



COMMUNITY DEVELOPMENT DIVISION FREDERICK COUNTY, MARYLAND

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TO: Frederick County Planning Commission
FROM: Shawna Lemonds, Project Manager
DATE: February 28, 2011
RE: Potential Zoning Ordinance Text Amendments

ISSUE

The Board of County Commissioners (BOCC) has received requests for review of specific sections of the zoning ordinance for possible revision through the text amendment process. In an attempt to address these concerns as well as other issues that Staff has identified, a list was created for Board review and direction. On February 24, 2011 the BOCC directed Staff to move forward with those issues identified as a priority 1. These potential text amendments have been forwarded to the Planning Commission for review and input.

BACKGROUND

Staff compiled a list of potential text amendments based upon a combination of BOCC discussion, citizen input, and Staff discussion. The list was ranked by priority 1=High (processed within 90-120 days), 2=Medium (processed within 120-180 days), 3=Low (processed beyond 180 days), based upon Staff ability to formulate and present solutions in a rapid manner. The full list of potential text amendments reviewed by the BOCC on February 24th has been attached as Exhibit 1-Potential Text Amendments. Also available through the Zoning Ordinance Rewrite webpage, are public process documents (including public hearing and adopted ordinances) for text amendments approved during the zoning ordinance rewrite process. That webpage can be found at the following link: <http://www.frederickcountymd.gov/index.aspx?nid=3342>.

At the February 24th meeting the BOCC directed Staff to move forward with those text amendments listed as a number 1 priority. The overview section below provides a summary of the proposed concepts for each text amendment.

TEXT AMENDMENT OVERVIEW

Landscape Contractor

In June of 2009 the A/RC Use Table and Definitions (ZT-09-03) text amendment became effective. As part of that text amendment 'Commercial greenhouses and nurseries' was replaced with 'Nursery retail', 'Nursery wholesale', 'Landscape contractor' and 'Hardware/garden center' in an effort to define and separate landscape contracting from nursery uses. In addition, the changes provided a more simplified approval process for purely nursery wholesale and/or nursery retail uses.

As adopted 'Landscape contractor' is currently permitted through site development plan approval (PS) in the GC, LI, and GI zoning districts and as a special exception (E) in the Agricultural zoning district. Although the current processing and criteria were developed in conjunction with several public meetings and input from the landscape contractor community, certain elements of the special exception criteria have proved to be difficult to achieve for a small user. Based on public input and feedback, amendments have been proposed to create a new land use term 'Limited landscape contractor' permitted through site development plan approval (PS) in the Agricultural zone, with specific limitations on the size and intensity of the development. The proposed changes have been summarized below.

Potential Changes:

- Add 'Limited landscape contractor' to §1-19-5.310 Use Table within the heading of Commercial Business and Personal Services and permit through the site development plan review process (PS).
- Create §1-19-8.441 Limited Landscape Contractor in the A District with provisions for development of a permitted use operation similar to existing special exception criteria for Landscape Contractor (1-19-8.331) with the following changes:
 - Maximum number of employees shall be 10
 - Paved road width of 16' rather than 20'
 - Distance from an arterial roadway increased to 2 miles rather than 1/2 mile or eliminated altogether
 - Vehicle operation on-site shall be limited to one ton or less with delivery of materials limited to dump trucks only
 - Lighting and signs shall be reviewed by existing zoning ordinance provisions (§1-19-6.500 and §1-19-6.320 item (12), respectively)

Private and Municipal Parks

As the practice of development has changed to meet the demands of the changing economy, the existing definitions may not provide for the public-private partnerships that are becoming a more common occurrence in constructing public facilities. To respond to these changes in development practices the zoning ordinance must be updated.

The zoning ordinance currently includes two land use terms to provide for processing of park and recreational facilities developed by entities other than County government: 'Indoor sports recreation facility' and 'Outdoor sports recreation facility'. The two land use terms were created as part of the A/RC Use Table and Definitions (ZT-09-03) text amendment to separate primarily indoor uses from those that are primarily outdoor, and to direct the indoor uses to those zoning districts intended for higher intensity development.

