

6 July 2009

## MEMO

From: Land Use Committee

To: Town Council

Copy: Town Manager

Re: Report on review of recently enacted ordinances (Chapter 4 Town Code) and recommendations to clarify legislative drafting and administration

1. The Land Use Committee (LUC) reviewed and examined recently enacted changes to Chapter 4 of the Town Code. The committee identified several anomalies in code language that require clarification through minor amendments to the code and/or interpretive diagrams/tables and/or interpretive guidance (“*Administrative Building Code Interpretation*”). The committee’s primary focus was on the newly enacted ordinance, maximum nonvegetative surface area (*Sec 4-3*), the 35% rule, and the rear and side setbacks ordinances (*Sec 4-4 (b) and (c)*). Town staff was consulted during our review and in the formulation of our recommendations.

2. The LUC proposes several changes to Chapter 4 of the Town Code to remedy inconsistencies related to the regulation of maximum nonvegetative surface area (*Sec 4-3(e)*) (the 35% rule). As part of this work, the LUC conducted a comprehensive review of the Town Code, Chapter 2 (Town Rights of Way), Chapter 4 (Buildings) and Chapter 15 (Motor Vehicles and Traffic) and the Town Charter Article VII (Public Ways and Sidewalks), as well as the proposed County ordinance and accompanying report on *Zoning Text Amendment No: 09-03 Concerning: Home Occupation and Residential Off Street Parking* (1 May 2009)

<http://www.montgomerycountymd.gov/content/council/pdf/zta/2009/zta09-03.pdf>. Our findings and specific recommendations are detailed Attachment 1 and the diagrams in Annex 1. The LUC determined that the proposed County ordinance would not address the purpose of the Town 35% rule. However, the LUC did examine alternatives to the 35% rule and these are included in Attachment 1 for the Council’s consideration.

3. The LUC committee proposes two changes to Chapter 4 of the Town Code to address two anomalies in the setback ordinance. The first anomaly affects properties that are greater than 120’ but less than 137’ deep. Our analysis and recommendations are enclosed in Attachment 2. The second anomaly affects properties whose rear and side yard property lines are irregular. Our analysis and recommendations are enclosed in Attachment 3.

4. The LUC also examined side and rear setbacks related to proposed second story additions. Staff provided staff reports on the twelve side and rear setback variance requests since May 2006. Hardship arguments varied but were substantiated all or in part. The Town Council approved all variance requests. Staff did an excellent job in

analyzing the variance requests as well as any neighborhood concerns. However, the LUC believes that there are too few variance requests related to proposed second story addition to warrant a change in current practices at this time.

5. Coincidental to our review the LUC identified several other sections of the building code that require minor clarifications. These are detailed in Attachment 4.

6. The LUC also reviewed recent variance requests for front yard wall replacements and front yard fence replacements. Findings and recommendations are detailed in Attachments 5 and 6.

7. The LUC reviewed Town rules regarding front porches and coverings; in particular the difference between the Town and the County rules as well as the recent changes in both the Town and County rules regarding setbacks and lot coverage. After a wide-ranging discussion the LUC recommends that this issue be examined by the 2009-2010 LUC.

8. The LUC is concerned that the Town has not identified the public rights of way throughout the Town and recommends that a survey be conducted to locate the public rights of way. The LUC notes that: in Chapter 4 (Buildings) of the Town Code reference is made to public rights of way 48 times in 17 sections; in Chapter 23 (Streets and Sidewalks) 9 times; in Chapter 28 (Water Drainage) 3 times; and in Chapter 29 (Urban Forest) 3 times. Regulations related to the public right of way clearly impact every property including buildings, fences, signage, sidewalks, trees, and water drainage.

## Attachment 1

### Analysis and Recommendations for 35% *Maximum Nonvegetative Surface Area Rule*

1. The definition of ***front yard*** as it applies to Section 4-3(e), ***maximum non-vegetative surface area***, is inappropriate for two reasons. First, the diagrams in the code describing the application of the 35% rule, incorrectly show the front yard measured to the street, which includes the public right of way (but should not). Second, it does not account for the many house configurations where the front wall plane is articulated, and as a result, some land area that should be included in the “front yard” surface area is not currently included. To correct these problems, the LUC proposes replacement of the term “front yard” in the ordinance with a new term, “front surface area”. Our assessment found the impact of this change on conforming properties (e.g. a 60’x 120’ lot with 25’ established building line) to be minimal, in that this would permit a 10’ driveway to the front of a new house and a 3’ walkway to the front lot line. See paragraph 5 below for recommendations that will address existing homes and non-conforming lots.

