

## MEMORANDUM

February 27, 2012

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz, Legislative Attorney  
SUBJECT: Zoning Text Amendment 11-08, Residential Zones – Accessory Commercial Kitchen

Zoning Text Amendment (ZTA) 11-08, sponsored by Councilmember Leventhal, was introduced on December 13, 2011.

### **ZTA Summary**

ZTA 11-08 would define commercial kitchens as food preparation facilities that satisfy the health code provision for places that prepare food for consumption by the general public. The Maryland State code provisions, which require proper sanitation, ventilation, and food storage facilities, are incorporated by reference.

ZTA 11-08 would allow accessory commercial kitchens in the R-90 and R-60 zones if the primary use of the property is a service use that is permitted without a special exception. ZTA 11-08 would not change the current prohibitions of accessory commercial kitchens in homes. The only service uses that would be allowed to have an accessory commercial kitchen are ambulance or rescue squads, houses of worship, fire stations, and publicly owned or operated uses. The size of an accessory commercial kitchen would be limited to 5 percent of the floor area of the permitted use. The sponsor believes that small commercial kitchens on properties that lack a residential character would allow a modest but appropriate opportunity for additional commercial kitchens.

### **Planning Board Recommendation**

The Planning Board recommended approval of ZTA 11-08 with modifications. The Board recommended the addition of provisions to further mitigate the possible impacts of an accessory commercial kitchen on surrounding residences. These provisions would include: hours of operation; limitation on the size of trucks delivering to the site; limitation on the number of visits per day/week,

including deliveries; and a provision establishing adequate off-street parking for the use. The Board suggested that the details of these provisions could take into consideration several parameters established for registered and no-impact home occupations (Section 59-A-6.1).

### **Planning Staff Recommendation**

Planning Staff recommended approval of ZTA 11-08 as introduced. In the opinion of Planning Staff, ZTA 11-08 would have limited applicability to certain service uses in the R-60 and R-90 zones. In addition, ZTA 11-08 would limit the size of the area designated for the commercial kitchen to 5 percent of the service use and would prohibit establishing an eating and drinking establishment in conjunction with the facility. Planning Staff believe that these provisions would only allow a minimal impact to surrounding neighborhoods.

### **Public Hearing**

On January 24, 2012, the Council held a public hearing on ZTA 11-08. Six speakers testified in favor of ZTA 11-08. The proponents cited a critical need for low cost commercial kitchens to provide an opportunity for start-up caterers. The Takoma Park Presbyterian Church wanted the ability to help address the needs of its congregation and the general public. Speakers asserted that the County has a critical shortage of commercial kitchens that allow multiple users. In addition, proponents believe providing a lower cost commercial kitchen could promote micro-businesses.

One speaker suggested the need to amend ZTA 11-08 before adoption. Jim Humphrey, who did not have a formal position from the Civic Federation, repeated the concerns identified in the Planning Board's testimony and also suggested that the approval of commercial kitchens as a special exception would give communities a better opportunity to comment on the location, layout, and traffic impact on any proposed commercial kitchen.

### **Councilmember questions**

Councilmember Elrich asked staff to be prepared to address any tax implications that might occur due to having a commercial kitchen in a tax exempt property. Councilmember Leventhal asked staff to review the current standards for home occupations and their applicability, if any, to ZTA 11-08. He also asked staff to describe how a house of worship can serve the public without a fully licensed kitchen. Staff addresses these questions in the background information section of the memorandum.

### **Issues**

*Should commercial kitchens be a permitted use under certain circumstances, a special exception use, or a prohibited use?*

ZTA 11-08 would allow a food service facility (a commercial kitchen) under certain circumstances: 1) the principle use must be for an ambulance or rescue squad, a house of worship, a fire station, or a publicly owned or operated use; and 2) the kitchen must be no greater than 5 percent of the floor area of the principle use. The Council can limit these circumstances or expand these circumstances. Whenever

the circumstances identified by the Zoning Ordinance exist, the use would be allowed as of right without further review.

A commercial kitchen would be a commercial use in a residential zone. Ambulance or rescue squads, houses of worship, fire stations, and publicly owned or operated uses are as of right uses in the R-90 and R-60 zones. These uses can be on any type of street. The uses can abut commercial or residential neighbors. There can be inadequate parking and traffic circulation around the institutional use or no problems around them. Given these possibilities, a one size fits all standard may be overly restrictive in some cases and overly permissive in others.

Special exceptions are allowable uses; however, if the use would cause a non-inherent problem at a particular location, it may be prohibited or approved with conditions that mitigate the potential problem. A special exception requires a quasi-judicial hearing, where particular problems or concerns can be raised and addressed. *Staff recommends amending ZTA 11-08 to allow commercial kitchens as a special exception. If the Council does not want to allow commercial kitchens as a special exception use, then additional standards are warranted to protect neighboring communities.*

#### *What home occupation standards could apply to commercial kitchens?*

##### Total space for a commercial kitchen

ZTA 11-08 would allow up to 5 percent of the principle use for a commercial kitchen. The maximum size of a home occupation is 1,500 square feet of floor area. As proposed, ZTA 11-08 would allow kitchens to be larger than 1,500 square feet.

The Department of Health and Human Services staff (HHS) believes that **any** maximum size could unreasonably limit the number of multi-user kitchens that would be realized. In the experience of HHS staff, multi-user kitchens require more floor area than single user kitchens. If any food storage is allowed, each user must have a segregated space for their supplies. HHS's comments would suggest deleting the current 5 percent limit on the size of a kitchen and not having any size limit.

