

# **ZONING FOR SMALL BUSINESSES IN ALEXANDRIA**

**Department of Planning and Zoning**

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## Background and Summary

The Small Business Task Force (SBTF) has identified a variety of programs and requirements of City government that create obstacles for small businesses to open, become established and thrive in Alexandria. In response, on June 26, 2007, City Council asked staff to review the SBTF recommendations and make proposals for change.

As to zoning, the SBTF recommends that the SUP requirement for certain businesses be eliminated. In addition, the SBTF recommends that the zoning processes that attend opening and modifying businesses over time be streamlined in order to avoid the burden in terms of time, money and uncertainty that procedural hurdles create.

### **SUP Protection**

The policy issue raised by the SBTF recommendations is whether the protections afforded by Alexandria's reliance on a case by case zoning review for certain uses is worth the burden it creates for small business. The SUP process provides three protections which are not afforded to permitted uses in the zoning ordinance:

- oversight on a case by case basis to ensure that a new use is compatible with its surroundings and appropriate to its site;
- an opportunity for the public to speak at two public hearings about their concerns; and
- attaching conditions to the approval, with review of them over time.

The SUP process requires an application, review by relevant staff departments, notice to citizens, and two public hearings. After a use's initial approval, the City has an elaborate system and process if a business owner wishes to expand or change the use or sell it to a new owner. One particularly criticized process is the "change of ownership" approval requirement, but small changes to the use also require specific approval, limiting a business' ability to grow and change without city intervention.

Special Use Permits have been part of the Alexandria Zoning Ordinance since the early 1930s, and the essence of today's SUP system was established in the zoning ordinance of the early 1950s. The 1992 Zoning Ordinance relied heavily on the SUP as a discretionary mechanism, with the result that many additional uses were brought within the SUP ambit at that time. Experience over the last 15 years, however, demonstrates that many of the uses captured by the 1992 revisions may not require SUP scrutiny, with its public hearing process, which is burdensome to the small business owner.

Although Alexandria requires that many businesses be treated as "special uses," most uses permitted by the zoning ordinance do not require SUP approval. Doctors' offices, retail stores, beauty salons, grocery stores, laundromats, and many other uses may be established without special review and approval.

### **P&Z Recommendations**

Planning and Zoning staff has attempted to balance the need for protection for the community against the burden the SUP requirement imposes on small businesses in its review of the SBTF

recommendations (attached as Appendix I), and has made a judgment about whether the uses selected could be changed from SUP uses to permitted uses, or in some cases to SUPs granted administratively, without harm to the public. It found that it could support most of the SBTF recommendations, although it has modified a few of the SBTF recommendations slightly, and expanded a few suggestions for consistency. Specifically, P&Z recommends the following changes:

- **Massage**, if part of another, larger use, such as a beauty salon or a hotel, would be permitted. If it is an independent use, an SUP will be required.
- **Child care center or preschool** in commercial zones typically have few issues attending them, and can be permitted without a public hearing.
- **Child care center or preschool** in a residential zone in a church or school building, has limited impact because it is part of a larger institution.
- **Small bakeries** with retail are now permitted as a retail use.
- **Small commercial schools**, such as yoga, personal training, or computer classes will not require SUP approval.
- **Garden center** provided it has no negative impacts on residential uses, and has adequate room for deliveries and loading. An administrative SUP would be required to ensure a judgment about distance from residential is applied.
- **Outdoor food and crafts market**, which is not a typical use, provided the requirements applied in the past, for example, to the Del Ray Farmers' Market, are met, with an administrative SUP.
- **Restaurants** are treated differently in P&Z's proposal, depending on their location: **restaurants in a shopping center, an industrial or flex space complex or a hotel** are allowed as permitted uses, but subject to performance standards; and **restaurants citywide (not in the above locations)** with 60 seats or less and limited entertainment are allowed by administrative SUP subject to standards and the ability of the Director to require a public hearing in an appropriate case. This approach is now used on Mount Vernon Avenue, in Carlyle and in the Arlandria area.
- **Health and athletic club in a shopping center, an industrial or flex space complex or a large office or mixed use complex** because the principal issue with health clubs is the parking impact and parking requirements will still apply fully.
- **Overnight pet accommodations** are now permitted only in the Industrial zone, but a shopping center, especially a large one, may want to include this use. With appropriate oversight by the center management and with performance standards, P&Z recommends the use be allowed.

- **Light auto repair in industrial/flex space center** similar to the business facilities on Eisenhower Avenue west of Clermont have negative impacts on few if any other uses.
- **Catering in an industrial/flex space center** is similar to the light auto repair, with minimal impacts given the location and setting.
- **Convenience store in an office building of four stories or more**, for the convenience of employees and pedestrians because, similar to a shopping center, management can be assumed to oversee issues that may arise.
- **Convenience store, and other limited commercial uses**, on the ground floor or basement of a **large apartment building**, which would change the RC and RCX zones where those uses now require SUP approval.
- The **change of ownership** and **minor amendment** procedures will be streamlined, eliminating inconsistencies and confusion, with the result that the change of ownership could be a shorter, 14 day process instead of the six weeks currently needed; the definition of a “minor amendment” is changed, broadening its scope slightly.