We recommend a different term, ***front surface area*** to replace ***front yard***. The LUC has drafted the following definition of ***front surface***:

*The front surface area is the area bounded by the front lot line (versus the street as currently shown in the diagrams), the side lotliness, and the perimeter of the front façade of the house.*

*The following definition of “front facade” will also need to be added :*

*The front façade is the exterior face of a building which is adjacent to the front building restriction line. For corner lots, the front façade is determined by the mailing address at the time of permitting.*

We recommend that the term ***maximum non-vegetative surface area***, be replaced with ***maximum surfaced area***, and that a modified version of the proposed County definition of surfaced area (see Zoning Text Amendment No: 09-03) be adopted.

*The surfaced area is the land where the natural surface has been altered by gravel, stone, brick, concrete asphalt, or any other material.*

We recommend that the diagrams included in the existing ordinance be deleted and the new diagrams in Annex 1 be adopted as part of administrative interpretations.

2. The LUC notes that determining where to draw the line between the side yard and the front yard when determining the area to be included in the front surface area is complicated when there are side bump-outs and articulated front facades. The committee proposes that this determination could be simplified using a proportion as follows:

If the distance from the bump out to the front corner closest to the side yard is greater than the width of the bump out, then it is a side yard, not a front yard. Refer to Annex 1.

3. All front surface area improvements should require a permit in order to administer the 35% rule. Otherwise this rule will be unenforceable. Accordingly, to properly and effectively administer Section 4-3(e) the LUC recommends that the Town should require a permit for all front surface area improvements including but not limited to front yard leadwalks, walkways and surfaced areas (for any purpose).

We also recommend that the definition of driveway be modified as follows:

*Driveway: A surfaced area in the front yard that provides vehicular ingress to and egress from a property.*

The 35% rule should be interpreted so as to place an upper limit on front surface area improvements and be administered as an element of the permitting process versus as separate approval/ permitting process.

4. a) Existing driveways, leadwalks, walkways and other surfaced areas should be grandfathered with respect to the 35% rule and may be replaced in-kind subject to permit. Replacement-in kind should be defined to allow for a narrow driveway to be replaced up to the width permitted by the Town Code, and should not be subject to the 35% rule limitation.

b) Similarly, replacement in-kind of leadwalks, walkways and steps/stairs should be defined so as to allow for substandard leadwalks, walkways and steps/stairs to be replaced to meet appropriate standards, and should not be subject to the 35% rule.

c) Non-conforming narrow lots (<60' width) may, by right install a 10' driveway to the garage or outermost perimeter of the front of the house and install, by right, one walkway or leadwalks to the curb or sidewalk and one walkway or leadwalk to the driveway subject to the permit process. These improvements should not be subject to the 35% rule.

5. The LUC recommends that the Council not require a survey accurate to 1" for approval of driveways (except driveways that are near the property line) , leadwalks, walkways and pads. Surveys accurate to 1' should suffice in most circumstances.. A new driveway along the property line should require a 1" survey. .

6. The LUC also suggests that the Council reconsider the limitation of the 35% rule to a single front on corner lots. In the spirit of the initial conception of maintaining green space, the 35% rule should apply to both front yards of a corner lot.

