



## DIVISION OF PLANNING FREDERICK COUNTY, MARYLAND

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To: Board of County Commissioners

FROM: Larry Smith, Zoning Administrator; Shawna Lemonds, Principal Planner

DATE: April 3, 2008

RE: Agricultural and Resource Conservation Zoning District  
Draft Text Amendment

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### **ISSUE**

Staff requests direction from the BOCC on potential text amendments to the zoning ordinance related to the Agricultural and Resource Conservation zoning district regulations.

After reviewing the regulations several areas have been identified where updates and changes will provide a clearer more concise set of regulations for implementation by Staff, Planning Commission, and the general public.

### **BACKGROUND**

In July of 2003 the Citizens Zoning Review Committee (CZRC) Report was transmitted to the Board of County Commissioners (BOCC). The CZRC represented a diverse group of stakeholders from the County. The Committee met over several months and reviewed the Zoning Ordinance by theme including General Consideration, General Uses, Zoning Districts, Special Exceptions, Use Table, Floating Zones, Environmental Regulations, Design Guidelines, Historic Preservation, Administration and Enforcement. The CZRC Report summarizes recommended amendments and revisions to the Zoning Ordinance that were identified by the Committee. The prior BOCC then reviewed the report and voted on those recommendations to provide direction to Staff.

In September of 2007 the current BOCC provided additional direction to Staff regarding the permitted uses in the Agricultural and Resource Conservation zoning districts as well as the appropriate scale and intensity for those uses.

Based on this information as well as the existing definitions for the Agricultural (A) and Resource Conservation (RC) zoning districts, Staff has reviewed Section 1-19-4 Definitions to improve the clarity of existing definitions and propose new definitions to reflect existing permitted uses, new uses, and related terms. Section 1-19-289 Use Regulations For Specific Zoning Districts was reviewed for suggested additions or changes to permitted uses and suggested changes for processing. Existing special exception criteria related to the A and RC zoning districts were reviewed for necessary edits and/or additions.

In conjunction with a review of existing definitions and permitted uses within the Ag and RC zoning districts, Staff began the process of identifying those uses that were recommended or have been discussed as more appropriately located within a floating zone. This effort has resulted in an overview of options for creating an Open Space/Recreation and/or Institutional floating zone.

### **STAFF RECOMMENDATION**

Staff requests direction regarding the proposed amendments to the Agricultural and Resource Conservation Zoning District regulations.

### **EXHIBITS**

Exhibit #1: Draft Definitions

Exhibit #2: Use Regulations

The Text Amendment Overview section below provides a summary of the proposed changes or issues identified by Staff. The summary includes the Zoning Ordinance Section and heading followed by a description for each proposed change or issue. Specific proposed text changes are shown in bold text with strikeout through existing language to be deleted.

## **TEXT AMENDMENT OVERVIEW**

### **ARTICLE I: IN GENERAL**

#### **Sec. 1-19-4 Definitions.**

This Section will be updated to remove existing definitions and add new definitions related to the recommended changes to the A and RC zoning districts. The definitions include those uses currently permitted, recommended for a change, or recommended for addition to the districts. Existing definitions for those uses that are recommended for removal from Section 1-19-289 would be deleted. (See Exhibit #1)

### **ARTICLE II: ADMINISTRATION AND ENFORCEMENT DIVISION 2 APPEALS, VARIANCES, ETC.**

#### **Sec. §1-19-48 Special Exceptions.**

This section of the zoning ordinance contains the general special exception criteria that a development must meet for the Board of Appeals to approve a project. The criteria are general in nature and apply to all uses permitted as a special exception through the zoning ordinance. These criteria are in addition to the specific criteria contained within Article VI Special Development Provisions Division 3 Special Exception Uses for various uses.

As requested, Staff has reviewed Section 1-19-48(B)(3) regarding conflicts in comparing a potential special exception use with a use that does not require a special exception. Existing language could be replaced with new language that would address adverse impacts from the proposed special exception and location compared to other possible locations in the following manner:

(3) ~~Operations in connection with any special exception use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics than would be the operations of any permitted use not requiring special exception approval; and~~ **Operations in connection with the special exception at the proposed location shall not have an adverse effect on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district.**

Staff is recommending changes to Section 1-19-196 (see discussion below) to address customary accessory uses associated with a principal permitted use. Staff would also recommend adding language to Section 1-19-48 (F) to address incidental accessory uses to a special exception, and remove outdated wording. These changes will clarify the intent, approval process, and location in the zoning ordinance for accessory uses requiring specific approval. The changes to Section 1-19-48 (F) include:

~~(F) Upon receipt of a notice of grant of special exception, the Zoning Administrator shall indicate the same in the proper place on the Zoning Map by use of appropriate code number or symbol.~~ **The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.**

**ARTICLE III PROVISIONS APPLICABLE TO ALL DISTRICTS**  
**DIVISION 7. ACCESSORY USES AND STRUCTURES**  
**Sec. §1-19-196 Definitions.**

This Section provides direction on uses that would be customarily associated with a principal use permitted within a zoning district, but where specific regulations are required. In these cases, the accessory use would be approved only when the regulations have been met. The existing language in this Section does not include a purpose and intent statement. Staff would recommend the addition of an overall purpose and intent statement to clarify what uses are included in this Section, why they are listed and what differentiates them from all other customary uses permitted in the zone. In addition, Staff recommends new language to clarify issues regarding the height and location of accessory structures. Existing Section 1-19-196 and 1-19-197 would be combined and moved to Section 1-19-196 to provide for the purpose and intent statement. Section 1-19-196 (A) & (B) below reflect existing language that would be modified with 1-19-196 (C), (D), and (E) as well as 1-19-197 (A) as entirely new language. Staff recommends the following changes:

**§1-19-196. DEFINITIONS. ACCESSORY STRUCTURE DEFINITION AND LOCATION**

**(A)** Accessory structures include garages, tool sheds, storage buildings, barns, signs, or other similar structures. An accessory structure having any part of a wall in common with a dwelling is considered part of the main building. A mobile home is not an accessory structure, except as a tenant house on a farm. (Ord. 77-1-78, § 40-47(A), 1-24-1977)

**(B)** ~~Except as otherwise provided, no accessory building will be erected within the required front yard, except as provided in §1-19-200. No accessory structure will be erected within 6 feet of any lot lines, or within 6 feet of any building on the lot, except as otherwise provided in §1-19-200.~~ (Ord. 77-1-78, §40-47(B), 1-24-1977; Ord. 06-24-420, 6-20-2006)

**(C)** Accessory structures shall be located on the same parcel as the principal permitted use or structure.

**(D)** Accessory structures shall not exceed seventy percent (70%) of the maximum height allowed for the permitted use, except as otherwise provided within this Chapter.

**(E)** Accessory structures over twelve (12) feet in height shall be set back one (1) additional foot for each foot of height over twelve (12) feet but not more than the minimum setback for the principal permitted structure as provided for in Section 1-19-290 Design Requirements for Specific Districts.

**§ 1-19-197. LOCATION. ACCESSORY USE PURPOSE AND INTENT**

**(A)** The operation of a principal permitted use may also include customary accessory uses. However, due to impact or intensity accessory uses listed within this Chapter will receive zoning certificate approval only when specific criteria have been met.

~~No accessory building will be erected within the required front yard, except as provided in §1-19-200. No accessory structure will be erected within 6 feet of any lot lines or within 6 feet of any building on the lot, except as provided in §1-19-200.~~ (Ord. 77-1-78, §40-47(B), 1-24-1977; Ord. 06-24-420, 6-20-2006)

**ARTICLE III: PROVISIONS APPLICABLE TO ALL DISTRICTS**  
**DIVISION 7. ACCESSORY USES AND STRUCTURES**  
**Sec. §1-19-202 Accessory Uses in All Zoning Districts**

This Section provides direction on uses that would be customarily associated with a principal use permitted within all zoning districts, but where specific regulations are required. After research and discussion, Staff requests consideration by the BOCC regarding the addition of language to the zoning ordinance to address development of individual power generation devices. These devices would include solar array and wind turbines. Language in Section 1-19-205 could be amended to provide for power generation devices by utilizing existing communication antenna provisions. Individual power generation devices could be permitted in any zoning district similar to communication antenna and limited to a device of 10 feet in height. If it is determined that the devices should be limited to specific zoning districts then the regulations could be added similar to other accessory uses listed in Division 7 Accessory Uses and Structures Section 1-19-196 through 1-19-206. In addition to the height limitation for the device, an overall height limitation should be set for the device and mounting, a maximum square footage or footprint for the device, a minimum setback from property lines, and possibly a minimum lot size.

Large scale power generation could be added to the use regulations in Section 1-19-289 to provide for devices not meeting the standards proposed above. The large scale power or energy generation device could be processed as a special exception, defined, with specific regulations added to Article VI Special Development Provisions Division 3 Special Exception Uses.

