

## MEETING OF THE LAND USE COMMITTEE 11-2-09

The meeting was called for 7 pm in the Jane Lawton Center. Present were Dedun Ingram (chair, 7:15) Craig Brooks, Stephanie Brown, Kathy Flaxman, Lees Hartman, Joe Rubin (7:25), Deborah Vollmer, Linna Barnes (Council liaison), David Podolsky (Town attorney), Tracy Scudder (assistant to Mr. Podolsky), and John Murtagh (resident).

Linna called the meeting to order at 7:15 and asked for public comments; there were none.

Minutes of the October meeting, previously circulated, were approved without dissent.

Dedun noted that the purpose of the meeting was to consult with Mr. Podolsky on legal issues connected with several items that the committee has been reviewing.

**Regulation of front-yard paving/parking:** The Town building code limits the amount of non-vegetative surface in the front yard (35%) in order to promote green space and reduce water run-off.: The 35% limitation on front-yard paving is difficult to enforce because some forms of such paving, including lead walks, do not require a permit and calculation of % non-vegetative surface can be time-consuming. The committee made various recommendations to the Council in the July 2009 memo to improve administration of the 35% rule, including requiring a permit for any front-yard paving. But, the Committee noted in its memo that the same goal might be achieved more simply using current or revised driveway regulations. The question for Mr. Podolsky was how much we could regulate front yard non-vegetative surfaces (particularly parking pads) with driveway regulations; would such a use be as effective? Mr. Podolsky advised that people sometimes try to get around driveway regulations by installing an adjacent strip, possibly of a different material, and calling it a walkway or placing parking pads a small distance away from the driveway, separated by perhaps a strip of grass. Regulating “non-vegetative surface” using the 35% rule avoids such loopholes and is more effective. His advice was to decide what we want to regulate and do it directly. On the question of whether the 35% rule could be limited to new construction and larger projects, Mr. Podolsky said that there would have to be a reason for distinguishing old from new.

**Clarifying issues with respect to the public right of way:** It was noted that currently the Town code allows residents to use the right of way for some private purposes. However, Dave Walton had informed the committee that this was becoming more problematic as things like sprinkler systems and invisible fences were installed in rights of way without the Town’s knowledge. If the Town or a utility needs to dig up the right of way, these underground systems can be damaged which while not the Town’s responsibility, leads to unhappy residents. What is the best way to record such uses? Mr. Podolsky suggested that anything in the public right of way (except perhaps plantings) require a permit and a map showing location. Information might also be recorded in the land record, as is currently done with some things such as walls, or kept on file at the Town office. Utilities doing scheduled work check with the Town, but for emergencies with Miss Utility—we might interface with that. Mr. Podolsky said that he hoped that the Town would provide funding for the proposed Right of Way Survey, which other jurisdictions have found to be tremendously valuable. Linna noted that the Town is waiting for information on expected tax revenue for the upcoming year.

**Alternate wording for ‘Front Building Line’:** A recent addition to the code mandated that a front-loading garage must be three feet either in front of or behind the front building line of the house. But the Front Building Line is elsewhere defined as the farthest front line of the house, so nothing can be in front of it. The committee had suggested substituting front facade, but this term has also not been

satisfactorily defined. We will look again at the definitions and possibly use a percentage of façade length as a standard? Joe thought that 3 feet was too large a setback and that we are trying to overmanage an aesthetic consideration. One possible solution would be to drop this rule entirely.

**Definition of ‘rear yard’:** This concept appears twice in the code with respect to garages and accessory buildings; one says such structures must be located to the rear of the house, one says in the rear yard. However, rear yard is not defined in the code. Town staff need to know where the rear yard is so they can advise residents who are interested in constructing an accessory building. Corner lots and some other odd-shaped lots are problematic. Mr. Podolsky advised that the definition be broad enough to cover most lots; he felt it is okay to have a few exceptions but not a third of all lots. He did not think that the street address was a good basis for determining what part of a lot was the rear yard, because an address can be changed (and changed back). Reference to the front door or front façade: this can also be changed or there could be multiple doors. If the issue is location of a garage, we should consider where we would be okay with locating it, remembering that the purpose of the regulation is to protect the neighbors. Or, on lots with more than one front yard, we could let owners choose a back yard as long as one front yard qualifies as a conforming front yard and no nonconformity is created. Side setbacks differ from rear setbacks, so a given area would have to meet relevant setback requirements in order to qualify as a rear rather than a side yard. He noted that Chevy Chase Village has had the same problem with defining the rear yard on corner lots. Joe asked about Town vs. County regulations and definitions. Is it possible that we could end up with a less-restrictive rule than the County, and if so would this prevent people from getting County permits? Should we defer to County definitions? Mr. Podolsky: You could do that, but it would allow the County to change their definitions and hence your code without your knowledge. They have in fact changed the definition of Established Building Line several times recently. He also noted that while County regulations can seem more restrictive (for example, requiring bigger setbacks) than the Town, the County also may allow more encroachments or grant more variances. It was suggested that we look at the County definition and consider using it. Linna will get it for the committee.

The meeting adjourned at 8:45 pm.

Next meeting is scheduled for the regular night (second Monday), December 14, 2009.