Staff supports the above changes for several reasons. First, it has analyzed each of the above changes and found there to be little need for “special” oversight for this limited list of uses. Second, P&Z believes that including **performance standards** for the above uses in the zoning ordinance will provide much of the protection supplied now by the SUP conditions. The standards will be fashioned from the historical conditions applied to SUP approval for these uses and, being part of the zoning ordinance, will be a legal requirement; failure to comply with the standards in the ordinance will be a zoning violation. Third, **parking requirements will not be changed** by the proposed changes. Any use that is deficient in parking will require a parking reduction SUP to be approved. Finally, staff notes that the above list is a limited and targeted one; most SUP requirements remain in the city’s zoning without change.

P&Z is also recommending these changes because it has experienced the confusion, frustration and disappointment of business owners when the zoning requirements are explained to them. The proposed changes will help foster an environment where small businesses are welcomed, encouraged, and supported by City government. Future monitoring will ensure that any problems that arise can be addressed by future amendments.

### **Next Steps**

After community input, P&Z staff will undertake the final, detailed zoning ordinance drafting to make the proposed zoning changes into a text amendment for consideration by the Planning Commission and City Council, with public hearings and potential adoption by June 2008.

## **LIST OF PROPOSED CHANGES**

### **I. USES PERMITTED WITH PERFORMANCE STANDARDS**

- Accessory massage
- Child care center and preschool in commercial zones
- Child care center and preschool in residential zone in a church or school building
- Small commercial school
- [Small bakery]

### **II. USES PERMITTED WITH ADMINISTRATIVE SUP SUBJECT TO STANDARDS**

- Outdoor garden center
- Outdoor food and crafts market
- Restaurants, 60 seat maximum and limited alcohol and entertainment

### **III. USES PERMITTED DEPENDING ON THE LOCATION AND TYPE OF BUILDING**

#### *Shopping Center*

- Restaurant
- Health and athletic club
- Dog accommodations overnight

#### *Hotel*

- Restaurant

#### *Industrial or Flex Space Center*

- Light auto repair
- Catering
- Restaurant
- Health and athletic club

#### *Large Office or Mixed Use Complex*

- Convenience store
- Health and athletic club

#### *Large Apartment Building*

- Convenience store, other limited commercial uses

### **IV. PROCEDURAL CHANGES**

- Minor Amendment
- Change of Ownership

## **I. USES PERMITTED WITH PERFORMANCE STANDARDS**

### **MESSAGE IF INCIDENTAL TO ANOTHER USE**

The SBTF recommends allowing a massage establishment if incidental to another use without the need for a SUP, and staff supports that approach.

The zoning ordinance now provides a distinction between a principal or main use and one that is accessory or subordinate to a principal use. Both terms, “principal” and “accessory,” are defined zoning terms. However, because of the historical concern and need for oversight of massage uses in Alexandria, P&Z has followed a restrictive interpretation of what constitutes “accessory” massage. Specifically, to date, an accessory massage establishment is one with no more than one massage therapist at work at any one time. All other massage facilities require SUP approval.

Massage establishments are heavily regulated businesses. In addition to any zoning review and approval, massage therapists and massage establishments are subject to review by the state and by the local police department. In addition, health department permits and building code requirements, as well as other laws and oversight, apply.

As examples, each of the new Kimpton hotels sought to include a massage business within its new Alexandria hotels. The new Monaco Hotel includes massage services for guests only and, as to zoning, the use was considered accessory. However, because the day spa at the new hotel at 1700 King Street will be open for both hotel and public customers, and includes multiple therapists, an SUP was required. Sugar House was required to obtain SUP approval for its massage services, even though the main use, the beauty salon and day spa does not require an SUP. Because massage is often just one of a series of beauty and therapeutic services offered at the same business, staff supports allowing massage without an SUP if it is part of another use, such as a beauty parlor, wellness center, day spa or a hotel, regardless of the number of therapists. Under this approach, a massage establishment will still require an SUP if it is a stand alone use, but will not require an SUP if it is part of another use accessory to it.

To effect a change in the way this use is handled, however, a text change is not necessary. Instead, staff proposes a change to its interpretation, making clear that all massage establishments that are accessory to another, principal use, such as a hotel, beauty salon, or day spa, without regard only to the number of therapists, will not require SUP approval. P&Z will adopt such an interpretation to be used administratively.

### **CHILD CARE CENTER AND PRESCHOOL IN COMMERCIAL ZONES**

Each commercial zone allows a “day care center,” which is defined to include the care or supervision of either children or adults, but the use requires SUP approval. The land use questions related to day care centers typically concern adequate parking for staff, adequate areas for drop off and pick up of children, adequate outdoor play area, and potential noise and other impacts on adjacent uses. However, these issues can be addressed by performance standards and reviewed administratively by staff. If the proposed change is limited to the commercial zones, and compliance with the performance standards is required, the potential impacts should be

minimized. Furthermore, day care centers and preschools are subject to extensive state review. Licenses are required and operations are scrutinized for safety, staffing, and outdoor play space. Therefore, staff proposes that day care centers be permitted in commercial zones without an SUP, but with performance standards included in the zoning ordinance, including a requirement that a state license has already been issued prior to the onset of operations.

In addition, staff proposes to clarify the definition of early child care locations in the zoning ordinance, as follows:

- The **day care center** definition should be amended to specifically state that it includes facilities known as “child care centers” and “preschools,” including both half day and full day programs. These are the terms now used by the City’s Office of Early Childhood Development and by the providers. The new definition language is proposed to be:

*Sec. 2-133 Day care center.* A facility other than a private single family dwelling, which receives children or adults for care, protection and supervision during part of a 24 hour day unattended by a parent or guardian. The term includes a child care center, preschool, nursery school and day nursery, and includes half day and full day programs.

