



## DIVISION OF PLANNING FREDERICK COUNTY, MARYLAND

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TO: Frederick County Planning Commission  
Frederick County Board of Appeals

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

DATE: September 3, 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 V: Zoning Map and Districts; Article VIII: Specific use Regulations, Article X: Optional Methods of Development, and 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, 1-19-3.110.9, 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 1-19-4.200, 1-19-4.220, and 1-19-4.230
- Article V: Zoning Map and Districts Section 1-19-5.300
- Article VIII: Specific Use Regulations Sections 1-19-8.480 and 1-19-8.500.5
- Article X: Optional Methods of Development Section 10.500
- Article XI: Definitions Section 1-19-11.100

The Board of County Commissioners held a worksession on August 4, 2009 to review and provide direction regarding the Administration and Enforcement *Draft* Text Amendment. At that worksession, the BOCC addressed four outstanding issues and provided direction regarding several other items within the draft. A summary of the direction given at the worksession has been provided below, however a more complete discussion of these items has been provided within the individual headings of the text amendment overview.

Direction provided by the BOCC at the August 4<sup>th</sup> worksession included:

1. Clarify existing text located in section 1-19-3.100.3 (C) and throughout the document for consistency
2. Delete existing incomplete listing of floating zoning districts within text located in section 1-19-3.110.2 (A)
3. Maintain restriction on applications for a Zoning Map Amendment to the months of April and October within existing text in section 1-19-3.110.2 (A).
4. Provide a time limit on BOCC decisions for individual zoning map amendment or floating zone reclassification applications within section 1-19-3.110.3
5. Replace 'comprehensive zoning map amendment' with 'comprehensive zoning or rezoning' throughout the text amendment
6. Standardize the use of the term 'Board of Appeals' within draft text amendment
7. Add 'Zoning Administrator' to section 1-19-3.200.2 to standardize language within posting requirements
8. Maintain reference to unreasonable hardship within zoning ordinance variance text without the addition of a practical difficulty standard
9. Create purpose and intent language to expand upon existing section 1-19-4.200 to address the long term implications regarding nonconforming uses and structures

10. Additional research and recommendations regarding notice and posting requirements within the zoning ordinance will move forward as a separate project

At the conclusion of the worksession the BOCC directed Staff by unanimous consent to send the Administration and Enforcement *Draft* Text Amendment to public hearing with the edits as directed, unless significant changes were recommended by the Board of Appeals or Planning Commission. The joint Planning Commission and Board of Appeals worksession is being held to provide an opportunity to review and comment on the proposed text amendment as well as better understand the proposed changes prior to the text amendment public hearing process.

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~~. Within specific sections, as noted throughout the overview, existing text has been reorganized therefore it is reflected in **BOLD CAPS** however, only those portions with **BOLD CAPS UNDERLINED** reflect new text.

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 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, Danger Reach areas, as well as applications for nonconforming uses as provided in section 1-19-9.120 1-19-9.220, and 1-19-4.230 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 expanded to include subsection (D)(4) and (5) 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 zoning 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.

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

In addition, subsection (C) has been deleted due to other recommended changes made within this section and duplicate existing language found in subsection (A).

## **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 has 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. 5]**

A purpose and intent for this section 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. 5]**

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. 5]**

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 BOCC, 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.

As directed by the BOCC at the August 4<sup>th</sup> worksession, existing text within proposed 1-19-3.100.3 (C) has been clarified to indicate that 'any' person shall have the right to submit testimony at the public hearing.

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. 7]**

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 Use it or Lose it Provision**

**§1-19-3.110.9 Appeals**

Text within these existing sections has 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. 7]**

A purpose and intent for this section 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. 9]**

This section contains existing language that has been reorganized and moved from another location to improve clarity and organization.

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. Staff requested direction from the BOCC as to whether this restriction should be removed from the zoning ordinance or maintained. At their worksession, the BOCC directed that this existing text should remain within the zoning ordinance without change. Text within this subsection was updated however, to remove an incomplete listing of the various floating zoning districts.

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 plans.

### **§1-19-3.110.3 Review and Approval Procedures [pg. 11]**

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.

At their worksession on August 4<sup>th</sup> the BOCC directed Staff to include language within the text amendment to provide a time limit on BOCC decisions for individual zoning map amendment or floating zone reclassification applications. The text has been added within subsection (D) and states that an application will be deemed denied if approval has not been received within 90 days of the conclusion of the public hearing.

### **§1-19-3.110.4 Approval Criteria [pg. 14]**

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. 15]**

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

### **§1-19-3.110.6 Continuances and Withdrawal of Applications [pg. 15]**

This section remains unchanged.

### **§1-19-3.110.7 Special Provisions for Comprehensive Zoning or Rezoning [pg. 15]**

Text within this section has been updated to clarify that separate procedures and requirements are contained in this section to provide for the processing of comprehensive zoning or rezoning applications rather than those provided for individual zoning map amendments and floating zone reclassifications contained in the remaining sections. Text has also been updated to provide for the public hearing portion of the comprehensive zoning or rezoning process in a manner consistent with other sections of the text amendment.

As directed by the BOCC at their worksession, this section has also been updated to refer to a 'Comprehensive Zoning or Rezoning' rather than a 'Comprehensive Zoning Map Amendment'.

### **§1-19-3.110.8 Use it or Lose it Provision [pg. 16]**

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. 16]**

This section has been updated to reflect new numbering as previous section 1-19-3.110.8 has been deleted.

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

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

#### **§1-19-3.200.1 Application**

#### **§1-19-3.200.2 General Review and Approval Procedures**

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 the structure 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.

The heading for this section has also been updated to reflect other changes made throughout this section to include an 'approval' by the Board of Appeals.

### **§1-19-3.200 Purpose and Intent [pg. 16]**

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

#### **§1-19-3.200.1 Application [pg. 18]**

This section contains existing text that has been moved to this location to improve clarity and organization. In addition, text has been added to provide for the processing of 'approval' applications in the case of activities within the FEMA Floodplain, Danger Reach Areas, and Nonconforming Uses.

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

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 remove a reference to the Board of 'Zoning' Appeals and to provide reference 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, Danger Reach Areas, and Nonconforming Uses which is discussed further under the heading of 1-19-2.150 Board of Appeals above.

In addition, it was clarified within subsection (C)(3) that the 'Zoning Administrator' shall cause the newspaper public notice to occur.

#### **§1-19-3.220 Variances [pg. 20]**

This section contains mostly existing text which has been updated and edited. 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.

The existing criteria for variance approval in subsection (C) 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 exist which are peculiar to the land or structure involved...' prior to moving forward with applying the remaining criteria.

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. This language is also proposed in section 1-19-4.220 (B) Nonconforming Structures.

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.

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 updated and provided recommendations regarding the processing and approval of variances and requested direction from the BOCC as to whether the 'practical difficulty' language should be added to the zoning ordinance.

The BOCC directed that the existing language should remain without changes. In addition it was noted that the Board of Appeals has the opportunity to request that the BOCC initiate a text amendment where it determines that an amendment to existing zoning ordinance provisions is necessary.

### ***§1-19-3.230 Appeals [pg. 22]***

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***

### ***§1-19-4.200 Generally***

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

### ***§1-19-4.230 Nonconforming Uses***

A general effort has been made within these sections to provide a separation of text and a clear distinction between a nonconforming structure and a nonconforming use.

### **§1-19-4.200 Generally [pg. 22]**

This is an existing section that provides for a general purpose and intent discussion regarding nonconforming lots, structures, and uses.

At the BOCC worksession Staff requested direction regarding 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.

It was noted that explanatory text including 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.

The BOCC directed Staff to create language to address this inconsistency and to provide a further explanation of the purpose and intent within the zoning ordinance for these types of development. Text has been added to section 1-19-4.200 to expand upon the purpose of the existing provisions and to clarify that it is not the policy of the County to pursue elimination of these nonconformities.

### **§1-19-4.220 Nonconforming Structures [pg. 23]**

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. 24]**

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.

**ARTICLE V: ZONING MAP AND DISTRICTS**  
**DIVISION 3. USE TABLE**  
**§ 1-19-5.300 Generally. [pg. 25]**

This section has been included in the text amendment to provide for a typographical correction.

**ARTICLE VIII: SPECIFIC USE REGULATIONS**  
**DIVISION 4. PERMITTED USES**  
**§ 1-19-8.480 Uses Permitted in the Euclidean Institutional (Ie) or Euclidean Open Space Recreation (OSRe) Zoning Districts. [pg. 25]**

This section has been included in the text amendment to provide for a typographical correction.

**DIVISION 5. INTENSIVE SWINE FEEDING**  
**§ 1-19-8.500.5. Notice and Hearing Requirements. [pg. 25]**

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

**ARTICLE X: OPTIONAL METHODS OF DEVELOPMENT**  
**DIVISION 5. MIXED-USE DEVELOPMENT DISTRICT (MXD)**  
**§ 1-19-10.500. Mixed-use Development (MXD). [pg. 26]**

Text within this section has been updated to provide consistency with proposed changes for the processing of applications for a zoning map amendment within section 1-19-3.100.3 of the administration and enforcement text amendment.

**ARTICLE XI: DEFINITIONS**  
**DIVISION 1. DEFINITIONS**  
**§1-19-11.100 [pg. 26]**

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.

## **STAFF RECOMMENDATION**

Staff requests review and input from the Board of Appeals and Planning Commission regarding the Administration and Enforcement *Draft* 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

ARTICLE II: ADMINISTRATION AND ENFORCEMENT

DIVISION 1. ADMINISTRATION

§ 1-19-2.110. ZONING CERTIFICATE AND BUILDING PERMIT.

(A) *Approval of Zoning Administrator required; application to essential services and accessory structures.* It is unlawful to change the use, locate or to begin the new use, erection, construction, reconstruction, extension, conversion or structural alteration or development of any lot or structure without first obtaining a zoning certificate and building permit. No zoning certificate and building permit shall be issued unless it is approved by the Zoning Administrator. This provision does not apply to essential services or accessory structures of 150 square feet or less of floor area **IN COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER.**

[(B) through (H) remain unchanged]

§ 1-19-2.150. BOARD OF APPEALS.

[(A) and (B) remain unchanged]

(C) The Board shall adopt rules in accordance with the provisions of this chapter. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in the Chairman's absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, which shall be immediately filed in the office of the ~~Board~~ **DIVISION OF PLANNING,** and shall be a public record.

(D) The Board of Appeals shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter;

(2) To hear and decide special exceptions to the terms of the chapter upon which the Board is required to pass under this chapter;

(3) To authorize upon appeal in specific cases a variance from the terms of this chapter subject to the Board's administrative procedures.

**(4) TO HEAR AND DECIDE APPROVAL REQUESTS FOR ACTIVITIES WITHIN THE FEMA FLOODPLAIN (UNDER SECTION 1-19-9.120) AND ACTIVITIES WITHIN DANGER REACH AREAS (UNDER SECTION 1-19-9.220).**

**(5) TO HEAR AND DECIDE APPROVAL REQUESTS FOR NONCONFORMING USES (UNDER SECTION 1-19-4.230).**

[(E) remains unchanged]

DIVISION 2. ENFORCEMENT  
§ 1-19-2.200. COMPLAINTS.

[(A) and (B) remain unchanged]

(C) The Zoning Administrator shall keep a ~~permanent~~ public record **S IN ACCORDANCE WITH THE COUNTY'S RECORDS RETENTION POLICY** of all complaints and findings of fact disposing of alleged zoning violations.

[(D) remains unchanged]

§ 1-19-2.210. CIVIL ZONING INFRACTIONS.

(A) Pursuant to MD. Ann. Code, Art. 66B, §§ 7.01 ~~(C)~~, **AND 7.02** any violation of any of the provisions of this entire chapter, which is Chapter 1-19, entitled Zoning (also known as the zoning ordinance for Frederick County, Maryland), is a civil zoning violation and shall be called a civil zoning infraction. If, after investigation, a civil zoning infraction is believed to exist, the Zoning Administrator or his authorized agent shall deliver a citation ~~or a warning~~ to the property owner and other person or persons responsible for the infraction. If the person is unable to be located personally, the Zoning Administrator or his authorized agent may post the citation ~~or warning~~ in a conspicuous place on the property and mail a copy of same to the person, which shall be sufficient for delivery under this section.

