To: Planning Commission
From: Morgan Brim, Town Planner/Zoning Administrator
Date: August 13, 2012
RE: Public Hearing Agenda Items IV(B)(1)-(6)- Zoning Text Amendments Section 70 of Town Code

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Item IV(B)(1) – Text Amendment Section 70-13(h)(1) & Section 70-13(k) related to parking requirements

Below is a proposal to amend parking standards of Town Code. The amendments, as proposed, act to decrease the overall minimum parking requirements through a definitional change in the description of "floor area" (sec 70-13(h)(1)) and by establishing a process by which property owners may share a single parking stock.

Currently, when calculating parking using gross square footage, the Town multiplies the square footage of the entire use, including common areas like lobbies or utility rooms shared by multiple tenants, to the required fixed parking standard. For instance, Town Code requires one parking space for every 200 square feet of retail space. By applying the current definition of "floor area", which states "The term "floor area" shall mean the gross floor area of the specific use", would require a 10,000 square foot building to provide 50 parking stalls. This requirement is burdensome to property owners, because most likely a significant portion of the building is dedicated to things other than retail, like stairwells or mechanical closets/shared spaces.

Planning Commission Options:

Option 1: Staff Recommendations

Staff recommends that the Planning Commission vote to forward a favorable recommendation to the Town Council of the following text amendment to Section 70-13(h):

> *Calculating number of off-street parking spaces.* In calculating the number of such parking spaces, the following rules shall govern:
> (1) The term "floor area" shall mean the gross floor area of the specific use multiplied by a core factor of .80.
> (2) When the units of measurement determining the number of required parking spaces result in the requirement of a fractional space, any fraction up to and including one-half shall be disregarded, and fractions over one-half shall require one additional parking space.
> (3) The parking space requirement for a use not specifically mentioned herein shall be the same as required for a use of similar nature.
> (4) In the case of mixed uses, the parking spaces required shall equal the sum of the requirements of the various uses computed separately, except as allowed in section 70.13(k).
> (5) Off-street parking facilities supplied to meet the needs of one use shall not be considered as meeting the off-street parking needs of any other use, except as allowed in section 70.13(k).
> (6) Each parking space shall be a minimum of nine feet in width and 18 feet in length.

Staff recommends adding Section 70-13(k) with the following language:

> The Public Works Director, with concurrence of the Zoning Administrator, may authorize, upon request of a property owner, a parking credit allowance. Such requests shall be in writing, shall state the reasons for the request, and shall include studies, surveys, reports or other evidence to support the request. A parking credit allowance may be authorized as follows:
>
> A. Up to thirty percent (30%) of the required parking spaces may be waived when the use is located in an area of development that is so intense that normal individual demand will not be generated. In considering this waiver request, weight shall be given to the availability of public transportation, the proximity of commercial parking garages or lots, and the expected overlap of commercial and employment activities in the area.
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> B. Credit may be given for parking spaces required for one use when parking spaces required for another use on the same lot, or on an adjacent lot, can be used because of a difference in normal operating hours. This credit may be given for up to seventy-five percent (75%) of the required spaces when no overlap in normal operating hours occurs, and up to twenty five (25%) of the required spaces when an overlap of less than four (4) hours per day occurs, provided legally sufficient agreement is executed when different property owners are involved.

Option 2: Applicant Proposals

The Planning Commission may also recommend approval of the applicants proposed text amendments, as follows:

> **Amend section 70-13. — Minimum off-street parking.**
>
> Amend subsection (h) (1)
>
> (h) (1) The term "floor area" shall mean the gross floor area of the specific use multiplied by a core factor of .75.
>
> Add a subsection (k)
>
> (k) Parking credit allowance.
>
> The zoning administrator may authorize, upon request of a property owner, a parking credit allowance. Such request shall be in writing, shall state the reasons for the request, and shall include studies, surveys, reports or other evidence to support her quest. A parking credit allowance may be authorized as follows:
>
> A. Up to 30% of the required parking spaces may be waived when the use is located in an area of development where normal individual demand will not be generated. In considering this waiver request, weight shall be given to the availability of public transportation, the proximity of commercial parking garages or lots, and the expected overlap of commercial and employment activities in the area.
>
> B. Credit may be given for parking spaces required for one use when parking spaces required for another use on the same lot, or on an adjacent lot, can be used because of a difference in normal operating hours. This credit may be given for up to 75% of the required spaces with no overlap in normal operating hours occurs in up to 25% of the required spaces when overlap of less than four hours per day occurs, provided a legally sufficient agreement is executed whenever different property owners are involved.

Option 3: Hold Vote until Later Date

If the Planning Commission feels that they are not ready to make a decision, they may hold their vote until a future meeting, discuss the proposal in another work session or meeting and/or request additional information from the applicant or staff.

Option 4: Recommend Denial

The Planning Commission may recommend denial of the proposed text amendments.

Item IV(B)(2) – Text Amendment Section 70-282(B)(14) related to the allowance of residential on the ground floor

The applicant has submitted the following amendment to what was Section 70-282(a)(40) of Town Code, but due to an approved text amendment in September of 2011, is now Section 70-282(B)(14) of Town Code:

> (40) Residential, multifamily, located above a commercial, retail or office use on the ground floor, subject to securing a conditional use permit. For the purposes of this section the commercial, retail, or office use shall comprise not less than 25% of the gross floor area first floor of a multifamily structure.

As proposed by the applicant, this amendment has the potential to considerably alter the future development of Main Street. The majority of Main Street is zoned B-2. Currently, the B-2 zone is designed to promote commercial activity at a neighborhood level, while encouraging pedestrian activity from local residents. The intent section of the B-2 zone states: "**Sec. 70-281. - Intent.** This district is intended to provide a limited range of retail, commercial and convenience business uses to serve public need at the neighborhood level."

The proposed change would allow residential uses to occupy up to 75% of the ground floor area. This would limit the amount of "retail, commercial and convenience business uses", with ground floor accessibility, to serve the needs of the surrounding neighborhood. The Town would like to see commercial activity on Main Street and the B-2 zone currently supports this goal. All of the allowable and conditional uses in the B-2 zone support some type of commercial presence, while allowing churches, schools and like uses. Residential is only allowed in limited circumstances and must be placed above some form of commercial. However, if a property owner feels that residential is the most logical choice to develop on their property, they could construct a substantial amount of residential on the 2nd, 3rd or even 4th floors of the building. For instance, if a four story building with a footprint of 10,000 square feet and total gross floor area of 40,000 square feet were to be constructed, this building could contain three floors of residential and only one floor, on the ground level, as commercial. The point being, the Town's current code is already written to allow around 75% of a building (if built to four stories) to be dedicated to residential. Changing the code to allow an additional 75% of the ground floor to be dedicated to residential, would in effect, completely alter the purpose of the zone and its application to Main Street. In the instance of a four story, 40,000 square foot building, this amendment could reduce the required commercial area to a mere 6.25% of the total building space. This creates a residential building with a small commercial component, which directly conflicts with the intent of the B-2 zone. If the applicant insists on locating residential on the ground floor they should apply for a zoning map amendment and request that a residential zone be applied to their property. This way the B-2 zone

stays intact as a commercial district. However, it should be known that staff would probably not recommend a zone change to residential on Main Street.

The applicant's proposal to allow residential on the ground floor conflicts with the Land Use Plan of the Town's Comprehensive Plan. The Main Street action strategy LU-MS-1.2 of the Comprehensive Plan states "Integrate medium density buildings with retail/office on the first floor with residential above" and action strategy LU-MS-1.5 states "Buildings should include small-scale neighborhood retail uses, such as cafes, delis, on the ground level in buildings with three or more stories."

