

**Please bring the PHED Committee Packet prepared for December 2, 2013**

**MEMORANDUM**

December 5, 2013

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: ZTA 13-04, Zoning Ordinance – Revised and District Map Amendment G-956  
Worksession #13 – Issues raised in November Council Public Hearings, continued

The following summarizes the Committee's recommendation made on December 2, 2013. Only actions which require a change from the Committee's previously recommended code are noted:

- 1) The Committee (2-1, Councilmember Elrich objecting) will recommend:
  - a) making the effective date of the Zoning Rewrite coterminous with the effective date of the District Map Amendment;
  - b) delaying the approval of the District Map Amendment until some time after June 1, 2014 but before November 1, 2014;
- 2) Remove "general building" as an allowable building in residential zones; Planning Staff to propose a way to address their continued concerns in proposed text;
- 3) Get recommended text from Planning Staff on average building height;
- 4) Get recommendation from Planning Board on amending the criteria for drive-through restaurants;
- 5) Allow an approved but unbuilt Country Inn to proceed under the new code;
- 6) Qiagen property – revise the height allowed in the IM zone to 80 feet for this property;
- 7) Resource recovery in the former Rural Service zone – allow pre-existing recovery businesses to continue;
- 8) Rockspring Drive and Rockledge Boulevard – allow a 1.0 FAR;
- 9) Democracy Plaza – allow a 1.0 FAR and a height of 110;
- 10) Park Potomac – translate the entire site to a single zone;
- 11) Easter Seals (Silver Spring) – allow commercial development up to 1.25 FAR;
- 12) GSSC Area – increase commercial FAR to match approvals;
- 13) 2 Bethesda Metro Center – all height to be 200 feet;
- 14) Pearl Street and Montgomery Avenue – the last parcel zoned C-O should retain a 1.5 FAR; allow the other 2 parcels a 3.0 FAR;
- 15) Woodmont Central (Donohoe) Project – Planning Staff to draft a solution to the density transfer issue;

- 16) Mapping corrections – the Committee agreed with all of Planning Staff’s recommended corrections (see item 11 in 11/27/13 memorandum);
- 17) Amend 8.5.2 to require a summary of ZTAs in a newspaper;
- 18) Require physical digital copies of electronic zoning maps and all changes;
- 19) Require the zoning history on zoning maps;
- 20) Amend the definition of Disabled Person to mirror the federal definition;
- 21) Add Lawn care as a limited land use separate from other home occupations;
- 22) Chickens and rabbits – remove the proposed limit on the number of animals to make the proposed code no different than the current code; replace the Animal Husbandry use with Farming as a permitted use in all Residential zones – as in the current code;
- 23) Clarify that a grocery store is not a combination retail store;
- 24) Allow indoor auto repair as an allowed use with either indoor vehicle sales or outdoor vehicle sales; also allow indoor car storage with either use. Outdoor storage would be allowed with outdoor sales;
- 25) Revise the design guidelines for drive-through restaurants (see item 19 in 11/27/13 memorandum);
- 26) Add the following provision to Seasonal Outdoor Sales:
  - e. Evergreen trees may only be sold beginning the first Saturday following Thanksgiving Day through December 24th, and are exempt from Section 3.2.12.B.2.b and Section 3.2.12.B.2.d.ii.;
- 27) Grandfathering will be fully reviewed on December 9; however, the Committee agreed to the following addition to address binding elements of current local map amendments:
 

Any development allowed on land subject to the binding elements of a Council approved development plan on {effective date minus one} must satisfy those binding elements until the land is subject to a Sectional Map Amendment that implements a master plan approved after {effective date} or is rezoned by Local Map Amendment.

## Leftover items

### *Average building height*

The following text provided by Planning Staff would allow the Planning Board to approve a higher height on one portion of a building, as long as the average height of the building does not exceed the maximum height of the mapped zone. The language below would appear for the Commercial/Residential zones. It would also apply to the Employment zones with a “T”.

6. Special provisions for "T" zones translated from certain zones existing before {date of adoption of district map amendment minus one}.
  - a. These special provisions apply to certain properties rezoned by District Map Amendment to implement this Chapter and are indicated on the zoning map as the zoning classification followed by a T, such as “CR2.0 C1.5 R1.5 H75 T”.
  - b. For Commercial/Residential-zoned properties designated with a T, the following provisions apply: ...
    - iii. Height on a portion of a building may be increased above the number following the H on the zoning map so long as the average height of the building is no greater than the maximum height allowed by the mapped zone. Average building height is calculated as the sum of the area of each section of the roof having a different height multiplied by that height, divided by the total roof area. Height is measured at the midpoint of each roof section along each frontage.
    - [iii]iv. Any density or height increases under Section 2.1.6.A.6 requires site plan approval under Section 8.3.4.