(B) The citation ~~or warning~~, as provided for in this section, shall be in writing and shall contain the following:

- (1) The name and address of the person charged ~~or warned~~ ;
- (2) The nature of the violation;
- (3) The location of the violation;
- (4) The date(s) of the violation;

(5) The amount of the fine assessed (~~or possible of assessment~~);

(6) The manner, location and time in which the fine may be paid (or violation corrected, if applicable);

(7) The person's right to **ELECT TO** stand trial for the violation (~~if applicable~~); and

(8) A certification by the Zoning Administrator or his authorized agent attesting to the truth of the matters set forth.

~~(C)~~ Whenever an alleged or possible civil zoning infraction comes to the attention of the Zoning Administrator, the procedure to be followed is:

~~\_\_\_\_\_ (1) That the Zoning Administrator will investigate whether an infraction has occurred;~~

~~\_\_\_\_\_ (2) That, if he reasonably finds that an infraction has occurred, he will issue a warning to the person or persons responsible in the form and manner as outlined in this section, with a reasonable time stated to abate or to prevent future infractions;~~

~~\_\_\_\_\_ (3) That, if the infraction continues or is allowed to occur after the reasonable time stated, the Zoning Administrator will issue a citation to the person or persons responsible in the form and manner as outlined in this section. Notwithstanding the provisions of step (2) above, the Zoning Administrator may issue a citation at step (2) without the prior issue of a warning.~~

~~(D)~~ A ~~present~~ fine of \$100 is hereby imposed upon any person responsible for a civil zoning infraction for each violation. Each day such violation is permitted to exist shall be considered a separate infraction. All fines shall be **MADE** payable to the **TREASURER** Board of County Commissioners of Frederick County, Maryland; **AND SUBMITTED TO THE DIVISION OF** in the Planning and Zoning Office, which shall remit same on a daily basis to the County Treasurer.

~~(E)~~ A person who receives a citation may elect to stand trial for the offense by filing with the Zoning Administrator a notice of intention to stand trial. The notice shall be given at least 5 days before the date of payment as set forth in the citation. On receipt of the notice of intention to stand trial, the Zoning Administrator shall forward to the district court for Frederick County, Maryland, a copy of the citation and the notice of intention to stand trial. On receipt of the citation, the district court shall schedule the case for trial and notify the defendant of the trial date. All fines, penalties, or forfeitures collected by the district court for zoning infractions shall be remitted to the Board of County Commissioners of Frederick County, Maryland, through the County Treasurer.

(~~FE~~) If a person who receives a citation for an infraction fails to pay the fine by the date of payment set forth on the citation and fails to file a notice of intention to stand trial, a formal notice of the infraction shall be sent to the person's last known address. If the citation is not satisfied within 15 days from the date of the notice, the person is liable for a fine of \$200 for each infraction. If, after 35 days, the citation is not satisfied, the Zoning Administrator may request adjudication of the case through the district court. The district court shall schedule the case for trial and summon the defendant to appear.

(~~GF~~) Adjudication of an infraction under this subsection is not a criminal conviction, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(~~HG~~) In a proceeding before the district court, the violation shall be prosecuted in the same manner and to the same extent as set forth for municipal infractions in Md. Ann. Code, Art. 23A, § 3(B)(8) through (15). However, the County Attorney is hereby authorized to prosecute all civil zoning infractions under this section.

(~~HH~~) If a person is found by the district court to have committed a civil zoning infraction, he shall be liable for the costs of the proceedings in the district court.

(~~IJ~~) Depending on the circumstances of each case and after consultation with the County Attorney, the Zoning Administrator has the discretionary authority to reduce or suspend all or a portion of the fine payable through his office.

(~~KJ~~) Nothing contained in this section shall prohibit or prevent the Zoning Administrator, or anyone else, from seeking other legal remedies, such as injunctions or criminal prosecution.

ARTICLE III: REVIEW AND APPROVAL PROCEDURES  
DIVISION 1. ZONING AMENDMENTS  
§1-19-3.100. ZONING TEXT AMENDMENTS.

***Editor's note:***

*Ord. 98-23-225, adopted Nov. 10, 1998, amended Chapter 1-19 by deleting provisions formerly codified as §§ 1-19-66 through 1-19-77, which comprised part of former Div. 3 of Art. II, pertaining to amendments to this zoning ordinance and which derived from the following:*

<b><i>Ord. No.</i></b>	<b><i>Date</i></b>	<b><i>Ord. No.</i></b>	<b><i>Date</i></b>
77-1-78	1-24-77	86-3-380	3-18-86
79-8-134	5-1-79	88-13-490	5-3-86
81-3-193	1-27-81	89-3-534	1-3-89

85-41-373 10-22-85 92-20-055 8-14-92

*In addition, Ord. No. 98-23-225 enacted §§ 1-19-60—1-19-64, being provisions of a new Div. 3, and created a Div. 4, a new division consisting of new provisions in §§ 1-19-70—1-19-75 and amended provisions in §§ 1-19-78 and 1-19-79.*

§ 1-19-3.100.1. ~~INITIATION BY BOARD OF COUNTY COMMISSIONERS~~ **PURPOSE AND INTENT.**

**(A) IT MAY BE PERIODICALLY NECESSARY FOR PROVISIONS OF THIS CHAPTER TO BE ESTABLISHED, AMENDED, OR REPEALED THROUGH A ZONING TEXT AMENDMENT. THIS SECTION ESTABLISHES PROCEDURES FOR THE ZONING TEXT AMENDMENT.**

**(B) A ZONING TEXT AMENDMENT SHALL BE INITIATED ONLY AT THE DIRECTION OF THE BOARD OF COUNTY COMMISSIONERS.**

~~The Board of County Commissioners may initiate a zoning text amendment. No particular form is required for the Board of County Commissioners to initiate a zoning text amendment.~~

§ 1-19-3.100.2. ~~REFERRAL TO PLANNING COMMISSION~~ **APPLICATION.**

~~THE BOARD OF COUNTY COMMISSIONERS MAY INITIATE A ZONING TEXT AMENDMENT WITH. NO PARTICULAR FORM IS REQUIRED. FOR THE BOARD OF COUNTY COMMISSIONERS TO INITIATE A ZONING TEXT AMENDMENT.~~

~~(A) The Zoning Administrator shall refer the initial proposed zoning text amendment to the Planning Commission for a recommendation.~~

~~(B) The Planning Commission will hold a public hearing prior to making its recommendation. A failure to act within 62 days of the last hearing shall be deemed as providing no recommendation on the request.~~

~~(C) The Board of County Commissioners shall act within 45 days on a zoning text amendment after receiving the recommendation of the Planning Commission unless the time is extended by the Board.~~

§ 1-19-3.100.3. ~~PUBLICATION OF NOTICE~~ **REVIEW AND APPROVAL PROCEDURES.**

**(A) PLANNING COMMISSION.**

**(1) THE ZONING ADMINISTRATOR SHALL REFER THE INITIAL PROPOSED ZONING TEXT AMENDMENT TO THE PLANNING COMMISSION FOR A RECOMMENDATION.**

**(2) THE PLANNING COMMISSION WILL HOLD A PUBLIC HEARING PRIOR TO MAKING ITS RECOMMENDATION. A FAILURE TO ~~ACT~~ MAKE A RECOMMENDATION WITHIN 62 DAYS OF THE ~~LAST~~ FIRST HEARING SHALL BE DEEMED AS PROVIDING NO RECOMMENDATION ON THE REQUEST.**

**(B) BOARD OF COUNTY COMMISSIONERS.**

**(1) THE BOARD OF COUNTY COMMISSIONERS SHALL HOLD A PUBLIC HEARING ON THE PROPOSED ZONING TEXT AMENDMENT.**

**(2) THE BOARD OF COUNTY COMMISSIONERS SHALL ACT ~~WITHIN 45 DAYS~~ ON A ZONING TEXT AMENDMENT AFTER RECEIVING THE RECOMMENDATION OF THE PLANNING COMMISSION ~~UNLESS THE TIME IS EXTENDED BY THE BOARD.~~**

**(C) ~~ANY INTERESTED PERSON SHALL HAVE THE RIGHT TO SUBMIT ORAL AND/OR WRITTEN TESTIMONY AT THE PUBLIC HEARING IN ACCORDANCE WITH THE ESTABLISHED RULES.~~**

**(D) THE BOARD OF COUNTY COMMISSIONERS MAY REVISE, AMEND, SUPPLANT OR MODIFY ANY PROVISION OF THE PROPOSED ZONING TEXT AMENDMENT IN WHOLE OR IN PART. NO ADDITIONAL REFERRAL TO THE PLANNING COMMISSION IS REQUIRED.**

**(E) PUBLIC NOTICE.**

**(1) NEWSPAPER.**

**(a) THE ZONING ADMINISTRATOR SHALL CAUSE NOTICES OF THE PUBLIC HEARINGS OF THE PLANNING COMMISSION AND THE BOARD OF COUNTY COMMISSIONERS TO BE PUBLISHED.**

**(b) PUBLIC NOTICE OF THE TIME AND PLACE OF THE FREDERICK COUNTY PLANNING COMMISSION HEARING, TOGETHER WITH A SUMMARY OF THE PROPOSED ZONING TEXT AMENDMENT, SHALL BE PUBLISHED IN AT LEAST 1 NEWSPAPER OF GENERAL CIRCULATION IN FREDERICK COUNTY AT LEAST 14 DAYS PRIOR TO THE HEARING.**

**(c) PUBLIC HEARING NOTICE OF THE TIME AND PLACE OF THE BOARD OF COUNTY COMMISSIONERS HEARING, TOGETHER WITH A SUMMARY OF THE PROPOSED ZONING TEXT AMENDMENT, SHALL BE PUBLISHED IN AT LEAST 1 NEWSPAPER OF GENERAL CIRCULATION IN FREDERICK COUNTY ONCE EACH WEEK FOR 2 SUCCESSIVE WEEKS WITH THE FIRST SUCH PUBLICATION OF NOTICE AT LEAST 14 DAYS PRIOR TO THE HEARING.**

~~—(A)—The Zoning Administrator shall cause notices of the public hearings of the Planning Commission and the Board of County Commissioners to be published.~~

~~—(B)—Public notice of the time and place of the Frederick County Planning Commission hearing, together with a summary of the proposed zoning text amendment, shall be published in at least 1 newspaper of general circulation in Frederick County at least 14 days prior to the hearing.~~

~~—(C)—Public hearing notice of the time and place of the Board of County Commissioners hearing, together with a summary of the proposed zoning text amendment, shall be published in at least 1 newspaper of general circulation in Frederick County once each week for 2 successive weeks with the first such publication of notice at least 14 days prior to the hearing.~~

#### ~~§ 1-19-3.100.4. BOARD OF COUNTY COMMISSIONERS AND DECISION.~~

~~(A)—The Board of County Commissioners shall hold a public hearing on the proposed zoning text amendment.~~

~~(B)—Any interested person shall have the right to submit oral and/or written testimony at the public hearing in accordance with the established rules.~~

~~(C)—The Board of County Commissioners may revise, amend, supplant or modify any provision of the proposed zoning text amendment in whole or in part. No additional referral to the Planning Commission is required.~~

#### § 1-19-3.110. ZONING MAP AMENDMENTS.

*Editor's note:*

*See the editor's note 1-19-3.100.*

#### § 1-19-3.110.1. ~~ZONING MAP AMENDMENT AND FLOATING ZONE RECLASSIFICATION PROCEDURES~~ PURPOSE AND INTENT.

**THE ZONING MAP MAY BE AMENDED BY CHANGING THE ZONING DISTRICT BOUNDARIES OR BY CHANGING FROM ONE ZONING DISTRICT TO ANOTHER. A ZONING MAP AMENDMENT MAY BE ACCOMPLISHED THROUGH AN INDIVIDUAL ZONING MAP AMENDMENT, COMPREHENSIVE ZONING OR REZONING, OR A FLOATING ZONE RECLASSIFICATION. THIS SECTION ESTABLISHES PROCEDURES FOR THE ZONING MAP AMENDMENT AND FLOATING ZONE RECLASSIFICATION.**

