RESIDENTIAL INFILL CONSTRUCTION: A REVIEW OF COUNTY LAWS, REGULATIONS, AND PRACTICES



OFFICE OF LEGISLATIVE OVERSIGHT

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OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2007-4 FEBRUARY 13, 2007

THE ASSIGNMENT

The Council asked OLO to review current laws, regulations, and management practices related to residential infill construction in older, more established residential neighborhoods in the County. "Residential infill construction" was defined as construction occurring in the County's R-60 and R-90 zones; it includes:

- Demolishing an existing home and subsequently re-building a home on the same site;
- Constructing a new home on a vacant lot that has not been re-subdivided; and
- Additions or alterations to existing homes.

The specific objectives of this assignment were to:

- Identify the set of laws and regulations that govern residential infill construction;
- Review the Department of Permitting Services' (DPS) procedures and practices for interpreting and administering the relevant laws and regulations; and
- Summarize data on location, number, and type of residential infill construction.

LEGAL FRAMEWORK FOR RESIDENTIAL INFILL CONSTRUCTION

Under authority provided by State law, the County Code creates a governance framework that regulates residential infill construction primarily through the Building Code (Chapter 8) and the Zoning Ordinance (Chapter 59). The County's Zoning Ordinance established the R-60 and R-90 residential zones in 1954. Lots in these zones undergoing infill construction must meet building standards defined in the Zoning Ordinance, which include standards for height, setback, lot area, lot width, and lot coverage. Some of these standards vary based on when a lot was initially recorded, particularly for lots recorded before 1954.

Current height, lot coverage, and setback requirements in the Zoning Ordinance allow for:

- A home with over 5,000 square feet of floor area on a 6,000 square foot R-60 lot; and
- A home with over 6,000 square feet of floor area on a 9,000 square foot R-90 lot.

County law requires that all residential infill construction projects must receive a building permit from the Department of Permitting Services. Depending on the proposed activity, a project may also require a demolition, sediment control, right-of-way, and/or Historic Area Work Permit. County law establishes certain requirements related to review, notice, issuance, inspection, and appeals of these construction-related permits.

OLO found that County law is unclear with respect to the zoning requirements for construction activity on lots legally created before the County imposed zoning standards in 1928. The factors contributing to this confusion are: procedural errors related to the formal adoption of the Zoning Ordinances in both 1928 and 1930; and varying uses and interpretations over time by government authorities as to the zoning requirements outlined in these two ordinances.

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DEMOLITION AND NEW CONSTRUCTION PROJECTS

Since FY02, demolition and new construction projects have occurred in 28 different County zip codes.

Of the 1,181 permits issued for demolition and new construction projects in the R-60 and R-90 zones, three-fourths were located in the Bethesda area (54%), Chevy Chase (12%), and Kensington (9%). Table 1 provides a breakdown by zip code.

For the demolition and new construction projects, DPS conducted over 8,700 routine building inspections and over 1,000 complaint-based inspections. The most common types of complaints resulting in inspection were sediment control and building setback complaints.

Table 1: Demolition/Rebuilds since FY02

| Location (Zip Code) | Number | % of Total |
|-----------------------|--------|------------|
| Bethesda (20817) | 313 | 26% |
| Bethesda (20814) | 228 | 19% |
| Chevy Chase (20815) | 140 | 12% |
| Kensington (20895) | 107 | 9% |
| Bethesda (20816) | 103 | 9% |
| Silver Spring (20910) | 43 | 3% |
| Colesville (20904) | 41 | 3% |
| Cabin John (20818) | 31 | 3% |
| Aspen Hill (20906) | 27 | 2% |
| Wheaton (20902) | 26 | 2% |
| Potomac (20854) | 25 | 2% |
| All Other | 97 | 4% |
| Total | 1,181 | 100% |

ADDITION AND RENOVATION PROJECTS

Since FY02, addition and renovation projects have occurred in 36 different County zip codes.

Of the 8,991 permits issued for addition and renovation projects in the R-60 and R-90 zones, nearly three-fourths were located in the Bethesda area (28%), the Silver Spring area (15%), Chevy Chase (13%), Kensington (9%), and Wheaton (8%). Table 2 provides a breakdown by zip code.

For the addition and renovation projects, DPS conducted over 43,000 routine building inspections and over 3,000 complaint-based inspections. The most common types of complaints resulting in inspection were building without a permit, building setback, and sediment control complaints.

Table 2: Addition/Renovations since FY02

| Location (Zip Code) | Number | % of Total |
|-----------------------|--------|------------|
| Chevy Chase (20815) | 1,204 | 13% |
| Bethesda (20817) | 968 | 11% |
| Kensington (20895) | 814 | 9% |
| Bethesda (20814) | 785 | 9% |
| Wheaton (20902) | 740 | 8% |
| Bethesda (20816) | 733 | 8% |
| Silver Spring (20901) | 671 | 8% |
| Silver Spring (20910) | 645 | 7% |
| Takoma Park (20912) | 442 | 4% |
| Aspen Hill (20906) | 414 | 4% |
| Rockville (20853) | 338 | 4% |
| Potomac (20854) | 249 | 3% |
| All Other | 752 | 8% |
| Total | 8,991 | 100% |

RESIDENTIAL INFILL CONSTRUCTION PERMIT DATA

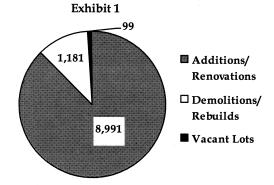
Between July 2001 and November 2006, DPS issued 23,780 permits for single-family detached dwelling construction activity, i.e. new construction or additions/renovations, in all residential zones (an addition/renovation project can range from an addition that substantially increases the

size of the home to an interior renovation of all or part of a home). 10,271 or 43% of these permits were issued for infill construction projects located in R-60 or R-90 zones. Of the permits issued:



- 11% were for demolition and rebuilds;
- 1% were for new construction on previously undeveloped lots.

In addition, DPS has conducted over 50,000 routine building inspections and nearly 4,300 complaint-based inspections related to residential infill construction projects since FY02.



DEPARTMENT OF PERMITTING SERVICES MANAGEMENT PRACTICES

DPS has developed a set of management practices to administer the permits associated with residential infill construction. DPS has written procedures and/or routine practices for:

- Permit applications including standard application forms that list the information DPS requires to appropriately review the application.
- Plan review including standardized sequencing of reviews, sharing of plan information
 with other agencies that must review plans, and formal sign-off on all necessary
 approvals before DPS will issue a permit.
- **Public notice** including standardized procedures for distributing and verifying the posting of building permit signs and the mailing of written notice requirements.
- **Field inspections** including both routine and complaint-based field inspections for all permits issued by the Department.

DPS also provides access to building permit and other information through an online database. In addition, the Department allows any interested party to view permit documents at DPS' offices. However, OLO found that DPS' document imaging practices do not guarantee that an approved set of building permit plans is available for immediate review at all times during a permit's 30-day appeal period.

DPS Code Interpretations. In an effort to ensure clear and consistent implementation of zoning and building laws by staff in the Department, DPS developed a set of official code interpretations. OLO found, however, that DPS does not have a written procedure for adopting these official interpretations, which range from technical explanations (e.g. written methodology and formulas) to legal interpretations (e.g. definition of terms). Pertinent to residential infill construction, DPS has official interpretations on: what constitutes new construction vs. an addition vs. an alteration; which zoning standards are used for lots created before 1928; when to use and how to calculate an established building line; how to calculate building height; and how to calculate whether a lower level is a basement or a cellar.

FEEDBACK FROM RESIDENTS AND BUILDING INDUSTRY REPRESENTATIVE

During the course of conducting this study, OLO consulted with representatives from building industry and civic groups, and individual County residents to receive information and other input about the County's legal and administrative structure for residential infill construction.

Many of the residents that OLO spoke with expressed general concern about the impact of residential infill development within neighborhoods and communities. In addition, some residents voiced specific concerns about DPS' management practices. Feedback from building industry representatives evidenced general support for DPS, but at the same time identified concerns related to both the legal structure and DPS management practices.

RECURRING CONCERNS VOICED BY BUILDING INDUSTRY REPRESENTATIVES:

- The length, cost, and unpredictable nature of the building permit application process.
- The length and cost associated with the building permit appeal process.
- DPS' process for establishing official code interpretations.

RECURRING CONCERNS VOICED BY RESIDENTS AND CIVIC GROUP REPRESENTATIVES:

- Inconsistent access to information and documents at DPS.
- DPS' process for establishing official code interpretations.
- DPS' complaint-based enforcement practices that rely on individual residents to find and report on permit violations.

OFFICE OF LEGISLATIVE OVERSIGHT RECOMMENDATIONS

The Office of Legislative Oversight found that, in general, DPS' procedures and practices for the review, issuance, and enforcement of residential infill construction permits align with current County laws and regulations. In particular, OLO found that DPS issues permits for residential infill construction located in the R-60 and R-90 zones based on the development standards in the Zoning Ordinance.

OLO offers four recommendations for Council action:

- 1) Adopt a Zoning Text Amendment to clarify the law related to implementation and related interpretations of the 1928 vs. 1930 versions of the Zoning Ordinance.
- 2) Discuss and decide whether the existing set of County laws and regulations governing residential infill construction reflect the Council's current preferences for development standards and permit issuance in the R-60 and R-90 zones.
- 3) Request that the Chief Administrative Officer develop a written procedure governing how DPS creates official code interpretations.
- 4) Request that the Chief Administrative Officer review DPS' procedures for public access to permit information and related documents, with a report back to the Council on specific actions taken for improvement.

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Chapter I: Authority, Scope, and Organization of Report

A. Authority

Council Resolution 15-1554, FY 2007 Work Program of the Office of Legislative Oversight, adopted July 25, 2006.

B. Purpose and Scope of Review

The Council asked OLO to review current laws, regulations, and management practices related to residential infill construction in older, more established residential neighborhoods in the County. For this project, OLO defined "residential infill construction" as construction occurring within the County's R-60 and R-90 residential zones and including: the demolition or teardown of an existing home and the subsequent re-building of a home on the same site; construction of a new home on a vacant infill lot that has not undergone re-subdivision; and additions/alterations to existing homes.

The Department of Permitting Services (DPS) has primary responsibility for permitting and regulating residential infill construction. Specific questions the Council asked OLO to examine with respect to DPS include:

- What written policies has DPS issued to interpret and administer the current laws and regulations related to residential infill construction?
- What practices does DPS follow to carry out its permit issuance, review, and enforcement responsibilities related to residential infill construction?
- How does DPS define a renovation versus new construction?
- What data are available from DPS on the number of residential infill construction projects since FY02?

The scope of this project focuses on reviewing the laws, regulations, and management practices related to demolition, reconstruction, and renovation activities for existing one-family detached dwellings in the R-60 and R-90 residential zones within the Montgomery County portion of the Maryland-Washington Regional District. Many of the laws, regulations, and DPS practices also apply to other types of projects or construction activities not covered in the scope of this particular report. This report only reviews how these laws, regulations, and practices affect residential infill construction activities.

For clarification, the scope of this OLO project does not include a review of the laws, regulations, and practices for:

- Municipalities in the county with separate zoning authority or additional zoning regulations;
- Any proposed residential development projects submitted to the Montgomery County Department of Planning for subdivision or site plan review; and
- Any existing or proposed multi-family or commercial construction.

C. Organization of Report

Chapter II, Legal Framework, introduces the key components of State and County laws and regulations that shape the legal framework related to residential infill construction;

Chapter III, Department of Permitting Services' Management Practices Related to Residential Infill Construction, reviews how the Department of Permitting Services carries out its management responsibilities related to residential infill construction;

Chapter IV, FY02-FY07 Data on Residential Infill Construction, summarizes available data related to residential infill construction in Montgomery County between July 1, 2001 and November 15, 2006;

Chapters V, Feedback from the Non-Governmental Sector, presents some of the views and recurring themes OLO heard from building industry representatives and civic or neighborhood representatives on residential infill construction;

Chapters VI and VII present OLO's Findings and Recommendations.

D. Methodology

Office of Legislative Oversight staff members Craig Howard, Kristen Latham, and Mike Kerr conducted this study. OLO gathered information through document reviews, general research, and interviews with staff members from the Department of Permitting Services, Board of Appeals, Office of Zoning and Administrative Hearings, and the Montgomery County Planning Board. OLO also met with various non-governmental groups (e.g. building industry representatives, civic group representatives) and/or other individuals that contacted OLO to provide information and other input for this study.

E. Acknowledgements

OLO received a high level of cooperation from everyone involved in this study. OLO appreciates the information shared and the insights provided by all staff who participated. In particular, OLO thanks: Assistant Chief Administrative Officer Paul Folkers; former Director Robert Hubbard, Acting Director Reggie Jetter, Susan Scala-Demby, Gail Lucas, Sandra Batterden, and Tom Laycock from the Department of Permitting Services; Planning Board Chair Royce Hanson and Gwen Wright from the Department of Park and Planning; Executive Director Katherine Freeman from the Board of Appeals; Director Francoise Carrier from the Office of Zoning and Administrative Hearings; Lisa Rother from the Offices of the County Executive; Acting County Attorney Marc Hansen; and Jeff Zyontz from the County Council Staff.

OLO would like to also thank the several non-governmental organizations and Montgomery County residents who provided information for this study. In particular, OLO would like to thank the following individuals: Arlene Bruhn, Tony Crane, Eileen Finnegan, Wayne Goldstein, Carol Green, Lisette Herdan, Jim Humphrey, Celesta Jurkovich, Brian Levite, Raquel Montenegro, Betty Petrides, Carol Placek, Mark Scott, Barbara Siegel, Chuck Sullivan and Rick Sullivan, Jr.

Chapter II: Legal Framework

This chapter introduces the key components of State and County laws and regulations that govern residential infill construction in Montgomery County. This Chapter is organized as follows:

- Part A, discusses the framework for land use regulation in State and County law;
- **Part B**, reviews the development standards pertinent to residential infill construction in the R-60 and R-90 zones;
- Part C, discusses the administrative structure for residential infill construction in the Montgomery County Code; and
- **Part D,** reviews the legally-established processes for requesting variances from development standards and appealing action by governmental entities.

A. Framework for Land Use Regulation in State and County Law

The governing framework for land use regulation balances an individual's right to own and develop private property with the authority of government to regulate the rights of private citizens to further the health, safety and welfare of the general public. The government's exercise of its police power includes the authority to zone, subdivide and regulate land.

The exercise of police power is vested with each State, and state legislatures enact enabling legislation that delegates broad decision making authority in land use matters to local governments. In Maryland, the State Constitution gives the General Assembly the authority to enact laws to protect the public health, safety and welfare. The General Assembly, in turn, enacts enabling legislation that establishes the parameters of local governments' authority.

1. Land Use Authority in State Law

The Maryland Code establishes Montgomery County's authority to regulate land use. The County's zoning and planning authority derives from Article 28 of the Maryland Code, known as the Regional District Act. The Regional District Act designates the bodies that are responsible for regulating land use in the County, assigns zoning, subdivision, regulatory and adjudicatory powers among them, and enumerates their duties.

The Regional District Act (RDA) establishes the bi-county Maryland-National Capital Park and Planning Commission (M-NCPPC), including the five member Montgomery County Planning Board. The RDA also establishes the County Councils of Montgomery and Prince George's County as the respective District Council for the portion of the regional district that is in each County.

The RDA assigns zoning powers to the Montgomery County Council as its designated District Council, including the authority to:

- Divide land into districts and zones to regulate the "erection, construction, reconstruction, alteration, and uses of buildings and structures and the uses of land":
- Adopt and amend a Zoning Ordinance to regulate development standards for buildings including location, height, bulk, building lines, minimum frontages, and percentages of lots which may be occupied;
- Impose different regulations in different districts or zones;
- Adopt and amend the zoning code text and maps;
- Delegate decision-making on special exceptions, variances, and appeals of administrative actions to the Board of Appeals or an administrative office, or to decide such matters at the District Council level; and
- Impose regulations to protect historical structures or districts.

The RDA authorizes the Montgomery County Planning Board to prepare and adopt recommendations to the District Council with respect to zoning map amendments. Both the Commission and the Planning Board are authorized to make recommendations to the District Council concerning amendments to the zoning code and subdivision regulations.

The RDA also establishes the requirement to issue a building permit before the erection or alteration of a building within the Regional District (Maryland Code, Article 28, §§8-101; 8-110; and 8-119).

2. Framework for Regulating Residential Infill Construction Activity in Montgomery County

Several sections of the Montgomery County Code establish the body of law that creates a governance framework and establishes standards to regulate development activities, including residential infill construction. The relevant chapters of the County Code as they relate to residential infill construction are summarized briefly below:

- Chapter 2, titled Administration, creates the administrative structure for the County Government, including establishing the Department of Permitting Services and the County Board of Appeals.
- Chapter 8 of the County Code, the Building Code, governs the construction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of all buildings and structures in Montgomery County.
- Chapter 19 of the County Code titled Erosion, Sediment Control, and Stormwater Management creates an administrative structure for regulating and issuing permits for land disturbing activities in Montgomery County.

- Chapter 24A of the County Code, titled Historic Resources Preservation, governs the identification, designation, and regulation of historic districts and historic structures in the County for the purposes of the protection and preservation of those sites and structures.
- Chapter 49 of the County Code, titled Streets and Roads, governs the proper use, care, construction, improvement, grading, repair and maintenance of County roads, including public rights-of-way.
- Chapter 59 of the County Code, the Zoning Ordinance, establishes zoning districts and regulations for all types of development in the Montgomery County portion of the Maryland-Washington Regional District to protect and promote the "health, safety, morals, comfort and welfare of the present and future inhabitants of the district."

Several other chapters of the County Code relate to construction and development activities, but those actions are generally outside the scope of this report. Among others, those chapters include: Chapter 22A, Forest Conservation – Trees; and Chapter 50, Subdivision of Land.

B. Zoning, Development, and Building Standards for Residential Infill Construction in the Montgomery County Code

The zoning power that state enabling legislation assigns to a local government gives local legislators the power to regulate the use and density of private property to protect public health and safety. The local government exercises this power through the adoption of a zoning ordinance and a zoning map.

The zoning ordinance creates a system of districts and zones that define an owner's permitted private property development rights. For each zone, the ordinance establishes allowable uses and development standards, such as building height, setbacks, and lot coverage; plus regulations that address other development issues such as parking and signage. A zoning map graphically displays the zone of each parcel of land in a jurisdiction.

The Montgomery County Zoning Ordinance and Zoning Map, which are adopted and amended by the County Council sitting as the District Council, are the County's principal regulatory tools for managing residential infill construction. The Council can alter the Zoning Ordinance by either adopting an entirely new ordinance or by making specific changes to the current Ordinance through zoning text amendments (ZTA).

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¹ The zoning regulations established by Chapter 59 expressly do not apply to the municipal corporations of Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove because these jurisdictions have their own planning and zoning authority.

Zoning Ordinance History. The Montgomery County Board of Commissioners, sitting as the District Council, first approved a Zoning Ordinance and zoning map in 1928 that established residential, commercial, and industrial zones and development standards for each zone. In 1930, the Board of Commissioners approved a new Zoning Ordinance that repealed and reenacted the 1928 ordinance. However, the public record indicates procedural errors that call into question whether either ordinance was adopted until 1932 as described below.

Zoning Ordinance Approval and Adoption History, 1928-1932

1928. On March 6, 1928 the minutes of the Board of Commissioners of Montgomery County indicated the approval of a Zoning Ordinance and map filed with the County Commissioners on January 17, 1928. However, the approved 1928 Zoning Ordinance was not reproduced in the Journal of the Board of Commissioner's minutes or ordinances despite the recitation within the adopting resolution that the Ordinance was "spread across the Journal."

1930. On October 28, 1930 the Board of Commissioners repealed and reenacted with amendments the 1928 Zoning Ordinance. The 1930 Ordinance is identifiable because of its citation to the 1928 Ordinance. The approved 1930 Ordinance, however, was also not "spread across the Journal."

1932. On July 21, 1932 the Board of Commissioners recognized that neither the 1928 Ordinance nor the 1930 Ordinance were ever published in the Board's Journal and took action to correct that oversight. On July 26, 1932, a *nunc pro tunc* (i.e. retroactive to the earlier date) entry was made of the entire text of the 1928 Ordinance and the 1930 Ordinance into Journal "E" (December 1, 1931-November 17, 1932) at pages 275 through 301.

The District Council reenacted the Zoning Ordinance in 1941, 1952, 1954, and 1958. Between 1928 and 1954, single-family detached homes generally fell into the Residential "A" zone and were governed by the standards for that zone. The 1954 Zoning Ordinance adopted the R-60 and R-90 single-family residential zones, which are the current underlying zones for many of the County's older, established residential neighborhoods.

Each version of the zoning ordinance either retained prior standards for each zone or established new standards. The adoption of new standards in a zone often caused a property or home to become "non-conforming" because it no longer met current standards. To address non-conformance, provisions were included in the zoning ordinances that allow some construction activities to meet some or all of the standards of older zoning ordinances instead of the current zoning ordinance.

1. Development Standards in the R-60 and R-90 Single Family Zones

The Zoning Ordinance includes specific development standards in the R-60 and R-90 zones, including standards for:

- Minimum net lot area;
- Minimum lot width;
- Minimum setbacks from lot lines;
- Maximum building height; and
- Maximum lot coverage.

In addition to the current standards, §59-B-5 of the Zoning Ordinance allows single family residential construction on lots recorded before 1958 to use the zoning standards in effect when the lot was recorded instead of the current zoning standards (§59-B-5) except that:

- Lots recorded before March 16, 1928 must meet the standards in the 1928 Zoning Ordinance;
- The maximum building height and maximum building coverage must comply with the standards of the lot's underlying zone at the time of construction; and
- An established building line setback must conform to the standards for determining the established building line at the time of construction.

Table 1: Selected Current Development Standards for One-Family Detached Dwellings in the R-60 and R-90 Zones

| Development Standards | R-60 Zone | R-90 Zone | R-60 or R-90: Lot recorded before 12/31/1954 | |
|--|--|---|---|--|
| Minimum net lot area | 6,000 sq. ft. | 9,000 sq. ft. | 5,000 sq. ft. ² | |
| Minimum lot width: -At front building line -At street line | 60 ft. 25 ft. | 75 ft. 25 ft. | 50 ft. ³ | |
| Minimum setback from street (front) | 25 ft. or EBL | 30 ft. or EBL | 25 ft. or EBL | |
| Minimum setback from sides of lot | 8 ft. on one side; and 18 ft. on both sides combined | 8 ft. on one side; and 25 ft. on both sides combined | 7 ft. if lot recorded before 12/31/54; or 5 ft. if lot recorded between 10/28/1930 and 9/30/1941 and the lot width is at least 40 ft. but less than 50 ft.; or 5 ft. if lot recorded before 3/16/1928 and the lot width is less than 40 ft. | |
| Minimum setback from rear of lot | 20 feet | 25 feet | 20 feet ⁴ | |
| Maximum building height | 35 feet to the highest point of roof regardless of roof type; or 30 feet to the mean height between the eaves and ridge of a gable, hip, mansard, or gambrel roof; and Must not exceed 2½ stories. | | | |
| Maximum building coverage of net lot area | 35% | 30% Same as current zone | | |

Sources: Montgomery County Code, Chapter 59; Department of Permitting Services

Building envelope established by development standards. The development standards create a "building envelope" for any particular property (i.e. the potential size and location of a structure that could be built on that lot). Based on the standards listed in Table 1, it is possible to calculate the potential square feet of floor area that could be constructed by multiplying the lot size, maximum lot coverage, and number of allowable stories.

² For lots recorded between 10/28/30 and 12/31/54 with a lot width at least 40 feet but less than 50 feet, no minimum lot area is required.

³ For lots recorded before 3/16/28, a lot can have a lot width of less than 40 feet. For lots recorded between 10/28/30 and 9/30/41, a lot can have a width of at least 40 feet.

⁴ For lots recorded under 1941 and 1952 Zoning Ordinances, the rear yard must have a minimum average depth of 20 feet with no point closer than 15 feet.

Based on the current standards, the Zoning Ordinance allows for the potential to build on a non-sloping lot:

- A home with 5,460 square feet of floor area on a 6,000 square foot R-60 lot;
- A home with 4,550 square feet of floor area on a 5,000 square foot lot recorded before 1954 and in a R-60 underlying zone; and
- A home with 7,020 square feet of floor area on a 9,000 square foot R-90 lot.

Established Building Line (EBL). The EBL supplements the minimum front (street) setback requirements in certain residential zones. The EBL may require that a building comply with a front setback that is greater than the minimum listed in the Zoning Ordinance. An EBL for any given lot is calculated by averaging the existing front setback of all nearby homes that are:

- Within 300 feet of the side property line of the proposed construction site;
- Along the same side of the street;
- Between intersecting streets; and
- Existing at the time when the building permit application is filed.

Any nonconforming buildings or those located on a pipestem or flag-shaped lot are not included in the EBL calculation.

Chapter 59 requires calculation of an EBL if at least two and more than 50% of the abovementioned eligible building have front setbacks greater than the minimum front setback for the zone. If that is the case, the average front setback of the eligible buildings is the EBL. The EBL then becomes the minimum front setback for the proposed dwelling (§59-A-5.33).

Sloping lot. The Zoning Ordinance also allows additional stories on sloping lots. Specifically, stories in addition to the number permitted in the zone are permitted on the downhill side on any sloping lot, but the height limit is not increased above that specified in the zone (§59-A-5.41).

2. Overlay Zones

Chapter 59 also includes overlay zones that have been adopted by the District Council as map amendments to the Zoning Ordinance. Development in overlay zones must conform with the standards of the underlying zone, except as specifically modified by the standards and regulations of the overlay zone. Chapter 59 states that overlay zones:

- Provide regulations and standards that are necessary to achieve the planning goals and objectives for development or redevelopment of an area; and
- Provide uniform comprehensive development regulations for an area. (§§59-C-18)

Of the 14 overlay zones in the Zoning Ordinance, one applies directly to single family residential lots. This section describes the development standards for that overlay zone.

Town of Garrett Park overlay zone. The Garrett Park overlay zone adopts development standards that apply to alterations, renovations, and enlargements to existing single-family dwellings as well as new construction (§59-C-18.112). The overlay zone adopts R-90 development standards with the following changes:

- New buildings or additions cannot project beyond the front yard setback line previously established by the buildings on the adjoining lots;
- Increased side yard setbacks of 10 feet on one side, and a lower required sum of both side setbacks to 20 feet if a lot that has less than 60 feet front building width;
- Decreased minimum rear yard setbacks for lots less than 90 feet in depth;
- A lower maximum building coverage of net lot area (20%); and
- The addition of a maximum floor area ratio of 0.375. (§59-C-18.113)

3. Other Zoning Provisions – Exemptions from Development Standards

The Zoning Ordinance exempts several specific building features or structures from certain development standards. These exemptions do not change a development standard; instead the exempted feature is not considered when determining whether a building meets that particular standard.

Roof features. For height purposes, the law exempts certain roof features from the calculation of height limits – such as belfries, chimneys, cupolas, domes, flagpoles, flues, and television antennae – as long as the features has a total area less than 25% of the total roof area (§59-B-1.1).

Fences and retaining walls. County law exempts walls or fences from setback requirements as long as the wall or fence is:

- A retaining wall made necessary by changes in street grade, width, or alignment;
- Deer fencing (in the rear and side yards only for residential zones); or
- No higher than $6 \frac{1}{2}$ feet. (§59-B-2.1)

Additionally, a fence or wall (other than a retaining wall) on a corner lot in any residential zone must not have a height greater than three feet above the curb level for a distance of 15 feet from the intersection of the front and side street lines (§59-B-2.1).

Non-enclosed porches, steps, stoops, stairways, and terraces. The Zoning Ordinance provides exemptions for open steps, stoops, exterior stairways, terraces, and porches projecting from a building into a minimum front, side, or rear setback. By law, these features:

- May extend into any minimum front or rear yard not more than 9 feet;
- May extend into any minimum side yard not more than 3 feet, unless the lot is a corner lot;
- May extend into any minimum side yard not more than 9 feet for a corner lot with a side yard of 25 feet or more; and
- May not extend into the minimum side yard at all for a corner lot with a side yard of less than 25 feet. (§59-B-3.1)

The Zoning Ordinance states that steps, stoops, exterior stairways, and terraces that do extend into a minimum setback may be roofed but must not be enclosed. Any roof covering these features must not extend more than three feet into the minimum setback, even if the feature extends farther. A porch that extends into a minimum front or rear setback may also be roofed but not enclosed, however the roof can extend the full allowable 9 feet of the porch. The law states that for a porch extending into the minimum front setback, the 9 feet is measured from the face of the building parallel to the front lot line (§59-B-3.1).

Bay windows. The Zoning Ordinance also provides a specific exemption for bay windows projecting into front or rear yards. The laws states that in any residential zone, a bay window, oriel, entrance, vestibule, or balcony 10 feet or less in width may project not more than three feet into any minimum front or rear setback (§59-B-3.2).

Other exempted projections into setbacks. County law also provides exemptions for cornices, eaves, outside stairways, chimneys, air conditioners, and heat pumps projecting into a minimum setback. The code provides that cornices and eaves may project 2 ½ feet over any court or yard, but the projection cannot be less than 2 feet from the vertical plane of a lot line. Ornamental features, such as sills, leaders, and belt courses, may not project more than six inches over a court or yard (§59-B-3.3).

The law provides that fire escapes may project not more than five feet over any minimum setback, while outside stairways may project not more than five feet over a minimum rear setback only. Chimneys in any one-family residential zone may project not more than 24 inches into any minimum front, rear, or side setback; but chimneys used as walls may not project into any minimum setback. Air conditioners and heat pumps may project not more than five feet into any minimum front or rear yard (§59-B-3.3). An accessibility improvement is also not subject to setback, or lot coverage limitations if the size of the accessibility improvement does not exceed the minimum design specifications in the Maryland Accessibility Code and Montgomery County Building Code (§59-B-7.1).

C. Administrative Structure for Residential Infill Construction in the Montgomery County Code

The chapters in the Montgomery County Code that address zoning, land use regulation, and permitting activities, create a system of government officials and citizen boards who are charged with administering, permitting, and enforcing development activities, including residential infill construction.

1. Administrative Authority

Pertinent to residential infill construction, County law provides administrative authority to the Department of Permitting Services, the Historic Preservation Commission, and the Board of Appeals. County law also provides certain administrative authority for development and construction to the Maryland-National Capital Park and Planning Commission (M-NCPPC). The administrative authority provided to M-NCPPC, such as managing the subdivision and site plan approval process, is not included within the scope of this review.

Department of Permitting Services. The Department of Permitting Services (DPS) is established in Chapter 2, Article III, Division 7B of County Code. Except for where specific functions are assigned to another department or agency, the law assigns DPS responsibility for:

- Administering, interpreting and enforcing zoning law and other land use laws and regulations;
- Administering, interpreting, and enforcing construction codes, and laws and regulations governing sediment control, stormwater management, floodplain management, special protection areas, and pond and excavation safety;
- Administering and enforcing agricultural preservation and historic resources laws and regulations; and
- Issuing building, electrical stormwater discharge, and on-site water supply and sewage disposal permits. (§2-42B)

Other chapters in the County Code establish specific authority within DPS that pertain to residential infill construction projects. Chapter 8 establishes the authority of the Director of DPS to enforce and administer the County's Building Code, including the authority to:

- Issue building and demolition permits;
- Ensure compliance with permit conditions and requirements;
- Conduct required inspections;
- Recommend written regulations for the administration of the provisions of the Chapter, including a schedule of fees;
- Issue a stop work order; and
- Issue a Notice of Violation. (§§8-12, 8-13, 8-17, 8-20 to 8-22)

Chapter 19 establishes the authority of DPS to issue sediment control permits, ensure compliance with permit conditions, conduct required inspections, and issue notices of violation or stop work orders (§§19-2, 19-9, 19-12). Chapter 24A establishes the authority of DPS to issue Historic Area Work Permits (§24A-8) and Chapter 49 authorizes DPS to issue right-of-way permits (§49-18).

Chapter 59 requires DPS to enforce zoning laws through its issuance of building permits, stating that DPS may only issue building permits for proposed work that conforms to the uses and amount of development authorized within Chapter 59 (§59-A-3.1).

Historic Preservation Commission. The Historic Preservation Commission (HPC) is a nine-member citizen board established in Chapter 24A of the County Code. County law authorizes the HPC to:

- Evaluate applications for a Historic Area Work Permit (HAWP), including holding a public meeting to consider the application and make a public decision on the application; and
- Instruct the Director of DPS to issue or deny a HAWP permit or to require the Director to issue the permit with reasonable conditions necessary to assure that work under the permit does not harm the historic resource. (§24A-4 to -8)

Board of Appeals. The Board of Appeals is a five-member citizen board established in Chapter 2 of the County Code. Among other functions, the law authorizes the Board of Appeals to:

- Receive, review and decide requests for variances from the development standards in the Zoning Ordinance; and
- Hear appeals of decisions made by DPS or the HPC. For example, the Board of Appeals can hear an appeal of a DPS decision to issue or deny a building permit. (§§59-A-4.1, 24A-7)

2. Permit Requirements

To comply with the County Code, a property owner proposing a residential infill construction project may be required to obtain several different permits. The number and types of permits established in the County Code that regulate residential infill construction activity will vary, depending on the nature of the infill activity.

For the purposes of this study, this section reviews the different requirements established in County Code related to the application, review, issuance, and compliance with a building, demolition, sediment control, right-of-way, or Historic Area Work Permit.

Building Permits. All residential infill construction projects require a building permit as the County Code requires receipt of a permit before constructing, enlarging, altering, removing, or demolishing a building. The issuance of building permits by DPS must comply with several requirements contained in Chapter 8, Building Code. An application for a permit must include a description of the proposed work, plans and specifications, a plot diagram, and engineering details. By law, the plot diagram must be drawn to scale and include:

- The location and dimensions of the lot upon which the proposed building is to be erected;
- The name and width of abutting streets;
- The location, dimensions, and proposed use of buildings for which a permit is requested; and
- Front and rear yard widths. (§8-24)

There are two sections of law outside of Chapter 8 that require some level of building permit review by the Maryland-National Capital Park and Planning Commission:

• Article 28, Title 8 of the State of Maryland Code requires that "in Montgomery County, all building permit applications shall be referred to the Commission for review and recommendations as to zoning requirements" (§8-119); and

• Chapter 59 of the County Code states that the Director of DPS must not issue a building permit for the construction of a new principal structure or construction that substantially increases the gross floor area of a one-family structure until the application has been submitted to the Commission for review for conformity with this Chapter (§59-A-3.34).

The law assigns DPS limited discretion to attach conditions to or amend a building permit application. Instead, the law requires DPS to act on each application for a permit, by either rejecting or issuing the permit, after reviewing the application's conformance to all applicable laws and regulations. Specifically, the law states that:

"If the application or the plans do not conform to all requirements of this Chapter, the Director must reject the application in writing and specify the reasons for rejecting it. If the proposed work conforms to all the requirements of this chapter and all other applicable laws and regulations, the Director must issue a permit for the work as soon as practicable (§8-25)."

Once issued, the law provides two constraining time limits on a building permit. The Code states that a building permit becomes invalid unless one approved inspection is recorded by DPS within 12 months and a second approved inspection is recorded within 14 months after issuance of the permit. The other factor that would explicitly invalidate a building permit under Chapter 8 is if the authorized work is suspended or abandoned for a period of 6 months (§8-25).

Chapter 8 requires maintaining two complete sets of the approved building plans upon which a building permit was issued, one set kept by DPS and one set kept at the building site. The law requires the set at the building site to be open to inspection by the DPS director or authorized representative at all reasonable times (§8-25).

The Building Code also provides specific requirements that all permit recipients must follow and as well as limitations to the authority granted by permit issuance. These include:

- The issuance of a permit <u>shall not</u> prevent DPS from requiring a correction of errors in plans, errors of construction, or violations of any applicable laws or ordinance;
- DPS <u>shall</u> accept certification by a certified engineer as evidence that the plans and specifications are in compliance with Chapter 8;
- The building or structure must comply with all applicable zoning regulations, and the issuance of a permit by DPS <u>does not</u> affect an otherwise applicable zoning regulation; and
- Before beginning first floor construction, DPS must receive from the permittee a certified location drawing that shows the actual location of the foundation walls in relation to the property lines and any existing buildings or structures on the property. (§8-26)

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Recent legislation enacted by the County Council on October 17, 2006 (Bill 26-05) will add new building application and permit review requirements to Chapter 8 as of March 1, 2007. Bill 26-05 requires DPS to review plans for stormwater runoff between private properties as part of the building permit review process. To do so, the legislation requires:

- Plot diagrams submitted as part of a building permit application to include the location of any existing or proposed drainage structure and the general flow of water to and from each structure; and
- Building plans submitted to DPS as part of the permit application package provide
 for the safe conveyance or control of any increased water runoff that would drain
 onto any adjacent or nearby property before DPS can issue a building permit.
 This requirement applies to a one- or two-family residential building on a lot
 smaller than 15,000 square feet, or an addition to a one- or two-family residential
 building that would increase the building lot coverage by more than 400 square
 feet.

Demolition Permits. The issuance of a demolition permit also has specific requirements set forth in Chapter 8. As noted above, the Code requires application for and receipt of a permit prior to constructing, enlarging, altering, removing, or demolishing a building (§8-24).

Chapter 8 defines demolish as "to tear down or destroy an entire building or structure, or all of a building or structure except a single wall or facade." The law requires that before DPS can issue a demolition permit, the applicant must provide a written release from each applicable public utility stating that all service connections have been safely disconnected and sealed (§8-27).

Each applicant for a demolition permit must also file a performance bond or surety equal to the cost of the demolition. The law requires this bond to "assure the safe and expedient demolition or removal of the building or structure and clearing of the site" (§8-27).

Chapter 8 includes four other conditions associated with the issuance of a demolition permit that requires permit recipients to:

- Exterminate any rodents or other pests before demolishing the building;
- Clear all construction and demolition debris after the demolition;
- Restore the established grade of the surrounding land, unless a sediment control permit is otherwise required; and
- Keep the site free from any unsafe condition at all times. (§8-27)

Sediment Control Permits. Chapter 19 governs issuance of a sediment control permit. Chapter 19 requires obtaining a sediment control permit for all "land-disturbing activity" associated with all new residential construction and for all additions to existing homes that involve 100 or more cubic yards of earth movement or disturb 5,000 or more square feet of surface area. The law requires that DPS issue any required sediment control permit before issuing a building permit (§§19-2, 8-26).

The law provides that an application for a sediment control permit must include an erosion and sediment control plan prepared by a certified engineer or other person qualified and approved by DPS. However, DPS can waive the sediment control plan requirement if DPS finds that the information on the permit application is sufficient to show the proposed work will conform to sediment control requirements (§19-4).

County regulations adopted to implement Chapter 19 provide criteria for DPS to waive the engineered sediment control plan requirement. The Department can waive the requirement if the activity complies with the limitations of the "Small Land Disturbing Activities Agreement." Those limitations are as follows for residential property:

- The property must not be disturbed more than 30,000 square feet for residential development at any one time;
- Proposed impervious surfaces on the property must not total greater than 15,000 square feet;
- Volume of earth movement on the property must be less than 1,000 cubic yards; and
- Not more than 3 contiguous lots or parcels must be approved for development at one time under one ownership. (COMCOR 19.10.02)

Chapter 19 also allows DPS to attach any conditions to a sediment control permit that are reasonably necessary to prevent sedimentation to public or private property or any sewer, storm drain, or watercourse; to prevent the operation from being conducted in a manner hazardous to life or property, or in a manner likely to create a nuisance (§19-7). The issuance of a sediment control permit on a tract of land at least 40,000 square feet or for land disturbance activity that would threaten the viability of a champion tree requires Forest Conservation review and approval from M-NCPPC (§22A-4).

Historic Area Work Permits. Chapter 24A governs issuance of a Historic Area Work Permit (HAWP), required by law before any construction, demolition, land disturbance, or alteration to exterior features of any historic site or historic resource located within any historic district (§24A-6).

For permit issuance, the law provides that DPS receive applications for a HAWP and issue the permit if approved by the Historic Preservation Commission (HPC). Chapter 24A requires the HPC to review the permit application, hold a public meeting to consider the application, and instruct DPS to approve or deny the permit application (§24A-7).

The Code also provides specific criteria for the HPC to use when determining whether to approve a HAWP; Chapter 24A, Section 8 provides that the HPC shall approve a permit request if:

- The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or
- The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district; or

- The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site resource in a manner compatible with the historical, archeological, architectural or cultural value of the historic site, resource, or district; or
- The proposal is necessary in order that unsafe conditions or health hazards be remedied; or
- The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or
- In balancing the interests of the public in preserving the historic site or resource with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

Chapter 24A also allows the HPC to instruct DPS to issue a permit subject to specific conditions that the HPC finds necessary to insure conformity with the purposes and requirements of the Chapter (§24A-8).

Right-of-Way Permits. Chapter 49 of the County Code governs issuance of right-of-way permits. The law provides that a person may only place any structure, fence, post, or other object (other than mail or newspaper boxes) in the public right-of-way under written agreement with DPS (§49-17). The law also authorizes DPS to issue permits for reconstruction or repairing a sidewalk; and for installing, repairing, locating, or replacing underground utilities under a sidewalk (§49-18).

3. Procedural Requirements – Public Notice

Local jurisdictions often include certain procedural requirements for public notice into the law in order to obtain reasonable levels of consistency, transparency, and fairness into governmental actions. The Montgomery County Code includes several procedural requirements that apply to residential infill construction projects, primarily related to the review and issuance of permits.

Building permits. Chapter 8 establishes procedures for public notice for recently issued residential building permits. If DPS issues a building permit for residential new construction or for an addition that affects the footprint or height of an existing home, the Code requires the permit holder to post a sign on the property. The sign must describe the proposed construction and specify the 30-day time limit to appeal the issuance of the permit to the Board of Appeals. The specific design, content, size, and location requirements for the sign are established by County Regulation (§8-25A).

The permit holder must post the sign within three days after DPS releases the permit and the sign must remain up for 30 days after the permit release date (§8-25A). County Regulation defines "release date" as the day that a building permit is paid for and received by the applicant (COMCOR, 08.25A.01).

The law also states that if a permit holder does not post the required sign within three days, the building permit is automatically suspended until the sign is posted. If this occurs, the 30-day time limit to appeal the permit does not begin until the sign is posted. If a permit holder begins work under the permit without having posted the sign, DPS must immediately issue a stop work order (§8-25A).

Demolition permits. Chapter 8 also establishes specific public notice requirements for demolition permits. At least 10 days prior to issuance of a demolition permit, DPS must mail a written notice to the owner of each adjacent and confronting lot that identifies the building to be removed and specifies the process for appealing issuance of the permit. The Code requires that the permit applicant provide DPS with the names and addresses of the lot owners (§8-27).

The law includes an additional public notice requirement (publication of the address on DPS website) for buildings more than 25 years old; however, this requirement does not apply to single-family dwellings (§8-27).

Historic Area Work Permits. Chapter 24A includes public notice procedural requirements related to the Historic Preservation Commission's public meeting to consider a permit application. The law requires that the HPC notify any citizen or organization that the Commission reasonably determines has an interest in the application of the time and place of the public meeting (§24A-7). County Regulation further defines the public notice procedures by requiring that approximately 14 days prior to a public meeting on a HAWP application:

- The Commission must publish a notice of the meeting in a newspaper of general circulation within the County; and
- The Commission shall mail notice of the meeting to the applicant, any existing Local Advisory Panel, adjoining and confronting property owners, and other interested parties.

4. Compliance and Enforcement Tools

Establishing a permitting process to administer land use and development regulations requires a system of inspection and enforcement to assure that permitted work complies with the approved plans and conditions. For residential infill construction activities, inspection and enforcement are the responsibility of the Department of Permitting Services.

Building/Demolition permits. Chapter 8, Section 17 provides DPS with both general and mandatory inspection authority related to any permit issued under the Chapter, including:

 DPS may conduct inspections from time to time during completion of work for which DPS has issued a permit, and must maintain a record of all such inspections and any violations found;

- The Director of DPS may accept reports of approved inspection services which satisfy the Director's requirements as to qualifications and reliability; and
- DPS must conduct a final inspection after completion of a building or structure and before issuance of a certificate of use and occupancy.

Chapter 8 also provides DPS with general enforcement authority related to requirements of Chapter 8 and permit conditions. Specifically:

- DPS may issue a Stop Work Order if it determines that work on a building or structure is in violation of Chapter 8 requirements or the conditions of a permit;
- DPS shall issue a Notice of Violation to the person responsible for any building activity in violation of federal, State, or County law or in violation of an approved permit condition. The notice shall include a set time period within which the violation must be discontinued or corrected:
- DPS may subject a responsible party to punishment for a Class A violation if the violation is not discontinued or corrected within the time frame established by the Notice of Violation; and
- DPS may revoke any permit or approval issued under Chapter 8 for any violation of the conditions upon which the permit was issued. (§§8-20, 8-21, 8-22)

Sediment control permits. Chapter 19 assigns DPS both inspection and enforcement authority for sediment control permits. The law authorizes DPS to conduct sediment control inspections at any time, and requires the permit holder to notify DPS 48 hours before commencing any land disturbing activity and to hold a pre-construction meeting with DPS. If the permit requires an engineered erosion and sediment control plan, DPS must inspect the property at a minimum of five different stages of the project. If no plan is required, the only mandatory inspection is the final inspection upon completion of the project (§§19-12, 19-14).

Chapter 19 also provides DPS with enforcement authority related to violations of Chapter 19 or sediment control permits conditions. These enforcement authorities include:

- Revoking or suspending a sediment control permit;
- Issuing a Stop Work Order;
- Issuing a Notice of Violation that states the nature of the violation, required corrective action, and a time-frame for compliance. (§§19-9, 19-12)

Historic Area Work Permits. Chapter 24A does not include specific inspection requirements; however it requires that DPS enforce the provisions of the Chapter. Additionally, the law states that persons who violate a provision or requirement of Chapter 24A are subject to punishment for a Class A violation (§§24A-7, 24A-11).

D. Administrative Remedies - Variance and Appeal Procedures

As part of a system of land-use regulation, local jurisdictions often establish systems to hear and decide requests for relief from the strict application of development standards and to appeal government agency decisions made under the land-use framework. As noted on Page 13, the County Code authorizes the Board of Appeals to hear and decide on requests for variances from development standards, and administrative appeals of decisions of DPS and the HPC. Additionally, the law allows that a party may further appeal any decision of the Board of Appeals to the Circuit Court.

Variance Procedures. The Zoning Ordinance includes specific procedures for filing a petition for a variance. An applicant can file a petition for a variance at any time, regardless of whether a building permit application has been rejected by DPS, and the law prescribes the specific information the petition for a variance must include (§59-A-4.23).

Additionally, the law provides that within seven days after the filing of a variance, the Board of Appeals must forward a complete copy of the filing to the Planning Board and must forward notice of the filing to DPS, the owners of properties contiguous to the applicant's property, the owners of properties opposite the applicant's property measured at right angles to the intervening street(s), and any local citizens association (§59-A-4.46). The applicant must also post a sign on the property within three days after filing for a variance that specifies the requested variance and the assigned Board of Appeals case number.

The Zoning Ordinance also provides specific criteria for the Board of Appeals to use when making a determination on a request for a variance (§59-G-3.1). A variance granted by the Board of Appeals is valid for a period of 12 months, during which time a building permit must be obtained and the erection or alteration of the building started (§59-A-4.53).

Administrative Appeal Procedures. The County Code includes requirements related to who can lawfully file an administrative appeal, the conditions that can trigger an appeal, the timeframe to file an appeal, and notice of filing for the appeal.

Chapter 8 provides that any person aggrieved by a DPS decision to issue, deny, renew, or revoke a building or demolition permit or any other decision or order of DPS under Chapter 8, may file an appeal within 30 days of the action. The law states that after notice and hearing, the Board of Appeals may then affirm, modify, or reverse DPS' order or decision in question (§8-23). The law does not state whether the issuance of a stop work order or a permit revision during the 30-day appeal period pauses or re-starts the appeal period.

Similarly, Chapter 24A provides that within 30 days after the Historic Preservation Commission makes a public decision on an application, an aggrieved party may appeal the Commission's decision to the Board of Appeals. The Board can also affirm, modify, or reverse the Commission's decision (§24A-7).

The Zoning Ordinance also provides that an appeal can be made to the Board by any party aggrieved by the issuance or denial of a building permit or other administrative decision by DPS based upon the requirements of the Zoning Ordinance (§§59-A-4.3).

As with a variance request, the Zoning Ordinance provides that within seven days after the filing of a administrative appeal, the Board of Appeals must forward a complete copy of the filing to the Planning Board and must forward notice of the filing to DPS, the owners of properties contiguous to the applicant's property, the owners of properties opposite the applicant's property measured at right angles to the intervening street(s), and any local citizens association (§59-A-4.46).

The Board of Appeal Rules of Procedure – enacted by the Board, approved by the County Council, and published as Appendix J in the County Code – also allow any party to file a motion to dismiss an administrative appeal on the grounds that there is "no genuine issue of material fact to be resolved and that dismissal or other appropriate relief should be rendered as a matter of law" (County Code Appendix J, 3.2.2).

Chapter III: Department of Permitting Services' Management Practices Related to Residential Infill Construction

As part of this study, the Council asked OLO to examine how DPS carries out its management responsibilities related to residential infill construction. As explained in Chapter II, the County Code assigns DPS responsibilities for both zoning enforcement and permit issuance. This chapter describes DPS' policies, interpretations, practices, and procedures for each of these responsibilities. The chapter is organized as follows:

- **Part A,** provides an overview of DPS' procedures for administering permits typically associated with residential infill construction activities;
- Part B, outlines DPS' practices related to zoning enforcement, including Zoning Ordinance interpretations;
- Part C, reviews DPS' procedures and practices for permit inspections and enforcement;
- Part D, describes DPS' practices for making permit and other information available to the general public; and
- Part E, reviews the procedures for filing an administrative appeal of a DPS action.

A. DPS Permit Administration Practices

As explained earlier, a property owner who undertakes a residential infill construction project may be required to obtain one or more permits. All residential infill construction projects require a building permit. A project may also require a right-of-way permit, a sediment control permit, a demolition permit, and/or a Historic Area Work Permit. This section describes DPS' practices for administering these permit processes.

1. Right-of-Way Permit

When an applicant applies for a demolition permit or a building permit, DPS staff consults with the applicant to determine whether the law also requires a right-of-way permit for the applicant's proposed project. DPS requires a right-of-way permit for projects that:

- Propose to create a temporary construction entrance for the property;
- Place a crane, construction fence, or dumpster within the public right-of-way during construction; or
- Propose any other type of work within the public right-of-way (e.g. sidewalks, storm drains, etc.).

If it is determined that a right-of-way permit is needed, the applicant completes an *Application for Work in Public Right-of-way Permit* (Appendix A, ©1) form. The application lists standard "Conditions of the Permit" that apply to any right-of-way permit issued by DPS. These conditions include that:

- A permit from the State of Maryland is required for any removal or planting of trees on improved public rights-of-way;
- Any damage done to the existing right-of-way must be repaired before the release of the permit; and
- Proper precautions must be taken to keep existing roadways free of mud, debris, and other obstructions.

2. Sediment Control Permit

When an applicant applies for a demolition permit or a building permit, DPS staff consults with the applicant to determine whether the law also requires a sediment control permit for the applicant's proposed project. DPS requires application for a sediment control permit for any proposed demolition, and any proposed new construction, or a proposed addition to an existing home that involves 100 or more cubic yards of earth movement or disturbs 5,000 or more square feet of surface area.

A copy of DPS' Application for Sediment Control Permit form is included in the Appendix (Appendix B, ©3). The application lists standard "Conditions of Approval" that apply to any sediment control permit issued by DPS. These conditions include that all sediment control work must comply with, written requirements, the applicant's approved sediment control plan, and/or all violation notices which may be issued by DPS.

The type of sediment control permit generally issued for residential infill construction projects is a Small Land Disturbance Sediment Control Permit. A need for an engineered sediment control plan as part of the Small Land Disturbance Sediment Control Permit is determined at the discretion of the DPS plan reviewer.

3. Demolition Permit

Many residential infill construction projects involve tearing down an existing home and rebuilding a new home in its place. As described in Chapter II, the County Code requires a property owner or an authorized agent of the property owner to obtain a permit to demolish an existing home. The Code defines demolish as "to tear down or destroy an entire building or structure, or all of a building or structure except a single wall or facade" (§8-27). This section describes DPS' procedures and practices related to issuing permits and regulating demolitions of buildings.

Permit application and review. DPS publishes a document entitled *Demolition Submittal Guidelines* (Appendix C, ©5) that describes a 14-step demolition process; 11 of these 14 steps must be completed prior to issuance of a permit. DPS uses a single

application form, *Application for Residential Building Permit* (Appendix D, ©9), to capture information for both construction and demolition permits. The form includes checkboxes to indicate which permit(s) the applicant would like to apply for. DPS staff report that applicants who plan to tear down a home and rebuild on the same site often apply for demolition and construction permits at the same time.

Public notice of proposed demolition. As part of the demolition permit application, the applicant must provide DPS with the names and addresses of adjacent and confronting property owners. DPS sends written notice of the proposed demolition by both regular and registered mail to each of the property owners at least 10 days before DPS issues the demolition permit. The notice identifies the home to be demolished, specifies DPS' process for issuing the permit, and specifies the time limit to appeal the issuance of the permit to the Board of Appeals. Along with the required notice, DPS also provides the neighboring property owners a copy of DPS' *Demolition in Your Residential Neighborhood* handout (Appendix E, ©11) that provides information and resources on the demolition process.

If an adjacent and confronting lot is used as a rental property, DPS sends the notice to the owner of the dwelling and not the current occupant. As of November 2006, DPS staff report that they now use property tax records to verify the accuracy and completeness of the addresses and names submitted by the applicant.

Demolition bond. An applicant must obtain and submit to DPS a bond in the same amount as the estimated cost of the demolition (minimum \$400). The four types of bonds an applicant can obtain are:

- A Performance Bond executed by an insurance company;
- A Letter of Credit executed by a bank;
- A Cash Bond in the form of cash, check or money orders; or
- A Certificate of Guarantee obtainable by members of the Maryland Development of Guarantee Group.

If a permit holder fails to complete the demolition or fails to meet other permit requirements (e.g. site clean-up requirements), the law allows DPS to use the bond to fund completion of those activities.

Disconnect utilities. To ensure that all utility service connections and equipment are safely disconnected and sealed before demolition, the applicant must obtain a written release from each applicable utility company stating that the disconnection is complete. The applicant must provide copies of these written releases to DPS before DPS will issue the demolition permit.

Other requirements. Depending on the characteristics of the site, the law may require an applicant to submit other information or documentation to DPS before the issuance of a demolition permit:

- For all sites, an applicant must submit a signed affidavit from a Maryland Department of Agriculture-licensed company stating that the property has been inspected and is free of any rodents or other pests;
- If applicable, an applicant must cap any wells located on the property and submit a well completion report;
- If applicable, an applicant must remove any asbestos or other hazardous material in accordance with Maryland Department of the Environment regulations; and
- If the building is listed on the Master Plan for Historic Preservation or located in a Master Plan historic district, a Historic Area Work Permit is required to move, demolish, or alter the exterior.

Issue permit. After DPS has reviewed the documentation to verify the applicant has complied with the law's requirements, DPS will issue the demolition permit. DPS uses its permitting database to track the information received and verify all necessary steps have been completed prior to issuing the permit. DPS designed the database to track the status of utility disconnection, the rodent/pest extermination, the bond posting, the date the written notices were mailed to adjacent property owners, and the issuance of the sediment control permit.