- The terms “**day nursery**” and “**nursery schools**,” which relate primarily to the residential zones, but also to some commercial zones, will be eliminated from the zoning ordinance, because, in modern parlance, all early childhood facilities are encompassed within the clarified definition above for “day care center.”

It is not difficult to simply amend each of the commercial zones to remove the day care center use from the list of SUP uses and add it to the list of permitted uses. P&Z supports that approach.

### **CHILD CARE CENTER AND PRESCHOOL IN RESIDENTIAL ZONES**

In residential zones, a variety of early childhood terms and facilities are now used and allowed by the zoning ordinance, including:

**Child care home**, defined to include children under 14, permits up to and including 5 children without an SUP and up to 9 children with a SUP, counting resident and nonresident children in both cases.

**Day nursery**, which is defined to mean a facility offering care to six or more children under 14, is allowed in a church or school building in the R-12, R-8, R-5 and R-2-5 zones with SUP approval.

**Nursery school**, which is defined to mean a place operated primarily for educational instruction for six or more children from 2-6 yrs old for up to three hours a day, is allowed in the RA, RB, RC and RCX and RM zones with an SUP. Also, a nursery school is allowed in the R-20 zone in a church or school building with an SUP.

In order to balance the need to protect residential zones and still make opening and expanding early childhood facilities easier for providers, P&Z proposes a series of changes for residential zones. First, P&Z supports amending the early childhood definitions as indicated above to make them consistent with modern terms and usage.

Second, P&Z is proposing no change to the regulation of child care homes because these small facilities take place in single family homes and can clearly impact neighboring homes and areas. Beyond these small facilities, there are many examples of successful day care, preschool, nursery and academic schools in residential areas, but they are now typically in larger institutional uses or associated with a neighborhood church. In addition, small facilities in residential zones without an SUP, outside a church or school, could be problematic, especially if a single family home could be converted to a school facility, even a preschool, and even for a small number of students, because the essential character of the street, block and neighborhood could change from a place where people live to one where a potentially commercial enterprise takes place.

With regard to child care facilities within churches and schools, P&Z proposes to allow these without the need for an SUP because they are typically located in an institutional setting, and typically in a larger building with parking and drive aisles affording protection to the nearby neighborhood. Performance standards will be included requiring adequate drop off and pick up areas, and a setting that buffers adjacent homes from noise. These will work to protect residential areas from the atypical church or school location. In addition, the performance standards will require that a state license must be obtained before operations can begin.

Staff notes that “nursery schools” are now allowed as standalone uses in the RA, RB, RC, RCX and RM zones with SUP approval. Under the proposed new definition above, the use will be changed from “nursery school” to “day care center” and SUP approval will continue to be required. The new approach for child care and preschool within a church or school, allowing the use without a SUP, will be followed in these higher density residential zones.

A final early childhood issue in residential zones relates to the definition of a “school,” which is an SUP use in single family zones, and the overlap with either “nursery schools” or “preschools” that provide pre-K educational instruction. By clarifying the “day care center” definition so that it expressly includes all nursery schools and preschools, and by allowing the use in a church or school building, the ordinance will eliminate the ambiguity that allows a preschool to be deemed a school and be considered for SUP approval in a single family house.

### **SMALL RETAIL BAKERIES**

Small retail bakeries are now permitted in all zones that permit retail uses. Specifically, the term “retail establishment” is defined to include bakeries limited to a maximum of 3,500 square feet. No SUP is required. The SBTF recommendation is therefore already addressed by the zoning ordinance.

Bakeries larger than 3,500 square feet typically include a baking component, akin to manufacturing, with a number of employees, cars, trucks for deliveries to and from the site, and

late night and early morning activities. The larger bakeries therefore can have impacts on surrounding uses and neighborhoods and therefore are not permitted except in the Industrial zone.

### **SMALL PRIVATE SCHOOLS OF LIMITED ENROLLMENT**

Small private commercial schools, such as yoga, dance, martial arts, personal training, and computer and tutoring facilities are allowed in commercial zones with an SUP. If limited to a small number of students, P&Z supports allowing the use without an SUP. The use is a frequent one on the Planning Commission docket and the SUP requirement is burdensome for entrepreneurs who are just getting started in small facilities. On the other hand, the City is home to several larger commercial schools, such as the Strayer University on Eisenhower Avenue and Liberty and George Washington University's satellite facilities. These larger schools do have zoning impacts, such as traffic, which should be looked at on a case by case basis.

The proposed change should not be problematic. The principal impact from small commercial schools is from parking and parking requirements will not be affected by these changes. P&Z supports this change, and proposes to allow only small schools, with up to a maximum of 20 students at one time, in order to avoid any serious problem. The text change would be straightforward: adding a new use, commercial school limited to 20 or fewer students at one time, to the permitted use list.

## **III. USES PERMITTED WITH ADMINISTRATIVE SUP SUBJECT TO STANDARDS**

### **OUTDOOR GARDEN CENTERS**

The SBTF recommends that garden centers if they are a certain distance from a residential use be allowed without an SUP. This and the next recommendation are similar in that there are few of these uses throughout the City, and where they are located and how they are operated make the difference between a neighborhood supporting business and one that detracts from and negatively impacts nearby uses.