~~(A) An application for zoning map amendment or floating zone reclassification may be made by any property owner or his duly authorized agent, a contract purchaser or any other person with at least a 50% proprietary interest in the area covered by any zoning map amendment or floating zone reclassification application. Applications for zoning map amendments, except for applications for floating zones (PUD, mineral mining, mobile home park, solid waste) will be accepted only in the months of April and October. Each zoning map amendment or floating zone reclassification application must cover a contiguous area.~~

~~(B) The Zoning Administrator shall review the applications for individual map amendments and floating zone reclassifications as filed and may:~~

~~(1) Reject the application, if:~~

~~(a) The information is incomplete; or~~

~~(b) The property is subject to review under a region plan update and comprehensive rezoning process, unless a waiver is granted by the Board of County Commissioners; or~~

~~(c) The amendment has been filed for the whole or part of land which was subject to a map amendment request for a zoning district designation which was opposed, denied, or dismissed by the Board of County Commissioners on the merits within 12 months from the date of the Board's signed resolution.~~

~~(2) Accept the application where all the required information has been provided and the appropriate fee paid.~~

~~(C) A zoning map amendment or floating zone reclassification application shall be filed with the Zoning Administrator during normal office hours. The application shall include the following:~~

~~(1) Completed application form;~~

~~(2) The required fee as set forth in § 1-19-2.130 of this chapter;~~

~~(3) Ownership verification: copy of deed or if contract purchaser, submit copy of contract;~~

~~(4) A boundary plat prepared and sealed by a surveyor registered in the State of Maryland, prepared in accordance with the minimum standards of practice, showing metes and bounds (courses and distances);~~

~~(5) A list of names and addresses of all adjoining property owners, whether or not separated by streets, railroads, or other rights of way. This list must be obtained from the latest Frederick County Property Tax assessments records;~~

~~(6) A vicinity map covering the area within at least 1,000 feet of the boundaries of the land proposed to be reclassified, including the existing zoning classification of all land shown on the map; and~~

~~(7) A written explanation justifying the amendment or floating zone reclassification, setting forth in sufficient detail to advise county officials required to review the application.~~

~~(D) The Zoning Administrator shall retain custody of all application files, which will be available for public inspection during normal office hours. Any person may obtain, at their expense, copies of any and all papers in the file.~~

§ 1-19-3.110.2. ~~PUBLIC NOTICE~~ APPLICATION.

(A) AN APPLICATION FOR AN INDIVIDUAL ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION MAY BE MADE BY ANY PROPERTY OWNER OR HIS DULY AUTHORIZED AGENT, A CONTRACT PURCHASER OR ANY OTHER PERSON WITH AT LEAST A 50% PROPRIETARY INTEREST IN THE AREA COVERED BY ANY ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION APPLICATION. APPLICATIONS FOR ZONING MAP AMENDMENTS, EXCEPT FOR APPLICATIONS FOR FLOATING ZONES (~~PUD, MINERAL MINING, MOBILE HOME PARK, SOLID WASTE~~) WILL BE ACCEPTED ONLY IN THE MONTHS OF APRIL AND OCTOBER. EACH ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION APPLICATION MUST COVER A CONTIGUOUS AREA.

(B) THE ZONING ADMINISTRATOR SHALL REVIEW THE APPLICATIONS FOR INDIVIDUAL MAP AMENDMENTS AND FLOATING ZONE RECLASSIFICATIONS AS FILED AND MAY:

(1) REJECT THE APPLICATION, IF:

(a) THE INFORMATION IS INCOMPLETE; OR

(b) THE PROPERTY IS SUBJECT TO REVIEW UNDER A REGION COMPREHENSIVE, COMMUNITY, OR CORRIDOR PLAN UPDATE AND COMPREHENSIVE REZONING PROCESS, UNLESS A WAIVER IS GRANTED BY THE BOARD OF COUNTY COMMISSIONERS; OR

(c) THE AMENDMENT HAS BEEN FILED FOR THE WHOLE OR PART OF LAND WHICH WAS SUBJECT TO A MAP AMENDMENT REQUEST FOR A ZONING DISTRICT DESIGNATION WHICH WAS OPPOSED, DENIED, OR DISMISSED BY THE BOARD OF COUNTY COMMISSIONERS ON THE MERITS WITHIN 12 MONTHS FROM THE DATE OF THE BOARD'S SIGNED RESOLUTION.

(2) ACCEPT THE APPLICATION WHERE ALL THE REQUIRED INFORMATION HAS BEEN PROVIDED AND THE APPROPRIATE FEE PAID.

(C) A ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION APPLICATION SHALL BE FILED WITH THE ZONING ADMINISTRATOR DURING NORMAL OFFICE HOURS. THE APPLICATION SHALL INCLUDE THE FOLLOWING:

(1) COMPLETED APPLICATION FORM;

(2) THE REQUIRED FEE AS SET FORTH IN § 1-19-2.130 OF THIS CHAPTER;

**(3) OWNERSHIP VERIFICATION: COPY OF DEED OR IF CONTRACT PURCHASER, SUBMIT COPY OF CONTRACT;**

**(4) A BOUNDARY PLAT PREPARED AND SEALED BY A SURVEYOR REGISTERED IN THE STATE OF MARYLAND, PREPARED IN ACCORDANCE WITH THE MINIMUM STANDARDS OF PRACTICE, SHOWING METES AND BOUNDS (COURSES AND DISTANCES);**

**(5) A LIST OF NAMES AND ADDRESSES OF ALL ADJOINING PROPERTY OWNERS, WHETHER OR NOT SEPARATED BY STREETS, RAILROADS, OR OTHER RIGHTS-OF-WAY. THIS LIST MUST BE OBTAINED FROM THE LATEST FREDERICK COUNTY PROPERTY TAX ASSESSMENTS RECORDS;**

**(6) A VICINITY MAP COVERING THE AREA WITHIN AT LEAST 1,000 FEET OF THE BOUNDARIES OF THE LAND PROPOSED TO BE RECLASSIFIED, INCLUDING THE EXISTING ZONING CLASSIFICATION OF ALL LAND SHOWN ON THE MAP; AND**

**(7) A WRITTEN EXPLANATION JUSTIFYING THE AMENDMENT OR FLOATING ZONE RECLASSIFICATION, SETTING FORTH IN SUFFICIENT DETAIL TO ADVISE COUNTY OFFICIALS REQUIRED TO REVIEW THE APPLICATION.**

**(D) THE ZONING ADMINISTRATOR SHALL RETAIN CUSTODY OF ALL APPLICATION FILES, WHICH WILL BE AVAILABLE FOR PUBLIC INSPECTION DURING NORMAL OFFICE HOURS. ANY PERSON MAY OBTAIN, AT THEIR EXPENSE, COPIES OF ANY AND ALL PAPERS IN THE FILE.**

~~(A) — *Posting of property.* At least 30 days before the public hearing of the Planning Commission or the Board of County Commissioners on the zoning map amendment, the applicant shall erect signs provided by the Zoning Administrator on the land proposed to be reclassified.~~

~~————— (1) — The signs shall be erected within 10 feet of each boundary or right-of-way line of the subject property where it abuts a public road, and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public.~~

~~————— (2) — The signs shall be affixed to a rigid Board and be maintained by the applicant at all times until a decision is announced by the Board of County Commissioners.~~

~~————— (3) — The applicant shall file a notarized affidavit certifying the posting of the signs.~~

~~————— (4) — The Zoning Administrator shall have the authority to postpone a public hearing if the applicant has not complied with the requirements for posting of property as detailed in this section.~~

~~————— (5) — It shall be a misdemeanor to remove or tamper with any sign during the period it is required to be posted.~~

~~(B) The Zoning Administrator will make a good faith effort to notify the owners of all properties adjoining a property for which an application for zoning map amendment or floating zone reclassification application has been accepted. Such notice shall be by first class mail at least 14 days prior to such public hearing and contain the date, time, place and nature of any public hearing to be held concerning the application.~~

~~(1) Adjoining property owners shall include the owners of properties immediately contiguous to the applicant's property as well as those separated by streets, railroads, or other rights of way as set forth in § 1-19-3.110.1(C)(5).~~

~~(2) Appearance by a property owner at the public hearing shall constitute a waiver of any defect in this notice requirement.~~

~~(C) Notice of the time and place of the Board of County Commissioners public hearing, together with a summary of the proposed zoning map amendment or floating zone reclassification shall be published in at least 1 newspaper of general circulation in Frederick County once each week for 2 successive weeks with the first such publication of notice at least 14 days prior to the hearing.~~

§ 1-19-3.110.3. ~~STAFF AND PLANNING COMMISSION APPLICATION REVIEW AND PROCESSING~~ **REVIEW AND APPROVAL PROCEDURES.**

(A) **PLANNING COMMISSION.**

**(1)** An application for a **AN INDIVIDUAL** zoning map amendment or a floating zone reclassification shall be reviewed by the **DIVISION OF** Planning ~~Department~~ staff which shall prepare a report and recommendation to the Planning Commission. After completion of this staff report the application shall be presented to the Planning Commission for consideration.

~~(B)~~**(2)** Within ~~62~~ **90** days after acceptance of the application by the Zoning Administrator, the Planning Commission shall hold a public hearing on the application for **INDIVIDUAL** zoning map amendment or floating zone reclassification. **THE PLANNING COMMISSION SHALL FORWARD ITS RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS WITHIN 90 DAYS OF ITS FIRST PUBLIC HEARING. A FAILURE TO MAKE A RECOMMENDATION WITHIN 90 DAYS OF THE FIRST PUBLIC HEARING SHALL BE DEEMED AS PROVIDING NO RECOMMENDATION ON THE REQUEST.** ~~The Planning Commission review will include, but not be limited to:~~

- ~~(1) Consistency with the Comprehensive Plan;~~
- ~~(2) Availability of public facilities;~~
- ~~(3) Adequacy of existing and future transportation systems;~~
- ~~(4) Compatibility with existing and proposed development;~~
- ~~(5) Population change; and~~
- ~~(6) The timing of development and facilities.~~

~~—(C)—~~ The Planning Commission shall forward its recommendation to the Board of County Commissioners within 62 days of its last public hearing. If the Planning Commission fails to make a recommendation within this time frame, the map amendment will be forwarded without a recommendation.