As with all permits issued by DPS, the issuance of a demolition permit may be appealed to the Board of Appeals within 30 days of the permits issuance. However, no provision in the law prevents the demolition from occurring even if an appeal has been filed.

A demolition permit is valid for one year, during which the demolition must be completed, unless the applicant requests a permit extension. DPS reports that most demolitions are completed within one month after a permit is issued.

4. Building Permit

Residential infill construction involves both building new homes after demolishing an existing home or constructing major additions to existing homes. As described in Chapter II, the County Code includes specific permitting and other requirements related to the residential home construction. This section describes DPS' procedures and practices related to the issuance of permits for construction of new homes and additions.

Sequencing with other required permits. When an applicant begins the application process for a building permit, DPS staff first determine if a sediment control permit or a right-of-way permit is required for the site. If so, those permits must be approved before DPS can issue the building permit. For new construction, DPS always requires both sediment control and right-of-way permits.

Building permit application. To apply for a building permit in Montgomery County, an applicant must submit a completed permit application package, containing all required supporting documentation. DPS utilizes a single application form, entitled *Application for Residential Building Permit* (Appendix D, ©9), for both construction and demolition permits. The form includes checkboxes to indicate the permit(s) the applicant is applying for. The form also asks the applicant to indicate whether the application is for new construction, an addition, or an alteration.

For new single-family dwellings, DPS requires the applicant to submit two complete sets of bound and legible prints containing floor plans, construction details, general notes and technical specifications. A list of minimum plan submittal requirements is included in DPS' *Plan Submittal Guideline – New attached and detached single-family dwellings* (Appendix F, ©12). The plans must be drawn to scale and dimensioned to show the scope of the proposed work. DPS review staff have the option of requiring any structural aspects of the proposal to be signed and sealed by the responsible Maryland Licensed Registered Architect or Professional Engineer. DPS also requires applicants to submit five site plans depicting the proposed location of the dwelling on the lot.

For additions or alterations, DPS requires the applicant to submit two set of plans with detailed floor plan information, general notes, and technical specifications. A list of minimum plan submittal requirements is included in DPS' *Plan Submittal Guidelines* – *Additions/Alterations* (Appendix G, ©14). The submission for additions or alterations must include both architectural and structural plans for the existing building as well as the proposed addition/alteration. DPS review staff have the option of requiring any structural aspects of the proposal to be signed and sealed by the responsible Maryland Licensed Registered Architect or Professional Engineer.

When applicants submit a building permit application, DPS intake staff conduct an initial review to assure it includes all required documents and information. If not, DPS staff immediately return the application and inform the applicant what other materials are needed before DPS can accept the application and began its review process.

DPS staff report that prior to submission of a building permit application, applicants will sometimes request to meet with DPS staff to discuss an upcoming submission and receive feedback on whether the plans generally seem to meet County requirements. DPS staff report that "pre-application" meetings often lead to more complete permit applications with less errors once they are formally submitted.

Review of the permit application. After an applicant submits an application for a residential building permit, the application undergoes a detailed review process before permit issuance or denial. As part of the initial screening process, DPS conducts a well and septic review if applicable. After the initial screening is completed, all permit applications receive a zoning review followed by a building plan review.

Zoning review. After accepting a permit application, DPS reviews the submitted plans for compliance with the applicable zoning and development standards for that property. As part of the zoning review, the assigned DPS plan reviewer fills out a standardized *Zoning Worksheet* (Appendix H, ©16). The worksheet includes space to enter the underlying zone for the property as well as when the lot was recorded to determine which development standards apply on the lot. DPS staff input data directly from the submitted building and site plans onto the worksheet to review against the applicable zoning standards for height, stories, setbacks, lot coverage, and lot width. DPS staff include the completed *Zoning Worksheet* as part of the official file for each building permit application.

Per the guidelines in the 2006 Memorandum of Understanding (MOU) between DPS and the Montgomery County Planning Board, DPS forwards all building permit applications for new construction to M-NCPPC to verify that all conditions of a site plan (if applicable) have been met. After this verification, M-NCPPC issues its "approval" directly into DPS' permitting database. DPS staff report that they also used to send permit applications for additions and alterations to M-NCPPC, but agreed to change this practice upon request from M-NCPPC based on the high volume of addition/alteration permits.

If DPS staff find that a building permit application does not comply with zoning standards, DPS will inform the applicant of the specific aspects of the proposal that are not in compliance. At that point the applicant can re-submit the proposal with the necessary changes to comply with the zoning standards. If the applicant does not want to make any changes, DPS denies the application for a building permit in writing and informs the applicant that the structure as proposed would require a zoning variance from the Board of Appeals before DPS could issue the building permit.

Building plan review. DPS' plan review process consists of reviewing the construction documents and supporting information submitted as part of the permit application. The plan review process also includes necessary reviews and approvals from other agencies, such as the Washington Suburban Sanitary Commission (WSSC).

For both new construction and addition/alteration permit applications, DPS reviews the submitted architectural and structural plans for compliance with applicable building code standards. DPS' architectural and structural review is an <u>engineering</u> review of the proposed structure and not a design review.

For new construction, Montgomery County Regulations adopt the 2003 International Residential Code, with local amendments, as the building standards for Montgomery County. For additions or alterations to a residence at least one year old, the Montgomery County Regulations allow for those buildings to comply with the construction standards of the Maryland Building Rehabilitation Code (COMCOR 08.00.02).

Issuance of the permit. After a building permit is issued by DPS, the actual permit must be posted in front of the site or house and be visible from the main road or entrance. Additionally, a sign (provided by DPS) noticing the issuance of the building permit must be posted on the property within 3 calendar days after the release date of the permit and must remain posted for 30 calendar days. DPS will not perform any building inspections before verifying the sign posting.

As with all permits issued by DPS, the law provides that an aggrieved party may appeal the issuance of a building permit to the Board of Appeals within 30 days of the permits release. If the permit holder does not post the required sign on the property within three days of the permit release, the 30-day appeal period does not begin until the sign is posted. DPS staff report that a permit holder may, at their own risk, began construction activities during the 30-day appeal period or even while a permit is under appeal.

5. Historic Areas Work Permits

Public or private properties listed on the Montgomery County Master Plan for Historic Preservation, either as individual historic sites or as properties within a historic district, require the approval of the Montgomery County Historic Preservation Commission (HPC) for any modification or change to the exterior features or alteration to the environmental setting. As noted in Chapter II, Chapter 24A of the County Code provides for protection and regulation of historic areas and outlines the Historic Area Work Permit (HAWP) application and review process. The HPC receives staff support from the Historic Preservation Section of the Maryland-National Capital Park and Planning Commission (M-NCPPC).

Both DPS and the HPC have a role in approving and issuing a Historic Area Work Permit. DPS receives the HAWP application and issues the permit along with any other needed permits, but the HPC approves the type and scope of work done under the Historic Area Work Permit.

Application process. For most types of construction work on a designated historic structure or a structure within a designated historic district, the property owner needs to receive a HAWP as well as the appropriate type of building permit. Applicants must first file an application for a HAWP with DPS, and DPS subsequently forwards the application to the Historic Preservation Commission for review. DPS will not consider or review a building permit application for a structure that requires a HAWP until the HAWP application is decided upon. DPS' permitting database includes data from Park and Planning on historic structures and historic districts that flags properties that would require a HAWP in case a building permit application is submitted without one.

Some of the work for which a HAWP is required includes: constructing additions; removing or enclosing porches; installing siding; permanently removing shutters; and adding, removing or changing architectural features, including size, shape and placement of windows. A HAWP is not required for ordinary maintenance projects, such as painting, minor landscaping, roof repair with duplicate materials, and window repairs (but not window replacement).

The application requirements depend on the nature of the proposed project The HPC publishes a document titled *Instructions for Filing a Historic Area Work Permit Application* (Appendix I, ©17) that summarizes the application and review process and indicates the application information required based on the type of proposed project. The HPC encourages applicants to discuss proposals for major work with M-NCPPC Planning Department staff in advance of filing an application for a HAWP. Once an application is completed, submitted to DPS, and forwarded to HPC, the Commission schedules a meeting to review the application.

Review process. Every HAWP application goes before the HPC at a public meeting, typically held on the second and fourth Wednesdays of each month. The HPC notifies the applicant by mail of the scheduled meeting date, time, and location. The HPC must also send notice of the meeting date to the DPS Director, any adjacent and confronting property owners, and any citizens or organizations that the Commission reasonably believes has an interest in the issuance of the permit.

Some historic districts have Local Advisory Panels (LAPs), which are groups of volunteer citizens which assist the Commission by reviewing HAWP applications prior to the meeting and forwarding comments for the public record.

The Commission must make a public decision on the application no later than 45 days after the application is filed or 15 days after the Commission closed the record on the application, whichever is earlier. If the Commission approves the HAWP application, it forwards the permit approval information to DPS along with any permit conditions and DPS issues the HAWP. The property owner may then submit an application for a building permit. If a building permit is not required for the project, the owner may commence work.

If the Commission denies the HAWP application, applicants are notified in writing why the application was denied. If applicant does not agree with the decision of the Commission, he/she can submit a revised application or appeal the HPC decision to the County Board of Appeals.

B. DPS Zoning Enforcement Practices

As explained in Chapter II, the County Code ties building permit approval to compliance with all applicable standards and regulations, including zoning regulations. The system that DPS has instituted to carry out its zoning administration responsibilities consist of standard zoning review practices and a set of written code interpretations.

1. DPS Code Interpretation Process

To ensure clear and consistent interpretation and implementation of the zoning code by multiple staff in the Department, DPS has instituted a set of written code interpretations. DPS' written interpretations are not legally mandated; instead they are developed at the discretion of the Department and in consultation with the County Attorney's Office.

DPS' Division of Casework Management develops written Code Interpretations/Policies. Several of DPS' interpretations are presented on a standardized form that includes:

- An Interpretation/Policy Number;
- A description of what the interpretation is intended to clarify;
- A statement of how DPS will interpret the issue; and
- Signatures from the DPS Director, appropriate Division Chief, and Assistant County Attorney.

DPS also has Interpretation/Policies that are not presented on the standardized form but consist of one or more pages of diagrams and written text. These do not receive formal Interpretation/Policy numbers or any signatures.

DPS does not have a written procedure for creating written interpretations; however staff report that DPS follows the same general internal process in each case. New code interpretations/policies usually come from staff at various levels of DPS requesting guidance in how a section of the code should be implemented or administered. If DPS management agrees that a written interpretation is the most appropriate option:

- 1. DPS staff develop a draft interpretation/policy.
- 2. DPS management and the Assistant County Attorney assigned to DPS review and approve the draft interpretation.
- 3. DPS staff finalize the interpretation and it is signed by the Chief of the Division of Casework Management, the Assistant County Attorney, and the DPS Director.
- 4. DPS publishes the new interpretation on its website.

DPS staff report that they do not currently have either a formal or informal process to seek any outside comments and/or feedback on a draft before finalizing the code interpretation.

2. DPS Code Interpretations/Policies Relevant to Residential Infill Construction

DPS' website lists 14 different official interpretations. Table 2 lists and briefly summarizes eight DPS' Code Interpretations/Policies that are particularly relevant to residential infill construction. This section also describes each of the selected interpretations in more detail. Appendices J-S contain the full copies of the code interpretations/polices.

TABLE 2: SUMMARY OF SELECTED DPS CODE INTERPRETATIONS/POLICIES

| Title | Summary of Interpretation |
|--|---|
| 1928-30 Interpretation/Policy (ZP0404-1) | States that the language of the 1928 Zoning Ordinance as originally enacted will be the single reference point for determining development standards on lots recorded prior to March 16, 1928. |
| Addition Interpretation/Policy (ZP0204) | Defines the terms "alteration", "addition", and "new construction" for use in reviewing a building permit application related to an existing single family dwelling. |
| Basement/Cellar, How to Determine | Provides a written methodology and formula to determine whether the lowest level of a single-family dwelling qualifies as a basement or a cellar. |
| Bay Windows Interpretation/Policy (ZP0927) | Provides criteria to determine whether a projection from a building qualifies as a bay window or oriel. |
| Building Across Lot Lines (ZP0404-4) | States that when a property consists of two or more lots that are referenced in the County tax records under one tax identification number and are improved with a single-family dwelling, proposed additions will be permitted to cross internal lot lines. Proposed new construction would need to meet County subdivision requirements. |
| Building Height, How to Measure | Provides separate diagrams with text describing how to measure building height in: 1) the R-60 and R-90 zones, measuring to the highest point of roof; 2) the R-60 and R-90 zones, measuring to the mean height between the eaves and ridge of roof; and 3) All zones except R-60 and R-90 using average front elevation or using street grade elevation. |
| Established Building Line (ZP0404-2) | Specifies when calculation of the established building line is required and the method for calculating the established building line. Includes a listing of the specific lot or building types that are excluded from the established building line calculation. |
| Corner Lots, Yard Requirements (ZP0404-3) | Provides criteria for determining the applicable front, side, and rear yard setback requirements for existing or proposed single-family dwellings located on corner lots. |

Source: DPS, 2006

1928-30 Interpretation/Policy (ZP0404-1) This interpretation/policy addresses the provision of the Zoning Ordinance (§59-B-5) that allows lots recorded prior to March 16, 1928 to meet the development standards in the 1928 Zoning Ordinance instead of current development standards.

As noted in Chapter II, the Montgomery County Board of Commissioners first approved a Zoning Ordinance and then attempted to repeal and reenact the Zoning Ordinance in 1930. The public record indicates procedural errors with the adoption process for each ordinance. Both the 1928 and 1930 ordinances included the same basic development standards for residential lots, but each ordinance had different exceptions for lots recorded before the passage of the ordinance as noted below:

- The 1928 Zoning Ordinance included a minimum lot area of 5,000 square feet, a
 minimum lot width of 50 feet, and a minimum side yard setback of seven feet.
 The 1928 ordinance included an exception that lots recorded before the passage of
 the ordinance with a lot width of 40 feet or less could have side yard setbacks of
 five feet.
- The 1930 Zoning Ordinance also included a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, and a minimum side yard setback of seven feet. The 1930 ordinance included an exception that lots recorded before the passage of the ordinance with a lot width between 40 and 50 feet could have side yard setbacks of five feet and exempted those lots from the minimum lot size requirement.

Over time, both the 1928 and 1930 versions of the Zoning Ordinance were used as the "1928 Zoning Ordinance," causing confusion for both DPS and the general public over which ordinance and development standards apply for lots recorded prior to March 1928, particularly for lots smaller than 5,000 square feet. Specifically:

- In 1990, the District Council approved a zoning text amendment (ZTA90002) that in part stated that lots recorded prior to March 16, 1928 must meet the development standards in the 1928 Zoning Ordinance (§59-B-5.1).
- In 1998, a Board of Appeals ruling (Case No. A-4851) stated "the effective 1928 Zoning Ordinance is actually the ordinance adopted in 1930. It superseded the 1928 ordinance, and the intention expressed in the 1930 ordinance was to grandfather lots recorded before zoning was imposed."

As a result, DPS adopted the 1928/30 policy in 2004 at the recommendation of the County Attorney. The 1928/30 Interpretation/Policy states that, for purposes of clarification and consistency, the DPS will use the language of the 1928 Zoning Ordinance as originally enacted as the single reference point for determining development standards on lots recorded prior to March 16, 1928.

Addition Interpretation/Policy (ZP0204). This interpretation/policy defines the terms "alteration", "addition", and "new construction" when applied to proposed changes to existing single-family dwellings. Neither the Zoning Ordinance nor the Building Code define these terms, however the distinctions may impact the type of permit needed, the development standards that apply to a building, and the construction standards that a building must meet. For example, as stated on page x new construction must comply with the *International Residential Code* standards, while additions and renovations must comply with the *Maryland Building Rehabilitation Code*.

¹ The Addition Interpretation/Policy identifies §59-A-5.33, which discusses established building line requirements, as the section of the County Code it is interpreting. DPS staff reports that this is because DPS needed definitions for addition, alteration, and new construction to correctly implement the established building line requirement in the County Code.

The interpretation defines *alteration* as a modification to a building which does not change the footprint or floor area of an existing building. *Addition* is defined as a modification to an existing building that changes the footprint or floor area provided that:

- The construction footprint must not exceed the existing footprint by more than 100%;
- At least 50% of the existing first floor exterior walls, in their entirety and compromising the footprint of the existing building, must remain as exterior walls. To count as a first floor exterior wall, the wall must have its finished floor surface entirely above grade; and
- Any increase in building height is subject to current zoning standards.

The interpretation defines *new construction* as any change to an existing building that exceeds the definition of an alteration or an addition.

Basement/Cellar, How to Determine. This interpretation addresses how to determine whether the lowest level of a single-family dwelling qualifies as a basement or a cellar. Development standards in the R-60 and R-90 zones limit houses to 30 or 35 feet in height (depending on the method of measurement) and a maximum of 2½ stories. According to the Zoning Ordinance, a basement counts as a story but a cellar does not.

This interpretation provides:

- DPS' written methodology for how to conduct a basement/cellar calculation;
- DPS' written formula to use for conducting the basement/cellar calculation; and
- A sample site plan diagram and sample basement/cellar calculation based on the diagram to exemplify the calculation process.

Bay Windows Interpretation/Policy (ZP0927). This interpretation/policy addresses bay windows that are allowed to project into a front or rear setback by the Zoning Ordinance (§59-B-3.2). The interpretation defines what a bay window is, including a description of how one is typically constructed. The interpretation also states if a building has two or more bay windows projecting from any one side (front or back), the bay windows combined may not cover more than 50% of the linear width of that side.

Building Across Lot Lines (ZP0404-4). This interpretation/policy addresses existing single-family dwellings situated on two or more lots and whether proposed additions may cross the internal lot line without requiring a minor subdivision process.

The interpretation states that, if a property consists of two or more lots or parts of lots that are referenced in the Montgomery County tax records under one tax identification number, a proposed addition to a single-family dwelling can cross internal lot lines. This interpretation applies to dwellings that already cross the internal line or those where only the proposed addition will cross the internal lot line.

Building Height, How to Measure. This interpretation/policy describes DPS' method of measuring building height as specified in the Zoning Ordinance for different zone types. DPS revised this interpretation in 2006 based on Council legislation that changed the height limits and height measurement methodology for single-family homes in the R-60 and R-90 zones. The interpretation consists of five different diagrams combined with written text.

DPS' developed the final version of this building height interpretation in conjunction with representatives of the Montgomery County Civic Federation (MCCF) and other residents. After DPS published an interpretation based on the new legislation, MCCF contacted DPS and expressed concerns that some language in the interpretation was confusing and did not appear to meet the entire intent of the legislation. Based on these concerns, DPS revised the interpretation to it current format.

For building height measurement in the R-60 and R-90 zones, the interpretation includes separate diagrams for both methods of measurement allowed by the Zoning Ordinance – from the average elevation of the finished grade to either the highest point of the roof or the mean height between the eaves and ridge of the roof. Written text underneath each diagram includes the methodology for how to calculate the average elevation of the finished grade. The text also states that the average front elevation used will be based on either pre-development grade or finished grade, whichever is lower at any given point along the front wall.

Established Building Line (ZP0404-2). (Appendix P, ©35) This interpretation/policy describes the method DPS uses to calculate established building line (EBL) and addresses when the EBL is utilized as a development standard. This interpretation includes the definition of EBL from the Zoning Ordinance, as well as the provision that the EBL applies in the R-60, R-90, R-150, R-200 zones. The interpretation states that calculation of the EBL is required in the aforementioned zones for:

- All new construction of houses and main buildings; and
- All proposed additions that extend beyond the front of the building.

The interpretation also describes the method for calculating the EBL, including a list of the types of buildings or lots that are specifically excluded from EBL calculations. The interpretation includes one diagram that illustrates a sample EBL calculation, and three additional diagrams that illustrate sample EBL calculations for cul-de-sac lots.

Corner Lot, Yard Requirements (ZP0404-3). This interpretation/policy addresses criteria for determining the applicable front, side, and rear yard setbacks for existing or proposed single-family dwellings located on corner lots. The interpretation states that:

- Corner lots have two front yards and therefore require a front yard setback from each street. In limited circumstances when one adjoining lot is also a corner lot, a reduced side street setback will be applied;
- For new construction, the applicant may choose which interior lot lines will be considered the side or rear lot line, provided that both a side yard and rear yard are created for setback purposes; and
- For an addition to an existing single-family dwelling, setback requirements for side and rear yards have already been determined based upon original construction. The proposed addition must maintain the applicable side or rear setback for the underlying zone.

The interpretation also includes six different diagrams illustrating the corner lot setback requirements for main dwellings that adjoin another corner lot, and for accessory structures.

C. DPS Inspection and Enforcement Practices

A local jurisdiction institutes a permitting process to ensure a property owner plans and constructs a project that complies with its zoning regulations and building codes. The inspection phase of a permitting process allows a building inspector to monitor a project and ensure compliance at key project milestones as the project is built. This section describes the routine inspections DPS conducts for building and other permits associated with residential infill construction projects. It also describes DPS' practices for conducting complaint-based inspections.

1. Routine Building Permit Inspections

DPS requires several different inspections as part of an approved building permit. The County Codes provides DPS with the authority to enforce any violations of a building permit through the use of notices of violation and/or stop work orders and citations.

Required inspections during construction. After approval of a building permit, the permittee receives a *Notice of Required Residential Building Inspections* form (Appendix R, ©47) that DPS attaches to the approved plans. This form, which is available on DPS' website, lists which building inspections must be performed as a condition of that permit's issuance. The types of inspections required may differ for new construction permits and addition/alteration permits.

Permit holders also receive a *Residential Inspection Timing Checklist* (Appendix S, ©49), which provides detailed information on all potential types of building, electrical, and mechanical inspections required as part of the construction approval process. The

checklist, available on DPS' website, also indicates any timing requirements for inspections. The timing requirements include:

- What building construction activities cannot occur until a certain inspection has been approved (e.g. a foundation cannot be poured until approval of a footings inspection); and
- What other types of required inspections (i.e. mechanical, electrical, and plumbing/gas inspections) must be approved before scheduling a certain building inspection.

The checklist also indicates who can conduct each of the inspection types; including whether an inspection can be conducted by a licensed design professional as a 3rd party inspection. Table 3 below describes some of the different building inspections.

TABLE 3: SUMMARY OF SELECTED BUILDING INSPECTIONS

| Type of Building Inspection | Summary of Inspection | 3 rd Party Inspection Allowed |
|-----------------------------------|---|--|
| Sign | Field inspection by DPS after release of a residential building permit to ensure that the required sign is posted on the property within 3 days. DPS will not conduct any other building inspections until approved. | No |
| Footings | Field inspection conducted prior to concrete placement and after any excavation is completed, reinforcement is in place, and installation of sediment control measures. | Yes |
| Foundation/Parging or Backfill | Field inspection conducted after the foundation has been poured, the walls are waterproofed and braced, and the exterior foundation drainage system is installed. | Yes |
| Concrete Slab-on- Ground Floor | Field inspection conducted after installation of the slab base and associated radon gas control system. | Yes |
| Wall Check | Certified house location survey provided to DPS after the foundation has been poured and before first floor framing begins. DPS zoning staff check the survey results showing the actual location of the foundation against the approved location, and redo all zoning standards calculations based on the actual location. | Yes |
| Framing (close-in) | Field inspection conducted after completion of all framing, roof construction, exterior sheeting, rough wiring, etc. but before installation of drywall and insulation. | No |
| Building Height | Field inspection conducted to verify the actual height of the structure as built for homes within R-60, R-90, and Site Plan zones. | Yes |
| Final | Field inspection conducted after the building (or addition) is completed and ready for occupancy. Before requesting DPS' final inspection, any final inspection approvals from other departments or agencies must be obtained. | No |

Source: DPS' Residential Inspection Timing Checklist and Notice of Required Residential Building Inspections

Requesting inspections and re-inspections. Other than the sign inspection, which DPS automatically conducts for every applicable building permit issued, DPS requires the permittee to schedule each inspection when ready. Inspection requests can be made via phone, through DPS' Interactive Voice Response System, or on DPS' web site. DPS reports that inspections requests received before 12:00 noon are scheduled for the following business day, while requests received after 12:00 noon are scheduled to occur within two business days. Inspection requests must include the street address, permit number, and the type of inspection needed. Further, inspections will not be performed without a set of original County approved plans on site.

A scheduled inspection where work is incomplete or that cannot be performed because the inspector cannot gain access to the construction is considered a failed inspection. If an inspection fails, the permittee must request a re-inspection until that inspection receives DPS approval. Once any building inspection fails twice, DPS requires the permittee to pay a re-inspection fee of \$110 prior to requesting any future inspections.

Third party inspections. As noted in Table 3, certain inspections can be conducted by a third party inspector that is a licensed design professional enrolled in the Montgomery County Inspectors Certification Program. Third party inspectors certify that the work conforms to building requirements and is in accordance with the approved plans associated with the building permit. Additionally, all house location surveys prepared for the wall check inspection must be prepared and certified by a Maryland Registered Land Surveyor or a Registered Professional Engineer.

After conducting on-site inspections, a third party inspector completes a *Residential Special Inspection Report/Certification* form (Appendix T, ©56) and provides the report to the permittee or property owner for submission to DPS. DPS staff report that sometimes permit holders do not provide DPS with the third party inspection certification form until scheduling the framing inspection. As a result, some inspections may not be entered into DPS' permit database in a timely fashion.

Field revisions. DPS allows its inspectors to authorize "minor" field revisions to approved plans during an inspection as long as the footprint of the structure does not change. DPS staff report that any alteration to the size or shape of the house or major structural revision would require a formal permit revision. According to DPS staff, the types of field revisions that inspectors generally use their discretion to approve or disapprove include changes to windows or doors. Third party inspectors are not allowed to make field revisions.

2. Other Routine Permit Inspections

DPS also conducts some routine inspections for other types of permits, described below.

• **Demolition Permit Inspections** – The final inspection is the only mandatory DPS inspection for a demolition permit. After the demolition is complete, the permittee contacts DPS to schedule a final inspection. DPS conducts the final

inspection to verify that the demolition occurred and to ensure that the site is free from demolition debris. Once the demolition site passes the final inspection, DPS releases the bond to the applicant. DPS does not require a property owner to complete a final inspection on a demolition permit before beginning new construction on the site. However, DPS staff report that a demolition permit holder will generally schedule a final inspection as soon as possible after the demolition is completed to facilitate return of their bond.

- **Sediment Control Permit Inspections** All sediment control permits require a pre-construction meeting at the site with the permit holder and a DPS representative as well as a final inspection. In between, DPS reports inspecting sediment control permit sites approximately once every two weeks.
- **Right-of-Way Permit Inspections** All right-of-way permits receive a minimum of one routine inspection. The total number of routine inspections depends on the specific purpose of the permit. For example, right-of-way permits related to utility installation will receive more routine inspections than permits related to placing a dumpster in the right-of-way.
- **Historic Area Work Permit Inspections** DPS does not conduct routine inspection specifically related to Historic Area Work Permits. However, these permits also have an associated building permit and received routine building inspections as described previously.

3. Enforcement Actions

The County Code authorizes DPS to take enforcement actions for illegal construction activities or violations of permits issues by DPS. If DPS determines during an inspection that construction is occurring illegally, either without a permit or without the correct permit, DPS will take enforcement action and require the property owner to obtain the correct permit. If the structure is still in the process of construction, DPS will issue a Notice of Violation and a Stop Work Order. If the structure is already constructed, DPS will issue a Notice of Violation.

Additionally, DPS reports that any construction work that is performed before receiving a necessary inspection approval is done at the risk of the permittee. DPS' general practice is not to issue a Notice of Violation or a Stop Work Order if, for example, a permittee begins first floor framing before receiving wall check approval. However, DPS will not schedule the next inspection until the prior required inspection is approved. Additionally, any construction work done at the permittee's risk may have to be altered or torn down based on the outcome of the inspection.

For other types of permit violations (e.g. if an inspector finds a sediment control fence has fallen down), DPS staff either provide verbal notice, a written Notice of Violation, or a written Stop Work Order that requires taking corrective action by a specific deadline.

DPS staff report a general practice, depending on the severity and type of the violation, of initially providing verbal notice to the permit holder to correct the problem within a set period of time and then re-inspecting the site at that time.

4. DPS' Procedures for Complaint-Based Inspections

In addition to routine inspections, DPS also conducts inspections in response to complaints from residents. This section describes DPS processes for complaint-based inspections.

Any County resident is able to file a building or zoning complaint with DPS related to a building permit. According to DPS, zoning complaints typically involve allegations of improper uses or activities in specific zones and violations of building restrictions such as setbacks, lot coverage, and building height. Building complaints generally relate to construction work done without permits, but also include right-of-way and sediment control complaints. DPS maintains a phone line for residents to request inspections of suspected zoning violations and illegal/improper construction activities. Residents may also access a complaint form on DPS' website and submit the form via fax, email or regular mail.

After a complaint is filed, complaints are assigned to zoning/building inspectors who, if they find violations, instruct the violators to take corrective action. This may include seeking a variance from the Board of Appeals or tearing down an illegal structure. If a violation is not corrected within a reasonable time, the inspector will issue a notice of violation or stop work order. If requested, complainants' names are kept confidential by the department.

DPS reports that the staff member investigating the complaint will inform the complainant of developments in the case and its final outcome. DPS aims to begin the investigation within one to three days from the receipt of the complaint, but the entire investigation time may vary according to workload and/or complexity of the complaint.

D. DPS' Public Information Practices

DPS provides access to building permit and other information through publishing information and data on its website and allowing any interested party to view permit information and files at DPS' offices.

DPS' website provides access to real-time information maintained in the DPS Permit System. The status of the permit, the reviews that are planned/in progress/completed, and inspection information is available for each permit. The permit system can be searched by application type and permit number, by zip code, or by address. When searching by address, each permit associated with that address is displayed.

To view permit information or the set of approved plans associated with a permit, any individual can make an appointment with DPS staff or can walk-in to DPS' offices during normal business hours. DPS keeps one set of the final approved plans in microfilm and microfiche format (for all plans before 2001) or electronic format (for all plans beginning in 2001). DPS staff report that the only time a new set of approved plans are not immediately available is when the plans are being converted into electronic format.

After a building permit is issued, DPS sends the complete paper set of approved building plans out for conversion into electronic format at the Montgomery County Detention Center in Clarksburg. DPS maintains the electronic version of the plans as its official set of approved building plans; the paper copies are not kept after the imaging process. DPS staff report that it takes 10 days (on average) for a set of building permit plans to be imaged and loaded into DPS' computer system. As a result, it is possible that an approved set of plans may not be available for viewing at DPS offices at all times during the 30-day appeal period for a building permit.

DPS reports that if an individual request to see permit documents that are out for imaging and cannot wait until imaging is completed due to time constraints, DPS will have the plans returned to DPS offices within 48 hours. If the individual is not under a time constraint to view the plans, DPS reports that it will mail or email copies of the plans to the individual as soon as the imaging is complete.

DPS also adheres to County Regulations that govern response procedures for public information requests for all County Departments. To formally request copies of any documents maintained by DPS, individuals must fill out a *Request for Public Information* form. DPS staff report that the processing time for information requests varies according to workload and the complexity of the request. While most requests are processed in no more than ten workdays; many can be processed on the day of the request. County Regulation (COMCOR Misc. 01) requires DPS (and other Executive Brach departments) to respond to public information requests within 30 days.

DPS staff report that if they are aware that an information request is time sensitive, they attempt to fill that request as soon as practicable. Specifically, DPS moves to the top of its queue any request for information that DPS knows is related to an existing or potential permit appeal.

E. Procedures for Filing an Appeal of a DPS Decision

As explained in Chapter II, the County's governance structure for zoning and development assigns the Board of Appeals (BOA) authority to hear administrative appeals of DPS decisions. An administrative appeal is the formal process by which a resident can disagree with an action or decision of a county agency. An appellant files an application, asserting that an agency acted improperly. The BOA conducts a public hearing in which there is an opportunity for both parties to present evidence and testimony. The agency whose action is questioned is generally represented by an attorney from the County Attorney's office.

If an administrative appeal of DPS' decision to issue or deny a building permit is filed, the party appealing the decision (the Appellant) fills out and submits the required forms, Administrative Appeal Application Forms (Appendix U, ©57) along with a \$200 filing fee to the Board of Appeals. The BOA will not accept an administrative appeal if it is incomplete (i.e. all required information is not provided). If the appeal clearly falls outside of the 30-day appeal period, BOA staff report that the appeal application is generally not refused; but the date of filing becomes an issue for the parties to raise at the hearing.

After accepting the application, BOA staff assign the case a number and schedule a hearing no sooner than 30 days after the filing date. Before the hearing, the appellant may withdraw the appeal at any time. Additionally, the County Attorney that represents DPS may file a request for the BOA to dismiss the case at any time before the hearing.

As long as the appeal is not withdrawn or dismissed, the BOA holds a formal hearing on the appeal. BOA staff report that the hearings can require more than one day, depending upon the complexity of the case. After the hearing(s), the BOA decides whether to grant or deny the appeal. If the Board denies the appeal, the permit is upheld as issued by DPS. If the Board grants the appeal (or part of the appeal), the Board's action may invalidate the permit or require modification of the permit as originally issued.

The Board's decision is not official until the Board issue a written opinion memorializing the decision. The BOA is required by their adopted Rules of Procedure (County Code, Appendix J, 9.1) to issue a written opinion within 45 days after an administrative appeal is decided. However, the BOA's most recent performance data for FY05 indicate an average of 61 days to issue an opinion for administrative appeal cases.² Any decision made by the Board of Appeals is appealable to the Circuit Court for Montgomery County.

² http://www.montgomerycountymd.gov/content/omb/FY07/mmurec/boa.pdf

Chapter IV: FY02-FY07 Data on Residential Infill Construction

This chapter summarizes available data related to residential infill construction in Montgomery County since FY02, from July 1, 2001 to November 15, 2006. At OLO's request, DPS provided OLO with permit, inspection, and enforcement data for properties in the R-60 and R-90 zones that underwent demolition and new construction, or an addition/renovation. The data cover five full fiscal years, FY02 to FY06, plus partial year data for FY07. The chapter also includes Board of Appeals data on administrative appeals of building permits. The chapter is organized as follows:

- **Part A,** provides an overview of residential infill construction permit data since FY02:
- **Part B,** summarizes DPS data on demolition and new construction activities within the R-60 and R-90 zones since FY02;
- Part C, presents DPS data on addition/renovation activities within the R-60 and R-90 zones since FY02; and
- **Part D**, summarizes annual Board of Appeals data since FY02 on administrative appeals of the issuance or denial of building permits.

This chapter presents certain data by zip code to show the locations of various residential infill construction activities. A map showing the location of all zip codes in Montgomery County is available in Appendix V (\bigcirc 62). For this chapter, OLO uses the term "demolition and new construction" to mean the tearing down or demolishing of an existing house and replacing it with a newly constructed house at the same site.

A. Overview of Residential Infill Construction Permit Data

Table 4 shows the annual number of building permits issued by DPS for residential infill construction since FY02 compared with the annual number of building permits issued in all residential zones for single-family detached dwellings (SFD). The data show:

- DPS has issued between 1,800 and 2,000 building permits for residential infill construction in R-60 and R-90 zones each year since FY02, for a total of 10,271 permits; and
- The over 10,000 residential infill construction permits account for 43% of all SFD construction activity since FY02.

TABLE 4: NUMBER OF SINGLE FAMILY DETACHED (SFD) CONSTRUCTION PERMITS IN R-60/R-90 AND ALL OTHER ZONES SINCE FY02

| SFD Permit for: | FY02 | FY03 | FY04 | FY05 | FY06 | FY07* | Total |
|--|----------------|----------------|----------------------|----------------|----------------|--------------|-----------------|
| R-60/R-90 Zone Infill Construction (% of total) | 1,796 (39%) | 1,780 (42%) | 2,075 (42%) | 2,008 (42%) | 1,924 (49%) | 694 (50%) | 10,271 (43%) |
| Construction in All Other Residential Zones (% of total) | 2,775 (61%) | 2,437 (58%) | 2, 8 54 (58%) | 2,776 (58%) | 1,984 (51%) | 683 (50%) | 13,509 (57%) |
| Total SFD Construction Permits Issued | 4,571 | 4,217 | 4,929 | 4,784 | 3,908 | 1,377 | 23,780 |

*FY07 data through November 15, 2006

Source: DPS, December 2006

Table 5 further breaks down the number of permits for residential infill construction activities in the R-60/R-90 zones by type of construction activity. Of the 10,271 permits issued since FY02:

- 8,991 (88%) permits were issued for renovations and additions¹;
- 1,181 (11%) permits were issued for demolition and new construction on the same site; and
- 99 (1%) permits were issued for new construction on vacant lots.

TABLE 5: NUMBER OF RESIDENTIAL INFILL CONSTRUCTION PERMITS IN R-60 AND R-90 ZONES SINCE FY02 BY TYPE OF CONSTRUCTION ACTIVITY

| Type of Residential Infill Construction Activity | FY02 | FY03 | FY04 | FY05 | FY06 | FY07* | Total |
|--|-------|-------|-------|-------|-------|-------|--------|
| Addition and Renovation | 1,572 | 1,604 | 1,862 | 1,704 | 1,646 | 609 | 8,991 |
| Demolition and New Construction on Same Site | 173 | 155 | 205 | 290 | 275 | 83 | 1,181 |
| New Construction on Vacant Lot | 51 | 21 | 8 | 14 | 3 | 2 | 99 |
| Total | 1,796 | 1,780 | 2,075 | 2,008 | 1,924 | 694 | 10,271 |

*FY07 data through November 15, 2006

Source: DPS, December 2006

¹ An addition/renovation project can range from an addition that substantially increases the size of a home to an interior renovation of all or part of a home.

B. Demolitions and New Construction in R-60 and R-90 Zones, FY02-FY07

In addition to the number of demolition and new construction projects shown in Table 5, DPS also provided data on location, inspections, zoning complaints, construction complaints, and enforcement actions related to the demolition and new construction projects.

1. Demolition and New Construction by Location

Table 6 shows the distribution of the nearly 1,200 R-60/R-90 demolition and new construction projects since FY02 by zip code. Exhibit 1 follows by illustrating the distribution using a map of Montgomery County zip codes.

Since FY02, over 75% of the R-60/R-90 demolition and new construction projects have occurred in five zip codes that cover Bethesda (54%), Chevy Chase (12%), and Kensington (9%).

Table 6: Number of Demolition and New Construction Projects in R-60 and R-90 Zones by Zip Code Since FY02*

| Location | Zip Code | R-60/R-90 Demolitions and Rebuilds | Percent of Total |
|---------------|----------|---------------------------------------|---------------------|
| Bethesda | 20817 | 313 | 26% |
| Bethesda | 20814 | 228 | 19% |
| Chevy Chase | 20815 | 140 | 12% |
| Kensington | 20895 | 107 | 9% |
| Bethesda | 20816 | 103 | 9% |
| Silver Spring | 20910 | 43 | 3% |
| Colesville | 20904 | 41 | 3% |
| Cabin John | 20818 | 31 | 3% |
| Aspen Hill | 20906 | 27 | 2% |
| Wheaton | 20902 | 26 | 2% |
| Potomac | 20854 | 25 | 2% |
| All Oth | ier | 97 | 4% |
| Total | | 1,181 | 100% |

^{*}Data is through November 15, 2006 Source: DPS, December 2006

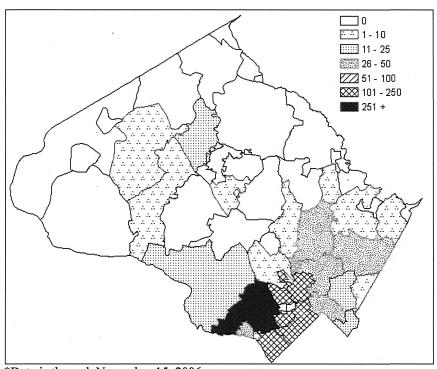


EXHIBIT 1: Number of Demolition and New Construction Projects in R-60 and R-90 Zones By Zip Code Since FY02*

*Data is through November 15, 2006 Source: DPS, December 2006

2. Inspections, Complaints, and Enforcement Actions

As noted in Chapter III, DPS conducts a number of routine inspections during construction of a new home. Additionally, DPS conducts complaint-based inspections related to construction activities. This section provides data on both required building inspections and complaint-based inspections for the 1,182 demolition and new construction projects since FY02.

Building inspections and outcomes. Table 7 displays the annual number of DPS routine building inspections for properties in the R-60 and R-90 zones with new construction following a demolition from FY02 to FY07. The data does not include mechanical inspections, electrical inspections, or any inspection conducted by other departments or agencies. The data indicate:

- A total of 8,735 routine building inspections conducted since FY02; and
- Building inspections (including both initial inspections and re-inspections) exhibit a passing rate of approximately 79% since FY02.

TABLE 7: ANNUAL NUMBER OF ROUTINE BUILDING PERMIT INSPECTIONS FOR R-60/R-90 ZONE DEMOLITION AND NEW CONSTRUCTION PROJECTS IN SINCE FY02

| Demolition and New Construction Projects | FY02 | FY03 | FY04 | FY05 | FY06 | FY07* | Total |
|---|------|------|-------|-------|-------|-------|-------------|
| Number of Routine Building Permit Inspections | 620 | 953 | 1,562 | 2,092 | 2,485 | 1,023 | 8,735 |
| Number of Building Permits Inspected** | 107 | 149 | 218 | 296 | 299 | 99 | |
| Inspection Passing Rate | 87% | 78% | 78% | 84% | 77% | 69% | 79% |

^{*}FY07 data through November 15, 2006

Table 8 further breaks down the outlines the number and passing rate of routine building inspections for demolition and new construction projects by inspection type since FY02. The highest numbers of routine inspections were for framing and final inspections, both of which had the lowest passing rates.

TABLE 8: Number of Routine Building Inspections and Passing Rate by Inspection Type for Demolition and New Construction Projects Since FY02*

| Building Inspection Type | Total Inspections Completed | Percent Passing |
|--|--------------------------------|--------------------|
| Framing or Close-in | 1,658 | 59% |
| Final | 1,401 | 58% |
| Concrete (Slab-on-ground) | 1,292 | 94% |
| Footings | 1,249 | 90% |
| Permit Notification Sign | 1,122 | 74% |
| Foundation/Parging or Backfill | 928 | 91% |
| Wall Check | 928 | 98% |
| Building Height (beginning March 2005) | 146 | 96% |
| Other** | 11 | 73% |
| Total | 8,735 | 79% |

^{*}Data through November 15, 2006

Complaints, Notices of Violation, and Stop Work Orders. As described in Chapter III DPS maintains an intake process for complaints about construction or building activities. DPS categorizes complaints as either a zoning complaint or a construction complaint. Zoning complaints are those related to requirements of the Zoning Ordinance, while construction complaints are those related to the Building Code, stormwater or sediment requirements, right-of-way requirements, or historic preservation requirements.

^{**}A building permit may receive inspections in more than one fiscal year. Source: DPS, December 2006

^{**}Other Includes: Setback, Special Inspection, and Retaining Wall Footing Source: DPS, December 2006

Table 9 shows the number and type of zoning complaints since FY02 associated with demolitions and new construction projects in the R-60 and R-90 zones. It also shows the total number of Notices of Violation or Stop Work Orders issued based on the complaints. The data indicate:

- Of the 380 total zoning complaints received, 68% were verified and 32% were dismissed after an inspection;
- DPS issued a total of 50 Notices of Violation and 13 Stop Work Orders for the 257 verified complaints; and
- Building setback complaints represented 47% of the 380 zoning complaints received since FY02. Setback complaints led to eight of the Stop Work Orders issued.

TABLE 9: NUMBER, TYPE, AND ENFORCEMENT ACTIONS FROM ZONING COMPLAINTS FOR DEMOLITION AND NEW CONSTRUCTION PROJECTS SINCE FY02*

| Town of Towns | Total | Zoning Comp | Enforcement Actions | | |
|--|----------|-------------|---------------------|------------------------|--------------------|
| Type of Zoning Complaint | Received | Verified | Dismissed | Notice of Violation | Stop Work Order |
| Setbacks | 179 | 112 | 67 | 10 | 8 |
| Building Height | 66 | 40 | 26 | 1 | 0 |
| Other Zoning** | 50 | 34 | 16 | 22 | 0 |
| Home Occupation | 40 | 38 | 2 | 13 | 0 |
| Zoning Enforcement | 21 | 20 | 1 | 2 | 4 |
| Development Standards- Residential | 23 | 12 | 11 | 2 | 1 |
| Lot Coverage | 1 | 1 | 0 | 0 | 0 |
| Total | 380 | 257 | 123 | 50 | 13 |
| Percent of Total | 100% | 68% | 32% | | * * * * |

^{*}Data through November 15, 2006.

Source: DPS, December 2006

^{**}Other Zoning includes: Improper Use of Community Property, Landscaping, Screening, Light, Residential-Number of People Residing in a Home, Animals in Residential Zone, Vehicles in Residential Zone, Landscaping, Signs in Right-of-Way, and No Permit for Sign

Table 10 shows DPS data on the number and type of construction complaints since FY02 associated with demolition and new construction projects in the R-60 and R-90 zones. It also shows the number of Notices of Violation or Stop Work Orders issued based on the complaints. The data indicate:

- Of the 738 total construction complaints received, 60% were verified and 40% were dismissed after an inspection;
- DPS issued a total of 31 Notices of Violation and 26 Stop Work Orders for the 440 verified complaints; and
- Sediment control complaints represented 46% of the 738 construction complaints received since FY02. Sediment control complaints also led to 42% of the Notices of Violation and 35% of the Stop Work Orders.

Table 10: Number, Type, and Enforcement Actions From Construction Complaints for Demolition and New Construction Projects Since FY02*

| Type of Construction | Total Co | onstruction C | Enforcement Actions | | |
|---------------------------------------|----------|---------------|---------------------|---------------------|--------------------|
| Complaint | Received | Verified | Dismissed | Notice of Violation | Stop Work Order |
| Sediment Control | 342 | 200 | 142 | 13 | 9 |
| Building | 111 | 72 | 39 | 3 | 4 |
| Drainage | 67 | 30 | 37 | . 1 | 1 |
| No Building Permit | 68 | 53 | 15 | 5 | 8 |
| Right-of-Way Obstruction or Violation | 60 | 29 | 31 | 4 | 2 |
| Other** | 35 | 16 | 19 | 2 | 2 |
| Fence/Retaining Wall | 28 | 22 | 6 | 3 | 0 |
| Flooding | 27 | 18 | 9 | 0 | 0 |
| Total | 738 | 440 | 298 | 31 | 26 |
| Percent of Total | 100% | 60% | 40% | | |

^{*}Data through November 15, 2006.

^{**}Other includes: Swimming Pool, Well and Septic, and Other Building Violation Source: DPS, November 2006

C. Additions and Renovations in R-60 and R-90 Zones, FY02-FY07

In addition to the total number of addition/renovation projects shown in Table 5, DPS also provided data on the location, inspections, zoning complaints, construction complaints, and enforcement actions related to the addition and renovation permits.

1. Additions and Renovations by Location

Table 11 shows the distribution of the nearly 9,000 addition and renovation projects in R-60 and R-90 zones since FY02 by zip code. An addition/renovation project can range from an addition that substantially increases the size of a home to an interior renovation of all or part of a home. Exhibit 2 follows by illustrating the distribution using a map of Montgomery County zip codes.

The data show that since FY02, over 73% of the R-60/R-90 additions and renovations have occurred in eight zip codes that cover Bethesda (28%), Silver Spring (15%), Chevy Chase (13%), Kensington (9%), and Wheaton (8%).

TABLE 11: TOTAL NUMBER OF ADDITIONS AND RENOVATIONS IN R-60 AND R-90 ZONES BY ZIP CODE SINCE FY02*

| Location | Zip Code | R-60/R-90 Additions and Renovations | Percent of Total |
|---------------|----------|--|---------------------|
| Chevy Chase | 20815 | 1,204 | 13% |
| Bethesda | 20817 | 968 | 11% |
| Kensington | 20895 | 814 | 9% |
| Bethesda | 20814 | 785 | 9% |
| Wheaton | 20902 | 740 | 8% |
| Bethesda | 20816 | 733 | 8% |
| Silver Spring | 20901 | 671 | 8% |
| Silver Spring | 20910 | 645 | 7% |
| Takoma Park | 20912 | 442 | 4% |
| Aspen Hill | 20906 | 414 | 4% |
| Rockville | 20853 | 338 | 4% |
| Potomac | 20854 | 249 | 3% |
| All Ot | ther | 752 | 8% |
| Tota | al | 8,991 | 100% |

^{*}Data through November 15, 2006 Source: DPS, December 2006

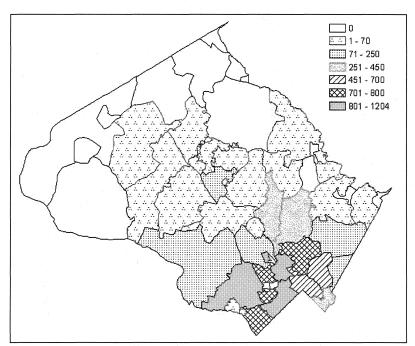


EXHIBIT 2: NUMBER OF ADDITIONS AND RENOVATIONS IN THE R-60 AND R-90 ZONES BY ZIP CODE SINCE FY02*

*Data through November 15, 2006 Source: DPS, December 2006

2. Inspections, Complaints, and Enforcement Actions

As noted in Chapter III, DPS conducts a number of required inspections during the course of renovating a home. Additionally, DPS conducts complaint-based inspections related to construction or building activities. This section provides data on both required building inspections and complaint-based zoning and construction inspections for the 8,991 addition and renovation projects since FY02.

Building inspections and outcomes. Table 12 outlines the annual number of DPS routine building inspections for properties in the R-60 and R-90 zones with an addition or renovation building permit and the passing rates of those inspections. The data does not include mechanical inspections, electrical inspections, or any inspections conducted by other departments or agencies. The data show:

- A total of 43,307 routine building inspections conducted since FY02; and
- Addition/renovation permit building inspections (including both initial inspections and re-inspections) exhibit a passing rate of 72% since FY02.

TABLE 12: ANNUAL NUMBER OF ROUTINE BUILDING PERMIT INSPECTIONS FOR ADDITION AND RENOVATION PROJECTS IN R-60 AND R-90 ZONES SINCE FY02

| Addition/Renov ation Projects | FY02 | FY03 | FY04 | FY05 | FY06 | FY07* | Total |
|---|-------|-------|-------|-------|--------|-------|---------|
| Number of Routine Building Permit Inspections | 4,759 | 6,620 | 8,932 | 9,645 | 10,054 | 3,296 | 43,306 |
| Number of Building Permits Inspected** | 1,610 | 1,738 | 2,103 | 2,030 | 1,826 | 536 | · · · · |
| Inspection Passing Rate | 78% | 73% | 71% | 73% | 69% | 69% | 72% |

^{*}FY07 data through November 15, 2006

Source: DPS, December 2006

Table 13 further breaks down the number and passing rate of routine building inspections for Addition/Renovation projects by inspection type. The highest number of inspections was for framing inspections, which had a 68% passing rate.

TABLE 13: Number of Routine Building Inspections and Passing Rate by Inspection Type for Additions and Renovations Since FY02*

| Building Inspection Type | Total Inspections Completed | Percent Passing |
|--|--------------------------------|--------------------|
| Framing or Close-in | 14,259 | 68% |
| Footings/Piers/Foundation | 8,816 | 81% |
| Final | 8,500 | 63% |
| Permit Notification Sign | 8,174 | 71% |
| Concrete Slab | 2,147 | 87% |
| Parging/Backfilling/Waterproofing | 1,323 | 82% |
| Wall Check | 43 | 100% |
| Other** | 42 | 79% |
| Building Height (beginning March 2005) | 3 | 100% |
| Total | 43,307 | 72% |

^{*}Data through November 15, 2006

^{**}A building permit may receive inspections in more than one fiscal year.

^{**}Other includes: Concrete Poured Wall, Footings/Rebar, Permit Extension Six Months, Retaining Wall Footing, Setback, Special Inspection, and Temp Pending Final Source: DPS, December 2006

Complaints, Notices of Violations, and Stop Work Orders. DPS provided OLO with data for both zoning complaints and construction complaints related to addition and renovation permits.

Table 14 shows the number and type of zoning complaints since FY02 associated with additions and renovations in the R-60 and R-90 zones. It also shows the number of Notices of Violation and Stop Work Orders issued based on the complaints. The data indicate:

- Of the 1,006 total zoning complaints received, 75% were verified and 25% were dismissed after an inspection;
- DPS issued a total of 326 Notices of Violation and 146 Stop Work Orders for the 824 verified complaints; and
- Building setback complaints represented 40% of the zoning complaints received since FY02. Setback complaints led to 48% of the Stop Work Orders issued by DPS.

TABLE 14: NUMBER, TYPE, AND ENFORCEMENT ACTIONS FROM ZONING COMPLAINTS FOR ADDITIONS AND RENOVATIONS SINCE FY02*

| Type of Zoning Complaint | Total Zoning Complaints | | | Enforcement Actions | |
|---|-------------------------|----------|-----------|---------------------|--------------------|
| | Received | Verified | Dismissed | Notice of Violation | Stop Work Order |
| Setbacks | 406 | 315 | 91 | 84 | 71 |
| Home Occupation | 239 | 214 | 25 | 93 | 26 |
| Other** | 88 | 71 | 17 | 33 | 8 |
| Development Standards – Residential | 78 | 67 | 11 | 27 | 18 |
| Number of People Residing in a Home | 71 | 51 | 20 | 27 | 13 |
| Commercial Vehicles in Residential Zone | 62 | 50 | 12 | 31 | 4 |
| Zoning Enforcement | 50 | 45 | 5 | 24 | 4 |
| Lot Coverage | 12 | 11 | 1 | 7 | 2 |
| Total | 1,006 | 824 | 182 | 326 | 146 |
| Percent of Total | 100% | 75% | 25% | | |

^{*}Data through November 15, 2006.

Source: DPS, December 2006

In addition to the data presented in Table 14, DPS reports issuing 23 Notices of Violation and 14 Stop Work Orders since FY02 for addition/renovation zoning violations that did not result from a complaint.

^{*}Other includes: Home Health Practitioners, No permit for signs, Signs in ROW/Other, Swimming Pools, Special Exceptions, Landscaping, U/O Permit Residential, Religious Issues, Child Day Care, Animals in a Residential Zone.

Table 15 shows DPS data on the number and type of construction complaints since FY02 associated with addition and renovation permits in the R-60 and R-90 zones. It also shows the number of Notices of Violation and Stop Work Orders issued based on the complaints. The data indicate:

- Of the 2,139 total construction complaints received, 66% were verified and 34% were dismissed after an inspection;
- DPS issued a total of 564 Notices of Violation and 385 Stop Work Orders for the 1,416 verified complaints; and
- Complaints of construction without a valid building permit represent 42% of the complaints received since FY02, and led to 72% of the Notices of Violation and 75% of the Stop Work Orders issued by DPS.

