of concerns about a proposed Special Exception and the sense of public sentiment gained from proceedings before the Commission have resulted in constructive responses and changes to requests for Special Exceptions before they get to the Board for actual decision. The Commission's own insights with respect Special Exceptions has also been helpful to the Board.

2. The shift of private clubs, lumber supply yards and parking structures from Special Exceptions to Conditional Uses may not be prudent. The Board agrees that, with carefully prescribed conditions, much of what has been treated as Special Exceptions could be safely handled as Conditional Uses, as the Draft Zoning Ordinance proposes. In the Board's experience, however, private clubs, lumber supply yards and parking structures typically have substantial impacts of public concern. They often do, for example, affect the character of a neighborhood and impose additional traffic burdens. Such uses, therefore, should, in each case, not be approved without the sort of public vetting that the Special Exception process provides.

3. The 25% or 7500 sq. ft. criteria for determining whether a Special Exception amendment request should require a partial or entire review of the grounds for the underlying Special Exception will likely prove arbitrary. A change in, say, just 5000 sq.

ft. but also involving a change in operational factors should warrant a full review. The Board also has doubts about whether there really can be a partial review, as both a practical and legal matter. In short, no processing distinction should be made for Special Exception amendments beyond the minor/major amendment distinction, with notice to the Board for minor amendment determinations, that already exists and that has proven itself in practice.

Apart from these three concerns with the substance of the Draft Zoning Ordinance, the Board anticipates an increase in the number of appeals to it, on account of the delegation and shifting, by the Ordinance, of more zoning decisions to City Staff. Treating what were previously Special Exceptions as Conditional Uses may be one example of this. Because the City itself will be a party to such appeals, the Board suggests that consideration begin now as to the need and procedures for providing the Board with the advice and assistance of legal counsel independent from the City, when such appeals arise.

Cc: James Wasilak, Director of Planning
Castor Chasten, City Planner and Board Liason