Staff recognizes that a small portion of the ground floor will need to be dedicated to residential amenities, for a lobby, elevators, mechanical/trash and leasing office. These uses should be located on the rear of the building, away from Main Street and should not include more than 15% of the ground floor area. Any square footage of the main floor that is dedicated to residential amenities should be supplemented with commercial uses on the above floors. If residential accessory uses comprise 2,000 square feet of the ground floor, then 2,000 square feet shall be dedicated on upper floors towards a commercial use.

Planning Commission Options:

Option 1: Staff Recommendations

Staff recommends the following amendment to Section 70-282(B)(14) of Town Code:

(14) Residential, multifamily, located above a commercial, retail or office use on the ground floor (a) Up to 15% of the ground floor may be dedicated to residential amenities. Residential amenities shall not be located adjacent to Main Street or within 50 feet of the front façade of the building. Residential amenities shall be located toward the rear of the building. An equal amount of square footage dedicated to residential amenities on the ground floor, shall be added to the upper floors of the building as commercial space. No residential amenities are permitted in single story buildings.

Option 2: Applicant's Proposal

The Planning Commission may recommend approval of the applicant's proposed text amendment, stated below:

70-282(B)(14) of Town Code:
Residential, multifamily, located above a commercial, retail or office use on the ground floor. For the purposes of this section the commercial, retail, or office use shall comprise not less than 25% of the gross floor area first floor of a multifamily structure.

Option 3: Alternative Amendment

The Commission could recommend an amendment to allow some residential on the first floor but require building sides fronting on Main Street to remain commercial. This option directly conflicts with the above stated section of the Comprehensive Plan.

Option 4: Hold Vote until Later Date

If the Planning Commission feels that they are not ready to make a decision, they may hold their vote until a future meeting, discuss the proposal in another work session or meeting and/or request additional information from the applicant or staff.

Item IV(B)(3) – Text Amendment Section 70-287 related to allowable heights in the B-2 zoning district to allow modification of height and setback requirements

The applicant is requesting an amendment to Section 70-287 regarding allowable heights for buildings in the B-2 zone. Currently, the B-2 zone prohibits structures from exceeding a height of 50 feet from grade of the ground and certain architectural features from exceeding a height of 55 feet. The applicant's proposal, which is shown in option 2 of this section, would allow an increase in height of any structure and a modification to building setbacks through a conditional use permit.

This proposed amendment provides a lot of flexibility to a property owner in the B-2 zone and could help intensify land use along an important corridor, Main Street. Also, it encourages economic development in the Town by providing an incentive to develop. Building higher means less land is consumed and the Town is provided with crucial tax generating properties. The drawback to the proposed text amendment, as drafted, is there is not a cap to the building height and the Town may find itself trying to negotiate future development proposals down to height that can reasonably fit in with the current architectural make up of Main Street. Does a ten or twelve story office building fit in with the small town values of Dumfries? A less risky solution would be to provide a height cap at the lesser of six stories or 75 feet, with an allowance of up to 80 feet for mechanical equipment and some architectural elements.

Planning Commission Options:

Option 1: Staff Recommendations

Staff recommends that the Planning Commission provide a recommendation of approval to the Town Council for the follow amendment to section 70-287:

Sec. 70-287. - Height regulations; maximum structure limitation.

~~No structure shall exceed~~ The maximum height of structures in the B-2 zone is 50 feet ~~in height~~ from grade of the ground, excluding mechanical equipment, which shall be adequately screened. No other architectural features such as false facades and towers, antennas, aerials, satellite dishes, spires, belfries, cupolas, chimneys, flues, flagpoles and steeples and similar devices shall exceed 55 feet in height from grade of the ground. However, additional height may be approved through approval of a conditional use permit. In no case shall building height exceed the lesser of six stories or 75 feet. Mechanical equipment, architectural features, as listed above, shall not extend higher than 80 feet. Additional height is not guaranteed, and may only be approved upon finding that the additional height will not adversely affect surrounding land uses. Minimum building setbacks for building sides adjacent to residential property or property zoned residentially shall be increased by one foot for every additional one foot of height that a building extends above 55 feet. As part of the approval to increase height, the Council may also reduce the required minimum front setback.