*Staff recommends retaining the current limit to give some comfort to neighbors that the kitchen would be nothing close to the predominant use of the institution. It is hard to object to the absolute size of a facility if it represents a small portion of a building's use and that there are other safeguards to avoid nuisance problems, such as noise and parking.*

##### Trip limits for commercial kitchen visitors

ZTA 11-08 does not have any limit on vehicular trips due to the addition of a commercial kitchen. Any limit would be extremely difficult to enforce at ambulance stations, houses of worship, fire stations, and publicly owned or operated uses. All of these principle uses may have activities unrelated to the commercial kitchen going on at the same time that the kitchen may be rented to a third party. A vehicular trip limit that applies only to the kitchen use would require an inspector to ask every person entering the facility the reason for their visit. *Staff does not recommend adding a visitor trip limit for commercial kitchens.* A trip limitation may be warranted under unique circumstances.

## Hours of operation

A home occupation may only have limits on its hours of operation if it requires a special exception. The hours of operation could be limited to avoid late-night or pre-dawn activity; however, this may not be necessary if neighboring houses are buffered from the activity. Limits on the hours of operation to prohibit the third party use of a kitchen for off-site catering during peak institutional events could also avoid parking problems. As a special exception, the hours of operation could also be tailored to any unique circumstances.

HHS staff again would caution that a limit on the hours of operation would limit the feasibility of creating accessory commercial kitchens. Some kitchens prepare most of their food in early morning hours in order to get their vehicles on the road before rush hour.

## Parking requirements

ZTA 11-08 does not add any parking requirements. Parking can be a problem for a surrounding community. General parking standards for the principle institutional use would be sufficient for the commercial kitchen, except when the principle use has its most intense activity. The maximum number of parking spaces required would be equal to the number of cooks, plus a space for deliveries. Parking that is sufficient to meet the standards for the institutional use (without a waiver for the number of parking spaces required) should be sufficient to provide parking for the commercial kitchen. If the objective is to have no impact on surrounding communities, on-street parking for the institution should not be allowed when the kitchen is rented to a third party. There may be unique parking situations that could best be addressed on a case-by-case basis.

ZTA 11-08 would not change the current prohibition on heavy commercial vehicles. One light commercial vehicle is currently allowed in R-90 and R-60 zones.<sup>1</sup> In addition, ZTA 11-08 would not change the setback requirements for on-street parking. *Staff recommends retaining the current limits on commercial vehicles or parking setbacks.*

## Background information

### *What is a commercial kitchen?*

The term used to define places where food or drink is prepared for sale or service on the premises or elsewhere, or an operation where food is served to or provided for the public with or without charge is “food service facility”.<sup>2</sup> Food service facility kitchens are required by the regulations to be equipped with commercially approved equipment that meets national standards. All plumbing and drains must

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<sup>1</sup>A light commercial vehicle is any motor vehicle or trailer used for carrying freight or merchandise, or used in furtherance of any commercial enterprise, that is less than 21 feet long, 8 feet high, and 10,000 pounds gross vehicle weight; §59-A-2.1.

<sup>2</sup> Chapter 15 definition:

Food service facility: Any enterprise that prepares or sells food or drink for human consumption on or off the premises. Food service facility includes:

- (1) Any restaurant, coffee shop, retail market, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain; and
- (2) Any food service facility in an industry, institution, hospital, club, school, church, catering kitchen, or camp.

\* \* \*

License: A document authorizing a food service facility or an itinerant food service facility to operate in the County.

comply with the requirements of WSSC. The materials used in the construction must satisfy County regulations.

A commercial kitchen is a new term in the County Code. ZTA 11-08 would define it as a facility that satisfies the requirements of Chapter 15 for the preparation of food served to the public. Chapter 15 uses the term "food service facility" instead of the term "commercial kitchen". (HHS has not objected to the use of the term "commercial kitchen".)

A food service facility must have a certified food service manager on-site whenever food is being prepared.<sup>3</sup> A caterer must have a certified food service manager on-site and access to a licensed food service facility (a base of operation) to prepare food for human consumption.

*How many licensed facilities are there, and how many rent their facilities to multiple users? Is there a shortage?*

There are some 3,500 licensed food service facilities in the County. The vast majority of those are restaurants.<sup>4</sup> To the best of HHS's information, only 10 of the 3,500 licensed facilities rent space to multiple caterers. Only 5 of those 10 facilities are available for any type of cooking.<sup>5</sup> All that offer a full range of cooking facilities are located in the Gaithersburg area. The other 5 facilities rent their kitchens but have a more limited range of cooking opportunities.<sup>6</sup>

HHS believes that there is a shortage of facilities that are equipped to handle multiple vendors. Restaurants do not rent their kitchens. That alone vastly reduces the number of possible rental kitchens. HHS does not know why the desire for space is not being met by the market.

If the expected rent of a commercial kitchen exceeded the costs by a sufficient margin, the market would provide more multi-user kitchens.<sup>7</sup> The exceedingly small number of places that rent to multiple users is

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<sup>3</sup> Sec. 15-8. License required; exceptions; certified manager required.

- (a) A person must not operate a food service facility or an itinerant food service facility without a valid license from the director. A separate license is required for each food service facility or itinerant food service facility.
- (b)
  - (1) After January 15, 1989, a licensee must not operate a food service facility unless at least one employee is a certified food service manager, or is taking a course that will train the employee to be a certified food service manager.
  - (2) After July 15, 1989, a licensee must not operate a food service facility unless the facility is under the immediate control of a certified food service manager.
  - (3) This requirement does not apply to:
    - (A) A food service facility where no unwrapped food is handled; or
    - (B) A seasonal food service facility in which little or no potentially hazardous food is prepared, handled or served.
  - (4) This requirement may be applied to an itinerant food service facility at the discretion of the director.
  - (5) The director may postpone or waive this requirement if in unusual circumstances its application to a particular licensee would result in undue hardship.