TABLE 15: NUMBER, TYPE, AND ENFORCEMENT ACTIONS FROM CONSTRUCTION COMPLAINTS FOR ADDITIONS AND RENOVATIONS SINCE FY02*

| The self Complement of | Total Construction Complaints | | | Enforcement Actions | |
|---------------------------------------|-------------------------------|----------|-----------|---------------------|--------------------|
| Type of Construction Complaint | Received | Verified | Dismissed | Notice of Violation | Stop Work Order |
| No Building Permit | 891 | 699 | 192 | 406 | 288 |
| Building | 350 | 259 | 91 | 51 | 33 |
| Sediment Control | 346 | 189 | 157 | 25 | 22 |
| Other** | 182 | 72 | 110 | 35 | 21 |
| Right-of-Way Obstruction or Violation | 114 | 54 | 60 | 10 | 8 |
| Fence/Retaining Wall | 98 | 51 | 47 | 17 | 6 |
| Drainage | 87 | 44 | 43 | 6 | 5 |
| Flooding | 47 | 29 | 18 | 7 | 1 |
| Historic Preservation | 24 | 19 | 5 | 7 | 1 |
| Total | 2,139 | 1,416 | 723 | 564 | 385 |
| Percent of Total | 100% | 66% | 34% | | |

^{*}Data through November 15, 2006.

In addition to the information presented in Table 15, DPS data reports five Notices of Violation issued since FY02 for addition/renovation construction violations that did not result from a complaint

^{**}Other includes: Swimming Pool, Well and Septic, and Other Building Violation Source: DPS, December 2006

D. Administrative Appeals of Building Permits

County law provides that an aggrieved party may appeal DPS' issuance or denial of a building permit to the Board of Appeals with 30 days of the permits release through filing an administrative appeal. The Board of Appeals provided OLO with data on the number and outcome of administrative appeals of building permits from FY02 to the present.

Since FY02, Board of Appeals data show 40 administrative appeals were filed to contest DPS' action on a building permit.² Over one-half of these appeals (21 or 53%) were dismissed by the Board of Appeals or withdrawn by the applicant before the Board held a hearing. Of the 17 appeals that went to a formal hearing, the Board of Appeals:

- Upheld DPS's building permit decision in 8 cases;
- Granted the appeal and overturned DPS's permit decision in 4 cases;
- Partially granted the appeal in 3 cases. In these cases, the Board upheld the issuance of the permit but required one or more specific permit modifications; and
- Continued 2 cases, which have yet to be decided.

Table 16 shows the number of building permit issues and number of appeals filed between FY02 and FY07. The data show the number of appeals filed varies considerably each year.

TABLE 16: ANNUAL NUMBER OF BUILDING PERMITS ADMINISTRATIVE APPEALS SINCE FY02

| Year | Building Permit Appeals Filed |
|-------|----------------------------------|
| FY02 | 7 |
| FY03 | 13 |
| FY04 | 3 |
| FY05 | 2 |
| FY06 | 12 |
| FY07* | 3 |
| Total | 40 |

^{*}FY07 data as of December 29, 2006 Source: DPS, December 2006

² Totals do not include two additional cases that have been filed and are currently pending before the Board.

Chapter V: Feedback from the Non-Governmental Sector

During the course of gathering information for this project, OLO spoke with several non-governmental groups (e.g. building industry representatives, civic group representatives) and/or individual Montgomery County residents to receive information and other input about residential infill construction for this study.

The chapter summarizes and presents some of the views and recurring themes OLO heard from building industry representatives and civic or neighborhood representatives (including residents who are not associated with any particular organization). Each individual or group that met with OLO was asked to discuss their views on:

- The County's legal structure related to residential infill construction; and
- DPS' policies and practices for permitting and regulating residential infill construction.

This chapter presents the direct views and experiences of individuals or general views of the groups/organizations that OLO spoke with; however, it does not assess how widely these views are shared among other individuals or groups who reside or conduct business in Montgomery County.

1. Feedback from Building Industry Representatives

OLO spoke with building industry representatives from the Maryland-National Capital Building Industry Association (MNCBIA) and the Montgomery County branch of the National Association of the Remodeling Industry (NARI). MNCBIA is a regional organization of the building and development industry which advises its members of legislative and regulatory changes and how these changes can affect building practices. NARI represents contractors and property owners who undertake residential infill building construction.

Overall, building industry representatives stated their belief that DPS' policies and procedures for permitting demolition and new construction are generally efficient and effective. Several builders commented that they do business in multiple D.C. metro-area jurisdictions and that Montgomery County had been one of the best jurisdictions to work in primarily because of DPS' competency and efficiency. However, they also stated that many procedural and legislative changes over the past few years have made the building permit process lengthier, more unpredictable, and more expensive.

Laws and DPS zoning interpretations/policies. According to building community representatives, it has required substantial time, effort, and sometimes cost to adjust building practices when new laws are passed related to residential infill construction. In order to better facilitate this transition period in the future, the builders suggested that all zoning text amendments adopted by the Council should:

- Include a clear, quantifiable, and measurable objective and purpose;
- Grandfather in existing and/or approved applications and permits so that plans
 that met the requirements at time of application can proceed under the original
 standards;
- Require a review and/or evaluation period to determine if the amendment is meeting its intended purpose; and
- Establish an effective date that provides enough notice to allow property owners to incorporate the new requirements without a disproportionate economic cost.

The builders also report that they do not always receive notice when DPS puts into effect a change in rules or interpretation. As a result, the building community further believes that DPS should adopt a more formalized process to establish a written code interpretation. The building representatives agreed that a process should include a forum for public input similar to the process used for Executive Regulations. In addition, if DPS changes or revises an existing Interpretation/Policy for any reason, the builders believe that DPS should provide formal public notice to ensure that all DPS customers are aware of the new regulation, new Interpretation/Policy, or new standard.

DPS staff. Overall, building industry representatives report that over time, DPS staff have generally provided consistent zoning interpretations; however, they also feel that DPS staff has become less willing to make decisions on issues that are not clear-cut and are not covered by a written DPS Interpretation/Policy. As an example, several builders commented that from their perspective, DPS staff often seek the opinion of legal staff before making decisions.

Because of this changing environment, builders state that they can not always rely on past experience and decisions to predict how the same issue will be interpreted by DPS staff in the future. Building representatives also report that some DPS inspectors have the technical skills or expertise to make and approve field changes during an inspection. The builders note that this practice results in greater efficiency for both the builder and DPS and avoids a failed inspection which can unnecessarily delay construction and increase costs.

Permitting and regulation process. The building industry representatives agreed that DPS has an efficient demolition permitting process, especially when compared to other jurisdictions. However, the builders feel that the application for a building permit has become lengthier and more demanding over the past few years. Specifically, they note that:

- Applications now go sequentially through a pre-screen submission, a zoning review, and a plan review. In the past, the builders report that the zoning and plan reviews were completed concurrently.
- More information is required on a building permit application, increasing the cost and time to complete an application.

The building industry representatives also discussed concerns about the building permit appeals process. They feel that during the appeal process, the property owner is often displaced for an indeterminate period of time and placed at risk of losing construction financing (for failing to comply with the terms). The builders expressed the following specific concerns with the building permit process:

- The law does not provide criteria for filing an administrative appeal of a building permit;
- The Board of Appeals is not required to schedule the case for a hearing within a specific time frame, nor is it required to project how long deliberations can or should take; and
- The Board of Appeals does not adhere to the time requirement for producing a written opinion of the Board's decision, leaving the builder to wait even if the permit decision was upheld.

2. Feedback from Residents and Members of Civic Groups

OLO received feedback from several individual Montgomery County residents as well as representatives of civic or neighborhood associations. Many of the residents that contacted OLO expressed concerns about the general impact of residential infill construction within their neighborhoods and communities. Overall, residents raised concerns about:

- Neighborhood aesthetics, in particular the bulk and height of some new construction compared to older homes;
- Removal of trees and loss of tree canopy;
- Stormwater drainage and sedimentation; and
- Impacts of construction activities within an existing neighborhood (e.g. noise; damage to streets, sidewalks, or other infrastructure; increased traffic, etc.)

Residents and civic group representatives also provided OLO with specific views about the legal and policy framework for residential infill construction, access to information from DPS, and DPS' permitting and regulation practices. The sections below summarize the common themes OLO heard about each of these areas.

Laws and DPS zoning interpretations/policies. Individuals and groups from the community held a variety of views and opinions on the law and policy framework of residential infill construction. Several residents stated that DPS does not always provide consistent interpretations of zoning requirements or standards. Those residents feel that this may occur due to a lack of written policies. Other residents felt that DPS exceeds its authority in developing certain interpretations, such as interpretations that define terms. More specifically, the individuals and civic groups OLO spoke with generally agreed that:

- DPS should adopt a formal rulemaking and/or administrative regulations process for interpretations. This process should include public input and also include formal notice when revising an interpretation.
- In some neighborhoods, many properties have undergone some type of residential infill construction activity. As a result, several residents feel that the impact is similar to building a new subdivision while the law does not require the same type and level of review as would be required for a new subdivision.

Access to DPS. Residents' perceptions of customer service and access to information at DPS are uneven. Some residents report they have had no difficulty accessing staff and permit documents; while other residents report they were unable to access documents or information in a timely manner.

In particular, several residents report that they were unable to obtain approved construction plans for a building permit because DPS' only copy of the approved plans had been sent out for imaging. These residents report that this sometimes occurred during the 30 day appeal period for the permit.

Some residents expressed frustration in attempting to contact DPS. They report often being sent to voicemail and a general difficulty connecting with a staff member unless a resident dials a direct line. Residents further report that DPS's responsiveness in returning calls varies, ranging from a couple of days to a few weeks, if at all. Residents suggest creating a single point of contact for all questions and concerns, along with a deadline on how long it will take DPS to return phone calls.

In addition, several residents who filed a building or zoning complaint through DPS' complaint-handling system report they did not receive follow-up information from DPS on the outcome of their complaint.

Permitting and regulation process. Several residents feel that DPS does not enforce zoning standards consistently. In addition, several residents feel that DPS primarily conducts complaint-based enforcement, and should instead move towards more proactive enforcement. Specific issues raised by residents include:

- DPS's routine inspections for a permit, which are listed in the on-line permitting database, do not always seem to follow the timing requirements for inspections which DPS lists on its website. This creates confusion for residents about whether construction is occurring legally.
- DPS should require chain-link fencing instead of orange "snow-fencing" as a safety measure at demolition sites and building sites where a hole is dug for the foundation, especially in neighborhoods with elementary schools.
- Several residents report often seeing sediment control fences in disrepair and sediment moving onto other properties or the street.

Chapter VI: Findings

This study, conducted by the Office of Legislative Oversight, reviews the current laws, regulations, and practices related to "residential infill construction" in older, more established neighborhoods in the County. The objective of this project was to:

- Identify the set of laws and regulations that govern residential infill construction:
- Review the Department of Permitting Services procedures and practices for interpreting and administering the laws and regulations; and
- Summarize available data on residential infill construction projects since FY02.

For purposes of conducting this study, OLO defined "residential infill construction" as construction occurring within the County's R-60 and R-90 residential zones and including: the demolition or teardown of an existing home and the subsequent re-building of a home on the same site; construction of a new home on a vacant infill lot that has not undergone re-subdivision; and additions/alterations to existing homes.

LEGAL FRAMEWORK

Finding #1: Under authorities provided by State law, the County Code creates a governance framework that regulates residential infill construction primarily through the Building Code (Chapter 8) and the Zoning Ordinance (Chapter 59).

The Maryland Code establishes Montgomery County's authority to regulate land use. The County's zoning and planning authority derives from Article 28 of the Maryland Code, known as the Regional District Act.

The Montgomery County Code in turn establishes a legal framework for regulating construction and development activities. Several chapters of the County Code establish authority or standards that relate to residential infill construction. The two chapters most applicable to residential infill construction are the:

- Building Code (Chapter 8), which governs any construction, alteration, addition, removal, and demolition of a building or structure; and
- Zoning Ordinance (Chapter 59), which creates a system of districts and zones that define allowable uses and development standards for specific properties.

Other chapters of the County Code particularly relevant to residential infill construction include Chapters 2, 19, and 24A. Those chapters establish the administrative structure to administer the Building Code and Zoning Ordinance; create regulations and standards for land disturbing activities; and establish additional regulatory requirements for construction within historic districts or on historic structures.

Finding #2: The County's Zoning Ordinance established the R-60 and R-90 residential zones in 1954. Lots in these zones undergoing infill construction must meet a specific set of building standards defined in the Zoning Ordinance. Certain standards vary based on when a lot was recorded.

The Montgomery County District Council has adopted new or revised zoning ordinances in 1928, 1930, 1941, 1952, 1954, and 1958. The 1954 Zoning Ordinance created a set of residential zones including the current R-60 and R-90 zones. The R-60 and R-90 zones are the underlying zones for many of the County's older, established residential neighborhoods.

The Zoning Ordinance establishes a set of minimum and maximum development standards that apply to properties within the R-60 and R-90 zones. Many of the R-60 and R-90 zone building standards have not changed since 1954. Current standards include:

- Minimum lot area;
- Minimum lot width:
- Minimum building setbacks from lot lines;
- Maximum building height; and
- Maximum building coverage of lot area.

For lots legally recorded before 1954, the Zoning Ordinance includes provisions that allow construction based on some or all of the development standards that were in place at the time of lot recordation and/or original construction.

The Zoning Ordinance also includes exemptions from height and/or setback standards for several specific building features (e.g. porches, steps, bay windows, chimneys).

Finding #3: All residential infill construction projects must receive a building permit from DPS. County law establishes requirements for review, notice, and issuance of building permits.

County law requires a building permit provided by the Department of Permitting Services before legally constructing, adding onto, or renovating a home. The Building Code specifies information that must be submitted to DPS as part of a building permit application, including a description of the proposed work, plans and specifications, a plot diagram, and engineering details.

County law requires DPS to review building permit applications for compliance with both applicable building and construction standards established by the Building Code and zoning standards established by the Zoning Ordinance. The law requires that DPS must then either reject or approve each building permit application based solely on the permit's conformance to applicable laws and regulations. The law assigns DPS limited discretion to attach conditions to or amend a building permit application.

Any building permit issued by DPS for new construction or an addition that affects the footprint or height of an existing home must be publicly noticed through placement of a DPS-provided sign on the subject property for 30 days. The permit holder must post the sign within three days after DPS releases the permit (i.e. when the permit is paid for and received by the applicant).

Finding #4: In addition to a building permit, residential infill construction projects may also require a demolition, sediment control, right-of-way, and/or Historic Area Work Permit. County law establishes varying requirements related to the review, notice, and issuance of these additional permits.

Other permits that may be required for a residential infill construction project include:

Demolition Permit – Any project that includes demolishing an existing house or tearing down all but one wall of an existing house requires a demolition permit from DPS. County law provides several requirements that must be met by the applicant before DPS issues a demolition permit. The law also requires DPS to provide written notice of a proposed demolition to adjacent and confronting property owners at least 10 days prior to issuance of a demolition permit.

Sediment Control Permit – County law requires a sediment control permit for all land-disturbing activity associated with demolitions, all new residential construction, and for certain additions to existing homes. The law requires that DPS issue any required sediment control permit before issuing a building or demolition permit. The law also allows DPS the authority to attach conditions to a sediment control permit.

Historic Area Work Permits (HAWP) – Any residential infill construction project within a designated historic district or on a designated historic structure requires a HAWP. DPS receives applications for and issues or denies Historic Area Work Permits, but Historic Preservation Commission (HPC) – a nine-member citizen board – reviews applications and makes approval decisions. County law provides specific criteria for determining whether to approve a HAWP, allows the HPC to attach conditions to a HAWP, and requires the HPC to hold public meetings to consider HAWP applications.

Right-of-Way Permit – Any residential infill construction project that proposes to place an obstruction in the public right-of-way (e.g. a dumpster), construct a temporary driveway for construction vehicle access to the property, conduct sidewalk repair or reconstruction, or work on underground utilities through a public right-of-way requires a right-of-way permit from DPS.

Finding #5: County law provides DPS with certain inspection and enforcement authority related to issuing of permits for residential infill construction.

For building and demolition permits, County law provides DPS with the authority to conduct both routine and unplanned inspections to verify compliance with applicable laws, regulations, and permit conditions. The Building Code also provides DPS with enforcement authority for non-compliance; DPS is able to revoke any building or demolition permit, issue a Stop Work Order, issue a Notice of Violation, or issue a Class A violation.

Similarly, County law assigns DPS both inspection and enforcement authority for sediment control permits. The law authorizes DPS to conduct sediment control inspections at any time, and provides DPS with the enforcement authorities to revoke or suspend a sediment control permit, issue a Stop Work Order, or issue a Notice of Violation.

County law also authorizes DPS to enforce the provisions of historic preservation law, which includes Historic Area Work Permits, and issue Class A violations for non-compliance.

Finding #6: County law establishes specific authority and processes for appealing permit actions or decisions of DPS and for requesting variances from development standards.

County law establishes the Board of Appeals, a five-member board of residents appointed by the Council. The law assigns the Board of Appeals duties to hear and decide administrative appeals of decisions or actions made by DPS or the HPC, including permit decisions; and to review and decide requests for variances from zoning standards.

County law provides that any person "aggrieved" by a DPS permit decision or other action authorized under the Building Code or the Zoning Ordinance may file an appeal within 30 days of the action. This includes decisions or permits related to residential infill construction. The law states that after notice and hearing, the Board of Appeals may affirm, modify, or reverse DPS' order or decision in question. Similarly, decisions of the Historic Preservation Commission may also be appealed to the Board of Appeals within 30 days of the action.

The Zoning Ordinance provides that an applicant can file a variance petition with the Board of Appeals at any time to request "relief" from the "strict application" of zoning standards for a particular property. The Zoning Ordinance also provides specific criteria for the Board of Appeals to use when making a determination on a request for a variance. If the Board grants a variance, then DPS must issue a building permit as long as all other standards are met.

Finding #7: County zoning law creates confusion over the zoning requirements for construction activity on certain lots legally created before the County imposed zoning standards in 1928. Several factors contribute to the confusion.

The Montgomery County Board of Commissioners, sitting as the District Council, first approved a Zoning Ordinance and zoning map in 1928. The District Council subsequently repealed and reenacted the Zoning Ordinance in 1930. The 1928 and 1930 ordinances required the same minimum lot size of 5,000 square feet and minimum lot width of 50 feet, but each ordinance had different exceptions to these requirements for lots recorded before the passage of the ordinance:

- The 1928 ordinance allowed lots with a width of 40 feet or less to have a smaller side yard setback.
- The 1930 ordinance allowed lots with a width between 40 and 50 feet to have a smaller side yard setback <u>and</u> exempted those lots from the minimum lot size requirement.

The public record indicates procedural errors with the adoption process for each ordinance. After approval, neither the 1928 or the 1930 ordinance was published in the Journal of the Board of Commissioners despite the recitation in the Board's approval that the text of the ordinance would be "spread upon the Journal." In 1932, the Board of Commissioners realized its error and made a *nunc pro tunc* (i.e. retroactive to the earlier date) entry of both the 1928 and 1930 ordinances into the Journal.

Over time, different interpretations of this sequencing of events has caused confusion both for DPS and for the general public over which ordinance and development standards apply for lots recorded prior to March 1928, particularly for lots smaller than 5,000 square feet. These events include:

- In 1990, the District Council approved a zoning text amendment (ZTA90002) that in part stated that lots recorded prior to March 16, 1928 must meet the development standards in the 1928 Zoning Ordinance (§ 59-B-5.1).
- In 1998, a Board of Appeals ruling (Case No. A-4851) stated "the effective 1928 Zoning Ordinance is actually the ordinance adopted in 1930. It superseded the 1928 ordinance, and the intention expressed in the 1930 ordinance was to grandfather lots recorded before zoning was imposed."
- In 2004, at the recommendation of the County Attorney, DPS adopted a Code Interpretation/Policy (ZP0404-1) stating that "the language of the 1928 Zoning Ordinance as originally enacted will be the single reference point for determining development standards on lots recorded prior to March 16, 1928." As a result, DPS' current policy does not exempt pre-1928 recorded lots from the 5,000 square foot minimum.

DPS MANAGEMENT PRACTICES RELATED TO RESIDENTIAL INFILL CONSTRUCTION

Finding #8: DPS has developed a set of management practices to administer the permits associated with residential infill construction.

To administer permits that conform to legal requirements, DPS has developed written procedures and/or routine practices for:

- *Permit applications* including standard application forms that list the information DPS requires both legally and practically to appropriately review the application;
- *Plan review* including standardized sequencing of reviews, sharing of plan information with other agencies that must review plans (including M-NCPPC), and formal sign-off on all necessary approvals before DPS will issue a permit; and
- *Public notice* including standardized procedures for distributing and verifying the posting of building permit signs and the mailing of written notice requirements.

DPS maintains a permit database that tracks the status of the permit administration process and allows for automated approvals.

Finding #9: DPS' system of zoning administration includes the development of written zoning interpretations and policies on an "as-needed" basis. DPS does not have a written procedure for adopting official interpretations.

In an effort to ensure clear and consistent implementation of zoning and building laws by staff in the Department, DPS has developed a set of written code interpretations or policies.

DPS' written interpretations are not legally mandated; instead they are developed at the discretion of the Department and in consultation with the County Attorney's Office. DPS does not have a written procedure for adopting official interpretations. However, DPS staff report following the same general internal process in each case. Several DPS interpretations are presented on a standardized Code Interpretation/Policy form while others consist of diagrams and written text.

DPS staff report that they do not currently have either a formal or informal process to seek any outside comments and/or feedback on a draft before finalizing the code interpretation. DPS also does not send out any public notice after it creates or revises an interpretation/policy.

Written DPS interpretations range from technical explanations (e.g. written methodology and formulas DPS uses for specific calculations) to legal interpretations (e.g. definition of specific terms, zoning standards that govern during specific timeframes).

Some DPS Code Interpretations/Polices with particular relevance to residential infill construction (described in detail in Chapter III) include:

- 1928-30 Interpretation/Policy;
- Addition Interpretation/Policy;
- Established Building Line Interpretation/Policy;
- How to Determine Basement/Cellar Interpretation/Policy; and
- How to Measure Building Height Interpretation/Policy.

Finding #10: DPS conducts both routine and complaint-based field inspections for all permits issued by the Department.

DPS conducts routine (i.e. planned) field inspections for all right-of-way, sediment control, demolition, and building permits. While each of these permits receives at least one routine inspection, building permits require multiple inspections throughout the construction process. Each building permit holder receives a list of building inspections that must be performed as a condition of that permit's issuance. If a building fails a routine inspection, the permit holder must correct any deficiencies and pass a reinspection before the next type of inspection can occur.

DPS conducts complaint-based inspections in response to any potential law or permit violation received via DPS' complaint-handling system. A DPS inspector conducts a field inspection to either verify or dismiss each complaint.

If a DPS inspector finds a violation of law or permit as part of a complaint-based inspection or a routine inspection, DPS reports that the enforcement action staff takes depends on the nature of the violation. Enforcement actions include:

- A verbal request to take corrective action within a set period of time; and/or
- A Notice of Violation the requires corrective action within a set period of time; and/or
- A Stop Work Order that requires corrective action within a set period of time.

Finding #11: DPS' document imaging practices do not guarantee that an approved set of building permit plans is available for immediate review at all times during a permit's 30-day appeal period.

After a building permit is issued, DPS sends the complete paper set of approved building plans out for conversion into electronic format at the Montgomery County Detention Center in Clarksburg. DPS maintains the electronic version of the plans as its official set of approved building plans; the paper copies are not kept after the imaging process.

DPS staff report that it takes 10 days (on average) for a set of building permit plans to be imaged and loaded into DPS' computer system. As noted in Finding #6, the law allows an aggrieved party to appeal the issuance of a building permit within 30 days of the permit's issuance. As a result, an approved set of permit plans could be unavailable for immediate viewing at DPS offices for one-third of the 30-day appeal period.

DPS reports that if an individual requests to see permit documents that are out for imaging, DPS will have the original paper plans returned to DPS offices within 48 hours; all other information requests follow the process established by County Regulation for responding to public information requests.

DPS COMPLIANCE WITH LEGAL REQUIREMENTS

Finding #12: DPS issues permits for residential infill construction in alignment with the existing set of County laws and regulations.

DPS' procedures and practices for the review, issuance, and enforcement of residential infill construction permits align with current County laws and regulations. DPS is a large department with a high volume of work to process. As in any similar organization, staff mistakes do occur; however, OLO's review did not find any evidence to suggest that DPS staff practices routinely violate Departmental procedures.

Specifically, OLO found that DPS issues permits for residential infill construction located in the R-60 and R-90 zones based on the development standards in the Zoning Ordinance. Based on the current height, lot coverage, and setback requirements, the Zoning Ordinance allows for the potential to build:

- A home with over 5,000 square feet of floor area on a 6,000 square foot R-60 lot;
- A home with over 6,000 square feet of floor area on a 9,000 square foot R-90 lot; and
- A home within 5 feet of a neighbor's property line and within 10 feet of a neighbors dwelling.

Board of Appeals data also indicate DPS building permit decisions conform to legal requirements. The data show very few administrative appeals filed (40 since July 1, 2001) related to the issuance of residential building permits. Of the appeals filed, four resulted in the Board overturning DPS' decision to issue a building permit; and three resulted in the Board requiring a partial revision to the building permit.

DATA ON RESIDENTIAL INFILL CONSTRUCTION

Finding #13: Since FY02, DPS has permitted over 10,000 residential infill construction projects in the R-60 and R-90 zones. These permits represent 43% of single-family detached home construction activity, and most were for additions/renovations to existing homes.

Between July 1, 2001 and November 15, 2006, DPS issued 23,780 permits for single-family detached dwelling construction activity (i.e. new construction or additions/renovations) in all residential zones. 10,271 (or 43%) of these permits were issued for infill construction projects within R-60 and R-90 zones, including:

- 8,991 permits for building additions or renovations (an addition/renovation project can range from an addition that substantially increases the size of a home to an interior renovation of all or part of a home);
- 1,181 permits for the demolition of a house followed by a new construction permit for a house on the same lot; and
- 99 new construction permits issued for previously undeveloped lots.

Finding #14: More than one-fourth of permitted additions/renovations and more than one-half of permitted demolition and new construction projects in the R-60 and R-90 zones were for properties located in three Bethesda zip codes. Other zip code areas with high levels of residential infill construction include Chevy Chase, Kensington, Silver Spring, and Wheaton.

Of the 8,991 permits issued by DPS for addition/renovation projects in the R-60 and R-90 zones since FY02:

- 2,486 (28%) occurred in Bethesda zip codes 20814, 20816, and 20817;
- 1,316 (15%) occurred in Silver Spring zip codes 20901 and 20910;
- 1,205 (13%) occurred in Chevy Chase zip code 20815;
- 814 (9%) occurred in Kensington zip code 20895; and
- 740 (8%) occurred in Wheaton zip code 20902.

Of the 1,181 permits issued by DPS for demolition and rebuild projects in the R-60 and R-90 zones since FY02:

- 644 (55%) occurred in Bethesda zip codes 20814, 20816, and 20817;
- 140 (12%) occurred in Chevy Chase zip code 20815; and
- 107 (9%) occurred in Kensington zip code 20895.

Finding #15: DPS has conducted over 50,000 routine building inspections for permits related to residential infill construction since FY02.

Between July 1, 2001 and November 15, 2006, DPS reports conducting 52,041 routine building inspections related to residential infill construction in the R-60 and R-90 zones. Of this total, 42,306 inspections (83%) were for addition/renovation permits and 8,735 (17%) inspections were for new construction permits. Additionally:

- For addition/renovation permits, the annual number of inspections increased from 4,759 in FY02 to 10,054 in FY06; and
- For new construction, the annual number of inspections increased from 620 in FY02 to 2,485 in FY06.

Finding #16: DPS has conducted nearly 4,300 complaint-based inspections related to residential infill construction projects since FY02. DPS staff verified 70% of complaints after inspection.

Between July 1, 2001 and November 15, 2006, DPS reports conducting 4,263 complaint-based inspections related to residential infill construction projects in the R-60 and R-90 zones. Of this total, 2,937 (69%) of the complaints were verified after inspection and required corrective action. The remaining 1,326 (31%) were dismissed after the inspector did not find an actual violation.

Based on the 2,937 complaints verified by DPS inspectors since FY02, DPS issued a total of 971 Notices of Violation and a total of 570 Stop Work Orders. 406 (42%) of the Notices of Violation and 288 (51%) of the Stop Work Orders were linked to complaints of "building without a permit."

DPS categorizes complaints as either construction complaints (e.g. those that relate to the actual construction of a building and its impacts) or zoning complaints (e.g. those that relate to the allowable uses or zoning standards of a property). The most common type of zoning complaints have been for alleged violations of "building setbacks"; and the most common types of construction complaints have been for alleged violations of "building without a permit" and "sediment control."

FEEDBACK FROM THE NON-GOVERNMENTAL SECTOR

Finding #17: Feedback from building industry representatives about the County's legal and administrative structure for residential infill construction shows support for DPS services. However, builders expressed concerns about DPS' interpretation process, increased permit review times, and the building permit appeal process.

Many of the building industry representative that OLO spoke with during the course of this study view DPS' policies and procedures for issuing demolition and construction permits as efficient and effective. At the same time, representatives of the building community expressed some concerns related to both the legal structure and DPS practices for issuing permits for residential infill construction. Some of the commonly-voiced concerns and/or suggestions from building industry representatives include:

- The building permit application process has become lengthier, more costly, and more unpredictable over the past few years due to both legislative and procedural changes;
- The building permit appeal process can be time-consuming and create financial and other difficulties for the builder and/or property owner, and as a result the process should include additional criteria that must be met to file an appeal; and
- The DPS process for establishing Code Interpretations/Policies is inadequate;
 DPS should adopt a more formalized process that includes a forum for public input.

Finding #18: Feedback from individual residents and civic group representatives about the County's legal and administrative structure for issuing permits for residential infill construction included concerns with DPS' interpretation process, DPS' zoning enforcement practices, and mixed views about access to information and services from DPS.

Many of the residents that OLO spoke with during the course of the study expressed general concern about the impact of residential infill development within neighborhoods and communities. This included concerns of neighborhood character, tree loss, stormwater drainage, and infrastructure damage.

Overall, residents report that access to information at DPS is inconsistent. Some residents report little difficulty accessing staff and permit documents; while other residents report frustration due to an inability to access documents or information in a timely manner. Particular concerns were expressed about accessing copies of building plans when the permit documents are out for imaging.

Some of the other recurring concerns and/or suggestions voiced by individual residents and civic group representatives include:

- DPS should adopt a formal rulemaking and/or administrative regulations process for interpretations. This process should include formal notice when revising an interpretation; and
- DPS primarily conducts complaint-based enforcement that relies on individual residents to find permit violations. DPS should instead move toward more proactive enforcement.

Chapter VII: Recommendations

Based on review of the laws, regulations, policies, and procedures that govern residential infill construction in the County's older, more established neighborhoods, the Office of Legislative Oversight offers four recommendations for Council action:

- 1) Adopt a Zoning Text Amendment to clarify the law related to implementation and related interpretations of the 1928 vs. 1930 versions of the Zoning Ordinance;
- 2) Discuss and decide whether the existing set of County laws and regulations governing residential infill construction reflect the Council's current preferences for development standards and permit issuance in the R-60 and R-90 zones;
- 3) Request that the Chief Administrative Officer develop a written procedure governing how DPS creates official code interpretations; and
- 4) Request that the Chief Administrative Officer review DPS' procedures for public access to permit information and related documents, with a report back to the Council on specific actions taken for improvement.

Recommendation #1: Adopt a Zoning Text Amendment to clarify the law related to implementation and related interpretations of the 1928 vs. 1930 versions of the Zoning Ordinance.

The Zoning Ordinance allows that lots recorded prior to June 1, 1958 are buildable for one-family dwellings and may be developed under the zoning standards in effect at the time the lot was recorded, even if the lot has less than the minimum area for its residential zone.

However, the law creates confusion over the applicable development standards for lots legally created before the County imposed zoning standards in 1928. Factors that contribute to the confusion include:

- Current Zoning Ordinance language that lots recorded before March 16, 1928 must meet the development standards in the 1928 Zoning Ordinance;
- Procedural errors related to the formal adoption of County Zoning Ordinances in both 1928 and 1930; and
- The varying use and interpretation of the 1928 and 1930 requirements over time by government authorities, including the Department of Permitting Services and the County Board of Appeals.

The County Council, sitting as the District Council should adopt a Zoning Text Amendment (ZTA) that clarifies the set of residential development standards the Council intends for DPS to enforce for proposed construction on lots legally recorded before 1928. Specifically, the ZTA should clarify whether lots recorded before March 16, 1928:

- Are buildable and may be developed under the development standards in the 1928 Zoning Ordinance. The 1928 ordinance <u>does not include</u> an exception for building on undersized residential lots (i.e. less than 5,000 square feet); or
- Are buildable and may be developed under the development standards in the 1930 Zoning Ordinance. The 1930 ordinance <u>includes</u> an exception for building on undersized residential lots (i.e. less than 5,000 square feet).

Recommendation #2: Discuss and decide whether the existing set of County laws and regulations governing residential infill construction reflect the Council's current preferences for development standards and permit issuance in the R-60 and R-90 zones.

The development standards for the R-60 and R-90 zones have remained essentially unchanged since the Zoning Ordinance established these two zones in 1954. Due to market forces, residential infill construction projects built in recent years tend to more frequently maximize the use of the allowable building envelope established by the development standards.

DPS processes a high volume permit requests for residential infill construction in the County's older, more established neighborhoods. Since FY02, DPS' has issued more than 10,000 addition/renovation or new construction building permits in the R-60 and R-90 zones. Many of these permits were for properties located in three Bethesda zip codes, with Chevy Chase, Silver Spring, Kensington, and Wheaton zip codes also experiencing significant levels of residential infill construction.

Given the high volume of activity and the trend toward increased use of the allowable building envelope in the R-60 and R-90 zones, the Council should determine whether the existing set of laws and regulations governing residential infill development reflects the Council's current preferences for development standards and/or permit issuance.

#2A: If "yes," then the Council should concentrate its oversight on ensuring agency practices align with the law.

The Council's Planning, Housing, and Economic Development (PHED) Committee has already initiated efforts that would fall into this category with its plans during 2007 to review and/or discuss DPS' official zoning interpretations and the current practices related to zoning text amendments.

OLO also recommends that the Council request regular updates from DPS on changes in permit issuance practices.

#2B: If "no," then the Council should embark upon a deliberative process of exploring and adopting alternative standards or permit issuance requirements.

If the current set of laws and regulations does not meet the Council's preference for development standards and/or issuing permits in the R-60 and R-90 zones, the next step should be a deliberative process of exploring alternatives. An examination of alternative options should include both mandatory and non-mandatory approaches, and should directly involve input from the Planning Board and its staff, DPS and other Executive Branch staff, and members of the community.

One appropriate forum for these efforts may be as part of a comprehensive zoning review led by Planning Board staff. As of this writing, the Planning Board has informed the Council that the agency plans to recommend a Planning Board work program item to comprehensively rewrite the zoning ordinance as part of its FY08 funding request.

Alternatively, the Council could request these efforts be conducted as a stand-alone project led by Planning Board, DPS, or Council staff.

Recommendation #3: Request that the Chief Administrative Officer, no later than April 2007, develop a written procedure governing how DPS creates official code interpretations. The procedure should include an opportunity for public review and comment.

DPS' use of written code interpretations is a good management practice intended to ensure clear and consistent interpretation and implementation of the zoning code by multiple staff in the Department. However, DPS does not have a written procedure for creating these written code interpretations; does not use a consistent format for all written interpretations; and does not seek any outside comments and/or feedback on a draft before finalizing the written code interpretation.

OLO recommends that the Council request the Chief Administrative Officer develop a written procedure for how DPS creates or revises an official interpretation/policy. The procedure should address:

- The overall transparency of the formal code interpretation/policy process;
- Consideration of methods to allow interested parties to provide views on a draft code interpretation/policy before it is finalized and implemented; and
- Consistency in format for all code interpretations/policies.

OLO recommends that the Council ask the CAO to develop this policy and present it to the Council by **April 2007.**

Recommendation #4: Request that the Chief Administrative Officer review DPS' procedures for public access to permit information and related documents, with a report back to the Council in April 2007 on specific actions taken for improvement.

DPS has established several mechanisms to provide public access to permit information and documents, including publishing data and information on its website and allowing any interested party to view permit information and files at DPS' offices. DPS also adheres to County Regulations that govern response procedures for public information requests for all County Departments.

At the same time, a recurring theme voiced by community representatives that OLO spoke with was uneven customer service and access to information at DPS. While some residents report little difficulty accessing DPS staff and documents; others expressed frustration with accessing documents or information in a timely manner. Additionally, DPS' document imaging practices do not guarantee the availability of approved permit plans for immediate viewing at DPS offices at all times during a permit's appeal period.

Despite the range of views, OLO heard enough concerns to conclude that the issue of public access to DPS information and documents deserves management's attention; specifically to examine ways to improve current procedures.

OLO recommends that the Council request that the CAO review DPS' current practices and procedures for public access to permit information and documents, in particular access to building permit documents during the permit's 30-day appeal period. Based on the review, the CAO should then determine what changes to these practices and procedures are necessary.

OLO recommends that the Council ask the CAO to report back to the Council on the review and any specific improvement actions taken by **April 2007.**

Chapter VIII: Agency Comments

The Office of Legislative Oversight circulated a final draft of this report to the Chief Administrative Officer for Montgomery County, the Montgomery County Board of Appeals, and the Montgomery County Department of Park and Planning. OLO appreciates the time taken by agency representatives to review the draft report and provide comments. OLO's final report incorporates technical corrections provided by agency staff.

The written comments received from the Chief Administrative Officer are attached in their entirety, beginning on the following page.



Isiah Leggett
County Executive

Timothy L. Firestine Chief Administrative Officer

MEMORANDUM

February 2, 2007

TO:

Karen Orlansky, Director

Office of Legislative Oversight

FROM:

Timothy L. Firestine

Chief Administrative Officer

SUBJECT:

OLO Report Number 2007-4

Residential Infill Construction: A Review of County Laws,

Regulations, and Practices

We have reviewed Draft OLO Report 2007-4, Residential Infill Construction: A Review of County Laws, Regulations, and Practices and concur with the report's findings and recommendations. We want to acknowledge the excellent work of OLO staff, Craig Howard and Kristen Latham, in pulling together many complex details into a document that is clear, concise, and direct.

The Department of Permitting Services (DPS) will develop written procedures governing how it creates official code interpretations as requested in recommendation three. I will review DPS procedures for public access to permit information and related documents and report back to the Council on specific actions taken for improvement as requested in recommendation four. The report identified mixed feedback about DPS procedures from builders, individual residents, and civic group representatives. Our goal is to have policies and procedures that are fair, understood by the public, and implemented in a consistent manner. We will use the recommendations in this report as a means to reach that goal. Attached is a listing of recommended technical edits.

We look forward to working with the Council and OLO in discussing the report and its findings.

TLF:dar

Attachment

OLO Report 2007-4, Residential Infill Construction: A Review of County Laws, Regulations, and Practices - Technical Edits

The following are recommended technical edits to the report:

Page 25 ".Sequencing with other required permits."

DPS requires all applicants for new construction of single family dwellings to submit applications for right of way permits and sediment control permits, and for these permits to be issued prior to the building permit being issued.

Page 8

Table 1 is accurate for most cases but not all. For instance, on lots recorded under 1941 and 1952 zoning ordinances, the rear yard must have a minimum <u>average</u> depth of 20 feet with no point closer than 15.

Page 9 top of page

The numbers for potential square footage of floor area are not correct as they do not take into account that a half story can be up to 60% of floor below and also, additional stories can be allowed on sloping lot with resultant increase in square footage.

Page 26 "Review of the permit application."

A well and septic review is only done when a well and/or septic system is on the property. Add "building" to the last sentence. "After the initial screening process is completed, all permit applications receive a zoning review followed by a <u>building</u> plan review.

Page 27 "Plan review."

Add "building" to title. Building plan review

Page 36 Table 3: Summary of Selected Building Inspections – Building Height As of May 2006, height inspections have been and will continue to be conducted for all building permits for single family dwellings in R60 and R90 zones.

Page 37 "Requesting inspections and re-inspections."

Anyone may call DPS between 7:30am and 4:00pm and speak to a live person to schedule an inspection in addition to scheduling inspections online and through the interactive voice response system.

Page 37 2. Other Routine Permit Inspections

At a minimum, sediment control inspections and complaints are done according to the following procedure:

COMAR 26.17.01.09 Inspection and Enforcement.

D.(2) Ensure that every active site having a designed erosion and sediment control plan is inspected for compliance with the approved plan on the average of once every 2 weeks.

And,

D.(6) Any erosion and sediment control complaint received shall be acted upon, routinely within 3 working days, and the complainant shall be notified of any action or proposed action routinely within 7 working days after receipt of the complaint.

Page 38 3. Enforcement Actions

If DPS determines during an inspection that construction is occurring illegally, either without a permit or without the correct permit, DPS will issue a <u>Notice of Violation</u> and a Stop Work order and require the property owner to obtain the correct permit.

Page 39 top of page

At a minimum, sediment control inspections and complaints are done according to the following procedure:

COMAR 26.17.01.09 Inspection and Enforcement.

D.(2) Ensure that every active site having a designed erosion and sediment control plan is inspected for compliance with the approved plan on the average of once every 2 weeks.

And,

D.(6) Any erosion and sediment control complaint received shall be acted upon, routinely within 3 working days, and the complainant shall be notified of any action or proposed action routinely within 7 working days after receipt of the complaint.

Page 39 4. DPS' Procedures for Complaint Based Inspections DPS also receives complaints from the DPS email address located on their web page dps@montgomerycountymd.gov

Page 40 first paragraph

DPS has permit applications and drawings on microfilm and microfiche as well as imaged documents.

Page 47 top of page – add the following

"construction complaints are those related to the Building Code, <u>construction in the right-of-way</u>, stormwater or sediment requirements, or historic preservation requirements."

Page 60, middle of page

Reference to lots recorded before 1954 should be 1958.

Page 60 Fourth paragraph

Porches, steps, bay windows are not considered in setback standards since they get an exemption into the setback. However, they are included in lot coverage calculations which is a development standard.

Page 65 Finding #10 add the underlined phrase

"While each type of permit, except fence permits, receives at least one inspection"

Page 66 Finding #12

The numbers for potential square footage of floor area are not correct as they do not take into account that a half story can be up to 60% of floor below and also, additional stories can be allowed on sloping lot with resultant increase in square footage.

Page 72 Recommendation #2

Consideration should be given to clarify the provisions of Section 59-B-5.3 dealing with additions and enlargements to existing homes and to replacement homes on lots recorded before June 1, 1958. For instance, do second story additions on existing homes need to meet EBL if it meets the minimum or do replacement homes with same front foundation need to do EBL if it meets the minimum setback for zone. This section plays a major role in many infill construction projects.

Consideration should also be given to platting requirements on older lots as many homes have been built across lot lines. The lots have become merged for zoning purposes and they should also be excused from having to go through the time consuming and very expensive process of subdivision and new record plat when a new home is being built as a replacement on the same merged lot.

RESIDENTIAL INFILL CONSTRUCTION: A REVIEW OF COUNTY LAWS, REGULATIONS, AND PRACTICES

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^{*} Unless otherwise noted, all Appendix documents are Department of Permitting Services documents.



Montgomery County Maryland Department of Permitting Services 255 Rockville Pike, 2nd Floor Rockville, Maryland 20850-4153 (240) 777-6320 Fax (240) 777-6262 http://permittingservices.montgomerycountymd.gov



Application for Work in Public Right-of-Way Permit

| Use Pe | rmit # | Building Permit # | | | | | |
|---------|--|--|------------------|-------------------------------|---|--|--|
| CONTA | ACT INFORMATION: | | Conta | oct #: | | | |
| Name o | of Applicant | | | | | | |
| Address | s | City | | State | Zip | | |
| Daytime | e Phone # | Fax # | | Email | | | |
| | TION OF WORK: | | | | | | |
| Addres | S House Number Stre | eet Name | | City | State Zip | | |
| Lot | Block | _ Subdivision Nam | ne | | | | |
| TYPE (| OF WORK: (check all that apply) | ☐ New | ☐ Existing | Residential | ☐ Commercial | | |
| Note: | For all work, provide two copies of the approved by MNCPPC. Include two | | | | | | |
| | Existing Right of Way Permit Numb Note: Letter of Permission will existing driveway or GP | | icant requests | ☐ Driveway building permit re | ☐ GP (Grading/Paving) lease under an | | |
| | Temporary Construction Entrance: | Existing Entra | nce | New Ent | trance | | |
| | Additional work in the public right-o | | | | eet trees, etc.). | | |
| | A crane construction fer construction. | nce | o be placed with | nin the public right-c | of-way during | | |
| | The public sidewalk and/or a travel Note: If checked, a Traffic Control | | quire closure du | ring construction. | | | |
| | Other (explain): | | | | | | |
| Montgo | oposed work shall be performed in a omery County Road Construction Co ment of Permitting Services. | | | | | | |
| Print N | ame | Applicant Sign | nature | | Date | | |
| No. of | FIELD RI | OR STAFF REVIEW A EPORT – DRIVEWAY C.DPW&T Std. No.: | APRONS - CON | IDITIONS: | ze: | | |
| Sight D | Distance: Checked: | Required: | □ Rι | ural Rustic Road: | | | |
| Modific | cation/Additional Work Required (Exp | olain): | | | | | |
| Bond A | Amount: \$ Permit F | ee: \$ | (9.383% of B | OND amount plus | 10% Automation Fee) | | |
| Date: _ | In: | spector: | | | | | |

CONDITIONS OF THE PERMIT

- 1. The permittee agrees to save harmless the County from all liability arising from the construction associated with this permit.
- This permit is non-transferable.
- 3. Unless otherwise noted, this permit automatically expires 18 months from the date of its issuance unless extended in writing by the Director of the Department of Permitting Services. An extension is granted after a request is made in writing and the appropriate fees are paid prior to the expiration date of the permit.
- 4. All work done under this permit shall comply with written requirements or directions which may be issued by the Director of the Department of Permitting Services relating to the particular project. If the conditions of this permit are being violated, this permit is subject to revocation by the Director of the Department of Permitting Services.
- 5. The work, materials, plans and specifications shall be available at all times for inspection by duly authorized officials of Montgomery County.
- 6. Driveway apron(s) constructed under this permit are for the purpose of providing access to lots adjacent to the right of way. Maintenance will be the responsibility of the property owner.
- 7. No permit shall be issued for construction unless the right of way has been acquired by the County or has been dedicated to public use and such acquisition or dedication has been recorded among the land records of Montgomery County.
- 8. If the Director of the Department of Permitting Services finds that the original plans, standards and specifications under which this permit is issued are inadequate or inappropriate for the particular project, he may require different or additional plans, standards and specifications and they shall thereafter, or modification thereof, become a part and condition of this permit.
- 9. A permit from the State of Maryland Forest, Park and Wildlife Service is required for the removal, and/or planting of any trees on improved public rights of way. Contact (301) 854-6060.
- 10. The relocation and/or adjustment of any public or private utility shall be the responsibility of the permittee prior to any construction authorized by this permit.
- 11. Coordinate the relocation of any traffic control signs, parking meters or signalization devices with the Division of Traffic and Parking Services. Contract (240) 777-2190.
- 12. Construction materials and equipment must not be stored or parked on the public right of way, unless otherwise noted as a condition of this permit.
- 13. Prior to the release of this permit, complete repair (restoration of right of way) shall be made of any and all damages done to the existing improvements in the public right of way caused by construction operations on this site. All disturbed areas shall be fine graded and sodded.
- 14. Proper precautions must be taken to keep existing roadways free of mud, debris and other obstructions.
- 15. Notify "Miss Utility" at 1-800-257-7777 prior to any excavation in the public right-of way.



Montgomery County Maryland Department of Permitting Services 255 Rockville Pike, 2nd Floor Rockville, Maryland 20850-4153 (240) 777-6300 Fax (240) 777-6262 http://permits.emontgomery.gov



Application for Sediment Control Permit

| Stormwater Concept #: _ | Fremiliary | rian #: | _ Seulment Control l | - eriiit # |
|-------------------------|---|----------------------------------|---------------------------------------|--|
| Project Information: | | | | |
| Subdivision/Project N | ame: | | | |
| Property Size/Area: _ | - | Square Feet | (Acres for Forest Harv | est Permits) |
| Property Address/Loc | eation: | • | | |
| Lot(s): | _Block(s): | Parcel(s): | Watershed | d: |
| Property Owner Info | ormation: | | | |
| Name | Property Owner's Name | | · · · · · · · · · · · · · · · · · · · | Contact ID # |
| | | City | State | Zip Code |
| Telephone #: | Fax #: _ | | | |
| Engineer Informatio | | • | | |
| | irm Name and/or Contact Person | | | |
| | Firm Name and/or Contact Person | | | Contact ID # |
| | | City | State | Zip Code |
| Telephone #: | Fax #: _ | | Email: | |
| Type of Application | (Please Check Item that appl | ies to desired permit) | | |
| ☐ Small La | nd Disturbance | Total Disturbe | ed Area: | Square Feet. |
| this site | • • | ved stormwater man | agement concept, t | mitted with this application. If he Department of Permitting |
| ☐ Engineer | ed Sediment Control | Total Disturbe | ed Area: | Square Feet. |
| ☐ For Plan | Rough Grading Only ns requiring Stormwater Manag | ☐ Full ement - Estimated Stor | Construction mwater Mgmt Costs: \$ | (Attach copy of Estimate) |
| | Sediment Control/Owner | | | (Attack copy of Estimate) |
| Note: Departi | ment of Permitting Services | Transfer Form must | be provided. | |
| ☐ Forest H | arvest | ☐ Post-0 | Construction Mon | itoring |
| ☐ Stormwa | ter Maintenance | | | |

| | ☐ Revision to Previously Approved Sediment Control Plan* |
|--------|--|
| | * Revision Plan Type: Original Sediment Control Permit # |
| | ☐ Remove Rough Grading Only/Add Bldg. Construction ☐ Add/Revise Stormwater Mgmt. |
| | ☐ Revise Sediment Control and/or Site Development Plan ☐ As-Built Submission |
| | ☐ Other |
| | Total Additional Disturbed Area Square Feet. |
| | Total Revised Disturbed Area Square Feet. |
| | Change in estimated Stormwater Management Costs: \$ |
| | (Attach copy of Estimate) |
| | |
| | Is the land disturbing activity within/near the 100-year floodplain limits of a channel, drainageway, stream of |
| | creek? |
| | |
| • | If YES, provide the drainage area to the property above the construction activity (in acres) If the |
| | drainage area is 30 acres or greater a Floodplain District Permit is required. |
| | |
| . • | Is the proposed land disturbing activity within a designated wetland? Yes No |
| | |
| | |
| decla | are and affirm, under penalty of perjury, that to the best of my knowledge, information and belief all matters and facts |
| | application are correct. I declare that I am the owner of the property or duly authorized to make this application on |
| | f of the owner and the standard conditions on the reverse side are made part of the approved Sediment Control |
| Plans. | |
| 10115. | |
| | |
| | |
| Signa | ature: |
| - | Signature Property Owner or Authorized Agent Printed Name Date |
| | |

Conditions of approval:

- 1. All sediment control work must comply with written requirements, the approved Sediment Control Plan, "Standards and Specifications for Soil Erosion and Sediment Control" and /or all violation notices, which may be issued by the Department.
- 2. The site, work, materials, plans, and specifications shall be available at all times for inspection by the Department.
- 3. The sediment control permit is subject to revocation or suspension whenever determination is made and after notice is given that the applicant is in violation of State and County sediment control laws or any rules and regulations promulgated under those laws. This includes conditions specified on the approved plan.
- 4. If the Department finds that the original sediment control plans are inadequate or inappropriate, then additional plans or modifications thereof will be required.
- 5. A grading permit must be obtained prior to start of any earthwork, construction, etc., within dedicated street right-of-ways.
- 6. Any temporary sediment basin or trap which will pond water in a pool greater than 9 feet in diameter and 18 inches in depth must be surrounded by permanent, semi-permanent or portable fences not less than 42 inches in height with openings not greater than three inches in width. This fence must be firmly anchored and constructed in a manner to prevent sagging and maintained in good condition.



Montgomery County Department of Permitting Services

255 Rockville Pike, 2nd Floor, Rockville, MD 20850 240-777-6370 Fax: 240-777-6262 http://permittingservices.montgomerycountymd.gov



DEMOLITION SUBMITTAL GUIDELINES

- 1. APPLY FOR A SEDIMENT CONTROL PERMIT, IF YOU ARE DISTURBING 5,000 SQUARE FEET OR GREATER AND PAY THE APPROPRIATE FILING FEE.
- 2. SUBMIT COMPLETED APPLICATION (PLEASE PROVIDE NAME OF CONTACT PERSON) EITHER BY MAIL OR IN PERSON TO: Montgomery County, Department of Permitting Services, 255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850-4166. OFFICE HOURS ARE 7:30 A.M. TO 4 P.M., MONDAY THRU FRIDAY. MAKE SURE YOU HAVE READ SECTION 8.27 OF THE MONTGOMERY COUNTY CODE THAT DESCRIBES THE DEMOLITION AND REMOVAL OF BUILDINGS (copy of the code is attached).
- 3. PAY A NON-REFUNDABLE APPLICATION FEE¹ OF \$205² to \$325³ (PLUS a 10% automation enhancement fee) WITH YOUR APPLICATION.
- 4. OBTAIN A BOND IN THE SAME AMOUNT AS THE ESTIMATED COST OF THE DEMOLITION (MINIMUM \$400) AND SUBMIT THIS AS SOON AS POSSIBLE.

There are four types of bonds:

- 1. **Performance Bond** executed by the Insurance Company according to the forms provided by the County; which includes a Power-of-Attorney statement and a Certification form completed by the Clerk of the Circuit Court (must be attached).
- 2. Letter of Credit executed by the bank, in the form provided by the County.
- 3. Cash Bonds may be posted in the form of cash, check, or money orders.
- 4. Certificate of Guarantee obtainable by members of the Maryland Development of Guarantee Group (ONLY).
- PROVIDE A LIST OF ADJACENT AND CONFRONTING PROPERTY OWNERS NAME AND ADDRESSES (see attached diagram).
- 6. CAP ANY WELL(S) LOCATED ON THE PROPERTY AND SUBMIT A WELL COMPLETION REPORT TO OUR OFFICE (if applicable).
- 7. CONTACT THE UTILITY COMPANIES TO REQUEST DISCONNECTIONS. SUBMIT COPIES OF DISCONNECTION LETTERS TO THE DEPARTMENT OF PERMITTING SERVICES. FAXED COPIES WILL BE ACCEPTED (see back for address listings).
- 8. SUBMIT A SIGNED AFFIDAVIT FROM A COMPANY LICENSED BY THE STATE OF MARYLAND, DEPARTMENT OF AGRICULTURE, LICENSED UNDER THE CATEGORY OF INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED (RODENTS), STATING THAT THE PROPERTY HAS BEEN INSPECTED AND IS FREE OF ANY RODENTS OR OTHER PESTS.
- 9. REMOVE ANY ASBESTOS OR OTHER HAZARDOUS MATERIALS IN ACCORDANCE WITH THE MARYLAND DEPARTMENT OF THE ENVIRONMENT REGULATIONS **PRIOR** TO DEMOLITION. FOR MORE INFORMATION, CALL 1-800-633-6101.
- 10. ACCESS TO PROPERTY BY CONSTRUCTION VEHICLES MUST BE THROUGH A DPS PERMITTED CONSTRUCTION ENTRANCE OR AN EXISTING PERMITTED DRIVEWAY.
- 11. FOLLOW UP ON ALL REQUIRED APPROVALS AND SUBMIT TO THIS OFFICE UNTIL PERMIT IS OBTAINED.

