



DIVISION OF PLANNING FREDERICK COUNTY, MARYLAND

Winchester Hall 12 East Church Street Frederick, Maryland 21701 (301) 600-1138

TO: Board of County Commissioners

FROM: Eric Soter, Director, Division of Planning

DATE: November 5, 2008

RE: BOCC direction regarding A and RC Zoning District Use Regulations and Definitions provided during September 30, 2008 Worksession

The Board of County Commissioners (BOCC) conducted worksessions on April 10, April 17, May 6, 2008, and September 30, 2008 to review Staff recommendations and a draft text amendment applying to land uses permitted within the Agricultural and Resource Conservation zoning districts. A summary of direction given by the BOCC during the September 30th worksession and the resulting changes to the text amendment has been provided below. The summary has been organized by land use topic. In addition, a summary of the informational meeting held on October 20th and 22nd has been provided in this report.

Within the attached draft text amendment, Exhibit 1, text in red bold or red strikethrough represents changes resulting from the direction given by the Board at the September 30th worksession, or changes initiated by Staff to clarify the proposed text amendment language.

The draft text amendment has been updated to correspond to the new zoning ordinance organization and numbering system that was approved by the BOCC on October 14, 2008. Therefore, the references below have been updated to the new numbering system and the attached Exhibit 1 has been reorganized. For reference purposes only, the September 22, 2008 Staff Report has been provided as Exhibit 2 in the reorganized format with cross-references updated to the new numbering system.

SUMMARY OF CURRENT EDITS

Solar Collection and Wind Turbines

The BOCC requested that Staff review the proposed text in Section 1-19-8.205.6(A)(3) regarding the location of Limited Wind Energy Systems (LWES) within a front yard. Staff recommends that the language remain unchanged. The proposed regulations provide that the LWES shall not be located within the required front yard **setback**. The front yard setback would be limited to that area as defined within Section 1-19-6.100 of the zoning ordinance and varies from zoning district to zoning district. However, the front setback in most instances will be less than the setback required based on the proposed Section 1-19-8.205.6(A)(2) requirements which provide for a potential fall area based on the height of a LWES. Any distance required to meet the minimum front setback in addition to the fall area would be minimal and not viewed by Staff as overly burdensome.

Public comment during the worksession requested removal of Section 1-19-8.205.5(A)(7) limiting the color of a wind energy system. The proposed language states that the wind energy system shall be painted a non-reflective, non-obtrusive color. Staff recommends that the language remain unchanged providing the least obtrusive option in locating the system.

Section 1-19-8.205.5(A)(13) regarding restrictions on variances has been deleted. This change will provide for the consideration of variances as outlined in Section 1-19-3.220 Variances within the zoning ordinance. Public comment requested that a variance should be considered for changes in technology. Currently the zoning ordinance permits the consideration of variances only for height, lot area, and yard regulations.

The language within Section 1-19-8.205.5(A)(1) and (2) has been clarified to refer specifically to the calculation of solar array rather than residential accessory structures.

Landscaping Contractor and Nurseries

The definition of Hardware/garden center has been updated to include feed and seed products.

Place of Assembly

The BOCC requested that Staff provide for the continued existence of places of worship within the Euclidean Institutional zoning district. As proposed within Section 1-19-5.260 place of worship land uses not meeting the institutional floating zoning district requirements will be permitted and formally recognized through application of the Euclidean Institutional zoning district. The existing language is general in nature and does not specify a square footage requirement or otherwise restrict the application of the Euclidean Institutional zoning district to a parcel with a place of worship meeting specific parameters. Therefore as proposed, the Euclidean Institutional zoning district could be applied to existing places of worship above the proposed 25,000 total maximum square footage, 300 peak hourly traffic trips, or 900 maximum daily trip thresholds or to those below these numbers that anticipate future expansion that may exceed the thresholds. However, future expansion of the facilities would be limited to the requirements as proposed in Section 1-19-8.480 Uses Permitted in the Euclidean Institutional or Open Space Recreation Zoning Districts.