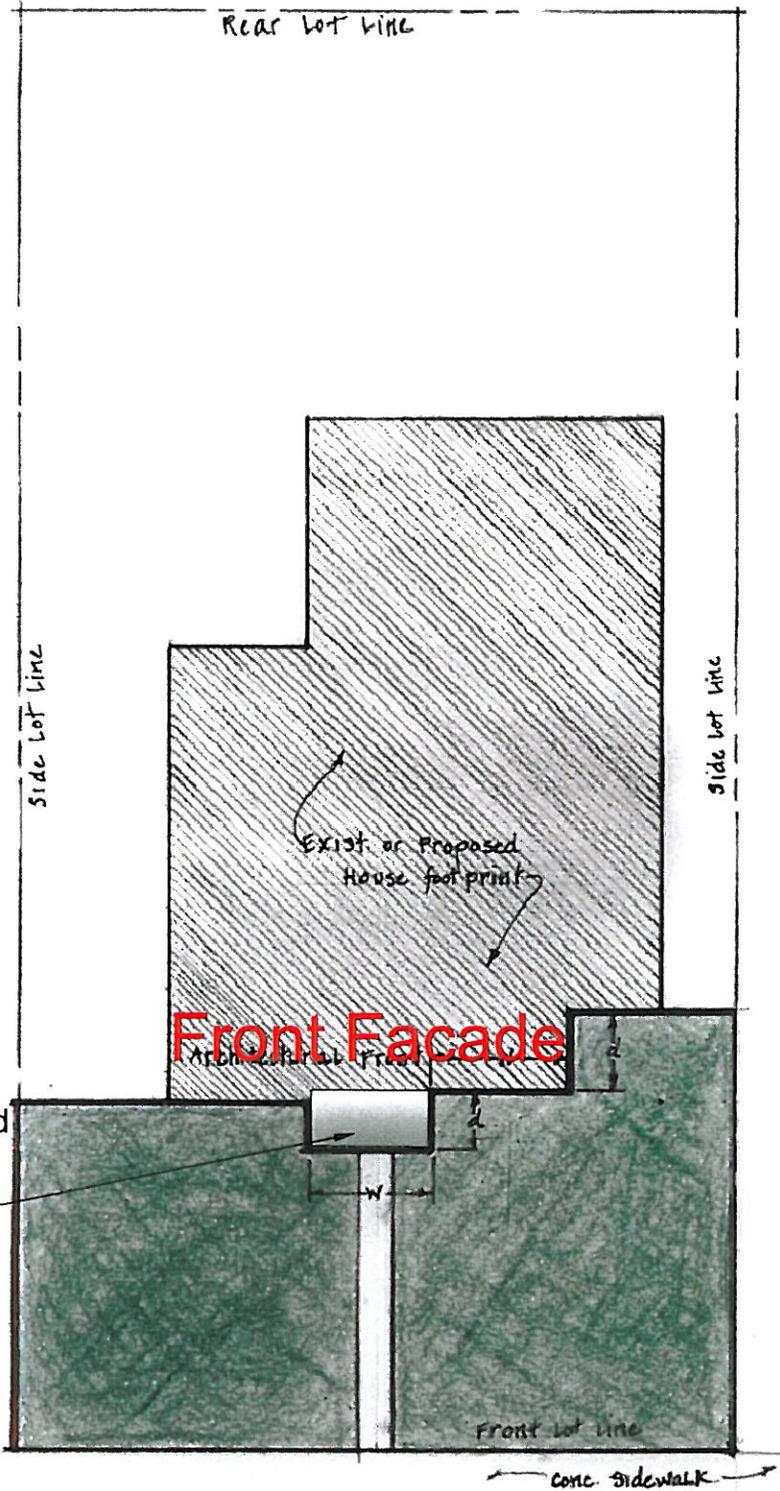
7. The LUC examined an alternative to the 35% rule. An option could be to prohibit front yard parking in any area other than the approved driveway (per the revised definition as proposed in this memo), surfaced areas adjacent to a driveway used for parking, and curves or bends to a driveway that increase the width of a driveway above

10' are prohibited. This could obviate the need for the permitting of walkways, leadwalks and other surfaced areas. However, this could be difficult to enforce. The LUC found that some provisions of the Town's parking code (Chapter 15) are not enforced. Should the Council decide to pursue this option, the enforcement issues would need to be addressed. The LUC respectfully suggests that the Public Services committee review Chapter 15 with an eye toward eliminating unenforced or unenforceable requirements or to initiate or investigate other actions as appropriate.