AFTER THE PERMIT IS ISSUED:

- 12. DEMOLISH THE BUILDING(S).
- 13. CLEAN UP THE LOT.
- 14. ARRANGE FOR INSPECTION BY CALLING 240-777-6210 BETWEEN 7:30 A.M. 4 P.M., MONDAY THRU FRIDAY.

NOTE: BE SURE TO ARRANGE FOR FINAL INSPECTION. ONCE THE INSPECTION IS PASSED, THE BOND WILL BE RETURNED.

Fees as shown in (DPS) EO-10-06.

² If the site address is located in the Department of Permitting Services plan review area.

³ If the site address is located in the Maryland - National Capital Park and Planning Commission plan review area.

Montgomery County Department of Permitting Services

DEMOLITION SUBMITTAL GUIDELINES

MAILING LIST

PEPCO

(POTOMAC ELECTRIC POWER CO)
MONTGOMERY CO. REGIONAL OFFICE
CUSTOMER SERVICE CENTER
210 WEST GUDE DRIVE
ROCKVILLE, MARYLAND 20850
MONDAY – FRIDAY, 10 a.m. - 2 p.m.

ATTN: ELIZA HEMINGWAY TELEPHONE: 301-548-4300

FAX: 301-670-8718

MISS UTILITY: 1-800-257-7777

; # HISTORICAL SOCIETY
1209 SPRING STREET
SILVER SPRING, MARYLAND 20910
ATTN: GWEN WRIGHT
TELEPHONE: 301-563-3400

FAX NO: 301-495-1370

BALTIMORE GAS & ELECTRIC CO. (BG&E)

SOUTHERN DISTRIBUTOR DEPT. PARKWAY INDUSTRIAL CENTER 731 PARKWAY DRIVE, SOUTH HANOVER, MARYLAND 21076 ATTN: EXPEDITING

TELEPHONE: 410-850-4620 FAX NO: 410-859-9354

WASHINGTON GAS LIGHT CO. SPRINGFIELD OPERATION CENTER 801 INDUSTRIAL RD. ROOM 206 SPRINGFIELD, VIRGINIA 22151

ATTN: RAZING DESK TELEPHONE: 703-750-4314 FAX NO: 703-750-7570

VERIZON

3901 CALVERTON BLVD., 3RD FLOOR BELTSVILLE, MARYLAND 20705 ATTN: TERRI MARCOUX TELEPHONE: **301-595-6122**

FAX NO: 301-595-3227

FAX NO. 240-777-6314

WELL & SEPTIC SYSTEM
MONTGOMERY CO.
PERMITTING SERVICES
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MARYLAND 20850-4166
ATTN: JAY BEATTY
TELEPHONE: 240-777-6320

ALLEGHENY POWER
INFORMATION CENTER
421 E. PATRICK STREET
P.O. BOX 488
FREDERICK, MARYLAND 21701
ATTN: DANE ROBINSON
TELEPHONE: 301-694-4450
FAX NO: 301-694-4440
(DAMASCUS/POOLESVILLE)

WSSC 14501 SWEITZER LANE LOBBY LEVEL LAUREL, MARYLAND 20707 ATTN: JACKIE SWAN/LOUIS PATIA

TELEPHONE: **301-206-8634** FAX NO: **301-206-8114**

VERIZON

ENGINEERING DEPARTMENT 92 THOMAS JOHNSON DRIVE FREDERICK, MARYLAND 21702 TELEPHONE: **301-694-3996** (POOLESVILLE/DICKERSON)

Montgomery County Department of Permitting Services **DEMOLITION SUBMITTAL GUIDELINES**

Sec. 8-27. Demolition or removal of buildings.

- (a) Notice. The Director must mail written notice, at least 10 days before the Director issues a permit to remove or demolish a building or structure, to the owner of each adjacent and confronting lot. The applicant must give the Department the name and address of the owner of each adjacent and confronting lot. The notice must identify the building or structure to be demolished or removed, specify the process for issuing the permit and the time limit to appeal the issuance of a permit to the Board of Appeals, and include any other information the Director finds useful. The Director need not deliver this notice if unsafe conditions require immediate demolition or removal of the building or structure.
- (b) Signage. The Director need not deliver the notice required by subsection (a) if, at least 10 days before the Director issues a permit to remove or demolish a building or structure, the applicant posts at a conspicuous location on the lot a sign describing the proposed demolition or removal, specifying the process for issuing the permit and the time limit to appeal the issuance of a permit to the Board of Appeals, and including any other information the Director requires. The sign must conform to design, content, size, and location requirements set by regulation under Section 8-13(a).
- (c) Special notice for older buildings. At least 30 days before the Director issues a permit to demolish or remove a building, other than a single-family dwelling, that will be more than 25 years old when it is demolished or removed, the Director must list the address of the property on a properly designated website or other widely available form of electronic notice.
- (d) Notice to utilities. Before the Director may issue a demolition or removal permit, the applicant must notify each connected public utility and obtain a written release confirming that all service connections and appurtenant equipment, such as meters and regulators, have been safely disconnected and sealed.
- (e) Permit requirement; conditions. A person must not demolish or remove a building or structure unless the Director has issued a permit to do so under this Section. Each demolition or removal permit must require the applicant to:
 - (1) before demolishing or removing a building or structure, exterminate any rodents or other pests in it;
 - (2) after demolition or removal, clear all construction and demolition debris;
 - (3) restore the established grade of the surrounding land, unless a sediment control permit is otherwise required; and
 - (4) at all times keep the site free from any unsafe condition.
- (f) Bond or surety. Each applicant for a demolition or removal permit must file a performance bond, cash, certificate of guarantee, or surety with the Department, in an amount equal to the cost of demolition or removal, to assure the safe and expedient demolition or removal of the building or structure and clearing of the site. If the building or structure is not demolished or removed and the site is not cleared of all debris within the time specified in the permit, but not sooner than 60 days after the permit is issued, the Director may enter the property, demolish or remove the building or structure, clear the site of debris, and take action to forfeit the performance bond, enforce the guarantee, or otherwise reimburse the Department for its cost.
- (g) Definitions. As used in this Section:
 - (1) remove means to move a building or structure substantially intact from or within a site; and
 - demolish means to tear down or destroy an entire building or structure, or all of a building or structure except a single wall or facade. (1975 L.M.C., ch. 1, § 3; 2002 L.M.C., ch. 24, § 1.)

MUST BE ON COMPANY LETTER HEAD

DATE

Department of Permitting Services 255 Rockville Pike Rockville, Maryland 20850

Attention Division of Casework Management:

Re:

Property Address of Demolition

Address Address

(Name of Company) is licensed with the Maryland Department of Agriculture in the category of "Industrial, Institutional, Structural & Related – Rodent". You will find our company listed with the following information:

Business Name:

Business License Number:

Expiration Date:

(Name of Company) has inspected (property address) and finds that it is free of any rodents or other pests.



Montgomery County Maryland 255 Rockville Pike, 2nd Floor Department of Permitting Services Rockville, Maryland 20850-4166 (240) 777-6300 Fax (240) 777-6262 http://permittingservices.montgomerycountymd.gov



APPLICATION FOR RESIDENTIAL BUILDING PERMIT

| Sediment Control # | _ Building AP #(s) | Demolitic | on # |
|--|--|---|----------------------|
| □ DEMOLISH Estimated Cost: □ MOVE Disturbed Land □ FOUNDATION ONLY □ RESTORE and/or REPAIR * IF BUILDING A FENCE OR RETAINII HEIGHT: ft in. □ Located entirely on the land of the ow **NOTE: | Area Created his Action: \$ Area: NG WALL Note: (A signed approver Public Right | RETAINING WALL TRAILER** MODULAR HOME** HOT TUB OTHER Doval letter from the adjacent lot o | wner(s) is required) |
| MODEL HOUSE PROGRAM: to build INITIAL SUBMITTAL or PREVIOUSLY APPROVED PERMIT # New Home Model Name or # | | REFER-BACK SYSTEM: to be initial submittal or previously approved per | |
| REVISION to ORIGINAL PERMIT # | | OTHER: | |
| BUILDING PREMISE ADDRESS: House Number Street Lot(s) Nearest Cross Street | Block | Subdivision | Zip |
| APPLICANT INFORMATION: Contact Name of Applicant | et ID #: | | |
| (Permit will be issued to Applicant) Address | | State | |
| CONTACT INFORMATION: Contact Contact Person | | Fax #: Ema | il: |
| Contractor Contractor Address | MH | IIC or Montgomery County Builders | License # |
| | | eview, when available, which is su | |

ADDITIONAL APPROVALS:

Bldg.appl.res.6/03

Properties located within historic districts, municipalities and special taxing districts may require additional approvals

beyond the required Department of Permitting Services (DPS) building permit.

For projects located in the City of Takoma Park's Commercial Revitalization Overlay, certain permits must be approved by the City prior to commencing construction.

| Please refer to "Permit Proced | • | | | |
|--|--|--|--|---|
| TYPE OF WATER SUPPLY | ☐ wssc | WELL | OTHER (spec | sify) |
| SEWAGE DISPOSAL | □ wssc | ☐ SEPTIC | OTHER (spec | sify) |
| MPDU 20% of this new hor | ne development will | be built as Moder | ately Priced Dwelling Units | ☐ Yes ☐ No |
| IMPACT TAX New Homes w | | | ne area where the house is built ax Credit, a copy of which i | |
| DAP & EDAET AGREEMENT | SAgreement mus | st be attached for | new homes when applicable | • * |
| SPECIAL EXCEPTION: Is this | s lot subject to a Spe | ecial Exception? | ☐ Yes , Case # | No |
| VARIANCE: Has a Variance | been granted to perfor | rm this work? | Yes, Variance # | No |
| HISTORIC AREA IN ATLAS | or MASTER PLAN: | Is the property a | Historic resource? | ☐ Yes ☐ No |
| AUTHORIZED AGENT AFFID | AVIT: I hereby | declare and affir | m, under the penalty of pe | rjury, that: |
| 1. I am duly authorized to make | ce this permit applica | ation on behalf of: | (please print property of | |
| 2. The work proposed by this3. All matters and facts set fo | | | ed by the property owner; an | d |
| (O: 1 - 5 A 41 1 A | | | | |
| (Signature of Authorized Agen | t) D | ate | (Print Name) | |
| HOMEOWNER ACTING AS N By this instrument, I, as the procontractor, I hereby declare an 1. I or a member of my in permit application; and | DEW HOME BUILDED DE AMERICA DE LA POPER DE | ER AFFIDAVIT: oplying for an exerpenalty of perjury to perform any and a | nption from the licensing required hat: | ith the foregoing building |
| HOMEOWNER ACTING AS No. By this instrument, I, as the procontractor, I hereby declare and 1. I or a member of my in permit application; and 2. The type of improvement dwelling place for my of 3. I take full responsibility | perty owner, am apped affirm, under the perty owner and affirm, under the perty owner and affirm, under the perty own or my immediate or for all and any code | ER AFFIDAVIT: oplying for an exerption of perjury for any and a puilding permit apple family's use; and a puildings. | nption from the licensing required hat: all construction associated with the licensing required to the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing required for use a second region of the licensing region | ith the foregoing building as a residence or |
| HOMEOWNER ACTING AS N By this instrument, I, as the procontractor, I hereby declare an 1. I or a member of my in permit application; and 2. The type of improvement dwelling place for my of take full responsibility 4. All matters and facts see | DEW HOME BUILDED operty owner, am application and affirm, under the permediate family will ent indicated on the bown or my immediate of for all and any code of forth in this affidate. | ER AFFIDAVIT: oplying for an exerption of perjury for any and a puilding permit apple family's use; and a puildings. | nption from the licensing requirate: all construction associated with the properties of the propertie | ith the foregoing building as a residence or |
| HOMEOWNER ACTING AS No. By this instrument, I, as the procontractor, I hereby declare an account application; and 2. The type of improvemed dwelling place for my of 3. I take full responsibility 4. All matters and facts so belief. | perty owner, am apply affirm, under the pendent family will and indicated on the lawn or my immediate of for all and any code at forth in this affidave and has set forth in the resuance of this policable government. | ER AFFIDAVIT: oplying for an exer- penalty of perjury of perform any and a puilding permit apple family's use; and e violations. wit are true and contact oate this application that is permit is that the int agencies. I her | nption from the licensing required hat: all construction associated we oblication is designed for use a crect to the best of my knowled (Print Name) at is false or misleading may be proposed construction will deby declare and affirm, under the construction will deby declare and affirm, under the construction will deby declare and affirm, under the construction will declare and affirm where the construction will declare and affirm the construction will declare | ith the foregoing building as a residence or edge, information, and result in the rejection of comply at all times with r the penalty of perjury, |
| HOMEOWNER ACTING AS M. By this instrument, I, as the procontractor, I hereby declare and 1. I or a member of my in permit application; and 2. The type of improvemed dwelling place for my of 3. I take full responsibility 4. All matters and facts see belief. (Signature of Property Owner) TO BE READ BY THE APPLIANY information that the application that the application as approved by all at that all matters and facts set for the plans as approved by all at that all matters and facts set for the plans as approved by all at that all matters and facts set for the plans as approved by all at that all matters and facts set for the plans as approved by all at that all matters and facts set for the plans as approved by all at the pla | perty owner, am appled affirm, under the permediate family will and indicated on the beauty for all and any code of forth in this affidave of the issuance of this policable government of the building permet of the perty of the period of the | ER AFFIDAVIT: oplying for an exer- penalty of perjury of perform any and a puilding permit apple family's use; and e violations. wit are true and contact oate this application that is permit is that the int agencies. I her | nption from the licensing required hat: all construction associated we oblication is designed for use a crect to the best of my knowled (Print Name) at is false or misleading may be proposed construction will deby declare and affirm, under the construction will deby declare and affirm, under the construction will deby declare and affirm, under the construction will declare and affirm where the construction will declare and affirm the construction will declare | ith the foregoing building as a residence or edge, information, and result in the rejection of comply at all times with r the penalty of perjury, |



Montgomery County Department of Permitting Services

255 Rockville Pike, 2nd Floor Rockville, MD 20850 240-777-6300 Fax: 240-777-6262 http://permittingservices.montgomerycountymd.gov



DEMOLITION IN YOUR RESIDENTIAL NEIGHBORHOOD

INFORMATION AND RESOURCES FOR NEIGHBORS AND CONTRACTORS

ASBESTOS REMOVAL – Asbestos should be removed BEFORE the building is demolished. For more information contact the Maryland State Department of Environmental Protection at 1-800-633-6101.

AIR, DUST AND ODOR COMPLAINTS related to demolition should be directed to the Department of Environmental Protection 240 777-7700.

CONSTRUCTION NOISE – The Noise Control Ordinance allows construction work to begin as early as 7:00am on weekdays and 9:00am on weekends. You may contact DEP by phone at 240 777-7700 or by email at dep.askdep@montgomerycountymd.gov.

DAMAGE TO NEIGHBORING PROPERITES – by demolition contractors is a civil matter to be resolved by the affected parties.

DEMOLITION PERMITS are required whenever you 1) move a building, intact, from or within a site: or 2) you tear down or destroy an entire building or structure, or all of a building or structure except a single wall or façade. Demolition permit application and issuance requirements can be found at http://permittingservices.montgomerycountymd.gov or by calling 240 777-6370.

DEMOLITION WITHOUT A PERMIT – should be reported to the Department of Permitting Services 240 777-6259.

HISTORIC HOMES AND SITES – If a building or site has been designated historic or is on the historic atlas for Montgomery County, approval for the demolition must be given by the Montgomery County Historic Preservation Commission 301 563-3400.

NEIGHBORS AND CONTRACTORS are encouraged to talk to each other prior to a home being demolished. When both parties know the date, duration and extent of the demolition each can prepare for this activity. This information will be provided to adjacent and confronting neighbors of the demolition along with the name and telephone number of the applicant for the demolition permit.

PORTABLE TOILETS – are required for workers by the Maryland Occupational Safety and Health Administration. Call 410 767-2189 for more information.

SEDIMENT/MUD should not leave the site due to demolition. Contractors are responsible for maintaining sediment onsite. A sediment control permit may be required from the Department of Permitting Services. Call 240 777-6320 for more information.

WASTE CONTAINERS IN THE RIGHT-OF-WAY require a permit from the Department of Permitting Services to block the right-of-way. Call 240 777-6320.



Montgomery County Department of Permitting Services 255 Rockville Pike Rockville, MD 20850



PLAN SUBMITTAL GUIDELINES

New attached and detached single-family dwellings

Two complete sets of neatly bound and legible prints (suitable for electronic scanning) containing floor plans, details, general notes and technical specifications (including building code analysis), drawn to scale and dimensioned, sufficiently complete and detailed to show clearly the scope of the work to be performed. Clouds, if used, must be identified and dated. Preferred print sizes are between 18" X 24" to 30" X 42". The original seal and signature of the responsible Maryland Licensed Registered Architect or Professional Engineer, as appropriate, is required on all attached single-family dwellings (townhouses) drawings and manufactured industrialized/manufactured houses (as approved by the State of Maryland). For detached single-family dwellings, the plan reviewer may require such engineering certification as a condition of permit approval when the plans and documents are difficult or complicated.

Drawings shall contain, but not be limited to the following information, as applicable:

S = single family dwellings

T = townhouse

A. SITE PLAN(S)

Please visit http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/z/zoning.asp for requirements.

B. ARCHITECTURAL PLANS - minimum scale 1/8", preferred 1/4"

| 1 | Name and address of project | S | , T |
|----|---|------------|-----|
| 2 | 2. Names, addresses and telephone numbers of owner(s), architect(s), contractor(s) and | t | |
| | consultants(s) | S | T |
| 3 | 3. Index of drawings | S | T |
| 4 | 4. List of material symbols used on drawings | | T |
| 5 | 5. Specifications | | |
| | a. Design criteria as required by the International Residential Code (IRC) 2003 as | | |
| | amended by Montgomery County for: floor load, roof load, ground snow load, win | d | |
| | loads, seismic design category, frost line depth, decay protection measures, floor | j - | |
| | resistant construction provisions, if any, see information on our website at | | |
| | http://www.montgomerycountymd.gov/mc/services/permitting/bc/nfbldc.htm | S | Т |
| | b. Species/grades of framing lumber; | S | T . |
| | c. Grades/classes of other structural elements; and | S | T |
| | d. Grades/types of construction materials and finishes | S | T |
| 6 | 6. Construction notes | S | T |
| 7 | 7. Scaled and dimensioned floor plans – one plan for each floor - showing the use of all | | |
| | spaces/rooms and means of egress | S | T 1 |
| 8 | 8. Clear indication of firewall locations and ratings. Include listed/approved | | |
| | design number used | | T |
| ξ | 9. Scaled roof plans clearly showing all openings | S | T |
| 1 | 10. Exterior elevations, showing all openings and covering materials | | |
| 1 | 11. Indicate method, amount of bracing, location of braced wall lines and braced wall par | iels | |
| | on each story | S | T |
| 1 | 12. Interior elevations, as appropriate | S | T |
| 1 | 13. Complete cross-sections and details for foundations, floors, walls and roofs, | | |
| | properly cross-referenced showing the type of construction and bracing method used | | T |
| _1 | 14. Window and door schedules or dimensions of these openings | S | T |
| | · · · · · · · · · · · · · · · · · · · | _ | |

| is | 16. 17. | Detailed stairway and/or ramp plans and sections, including guards and handrails with all dimensions shown Flame-spread rating, smoke development, separation of foam plastic materials Location of fireplace/chimneys Location of smoke detectors | S S S S | T T T T |
|--------|------------|--|------------------|------------------|
| | C. 5 | STRUCTURAL PLANS – minimum scale 1/4" | | |
| | 1. | Scaled and dimensioned footing/foundation plans | S | Т |
| | 2. | Scaled and dimensioned floor – one plan for each floor, line drawn structural framing | • | _ |
| | 3. 4. | Roof framing plans Elevations, sections and details, properly cross-referenced- minimum ½" scale | S | 1 |
| | 4. | for sections and details | S | T T |
| | 5. | Column and footing schedules | Š | T |
| | 6. | Load calculations, if applicable, e.g. pier footing, or other engineering | | |
| | | data/computations required to complete plan review | S | T |
| | 7. | Reinforcing steel for slabs, retaining walls, grade beams, foundations walls and/or schedules | S | - |
| | 8. | Engineered wood girders, headers, steel beams and lintels adequately identified | S | Ť |
| | D. I | ENERGY EFFICIENCY REQUIREMENTS | | |
| | 1. | Energy conservation analysis/computations based on the International Energy Conservation Code 2003 | S | т |
| | 2. | Montgomery County prescriptive package issued by Department of Permitting Services | S | + |
| | | | | |

ADDITIONAL REQUIREMENTS

- 1. If dwelling is in historic location, provide stamped plans and letter of conditions from Historic Preservation Commission.
- 2. For zones R-60, R-90 there may be height limitations, contact zoning office at 240-777-6320.
- 3. Three supplemental sets of site and landscape plans (5 total). NOTE: If building is on well and septic, four supplemental sets of site development plans (6 total) are required.
- 4. Application to Montgomery County for construction of property dedicated to public use (driveway apron). Provide street address, subdivision name, lot and block or parcel. In most cases, a bond will be required; you will be notified of the amount. For state highways, follow the instructions of the State Highway Administration (SHA) application, which may be obtained from the SHA at 301-333-1350.
- 5. Application for Stormwater Management and Sediment Control processing.
- Building permit applications must be accompanied by a non-refundable filing fee.
- 7. If property is on well and/or septic, submit an application to the Well and Septic Section at 255 Rockville Pike, Rockville, Maryland (240) 777-6320.
- 8. If connecting to public water and/or sewer, the original (pink slip) copy of the plumbing permit will be required prior to the issuance of a building permit.
 - NOTE: Properties that lie within incorporated areas typically require building permits from the municipality in addition to Montgomery County Department of Permitting Services (DPS), see **Permit Procedures for Properties Within a Montgomery County Municipality** document issued by DPS.

Failure to comply with these guidelines may result in your plan(s) not being accepted for review.



Montgomery County Department of Permitting Services

255 Rockville Pike Rockville, MD 20850



PLAN SUBMITTAL GUIDELINES

Additions/Alterations

These guidelines contain a list of plan details, specifications, and technical information generally required for plan review for additions/alterations to single family dwellings (attached or detached). This list is not all-inclusive and detailed, further information may be required if needed at the time of plan review. The plan reviewer may require such engineering certification as a condition or permit approval when the plans and documents are difficult or complicated.

A. General requirements

- 1. Two complete sets of plans, including site plans, assembled in a logical sequence and bound neatly.
- 2. Plans and documents must be suitable for electronic scanning (no dark background, no faint copies, no blurred lines or lettering, no lined paper, or graph paper.)
- 3. Clouds, if used, must be identified and dated.
- 4. Plans that are pieced/taped together will not be accepted.
- 5. Provide door and window schedule(s) with size, glazing type (tempered, for example), and U-value.
- 6. Provide location of smoke detectors.
- 7. Note the year the existing building was built.

B. Site plan (two sets) drawn to scale and dimensioned

Please visit

http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/z/zoning.asp for requirements.

C. Architectural/structural plan (two sets) drawn to scale and dimensioned.

- 1. Architectural floor plans one plan for each floor (Scale: 1/8" = 1', preferred 1/4"=1')
 - a. Label floor plan(s) of *existing* building (basement, first story, etc.) affected by the addition/alteration, including dimensions, use of each space, stairways, doors, windows, construction materials, means of egress, etc.
 - b. Label floor plan(s) of **proposed** addition/alteration including dimensions, use of space, stairways, doors, windows, construction materials, means of egress, etc.
 - c. Provide the gross square feet of new space (basement, each floor, and attic).
 - d. Indicate method, amount of bracing, location of braced wall lines and braced wall panels on each story.
- 2. Foundation plan and structural framing plan one structural plan for each floor (Scale: 1/4" = 1')
 - a. Show existing footing/foundation and floor/roof structural framing affected by the addition/alteration. Indicate location, size, spacing, and material of all structural and framing elements (sheathing, rafters, trusses, joists, beams, posts, bearing walls, foundation walls, footings, etc.).
 - b. Show footing/foundation and floor/roof structural (line drawing) framing of **proposed** addition/alteration. Indicate location, size, spacing, and material of all structural and framing elements (sheathing, rafters, trusses, joists, beams, posts, bearing walls, foundation walls, footings, etc.), and soil data, if necessary, such as type of soil and bearing capacity.
 - c. When using wood trusses, provide truss design drawings showing depth, span, spacing, bearing widths, design loads, and connections on framing plans.
 - d. Provide a steel lintel schedule, if any, for the support of the brick veneer.

- 3. Elevations of existing building and proposed addition (Scale: 1/4" =1')
 - a. Show doors, windows, other exterior openings, exterior structural elements, gables, dormers, stairways, chimneys, other exterior architectural features/details, and exterior finish materials.
 - b. Show exterior proposed grade, roof pitch, and vertical dimensions of all construction elements and architectural features.
 - c. Show crawl space, if any, including elevations and vents
 - d. Indicate braced wall lines and braced wall panels.
- 4. Cross-sections (Scale: 1/4" = 1')
 - a. Show existing and proposed work affected by the addition/alteration
 - b. Show vertical dimensions of all significant construction elements (ceiling heights, duct/beam clearances, door/window openings, headroom, door/window heights, sill heights, etc.)
 - c. Show size, spacing, and material of all structural elements (footings, foundation walls, bearing walls, posts, beams, joists, rafters, trusses, sheathing, etc.)
 - d. Show special areas/features (stairs, fireplace/chimney, etc.)
- 5. Details (Scale: 1/2" = 1')
 - a. Show footings, retaining walls, unusual structural arrangements and/or connections, indicating materials and size, type, location, and spacing of reinforcing, connectors, etc.
 - b. Show stairway construction (including spiral/circular) indicating materials and dimensions of all treads, risers, landings, winders, guards, handrails, headroom, etc.

D. Technical information required

- 1. Specifications
 - a. Design criteria as required by the International Residential Code (IRC) 2003 as amended by Montgomery County for: floor load, roof load, ground snow load, wind loads, seismic design category, frost line depth, decay protection measures, flood-resistant construction provisions, if any, see information on our website at http://www.montgomerycountymd.gov/mc/services/permitting/bc/nfbldc.html
 - b. Species/grades of framing lumber;
 - c. Grades/classes of other structural elements; and
 - d. Grades/types of construction materials and finishes
- 2. Engineering data/computations required to complete plan review
- The plan reviewer, at his/her discretion, may require that the structural aspects of the construction documents be signed and sealed by an Architect or Professional Engineer licensed in Maryland

E. Energy efficiency requirements

- Energy conservation analysis/computations based on the International Energy Conservation Code 2003
- Montgomery County prescriptive package issued by Department of Permitting Services.

NOTE: Properties that lie within incorporated areas typically require building permits from the municipality in addition to Montgomery County Department of Permitting Services (DPS), see **Permit Procedures** for Properties Within a Montgomery County Municipality document issued by DPS.

Failure to comply with these guidelines may result in your plan(s) not being accepted for review.

ZONING WORKSHEET

Permit

| Zone: | Sheet: | DPS or P&P | Lot Size: | Year House Built: |
|-------|----------|------------|-----------|-------------------|
| Plat: | Lot Rec: | Lot: | Block: | Lgl. Desc: |

| Height | Max. | | | | Mean Peak | | | | | |
|------------------|--------------------------------|---------|--------------------------|----------|-------------------|---------|-----------|-------|------------|-------|
| | Avg. Front Elev. | | | | FF Elev. | | | | | |
| | Roof Ht. | / 2 = | | | Provided | | | | | |
| Stories | Max. F | | Provided | | | | 4.4 | | | |
| Half Story | 2 nd Fl. Area ÷ | | 3 rd Fl. Area | | | = | | % | | |
| | 60% of 2 nd fl. Y/N | Rf. gab | le/hip/ga | mbrel | 2' Wall Plts. Y/N | Truss | /Rafter v | v/mii | n. 5 ft. v | valls |
| Cellar vs. Bsmt. | Cellar | | | Basement | | Crawl S | Space |) | | |
| Front | Min. | Min. F | | Provided | | | | | | |
| | Corner Lot | Provid | ed | - | EBL | | | | | |
| Rear | Min. | | | | Provided | | - | • | | |
| Left Side | Min. | | | | Provided | | | | | |
| Rt. Side | Min. | | | | Provided | | | | | |
| | Total | ī | | | Provided | | | | | |
| Lot Coverage | Max. | | , | % | Provided | | - | | | % |
| | Bldg. Footprint | 1 | | ÷ | Lot Size | | _ | | - | % |
| Lot Width-Bldg. | Min. | | | | Provided | | | | | |
| Lot Width-St. | Min. | | | | Provided | | | | | |

ACCESSORY STRUCTURES:

| Rear Yard Cover | Max. | | Provided | | . , | | |
|---------------------|-------------------------------------|-----|----------------------|----------|-----|---|--|
| R-60/90 20% or> | Access. Bldg. Footprint ÷ | | Rear Yard Area | - | | % | |
| All zones 50% or> | Access. Bldg. Footprint | ÷ | Main Bldg. Footprint | = | | % | |
| Front | Min. | | Provided | | | | |
| | Corner Lot | | Provided | | | | |
| R-60/90 over 24' lg | Add 2' for every 2' over 24' length | | Additional required | | | | |
| R-60/90 over 15' ht | Add 2' for every 1' over 15' (mea | ın) | Additional required | | | | |
| Rear | Min. | | Provided | <u>.</u> | | | |
| Left Side | Min. | | Provided | | | | |
| Right Side | Min. | | Provided | | | | |
| Height | Max. | | Provided | | | | |
| Stories | Max. | | Provided | | | | |

ADDITION vs. NEW CONSTRUCTION:

| Add vs. New Const | Addition Footprint: | | Existing Footprint: | | Add. – Y / N |
|--|---------------------|---|--------------------------------|---|--------------|
| 100% Rule | | | | | New – Y / N |
| Retain 50% Exterior 1 st Fl. Walls | Remaining Walls: | ÷ | Existing Walls: | = | %Retained |
| Uses | RLU - Yes / No | | Accessory Apartment - Yes / No | | |
| Exempted Items | | | | | |

INSTRUCTIONS FOR FILING A HISTORIC AREA WORK PERMIT APPLICATION

All applications for proposed exterior work involving properties listen on the Montgomery County <u>Master Plan for Historic Preservation</u>, either as individual historic sites or as properties within a historic district, require the approval of the Montgomery County Historic Preservation Commission (HPC).

The HPC, staffed by Historic Preservation Planners who work at M-NCPPC, reviews proposals for new construction, demolition, and exterior alterations through the mechanism of the Historic Area Work Permit (HAWP) process. You are encouraged to discuss proposals for major work with the staff in advance of filing a HAWP. For information or to make an appointment, call the HPC staff at M-NCPPC: 301.563.3400.

The HAWP Application Process

***** HAWP applications are obtained from and returned to the Department of Permitting Services (DPS), 255 Rockville Pike, Rockville, 240.777.6370. The application requirements depend on the nature of the proposed project and are listed on the attached checklist. Your application must be complete before it will be accepted by DPS staff. DO NOT FILE YOUR APPLICATION AT M-NCPPC!

Typically, HPC public meetings are held on the second and fourth Wednesdays of each month. A current schedule of meetings can be found on our website: http://www.mc-mncppc.org/historic/commission/meetings.shtm. The firm deadline for filing a HAWP is the Wednesday three weeks prior to each meeting. You are notified by mail of the scheduled meeting date, time, and location, and are normally expected to attend.

Some historic districts have Local Advisory Panels (LAPs), groups of volunteer citizens which assist the HPC by reviewing HAWP applications and forwarding comments for the public record. Further information on Local Advisory Panels an their role in the HAWP review can be provided by the HPC staff. In addition, adjacent and confronting property owners, whose names and addresses are provided by you on the application, are notified by mail that you have filed a HAWP application.

Actions After HAWP Review Hearing

If the HPC approved the HAWP application, it is returned to DPS for issuance of the HAWP. Subsequently, a copy of the approved HAWP and the stamped plans are mailed to the property owner and must be presented to DPS officials in order to obtain a Building Permit.

If you are not satisfied with the decision of the HPC, you can submit a revised application or appeal the decision to the County Board of Appeals, which will hear the original

application <u>de novo</u> (that is, starting fresh with a new hearing) and render its own decision.

HISTORIC AREA WORK PERMIT CHECKLIST OF APPLICATION REQUIREMENTS

| 14 14 14 14 14 14 14 14 | Required Attachments | - | | | | | |
|--|---------------------------|--------------|-------------------------|----------------------------|----------------|----------------|-----------------------------------|
| Proposed Work | 1. Written Description | 2. Site Plan | 3. Plans/ Elevations | 4. Material Specifications | 5. Photographs | 6. Tree Survey | 7. Property Owner Addresses |
| New Construction | * | * | * | * | * | * | * |
| Additions/ Alterations | * | * | * | * | * | | * |
| Demolition | * | * | | | * | | * |
| Deck/Porch | * | * | * | * | * | | * |
| Fence/Wall | * | * | * | * | * | * | * |
| Driveway/ Parking Area | * | * | | * | * | * | * |
| Major Landscaping/ Grading | * | * | | * | * | * | * |
| Tree Removal | * | * | | * | * | * | * |
| Siding/ Roof Changes | * | * | * | * | * | | * |
| Window/ Door Changes | * | * | * | * | * | | * |
| Masonry Repair/ Repoint | * | * | * | * | * | | * |
| Signs | * | * | * | * | * | | * |

PLEASE SEE INSTRUCTIONS ON DPS' HAWP APPLICATION FOR FURTHER DETAILS REGARDING APPLICATION REQUIREMENTS.

<u>NOTE:</u> Historic Area Work Permits are not required for ordinary maintenance projects, such as painting, gutter repair, roof repair with duplicate materials, and window repairs. All replacement materials <u>must match the original exactly</u> and be of the same dimensions.

ALL HAWPS MUST BE FILED AT DPS: 255 ROCKVILLE PIKE, ROCKVILLE, MARYLAND, 20850.

HAWP APPLICATION: MAILING ADDRESSES FOR NOTIFING

[Owner, Owner's Agent, Adjacent and Confronting Property Owners]

| Owner's mailing address | Owner's Agent's mailing address |
|--------------------------|-----------------------------------|
| | |
| | |
| | |
| | |
| | |
| Adjacent and confronting | Property Owners mailing addresses |
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APPLICATION FOR HISTORIC AREA WORK PERMIT

| | | | | Contact Person: | | |
|----------------------------|-------------------|---------------------------------------|---------------------------------------|---------------------------------------|--|----------------------------------|
| | | | | Daytime Phone No.: | · ———————————————————————————————————— | |
| ax Account No.: | | | | | | |
| ame of Property Owner | r: | · | | Daytime Phone No.: | | · |
| .ddress: | and Alexandra | | City | - 04 | | 7:01 |
| | | | | Stae | - | Zip Code |
| | | | | | | |
| | | | | | | |
| gent for Owner. | | | | Daytime Phone No.: | | <u> </u> |
| OCATION OF BUILD | ING/PREMIS | E | | | | |
| ouse Number: | | | Street | · | | |
| own/City: | | | Nearest Cross Street | · · | | |
| ot: | Block: | Subdivision: | | | | |
| iber: | _ Folio: | Parcel: | · · · · · · · · · · · · · · · · · · · | | | |
| ART ONE: TYPE OF | DEDMIT ACT | ION AND LICE | 3 | | | |
| A. CHECK ALL APPLIC | | TOTAL OSE | CHECK VI | L APPLICABLE: | | |
| | | ☐ Alter/Renovate | | ☐ Slab ☐ Room | Addition Borel | Dook C Sho |
| ☐ Move (| | ☐ Wreck/Raze | | ☐ Fireplace ☐ Wood | | |
| ☐ Revision [| | | | | | |
| | | nevocable | | Wall (complete Section 4) | Uther: | |
| | | | | | | |
| C. II this is a revision o | or a previously o | ipproved active permit, se | e reimit # | · · · · · · · · · · · · · · · · · · · | | |
| ART TWO: COMPL | ETE FOR NEV | CONSTRUCTION AN | D EXTEND/ADDIT | TIONS | | |
| A. Type of sewage di | isposal: | 01 USSC | 02 🗆 Septic | 03 🗆 Other: | | |
| B. Type of water supp | ply: | 01 U WSSC | 02 🗆 Well | 03 🗆 Other: | | |
| ART THREE COMP | I FTF ONLY F | OR FENCE/RETAINING | ΜΑΙΙ | | | |
| | feet | | WALL . | | | |
| | | inches aining wall is to be constr | ricted on one of the | fallarrina lagatione. | | |
| | | | | | | |
| ☐ On party line/p | roperty line | ☐ Entirely on la | nd ot owner | On public right of | r way/easement | |
| hereby certify that I ha | ve the authorit | y to make the foregoing a | application, that the | application is correct, an | d that the construction | will comply with plan |
| | | | | condition for the issuance | | 4.7 |
| | | | • | | | |
| | innature of owns | r or authorized agent | | | | Date |
| | gata. 0. 0.000 | | | <u> </u> | | 2016 The Ouers of Applicative |

Approved:

| AAI | THE DESURIFIED OF PROJECT |
|-----------|---|
| a. | Description of existing structure(s) and environmental setting, including their historical features and significance: |
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| | |
| | |
| b. | General description of project and its effect on the historic resource(s), the environmental setting, and, where applicable, the historic district: |
| | |
| | |
| s | |
| | |
| S1. | TE PLAN |
| | e and environmental setting, drawn to scale. You may use your plat. Your site plan must include: |
| | |
| a. | the scale, north arrow, and date; |
| b. | dimensions of all existing and proposed structures; and |
| C. | site features such as walkways, driveways, fences, ponds, streams, trash dumpsters, mechanical equipment, and landscaping. |
| <u>PL</u> | ANS AND ELEVATIONS |
| You | umust submit 2 copies of plans and elevations in a format no larger than 11" x 17". Plans on 8 1/2" x 11" paper are preferred. |
| a. | Schematic construction plans, with marked dimensions, indicating location, size and general type of walls, window and door openings, and other fixed features of both the existing resource(s) and the proposed work. |
| b. | Elevations (facades), with marked dimensions, clearly indicating proposed work in relation to existing construction and, when appropriate, context. All materials and fixtures proposed for the exterior must be noted on the elevations drawings. An existing and a proposed elevation drawing of each facade affected by the proposed work is required. |
| <u>M</u> | ATERIALS SPECIFICATIONS |
| | neral description of materials and manufactured items proposed for incorporation in the work of the project. This information may be included on your sign drawings. |
| DH | OTOGRAPHS |
| | |
| a. | Clearly labeled photographic prints of each facade of existing resource, including details of the affected portions. All labels should be placed on the front of photographs. |
| b. | Clearly label photographic prints of the resource as viewed from the public right-of-way and of the adjoining properties. All labels should be placed on the front of photographs. |
| TR | <u>ee survey</u> |

If you are proposing construction adjacent to or within the dripline of any tree 6" or larger in diameter (at approximately 4 feet above the ground), you

must file an accurate tree survey identifying the size, location, and species of each tree of at least that dimension.

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3.

4.

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6.

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| | |
| Detail: | |

Page:_

Existing Property Condition Photographs (duplicate as needed)

Applicant:_____

Site Plan



Shade portion to indicate North

Applicant:_____

23 Page:__



Department of Permitting Services

Division of Casework Management

255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850

CODE INTERPRETATION/POLICY

| Code/Year | Section of Code | Title of Code Section/Subsection/Policy | | |
|-----------|-----------------|---|--|--|
| 2004 | 59-B-5.1 and | Exemptions from Controls | | |
| | 59-B-5.3 | | | |

Statement/Background of Issue

Lots recorded prior to 1928 are subject to different development standards for new construction or additions than those required under today's Zoning Ordinance. Historically, the Department has had to interpret whether the original 1928 Zoning Ordinance controls development or if subsequent reenactments of the 1928 Code take precedent, particularly the 1930 Zoning Ordinance or amendments thereto.

Division Interpretation/Policy

For purposes of clarification and consistency, the Department has determined that the language of the 1928 Zoning Ordinance as originally enacted will be the single reference point for determining development standards on lots recorded prior to March 16, 1928. This is the code citation referenced in the current Zoning Ordinance and accurately reflects the language contained in the Zoning Text Amendment which amended Sections 59-B-5.1 and 59-B-5.3. Therefore, standards including minimum lot area and setbacks must comply with the provisions of the 1928 Code.

| Interpretation/Policy No. ZP0404-1 | Date 5/3/04 | Division Chief Reginald T. Jetter |
|------------------------------------|---------------|--|
| Interpretation/Policy No. | Date 5/3/04 - | Assistant County Attorney Malcolm F. Spicer |
| Interpretation/Policy No. | Date 5/5/04 | Director Robert C. Hubbard |



Department of Permitting Services

Division of Casework management 255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850

CODE INTERPRETATION/POLICY

| Code/Year 2004 | Section of Code 59-A-5.33 | Title of Code Section/Subsection/Policy ADDITIONS | | |
|--|--|--|--|--|
| Statement/Background of Is | sue | | | |
| | vill establish definitio | evelopment approval by this Department and ons for the terms "alteration", "addition", and ple-family dwellings. | | |
| Division Interpretation/Polic | у | | | |
| The following definitions maction to a single-family dwo | | determination of a proposed bullding permit | | |
| A. ALTERATION — a floor area of an exist | | ilding which does not change the footprint or | | |
| B. ADDITION – a mofilior area provided t | | ting building which changes the footprint or | | |
| | struction must not, more than 100%. | at time of application, exceed the existing | | |
| (measured in and must re | * At least 50% of the existing first floor exterior walls, in their entirety, (measured in linear feet) and comprising the footprint of the existing building and must remain as exterior walls. The determination of first floor exterior walls is that it must have its finished floor surface entirely above grade. | | | |
| | | is subject to current zoning standards and truction is within the above criteria. | | |
| | CTION — any change ation or addition as s | e to an existing building which exceeds the tated above. | | |
| Interpretation/Policy No. ZP0204 | 2/25/0 4 | Division Chief, Reginald T. Jetter | | |
| | Date 2/25/04 | Assistant County Attorney Melsblut sur Malcoing F. Spicer | | |
| | Date 2/25/64 | Director/ Hull | | |

METHODOLOGY FOR BASEMENT/CELLAR DETERMINATION:

This calculation must be done using average finished grades and pre-development grade elevations.

- Determine the grades along perimeter of house. This is done by multiplying each wall section length times
 the grade adjacent to that section. The grade used for this determination is whichever is lower, either
 finished grade or pre-development grade at any point along the perimeter walls. Add all the products
 together and divide by the total perimeter to obtain the average finished grade.
- 2. Determine the elevation of the lowest level (basement or cellar slab elevation) from site plan or floor plan.
- 3. Subtract 2 from 1 to get the average height of finished grade above basement floor.
- 4. Determine the distance from basement floor slab to the bottom of first floor joists. This is the height of the foundation wall plus the sill plate.
- 5. Divide the result of #4 by 2 to get the midpoint.
- 6. If #3 is greater than #5 it is a cellar and therefore not a story.

Calculations:

1.

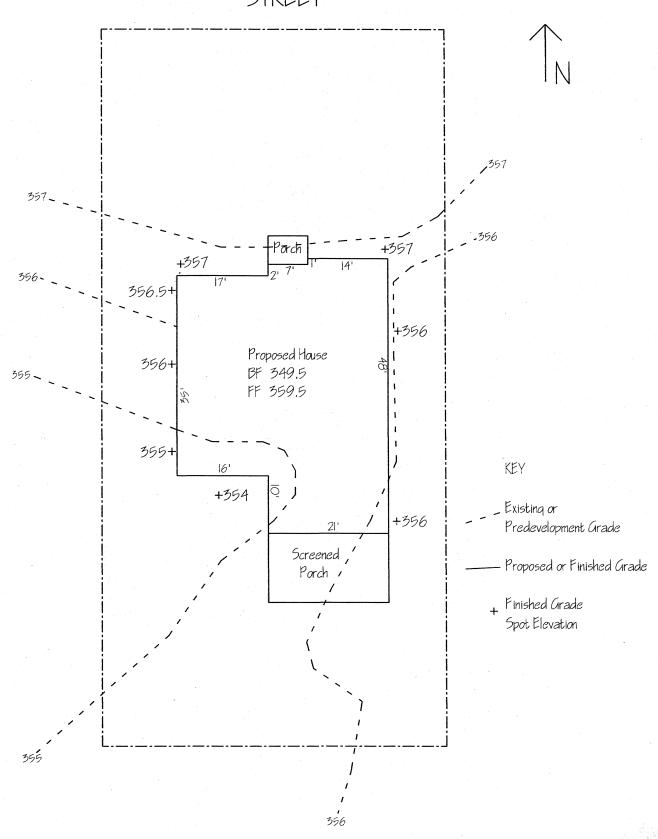
- Basement or Cellar elevation:
- 3. (1) (2)
- 4. Height of foundation wall from basement/cellar to bottom of 1st floor joists:
- 5. (4)
- /2=
- 6. (3) (< or >) (5)
 - Basement or Cellar

EXAMPLE OF METHODOLOGY FOR BASEMENT/CELLAR DETERMINATION:

SEE SAMPLE SITE PLAN ON NEXT PAGE

| FINISHED & PRE-DEV. GRADESPerimeter of House (in ft.) | Elevation | Total | |
|--|-----------|---------------|--------|
| Along entire front wall of house: 41 | 357 | 14637 | |
| East side wall: 48 | 356 | 17088 | |
| Rear of house, not screened porch: 21 | 356 | 7476 | |
| Rear of house: 10 | 354 | 3540 | |
| Rear of house: 16 | 354 | 5664 | |
| West side wall, along contour line at 355: 8 | 355 | 2840 | |
| West side wall, along contour line at 356: 18 | 356 | 6408 | |
| West side wall, between contour lines at 356 & 357: 9 | 356.5 | <u>3208.5</u> | |
| <u>. 171</u> . | 1 | 60861.5 = | 355.91 |
| Avg. Elevation of Finished & Pre-dev. Grades Around House | 355.91 | | |
| Basement/Cellar Elevation | 349.5 | | |
| Avg. Ht. of Finished & Pre-dev. Grades Above Basement/Cellar | 6.41 | | |
| Distance from floor to btm. of 1st flr. joists-Ht. of wall & sillplate | 8.33 | | |
| Midpoint of Foundation Wall | 4.16 | | |
| Lowest level is a cellar | TRUE | | * |
| Lowest level is a basement | FALSE | | |
| | | | |

AMPLE SITE PLAN FOR BASEMENT/CELLAR DETERMINATION STREET





Department of Permitting Services

Division of Casework Management 255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850

CODE INTERPRETATION/POLICY

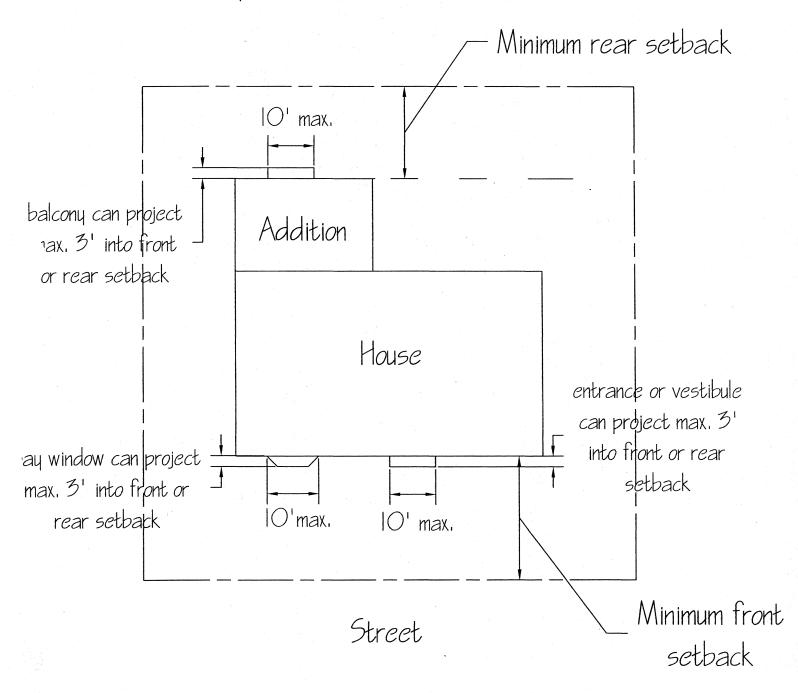
| Code/Year 2004 | Section of Code 59-B-3.2 | Title of Code Section/Subsection/Policy Development Standards Bay Windows | | |
|--|--------------------------|---|--|--|
| Statement/Background of | Issue | | | |
| | hould be applied by | e than 3 feet into a required front or rear the Department to determine bay window | | |
| Division Interpretation/Po | licy | | | |
| A bay window or oriel, not greater than 10 feet in width, may project up to 3 feet into a required front or rear setback. For purposes of clarification, a bay window is considered to be an outward projection from the main wall of a building that forms a bay or alcove in a room. This type of window typically has canted sides and is supported by brackets, cables or similar attachments (cantilevered) or a foundation. If two or more bay windows project from any one side (front or back) of the main building, not more than 50% of the linear width of the front or back, as applicable, of the building may be utilized for such projections. | | | | |
| | | | | |
| Interpretation/Policy No. ZP0927 | 10/1/04 | Division Chief Agrada T. Jetter Reginald T. Jetter | | |
| Interpretation/Policy No. | Date | Assistant County Attorney | | |
| | 10/1/04 | Malcolm F. Spicer | | |
| Interpretation/Policy No. | Date | Director / | | |

MINIMUM SETBACK REQUIREMENTS

Exemptions for Projections

Montgomery County Zoning Ordinance Section 59-B-3.2

Bay Windows, Balconies, Vestibules





Department of Permitting Services

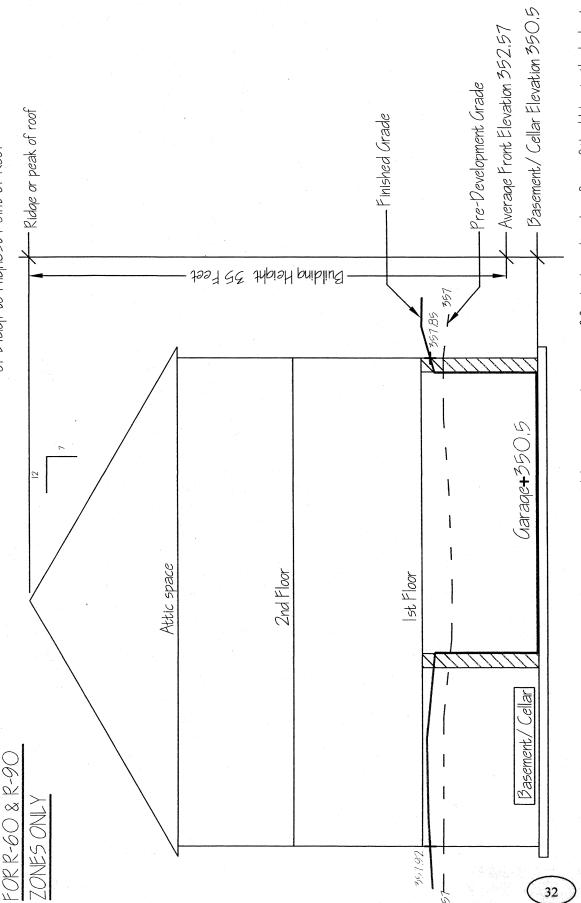
Division of Casework Management 255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850

CODE INTERPRETATION/POLICY

| Code/Year 2004 | Section of Code | Title of Code Section/Subsection/Policy Building Across Lot Lines | | | | |
|---|--|---|--|--|--|--|
| Statement/Background of Iss | ue | | | | | |
| more lots or parts of lot additions to existing dw | In certain areas of the County, single-family dwellings are situated on two or more lots or parts of lots. Clarification is necessary to determine if proposed additions to existing dwellings may cross internal lot lines without requiring a minor subdivision process. | | | | | |
| Division Interpretation/Policy | | | | | | |
| When a property consists of two or more lots or parts of lots as referenced in the tax records of Montgomery County under one tax identification number, and is improved by a single-family dwelling, proposed additions to the building will be permitted to cross Internal lot lines. This interpretation applies to dwellings which already cross internal lines or to additions which will extend across these lines. Setback requirements will be measured from the outer boundaries of the subject property as indicated on the tax records. This policy applies to proposed additions to single family dwellings only. A permit application that is determined by this Department to be new construction will be required to meet subdivision regulations referenced in Chapter 50 of the Montgomery County Code. | | | | | | |
| Interpretation/Policy No. ZP0404-4 | Date 5/3/04 | Division Chief Reginald t. Jetter | | | | |
| Interpretation/Policy No. | Date | Assistant County Attorney | | | | |
| | 5/3/04 | Malish to sur | | | | |
| | | Malcolm F. Spicer | | | | |

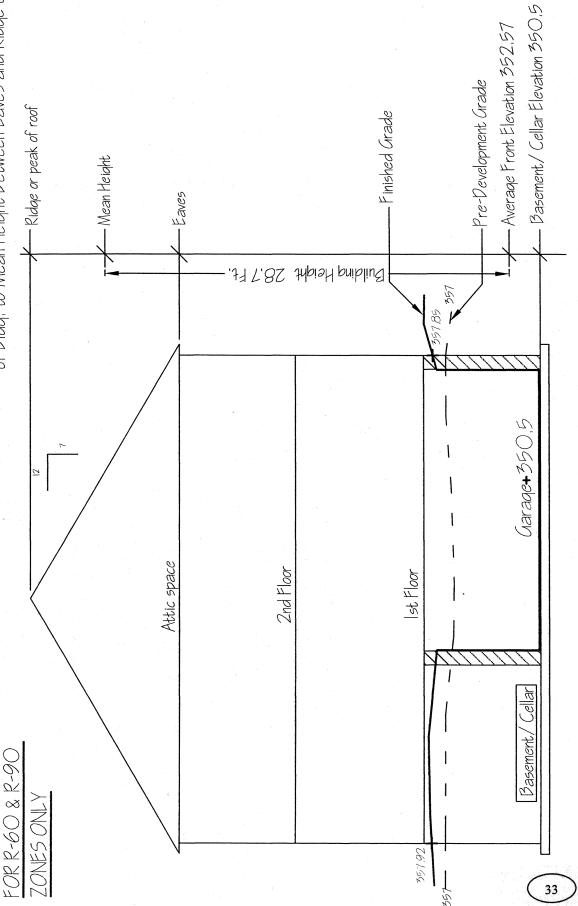
BUILDING HEIGHT MEASUREMENT BUILDING SETBACK FROM STREET LINE MORE THAN 35 FT,--USE AVERAGE FRONT ELEVATION Basement/Cellar Elevation 557,4 - Average Front Elevation* 542,4 - MEAN TEIGHT OF ROOF - Ridge or peak of roof Eaves Finished Gradge Garage Basement/Cellar Attic space 1st Floor EXCEPT R-60 & R-90 FOR ALL ZONES, 31

highest point of roof surface of a flat roof, to the mean height between the eaves and ridge of a gable, hip, gambrel or mansard roof, * Average elevation is determined by multiplying each wall section of front facing planes, times the finished grade elevation adjacent to that section. Add all products together and divide by the total length of the front wall. This result is the average finished grade along the front of the building. Building Height is the vertical distance measured from the average elevation* of finished grade along the front of the building, to the



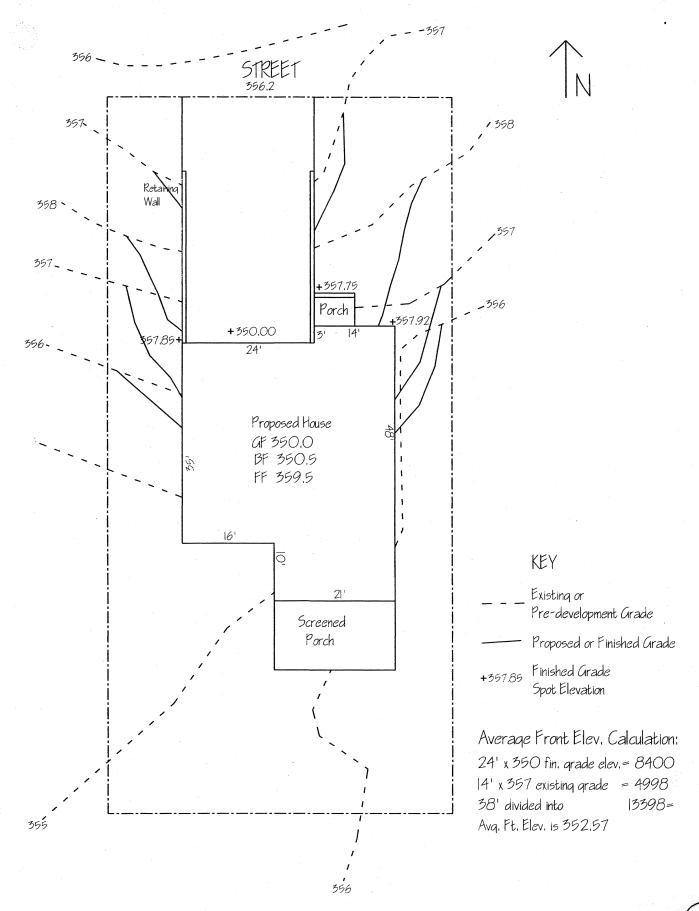
of front facing planes, times the grade elevation adjacent to that section. Add all products together and divide by the total length of the front wall. This result is the grade (existing grade) or finished grade whichever is lower at any given point along the front wall, * Average elevation is determined by multiplying each wall section of any roof surface, Maximum bldg, ht, is 35 ft, For the purpose of determining bldg, ht, the average front elevation used will be based on either pre-development In the R-60 & R-90 zones, bldg, Ht. is the vertical distance measured from average elevation* of finished grades along front of the bldg., to the highest point average grade along the front of the bldg, See SAMPLE SITE PLAN FOR BUILIDNG HEIGHT MEASUREMENT

BUILDING HEIGHT MEASURENT; METHOD 2; Average Elevation of Finished Grade Along Front of Bldg, to Mean Height Between Eaves and Ridge of Roof



In the R-60 & R-90 zones, bldg, Ht. is the vertical distance measured from average elevation* of finished grades along front of the bldg., to the mean Ht. between eaves pre-development grade (existing grade) or finished grade whichever is lower at any given point along the front wall,* Average elevation is determined by multiplying each and ridge of a gable, hip or mansard roof. Maximum bldg, ht. is 30 ft. For the purpose of determining bldg, ht. the average front elevation used will be based on either wall section of front facing planes, times the grade elevation adjacent to that section. Add all products together and divide by the total length of the front wall. This result is the average grade along the front of the bldg, See SAMPLE SITE PLAN FOR BUILDING HEIGHT MEASUREMENT,

AMPLE SITE PLAN FOR BUILDING HEIGHT MEASUREMENT





Department of Permitting Services

Division of Building Construction

255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850

CODE INTERPRETATION/POLICY

| Code/Year | Section of Code | Title of Code Section/Subsection/Policy |
|----------------|-----------------|---|
| ZONING | 59-A-5.33 | ESTABLISHED BUILDING |
| ORDINANCE 2004 | | LINE |
| | | |

Statement/Background of Issue

This policy is written to clarify the method by which the established building line is calculated.

