



## DIVISION OF PLANNING FREDERICK COUNTY, MARYLAND

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To: Board of County Commissioners

FROM: Eric Soter, Director; Shawna Lemonds, Project Manager

DATE: July 22, 2009

RE: Administration and Enforcement Draft Text Amendment

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### **ISSUE**

In an on-going effort to rewrite the zoning ordinance Staff is moving forward with the next identified theme which is Administration and Enforcement.

The primary objectives of the update to this portion of the zoning ordinance are to reduce duplication, provide consistency with recently adopted text amendments, and reorganize and edit existing text to reflect current policy and practice regarding administration and enforcement process and procedures.

The proposed text amendment would edit and update Article II: Administration and Enforcement; Article III: Review and Approval Procedures; Article IV: Regulations Applicable to All Districts; Article XI: Definitions.

### **BACKGROUND**

In May of 2007 Planning Division Staff presented the Board of County Commissioners (BOCC) with a Staff Report outlining a theme based approach to updating the zoning ordinance. The BOCC Strategic Plan FY 2007-FY 2011 Goal #5 Land Use, Objective 1 initiated the examination of the zoning ordinance, determination of priorities for changes, and initiating a phased approach for zoning text amendments. In achieving that objective Staff is moving forward with updates to specific areas within the zoning ordinance.

The Citizen Zoning Review Committee (CZRC) represented a diverse group of stakeholders from the County who met over several months and reviewed the zoning ordinance by theme. The CZRC Report summarizes recommended amendments and revisions to the zoning ordinance that were identified by the Committee. The Report provides the basis for review of themes, additional research, and eventual presentation of recommendations to the BOCC for text amendments to the zoning ordinance. The 2003 CZRC Report within Administration and Enforcement included several discussion points and recommendations:

- Time Limits for Appeals
- Notification and Posting Requirements
- Variances
- Nonconforming uses, lots, and structures
- Zoning hearing officer and staff approvals
- Zoning text amendment and map amendment process
- Miscellaneous considerations

Staff reviewed the CZRC Report, existing regulations within the zoning ordinance, input from the Staff of the Planning Division, Office of the County Attorney, and the Division of Permitting and Development Review and based on this analysis recommended several updates to the zoning ordinance. The edits and updates will provide Staff, citizens, and applicants with a clear and concise set of regulations leading to an established level of expectation regarding those provisions related to administration and enforcement.

The draft text amendment includes updates and edits to the following sections of the zoning ordinance:

- Article II: Administration and Enforcement Sections 1-19-2.110, 1-19-2.150, 1-19-2.200, and 1-19-2.210
- Article III: Review and Approval Procedures Sections 1-19-3.100, 1-19-3.100.1, 1-19-3.100.2, 1-19-3.100.3, 1-19-3.100.4, 1-19-3.110.1, 1-19-3.110.2, 1-19-3.110.3, 1-19-3.110.4, 1-19-3.110.5, 1-19-3.110.7, 1-19-3.110.8, 1-19-3.200, 1-19-3.220, 1-19-3.230, and creation of 1-19-3.200.1 and 1-19-3.200.2
- Article IV: Regulations Applicable to All Districts Sections 1-19-4.220, and 1-19-4.230
- Article VIII: Specific Use Regulations Section 1-19-8.500.5
- Article XI: Definitions Section 1-19-11.100

The text amendment overview section below provides a summary of the proposed changes. The summary includes the zoning ordinance section and heading followed by a description for each proposed change. Within the attached Exhibit 1-Administration and Enforcement *Draft* Text Amendment proposed new text is shown in **BOLD CAPS UNDERLINED**, with text for removal shown in ~~STRIKETHROUGH~~. Page numbers follow the zoning ordinance section number below to provide a reference to the location of the related text within the draft text amendment.

Exhibit 2 - Existing Administration and Enforcement Zoning Ordinance Text contains relevant existing Article II, Article III, Article IV, and Article XI zoning ordinance text which has been attached for reference purposes.

