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MEMORANDUM

TO: Planning and Zoning Commission

FROM: Leonard K. Tundermann, AICP, Town Planner

SUBJECT: PZ-2011-17: Proposed Amendments to the Zoning Regulations

DATE: January 12, 2012

Background

The proposed changes to the zoning regulations were drafted by the law firm of Blackwell, Davis & Spadaccini at the direction of former Mayor McCoy. The proposed changes target zones that allow commercial and industrial uses, several of which also allow residential uses, such as the Historic District – Residential Commercial Zone. In essence the proposed changes remove many uses from sections that require approval of a special permit and place them in companion sections that permit uses as of right.

The effect of such changes is twofold: (1) it would no longer subject the affected uses to the special permit criteria of section 17.3, and (2) the absence of a special permit requirement for the affected uses would eliminate the statutory requirement that a public hearing be held on the application. Of course, an application for site plan review would typically be required, and the Commission has the prerogative of scheduling a public hearing on any site plan. But the Commission should keep in mind that site plan review is a “ministerial” function. If a plan satisfies all zoning regulations the Commission has no discretion but to approve it.

Following are comments with respect to the proposed changes with respect to each zone that is potentially affected.

Commercial Zone (section 4.9)

1. New section 4.9.2.2 (moved from 4.9.4.10) establishing full service restaurants as a permitted use instead of as a special permit use: I find this change to be appropriate. In a commercial zone there is no compelling reason to require a special permit to establish what amounts to a common commercial venture.

2. New section 4.9.2.12 establishing single and two-family dwellings as a permitted use: I find this change questionable. The minimum lot area in the commercial zone is ½ acre, so single and two-family dwellings would have to occupy a lot of that size. I suspect many existing single and two-family dwellings in the commercial zone would be rendered nonconforming. I think it would make more sense to permit multifamily dwellings in the commercial zone according to appropriate parameters, but that has not been proposed.
3. Deletion of section 4.9.3.2, special exception for new and used car dealerships: this section is actually in conflict with present section 4.9.2.10, which permits sale and rental of vehicles as of right. It would be appropriate to delete one of these sections depending on whether the Commission believes car or truck lots should be subject to a higher level of review.
4. Deletion of specified personal convenience services as special exception uses under present section 4.9.3.4: removal of the specific services would render the section a catch-all for all such uses not listed as permitted under present section 4.9.2.7. This would not be a problem. Eventually all personal convenience services should be listed as permitted as of right and removed as special exception uses.
5. Deletion of full service restaurant or clubs as a special permit use under present section 4.9.4.10: this is addressed under item #1, above.
6. Deletion of medical or research laboratory as a special permit use under present section 4.9.4.12: I support this change. Presently medical or research laboratories are listed as both a use as of right and as a special permit use in the commercial zone, which is obviously contradictory. Listing them as uses of right is appropriate.
7. Deletion of non full-service restaurant as a special permit use under present section 4.9.4.21: although the definition of non full-service restaurant is somewhat ambiguous, it would seem to apply to so-called fast food restaurants. This use is not proposed to be added to the section of permitted uses, so its deletion as a special permit use would eliminate this type of restaurant altogether, which in turn would render existing fast food restaurants in the commercial zone nonconforming. This would not be a practical change in my judgment.

Industrial Zone (section 4.10)

1. New section 4.10.2.15 (moved from 4.10.4.1) establishing commercial education or recreational facility as a permitted use instead of as a special permit use: I believe this change requires some debate. The other uses listed as permitted are minimally consumer-oriented. Introducing uses that rely on consumer patronage is inconsistent and could lead to conflicts in the traffic mix of personal vehicles and trucking.
2. New section 10.2.16 establishing as permitted uses any uses permitted in the commercial zone: I am not in favor of this change. It represents the upward integration and

agglomeration in a more restrictive zone of uses permitted in a less restrictive zone. This has the potential of leading to conflicts, particularly between retail trade and traffic and more self-contained industrial uses. Allowing single and two-family dwellings in the commercial zone, proposed under item #2 for the Commercial Zone, above, has the potential of introducing a steady stream of conflicts and complaints between residents in an industrial zone and industrial operations.

3. Deletion of restaurant or other establishment serving food within a building as a special permit use under present section 4.10.4.9: restaurants are not typically found in industrial zones, but they do exist. This use should not be deleted unless it is added as a permitted use. It would be appropriate to remove the reference to live entertainment and add a reference to cafeteria.
4. Deletion of professional or business offices, including banks or other financial institutions as a special permit use under present section 4.10.4.10: presumably this change is predicated on permitting those uses also permitted in the commercial zone, where similar language exist. Again, the Commission needs to be mindful and careful about upward agglomeration of uses from less restrictive zones. The definition of professional offices includes medical offices, which generate patient traffic; banks generate similar customer traffic. As asserted above, mixing consumer traffic with trucking and industrial operations could lead to incompatible uses within an industrial zone.
5. Deletion of electronic or mechanical games as a special permit use under present section 4.10.4.12: I support this change inasmuch as this use is permitted by special permit in the commercial zone. I do not believe it is an appropriate use in the industrial zone.

