

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

**April 6, 2009**

**CALL TO PODIUM:**

**Rob Robinson, Planner**

**RESPONSIBLE STAFF:**

**Greg Ossont, Director  
Planning & Code  
Administration**

**Rob Robinson, Planner**

**AGENDA ITEM:**

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Joint Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	NA
Advertised	01/14/2009
	01/21/2009
Hearing Date	02/02/2009
Record Held Open	03/11/2009
Policy Discussion	04/06/2009

**TITLE: Text Amendment T-389**

The application requests to amend Chapter 24 of the City Code (City Zoning Ordinance) Article III, entitled, "Regulations applicable to particular zones," Division 2, entitled, "R-90 zone, medium density residential," § 24-32, entitled, "Dimensional restrictions," to modify subsection (d) to establish new standards for impervious areas in front and side yards

**SUPPORTING BACKGROUND:**

The proposed amendment, T-389, will provide an additional development standard in the R-90 zone that will limit the amount of impervious area found in the "front yard." A joint public hearing for T-389 was held on July 7, 2008.

The amendment provides two methodologies depending on the size of the lot and would not apply to those properties reviewed under a Historic Area Work Permit. The methodologies are a contiguous area that is no more than twenty-five (25) percent of the area of the front yard or a contiguous area twenty-five (25) feet wide and the depth of the front yard, whichever is less. Lead walks (walkway to front door) measuring not more than five (5) feet in width are excluded. The purpose for the two methodologies is to address the atypical lot size scenarios found within the R-90 zone and minimize both the physical and visual impacts of any impervious areas.

The Planning Commission, at its March 4, 2009 meeting, recommended adoption of T-389. The Council's record closed at 5pm March 11, 2009.

Staff has attached the draft ordinance and, should the Council choose, is ready for final action.

*Attachments:  
Index of Memoranda and Exhibits (in **BOLD**)*

**DESIRED OUTCOME:**

**Conduct Policy Discussion**

**Ordinance is ready for Final Action**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE III, ENTITLED, "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 2, ENTITLED, "R-90 ZONE, MEDIUM DENSITY RESIDENTIAL," § 24-32, ENTITLED, "DIMENSIONAL RESTRICTIONS," TO MODIFY SUBSECTION (d) TO ESTABLISH NEW STANDARDS FOR IMPERVIOUS AREAS IN FRONT AND SIDE YARDS

**Text Amendment T-389**

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance), Article III, Division 2, § 24-32(D) is hereby amended to read as follows:

**Sec. 24-32. Dimensional restrictions.**

\* \* \*

(d) Impervious areas in the front yard, or side yard when adjacent to a public right-of-way for single family detached dwellings, shall be limited to a contiguous area that is no more than twenty-five (25) percent of the area of the front or side yard, or a contiguous area twenty-five (25) feet wide and the depth of the front yard, whichever is less. Lead walks (walkway to front door) measuring not more than five (5) feet in width are excluded. This section shall not apply to those properties requiring a historic area work permit for site development.

(d)(e) The minimum distance between main buildings shall be fifty (50) feet.

(e)(f) No less than fifty (50) percent of the lot area of each project in this zone shall be devoted to green space.

(f)(g) The maximum lot coverage shall be thirty (30) percent.

(g)(h) No buildings shall exceed two and one-half (2½) stories in height or thirty-five (35) feet.

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<del>Single strikethrough</del>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
<del>Double boldface strikethrough</del>	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

ADOPTED by the City Council of Gaithersburg, Maryland, this 6th day of April, 2009.

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SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this 6<sup>th</sup> day of April, 2009. APPROVED by the Mayor of the City of Gaithersburg, Maryland this 6th day of April, 2009.

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SIDNEY A. KATZ, MAYOR

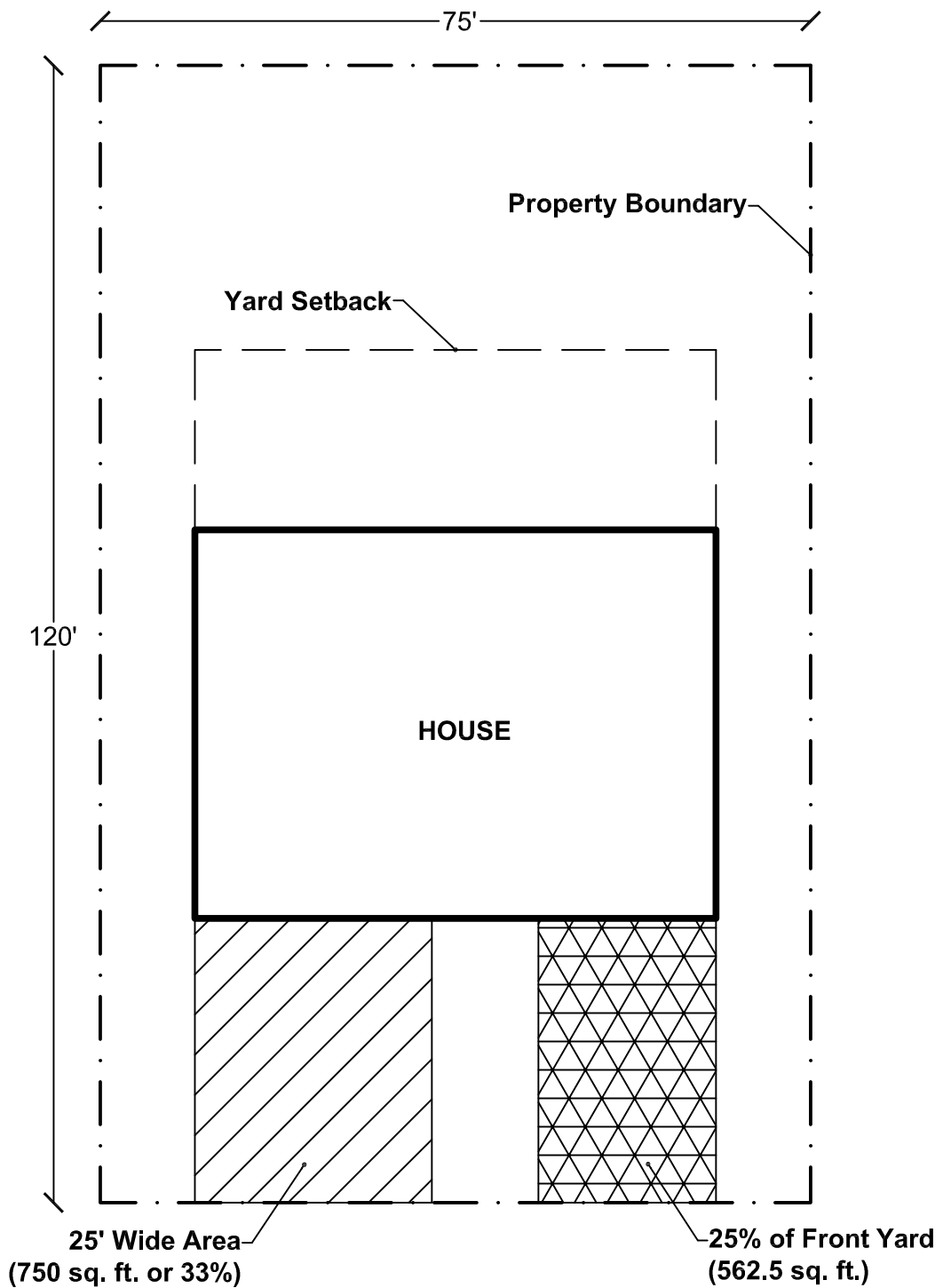
THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 6th day of April, 2009, and the same was APPROVED by the Mayor of the City of Gaithersburg on the 6th day of April, 2009. This Ordinance will become effective on the 26th day of April, 2009.