Although the SBTF recommended that distances to homes be measured to determine likely future impact, measuring distances can be difficult, and staff would prefer that the ordinance not include specific distances that require measuring. In fact, there have been successful garden centers within 150 feet of residential, such as Eclectic Nature on Mount Vernon Avenue, but others could be farther away with significant and negative impacts. Therefore, staff supports a judgment, allowing differing distances to apply in different settings, and believes it can be done without the necessity of an SUP.

Specifically, P&Z is recommending that a garden center be permitted with an administrative SUP and subject to standards. This is the approach already included in the ordinance for the Mount Vernon Retail Overlay Zone. Without including a specific distance or measurement, the provision will still require that the Director make an informed judgment, based on the proposed location about the future probable impacts of the use. The standards will further require that the

garden centers be small operations catering to pedestrian or local traffic, with limited truck traffic for deliveries and pick up of supplies, and with adequate parking areas for loading of garden materials. The standards will be designed to distinguish between small, neighborhood centers on the one hand, and larger garden centers, such as the one at Home Depot on the other. The latter type will still require an SUP. Under the administrative SUP program, the Director may still determine that a proposed garden center does not meet the ordinance standards, and that a full public hearing will be required.

### **OUTDOOR FOOD AND CRAFTS MARKET CERTAIN DISTANCE FROM RESIDENTIAL**

Because there are so few of these uses, and because their requirements are readily captured in standards that can be incorporated in the ordinance, staff supports allowing community oriented farmers markets by administrative SUP subject to standards. While the timing of the SUP and especially the summer recess can be problematic to creative neighborhood organizers who wish to start a farmers market, an administrative review process ensures that the potential operator has selected a location that has minimal impacts on surrounding uses, and will be operated and managed based on a common set of guidelines for vendors. Although staff has concerns about allowing a proliferation of outdoor vending generally, it sees no problem with allowing outdoor food and crafts markets with an administrative SUP, with standards taken from the existing SUP for the Del Ray Farmers Market. This is precisely the approach already used by the City for Arlandria and Mount Vernon Avenue.

### **RESTAURANTS WITH FEWER THAN 60 SEATS**

Outside of the shopping center or hotel or industrial complex exception (see discussion below), and as a City wide matter, P&Z supports allowing small restaurants by administrative SUP. This is the approach already being used in the NR zone in Arlandria, in the overlay zoning on Mount Vernon Avenue, and under the new provisions for Carlyle. It was also the approach proposed but not approved for King Street, when the King Street Retail Strategy was adopted.

The SBTF recommendation would allow restaurants without a full SUP if they include fewer than 60 seats, no live entertainment or dancing, and within a certain distance from residential uses. On the other hand, the NR zone, and Mount Vernon Overlay Zone permit restaurants with an administrative SUP in slightly different circumstances. They are permitted in those zones, if they include the following limitations:

- no more than 60 seats
- nonamplified live entertainment consisting of a maximum of two performers
- hours from 7:00 am to 11:00 pm
- 16 of the 60 seats may be located outdoors in front of the restaurant.
- limited delivery is permitted
- limited alcohol (beer and wine) service may be provided

It would be best to have consistency citywide for administrative restaurant SUPs by including the same limitations for restaurants on a citywide basis. Staff recommends that the above requirements be used, except staff suggests that all administrative SUPs for restaurants allow

mixed drinks as well as beer and wine. In the latter case, there is simply insufficient difference in the nature of these small restaurants for the distinction to trigger the SUP requirements.

To amend the zoning ordinance, each commercial zone would be amended by adding additional language to the restaurant SUP listed use, explaining the potential for administrative permit if certain criteria are met, and referring to the appropriate section of the ordinance where the requirements are listed.

### **III. USES PERMITTED DEPENDING ON THE LOCATION AND TYPE OF BUILDING**

Several of the SBTF's recommendations would allow uses without SUPs if they are located in specific types of buildings and locations. P&Z agrees and recognizes that certain building types, because of their size, layout and orientation have little connection with neighboring properties and therefore little impact on adjacent uses. In addition, larger facilities typically are commonly managed, with self interested owners and management seeking internally compatible uses and striving for problem-free uses.

P&Z's recommendations, listed below, adopt the SBTF's approach, with slight modifications. In addition, P&Z is proposing three new definitions for the location categories, because the zoning ordinance does not now include them.

*Shopping Center: a building or complex of buildings under common ownership and control which includes at least five independent retail businesses, provides shared parking, and is at least 35,000 square feet of floor area in size.*

*Industrial or Flex Space Complex. A building or complex of buildings under common ownership and control, which is no more than two stories in height, includes at least three independent businesses within it, and consists of at least 45,000 sf of floor area.*

*Office or Mixed Use Complex. A building or group of buildings under common ownership and control which is four or more stories in height, which is primarily office use, but which may include additional uses as well, and which is a minimum of 50,000 sq ft in size.*

#### **RESTAURANTS IN SHOPPING CENTERS**

Allowing restaurants within shopping centers is a reasonable request because with the typically large land areas covered by a shopping center, and the common management, restaurants are likely to be controlled and of minimal impact to the surrounding neighborhoods. The City has several traditional shopping centers of mid and large size:

Landmark Mall  
Potomac Yard  
Bradlee  
Alexandria Commons (Hechingers)  
Fox Chase  
Winkler

South Van Dorn  
Landmark Plaza  
Home Depot/Trade Center  
Mount Vernon Village Center/Arlandria Shopping Center  
Seminary Plaza  
(center by IHOP across from Landmark Plaza)  
Plaza Center (Fairlington)

The proposed definition language above is carefully designed to capture the traditionally designed, suburban shopping center model, with its large parking areas and setbacks, as well as some other building arrangements which include multiple retail stores. The size limitation of 35,000 square feet will exclude many smaller buildings in the City, even with multiple stores, such as on King Street or Mount Vernon Avenue. As an example, the complex on Mount Vernon Avenue where Caboose Cafe and Cheestique are located includes approximately 27,000 square feet of space, and its size is typical of many retail blocks with public frontage. In addition, there are several locations which include retail stores on the ground floor of a large office or residential building, such as the Saul Center or the Calvert Apartments, which are included. The definition excludes the Montgomery Center in the 800 block of North Fairfax Street because that building fails to include parking.

