

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

October 19, 2009

CALL TO PODIUM:

Greg Ossont

RESPONSIBLE STAFF:

Greg Ossont, Director
Planning & Code Administration

Jacqueline Marsh, Planner

Lauren Pruss, Planning Director

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
X	Public Hearing -JOINT
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other: Staff Guidance

PUBLIC HEARING HISTORY:

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

Introduced	
Advertised	9/30/2009
	10/7/2009
Hearing Date	10/19/2009
Record Held Open	
Policy Discussion	

**TITLE: Text Amendment T-393
Joint Public Hearing**

Ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article VI, entitled, "Administration and Enforcement of Chapter," § 24-178, entitled, "Use and Occupancy Permits for new, altered, or nonconforming uses," to create new subsections §24-178(g) entitled "Temporary Uses;" §24-178(g)(1) through §24-178(g)(6) so as to allow temporary uses.

SUPPORTING BACKGROUND:

On September 21, 2009, during its policy discussion on sketch plan amendment Z-313 and schematic development plan SDP-09-003, the Mayor and City Council directed staff to prepare a text amendment that would allow temporary uses.

Staff has drafted the attached text amendment that lists criteria an applicant must meet in order to establish a temporary use on property in the city.

Please note that the temporary use would be terminated at such time the surrounding land is developed in accordance with any Master Plan recommendations. There is also the availability of a time frame that can be imposed upon the temporary use by the Council or the Planning Commission.

Attachments: Index of Memoranda and Exhibits

DESIRED OUTCOME:

Conduct Public Hearing

Staff recommends the Planning Commission hold the record open for 11 days until 5PM on October 30, 2009, with anticipated recommendation on November 4, 2009.

Staff recommends the Mayor and City Council hold the record open for 18 days until 5PM on November 6, 2009, with anticipated policy discussion on November 16, 2009.

**INDEX OF MEMORANDA
T-393**

1. Application for T-393
2. Draft Ordinance – T-393
3. Letter to Gaithersburg Gazette dated September 25, 2009, requesting a Legal Ad in the September 30 and October 7, 2009, issues
4. Notice of the October 19, 2009, Joint Public Hearing to interested parties sent on September 29, 2009
5. Letter submitted by Peter Henry, dated September 30, 2009
6. Letter submitted by James Clifford, dated October 2, 2009

**TEXT AMENDMENT
TO THE
ZONING ORDINANCE**

In accordance with Article VIII,
Section 24-194, 195, 197, and 198 of the City Code

Application No.	<u>T-393</u>
Filing Date	<u>September 25, 2009</u>
P.C Hearing	<u>October 19, 2009</u>
M&C Hearing	<u>October 19, 2009</u>
Decision	_____
Decision Date	_____

Application is hereby made to the

- City Planning Commission, or
- Mayor and City Council

for a change in the text of the Zoning Ordinance of the City of Gaithersburg, Maryland.

This change involves Article VI, "Administration and Enforcement of Chapter", Section 24-178, "Use and Occupancy Permits for new, altered, or nonconforming uses" to be amended per the attached ordinance.

Applicant/Staff Person Greg Ossont, P&CA Director Date September 25, 2009

Address City Hall, 31 S. Summit Ave., Gaithersburg, MD 20877

Ordinance No. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE VI, ENTITLED, "ADMINISTRATION AND ENFORCEMENT OF CHAPTER," § 24-178, ENTITLED, "USE AND OCCUPANCY PERMITS FOR NEW, ALTERED, OR NONCONFORMING USES," TO CREATE NEW SUBSECTIONS § 24-178(g) ENTITLED "TEMPORARY USES;" §24-178(g)(1) THROUGH §24-178(g)(6) SO AS TO ALLOW TEMPORARY USES

Text Amendment T-393

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 VI, § 24-178 is amended to create § 24-178(g) as follows:

ARTICLE VI. ADMINISTRATION AND ENFORCEMENT OF CHAPTER

* * * * *

Sec. 24-178(g) Temporary Uses

The Mayor and City Council and/or the Planning Commission may by resolution establish or grant a temporary use upon a finding of the following:

1. The use shall be listed as permitted in the zoning district and not as a prohibited use or special exception;
2. The use will not adversely affect the health or safety of persons residing or working in the vicinity of the proposed uses;
3. The use will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
4. The use further enhances economic development activities in the city;
5. Such a use shall be terminated at such time adjacent or abutting land uses are developed in accordance with any applicable Master Plan for the subject area;

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

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T-393
Exhibit #2

6. The period of the temporary use shall be set forth by the Mayor and City Council and/or the Planning Commission in the resolution for approval; and
7. An annual review shall be conducted to ensure compliance with all conditions or requirements of the approval.

As determined by the Mayor and City Council and/or the Planning Commission, a request for such a temporary use shall be accompanied by so much of the information required by Section 24-169 as is necessary to properly detail and permit action upon the request.

ADOPTED, this ____ day of _____, 2009, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2009. Approved by the Mayor of the City of Gaithersburg 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 that 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.

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

ANGEL L. JONES, City Manager

DRAFT

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



September 25, 2009

Bonnie Geiger
Law Section
The Gazette Newspaper
2-A North Market Street
Frederick, Maryland 21701

Dear Ms. Geiger:

Please publish the following legal advertisement in the September 30 and October 7, 2009, issues of the *Gaithersburg Gazette*.

Sincerely,

Greg Ossont, Director
Planning and Code Administration

ASSIGN CODE: T-393

Acct# 133649

NOTICE OF PUBLIC HEARING

The Mayor and Council and Planning Commission of the City of Gaithersburg will conduct a joint public hearing on T-393, filed by Greg Ossont on

**MONDAY
OCTOBER 19 2009
AT 7:30 P.M.**

or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.