In addition, 'Outdoor recreation center' was created to consolidate the processing of various golf activities and bring clarity to how specific golf related uses were previously permitted or prohibited in certain zones.

'Indoor sports recreation facility' is permitted in the GC and LI zoning districts through site development plan approval (PS). 'Indoor sports recreation facility' provides for a building primarily operated for the purpose of providing indoor sports and recreation. The use may also include associated outdoor recreation fields.

'Outdoor sports recreation facility' is permitted solely through the Open Space Recreation floating zoning district, as provided in §1-19-10.1000, on parcels of land with a County Comprehensive Plan land use designation of Agricultural/Rural.

'Outdoor sports recreation facility' provides for outdoor recreational activities where clearing is minimized. By current definition, construction of buildings associated with the 'Outdoor sports recreation facility' is limited.

'Outdoor recreation center' is permitted through site development plan approval in the GC, LI, and GI zoning districts. The land use is also permitted through the Open Space Recreation floating zoning district as provided in §1-19-10.1000, on parcels of land with a County Comprehensive Plan land use designation of Agricultural/Rural.

A floating zone is applied only through specific request by an applicant, as it serves to provide an opportunity for evaluation of compatibility, and to limit development of a specific use to only those parcels with appropriate size, access, and location. However, the floating zone requires an increased processing time and application fee.

Staff reviewed and evaluated the existing regulations to identify opportunities to provide for the processing of parks and recreational facilities by entities other than County government in a straightforward manner without confusing existing provisions.

Potential Changes:

- Combine 'Outdoor recreation center' with 'Outdoor sports recreation facility' in §1-19-5.310 Use Table within the heading of Commercial Amusements and permit the combined term 'Outdoor sports recreation facility' through the site development plan review process (PS)
- Remove 'Outdoor sports recreation facility' and 'Outdoor recreation center' from §1-19-10.1000 Open Space Recreation floating zone provisions
- Combine 'Outdoor sports recreation facility' and 'Outdoor recreation center' definitions in §1-19-11.100 and provide that the use may also include buildings as an accessory use to the primary use of 'Outdoor sports recreation facility'

As proposed the new 'Outdoor sports recreation facility' would be a permitted use in the Agricultural zoning district, eliminate confusion between outdoor recreational activities that are golf/entertainment related and those that are sports field related, eliminate the floating zone processing, and maintain the more intensive 'Indoor sports recreation facility' land use as permitted within the GC and LI zoning districts.

Village Center

Four specific issues have been identified within the Village Center zoning district for potential amendment: 1- Duplex and Two-family dwellings as permitted through site development plan approval, 2- setback calculations, 3- Concept Plan requirements, and 4- footprint limitation for commercial buildings.

The zoning ordinance currently requires 'Duplex' and 'Two-family dwelling' to be processed through site development plan approval. Due to the commercial nature of these land uses, the intent of the requirement was to subject the uses to the overlay standards in §1-19-7.500. However, upon further review of existing provisions it is unnecessary to require site development plan approval for these specific land uses to achieve these results. Therefore, the two land uses could be permitted subject to design regulations similar to single-family detached.

Setbacks within the Village Center zoning district are based upon provisions in §1-19-7.500(B)(3) which require calculation of average setbacks for structures located on all lots facing and adjacent to the proposed development. For the most part, this average calculation ensures new development is compatible with existing historic development patterns. However, in those cases where an existing development includes a very large or small setback that is not reflective of the overall pattern in the zoning district, it may create a hardship when calculating average setbacks. For these reasons proposed changes will provide the opportunity for the zoning administrator to eliminate anomalies when calculating averages.

A concept plan is required for all Village Center zoning district development permitted by site plan review (§1-19-7.500(D)). The intent of the text is to demonstrate the manner in which the Village Center zoning district design standards will be met by the proposed development. However, there has been confusion regarding the minimum necessary to meet this provision. For existing development where minor modifications are proposed, a fully developed "plan" is above and beyond what is necessary to meet the intent of the requirement. Amendments to the existing text will provide flexibility in meeting this section.