P&Z's limited approach is purposeful, because P&Z is supporting allowing restaurants in shopping centers as permitted uses, without even an administrative SUP approval. It believes that the control by the center management is sufficient for land use protection purposes. Instead of the administrative SUP approach, the zoning ordinance will include performance standards, based on the typical restaurant SUP conditions such as regarding trash, noise, and environmental hazards, etc, and compliance will be required. Under the proposed approach, a new restaurant at the Bradlee Shopping Center will not need a SUP in the future, but would have to comply with the performance standards in order to open. In all cases, parking is still required. If there is insufficient parking, then a parking reduction SUP will be required for the restaurant's approval.

On balance, staff supports the permitted use approach, which is how restaurants have been handled in the zoning ordinance for the last 15 years at Landmark Mall. Given the fairly restrictive definition proposed above, and the limited number of locations where the change will apply, P&Z predicts minimal if any problems.

### **RESTAURANTS IN HOTELS**

In addition to shopping centers, staff notes that almost every hotel in the City includes a restaurant, and has found little or no land use issues with those restaurant uses over time. Therefore, P&Z is recommending that these uses not require SUP approval; instead they would be subject to the proposed performance standards to be included in the zoning ordinance. Staff notes that hotels themselves are subject to SUP approval, and a restaurant use is typically, but not always, part of the initial plan and approval. Again, parking requirements are not being amended. If a hotel does not include parking sufficient for all uses, then a parking reduction SUP will be required.

### **HEALTH AND ATHLETIC CLUBS IN SHOPPING CENTER**

Health and athletic clubs are now allowed in the CG and higher commercial zones but an SUP is required. Land use issues for health clubs typically include parking and traffic. The SBTf does not recommend and staff does not support any change to parking requirements. Otherwise, the use is generally desirable because it provides activity at times that other uses, such as office buildings, do not. Health clubs can therefore support round the clock activity which creates pedestrian activity, supports nearby retail uses, and provides eyes on the street. Traffic impacts can be a concern, however, although when the use is part of a mixed use building or complex, the impacts are reduced. Within a shopping center, the self interest of the center in maintaining a mix of uses and managing traffic and parking for other tenants should work to self select appropriate locations. P&Z therefore supports allowing the use in shopping centers without an SUP, but with performance standards.

As a technical, definitional matter, the “Use Limitations” in the commercial zones typically have language making massage establishments part of the health and athletic club definition. See §4-1106(E) for example. The treatment recommended here for both uses will require a separate listing for massage establishments in each commercial zone, with the interpretation discussed above. As to health and athletic clubs, the use limitation will not be necessary. Massage will be permitted if incidental to a health club and the health club use will be permitted without an SUP in the specific locations proposed in these recommendations.

### **PET SUPPLIES WITHOUT OVERNIGHT STAY IN SHOPPING CENTER**

Pet supplies, grooming and training, is a use now permitted without a SUP in most of the commercial zones throughout the City. However, the use is limited to facilities that do not include overnight accommodations for pets. An “animal shelter or kennel” is only allowed in the Industrial zone. An “animal hospital” is not specifically allowed under the zoning ordinance; those that continue in the City do so as noncomplying uses. The traditional approach has been to view overnight dog accommodations – whether part of a retail operation or a medical facility – as creating serious negative impacts on neighboring uses because of the need for outdoor space, and the potential noise and odors associated with pets.

However, as part of the modern demand for pet facilities of all types, there is a growing demand for overnight pet accommodations. The SBTf recommends that the use should be allowed without an SUP within a shopping center, and P&Z agrees that if a center is able to meet health and other requirements for overnight accommodations, and willing to include the use in its mix of tenants, then there is not likely to be any impact on neighboring uses.

[Staff notes that there is a typing mistake in the SBTf report which recommends allowing pet supply uses *without* overnight accommodation in shopping centers. That use, of course, is already permitted. Therefore staff assumes SBTf intended to include pet uses *with* overnight accommodation.]

## **LIGHT AUTO REPAIR IN AN INDUSTRIAL OR FLEX SPACE COMPLEX**

Incubator space for small service uses is difficult to find in Alexandria's high price land market, but there are still a few opportunities, for example in the West Eisenhower area. A series of large buildings are located in that quasi-industrial setting, west of Clermont, and they include small tenant spaces for a multiple of small business uses. The SBTF recognizes that these facilities, typically with several small business bays for a variety of uses, are candidates for eliminating the SUP regulation because they are so valuable to small businesses just starting out, and because, depending on the location, there are minimal impacts from at least some uses. Specifically, the SBTF recommends that for a light auto repair business in one of these quasi-industrial buildings, SUP approval should not be necessary.