Division Interpretation/Policy

The established building line is the front yard building line which is greater than the minimum setback required for structures in a designated zone.

The established building line is required in the R-60, R-90, R-150, and R-200 zones (except R-200 zones with well and septic in the front.) for:

- 1. All new construction of houses and main buildings
- 2. All proposed additions that extend beyond the front of the building.

Corner lots will have an established building line on both streets.

The process for calculation of the **established building line** is as follows: Identify all the main buildings that are within 300 feet of the side lot lines on the subject property that are, on the same side of the street, between intersecting streets and in the same block as the subject property.

For each building within 300 of the subject property exclude:

- i. The subject property
- ii. Buildings on corner lots
- iii. Buildings subject to a front yard variance
- iv. Buildings with a nonconforming front setback
- v. Buildings set back less than the required minimum front yard setback
- vi. Illegal buildings.
- vii. Houses on pipe stem or flag shaped lots
- viii. Houses on lots not meeting the minimum width at the minimum front setback.

Measure the shortest distance from the front property line of each building to it's nearest

- i. Foundation wall
- ii. Cantilevered floor

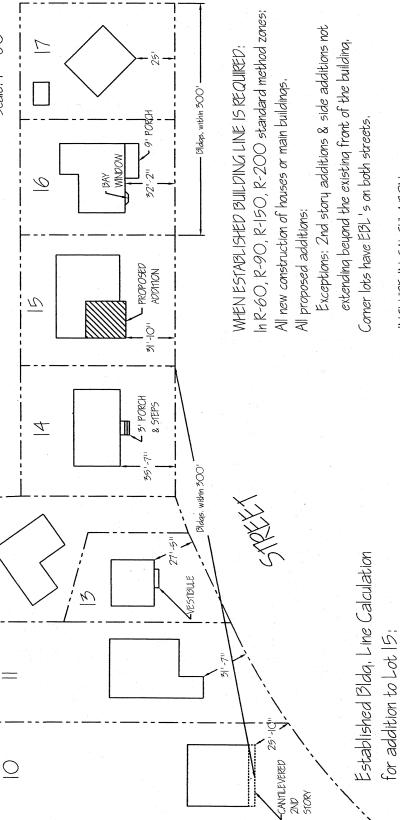
The measurement must be taken at a 90 degree angle from the front property line. This measurement is the front yard setback for that building.

Add all of the front yard setbacks together and divide by the number of houses included in your calculation. The result is the **established building line**.

An example is attached.

| Interpretation/Policy No. | Date | Division Chief |
|---------------------------|------|---------------------------|
| ZP0404-2 Rev 8/30/06 | | |
| | | Reginald T. Jetter |
| Interpretation/Policy No. | Date | Assistant County Attorney |
| | | Malcolm F. Spicer |
| Interpretation/Policy No. | Date | Director |
| | | |
| | | Robert C. Hubbard |

Scale: |"=60"



INCLUDE IN CALCULATION:

When 2 or more buildings meet the following:

All bildas, within 500' of side property lines of subject property.

Between intersecting streets and within the same block.

Buildings existing at time permit application is filed.

Measure the distance between front property line and foundation wall of nouse or any cantilevered second story.

EXCLUDE FROM CALCULATION:

Subject property,

Corner lots,

opestem, flag-shaped or lots not meeting minimum lot width at minimum front setback,

Juildings with front setback variances,

Juildings with nonconforming front yard setbacks.

7 () - 7

ESTABLISHED BUILDING LINE

roth =

Lot 17

152' 7" or 152,56' divided

by 5 lots= 30,511 is EBL

not included, corner lot

32' 2" or 32,16'

not included, subject property

1st 15 1st 16

し<u>み</u> 4

35'7" or 35,58'

27'5" or 27,41"

not included, pipestem lot

Lot 12 Let 13

| |-|-

25' | 0'' or 25,83' 3|' 7'' or 31,58'

10t 10

ESTABLISHED BUILDING LINE FOR CUL-DE-SAC LOTS

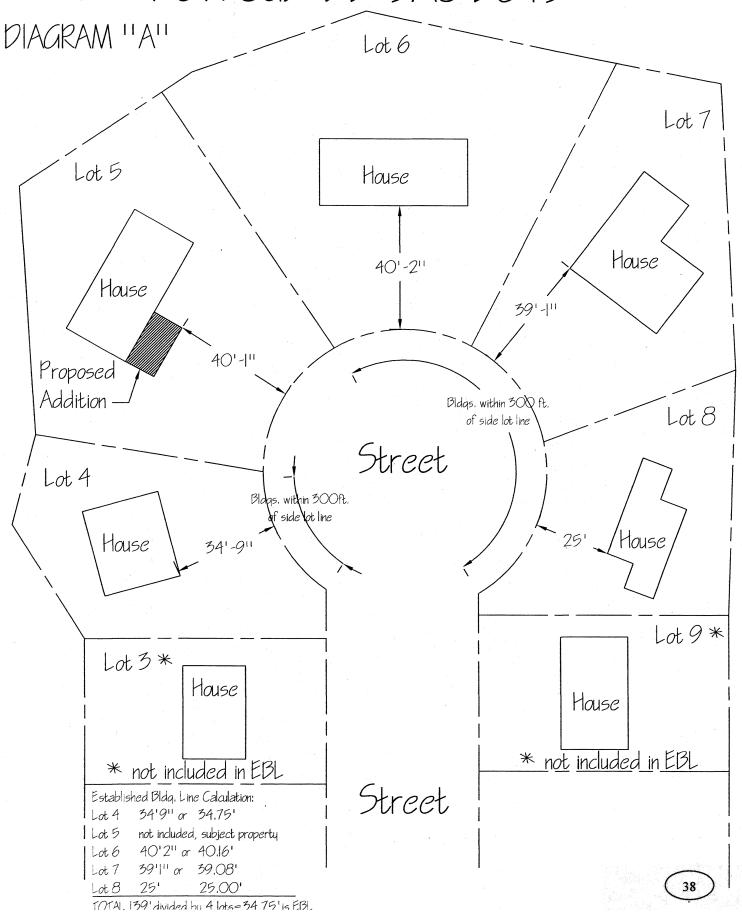
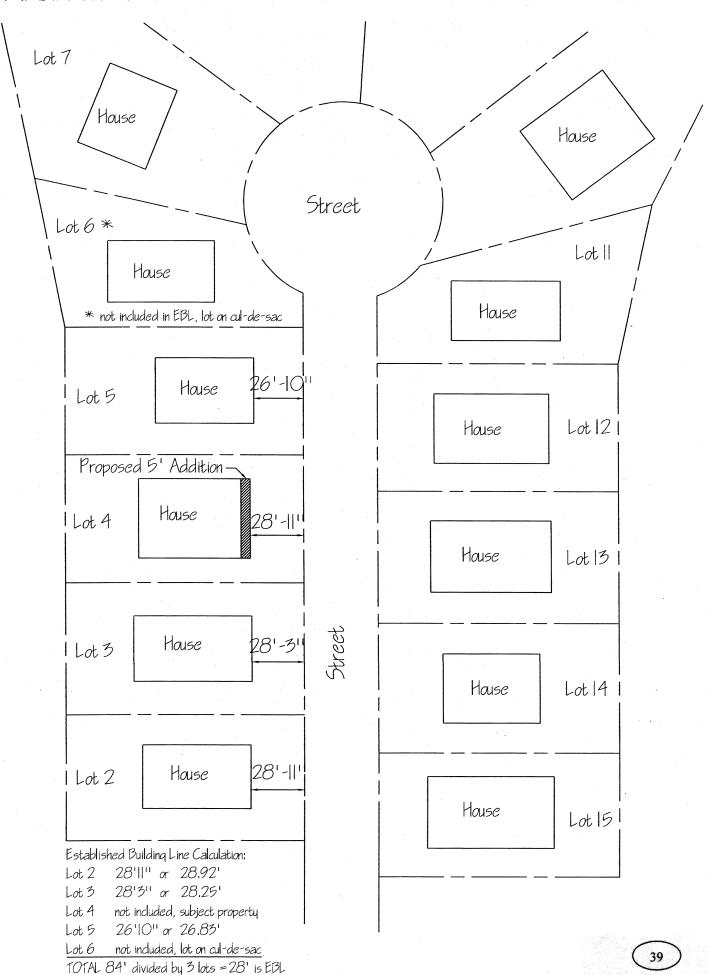
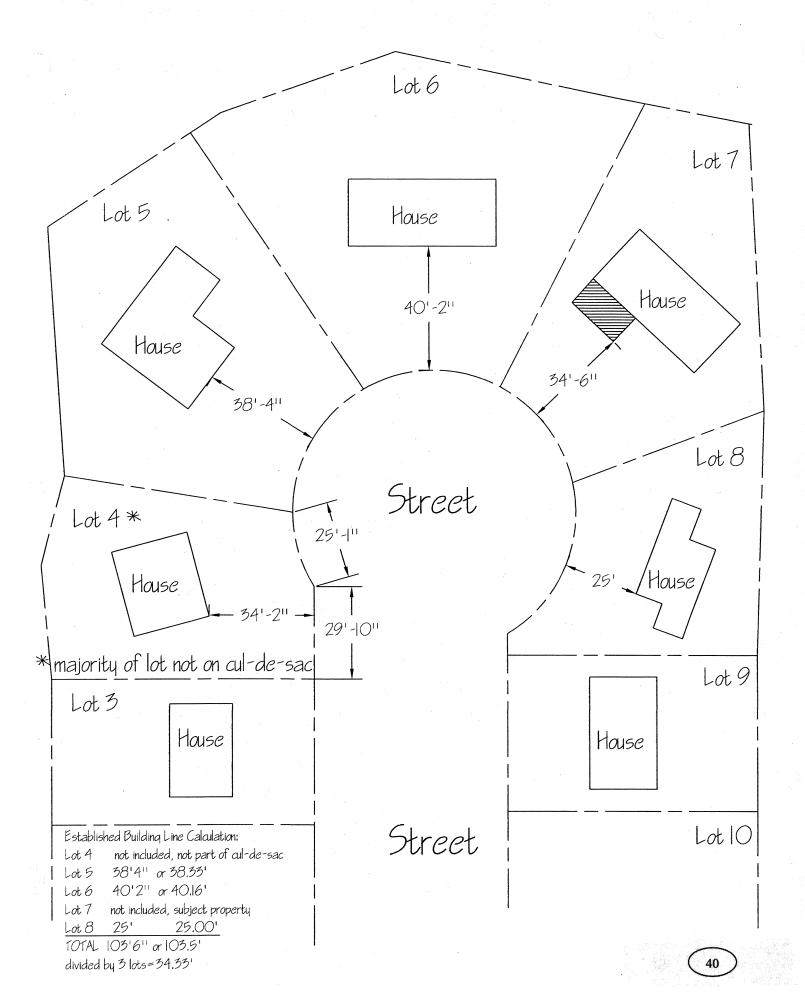


DIAGRAM "B"







Department of Permitting Services

Division of Casework Management

255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850

CODE INTERPRETATION/POLICY

| 2004 | 59-C-1.323 | Yard Requirement: Corner Lots |
|-----------|-----------------|---|
| Code/Year | Section of Code | Title of Code Section/Subsection/Policy |

Statement/Background of Issue

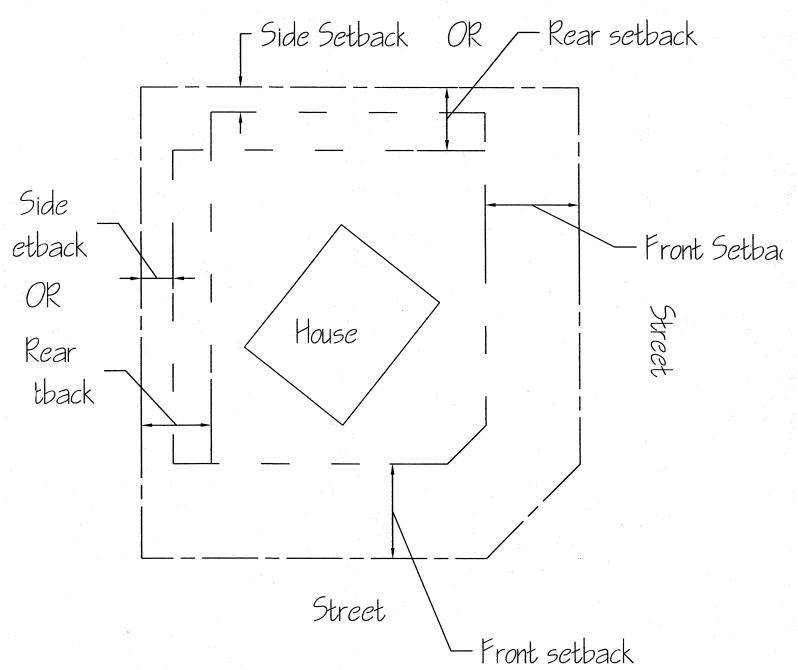
What criteria determines setback requirements for existing or proposed one-family dwellings (main buildings) located on a corner lot?

Division Interpretation/Policy The Department is frequently required to identify the applicable front, side, and rear yard setbacks for dwellings situated on corner lots. For purposes of clarity and consistency, the following criteria will be employed for such determination:

- Each corner lot has two front yards and therefore requires a front yard setback from each street. In limited circumstances when one adjoining lot is also a corner lot, a reduced side street setback will be applied.
- For new construction, the applicant may choose which interior lot lines will be considered the side or rear lot line, provided that both a side and a rear yard are created for setback purposes. The orientation of the front entrance or access from the street does not always determine which side yard will be considered the rear.
- For an addition to an existing one-family dwelling, setback requirements for side and rear yards have already been determined based upon original construction. The proposed addition must maintain the applicable side or rear setback for the underlying zone. If the less restrictive rear yard setback is met in both yards, the applicant may choose either yard for the more restrictive side yard setback.

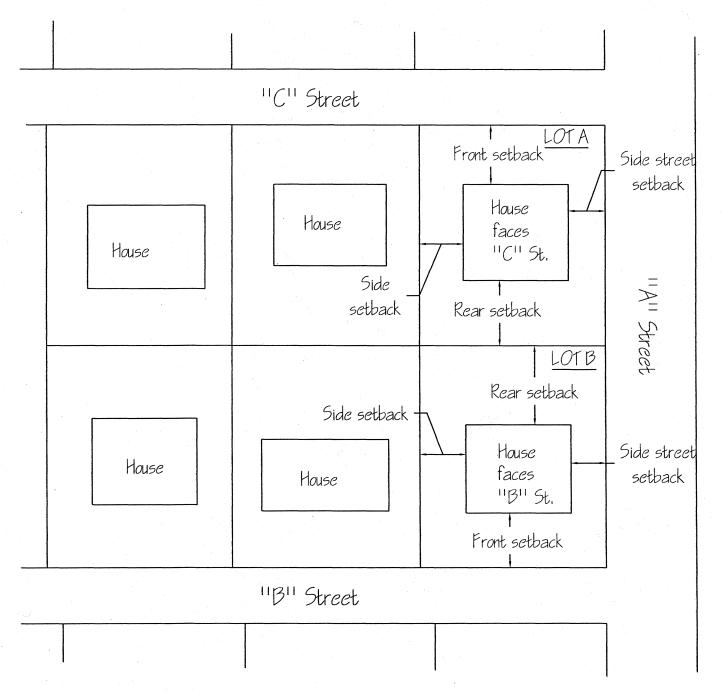
| Interpretation/Policy No. ZP0404-3 | Date 5/3/04 | Division Chief Common A Marie Reginald T. Jetter |
|------------------------------------|-------------|--|
| | Date 5/3/04 | Assistant County Attorney Malcolm, F. Spicer |
| | 5 5 04 | Director Manual |

CORNER LOT SETBACKS FOR MAIN DWELLINGS



NOTE: If setbacks from both interior lot lines meet the rear yard minimum, and there is no accessory structure on the lot, then either yard may be selected as a side yard for future additions. On this lot, you may choose which is a side and a rear yard, but you must have both a side and a rear setback on the lot. Revised 12

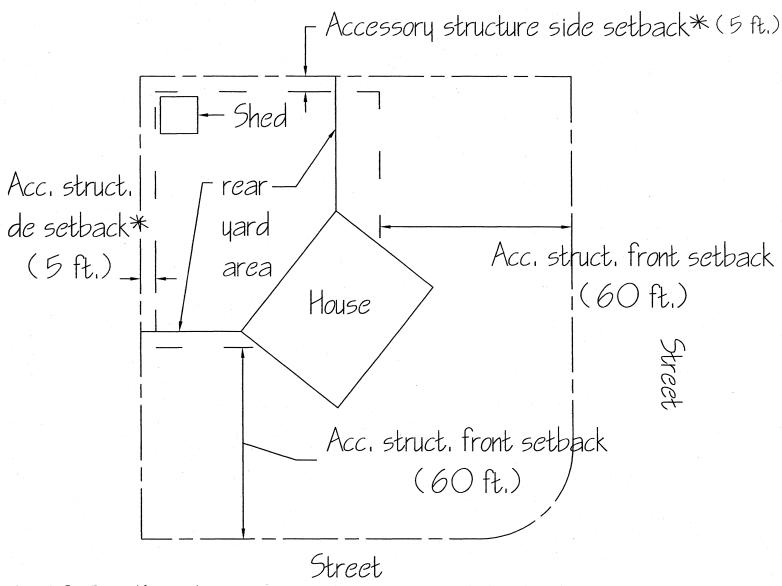
CORNER LOT SETBACKS FOR MAIN DWELLINGS SIDE STREET REQUIREMENT



In the case of a corner lot (Lot A), if the adjoining lot (Lot B) on one of the streets either does not front on that street or is in a nonresidential zone, then the setback from that side street line must be at least 15 ft. in the R-60, R-90, R-150 & R-200 zones, and at least 20 ft. in the RE-1, RE-2C & RE-2 zones.

CORNER LOT SETBACKS FOR ACCESSORY STRUCTURES

'iagram A-Mont, Co. Zoning Ord, Sec. 59-C-1,326(a)



R-60 Zone Example:

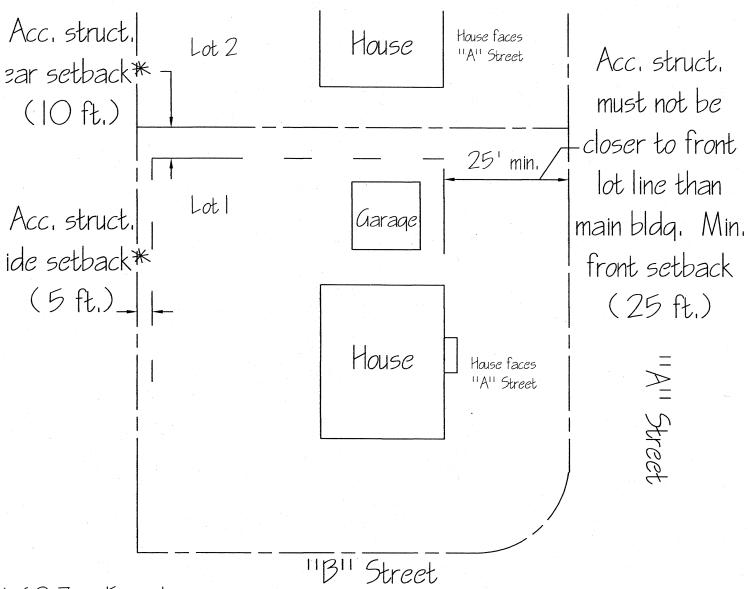
Accessory building must not exceed 50% of the footprint of the residence. In Diagram A, the accessory structure must be located in the rear yard, behind the house.

. vccessory structures shall meet the minimum setbacks shown in Diagram A. or Diagram B or Diagram C, whichever corner lot situation is applicable. \bigcirc

st Additional setbacks required if structure is over 24' in length or over 15' in height.

CORNER LOT SETBACKS FOR ACCESSORY STRUCTURES

'iagram B-Mont. Co. Zoning Ord. Sec. 59-C-1.326(b)(1)&(2)



:-60 Zone Example:

Accessory building must not exceed 50% of the footprint of the residence.

1 Diagram B, if the adjoining lot (Lot 2) on a side street has frontage on the side treet, the setback from the side street line is 25', but the building must not be loser to the street line than the main building.

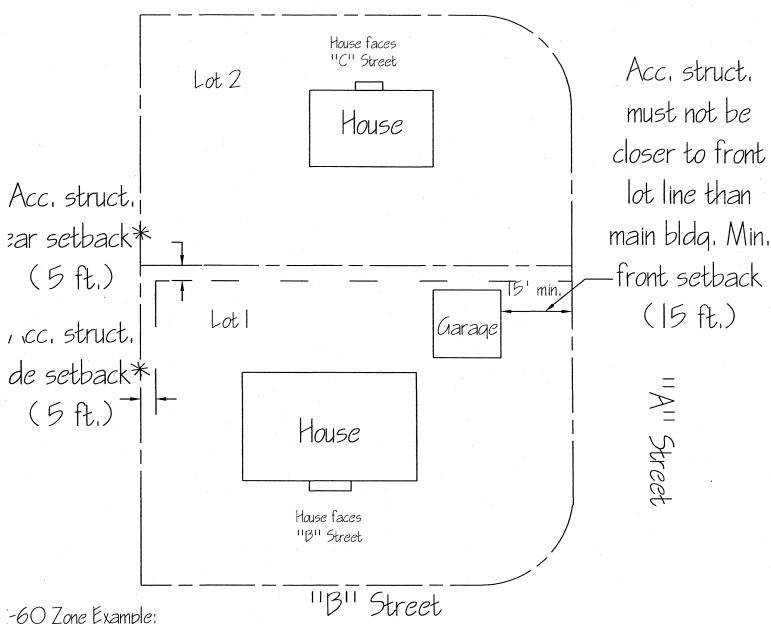
r Diagram C, whichever corner lot situation is applicable.

1. Viagram A, Diagram B

 κ Additional setbacks required if structure is over 24' in length or over 15' in height. REVISED 08/31/06

CORNER LOT SETBACKS FOR ACCESSORY STRUCTURES

iagram C-Mont. Co. Zoning Ord. Sec. 59-C-1.326(b)(1)&(3)



-60 Lone Example:

vccessory building must not exceed 50% of the footprint of the residence.

I Diagram C, if the adjoining lot (Lot 2) on a side street does not have frontage on the side street, he setback from the side street line is 15', but the building must not be closer to the street line than main building.

Accessory structures shall meet the minimum setbacks shown in Diagram A, Diagram B or Diagram C, whichever corner lot situation is applicable.

(46)

 $^{ extsf{K}}$ Additional setbacks required if structure is over 24' in length or over 15' in height. REVISED 08/31/06



Montgomery County Department of Permitting Services 255 Rockville Pike, 2nd Floor, Rockville, MD 20850 240-777-6300 Fax: 240-777-6262

http://permittingservices.montgomerycountymd.gov



NOTICE OF REQUIRED RESIDENTIAL BUILDING INSPECTIONS

You are being provided with this Notice so that you will understand which BUILDING INSPECTION(S) must be performed as a condition of a permit issuance. You must arrange for the inspection(s) according to the procedures specified below. Please call 240-777-6210 between the hours of 7:30 a.m. -4:00 p.m. Monday to Friday, if you have any questions about the required inspection(s). If you have job specific questions during construction please call the inspector assigned to the area in which the project is located.

Inspections shall be requested at least 24 hours prior to the date the inspection is needed. To schedule an inspection, call 240-777-6210. Inspection requests must include the street address, permit number, and the type of inspection needed. Inspection requests made before 12 noon will be scheduled for the next working day, requests made after 12:00 noon will be scheduled within two working days. A specific time for an inspection cannot be given at the time that the inspection is scheduled.

The permit must be posted in front of the site or house and be visible from the main road or entrance. If house numbers are not shown on the house or structure, the address must be posted in the same area as the permit and must be displayed in large four-inch letters on a temporary card or the window. <u>FOR ALL INSPECTIONS, A SET OF APPROVED PLANS STAMPED BY MONTGOMERY COUNTY MUST BE ON THE JOB SITE FOR INSPECTOR'S REVIEW.</u>

BEFORE YOU DIG call MISS UTILITY 1-800-257-7777 (2 day notice is required). Please note that the Maryland High Voltage

Line Act prohibits any person or object from getting closer than 10 feet from high voltage power lines. The following INSPECTIONS are required for your building permit number _ □ 555 SIGN — The sign must be posted on the property within 3 days after the permit issuance date and must remain posted on the property for 30 days. The sign must be located on the side of the lot/parcel, which provides principal access to the street or right-of-the-way. It must be conspicuously posted not more than 5 feet from the front property line and mounted at least 30 inches, but not more than 60 inches, above the ground. NO BUILDING INSPECTION WILL BE PERFORMED PRIOR TO THE APPROVAL OF THIS INSPECTION. □ 001⁽¹⁾ FOOTINGS —Conducted prior to concrete placement and after excavation for wall footings, retaining wall footing (sometimes), column/pier footings, or thickened slabs have been completed; after grade stakes, reinforcing steel, concreteencased electrode (for new homes) are in place; and after sediment control measures are installed according to the approved sediment control plans. □ 402 REBAR, DEADMAN, GEOGRID PLACEMENT – Conducted prior to pouring/backfilling retaining walls. □ 002⁽¹⁾ FOUNDATION/PARGING OR BACKFILL – Conducted after walls have been waterproofed and exterior foundation drainage system has been installed. If interior drain tiles are to be used, weep holes (2 in. minimum diameter, 6 feet on center) must be installed. A second inspection may be required prior to backfilling the interior drainage system. □ 011⁽¹⁾ CONCRETE SLAB-ON-GROUND FLOOR -After the installation of the slab base, vapor retarder, slab edge insulation, and a minimum 3 in. schedule 40 PVC, or equivalent gas tight pipe inserted into a 3 in. tee embedded into the slab base for the venting of RADON GAS and labeled adequately. Where the sump crock is to be used for the venting of RADON GAS, it must be in place at the time of the inspection. Additions to an existing building that has the final inspection older than a year does not require a radon control system.

- □ 003⁽²⁾ Wall Check (House Location Survey) Required at foundation completion prior to framing installation. This inspection is not performed by a county inspector. A wall check will not be accepted unless the permit number and premise address identify it.
- □ 006 MASONRY FIREPLACE/CHIMNEY Conducted after the chimney/fireplace and the first flue liner has been installed.
- □ 004 FRAMING (CLOSE-IN) Conducted after the completion of all framing, rough wiring, fire sprinkler system installation and testing⁽⁴⁾, plumbing and mechanical distribution systems, if required, but prior to installing insulation and drywall. When plumbing work is part of the construction, a Washington Suburban Sanitary Commission (WSSC) plumbing inspection must be approved before requesting a framing inspection. WHEN FLOOR FRAMING IS LESS THAN 36 IN. ABOVE THE SURFACE BELOW, A FRAMING INSPECTION MUST BE REQUESTED PRIOR TO INSTALLATION OF ANY FLOOR MATERIALS.
- □ 012 SWIMMING POOL BONDING Conducted when the pool has been formed with the rebar installed and bonded prior to placement of concrete or backfill. During construction pool excavations must be completely enclosed by a 42 in. high safety fence AT ALL TIMES when work is not being performed in the pool.
- □ 251 FINAL Conducted after building (or portion thereof) is completed and ready for occupancy. Before requesting the final inspection, the fire sprinkler system must be approved⁽⁵⁾, all conditions of well and septic permits, if any, must be satisfied and WSSC approved final inspection for plumbing/gas installations must be obtained. The address numbers must be displayed in accordance with the requirements of the fire code. If an owner refuses access within a reasonable time after the house is completed, the building official may close the permit file, but this action will not relieve the owner from any obligation to comply with applicable building codes. For new construction, to allow the purchaser to go to settlement before the final inspection is completed, the home owner must provide a signed copy of the Final Inspection Waiver to the Department of Permitting Services. However, the final inspection must be requested and approved before building (or portion thereof) is used and occupied.

REINSPECTION FEE —A re-inspection fee will be required after a building or electrical (\$110.00) or mechanical (\$38.50) inspection has been disapproved twice. A 50% of fire sprinkler inspection fee will be required after a fire sprinkler system inspection has been disapproved once. To alert you of the reinspection fee the inspector will leave a disapproval sticker indicating a fee is due and outlining the payment procedure. This fee must be paid prior to requesting any future inspections. Inspections which cannot be performed because the inspector cannot gain access to the construction, or where work is incomplete, will be considered disapproved, counting toward the two allowed disapprovals. To avoid reinspection fees, footing, parging and slab inspections not ready due to weather conditions, may be cancelled by phone or upon the inspector's arrival up to 8:30 a.m. on the scheduled day. All other inspections must be cancelled prior to inspector's arrival on the job site. To cancel an inspection call 240-777-6210 and provide the permit number, address and type of inspection.

FRAMING (CLOSE-IN) and FINAL building inspections must be requested at the same time with electrical and mechanical inspections under the relevant Electrical and Mechanical Permits, if any of these permits is required. If all inspections are not properly requested, the inspector will disapprove the scheduled inspections.

For more information on scheduling inspections, please visit http://permittingservices.montgomerycountymd.gov/permitting/bc/TimingOfInspections(Residential).pdf

- (1) A licensed design professional enrolled in the Montgomery County Inspectors Certification Program may carry out the inspection
- Owner must have a house location survey prepared and certified by a Maryland Registered Land Surveyor or a Registered Professional Engineer (where the property lines and corners are already existing and determined on the ground) and must furnish a copy to the Land Use Compliance Section (LUC) for approval before any further inspections may be scheduled. For questions about wall checks please call LUC at 240-777-6240.
- (3) For construction of new single-family dwellings and townhouses only.
- Inspections must be arranged through the Department of Fire and Rescue Services, 240-777-2457, between 8:00 a.m. and 4:00 p.m., Monday-Friday. A hydro test must be approved prior to scheduling the framing (close-in) inspection.
- The final sprinkler inspection must be approved prior to scheduling the final building inspection.



Montgomery County Department of Permitting Services

255 Rockville Pike, 2nd Floor, Rockville, MD 20850 240-777-6370 Fax: 240-777- 6262 http://permittingservices.montgomerycountymd.gov



RESIDENTIAL INSPECTION TIMING CHECKLIST

The Code of Montgomery County (Chapter 8 and 17) requires that new homes and their accessory structures comply with the Montgomery County Building Code. Montgomery County Building Code incorporates and amends by Executive Regulation:

| Code | Permit Type | Code/Standards | Effective Date |
|---------------------|-------------|--------------------------------------|----------------|
| Building | Building | International Residential Code, 2003 | 06-01-2005 |
| Mechanical | Mechanical | International Residential Code, 2003 | 06-01-2205 |
| Energy Conservation | Building | International Residential Code, 2003 | 06-01-2005 |
| Electrical | Electrical | National Electrical Code, 2002 | 06-01-2005 |

Rehabilitation work, such as additions, renovations, restorations, on buildings that have the final approved inspection older than one year, must comply with Maryland Rehabilitation Building Code. By reviewing plans, issuing permits and performing inspections under these building codes, the Department of Permitting Services (DPS) can help in complying with the provisions of the law.

Permits must be posted in front of the site or house and be visible from the main road or entrance. If house numbers are not shown on the house or structure, the address must be posted in the same area as the permit and must be displayed in large four-inch letters on a temporary card or the window. Inspections will not be performed without a set of original County approved plans on the job site.

Approved plans issued by DPS have a Notice of Required Residential Inspections form attached to them. On that form, the required inspections for the type of construction work are indicated. First table indicates the scheduling order of those required building inspections. Similarly, the second and third tables show the required mechanical and electrical inspections, respectively. Some of the mechanical and electrical inspections are prerequisite for scheduling building inspections (and vice versa) and are cross referenced accordingly.

Montgomery County residential inspectors are cross trained in building, mechanical and electrical inspections, therefore the close-in and final building, electrical, and mechanical must be combined. However, close-in and final inspections must be requested under the relevant Building, Electrical, and Mechanical Permits. If all trades are not ready, the inspector will disapprove the scheduled inspections.

When issued a Building Permit Notice must be posted within 3 calendar days after the release date and must remain posted for 30 calendar days. No other inspections will be performed prior to approval of the posting requirements of the sign.

Montgomery County Department of Permitting Services Residential Inspection Timing Checklist

| REQUIRED BUILDING INSPECTIONS | | | | | | |
|--|--------------------------------------|---|--|-------------------------|---|---|
| Building Inspection Codes and Types | | Prior to Inspection Request | | Inspection performed by | | |
| | | | | County Inspector | Others | Inspection approval required prior to |
| Code | Туре | Work to be Completed | Approved Inspections | Cour | | |
| 001 | Footings | Excavation for wall footings, retaining wall footing (sometimes), column/pier footings, or thickened slabs completed Grade stakes, reinforcing steel, concreteencased electrode (for new homes) in place Sediment control measures installed according to the approved sediment control plans | Before you dig call MISS UTILITY 800-257-7777 (2 day notice required) | Yes | Licensed Design Professional ¹ | Placing of concrete |
| 402 | Rebar, deadman, geogrid placement | Excavation for wall footings, retaining wall footing, column/pier footings, or thickened slabs completed Grade stakes, reinforcing steel, concreteencased electrode (for new homes) in place Sediment control measures installed according to the approved sediment control plans | • 001 | Yes | | Installing and backfilling retaining walls |
| 002 | Foundation/Parging or Backfill | Walls waterproofed Exterior foundation drainage system installed If interior drain tiles are to be used, weep holes (2 in. minimum diameter, 6 feet on center) installed⁽²⁾ Walls strong enough or braced | • 001 | Yes | Licensed Design Professional ¹ | Backfilling |
| 011 | Concrete slab-on- ground floor | Sewer and water and sewer pipe installed Installation of slab base, vapor retarder, slab edge insulation A minimum 3 in. schedule 40 PVC, or equivalent gas tight pipe inserted into a 3 in. tee embedded into the slab base for the venting of radon gas and labeled adequately Installed sump crock, if necessary for the venting of radon gas | • 001 • WSSC#1 | Yes | WSSC ⁽³⁾ Licensed Design Professional ¹ | Placing of concrete |
| 003 | Wall check (house location survey) | Sill plates installed Certified house location survey (new houses only) | • 001,002 | Yes | Survey prepared and certified by a Maryland Registered Land Surveyor or a Licensed Design Professional ⁽⁴⁾ | • Framing the first floor |

Montgomery County Department of Permitting ServicesResidential Inspection Timing Checklist

| REQUIRED BUILDING INSPECTIONS | | | | | | |
|--|--------------------------------------|---|--|------------------|------------------------------|---|
| Duil | dina | | | | ction performed by | |
| Building Inspection Codes and Types | | Prior to Inspection Request | | County Inspector | Others | Inspection approval required prior to |
| Code | Туре | Work to be Completed | Approved Inspections | Cour | | |
| 006 | Masonry Fireplace/Chimney | Chimney/fireplace and the first flue liner installed | • 001 | Yes | | Installing additional liners Framing (close-in) inspection |
| WSSC#2 | Plumbing/Gas rough-in | Check with WSSC ⁽³⁾ | • | | WSSC | Installing insulation and drywall Framing (close-in) inspection |
| 041 | Framing (close-in) ⁽⁵⁾⁽⁶⁾ | All framing installed Roof and components installed All stairs in place Fire stopping and draft stopping installed Building is watertight Exterior sheeting installed Windows, doors installed | • 001, 002, 003, 011 • WSSC#2, 008, 104 | Yes | WSSC | Installation of insulation and drywall Installation of outlets, switches, fixtures, appliances |
| 012 | Swimming pool bonding | Pool has been formed with the rebar installed and bonded prior to placement of concrete or backfill. | | Yes | | Placing of concrete |
| 251 | Final ^{(7) (8)} | All attic, basement, crawl space insulation installed, if required Floor covering installed Trim in place All surfaces inside the house finished Al exterior finishes are complete (siding, soffits, fascia, trim) Street address attached to the building | 001, 002, 003, 011, 041, 102 Final Electrical Final mechanical | Yes | WSSC Fire Department | Prior to the issuance of Certificate of Final Inspection Using plumbing, gas, mechanical systems Occupying any part of building |

Montgomery County Department of Permitting Services

Residential Inspection Timing Checklist

REQUIRED BUILDING INSPECTIONS

- (1) Montgomery County Inspectors Certification Program (ICP) maintains a list of Maryland registered professional engineers & architects certified for this type of inspection
- (2) A second inspection may be required prior to backfilling the interior drainage system.
- Washington Suburban Sanitary Commission (WSSC) provides permits and performs inspections on plumbing and natural gas piping and appliance installation. Montgomery County inspectors will not conduct a close-in inspection without an approved WSSC rough-in inspection
- Owner must have a house location survey prepared and certified by a Maryland registered Land Surveyor or a registered Professional Engineer (where the property lines and corners are already existing and determined on the ground) and must furnish a copy to the Zoning Section for approval before any further inspections may be scheduled. For questions about wall checks please call Zoning Section at 240-777-6240. A wall check will not be accepted unless the permit number and premise address identify it.
- When floor framing is less than 36 in. above the surface below, a framing inspection must be requested prior to installation of any floor materials
- ⁽⁶⁾ For new construction, the framing 041, rough wiring -104, and mechanical inspections 008 must be requested at the same time
- ⁽⁷⁾ The final mechanical and electrical inspection must be requested with the final building inspection
- ⁽⁸⁾ For new construction, conducted after the building is completed and ready for occupancy, but prior to settlement on the house, unless the contract owner waives the requirements and provides, in writing, the Department of Permitting Services with a signed copy of the waiver form provided by the County.

For other than new construction, or when the scope of the work does not involve structural modifications to the building a rough wiring inspection must be requested prior to concealment and approved prior to the framing inspection, or both may be requested at the same time.

If an owner refuses access within a reasonable time after the house is completed, the building official may close the permit file, but this action will not relieve the owner of from any obligation to comply with applicable building codes.

Montgomery County Department of Permitting Services Residential Inspection Timing Checklist

| REQUIRED MECHANICAL INSPECTIONS | | | | | | |
|--|---------------------|---|-------------------------------|--------------------|----------------------|---|
| Mechanical Inspection Codes and Types | | | | | spection ormed by | |
| | | Prior to Inspection Request | | County nspector | Others | Inspection approval required prior to |
| Code | Туре | Work to be Completed | Approved Inspections | | | |
| 008 | Mechanical close-in | Kitchen and bathroom ventilation installed Dryer vents installed Equipment working space provided Attic furnace installed, if any Combustion air provided Vents and connectors installed Duct supports and joints installed Factory-built fireplaces and flue chimneys installed in accordance with manufacturer's specifications. Wood stoves installed in accordance with the manufacturer's specifications | • 001, 002, 003, WSSC#2 | Yes | | Installing insulation and drywall Framing inspection Mechanical final Concealing flue or chimney connectors Concealing ductwork, piping and vents |
| 251 | Mechanical final | Grilles installed All equipment installed Concrete pad for the condensing unit Dryer vent installed Range hood installed Refrigerant line cover installed Gas vents to be connected to appliances Electrical disconnects installed All HVAC units must be installed and operating. | • 008 | Yes | | Building final |

Montgomery County Department of Permitting ServicesResidential Inspection Timing Checklist

| REQUIRED ELECTRICAL INSPECTIONS | | | | | | | |
|--|-------------------------------------|--|---|--------------------------|--------|--|--|
| Electrical Inspection Codes and Type | | Prior to Inspection Request | | Inspections Performed by | | | |
| Code | Туре | Work to be Completed | Approved Inspections | County Inspector | Others | Inspection approval required prior to | |
| 101 | Heavy-up | Adequate Working Clearance SEC must be sized correctly and secured Grounding completed Neutral Bonding completed Installed panel size per sec 230-50c (amended) Inhibitor installed Connection to water pipe must be complete No. of mains per executive regulation or code whichever is applicable Sleeve installed | | Yes | | Electrical final | |
| 102 | Temporary Pending Final (TPF) | Adequate Working Clearance SEC must be sized correctly and secured Grounding completed Neutral bonding completed Installed panel size per executive regulation or code which ever is applicable Inhibitor installed Connection to water pipe completed No. of mains installed Sleeve Installed | | Yes | | Electrical final | |
| 103 | Temporary for construction (T4C) | Pole height (Overhead service minimum height 12') Pole anchored and braced Pole size per code Weatherproof enclosure per code Lockable Size of SEC per code Grounding completed Neutral Bonding must be complete Panel per Code Inhibitor per code GFCI installed | | Yes | | • Electrical final | |
| 104 | Concealment/Ele ctrical rough-in | Conduits and junctions boxes installed and supported Junctions boxes installed in accordance with their listing Grounding continuity maintained Approved grounding conductor must be installed | | Yes | | • Framing (close-in) | |
| 251 | Final | All appliances, fixtures, outlets, panels, switches installed All electrical wiring complete Circuits identified in the panel index | • 001, 002, WSSC#2, 003, 011, 102, 104, 004 | Yes | | Using any equipmentBuilding final | |

Montgomery County Department of Permitting Services

Residential Inspection Timing Checklist

Inspections shall be requested at least 24 hours prior to the date the inspection is needed

- To schedule an inspection, call 240-777-6210 between the hours of 7:30 a.m. 4:00 p.m. Monday to Friday. Inspection requests must include the street address, permit number, and the type of inspection needed. Inspection requests made before 12 noon will be scheduled for the next business day, requests made after 12:00 noon will be scheduled within two working days. A specific time for an inspection cannot be given at the time that the inspection is scheduled.
- To schedule inspections, you must have the appropriate permit number(s) available when you call.
- You may also schedule inspections via internet at http://permittingservices.montgomerycountymd.gov
- If you have job specific questions during construction please call the inspector assigned to the area in which the project is located.
- Reinspection Fee: A reinspection fee will be required after a building, electrical or mechanical inspection has been disapproved twice. To alert you of the reinspection fee the inspector will leave a disapproval sticker indicating a fee is due. This fee must be paid prior to requesting any future inspections
- Inspections which cannot be performed because the inspector cannot gain access to the construction, or where work is incomplete, will be considered disapproved, counting toward the two allowed disapprovals. To avoid reinspection fees, inspections may be cancelled by phone prior to inspector's arrival. To cancel an inspection call 240-777-6210 and provide the permit number, address and type of inspection.

ADDITIONAL IMPORTANT INFORMATION

- For information on Well and Septic permits and required inspections call 240-777-6320.
- For information on Sediment Control permits and inspections call 240-777-6320.
- For information on Subdivision permits and inspections call 240-777-6320.
- Be certain that your projects are clearly marked with a lot number or address. If the lot is not marked the inspection will be rejected.
- If you need assistance, please contact us at 240-777-6370.



Montgomery County, Maryland Department of Permitting Services 255 Rockville Pike, Rockville, MD 20850-4166



RESIDENTIAL SPECIAL INSPECTION REPORT/CERTIFICATION

This report is submitted in conformance with procedures governing special inspection report/certification established by the Department of Permitting Services (DPS). As such, DPS will accept this report/certification in lieu of inspecting the work noted below.

| certify the report is a tru | at I have authority to sign this report/certification in the ne report of jobsite conditions, the laws and building code omery County DPS to submit this report/certification. | | and I llowed, and that I am currently |
|-----------------------------|--|----------------------------------|---------------------------------------|
| FOOTINGS | Elevation at bottom of excavation, as per approved plans or as noted | | APPROVED |
| | Footings located in natural ground, soil conditions ac | lequate to carry the design load | |
| | Footings located on controlled fill compacted to at led density per ASTM D-698 - attach compaction reported. | | |
| | Width and depth of footing trench below frost line, re | ebar placement | |
| | Concrete-encased electrode in place with a minimum accessible length outside the footing. | 2 ft. | □ ½" STEEL REBARS □ #4 SOLID CU |
| PARGING | Parging material, thickness and application | | , • • • |
| | Exterior foundation drains | | |
| | Interior foundation drains, weep holes 2" min. diame | ter, 6' on center | |
| CONCRETE FLOC | RS □ BASEMENT □ GARAGE | | |
| | Elevation as per approved plans or as noted | | |
| e kan | Floor located on natural subgrade/soil, soil condition | s adequate | |
| | Floor located on controlled fill compacted to at least dry density as per ASTM-D698 – attach compaction | | |
| | 4-inch-thick base course of clean graded sand, gravel crushed stone on prepared subgrade | , | |
| | Vapor retarder, adequate thickness with joints lapped | 16 inches | |
| | Reinforcement, if required, adequate | | |
| | Radon control system installed | | |
| DATE INSPECTED | | PERMIT NUMBER | |
| LOT BI | OCK SUBDI | IVISION | |
| PREMISE ADDRE | SS | | |
| | | | |
| NAME (print) of D | PS CERTIFIED INDIVIDUAL | SIGNATURE | |
| | | | |
| ADDRESS | | INSPECTOR NUMBER | |
| | | | SEAL |

This certification to be given to inspector at the time of the framing or temporary pending final (TPF). Otherwise deliver to DPS prior to scheduling a framing or TPF inspection.

REGARDING APPEALS CHARGING ERROR IN ADMINISTRATIVE ACTION OR DETERMINATION

PLEASE TAKE NOTICE

Effective immediately, all parties who make submissions, after an initial filing, in Special Exception, Variance and **Administrative Appeals** cases, must furnish copies of the submission to all other parties in the case. For the purposes of this requirement, a party includes:

- 1. Counsel of record who have formally entered their appearance;
- 2. The People's Counsel for Montgomery County if he has filed a Notice of Intention to Participate in a case;
- 3. Any person to whom the Board has granted Intervener status and;
- 4. The Applicant, Petitioner or Appellant in the case.

Submissions must be accompanied by a written statement certifying that copies have been sent to all parties.

BOARD OF APPEALS for MONTGOMERY COUNTY

Stella B. Werner Council Office Building 100 Maryland Avenue Rockville, Maryland 20850 (240) 777-6600

REGARDING APPEALS CHARGING ADMINISTRATIVE ERROR

PLEASE TAKE NOTICE

- (1) That the parties may be represented by counsel or represent themselves.
- (2) That the parties have the opportunity to present witnesses; cross-examine witnesses, and present supporting documentation.
- (3) That there are pre-hearing procedure requirements as set forth in Section 2A-7, Montgomery County Code, 1994, as amended.
- (4) That the parties may request a continuance of the hearing by written request if made not less than five (5) days prior to the date of hearing.
- (5) That a verbatim record and transcript of the hearing will be made where said record and transcript is required by law; or, in the alternative, that any party may request that such record of the transcription be made at his or her expense.
- (6) That there is a right, subject to the provisions of the State Public Information Law, to inspect and copy at the requesting party's own expense, documents of any party, administrative authority or investigating governmental agency involved where such inspection is not otherwise prohibited by law.

BOARD OF APPEALS FOR MONTGOMERY COUNTY, MARYLAND (240) 777-6600

| Docket No. A- | |
|---------------|--|
| Date Filed | |
| Hearing Date | |
| Time | |
| | |

APPEAL CHARGING ERROR IN ADMINISTRATIVE ACTION OR DETERMINATION

Please note instructions on reverse side.

<u>Attach additional sheets if required for answers.</u>

Appeal is hereby made pursuant to Section 2-112 of the Montgomery County Code 1994, as amended, from the decision or other action of an official or agency of Montgomery County specified below which Appellant contends was erroneous. Official or agency from whose action or determination this appeal is made: Brief description of action or determination from which this appeal is made (attach document indicating such action or determination) Date of that action or determination:___ Brief description of what, in appellant's view, the ruling or action should have been: Number of Section, and Subsection, if any, of the Montgomery County Code 1994, as amended, or citation or other statutory provision, which appellant contends was misinterpreted: Reason for appeal: Description of real property, if any, involved in this appeal: Lot_____, Block_____ Parcel ____ Subdivision _____, Street and Number _____
City _____, Zone Classification _____ Name of Property owner: Mailing address of property owner if different from above address: Appellant's present legal interest in above property, if any: ____Owner (including joint owner-ship) ____ Contract to lease or rent ____ Contract to purchase ____ Neighbor ____ Civic Association ____ Other Explain I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct. Signature of Appellant(s) (Please print next to signature) Signature of Attorney (Please print next to signature) Address of Appellant(s) Address of Attorney Home Telephone Number Telephone Number

(OVER)

Work Telephone Number

INSTRUCTION FOR FILING APPEAL CHARGING ERROR

IN ADMINISTRATIVE RULING OR ACTION

- Address all correspondence to: Chairman, Montgomery County Board of Appeals, Stella B. Werner Council Office Building, I00 Maryland Avenue, Room 217, Rockville, Maryland, 20850. Phone (240) 777-6600.
- 2. Send with the appeal a check or money order made payable to MONTGOMERY COUNTY, MARYLAND, to cover filing fee. Cash cannot be accepted.

\$200.00* - residential property

\$800.00* - commercial property

* Refundable if appeal is granted.

INFORMATION TO ACCOMPANY APPEAL

- 1. An original and three (3) copies of Appeal Application (BOA Form 3).
- 2. A listing of the names and mailing addresses of the adjoining and confronting property owners (see Section 59-A-4.46) who are entitled to notice of the filing. This information is available from the State Department of Assessments and Taxation, 51 Monroe Street, Third Floor, Rockville, Maryland, 20850, (Phone: 301-279-1355). Please also list any local citizens associations and any municipality or special taxing district within which the property is located. Please use BOA Form 5.
- 3. Four (4) copies of the ruling or other document indicating official or agency action from which this appeal is made.

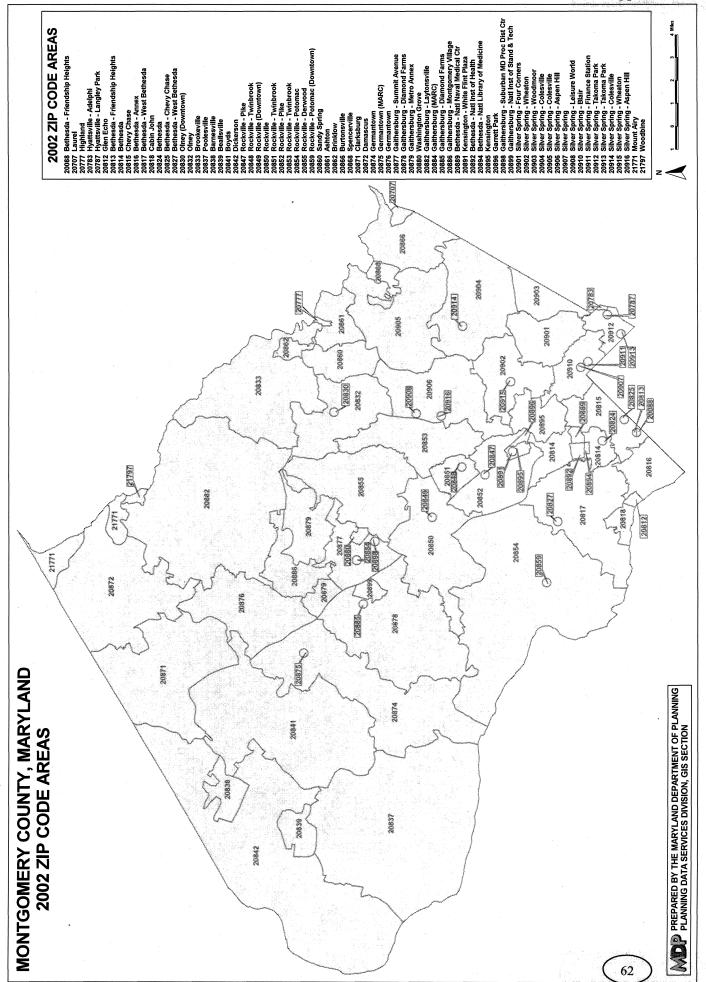
SUGGESTION FOR APPELLANTS

It is suggested that appellants consult Chapter 2A (1)–(11) of the Montgomery County Code 1994, as amended.