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Angel L. Jones, City Manager

**INDEX OF MEMORANDA**  
**T-389**

1. Application
2. Draft T-389 Ordinance
3. Letter to *Gaithersburg Gazette* dated January 5, 2009, requesting a Legal Ad for January 14 and 21, 2009, issues
4. Legal Ads, as published in the January, 14 2009 issue of the *Gaithersburg Gazette*
5. Notice of Joint Public Hearing, to be sent January 20, 2009
6. Mailing List of JPH Notices
7. **Diagram of standard R-90 lot**
8. **Diagram of narrow width R-90 lot**
9. **Diagram of wide width R-90 lot**
10. E-Mail from Ms. Betty Dooley: Jan. 26, 2009
11. Joint Public Hearing Cover Sheet: Feb. 2, 2009
12. **Transcript of Joint Public Hearing: Feb. 2, 2009**
13. **Revised Draft Ordinance**
14. **Staff Comments: Planning Commission Recommendation, March 4, 2009**
15. **CPC: Planning Commission Recommendation: March 5, 2009**
16. **Letter from Mr. Robert Brewer**



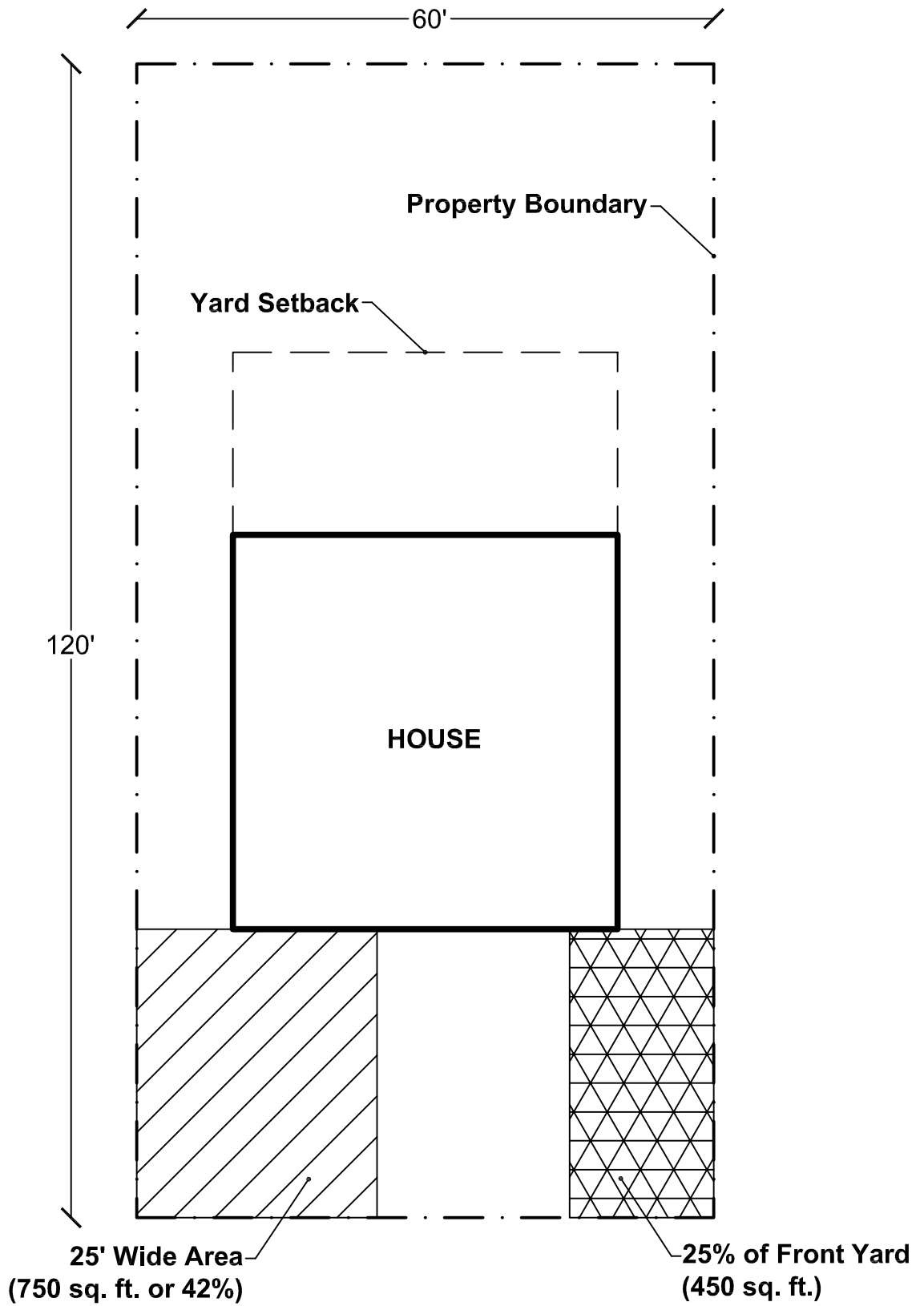
## Standard R-90 zoned Lot

Front/Rear Yards = 30'    Side Yards = 10'