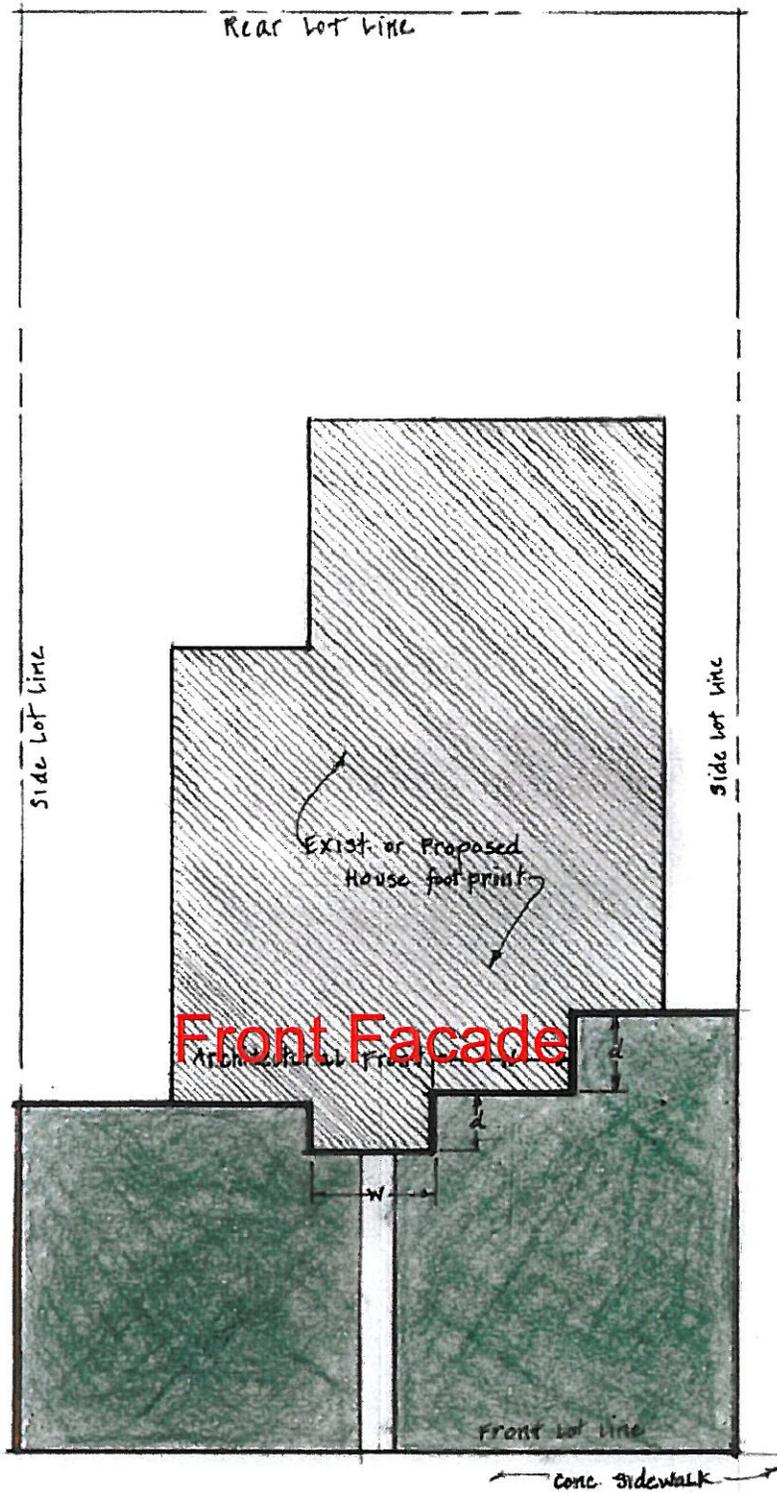
Front surface Area  
Corner lot

Not to scale



Note: open, unenclosed porches to be included as front surface area

"Front Surface Area"  
 The area within the front facade articulations  
 where width ( $W$ ) > depth ( $d$ )  
 Not to scale



"Front Surface Area"

The area within the front facade articulations  
 where width (W) > depth (d)

Not to scale

## Attachment 2

Analysis and Recommendations for rear setbacks of interior lots with side lot lines more than 120 feet but 137 feet or less in length.

The rear setback of interior lots as stated in Section 4-4 (b) (3) of Chapter 4 of the Town Code is calculated using a minimum of 20 feet for lots 120 feet or less in depth but a minimum of 25' for lots greater than 120 feet in depth. Thus, there is an abrupt increase of 5 feet in the base used in the setback formula between 120' and 121' deep lots. As a result, the homes allowed to be built on lots with depths between 120' and 137' have smaller footprints than those allowed on lots of 120 feet or less. This issue has been the subject of only one variance request since the ordinance was adopted more than three years ago. However, based on data supplied to the Setbacks Committee, 227 lots have at least one side lot line with a length that is greater than 120 feet, but 137 feet or less. Using that data approximately 22% of the homes in the Town could be affected by this condition .

Recalling the original discussion of the Setback Committee, a number of the members argued for the use of a 25 foot minimum in the rear setback formula, while others were in favor of retaining the existing 20 foot minimum. The Council during its deliberations decided to strike a compromise and retain the 20 foot minimum for lots more than 100 feet in depth, but 120 feet or less. For lots more than 120 feet in depth, the Council set the minimum at 25 feet.

