



## DIVISION OF PLANNING FREDERICK COUNTY, MARYLAND

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To: Frederick County Planning Commission

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

DATE: April 12, 2010

RE: Euclidean Institutional/Euclidean Open Space Recreation Text Amendment (ZT-10-01)

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### **ISSUE**

During the Countywide Comprehensive Plan update process, Staff identified several issues in regards to the existing zoning ordinance text, and the application of the Euclidean Institutional (Ie) and Euclidean Open Space Recreation (OSRe) zoning districts. These issues include providing conformity to 'Private School in Conjunction with a Place of Worship' and 'Caretaker Residence' land uses, adding cross references, providing design requirements (such as height and setback standards), and providing further clarification regarding subdivision and processing within these districts.

### **BACKGROUND**

The Ie and OSRe zoning districts were created with the adoption of ZT-09-03 in June of 2009 (A/RC Use and Definitions Text Amendment), in an effort to provide conforming status to several land uses previously permitted within the Agricultural and/or Resource Conservation zoning districts. In addition to purpose statements for the Ie and OSRe zoning districts (section 1-19-5.260 and 1-19-5.270) and a listing of permitted uses (section 1-19-5.310 (B)), companion language was also adopted to provide for the processing and review of potential expansion of these existing land uses (section 1-19-8.480). Although the zoning districts were created with the adoption of the text amendment in June of 2009, application of the zoning districts to specific properties occurred as part of the Countywide Comprehensive Plan update process (*recently completed on April 8, 2010*). During the Comprehensive Plan discussions and worksessions it became clear that specific updates to the existing adopted Ie and OSRe zoning ordinance text were necessary.

The initial draft of the Ie/OSRe text amendment, was discussed at a February 2<sup>nd</sup> worksession with the BOCC, and included general edits to existing text that would provide conformity to 'Private School in Conjunction with a Place of Worship' and 'Caretaker Residence' land uses, add cross references and provide design requirements including minimum lot area, lot area per unit, lot width, height, and front, side, and rear yard setbacks. The design requirements were proposed to provide guidance for the future expansion of permitted uses within the Ie and OSRe zoning districts through the site plan review process.

Although minimum design requirements are needed to facilitate the review of future expansion, the inclusion of minimum lot area requirements may also provide for future subdivision potential. Subdivision was not discussed during initial creation and adoption of the Ie and OSRe zoning districts. These zoning districts were created with a narrow and specific purpose, to provide for conformity and continuation of existing uses rather than amplification or significant alteration of those uses.

After consideration of the draft text at the February 2<sup>nd</sup> worksession, the BOCC directed Staff to include maximum height and minimum setback requirements and to create a set of options for further consideration regarding potential subdivision within these zoning districts.

As part of the text amendment discussion the BOCC also noted that the draft text should provide a set of standards that apply uniformly within the districts, that a minimum lot size of 5 acres may be too small based on the permitted uses, and subdivision options to be drafted should not permit an increase in subdivision potential beyond what would have been permitted within the previous zoning districts (A and RC).

Staff prepared three options for BOCC consideration. The three options contained general edits and updates to the existing text adding maximum height and minimum setback standards, and providing for subdivision based on A district standards. The BOCC discussed the option of providing for both residential and non-residential subdivision.

A fourth option of deleting the OSRe zoning district from the zoning ordinance altogether, was presented to the BOCC for discussion at a worksession on March 4, 2010. If deleted, the OSRe zoning district would be legislatively deemed conforming by language in the ordinance adopting the Countywide Comprehensive rezoning. (*Note: This was included in the April 8, 2010 BOCC ordinance adopting the Comprehensive rezoning*)

At a worksession on March 9, 2010, the BOCC gave final direction that the OSRe zoning district should be removed from the zoning ordinance and replaced with an adopting ordinance and that the remaining general text amendment edits and changes to the Euclidean Institutional zoning district should move forward to public hearing as previously discussed at worksession. To that end, the three options contained in the text amendment for public hearing include:

- Option 1: Maximum height and minimum setback standards
- Option 2: Maximum height and minimum setback standards and non-residential subdivision based on A district standards with an option for the BOCC to choose either a 5 acre or 10 acre minimum lot size
- Option 3: Adding maximum height and minimum setback standards, providing for subdivision ( including residential and clustering) based on A district standards with an option for the BOCC to choose either a 5 acre or 10 acre minimum lot size for non-residential uses
- Generally provide for agricultural activities as a permitted land use within the Ie zoning district

The development standards as proposed within the attached text amendment are based on a review of the properties reflecting the Ie zoning district as proposed within the BOCC draft Comprehensive Plan. All of the properties currently reflect Agricultural zoning. A few of the properties also include another type of zoning which is reflective of a site specific situation such as an environmental feature or an access through another zoning district. However, the properties currently reflect a majority of Agricultural zoning, even where another zoning district may be present. For this reason, the recommendations regarding height, setbacks, and subdivision are similar to the regulations within the Agricultural zoning district.

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 - Ie and OSRe Zoning Districts Text Amendment (ZT-10-01), proposed new text is **BOLD CAPS**, and text for removal is shown in ~~STRIKETHROUGH~~. Exhibit 2 – Options Summary contains an overview of the various components within each option.

## **TEXT AMENDMENT OVERVIEW**

Within the overview section each option is provided separately for discussion purposes. It has been noted within the discussion where specific text remains the same throughout the options.

### **Option 1**

Option 1 includes general edits as well as maximum height and minimum setback standards. The text clarifies that subdivision is not permitted within the zoning district.

## **ARTICLE V: ZONING MAP AND DISTRICTS**

### **DIVISION 2. ZONING DISTRICTS**

#### **§ 1-19-5.260. EUCLIDEAN INSTITUTIONAL ZONING DISTRICT (Ie).**

This existing section of the zoning ordinance has been updated within the text amendment to provide conforming status to ‘Private school in conjunction with a place of worship’ land uses, to remove duplication in the original text, and to add a cross reference to section 1-19-8.480.

During the County Comprehensive Plan update process Staff was made aware through public comment that two properties with proposed Euclidean Institutional zoning include both a private school and a place of worship. In addition to other permitted uses, the existing purpose statement for the Euclidean Institutional zoning district provides only for private school. Text has been added to permit ‘Private school in conjunction with a place of worship’ in addition to the existing text providing for ‘Private school’. The addition of this text will provide conforming status for these properties.

Within all three options this section remains the same.

#### **§ 1-19-5.270 EUCLIDEAN OPEN SPACE RECREATION ZONING DISTRICT (OSRe).**

This section is proposed for deletion based on discussion and direction given by the BOCC that the OSRe zoning district should be removed from the zoning ordinance and replaced by an adopting ordinance as discussed above.

Within all three options this section remains the same.

**DIVISION 3. USE TABLE**  
**§ 1-19-5.310. USE TABLE.**

Subsection (B)(1) within this existing section of the zoning ordinance has been updated to correspond to the changes proposed in section 1-19-5.260 and 1-19-5.270 discussed above, and 'Agricultural activities' has been added as a permitted land use.

In addition, 'Caretaker residence in conjunction with a permitted use' has been added as a permitted accessory use to provide for caretaker residences that may be requested in the future. Caretaker residence was initially included to provide conformity for an existing caretaker residence at the Catoctin Wildlife Preserve and Zoo within the OSRe zoning district. Although it is no longer necessary with the deletion of the OSRe zoning district, it is conceivable that land uses permitted within the Euclidean Institutional zoning district may request this type of accessory use as part of future development. Therefore the text remains within the proposed amendments.

References to the OSRe zoning district in subsection (B)(2) is proposed for deletion based on discussion and direction given by the BOCC that the zoning district should be removed from the zoning ordinance and replaced by an adopting ordinance. Deletion of this subsection is contained within all three options.

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

This existing section of the zoning ordinance was created to provide for the possibility of future expansion of those uses permitted within the Ie and OSRe zoning districts. General edits to this section have been made to correspond to those changes as previously discussed above, text has been added to provide design requirements within the Ie zoning district, and to provide clarification regarding permitted uses and site plan review processing.