Auto repair businesses are allowed now in the ordinance by SUP only, even if the operation is "light" as opposed to "general" auto repair. The one exception is in the Industrial zone, where "light" auto repair is permitted without an SUP. So little of the city is zoned Industrial, however, that it is typical for an auto repair business to locate within a commercial zone where an SUP is required.

Light auto repair is defined to include minor service work to cars or light trucks including tune ups, lubrication, alignment, fuel system, brakes mufflers, and replacement of small items. It does not include those services which are performed by general auto repair businesses, including painting, upholstery, rebuilding, reconditioning, body and fender work, frame straightening, undercoating, engine or transmission rebuilding tire retreading or recapping and similar work.

The definition proposed above for an industrial or flex space complex is designed to describe the building characteristics of the quasi industrial complexes in the West Eisenhower Avenue area. They are large, sometimes sprawling, buildings, typically one story, and most of the businesses are housed in separate bays which do not have direct access to the street. Parking is provided adjacent to the business bays. In the West Eisenhower Avenue examples, the buildings are large, between 45,000 and 70,000 square feet. In such cases, as a practical matter, there is less need for City review and regulation because there is the expectation of communal management and controls. The definition limits appropriate buildings to one or two stories in order to avoid the problem of allowing auto repair in larger buildings, which could capture Type A office buildings, which is clearly not intended.

P&Z staff supports this approach, which would make the use permitted, subject to performance standards to be included in the zoning ordinance. The amendment to the ordinance would be to list light auto repair in an industrial/office complex as a permitted use. Under special uses, language could be added to light auto repair under SUP uses, indicating "unless located in an industrial/office complex."

The zoning ordinance change is proposed to appear in the OCM zones only, in order to capture land in the West Eisenhower area. Although there are some other areas of the City where OCM appears, those areas lack the type of building described by the definition. Again, P&Z is attempting to limit the elimination of the SUP requirement to only those locations intended.

### **CATERING IN INDUSTRIAL OR FLEX SPACE COMPLEX**

This recommendation is similar to light auto repair in the Eisenhower West area, and P&Z also supports it. Catering is now allowed by SUP in the OC and OCM zones, as well as in the CD and CDX zones. However the proposed change will only be included in the OCM zones, where the appropriate industrial complexes are located.

### **RESTAURANT IN INDUSTRIAL OR FLEX SPACE COMPLEX**

There are small restaurants already located in some of these industrial facilities, and P&Z supports allowing additional ones, if they desire to locate there, without an SUP in these buildings. They are typically for employees working in the area, without impact on residential neighborhoods. As with light auto repair and catering, the approach will only be incorporated in the OCM zones, and only in these large, multi business industrial complexes.

### **HEALTH AND ATHLETIC CLUB IN INDUSTRIAL OR FLEX SPACE COMPLEX**

Health and athletic clubs, without an SUP required, are also good candidates for the West Eisenhower building complexes, and P&Z proposes to treat them in the same way as light auto repair and catering in those locations.

### **HEALTH AND ATHLETIC CLUB IN AN OFFICE OR MIXED USE COMPLEX**

The SBTF has recommended that large office complexes should be allowed to have certain uses within them, without the requirement for an SUP because, again, the size of the facility and its management should provide sufficient protection against zoning impacts on surrounding uses. SBTF specifically proposes and P&Z supports allowing a health and athletic club in a large office or mixed use building.

The proposed definition for an “office or mixed use complex” focuses on two aspects of the office building where the use would be allowed: size and the potential mix of uses. Both criteria help buffer the health club from surrounding uses, and are most likely to mean sufficient management control to provide additional protection. A good example on both points is the Old Town Athletic Club on North Fairfax Street. The definition would allow the use without an SUP, because the complex is large enough (50,000 sq ft and four or more stories), and includes a mix of uses, i.e., some retail, a day spa, and the athletic club in what is primarily an office setting. P&Z supports the approach, and proposes to allow a health club in sizeable office complexes without an SUP but subject to performance standards included in the zoning ordinance.

P&Z proposes one exception to the above approach, however, for Old Town. The recently adopted KR zone emphasizes first floor retail uses, with non retail uses, such as health and athletic clubs, either limited to upper floors of a building or required to obtain a SUP. P&Z proposes to keep those restrictions and requirements for health and athletic clubs in the KR zone to support the effort in favor of first floor retail uses.

Otherwise, the zoning change will be to list health and athletic club in an office or mixed use complex as a permitted use in all of the zones that the use now appears in except KR, and to add language to the use in the special use list indicating “unless located in an office or mixed use complex.”

### **CONVENIENCE STORE IN OFFICE OR MIXED USE COMPLEX**

The same rationale that would permit a health and athletic club in a large office or mixed use complex supports allowing other uses typically associated with such buildings. Most of the other businesses found in large office complexes, such as retail stores, newsstands, day spas and dry cleaning are permitted uses; an SUP is not required. However, a tenant space cannot be rented to a convenience store without SUP approval. The SBTF recommends that a convenience store be permitted in large office or mixed use buildings, and staff supports that change.

As P&Z is proposing the definition, the office complexes to which the change would be limited are large enough to buffer the use. Moreover, the most serious impacts from convenience stores are its intense, small purchase, traffic, and the potential for alcohol sales. Limiting the use without an SUP to large facilities eliminates the problem with easy automobile access. Because the use will have required performance standards in the zoning ordinance, alcohol sales will also be limited, as in SUP cases, to prohibit single sales. The use will thereby provide a convenience to users of the office building, and not an impact for adjacent uses.