The zoning ordinance currently limits commercial buildings within the village center zoning district to no more than 5,000 square feet, except within growth area communities where the Planning Commission may grant an increase up to 8,000 square feet (§1-19-7.500(C)(4)(d)). An increased footprint above 8,000 square feet may be appropriate on specific parcels with Village Center zoning based on review and approval by the Planning Commission.

To address the four identified issues, specific changes and concepts have been formulated.

Potential Changes:

- Amend §1-19-5.310 Use Table to permit 'Duplex' and 'Two-family dwelling' to be processed subject to design regulations 'P'
- Amend §1-19-7.500(B)(3) to permit the Zoning Administrator to:
 - Approve an increase or decrease in the minimum setback requirements where the increase or decrease is consistent with the purpose and intent of the overlay standards
 - Approve the elimination of an existing setback where the facing or adjacent setback is found to be significantly out of range of other setbacks within that Village Center zoning district
- Delete "Plan" from section §1-19-7.500(D) to permit a concept as sufficient in meeting the requirements, including companion amendments to §1-19-3.300.2 to achieve the desired results

- Amend §1-19-7.500(C) to permit the Planning Commission to increase the maximum footprint above 8,000 square feet within growth area communities where the following concepts have been met:
 - The increase footprint is compatible with the pattern of or relationship to existing development on adjacent or confronting lots
 - The increased footprint does not exceed an established maximum total square footage
 - Integration of historic resources

Site Plan Review

The zoning ordinance currently provides for Type II - Limited and Type III – Administrative (i.e staff) processing of applications in §1-19-3.300. Both processes permit Staff review and approval of an application that does not require review of adequate public facilities, forest resource ordinance, or stormwater management requirements. However, both review types include limitations to footprint modifications which have proven difficult to implement based on applications received. To provide increased flexibility the existing provisions in §1-19-3.300(A)(2)(c) and §1-19-3.300 (A)(3)(b) should be reviewed for possible creation of alternate criteria. At a minimum the existing criteria should be deleted.

Potential Changes:

- Delete existing provisions in §1-19-3.300(A)(2)(c) and (A)(3)(b)

Commercial and Industrial Zones, Multiple Structures

The zoning ordinance currently includes separate lot requirements (§1-19-4.500) which limit commercial and industrial districts to only 1 principal structure and customary accessory structures on a single lot. The zoning ordinance also contains development provisions within other sections that permit multiple principal structures on an individual lot (shopping center, Village Center mixed uses text, Planned Development Employment, etc.) however, each of these provisions are restricted to limited situations. Although provisions for Planned Industrial/commercial development exist in (§1-19-10.300) the text is also limited and confusing. In an attempt to provide increased flexibility, the Planned Industrial/Commercial development standards could be updated which would provide an additional opportunity for development of commercial and industrial properties with multiple structures on a single lot, or other areas of the code may be reviewed. Although the entire development method would be reviewed, specific concepts to update the text have been proposed.

Potential Changes:

- Review and evaluate existing text references to split zoning and overlapping uses for elimination, to achieve a more generalized and flexible method of development
- Review and evaluate design standards to provide for adequate review of multiple structure development

Variable/Electronic Message Signs

The zoning ordinance does not currently provide for the review and approval of electronic message signs although requests for this type of sign have been made. Text would be created to address several concepts.

Potential Concepts:

- Message movement (such as frequency and type) for motor vehicle operation safety
- Sign design (such as brightness and type) to address motor vehicle operation safety
- Square footage allotment

Farms and Roadside Stand Signs

Signs for 'Limited roadside stands' are currently permitted 16 square feet within the A and RC zoning districts (§1-19-6.320). Requests have been received to increase the maximum size to 32 square feet which is more consistent with surrounding jurisdictions. It has also been noted that sign setbacks for agricultural uses should be similar. Changes have been proposed to address these two issues.

Potential Changes:

- Create §1-19-6.320 (6)(a) to increase the maximum permitted sign size for limited roadside stand to 32 square feet
- Evaluate agricultural uses to standardize sign setback requirements

LI/GI Industrial Standards

The current industrial district performance standards in §1-19-7.610(J)(4)(a) restrict the storage capacity of flammable liquids to 60,000 gallons in the LI district and 120,000 gallons in the GI district. Requests have been received to establish facilities that would exceed these restrictions. To address this request, the existing provisions will be reviewed and evaluated for possible amendment.