## **TEXT AMENDMENT OVERVIEW**

### ***ARTICLE II: ADMINISTRATION AND ENFORCEMENT DIVISION 1. ADMINISTRATION***

#### ***§1-19-2.110. Zoning Certificate and Building Permit [pg. 1]***

This existing section of the zoning ordinance contains an explanation of the requirements for a zoning certificate and building permit within the County development approval process.

Text within this section has been updated to clarify the exemption of accessory structures of 150 square feet or less of floor area from the building permit and zoning certificate requirement only where the accessory structure is permitted and in compliance with the provisions within the zoning ordinance. The addition of this text clarifies that other provisions of the zoning ordinance continue to apply to an accessory structure, such as setbacks, even though the structure may be exempt from the building permit and zoning certificate process.

### **§1-19-2.150. Board of Appeals [pg. 1]**

This existing section describes the role and authority of the Board of Appeals as provided within the zoning ordinance.

The Board of Appeals is required to review applications for activities within the FEMA floodplain as well as applications for nonconforming uses as provided in section 1-19-9.120 and 1-19-4.230 (B) respectively. However, existing text within section 1-19-2.150 does not specifically refer to these items within the powers of the Board of Appeals. The existing text has been updated to provide consistency with the requirements found in the other sections of the zoning ordinance as noted.

The proposed changes do not represent a change in policy or procedure. The Board of Appeals review process is currently provided for within the previously noted sections and has been included here to improve clarity throughout the zoning ordinance.

## ***DIVISION 2. ENFORCEMENT***

### **§1-19-2.200. Complaints [pg. 2]**

This existing section has been updated to require that the Zoning Administrator keep public records related to complaints and violations in accordance with the County's records retention policy rather than permanently. These changes will provide consistency between current zoning ordinance requirements and County policy, as well as reducing the need for unlimited storage and administrative processing.

### **§1-19-2.210 Civil Zoning Infractions [pg. 2]**

This existing section of the zoning ordinance reflects the procedure and process for civil zoning infractions. The text in this section has been updated for clarity and to remove references to warnings as part of the citation process. This change is consistent with current policy and practice related to the citation process.

In addition, references have been updated to reflect the current citation to related text within the Maryland Annotated Code, Article 66B.

## ***ARTICLE III: REVIEW AND APPROVAL PROCEDURES***

### ***DIVISION 1. ZONING AMENDMENTS***

#### **§1-19-3.100 Zoning Text Amendments**

##### **§1-19-3.100.1 Purpose and Intent**

##### **§1-19-3.100.2 Application**

##### **§1-19-3.100.3 Review and Approval Procedures**

Text within these existing sections have been reorganized, consolidated, and edited to improve organization, reflect current policy and practice as well as improve processing. The headings of Purpose and Intent, Application, and Review and Approval Procedures have been created. This organizational structure follows the recently adopted ZT-09-04 Site Plan Review text amendment as well as within the Institutional and Open Space Recreation floating zoning districts.

To improve legibility while reviewing the text amendment, existing text within these sections has been shown for deletion, reorganized, and then placed as new text shown in **BOLD CAPS**. However, only those portions of text with **BOLD CAPS UNDERLINED** reflect new text.

### ***§1-19-3.100.1 Purpose and Intent [pg. 4]***

A purpose and intent for this portion of the zoning ordinance has been created to provide a better understanding of the zoning text amendment process.

### ***§1-19-3.100.2 Application [pg. 4]***

Text within proposed section 1-19-3.100.2 provides consistency with text in section 1-19-3.100.1, stating that the BOCC may initiate a text amendment, and provides that no specific application form is required.

### ***§1-19-3.100.3 Review and Approval Procedures [pg. 4]***

Within the Review and Approval Procedures, reorganization of existing text allows process and procedures to be more easily identified. Where possible text was standardized and repeated throughout the proposed text amendment to provide consistency throughout the zoning ordinance.