Within this option, maximum height and minimum setback requirements are established without providing for future subdivision. In addition, references within this section to the OSRe zoning district are proposed for deletion as previously discussed.

Subsection (A) contains proposed maximum height and minimum front, side, and rear yard setback standards. The proposed standards are based upon similar existing requirements for natural resource uses within the Agricultural zoning district as contained in section 1-19-6.100 of the zoning ordinance.

Subsection (B) provides clarification that there is no minimum lot size or lot width within the zoning district, however, no future subdivision will be permitted. The proposed text would provide conformity for existing properties regardless of lot size or lot width but prohibit future subdivision.

Subsection (C) includes reorganization and consolidation of existing text. Clarification has also been provided with the addition of a cross reference to the site plan review sections within the zoning ordinance, and 'Agricultural activities' has been added as a permitted land use.

Existing subsection (B), including the reference to the expansion as a permitted natural resource use, has been deleted as discussed by the BOCC during the February 2<sup>nd</sup> worksession.

'Private school in conjunction with a place of worship' has been added to subsection (D) and general edits have been made to provide consistency with subsection (C). 'Agricultural activities' has been added as a permitted land use.

## **Option 2**

Option 2 includes general edits as well as maximum height and minimum setback standards. It also provides for non-residential subdivision consistent with current standards in the A district and includes an option for either a 5 acre or 10 acre minimum lot size. If adopted, the standards within Option 2 would permit subdivision of existing lots with Euclidean Institutional zoning and permit development of new lots with land uses as permitted within the zoning district.

### **ARTICLE V: ZONING MAP AND DISTRICTS**

#### **DIVISION 2. ZONING DISTRICTS**

**§ 1-19-5.260. EUCLIDEAN INSTITUTIONAL ZONING DISTRICT (Ie).**

**§ 1-19-5.270 EUCLIDEAN OPEN SPACE RECREATION ZONING DISTRICT (OSRe).**

#### **DIVISION 3. USE TABLE**

**§ 1-19-5.310. USE TABLE.**

Within this option, sections 1-19-5.260, 1-19-5.270, and 1-19-5.310 remain the same as proposed in Option 1.

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

Within Option 2, section 1-19-8.480 subsection (A) provides the same height and setback standards as proposed in Option 1, which are based upon similar requirements for natural resource uses within the Agricultural zoning district as contained in section 1-19-6.100 of the zoning ordinance.

Subsection (B) provides for subdivision within the Ie zoning district based on current non-residential subdivision requirements within the Agricultural zoning district which are contained in section 1-19-7.300 (B) of the zoning ordinance. The proposed text would permit subdivision of 3 lots and a remainder off an original tract of land as of August 18, 1976.

The proposed minimum lot area and lot width is based upon the same requirements for natural resource uses within the Agricultural zoning district as provided in section 1-19-6.100 of the zoning ordinance. Although it was discussed that a minimum lot size of 5 acres may be too small for the permitted uses within the Ie zoning district, current regulations within the Agricultural zoning district provide a minimum lot size of 40,000 square feet for Institutional, Governmental, and public utility uses, and a 5 acre minimum lot size for Open space uses and Commercial Amusements. As directed by the BOCC at worksession, an option for either a 5 acre minimum or 10 acre minimum lot size has been provided.

As previously discussed, the regulations within the Agricultural zoning district are reflective of current requirements for those properties proposed to receive Ie zoning.

Subsection (C) includes reorganization and consolidation of existing text. Clarification has also been provided with the addition of a cross reference to the site plan review sections within the zoning ordinance, and 'Agricultural activities' has been added as a permitted land use.

Existing subsection (B), including the reference to the expansion as a permitted natural resource use, has been deleted as discussed by the BOCC during the February 2<sup>nd</sup> worksession. 'Private School in Conjunction with a Place of Worship' has been added to subsection (D) and general edits have been made to provide consistency with subsection (C).