Option 2: Applicant's Proposal

The Planning Commission may recommend approval to the Town Council for the follow amendment to section 70-287, as proposed by the applicant:

Amend section 70-287. — Height regulations; maximum structure limitation.

No structure shall exceed 50 feet in height from grade of the ground, excluding mechanical equipment, which shall be adequately screened. No other architectural features such as false façades and towers, antennas, aerials, satellite dishes, spires, belfries, cupolas, chimneys, flus, flagpoles and steeples and similar devices shall exceed 55 feet in height from grade of the ground. The Council may approve increase in the permitted height of any structure as a condition of any conditional use permit special use permit or rezoning. As part of an approval to increase height, the Council may modify setback regulations, provided any minimum setbacks and yards required elsewhere in this Chapter shall be met.

Option 3: Hold Vote until Later Date

If the Planning Commission feels that they are not ready to make a decision, they may hold their vote until a future meeting, discuss the proposal in another work session or meeting and/or request additional information from the applicant or staff.

Option 4: Recommend Denial

The Planning Commission may recommend denial of this proposed text amendment.

Item IV(B)(4) – Text Amendment Section 70-542 Procedures related to the process and responsible agents for approval of site plans

Town code requires that site plan approvals to go through both the Planning Commission and Town Council for approval. This is an arduous process that does not provide anything substantive to the final outcome of the project. Site plans are a by right use and are required to follow the standards within Town Code. The Planning Commission and Town Council are not allowed to add conditions to a site plans approval and must provide a positive vote if the standards of the Town Code have been met. Staff recommends amending Section 70-542 to allow the Zoning Administrator and Public Works Director to approve site plans administratively, thus saving applicants a considerable amount of time.

Option 1: Staff Recommendations

Staff recommends that the Planning Commission provide a favorable recommendation to the Town Council to amend Section 70-542 of the Town Code as follows:

Section 70-542 Procedures:

(a) The zoning administrator is responsible for checking site plans, preliminary and final, for general completeness and compliance with such administrative and legislative requirements as may be established by routing copies thereof to appropriate reviewing departments, and outside agencies.

(b) All applicants are encouraged to request a preapplication review conference. The purpose of the conference is to discuss the basic site plan, off-street parking, signs, other town ordinance requirements, utilities, and drainage, and to consider preliminary features of the proposed development as they relate to this article.

(c) Sufficient copies, as required by the administrator, of the final site plan shall be submitted to the administrator.

(d) Upon receipt of the first review comments from the reviewing agencies, the zoning administrator or designated agent shall transmit review comments to the applicant for correction or implementation.

(e) The applicant shall then return to the administrator, revised plans addressing all concerns and noting all changes. The administrator shall then distribute and coordinate all further comments in the same manner until the final plan conforms with all technical requirements of all applicable codes.

~~(f) The administrator shall submit final site plans to the planning commission for review and recommendation. The planning commission shall recommend approval, approval subject to conditions, or disapproval to the town council within 60 days upon their receipt of the final site plan.~~

~~(g) The administrator shall then forward the final site plan to the town council for action.~~

(f) The Zoning Administrator and the Director of Public Works, jointly, are hereby designated as the agents responsible for reviewing and approving site plans as designated by the governing body.

Option 2: No Change

The Planning Commission may vote to recommend that no change in site plan review process occur.

Item IV(B)(5) – Text Amendment Section 70-22 (Temporary Uses) & Section 70-23 (Temporary Use General Standards)

The Town Council has directed the Planning Commission to consider the allowance of food vendors as permitted through a temporary use permit. The Planning Commission was not in favor of allowing food vendors to operate independently in a "road side" setting or on private property, like a parking lot. The Commission agreed that food vendors would be appropriate in conjunction with a larger event permit.

Planning Commission Options:

Option 1: Staff Recommendations

Staff recommends that the Planning Commission provide a recommendation of approval to the Town Council for the follow amendments to section 70-22 & 70-23:

Sec. 70-22. - Temporary uses.