Text within proposed section 1-19-3.100.3 (A) has been updated to provide specificity that the Planning Commission makes a formal *recommendation* to the Board of County Commissioners for zoning text amendments. In addition this same sentence has been updated to state that the Planning Commission failure to make a recommendation 'within 62 days of the *first* public hearing' shall be deemed as providing no recommendation on the request. This change has been made to provide for the timely processing of a zoning text amendment initiated by the BOCC.

Text within proposed section 1-19-3.100.3 (B) has been edited to remove a requirement that the BOCC act 'within 45 days' on a text amendment. The existing 45-day requirement has created significant difficulty in the past due to text amendment process timing and scheduling conflicts. Furthermore, as the initiation of a text amendment is limited to the County Commissioners, it is at the discretion of the BOCC whether to take action on a text amendment. For these reasons, the text has been proposed for deletion.

Within proposed section 1-19-3.100.3 (E) public notice text is existing however, it has been updated to provide consistency with the recently reviewed and adopted posting requirements within ZT-09-04 Site Plan Review. This same text has been standardized throughout the text amendment including Zoning Map Amendment and Special Exception, Variance, and Appeals procedures. Where possible the text has been standardized however, where existing requirements differ, the existing text remains.

#### **§1-19-3.100.4 Board of County Commissioners and Decision [pg. 6]**

Existing section 1-19-3.100.4 has been deleted as the text has been consolidated into the review and approval procedures within proposed section 1-19-3.100.3.

#### **§1-19-3.110 Zoning Map Amendments**

##### **§1-19-3.110.1 Purpose and Intent**

##### **§1-19-3.110.2 Application**

##### **§1-19-3.110.3 Review and Approval Procedures**

##### **§1-19-3.110.4 Approval Criteria**

##### **§1-19-3.110.5 Conditions**

##### **§1-19-3.110.6 Continuances and Withdrawal of Applications**

##### **§1-19-3.110.7 Special Provisions for Comprehensive Zoning Map Amendments**

##### **§1-19-3.110.8**

##### **§1-19-3.110.9 Appeals**

Text within these existing sections have been reorganized, consolidated, and edited to improve organization, reflect current policy and practice as well as improve processing. In addition to existing headings, new headings of Purpose and Intent, Application, Review and Approval Procedures, and Approval Criteria have been created. This organizational structure follows the recently adopted ZT-09-04 Site Plan Review text amendment as well as within the Institutional and Open Space Recreation floating zoning districts.

To improve legibility while reviewing the text amendment, existing text within these sections has been shown for deletion, reorganized, and then placed as new text shown in **BOLD CAPS**. However, only those portions of text with **BOLD CAPS UNDERLINED** are reflective of new text.

#### **§1-19-3.110.1 Purpose and Intent [pg. 6]**

A purpose and intent for this portion of the zoning ordinance has been created to provide a better understanding of the zoning map amendment process.

#### **§1-19-3.110.2 Application [pg. 7]**

This Section contains existing language that has been reorganized and moved from another location to improve clarity and organization. Text has also been updated in subsection (B)(1)(b) to clarify that an application for an individual map amendment or floating zone reclassification will be rejected if the property is subject to review under a comprehensive, community or corridor plan. The 'Region Plan' reference has been deleted to follow current practice as the new Comprehensive Plan update process moves forward with Countywide and/or Community and Corridor reviews.

#### **Outstanding Issue**

Existing text within section 1-19-3.110.2 (A) restricts applications for a Zoning Map Amendment or Floating Zone Reclassification to the months of April and October. This restriction was added in the past due to the volume of applications that were received during the year. It has been recent experience by Staff that the volume of applications has reduced to the point that this text is no longer needed. Staff requests direction as to whether this restriction should be removed from the zoning ordinance or maintained.