As requested, 'Place of worship' has been added to Section 1-19-5.310 as a permitted use subject to site development plan approval in the LI zoning district. Most activities associated with a place of worship will occur during non-peak hours for industrial users. This would address potential associated conflicts and provide opportunities for shared parking.

Transitional Provisions

Text has been added to Section 1-19-5.260, 1-19-5.270, and 1-19-5.310 (B) to provide that the Euclidean Institutional and Euclidean Open Space Recreation zoning districts may be applied to those properties where a site plan has been approved. This language will provide for those development projects that may have received site development plan approval but have not begun construction. This language will only provide for those portions of the project that were reviewed and received approval as part of the site plan process. Therefore additional phases beyond that portion of the development project approved during site development plan approval would not be included. Options for development beyond this approval would be limited to the Institutional floating zoning district or the proposed language within Section 1-19-8.480 Uses Permitted in the Euclidean Institutional or Open Space Recreation Zoning Districts. In addition, the transitional language as proposed would not provide for those projects that have received special exception approval but have not yet received site development plan approval. This would be applicable to any project within the RC zoning district where place of worship is currently permitted by special exception but may become non-conforming due to changes in special exception approval requirements.

Camps and Retreats

In reviewing the proposed language for Rustic retreat/camp/outdoor club Staff would suggest adding regulations to provide for an individual structure not to exceed a maximum square footage. As a starting point for discussion purposes, the 25,000 square feet applied to place of worship, civic community center, and civic service club has been included in the special exception criteria in Section 1-19-8.327(D) for Rustic retreat/camp/outdoor club. Each additional building would be limited to a maximum of 5,000 square feet as previously proposed. These changes better reflect existing development and address scale and intensity within the A and RC zoning districts. The 25,000 square feet is considerably larger than the largest existing facility as researched by Staff (at approximately 17,130 square feet).

The existing regulations within Section 1-19-8.327(C) regarding density not to exceed 3 persons per acre will work together with the maximum building size to address scale and massing concerns in the A and RC zoning districts.

Public and Private Schools

As directed during discussion of priority funding area requirements and permitted uses in the Agricultural zoning district, public and private schools have been included in the Institutional floating zoning district in Section 1-19-10.900 and the Euclidean Institutional zoning district in Section 1-19-5.260. These uses have been removed as permitted uses within the Agricultural zoning district as provided in Section 1-19-5.310 and new uses will be processed solely through the Institutional floating zoning district. Existing uses will be identified and provided for through the Euclidean Institutional zoning district. The heading in Section 1-19-8.341 has been updated to reflect this change.

Provision for future expansion of public and private schools within the Euclidean Institutional zoning district has been addressed in updates to Section 1-19-8.480. These updates permit the expansion of public and private schools with Euclidean Institutional zoning subject to the site plan review process.

School Bus Parking

The definition in Section 1-19-11.100 has been updated to better reflect that the regulations within Section 1-19-5.310 do not apply to a single bus driven daily by a school bus driver to and from the individual's residence.

Caretaker Apartment

As directed, 'Caretaker apartment' has been added in Section 1-19-5.310 as a permitted use subject to site development plan approval in the A and RC zoning districts. However, it was noted by Staff that the current restrictions on accessory apartment size are located within the special exception criteria and therefore do not apply to the existing owner/caretaker land use. For these reasons the owner/caretaker land use entry in Section 1-19-5.310 and definition within Section 1-19-11.100 have been updated to refer to a *residence* rather than an apartment.

Community Fire and Rescue

'Community fire and rescue' has been removed within Section 1-19-5.310 as a permitted use within the Resource Conservation zoning district.

Maximum Lot Size Within the Open Space Recreation Floating Zoning District

A discussion point was raised by the Office of Economic Development that the maximum parcel size associated with the fairgrounds land use, as provided in proposed Section 1-19-10.1000 (B)(2), has not been applied to the other permitted land uses within the zoning district. Staff requests direction whether the 100 acre maximum parcel size should be applied to all land uses within the Open Space Recreation floating zoning district, and/or whether a maximum parcel size for fairgrounds should continue to be included in the draft language.