<sup>4</sup> The number of caterers and restaurants is not available from this aggregated data.

<sup>5</sup> Prime Choice, 7621 Rickenbacker, Gaithersburg; Le Academie Cuisine, 16006 Industrial Drive, Gaithersburg; Superb Cuisine, 8621 Ziggy Lane, Gaithersburg; Delicious Gourmet, 7840 Beechcraft Avenue, Gaithersburg; CKR 18877-G N. Fredrick Road, Gaithersburg.

<sup>6</sup> El Nopalito Grill, 2259 Bel Pre Road, Silver Spring; Creative Cakes, 8814 Brookville Road, Silver Spring; Rosa Melgarejo at Lucia's Italian Deli, 2409 University Blvd, Silver Spring; Chloe's Coffee, 244 Main Street, Gaithersburg; Praline Bakery, 4611 Sangamore Road, Bethesda.

<sup>7</sup> In economic terms, when the rent exceeds the cost, it would be referred to as an economic demand. In the absence of economic demand, there are wants, desires, and dreams.

an indication that the rent businesses are willing to pay is generally lower than the cost to provide the facility.

*How many commercial kitchens would be created if ZTA 11-08 is approved?*

There are 374 houses of worship and another 10 fire stations that are located in the R-90 or R-60 zone.<sup>8</sup> There is no way to reliably know how many of these institutions will want to go through the time and expense of being a licensed commercial kitchen. Only one institution has indicated a desire to have a commercial kitchen.

*What makes a commercial kitchen expensive?*

HHS staff estimates that converting an existing kitchen to commercial standards would be in the ball park of \$100,000. The accuracy of that ballpark number is dependent upon the condition of the current kitchen. If additional water supply or waste water plumbing is required, the cost can easily go above \$200,000.

The County Code incorporates all of the state standards for kitchens where food is prepared for the public on a regular basis.<sup>9</sup> Every physical aspect of a kitchen is regulated. Floors, walls, and ceilings must be constructed in a manner that keeps building materials out of food.<sup>10</sup> There are minimum ventilation and lighting standards.<sup>11</sup> The plumbing fixtures must be sufficient for sanitation, with additional systems for keeping grease out of the sewer system.<sup>12</sup> The need for adequate fire suppression may require a higher capacity water supply.

*Will ZTA 11-08 be a tool for start-up businesses?*

ZTA 11-08 would not regulate the size or the age of the businesses that rent commercial kitchens. ZTA 11-08 would not regulate the rental price. The rent for any commercial kitchen is a matter of private concern. As a matter of supply and demand, rental prices for commercial kitchens may be decreased by an increase in supply of kitchens.

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<sup>8</sup> Parcel file GIS data base.

<sup>9</sup> 15.00.01.02 Minimum Construction and Operating Standards for Food Service Facilities.

The Sections of the Code of Maryland Regulations (COMAR) 10.15.03, Food Service Facilities and the Maryland Department of Health and Mental Hygiene's standards for "Public Health Management of Food Service Employees" governing: food supplies, food protection, personnel, food equipment and utensils, sanitary facilities and control, other facilities and operations, special food service facilities, egg records, choking posters, plan review, priority assessment, hazard analysis, food-borne disease investigation and control, the sampling, detention, and condemnation of food, and Table I are incorporated as the construction and operating standards of this regulation...

<sup>10</sup> COMAR 10.15.03.21.

<sup>11</sup> COMAR 10.15.03.22.

<sup>12</sup> COMAR 10.15.03.18.18.

*How can houses of worship and non-profit institutions serve food to the general public without a commercial kitchen?*

There are exceptions to the licensing requirement that apply to limited uses of kitchen facilities.<sup>13</sup> The licensing requirements do not apply to a food service facility (or itinerant food service facility<sup>14</sup>) where no unwrapped food is handled, or to a seasonal food service facility in which little or no potentially hazardous food is prepared, handled, or served.<sup>15</sup> Under a temporary license, the Department of Health and Human Services inspects for basic sanitation and food handling but does not require the physical infrastructure necessary for a fully licensed facility. The County charges \$30 for an unlicensed facility serving potentially hazardous food. A house of worship may also serve food to its own congregation without a license.<sup>16</sup>

*What are the home occupation standards for parking, hours of operation, and traffic?*

The Zoning Ordinance defines no-impact, registered, and major special exceptions.<sup>17</sup> Each class of home occupation has standards for the allowed activity leave (number of employees, vehicular trips related to the home occupation) and parking. In the R-90 and R-60, only one light commercial vehicle may be parked at any time. Parking heavy commercial vehicles is prohibited.<sup>18</sup>

Home occupations are not allowed in any newly constructed additions. The space used by no-impact home occupations may not exceed 33 percent of the floor area in the house. Space used by a major home occupation must not exceed 33 percent of the residential floor area or 1,500 square feet, whichever is less.

The following tables apply to R-60 and R-90 zoned property.

	<b>Visitor Trips</b>	<b>Parking Requirements</b>
<b>No-impact</b>	5 visits per week (including deliveries – no non-resident employees)	Two or less total vehicles
<b>Registered</b>	20 visits per week and 5 per day (including deliveries)	Two or less total vehicles
<b>Major (Special Exception required)</b>	Limits may be imposed as a condition of the special exception. Maximum 2 non-resident employees.	At least enough for the minimum residential use plus employees and the number of visitors allowed at one time

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<sup>13</sup> Sec. 15-8 (c).