Joint Hearing - MCC & PC

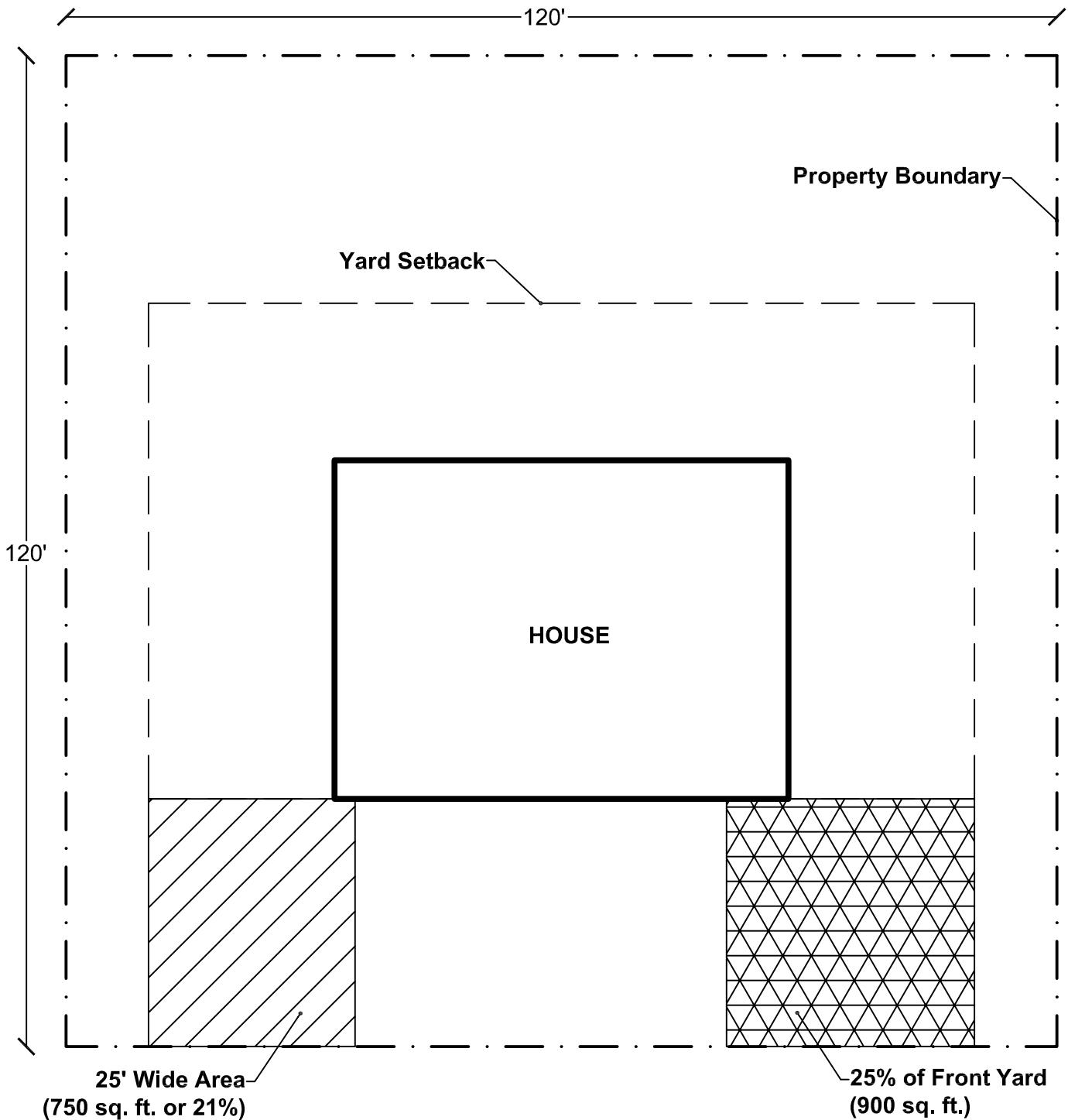
T-389

7



## Small R-90 zoned Lot

Front/Rear Yards = 30'    Side Yards = 10'



# Large R-90 zoned Lot

Front/Rear Yards = 30'    Side Yards = 10'

TRANSCRIPT OF

JOINT PUBLIC HEARING

ON

**T-389**

**Application Requests to Amend Chapter 24 of the City Code (City Zoning Ordinance) Article III, Entitled, "Regulations Applicable to Particular Zones," Division 2, Entitled, "R-90 Zone, Medium Density Residential," § 24-32, Entitled, "Dimensional Restrictions," to Modify Subsection (d) to Establish New Standards for Impervious Areas in Front and Side Yards**

BEFORE THE

CITY OF GAITHERSBURG

MAYOR AND CITY COUNCIL

and

PLANNING COMMISSION

on

February 2, 2009

Transcribed by  
Doris R. Stokes

PARTICIPANTS

CITY COUNCIL

Mayor Katz  
Council Vice President Sesma  
Council Member Ashman  
Council Member Drzyzgula  
Council Member Spiegel

PLANNING COMMISSION

Chair Bauer  
Commissioner Hopkins  
Commissioner Kaufman  
Commissioner Levy  
Commissioner Winborne

STAFF

Planning and Code Administration Director Ossont  
Planner Robinson

SPEAKERS FROM THE PUBLIC

William Fallon, 822 Jonker Court  
JoAnn Schimke, 734 Tiffany Court

Katz Can we please ask the Planning Commission to come forth and join us. While they are coming forward, I guess Rob Robinson will explain it to us please.

