City of Rockville

M E M O R A N D U M

August 25, 2009

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Planning Commission Recommendation on Text Amendment Application TXT2009 - 00221; Comprehensive Corrections to the Zoning Ordinance

The Planning Commission considered Text Amendment Application TXT2009 – 00221 at its meeting on Wednesday, July 22, 2009. The Commission received a report from the planning staff, and comments from the public.

The staff provided detailed comments on a number of the proposed changes in the text. This included some additional information developed subsequent to the publication of the staff report. The Commission unanimously recommends approval to the Mayor and Council of Text Amendment Application TXT2009 – 00221 with the additional corrections and modifications contained in this recommendation, as follows:

- The definition of "Easement" (Sec. 25.03.02) is recommended to be modified to change the word "property" to "land". The Commission requests that prior to the public hearing the staff examine whether this change is too limiting as it relates to easements such as air rights or other easements not directly attached to the land.

- Location of notice signs posted for project applications (Sec. 25.05.03) – The staff report recommended increasing the spacing of notice signs along property boundaries from 250 feet to 750 feet. The Commission believes this is too great an increase and recommends the spacing be 500 feet.

- Preliminary review of text amendments by Mayor and Council (Sec. 25.06.02) – The zoning ordinance does not currently require the Mayor and Council to review proposed text amendments prior to acceptance for filing, as had been required under the prior ordinance. The text amendment as filed proposes to restore that procedure. However, in discussion with the Planning staff and City Attorney, the Planning Commission believes that acting to accept or deny a proposed text amendment without formal review is problematic. The Commission therefore recommends that this modification to the text

not be made. Proposed text amendments would be filed and processed through the normal staff analysis, Planning Commission review and public hearing procedures.

- Major Amendments to Approved Development (Sec. 25.05.07.c) – The proposed text amendment inserts a new subsection (d) that would require amendment approval for any significant change to the site or approved uses. Comment from the public indicated that there may be some confusion as to what might constitute a significant change in uses, such that a simple change in tenants might trigger a major amendment process. The staff indicated that simple changes in tenants would not be considered significant, but agreed that some further change in the wording could clarify the intent that only a substantial change in overall use of the property would require a major amendment. The following language is therefore recommended:

  (d) <u>any other significant change to the site that results in an increase in the parking requirement.</u>

- The staff report indicates that a new subsection f is to be inserted under Sec. 25.07.09, Special Exceptions, requiring a post-application area meeting, but the language does not appear in the proposed text amendment. This language should be inserted, as follows:

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

  The following subsections will be re-ordered as needed.

  In discussing this matter, the Commission wishes to have the Mayor and Council monitor the area meetings process to make sure it achieves the desired outcomes.

- The proposed text amendment would add a requirement under Sec. 25.07.12, Occupancy Permit, that any change in tenancy in a mixed-use, commercial or industrial use would require issuance of a new occupancy permit. This procedure is currently covered within the Building Code procedures in Chapter 5, and therefore does not need to appear in the zoning ordinance. This change should therefore be deleted.

- While the HDC recommended a change to Sec. 25.07.14, to remove the enumerated list of criteria under their auspices, the Commission does not wholly support the recommended wording effect. We understand and support the HDC wanting to preserve flexibility of their considerations to best service changes on historic properties. But the Commission observes that entirely removing the example reference points for what changes may undergo HDC review is hostile to general citizen comprehension of the zoning code. It leaves no framing of the scope of property changes that trigger HD review. Therefore, and as compromise with HDC recommendation, the Commission

recommends inverting the logic of this reference and at least identifying property changes plainly outside scope of HD zoning review, as some general citizen guidance. At minor stake is whether general citizens can plainly read their own City zoning code and understand its applicability to their private property. The text amendment should therefore be modified as follows:

25.07.14 – Certificate of Approval in Historic Districts

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

[1. Construction;

2. Structural Alteration;

1. Substantial Exterior Alteration;

2. Relocation;
3. Demolition,

4. Reconstruction, or

5. Demolition by neglect.**]**

- Ancillary Restaurant – Correspondence was received requesting consideration for adding an Ancillary Restaurant as a new use in the ordinance and allow it in large office buildings on the ground floor. The initial request was limited to buildings in a PD Zone. The staff recommended revising the text to allow this use in any office building with a gross floor area greater than 150,000 square feet, without a limitation on location within the building. The Commission supports the staff recommendation for the reasons set forth in the staff report and recommends adding the revised text to the text amendment.