We recommend that the rear setback be calculated for each side lot line independently. (See Attachment 3) In addition, we recommend that a separate formula be applied to side lot lines greater than 120 feet, but 137 feet or less in length. For lots with sides within this range the rear setback would be the rear setback of a lot 120 feet in depth (34 feet) plus the length of the side in excess of 120 feet. The formula would read as follows:

$$\text{Rear Setback} = 34 + (\text{Length of Side Lot Line} - 120)$$

The other provisions of the rear setback would continue to apply to lots with side lot lines greater than 120 feet, but less than 137 in length.

- The rear setback would be reduced by one foot for each foot that the established building line front setback exceeded 30 feet
- In no event would the setback be less than 25 feet

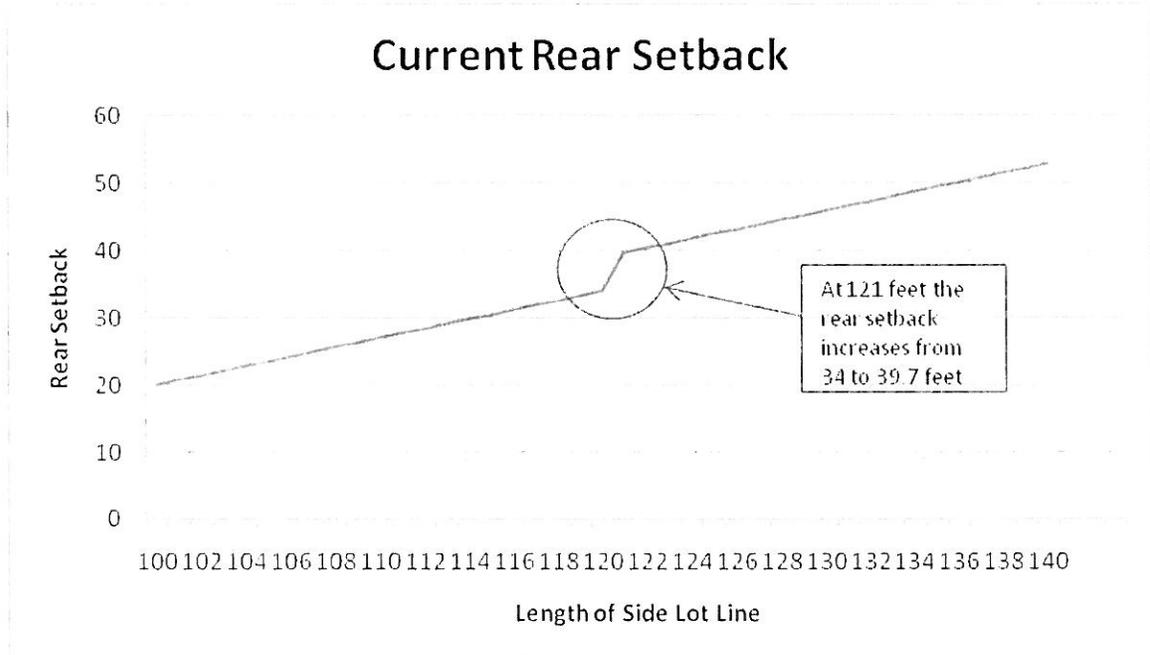
We recommend that no change be made to the rear setback calculation for lots with a side lot line 120 feet or less. In addition, we recommend that no change be made to the rear setback calculation for lots with a side lot line of 137 feet or more.

In Table 2-1 the current rear setbacks for a rectangular lot with a 30 foot established building line are compared with the recommended approach. In each case the recommended approach produces a smaller rear setback by spreading the additional 5 feet of setback (difference between 20 feet and 25 feet) across 16 feet rather than having it abruptly introduced at 121 feet.

Side Lot Length	Current Rear Setback	Recommended Rear Setback
119	33.3	33.3 (unchanged)
120	34.0	34 (unchanged)
121	39.7	35
122	40.4	36
123	41.1	37
124	41.8	38
125	42.5	39
126	43.2	40
127	43.9	41
128	44.6	42
129	45.3	43
130	46	44
131	46.7	45
132	47.4	46
133	48.1	47
134	48.8	48
135	49.5	49
136	50.2	50
137	50.9	50.9 (unchanged)