The ordinance change for office locations would be to list convenience store in an office or mixed use complex as a permitted use, and to add language to the convenience store SUP use, indicating the exception for office or mixed use complex. This would be in all the office zones.

### **CONVENIENCE STORE AND OTHER COMMERCIAL USES IN MULTIFAMILY BUILDINGS**

The SBTF recommends that convenience stores also be allowed without a SUP in large multifamily buildings. P&Z agrees, reasoning that if located within a large multifamily building, then management and landlord oversight, similar to with a shopping center, should eliminate the impacts these uses can produce when they stand alone as a retail use in a neighborhood.

In the multifamily context however, the zoning change is different, because the RC and RCX zone (which is the primary zone where large residential buildings are permitted) now permits a series of small commercial uses but only with SUP approval.

The RC and RCX zones allow the following specific commercial uses:

- banks
- barber or beauty shops
- dry cleaners, without operations
- convenience store
- day care center
- drug store

- gift store
- grocery store
- health and athletic club
- professional offices (with limitations), typically doctors
- restaurants ( in RC, this use is allowed on the top floor of a building with seven or more stories)

These uses are allowed with SUP approval in a multifamily building of four or more stories if limited to an area the size of the first floor or a floor below it, whichever is less, and if located on the first floor or any floor below it of the building. These limitations are imposed so that the residential character of the building is maintained; the use is not allowed to be anywhere in the building, and there is a limit to the space that can be devoted to commercial uses. They also have been used in Alexandria in large multifamily buildings for many years with apparent success. In the rare case that an SUP is docketed for consideration of one of the above uses in a high rise apartment building, the issues that arise relate solely to parking and how parking is organized internally, especially in a condominium setting.

P&Z supports the recommendation of SBTF, but would include all of the above uses, maintaining the same limitations on amount of space and location, but eliminating the need for SUP approval. P&Z proposes that these zones be changed to allow all of the listed uses without an SUP on the theory that, again, the size and locational restrictions on the nonresidential uses, help ensure that the uses will not create impacts on neighboring properties.

P&Z also supports considering a similar change to the other zones, such as OCH and the CRMU zones, where large residential buildings are permitted, so as to encourage locating retail and service uses within them on the ground floor.

### **ADMINISTRATIVE APPROVAL OF MINOR AMENDMENTS TO SUPS**

Section 11-511 of the zoning ordinance now permits minor changes to SUPs to be approved administratively. The SBTF recommends that the definition of “minor” under the existing provision be broadened so that more changes can be approved administratively in the future. P&Z agrees that this provision should be amended.

The administrative SUP amendment process today is rarely used because few businesses can meet the exceptionally narrow criteria for applicants. Businesses cannot apply today when:

- there are any written or oral complaints, even if they are unfounded;
- there was any opposition to the use when the SUP was originally approved, even if over time no one has had a problem with the use;
- there is *any* increase in the intensity of the use, even if there are no impacts; an increase in intensity is defined as including at least *any* increase in hours, seats, number of employees, visitors or customers, or traffic trips generated.

The current process requires published newspaper notice and allows the application to be removed from the administrative process if any person requests a public hearing.

P&Z suggests that a substitute procedure that allows performance criteria to govern would provide sufficient protection, while still being a useful procedure for businesses that seek small changes and wish to avoid the full SUP process. P&Z proposes that applications be allowed where:

1. There is no history of real or significant violations that were not immediately rectified;
  2. The Director determines that there will be no negative zoning impacts on adjacent properties or neighborhood from the amendment over what was originally considered; and
  3. New conditions can be included if they are standard conditions, those that the Director includes because they are clearly related to the use and those to which the applicant agrees.
- These are the standards currently in the ordinance for change of ownership applications. See 11-503 (F).

In terms of an increase in intensity, staff agrees that additional leeway should be allowed, so that a businesses that wishes to make a small change, even if it includes some measure of additional seats or hours, and additional employees, be allowed, provided the change produces little discernible impact. The proposed language below effects these changes. It also addresses the fact that the minor amendment process and the change of ownership process in the ordinance are now stated separately and differently. To reduce the confusion and inconsistency between the two provisions in the ordinance, and because the two processes, although for slightly different purposes, both should share the same standards for approval and the same procedure, staff has rewritten both sections as one, merging the two ideas, as follows:

Section 11-511 *Administrative Amendment to SUP.* The director is authorized to approve the following amendments to approved special use permits under the following circumstances and procedures.

(A) *Amendments Authorized.*

- (1) *Change in ownership.* Where an application is necessitated solely by a change in ownership of the use, the director may administratively approve the application and transfer the special use permit to the new applicant.
- (2) *Minor Amendment.* An application that seeks a change of a special use which constitutes no more than a minimal enlargement or extension may be approved if the director determines that:
  - (a) the changes are so insignificant, when the overall use is considered, that they will have little or no zoning impact on the adjacent properties or the neighborhood; and
  - (b) the proposal will not change the character of the use or increase its overall intensity, including no more than the following increases:
    - (i) additional hours of operation but not to exceed hours consistent with nearby similar uses;
    - (ii) 10% additional seats for a restaurant; and

(iii) similar increases for other aspects of the use.

(3) Special Events. Notwithstanding any provision of this ordinance to the contrary, the director may approve a temporary extension in the hours of operation of a business subject to an approved special use permit, to coincide with the hours of operation of an event, promotional program or city-sponsored festival in which the business is participating. The procedures required under this section 11-511 shall not apply in such cases.