**(B) BOARD OF COUNTY COMMISSIONERS.**

**(1) THE BOARD OF COUNTY COMMISSIONERS SHALL HOLD A PUBLIC HEARING ON THE APPLICATION FOR AN INDIVIDUAL ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION.**

~~(C) ANY INTERESTED PERSON SHALL HAVE THE RIGHT TO SUBMIT ORAL AND/OR WRITTEN TESTIMONY AT THE HEARING AND SHALL HAVE THE RIGHT TO REASONABLE CROSS-EXAMINATION IN ACCORDANCE WITH THE ESTABLISHED RULES.~~

**(D) AN APPLICATION FOR INDIVIDUAL ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION SHALL BE DEEMED DENIED IF APPROVAL HAS NOT BEEN RECEIVED WITHIN 90 DAYS OF THE CONCLUSION OF THE PUBLIC HEARING.**

**(E) PUBLIC NOTICE.**

**(1) SIGN(S). AT LEAST 30 DAYS BEFORE THE PUBLIC HEARING OF THE PLANNING COMMISSION OR THE BOARD OF COUNTY COMMISSIONERS ON THE ZONING MAP AMENDMENT, THE APPLICANT SHALL ERECT SIGNS PROVIDED BY THE ZONING ADMINISTRATOR ON THE LAND PROPOSED TO BE RECLASSIFIED. THE APPLICANT SHALL PLACE A SIGN ON THE PROPERTY PROPOSED TO BE RECLASSIFIED, WITHIN 10 FEET OF EACH PROPERTY LINE THAT ABUTS A PUBLIC ROAD. IF THE PROPERTY DOES NOT ABUT A PUBLIC ROAD, A SIGN SHALL BE PLACED IN SUCH A MANNER SO THAT IT MAY BE MOST READILY SEEN BY THE PUBLIC.**

**(a) THE SIGNS SHALL BE ERECTED WITHIN 10 FEET OF EACH BOUNDARY OR RIGHT-OF-WAY LINE OF THE SUBJECT PROPERTY WHERE IT ABUTS A PUBLIC ROAD, AND IF NO PUBLIC ROAD ABUTS THEREON, THEN FACING IN SUCH A MANNER AS MAY BE MOST READILY SEEN BY THE PUBLIC. THE ZONING ADMINISTRATOR SHALL PROVIDE THE REQUIRED SIGN(S).**

~~(b) THE SIGNS SHALL BE AFFIXED TO A RIGID BOARD, AND BE MAINTAINED BY THE APPLICANT AT ALL TIMES UNTIL A DECISION IS ANNOUNCED BY THE BOARD OF COUNTY COMMISSIONERS. THE SIGN(S) SHALL BE PLACED ON THE PROPERTY AT LEAST 30 DAYS PRIOR TO THE PUBLIC HEARING OF THE PLANNING COMMISSION OR BOARD OF COUNTY COMMISSIONERS ON THE ZONING MAP AMENDMENT.~~

~~(c) THE APPLICANT SHALL FILE A NOTARIZED AFFIDAVIT CERTIFYING THE POSTING OF THE SIGNS. THE SIGN(S) SHALL BE AFFIXED TO A RIGID BOARD, PROTECTED FROM THE WEATHER, AND MAINTAINED AT ALL TIMES BY THE APPLICANT.~~

~~(d) THE APPLICANT SHALL FILE AN AFFIDAVIT CERTIFYING THAT THE SIGN(S) HAS BEEN POSTED AND MAINTAINED FOR THE REQUIRED PERIOD OF TIME.~~

~~(e) IT SHALL BE A MISDEMEANOR TO REMOVE OR TAMPER WITH ANY SIGN DURING THE PERIOD IT IS REQUIRED TO BE POSTED. IF ANY PERSON REMOVES OR TAMPERS WITH A POSTED SIGN(S) DURING THE ABOVE 30 DAY POSTING PERIOD, THAT PERSON, UPON CONVICTION, SHALL BE GUILTY OF A MISDEMEANOR, AS PROVIDED IN §1-19-2.220.~~

(2) MAIL. THE ZONING ADMINISTRATOR WILL MAKE A GOOD FAITH EFFORT TO NOTIFY THE OWNERS OF ALL PROPERTIES ADJOINING A PROPERTY FOR WHICH AN APPLICATION FOR ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION APPLICATION HAS BEEN ACCEPTED. SUCH NOTICE SHALL BE BY FIRST CLASS MAIL AT LEAST 14 DAYS PRIOR TO SUCH PUBLIC HEARING AND CONTAIN THE DATE, TIME, PLACE AND NATURE OF ANY PUBLIC HEARING TO BE HELD CONCERNING THE APPLICATION.

(a) ADJOINING PROPERTY OWNERS SHALL INCLUDE THE OWNERS OF PROPERTIES IMMEDIATELY CONTIGUOUS TO THE APPLICANT'S PROPERTY AS WELL AS THOSE SEPARATED BY STREETS, RAILROADS, OR OTHER RIGHTS-OF-WAY AS SET FORTH IN § 1-19-3.110.~~+(C)(5).~~

(b) APPEARANCE BY A PROPERTY OWNER AT THE PUBLIC HEARING SHALL CONSTITUTE A WAIVER OF ANY DEFECT IN THIS NOTICE REQUIREMENT.

(3) NEWSPAPER. NOTICE OF THE TIME AND PLACE OF THE BOARD OF COUNTY COMMISSIONERS PUBLIC HEARING, TOGETHER WITH A SUMMARY OF THE PROPOSED ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION SHALL BE PUBLISHED IN AT LEAST 1 NEWSPAPER OF GENERAL CIRCULATION IN FREDERICK COUNTY ONCE EACH WEEK FOR 2 SUCCESSIVE WEEKS WITH THE FIRST SUCH PUBLICATION OF NOTICE AT LEAST 14 DAYS PRIOR TO THE HEARING.

**(4) THE ZONING ADMINISTRATOR SHALL HAVE THE AUTHORITY TO POSTPONE A PUBLIC HEARING IF THE APPLICANT HAS NOT COMPLIED WITH THE REQUIREMENTS FOR POSTING OF PROPERTY AS DETAILED IN THIS SECTION.**

~~§ 1-19-3.110.4. BOARD OF COUNTY COMMISSIONERS CONSIDERATION AND ACTION~~ **APPROVAL CRITERIA.**

**(A) APPROVAL OR DISAPPROVAL OF A REQUEST FOR AN INDIVIDUAL ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION SHALL BE DETERMINED THOROUGH REVIEW OF SEVERAL CRITERIA. THE PLANNING COMMISSION AND BOARD OF COUNTY COMMISSIONERS REVIEW WILL INCLUDE, BUT NOT BE LIMITED TO:**

- (1) CONSISTENCY WITH THE COMPREHENSIVE PLAN;**
- (2) AVAILABILITY OF PUBLIC FACILITIES;**
- (3) ADEQUACY OF EXISTING AND FUTURE TRANSPORTATION SYSTEMS;**
- (4) COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT;**
- (5) POPULATION CHANGE; AND**
- (6) THE TIMING OF DEVELOPMENT AND FACILITIES.**

**(B) IN ADDITION TO THE CRITERIA ABOVE, APPROVAL OR DISAPPROVAL OF A REQUEST FOR AN INDIVIDUAL ZONING MAP AMENDMENT SHALL BE GRANTED ONLY WHERE A FINDING HAS BEEN MADE THAT THERE WAS:**

**(1) A SUBSTANTIAL CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD WHERE THE PROPERTY IS LOCATED; OR**

**(2) A MISTAKE IN THE EXISTING ZONING CLASSIFICATION.**

~~(A) The Board of County Commissioners shall hold a public hearing on the application for a zoning map amendment or floating zone reclassification.~~

~~(B) Any interested person shall have the right to submit oral and/or written testimony at the hearing and shall have the right to reasonable cross examination in accordance with the established rules.~~

§ 1-19-3.110.5. CONDITIONS.

The Board of County Commissioners may impose, upon the granting of a zoning map amendment or floating zone reclassification, such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, enhance, or protect the general character and design of the lands and improvements being zoned or rezoned or of the surrounding or adjacent lands and improvements. The Board may, upon the zoning or rezoning of any land, retain or reserve the power and authority to approve or disapprove the design of structures, construction, landscaping or other improvements, alterations and changes made or to be made on the subject land or lands to assure conformity with the intent and purposes of this chapter. Conditions imposed or requested may not include the prohibition of any uses expressly permitted in the **REQUESTED ZONING** district.

§ 1-19-3.110.6. CONTINUANCES AND WITHDRAWAL OF APPLICATIONS.

(A) Withdrawal. By filing a written request with the Zoning Administrator prior to any public hearing, the applicant may withdraw the application for zoning map amendment or floating zone reclassification.

(B) A request by the applicant for continuance of a map amendment or floating zone reclassification application hearing may be granted by the Board of County Commissioners for good cause shown. The applicant shall be responsible for any costs to the county caused by the continuance.

§ 1-19-3.110.7. SPECIAL PROVISIONS FOR COMPREHENSIVE ZONING **OR REZONING** ~~MAP AMENDMENTS~~.

In the case of a comprehensive zoning **OR REZONING** ~~map amendment~~, **ONLY** the following ~~public notice~~ **REVIEW AND APPROVAL** ~~procedure~~**S** shall ~~govern~~**APPLY**.

(A) The Planning Commission shall **HOLD A PUBLIC HEARING AND** cause notice of **THE** ~~comprehensive zoning map amendment~~ hearing to be published in a newspaper of general circulation in the county in accordance with § 1-19-3.110.23. **THE PLANNING COMMISSION SHALL FORWARD A RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS WITHIN 62 DAYS OF THE FIRST PUBLIC HEARING.**

(B) Upon receipt of the recommendation of the Planning Commission, the Board of County Commissioners shall **HOLD A PUBLIC HEARING AND** cause notice of **THE** ~~comprehensive zoning map amendment~~ hearing to be published in accordance with § 1-19-3.110.23. **ANY PERSON SHALL HAVE THE RIGHT TO SUBMIT ORAL AND/OR WRITTEN TESTIMONY AT THE HEARING.**

(C) Posting of property will not be required.

§ 1-19-3.110.8. ~~USE IT OR LOSE IT PROVISION.~~

~~—All applications for individual residential or planned unit development (PUD) or mobile home (MH) floating zones or a mixed use development floating zone (MXD) with a residential component or landowner initiated comprehensive rezonings granted by the Board of County Commissioners after March 2, 1990, shall be subject to the following conditions.~~

~~—(A) The rezoned property shall automatically revert to its prior classification unless at the next comprehensive zoning of the property:~~

~~—(1) A preliminary or final subdivision plat has been approved and at least 10% of the lots have been recorded; unless otherwise restrained by the conditions of rezoning or conditions of adequate public facilities ordinance (APFO) approval; or~~

~~—(2) Site plan approval has been obtained, building permits issued and substantial construction begun on the buildings or structures approved as part of that site plan; or~~

~~—(3) The Board of County Commissioners confirms the zoning during the comprehensive zoning process.~~

~~—(B) Paragraph (A) above shall apply only to:~~

~~—(1) All residential zoning classifications;~~

~~—(2) The PUD and MH floating zone classifications; and~~

~~—(3) The MXD floating zone with a residential component.~~

§ 1-19-3.110.98. APPEALS.

Pursuant to the authority granted in Md. Ann. Code, Art. 66B, § 4.08(f), the Board of County Commissioners may appeal to the circuit court of the county and thence to the Court of Special Appeals of Maryland, or, upon certiorari, to the Court of Appeals of Maryland, any decision concerning zoning made by the Board of Appeals, and the Board of County Commissioners may file an answer and be a party to any zoning appeal filed in the circuit court of the county concerning a decision made by the Board of County Commissioners and may appeal any decision of the circuit court of the county to the Court of Special Appeals of Maryland, or, upon certiorari, to the Court of Appeals of Maryland.

DIVISION 2. SPECIAL EXCEPTIONS, VARIANCES, APPROVALS, AND APPEALS

§ 1-19-3.200. ~~GENERALLY~~ PURPOSE AND INTENT.