### **§1-19-3.110.3 Review and Approval Procedures [pg. 9]**

This section contains language that for the most part is existing however, it has been reorganized, updated, and standardized with recently reviewed and adopted text amendments as well as other public notice requirements within this text amendment.

A change is proposed for section 1-19-3.110.3 (A)(2) which requires that the Planning Commission hold a public hearing 62 days after acceptance of the application by the zoning administrator. This requirement has been difficult for Staff to meet in the past due to information review, process timing, and scheduling conflicts.

For these reasons, Staff requests and has proposed within the text amendment, an extension of this requirement to 90 days consistent with other review periods such as preliminary subdivision and site plan review.

Text has also been added to clarify where specific provisions apply only to 'individual' or piecemeal zoning map amendments and floating zone reclassification rather than to comprehensive, individual, and floating zone reclassification zoning map amendments.

### **§1-19-3.110.4 Approval Criteria [pg. 12]**

This section contains existing language that has been moved from another location to improve clarity and organization. Minor edits have been made to the existing language for clarification purposes.

Text has been added to this section to provide for evaluation of piecemeal or 'individual' zoning map amendments. Existing provisions for Zoning Map Amendments contain approval criteria within this section. However, these criteria do not contain an analysis for piecemeal 'individual' rezoning requests which would require evidence of a 'change or mistake'. This requirement is provided in the Maryland Annotated Code Article 66B and has been proposed for inclusion in this section.

### **§1-19-3.110.5 Conditions [pg. 13]**

This section has been edited to provide clarification of existing text.

### **§1-19-3.110.6 Continuances and Withdrawal of Applications [pg. 13]**

This section remains unchanged.

### **§1-19-3.110.7 Special Provisions for Comprehensive Zoning Map Amendments [pg. 13]**

This section has been updated to clarify that a separate procedure and requirements are contained in this section relating to the processing of Comprehensive Zoning Map Amendments. The provisions in this section apply to Comprehensive Zoning Map Amendments rather than those provided for Individual Zoning Map Amendments and Floating Zone Reclassifications contained in the remaining sections.

### **§1-19-3.110.8 Use it or Lose it Provision [pg. 14]**

The existing 'Use it or Lose it' text is proposed for deletion as it is unnecessary within the zoning ordinance. Actions associated with 'losing' zoning would be undertaken during a comprehensive rezoning. Those actions are at the discretion of the Board of County Commissioners for all properties within the County regardless of this existing text. For these reasons the text is proposed for deletion.

### **§1-19-3.110.9 Appeals [pg. 14]**

This section remains unchanged.

## **DIVISION 2. SPECIAL EXCEPTIONS, VARIANCES, AND APPEALS**

### **§1-19-3.200 Purpose and Intent**

#### **§1-19-3.200.1 General Review and Approval Procedures**

#### **§1-19-3.200.2 Application**

The existing Special Exceptions, Variances, and Appeals text has been reorganized, consolidated, and edited to improve organization, reflect current policy and practice, as well as improve processing. The proposed organizational structure follows that utilized within recently adopted text amendments as well as the changes proposed for regulations within the zoning ordinance for Zoning Text Amendment applications.

To improve legibility while reviewing the text amendment, existing text within these sections has been shown for deletion, reorganized, and then placed as new text shown in **BOLD CAPS**. However, only those portions of text with **BOLD CAPS UNDERLINED** reflect new text.

### **§1-19-3.200 Purpose and Intent [pg. 14]**

A purpose and intent for this portion of the zoning ordinance has been created to provide a better understanding of the Special Exception, Variance, and Appeals process.

#### **§1-19-3.200.1 Application [pg. 16]**

This section contains existing text that has been moved to this location to improve clarity and organization.

#### **§1-19-3.200.2 General Review and Approval Procedures [pg. 17]**

This section contains language that for the most part is existing, however notification and posting requirements have been reorganized, updated, and standardized with recently reviewed and adopted text amendments as well as other public notice requirements within this text amendment.