BOARD OF APPEALS FOR MONTGOMERY COUNTY, MARYLAND

LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS (Please see information on reverse side)

| NAME | ADDRESS (Please add Zip Code) | LOT/PARCEL | BLOCK |
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COMPARATIVE STUDIES - RESIDENTIAL INFILL CONSTRUCTION

For this report, OLO examined approaches used by other jurisdictions to address residential infill construction. This research focused on studies produced by local government agencies that outline residential infill construction planning and regulatory tools. This appendix summarizes these studies. The studies can also be found on OLO's website at http://www.montgomerycountymd.gov/csltmpl.asp?url=/content/council/olo/index.asp.

- Arlington County, Virginia. *Lot Coverage Study*. March 2005. http://www.arlingtonva.us/Departments/CPHD/forums/lotcoverage/pdf/lotcoverage_toc.pdf
- City of Alexandria, Virginia. *Residential Infill Development in Alexandria*. March 2006. http://alexandriava.gov/planningandzoning/pdf/infill_development_study.pdf
- City of Atlanta, Georgia. *The Recommendations of the Atlanta Infill Development Panel*. June 2006. http://www.aiaatlanta.org/Independent/atlantainfill/AtlantaInfillDevelopmentPanelRecommendations 2006_06013.pdf)
- City of Rockville, Maryland. *Mansionization White Paper Discussion*. July 2005. http://www.rockvillemd.gov/zoning/mansionization-wp.pdf
- Maryland-National Capital Park and Planning Commission. *Teardown/Mansionization Bulletin Protecting Older Neighborhoods with Newer Tools*. August 2006. http://www.mc-mncppc.org/historic/pdfs/teardown.pdf

JURISDICTION/AGENCY: ARLINGTON COUNTY, VIRGINIA **REPORT TITLE:** LOT COVERAGE STUDY (MARCH 2005)

(Available at http://www.arlingtonva.us/Departments/CPHD/forums/lotcoverage/pdf/lotcoverage toc.pdf)

PURPOSE

The Arlington County Board directed the Zoning Ordinance Committee (ZORC) and Planning Department staff to examine reasonable coverage limits that would limit house size in the future but still allow reasonable sized houses to meet market demands. The study also recommended new guidelines for lot coverage related to infill development in established neighborhoods.

FINDINGS

The Arlington study found that the current maximum lot coverage requirement was the same for all five of the County's single-family residential zoning districts. Additionally, an analysis of GIS data for all lots in the County with single-family, detached houses found that relatively few were out of compliance with the existing regulations.

RECOMMENDATIONS

The report recommended that Arlington County should:

- Adopt a sliding scale lot coverage requirement to reduce overall coverage but still allow larger coverage on smaller lots. If this recommendation was adopted, homes at the new maximum would be limited in how much additional footprint could be added unless it was a front porch or detached garage in the rear yard. Homes exceeding the new maximum would be referred to as "nonconforming" and would be unable to add to their existing footprints.
- Encourage and reward building forms compatible with existing Arlington neighborhoods.

JURISDICTION/AGENCY: CITY OF ALEXANDRIA, VIRGINIA

REPORT TITLE: RESIDENTIAL INFILL DEVELOPMENT IN ALEXANDRIA (MARCH 2006) (Available at http://alexandriava.gov/planningandzoning/pdf/infill_development_study.pdf)

PURPOSE

The City of Alexandria's Department of Planning and Zoning conducted this study to assess existing zoning restrictions and formulate potential zoning policy changes related to the trend towards the construction of larger homes within existing neighborhoods.

FINDINGS

The Alexandria report found that residential infill construction is multifaceted and complex, defying a "one size fits all" approach. Since residential infill construction involves the application of technical and detailed zoning regulations as well as matters of design and subjective taste, the report found that the issue of residential development was best addressed on a case by case basis.

The report identified two important factors that would define the success of new residential construction in existing neighborhoods:

- The design of the construction; and
- The aggregate loss of critical land resulting from the construction of an "oversized" house.

The report also found that Alexandria's existing zoning ordinance and development review process were effective, and therefore that it would be unwise to require discretionary review for every new or expanded single family house. On the other hand, the report found that the City's regulatory tools were difficult to administer and in need of improvement.

RECOMMENDATIONS

The Alexandria report recommended that the City:

- Review four specific regulatory areas for potential amendments to the zoning ordinance: steep slope restrictions, subdivision regulations, lot coverage limitations, and floor area ratio calculations;
- Create a residential conservation design pattern book with design guidelines for builders and architects on infill projects; and
- Do not require discretionary review for every new or expanded single-family house.

JURISDICTION/AGENCY: CITY OF ATLANTA, GEORGIA

REPORT TITLE: THE RECOMMENDATIONS OF THE ATLANTA INFILL DEVELOPMENT PANEL (JUNE 2006) (Available at

http://www.aiaatlanta.org/Independent/atlantainfill/AtlantaInfillDevelopmentPanelRecommendations_2006_06013.pdf)

PURPOSE

The Atlanta Infill Development Panel was created to begin a comprehensive update of Atlanta's zoning ordinance. The work of the panel included reviewing the zoning ordinance, various legislation from other jurisdictions, hypothetical case studies developed by members of the panel, and specific issues affecting infill development within the City of Atlanta.

FINDINGS

The Atlanta study found that:

- Any residential zoning changes must balance property rights with the need for change;
- Existing bulk restrictions on residential homes were inconsistent across the zoning ordinance; and
- New tools were needed to allow neighborhoods to adopt building restrictions greater that currently allowed but less restrictive than in historic districts.

RECOMMENDATIONS

The Atlanta study included both zoning and planning recommendations. The zoning recommendations addressed the overall mass (bulk) of new buildings on a given residential lot. These recommendations included:

- Provide consistent bulk limitations across all residential zone ordinances through adjustments to the existing ordinances; and
- Allow neighborhoods to voluntarily adopt a zoning overlay restricting the bulk of new residential buildings.

The planning recommendations were intended to allow neighborhoods to opt into an overlay that would further address development issues other than bulk. These recommendations included:

- Formulate a clear and consistent statement of goals on how infill development should be guided within the City of Atlanta;
- Give neighborhoods a set of defined overlay tools to customize development review to their needs:
- Increase public access to relevant development review information and improve flow of information between the City and the community; and
- Increase the consistency and transparency of zoning and code enforcement.

JURISDICTION/AGENCY: CITY OF ROCKVILLE, MARYLAND

REPORT TITLE: MANSIONIZATION – WHITE PAPER DISCUSSION (JULY 2005)

(Available at http://www.rockvillemd.gov/zoning/mansionization-wp.pdf)

PURPOSE

The Rockville study was conducted to identify issues that surrounded the development/redevelopment of existing homes and home sites. The study's goal was to find a way to respect current property owners' community values while still allowing for appropriate growth and change within the City of Rockville.

SUMMARY OF REPORT FINDINGS

The Rockville study identified several potential concerns with "mansionization" and several potential benefits of "mansionization" in the areas of property value, infrastructure, environment, and compatibility.

The study also discussed and analyzed alternative courses of action that other jurisdictions have adopted specifically related to infill construction. The study looked at: 1) mass regulations (including building envelope regulations, floor area ratio, cubic content ration, second story regulations, and daylight plane regulations); 2) architectural requirements (including requirements for rooflines, entries, facades, and windows); and 3) implementation techniques (including additional building review, overlay districts, and new zoning definitions and permitting requirements).

SUMMARY OF REPORT RECOMMENDATIONS

The study made a series of recommendations including:

- Limit any mansionization regulations to the three smallest lot zones;
- Modify and add definitions for "demolition" and "substantial alteration" to the zoning ordinance;
- Establish policies and procedures for the establishment of neighborhood conservation districts;
- Consider requiring additional side yard setbacks for when height reaches a certain level; and
- Revise bulk standards in the zoning code for smaller residential districts, especially height requirements and the measurement of height.

JURISDICTION/AGENCY: MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION REPORT TITLE: TEARDOWN/MANSIONIZATION BULLETIN — PROTECTING OLDER NEIGHBORHOODS WITH NEWER TOOLS (AUGUST 2006) (Available at http://www.mc-mncppc.org/historic/pdfs/teardown.pdf)

PURPOSE

The Historic Preservation Section of the Montgomery County Department of Planning prepared the Bulletin to provide a case study that outlines a variety of planning and regulatory tools available to address the issue of teardowns and infill development. The work on this bulletin was partially funded by a grant from the Maryland Historical Trust's Certified Local Government fund.

FINDINGS

The M-NCPPC bulletin describes a number of different tools or options that are available to address issues associated with teardowns and infill development. They include:

- <u>Traditional Historic Districts</u>: If designated a historic district, any exterior alteration to a structure other than routine maintenance requires an application for a Historic Area Work Permit (HAWP).
- Overlay Zones: A jurisdiction can protect a neighborhood's existing character through the adoption and enforcement of stricter building requirements than those that are established under the regular zoning code.
- <u>Architectural Covenants</u>: Covenants are restrictions attached to the deed that are typically created at the time of a neighborhood's establishment and typically include a set of standards that can be legally enforced by covenant beneficiaries.
- <u>Neighborhood Conservation Districts (NCDs)</u>: These are self determined tools
 that provide physical and environmental protections for neighborhoods that are
 not registered as local historic districts. NCDs may be established as zoning
 overlay districts or actual re-zonings.
- <u>Improving Builder/Resident Communication</u>: Based on discussions with builders and residents, the bulletin provides a checklist for builders and residents to go over when undertaking a demolition or new construction project in an established neighborhood.

The Recommendations of the **Atlanta Infill Development Panel**

Draft Version Date of Issue: 01 June 2006 Atlanta, Georgia

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Introduction

way found formed

In January 2006, City of Atlanta Mayor Shirley Franklin issued an executive order designed to stop infill development long enough to allow the Zoning Committee of the City Council to take up the issue at their 01 Feb 2006 meeting. A number of professional groups delivered prepared statements during the public comment portion of the Zoning Committee meeting.

In a letter to the City Council dated 13 February 2006, Mayor Franklin announced a plan to form a task force under the direction of the Commissioner of Planning and Community Development, Mr. Steve Cover. The letter states the task force will "commence a comprehensive update to the Zoning ordinance".

Mayor Franklin's 13 February 2006 letter calls for the task force to commence within 90 days. In the period between the Mayor's February letter and the anticipated start of the task force in May, a group of professional organizations gathered voluntarily to begin collecting and reviewing information that might be submitted in a supporting role to the Mayor's task force.

work work

The group of professional organizations, referred to herein as the Atlanta Infill Development Panel, first convened on 07 March 2006. The panel met weekly through 25 March 2006 when it held a city-wide reporting forum at the Atlanta Civic Center. Twenty-one out of twenty-four City of Atlanta Neighborhood Planning Units (NPUs) attended the forum to report to the conditions and issues in their respective NPUs to the panel. The work of the panel is based on the input and specific requests from the NPU representatives who spoke and submitted information on behalf of the citizens of the City of Atlanta.

Following the city-wide forum on 25 March 2006, the panel met weekly from noon until three o'clock every Wednesday through 24 May 2006 to review the information presented by the NPUs and prepare recommendations for the Mayor's task force. At the 31 May 2006 Zoning Committee meeting of the City Council, the panel respectfully submitted its recommendations and offered its support and resources to the Mayor's task force, the City Council and Commissioner Cover's office

The organizations partnering to address this issue include the Atlanta Chapter of the American Institute of Architects, the Atlanta Planning Advisory Board, the Greater Atlanta Home Builders Association, the Georgia Chapter of the American Planning Association, the Atlanta Chapter of the National Association of the Remodeling Industry, the Georgia State University Heritage Preservation Program, the Georgia Trust for Historic Preservation, the Atlanta Preservation Center and realtors from various section of the City.

Overview

In the review following the city-wide public reporting forum, the Atlanta Infill Development Panel spent a significant amount of time discussing the information presented by the NPU representatives. The work of the panel included careful study of the existing City of Atlanta zoning ordinance, various legislation from other jurisdictions, model legislation, hypothetical case studies developed by members of the panel and the specific issues effecting infill development within the City of Atlanta. (The issues specific to the City of Atlanta include the evolution of the City of Atlanta zoning ordinance, existing tools for dealing with development issues, Atlanta's challenging topography, economic forces, etc.)

The panel quickly determined that it would work to balance the issue of property rights against any recommendations developed by the panel. As a result, the panel has developed a two-part recommendation. The first portion, the zoning recommendations, is intended to immediately address some of the most troublesome development issues. The second portion, the planning recommendations, is intended to allow neighborhoods to opt into an overlay that would further address development issues that threaten the character and quality of the neighborhoods.

Z Part Q es D Zoning D Ranning

The panel considered a very broad range of potential solutions; however, many of the solutions were discarded because although they provided academic solutions, they were ultimately determined to be unenforceable on a city-wide basis. Instead the recommendations of the panel are intended to fill the gap between the current requirements and the more stringent requirements of an historic overlay.

The panel has purposely avoided publishing any sort of design guidelines for development. While neighborhoods may choose to implement design guidelines and other requirements on a voluntary basis, many NPUs expressed concern that the controls provided by historic (and other available) overlays were seen as too restrictive and thus, very difficult to adopt and maintain.



Rather than focusing on design, the panel made an effort to address the key issues raised by the various NPUs during the public reporting forum. The result is the following two-part recommendation that seeks to address issues like scale, height, ambiguities in the existing requirements, etc.

Zoning Recommendations

The intent for these proposed amendments to the existing City of Atlanta zoning ordinance is for all restrictions to work in a *comprehensive* manner to address the overall mass (bulk) of new buildings on a given lot. Rather then relying on one particular metric, the existing ordinance uses setbacks, maximum height, maximum lot coverage and maximum floor-area-ratios to create a three-dimensional zone on each property. Construction may only occur within the zone created by the ordinance. The proposed amendments fill-in some metrics that have been omitted from previous versions of the zoning ordinance.

The proposed amendments also request further clarification of vague requirements. The zoning ordinance should be revised to the point that various parties working to determine the three-dimensional construction zone for a given piece of property reach the same conclusion independent of one another. Realization of this goal will substantially reduce the amount of time the City of Atlanta planning and zoning officials spend interpreting various requirements to specific projects. Realization of this goal will also allow (potential) property owners to have a clear understanding of the development potential of a given piece of property.

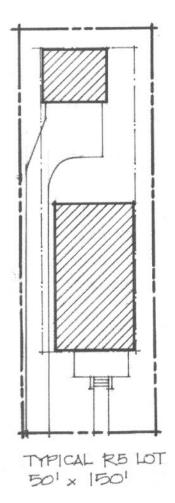
The Atlanta Infill Development Panel proposes the following two methods to accomplish the requested limits for new construction in established neighborhoods and communities. First, provide consistent limitations across all residential zoning ordinances through adjustments to existing metrics. Second, allow an additional voluntary overlay for compatibility which neighborhoods can choose to shape and adopt. It is the panel's recommendation that interim controls be put in place during the process of adopting these new zoning regulations.

Quantifiable Metrics:

- All Residential Zoning Categories to have both Lot Coverage and Floor Area Ratio standards.
- 2. Adopt the following changes for residential classifications without FAR.
 - R-4A: Adopt FAR of .5 consistent with R-4.
 - 2.2. **R-4B:** Adopt higher FAR of .75 to allow larger homes on small lots.
 - R-5: Adopt FAR of .5 for all conditions under this zoning.
 See Figure 2.

- 3. Adopt the following changes for residential classifications without lot coverage requirements.
 - 3.1. R-4A: 50% Maximum Lot Coverage
 - 3.2. R-4B: 60% Maximum Lot Coverage
 - 3.3. R-5: 50% Maximum Lot Coverage

Lot Coverage Example Figure 1



MAX. LOT COVERAGE: 50% LOT AREA MAX. ALLOWABLE AREA: 3750 SF

HOUSE (30'x 55'): 1650 SF GARAGE (20'x 25'): 500 SF FORCH (10'x 20'): 200 SF FAVEMENT: 1320 SP TOTAL COVERAGE: 3670 SF

 Clarify that Floor Area Ratio (FAR) is based upon calculations using the Net Lot Area: the area within the property boundaries for all residential zoning classifications.

- 5. The **FAR** should be defined as applying to all levels above grade where the majority (51% or greater) of space can be occupied and includes portions of attic spaces that meet the minimum headroom requirements.
- 6. Other than the area dedicated to parking vehicles, any area within an accessory building meeting minimum headroom and minimum room dimension requirements will be included in the **FAR**.
- 7. Define **basement** as any habitable area, one or more levels, whereby the majority (51% or greater) of wall area between the finished floor to the underside of floor structure above is below the exterior grade.
- 8. The **exterior grade line** is the average grade height between the perimeter face of house and grade elevation five (5) feet away from the building face.
- 9. For new construction, the **main floor elevation** (above sea level) may be established as the greatest of the following options:
 - 9.1. 4'-0" above the existing, undisturbed grade.
 - 9.2. 3'-0" above the street, measured at the centerline of the property at the gutter level of the street.
 - 3'-0" above the main floor level threshold of the existing structure.
 See Figure 3.
- 10. Define the measurement of Maximum Building Height with acknowledgement of grade changes.
 - 10.1. The maximum building height is 35'-0".
 - 10.2. The building height is the mean building height measured on the four elevations (front, sides and rear) of the building. [Add the building height of the front, both side and rear elevations. Divide by four to determine the mean building height.]
 - 10.3. The building height is measured from the average grade level on each elevation (front, sides and rear) to the mean of the main body of the roof. The main body of the roof does not include roof accessories such as chimneys, flagpoles, cupolas, turrets, towers, etc. so long as the gross floor area of the accessory projection is 15% or less than the gross floor area of the floor immediately below the roof.
- 11. **Retaining walls** are limited to 4'-0" feet in height based on the cut or fill of the existing grade conditions.*
- 12. **Retaining walls** within the prescribed setbacks may not exceed 30" in height. Retaining walls within the prescribed setbacks required for the retaining of cut and/or fill for a driveway may not exceed 4'-0".*

^{*} Retaining wall requirements should not be interpreted as a limit of 4'-0" of retainage on a given site. A site may require more retainage though the maximum limit for any *individual* wall is 4'-0".

Overlay control:

Neighborhoods as defined by the Neighborhood Planning Unit system may petition for a single overlay based on compatibility. The area of comparison or influence shall be prescribed as within five time the minimum lot frontage of the residential zoning district. Example: An R-5 lot with a minimum street frontage requirement of 50 feet would have an area of comparison within 250 feet of the property. Structures within that area must be of like use in order to be incorporated in the comparison. The origin of the structures would be limited to those built before the current zoning ordinance was put in place: residences built prior to 1982.

This voluntary overlay would allow the neighborhood to set certain quantifiable metrics based on compatibility. The neighborhood may choose to adopt more stringent metrics that protect the quality and character of the neighborhood by relating new construction (including additions) to the existing conditions.

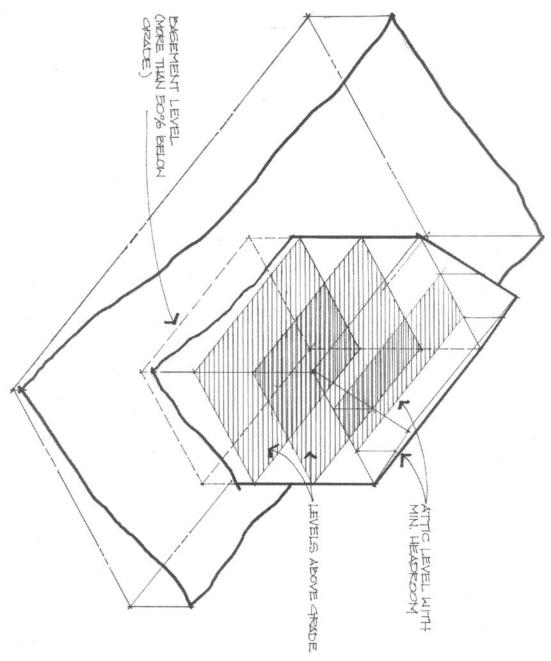
This method is not intended to stop the evolution of the neighborhood. It allows development relative to the existing conditions based on the overlay approved by the neighborhood. The overlay would require that additions and new construction be no larger than the largest and no smaller than the smallest buildings within a designated area of comparison.

Quantifiable Metrics that may be amended:

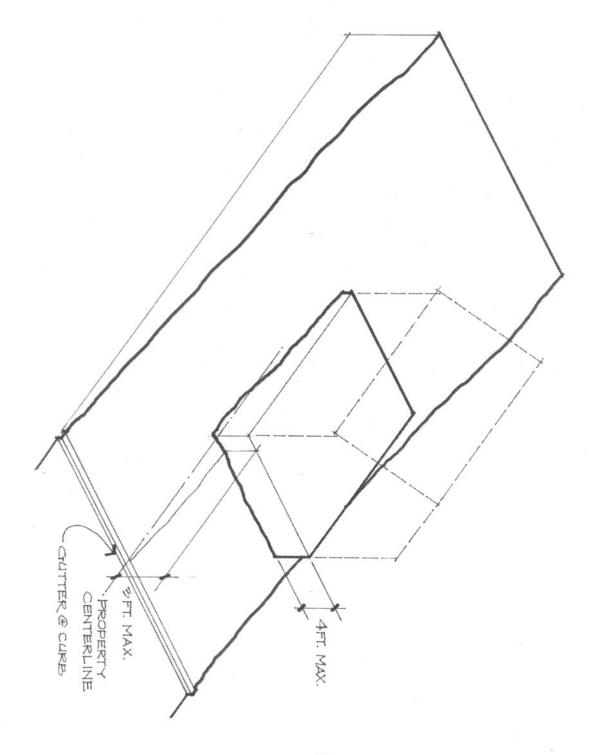
- 1. Lot size
- Setbacks
- 3. Maximum building height
- 4. Floor height above grade
- 5. Determine maximum bearing height of wall
- 6. Maximum building width

| Zoning Classification | R-1 | R-2 | R-2A | R-3 | R-3A | R-4 | R-4A | R-4B | R-5 | R-5 |
|--------------------------|----------|---------------|-----------|--------|---------|---------|---------|---------|---------|-----------------|
| | | | | | | | | | | Zero-lo line |
| 2/22 No. 1999-25. | | | | 18,000 | 13,500 | | | | | |
| Min. Lot Size | 2 acres | 1 acre 150 | 30,000 SF | SF | SF | 9000 SF | 7500 SF | 2800 SF | 7500 SF | 2500 S |
| Min. Lot Frontage | 200 FT | FT | 100 FT | 100 FT | 85 FT | 70 FT | 50 FT | 40 FT | 50 FT | 10 FT |
| Front Setback | 60 | 60 | 60 | 50 | 50 | 35 | 30 | 20 | 30 | 30 |
| Side Setback | 25 | 15 | 15 | 10 | 10 | 7 | 7 | 5 | 7 | 0 |
| Rear Setback | 35 | 30 | 30 | 20 | 15 | 15 | 15 | 5 | 7 | 7 |
| F.A.R. | 0.25 | 0.3 | 0.35 | 0.4 | 0.45 | 0.5 | 0.5 | 0.75 | 0.5 | 0.5 |
| Max. Lot Coverage | 25% | 35% | 35% | 40% | 45% | 50% | 50% | 60% | 50% | 50% |
| Max. Height | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Test Cases | | | | | | | | | | |
| Large Lot Size | 100000 | 50000 | 35000 | 20000 | 15000 | 11250 | 9000 | 3500 | 9000 | 3000 |
| FAR | 25000 | 15000 | 12250 | 8000 | 6750 | 5625 | 4500 | 2625 | 4500 | 1500 |
| Max Lot coverage | 25000 | 17500 | 12250 | 8000 | 6750 | 5625 | 4500 | 2100 | 4500 | 1500 |
| 35% pavement | 8750 | 6125 | 4287.5 | 2800 | 2362.5 | 1968.75 | 1575 | 735 | 1575 | 525 |
| 65 % building | 16250 | 11375 | 7962.5 | 5200 | 4387.5 | 3656.25 | 2925 | 1365 | 2925 | 975 |
| Typical Lot Size | 87120 | 43560 | 30000 | 18000 | 13500 | 9000 | 7500 | 2800 | 7500 | 2500 |
| FAR | 21780 | 13068 | 10500 | 7200 | 6075 | 4500 | 3750 | 2100 | 3750 | 1250 |
| Max Lot coverage | 21780 | 15246 | 10500 | 7200 | 6075 | 4500 | 3750 | 1680 | 3750 | 1250 |
| 35% pavement | 7623 | 5336.1 | 3675 | 2520 | 2126.25 | 1575 | 1312.5 | 588 | 1312.5 | 437.5 |
| 65 % building | 14157 | 9909.9 | 6825 | 4680 | 3948.75 | 2925 | 2437.5 | 1092 | 2437.5 | 812.5 |
| Small Lot Size | 65340 | 35000 | 25000 | 15000 | 12000 | 7500 | 5000 | 2000 | 5000 | 2000 |
| FAR | 16335 | 10500 | 8750 | 6000 | 5400 | 3750 | 2500 | 1500 | 2500 | 1000 |
| Max Lot coverage | 16335 | 12250 | 8750 | 6000 | 5400 | 3750 | 2500 | 1200 | 2500 | 1000 |
| 35% pavement | 5717.25 | 4287.5 | 3062.5 | 2100 | 1890 | 1312.5 | 875 | 420 | 875 | 350 |
| 65 % building | 10617.75 | 7962.5 | 5687.5 | 3900 | 3510 | 2437.5 | 1625 | 780 | 1625 | 650 |

Floor Area Ratio Diagram Figure 2



Finished Floor Height Diagram Figure 3



Planning Recommendations

- City of Atlanta Infill Goals: The City needs a statement of goals on how infill development should be guided. A concise statement of goals is the first step in clear and consistent policy and enforcement. The City's statement could include the following:
 - 1.1. "Compatible scale" includes the comparable massing, height, and width as a building appears from the street, as well as the effects of different massing, height, and width on neighbors to the side and rear. The impacts of scale that should be considered include loss of daylight, loss of side views, loss of backyard privacy and loss of street/neighborhood character.
 - 1.2. The development review process should be consistent, concise, and fair and should protect the rights of all interested parties: the land owner, the developer, the neighbors, and the City. The City should strive to adopt rules that are easy to understand and thus easy to enforce.
 - 1.3. New construction should be integrated into the existing neighborhood by observing context and where possible improve the neighborhood.
 - 1.4. Neighborhoods should have the ability to customize their regulations to address their most urgent needs. This ability needs to be sufficiently uniform to be efficiently enforced and understood by all parties.
 - 1.5. Neighborhoods have a right to preserve their existing character while permitting compatible new construction and renovations. Except in designated historic neighborhoods, the definition of existing neighborhood character should focus on the issues of scale, building placement, and street orientation, and should not restrict architectural style.
 - 1.6. Increasing the allowable building mass by manipulating the grade change should be kept to an absolute minimum.
- 2. Neighborhood Self-Governance: Give neighborhoods a set of defined overlay tools to customize development review to their needs. In order to keep administration simple, each overlay option must either be accepted "as is" without modification, or refused. Where they are adopted, the overlays should be enforced identically throughout the City. Overlay options may include:
 - 2.1. Scale Overlay An overlay that can be adopted by a neighborhood to ensure compatibility.
 - 2.2. Urban Design Overlay An overlay that can be adopted by a neighborhood to address basic urban design issues of garage placement, driveway placement and design, and front façade door and window treatment.

- 2.3. Remind neighborhoods that they can apply for *Historic District*, *Landmark District*, *Conservation District or SPI District* status if the above overlay tools do not serve their purposes.
- Public Involvement: Increase NPU and public access to relevant development review information. Improve the flow of information between the City and NPUs. [Public comments should be handled through the NPU leadership rather than citizens contacting permit applicants directly.]
 - 3.1. Require that applications for demolition be posted in a conspicuous location in the right-of-way on a property in the same manner as rezoning notices two weeks prior to demolition.
 - 3.2. Require NPU notification of subdivision applications
 - 3.3. Require NPU notification of new construction even if no rezoning or variances are necessary for construction.
- Regulation Review: Beyond standard residential zoning, consider reform of the following regulations to promote neighborhood compatibility and quality urban design.
 - 4.1. Illustrate regulations with examples to make them easier for both the general public and developers to understand. Make illustrations of both desired and unacceptable types of development.
 - 4.2. Rescind the Lots of Record Subdivision Ordinance
 - 4.3. Consider new zoning categories for narrow, deep lots and other common lot types that do not fit in the current zoning categories. Consider applying "compatibility rules" to any and all nonconforming lots as a means to proper development within existing neighborhoods.
 - 4.4. Reform PDH zoning to make it clear what purposes it should be used for and where it should apply. Possibly replace PDH zoning with a new conservation subdivision ordinance.
 - 4.5. Clarify the rules for justifying a variance and enforce them as written.
- 5. **Enforcement issues:** Increase the consistency and transparency of zoning and code enforcement.
 - 5.1. Provide citizens and NPUs with a single point of contact for reporting on and inquiring about enforcement issues.
 - 5.2. Apply standards consistently and thoroughly.
 - 5.3. Enforce notification requirements on posting rezonings (zoning actions) and tree removals.
 - 5.4. Require complete submission of documents before approval of a permit.
 - 5.5. Require the demolition of all illegal work. Fines are not enough of a deterrent to prevent illegal work.

- 5.6. Use a team approach to development review so that all departments can share information on possible issues with an application. Ideally, all staff involved in site plan review should attend a joint site review meeting, including transportation, watershed, city arborist, zoning, urban design planner and an NPU planner. Suggest that a preliminary review of project be allowed to take place prior to submission for permit.
- Affordability: Address displacement through rising property tax assessments.
 Work with Fulton County to explore placing a ceiling on the increased
 assessments for long-time residents of neighborhoods.

Moving Forward

The Atlanta Infill Development Panel has consumed a substantial amount of information in its development of the recommendations to the City. The most important information provided to the panel came from the public reporting forum.

The panel views the reports from the public forum as the benchmark set by the citizens of the city of Atlanta through their NPU representatives. The panel is prepared to continue its work for the citizens of Atlanta through its support of the Mayor's task force, the work of the City Council and the work of Commissioner Steve Cover's Planning and Community Development Department.

The member organizations that make up the panel offer experience, expertise and physical resources such as meeting space and staff time. Many of the member organizations also provide additional resources from their state and national components.

The panel encourages the City to make the process of addressing the issue of infill development as open and transparent as possible. The panel also encourages the City to include, in the Mayor's task force, professional organizations like those that make-up the Atlanta Infill Development Panel. The professionals from these organizations bring real-life, day-to-day experience to the process and they are backed by the resources of their respective organizations. If invited to participate, they will be an invaluable resource to the City of Atlanta.

Introduction

Infill Housing and Lot Coverage

Arlington is one of the most desirable places to live in the region. And as a largely "built out" community, when new single-family homes are constructed here, often they are built on lots previously occupied by existing houses. In the case of larger lots, oftentimes one older home might be torn down and replaced by two. Other new residences are being built on vacant lots.

The issues

Many neighbors of these new houses, who perceive them as too big and not in keeping with the character of the existing neighborhoods, have asked the County Board to address this issue. In recent years, the Board has received wide range of complaints about infill development including loss of open space, bulky and incongruous buildings that are incompatible with neighborhood character, loss of separation between houses, visual intrusions, loss of trees, and more area devoted to parking and driveways.



The County Board already has taken steps designed to limit the undesirable impacts of infill development on established neighborhoods (See sidebar). However, in response to continuing community concerns, the Board has directed the Zoning Ordinance Review Committee (ZORC) and Planning Department staff to recommend new guidelines for one remaining issue 4 "lot coverage." On February 12, 2005, the County Board authorized the advertisement of public hearings on the proposed amendments to Sections 1, and 32, of the Arlington County Zoning Ordinance at the April 25, 2005 Planning Commission and May 7, 2005 County Board meetings. The advertised language was recommended by the Planning Commission. The Neighborhood Conservation Advisory Committee and the Zoning Ordinance Review Committee also recommended the language in Attachment E with minor differences from the language recommended by the Planning Commission. Coverage requirements in the advertised language, along with staff recommendation, are described in this report.

What is coverage?

Coverage determines how much of a lot can be covered by structures and driveways. Regulating coverage has a direct impact on the size of the "footprint" of houses, garages and driveways. The purpose of the ZORC/Staff study was to determine reasonable coverage limits that would protect neighborhoods from very large houses in the future while still allowing reasonable sized houses for today's market.

One issue with the current maximum lot coverage requirement is that it is the same - 56 percent maximum coverage - for all five of the County's single-family residential zoning districts (R-5, R-6, R-8, R-10 and R-20) regardless of lot size.

A recent staff analysis of GIS data for all lots in the County with singe-family. detached houses found that relatively few houses are currently out of compliance with the existing regulations: only 96 lots (approx. 0.04 percent) have a coverage that is greater than 56 percent. And the overwhelming majority of lots, 96.5 percent, have coverage of 40 percent or less. (See chart)

| Zoning District | Lots More Than 56% | Lots 40% or Less | | |
|-----------------|--------------------|--|--|--|
| R-5 | 40 (1.8%) | 1,902 of a total of 2,253 (84.4%) | | |
| R-6 | 49 (0.3%) | 16,488 of a total of 17,428 (94.6%) | | |
| R-8 | 3 (0.2%) | 1,727 of a total of 1,763 (97.9%) | | |
| R-10 | 4 (0.1%) | 4,684 of a total of 4,790 (97.8%) | | |
| R-20 | 0 (0 %) | 281 of a total of 281 (100%) | | |

Recommendations

After studying the issues, ZORC is recommending a sliding scale requirement that would reduce the overall coverage but allow larger coverage on smaller lots. It would also distinguish between properties with detached rear garages and front porches.

ZORC is also recommending:

- Reducing coverage to ranges from 45 percent for the R-5 District to 20 percent for the R-20 District
- Instituting footprint size caps so that overly large houses could not be built on lots that were significantly larger than the typical lot in any zoning district.

Based on the data, if this recommendation were adopted, 95 percent of the lots in R-5, 95 percent of the lots in R-6, 92 percent of the lots in R-8, 90 percent of the lots in R-10 and 78 percent of the lots in R-20 would not be impacted by the proposed change.

Porches and detached garages encouraged

Front porches promote an inviting streetscape and are commonly found on older homes in the County, and detached rear garages significantly reduce the bulk of main buildings. However, because such garages require longer driveways (which are included in coverage calculations), reducing the coverage percentage without some relief for detached rear garages would make it difficult to build them.

To address this, ZORC recommended 5 percent additional coverage for detached rear garages located in rear yards and 3 percent additional coverage for front porches. This addresses a concern that reducing coverage might discourage these desirable design elements, which increase a building's footprint and thus coverage.

These distinctions are designed to encourage and reward building forms compatible with Arlington neighborhoods. Staff is analyzing these recommendations and will request that the County Board advertise final zoning ordinance amendments later this fall.

Impact on homeowners

How would these changes affect homeowners? As long as your lot does not exceed the new maximum requirement, there would be no impact. You might be limited in how much additional footprint you could add to your property.

If your lot is currently at the new maximum, then you would be limited in how much additional footprint could be added unless it was a front porch or a detached garage in the rear yard. Finally, if your lot is currently over the new maximum then you would not be able to add additional footprint and you would be what is called nonconforming. This means that your lot is perfectly legal but that your lot does not comply with the zoning ordinance. There is currently a limit to your ability to expand a nonconforming structure, and a limit on your ability to rebuild them if it is damaged or destroyed. The County Board has also directed staff to prepare an amendment that would protect your ability to rebuild.

In an effort to inform Arlington citizens of the pending changes, planning staff has developed this article. In addition, staff will make presentations to the Neighborhood Conservation Advisory Committee and any civic associations that are interested, and establish a "Hot-Line" for homeowners to call with questions and for assistance to determine whether specific properties would be in compliance with the proposal.

The Advertised Coverage Limits

| Categories | R-5 | R-6 | R-8 | R-10 | R-20 |
|---|---------|---------|---------|---------|---------|
| Maximum Lot Coverage | 45% | 40% | 35% | 32% | 25% |
| Maximum Lot Coverage with front porch | 48% | 43% | 38% | 35% | 28% |
| Maximum Lot Coverage with rear detached garage | 50% | 45% | 40% | 37% | 30% |
| Maximum Lot Coverage with rear garage and front porch | 53% | 48% | 43% | 40% | 33% |
| Maximum Main Building Footprint Coverage | 34% | 30% | 25% | 25% | 16% |
| Maximum Main Building Footprint Coverage with a front porch | 37% | 33% | 28% | 28% | 19% |
| Main Buildings Footprint Cap | 2040 sf | 2160 sf | 2400 sf | 3000 sf | 3880 sf |
| Main Buildings Footprint Cap with a front porch | 2200 sf | 2376 sf | 2688 sf | 3360 sf | 4610 sf |

STAFF RECOMMENDATION

Not Advertised. However this language is within the scope of notice of the language advertised by the County Board on February 12, 2005.

Definitions Section 1.

Lot Coverage. The percentage determined by dividing (a) the area of a lot covered by the total (in square feet) of: (1) the footprint of the main building; and (2) the total footprints of accessory buildings [counting only buildings with footprints larger than one hundred fifty (150) square feet, or with a height of two stories or morel; and (3) parking pads and driveways; by (b) the gross area of that lot.

Main Building Footprint Coverage: The percentage determined by dividing that area covered by a main building footprint by the gross area of the lot on which the main building is located. The main building footprint shall include all parts of a main building that rest, directly or indirectly, on the ground, including, by way of illustration and not by limitation, bay-windows with floor space, chimneys, porches, decks supported by posts and with floor heights that are four (4) feet or higher above grade, cantilevered decks with horizontal projections that are four (4) feet or more, and covered breezeways connected to a main building.

* * *

Section 32. Bulk, Coverage and Placement Requirements

C. Coverage

> For the purpose of securing open space for the exclusive use of pedestrians, except by site plan approval, no building or structure in "R," "RA," and "C-1-O" Districts, including accessory buildings and all areas for parking, driveways, maneuver and loading space, shall cover more than fifty-six (56) percent of the area of the lot, except as may be specified in the various district classifications.*

The maximum lot coverage percentage shall be as follows:

On lots in "R" Districts ("R" District to include "R-20," "R-10," "R-8," "R-6," and "R-5, but not "R2-7") where new construction is proposed or built, the following shall apply. For purposes of this section, "new construction" means when one of the following criteria is met: constructing a main building on a lot where there has been no main building; or where

construction retains (as outer walls) less than fifty percent (50%) of the linear feet of a structure's outer walls (measured at the top of the wall where it meets the roof) as those outer walls existed on May 7, 2005; or where construction results in an increase of more than 100 percent in the footprint of the main building.

- Maximum lot coverage shall be as established in the table below: a.
- When a detached garage is provided in the rear yard, the maximum b. lot coverage may be increased as shown in the table below (in compliance with the requirements of 32.D.2.e.);
- Maximum main building footprint coverage shall be as shown in the C. table below.
- When a porch is attached to the front elevation of a one-family dwelling and has an area of at least sixty (60) square feet on the front of the building (exclusive of any wrap-around or side portion), the maximum coverage may be increased as shown in the table below.

| Categories | R-5 | R-6 | R-8 | R-10 | R-20 |
|---|---------|---------|---------|---------|---------|
| Maximum Lot Coverage | 45% | 40% | 35% | 32% | 25% |
| Maximum Lot Coverage with front porch | 48% | 43% | 38% | 35% | 28% |
| Maximum Lot Coverage with rear detached garage | 50% | 45% | 40% | 37% | 30% |
| Maximum Lot Coverage with rear garage and front porch | 53% | 48% | 43% | 40% | 33% |
| Maximum Main Building Footprint Coverage | 34% | 30% | 25% | 25% | 16% |
| Maximum Main Building Footprint Coverage with a front porch | 37% | 33% | 28% | 28% | 19% |
| Main Buildings Footprint Cap | 2040 sf | 2160 sf | 2400 sf | 3000 sf | 3880 sf |
| Main Buildings Footprint Cap with a front porch | 2200 sf | 2376 sf | 2688 sf | 3360 sf | 4610 sf |

Existing main and accessory buildings or structures that are not in 2. conformance with the coverage requirements adopted on May 7, 2005, shall be permitted to be rebuilt within the building footprint as it existed on May 7, 2005, if the structures are damaged or partially destroyed by fire, wind, earthquake or other force majeure, and if construction commences within two (2) years from the date of the

calamity.

3. For all lots in "R" Districts that are not new construction as defined above or not used for one-family dwellings, and lots in "R2-7," "RA," "C-1-O" or any other zoning districts, lot coverage shall not exceed fifty-six (56) percent, except as may be specified in the various district classifications, or unless otherwise permitted to be modified by site plan or use permit.

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These recommendations are respectfully submitted by the Atlanta Infill Development Panel.

For additional information or to submit comments and suggestions, please visit http://www.AlAatlanta.org.

^{*} A number of other organizations were asked to participate. Some agreed and did not attend. Some declined. The panel members listed above participated at the request of their respective organizations.

Mansionization



White Paper Discussion City of Rockville, Maryland

July 25, 2005

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City of Rockville **Zoning Ordinance Revision Issue Paper**

Mansionization

I. INTRODUCTION

"Mansionization" is the process where existing single-family, detached homes are demolished or enlarged to create houses that are several times larger than the originals. Mansionization also

occurs on infill lots where new houses do not conform to the character of the neighborhood. It is caused by a desire for modern amenities, such as large kitchens, cathedral ceilings, walk-in closets, and multiple bathrooms, that may not exist in older homes. This trend is a growing concern across the U.S. and has already had a great impact in built-out neighborhoods in Bethesda and Chevy Chase where vacant property is unavailable. Rockville is reaching built-out status and requests demolitions to rebuild have become a regular occurrence.



Incompatible Reconstruction

There are a number of competing arguments on either side of this issue. Property owners state that they have the right to use or develop property as long as they are in compliance with the legal development standards. Adjacent property owners however, may lament the loss of neighborhood character and the reduction in sunlight and air movement. In addition, there can be a reduction of privacy when a 40-foot structure towers over a one-story house and yard.

On the proponent side, building new homes where there is existing infrastructure gives residents an alternative to building further out and away from businesses. This helps reduce other urban problems, specifically sprawl and increased traffic.

Mansionization is not an issue with new development in Rockville. Most new developments have strict covenants and require architectural review approval for changes to existing houses. Large houses at minimum setbacks in places like the King Farm or Fallsgrove remain in the same context as they existed when buyers purchased their home. If homeowners do not care for the home's development style, they will buy elsewhere.



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Mansionization, however, is a growing occurrence in some neighborhoods and will likely intensify as the current trend for larger housing progresses. Demolition and redevelopment with much larger houses is already a common occurrence in West End Park from Forest Avenue to I-270 on the north side of West Montgomery Avenue¹.

Mansionization is primarily an issue where lots are not large enough to accommodate these large houses in an esthetically acceptable manner. It is also a potential issue in areas where the land values justify the expense of renovation or even demolition and reconstruction. This means that neighborhoods in the R-60, R-75 and R-90 zones are the ones most likely to be affected by this redevelopment process. There are no hard and fast criteria that can readily predict where mansionization may occur. However, some of the relevant factors include a high ratio of land value to improvement value; perceived desirability of the neighborhood; convenience to mass transit; convenience of the neighborhood to jobs or the central urban core. Within the City, neighborhoods other than the West End that may be susceptible to mansionization include Twinbrook, Twinbrook Forest, Croyden Park, and Lincoln Park.

Demolitions for redevelopment of new housing have been most active in the West End Park area of Rockville. This area has attracted small infill developers as the cost of a 9,000 square foot R-60 zoned lot and a house in this neighborhood ranges from \$300,000 to \$450,000, although it continues to climb with the housing market. In 2003, a house built in 1935 on Mannakee was sold for \$350,000 with redevelopment the ultimate intention. This was the record price for a teardown in 2003. The ceiling cost for a teardown structure that allows a reasonable profit has increased to \$400,000 in 2005. The average price is closer to \$360,000. This is fueled by the number of new or recent resale houses in West End Park that are marketed in excess of one million dollars.

Another category of redevelopment is the home buyer who purchases a small house in West End Park or East Rockville to demolish the existing house and build a new house for their own use.

II. GENERAL ISSUES

The mansionization issue relates to in-fill development. As stated above, the controversy is not about large houses in general. The controversy is about large houses intruding upon neighborhoods of smaller houses. Residents of any neighborhood move in expecting a degree of stability. Many buy their house not only because of the house itself, but also because of their expectation of living in a stable community. The sudden intrusion of a house out of character with the neighborhood is destabilizing in their minds, particularly if it is next-door.

The following is background information to balance the various elements and arguments that are typically used when confronting larger infill structures in lower scale, existing neighborhoods.

¹ Statistics are difficult to assemble. The City's permitting software did not capture demolition as a separate category until 2001. Prior to this, demolition was permitted as part of a building permit. Of 55 applications for demolitions from January of 2001 to January of 2005, 55 applications for demolition had been received. Prior to 2001, demolition was issued as part of a building permit.



A. Potential Concerns Related to Mansionization

1. Property values: Neighbors are often concerned that new homes will hinder their own housing value and change the character of the neighborhood. Higher property values in a neighborhood may change the demographics of an area and may make a once affordable, middle class community into a high priced area that few can afford. This alteration makes current residents feel like they do not belong in what was once their neighborhood. In addition, other neighbors claim that their property value will go down because their house is now valued less than the new/expanded houses.

Some neighbors object to new or expanded houses because they believe that their own taxes will rise as a result of the increased value of the nearby properties. Their concern may be warranted. Some jurisdictions welcome such redevelopment. The increase in property values adds to the tax base, helping to fund public infrastructure and schools.

- 2. **Infrastructure:** Infill may also burden the existing community's infrastructure. Utilities, such as water, sewer, stormwater controls, and electricity may have been designed to handle smaller houses and may not be able to accommodate large infill houses that would exhaust these resources.
- 3. **Environment:** The size of houses potentially can degrade the environment by increasing storm water runoff, removing existing trees, increasing lot coverage, and requiring more paving (of driveways, patios, etc.).
- 4. Compatibility: Large houses can be out of proportion and balance with the existing houses in the neighborhood. These new houses may be termed an "eyesore" because they do not match the architectural style of the neighborhood. The new houses often "loom" over neighboring smaller houses, especially at the minimum setback, restricting air and light and reducing privacy. The prevailing conditions were part of the original lot value and infringing on these rights threatens the overall property value and the property owner's rights. In addition to the inconvenience that the large house places on its immediate neighbors, it also weakens the character and texture of the neighborhood as a whole.
- 5. **Cost**: In today's market, the cost of additions or remodeling can be twice the cost of new construction. As a result, many homeowners choose to demolish instead. Demolition is less likely to retain the original character of a house than reconstruction.

B. Potential Benefits of Mansionization

Property Values: Neighborhoods that don't improve are liable to stagnate and
eventually degenerate. Viable communities are necessary to the cultural and economic
well being of a city. It is to the City's ultimate benefit, as well as the neighborhood, to
encourage improvement or redevelopment and maintenance of homes to maintain
property values.



- 2. Infrastructure: Redevelopment in established neighborhoods may have some effect on sprawl. Instead of seeking out new developments located farther from the city, property owners will replace older homes with their own desired housing styles. Schools and other infrastructure already exists that can accommodate or be made to accommodate the home.
- 3. More compact development means more compact infrastructure. Infill helps reduce cost of new infrastructure because extensions to services do not need to be laid to support rural development. For example, long pipes and drains are not needed to service properties on larger and more spread out yards.
- 4. Although the redevelopment near the metro station and along Rockville Pike is providing new sources of housing, some property owners prefer single-family homes with yards. Likewise, many want to move into already settled communities that have close proximity to services such as transportation and commercial centers.
- 5. Environmental: Another argument to support mansionization is that it does not affect the potential amount of run-off on a property. Under current standards, a homeowner could cut down all his trees and pave virtually the entire yard. Current coverage limitations in the zoning ordinance are based on the *building* coverage, not total imperviousness. Driveways, patios, decks, etc. do not count toward the total percentage of lot coverage allowed, nor does Rockville limit the amount of a lot that can be covered with a patio or other material. Where there is open space, the Rockville City Code (§ 5-287, Property Maintenance Code) requires ground cover such as grass or mulch.
- 6. **Compatibility:** New development can include aesthetic touches, which may be lacking in existing structures. Zoning currently does not regulate aesthetics or require that the aesthetics of new development correspond to the character of the neighborhood. Instead, character elements and design are currently considered in changes to a site in designated historic district, as it would be in a designated neighborhood conservation overlay district that has adopted guidelines.
- 7. Normal Progression: Houses are lost due to natural causes as well. Hurricanes, fires, falling trees, and termite infestation make unanticipated changes to the structure of a house. Homeowners may wish to protect against natural deterioration by reconstruction or demolition, while remaining in their neighborhood. Permitting mansionization, therefore, would provide homeowners with options to maintain their property within their current neighborhood. Furthermore, it allows home owners to maximize the investment that they have made on their home.

III. ALTERNATIVES

Methods have been used nationwide to control new development in existing neighborhoods and accomplish the goal of compatibility without stifling the opportunity for improvement and



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expansion. No single answer has yet been found to adequately address all the concerns of mansionization. Monster homes are criticized not only for their sheer size, but also for the way in which size is further emphasized by the design of the house.

Other jurisdictions' solutions can be classified in two groups: 1) mass regulations and 2) architectural requirements. The following are some solutions that have been developed by other communities to address mansionization. They are listed in order from least aggressive to most aggressive. Some of these options appear to be more applicable to Rockville than others.

A. Mass Regulations

Mass regulations control the scale of the home to its context. When a monster home is constructed in a neighborhood of small lots, the impact of mass is maximized. These regulations help to limit the impact of large structures.

1. **Building Envelope Regulations**. A traditional means of controlling home size is by specifying lot coverage limits (setbacks and percentage of usable space). Decreasing the allowed lot coverage and increasing building setbacks achieve a smaller envelope.

The basic matter that needs to be addressed is the relationship between the large house and its immediate neighbors, particularly along the side lot line. A sliding scale is needed to adequately accommodate the new house on different sized lots. A 5,000 square foot house on a half-acre lot with at least a 13-foot setback is not as intrusive as the same house on a 6,000 square foot lot with an 8-foot setback. It should also be understood that while a large lot can usually support a large house without infringing on its neighbors, it should not be developed with the intent to redevelop the lot for two houses in that same space where subdivision is a possibility.

Smaller bulk is achieved, overall, by decreasing the height or number of stories allowable. Some cities have reduced standard height restrictions to produce a shallower roof pitch, but still making a second-story addition possible. Regulations on height can be placed on a number of things. Besides total building height, height restrictions can be placed on attic floor levels, basements, and detached garages.

The percent of all building footprints or building coverage, allowed on a lot in Rockville ranges from 25% to 35% of the lot square footage. For Rockville's smallest permitted new lots, 6,000 square feet, this allows 2,100 square feet for each story. Rockville allows a height of 35 feet, measured to the midpoint of a gable roof. The midpoint of a very steep roof can be 8-10 feet, which allows another 8-10 feet above it or close to 45 total feet in height. By these standards, a new home on a 6,000 square foot lot with an attic and basement can legally be built in excess of 8,000 square feet and be very tall with an FAR of 1.3. Currently, new single-family home subdivisions have been built via the Planned Residential Unit method, and other than the two country clubs there are no large undeveloped parcels remaining. An overall change to the zoning standards in height,



setback and lot coverage would primarily affect new houses and large additions in older established subdivisions.

2. Floor Area Ratio (FAR). FAR regulations are one of the most common techniques for controlling oversized homes. Floor area ratio is a ratio of the gross square footage of the building or buildings on the lot divided by the square footage of the lot. FAR's allow planning departments to control the overall square footage of a home, including second-plus stories, as well as accessory structures such as garages and covered porches. Many communities implement a sliding scale for FAR's to meet the individual needs of the individual zoning districts, instead of one set FAR for the entire city.

Rockville has used FAR values for commercial buildings in urban commercial areas where front, side and rear setbacks are not the primary consideration. A simple lot percentage for the footprint of all buildings combined with the allowed height and setbacks has been used in Rockville to define the building envelope, not FAR.

FAR limits alone will not solve the problem. While FAR controls the bulk, it does not limit the amount a large house may impede on a neighbor. Regulations controlling height and setbacks must also be included in order to be effective.

Adopting an FAR standard is not the best method for Rockville. Areas of Rockville most vulnerable to mansionization are generally urban R-60 to R-90 lots ranging from 5,000 to 10,000 square feet with lot widths of 50 feet to 70 feet. With narrow lot widths, a tall building could easily be built within FAR standards and still cause problems to adjacent neighbors.

3. Cubic Content Ration (CCR). Cubic content ratios are similar to the floor area ratio. A CCR value, as used in Aspen, Colorado, considers the height of the building as well as the gross square footage of the building and the lots.

Like FAR, CCR is not a practical option for Rockville. Because there is no one-size-fitsall standard that can be applied to effectively address the concerns of mansionization, a better option would be to apply design guidelines on a neighborhood-by-neighborhood basis.

4. Second Story Regulations. Since mansionization often includes the addition of a second story, many mass regulations have begun to regulate the size and setbacks of second stories. This type of regulation leads to a stepped appearance, which limits the overall bulkiness of a larger house.

Second story ratios are placed in relation to the size of the first floor. Like FAR regulations, these ratios are often provided on a sliding scale for the various lot sizes (as seen in two examples below). The following chart is an example of some second story ratios.



| Percentage Allowable | Ratio Comparison | |
|---|---|--|
| 35% or 600 sq. ft. (whichever is greater) | Of the first floor | |
| 50% | Of the first floor for lots under 5,000 sq. ft. | |
| 75% | Of the first floor for lots over 5,000 sq. ft. | |
| 60% | Of the first floor | |

In addition to, or as an alterative to ratios, some communities have imposed a secondstory setback requirement to make the house appear less bulky. These could be placed on front or side setbacks. For example, where there is a five-foot side setback for the first



Second Story Setback

story, a 10-foot side setback would be placed on the second story. Both setbacks are measured from the property line.

The drawback of a second-story setback or ratio is that a one-story home that is reconstructed may not be built to bear the load of a second story that is not flush with existing walls. A second-story addition can, therefore, be more architecturally challenging and more expensive than a simple second story on a new house. Nevertheless, second story ratios and

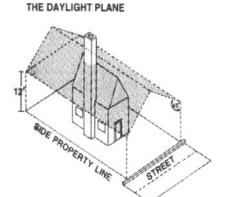
setbacks have been shown to effectively minimize bulk by breaking up the façade of a home.

5. Daylight Plane Regulation. A complicated regulation is a daylight plane requirement. Drawing a vertical line from the side property line to a specified height on a house derives a daylight plane. An angle is then drawn off this line, which continues until it meets the angle drawn from the opposite side of the house (see illustration below). The more restrictive the height/angle used, the more effective the daylight plane is at reducing mass. The daylight plane creates an imaginary envelope around the sides and top of a house that limits its height and width. Any part of the house, which protrudes out of this envelope, is considered to be an obstruction that can reduce the solar access of the adjacent house.

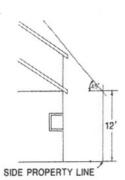
With regulating daylight planes, it is important to include both exemptions and demonstrative illustrations. Exemptions may include dormer windows, gables, fireplaces, and antennas. Illustrations may include something like the following:



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Daylight planes confusing alternative, that staff does not recommend implementing. In practice, the daylight plane serves much the same purpose as a second story ratio or setback because it forces the second-story to be stair-stepped in. Daylight plane regulations, however, are more complicated to implement. The plane must be calculated and permitted exemptions reviewed on a case-by-case basis. The plane is particularly challenging to calculate on slopes, where it must be done in increments. The daylight plan must be closely keyed to the side setbacks of a home, as the point of which the angle intersects the home is greatly influenced by the distance of the home from the side property line. The further the home is from the property line, the taller the addition may be. Thus, the daylight plane is most restrictive in homes with small side setbacks.