**ARTICLE III: PROVISIONS APPLICABLE TO ALL DISTRICTS**  
**DIVISION 8. OTHER REQUIREMENTS**  
**Sec. §1-19-214 Exemption of Essential Services**

Staff has made an effort to clarify and define solid waste operations within the use regulations. The changes include providing definitions within Section 1-19-4 and edits to Section 1-19-214. Section 214 provides guidance on the exemption of essential services but does not address solid waste. As provided in the County Code Part II, Section 2-13-3(d)(5)(iii) "That in exercising the powers granted by this chapter, the board is not subject to the provisions of any planning regulations or zoning ordinances enacted under the provisions of Article 66B of the Annotated Code of Maryland."

Language is proposed for Section 1-19-214 within the zoning ordinance to clarify the processing of solid waste facilities.

- A. As defined in Chapter §2-13-1 of the Frederick County Code, and as provided in Chapter §2-13-3, the Board of County Commissioners may establish, extend and maintain water, sewerage, drainage and solid waste systems in the County. As provided in §2-13-3(d)(5)(III) in exercising these powers the Board of County Commissioners shall not be subject to the provisions of any planning regulations or zoning ordinances enacted under the provisions of Article 66B of the Annotated Code of Maryland.**

- B. Government utilities shall be permitted in any district, it being the intention to exempt such facilities from the application of this chapter; except, that the plans of any overhead electric transmission line of 69 kilovolts or greater, of any cross country telephone trunk line, including microwave, transmission pipe line ~~or trunk sewer line proposed to be created or installed in any district~~, shall be submitted to the Planning Commission in adequate time for its review and recommendation. A non-governmental utility that is proposed either on a site area measuring 1, 500 square feet or less, or that includes a structure that measures 240 square feet or less and is 10 feet in height, is also exempt from the application of this chapter.

**ARTICLE IV: ZONING DISTRICTS AND MAP GENERALLY**

**DIVISION 2. ZONING DISTRICTS**

**Sec. §1-19-238 Resource Conservation Zoning District (RC).**

The RC zoning district has been applied to specific areas of 100-year floodplain across the County. However, the definition for the RC district within Section 1-19-238 does not list floodplain among the other environmentally sensitive areas within the Resource Conservation zone. Staff recommends the following changes:

**§1-19-238. RESOURCE CONSERVATION ZONING DISTRICT (RC).**

The purpose of the Resource Conservation Zoning District is to allow low intensity uses and activities which are compatible with the goal of resource conservation to be located within mountain and rural wooded areas. Areas within this district include mountain areas, rural woodlands, and cultural, scenic, and recreation resource areas. Environmentally sensitive areas within the resource conservation zone including, **FEMA FLOODPLAIN**, steep slopes, wetlands and the habitats of threatened and endangered species, will be protected from development.

The definition of the RC zoning district has been clarified to specifically list floodplain from within the more generalized term of environmentally sensitive areas. This addition reflects the provisions within Section 1-19-302 (A)(2) of the zoning ordinance.

**ARTICLE V: DISTRICT REGULATIONS**

**DIVISION 2. SPECIFIC DISTRICT REGULATIONS**

**Sec. §1-19-288 Generally.**

Staff has recognized that the zoning ordinance does not address the situation where a specific use is not listed in the use regulations contained in Section 1-19-289. Language is recommended below to clarify the process for determining whether a specific request is permitted or prohibited by the zoning ordinance. Recommended changes for Section 1-19-288 include:

The specific district regulations are set out in § 1-19-76 of this Code and are in 2 tables.

(A) Table I is § 1-19-289 of this Code and sets out the permitted uses in each zoning district and the type of required development review.

(B) Table II is § 1-19-290 of this Code and sets out the minimum lot area, frontage, yards and the maximum building height allowed for permitted uses in each zoning district.

(Ord. 77-1-78, § 40-60, 1-24-1977)

**(C) UNLISTED USES**

**(1) No building permit shall be issued for a use not specifically mentioned or described by category in §1-19-289 Use Regulations for Specific Zoning Districts.**

(2) Notwithstanding any provision of this section to the contrary, uses that are permitted in any zoning district by state statute may be permitted in accordance with state law whether or not the use is included in §1-19-289 Use Regulations for Specific Zoning Districts.

(3) Uses not listed in Section 1-19-289 are prohibited. However, for uses not listed in Section §1-19-289 the Zoning Administrator upon request may issue a determination that a proposed use is permitted due to its similarity to a particular use permitted within the zoning district.