A license is not required if food or drink is:

(1) Prepared or provided from the homes of members of a nonprofit organization;  
(2) Shared among the members of the organization at no charge; and  
(3) Not served to the public.

<sup>14</sup> An itinerant food service facility is a place that operates for a temporary period at a fixed location, not exceeding 14 days, at a fair, carnival, public exhibition, construction project, recreational facility or similar gathering; or any food service facility which travels from place to place.

<sup>15</sup> Section 15-8(d).

<sup>16</sup> Op cit; Sec. 15-8(c).

<sup>17</sup> Commercial kitchens are a prohibited use in residential zones, even as a home occupation. Home occupations only allow occupations that use household equipment, office equipment, or equipment necessary for producing art, handicrafts, beer, or wine. The Department of Health and Human Services (HHS) will not license a commercial kitchen in a single family house.

<sup>18</sup> Many caterers use light commercial vehicles. The largest caterers use heavy commercial vehicles.

Each home occupation parking area must be set back from a lot line. The setback varies by zone; the largest setback (30 feet for R-90 and 25 for R-60) is required on the front of the property.

*What are the tax implications of allowing a profit-making enterprise in a tax-exempt facility?*

Staff will not advise any individual property owner about their specific tax treatment. The tax implication of a land use is not a zoning ordinance concern. Property owners should contact the State Department of Assessments and Taxation (SDAT) on real estate tax questions.

As a general matter, if a property is primarily (majority) used for the exempt purpose, the property will retain the exemption. However, if a small portion of the property (less than a majority) is used for a for-profit commercial purpose, then SDAT will most likely prorate the exemption, and the portion of the property that is used for a for-profit use will be subject to tax. The use for commercial for-profit activities must be more than a *diminimus* use to get the prorated treatment. One example that was used to describe *diminimus* use was a church parking lot used near Byrd stadium for football game day parking. There were only 8 home games, and otherwise the parking lot was used for parking for church functions only. Therefore, this was *diminimus* use and did not affect the exemption, and the entire property remained exempt.

This Packet Contains

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Zoning Text Amendment No.: 11-08  
Concerning: Residential Zones –  
Accessory Commercial Kitchen  
Draft No. & Date: 1 – 12/5/11  
Introduced: December 13, 2011  
Public Hearing: January 24, 2012  
Adopted:  
Effective:  
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Councilmember Leventhal

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- Define a commercial kitchen; and
- Add accessory commercial kitchen as a permitted land use in certain residential zones under certain circumstances.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2      "DEFINITIONS AND INTERPRETATION"

Section 59-A-2.1      "Definitions"

DIVISION 59-C-1      "RESIDENTIAL ZONES, ONE-FAMILY"

Section 59-C-1.31      "Land uses"

**EXPLANATION:**

*Boldface* indicates a heading or defined term.

*Underlining* indicates text that is added to existing laws by the original text amendment.

*[Single boldface brackets]* indicate text that is deleted from existing law by the original text amendment.

*Double underlining* indicates text that is added to the text amendment by amendment.

*[[Double boldface brackets]]* indicate text that is deleted from the text amendment by amendment.

\* \* \* indicates existing law unaffected by the text amendment.

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council  
for that portion of the Maryland-Washington Regional District in Montgomery County,  
Maryland, approves the following ordinance:*

1   **Sec. 1. DIVISION 59-A-2 is amended as follows:**

2   **Division 59-A-2. DEFINITIONS AND INTERPRETATION.**

3   **Sec. 59-A-2.1. Definitions.**

4   \* \* \*

5   **Commercial Kitchen:** a facility that satisfies the requirements of Chapter 15 for  
6   the preparation of food that could be sold to the public.

7   \* \* \*

8   **Sec. 2. DIVISION 59-C-1 is amended as follows:**

9   **DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

10   \* \* \*

11   **Sec. 59-C-1.3 Standard development.**

12   The procedure for approval is specified in Chapter 50.

13   **59-C-1.31. Land uses.**

14   No use is allowed except as indicated in the following table:

15       - **Permitted Uses.** Uses designated by the letter "P" are permitted on any lot  
16       in the zones indicated, subject to all applicable regulations.

17       - **Special Exception Uses.** Uses designated by the letters "SE" may be  
18       authorized as special exceptions under Article 59-G.

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	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
* * *										
(g) Miscellaneous.										
* * *										
<u>Commercial kitchen, if accessory to service uses that are permitted without a special exception. However, accessory commercial kitchens are prohibited in home occupations, day care facilities, and adult foster care homes. The accessory commercial kitchen must occupy less than 5% of the building in which it is located and must not be used as part of an on-site eating and drinking establishment.</u>						P	P			
* * *										

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21           **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of  
 22 Council adoption.

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24       This is a correct copy of Council action.

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27       Linda M. Lauer, Clerk of the Council



## MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

### OFFICE OF THE CHAIR

## MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

January 20, 2012

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 11-08

### BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 11-08 at its regular meeting on January 19, 2012. By a vote of 5:0, the Board recommends approval of the text amendment as modified by the Planning Board to prohibit several additional service category uses (as discussed below) from establishing an accessory commercial kitchen in the R-60 and R-90 zones. The Board further recommends that the County Council add provisions to the text amendment to further mitigate possible impacts of an accessory commercial kitchen on surrounding residences. These provisions should include: hours of operation; limitation on the size of trucks delivering to the site; limitation on the number of visits per day/week, including deliveries; and a provision establishing adequate off-street parking for the use. The Board believes that the details of these provisions should be addressed during the Planning, Housing and Economic Development (PHED) Committee worksessions, taking into consideration several parameters established for registered and no-impact home occupations (Section 59-A-6.1).