The application requests amendment of Chapter 24 of the City Code (City Zoning Ordinance), Article VI, entitled, "Administration and Enforcement of Chapter," § 24-178, entitled, "Use and Occupancy Permits for new, altered, or nonconforming uses," to create new subsections §24-178(g) entitled "Temporary Uses;" §24-178(g)(1) through §24-178(g)(6) so as to allow temporary uses.

Further information may be obtained from the Planning and Code Administration Department at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday, or visit the City's website at www.gaithersburgmd.gov.

Greg Ossont, Director
Planning and Code Administration
jm

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301-258-6300 • FAX 301-258-6149 • TTY 301-258-6430 • cityhall@gaitersburgmd.gov • www.gaithersburgmd.gov

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CITY COUNCIL MEMBERS
Jud Ashman
Cathy C. Drzyzgula
Henry F. Marraffa, Jr.
Michael A. Sesma
Ryan Spiegel

CITY MANAGER
Angel L. Jones

Joint Hearing - MCC & PC
T-393
Exhibit #3



CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: 301-258-6330

NOTICE OF JOINT PUBLIC HEARING

The City of Gaithersburg Mayor and Council and Planning Commission will conduct a public hearing at the time and place noted below.

Meeting: **MAYOR AND CITY COUNCIL**
Application Type: **TEXT AMENDMENT**
File Number: **T-393**
Applicant: **GREG OSSONT FOR MAYOR & CITY COUNCIL**
Day/ Date/Time: **MONDAY, OCTOBER 19, 2009, AT 7:30 P.M.**
Place: **COUNCIL CHAMBERS, GAITHERSBURG CITY HALL
31 SOUTH SUMMIT AVENUE**

***** IMPORTANT *****

This is a proposal to amend Chapter 24 of the City Code (City Zoning Ordinance), Article VI, entitled, "Administration and Enforcement of Chapter," § 24-178, entitled, "Use and Occupancy Permits for new, altered, or nonconforming uses," to create new subsections §24-178(g) entitled "Temporary Uses;" §24-178(g)(1) through §24-178(g)(6) so as to allow temporary uses. . (A copy of the draft ordinance can be viewed at www.gaithersburgmd.gov/notices.) This is an opportunity to publicly participate, other than providing written testimony which must be submitted before the public hearing record closes. Contact the Planning and Code Administration City Planner (listed below) at (301) 258-6330 if you should have any questions and/or to learn more about this process and your ability to offer testimony and input.

View Mayor and City Council and Planning Commission meetings live on Gaithersburg Television, Comcast Channel 13 within the City limits, or via streaming video at www.gaithersburgmd.gov/tv. Meetings are rebroadcast for one week on television, and are archived within 24 hours for viewing at any time on the City's website.

CITY OF GAITHERSBURG

Greg Ossont, Director
Planning and Code Administration

Joint Hearing - MCC & PC
T-393
Exhibit #4

NOTICES SENT THIS 29TH DAY OF SEPTEMBER, 2009, TO:

APPLICANT AND INTERESTED PARTIES

(A list of interested parties and agencies is available in the file in the Planning and Code Administration.)

MAYOR AND COUNCIL

PLANNING COMMISSION

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Jackie Shaw
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GERMANTOWN MD 20874

BP REALTY INVESTMENTS, LLC

September 30, 2009

Jacqueline Marsh, AICP
Planner
Planning and Code Administration
City of Gaithersburg
31 S. Summit Avenue
Gaithersburg, MD 20877

RE: Draft Text Amendment T-393

Dear Ms. Marsh:

We have had an opportunity to review the draft language for the proposed text Amendment T-393, and have just one observation.

At present the text reads that any such temporary use would be terminated “at such time adjacent or abutting land uses are developed” in accordance with any applicable Master Plan for the subject area. Perhaps the City may want to consider adding third criteria to ‘adjoining or abutting’ -- something with a radius (within a certain number of feet).

For example, the Casey West homes are neither adjoining nor abutting -- they are separated by a stream valley buffer and other lands held by the commercial group. A radius clause of 500 feet would address what we believe was the Council’s concern.

Best regards,

Peter

Peter Henry
BP Realty Investments, LLC

CLIFFORD, DEBELIUS, BONIFANT,
FITZPATRICK & HYATT, CHTD.

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John W. Debelius (1926-1984)

October 2, 2009

Jacqueline Marsh
Planning and Code Administration
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877

Re: Proposed Text Amendment T-393

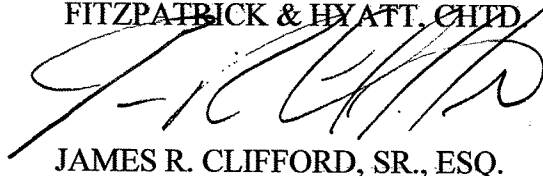
Dear Jackie:

I have reviewed the above proposed text Amendment and have two concerns. Number five, relating to termination, is triggered by activity on the adjacent properties, consistent with the Master Plan; however, number six shows a preset date of termination. I see the potential of the Mayor and Council's preset date being later than the activity date. Also, could it not be argued that Pete Henry has already begun development of his adjoining parcel according to the Master Plan, thereby preventing the Stevensons from obtaining a temporary use permit under this new ordinance? It seems to me the Council's preset termination date is all that is needed in this legislation.

Thank you and please do not hesitate to contact me should you have any questions.

Sincerely,

CLIFFORD, DEBELIUS, BONIFANT
FITZPATRICK & HYATT, CHTD.



JAMES R. CLIFFORD, SR., ESQ.

JRC/dlh

cc: Louise's Heritage LLC

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Joint Hearing - MCC & PC
T-393
Exhibit #5