Robinson Good evening. This is a joint public hearing on text amendment application T-389. This hearing has been duly advertised in the Gaithersburg Gazette on January 14 and 21, 2009. At the present time, there are ten (10) exhibits in the record file. These exhibits are referenced in an exhibit list in the file. Individual exhibits may be reviewed during the course of the meeting or in the Planning Office during regular business hours at City Hall. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise they will deem received into evidence. During the course of discussion with text amendment application T-385 which we casually refer to as the Mansionization text amendment. The Council had raised the issue to staff regarding the issue of front yard coverage in the R-90 Zone specifically. This proposed text amendment will hopefully address this development standard. I think is going to be easier if I give some background. This is the standard R-90 lot by code. Its 75 feet across in frontage, 90,000 square feet. There are setbacks established 30 feet from the back, 30 feet from the front, 10 feet from the sides. The important note is the current development standard for coverage only deals with structural coverage and is limited to 30 percent of the lot. With the establishment of yards, the 30 foot setback in the front, structures cannot be built in this front area. The proposed text amendment T-389 is going to deal with impervious coverage. The way we approached this is we developed one of two methodologies to address this. The red shaded area represents 25 percent of the front yard. The blue shaded area is the 25 foot-wide area to the depth of the front yard. In using this, what we have established is for certain homes, you will go with either percentage whichever is the least. So on a standard lot, as is

shown by this, the red shaded area will come in for impervious contiguous coverage. It is basically 562 square feet. The 25 foot wide area would be 750 feet or 33 percent of the front yard. The R-90 Zone is interesting that many neighborhoods of the City fluctuate and really do not adhere to the standard size. This next board represents smaller R-90 Zone lots. These are lots that can easily be found in Observatory Heights and Browns Addition. Once again, the red shaded area is 25 percent; the blue shaded area is 25 feet wide from the depth of the front yard. You can see how dramatically it changes now. The blue area if we went with a standard 25 foot wide to the depth of the front yard, now encumbrances 42 percent of the front yard. The 25 percent now drops down to 450 square feet. I think it should be noted between these two boards, the parking is still available. The red shaded area in the standard lot, basically equates to almost a 19 foot wide strip for tandem parking. While this is not specifically a parking ordinance, many of the issues deal with parking. The red areas in the smaller lots for example with this one, is over 15 feet wide. So with the smaller lot, it is very rare that you would find a two car garage anyway because it is almost impossible to build on a lot. Unless it is in the back and this only deals with the front, to the depth of the front yard. As I mentioned, whichever is less. Where that comes is particularly wide lots. This is a 120 foot wide lot. These can be done in Deer Park. We have lots that are as wide as 130 feet across. So at this stage, the blue would kick in. The 25 foot wide to the depth of the front yard rather than the red area which would be (inaudible) along this 900 square feet. So obviously the breaking point is the 100 foot line. So if you have a lot, anything above 100 feet, you would trip into the 25 foot wide area to the depth of the front yard. Anything below, we would go with the 25 percent. I think it is important to note with this text amendment that those properties that are governed by Historic Area Work Permits (HAWP) would be excluded. Brooks, Walker, Russell Addition, (inaudible) R-90. It already has a

review process and this wouldn't come into play. Also in the things that we use to look at impervious areas, we wouldn't include lead walks under five feet in width. Everybody needs to get to their front door.

Katz And a lead way is a front walkway?

Robinson Basically. Yes it is the walkway that connects the public sidewalk to your front door or your driveway to your front door. So those would be excluded. This proposed amendment is not retroactive on existing conditions. We are not going to ask people to go and take out what they already have. It is only for new construction and new site development permits. So, it is going forward. It sought of ties in with T-385. If you want to tear down and rebuild your standard driveway, this would kick in. And basically, this ordinance is just there to address environmental issues and parking issues. So I would be happy to answer any questions.

Katz Rob let me ask you a couple of questions. 1) What happens if someone wants to put the pervious pavers in there, how does that work?

Robinson They are allowed to, but there is a caveat with that. If they wish to have decorative patio up front and they use a permeable material, they can do it and it would not go into the calculations. If they wish to use it for parking, our code establishes that for residential parking, you have to have a four inch impervious space. So know matter what the top was, you are going to have an impervious layer. So it would be included in the 25 percent.

Katz So someone could not park on that pervious pavers that you are saying?

Robinson No they could not. No unless it had an impervious space.

Katz And then the other kicks in. Ok.

Sesma They could claim that it wasn't for parking?

Katz But if they parking there then you know that they are parking there.

Sesma Well the enforcement would be kind of difficult in that particular thing. That was basically going to be one of my questions as well is what if people use an impervious, just use compacted gravel as well to create an area where they can pull up a car and park in front of their house.

Robinson There are measures that is listed in the property maintenance code that residential off-street parking has to be on a driveway and then it trips to the zoning ordinance where it says that your driveway must have impervious space. So it there in language, its there in code. So then it becomes more of an enforcement issue.

Sesma So, the other two questions I have were, we do have neighborhoods where the lots are around the court. The configuration of the lot is odd. But it could certainly have an impact on, I mean it could be that we have lots not where the current parking which is up to whatever specs we have now already occupies more than 25 percent of the front yard. One question is are we considering waivers for that kind of thing or just limited to what's available now. And then related to that is the opposite situation where one has a corner lot. There are two sides on the street. What do we consider the front of that?

Robinson That is established basically in the proposed ordinance. The best example is when we are dealing with fences. The side yard that fronts on

a public right-of-way by zoning ordinance is considered a front yard, even though the front the house may be facing the other way. So corner lots essentially have two front yards. So that is why we actually wrote into the draft ordinance (inaudible) so it still would be beholden to the same requirements of the 25 percent.

Sesma So it would be 25 percent of that total?

Robinson If you choose to have your driveway coming in, in a sense into the side of your house or you wanted to have a impervious patio area on the side; it would still count towards that 25 percent.

Sesma Ok, but it would be 25 percent of the total area adjacent to the street? So either side.....

Robinson Yes it says, no more than twenty-five (25) percent of the area of the front or side yard....so its not necessarily cumulative. They may have the advantage of both because it is in a sense two front yards.

Sesma So now maybe, lets talk about the inside corner of a court where you have an odd configuration. Almost like a triangle lot, shape that fronts the street.

Katz Well you already said that its not going to be retroactive. So none of those are going to have to change.

Sesma I wouldn't worry about retroactive, going forward.

Robinson The square footage would still be the square footage even with the court, with the property line, you will still have basically your front property line.

Even at an angle, the building is still going to be essentially set back 30 feet from that. So even though it may be a wedge, you still will be able to calculate the total square feet. You will still be able to go 25 percent from that. As I said unless of course, I don't even know if we have an existing lot, court where the frontage would be over 100 feet (inaudible) length where the other one would trip in.