Potential Concepts:

- On-site versus distribution center
- Flammable versus combustible

STAFF RECOMMENDATION

Staff requests input from the Planning Commission regarding the proposed amendments.

EXHIBITS

Exhibit 1 – Potential Text Amendments

POTENTIAL ZONING ORDINANCE TEXT AMENDMENTS

<i>Topic</i>	<i>Priority</i>	<i>Sections</i>	<i>Issue</i>	<i>Potential Solution</i>
Ag District, Landscape Contractors	1	1-19-5.310 1-19-8.331	Landscape Contractor was added to the Ag zoning district as a SE. Difficulty meeting 1-19-8.331(G) requirement of public road, paved width of 20', at least collector designation; or be within ½ mile of an arterial designated roadway.	Review SE criteria. Evaluate creation of small scale or limited Landscape Contractor with possible parameters on number of employees, amount or type of truck traffic, and outside storage. Consider permitting limited landscape contractor through PS.
Ag District, Private and/or Municipal Parks	1	1-19-5.310 1-19-10.1000	The zoning ordinance permits indoor sports recreation facility and outdoor sports recreation facility land uses which may not sufficiently provide for municipal or private park development, or may require floating zone review and approval.	Review Use Table and Open Space Recreation floating zone to provide for municipal or private park development.
Ag District, Ag Uses – Text Amendment	2	1-19-5.310	Concerns have been raised regarding uses removed from the Ag zoning district.	Review Use Table and evaluate changes.
Ag District, Public/Private Schools	3	1-19-5.310 1-19-5.310(B) 1-19-8.480 1-19-10.900	Public and Private Schools are not permitted within the Ag zone. The uses were removed as permitted within the district due to concerns with well and septic development, location outside of priority funding areas, and commercial development within the Ag zone.	Evaluate re-establishing public and private schools as permitted uses within the Ag zone. If re-established, identify solutions to permit Public/Private Schools through PS or SE with certain conditions.
Ag District, Cluster Rights	3	1-19-7.300(B) and (C)	Ag clustering option is separate from 3 lots and remainder text within zoning ordinance. Should the clustering and subdivision text be combined, remain within the zoning ordinance, and/or move to the subdivision ordinance.	Coordinate with subdivision ordinance rewrite to remove much of this language from zoning ordinance. Review purpose and intent of clustering option and possibly combine 1-19-7.300(B) and (C) text.
Ag District, Farm Lots	3	Deleted section 1-16-5(D) from <i>Subdivision Ordinance</i>	Regulations permitting Farm Lots were deleted from the Subdivision Ordinance in 2007. The Farm Lot provisions were deleted due to use of Farm Lots as estate lots and not for farming, and exemption from Forest Resource Ordinance, road improvements, road adequacy standards, septic percolation testing, and well drilling.	Evaluate re-establishing provisions permitting the creation of Farm Lots. Review deleted text and stated concerns in conjunction with subdivision ordinance rewrite.