B. Architectural Requirements

While architectural requirements protect neighborhood character, they can also help prevent look-alike areas. The key to such requirements is to strike the right chord. The language cannot be too restrictive, allowing for the imagination of architects, but not unconstitutionally vague either.

- Rooflines. Major rooflines on a property can accentuate the mass of a building or lead to a monotonous street if constructed the same way on a number of houses along a block. As a result, architectural requirements can impose a change in roof plane, a mix of roof styles or materials, and a number of decorative options.
- 2. **Entries**. Some cities require clearly defined, prominent primary entrances that feature some form of design element. Design elements may include decorative doors; porticos, arches, or pillars; or peaked roof forms.
- 3. **Façade.** Mass can be accentuated when a home lacks definition in its façade, making it look square and bulky. Unbroken multi-story elements, such as towers, entryways, and



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walls can also accentuate mass. Some communities require that façades be broken up, that a mix of building materials be used, or that decorative windows or doors be installed to reduce the impression of mass.

4. **Windows.** Some cities ban windows on the side walls of home to protect the privacy of neighbors. Banning windows is unnecessarily restrictive, however, as there are many window styles and glass types currently available. Opaque glass, including frosted and tinted glass, patterned glass, and glass blocks can afford both light and privacy.

IV. IMPLEMENTATION TECHNIQUES

In addition to applying mass regulations and architectural guidelines, some cities have initiated additional review requirements or overlay zoning requirements to protect against mansionization problems.

A. Additional Review. To ensure adequate application of bulk requirements, some jurisdictions have initiated additional review and regulation requirements for additions of second stories or any expansions greater than a set percentage of the existing building area. Some communities even require a notification and comment period for adjacent property owners when two-story construction is proposed.

For example, in Menlo Park, California, a two-tier system of review was established. If construction meets the requirements for lot area, floor area limits, lot coverage, setback, daylight planes, permeable surface, and other basic elements, an applicant can merely file for a building permit. If, however, the owners of adjacent properties approve, more permissive standards could be applied (up to a set limit) including setback encroachments, and more daylight plane flexibility upon review by staff. Failure to gain neighbors' approval requires approval of necessary permits by the Planning Commission.

B. Overlay Districts:

One solution is to implement historic districts, where eligible and appropriate. Historic districts aim to protect a community's historic significance in terms of the contribution to the national, state or local pattern of history. Design guidelines which restrict mansionization are implemented and enforced to ensure protection of these resources. Alterations to the house are reviewed by a historic district commission, which determines if they are appropriate to the community based on established criteria.

Of the properties identified for potential mansionization expansion in Rockville, only a small number are currently designated in an historic district. While current exterior alterations guides for Rockville's Historic Resources regulate exterior materials, roofing, windows and doors, and color selection, these may or may not be the types of regulations to apply throughout the city. Under the guidelines, new additions must respect the building's character and protect the neighborhood's feel. New additions are encouraged



in back and not up. While these are potential guidelines that Mayor and Council may wish to pursue, if historic district overlay is chosen, these guidelines will be further reviewed for their impact on mansionization.

2. Conservation overlay districts are another technique that imposes zoning and development standards that reflect the existing conditions. This works well in an architecturally cohesive community with the same basic character, height of buildings, and style. It does require research and documentation of existing conditions to back up the new development standards.

Annapolis has imposed conservation districts with its Eastport District, which sets a height standard for each block based on the existing residential height. Cities in Kentucky have used neighborhood conservation districts in both urban and suburban communities. In both cases, the adopted guidelines deal with lot size, configuration and lot layout as well as setbacks, height, lot coverage and architectural design. (Some examples are: prohibiting front-loading projecting garages in areas where detached rear garages predominate; and prohibiting cul de sac subdivision where square lots fronting the street are normal.)

These districts may be implemented either by guidelines or adopted as regulations, thus having the force of law. Newport Virginia has an intense educational program that persuades new builders to construct compatible new homes and additions via a design handbook. This tends to work best, however, if the area is largely owner-occupied and not the target of individual infill developers.

Applicability:

Many subdivisions were created as approved Planned Residential Unit Developments or Comprehensive Planned Development that have established guidelines and review procedures for additions and new constructions. Other subdivisions have Homeowners Association Review for exterior modifications and new construction. These areas do not need an additional overly district and review process. Examples are: Some portions of Rockshire, Fallsmead, New Mark Commons, Carter Hill, Fallsbend, Flint Ledge Estates, Rose Hill Falls, Rose Hill, King Farm and Fallsgrove.

Mansionization controls may be appropriate for older areas still covered by the traditional Euclidian zoning. This would include West End Park, East Rockville areas including Lincoln Park, College Gardens and Twinbrook. Community support is essential. Conservation districts do not succeed unless the community actively supports the program. Some incentives, such as workshops on design and the process may help. For many neighborhoods, stability and clear future direction are incentive enough.

C. New Definitions and Permitting Requirements— An additional alternative to minimize the impact of mansionization is to redefine "demolition" and "substantial alteration" to



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encourage less destruction to the original dwelling and promote appropriate additions as an alternative to complete demolition.

Under current Rockville standards, reconstruction requires only a building permit. If there are encroachments or the building is too high, Planning Staff will delay issuance of a permit until the problem is resolved. Additionally, the current definition of reconstruction is vague, leaving no set standard to apply throughout the city.

With regard to nonconforming uses, there is a more defined guideline for reconstruction. The Zoning Ordinance has a provision that if more than 50% of a nonconforming structure is destroyed or damaged, then any nonconformity must be corrected. There is no specific section in the Zoning Ordinance that address reconstruction. Section 25-164 addresses the fact that the only structural alteration that may be made to a structural nonconformity is their removal. Section 25-165 provides for its removal if more than 50% is damaged or destroyed.

V. CURRENT STANDARDS

The tables of development standards that are currently applied to construction or reconstruction from § 25-311 of the Zoning Ordinance are attached at the end of this document for reference.

VI. RECOMMENDATIONS

A. The first policy under the Housing section of the Master Plan is to encourage the maintenance and upgrade of existing housing stock. It is, therefore, not the goal of the city to restrict maintenance, but certain steps are needed to protect against the negative implications of mansionization. There is no one-size-fits all answer the mansionization issue. After evaluating the pros and cons of mansionization, the staff makes the following recommendations for the Mayor and Council's consideration.

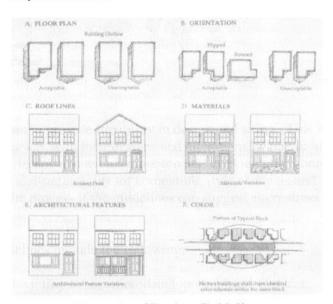
- 1. Limit any mansionization regulation to the 3 smallest-lot zones—R-60, R-75, R-90. Beyond these, the lot sizes and related setbacks are large enough that the perceived impact is substantially reduced.
- 2. Modify and add definitions for demolition and substantial alteration. Current definitions are too lenient and thus must be adapted for today's values. Substantial alteration should include the tear down of more than 50% of the original walls. Demolition should include teardown of the roof, foundation, and two or more of the original exterior walls. Additionally, leveling the house to the foundation (keeping the foundation intact) should also be considered demolition.
- 3. Establish policies and procedures for the establishment of neighborhood conservation districts. Such a process is currently being considered for the Lincoln Park area as a part of the neighborhood planning efforts currently under way. Such districts should include



design guidelines to provide flexibility in design and siting. This will give property owners more leeway with their designs and alterations, which in turn creates a more interesting streetscape and avoids monotonous "cookie-cutter" homes. The City might offer examples and suggestions for compatible style elements and alterations. This will also speed up the process if the guidelines can suggest alternatives that do not require extensive review.

Suggested guidelines include the following:

- a) Adequate flexibility to accommodate topographical features;
- b) Adequate setbacks to maintain all four facades of the dwelling;
- c) Setbacks to compensate for shadow casting;
- d) Area limitations for accessory uses, such as garages, sheds, and pools; and
- e) Roof and entry alternatives.



Example of Design Guidelines

The neighborhood conservation districts should be initiated by the neighborhoods themselves, rather than be dictated by the City. The process should likely be similar to the current process for designating historic district zones in the City.

4. As a potential adjunct to the conservation district concept, consider requiring additional side yard setback for height above a certain level. Our initial recommendation would be two foot of additional side yard setback for each foot of height above 25 feet. Twenty-five feet is high enough to accommodate a typical two-story house. The recommended two-to-one ratio would mean that a 35 foot high building would have to be set back an



additional 20 feet beyond the minimum side yard setback on each side. On a minimum-width 60-foot R-60 lot, the maximum height house could be only 20 feet wide, certainly an undesirable design.

- 5. As part of the comprehensive review of the zoning ordinance, revise bulk standards in zoning code for smaller residential districts, especially height requirements and the measurement of height.
- **B.** Although not directly a part of this issue, the Mayor and Council may wish to consider make existing historic houses non-conforming that may not meet today's zoning standards. These houses are also considered structural nonconformities, and cannot be replaced in kind if substantially damaged. Since these structures help define the character of the historic district, they should be allowed to be replaced in kind.

VII. CONCLUSION

There are two sides to consider with regard to mansionization, potential costs and benefits. Regardless of whether mansionization is deemed a threat or a natural cycle for communities, it is a matter deserving attention. If ignored, larger in-fill homes could suffocate a community quickly and erase the elements that make that area unique. Communities must work with their residents, government, and outside developers to determine the best approach in ensuring that they do not lose the character of their neighborhood.

In-fill housing may help discourage sprawl; however, it will not eliminate the problems of sprawl altogether. It is possible to control the scale of the in-fill housing, while at the same time discouraging sprawl. It is possible to dissuade people from building structures that take up more space, and encourage more luxurious models that repeat the scale of the buildings around them. The customized guidelines made for each neighborhood can assist with this negotiation. Likewise, the staff does not want the community to lose the opportunity for improvement. Improvements can be made to the homes and lots without competing with the existing character of the neighborhood. It is the responsibility of the city to make those alternatives apparent and to educate the public on appropriate design standards.

Aesthetics can be regulated when the appearance contributes to the district's character. The staff suggests designating conservation districts in order to preserve the unique architectural and historic characteristics of certain neighborhoods. The goal of these districts is to recognize when a community shares certain elements, whether they are architectural or historical, and offer them protection to save these elements.

The ultimate goal is to respect the current property owners' community while still allowing for appropriate growth and change. Rockville does not seek to eliminate property rights or stifle the community's wishes to grow and improve. The problem is a matter of scale and awareness of design elements. A delicate balance must be made to support the desired house size without infringing on the rights of its neighbor. The owners should also seek to build a home that blends



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well with the rest of the architecture on the street. Guidelines will help developers and private property owners with their decisions to rebuild or remodel. Awareness and education is the best tool.

ATTACHMENTS:

Pictorial Appendix

Table of Residential Development Standards

Map: Recent Demolition Permits

Map: R-60 Properties by Value and Size

Background Information

Nasser, Haya El. "Mega-mansions' upside: They help reduce suburban sprawl." <u>USA Today</u>. March 13, 2002.

Barnes, Linna et al. "A Pictorial Study of Problems with 'Story' and 'Height of Building' in the Montgomery County Zoning Ordinance." April 20, 2004.

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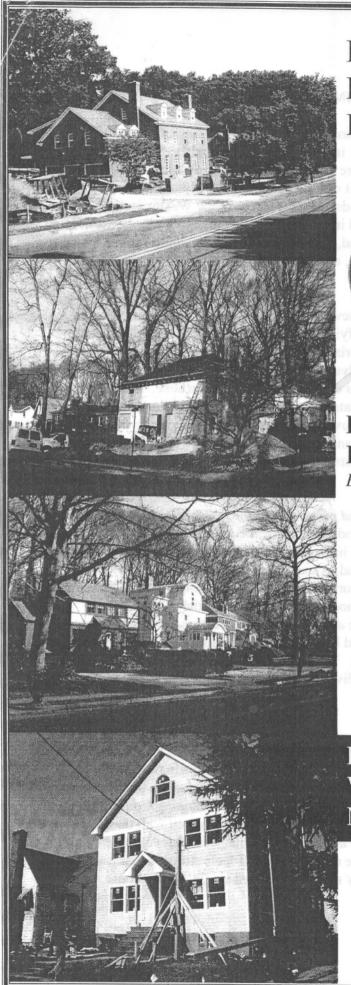
Ramshaw, Emily. "The McMansion Next Door." The Dallas Morning News. May 1, 2005.

Samuelson, Robert J. "Homes as Hummers." The Washington Post, July 13, 2005

Miller, Julia H. "Neighborhood Conservation Districts." <u>The Alliance Review</u>. November/December 2003.

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RESIDENTIAL INFILL DEVELOPMENT IN ALEXANDRIA



Department of Planning & Zoning Eileen Fogarty, Director

Planning Commission Work Session March 9, 2006

I. SUMMARY OF FINDINGS AND RECOMMENDATIONS

The issue of residential infill development, or mansionization – the building of houses that are out of scale and character with a neighborhood – is not unique to Alexandria. Established communities across the country and the region are experiencing similar development problems as builders and property owners use every last bit of land and build large houses to support 21st century living styles in 20th century neighborhoods. Market forces in the Washington, D. C. region have raised property values, and the trend in modern living is toward larger houses. High property values support larger houses on less land, especially for close in single-family neighborhoods, such as in Alexandria, Arlington, and Chevy Chase.

No simple solutions

This infill development report is the product of several months of analysis and work by a large group of planning staff. While it would be satisfying and helpful to present a single and simple conclusion, staff found that the issue in Alexandria is multifaceted and complex and defies a "one size fits all" solution. The infill issue involves the application of technical and detailed zoning regulations and, at the same time, matters of design and subjective taste. It is also contextual, so that what is perceived as appropriate construction in one neighborhood will not be deemed compatible with another. Cities evolve over time: staff found a newspaper article from the 1890s outraged at the onslaught of then new and large Victorian homes which today are held up as models for others to emulate. Thus, what staff is presenting is a "good news – bad news" message on infill in Alexandria:

Importance of site and building design and land preservation for residential neighborhoods

First, Alexandria's older residential neighborhoods are a critical component of the City's
identity. When a new, out of scale home is built in an older neighborhood, long time residents
are understandably concerned. On the other hand, Alexandria appears to have fewer
controversial infill cases than some other local jurisdictions, such as Arlington. One emphatic
conclusion in staff's analysis is that the single most important factor in the success of new
construction in a residential neighborhood is the design of the construction. Another is that more
problematic to a neighborhood than an oversized house may be the painful loss of critical land,
often green area with trees, to new construction. Therefore, the infill issue is important to the
City but it is key to consider not only size of individual buildings but also the use of land in
construction in residential areas.

Alexandria's infill approach

Second, Alexandria's zoning ordinance and development review process has long included more attention to the specific details of infill development than many other jurisdictions. City staff and local architects and builders have been trained and attuned to recognize the importance of detailed decisions in development. The City's decision makers – the Planning Commission, Boards of Architectural Review, Board of Zoning Appeals and City Council – all do a very good job of deciding individual cases, with extensive attention to the nuances of development and its affect on the surrounding neighborhood. On the other hand, staff feels strongly that it would be unwise to require discretionary review for every new or expanded single-family house.

Alexandria's regulatory tools could be improved

As relatively successful as the City has been with infill development to date, it is clear that son... of the City's regulatory tools are difficult to apply well and fairly, and could be improved. Many of the individual achievements in the City's recent history are a result of staff and board efforts to persuade builders to consider alternative approaches to building. Staff and City board members spend an enormous amount of time attempting to achieve reasonably designed construction that fits in well with an established neighborhood. Developers and landowners need to have a clear picture of what is allowed and what specific rules will permit. Staff, board members and applicants often struggle to find solutions to the details of development that could be better managed if the City made some refinements to its approach to infill development.

Staff recommendations

Specifically, staff is recommending that:

- four specific regulatory areas be studied for potential amendment to the zoning ordinance:
 - steep slope restrictions
 - subdivision regulations
 - lot coverage limitations
 - floor area ratio calculations
- the City create a residential conservation design pattern book with design guidelines for builders and architects on infill projects.

The goal of this paper is to frame the infill issue, provide background information, and begin discussion among the City's professional planning staff, residents, landowners, builders and developers, and its decision makers, including the Planning Commission, Board of Zoning Appeals, Boards of Architectural Review and City Council. Ultimately, the City may choose to adopt new or amended regulations to address modern building in its already developed neighborhoods. Nevertheless the discussion needs to balance the harm that infill building can create against the burden of over regulation on individual homeowners.

louble the size of the original house. Some of these projects are developed

II. DEFINING THE INFILL ISSUE IN ALEXANDRIA

When a large new house is built on an already developed street, or when a long undeveloped corner is suddenly graded and staked for new houses, the result may be a traumatic change for an established neighborhood. In Alexandria, the infill issue is typically experienced in one of the following ways:

Tear downs. A vacant single-family lot in Alexandria may actually be more valuable than the same lot with an older house on it. Therefore, a savvy builder may purchase a lot, demolish the existing house and build a new house on the lot. Even if the new house complies with technical zoning and building requirements, it may be much larger than the other houses on the block. Many communities across the country are experiencing the tear down phenomenon. In Alexandria, new homes that comply with zoning regulations only need an administrative plot plan and building permit for approval.

Building additions. Alexandria has not experienced as many "tear downs" as other close-in D. C. suburbs. More typical here is financial investment in an existing home by constructing a building addition. Where houses are smaller than the maximum allowed by zoning, only a building permit is required to expand the house. Whether it is a second floor over the entire house, a large addition in the rear, or an expanded attic and dormer, the result can be a radical change for the neighborhood.



The trend in modern living is toward larger houses. The National Association of Home Builders has noted that the average size of a house has grown from 983 square feet in 1950 to more than 2,200 square feet in 2000. A 1998 American Housing Survey noted that the median size of a detached home in the Washington area was 2,315 square feet. No matter how you count it, there is a trend.

Residential building additions often add significant mass to what had been a small house; some double the size of the original house. Some of these projects are developed at a scale consistent with the original development, incorporating design elements sensitive to the established neighborhood, and others have an opposite effect, creating a new style all their own within the neighborhood. Citizens have expressed concern over a variety of specific building elements including: mass and scale overshadowing smaller neighbors; interruption of established setbacks; inconsistent design and architectural elements (such as front-loaded garages); excessive paved surfaces; oversized accessory structures; and removal of mature trees and open space.

New subdivisions. Throughout Alexandria, there are parcels of land that were never developed, either because they are steeply sloped or otherwise difficult to develop, or because they have been enjoyed as excess land associated with an existing house. With the escalating value of land, builders are now willing to build on difficult properties, and landowners are sometimes willing to sell extra land. Another example of re-dividing land occurs when an existing house is built on a double lot; the house may need to be removed to allow construction on the two lots that zoning permits on the land. From the neighborhood perspective, these leftover lands often define a neighborhood; typically offering green relief or treed areas, and their loss can create a dramatically different neighborhood environment. When the extra land is the equivalent of a zoning lot, then only a plot plan and building permit is required to develop the site. If there is sufficient land for two or more lots, then a subdivision application is required.

Consolidation of lots. Although Alexandria has yet to experience this phenomenon on a large scale, other communities have seen real estate developers purchase a series of lots, a whole block, or even a series of blocks, and propose to redevelop the area, sometimes re-subdividing the land into more modern building lots. The result can lead to significant changes in the City as a whole and can displace households. Staff notes that, given the value of land in Alexandria, and its close in location, at some point the rebuilding of familiar but modest neighborhoods may be attractive to builders.

III. HOW ALEXANDRIA REGULATES INFILL DEVELOPMENT

The Alexandria Zoning Ordinance is the principal tool for determining how much land is required for a house and how large houses can be in specific locations in the City. The ordinance contains a series of provisions addressing the basic form of residential development as well as the details of individual house sites in the City.

Single-family zoning

The great preponderance of land in the City is zoned for single-family development. The single-family zones, R-20, R-12, R-8, R-5, and R-2-5, are similar in content, but the rules vary as to lot size, height, setbacks and house size. These regulations define the legal building area on a property. In order to build a single family house in one of these zones, or to construct a building addition, only a building permit, plus an administrative plot plan in some cases, is required if the zoning regulations are met. For the vast majority of the City, there is no prohibition against demolishing a house and no discretionary review to assure that the design of the house is compatible with its neighbors or that consistency with neighborhood character is achieved.

The one area where the City exercises its authority to regulate design and character is within the Old and Historic Alexandria or Parker Gray Historic Districts; the residential land in the districts is zoned RB and RM. In the historic districts, every new house and every visible building addition is reviewed for its architectural consistency with the original structure as well as with the character of the district as a whole. In addition, demolition is not permitted without Board of Architectural Review approval. Although the City also has several National Register historic

districts, such as Rosemont, Town of Potomac, and Park Fairfax, design compatibility is not locally regulated in those areas.

For any land in the City, should a homeowner wish to build a house or an addition larger than the zoning allows, then a variance may be granted by the Board of Zoning Appeals, which is charged with considering, whether the proposed variance creates harm for an adjacent property owner or the neighborhood. In fact, the BZA hears approximately 75 cases each year and nearly 90% of those cases involve single-family house additions.

Subdivision review and approval by the Planning Commission is required to divide land into building lots or to change lot lines (although not to consolidate lots). As discussed further below, lots must be in character with nearby lots, but the architecture and eventual improvements to those lots is beyond the scope of Commission review.

Beyond the basics of residential zoning, it is also important to recognize those aspects of Alexandria's approach to single family building that are unique. The following circumstances and regulations are not typically found in other jurisdictions and affect the infill issue in both positive and negative ways.

Overzoning

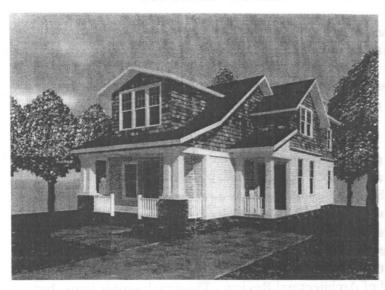
Many of the City's established single family neighborhoods, including Old Town, Parker Gray, Rosemont, Del Ray and parts of North Ridge, were built prior to 1952 when the modern forerunner of the existing zoning ordinance was adopted. Many of the houses and blocks in those neighborhoods were built at the same time, often by a single builder, and thus share a common design and character. Moreover, many of these single family areas are actually "underbuilt," or "overzoned." In other words, the zoning regulations allow a larger or taller house, or one on less land, than has long existed in the neighborhood. As a consequence, a new house proposed for an existing lot on an established block may be legally built to a size not in harmony with the original houses on the block.

Infill Zoning Regulations

Alexandria, with its older neighborhoods, has long recognized the impact that infill development can create and its zoning ordinance incorporates discretionary review of certain special circumstances in residential building in order to protect established neighborhoods. The following are examples of regulations in the zoning ordinance that are not typical in zoning ordinances elsewhere, that attempt to modulate the impacts of residential building on a neighborhood, and that are actually longstanding Alexandria "infill" regulations.

Developed front setback. Recognizing the problem of neighborhoods that preexisted the zoning requirements, Section 7-1000 of the zoning ordinance generally requires that, where a block has been built to a different front setback than the applicable zone has set, a new house or front addition will have to respect the developed setback line. For example, a new house built in a zone that requires a 25 foot setback may be allowed to locate the house only 15 feet from the front lot line if that is the developed setback on the block.

Substandard Lots. Through the SUP process, certain lots that are smaller in size or width than the zoning allows may be developable if a neighborhood study demonstrates that the lot is similar in size to the way other lots on the block have historically been developed. SUP review is required to ensure that the character and scale of the proposed new house will not negatively affect adjacent property or the established neighborhood.



The Commission and Council have seen a number of these cases in recent years. At 29 East Walnut, the approved new house design incorporated a large front porch, massing, scale, and roof pitch, tandem parking, and tree preservation, all consistent with its Rosemont neighbors. Another recent example is located at 500 East Howell Avenue. While it is a large home, its design mimics that of an existing home listed on the National Register of Historic Places on the same street. Design elements such as the front porch

are consistent with the historic fabric of the neighborhood. Large trees were able to be saved as part of the project, and the curbcut was reduced to a single cut allowing for tandem parking. The lot size was consistent with other developed corner lots in the immediate area. These considerations are specific to the special use permit process.

Character language in subdivision regulations. It is a significant feature of the City's subdivision regulations that the Commission is required to review new lots for their consistency with the adjacent properties, and the remainder of the subdivision. This issue is discussed in more detail in Section VII below but is a striking example of an atypical regulation designed specifically to address neighborhood infill issues.

Special exception. In addition to the variance procedures at the Board of Zoning Appeals, which requires a homeowner to show an economic hardship supporting relief, the BZA has adopted an additional technique, the special exception, to address typical cases that come before it and that should require design and neighborhood compatibility review for approval. Under the special exception review, the BZA considers whether a request to alter the zoning, typically for an addition to a single family house, will alter the essential character of the neighborhood, harm adjacent properties, and be compatible with other development in the surrounding neighborhood. Currently applicable only to exceptions to the rules for corner lot fences and yard and setback requirements, the BZA is also considering allowing special exceptions for front yard porches and similar projections.

Floor area ratio regulations. Although the FAR rule is the subject of some debate, it is notable that Alexandria has long included an FAR limitation to govern the overall size of individual houses in the single-family zones. The details of the FAR computation are explained below in Section VII. Many jurisdictions have not included that type of zoning rule in their ordinances for single-family construction. Interestingly, some jurisdictions, such as Winnetka, Illinois, have recently adopted FAR rules as a way to address infill issues and mansionization.

Unusual Circumstances/Exceptional Design in RA and RB Zones. The minimum lot size for residential dwellings in the RA and RB zones is 1,980 square feet, except that the lot size may be reduced with SUP approval to as small as 1,600 square feet – in the case of unusual circumstances or exceptional design. This flexible zoning regulation, with design review, recognizes that, while lot size is a critical component of neighborhood compatibility, design is also important. An example of development under this regulation is a single-family house built at 1000 Princess Street, at the



southwest corner of Princess and N. Patrick Streets, which was also subject to another layer of design review at the Parker-Gray Board of Architectural Review. The new house is large, but includes several elements to blend in with the mass, scale and character of the neighborhood, including a consistent setback and architectural style, as other buildings on the Patrick Street frontage.

Curb cuts. Alexandria recognizes the damage curb cuts can create in older neighborhoods through a complex set of regulations balancing the need for parking against the negative impacts on neighborhood character and the pedestrian experience. Curb cuts are prohibited in Old Town, require BAR approval in Parker-Gray, and, depending on the circumstances, may require additional approvals in the historic areas of Rosemont and the Town of Potomac. At a minimum, under the City Code, all curb cuts are reviewed for their consistency with neighborhood character at the administrative level.

Parking reductions. In order to reduce paving, accommodate new construction and balance the effect of construction on existing neighborhood conditions, an application for a parking reduction SUP may accompany an infill residential building plan. The design of parking on a residential lot can radically affect the design and compatibility of new residential construction and a request to reduce the number of parking spaces, or more typically to allow tandem or reduced size spaces, can greatly improve the design of a new house site, and brings



the development before the Planning Commission and Council for review. The home at 518 East
Howell Avenue is a good example because, as originally proposed, garage parking created a
"snout" house, with jutting garage; working with staff and the Commission the landowner
accommodated tandem parking for two spaces on the lot, and achieved a neighborhood
compatible house site design.

Lots without frontage. In order to ensure that new residential development follows the traditional model of blocks, grid streets, and generally rectangular lots oriented toward a street, the zoning ordinance requires SUP approval to create a lot that does not front on a public street. The new home approved at the rear of 219 North West Street is an example of a new lot without street frontage.

Paving restricted to 50% of yard. Section 7-1005 of the zoning ordinance limits the area that may be used for parking, whether paved or not paved, on a residential lot, to a maximum of 50% of a required yard, allowing excess land on a lot to be paved. Fairfax County recently adopted a similar rule in order to promote green areas and reduce the number of cars on residential lots.

Height limit depends on roof type and orientation. In certain zones in the City, such as the RM zone, increased height is allowed if the ridge line of the roof runs parallel to the street and if the slope of the roof is compatible with neighboring buildings.

Private drives not included in lot area. Several years ago, the City amended the zoning ordinance by prohibiting the land used for alleys or drives to count as part of residential lot area. Although the purpose of the new rule was to ensure sufficient land for open space on residential lots, staff has found that the rule has an unanticipated negative effect on infill development. Specifically, on small infill parcels, builders have no incentive to design townhouses with rear parking and garages, because it requires less land area, paving, and construction costs to put the garages on the front of the buildings, where they detract from the street, the architecture and the ability of the new project to be compatible with its surroundings. While builders may be willing to change their design at staff's urging, they will not agree to lose units, which the current rule would require, to do it.

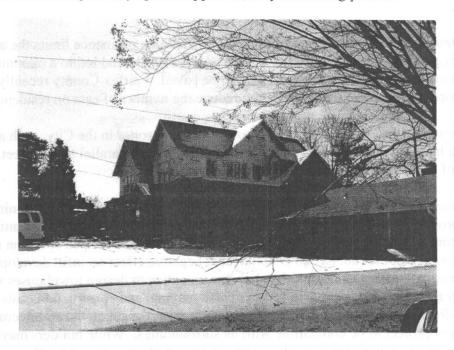
IV. INFILL CASE EXAMPLES and an analysis and the proof of the following a universal and analysis of the company of the company

In order to assess the problem of infill development in Alexandria, planning staff performed an in-depth study of several dozen cases from the last ten years. Cases studied include those that were significantly troublesome at the BZA, BAR and Planning Commission, examples which generated citizen complaints, and those which staff on its own found to be technically problematic. The review included a large number of individual houses, subdivision cases, and cases where citizens were upset at intruding additions, the removal of trees, and setback and design issues. Staff inspected neighborhoods, and reviewed building plans, applications for approval, and citizen concerns; it recalculated dimensions and FARs and assessed board and administrative decisions.

Although staff set out to find common problems with the zoning rules or system that lead to larger houses and neighborhood problems, it discovered that each case includes individualized circumstances and so many variables that there were few common problems. The following case examples are instructive:

2412 Crest Street

The current construction on Crest Street is a typical infill case and a good example of a large house renovation project in an underbuilt neighborhood. The new house complies with zoning in all respects and did not require any special approval, only a building permit.



The Crest Street neighborhood, close to Braddock Road and adjacent to Blessed Sacrament church, is zoned R-8. Each house is required to have an 8,000 square foot lot, a maximum height of 40 feet and a maximum FAR of .35. The lot at 2412 Crest contains 10,000 square feet, allowing a maximum of 3550 square feet of floor area. The builder is maximizing the floor area in the reconstructed home, which includes 3520 square feet. The height and yards comply with zoning rules.

The new house is much larger than the remaining homes on this block, which are fairly regular in size and style. Although the lot is 10,000 square feet and the zone only requires 8,000 square feet, four of the seven lots on that blockface are 10,000 square feet or larger.

The project involves a large addition which essentially adds a second floor and front porch to what had been a one story, rambler. The preexisting style had been consistent with its neighbors; the new house design resembles a different, farmhouse era. The project has raised great concern

with some neighborhood homeowners, although others, including the immediately adjacent homeowners support the project.

Staff believes that, while well designed, the new construction is completely out of harmony with the homes in the neighborhood, although in another Alexandria context, perhaps only a few blocks away, the size of the house would be in character with the neighborhood.

2714 Hickory Street

This house, remodeled by a second floor addition in 2000 is included because it is an example of modern architecture on a street that is more traditional in architectural style. Again, the house meets all zoning rules and the reconstruction work required only a building permit under the zoning ordinance. Nevertheless, it is unusual and arguably out of harmony with its neighbors. Outside of the regulated historic districts, however, Alexandria does not regulate the design and architectural style of houses.



19 Sunset Drive and 217 East Del Ray Avenue

At 19 Sunset Drive, a single family home was demolished and redeveloped with a three-story duplex. The property was already served by two curb-cuts, which accommodated the four required parking spaces for the two dwellings allowed in the R-2-5 zone. While the development complies with zoning, it is arguably out of scale with adjacent dwellings.





Front

Back

Especially as seen from the rear, from Commonwealth Avenue, the building is much larger than its neighbors. The large rear addition, so much larger than the rear of its neighbors' homes, changes the rear building line of homes on the block radically.

A similar instance occurred at 217 East Del Ray Avenue, which was reconstructed with a large addition a few years ago.



In both cases, the new homes complied with zoning. The Del Ray house is on an extra wide lot. The Sunset Drive house is a two family duplex structure. We cite them together however to show the difference that design can achieve with large houses in established neighborhoods. In the Del Ray example, the overall design and especially the front of the house, with its porch and use of materials, are very good example of classic Del Ray architecture. Thus, although a very long house, and deeper than its neighbors, the Del Ray house is compatible with the neighborhood in terms of appearance.

On the other hand, in the case of the Sunset Drive house, its architecture, with its blank walls and front facade garage doors is unappealing. Furthermore, it lacks favorable design elements, such as front porches found in the older dwellings on the street. The Sunset Drive house is also an example of an unsuccessful effort by staff to negotiate design solutions with the developer of the lot. Originally an application for subdivision which staff could not support because of the front-loaded garages, the applicant was not amenable to staff's alternative parking designs, because they required a parking reduction SUP, even though staff would have supported the SUP.

These and other cases confirm staff's understanding of the development process and the City's infill regulations: Whatever regulations are in place, design is a key ingredient in determining what creates a successful infill project. Although required design review is one solution, voluntary design achievements are often equally successful, as with the well designed home at 217 East Del Ray Avenue. Even in the case of 2412 Crest Street, while larger than its modest neighbors, the new house is well designed; under the city regulations, it could easily have been built as a large brick box; the builder chose to create an appealing house design with porches, dormers and gables.

V. WHAT REGULATIONS HAVE OTHER JURISDICTIONS ADOPTED THAT AFFECT INFILL PROJECTS

Regulations on infill development throughout the country range from strict regulation with design criteria to encouragement and education strategies through guidelines and other reference materials. Given the complexity of the issue of infill, jurisdictions across the country have incorporated various regulations and guidelines to achieve compatibility with established neighborhoods.

Regional Solutions: Zoning Regulations

Arlington County

Over the past few years, Arlington County has studied the infill problem, especially as it relates to building height, setbacks and pipe-stem lots. In November 2005, the County adopted changes to the zoning ordinance to decrease the amount that a residential lot that can be covered by houses, accessory buildings and driveways, known as "lot coverage." A lot coverage rule specifies how much of a lot can be covered by the footprint of structures and hard surfaces such as driveways. It is the ratio of the occupied area (buildings and driveways) to the total area of a lot. For example, if the occupied area is 2,400 square feet and the total lot area is 6,000 sq. ft., coverage would then be equal to 40%.

Arlington studied the issue for two years to determine reasonable coverage limits that would protect neighborhoods from very large houses in the future while still allowing reasonably sized houses. Historically, zoning in Arlington allowed homeowners to cover 56% of a lot's total area with a main building, garage and driveway. The new regulations apply to the County's single-family residential districts, and provide a detailed sliding scale approach to the amount of lot coverage based on the size of the lot. The larger the minimum lot size, the smaller the percentage of lot coverage. Generally speaking, the new provisions allow the main house to occupy between 16% and 34% of the lot area, depending on the size of the lot, and provide incentives for front porches and detached garages in the rear yard. The changes do not affect existing houses; however, large additions (50% or more) or redevelopment that constitutes "reconstruction" triggers the new requirements.

Montgomery County

Like Arlington, Montgomery County, Maryland, has experienced significant infill disruption in its close-in, older residential areas. In assessing their infill problem and comparing it to their zoning, and after studying the issue for more than a year, Montgomery County determined that the most problematic aspect of new infill development was the height of homes. To address the height issue, the County lowered the height limits in some zoning districts. It also made a series of technical changes to the method by which height is measured, including the point to which and from which height is measured.

Fairfax County

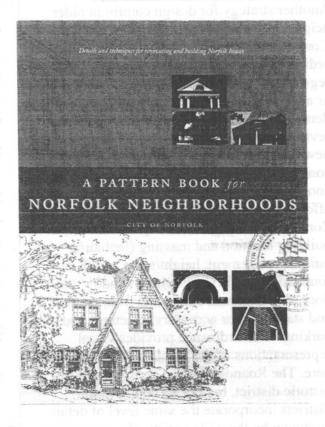
Because of the scope and size of the Fairfax County residential community, with its vast acreage and large number of residential zones, Fairfax planning staff has been studying the infill issue for several years. Their work continues as the County looks at a series of potential changes to its zoning, particularly with regard to lot coverage and methods of measuring height. In addition, the County is also looking at the potential for a neighborhood conservation overlay district and form based coding. Final proposals are not anticipated for another year or so.

Norfolk: Education, Outreach, and Assistance

Specific regulations may not be the answer to every infill issue. Strategies of encouragement and education may be considered either on their own or in conjunction with regulations. Just last year, the City of Norfolk established the Neighborhood Design and Resource Center (NDRC), offered through the Department of Planning and Community Development. The office provides a setting and a program to address neighborhood and housing design issues for the City. Its services include: professional expertise in strategic neighborhood planning, revitalization and design, preliminary architecture and design services for residents, renovation advisory services, education and outreach to raise public awareness about good design, access to financial assistance, infill development consultation, and more. The office is staffed by planners,

architects, and housing specialists, and reviews all building permits related to infill development, providing comments and recommendations. Although the design comments from the office are not required by regulation, many builders incorporate some or all recommendations into final designs.

Norfolk has a number of neighborhoods developed between 1850 and 1950 that are known for their significant history and architecture. As a reference for area builders and homeowners, the City of Norfolk prepared a pattern book on architecture, character and design in its older residential neighborhoods (see attached book). The book is not a regulatory tool, although some of the areas within the neighborhoods covered in the book are in designated historic districts with a formal review process. The book includes detailed guidelines on neighborhood patterns, architectural patterns, and landscape patterns. The more detailed contents of each section include the following:



Neighborhood Patterns:

This section includes information on lot sizes and setbacks, accessory structures, streetscape, and landscape character.

Architectural Patterns:

The architectural patterns section discusses style, massing and composition, floor-to-floor heights, door and window composition, porches, roof pitches, cladding, and other elements.

Landscape Patterns:

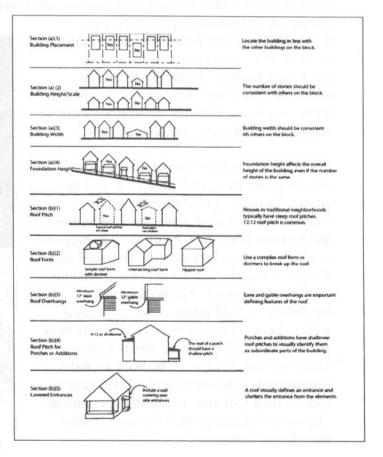
The landscape section includes information on foundation planting, sidewalk edging, hedges, sidewalk paving and driveway paving surfaces, garden features, and other elements.

This comprehensive outreach and education strategy provides resources to the community resulting in a greater consciousness of design issues. The hope is that, with greater community understanding, voluntary implementation will lead to creative design strategies by the building industry.

Roanoke:

Neighborhood Conservation District

Another strategy for design control in older neighborhoods is establishing a Neighborhood Conservation District. A conservation district ordinance accomplishes its purpose by regulating new construction, major alterations or additions to existing buildings, and demolition. Many ordinances contain design review guidelines applicable to additions and new construction. Some only regulate new construction. Roanoke, Virginia, established a conservation district, with zoning rules affecting new and expanded dwellings. Zoning regulations include specifications on building location and massing (including building placement, height/scale, width, and foundation height), roof pitch, window and door arrangements, siding and trim, porches, and standards for accessory structures and parking. The ordinance provides visual representations of the regulations, as shown here. The Roanoke district is essentially an historic district, but not all conservation districts incorporate the same level of detail, as shown by the wide variety of approaches in other jurisdictions around the country.



In fact, conservation districts differ from historic districts in that they provide more flexibility. As explained by Marya Morris in *Innovative Tools for Historic Preservation*, American Planning Association,

Conservation districts are areas, usually residential neighborhoods, with certain identifiable attributes, embodied in architecture, urban design, and history that are subject to special zoning or land-use regulations. The purpose for creating these districts vary somewhat from city to city, but, in general the districts are a land-use or zoning tool used to preserve neighborhood character, retain affordable housing, and protect an area from inappropriate development by regulating new construction. They also can serve as a catalyst for rehabilitation of existing buildings. Conservation districts can be used to protect neighborhoods or districts that have significant architectural and historic merit and a distinct character but that do not qualify for historic district status or have lost some of their integrity through incompatible additions and new development.

For communities in Virginia, a conservation district would be created under the state historic district authority (and in Alexandria, under its charter authority for historic districts), but the rules and procedures within the district could be much more flexible than those Alexandria employs within its historic districts now.

Other Strategies

Outside of Virginia, there are numerous strategies to address design issues of infill development. *Mansionization and Its Discontents: Planners and the Challenge of Regulating Monster Homes*, is a thorough article prepared by the American Planners Association, which examines strategies and results from three communities: Winnetka, Illinois and Sunnyvale and Menlo Park, California (see attached article). A summary of the regulation strategies attempted in these communities, some of which have been approved, then revised, or tried and rescinded, include:

FAR review trigger: Activates special review when FAR exceeds defined limit.

FAR exclusions/bonus features: Establishes incentives/added floor area for removing

existing structures, subordinating garage space, or

specifically placing accessory elements.

Impervious surface coverage: Limits impervious surface or paved surfaces to a specific %

of lot.

Second-story ratio: Limits floor area on second story to a specific size or % of

first floor area to minimize appearance of bulk/build out in

single-story neighborhoods.

Daylight plane: Reduces building mass and projections; ensures light for

adjoining property.

Second-story setback: Reduces appearance of bulk; provides articulation; avoids

"blank wall" effect.

Other setbacks: Limits building projections in front, side, or rear yard to

address privacy or scale issues related to build out.

Special height limits: Reduces excessive floor-to-ceiling height or height

resulting from basement projections.

Design guidelines: Encourages compatibility of new construction in existing

neighborhoods.

Design review: Ensures greater compatibility or consistency with

guidelines when designated thresholds are exceeded.

VI. FINDINGS AND RECOMMENDATIONS

While staff is loathe to understate the issue, Alexandria may not be experiencing as much impact from infill as other jurisdictions, such as Arlington and Chevy Chase, which may have seen even more dramatic real estate value increases than Alexandria has. Nevertheless, when there is a neighborhood problem with an oversized, out of character, structure, it is very traumatic. Staff also notes that there has been a series of recent cases that were troublesome for decision makers, such as the subdivision cases on North Latham Street and Sunset Drive, and the substandard lot case on Laverne Avenue.

Decision Makers

Staff found that the City's decision makers do an excellent job in deciding individual cases based on the longstanding zoning rules crafted to address nuances of building in developed neighborhoods. Planning staff, board and commission members are well trained in the importance of protecting neighborhood character by paying attention to design issues, as well as mass, scale, height and architecture. While citizens may differ as to the approach to individual cases, and neighborhoods may be upset over a particularly large house addition, from a distance of several years, and looking at hundreds of cases, the work done by the BZA, the BAR and the Planning Commission on single family house cases is part of, on balance, a success story. If there is an infill problem, it occurs typically in those cases that only require a plot plan and building permit, not in those that receive discretionary review by the Commission, BAR or BZA.

Staff approach

In individual cases, including those that require only a building permit, planning staff takes an active role in attempting to create solutions for builders as to design, mass, parking, and other issues, and to persuade developers to use those solutions to the benefit of the neighborhood – and often to the financial benefit of the builder. Many individual builders are sensitized to the importance of design and neighborhood issues and assist homeowners to achieve new houses or additions with design elements that help blend in with established neighborhoods.

Design solutions

As outlined above, staff found that the design of a structure, a designer/builder's sensitivity to the neighborhood context is the single most important ingredient in ensuring that new construction is compatible with the character of an existing neighborhood. Furthermore, staff notes that the regulatory process, while helpful, is not the only way to achieve better designs. While one solution to infill would be to require design review of every single family home or addition, far preferable, from both a policy and practical standpoint would be to have builders voluntarily find design solutions that blend in with the established built environment. Staff finds the Roanoke example of neighborhood pattern books, with design guidelines, to be particularly helpful, and is providing Planning Commission members with copies to review.

Problem areas

Where staff found infill problems, they occurred because of the lack of transition with neighboring houses, oversized lots, underbuilt (overzoned) neighborhoods, narrow streets, and deductions allowed by the FAR rule. Staff also noted two particular problem areas in the City. The Fillmore area on the City's western border is severely underbuilt with R-20 zoning and very modest, ranch style houses. The R-20 zoning was historically applied to preserve single-family development, but new homes consistent with zoning exaggerate the overzoning problem. In addition, because of its popularity and modest homes, the eastern part of Del Ray has seen a number of large new and newly constructed homes built. The neighborhood is concerned and the Civic Association is giving special attention to the issue.

Future work

Finally, staff's analysis of the infill problem has uncovered a few troublesome situations that occur and regulations that do not work as well as intended. In addition, staff notes that planning staff, decision makers, neighborhood citizens and developers spend a significant amount of time debating issues related to details of residential development. Staff also is concerned about the future potential for more significant disruption in the City's residential neighborhoods. Therefore, staff has identified four areas for further, in depth study, and potential regulatory solutions. In addition staff believes the City should consider some form of Norfolk's non-regulatory design initiative for Alexandria.

Staff recommendations

Specifically, staff is recommending that:

- four specific regulatory areas be studied for potential amendment to the zoning ordinance:
 - steep slope restrictions
 - subdivision regulations
 - lot coverage limitations
 - floor area ratio calculations
- the City create a residential conservation design pattern book with design guidelines for builders and architects on infill projects.

These issues are discussed in greater depth in Section VII.

VII. TOPICS SUGGESTED FOR FURTHER STUDY

The following pages discuss specific aspects of existing or potential regulations in Alexandria, each of which could form the basis of additional study and new or amended regulation.

STEEP SLOPES

Alexandria does not address development on steep slopes in the zoning ordinance, and it has been suggested that it should. As land becomes more and more valuable, those properties previously considered undesirable or difficult to develop have come to the attention of builders. The City has seen several developments in the last few years on long undeveloped land, such as at Pickett's Ridge, Lloyds Lane, and Beauregard and Armistead. The City's ability to deal with relevant development issues on those sites is restricted without an ordinance that addresses the issue.

What is a steep slopes ordinance?

Very simply, a steep slopes ordinance defines the maximum degree of slope of land that is permitted to be developed. In the most extreme circumstances, development can be prohibited where the grade of land is too great, because the result is harmful to soil stability, requires the removal of trees, the erection of large retaining walls, and otherwise brings harmful results to the community. While still not prohibiting construction, a steep slope ordinance may require additional review, or require development alterations at certain levels of slope.

What do other jurisdictions do?

Several jurisdictions nationwide and regionally include a steep slope regulation in their development approach. In many jurisdictions, including Loudoun, Prince William, Montgomery and Prince Georges Counties, development is not permitted on slopes with over a 25% grade. In addition, jurisdictions frequently reviewed development on land with at least a 15% grade, or require additional performance standards for development.

In addition to these steep slope ordinances, Arlington County elected to use its Chesapeake Bay regulations to address steep slopes that occur adjacent to RPA areas or required RPA buffer areas. For example, if a slope greater than 25% exists adjacent to a required 100-foot buffer, the buffer is expanded to include that slope. The controlled slopes are reduced to 15% along the Potomac Palisades. Development is not necessarily prohibited on these slopes, but typically a special exception is required in addition to a Water Quality Impact Assessment. Through this process, staff reviews impacts to the RPA, especially vegetation and runoff impacts, and requires mitigation and RPA enhancement measures.

Alexandria experience

While Alexandria does not have the mountains that parts of Loudoun and Montgomery County do, nor the Potomac Palisades that Arlington has, it does, especially with regard to the remaining undeveloped land in the city, have sites that are hilly, where development can only be achieved with special technical and engineering attention to stabilizing the soil to hold construction. Building large retaining walls, and running piped water and sewer for longer distances to accommodate such sites, negatively affects the underlying ground and tree root system, causes decline of remaining natural flora, and, with appropriate techniques, may be able to be avoided.

A few recent examples are instructive:

Pickett's Ridge/Buzzards Gap. This single-family house development began with a builder's application to build seven to eight homes on severely sloped land in the west part of the City. 80-90% of the site included 15 to 20% grades. All of it included heavily treed land. The initial site plan proposal removed all of the trees and included extensive use of large retaining walls. As a result of working with staff, the final proposal was scaled down to a total of four single-family homes, and required SUP approval for lots without street frontage, which staff supported. Most of the trees were saved and retaining walls minimized. The change in product and site design was driven by both environmental concerns but also by market. The houses are experiencing successful sales now.

Armistead/Beauregard. This development site plan case was problematic for staff, the Commission and City Council. The proposal included 42 townhouses on a steeply sloped property, but required the removal and grading of hilltops and removal of trees to make it work. Ultimately approved by Council on appeal, neither Staff nor the Commission could support it without the removal of some units to reduce the amount of grading and save some of the treed area. Ideally, a sloped site such as this one should be developed with fewer footprints than townhouses require; a single large condominium building would have suited the site environment better than a townhouse project.

Potential zoning changes

It would not be difficult to amend the zoning ordinance to include a provision, which requires additional review of development on steep slopes. For example, development on slopes greater than 15% could be required to obtain a special use permit, thus allowing greater review and discretion in what might otherwise be a site plan application.

In addition, the steep slope amendment could provide that where possible, development on steep slopes should be avoided, or should be modified to group development so as to avoid the steep slopes. While it would be desirable to help find solutions for a developer to achieve the size, type and scope of development planned, in the proper case the City may want to be able to require a change in product type or potentially a reduction of the number of units proposed in order to respect the natural environment affected by what would otherwise require a change in the natural grade of land.

Who would be affected by a steep slope ordinance?

Using GIS mapping technology, staff can estimate the number of platted parcels of land with differing amounts and degrees of slopes. As an example, if the City applied a steep slope ordinance with a threshold of 10% of a parcel having a slope of 15 % or greater, then a total of 16 vacant single-family residential parcels would be affected. The same threshold applied to oversized residential lots (developed with only one house but enough land for at least two houses), then 346 lots would be affected. If instead of capturing lots with 10% area in steep

slopes, the regulation only applied to those with 20% area steeply sloped, then 273 underbuilt single-family residential parcels would be affected. Individual parcels can be reviewed for GIS accuracy and topographical information is typically part of survey information in development cases.

SUBDIVISION REGULATIONS

The potential subdivision infill problem

Beyond zoning and construction issues with regard to existing lots, the City has recently seen efforts to create *new lots* for building houses. Examples include the recent North Latham Street and Sunset Drive cases, where the size of the new houses proposed would dwarf those in an established neighborhood or where development issues such as parking, location of garages and building design will lead to incompatible development. In addition, the City is seeing the subdivision of long-held, large, undeveloped parcels, such as on Lloyds Lane and North Quaker Lane. In the future, if a developer obtains a whole block, a portion of a block, or a several block area now occupied by small, modest homes, and seeks to redevelop the area, the developer would undoubtedly seek to resubdivide the land into lots more suitable for modern, larger homes.

The subdivision regulations are found at section 11-1700 of the zoning ordinance, and were last revised as the result of a committee designed for the purpose, led by past Commission chair, Bill Hurd, in mid late 1990s. At that time, the regulations were streamlined without radical changes.

The regulations include a series of technical requirements for plats, a requirement that the subdivided lots comply with zoning, and several requirements for access. Technical requirements include, for example, survey information and lot numbering systems. Zoning requirements for lots require that lots have frontage on a public street, and that the size of the lot meets the zoning requirement for size. As to access, the subdivision regulations make clear, for example, that pipe stem lots are not favored and that fire and emergency access is required. Each of these requirements helps assure that new lots for construction are similar to traditional Alexandria neighborhood homes, with houses on streets, room for parking, and enough size to accommodate a house that meets zoning.

North Latham Street subdivision case

On December 19, 2005, Judge Kemler of the Alexandria Circuit Court ruled that Section 11-1710 (B) of the Alexandria Zoning Ordinance may not be interpreted to permit consideration of improvements on the lot when assessing whether 1) the proposed subdivided lots would be of substantially the same character as other lots in the subdivision, or 2) the resubdivision as improved would detract from the value of adjacent properties. The City is proceeding to trial in this matter in early March. At trial, the City intends to show that denial of the subdivision was based on other factors (aside from consideration of improvements on the lot), including for instance the fact that the proposed subdivision would create a new "corner" lot that is not of substantially the same character as the other corner lots in the original subdivision.

Subdivided lots "in character" with subdivision

The subdivision regulations recognize the importance of maintaining neighborhood character, at least as regards the remainder of the subdivision. At section 11-1710(B), the zoning ordinance provides:

No lot shall be resubdivided in such a manner as to detract from the value of adjacent property. Lots covered by a resubdivision shall be of substantially the same character as to suitability for residential use, areas, street frontage, alignment to streets and restrictions as other land within the subdivision, particularly with respect to similarly situated lots within the adjoining portions of the original subdivision.

In the case of resubdivision then, new lots must be of "substantially the same character" as other land within the "subdivision," and especially as to "similarly situated lots" within "adjoining portions of the original subdivision." This prescient regulation, long a part of Alexandria's subdivision regulations, seeks to maintain neighborhood integrity by prohibiting lots that would be so large, so oddly shaped, or so positioned, as to detract from a neighborhood's character. As beneficial as this regulation is, however, its parameters both restricted to a narrow set of circumstances and are not specifically set.

Potential infill solutions

If the Commission wishes to pursue amendments to the subdivision regulations, staff suggests that the "in character" rule could be expanded with additional language to make its effect clearer. For example, language could be added to:

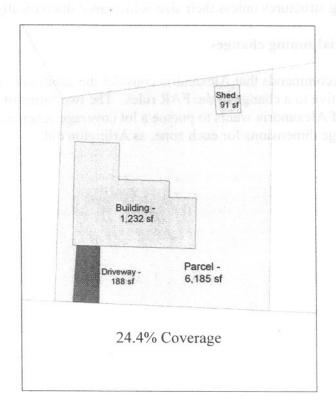
- 1. Make clear what constitutes a "subdivision" and an "original subdivision" for purposes of the provision. Beyond the original subdivision plat document, which is not always readily available, language describing land in the same location with the same features so as to be essentially identical to the original plat may be helpful.
- Make clear what "in character" means in this context. While the regulation does include language on this point, and asks that the City look at elements such as areas, alignment to street, street frontage, etc, there may be additional tests that should supplant or be added to the existing regulation to modernize it. The zoning ordinance already incorporates an objective compatibility test for lot sizes that are consistent with a developed neighborhood as part of the substandard lot regulations. It may be that a similar test could be applied in the subdivision context to support the "in character" requirement of section 11-1710(B).

LOT COVERAGE

What is a lot coverage rule?

One typical zoning regulation for single family homes, that Alexandria does not include in its zoning ordinance, is a lot coverage rule. Lot coverage regulations, typically expressed as a percentage, limit the amount of a lot that can be covered with building or other structures because those elements add to the size and bulk of structures and deplete the open space, yards and openness of the remaining lot area. Alexandria's yard and open space regulations function in similar ways; they are a type of lot coverage requirement.

It has been suggested that Alexandria look at the potential for a lot coverage rule to add to its single family zones. Such a regulation, especially on larger lots, would provide a check on the amount of



hardscape and building that can be included on a lot – even beyond what is required by yards or open space requirements.