- Parking for Life Care Facility – The staff indicated that there may be a revision to the parking standards for the nursing and assisted living portions of a life care facility (Sec. 25.16.03). The proposed standard of one parking space per 1,000 square feet, plus one per participating doctor, and one space for each 2 employees on the main shift seems high. The staff notes that the County standard for nursing homes is one space per 4 beds plus one space for each 2 employees on the main shift. The staff will be examining this issue and present further information and a recommendation to the Mayor and Council at the public hearing. The Commission endorses the concept of avoiding a requirement to provide excess parking.

- Landscaping, Screening and Lighting Manual – The staff has recommended adding a provision to the Manual defining the modifications that may be done as part of the maintenance of the landscaping. The Commission recommends adding language that will include a review by the Forestry division where trees are involved. The proposed language should therefore be modified to read as follows:

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

The staff also presented some additional minor corrections that should be made, as follows:

25.01.04 (p.3) – Need to add the word "to" in second line: … conforms to the Plan…

25.04.03 (p.7) – Delete subsection g – redundant to f.

25.04.06 (p.8) – In subsection (e), insert "and acting upon": Reviewing and acting upon applications… This will be consistent with provisions in the language earlier in this section.

25.05.07 (p.12) – In subsection c.2, there may be some duplication of references between the first sentence and the last sentence of the new language. This will be examined and cleaned up.

25.06.02 (p.14) – If the modification to this section regarding preliminary review of text amendments is retained (see discussion above), then in subsection (b), we need to insert the word "not": …determines that it should not be considered further…

25.07.08 (p.18) – In subsection 22, delete the reference to map amendment applications, and insert instead in Sec. 25.06.01.

25.07.09 (p.18 & 19) – Delete the references to variances. This section applies only the Special Exceptions.

In addition to the explicit changes recommended above, the Commission identified two issues for further consideration. In the timeframe of a single meeting to formulate its recommendation, the Commission was unable to enunciate explicit text, yet considers these issues worthy of further review in this update cycle. And as many individual changes are swept into this text

amendment, perhaps some should move forward while others get this further consideration. This is a choice for the approving authority.

- 25.13.03, MXNC use table. Our consideration of this text change started with the premise that proscribing certain uses within this table to pre-determined structural locations made little sense. For example, proscribing archival uses in basements likely requires this use occupy a counter-productive environment (i.e. constrained and damp basements—inherent in our climate—are not good for archival storage without substantial environmental control systems). Further consideration pointed to a larger conclusion: the micro-management of detailed permitted uses within a zone into certain structural locations may be injudicious. It replaces site knowledge and circumstance with proscriptively encoded prior judgment that borders on unknowable. Conventionally, zoning codes assign permitted commercial uses to zones and generally stops at that level of requirement. The arrangement of uses—either economically or physically—is left to the best judgment of property owner/operators. This text amendment change exceeds that convention. The desirability of encoding such restrictions warrants deeper consideration.

- Regarding the recommendation on Ancillary Restaurants in office zones generally (see above), we identified a further issue. If incorporated as submitted, the ordinance would contain both Accessory and Ancillary Restaurant uses in these zones. Is this distinction necessary? We observe the distinction is a legalistic construct of separate definition. It lacks common sense of plain language. If restaurants in these zones and types of structures are acceptable, we prefer a single statement of allowable attributes for this use, rather than dual statements closely aligned, but separate on detail. This addresses the intent of recent zoning code containing plain language and less complexity.

cc: Planning Commission
Case File