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<i>Topic</i>	<i>Priority</i>	<i>Sections</i>	<i>Issue</i>	<i>Potential Solution</i>
I/OSR Floating Zones	2	1-19-10.900 1-19-10.1000	Recent discussions included evaluation of whether uses permitted solely through I/OSR floating zones are acceptable uses within the zoning districts where previously permitted and should not require floating zone approval.	Review and evaluate whether those uses permitted by I/OSR floating zones should be permitted through another approval process.
RC District, RC Uses – Text Amendment	3	1-19-5.310	Concerns have been raised regarding uses removed from the RC zoning district.	Review Use Table and evaluate changes.
RC District, Minimum Lot Size	3	1-19-6.100	Minimum lot size was increased from 5 acres to 10 acres. Request to return to 5 acres.	Evaluate returning the minimum lot size to 5 acres.
VC District, Duplex and Two-family units	1	1-19-5.310 1-19-7.500	Duplex and Two-family residential units are permitted through PS in VC zone while in residential zones it is permitted through P (subject to design regulation).	Amend 1-19-5.310 to permit Duplex and Two-family residential units through P in VC zone including staff review of overlay standards.
VC District, Setbacks	1	1-19-7.500(B)(3)	Calculating setbacks based on average setbacks of structures on facing and adjacent lots, has resulted in some instances of excessive setbacks.	Evaluate whether existing text should be amended to permit the Zoning Administrator to modify VC setback requirements in certain circumstances.
VC District, Concept Plan Procedures	1	1-19-7.500(D)	Review of VC concept plan by FCPC or Staff requires associated fee and plan submission.	Evaluate whether to remove the term ‘plan’ from existing text to provide flexibility in submission materials and permit ‘concept review’ at no charge possibly in combination with pre-application meeting.
VC District, Maximum Footprint	2	1-19-7.500(C)(4)(d)	VC design standards limit commercial buildings to a maximum footprint of 5,000 sq. ft. in non-growth areas; Planning Commission (FCPC) may grant increase up to 8,000 sq. ft. footprint in growth areas.	Evaluate VC zoning district boundaries in certain growth areas and consider rezoning properties, or evaluate whether to permit FCPC to grant a larger footprint than 8,000 sq. ft. in certain circumstances in growth areas.
Residential Properties, Accessory Uses (domestic animals)	3	1-19-8.240(A)(2)(a)	Recent discussion of reducing the number of permitted domestic animals. Existing text limits the number of permitted domestic animals to 9, Farm parcels are exempt.	Review and evaluate existing requirements for potential reduction in the number of permitted animals. Amend text to provide consistency in terms ((A)(2)(a) ‘Domestic animals’ and (A)(2)(b) ‘Farm animals’)

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<i>Topic</i>	<i>Priority</i>	<i>Sections</i>	<i>Issue</i>	<i>Potential Solution</i>
Residential Properties, Accessory Uses (3 acre req.)	3	1-19-8.240(A)(2)(b)	Recent discussions of reducing the minimum 3 acre requirement for keeping farm animals in residential districts. The issue was discussed in relation to beekeeping and 4H projects where properties are less than 3 acres.	Review and evaluate existing requirements for potential reduction in the minimum acreage requirement. Evaluate whether 4H projects could be permitted as a temporary activity with no more than 3 animals on properties less than 3 acres while meeting setback requirements.
Site Plans, FCPC Review Required	1	1-19-2.160(A) 1-19-3.300 1-19-3.300.1	Authority provided to FCPC to review site development plans causes confusion with authority provided to Staff as authorized representative. This affects the intent to allow staff level review at the Type II and III levels.	CREATE POLICY AND PROCEDURE – this could eliminate need for any text changes. Confer with County Attorney regarding any necessary text changes.
Site Plans, Site Plan Term	1	1-19-2.160(A), 1-19-3.210, 1-19-3.220, 1-19-3.330- 1-19-3.300.4, 1-19-5.310	Existing text reference to “site development plan” throughout the zoning ordinance causes confusion within the site plan review process Type I, II and III.	CREATE POLICY AND PROCEDURE regarding the term – this could eliminate need for any text changes. Confer with County Attorney regarding any necessary text changes.
Site Plans, Minor Modification to Building Footprint	1	1-19-3.300.1(A)(2)(c); (A)(3)(b)	Minor modification to resiting or relocation of building beyond existing text requires an FCPC site plan. Current text allows between 201 sq. ft. to 2,000 sq. ft.; not more than 200 sq. ft.	Delete existing text, review and evaluate need for creation of alternate modification criteria.
Site Plans, Minor Expansion to Existing Building	1	1-19-3.300.1(A)(2)(c)	Expansion modification restricted to 2,000 sq. ft. or 10%, whichever is less. For large structures (i.e. 100,000 sq. ft.) this requirement may restrict expansion.	Delete existing text, review and evaluate need for creation of alternate modification criteria.
Site Plans, Type III	1	1-19-3.300.1(A)(3)	Confusion regarding development subject to the Type III process and whether a site plan per 1-19-3.300.3 is required.	CREATE POLICY AND PROCEDURE – regarding the process and requirements – this could eliminate need for any text changes. Create procedures for Type III reviews. Confer with County Attorney regarding any necessary text changes.