Staff will ask DPS Staff if DPS believes that they can administer this definition at the December 9 worksession.

*Additional density transfer provision*

In order to recognize existing density transfer arrangements without mapping the approved density transfers, Planning Staff recommends adding the following language to Section 8.7.1:

On a property that is subject to an effective density transfer easement and density transfer deed, the total density or density associated with a commercial or residential use, including any density approved by an amendment of a previously approved application listed in 8.7.1.B.1, may exceed that allowed by the existing zoning as long as the total density or density associated with a commercial or residential use does not exceed that allowed by the density transfer easement and density transfer deed.

*Amending the criteria for drive-thru restaurants*

Planning Staff recommends adding the following provision, in addition to their recommendation in the December 2 packet:

Sec. 3.5.14.E. Drive-Thru

1. Defined  
A Drive-Thru means a facility where the customer is served while sitting in a vehicle. Drive-Thru includes drive-thru restaurants, banks, and pharmacies, but does not include Filling Station.
2. Use Standards  
Where a Drive-Thru is allowed as a limited use, it must satisfy the following standards:
  - a. A Drive-Thru, including the queuing area, must be located a minimum of 100 feet from any property in an Agricultural, Rural Residential, or Residential Detached zone.
  - b. For a Restaurant with a Drive-Thru, access to the site from a street with a residential classification is prohibited.

*Remove "general building" as an allowable building in residential zones*

Planning Staff proposes to delete the formerly proposed reference to non-residential buildings in residential zones and add to the description of a detached house so that it would read "Detached House or Building for Cultural Institution, Religious Assembly, Public Use or conditional use allowed in the zone". Exactly how that would work in ZTA 13-04 is attached.

Staff would be inclined to use fewer words.<sup>1</sup> The phrase "principle building" would cover all land uses.

---

<sup>1</sup> When a writer was asked the title of a new book by his publisher, the excited author said, "I call it 'Julius, get up and grab her before she runs away'." The publisher replied, "May I suggest just calling the book 'Julius, Cease Her'".

*Planning Staff note the following additional mapping corrections:*

In translating the C-2 zones a proxy was used for the current code requirement of allowing a height of 75 feet for development that is a minimum distance of 300 feet from a residential use. Planning Staff will correct the C-2 translations so that the 300 foot minimum distance is met.

*Individual map considerations*

Staff will track all individual complaints on zoning translations, but will bring any outstanding issues back to the Committee after the Council approves, disapproves, or amends ZTA 13-04.

**Proceeding through the December 2 memorandum**

The Committee will continue going through the Memorandum prepared for December 2, starting with parking issues on page 20, issue number 21.

*Parking*

The Executive staff would like to raise the possibility of an illegal delegation issue concerning parking. As proposed, any change in the Urban Land Institutes Shared Parking Model results in an automatic change to parking standards:

7.2.3.H.3. Shared Parking

An applicant proposing development with more than one use may submit a shared parking analysis using the Urban Land Institute Shared Parking Model (latest edition) instead of using the parking table in Section 7.2.4.B.

Staff believes that a change in rates should not be automatic and is better accomplished by a ZTA when necessary.

**New Item – Code structure**

The Council received complaints on the proposed codes organization. Staff does not believe that there is a perfect solution. The planning online version with clickable references may help. The best innovation in the proposed code is the single land use table. Even the current code had separate chapters for parking, signs, and procedures. Those familiar with the current code will be challenged by the new code until it too becomes familiar.

The worst aspect of the proposed code is that a review of any individual zone requires referencing almost every chapter. Staff is not convinced that there is any perfect solution. With some work, Chapters 2, 4, and 6 could be reorganized so that they are zone-centric and not function-centric. There would still be the need to reference Chapters 3, 7, and 8 to know all aspects of a zone.