**THIS SECTION ESTABLISHES GENERAL PROCEDURES FOR THE BOARD OF APPEALS TO HEAR AND DECIDE APPLICATIONS FOR SPECIAL EXCEPTIONS, VARIANCES, APPROVALS, AND APPEALS, AS PROVIDED FOR IN THIS CHAPTER.**

~~—(A) An application for appeals, variances or special exception shall be made on forms approved by the Division of Planning.~~

~~(B) The application for a variance or special exception and the information required in subsection (C) below shall be filed with the Zoning Administrator a minimum of 45 days prior to the regularly scheduled monthly meeting of the Board of Appeals.~~

- ~~—(C)— Required information for a variance or special exception shall include:~~
- ~~—(1)— Plot plan or accurate drawing of the property showing the distances of all existing and proposed structures from all property lines, driveways and parking areas;~~
  - ~~—(2)— Name and address of each person owning property adjacent to the subject property;~~
  - ~~—(3)— Plans, architectural drawings, photographs, elevations, specifications or other detailed information fully depicting the exterior appearance of any existing structures on the property, including signs and the proposed construction;~~
  - ~~—(4)— In addition, for all applications for a special exception, a statement shall be provided explaining in detail how the use is to be operated. The following information is required to be submitted:
    - ~~—(a)— Hours of operation;—~~
    - ~~—(b)— Number of anticipated employees;~~
    - ~~—(c)— Equipment involved; and~~
    - ~~—(d)— Any special conditions or limitations which the applicant proposes for adoption by the Board.~~~~
- ~~—(D)— The application for an appeal shall be filed in accordance with § ~~1-19-3.230~~ within 30 days after the date of the action or decision being appealed. Required information for an appeal shall include a copy of any written decision that is being appealed and all other information pertinent to the appeal.~~
- ~~—(E)— Fee shall be paid at the time of filing of application in accordance with the fee schedule established in this chapter.~~
- ~~—(F)— The Board of Zoning Appeals shall hold a public hearing before making a decision on any appeal or other matter within its powers. Upon accepting an application for an appeal or for a special exception, the Zoning Administrator shall schedule the public hearing by the Board of Appeals. Appeals and applications filed in proper form shall be numbered serially, docketed and placed upon the calendar of the Board.~~
- ~~—(G)— The Administrator shall cause to be published once a notice of the public hearing. This notice shall be published in a newspaper of general circulation in the county not less than 15 days prior to the date set for the hearing. All adjoining property owners, whether separated by streets, railroads, or other rights of way, shall be notified by mail, of the time, date, place, and nature of the public hearing.~~
- ~~—(H)— Within 3 days after acceptance of an application for an appeal, variance or a special exception, the applicant shall erect a sign as provided by the Zoning Administrator on the land involved. Such a sign shall be erected within 10 feet of the boundary line of such land which abuts the most traveled public road and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public. If the land lies within more than one block as shown on a plat recorded in the county land records, then a sign shall be erected on the land in each such block. A sign shall be maintained at all times by the applicant until a decision on the application has been made public by the Board of Appeals. It is a misdemeanor for any person to remove or tamper with such sign during the period it is required to be maintained. The applicant shall file an affidavit certifying the posting of the required sign.~~
- ~~—(I)— The Board of Appeals shall make an on the site inspection of the premises involved in the application for a variance or special exception.~~

~~—(J)— A decision of the Board granting a variance or a special exception will be void 2 years from date of approval by the Board of Appeals unless the use is established or a building permit is issued and construction has begun and is in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.~~

**§ 1-19-3.200.1 APPLICATION.**

**(A) AN APPLICATION FOR APPEALS, APPROVAL, VARIANCES OR SPECIAL EXCEPTION SHALL BE MADE ON FORMS APPROVED BY THE DIVISION OF PLANNING.**

**(B) THE APPLICATION FOR AN APPROVAL, VARIANCE OR SPECIAL EXCEPTION AND THE INFORMATION REQUIRED IN SUBSECTION (C) BELOW SHALL BE FILED WITH THE ZONING ADMINISTRATOR A MINIMUM OF 45 DAYS PRIOR TO THE REGULARLY SCHEDULED MONTHLY MEETING OF THE BOARD OF APPEALS.**

**(C) REQUIRED INFORMATION FOR AN APPROVAL, VARIANCE OR SPECIAL EXCEPTION SHALL INCLUDE:**

**(1) PLOT PLAN OR ACCURATE DRAWING OF THE PROPERTY SHOWING THE DISTANCES OF ALL EXISTING AND PROPOSED STRUCTURES FROM ALL PROPERTY LINES, DRIVEWAYS AND PARKING AREAS;**

**(2) NAME AND ADDRESS OF EACH PERSON OWNING PROPERTY ADJACENT TO THE SUBJECT PROPERTY;**

**(3) PLANS, ARCHITECTURAL DRAWINGS, PHOTOGRAPHS, ELEVATIONS, SPECIFICATIONS OR OTHER DETAILED INFORMATION FULLY DEPICTING THE EXTERIOR APPEARANCE OF ANY EXISTING STRUCTURES ON THE PROPERTY, INCLUDING SIGNS AND THE PROPOSED CONSTRUCTION;**

**(4) IN ADDITION, FOR ALL APPLICATIONS FOR A SPECIAL EXCEPTION, A STATEMENT SHALL BE PROVIDED EXPLAINING IN DETAIL HOW THE USE IS TO BE OPERATED. THE FOLLOWING INFORMATION IS REQUIRED TO BE SUBMITTED:**

**(a) HOURS OF OPERATION;**

**(b) NUMBER OF ANTICIPATED EMPLOYEES;**

**(c) EQUIPMENT INVOLVED; AND**

(d) ANY SPECIAL CONDITIONS OR LIMITATIONS WHICH THE APPLICANT PROPOSES FOR ADOPTION BY THE BOARD.

(D) THE APPLICATION FOR AN APPEAL SHALL BE FILED IN ACCORDANCE WITH § 1-19-3.230 WITHIN 30 DAYS AFTER THE DATE OF THE ACTION OR DECISION BEING APPEALED. REQUIRED INFORMATION FOR AN APPEAL SHALL INCLUDE A COPY OF ANY WRITTEN DECISION THAT IS BEING APPEALED AND ALL OTHER INFORMATION PERTINENT TO THE APPEAL.

(E) FEE SHALL BE PAID AT THE TIME OF FILING OF APPLICATION IN ACCORDANCE WITH THE FEE SCHEDULE ESTABLISHED IN THIS CHAPTER.

**§ 1-19-3.200.2 GENERAL REVIEW AND APPROVAL PROCEDURES.**

**(A) BOARD OF APPEALS.**

**(1) THE BOARD OF ZONING APPEALS SHALL HOLD A PUBLIC HEARING BEFORE MAKING A DECISION ON ANY APPEAL OR OTHER MATTER WITHIN ITS POWERS. UPON ACCEPTING AN APPLICATION FOR AN APPEAL OR OTHER MATTER FOR A SPECIAL EXCEPTION, THE ZONING ADMINISTRATOR SHALL SCHEDULE THE PUBLIC HEARING BY THE BOARD OF APPEALS. APPEALS AND APPLICATIONS FILED IN PROPER FORM SHALL BE NUMBERED SERIALLY, DOCKETED AND PLACED UPON THE CALENDAR OF THE BOARD.**

**(B) THE BOARD OF APPEALS SHALL MAKE AN ON THE SITE INSPECTION OF THE PREMISES INVOLVED IN THE APPLICATION FOR AN APPROVAL, VARIANCE OR SPECIAL EXCEPTION.**

**(C) PUBLIC NOTICE.**

**(1) SIGN(S). WITHIN 3 DAYS AFTER ACCEPTANCE OF AN APPLICATION FOR AN FOR ALL APPEAL, APPROVAL, VARIANCE OR A AND SPECIAL EXCEPTION APPLICATIONS, THE APPLICANT SHALL ERECT A SIGN AS PROVIDED BY THE ZONING ADMINISTRATOR ON THE LAND INVOLVED. SUCH A SIGN SHALL BE ERECTED WITHIN 10 FEET OF EACH PROPERTY LINE THAT ABUTS A PUBLIC ROAD. IF THE PROPERTY DOES NOT ABUT A PUBLIC ROAD, A SIGN SHALL BE PLACED IN SUCH A MANNER SO THAT IT MAY BE MOST READILY SEEN BY THE PUBLIC. THE BOUNDARY LINE OF SUCH LAND WHICH ABUTS THE MOST TRAVELED PUBLIC ROAD AND IF NO PUBLIC ROAD ABUTS THEREON, THEN FACING IN SUCH A MANNER AS MAY BE MOST READILY SEEN BY THE PUBLIC. IF THE LAND LIES WITHIN MORE THAN ONE BLOCK AS SHOWN ON A PLAT RECORDED IN THE COUNTY LAND RECORDS, THEN A SIGN SHALL BE ERECTED ON THE LAND IN EACH SUCH BLOCK.**

~~A SIGN SHALL BE MAINTAINED AT ALL TIMES BY THE APPLICANT UNTIL A DECISION ON THE APPLICATION HAS BEEN MADE PUBLIC BY THE BOARD OF APPEALS. IT IS A MISDEMEANOR FOR ANY PERSON TO REMOVE OR TAMPER WITH SUCH SIGN DURING THE PERIOD IT IS REQUIRED TO BE MAINTAINED. THE APPLICANT SHALL FILE AN AFFIDAVIT CERTIFYING THE POSTING OF THE REQUIRED SIGN.~~

(a) THE ZONING ADMINISTRATOR SHALL PROVIDE THE REQUIRED SIGN(S).

(b) THE SIGN(S) SHALL BE PLACED ON THE PROPERTY WITHIN 3 DAYS AFTER ACCEPTANCE OF THE APPLICATION.

(c) THE SIGN(S) SHALL BE AFFIXED TO A RIGID BOARD, PROTECTED FROM THE WEATHER, AND MAINTAINED AT ALL TIMES BY THE APPLICANT UNTIL A DECISION HAS BEEN MADE BY THE BOARD OF APPEALS.

(d) THE APPLICANT SHALL FILE AN AFFIDAVIT CERTIFYING THAT THE SIGN(S) HAS BEEN POSTED AND MAINTAINED FOR THE REQUIRED TIME PERIOD.

(e) IF ANY PERSON REMOVES OR TAMPERS WITH A POSTED SIGN DURING THE ABOVE POSTING PERIOD, THAT PERSON, UPON CONVICTION, SHALL BE GUILTY OF A MISDEMEANOR, AS PROVIDED IN §1-19-2.220.

(2) MAIL. ALL ADJOINING PROPERTY OWNERS, WHETHER SEPARATED BY STREETS, RAILROADS, OR OTHER RIGHTS-OF-WAY, SHALL BE NOTIFIED BY THE ZONING ADMINISTRATOR BY MAIL, OF THE TIME, DATE, PLACE, AND NATURE OF THE PUBLIC HEARING.

(3) NEWSPAPER. THE ZONING ADMINISTRATOR SHALL CAUSE TO BE PUBLISHED ONCE A NOTICE OF THE PUBLIC HEARING. THIS NOTICE SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY NOT LESS THAN 15 DAYS PRIOR TO THE DATE SET FOR THE HEARING.

§ 1-19-3.220. VARIANCES.

(A) The Board of Appeals may authorize a variance in height, lot area and yard regulations ~~only in cases where the strict compliance with the terms of this chapter would result in unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to the public health, safety and general welfare.~~

(B) An application for a variance shall be filed with the Board of Appeals only after refusal of a zoning APPROVAL certificate **OR AN ADVERSE DETERMINATION HAS BEEN ISSUED** by the Zoning Administrator.

(C) The Board of Appeals shall not grant a variance unless and until **A PUBLIC HEARING IS HELD AND ALL OF** the following conditions **CRITERIA** are satisfied **MET**:

(1) **FIRST, THE BOARD OF APPEALS SHALL FIND** ~~That~~ special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same district; ~~and~~

(2) **UPON MAKING THIS FINDING THE BOARD OF APPEALS SHALL ALSO FIND THAT THE FOLLOWING CRITERIA ARE MET:**

(a) **THAT THE SPECIAL CONDITIONS AND CIRCUMSTANCES DO NOT RESULT FROM THE ACTIONS OF THE APPLICANT; AND**

(b) The literal interpretation of the provisions of this chapter would **RESULT IN UNREASONABLE HARDHIP AND** deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this chapter; **AND**

~~(3) That the special conditions and circumstances do not result from the actions of the applicant; and~~

~~(4)~~ (c) That granting the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands or structures in the same district; and

~~(5) A public hearing has been held;~~

~~(6)~~ (d) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of this chapter.

(E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in said zone.

**(F) UNDER NO CIRCUMSTANCES SHALL THE BOARD OF APPEALS GRANT A VARIANCE TO A NONCONFORMING STRUCTURE FOR THE PORTION OF STRUCTURE DETERMINED BY THE ZONING ADMINISTRATOR TO BE NONCONFORMING.**

**(G) A DECISION OF THE BOARD GRANTING A VARIANCE OR A SPECIAL EXCEPTION WILL BE VOID 2 YEARS FROM DATE OF APPROVAL BY THE BOARD OF APPEALS UNLESS THE USE IS ESTABLISHED, OR A BUILDING PERMIT IS ISSUED, AND CONSTRUCTION HAS BEGUN, AND IS OR FINAL SITE DEVELOPMENT PLAN APPROVAL HAS BEEN RECEIVED IN ACCORDANCE WITH THE TERMS OF THE DECISION. UPON WRITTEN REQUEST SUBMITTED TO THE ZONING ADMINISTRATOR NO LATER THAN 1 MONTH PRIOR TO THE EXPIRATION DATE AND FOR GOOD CAUSE SHOWN BY THE APPLICANT, A 1 TIME EXTENSION MAY BE GRANTED BY THE ZONING ADMINISTRATOR FOR A PERIOD NOT TO EXCEED 6 MONTHS.**

§ 1-19-3.230. APPEALS.