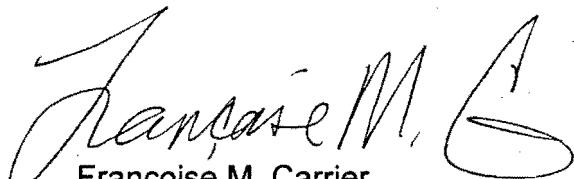
ZTA No. 11-08 proposes to define a commercial kitchen; and allow an accessory commercial kitchen as a permitted land use in certain residential zones under certain circumstances. Specifically, a commercial kitchen is being defined in the Zoning Ordinance to coincide with the regulations for a facility that satisfies the requirements of Chapter 15 (Eating and Drinking Establishments) for the preparation of food. A

commercial kitchen would be permitted by right as accessory to certain service category uses in the R-60 and R-90 zones that are currently permitted by right, would be limited to less than 5% of the building in which it is located and would not be used as part of an on-site eating and drinking establishment. The service category uses where an accessory commercial kitchen could be located include places of worship, publicly supported ambulance or rescue squads, publicly supported fire stations, publicly owned or publicly operated uses, opportunity housing projects and respite care homes. Those service category uses permitted by right that would be prohibited from establishing an accessory commercial kitchen include home occupations, day care facilities, and adult foster care homes. *The Planning Board recommends adding to this list opportunity housing projects and respite care homes.*

With the recommendation to provide several additional protections to the neighboring residences, and given its limited applicability to certain service uses in the R-60 and R-90 zones and the protections that limit the size of the area designated for the commercial kitchen to 5% of the service use and the prohibition on establishing an eating and drinking establishment in conjunction with the facility, the Board believes that ZTA 11-08 could be approved with minimal impact to surrounding neighborhoods.

#### CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, January 19, 2012.



Françoise M. Carrier  
Chair

FC:GR:tc



MONTGOMERY COUNTY PLANNING DEPARTMENT  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item No. 11  
Date: 1-19-12

Zoning Text Amendment (ZTA) No. 11-08, Accessory Commercial Kitchen

NOR

Gregory Russ, Planner Coordinator, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174

MD

Mary Dolan, Acting Chief, FP&P, [mary.dolan@montgomeryplanning.org](mailto:mary.dolan@montgomeryplanning.org), 301-495-4552

Completed 1/12/12

Description

ZTA No. 11-08 proposes to define a commercial kitchen; and allow an accessory commercial kitchen as a permitted land use in certain residential zones under certain circumstances. Specifically, a commercial kitchen is being defined in the Zoning Ordinance to coincide with the regulations for a facility that satisfies the requirements of Chapter 15 (Eating and Drinking Establishments) for the preparation of food. A commercial kitchen would be permitted by right as accessory to certain service category uses in the R-60 and R-90 zones that are currently permitted by right. These uses include places of worship, publicly supported ambulance or rescue squads, publicly supported fire stations, publicly owned or publicly operated uses and respite care homes. An accessory commercial kitchen must occupy less than 5% of the building in which it is located and must not be used as part of an on-site eating and drinking establishment.

Summary

Staff recommends approval of ZTA 11-08, as introduced, to define a commercial kitchen; and to allow an accessory commercial kitchen as a permitted land use in certain residential zones under certain circumstances, as outlined above.

Chapter 15 of the Montgomery County Code specifies rules governing an eating and drinking establishment which is defined as "any food service facility". A food service facility is defined as "Any enterprise that prepares or sells food or drink for human consumption on or off the premises". Food service facility includes:

(1) Any restaurant, coffee shop, retail market, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain; and

(2) Any food service facility in an industry, institution, hospital, club, school, church, catering kitchen, or camp.

ZTA 11-08 defines a commercial kitchen to be regulated by Chapter 15 but limits applicability of the use as accessory to certain uses in the R-60 and R-90 zones.

### **Service Category Uses in One-family Residential Zones**

ZTA No. 11-08 proposes to allow an accessory commercial kitchen by right as accessory to certain service category uses in the R-60 and R-90 zones that are currently permitted by right. These uses include places of worship, publicly supported ambulance or rescue squads, publicly supported fire stations, publicly owned or publicly operated uses and respite care homes. Those service category uses permitted by right that would be prohibited from establishing an accessory commercial kitchen include home occupations, day care facilities, and adult foster care homes. As further stated in ZTA 11-08, no use under the service category requiring special exception approval would be permitted to include an accessory commercial kitchen.

Staff recommends approval of ZTA 11-08 given its limited applicability to certain service uses in the R-60 and R-90 zones and the protections that limit the size of the area designated for the commercial kitchen to 5% of the service use and the prohibition on establishing an eating and drinking establishment in conjunction with the facility. With the parameters as set by the proposed text, staff believes that the use will have minimal impact to surrounding neighborhoods.

#### **ATTACHMENTS**

1. ZTA 11-08 as introduced



# Takoma Park Presbyterian Church

310 Tulip Avenue  
Takoma Park, MD 20912  
301-270-5550

17

## Testimony to the Montgomery County Council On the Takoma / Langley Crossroads Sector Plan

January 24, 2012

ZTA 1108

Pastor Mark Greiner

Good afternoon. My name is Pastor Mark Greiner, and I am the pastor of the Takoma Park Presbyterian Church.

In November of 2008, Governor Martin O'Malley launched the Partnership to End Childhood Hunger in Maryland. The Governor has hosted 7 Childhood Hunger Summits in our state, partnering the public and private sectors. The Montgomery County Summit, held at Methodist Church in Rockville this past September specifically engaged our county's faith-based leaders and challenged churches to be partners. This Zoning Text Amendment will help our congregation be part of this partnership to address local hunger.