The following temporary activities, and activities of a similar nature, may be administratively approved in any zoning district by the zoning administrator through the issuance of a temporary use permit when, in the administrator's judgment, the public health, safety and welfare will not be impaired, and when the use is not so recurring in nature as to constitute a permanent use, and when the following enumerated conditions are met:

(1) Roadside stands for the temporary retail sales of seasonal and holiday goods, excluding fireworks, for a period not to exceed 30 consecutive days, and provided that:

a. No structure of a permanent nature shall be constructed;

b. Removal of temporary structures shall be guaranteed in writing, and such structures shall be removed within 48 hours after permit expiration;

c. Written approval of the owner of the site shall be obtained. This approval shall identify

the site address, owner's name, owner's mailing address, owner's telephone number, owner's acknowledgment of proposed activity and dates activity is to operate;

d. Adequate and safe ingress and egress, such that the normal traffic pattern shall not be disrupted, shall be provided;

e. Removal of all freestanding signs, trash, or debris from the site and the immediate vicinity, upon termination of the activity shall be guaranteed in writing, and accomplished within 24 hours after permit expiration;

f. Documentation or a letter of permission shall be provided stating the specific location of rest rooms that will be available to the applicant throughout the duration of the activity. Adequate sanitary facilities shall be provided at the site, if deemed necessary by the administrator, for the intended activity and, when necessary, shall be approved by the health department;

g. A bond, cash escrow or other suitable guarantee in the amount listed in the Town's fee schedule ~~of $100.00~~ shall be provided to insure that conditions of the permit will be met;

h. The bond or other guarantee, required by subsection (a)(1)g., of this section, shall be forfeited to the town if the site is not adequately cleared of all trash debris, signs and temporary structures, the activity remains on the site after expiration of the permit, or violations of this section or the conditions of the permit are established (but nothing in this forfeiture provision shall limit the town's ability to enforce this section in any manner provided by law);

i. No more than four such permits shall be issued for the same lot during a calendar year; ~~and~~

j. Adequate parking for the activity intended, but no less than four parking spaces, shall be provided on-site. Parking or stopping in public rights-of-way shall be prohibited, unless approved by the state department of transportation and/or the town public works department~~.~~; and

k. No sale of food that has been cooked or prepared onsite is permitted, excepted as stated in Sec. 70-22(3) of this Code.

(2) Carnivals, circuses, craft fairs, concerts, flea markets, car shows, meetings, religious activities not held on church property, business catered events, and similar outdoor activities, for a period not to exceed 14 days, provided that:

a. All the standards of subsections (1)a—(1)f., of this section shall be met;

b. Carnivals and circuses shall be sponsored by a town or the county nonprofit benevolent, religious, educational, patriotic, civic or charitable organization or recognized chapter thereof;

c. Adequate parking for the intended activity shall be provided on the site or on property immediately contiguous to the site. Parking or stopping in public rights-of-way shall be prohibited unless approved by the state department of transportation and/or the town public works department;

d. A bond, cash escrow or other suitable guarantee in the amount listed in the Town's fee schedule ~~of $250.00~~ shall be provided to insure that conditions of the permit will be met;

e. The bond, or other guarantee, required by subsection (2)d., of this section shall be forfeited to the town if the site is not adequately cleared of all trash, debris, signs and temporary structures, the activity remains on the site after expiration of the permit, or violations of this section or the conditions of the permit are established (but nothing in this forfeiture provision shall limit the town's ability to enforce this section in any manner provided by law); and

f. No more than six such permits shall be issued for the same lot during a calendar year.