## **ARTICLE V: DISTRICT REGULATIONS**

### **DIVISION 2. SPECIFIC DISTRICT REGULATIONS**

#### **Sec. §1-19-289 Use Regulations for Specific Zoning Districts.**

Staff reviewed the CZRC Final Report recommendations, subsequent BOCC votes on the CZRC recommendations, as well as BOCC direction given on 9/11/07 during discussion of Section 1-19-289 Use Regulations and the A/RC zoning districts. The information has been provided in both text as well as table form. The table reflects the current process for the use, the CZRC recommendations, subsequent votes from the prior BOCC, and resulting Staff recommendations based on the described review. Those uses recommended for change have been highlighted with yellow. (See Exhibit #2)

Staff considered past BOCC discussion and direction regarding the evaluation of the number of permitted uses in the A and RC zoning districts. Each use was reviewed based on the existing definitions for the A and RC zoning districts, as well as the ability to identify scale and intensity parameters that would enable the use to function in a compatible manner within the zoning district.

Staff has noted where a particular use may fit the floating zone option with 'OR' representing the Open Space/Recreation district and 'I' representing Institutional.

Specific items identified in the CZRC report or BOCC recommendations have not been included in this staff report if they have been addressed within other text amendments or efforts. Staff recommended changes or options have been summarized below and for organization purposes have been grouped as reflected in Section 1-19-289 use category headings:

#### **Natural Resources Uses**

##### Farm Winery Tasting Room

'Farm Winery Tasting Room' has been removed as a permitted use in the RC zoning district. On 9/11/07 the BOCC discussed removing 'Farm winery tasting room' as a permitted use within the RC district because the use is a retail operation.

##### Roadside Stands – retail and wholesale

The CZRC and BOCC recommended changes to 'Roadside Stands – retail and wholesale' to permit small scale mom and pop operations by right with a square footage maximum. Staff recommends replacing the existing listing with 'Limited roadside stands' and 'Commercial roadside stands'. 'Limited roadside stands' would represent the mom and pop operation as a principal permitted use subject to design regulations (P) in the A and RC zones and limited to a structure of 300 square feet or less. 'Commercial roadside stands' would represent the commercial operation as a principal permitted use subject to site development plan approval (PS) in the A and RC zones. The original definition has been used for both types of roadside stands with an addition of a maximum structure size for the smaller operation. Both uses would continue in the R1, R3, VC, HS, and GC subject to site development plan approval (PS).

### Forestry

'Forestry' is currently listed as a separate use in the use regulations but Section 1-19-4 of the zoning ordinance does not contain a definition. Staff considered the differing types of forestry activity (selective cutting or logging operations and growing of trees as a crop) to determine potential benefits to a separate listing. Existing regulations including the Forest Resource Ordinance (FRO), and Section 1-19-302 Resource Conservation District were also reviewed.

Staff recommends maintaining 'Forestry' as a separate listing in the use regulations and adding a definition to Section 1-19-4.

### Sawmill

'Wood shaving operations' was proposed as a new use through the CZRC process recommended as a special exception in the A and RC zoning districts. The CZRC and BOCC also recommended a change from PS to E for 'Sawmill' in both the Ag and RC zoning districts. Staff recommends permitting 'Sawmill' as a special exception in the A and RC zoning districts and adding a definition to Section 1-19-4. The approval criteria would be created similar to Section 1-19-404 Solid Waste Operation in the Agricultural and General Industrial districts with a possible increase in minimum lot size and setbacks when adjacent to a residential use or residentially zoned property. Wood shaving or mulching operations would be permitted as an incidental accessory use to a sawmill.

## **Transient Housing**

### Boarding House or Tourist Home

The zoning ordinance contains definitions in Section 1-19-4, for both Boarding house and Tourist home. The use 'Boarding house or tourist home' is permitted as a special exception (E) in the RC zone and subject to site development plan approval (PS) in the A zone. Both terms are outdated and could be replaced with 'Bed and breakfast'. The existing terms would be deleted and the new term would be added and defined. Section 1-19-4 defines 'Tourist home' as "a building arranged or used for lodging, with or without meals, for compensation, by more than 5 and not more than 20 individuals". As proposed the definition for 'Bed and breakfast' would limit the intensity of the use to six guest rooms rather than to the number of individuals served.

In differentiating between 'Country inn' and 'Bed and breakfast' as well as BOCC discussion and direction regarding uses in the Ag and RC zone Staff recommends permitting the 'Bed and breakfast' in the VC and GC zoning districts subject to site development plan approval (PS) process. The proposed 'Country inn' definition as well as previously established uses, provide for ancillary uses including banquet facilities, transient lodging as well as catering services or meeting rooms. A 'Bed and breakfast' primarily provides temporary lodging and may provide meals for guests only.