Historic District – Residential Commercial Zone (section 4.17)

1. All uses presently requiring a special permit under sections 4.17.3.1 through 4.17.3.23 and sections 4.17.3.26 through 4.17.3.28 would be listed as uses of right under section 4.17.2. Medical or research laboratory would be added as a use permitted by right.

The Commission needs to review the list of uses individually rather than as a group. The minimum lot area in the zone is 0.45 acre. Because the zone accommodates a mix of residential and commercial uses, an extra measure of scrutiny is appropriate to make sure one use does not impinge on a neighboring one. The special permit criteria provide the Commission that extra degree of review and discretion. To allow the entire list of uses by right would invite conflicts, in my judgment. For example, outside displays exceeding ten percent of gross floor area, proposed to be a use of right, was a matter of neighborhood contention for a retail use on Windsor Avenue early in 2011.

There are also several inconsistencies within the proposed changes:

- a. Sellers and servers of alcoholic beverages would be listed as a use permitted as of right under proposed section 4.17.2.15, yet the continued reference to section 17.1 would make those uses subject to a special permit nevertheless;
- b. Drive-up service windows are proposed as a use of right under proposed section 4.17.2.19, yet the language still requires a special permit; section 3.27 also requires a special permit for drive-up service windows, and that section was not proposed for change;
- c. Multiple single-family dwellings are proposed as a use of right under proposed section 4.17.2.24, yet the language still makes the use subject to the special permit requirements of section 17.3.3.

Historic District – Industrial (section 4.19)

1. All uses presently requiring a special permit under sections 4.19.3.1 through 4.19.3.4 would be listed as uses of right under section 4.19.2. In addition, all uses permitted in the Historic District – Residential Commercial (HD-RC) zone would be permitted as of right, and the special permit required for more than forty (40) off-street parking spaces would be deleted (this is the only zone for which that change has been proposed).

The same argument raised for the HD-RC zone applies to the HD – I zone. The Commission needs to consider the potential impact of disparate uses adjoining one another and whether sacrificing the scrutiny and review criteria afforded by special permit requirements is appropriate. In general I would not favor allowing residential uses within an industrial zone.

Special Development Zone – Economic Development (section 4.20)

1. A new section would be added to permit as of right all uses permitted in the HD-RC zone. The section declaring that there are no special exceptions in the SED zone would be deleted, which accomplishes nothing because no special exception uses are listed. Professional office buildings and office parks, banks, restaurants, and government buildings would be deleted, presumably because these uses would be incorporated by reference to the HD-RC zone. If that reference were to be disapproved, the deleted uses should remain in the SED zone. Other uses proposed for deletion are (a) retail sale of products assembled or packaged on the premises and comprising at least 75% of the floor area, and (b) plumbing, heating, electrical, industrial, and general contracting establishments. I do not know the reason for those changes; I can only speculate that the 75% criterion may be seen as too restrictive and that the trade and contracting uses may be viewed as more appropriate for an industrial zone.

I do not have a clear understanding why the SED zone was established. In its present form it resembles the use characteristics and minimum lot area requirements of an industrial zone. I do not object to eliminating or reducing the 75% floor area requirement

for assembly/ packaging in order to allow retail use, but I question allowing such uses as churches, nursing homes, and multifamily dwellings as of right.

Planned Commercial Zone (section 4.21)

1. A new section would be added to permit as of right all uses permitted in the HD-RC zone. Specific special permit uses of full service restaurants, research and experimental laboratories, banks or other financial institutions without drive-up windows, government facility, retail, and recreational and educational facilities would be deleted. The Planned Commercial zone requires a three acre minimum lot area and was probably put into place to encourage large scale commercial development. Again, the Commission needs to examine whether the residential and institutional uses that would be permitted as of right in the HD-RC zone should also be permitted as of right in the Planned Commercial zone.

Historic District – Downtown Business & Residential zone (section 4.23)

1. A new section would be added to permit as of right all uses permitted in the HD-RC zone. Several specific special permit uses would be deleted and no longer permitted within the zone: (a) hotels and motels, and (b) conversion of residential to non-residential use, and conversion of non-residential to residential use. Motels would not be appropriate to the HD-DBR zone, but a hotel would be. More importantly, I believe conversions have been and should remain an integral feature of Rockville and reflect a preservation opportunity that should not be dismissed. A number of large, historic homes in Rockville have been converted to uses such as funeral homes, and former mills have been converted to residential use. Section 3.26 of the Zoning Regulations specifically recognizes the value and legitimacy of adaptive re-use.

As I have suggested in numerous instances above, incorporating all uses that would be permitted as of right in the HD-RC zone should be examined carefully for applicability to the HD-DBR zone.

Aquifer Protection (section 20)

1. The change proposed to section 20.3.1 would automatically substitute a Level A aquifer protection map prepared by the CT Water Company and approved by the DEEP for the aquifer protection mapping presently used by the Town and Commission under the Zoning Regulations. Level A mapping has not been undertaken for Vernon and may not be for some time. When it is, Vernon will have to put into place appropriate aquifer protection regulations based on the DEEP model regulations and subject to DEEP approval. With that occurs, Vernon's zoning regulations for aquifer protection will likely be abandoned. Under this scenario I think the proposed change to section 20.3.1 only "muddies the waters" because aquifer protection based on Level A mapping will introduce an entirely different regulatory regimen.