What do other jurisdictions do?

Arlington County, which does not regulate single family homes by an FAR rule, has historically applied a lot coverage limit to single family development. Originally set at 50% many years ago, in recent history, the rule has allowed a maximum of 56% lot coverage in all zones. As applied in Arlington in recent history, the rule counts the footprint of the house and accessory structures on the lot, plus any driveway or paved area. In Arlington, the 56% lot coverage rule applied to all SF zones.

As previously discussed, in the last few months, Arlington County changed its lot coverage rule so as to apply a different percentage to different lot sizes, believing that using a sliding scale would help it address the mansionization issue. The new Arlington rules allows more lot coverage in the smaller lot zones, and a descending amount in the larger zones. They also

include bonuses from the calculation for including front porches and detached garages, two character defining features, and addresses oversized lots. Significantly, in Arlington, the most contentious issue related to its new lot coverage rules was how to apply it to existing homes. As adopted by the Arlington County Board, the new rules apply only to new construction, and not to existing structures unless their size is increased dramatically (by 50%).

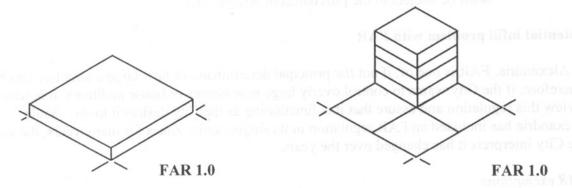
Potential zoning changes

Staff recommends that Alexandria consider the addition of a lot coverage rule, possibly as an alternative to a change to the FAR rules. The two forms of regulation operate to achieve similar ends. If Alexandria wants to pursue a lot coverage scheme, then staff should study the typical coverage dimensions for each zone, as Arlington did.

FLOOR AREA RATIO (FAR)

What is FAR?

Floor Area Ratio (FAR) is the measure by which the Alexandria zoning ordinance regulates the bulk of buildings, including single family homes. FAR relates the amount of *floor area* within a building to the size of the *land parcel* the building is being sited on. It is a flexible measure allowing a variety of building forms, even on the same size parcel, depending on the building's shape and the number of floors within the structure. For example:



Each zone in Alexandria, including each single family zone, includes an FAR amount stated as a maximum. In addition to the lot size, setback, yard and height regulations that define the envelope for single family construction, each zone includes an FAR requirement to further define the limits of development permitted, and the amount is set on a sliding scale depending on the zone.

| Zone | FAR max | Lot Size | Maximum Allowable Floor Area |
|-------|---------|--|--|
| R-20 | .25 | 20,000 sf | 5,000 sf |
| R-12 | .30 | 12,000 sf | 4,000 sf and all distributions and limit |
| R-8 | .35 | 8,000 sf | 2,800 sf |
| R-5 | .45 | 5,000 sf | 2,250 |
| R-2.5 | .45 | 5,000 sf–single family; 2,500 sf–two family | 2,250 sf; 1,125 sf |

Although the amount of FAR a building is allowed is found in the relevant zone, the application of the rule is based on the current definition of "floor area" in section 2-145 of the zoning ordinance:

2-145 Floor area: The floor area of the building or buildings on a lot or tract or tract of land (whether "main" or "accessory") is the sum of all gross horizontal areas under a roof or roofs. These areas shall be measured from

the exterior faces of walls and from the eaves of all roofs where they extend beyond the wall line or from the center line of party walls and shall include all space with a headroom of seven feet six inches or more, whether or not provided with a finished floor or ceiling. Excluded shall be elevator and stair bulkheads, accessory water tanks, cooling towers and similar construction not susceptible to storage or occupancy. Basements and subbasements shall be excluded from the floor area ratio computations, but for the purpose of computing off street parking requirements, that portion of such areas as are occupied by permitted uses shall be subject to the provisions of Article VIII.

Potential infill problem with FAR

In Alexandria, FAR is one of, if not *the* principal determinant, of how large a structure can be. Therefore, if the City wants to control overly large new houses or house additions, it is wise to review this regulation and assure that it is functioning as the City desires it to do. While Alexandria has included an FAR regulation in its single family zones for many years, the way the City interprets it has changed over the years.

FAR exemptions

Under the above definition, each horizontal area of floor located under a roof or eave is counted in the calculation, unless the area fits within an exception within the definition. The following areas of buildings are not counted: stairs and stairway, fireplace and elevator shafts, mechanical rooms, and basements that rise less than four feet above the grade. The part of the definition that has proved problematic is the phrase that says that areas to be measured in determining floor area "shall include all space with a headroom of seven feet six inches or more..." For at least 20 years, staff and the development community, have interpreted this phrase to mean that space that is less than 7'6" in height is not counted as floor area. Thus, above ground parking garages, closets, bathrooms, and most attic space were not included in the calculation of FAR.

The 7'6" provision in the FAR definition was probably included originally because of the definition of "habitable space" that was part of the 1993 and prior editions of the Virginia Uniform Statewide Building Code (VUSBC). Habitable space in the VUSBC was defined as having a ceiling height of "not less that 7 feet 6 inches", except that hallways, corridors, bathrooms, kitchens, laundry rooms were permitted a ceiling height of "not less than 7 feet." However, if there was a linkage, it was changed in the 1996 edition of the VUSBC to reduce the required height of all habitable space to seven feet.

In recent years on small scale additions and new construction, Planning staff have taken a more restrictive interpretation of the 7'6" provision, limiting exemptions to the FAR calculation for ceiling height. The rationale is that although the floor area definition expressly requires that all space with a headroom of 7'6" be counted for purposes of FAR, it does not expressly say that space that is less than 7'6" is to be excluded from the FAR calculation. Nevertheless, the 7'6" language is a continued source of difficulty for developers and home owners as well as staff.

Application of FAR rule

With the advent of sharply increasing real estate values, every inch of space in buildings, including in single family homes, has value. Therefore, Planning and Zoning staff routinely deal with builders and homeowners over FAR interpretations, as well as the developers of large projects. Over the last decade, staff finds itself routinely in negotiations with applicants over whether, for example, to count closets and bathrooms within FAR calculations. Some examples of the application of the FAR rule show the issue:

- 1. <u>Historic homes</u>. In Old Town, where most houses are old and built prior to the advent of Building Codes, there are many homes with floor to ceiling dimensions under 7'6." Arguably, under the definition there could be an entire house or large portions of existing homes without any floor area, and therefore not part of the FAR calculation. If such a house is the subject of an application for an addition, then the homeowner could argue that he is entitled to a larger addition than if his entire existing house counted as part of the floor area calculation. The result could be a much larger house than was envisioned in the neighborhood.
- 2. New homes on vacant or cleared land and house expansions In new homes or additions to existing houses, questions of how to calculate the floor area can become issues. For example, residential builders will routinely propose bathrooms, closets and attic space that have ceilings lower than 7'6" and argue for eliminating that area from the FAR calculation. The problem is exacerbated by the use of false ceilings, which can be removed after construction, or the change, sometimes innocent, in the intended use of space. For example, if the built space over a two-car garage is only 7 feet tall and designated for storage, later owners of the property could decide to use the space as a bedroom. If a builder uses a false ceiling initially, there is no after-the-fact inspection to check to ensure that the ceiling remains forever. Another problem is created when builders manipulate the basement exemption by piling up soil and landscaping around the base of a new home to ensure the basement does not extend more than the four feet above grade that the exemption allows.
- 3. FAR Deductions and Above Grade Parking. It is often unsettling to find that large components of new buildings, typically commercial buildings, are able to take advantage of the FAR deduction rule, especially by building above grade parking structures with ceiling heights lower than 7'6." This can account for 15-20%, or more, of a building being deducted from FAR. For example, the office building at 1101 King Street covers almost a full block. The structure contains an office building and parking structure with some retail on King Street. Although a large building by any measure, more than half of the building is not counted as FAR because it is a parking garage with low ceiling heights, excludable as FAR. The result is that the public experiences the bulk of the building but the regulation does not count the bulk in its calculation. Another example is a recent concept application for an automobile use for the construction of a modest office surrounded by a three-level parking structure. If the parking were counted, the proposed structure have a 2.5 to 3 FAR. Because the parking garage ceilings are low, however, the applicant is able to calculate the FAR of the building as .5, in compliance with the zoning.

The effect of these examples is to undermine the integrity of the City's regulations, to make more work for staff who review applications, and to create uncertainty on the part of property owners, developers, and the public at large.

What do other jurisdictions do?

Not all communities use FAR to regulate the size of single family homes. In the recent infill debates in Montgomery County, the discussion focused on height limits because there is no FAR rule for single family in the close-in communities. Arlington County does not include an FAR rule in its single family zones; therefore the infill debate in that jurisdiction focused on coverage requirements. In some jurisdictions with an FAR rule, there are no exemptions from the calculation whatsoever (a gross FAR calculation). In Montgomery County, where FAR does apply, it is a gross not a net figure. And for those jurisdictions that do use a net figure, allowing for some exemptions, it is rare to find one that exempts space with low ceilings. Typical exemptions in those cases involve elevator and stair shafts and true mechanical space.

Past reviews of the FAR definition.

The City has previously considered changing the definition, and the effort has not succeeded. The Zoning Task Force, formed to guide the comprehensive revision of the zoning ordinance adopted in 1992 recommended that the FAR rules be changed to eliminate the 7'6" language. And in the late 1990s, City Council and the Planning Commission considered a similar recommendation. That effort was ultimately tabled for lack of consensus. Attached is the staff report from TA #98-0014, as well as two memorandums from the City Attorney's Office regarding FAR.

Potential ways to modify FAR

1. Elimination of 7'6" language.

The issue with changing the definition to eliminate the 7'6" exemption, or otherwise changing the method of calculating FAR, is one of fairness. In an almost completely developed city, where every structure has been built under the rules existing at the time, to change the method of calculating FAR would mean that many existing structures would become noncomplying because they would not conform to the new rules.

Much of the City, especially the single family homes on the eastern part of the City, were built before zoning, and are today already noncomplying in some way, typically with regards to one or more yard requirements. After the 1992 zoning ordinance change, these homes were made subject to new noncomplying rules, specifically prohibiting an expansion without approval of a variance or special exception by the BZA. The noncomplying label has not deterred homeowners from putting on new, large additions, but it does mean that the BZA gets involved to review the addition, as well as the need to waive the noncomplying rule in that case.

If the FAR definition were to be changed to not allow some exemptions that are now allowed, then ultimately a smaller building would be permitted than is allowed today. With that loss of space previously allowed, some would argue that homeowners are harmed as relates to either the amount they paid for the house or the land, or the size of additions their neighbors have been allowed. The difference could arguably be made up by increasing the amount of FAR allowed in a zone by a corresponding degree. Under this approach the FAR maximums in the single family zones could be increased to allow greater FAR buildings, although the FAR would be calculated under the new rules.

Another option is the potential for applying a new way of measuring FAR only to new construction, which could be defined to include only new structures and additions to existing structures over a certain threshold, and/or only to development site plan cases.

2. Gross instead of net FAR rule.

While similar to eliminating the 7'6" rule, this approach would go further and simply measure the full square footage of each floor to the outside dimension of buildings. This approach was used within the Coordinated Development Districts in Eisenhower East and for those CDDs more recently approved in Arlandria and Mt. Vernon Avenue. While there are no exclusions on floor area, volumetic spaces, such as elevator shafts and atriums, are excluded. We have found that this approach offers the community and the developer more surety that the FAR calculation actually reflects the real mass and scale of buildings. The advantage is simpler administration and better understanding of the zoning code by the public.

In the CDDs where this approach has been applied, detailed analysis was performed to determine the appropriate gross FAR to ensure compatibility of new development with existing neighborhoods. Applying this approach across the board, without adjustment to the allowable FAR, would have the same impact as eliminating the 7'6" exemption rule noted above -- allowing smaller buildings than would be permitted today. Again, to compensate, the difference could be made up by increasing the amount of FAR allowed in a zone by a corresponding degree.

3. Eliminate FAR as a measure for single family homes.

Another idea is to do away with FAR altogether. Some argue that for single family, the true measure of the form and size of a structure can be achieved by regulating height, setbacks and volume, which would be a new zoning regulation for Alexandria. A lot coverage ratio could compliment open space requirements and be a possible substitute for FAR.

4. Other approaches.

Other approaches that could be implemented in single family zones, with or without changing the FAR definition are:

a. Establish a certain threshold for house additions, or replacement houses, at which point the City could require an SUP, variance or other design review approval to ensure compatibility with the neighborhood. For example, for an increase of more than (25%, 50%) of the existing FAR, height or gross footprint, additional approval would be required.

- b. Identify designated and mapped neighborhood conservation areas of the City to limit where the threshold would apply. Areas could be chosen by design, history and neighborhood character and could include a requirement that the approach be favored by the neighborhood.
- c. Because FAR is related to the size of land, larger houses are automatically allowed on larger lots. While the City includes a *minimum* lot size, it does not include a *maximum* lot size regulation. In some neighborhoods, both large houses and large lots would be out of scale and could be prohibited, or at least made subject to additional review.

The FAR issue is difficult, and the City has tried unsuccessfully to address it in the past. Nevertheless, staff is prepared to discuss it and study it further, and to respond to the Commission's direction on the subject.

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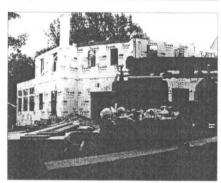
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Teardown/Mansionization Bulletin: Protecting Older Neighborhoods with Newer Tools Montgomery County, Maryland

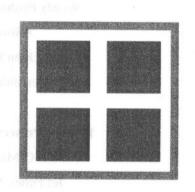
Maryland-National Capital Park and Planning Commission Montgomery County Department of Planning Historic Preservation Section August 2006

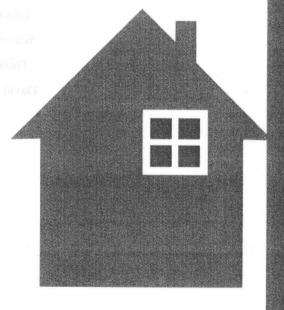












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Teardown/Mansionization Bulletin: Protecting Older Neighborhoods with Newer Tools, Montgomery County, Maryland

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Teardown/Massionaction Bullatin: Protecting Older Neighborhoods with Mewer Tools, Montgomery County, Maryland

Goals and Methodology

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This Bulletin was prepared to show a snapshot in time of one county in the state of Maryland grappling with the issue of teardowns and infill development, often referred to as mansionization. The Bulletin is intended as a case study that outlines a variety of planning and regulatory tools available for addressing this issue. The work on the project was partially funded by a grant from the Maryland Historical Trust's Certified Local Government fund, and was undertaken by staff in the Historic Preservation Section of the Montgomery County Department of Planning.

In order to understand the issue, Historic Preservation Section staff attempted to get information and input from both sides of the debate: the real estate/building community and neighborhood residents. One goal of the project was to understand and frame the economic forces in Montgomery County creating this trend. A second goal was to identify the concerns of neighborhoods and communities with regard to the trend. A third goal was to report on the planning and regulatory tools being used in the county by various communities taking action on aspects of the teardown/mansionization trend.

Due to the relatively small nature of the grant, the effort did not involve conducting a completely comprehensive study of the issue, but rather aimed understanding how various. sample neighborhoods have responded teardown/mansionization forces. The Historic Preservation Section worked with several builders and concerned neighborhood residents to analyze the problem, but it did not, by any means, contact every person or organization involved in home construction or neighborhood conservation.

The first step in undertaking the research for the Bulletin involved the convening of a half-day builder/realtor/new homeowner workshop to discuss the issues associated with teardowns/mansionization in Montgomery County. Several builders attended, as did two real estate agents who sell new properties and a homeowner building a large house to replace an older, smaller

house. As preparation for this meeting, the Historic Preservation Section prepared a series of questions, titled "Questions for Builder/Realtor Teardown Workshop" as well as a "Partial List of Issues Associated with Teardowns/Infill Construction." Two staff from the Historic Preservation Section took notes on the content of the meeting, particularly the builders/realtors/new homeowners' perspectives on neighborhood character, housing market trends, the problems of retrofitting existing houses, and issues associated with recently introduced legislation. The group was informed that the Section would be writing a Bulletin on Teardowns and Mansionization, and that their input on a draft would be welcomed. During the course of the next several months, staff had occasion to call a few of the builders/realtors with specific questions.

A second step was to convene a meeting of residents concerned with teardowns/ mansionization. Again, the group was not comprehensive in its geographic scope, but staff made an effort to find people from neighborhoods that had taken action or were contemplating action in the face of teardown activity. Representatives from the Town of Chevy Woodhaven, Green Acres/Glen Cove. Somerset, Kensington, Brookdale, English Village, Greenwich Forest, Woodmoor, greater Bethesda, and the county's civic federation were invited to participate. This group exchanged information on what was happening in the county on the topic. Participants discussed the specific concerns of their neighborhoods, as well as the tools neighborhoods were using or contemplating to retain community character due to loss of buildings and trees. Subjects discussion under included: neighborhood conservation districts, demolition moratoriums, tree ordinances, stormwater management controls, incorporation into municipalities versus remaining unincorporated, design guidelines, local historic districts, etc.

Some of the residents in this group worked together outside the context of preparation of this Bulletin to begin drafting enabling legislation to create neighborhood conservation districts as a tool in Montgomery County. The citizens took the lead on drafting this legislation, with Historic Preservation Section staff acting as a resource on historic preservation issues and current-day county planning

processes. This draft legislation has not yet been introduced.

Historic Preservation Section staff incorporated all the information gained from the meetings mentioned above, and conducted additional research. This research focused on various planning tools being used across the country to address teardowns and mansionization, the monitoring of local events regarding task force efforts on environmental issues and building regulations, and a review of legislation contemplated or introduced by the County Council on issues ranging from building height to forest conservation to stormwater management. All of these factors led to the development of a rough draft Bulletin, which was sent to the builder/realtor/new homeowner group in June for comment. Historic Preservation Section staff actively solicited comments. Comments that were received were considered very carefully. In the case of one builder who supplied detailed,

written comments, almost 100% of those comments were incorporated into a revised draft.

Similarly, as the document proceeded towards completion, staff issued a draft to the neighborhood resident group in July. As with the builder/realtor/new homeowner group, comments that came in were reviewed carefully, and a majority of the comments were incorporated as appropriate into the document.

Finally, the document was reviewed by staff at the County Attorney's office for legal accuracy, by the staff at the Maryland Historical Trust, by the Acting Chief of Countywide Planning, and by the Acting Director of the Department of Planning.

The resulting document provides useful information for communities experiencing a large number of teardowns and infill construction. It is an educational publication that explores a variety of tools that have been used or may be used in the future to address this important planning issue.

Introduction

Although teardowns and mansionization are occurring nationwide, Montgomery County could easily serve as the "poster child" for the phenomenon. The reality in Montgomery County significant numbers of older, modest-sized houses are being razed to make way for substantially larger homes. This is a concern because these replacement houses often are incompatible with the existing height, scale, massing or materials of the surrounding. established neighborhood. Moreover, the resulting increases in lot coverage have contributed greatly to the loss of mature tree canopy and an increase in stormwater runoff. Neighboring property owners also report "quality of life" impacts such as diminished air, light, ventilation and privacy.

This trend is primarily being undertaken by small-scale homebuilding companies, rather than large development firms. These builders have been operating, for the most part, in accordance with existing building and zoning codes. The builders are unified



This brand new house in Glen Echo Heights dwarfs the modest ranch and Cape Cod houses of the original neighborhood, one of which can be seen amongst the mature trees behind it.

in their stance that they are not creating the market, but rather responding to it. According to builders, the current market is demanding large houses in close-in, established neighborhoods. Their clients, ranging from young families to empty nesters, want abundant square footage along with a manageable automobile or Metro commute to downtown and closeness to shops and restaurants. According to these builders, their clients tend to view older, existing houses as "obsolete" or "starter homes" that are appropriate for removal. The neighborhoods hardest hit presently are those west of Rock Creek Park and just over the District border; namely Bethesda and Chevy Chase, but no neighborhood is There are "mansionization" immune. pockets in Kensington, Wheaton, and Silver Spring.

Many socio-economic factors contribute to this extremely fast-paced trend:

- 1) A rise in affluence and buying power within the Washington metropolitan community;
- 2) Land that is valued more highly than existing houses;
- 3) A zoning code that is inconsistent with existing conditions; one that in fact permits as a matter of right, Floor Area Ratios (FARs) and lot coverages at great odds with existing neighborhood development patterns;
- 4) A perspective on the part of the builder community that the cost of repairing older structural systems and/or replacing potentially hazardous materials such as lead-painted surfaces is not money well spent;
- 5) A lack of appreciation for the character of houses built in the second through sixth decades of the 20th century;
- A distrust of traditional historic districts, still the best tool for protection against demolition;

- A growing elderly population which can fall prey to sometimes misleading real estate solicitations; and
- 8) The revitalization of certain downcounty, urban business districts, such as Bethesda and Silver Spring, which makes neighboring lots all the more attractive.

The issue is not just one of the preservation of buildings; it is an issue of preserving the character of older, established neighborhoods and preventing a loss of what is, relatively speaking, more affordable housing. (Not only do smaller houses get torn down for bigger houses, property taxes rise as the neighborhood becomes more affluent.) In other words, the teardown / mansionization trend is not simply about historic preservation; it is about environmental health and protections, neighborhood conservation, and housing that can serve a diversity of people and The issue embraces buildings, incomes. streetscapes, trees, vegetation, open space, water quality, wildlife, and, of course, neighbors.

The challenge lies in finding the point where individual property rights end and community property rights begin. It lies in defining how the other side of the "property rights" coin is "property responsibility." It means recognizing that one person's dream house may become another neighbor's newly flooded basement.

It means exploring alternative tools and new regulations that could have the positive effect of retaining existing community character. Protecting longstanding character traits would prove a benefit to homeowners. It also means recognizing, however, that if those regulations require limits on new construction, current homeowners may lose some portion of their future resale income.

Partly because out-of-scale, infill development has been so rapid in its spread, Montgomery County has not yet developed one specific policy to address the problem head on. Instead, as this bulletin points out, the tools being used in Montgomery County have resulted primarily from grass-roots efforts by concerned citizens working with



This is the type of house most threatened: a modest dwelling in a neighborhood close to downtown that lacks protection by any preservation or planning tools.

the County Council, the Department of Permitting Services, and the Department of Planning. Similarly, the builder community, struggling to keep up with newly changing regulations, has its own share of concerns. Elected officials have responded through regulation targeted at the teardown phenomenon's most quantifiable problems. As a result, Montgomery County is in the midst of analyzing a great number of legislative initiatives. This bulletin should be viewed, therefore, as a snapshot in time of one county grappling with a multi-faceted land-use, environmental, and social policy issue.

The list of tools available singly or in combination to mitigate teardowns / mansionization in Montgomery County thus far includes:

- Traditional Historic Districts
- Overlay zones
- Architectural covenants
- An approved building height amendment to the Zoning Ordinance
- A proposed forest conservation law amendment and/or separate tree ordinance
- A proposed stormwater management amendment
- Demolition moratorium
- Potential Neighborhood Conservation District legislation
- A builder/resident communication checklist

All of these tools are potentially available to at least one or more neighborhoods in the county. Some can apply to the entire county.

At present, most planning and zoning occurs under the umbrella of the Montgomery County Department of Planning and the Department of Permitting Services. When it comes to teardowns and mansionization, however, not everyone is satisfied that the county is the best watchdog to protect the character of established neighborhoods.

Several lower Montgomery County municipalities turned to the state legislature to gain control over mansionization within their borders. On May 26, 2006, state legislation was adopted that will give municipalities the right to adopt stricter controls on the dimensions of structures, including height, bulk, massing and design, and on lot coverage, including impervious surfaces. This authority, granted through the enactment of House Bill 1232, becomes effective on October 1, 2006. In addition, some unincorporated sections of the county are considering incorporation as a means of accessing these new planning



This new house in the Sonoma area of Bethesda rises significantly higher than its neighbors.

http://mlis.state.md.us/2006rs/bill file/ hb1232.html www.nthp.org/teardowns/resou rce_guide.html

Tools: Traditional Historic Districts

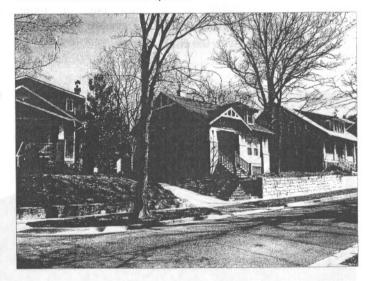
For older, established neighborhoods that meet the criteria for historic and architectural significance, there is no for protection against tool better teardowns and inappropriate infill than the traditional, local historic district. To be designated a historic district, however, an area must meet local criteria for older Once an qualification. neighborhood has been designated as an historic district on Montgomery County's Master Plan for Historic Preservation, any exterior alteration to a structure other than maintenance requires routine application for a Historic Area Work Permit (HAWP). Review of such an application falls under the purview of the Montgomery County Historic Preservation Commission. While demolition of contributing buildings within an historic district is not outlawed as a matter of right, it is extremely rare for the Historic Preservation Commission to approve the demolition of a "contributing" building. Instead, the Commission typically works with homeowners to expand smaller houses through sensitive additions. long as such additions are compatible with the overall character of a neighborhood, they are usually approved in one form or another.

A second benefit of local historic district designation is that it requires an added protection for trees over six inches in diameter. Any removal of a tree that size or greater within an historic district requires a HAWP, unless the tree has been

verified as "dead or dying" by a certified arborist.



Top: This Victorian house in Somerset benefits from design standards developed as part of a traditional, local historic district. Bottom: A streetscape in the Takoma Park Historic District illustrates how setback, massing, and overall character can be maintained when historic districts are in place.



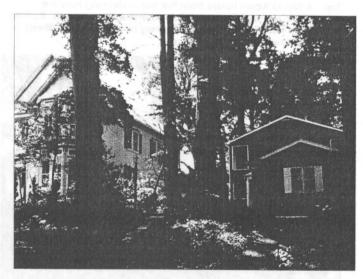
See:

http://www.montgomerycountymd.gov/govtmpl.asp?url=/content/government/AboutGovt/charter.asp.

Tools: Overlay Zones

Another tool on the books in Montgomery County is the overlay zone. Through an overlay zone, a neighborhood's existing character can be partially protected by the adoption and enforcement of stricter building requirements than established under the regular zoning code. Such a zone exists in Garrett Park and could be used as a model for other neighborhoods. See Zoning Code, Sec. 59-C-18.11.

The Garrett Park Overlay Zone was created as part of the North Bethesda/Garrett Park Master Plan, which went into effect in 1993. The overlay zone seeks to "preserve the unique park-like setting of the 19th century garden suburb, maintain the prevailing pattern of houses and open spaces, and retain the maximum amount of green area surrounding new or expanded houses." The overlay standards increase the amount of front, rear, and side setbacks from the street and adjacent properties; limit the maximum percentage of net lot area that may be covered to 20%; and limit the maximum floor area ratio (FAR) to .375. All of these standards are more stringent than those for a typical R-90 zone.



In Garrett Park, the recent, Neo-Victorian house on the left rises much higher than the smaller, older house on the right. Yet the newer house was built in conformance with the overlay zone.

One problem common to all properties within R-90 zones, which includes Garrett Park, is that allowable building height is relatively tall compared to what was built historically. In addition, until recently, the county allowed 35-foot high structures to be measured at the mid-point of the roof and nothing prevented builders from building up the lot's grade to create a "terrace." A terrace, in turn, provided opportunity for an even taller structure.

The Garrett Park overlay zone, while mostly successful in protecting the neighborhood's open space patterns, has been less able to mollify the effects of these taller houses. The problem is particularly acute in new houses with prefabricated, trussed attics. These houses are permitted under the Garrett Park Overlay Zone because the formula used to determine gross floor area does not consider unusable attic space—exactly the type of space contained in houses with trussed attics.

Despite these concerns, Garrett Park citizens decided in the fall of 2005 not to support the adoption of amendments to the overlay zone that would change the definition of gross floor area and how building height is measured. (See next section on Zoning Text Amendment on Height.) The issue of whether or not to amend the overlay zone is still an ongoing discussion.

Tools: Architectural Covenants

Architectural covenants are a third tool teardowns for addressing Covenants are restrictive mansionization. provisions typically created at the time of neighborhood establishment. They include a set of standards that can be legally enforced by covenant beneficiaries. Most are safeguarded by a designated entity such as the initial builder/architect and/or a civic association covenant committee. In some communities, the covenants are allowed to sunset, but most are renewed and therefore remain perpetual. In this way and because they are restrictive--meaning they convey with the lot and are attached to the deedthey differ from zoning laws. Typically, architectural covenants stipulate that new construction must match the character that already exists in the neighborhood and that all new designs must be approved by a design review board. In these ways, architectural covenants can help ensure that an existing housing stock is retained and that additions are architecturally compatible.

A useful case study for assessing the value of architectural covenants as a means to protect community character lies in the juxtaposition of two Montgomery County neighborhoods, Wood Acres and Springfield. The former has architectural covenants, while the latter does not. Wood Acres was developed beginning in 1939 as a neighborhood of modest, two-story, brick Colonial Revival houses. The neighborhood covenants state, in part:

shall be erected thereon, and none begin (sic), nor any change made in the exterior design of such improvements after original construction has begun, unless and until the architect designing the same; the cost, type and size thereof; the materials to be used in the construction, the color scheme; the plans, specifications and details thereof, and the lot plan, showing the proposed location of the dwelling and driveways upon the lot, shall all have been approved in writing by Wood Acres Construction Corporation, or its successors...

Even more pertinent to the teardown phenomenon are the "guidelines" that accompany the architectural covenants. These guidelines stipulate that an owner



Top: A Wood Acres house from the street showing how the subdivision's character is maintained through covenants. Bottom: A different Wood Acres house, showing how covenants direct additions towards the side and rear.



wishing to demolish and rebuild an existing, structurally sound house, must come up with a design that is "consistent with the spirit of the original Wood Acres house" to the point that the lengths of the front, side, and rear elevations shall not exceed those of the preexisting elevations unless setbacks break up In addition, the floor-to-floor the mass. heights of the new house must match those of the pre-existing house. These restrictions create a climate where conservation is prized over newness. As of the date of this bulletin, there have been no demolition requests in Wood Acres. Instead, the houses, which are small by nature (an original footprint of approximately 750 feet





Top: An original Springfield house that was expanded, but attempted to fit in with its neighbors. Bottom: The newer trend: a series of large, new houses that replaced the older houses.

and roughly 2000 square feet of living space not counting a 150-foot screened porch), have almost all received additions of one sort or another. Most houses have seen the one-bay garage on the front of the house infilled to create a year-round room and almost all houses have received some kind of rear and/or side addition. Recently, such additions have been quite sizeable, often doubling the square footage of the houses. While the loss of back- and side-yard trees to accommodate these expansions has not been ameliorated, the character of the neighborhood as perceived from the street has been maintained. Rooflines remain the same, as does the overall scale as perceived by a passerby.

Making existing architectural covenants more protective to prevent teardowns is easier to achieve than enacting covenants in neighborhoods where they do not exist. In order to create architectural covenants anew. each property owner would have to agree to covenants on his/her own property, in addition to senior lien holders such as mortgage companies signing on. Such covenants could, in fact, dictate architectural review criteria and/or stipulate against demolition. While protecting neighborhood, however, covenants might affect purchase price when it came time to sell.

Another opportunity to stem teardowns in older neighborhoods is the selling or donating of easements to local preservation organizations that could protect historic and architectural character in exchange for tax benefits. While façade easements are a common form of this tool, there could, in fact, be easements on development rights as represented by height or massing. Such easements would have to be very carefully crafted, however, to meet stringent IRS criteria for legality and enforceability. As such, they are an unused tool in the teardown kit.

Springfield, immediately adjacent to Wood Acres, is not protected by

architectural covenants and because of this difference, the neighborhood is becoming a study in the domino effect of the teardown/infill phenomenon. Built in the early-to-mid 1950s, the community of brick, split level houses continued to serve families well for housing, but in the 1990s, some owners began looking for more space. One builder began to expand the houses by raising the roofline of the lower level of the split. This approach added square footage to the houses while maintaining the overall character of the neighborhood.

Starting around the year 2000, however, this builder and others began to tear some of the houses down, replacing them with structures at least twice their size. What is evident as one goes through the neighborhood today is that a teardown on one block virtually assures two, three, or four others on that same block's adjacent lots. The newer trend also includes more clear cutting of trees and the construction of houses that do not necessarily attempt to match the exterior character of the original houses

Legislative Initiatives

Legislation introduced in Montgomery County on a number of fronts is beginning to address teardown/mansionization issues. Bills and zoning text amendments aimed at the problems associated with over-scaled buildings, loss of mature trees, and stormwater runoff represent serious efforts by the Montgomery County Council to curtail the multi-faceted impacts of inadequately regulated infill development.

Height Amendment

On October 18, 2005, the County Council closed a loophole in the zoning code by adopting an amendment to improve method of calculating residential building height and reduce allowable building height on single-family houses in the R-60 and R-90 zones. (See Zoning Text Amendment 03-27.) The legislation also revised the definitions of basements and cellars, and added a definition for predevelopment and finished grades. The new zoning text amendment specified a height limit in the R-60 and R-90 zones of 35 feet as measured from the average finished grade



A large house under construction towers over its neighbor, but is built according to code. Such disparities in height prompted citizens to lobby the County Council for zoning revisions.

in front of the house to the peak of the roof, regardless of roof type, or 30 feet, as measured to the mean height level between the eaves and the ridge of a gable, hip, mansard, or gambrel roof (or to the highest point of a flat roof).

While most neighborhood groups view the amendment as a definite step in the right direction, it is not seen as a perfect solution. Neighborhood groups still feel that allowable building heights are excessive. They also are concerned that the new requirements are not being properly enforced. (The County Council's Office of Legislative Oversight will conduct an investigation into the laws applying to teardowns and replacements as part of its Fiscal Year 2007 work program.) Many builders are also less than happy about the new height regulations, viewing them as a directive to design mansard-style or flatroofed structures if they are to obtain higher interior ceiling heights. Builders also indicate that the new rules effectively prohibit the small, creative use of space that might be employed to break down roof massing. A not necessarily welcome result, therefore, may be the introduction of roof design consequences from legislation intended only to solve problems of scale.

Forest Conservation Law Amendment

In addition to over-scaled buildings, nothing has provoked the ire of neighbors more than the loss of mature trees that typically accompanies an infill development project for a large new house. The removal of trees is often viewed by neighbors not only as a loss of community character, but as environmental destruction in the broader sense since trees filter carbon dioxide from the air and cool increasingly soaring temperatures. In Montgomery County, two task forces and a working group were formed to focus on forest conservation and urban tree canopy loss:

The C & O Canal Task Force

Put into place as a reaction to significant tree loss on a National Park Service property with the assistance of County Council members and U.S. Congressman Chris Van Hollen, this task force is working to improve the county's forest conservation law. Task force members see several weaknesses to the law, including enforcement issues and limited citizen input. The group is concerned that the current law is less focused on tree retention than on reforestation. The goal of the C&O Canal Task Force is to apply the law to a broader area of the county and to create a higher threshold for the removal of healthy, mature

The Montgomery County Urban Forest Alliance

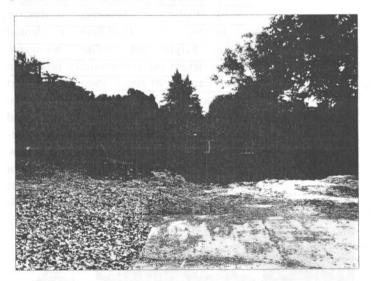
Formed to deal with the loss of tree canopy in more urbanized areas, this informal working group of citizens not affiliated with county government began tackling challenge of crafting a tree and urban forest ordinance separate from the Forest Conservation Law for Montgomery County. Such an ordinance is a tool in other parts of the country and in local municipalities including Takoma Park, the Town of Chevy Chase, the Village of Chevy Chase, and Somerset. In the absence of any ordinance, some unincorporated sections of the county, like Edgemoor, are grappling with the problem by undertaking tree surveys so that citizens can monitor construction that negatively impacts mature trees. Several members of this working group have now joined a Department of Planning task force to continue their efforts.

The Montgomery County Department of Planning's Task Force on the Forest Conservation Law

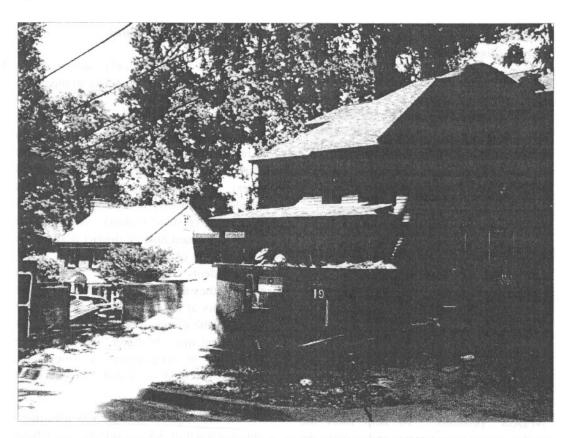
In summer 2006, the Acting Director of the Montgomery County Department of



Top: What was once a typical streetscape in Bethesda is becoming a remnant, as lots are cleared of mature trees for houses of greater scale. At present, there is no obstacle to removing such trees. Bottom: A lot completely cleared of trees while being prepared for construction. In the background is a typical neighborhood house, which is far smaller than what is planned for the construction site.



Planning convened a task force to look at the implementation of the Forest Conservation Law. This task force is made up of knowledgeable citizens, members of the environmental community, representatives of the building community who are working to improve the operation and implementation of the existing law. The original forest conservation law was put in place in 1992 as Chapter 22A of the Montgomery Code. When written, its goal was primarily to protect upland forest in the rural sections of the county. The increasing number and complexity of cases has spurred a reevaluation of how the law is working.



Houses of great size on high ground have the potential for stormwater runoff that causes flooding of others' yards and basements. Builders have a responsibility to implement stormwater management plans for each new house to prevent such nuisances.

In September 2005, several members of the County Council introduced Bill No. 27-05 to amend penalties under the forest conservation law. This amendment was approved, but it is just a first step. The amendment increases the penalties available to be levied upon violators of the law and makes actions against the law not only civil but criminal. Additional staffing and inspection support are still needed, however, to improve enforcement.

Stormwater Management Amendment

If trees are the first environmental issue to be noticed with infill development, stormwater runoff is the second. Several factors have contributed to the predicament:

1) bigger house footprints and massing, 2) the possibility of an artificially raised grade

(at least prior to the height amendment to stop the practice), and 3) an expansion in impervious surface area and loss of soil cover. The result is larger houses that sometimes tower over neighboring houses set at a lower grade, with stormwater runoff trailing onto other people's property (and into their homes) and damaging the County's important stream systems.

The most significant runoff issue resulting from mansionization is surface water on the site that is increased and redirected due to more impervious area and altered topography. Presently, the county does not regulate this runoff because it has no surface drainage grading ordinance. While the stormwater management water collected in ordinance applies to streets, other paved areas, and entire subdivisions, it does not apply to runoff on individual lots at this time. A county grading ordinance controlling water runoff on individual lots would go a long way toward rectifying the problem of nuisance runoff to adjacent neighbors.

Working to improve the existing law, Montgomery County Stormwater the Partners Coalition is a citizens' group that formed to improve stormwater protect streams. management and coalition is advocating that Council Bill 26-05 concerning stormwater drainage and runoff contain language stipulating that a minimal level of on-site infiltration be required on small, individual residential lots in order to prevent further stream damage. The coalition also is pressing the Maryland Department of the Environment, and Montgomery County, to adopt stronger pollution controls through the 2006 renewal of the County's water quality permit under the federal Clean Water Act (National Pollutant Discharge Elimination System, or "NPDES" permits). To help meet the tougher permit requirements and to make the pollution reductions necessary to restore the Anacostia, the Chesapeake Bay, and other waters, the Coalition urged the County Council to put money and programs towards LID stormwater retrofits. These techniques filters bioretention (shallow include depressions in the landscape to collect, filter, and absorb excess water and pollutants), rain gardens, rain barrels, and green roofs. The first result has been a Low Impact Development Retrofit Initiative, approved by the County Council, which provides 1.3 million dollars for retrofitting residential and commercial properties in pilot subwatershed areas downcounty. The initiative is funded from dedicated stormwater fees, and it provides incentive grants to builders who make use of retrofit technologies such as rain gardens and rain barrels. On August 1, 2006, the County Council unanimously passed a resolution supporting higher permit standards asked the County's Department of Environmental Protection to report on ways to address pressing storrmwater issues.

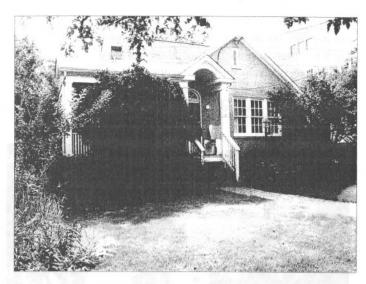
Demolition Moratorium

Citizens are not only active on a countywide basis, but are active in their own municipalities. The Town of Chevy Chase is one neighborhood that has taken a strong stand against teardowns and mansionization in response to the alarming rate at which its houses have been demolished (55 in 4 years). Incorporated in 1918, the town was developed primarily in the 1920s and 1930s by a series of small builders. Although the county proposed historic district designation for a portion of the town in the mid-1990s, its residents opposed the designation because they did not perceive a threat to the community at the time. Startled by the rate at which the community has been losing its houses and trees, however, and by the size and scale of replacement housing, town residents decided on a different course of action.

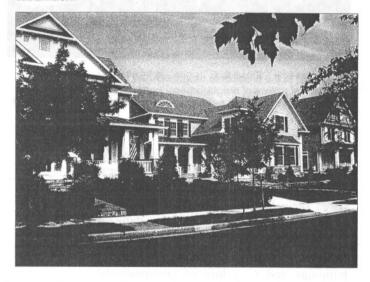
At the request of over 500 petitioners out of a town of 3000 residents, The Chevy Chase Town Council approved an emergency ordinance creating a six-month moratorium on demolitions, additions, new construction, and the removal of trees. The moratorium, adopted on August 10, 2006,



A typical scene in the Town of Chevy Chase, where an older, Cape Cod-style house on the left stands next to a newer, taller, significantly bigger house on the right. This type of new construction prompted residents to successfully petition the Town government for a demolition moratorium.



Top: An original house in this section of the Town of Chevy Chase is a small cottage-type dwelling. It is one of the only remaining original houses on the block. Bottom: The houses directly across the street are all new, giving the impression of a completely new subdivision.



was enacted over the objections of builders and real estate agents who had been active in the neighborhood and a minority of residents concerned about property rights. One builder successfully sued the town, enabling him to build his project during the moratorium period. Other projects were also constructed through a variance process, but overall, the demolition moratorium gave the Town what it needed: time to craft a vision and a plan.

During the moratorium period, the town formed several citizen committees. These committees were tasked with addressing problems relating to visioning and strategic planning, tree protection, stormwater runoff, regulatory review enforcement, setback restrictions, and the need for more authority through state or county measures. In less than a year, the town has a new tree ordinance in place, setback controls, and new enforcement measures. Through its town-wide visioning process, the residents developed a draft strategic planning guide, and, most importantly, succeeded in obtaining authority from the state (as one of several municipalities) to regulate height, bulk, massing, design, lot coverage, and setbacks within its own borders.

Tools: Neighborhood Conservation Districts

No tool is more popular right now in mitigating teardowns and mansionization than the Neighborhood Conservation District tool. Neighborhood Conservation Districts (NCDs) are spreading across the country as an effective means of preserving character of older. established neighborhoods that are not registered as local historic districts. One aspect of the NCD model that is highly advantageous is the self-determination that goes with it. An requires neighborhood usually initiation and a strong level of participation, or 'buy-in,' as part of the NCD application In most cases, any limitations imposed upon demolition or new decided by the construction are neighborhood after crafting a Neighborhood Conservation Plan.

The National Trust for Historic Preservation has published several excellent pamphlets that cover the subject either exclusively or as one of several teardown tools. These publications include: Julia Miller's Protecting Older Neighborhoods Through Conservation District Programs; Adrian Scott Fine and Jim Lindberg's Protecting America's Historic Neighborhoods: Taming the Teardown Trend: Pratt Cassity's Maintaining Community Character: How to Establish a Local Historic District, and the National Park Service issue paper Conservation Districts, a Cultural Resources Partnership Note. As mentioned, the National Trust has also launched an entire website devoted to the subject. http://www.nationaltrust.org /teardowns/resource_guide.html

Neighborhood conservation districts (NCDs) are typically formed in established residential areas having a distinct physical and environmental character worthy of protection. NCDs may be established as

zoning overlay districts or actual re-zonings. Under either approach, special protections are put in place to ensure that the physical and environmental hallmarks of that neighborhood—the development patterns



This street in the Brookdale neighborhood reveals the qualities inherent in potential neighborhood conservation districts: a distinct sense of place, uniform height and setbacks, and mature trees

that comprise its special qualities--remain in place and serve as guideposts for new construction. Neighborhoods that seek NCD status typically are looking for a land-use character-defining protects tool that streetscapes threatened by inappropriate infill, excessive development, loss of buildings and / or loss of environmental qualities. NCDs can be found in Philadelphia, Atlanta, Austin, Chapel Hill, Dallas, Indianapolis, Miami and many other areas. While those examples represent cities, NCD enabling legislation is also on the books in counties as close as Prince George's and as far as Boulder County, Colorado.

Although NCDs vary widely, many provide neighborhood-specific development standards that require *discretionary* review. Such review would include a design review process and/or a general prohibition on

demolition as part of an NCD's legal structure and implementation package. Parameters are developed in accordance with each neighborhood's character and needs. Since the application of standards is to a specific property and the outcome may vary depending on the context, some type of commission is typically required for decision making.

In addition to discretionary review items, many neighborhoods opt for development controls that are *non-discretionary* or *ministerial* in their planning. These controls also come out of



Above: This street in English Village has been in a constant state of construction for years. Almost all of the original houses have been replaced. Below: This new house in Bethesda indicates the trend for double facade garages and paved driveways, regardless of established neighborhood patterns.



the neighborhood planning process and often focus on setbacks, building height and width, roof pitch, floor area ratio, lot coverage, garage location, demolition thresholds, tree retention, and stormwater runoff, etc. Some specify maximum square footage for new construction, based on the average of the existing buildings. Unlike discretionary items, these items can be reviewed by a program administrator defined legally in an ordinance.

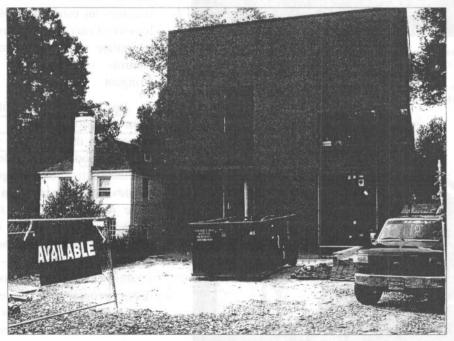
Thus, NCDs have some similarities to local historic districts in that they can involve design review, but they also can have many differences. A key difference between how a traditional, local historic district and a neighborhood conservation district are administered is the latitude in crafting the process for NCDs. As noted, an NCD can be administered by a planning agency or official, by the local historic district commission, and/or by neighborhood review body. Given the detailed, lot-by-lot nature of NCD review, it is particularly appropriate to have reviews handled at a neighborhood level.

One important thing to take into account, however, is that once an NCD becomes an established planning tool in a locality, it may become harder for that locale to initiate traditional historic districts, the controls of which are typically more stringent.

Just how similar or different NCDs are from traditional historic districts largely depends on the guidelines developed by the neighborhoods. In Cambridge, Massachusetts, for example, some of the neighborhood conservation districts have the same review criteria as the local historic districts, except that there is no requirement to review paint color. In the Eastport section of Annapolis, Maryland — where a longestablished neighborhood conservation district program is in place—the situation is quite different. The review criteria there are looser than would be those of a traditional. local historic district. As examples, largescale additions can be added to small houses if they are well placed, and new materials are incorporated liberally, even at the expense of loss of original materials.

Eastport serves as an example of neighborhood emerging trends in conservation district planning. Whereas a traditional historic district often aims for protection of original building materials, a neighborhood conservation district generally more lenient on that subject, while concerning itself more with issues of scale, bulk, and mass. And while demolition of a contributing structure within a designated traditional historic district is rarely approved (unless there are strongly mitigating circumstances), demolition of structures within a neighborhood conservation district may happen, again depending on whether demolition controls are adopted by the neighborhood at the time the NCD is put in good neighborhood place. What a conservation district always achieves, however, is a replacement structure, the height, bulk, and mass of which are in keeping with the existing neighborhood. This positive result is due to the fact that a neighborhood conservation district's parameters for new construction must be stricter than those of the underlying zoning code.

The value of NCDs as a potential planning tool came out of research for this project. In preparing this bulletin, concerned residents and members of the real estate/builder community were asked to provide input and ideas. Out of discussions with residents, it became apparent that many thought the neighborhood conservation district model would be a very effective tool the unincorporated sections of Montgomery County seeking protection of community character, but not opting for traditional historic district status. To that end, a group of residents began reviewing NCD ordinances from other parts of the country, and decided to draft enabling legislation that would allow for the creation of NCDs. This draft legislation has not yet been introduced, but may be soon.



While there is nothing wrong with Modern architecture per se, the scale and massing of this new house in Edgemoor are completely at odds with those of its neighbors.

Tools: Improving Builder / Resident Communication

While many residents have banded together to discuss the issue of teardowns and proposed a number of legislative changes, some builders have actively participated in the dialog as well.

There are many differences to overcome before moving toward solutions. Builders emphasize that they are fulfilling a marketdriven need; namely, the desire for larger houses in close-in, established communities. Builders describe their market as comprised of people who insist on significantly more living space than can be accommodated in older neighborhood houses. For this market, very large kitchens with attached family rooms are the norm, as are extremely generous master bedroom suites and baths, and space for luxuries such as home gyms, family theaters, his and her walk-in closets, and nanny suites. Builders describe their clients as expecting tall ceiling heights (9' to 10' on average) and a dining room capacity ranging anywhere from 10 to 40 people for



In Woodhaven, the original house on the left was turned sideways and moved to accommodate a new house to its right. The existence of two recorded lots allowed such a change. Although introducing a tighter density pattern into the neighborhood, the residents were able to convince the builder not to tear down the original house. The new house also looked to its predecessor for Tudor Revival design cues.

large family gatherings.

When talk revolves around conserving the "character" of a neighborhood, the opposing groups frequently differ in their attitudes. The builder, realtor, and new homeowner communities will tell you that it is the people who make up the character of a neighborhood more than its structures or vegetation. If the people contribute to a community by sharing its values in desiring good schools, easier commutes, and accessibility to commerce, then nothing is lost by the removal of a smaller, older home and its trees. Builders also suggest that change in the building stock promotes a welcome diversity in housing types.

While long-term residents will agree that the majority of new community members want to participate in the neighborhood's life, they will disagree that teardowns and large new houses introduce diversity, either of housing type or of socioeconomic groups.

looking at neighborhoods experiencing teardowns as part of the research for this project, it is clear that an early 20th-century block face can easily become an early 21st century block face almost overnight, with no more or less housing diversity attained in the end. In other words, a block of 1940s Cape Cods can become a uniform block of 2006 Neo-Arts and Crafts mansions within a matter of months. As for the economics, it appears from direct observation for this project that a neighborhood of somewhat varied income tends to become one homogenized even more by affluence. There is clearly a loss of what is relatively speaking "affordable" housing.

Both sides of the issue really only agree on one thing: that the cultural divide between the citizens who want controls on teardowns and mansionization and the builders/new homeowners who participate in the process has reached the point of impasse. One creative suggestion put forward by the builder/real estate group convened for this

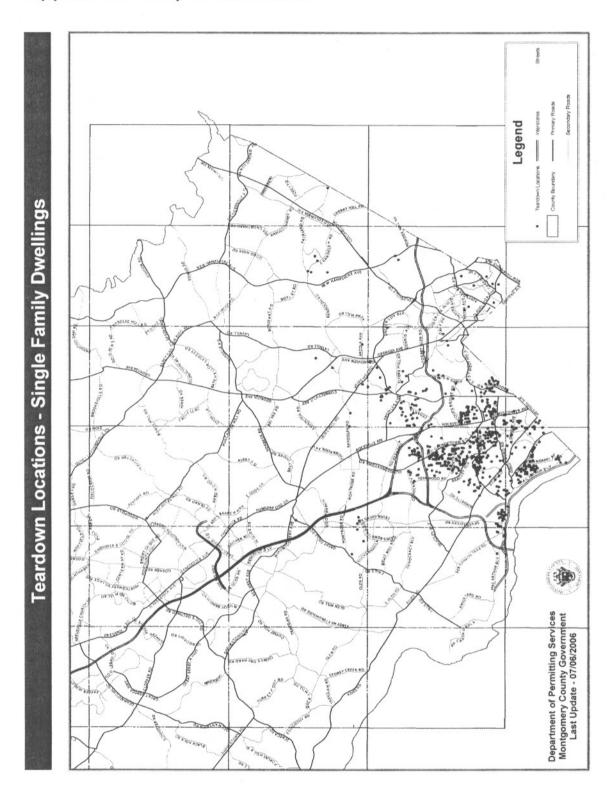
study was to prepare a checklist for builders and existing residents when undertaking any demolition and/or major new construction in established neighborhoods (perhaps at a threshold of a size increase of 50% or more). Such a checklist could improve the climate between the neighborhood and the builders.

One future application of the checklist might be to attach it to an actual building permit so that all questions have to be answered in the affirmative for a building permit to be released by the County's Department of Permitting Services.

Checklist for residents and builders interested in improved communication before and during major additions or demolition:

- Has a pre-construction meeting with the affected civic association been scheduled for project inception? This meeting is the best way for the builder to introduce his/her intended design and for neighborhood residents to explain their concerns. Concerns might include scale, design, trees, stormwater capture, etc.
- Will the builder agree to keep the neighborhood informed at the 5%, 50%, and 90% stages?
- If changes are made to building plans during the course of construction that will be evident to neighbors, is there a system in place so that the builder can apprise the residents of those changes? Is there a main neighborhood contact person?
- If a neighborhood is not within a neighborhood conservation district, has the builder conducted an analysis of the affected block face to inform his design? Such an analysis should include block face averages such as: setbacks, height, lot coverage, floor area ratio, existence and location of garages (if any), existence or lack of driveways and curb cuts, ratio of green space to impervious surface, etc.
- Have the residents also familiarized themselves with the predominant materials and architectural styles of the neighborhood or the block face so that additions and/or new construction can be evaluated for harmoniousness to existing materials and styles?
- Has a new roofline been designed to avoid going higher than the original rooflines within the community, at least from the vantage point of the streetscape?
- Has an effort been made to disguise the allowable mass of any new construction by breaking up the faces of the building into smaller planes, so that what is perceived from the street is in keeping with the existing neighborhood scale?
- Has the builder employed an arborist? If so, has he/she shared the arborist's tree and vegetation survey with the neighborhood, explaining how mature and/or character-defining trees and shrubs will be saved and which trees, if any, are suggested for removal?
- Has the builder explained his/her stormwater runoff plan?
- Have the builder and residents agreed to standard work hours, so as not to disrupt basic neighborhood patterns?
- Have the builder and residents communicated about the setup and cleanup of the construction site so that the builder can operate efficiently, but the neighborhood can retain a reasonably tidy view from the streetscape?

Appendix A: Map of Teardowns





Teardown / Mansionization : Protecting Older Weighborhoods with Newer Tools Montgomery County, Maryland

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from the Maryland Hosorical Trust

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