Miscellaneous Edits

Staff initiated edits and updates were also made to clarify the proposed text amendment language.

The language in Section 1-19-8.480 has been edited to better define how an existing use with Euclidean Institutional or Euclidean Open Space Recreation zoning may expand.

Section 1-19-10.900 Institutional Floating Zoning District and 1-19-10.1000 Open Space Recreation Floating Zoning District have been updated to provide flexibility within the size and location criteria in (B)(1)(c) regarding utility and transportation rights-of-way.

As a discussion item, Staff would note that within the proposed language to process Continuing Care Retirement Communities (CCRCs) the density calculations do not include separate provisions for individual beds. The existing Planned Unit Development (PUD) regulations within Section 1-19-10.700 provide that the development will not exceed the density as permitted within the land use designation. The densities are calculated based on dwelling units per acre and does not include provisions to address the types of facilities where multiple individual beds are provided rather than individual dwelling units.

Since CCRCs are based on the model of providing several levels of life care, a balance of the different units types would be achieved based on the need to provide all levels of care to residents. Land use density would then be calculated based on the number of individual or independent living dwelling units.

Increased specificity could be achieved by including separate density requirements for a maximum number of beds per acre. This could be achieved by applying the density calculations that were previously included in the zoning ordinance to address nursing homes as a special exception. The special exception requirements for nursing homes limited density at a minimum lot area per bed of 1,675 square feet. Utilizing this calculation would permit a gross density of 26 beds per acre for the non-dwelling unit based portion of the development.

The definition of Outdoor Recreation Center in Section 1-19-11.100 was edited to clarify that in general, the uses contained within the definition are not required to be co-located. Within the Open Space Recreation floating zoning district these uses are subject to co-location requirements which have been specified within the floating zone language. The language within the floating zone will work together with the definition to provide direction on locating these land uses.

COMMUNITY OUTREACH MEETINGS

Community Outreach Meetings were held with the general public on both October 20 and 22nd, 2008. Discussion on October 20th focused on places of worship, civic community centers, civic service clubs, and the Institutional and Open Space Recreation floating zoning districts. The meeting on October 22nd focused on landscape contractors, nursery land uses, and golf related land uses.

Approximately 200 people attended the meeting held on October 20th to discuss and provide input regarding places of worship, civic community centers and civic service clubs. Public comment and input has been summarized into the following:

- Provide grandfathering provisions for those places of worship that are existing, those that are in process, as well as those that have purchased land
- Places of worship should be exempt from the proposed changes to the A and RC zoning districts

- Places of worship cannot afford the costs associated with receiving a special exception or floating zoning district approval
- Places of worship cannot afford the costs associated with purchasing land that is within or contiguous to a community growth boundary due to its higher value
- Additional regulations are unnecessary as large institutional uses desire high visibility locations which will most likely meet the proposed requirements
- The services provided by a place of worship are different and expanded beyond those that were provided in the past which requires a different type of facility and increased square footage
- 25,000 square feet is too restrictive as a maximum total floor area for all buildings
- Proposed changes will be duplicative and an unnecessary burden as other state and county requirements limit size of facilities and address water, septic, and traffic
- The services/benefits provided by a place of worship and their non-profit/not for profit status should be considered

Public comment also included support for regulations to address large institutional uses due to the increased parking, traffic, and daily trips to a site that is located in an area that is not intended or built for the increased level of activity. Several attendees also expressed appreciation for the community outreach meetings, the opportunity to be involved in the process, and the opportunity to have their concerns heard and addressed.