Our county is facing a perfect storm: decreased availability of affordable food just when the economy is pressing people hardest. Last year, the (federal) Emergency Food Assistance Program (TEFAP) budget was slashed by one-third. That program provided much of the food that is now no longer available through the MANNA and Washington DC food banks. The Free and Reduced Meals (FARMS) program in Montgomery County Public Schools provides a window on local hunger. About thirty percent of enrolled students receive meals through the FARMS program. Fewer than a quarter of these students have any access to a meals program when school is not in session. Some schools near our church have a substantially higher FARMS rate (Rolling Terrace 63%, New Hampshire Estates 86%). The proposed Zoning Text Amendment will allow a commercial kitchen to prepare meals for these hungry children.

Partnership with community leaders birthed this project. We hope to convey the broad community support, savvy and deep enthusiasm for developing local farm-to-table systems. The proposed Commercial Kitchen has two components. First, to be a site to prepare food to feed the increasing population of hungry people. Second, to provide commercial kitchen space to develop "local food" micro-enterprise, especially for low-income residents.

Community partnership is key. The Church has worked with our local Takoma Park / Silver Spring Food Co-op to carefully identify the needs for microenterprise business development. Crossroads Farmer's Market has farmers who want and need commercial kitchen space. Many partners are eager to work together in this endeavor.

Partnership with our immediate neighbors is essential to avoid adversely affecting our neighborhood. We will not, for instance, feed groups on site. But we can prepare food to be distributed at other sites.

From 1978 to 1982, the County itself used the kitchen to provide more than 60 children daily meals through a day care center the county operated on site. This Zoning Text Amendment will extend that tradition of service and community partnership. Thank you.

**Testimony of Seth Grimes to the Montgomery County Council  
In support of ZTA 11-08, January 24, 2012**

Councilmembers, thank you for the opportunity to speak today.

I support the proposed zoning text amendment, ZTA 11-08.

I am Seth Grimes, a resident of Takoma Park. I am also a Takoma Park City Council member.

The Takoma Park Presbyterian Church is my constituent, as are many of the church's members. I answer to a larger community, however, so I solicited residents' views on the church's plans and the proposed ZTA. The opinions I know of, of residents of my ward and others in Takoma Park (but no politicians), tally as follows:

- 2 conditionally in favor, depending on handling of logistics
- 2 in favor only if the ZTA is enacted with a Special Exception
- 28 in favor without reservation

Support is strong.

Myself, I almost wish there were a third category in the Montgomery County Zoning Ordinance, not only P for Permitted and SE for Special Exception, but also R for Required.

Churches are exempt from property taxes. They receive other, special considerations, for instance, the ability to locate in residential zones by right. Many churches include social welfare in their missions. They recognize that they are constituted, and also uniquely positioned, to work for community good. There's no R in zoning code, but we should do what we can to enable and encourage this contribution.

Churches are located throughout the county, just as schools are. Schools have been thrust into the role of feeding needful children. In 2008, the Montgomery County Public Schools (MCPS) elementary-school FARMS rate – the proportion of children eligible for free and reduced-price meals – was 29.4%, an indicator of *significant* poverty in our rich county.

Schools reach only kids, for only part of the year. Churches are open year-round. Many churches have facilities they can and do share with the community. Many wish very much to help with poverty. Churches cannot *only* help feed people; they can also foster economic opportunity by hosting small businesses in their kitchens.

Note, by the way, that community commercial kitchens and incubators are complementary concepts. Incubators would be centralized where CCKs would be geographically dispersed. Incubators would entail government spending; CCKs would not. Incubators would graduate small businesses while CCKs would provide long-term facilities access.

What about neighborhood impact? I expect CCKs would add little traffic beyond current church usages, and require minimal parking. Timing of usage would be largely out-of-phase with residential patterns, that is, mostly during the workday.

But what really makes me comfortable with the proposed ZTA is that commercial kitchens would be regulated by Montgomery County health standards and code. CCKs would not be undertaken casually, and in particular, not in houses converted to churches.

Community commercial kitchens can provide great economic and food benefits to needful segments of our county. ZTA 11-08 would enable their creation. I support ZTA 11-08. I hope you will as well.

Thank you.

Seth Grimes  
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TESTIMONY BEFORE THE MONTGOMERY COUNTY COUNCIL ON ZTA 11-08  
JANUARY 24, 2012

My name is Vicki Warren and I serve as an elder and member of the Shared Use Community Commercial Kitchen Task Force at Takoma Park Presbyterian Church. Last year I was also part of a listening campaign at the Church to engage the congregation in defining how we wanted to move forward in meeting our mission goals. What we learned was that the members of our congregation care very deeply about economic inequality in our community and the increasing incidence of hunger in our neighborhoods. As a member of the Property Committee at the Church, I knew that we had a commercial kitchen at the Church that we had used in the past to address both of these issues--economic inequality and hunger.

The kitchen is currently in need of renovation to bring it up to code again. Over the years, people have looked into fixing up the kitchen, but the project was never completed. With the new understanding we gained from the Listening Campaign –learning how deeply the congregation felt about local service—a group quickly coalesced around the idea of renovating the kitchen we already have to feed the hungry and to allow those with economic need to use their skills and our space to feed their families.

As we connected with others in the community interested in our project, the enthusiasm for developing a shared use community commercial kitchen was overwhelming. Many of those who have joined with us are here today and I know you have received emails from others anxious to see our kitchen brought back to life.