(B) Required Findings and New Conditions. Prior to the administrative approval of a change of ownership or a minor amendment, the Director is required to find that:

(1) there have been no substantiated violations of the special use permit conditions which were not corrected immediately, constitute material or repeat violations or which created a material and direct adverse impact on the surrounding community.

(2) conditions or amendments to existing conditions may be added as may be required by the following circumstances:

a) standard conditions promulgated by the director, approved by City Council and agreed to by the applicant in writing; or

(b) such additional conditions as the director finds necessary for the public benefit, in keeping with the use and the special use permit approved therefor, and agreed to by the applicant in writing.

(C) Procedure.

(1) The Director shall placard the property, cause email notice to the affected civic associations and prominently post a list of pending administrative applications on the department web page for review by the public. Such notice shall be given at least 10 days prior to the approval of an amendment under this section.

(2) An application for an administrative approval under this section 11-511 which is not approved by the director shall be subject to the same procedural requirements of any other application for a special use permit.

(3) The director is authorized to issue regulations governing administrative approvals issued under this section 11-511.

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The proposed new zoning text above for change of ownership and minor amendment applications merges what are two different sections of the zoning ordinance now in order to reduce confusion and make the two processes more consistent. The existing language is produced below with strikeout and highlighting to show what has been retained, deleted and changed in the new merged language, as follow:

~~Strikeout~~ indicates that the language has been deleted

Grey shading indicates that the language has been incorporated into the new text

*Italics* indicates that the language has been incorporated with changes

Section 11-503 (F) Change of Ownership only. Where an application under this section 11-500 is necessitated solely by a change in ownership of the use that is subject to the special use permit, and the circumstances set forth in paragraph (1) below apply, the director may administratively approve such application and transfer the special use permit to the new applicant only.

(4) The circumstances which are a condition to such administrative approval are as follows:

(a) *The applicant is not requesting a change in the conditions of the special use permit.*

(b) There have been no substantiated violations of the special use permit conditions which were not corrected immediately, constitute material or repeat violations or which created a material and direct adverse impact on the surrounding community.

(c) There are no changes proposed or anticipated in the operation of the use involved.

(d) The director has concluded that no new conditions, and no amendments to existing conditions are necessary, other than as may be required by the following:

i) standard conditions promulgated by the director, approved by City Council and agreed to by the applicant in writing; or

ii) such additional conditions as the director finds necessary for the public benefit, in keeping with the use and the special use permit approved therefor, and agreed to by the applicant in writing.

~~(e) Following notice of the application in a newspaper of general circulation in the city, no person has requested the director to forward the application to city council.~~

(5) Where the director approves an application under this section 11-503(F), sections 11-503(A) through (E) shall not apply to the application. However, where such application is not approved by the director, it shall be subject to the same procedural requirements of any other application for a special use permit. The director is authorized to issue regulations governing administrative approvals issued under this section 11-503(F).

11-511 Administrative approval of minor changes. The director is authorized to approve those changes to an approved special use permit which constitute no more than a minimal enlargement or extension of the special use, where the director determines that [the] following requirements are met:

~~A) There have been no written or oral complaints that the use is in violation of the zoning ordinance.~~

~~B) At the time the special use permit was approved, no opposition was presented to the planning commission or the city council by persons speaking at a public hearing or submitting written comments.~~

*C) The proposed changes do not involve an increase in the intensity of the use. An increase in the following, without limitation, would typically constitute an increase in intensity of use:*

*(1) Hours of operation;*

*(2) Number of seats;*

*(3) Number of employees, visitors or customers; or*

~~D) Number of vehicle trips generated.~~

~~E) In addition to publishing newspaper notice of the proposed changes, the director has notified the planning commission and each docket subscriber under section 11-304, and no person, including a planning commission member, has requested that the proposal be docketed for consideration by the planning commission.~~

F) The changes are so insignificant that they will have little or no zoning impact on the adjacent properties or the neighborhood.

G) *No new conditions and no amendments to existing conditions are necessary.*

H) *Notwithstanding any provision of this ordinance to the contrary, the director may approve a temporary extension in the hours of operation of a business subject to an approved special use permit, to coincide with the hours of operation of a city-sponsored festival, event, or promotional program in which the business is participating.*

## **APPENDIX I**

**SMALL BUSINESS TASK FORCE RECOMMENDATIONS** (from SBTF Report, CC docket item#27, p. 32, 06/26/07)

1. Light Auto Repair (if located within an office/industrial park setting, i.e. Eisenhower Avenue Office Commercial zones)
2. Catering operation (if located within an office/industrial park setting, i.e. Eisenhower Avenue Office Commercial zones)
3. Day care centers in commercial zones
4. Health and athletic clubs (in a shopping center or office/mixed use complex)
5. Restaurants (in a shopping center)
6. Restaurants less than a certain number of seats that do not have live entertainment, dancing or are a certain distance from residential uses
7. Private schools and nursery schools (of less than a certain enrollment)
8. Retail bakeries (of a certain floor area)
9. Garden centers, if located a certain distance from residential
10. Outdoor food and crafts markets, if located certain distance from residential
11. Pet supplies, grooming and training with no [sic] overnight accommodations (in a shopping center)
12. Massage if incidental and accessory to another permitted use
13. Convenience store if incidental to a multifamily or office complex
14. Allow minor amendments to approved SUPs through an administrative process.