Approximately 30 people attended the meeting held on October 22nd to discuss and provide input regarding general changes to the Agricultural and Resource Conservation zoning districts and specifically those changes related to Landscape Contractor and Nursery uses. Public comment and input has been summarized into the following:

- Provide grandfathering provisions for those landscape contractor land uses that are existing as well as those that are in process
- A combined total of no more than 10,000 square feet for principal and accessory structures is not sufficient to provide for landscape contractor land uses
- 40,000 square feet of total impervious surface area for parking and storage of equipment exterior to any structures is not sufficient for landscape contractor land uses especially on parcels including a long paved driveway
- If the intent is to move landscape contractor land uses to LI zoned property then there is a need to increase the amount of land where this zoning district is applied
- Consider permitting 'pet training/day care/grooming facility' as a permitted use on existing farms
- 5,000 square foot limitation on camps and retreats should be increased as existing facilities will not meet this requirement
- Clarify that the 300 square foot limitation on a 'Limited roadside stand' applies to the operation of the facility and not to parking or other areas associated with the land use
- Consideration should be given to expansion of the proposed limitation of 2 limited wind energy systems per property to provide for future technological improvements
- Floor area parking requirements for Farm Equipment Sales and Service, and Feed and Grain Mills should be clarified
- Sign provisions for Farm Equipment Sales and Service are not sufficient

- Buffering and screening requirements for Farm Equipment Sales and Service land uses where adjacent to residential land uses or zoning districts should be clarified to apply only where the residences are within a certain distance of the property line
- Open space recreation floating zoning district approval would include associated location and expense requirements for a Fairground facility that could not be met by the current operation
- Proposed definitions for Fairground and Place of Assembly/Event Complex need to be improved to provide a better distinction between the uses

Summary Discussion

Public input in recent weeks underscores much of the consideration and analysis that produced the recommended changes to the Agricultural and Resource Conservation zoning districts. Although the proposed text amendment includes recommendations to update several land uses within the zoning district, public comment has concentrated on the thresholds that have been established to address the differences in intensity between a small-scale and large-scale institutional facility. For this reason an expanded discussion of this portion of the text amendment has been provided below.

As services and activities associated with a place of assembly are expanded, the need or desire for an expanded facility to provide those services becomes apparent. When the place of assembly is located in an area with an Agricultural land use designation or zoning, the expanded services and activities increase traffic and permit construction of a large facility which may not be compatible in scale, massing, and intensity to the surrounding properties or neighborhood. The result of this increased intensity may include negative impacts such as noise, significant traffic volumes, and consumption of large areas of land for parking, infrastructure, and related facilities.

As provided within the purpose and intent statement within the zoning ordinance, the Agricultural zoning district provides areas that are intended to preserve productive agricultural land and prevent urbanization in areas intended to serve rural needs. The Agricultural/Rural land use designation as provided within the Comprehensive Plan includes areas of active farmland, pasture land, cropland, and commercial forestry, as well as the rural environs associated with active agricultural activities.

Within this context review of place of assembly land uses requires consideration of the following factors:

- Places of assembly as addressed by the proposed changes act not only as traditional places of worship but also provide general public meeting space, recreational facilities, concert facilities, health care, as well as educational facilities
- The expanded services provided by a place of assembly increases the amount of traffic, hours of operation, and size of the facility in an area intended to meet rural needs
- The traditional historic place of worship serving a local population, with a smaller scale facility, at lower levels of traffic volume, with limited hours of operation does not have the same impact on transportation networks, surrounding properties and neighborhoods, or related environmental features including well, septic, and impervious surface runoff as compared to a place of assembly with expanded services and facilities serving a regional population
- Septic, well, building, and infrastructure requirements associated with a large institutional facility necessitates increased parcel size to provide for this type of development

- The current purpose and intent of the Ag zoning district and Agricultural/Rural land use designation do not support construction of large facilities of this type throughout rural areas, where the intent is to provide a zoning district and land use designation that furthers the continued expansion and preservation of Agricultural and Agricultural support land uses
- The zoning ordinance does not provide a cap on the number of large institutional facilities that may choose to locate in areas with Agricultural zoning or an Agricultural/Rural land use designation. Therefore careful review for siting of these facilities is necessary to maintain the purpose of these areas, mitigate or avoid negative impacts, and avoid traffic congestion to improve pedestrian and roadway safety
- Public comment regarding places of worship noted that current parking requirements for the use do not provide an adequate number of spaces. However, Staff would not recommend increasing the number. Parking requirements for places of worship within the zoning ordinance most likely reflect a requirement for a lower number of spaces than would typically be needed in an Agricultural area based on the use of alternate modes of transportation to supplement individual vehicles which encourages a reduction of impervious surface

It is recognized that places of assembly including places of worship, provide important community functions. However, the siting, location, and intensity of these types of development should be addressed in areas intended to provide for the continued availability of productive Agricultural land and Agricultural support activities.