Packet contains

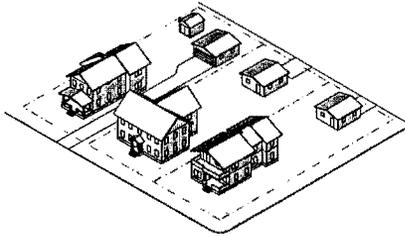
Pages to remove General Buildings in residential zones

© Page

1 - 4

### Section 4.1.3. Building Types in the Agricultural, Rural Residential, and Residential Zones

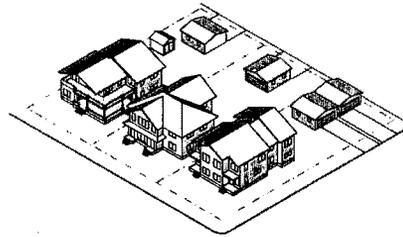
Building types regulate the form of development allowed within each zone. The building type only determines the applicable development standards. All graphic depictions of building types are for illustrative purposes only and are not meant to limit or exclude other designs.



**A. Detached House or Building for a Cultural Institution, Religious Assembly, Public Use, or Conditional Use allowed in the zone**

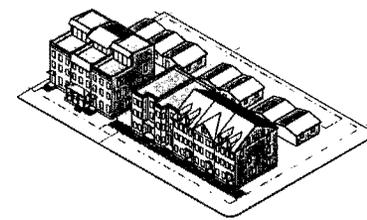
A detached house is a building containing one dwelling unit that may contain ancillary nonresidential uses, such as a Home Occupation or Family Day Care.

A building for a Religious Assembly, Cultural Institution, Public Use, or an approved conditional use is a building that accommodates only a Religious Assembly, Cultural Institution, Public Use or a conditional use allowed in the applicable zone under Article 59-3, Uses and Use Standards.



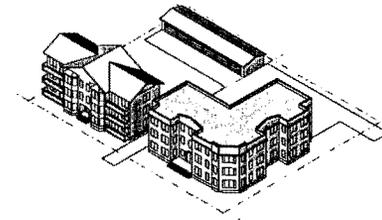
**B. Duplex**

A duplex is a building containing 2 principal dwelling units that may contain ancillary nonresidential uses, such as a Home Occupation or Family Day Care.



**C. Townhouse**

A townhouse is a building containing 3 or more dwelling units where each dwelling unit is separated vertically by a party wall. A townhouse may contain ancillary nonresidential uses, such as a Home Occupation or Family Day Care.

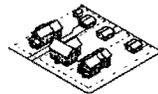


**D. Apartment**

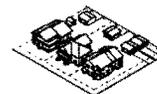
An apartment is a building containing 3 or more dwelling units vertically and horizontally arranged. An apartment may contain up to 10% of the gross floor area as Retail/Service Establishment uses, otherwise it is a multi use building.

### Section 4.1.4. Building Types Allowed by Zone in the Agricultural, Rural Residential, and Residential Zones

In the Agricultural, Rural Residential, and Residential zones, building types are allowed by zone as follows:



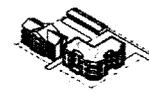
**Detached House or Building**  
for a Cultural Institution,  
**Religious Assembly, Public**  
**Use, or Conditional Use al-**  
**lowed in the zone**



**Duplex**



**Townhouse**



**Apartment**

	Detached House or Building for a Cultural Institution, Religious Assembly, Public Use, or Conditional Use al- lowed in the zone	Duplex	Townhouse	Apartment
<b>Agricultural Zone</b>				
Agricultural Reserve (AR)	A	--	--	--
<b>Rural Residential Zones</b>				
Rural (R)	A	--	--	--
Rural Cluster (RC)	A	--	--	--
Rural Neighborhood Cluster (RNC)	A	A	A	--
<b>Residential Detached Zones</b>				
Residential Estate - 2 (RE-2)	A	TDR	TDR	TDR
Residential Estate - 2C (RE-2C)	A	MPDU	MPDU	--
Residential Estate - 1 (RE-1)	A	MPDU	MPDU	--
Residential - 200 (R-200)	A	MPDU, TDR	MPDU, TDR	TDR
Residential - 90 (R-90)	A	MPDU, CD, TDR	MPDU, CD, TDR	TDR
Residential - 60 (R-60)	A	MPDU, CD, TDR	MPDU, CD, TDR	TDR
Residential - 40 (R-40)	A	A	MPDU	--
<b>Residential Townhouse Zones</b>				
Townhouse Low Density (TLD)	A	A	A	--
Townhouse Medium Density (TMD)	A	A	A	--
Townhouse High Density (THD)	A	A	A	--
<b>Residential Multi-Unit Zones</b>				
Residential Multi-Unit Low Density - 30 (R-30)	A	A	A	A
Residential Multi-Unit Medium Density - 20 (R-20)	A	A	A	A
Residential Multi-Unit High Density - 10 (R-10)	A	A	A	A