### **Option 3**

Option 3 includes general edits as well as maximum height and minimum setback standards. It provides for subdivision (including residential and clustering) consistent with current standards in the A district and includes an option for either a 5 acre or 10 acre minimum lot size for non-residential land uses. If adopted, the standards within Option 3 would permit subdivision of existing lots with Euclidean Institutional zoning and permit development of new lots with land uses as permitted within the zoning district, including single family dwellings.

## **ARTICLE V: ZONING MAP AND DISTRICTS**

### **DIVISION 2. ZONING DISTRICTS**

**§ 1-19-5.260. EUCLIDEAN INSTITUTIONAL ZONING DISTRICT (Ie).**

**§ 1-19-5.270 EUCLIDEAN OPEN SPACE RECREATION ZONING DISTRICT (OSRe).**

Within this option, sections 1-19-5.260 and 1-19-5.270 remain the same as proposed in Options 1 and 2.

### **DIVISION 3. USE TABLE**

**§ 1-19-5.310. USE TABLE.**

The Ie and OSRe zoning districts were created to provide conforming status to those uses removed as permitted within the Agricultural and Resource Conservation zoning districts. As discussed during the March 4<sup>th</sup> worksession with the BOCC, providing the option of residential subdivision is beyond the initial intent of the creation of the Euclidean Institutional and Open Space Recreation zoning districts.

Based on input from the Office of the County Attorney, the addition of residential subdivision standards within the Ie zoning district would necessitate a rewrite of the existing provisions for the zoning district within the zoning ordinance. Rather than a simplistic solution to provide conforming status to permitted uses, the zoning district will be expanded beyond the original intent. The necessary changes will create a fully developed, new zoning district similar to other standard Euclidean zoning districts within the zoning ordinance.

For these reasons the Use Table within this section has been expanded to include a new column dedicated to the Euclidean Institutional zoning district. Text has been added to permit those specific land uses as previously listed in Option 1 and 2, and single family detached residential has been added which is consistent with providing for residential subdivision.

'Agricultural activities', 'Single-family detached', and 'Caretaker residence in conjunction with a permitted use' have been added as 'P' principal permitted uses subject to design regulations similar to processing within other Euclidean zoning districts.

As part of Option 3 it is necessary to add Continuing Care Retirement Communities to the Use Table. Up to this point, conforming status for existing CCRCs in the county which previously reflected Agricultural and R1 zoning has been provided within the Ie zoning district in section 1-19-5.310. Due to the nature of the edits within Option 3 it is necessary to delete section 1-19-5.310 (B) to be replaced with additions to the Use Table.

Continuing Care Retirement Communities (CCRCs) were discussed extensively throughout the text amendment process updating the A and RC zoning districts in 2009. As part of the text amendment process CCRCs were added as a permitted use within the Planned Unit Development (PUD) provisions within section 1-19-10.700 of the zoning ordinance.

CCRCs were recommended and adopted as permitted solely through the PUD process based on the fact that it is primarily a residential development. The PUD process also accommodates the large nature of this type of development and provides for review of design, public facility components and provides needed flexibility.

Within the zoning ordinance, regulations and permitted uses within floating zones are specifically provided in Article X: Optional Methods of Development. Therefore, as permitted solely within a PUD floating zone CCRC does not currently appear in Section 1-19-5.310 Use Table. Adding CCRCs to the Use Table will provide conforming status within the Ie zoning district but may confuse the intent of processing new CCRCs through the PUD regulations as previously recommended and approved.

Consistent with the deletion of section 1-19-5.310 (B) (1) and (2), CCRCs, 'Place of worship', 'Private school', 'College or university', and 'Elementary or secondary school' have been added to section 1-19-5.310 Use Table as 'PS' principal permitted use subject to site development plan approval. 'Place of worship' has been added as a permitted land use in the district consistent with providing conforming status to 'Private school in conjunction with a place of worship'. The processing of these land uses through site plan approval is consistent with existing requirements for permitted uses within the Euclidean Institutional zoning district found in section 1-19-8.480.