POTENTIAL ZONING ORDINANCE TEXT AMENDMENTS

<i>Topic</i>	<i>Priority</i>	<i>Sections</i>	<i>Issue</i>	<i>Potential Solution</i>
Site Plans, Change in Use	1	1-19-3.300.1(A)(3)	Confusion regarding requirements for a change of use as part of the Type III process and whether a site plan per 1-19-3.300.3 is required.	CREATE POLICY AND PROCEDURE – regarding change of use process and requirements – this could eliminate need for any text changes. Create procedures for Type III reviews. Confer with County Attorney regarding any necessary text changes.
Site Plans, Parking, Loading, and Lighting	3	1-19-6.210 1-19-6.220 1-19-6.400	Clarification may be needed regarding the extent to which an existing site must conform to the Parking, Loading, and Lighting requirements.	CREATE POLICY AND PROCEDURE – this could eliminate need for any text changes. Review and evaluate sections and whether staff should be given more allowance to grant modifications. Confer with County Attorney regarding any necessary text changes.
Commercial and Industrial Zones, Multiple Structures	1	1-19-4.500(B) 1-19-10.300	Zoning ordinance currently permits only 1 principal structure and customary accessory structures on any single lot in commercial or industrial zoning districts.	Review and evaluate whether to amend the Planned Industrial/Commercial Development Standards to apply to multiple structures on a single lot/permit same use structures.
Signs, Variable/Electronic Messaging	1	1-19-6.320	Zoning ordinance does not currently address this type of sign, although receiving requests for message boards.	Review sign section to incorporate electronic message signs.
Signs, Farms and Roadside Stands	2	1-19-6.320	Permitted signage is insufficient.	Review and evaluate sign section to permit increased signage.
Signs, Church Use vs. Zoning Dist.	2	1-19-6.320	Church in GC zone is allowed less signage than a commercial use.	Review and evaluate sign section to permit equal signage in GC zone regardless of use.
Signs, Corner Lots	2	1-19-6.320	Zoning ordinance currently restricts signage on multiple sides of building, facing two or more streets.	Review and evaluate sign section to permit more building signage on corner lots.
'SE' Special Exception Uses	2	1-19-5.310 1-19-8.300- 1-19-8.490	Several special exception uses could be processed administratively by zoning certificate (temporary trailers and accessory apartments) or by a site plan 'PS' (vet clinics in GC zone and auto services in LI zone).	Review and evaluate uses and whether they should be processed differently.

POTENTIAL ZONING ORDINANCE TEXT AMENDMENTS

<i>Topic</i>	<i>Priority</i>	<i>Sections</i>	<i>Issue</i>	<i>Potential Solution</i>
GC/LI District, Outdoor Storage	2	1-19-7.510(E) 1-19-7.600(D)	Zoning ordinance currently requires that storage of equipment, materials, or products in the GC and LI Districts shall be conducted within completely enclosed buildings or outdoors only when completely screened by a wall, opaque fence, or planting.	Review and evaluate opportunities to provide flexibility in requirements for storing material outdoors.
Variances and Setback/Design Modifications	2	1-19-6.110 1-19-6.120 1-19-6.130 1-19-6.140 1-19-6.150 1-19-6.160	Increase flexibility in existing language to provide for requests to modify a standard which has minimal to no effect to surrounding properties but requires a variance.	Review and evaluate existing text to provide clearer language and opportunities for additional staff level allowances.
Flooding Soils	3	1-19-9.110	The NRCS soil mapping process can be burdensome and expensive for applicants and testing has often resulted in notification that the development area does not contain flooding soils.	Review and evaluate existing zoning ordinance requirements to consider alternatives that would achieve the intent of existing text, without the applicant burden and expense.
LI/GI, Industrial Standards	1	1-19-7.610	The current code restricts storage capacity of liquids: LI – 60,000 gal. and GI – 120,000 gal.	Review and evaluate industrial district performance standards. On-site use versus distribution center, flammable versus combustible.