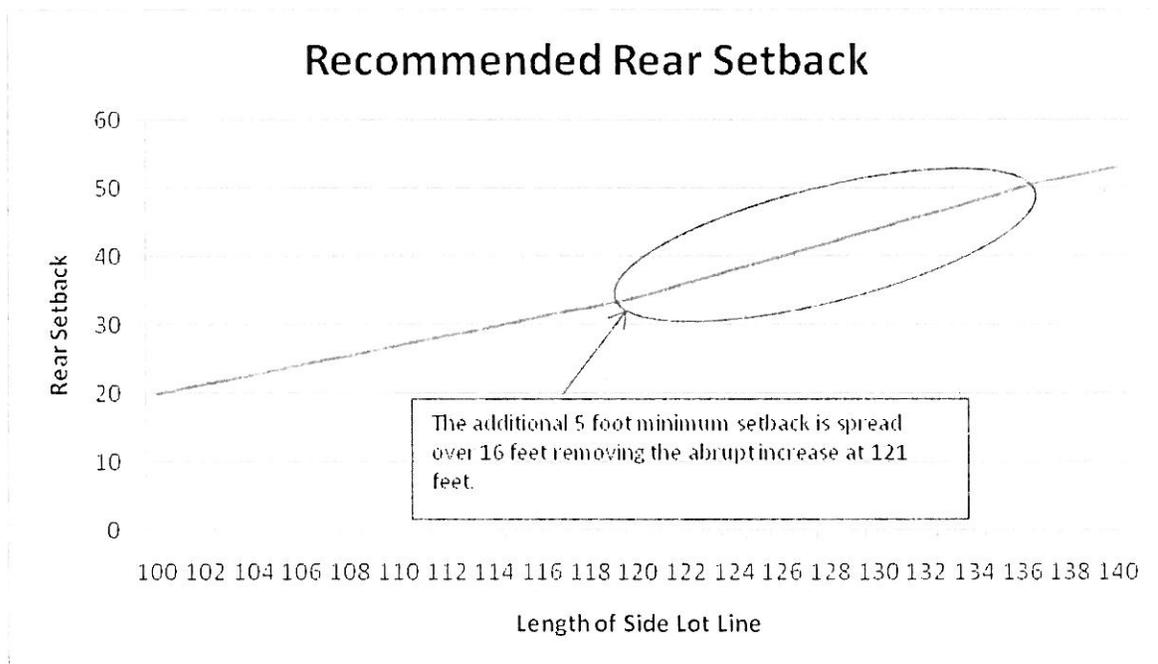
**Table 2-1**

A graph of the current rear setback calculation Chart 2-1 shows the abrupt increase in the rear setback between lots 120 feet deep and lots and 121 feet deep.



**Chart 2-1**

The recommended calculation in Chart 2-2 demonstrates that the additional 5 foot minimum is spread across 16 feet producing a smoothing of the line and removing the abrupt change from 120 feet to 121 feet.



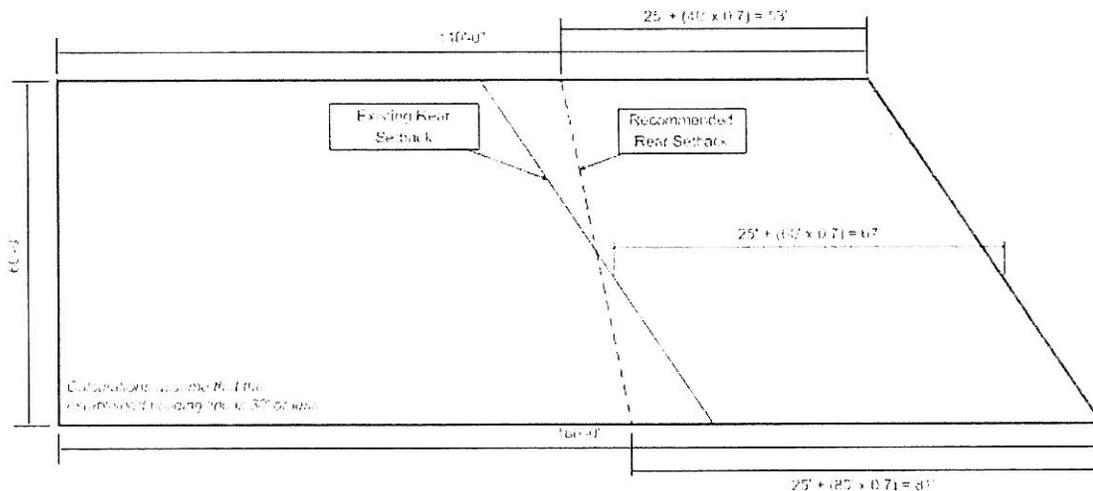
**Chart 2-2**

### Attachment 3

Analysis and Recommendations for rear setbacks where the side lot lines are of unequal length.