(3) Vendors selling food products shall be permitted only in conjunction with a temporary activity listed in Sec. 70-22(2) of this Chapter, provided that:

a. A business license is obtained and all applicable standards of chapter 18 of this code are met;

c. Within seven days of the conclusion of the event, all gross receipts are provided to the town for tax verification purposes; and

d. A bond, cash escrow or other suitable guarantee, as listed in the Town's fee schedule, shall be provided to insure that conditions of the permit will be met.

e. The bond, or other guarantee, required by subsection (3)d., of this section shall be forfeited to the town if the site is not adequately cleared of all trash, debris, signs and temporary structures, the activity remains on the site after the expiration of the permit, or violations of this section of the conditions of the permit are established (but nothing in this forfeiture provision shall limit the town's ability to enforce this section in any manner provided by law).

Sec. 70-23. - Temporary use general standards.

(a) Temporary use permits shall be issued in accordance with the following standards:

(1) Each activity or event shall be separated by a period of not less than 30 consecutive days from the previous event on that lot.

(2) No violation of law occurs in connection with the activity. Any illegal activity shall be grounds for immediate termination of the permit by the zoning administrator. Termination of the permit for this or other proper reason shall be accomplished by posting a notice of violation at the temporary use site.

(b) Only one temporary use permit can be active on a lot, shopping plaza, multi-unit retail strip, office complex or parking lot shared by multiple businesses or uses at any time, unless an event or activity is sponsored, managed or operated by a nonprofit organization, and in the judgment of the zoning administrator, adequate space exists for two temporary uses and the goals of section 70-22 et seq., are not jeopardized. In the event the zoning administrator so finds, no more than two events or activities can be active on the same lot at the same time.

(c) Nonprofit organizations shall submit a copy of tax exempt status or other documentation with the temporary use permit application to demonstrate bona fide nonprofit or not for profit status.

(d) For any temporary activity sponsored, managed or operated by a nonprofit organization, a representative from the nonprofit organization shall be present at the activity at all times it is in operation.

(e) All temporary activities and any appurtenant structures, signs, goods and other features must be set back from any public right-of-way at least 20 feet.

(f) No temporary use permit shall be issued to an applicant until at least 30 days after any permit issued to that applicant on a adjoining lot has expired.

(g) The zoning administrator may deny approval of all temporary activities on a site for a period of up to one year if any temporary activity is commenced without or prior to all required approvals by the town or other agencies, or the conditions of a previously issued permit were violated.

(h) Temporary activities authorized in accordance with section 70-22 shall be subject to all other applicable town permits and approvals including, but not limited to; schematic layouts, occupancy permits, hazardous use permits, itinerant vendor licenses, sign permits and similar requirements.

(i) Additional conditions may be required, as deemed reasonable and necessary by the zoning administrator, for any temporary activity.

Option 2: Allow food vendors to operate independently

The Planning Commission may still recommend an alternative text amendment to allow food vendors to operate independent of events, in roadside settings or on private property. However, as stated before, the Commission was adamantly opposed to this option, as expressed during the May work session.

Option 3: No Change

The Planning Commission may vote to recommend that no change occur to this section of Code.

Option 4: Hold Vote until Later Date

If the Planning Commission feels that they are not ready to make a decision, they may hold their vote until a future meeting, discuss the proposal in another work session or meeting and/or request additional information from staff.

Item IV(B)(6) – Text Amendment Section 70-679(a) Meeting Times for the Architectural Review Board

Section 70-679(a) of the Town Code requires the Architectural Review Board to meet at 7:00 PM. The ARB has requested that no meeting time be reflected in Code. They would like the flexibility to meet when they find it convenient. Meeting times will still be posted on the Town website and meeting agenda.

Planning Commission Options:

Option 1: Staff Recommendations

Staff recommends that the Planning Commission provide a recommendation of approval to the Town Council for the follow amendment to section 70-679(a):

Sec. 70-679. - Meetings.

(a) Regular meetings of the ARB shall be held at least once a month when an application has been filed for its consideration. ~~The meeting shall open at 7:00 p.m., local time, and adjourn upon completion of the business brought before it.~~ The meetings shall be held in the town hall or as duly advertised and noted ~~conference room~~. The ARB shall meet at least three times per calendar year.

Option 2: No Change

The Planning Commission may vote to recommend that no change occur to this section of Code.