Drzyzgula Well I had a question sought of related to that too and I'm guessing its not an issue because you probably looked at it. Generally, this is all wonderful. Are there any flag lots or lots in the City where the front yard would be so narrow that the 25 percent would be less than 10 feet wide?

Robinson Not that I know of. I did some preliminary research in developing these two methodologies and it seems as if the smallest we found were in Browns Addition. I believe there are a few lots that may have 50 linear feet of frontage. So that would be, it would be a tiny impervious area. I believe some of those don't even have driveways because they are so narrow. They would have the ability to put something in but it probably would not be enough for ten (inaudible) plan.

Katz Are they allowed a minimum amount of driveway I guest is the question?

Robinson They would essentially get a 12 foot wide, we will use driveway even though we are talking about impervious surface, virtually 12 feet. Going back the depth of the front yard. I cannot find any place where it would be single digits.

Drzyzgula Aren't there any lots where one lot is behind another and you just have an access way next to it? I don't know what the front yard of that would be.

Robinson I can't think of any off hand. It wouldn't be a front yard.

Katz And we certainly would not create any new ones that way.

Drzyzgula No, I just wanted to make sure. I presume you would be able to get a zoning variance if you had to.

Hopkins That would be a special exception.

Robinson That's a circumstance that the Board of Appeals could probably work out.

Katz Now, with the special exception process, can they give a special exception for an impervious area? If someone came in and said they wanted a driveway, can they also say, oh by the way, they can pave this driveway. How does that work? Which one is in effect?

Ossont To be clear and use the right language, it wouldn't be a special exception. It would be variances sought of speak. If you want to construct a new lot on a lot that was too narrow or narrower than the standard lot, it would require a variance. We only have about a half dozen R-90 vacant lots that would be new construction. So we are dealing with very limited, a handful of lots. As part of that variance, there are about half dozen standards that need to be met in order to qualify for that variance. And that would just be in order to establish a structure on a lot that was that narrow. That doesn't get into any of the site conditions or development standards that the Planning Commission would review under something like that. Now that we have the mansionization legislation, a tear down, rebuild or new construction on a R-90 lot, is going to go to the Planning Commission where there would have the ability to say, this is the development standard, but we need to look at this a little bit closer because there is a

circumstance here whether (inaudible) cul-de-sac or maybe something else that contributes to. Something that would require other than what this standard is the 25 percent. So, not necessarily something that the Board of Appeals as part of that variance would go into that level of detail to approve a development plan, but ultimately it is going end up with the Planning Commission who would have the ability to review it and approve those things.

Katz So the Planning Commission would have the ability to say to someone that they could have a larger area that is impervious?

Ossont The Planning Commission would be reviewing it. There is not a waiver process; however, this is a development standard that is not normally, it can't be any taller or wider, it's a development standard. So, there is not a waiver process by the Planning Commission.

Katz So, if someone came in for that scenario that you were talking about and the Planning Commission can't give them a waiver and the Board of Appeals can't give them a waiver, how can they have that?

Ossont There is no waiver.

Katz So they couldn't do it is what you are saying? If you couldn't put a driveway to get back to your house, how are you going to do it?

Ossont Well, first of all, we are talking about impervious surfaces. We are not specifically talking about driveways.

Katz I'm talking about a driveway.

Ossont        There is a distinction. It is written specifically for that. It is not just to address driveways. Regardless of the size of the lot, someone is going to have the ability to be able to park their car provided there is enough depth and width. With a lot like that, we are really talking about the extreme unlikely example. On something like that where we needed to get creative, you don't have to have 10 foot wide, 20 foot deep, asphalt driveway on house like that. You may be able to do just the wheel base or something more create like that and you are still within that 25 percent. You see it in a lot of urban areas; Baltimore comes to mind where you don't have a big huge concrete pad as a parking area. You might have just the (inaudible) or something else that otherwise meets code and allows somebody to park, but then doesn't exceed that. That would be a really rare and extreme case, but that is when we can get creative.

Sesma        So you are talking like to concrete or asphalt strips with a lane of grass in between?

Ossont        Yes. Some creative solution or something like that that might be able to be worked out. If a variance was approved for a 35 foot width lot and they wanted to have parking in the front, presumably when you get that narrow, you are not going to have room for a driveway. You are probably relying on on-street parking anyhow. Again, very rare, very extreme. Probably not a likely scenario. I think we have enough lead way where we can work with that or create a solution.

Katz         Anybody else, please?

Spiegel      I have just a few questions? When measuring what is considered the front yard that Mike was asking questions about, the side entry situation, if

there is a build out in front of the house, how much of the square footage is considered front yard? Is there perpendicular?

Robinson There is no build out into the front yard of the house. That is why it is described as a yard in the R-90 zone. The code states that you can have no structures. So that is why, you can lead walk, but you can't have any construction that faces the house going into the front yard.

Spiegel I understand, but say the house is set further back and it has a façade that is not one straight line.

Robinson We are not holding to the straight set back line. What we are saying in this, obviously the 30 feet counts because it is the R-90 zone. If the house is set back 40 feet, they can include that additional square footage into their 25 percent. We are basically going to the base of the house. So the front yard could be 40 feet, 50 feet, but we know at a minimum, its 30 feet.

Spiegel Ok. You can build up to the set back, but what happens if different parts of the front of the house are closer to the set back.

Robinson As it moves?

Spiegel Yes. The first point or the nearest point is measured or is it just the precise square footage going into this little nook.

Robinson It is going to be the linear line across. From the furthest point closes to the (inaudible) base.

Drzyzgula Parallel to the street.

- Bauer           The set back is plated. The set back creates the property line, not the building. It establishes a straight line. It doesn't matter where the house is. It could sit 100 feet behind the (inaudible).
- Spiegel         If the house does sit 100 feet behind the set back, the blue category that you have on the chart would run all the way back regardless of house far back the lot the house is.
- Sesma           It would only be 25 percent of that surface area.
- Spiegel         Or whichever is less.
- Bauer           But just the front yard. You can still build a driveway into the back area.
- Robinson       You can have a four car garage if it complies with the 30 percent lot coverage.
- Bauer           As a practical matter, the R-90 lots are all plated. We know what they are. It's not as though we are going to create these odds situations this point going forward.
- Sesma           But we do have odd situations already.
- Katz            They could change the plat. Like in the Historic District as an example, but there are some lots off of Walker, there are some houses built in there.
- Drzyzgula      There is a lot that hasn't been developed but it has already been plated and it would be very unusual for the lot sizes to change because there is just one lot between two lots.