Subsection (B)(1) and (2) have been deleted as previously discussed.

**ARTICLE VI: DISTRICT REGULATIONS**  
**DIVISION 1. DESIGN REQUIREMENTS AND MODIFICATIONS**  
**§ 1-19-6.100. DESIGN REQUIREMENTS FOR SPECIFIC DISTRICTS.**

As noted previously, due to the addition of residential subdivision standards as part of this option, it is necessary to create a fully developed, new Euclidean zoning district which requires the addition of design standards within this existing section. The Euclidean Institutional zoning district has been added with specific standards for each type of land use category reflective of permitted uses within the zoning district. The proposed standards are consistent with the current standards for each similar land use category within the Agricultural zoning district. The proposed text provides for a minimum lot size "as exists on June 15, 2009" which would provide conforming status for all lots within the zoning district regardless of size. A reference to section 1-19-7.700 has been added to provide direction to the supplementary district regulations which contain information regarding subdivision including a minimum lot size at the time that subdivision occurs.

**ARTICLE VII: SUPPLEMENTARY DISTRICT REGULATIONS  
DIVISION 7. EUCLIDEAN INSTITUTIONAL DISTRICT  
§ 1-19-7.700. EUCLIDEAN INSTITUTIONAL DISTRICT.**

This new section contains the supplementary district regulations pertaining to the Euclidean Institutional zoning district consistent with other established zoning districts within the zoning ordinance. This section contains subdivision standards within the Ie zoning district based on current subdivision requirements within the Agricultural zoning district which are contained in section 1-19-7.300 (B) of the zoning ordinance. The proposed text would permit subdivision of 3 lots and a remainder off an original tract of land as of August 18, 1976 for residential and non-residential development.

The proposed minimum lot area is based upon the same requirement for single family dwellings within the Agricultural zoning district as provided in section 1-19-7.300 (B) of the zoning ordinance. The proposed minimum lot area for all other uses is similar to the lot area proposed within Option 2, including the option for either a 5 acre or 10 acre minimum lot size for non-residential uses.

As a portion of the discussion during the March 9<sup>th</sup> worksession the BOCC directed that Staff include the clustering provisions for consideration as a portion of Option 3. Therefore, subsection (C) contains Optional Residential Method of Development (Clustering) provisions similar to those provided within the Agricultural zoning district. Minor text edits have been made to reflect clustering provisions within the Euclidean Institutional zoning district rather than an agricultural area.

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

This existing section contains provisions for the further development or expansion of those existing uses within the Euclidean Institutional zoning district. Within Option 3 it would also provide standards for development of properties created during future subdivision.

Within subsection (A) text has been added to reference section 1-19-5.260 which provides the purpose of the district, and to section 1-19-5.310 Use Table which provides the appropriate review process for permitted uses. Remaining existing text has been edited to remove references to the OSRe zoning district.

Existing subsection (B), including the reference to the expansion as a permitted natural resource use, has been deleted as discussed by the BOCC during the February 2<sup>nd</sup> worksession.

'Private School in Conjunction with a Place of Worship' has been added to the proposed subsection (B) and general edits have been made to provide consistency with subsection (A). 'Single family dwelling' and 'Agricultural activities' have been added as permitted land uses.

## **STAFF RECOMMENDATION**

Due to the complexity of the revisions required by inclusion of residential subdivision within Option 3, and the confusion of purpose and function of existing regulations Staff does not recommend Option 3 as a viable solution to updating the Ie and OSRe zoning districts. Staff would recommend either Option 1 as consistent with the original objective of creating the Ie and OSRe zoning districts, or Option 2 which is consistent with the original objective of the zoning district while also providing for non-residential subdivision.

Staff requests a recommendation regarding the Ie and OSRe Zoning Districts Text Amendment and the three Options provided for BOCC consideration, and specifically the 5 or 10 acre minimum lot size.

## **EXHIBITS**

Exhibit 1 – Ie and OSRe Zoning Districts Text Amendment (Option 1, Option 2, Option 3)

Exhibit 2 – Summary of Options