Text in Subsection (A)(1) has been edited to provide standardization of text within this section referring to Board of Appeals public hearings on applications for an appeal or 'other matter'. Utilizing 'other matter' is consistent with other text in this section, and provides clarity to the processing of approvals for Activities within the FEMA floodplain and Nonconforming Uses which is discussed further under the heading of 1-19-2.150 Board of Appeals above.

### **§1-19-3.220 Variances [pg. 18]**

The existing criteria for variance approval have been updated and reorganized to provide clarity to the Board of Appeals, applicants, and the general public in applying the criteria to an application. These changes reflect current policy and practice, in that the Board of Appeals must first establish 'special conditions and circumstances...which are peculiar to the land or structure involved' prior to moving forward with applying the remaining criteria.

In Subsection (B) it has been clarified that an application for a variance can be made after 'the refusal of a zoning approval or an adverse determination has been issued by the Zoning Administrator'.

The new text reflects current practice regarding a zoning approval and also provides that the applicant need not be refused a building permit prior to applying. The change providing for an adverse determination will allow an applicant to apply for a variance prior to building permit refusal and will reduce cost, possible confusion, and the potential requirement of an unnecessary step.

In Subsection (F) new text has been added to clarify that a variance shall not be granted for the portion of a structure that has been deemed nonconforming. This will clarify the application of a variance to nonconforming structures and provide the possibility that a variance may be approved for the legal, conforming portions of a nonconforming structure.

Lastly, text within Subsection (G) has been updated and moved to this section of the zoning ordinance from section 1-19-3.200 Special Exceptions, Variances, and Appeals. Existing regulations provide that an approval granted for 'a variance or special exception will be void 2 years from the date of approval by the Board of Appeals'. The text referring to a 'Special exception' has been removed from this subsection due to conflicts that this requirement has with the site plan review process. The current 2 year expiration could permit a special exception approval to expire prior to receiving site plan approval. The proposed change provides maximum flexibility for a special exception to complete the site plan review process without expiration of the special exception approval. Removal of the reference to 'special exception' results in this language referring only to variances. For this reason the text has been moved into this section of the zoning ordinance (1-19-3.220) which contains specific requirements related to variance review and approvals.

### **Outstanding Issue**

The CZRC report, within the discussion of variances, recommended changes to existing zoning ordinance text found in section 1-19-3.220 to include language that would add practical difficulty to the existing review requirement of unnecessary hardship. Practical difficulty is a lesser standard than unnecessary hardship, and would lower the standard by which a variance is reviewed and potentially approved.



Staff has updated and recommends the text as proposed within the text amendment to clarify the processing and approval of variances. Direction is requested regarding the addition of 'practical difficulty' language which would lower the existing standards.

**§1-19-3.230 Appeals [pg. 20]**

This section has been edited to provide consistency with other existing references within the zoning ordinance to the Maryland Annotated Code Article 66B.

**ARTICLE IV: REGULATIONS APPLICABLE TO ALL DISTRICTS  
DIVISION 2. NONCONFORMING LOTS, STRUCTURES, AND USES**

**§1-19-4.220 Nonconforming Structures**

**§1-19-4.230 Nonconforming Uses**

These two existing sections have been edited to provide a separation of text and a clear distinction between a nonconforming structure and a nonconforming use.

**§1-19-4.220 Nonconforming Structures [pg. 20 & 21]**

The CZRC recommended that prohibitions should be removed to permit *alterations that would not "increase the non-conformity"* and clarification should be provided as to the area of nonconformity. Based on these recommendations updates have been made to Subsection (A) to provide new text to permit expansion of the conforming portion of a nonconforming structure. A modification to the nonconforming portion of a structure has also been permitted where the modification results in a reduction in the area of nonconformity.