**KEY:** A = Allowed to accommodate permitted, limited, and conditional uses  
MPDU = Allowed as part of an Optional Method MPDU Development under Division 6.1  
-- = Not allowed

CD = Allowed as part of an Optional Method Cluster Development under Division 6.2  
TDR = Allowed as part of Optional Method TDR Development under Division 6.3

2

**Section 4.4.8. R-60 Zone, Standard Method Development Standards**

<b>B. Lot and Density</b>		<u>Detached House or Building for a Cultural Institution, Religious Assembly, Public Use, or Conditional Use allowed in the zone</u>
<b>Lot (min)</b>		
Lot area		6,000 SF
Lot width at front building line		60'
Lot width at front lot line		25'
<b>Density (max)</b>		
Density (units/acre)		7.26
[Density (FAR per tract)]		n/a]
<b>Coverage (max)</b>		
Lot		35%
<b>Specification for Lot and Density</b>		
1	Lot width at the front building line and setback requirements may be reduced under <u>Section [Sec.] 4.4.2.B.</u>	
2	Development with a detached house [building type] may have to satisfy <u>Section [Sec.] 4.4.3, Residential Infill Compatibility.</u>	
3	The lot coverage maximum does not apply to Religious Assembly.	

<b>C. Placement</b>		<u>Detached House or Building for a Cultural Institution, Religious Assembly, Public Use, or Conditional Use allowed in the zone</u>
<b>Principal Building Setbacks (min)</b>		
Front setback		25'
Side street setback		15'
Side setback		8'
[Side setback, abutting Agricultural, Rural Residential, or Residential Detached zones]		n/a]
[Side setback, abutting all other zones]		n/a]
Sum of side setbacks		18'
Rear setback		20'
[Rear setback, abutting Agricultural, Rural Residential, or Residential zones]		n/a]
[Rear setback, abutting all other zones]		n/a]
Rear setback, alley		n/a]
<b>Specification for Principal Building Setbacks</b>		
1	Development may have to satisfy <u>Section [Sec.] 4.4.2.C, Established Building Line.</u>	

<b>C. Placement</b>		<u>Detached House or Building for a Cultural Institution, Religious Assembly, Public Use, or Conditional Use allowed in the zone</u>
<b>Accessory Structure Setbacks (min)</b>		
Front setback		60'
Side street setback		15'
Side setback		5'
Rear setback		5'
[Rear setback, alley]		n/a]
<b>Specifications for Accessory Structure Setbacks</b>		
1	In addition to the front setback minimum, any accessory structure must be located behind the rear building line of the principal building.	
2	For any accessory structure with a height greater than 15', the minimum side and rear setback must be increased at a ratio of 2' of additional setback for each foot of height in excess of 15'.	
3	For any accessory structure with a length along a rear or side lot line that is longer than 24', the minimum side or rear setback must be increased at a ratio of 2' for every 2' that the dimension exceeds 24 linear feet. A swimming pool is exempt from this limit.	
4	The maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the footprint of the main building or 600 square feet, whichever is greater. Buildings for an agricultural use are exempt from this size restriction.	
<b>[Parking Setbacks for Surface Parking Lots (min)]</b>		
[Front setback]		n/a]
[Side street setback]		n/a]
[Side setback]		n/a]
[Rear setback]		n/a]
[Rear setback, alley]		n/a]
<b>D. Height</b>		
<b>Height (max)</b>		
Principal building, measured to highest point of a flat roof		35'
Principal building, measured to mean height between the eaves and ridge of a gable, hip, mansard, or gambrel roof		30'
Accessory structure		20'
[Agricultural building]		50']
<b>Specification for Height</b>		
1	In development with a detached house [building type] height may be increased to 40' if approved by the Planning Board in a site plan under <u>Section [Sec.] 8.3.4.</u>	

Section 4.4.8. R-60 Zone, Standard Method Development Standards (cont'd)

<b>E. Form</b>	<b><u>Detached House or Building for a Cultural Institution, Religious Assembly, Public Use, or Conditional Use allowed in the zone</u></b>
<b>Allowed Building Elements</b>	
Gallery/Awning	n/a
Porch/Stoop	yes
Balcony	yes

**F. Buildings used for Agriculture Associated with Farming**

**Specification for Buildings used for Agriculture Associated with Farming**

1 A building used for agriculture associated with Farming must satisfy the standards of an accessory structure, except that the maximum building height is 50'.

④