[(A) through (C) remain unchanged]

(D) In exercising the above-mentioned powers such Board may, in conformity with ~~MeD~~ Ann. Code, Art. 66B, as amended, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

ARTICLE IV: REGULATIONS APPLICABLE TO ALL DISTRICTS  
DIVISION 2. NONCONFORMING LOTS, STRUCTURES, AND USES  
§ 1-19-4.200. GENERALLY.

Within the zoning districts established by this chapter or amendments that may later be adopted there exist lots, structures, uses of land, and/or structures, which were lawful before January 24, 1977 or before this chapter was amended, but which would not conform to regulations and restrictions under the terms of this chapter or future amendments thereto, and which could not be built or used under existing regulations.

**THE PURPOSE OF NONCONFORMING LOT, STRUCTURE, AND USE PROVISIONS ARE TO ALLOW ~~S~~such nonconformities ~~may~~ TO continue to exist subject to the regulations contained in this division WHILE NOT INCREASING THE NONCONFORMITY. IT IS NOT THE POLICY OF THE COUNTY TO PURSUE ELIMINATION OF THESE NONCONFORMITIES.**

§1-19-4.220. NONCONFORMING STRUCTURES.

(A) A nonconforming structure is a structure lawfully existing January 24, 1977 or on the effective date of an amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:;

(1) ~~No such structure may be modified so as to~~ **THE CONFORMING PORTION OF A NONCONFORMING STRUCTURE MAY BE EXPANDED OR MODIFIED PROVIDED THAT THE EXPANSION OR MODIFICATION DOES NOT INCREASE THE PORTION OF THE STRUCTURE DETERMINED BY THE ZONING ADMINISTRATOR TO BE NONCONFORMING** ~~its nonconformity.~~

**(2) THE NONCONFORMING PORTION OF A NONCONFORMING STRUCTURE MAY BE MODIFIED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS CHAPTER PROVIDED THAT THE MODIFICATION REDUCES THE PORTION OF THE STRUCTURE DETERMINED BY THE ZONING ADMINISTRATOR TO BE NONCONFORMING.**

~~(23)~~ Such structure once destroyed by any means will not be reconstructed unless:

- (a) It is in conformity with this chapter; or
- (b) The Board of Appeals grants a variance;

~~(34)~~ Such structure once moved, will thereafter conform to the regulations for the district to which it is moved.

~~(B)~~ (5) This movement does not include minor shifting or settling of the structure from natural or accidental causes.

**(B) UNDER NO CIRCUMSTANCES SHALL THE BOARD OF APPEALS GRANT A VARIANCE TO A NONCONFORMING STRUCTURE FOR THE PORTION OF STRUCTURE DETERMINED BY THE ZONING ADMINISTRATOR TO BE NONCONFORMING.**

§ 1-19-4.230. NONCONFORMING USES.

(A) A nonconforming use is a use which legally exists on January 24, 1977 or at the time of amendment of this chapter but that does not comply with the regulations of the district in which it is located. ~~Such nonconforming use may consist of any nonconforming use of land, a nonconforming use of structure, or a nonconforming use of land and structure.~~ Nonconforming uses are incompatible with permitted uses in the same district and will not be modified or enlarged, except ~~by special exception~~ **WITH THE APPROVAL OF THE BOARD OF APPEALS**, after January 24, 1977.

(B) The Board of Appeals may grant a ~~an~~ special exception to **APPROVAL TO CHANGE A NONCONFORMING USE TO ANOTHER NONCONFORMING USE WHERE A SPECIFIC FINDING IS MADE THAT:**

~~(1) Change a nonconforming use to another nonconforming use if:~~

**(1)** ~~(a)~~ No structural alterations are made; ~~and~~

**(2)** ~~(b)~~ The Board of Appeals, by a specific finding in the case, finds that ~~the~~ proposed use is more appropriate to the district; **AND**

**(3)** ~~(c)~~ A nonconforming use will not be changed to a use considered less appropriate to the district;

~~(d) The Board of Appeals may impose conditions within the scope of this chapter on the granting of such a special exception.~~

(C) ~~(2)~~ **THE BOARD OF APPEALS MAY GRANT AN APPROVAL TO** ~~E~~expand a nonconforming use ~~or structure~~. Expansion is limited to the lot that exists on January 24, 1977. Additional acreage or dwelling units will not be added to expand a nonconforming use.

~~(D)~~**(D)** **THE BOARD OF APPEALS MAY IMPOSE CONDITIONS WITHIN THE SCOPE OF THIS CHAPTER ON THE GRANTING OF SUCH AN APPROVAL WITHIN THIS SECTION.**

**(E)** ~~No building, structure, or lot~~ **A NONCONFORMING USE WHICH** ~~where a nonconforming use has ceased for one year or more~~ **SHALL BE VOID AND HAVE NO FURTHER STATUS** ~~shall again be put to a nonconforming use.~~

~~(F)~~**(F)** The casual, temporary or illegal use of land ~~or structure~~ does not establish the existence of a nonconforming use.

~~(G)~~**(G)** Existing mobile home parks.

(1) A mobile home park which existed on January 24, 1977 may continue in existence under the rules and regulations then in effect.

(2) A mobile home located in an existing mobile home park on the effective date of this section may be replaced by another mobile home no larger than 840 square feet in size.

(3) No increase in the number of units or parcel size of any existing mobile home park will be allowed except as provided in §1-19-10.600.2, Mobile home parks.

## ARTICLE V: ZONING MAP AND DISTRICTS

### DIVISION 3. USE TABLE

#### § 1-19-5.300. GENERALLY.

[(A) through (E) remain unchanged]

~~(E)~~ A proposed public building or facility owned by, or located on property owned by, the Board of County Commissioners will be submitted to the Frederick County Planning Commission (FCPC) for nonbinding review and comment. The FCPC will hold a public meeting on the proposed public building or facility, after nonbinding review and comment by the Division of Permitting and Development Review in accordance with §1-19-3.300.1 (D) (1) and 1-19-3.300.3 of this chapter.

## ARTICLE VIII: SPECIFIC USE REGULATIONS

### DIVISION 4. PERMITTED USES

#### 1-19-8.480. USES PERMITTED IN THE EUCLIDEAN INSTITUTIONAL (Ie) OR EUCLIDEAN OPEN SPACE RECREATION (OSRe) ZONING DISTRICTS.

Uses permitted in the Euclidean Institutional or Euclidean Open Space Recreation zoning districts shall be permitted subject to A, or B, or C, ~~and D~~ below.

[(A) through (C) remain unchanged]

### DIVISION 5. INTENSIVE SWINE FEEDING

#### § 1-19-8.500.5. NOTICE AND HEARING REQUIREMENTS.

[(A) through (C) remain unchanged]

(D) (1) In addition to the individual notice required by section of this article, the Zoning Administrator shall require the applicant to give public notice of the opportunity to comment on the requested permit.

(2) The public notice for a new or expanding operation shall be published as a legal notice prior to the date the application is available for public viewing in at least 1 newspaper of general circulation in Frederick County. The applicant shall also post the property in accordance with § 1-19-3.200.2(HC).

[(3) through (5) remain unchanged]

[(E) remains unchanged.]

ARTICLE 10: OPTIONAL METHODS OF DEVELOPMENT  
DIVISION 5. MIXED-USE DEVELOPMENT DISTRICT (MXD)  
§ 1-19-10.500. MIXED USE DEVELOPMENT (MXD)

[(A) Through (G) remain unchanged]  
(H) Review and approval of MXD District.

(1) *Phase I: Concept Plan.* The developer will provide sufficient information for the Board of County Commissioners to approve or disapprove the floating zone on the property and the overall concept of the project and to establish the land use mix of the project.

[(a-b) remain unchanged]

(c) ~~No less than 60 days after submission,~~ The Planning Commission shall review the Phase I proposal at a public hearing. All requirements for floating zone map amendments, as set forth in Article III, Division 1, shall be met. The Planning Commission shall then make a recommendation to the Board of County Commissioners as to approval or disapproval of the MXD application. A recommendation for approval will be accompanied by a recommendation for land use mix percentages for the project.

[(d) through (e) remain unchanged]

[(2) Remains unchanged]

[(I)-(J) remain unchanged]

ARTICLE XI: DEFINITIONS  
DIVISION 1. DEFINITIONS  
1-19-11.100 DEFINITIONS.

~~FRONTAGE. See LOT FRONTAGE.~~

*LOT TYPES.* The lots with the following definitions.

(a) *CORNER LOT.* A lot located at the intersection of 2 or more streets. A lot abutting on a curved street or streets is considered a corner lot, if straight lines drawn from the foremost points of the side lot lines to the foremost points of the lot meet at an interior angle of less than 135 degrees. **WHERE A LOT CONTAINS 3 FRONT YARDS THE REMAINING YARD SHALL BE CONSIDERED A SIDE YARD.**

[(b)Through (e) remain unchanged]

ARTICLE II: ADMINISTRATION AND ENFORCEMENT

DIVISION 1. ADMINISTRATION

§1-19-2.110. ZONING CERTIFICATE AND BUILDING PERMIT.

(A) *Approval of Zoning Administrator required; application to essential services and accessory structures.* It is unlawful to change the use, locate or to begin the new use, erection, construction, reconstruction, extension, conversion or structural alteration or development of any lot or structure without first obtaining a zoning certificate and building permit. No zoning certificate and building permit shall be issued unless it is approved by the Zoning Administrator. This provision does not apply to essential services or accessory structures of 150 square feet or less of floor area.

(B) *Submission and approval of site development plans prior to issuance.* Every multifamily, townhouse, institutional, commercial or industrial development will submit and have approved site development plans, in accordance with §§ 1-19-2.160 and 1-19-3.300 through 1-19-3.300.4 of this Code, prior to the issuance of a zoning certificate and building permit.

(C) *Restrictions on use, arrangement and construction.* Zoning certificates and building permits issued on the basis of approved site plans and applications authorize only the use, arrangement and construction set forth in such applications and plans and no other use, arrangement or construction. Use, arrangement or construction differing from that authorized is a violation of this chapter.

(D) *Application to certificates/permits approved prior to January 24, 1977.* This chapter does not require a change in the plans, construction or designated use of any structure or lot for which a zoning certificate and building permit has been approved prior to January 24, 1977, provided such approved activity continues in compliance with all terms of the previously approved permits.

(E) *Terms of certificates/permits.* A zoning certificate and building permit approval is void 1 year from date of issuance unless the use is established under the terms of the zoning certificate and building permit.

(F) *Transferability/assignability.* A zoning certificate and building permit is nonassignable and nontransferable.

(G) *Revocation for noncompliance.* A zoning certificate and building permit is revocable upon noncompliance with any conditions or requirements imposed under this chapter.

(H) *Filing fees.* A filing fee shall be charged in accordance with the fee schedule provided in this chapter.

§ 1-19-2.150. BOARD OF APPEALS.

(A) (1) The Board of County Commissioners shall appoint a Board of Appeals. The Board of Appeals shall consist of 5 members. The terms of office of the members of the Board is 3 years.

(2) They are removable for cause, upon written charges, and after public hearing. Vacancies shall be filled for the unexpired terms of any member whose term becomes vacant. Members of the Board may receive such compensation as the Board of County Commissioners deem appropriate.

(B) The Board of County Commissioners shall designate 1 alternate member for the Board of Appeals who may be empowered to sit on the Board in the absence of any member of the Board; and when the alternate is absent, the Board of County Commissioners may designate a temporary alternate.

(C) The Board shall adopt rules in accordance with the provisions of this chapter. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in the Chairman's absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, which shall be immediately filed in the office of the Board and shall be a public record.

(D) The Board of Appeals shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter;

(2) To hear and decide special exceptions to the terms of the chapter upon which the Board is required to pass under this chapter;

(3) To authorize upon appeal in specific cases a variance from the terms of this chapter, subject to the Board's administrative procedures.

(E) Three members of the Board shall constitute a quorum for the conducting of business.