The Church has already reached out to our neighbors and distributed more than 100 letters to those living closest to our doors outlining our objectives. Next, we will hold community conversations and invite our neighbors to visit the kitchen and voice any concerns they may have.

Before I began working on this project, I had no idea of the need within the community for a thriving shared use community commercial kitchen. Nor did I understand that zoning regulations have changed since we last used our kitchen and that we would need a zoning change to allow us to move forward in our plans to use our kitchen once again to meet the needs of the community.

I am here today to urge you to support ZTA 11-08 and work together to find a common sense solution that will allow Churches such as Takoma Park Presbyterian located in residential neighborhoods to use their commercial kitchens to meet the needs of their neighbors. The need for shared use community commercial kitchens is great. Clear to me is the critical and very special role Churches can play in meeting that need.

Dedicated to service, Churches have established pathways with organizations committed to helping the most vulnerable among us. Churches depend on volunteers such as myself and that allows service without the need for any government subsidy or charging excessive fees.

The congregation of Takoma Park Presbyterian Church has made it clear that an important part of our mission is to be deeply involved in the life of our community and to use our resources to meet the needs of our neighbors. I am here to ask for your help in achieving that goal.

My name is Michele Levy, and I am a Takoma Park resident. I am also Executive Director of the Crossroads Community Food Network, a non-profit committed to increasing access to fresh, healthy, local foods for people of all backgrounds and incomes. Food access can only be guaranteed when communities are able to produce and process their own food. However, in Montgomery County, there are disturbingly few opportunities for committed individuals to prepare, preserve, or process foods for sale in their own community.

Since 2007, Crossroads has operated a farmers market in the Takoma/Langley Crossroads, an ethnically diverse area often referred to as "Maryland's International Corridor." This producers-only market is tailored to the underserved residents of the Crossroads, and aims to provide both fresh, affordable food and economic opportunity to the surrounding areas.

While we've successfully brought fresh, local produce to the Crossroads community, providing food-related job opportunities has been far more of a challenge. Over and over, one recurring issue presents a stumbling block: a shocking dearth of for-rent commercial kitchen space in Montgomery County.

We know the need is there.

For the past two years, Crossroads has partnered with Rolling Terrace Elementary School to provide farm-to-table, healthy eating programming for students and parents. Specifically, we have worked closely with the Padres Latinos, the Latino mothers subgroup of the PTA, providing culturally-appropriate lessons on healthy food preparation and preservation.

Over the course of these lessons, the Padres have expressed repeated and consistent interest in food-related micro-enterprise. These mothers are majority unemployed or underemployed, and are looking to earn much-needed income for their families through value-added food production. They aren't looking to do anything time or resource intensive, but they have the skill sets and enthusiasm to gain empowerment and greater financial stability by selling salsas, jams, or baked goods. Together, we have identified local outlets for sale- including farmers markets and the TPSS Co-op, found Spanish language food safety classes, and developed potential business plans. But without access to a certified, shared-use commercial kitchen- of which there are only three in Montgomery County—these women are unable to proceed.

They aren't alone.

Throughout the County, potential micro-entrepreneurs are losing the opportunity to support themselves and their families, in turn bolstering our local food economy, *simply because they lack access to a certified production kitchen.*

Our work with the Padres Latinos led Crossroads to convene an informal working group of organizations interested in developing community commercial kitchens. I've been as inspired by the demand for creating these spaces as I was surprised by their scarcity.

Shared-use commercial kitchens are the critical missing link in this chain of local production and distribution. Across the country, community commercial kitchens provide a springboard for micro-enterprise, increase availability of freshly-made, culturally-appropriate foods, and boost community food security. Churches are uniquely situated to meet this need. They are trusted entities within the community, and are often already connected to the individuals who would benefit most from commercial kitchen access. Supporting ZTA 11-08 would open up a wealth of untapped possibility for low-income families countywide.

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TESTIMONY BEFORE THE MONTGOMERY COUNTY COUNCIL ON ZTA 11-08  
JANUARY 24, 2012

My name is Robin Brannon; I am a resident of Takoma Park, a member of Takoma Park Presbyterian Church (TPPC) and a registered dietitian. I have worked the last 5 years throughout Montgomery County in the field of dietetics. I am here today because I am concerned about sustainable food sources being available and hunger within our community.

Supporting the shared-use community commercial kitchen as outlined in ZTA 11-08 will address both of my concerns.

Our church, Takoma Park Presbyterian Church is well-located to provide this service in Montgomery County being easily metro accessible and having a pre-existing partnership with Crossroads Farmers Market and Takoma Park Silver Spring Food Cooperative. These alliances will connect vendors with the resources to process their product and in helping vendors sell these products. In the DC region, there are few kitchens designed to be used in a cooperative manner that are accessible without a significant set-up fee. At TPPC, we would like to be able to remove this obstacle.

The kitchen at TPPC is about 600 square feet and will allow for start-up home based vendors to create "value-added food products" to sell in local outlets such as farmers markets and grocery stores. There is a process outlined and promoted by the Maryland Department of Health & Mental Hygiene (MDHMH) to allow for these type of endeavors in Maryland. The Maryland Cooperative Extension service also has a program, The Maryland Alternative Enterprise Hotlist, designed to enable farmers and others to produce food products to provide an income source. In preparing to come here today, I came across a community initiative from within the Montgomery County Office of Community Partnerships which outlines strategies to improve local, sustainable food sources within Montgomery County-- one of which was a commercial kitchen incubator, similarly set up to what we are trying to achieve with bringing our commercial kitchen back up to code.