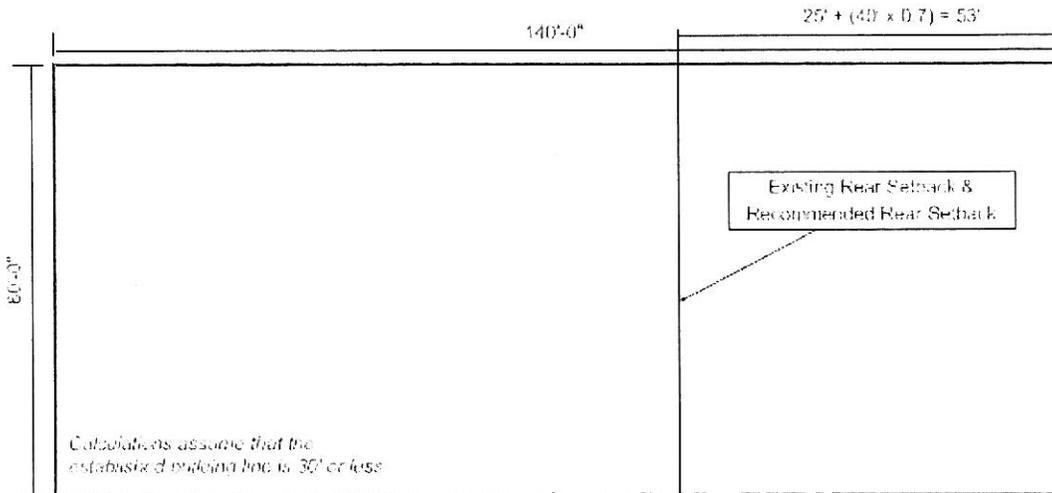
The definition of the *depth of lot* as defined in Section 4-1 Definitions of the Setback Ordinance is “The average (mean) length of the side lot lines.” The ordinance fails to specifically state that the calculated setback line should be parallel to the rear lot line as was the intent of the Setback Committee. When the side lot lines are of unequal length this parallel line can create an abnormally large setback on the shorter of the two sides. This has been the subject of variance requests over the last several years.

We recommend that the rear setback be calculated for each side lot line independently. The rear setback as stated in the ordinance and Attachment 2 for the various lot depths would be applied to each side lot line. A point would be placed on each side lot line based on the appropriate setback. A line would then be drawn to connect the two points and this would be the rear setback line. See drawing 3-1.



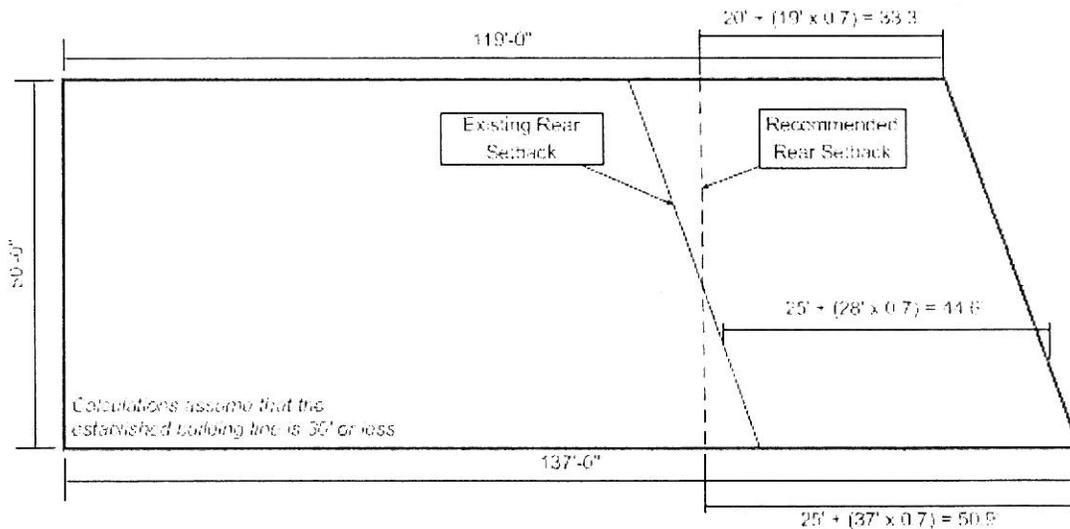
Drawing 3-1

This approach would be used for all lots. For rectangular lots, the calculations would be identical for both sides and would produce a setback line parallel to the rear lot line. For lots with unequal side lot line lengths, the rear setback line would not be parallel to the rear lot line. See drawing 3-2.