Katz They are the ones with the deep lots.

Drzyzgula I think there are some in Observatory Heights area that is more in question.

Katz But then again, narrow (inaudible) lots.

Spiegel I have one more question. The change won't address or I guess won't prohibit unconventionally designed impervious surfaces whether its patio or a parking space.

Robinson No not at all.

Spiegel Let's say someone wants to put a S-shape in front of their house as long as it's within the square footage, they can still do it?

Katz Does that stand for Spiegel?

Spiegel It stands for Sidney.

Katz I asked for that. Go ahead.

Robinson We are quite cognizant that this text amendment should be long reaching and we know while there is technology is being developed, there will be even more technology in the future. So we don't want to necessarily preclude any specific materials right now. It is just impervious or not impervious, a black and white issue. People see stuff such grass (inaudible) which makes a lovely patio. You wouldn't be able to park on it but you can definitely have it in your front yard and it wouldn't count towards the 25 percent. It is a permeable material.

Spiegel But in terms of the layout of the impervious material, it doesn't have to be this rectangle or square?

Robinson We did that for the simplicity of graphics, but all we stated was contiguous. As long as it all connects. We just didn't want the spotting. Once again, that can be removed. That is more of a policy issue as we go through with recommendations from the Planning Commission or the Council themselves. We started out with the idea of contiguous cause we know for the most part, this is going to (inaudible) driveway so you are going to have a solid driveway.

Spiegel Thank you.

Winborne I guess that is kind of a little bit of my question. My question was related to the lead walk. Most people have like five foot perpendicular lead walk, but I seen a lot of folks, a couple of people in my neighborhood have put a lead walk parallel to the driveway because they don't want to walk on the grass or something like that. Would this preclude something like that from happening?

Robinson No, once again, we have excluded lead walks that are under five feet in width. Even if it is coming from the driveway, it would not be included. This is dealing more with the idea of a driveways, patios or sitting areas. Concrete or asphalt bases, there is no pervious surface.

Katz Is there a limit to how many lead walks you can have?

Robinson No.

Winborne That is what I am talking about. You can have them either side of the driveway. A lot of people are doing that now.

Sesma You can't park a car on it. You can park a motorcycle on it. It becomes an enforcement issue rather than a code thing.

Robinson That is the thinking with using phrases like impervious surface rather than driveways. I don't have people going forward who may be confused and want to construct a patio and thinking they can just use it as parking pad.

Winborne A parking pad on the side.

Robinson If someone wishes to create a lovely sitting area, you have the space in the front with brick pavers that are set in sand, it is totally permeable, this does not address it. But if they wish to do something that has the solid, concrete or asphalt base or compressed crushed stone, it becomes (inaudible). No matter they place on top, pavers, bricks, or just black top, that would count.

Katz Anybody else please?

Drzyzgula I want to thank you for thinking it through so thoroughly. Obviously we haven't been able to poke any holes in it.

Katz Thank you Rob. This is the time that the Mayor and Council and Planning Commission hear from anyone who would like to speak on this joint public hearing topic. We ask that you please keep your remarks to no more than three minutes. Please note the timer will beep and blink yellow when you have 30 seconds left of your three minutes so that you can begin to finish your statement. The timer will beep and turn red when your three minutes

is up. Please note that any additional testimony that you might have can be submitted to the City in written form and will be a part of the record just as your oral testimony. Please state your name and address for the record. Who would like to speak on this topic, please, yes sir?

Fallon Good evening. I appreciate the time. My name is Bill Fallon. I live at 822 Jonker Court. We have lived there for 25 years. I guess because none of this is retroactive what I am going to say is not going to matter to the committee, but I want to say it anyway. I have three things to say, 1) is to wholeheartedly endorse this proposed amendment. Why? Because we live next door to a fellow who recent purchased and paved over every square inch of his entire front yard. Every square inch of 2,500 square feet that use to be beautiful garden, pathway, roses that has now been turned into a parking lot. Those of you that came out when we had the 4th of July parade know what I am talking about. As far as we are concern, we now live next door to something like a Criswell Chevrolet annex. I've heard comments and have been listening to some ideas. Can something be done to say that you can't build it right up to your neighbors property line so he has to look at your truck? Could we say that live at the end of a court like this where there is no danger of blocking the traffic, there could be a waiver to allow me to put up a higher fence. He basically, took the typography and filled the land up about a foot or two on every square inch. So if any of the Council members are wavering as to the merits of this, come up to Jonker Court and take a look at what happens when they pave every square foot. I've heard comments tonight about the future of Olde Towne. If this is not enacted, what we will have is something utterly devoid of character. We brought here probably because of the West Riding covenants. A very well noted realtor who has worked successfully in this area for a long time discussed this with me and he said these covenants don't mean a thing because they are too old and the Council and the developers will ignore them. You know what, as far as we are

concern, he was right. Again, I strongly urge this to be adopted. Its too late for us. We are the proverbial horse has left the barn. It is ugly and has destroyed the character of our court and I wish this has been done a year or two again so this could have been avoided for us.

Katz Thank you. Next speaker, please JoAnn.