Being commercial kitchen differs from our kitchens at home, in the scale of equipment and the regulations as enforced by MDHMH. Because of the physical size of our kitchen, this will never be a large food processing facility, nor is it intended to become one.

ZTA 11-08 will enable us as a community at TPPC to utilize our resources both in physical facilities and talent to help others achieve their goals and care for themselves and their families; I would ask you all to join us.



# Meals on Wheels



serving

TAKOMA PARK — SILVER SPRING — HYATTSVILLE

7410 New Hampshire Avenue  
Takoma Park, Maryland 20912

(301) 434-1922

TESTIMONY BEFORE THE MONTGOMERY COUNTY COUNCIL  
In support of ZTA 11-08: Residential Zones - Accessory Commercial Kitchens  
January 24, 2012

I am Jill Feasley and I come before you today wearing several different "aprons":

- 1) I am a Takoma Park resident and live about 50 yards from the proposed community kitchen at the Takoma Park Presbyterian Church (TPPC);
- 2) I am a member of TPPC and helping the group trying to get the community kitchen project off the ground; and finally,
- 3) For the past 10 years I have been the Director of Meals on Wheels of Takoma Park, which has been operating its fully-licensed commercial kitchen out of Zion Lutheran Church on New Hampshire Ave. for the past 40 years.

No matter the apron I wear, I heartily endorse the proposed zoning text amendment to allow churches to operate commercial kitchens.

My comments today focus on my Meals on Wheels role. My small nonprofit organization is extremely lucky to have very affordable kitchen facilities in which to operate. If we had to pay prevailing market rates, we could not continue to provide our meals—which go out to about 40 frail, vulnerable homebound residents every week day—at the cost we currently ask. If we had to leave our space, we would have great difficulty finding similar affordable space. This happened to the Meals on Wheels of Wheaton several years ago when the church they worked out of changed ownership and they had to relocate. It took them months and considerable expense to find a new home.

Limiting the scale of the commercial activity to only 5% of a building's space, in my view, is a practical way to address concerns about such kitchens operating in residential neighborhoods. Kitchens permitted by right would still have to go through all the hoops of getting building permits and becoming licensed as a food service facility, which can be quite costly and time consuming. Going through the special exception process adds even more time, expense, and burden.

As someone who will be living about 50 yards from a commercial kitchen, I appreciate the procedural protections afforded by a special exception. They are useful protections if a really big operation wanted to come in and use the kitchen. However, the scale of any kitchen project using only 5% of a church building is limited—even in a really big church.

In TPPC's case, the kitchen is small. We are quite literally talking about a space for moms baking apple pies.

Even with a kitchen permitted by right, neighbors still have valuable protections such as noise ordinances, parking restrictions, sanitation codes, and regular health inspections to address any problems that arise. My concern with a special exception use is that it presents churches with another sizable disincentive to invest the considerable sums needed to develop a commercial kitchen, especially if they fear their activity will be denied or revoked.

At Meals on Wheels, I think we are good neighbors. The kitchen, which is only about 600 square feet, is in use from about 7 in the morning until 1 in the afternoon every weekday. We get about 2 to 3 deliveries of food and supplies each week. Each weekday we have 8-12 volunteers coming in to prepare and deliver the food. We employ 2 people part-time. We provide opportunities for community service and training to many students as well as volunteers with mental and developmental disabilities. In our 40 years, we have delivered almost a million meals to our homebound neighbors. We have done a tremendous amount of good for our community.

Given the small scale of what would be allowed by the zoning amendment, I ask you to support it. It allows churches and other non-profit groups like mine some flexibility to use their assets to benefit the community. At a time when everyone is trying to do more with less, we need to think creatively about using what we already have.

Respectfully submitted,

Jill Feasley  
Director  
Meals on Wheels of Takoma Park



January 24, 2012

5104 Elm St., Bethesda MD 20814      (301)652-6359      email - theelms518@earthlink.net

**Civic Federation Testimony to County Council - Bill 39-11, Development Impact Tax Exemption**

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of the Planning and Land Use Committee. The Federation respectfully urges Council members to disapprove Bill 39-11, which would exempt certain residential projects from development and school impact taxes. The following resolution was unanimously approved at the December 5, 2011 MCCF meeting:

"Whereas it is not known how the county government would make up for the shortfall in revenue caused by exempting an undetermined number of market-rate dwelling units from paying the development impact tax (for transportation) and school impact tax; and,

"Whereas we do not believe that exempting an undetermined number of market rate dwelling units from paying impact taxes is fiscally sustainable in the long term;

"Therefore, the Montgomery County Civic Federation opposes County Council approval of Bill 39-11, legislation to exempt market-rate units in any project that consists of at least 25% affordable dwelling units from paying transportation and school impact taxes."

Perhaps this issue could be revisited when economic conditions have improved. Thank you.

**MCCF comments - ZTA 11-08, to Allow Commercial Kitchens as Permitted Accessory to Certain Service Uses in R-60 and R-90 Residential Zones**

While the Civic Federation has not formally adopted a position on ZTA 11-08, there are issues we urge the Council to consider in reviewing the legislation.

ZTA 11-08 would allow for-profit food preparation operations in residential areas as a permitted use. But it does not set standards for off-street parking or loading areas, hours of operation, frequency of use, or number of employees, like those that exist for home occupations. We believe other commercial operations located in service uses in residential neighborhoods require approval of a Special Exception (e.g.; a for-profit child daycare center that rents space in a church but is not a program of the church). The SE process gives neighbors a chance to comment on the location, layout, and proposed use of the facility, and impact on traffic, in the context of the surrounding neighborhood. This ZTA does not set standards or provide a process with an opportunity for public comment, and we hope Council members will address this. Thank you.