

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director
Metropolitan Council Office

DATE: **Tuesday, May 4, 2006**

- BILL INVOLVING AMENDMENTS TO THE ZONING ORDINANCE -

ORDINANCE NO. BL2006-999 (SUMMERS & WILLIAMS) – This zoning text change would require the board of zoning appeals (BZA) to provide a copy of the planning commission staff report on a special exception to the applicant at least 48 hours prior to the hearing. The zoning code currently requires the planning department to review all special exception requests and to provide the BZA with a report regarding land uses in the general vicinity of the proposed special exception use. The report is provided to the BZA at least one week prior to the meeting at which the special exception request is to be heard.

This ordinance would require the BZA to give the applicant for the special exception a copy of the report upon request at least 48 hours before the public hearing on the request.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1044 (DREAD) – This zoning text change would establish “after hours establishments” as a new use in the zoning code. This ordinance is in tandem with Ordinance No. BL2006-1016 creating a separate permit process for after hours establishments, which was deferred on second reading at the last meeting until May 16, 2006. This ordinance defines an “after hours establishment” as a commercial establishment open to the general public after the hour of 3:00 a.m. that allows patrons to bring alcoholic beverages onto the premises. For purposes of the zoning code, these type establishments are currently considered a bar/night club, which are permitted in the mixed-use, commercial, shopping center, and industrial zoning districts. By making after hours establishments a separate use under the zoning code, these establishments would be permitted only in the more intensive commercial and industrial zoning districts.

This ordinance was deferred by the planning commission to its May 11, 2006 meeting. Since more than thirty (30) days have elapsed since this ordinance was referred to the planning commission, it is deemed approved by the commission pursuant to the Charter unless the Council chooses to defer the ordinance.

ORDINANCE NO. BL2006-1045 (LORING & MCCLENDON) – This zoning text change amends the hillside development standards to allow the building envelope width to be as approved on all preliminary plats approved by the planning commission prior to March 1, 2006. The zoning code currently requires that the building envelope for lots with a twenty-five percent or greater natural slope (referred to as “critical lots”) have a minimum width of seventy-five feet at the building line. Although this provision has been in the zoning code since 1998, it has just recently started to be enforced by the planning department. As a result, developers who had preliminary plats approved showing critical lots with building envelope widths of less than seventy-five feet are now being told they need to revise their plats before obtaining final plat approval.

This ordinance would essentially “grandfather in” the building envelope widths for critical lots that were shown on preliminary plats approved prior to March 1, 2006. The planning commission has approved this ordinance, but has recommended several technical changes to the bill that are in keeping with the purpose and intent of the ordinance.

ORDINANCE NO. BL2006-1046 (BRILEY) – This zoning text change would allow for reductions in minimum lot sizes for conservation subdivisions. The purpose of this ordinance is to provide developers with an incentive for conserving natural space. The zoning code currently allows for reductions in lot sizes equivalent to two smaller base zoning districts through the cluster lot option when at least fifteen percent of the land area is conserved. For example, a developer of RS15 property has the option of leaving open space and “clustering” the subdivided lots with a lot equivalent to the RS7.5 district. However, the cluster lot option is only available for the R and RS zoning districts, not the AG and AR2a districts.

This ordinance would allow developers to achieve a reduction in lot size in areas worthy of conservation when at least fifty percent of the land is designated as permanent open space or farmland. This ordinance does not modify the cluster lot option provisions in the zoning code. This ordinance differs from the cluster lot option in that fifty percent of the land would have to be left undeveloped, as opposed to the fifteen percent requirement for cluster lot subdivisions. In addition, the cluster lot option allows developers to set aside land that is not able to be developed because it is in the floodplain or because of steep topography. This

ordinance requires that the most worthy areas be conserved, not just the leftover property frequently used in cluster lot subdivisions.

By taking advantage of this conservation subdivision provision and setting aside fifty percent of the total land area as open space, developers will be able to substantially reduce the minimum lot sizes and thus lower their costs. The land area must be held in a conservation easement to ensure that it will never be developed. The ordinance would require that the lots closest to neighboring developments be the largest. The further away a lot is from a neighboring property outside the conservation subdivision, the smaller the lot could be. For example, the RS80 base zoning district requires a minimum lot size of 80,000 square feet. Under this ordinance, if the lot was 150-200 feet from a neighboring property, then the minimum lot size would be 20,000 square feet. The minimum lot sizes would increase the closer the property is to a neighboring property. Lots 50 feet or less from a neighboring property would not qualify for a reduction in the minimum lot size. It is important to note that this ordinance would not result in a density bonus. It would only allow for a reduction in minimum lot size.

This ordinance would also do away with the landscape buffer requirement along scenic arterials where a conservation subdivision provides a scenic easement of 50 feet or more. Otherwise, an artificial landscape buffer would have to be planted in an already natural area.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1047 (LORING & MCCLENDON) – This zoning text change would require that buildings proposed to be taller and/or closer to the street than the zoning code allows obtain a special exception from the board of zoning appeals (BZA). The zoning code currently requires that any building proposed to be taller and/or closer to the street or property line than the code allows obtain a variance from the BZA. In order for the BZA to lawfully grant a variance, the applicant must prove that compliance with the zoning code is not feasible due to the unique physical characteristics of the property, and that financial gain for the applicant is not the sole basis for granting the variance. It is often very difficult to show that the unique physical characteristics require the building to be taller, and that financial gain is not the motivating factor. By requiring developers to obtain a special exception rather than a variance in order to exceed the height and setback restrictions in the zoning code, the burden on the applicant would only be to provide evidence to the BZA that the proposed building will not adversely impact surrounding properties and will not detract from a strong pedestrian-friendly streetscape. This ordinance would not apply to single-family or two-family homes.

This ordinance has been approved by the planning commission.

ORDINANCE NO. BL2006-1048 (SUMMERS) – This zoning text change would increase the amount of notice required prior to public hearings held by the board of zoning appeals on requests for special exceptions and variances. The zoning code currently requires that notice be sent by certified mail to property owners located within 300 feet of the applicant's property not less than twenty-one days prior to the hearing. The code further requires that notices be mailed twenty-one days prior to public hearings held by the planning commission. This ordinance would increase the notice requirement for special exception and variance requests from the board of zoning appeals from twenty-one to forty-five days. A similar ordinance changing the notification period to sixty days failed to receive council approval in March 2006.

The planning commission staff recommends that the zoning code provisions requiring public hearings on special exceptions and variances to be held within 60 days of the application being deemed complete also be amended to address the longer notification period.

This ordinance has been approved by the planning commission.

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