Schimke JoAnn Schimke, 734 Tiffany Court. I am also a West Riding resident in the R-90 Zone so our community will be impacted by this ordinance. Right now we have 300 homes and when the builder built our neighborhood, he put in a driveway and a carport to accommodate three car off-street parking. This is for all the houses in the neighborhood. About 60 homes have put in parking pads to accommodate more off-street parking. They do well, they look fine and they do not go over the exceed 25 feet or 25 percent. So this ordinance is not going to be negative impact on West Riding at all. We only have one house that exceeded this as Mr. Fallon talked about. I live on a court and I'm at the top of the court with a pie shaped year and so I can't put on a parking pad. When all my kids are home, we have four or five cars. So at night, we gather as a family and we do the Schimke shuffle. We go outside and we take our keys and we determine who has to leave first and spend about two minutes, its a family bonding affair and we will shuffle our cars around to get as many off the street as we can. This has worked well for many years except one morning this year in December. I went outside and discovered that my youngest son went out earlier than expect. He was blocked in and decided the best course of action was to drive around the offending car through my front yard and jump the curve. Now other then that, we have never had a problem in the Schimke household at all. What Mr. Fallon has brought up is that West Riding is a residential community of single family homes. When a residents paves over the whole front yard and

parks four or five cars right in a row next to each other, we are losing that flavor of a residential community and it starts to look like a business in a commercial district. And sadly now when I drive by that house and there are four or five cars there, I can't even see the house hardly. It just looks like a little parking lot. So I endorse this ordinance. I think it's great. As a footnote to Mr. Ryan Spiegel, when you were probably fourteen, I was taking my kids to Winter Lights over at Bohrer Park and we only had maybe two or three lighted lights. They would pull us around in a wagon by a truck. But the best part was that you came to the end of the ride there was a slide and there were two what looked like mannequins sitting in the slide dressed up like Santa and Mrs. Claus. As you drove by, they came to life and waived to the kids and the kids would scream. I would never forget that and I give a lot of credit to that couple who night after night sat out in the freezing cold just to wave at the kids. Thank you.

Katz Thank you JoAnn. You will make this public hearing very interesting for those who transcribe it.

Sesma Schimke shuffle, what she talked about is actually not exclusive to those homes on the cul-de-sac because it happens at my house quite often as well.

Katz Anybody else from the public, please? Thank you very much. It has been suggested for some time recommendations.

Bauer Thank you Mr. Mayor. Staff recommends that the Planning Commission hold their record open until 5 p.m. on February 20, 2009, with anticipated recommendation on March 4, 2009. What is the pleasure of the Commission please?

Kaufman So moved.

Winborne Second.

Bauer It's been moved and seconded. All in favor please say aye?

Commission Ayes.

Bauer Opposed? That passes unanimously (5-0), Mr. Mayor.

Katz Thank you very much. Staff recommends that the Mayor and Council hold their record open until 5 p.m., Wednesday, March 11, 2009 with anticipated policy discussion on Monday, April 6, 2009. What is the pleasure of the Council?

Drzyzgula So moved.

Sesma Second.

Katz It's been moved and seconded. All those in favor please say aye?

Council Ayes.

Katz Opposed? That carries unanimously (4-0) as well. Thank you very much. This concludes this evening's joint public hearing.

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End of Joint Public Hearing

T-389

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE III, ENTITLED, "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 2, ENTITLED, "R-90 ZONE, MEDIUM DENSITY RESIDENTIAL," § 24-32, ENTITLED, "DIMENSIONAL RESTRICTIONS," TO MODIFY SUBSECTION (d) TO ESTABLISH NEW STANDARDS FOR IMPERVIOUS AREAS IN FRONT AND SIDE YARDS

**Text Amendment T-389**

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance), Article III, Division 2, § 24-32(D) is hereby amended to read as follows:

**Sec. 24-32. Dimensional restrictions.**

\* \* \*

(d) Impervious areas in the front yard, or side yard when adjacent to a public right-of-way for single family detached dwellings, shall be limited to a contiguous area that is no more than twenty-five (25) percent of the area of the front or side yard, or a contiguous area twenty-five (25) feet wide and the depth of the front yard, whichever is less. Lead walks (walkway to front door) measuring not more than five (5) feet in width are excluded. This section shall not apply to those properties requiring a historic area work permit for site development.

(d)(e) The minimum distance between main buildings shall be fifty (50) feet.

(e)(f) No less than fifty (50) percent of the lot area of each project in this zone shall be devoted to green space.

(f)(g) The maximum lot coverage shall be thirty (30) percent.

(g)(h) No buildings shall exceed two and one-half (2½) stories in height or thirty-five (35) feet.

**Boldface**  
Underlining  
~~Single strikethrough~~  
Double underlining  
~~Double boldface strikethrough~~  
\* \* \*

*Heading or defined term.*  
*Added to existing law by original bill.*  
*Deleted from existing law by original bill.*  
*Added by Amendment.*  
*Deleted from existing law or the bill by amendment.*  
*Existing law unaffected by bill.*

Joint Hearing - MCC & PC  
T-389  
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ADOPTED by the City Council of Gaithersburg, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_ day of \_\_\_\_\_, 2009. APPROVED by the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_ day of \_\_\_\_\_, 2009, and the same was APPROVED by the Mayor of the City of Gaithersburg on the \_\_\_\_ day of \_\_\_\_\_, 2009. This Ordinance will become effective on the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
ANGEL L. JONES, City Manager

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## STAFF COMMENTS FOR PLANNING COMMISSION

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**MEETING DATE:** March 4, 2009

**TEXT AMENDMENT:** **T-389**

**TITLE:** AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE) ARTICLE III, ENTITLED, "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 2, ENTITLED, "R-90 ZONE, MEDIUM DENSITY RESIDENTIAL," § 24-32, ENTITLED, "DIMENSIONAL RESTRICTIONS," TO MODIFY SUBSECTION (D) TO ESTABLISH NEW STANDARDS FOR IMPERVIOUS AREAS IN FRONT AND SIDE YARDS

**REQUEST:** **RECOMMENDATION TO M&CC**

**ADDRESS:** N/A

**ZONE:** R-90 (Medium Density Residential)

**APPLICANT/REPRESENTATIVE/ATTORNEY/DEVELOPER:** (as applicable)

**STAFF PERSON:** Rob Robinson, Planner

**Enclosures:**

Staff Comments  
Index of Memorandum and Exhibits (In **Bold**)

Joint Hearing - MCC & PC  
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## STAFF COMMENTS

This item is on the Commission's agenda for a transmittal of a recommendation to the Mayor and Council.

The joint public hearing on T-389 was held on February 2, 2009. The Planning Commission held open its record until 5 PM on February 20, 2009. There are Thirteen (13) exhibits in the public record.

This is a proposed ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance) Article III, entitled, "Regulations applicable to particular zones," Division 2, entitled, "R-90 zone, medium density residential," § 24-32, entitled, "Dimensional restrictions," to modify subsection (d) to establish new standards for impervious areas in front and side yards. The proposed amendment, T-389, will provide an additional development standard in the R-90 zone.