Drawing 3-2

This recommended change however may, in some situations, serve to increase the complexity of the rear setback calculation. In the case of side lot lines that fall into different parts of the rear setback formula, one side may have a minimum of 20 feet while the other side may have a minimum of 25 feet. In drawing 3-3 one side is 119 feet and the other side is 137 feet. The shorter side has a minimum of 20 feet and the longer side has a minimum of 25 feet.



Drawing 3-3

The wording of the ordinance for the rear setbacks would need to be adjusted as it references the "depth" of the lot rather than the length of the side lot line.

## Attachment 4 Miscellaneous Issues

The LUC identified several other Chapter 4 issues as discussed below.

- a. The existing Town Code does not properly grandfather the new FAR ordinance. The current language refers to the date of the setbacks ordinance. After our discussions with David Podolsky we recommend that section 4-7 be amended as follows:

*Sec. 4-7. Developmental nonconformities.  
A developmental nonconformity may be maintained, altered or repaired provided that it may not be enlarged beyond the dimensions that existed on May 17, 2008, except in accordance with this chapter.*

- b. Town ordinances and the Town permitting requirements as posted on the Town website do not define right of way disturbance or an activity that may disrupt a public right of way. The Code regulates right of way disturbances in Sections 4-8 and 4-54 & 55. These three sections read together are confusing and require clarification. It is unclear what is meant by the phrase in section 4-54, “The town, by this article, grants to such abutting property owners, {LUC note: abutting to the public right of way} their successors, assigns, and occupants so using this area, a license to continue to use such area license....” with respect to sections 4-8 and 4-55. Furthermore, the current website and permitting guidance and applications imply that such disturbances are limited to driveways, fences, hedges and dumpsters. The LUC recommends that staff and the Town attorney review these sections and clarify the requirements and develop a specific ordinance or executive regulation and corresponding revised permit applications and interpretative guidance. At a minimum such requirements should address front leadwalks, walkways, surfaced areas for any purpose, and excavations for any purpose.
- c. Section 4-56 explicitly requires that “Trees and shrubbery or any other forms of plant growth located on private property shall be set back at least two (2) feet from the public right-of-way.” We find that it is a bit overzealous to prohibit “any other form of plant growth” and therefore recommend that be revised to read, “Trees and shrubbery or any other forms of plant growth **other than low growing grasses and ground cover**, located on private property shall be set back at least two (2) feet from the public right-of-way.” This minor clarification would make this section consistent with Section 4-55.

## Attachment 5

### FRONT WALL REPLACEMENT

A characteristic of the Town streetscape is rolling topography on many of the community's streets, a condition commonly managed by a number and variety of front yard garden and retaining walls. Many of these walls have been constructed all or in part in the public right of way. For clarification, garden walls are considered non-structural elements and typically less than 12 inches in height. Retaining walls are necessary to allow practical use of a yard or lot and should be constructed or repaired to structural standards.

The LUC has studied the issue of replacing front yard garden and retaining walls and has concluded that most, if not all, of these can rightly be replaced in-kind without the need for variances as is currently required. The Committee recommends the following changes to the Town code:

Existing front yard wall replacement in like kind material, dimension and function shall be permitted by right subject to the conditions of any other required building permit, including but not limited to Montgomery County Department of Permitting Services.

Recommended permit application submittal requirements:

- Application Fee
- House location survey or plat showing location of existing retaining wall
- Description of wall, including height and materials
- Signed Building Permit Conditions

*If determined that a County Permit is required for the replacement wall, The Town will not approve the permit application until the County Permit is issued.*

## **Attachment 6**

### **FRONT YARD FENCE REPLACEMENT**

Town of Chevy Chase prides itself on the open greenscape typical throughout the community. The Town code enforces that characteristic by not allowing front yard fences.

The Land Use Committee has studied this issue and determined that routinely allowing replacement of front yard fences by variance contradicts the intent of regulations designed to preserve open space. Repair of existing fences is allowed, although removal of unnecessary fences is encouraged. While there may be occasional conditions on irregular lots, including oddly shaped or some corner lots, the Committee recommends that front yard fence replacement only be allowed subject to the following criteria:

- Minimum size as necessary to accomplish objective
- Attention paid to neighborhood lines of sight
- Maximum height of 36 inches
- Minimum fenestration of 50%
- Fencing not permitted to encroach in public right of way
- Chain link fencing not permitted