

DRAFT

THE EFFECTIVE DATE OF THIS ORDINANCE IS _____

ORDINANCE NO. _____

Zoning Text Amendment - ZT-09-05

RE: The 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 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

PREAMBLE

The Board of County Commissioners of Frederick County, Maryland (the “Board”) recognizes that certain provisions of Chapter 1 – 19 of the Frederick County Code (the “Zoning Ordinance”) relating to administration and enforcement are in need of editing and updating. This editing and updating will promote ease of use by members of the public and others by reducing duplication, providing consistency with other recent revisions to the Zoning Ordinance, and reflect current policy and practice in administration and enforcement process and procedure.

The Board determines that it is appropriate and is in the best interest of the health, safety and welfare of the citizens of Frederick County to amend the provisions of the

Zoning Ordinance to update and edit the provisions relating to administration and enforcement.

The Frederick County Planning Commission held a duly advertised public hearing on October ____, 2009 and recommended _____ of the proposed text amendment.

The Board of County Commissioners held a duly advertised public hearing on November ____, 2009. The public had an opportunity to comment at this public hearing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that the Zoning Ordinance be amended as shown on the attached Exhibit A.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on _____, 2009.

The undersigned hereby certifies that this Ordinance was approved and adopted on the ____ day of _____, 2009.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

Ronald A. Hart
County Manager

Jan H. Gardner
President

EXHIBIT A

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).**

EXHIBIT A

(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 records **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;

EXHIBIT A

(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.

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(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.

(II) 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:

<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

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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 REQUIRED.

~~(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.

EXHIBIT A

(2) THE PLANNING COMMISSION WILL HOLD A PUBLIC HEARING PRIOR TO MAKING ITS RECOMMENDATION. A FAILURE TO MAKE A RECOMMENDATION WITHIN 62 DAYS OF THE FIRST PUBLIC 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 ON A ZONING TEXT AMENDMENT AFTER RECEIVING THE RECOMMENDATION OF THE PLANNING COMMISSION.

(C) ANY PERSON SHALL HAVE THE RIGHT TO SUBMIT ORAL AND/OR WRITTEN TESTIMONY AT THE PUBLIC HEARING.

(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.~~

EXHIBIT A

~~—(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.

EXHIBIT A

~~(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.~~

EXHIBIT A

§ 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 INDIVIDUAL ZONING MAP AMENDMENT OR FLOATING ZONE RECLASSIFICATION APPLICATION. APPLICATIONS FOR INDIVIDUAL ZONING MAP AMENDMENTS (NOT INCLUDING APPLICATIONS FOR FLOATING ZONES), WILL BE ACCEPTED ONLY IN THE MONTHS OF APRIL AND OCTOBER. EACH INDIVIDUAL 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 CURRENT ZONING STATUS OF THE PROPERTY IS BEING REVIEWED UNDER A 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;

EXHIBIT A

(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.~~

EXHIBIT A

~~(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 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 62 DAYS OF ITS FIRST PUBLIC HEARING. A FAILURE TO MAKE A RECOMMENDATION WITHIN 62 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.~~

EXHIBIT A

~~—(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.

(2) ANY PERSON SHALL HAVE THE RIGHT TO SUBMIT ORAL AND/OR WRITTEN TESTIMONY AT THE HEARING.

(3) 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.

(C) PUBLIC NOTICE.

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

(b) 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 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) 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.

EXHIBIT A

(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 § 1-19-3.110.2(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 THROUGH 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;**

EXHIBIT A

(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.

§ 1-19-3.110.7. 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** procedureS shall ~~govern~~**APPLY**.

EXHIBIT A

(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.

EXHIBIT A

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.~~

EXHIBIT A

~~—(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 A SPECIAL EXCEPTION, VARIANCE, APPROVAL, OR APPEAL SHALL BE MADE ON FORMS APPROVED BY THE DIVISION OF PLANNING.

(B) THE APPLICATION FOR A SPECIAL EXCEPTION, VARIANCE, APPROVAL, OR APPEAL 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 SPECIAL EXCEPTION, VARIANCE, OR APPROVAL 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;

EXHIBIT A

(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 OR APPROVAL, 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 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, THE ZONING ADMINISTRATOR SHALL SCHEDULE THE PUBLIC HEARING BY THE BOARD OF APPEALS. APPEALS AND APPLICATIONS FILED IN PROPER FORM SHALL BE NUMBERED SERIALY, DOCKETED AND PLACED UPON THE CALENDAR OF THE BOARD.

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

EXHIBIT A

(C) PUBLIC NOTICE.

(1) SIGN(S). FOR ALL SPECIAL EXCEPTION, VARIANCE, APPROVAL, AND APPEAL APPLICATIONS THE APPLICANT SHALL ERECT A SIGN 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. 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) 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.

EXHIBIT A

§ 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~~ **UNIQUE** 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 HARDSHIP 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.

EXHIBIT A

(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 OF APPEALS GRANTING A VARIANCE WILL BE VOID 2 YEARS FROM DATE OF APPROVAL BY THE BOARD OF APPEALS UNLESS THE USE IS ESTABLISHED, A BUILDING PERMIT IS ISSUED, CONSTRUCTION HAS BEGUN, 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 M&D 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.

EXHIBIT A

THE PURPOSE OF NONCONFORMING LOT, STRUCTURE, AND USE PROVISIONS ARE TO ALLOW ~~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.

EXHIBIT A

§ 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~~ **N 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 T~~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 AN APPROVAL WITHIN THIS SECTION.**

~~(E)~~ **(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.

EXHIBIT A

(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 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 1: 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.

EXHIBIT A

[(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]