In Subsection (B), language has been added to prohibit a variance to the nonconforming portion of a nonconforming structure. This language is also proposed in Section 1-19-3.220 (F).

**§1-19-4.230 Nonconforming Uses [pg. 21 & 22]**

Edits to this section of the zoning ordinance were made to clarify in Subsection (A) that a modification or enlargement of a nonconforming use requires 'approval' by the Board of Appeals rather than a formal 'special exception' which is the most appropriate terminology for this type of approval.

Remaining edits to this section were made to provide clarity in text and to remove confusion between a nonconforming use and a nonconforming structure.

## **Outstanding Issue**

Staff is requesting clarification on the continued existence of nonconforming structures and uses. Current regulations within the zoning ordinance address nonconforming structures and uses, however, it is unclear as to whether the intent is for these types of development to eventually be removed from the zoning district in which they have become nonconforming, or whether the intent is to merely prevent new construction or development of similar structures and uses.

At a minimum, Staff would find it helpful to provide explanatory text in existing sections 1-19-4.220 Nonconforming Structures and 1-19-4.230 Nonconforming Uses. In addition, if the BOCC were to direct staff that the nonconforming structures and uses were to continue rather than be removed, text could be added to 1-19-2.160(B) Planning Commission for catastrophic events (formerly 1-19-2.160(D)).

The addition of text to include an intent regarding these types of uses would provide clarity to Staff, the general public, as well as nonconforming structure and use property and business owners.

### ***ARTICLE VIII: SPECIFIC USE REGULATIONS DIVISION 5. INTENSIVE SWINE FEEDING § 1-19-8.500.5. Notice and Hearing Requirements. [pg. 22]***

Text within this section has been updated to reflect section numbers as updated within the proposed administration and enforcement text amendment.

### ***ARTICLE XI: DEFINITIONS DIVISION 1. DEFINITIONS §1-19-11.100 [pg. 23]***

Within this section, the reference to 'Frontage. See Lot Frontage' is proposed for deletion due to the fact that there is no corresponding definition for Lot Frontage in the definitions within the zoning ordinance. The removal of this reference will reduce confusion within this section.

In addition, a minor edit was made to the definition of 'Lot Types' to provide for a lot containing 3 front yards. The proposed text will provide clarity in the application of section 1-19-6.100 Design Requirements for Specific Districts and section 1-19-6.110 Design Modifications. In the past the zoning ordinance has been unclear as to what type of yard requirements would apply to a lot containing 3 front yards. These changes are consistent with current policy and practice.

## **Outstanding Issue**

The CZRC Report within Administration and Enforcement, made several recommendations regarding notification and posting requirements. As previously discussed, the proposed text amendment is limited to standardization of general text describing existing notification and posting requirements.

Staff requests that the proposed text amendment move forward at this time without additional changes to notification and posting requirements. Staff will continue to research this topic on a separate track which will provide the necessary time to conduct research and adequately review this topic without impeding progress on the proposed Administration and Enforcement text amendment. Further research on notification and posting requirements will include a comparison of existing requirements within the Frederick County zoning ordinance for the different land use processes, as well as a comparison of Frederick County notification and posting requirements with other jurisdictions.

At the direction of the BOCC, if/when further research leads to additional recommendations for changes to the notification and posting requirements those changes could be folded into the Administration and Enforcement text amendment or continue to move forward as a separate text amendment.

### **STAFF RECOMMENDATION**

The primary objectives of the update to this portion of the zoning ordinance are to reduce duplication, provide consistency with recently adopted text amendments, and reorganize and edit existing text to reflect current policy and practice regarding administration and enforcement process and procedures.

Staff requests direction from the Board of County Commissioners regarding the *Draft* Administration and Enforcement text amendment to the zoning ordinance.

### **EXHIBITS**

Exhibit 1 – Administration and Enforcement *Draft* Text Amendment  
Exhibit 2 - Existing Article II, III, IV, and IX Zoning Ordinance Text