Large-scale institutional development outside of population centers should be carefully reviewed and sited to provide for adequate safety and to mitigate or minimize adverse impacts on surrounding properties and neighborhoods. Placing these facilities in rural areas outside of population centers necessitates the user of the services to drive increased distances to access the services. Public transportation is centered in population centers and would not provide service to individual place of assembly sites. With a lack of alternate transportation options traffic will increase significantly in areas intended to meet rural needs. Public facilities including water, sewer, sidewalks, and public transportation are concentrated in population centers to provide the most benefit to the highest number of citizens as well as providing the most logical, safe, and cost effective extension of those services.

The proposed changes to place of assembly and large institutional facilities provide for the continued location of these land uses in the Agricultural zoning district and/or areas with an Agricultural/Rural land use designation. However, traffic, scale, and intensity impacts have been addressed through threshold requirements. The thresholds direct these land uses to transportation systems that have been identified to accommodate higher volumes of traffic and to areas adjacent to population centers to address the increased traffic, scale, and intensity impacts.

OPTIONS FOR CONSIDERATION

Several options exist for moving forward with the process of a formal text amendment to update the Agricultural and Resource Conservation zoning districts.

Option 1-

Move forward with the draft text amendment with various minor edits as reflected within this memo and as directed by the BOCC in future worksessions.

Option 2-

Move forward with edits as discussed in Option 1 as well as additional edits that would revise the procedural requirements to include:

- Provide for Place of Assembly land uses including Civic Community Center, Civic Service Club, and Place of Worship not exceeding 25,000 square feet of total floor area, and not generating more than 300 peak hourly traffic trips, or 900 maximum daily traffic trips as permitted with site development plan approval in the Agricultural zoning district
- Provide for Place of Assembly/Event Complex land uses exceeding 25,000 square feet of total floor area, or 300 peak hourly traffic trips, or 900 maximum daily traffic trips as permitted with special exception approval

This option would provide for the small scale facility with site development plan approval but specification would need to be made regarding parking maximums and location requirements on at least a collector status roadway. Consideration could also be given to include language within the proposed special exception criteria to permit location within ½ mile of the designated roadway similar to what is proposed for the Landscape contractor land use.

If this option were chosen, Staff would not recommend creation of the Euclidean Institutional zoning district to address non-conforming Place of Assembly uses. Transitional language could be explored to provide for the continued existence of existing Place of Assembly uses not meeting the proposed special exception criteria.

The Institutional floating zoning district would continue as proposed with the Place of Assembly/Event Complex removed as a permitted use as well as any regulations specifically related to that land use.

Option 3-

Move forward with the majority of the draft text amendment as discussed in Option 1 but remove those provisions addressing Place of Assembly land uses. Regulations pertaining to Place of Assembly, including permitted uses, special exception criteria, Institutional Euclidean zoning district and Institutional floating zoning district could be reviewed in a separate draft text amendment process per BOCC direction.

If this option is chosen Staff would request direction on whether the proposed changes to address Public Airports, College or University, and Private, Elementary, or Secondary Schools including the Use Table, Euclidean Institutional zoning district, and Institutional floating zoning district should continue to move forward with the remaining updates to the A and RC zoning districts.

STAFF RECOMMENDATION

Staff requests direction regarding the proposed amendments to the Agricultural and Resource Conservation Zoning District regulations and creation of the Institutional and Open Space Recreation floating zones. Specifically, regarding the three options provided above and/or any further updates or edits based on the summary of public comment received during the Community Outreach Meetings held on October 20th and 22nd.