This proposed amendment will limit the amount of impervious area found in the "front yard" of single family detached dwelling units. The current development standards for the R-90 zone only limit structures to no more than 30% lot coverage; however, no structures can be built within areas defined as "yard setbacks" in the R-90 zone. In other words no structures are permitted in front yards. Therefore, the 30% lot coverage would not be applicable in front yards and a new mechanism was needed.

The T-389 amendment will continue to allow and foster redevelopment in a quality manner and in an environmentally sensitive way. Staff has added "for single family detached dwellings" to the draft ordinance since the public hearing. This is to clarify the applicability of this ordinance and exclude other non-residential uses, such as religious facilities, allowed by right in the R-90 zone.

### **Sec. 24-32. Dimensional restrictions:**

Staff has recommended the following underlined language be added:

- (d) Impervious areas in the front yard, or side yard when adjacent to a public right-of-way for single family detached dwellings, shall be limited to a contiguous area that is no more than twenty-five (25) percent of the area of the front or side yard, or a contiguous area twenty-five (25) feet wide and the depth of the front yard, whichever is less. Lead walks (walkway to front door) measuring not more than five (5) feet in width are excluded. This section shall not apply to those properties requiring a historic area work permit for site development.

The draft amendment language provides two methodologies, depending on the size of the lot, and would not apply to those properties reviewed under a Historic Area Work Permit. The purpose for the two methodologies is to address the atypical lot size

scenarios found within the various R-90 zoned neighborhoods (reference exhibits 7-9) and minimize both the physical and visual impacts of any impervious areas. The methodologies are a contiguous area that is no more than twenty-five (25) percent of the area of the front yard or a contiguous area twenty-five (25) feet wide and the depth of the front yard, whichever is less. Lead walks (walkway to front door) measuring not more than five (5) feet in width are excluded.

**COMMUNICATION: PLANNING COMMISSION**

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**MEMORANDUM TO:** Mayor and City Council

**VIA:** Angel L. Jones, City Manager

**FROM:** Planning Commission

**DATE:** March 5, 2009

**SUBJECT:** T-389 -- Request to amend Chapter 24 of the City Code (City Zoning Ordinance) Article III, entitled, "Regulations applicable to particular zones," Division 2, entitled, "R-90 zone, medium density residential," § 24-32, entitled, "Dimensional restrictions," to modify subsection (d) to establish new standards for impervious areas in front and side yards.

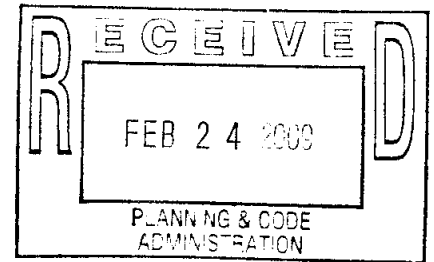
At its regular meeting on March 4, 2009, the Planning Commission made the following motion:

Commissioner Levy moved, seconded by Vice Chair Winborne, to recommend Text Amendment T-389 for ADOPTION to the Mayor and City Council.  
Vote: 5-0

**Joint Hearing - MCC & PC**  
T-389  
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Feb. 20,2009

To the City of Gaithersburg 's Planning Dept.



I am writing today in regards to the proposed amendment to the City's code/ requirements on paving in front yards.

I was unable to attend the recent meeting on this subject. I received very polite and courteous service when I called your dept for details. They asked that I send my comments to you. I am enclosing a sketch of what currently exist at my home ( # 205 East Deer Park Dr) and the adjacent homes. I had planned to pave our driveway in the future and have shown this on my sketch. I would appreciate if you could take in to consideration that East Deer Park differs from most other city streets in that there is no on street parking.

Due to the volume of traffic, I have made parking space's and a means of turning around if needed at my home. Also- there are many existing driveways that appear to have more than the size proposed for future driveway's. Recently, at house # 125 East Deer Park, the owner was allowed to pave on what I believe to be the City's ROW for their driveway.

While I have no problems with this, I would again appreciate your taking in to consideration the nature of traffic/ parking along East Deer Park, and applying this to other owners on this street when you decide how much paving can be done in the front yards. I would be glad to meet with you at my house, or at your office to go over this in further detail in needed. Also, if you haven't already, can you please drive on this road and see the various driveway/ parking spaces already in place.

Most Sincerely Yours

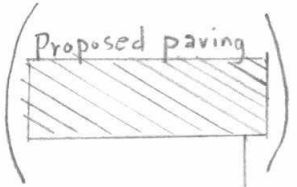
*Robert S Brewer*  
Robert & Kathryn Brewer

205 East Deer Park Dr  
Gaithersburg, MD 20877  
301-977-0087  
brewer000@comcast.net

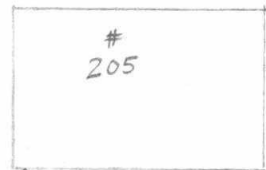
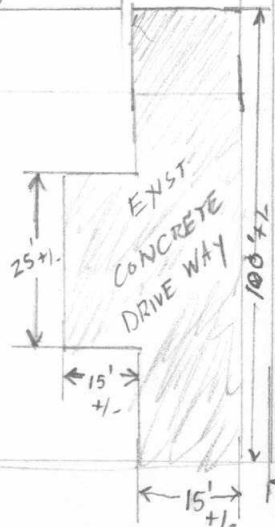
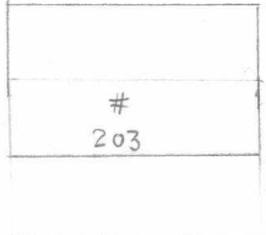
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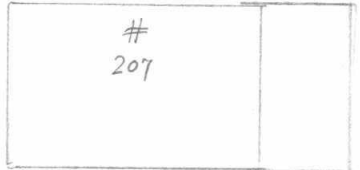
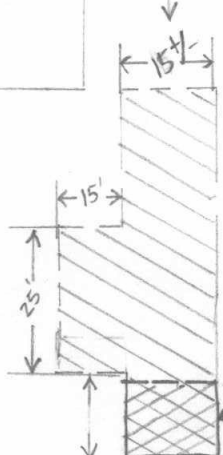
\* Dimensions: to the nearest foot \*



Robert S. & Kathryn B. Brewer



70'



EXIST. ASPHALT DRIVE WAY

EXIST. ASPHALT APRON

← EAST DEER PARK →