## DIVISION 2. ENFORCEMENT

### § 1-19-2.200. COMPLAINTS

(A) Any person may file a written complaint with the Zoning Administrator alleging a violation of this chapter. Such complaint will state the factual basis for the alleged violation of this chapter.

(B) The Zoning Administrator will investigate and find as a matter of fact whether a violation of this chapter has occurred.

(C) The Zoning Administrator shall keep a permanent public record of all complaints and findings of fact disposing of alleged zoning violations.

(D) Violations of the FEMA floodplain regulations set forth in §§ 1-19-9.100 through 1-19-9.130 shall also be subject to the following:

(1) The Federal Emergency Management Agency and the Maryland Department of the Environment shall be notified immediately in writing of any property or structure in violation of the floodplain section of this chapter.

(2) New or renewal National Flood Insurance shall be denied for any structure remaining in violation or situated on property in violation of this chapter.

§ 1-19-2.210. CIVIL ZONING INFRACTIONS.

(A) Pursuant to Md. Ann. Code, Art. 66B, § 7.01(C), any violation of any of the provisions of this entire chapter, which is [Chapter 1-19](#), entitled Zoning (also known as the zoning ordinance for Frederick County, Maryland), is a civil zoning violation and shall be called a civil zoning infraction. If, after investigation, a civil zoning infraction is believed to exist, the Zoning Administrator or his authorized agent shall deliver a citation or a warning to the property owner and other person or persons responsible for the infraction. If the person is unable to be located personally, the Zoning Administrator or his authorized agent may post the citation or warning in a conspicuous place on the property and mail a copy of same to the person, which shall be sufficient for delivery under this section.

(B) The citation or warning, as provided for in this section, shall be in writing and shall contain the following:

- (1) The name and address of the person charged (or warned);
- (2) The nature of the violation;
- (3) The location of the violation;
- (4) The date(s) of the violation;
- (5) The amount of the fine assessed (or possible of assessment);
- (6) The manner, location and time in which the fine may be paid (or violation corrected, if applicable);
- (7) The person's right to stand trial for the violation (if applicable); and
- (8) A certification by the Zoning Administrator or his authorized agent attesting to the truth of the matters set forth.

(C) Whenever an alleged or possible civil zoning infraction comes to the attention of the Zoning Administrator, the procedure to be followed is:

- (1) That the Zoning Administrator will investigate whether an infraction has occurred;
- (2) That, if he reasonably finds that an infraction has occurred, he will issue a warning to the person or persons responsible in the form and manner as outlined in this section, with a reasonable time stated to abate or to prevent future infractions;
- (3) That, if the infraction continues or is allowed to occur after the reasonable time stated, the Zoning Administrator will issue a citation to the person or persons responsible in the form and manner as outlined in this section. Notwithstanding the provisions of step (2) above, the Zoning Administrator may issue a citation at step (2) without the prior issue of a warning.

(D) A present fine of \$100 is hereby imposed upon any person responsible for a civil zoning infraction for each violation. Each day such violation is permitted to exist shall be considered a separate infraction. All fines shall be payable to the Board of County Commissioners of Frederick County, Maryland; in the Planning and Zoning Office, which shall remit same on a daily basis to the County Treasurer.

(E) A person who receives a citation may elect to stand trial for the offense by filing with the Zoning Administrator a notice of intention to stand trial. The notice shall be given at least 5 days before the date of payment as set forth in the citation. On receipt of the notice of intention to stand trial, the Zoning Administrator shall forward to the district court for Frederick County, Maryland, a copy of the citation and the notice of intention to stand trial. On receipt of the citation, the district court shall schedule the case for trial and notify the defendant of the trial date. All fines, penalties, or forfeitures collected by the district court for zoning infractions shall be remitted to the Board of County Commissioners of Frederick County, Maryland, through the County Treasurer.

(F) If a person who receives a citation for an infraction fails to pay the fine by the date of payment set forth on the citation and fails to file a notice of intention to stand trial, a formal notice of the infraction shall be sent to the person's last known address. If the citation is not satisfied within 15 days from the date of the notice, the person is liable for a fine of \$200 for each infraction. If, after 35 days, the citation is not satisfied, the Zoning Administrator may request adjudication of the case through the district court. The district court shall schedule the case for trial and summon the defendant to appear.

(G) Adjudication of an infraction under this subsection is not a criminal conviction, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(H) In a proceeding before the district court, the violation shall be prosecuted in the same manner and to the same extent as set forth for municipal infractions in Md. Ann. Code, Art. 23A, § 3(B)(8) through (15). However, the County Attorney is hereby authorized to prosecute all civil zoning infractions under this section.

(I) If a person is found by the district court to have committed a civil zoning infraction, he shall be liable for the costs of the proceedings in the district court.

(J) Depending on the circumstances of each case and after consultation with the County Attorney, the Zoning Administrator has the discretionary authority to reduce or suspend all or a portion of the fine payable through his office.

(K) Nothing contained in this section shall prohibit or prevent the Zoning Administrator, or anyone else, from seeking other legal remedies, such as injunctions or criminal prosecution.

## ARTICLE III: REVIEW AND APPROVAL PROCEDURES

### DIVISION 1. ZONING AMENDMENTS

#### § 1-19-3.100. ZONING TEXT AMENDMENTS.

#### *Editor's note:*

*Ord. 98-23-225, adopted Nov. 10, 1998, amended [Chapter 1-19](#) by deleting provisions formerly codified as §§ 1-19-66 through 1-19-77, which comprised part of former Div. 3 of Art. II, pertaining to amendments to this zoning ordinance and which derived from the following:*

<i>Ord. No.</i>	<i>Date</i>	<i>Ord. No.</i>	<i>Date</i>
77-1-78	1-24-77	86-3-380	3-18-86
79-8-134	5-1-79	88-13-490	5-3-86
81-3-193	1-27-81	89-3-534	1-3-89
85-41-373	10-22-85	92-20-055	8-14-92

*In addition, Ord. No. 98-23-225 enacted §§ 1-19-60—1-19-64, being provisions of a new Div. 3, and created a Div. 4, a new division consisting of new provisions in §§ 1-19-70—1-19-75 and amended provisions in §§ 1-19-78 and 1-19-79.*

§ 1-19-3.100.1. INITIATION BY BOARD OF COUNTY COMMISSIONERS.

The Board of County Commissioners may initiate a zoning text amendment. No particular form is required for the Board of County Commissioners to initiate a zoning text amendment.

§ 1-19-3.100.2. REFERRAL TO PLANNING COMMISSION.

(A) The Zoning Administrator shall refer the initial proposed zoning text amendment to the Planning Commission for a recommendation.

(B) The Planning Commission will hold a public hearing prior to making its recommendation. A failure to act within 62 days of the last hearing shall be deemed as providing no recommendation on the request.

(C) The Board of County Commissioners shall act within 45 days on a zoning text amendment after receiving the recommendation of the Planning Commission unless the time is extended by the Board.

§ 1-19-3.100.3. PUBLICATION OF NOTICE.

(A) The Zoning Administrator shall cause notices of the public hearings of the Planning Commission and the Board of County Commissioners to be published.

(B) Public notice of the time and place of the Frederick County Planning Commission hearing, together with a summary of the proposed zoning text amendment, shall be published in at least 1 newspaper of general circulation in Frederick County at least 14 days prior to the hearing.

(C) Public hearing notice of the time and place of the Board of County Commissioners hearing, together with a summary of the proposed zoning text amendment, shall be published in at least 1 newspaper of general circulation in Frederick County once each week for 2 successive weeks with the first such publication of notice at least 14 days prior to the hearing.

§ 1-19-3.100.4. BOARD OF COUNTY COMMISSIONERS AND DECISION.

(A) The Board of County Commissioners shall hold a public hearing on the proposed zoning text amendment.

(B) Any interested person shall have the right to submit oral and/or written testimony at the public hearing in accordance with the established rules.

(C) The Board of County Commissioners may revise, amend, supplant or modify any provision of the proposed zoning text amendment in whole or in part. No additional referral to the Planning Commission is required.

§ 1-19-3.110. ZONING MAP AMENDMENTS

*Editor's note:*

*See the editor's note 1-19-3.100.*

§ 1-19-3.110.1. ZONING MAP AMENDMENT AND FLOATING ZONE RECLASSIFICATION PROCEDURES.

(A) An application for zoning map amendment or floating zone reclassification may be made by any property owner or his duly authorized agent, a contract purchaser or any other person with at least a 50% proprietary interest in the area covered by any zoning map amendment or floating zone reclassification application. Applications for zoning map amendments, except for applications for floating zones (PUD, mineral mining, mobile home park, solid waste) will be accepted only in the months of April and October. Each zoning map amendment or floating zone reclassification application must cover a contiguous area.

(B) The Zoning Administrator shall review the applications for individual map amendments and floating zone reclassifications as filed and may:

(1) Reject the application, if:

(a) The information is incomplete; or

(b) The property is subject to review under a region plan update and comprehensive rezoning process, unless a waiver is granted by the Board of County Commissioners; or

(c) The amendment has been filed for the whole or part of land which was subject to a map amendment request for a zoning district designation which was opposed, denied, or dismissed by the Board of County Commissioners on the merits within 12 months from the date of the Board's signed resolution.

(2) Accept the application where all the required information has been provided and the appropriate fee paid.

(C) A zoning map amendment or floating zone reclassification application shall be filed with the Zoning Administrator during normal office hours. The application shall include the following:

(1) Completed application form;

(2) The required fee as set forth in § 1-19-2.130 of this chapter;

(3) Ownership verification: copy of deed or if contract purchaser, submit copy of contract;

(4) A boundary plat prepared and sealed by a surveyor registered in the State of Maryland, prepared in accordance with the minimum standards of practice, showing metes and bounds (courses and distances);

(5) A list of names and addresses of all adjoining property owners, whether or not separated by streets, railroads, or other rights-of-way. This list must be obtained from the latest Frederick County Property Tax assessments records;

(6) A vicinity map covering the area within at least 1,000 feet of the boundaries of the land proposed to be reclassified, including the existing zoning classification of all land shown on the map; and

(7) A written explanation justifying the amendment or floating zone reclassification, setting forth in sufficient detail to advise county officials required to review the application.

(D) The Zoning Administrator shall retain custody of all application files, which will be available for public inspection during normal office hours. Any person may obtain, at their expense, copies of any and all papers in the file.

#### § 1-19-3.110.2. PUBLIC NOTICE.

(A) *Posting of property.* At least 30 days before the public hearing of the Planning Commission or the Board of County Commissioners on the zoning map amendment, the applicant shall erect signs provided by the Zoning Administrator on the land proposed to be reclassified.

(1) The signs shall be erected within 10 feet of each boundary or right-of-way line of the subject property where it abuts a public road, and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public.

(2) The signs shall be affixed to a rigid Board and be maintained by the applicant at all times until a decision is announced by the Board of County Commissioners.

(3) The applicant shall file a notarized affidavit certifying the posting of the signs.

(4) The Zoning Administrator shall have the authority to postpone a public hearing if the applicant has not complied with the requirements for posting of property as detailed in this section.

(5) It shall be a misdemeanor to remove or tamper with any sign during the period it is required to be posted.

(B) The Zoning Administrator will make a good faith effort to notify the owners of all properties adjoining a property for which an application for zoning map amendment or floating zone reclassification application has been accepted. Such notice shall be by first class mail at least 14 days prior to such public hearing and contain the date, time, place and nature of any public hearing to be held concerning the application.

(1) Adjoining property owners shall include the owners of properties immediately contiguous to the applicant's property as well as those separated by streets, railroads, or other rights-of-way as set forth in § 1-19-3.110.1(C)(5).

(2) Appearance by a property owner at the public hearing shall constitute a waiver of any defect in this notice requirement.

(C) Notice of the time and place of the Board of County Commissioners public hearing, together with a summary of the proposed zoning map amendment or floating zone reclassification shall be published in at least 1 newspaper of general circulation in Frederick County once each week for 2 successive weeks with the first such publication of notice at least 14 days prior to the hearing.

§ 1-19-3.110.3. STAFF AND PLANNING COMMISSION APPLICATION REVIEW AND PROCESSING.

(A) An application for a zoning map amendment or a floating zone reclassification shall be reviewed by the Planning Department staff which shall prepare a report and recommendation to the Planning Commission. After completion of this staff report the application shall be presented to the Planning Commission for consideration.

(B) Within 62 days after acceptance of the application by the Zoning Administrator, the Planning Commission shall hold a public hearing on the application for zoning map amendment or floating zone reclassification. The Planning Commission review will include, but not be limited to:

- (1) Consistency with the Comprehensive Plan;
- (2) Availability of public facilities;
- (3) Adequacy of existing and future transportation systems;
- (4) Compatibility with existing and proposed development;
- (5) Population change; and
- (6) The timing of development and facilities.

(C) The Planning Commission shall forward its recommendation to the Board of County Commissioners within 62 days of its last public hearing. If the Planning Commission fails to make a recommendation within this time frame, the map amendment will be forwarded without a recommendation.

§ 1-19-3.110.4. BOARD OF COUNTY COMMISSIONERS CONSIDERATION AND ACTION.

(A) The Board of County Commissioners shall hold a public hearing on the application for a zoning map amendment or floating zone reclassification.

(B) Any interested person shall have the right to submit oral and/or written testimony at the hearing and shall have the right to reasonable cross-examination in accordance with the established rules.

§ 1-19-3.110.5. CONDITIONS.

The Board of County Commissioners may impose, upon the granting of a zoning map amendment or floating zone reclassification, such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, enhance, or protect the general character and design of the lands and improvements being zoned or rezoned or of the surrounding or adjacent lands and improvements. The Board may, upon the zoning or rezoning of any land, retain or reserve the power and authority to approve or disapprove the design of structures, construction, landscaping or other improvements, alterations and changes made or to be made on the subject land or lands to assure conformity with the intent and purposes of this chapter. Conditions imposed or requested may not include the prohibition of any uses expressly permitted in the district.

§ 1-19-3.110.6. CONTINUANCES AND WITHDRAWAL OF APPLICATIONS.

(A) *Withdrawal.* By filing a written request with the Zoning Administrator prior to any public hearing, the applicant may withdraw the application for zoning map amendment or floating zone reclassification.

(B) A request by the applicant for continuance of a map amendment or floating zone reclassification application hearing may be granted by the Board of County Commissioners for good cause shown. The applicant shall be responsible for any costs to the county caused by the continuance.

§ 1-19-3.110.7. SPECIAL PROVISIONS FOR COMPREHENSIVE ZONING MAP AMENDMENTS.

In the case of a comprehensive zoning map amendment, the following public notice procedure shall govern.

(A) The Planning Commission shall cause notice of comprehensive zoning map amendment hearing to be published in a newspaper of general circulation in the county in accordance with §1-19-3.110.2.

(B) Upon receipt of the recommendation of the Planning Commission, the Board of County Commissioners shall cause notice of comprehensive zoning map amendment hearing to be published in accordance with §1-19-3.110.2.

(C) Posting of property will not be required.

§ 1-19-3.110.8. USE IT OR LOSE IT PROVISION.

All applications for individual residential or planned unit development (PUD) or mobile home (MH) floating zones or a mixed use development floating zone (MXD) with a residential component or landowner initiated comprehensive rezonings granted by the Board of County Commissioners after March 2, 1990, shall be subject to the following conditions.

(A) The rezoned property shall automatically revert to its prior classification unless at the next comprehensive zoning of the property:

(1) A preliminary or final subdivision plat has been approved and at least 10% of the lots have been recorded; unless otherwise restrained by the conditions of rezoning or conditions of adequate public facilities ordinance (APFO) approval; or

(2) Site plan approval has been obtained, building permits issued and substantial construction begun on the buildings or structures approved as part of that site plan; or

(3) The Board of County Commissioners confirms the zoning during the comprehensive zoning process.

(B) Paragraph (A) above shall apply only to:

(1) All residential zoning classifications;

(2) The PUD and MH floating zone classifications; and

(3) The MXD floating zone with a residential component.

§ 1-19-3.110.9. APPEALS.

Pursuant to the authority granted in Md. Ann. Code, Art. 66B, § 4.08(f), the Board of County Commissioners may appeal to the circuit court of the county and thence to the Court of Special Appeals of Maryland, or, upon certiorari, to the Court of Appeals of Maryland, any decision concerning zoning made by the Board of Appeals, and the Board of County Commissioners may file an answer and be a party to any zoning appeal filed in the circuit court of the county concerning a decision made by the Board of County Commissioners and may appeal any decision of the circuit court of the county to the Court of Special Appeals of Maryland, or, upon certiorari, to the Court of Appeals of Maryland.

DIVISION 2. SPECIAL EXCEPTIONS, VARIANCES, AND APPEALS

§ 1-19-3.200. GENERALLY.

(A) An application for appeals, variances or special exception shall be made on forms approved by the Division of Planning.

(B) The application for a variance or special exception and the information required in subsection (C) below shall be filed with the Zoning Administrator a minimum of 45 days prior to the regularly scheduled monthly meeting of the Board of Appeals.

(C) Required information for a variance or special exception shall include:

(1) Plot plan or accurate drawing of the property showing the distances of all existing and proposed structures from all property lines, driveways and parking areas;

(2) Name and address of each person owning property adjacent to the subject property;

(3) Plans, architectural drawings, photographs, elevations, specifications or other detailed information fully depicting the exterior appearance of any existing structures on the property, including signs and the proposed construction;

(4) In addition, for all applications for a special exception, a statement shall be provided explaining in detail how the use is to be operated. The following information is required to be submitted:

(a) Hours of operation;

(b) Number of anticipated employees;

(c) Equipment involved; and

(d) Any special conditions or limitations which the applicant proposes for adoption by the Board.

(D) The application for an appeal shall be filed in accordance with § 1-19-3.230 within 30 days after the date of the action or decision being appealed. Required information for an appeal shall include a copy of any written decision that is being appealed and all other information pertinent to the appeal.

(E) Fee shall be paid at the time of filing of application in accordance with the fee schedule established in this chapter.

(F) The Board of Zoning Appeals shall hold a public hearing before making a decision on any appeal or other matter within its powers. Upon accepting an application for an appeal or for a special exception, the Zoning Administrator shall schedule the public hearing by the Board of Appeals. Appeals and applications filed in proper form shall be numbered serially, docketed and placed upon the calendar of the Board.

(G) The Administrator shall cause to be published once a notice of the public hearing. This notice shall be published in a newspaper of general circulation in the county not less than 15 days prior to the date set for the hearing. All adjoining property owners, whether separated by streets, railroads, or other rights-of-way, shall be notified by mail, of the time, date, place, and nature of the public hearing.

(H) Within 3 days after acceptance of an application for an appeal, variance or a special exception, the applicant shall erect a sign as provided by the Zoning Administrator on the land involved. Such a sign shall be erected within 10 feet of the boundary line of such land which abuts the most traveled public road and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public. If the land lies within more than one block as shown on a plat recorded in the county land records, then a sign shall be erected on the land in each such block. A sign shall be maintained at all times by the applicant until a decision on the application has been made public by the Board of Appeals. It is a misdemeanor for any person to remove or tamper with such sign during the period it is required to be maintained. The applicant shall file an affidavit certifying the posting of the required sign.

(I) The Board of Appeals shall make an on the site inspection of the premises involved in the application for a variance or special exception.

(J) A decision of the Board granting a variance or a special exception will be void 2 years from date of approval by the Board of Appeals unless the use is established or a building permit is issued and construction has begun and is in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

#### § 1-19-3.220. VARIANCES.

(A) The Board of Appeals may authorize a variance in height, lot area and yard regulations only in cases where the strict compliance with the terms of this chapter would result in unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to the public health, safety and general welfare.

(B) An application for a variance shall be filed with the Board of Appeals only after refusal of a zoning certificate by the Zoning Administrator.

(C) The Board of Appeals shall not grant a variance unless and until the following conditions are satisfied:

(1) That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same district; and

(2) The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this chapter;

(3) That the special conditions and circumstances do not result from the actions of the applicant; and

(4) That granting the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands or structures in the same district; and

(5) A public hearing has been held;

(6) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of this chapter.

(E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in said zone.

#### § 1-19-3.230. APPEALS.

(A) Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the jurisdiction affected by any decisions of the administrative officer. Such appeal shall be taken within 30 days after the date of the action or decision being appealed, by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(B) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals after notice of appeal shall have been filed with him that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(C) The Board of Appeals shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(D) In exercising the above-mentioned powers such Board may, in conformity with Md. Ann. Code, Art. 66B, as amended, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

ARTICLE IV: REGULATIONS APPLICABLE TO ALL DISTRICTS  
DIVISION 2. NONCONFORMING LOTS, STRUCTURES, AND USES  
§1-19-4.220. NONCONFORMING STRUCTURES.

(A) A nonconforming structure is a structure lawfully existing January 24, 1977 or on the effective date of an amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions.

- (1) No such structure may be modified so as to increase its nonconformity.
- (2) Such structure once destroyed by any means will not be reconstructed unless:
  - (a) It is in conformity with this chapter; or
  - (b) The Board of Appeals grants a variance;
- (3) Such structure once moved, will thereafter conform to the regulations for the district to which it is moved.

(B) This movement does not include minor shifting or settling of the structure from natural or accidental causes.

§ 1-19-4.230. NONCONFORMING USES.

(A) A nonconforming use is a use which legally exists on January 24, 1977 or at the time of amendment of this chapter but that does not comply with the regulations of the district in which it is located. Such nonconforming use may consist of any nonconforming use of land, a nonconforming use of structure, or a nonconforming use of land and structure. Nonconforming uses are incompatible with permitted uses in the same district and will not be modified or enlarged, except by special exception, after January 24, 1977.

(B) The Board of Appeals may grant a special exception to:

- (1) Change a nonconforming use to another nonconforming use if:
  - (a) No structural alterations are made; and
  - (b) The Board of Appeals, by a specific finding in the case, finds that the proposed use is more appropriate to the district;
  - (c) A nonconforming use will not be changed to a use considered less appropriate to the district;
  - (d) The Board of Appeals may impose conditions within the scope of this chapter on the granting of such a special exception.

(2) Expand a nonconforming use or structure. Expansion is limited to the lot that exists on January 24, 1977. Additional acreage or dwelling units will not be added to expand a nonconforming use.

(C) No building, structure, or lot where a nonconforming use has ceased for one year or more shall again be put to a nonconforming use.

(D) The casual, temporary or illegal use of land or structure does not establish the existence of a nonconforming use.

(E) Existing mobile home parks.

(1) A mobile home park which existed on January 24, 1977 may continue in existence under the rules and regulations then in effect.

(2) A mobile home located in an existing mobile home park on the effective date of this section may be replaced by another mobile home no larger than 840 square feet in size.

(3) No increase in the number of units or parcel size of any existing mobile home park will be allowed except as provided in §1-19-10.600.2, Mobile home parks.

## ARTICLE XI: DEFINITIONS

### DIVISION 1. DEFINITIONS

***FRONTAGE.*** See ***LOT FRONTAGE.***

***LOT TYPES.*** The lots with the following definitions.

(a) ***CORNER LOT.*** A lot located at the intersection of 2 or more streets. A lot abutting on a curved street or streets is considered a corner lot, if straight lines drawn from the foremost points of the side lot lines to the foremost points of the lot meet at an interior angle of less than 135 degrees.

(b) ***INTERIOR LOT.*** A lot with only 1 frontage on a street other than an alley.

(c) ***OUTLOT.*** A parcel of land within a subdivision which has been included on a preliminary and final plat, but not designated as a buildable lot. Establishment shall only be due to the necessity of providing for access to adjoining properties a continuation of appropriate street patterns, or any other approved governmental use.

(d) ***PANHANDLE LOT.*** A lot with the appearance of a "frying pan" or "flag and staff" in which the handle is most often used as the point of access to a street or road. The "handle," when less than the minimum width for a building lot in the zoning district in which it is located, is not to be used in computing the minimum required area or delineating the minimum required "building envelope." The handle shall not be less at any point than the required minimum road frontage.

(e) ***THROUGH LOT.*** A lot (other than a corner lot) with frontage of more than 1 street other than an alley.