### Travel Trailer Park and Tent Campground

Staff reviewed and discussed 'Travel trailer park' with consideration of 'Tent campground'. Although similar uses, Staff believes that when located in the A or RC zoning districts, the uses should function differently. A tent campground could be designed as a low intensity non-vehicle dependent use that provides an opportunity to utilize a natural resource. The use would most likely be seasonal with an intensity level similar to rustic camps and retreats. Staff recommends that 'Tent campground' remain as a special exception with changes to the criteria within Section 1-19-379 to modify density calculations, address impervious surface by limiting parking to the maximum number of required spaces co-located with any required access paving, and establish a minimum lot size. Lastly, the use is listed in Section 1-19-289 within the category of Transient Housing. Staff recommends moving the use to the category of Open Space and Institutional.



'Travel trailer park' would be replaced with 'Recreational vehicle campground' to reflect a use that may include other recreational amenities such as a swimming pool, limited entertainment activities, and/or concessions. 'Recreational vehicle campground' would also be moved to the use category of Open Space and Institutional. It would be defined in Section 1-19-4 and permitted in the Agricultural zone through the open space/recreation floating zone where an appropriate location can accommodate the increased traffic, parking needs, and necessary open space for camp sites and other amenities. The use would continue to be permitted as a special exception in the Highway Service zoning district with text changes to the special exception criteria in Section 1-19-378 as well as the heading to reflect the new use title. Staff also recommends editing existing criteria to combine 1-19-378 (C) & (H) into one regulation.

## **Commercial Uses - Retail**

### Antique, Artisan and Craft Shops

'Antique, artisan and craft shops' are currently a principal permitted use as a special exception in both the RC and A zoning districts. The CZRC recommended that a distinction be made between the Antique/artisan/craft shops and Hobby/craft/gallery as to why Antique/artisan/craft shops are permitted in RC but the other use is not. The CZRC also recommended that Antique/artisan/craft shops be removed as a permitted use in the RC zoning district but continue as home occupation.

Existing special exception criteria within Section 1-19-380 limit 'Antique, artisan and craft shops' within the A and RC zoning district, however, the restriction to location within a structure existing as of 1/24/77 only applies within the RC district. Under current regulations, a new primary commercial use could be constructed in the Agricultural zone without size limitations other than minimum lot size, setbacks, and height requirements for a single-family dwelling.

The regulations within 1-19-380 could be amended to add the 1/24/77 limitation to the A zone, or the use could be removed as a primary use in the A and RC zones and permitted solely within those zones as a home occupation. As a special exception the use is a primary commercial use, as a home occupation the use is reduced to a secondary or accessory use with several limitations.

'Home Occupation' is defined in section 1-19-4 as "any occupation or business use conducted entirely within a dwelling or an accessory structure, or both, by a resident of the property, and which is clearly an incidental residential use of the building, excluding antique shops; boarding or rooming houses or tourist homes; commercial repair or storage of automobiles, water craft, or other motor vehicles; commercial stables, kennels, and nurseries; mortuary establishments; professional offices; restaurants or tea rooms." Processing antique shops as a home occupation within the A and RC zones would require amending the definition since the use is specifically listed as an excluded use within the home occupation provisions.

Regulations within Section 1-19-198 Accessory Uses on Residential Properties provides Home Occupation standards. The standards limit the size and intensity of the use and structure but provide a range of options depending on the specific type of home occupation that develops. In addition, within 1-19-198 (A)(5)(c)(3) the provisions permit an increased accessory structure size for the A and RC zone.

If 'Antique, artisan and craft shops' are permitted only as a home occupation, the reference to the use within the use regulations Section 1-19-289 will be removed for the RC and A zones as well as the special exception criteria in Section 1-19-380. The use will also be defined within Section 1-19-4 of the zoning ordinance.

Related Issue #1: It is also an option to permit 'Antique, artisan and craft shops' as an accessory use within the Ag and RC zone as provided in Division 7 Accessory Uses and Structures, with a heading change to Section 1-19-199 to apply to the Agricultural District. However, existing provisions within the home occupation standards limit the intensity of the use by addressing several factors.

Related Issue #2: In reviewing the Hobby/craft shop/gallery use it seems similar and redundant to other uses listed in the use regulations. Staff recommends retaining 'Hobby shop' as a primary use and deleting the reference to craft shop and gallery. Craft shop is listed within 'Antique, artisan and craft shops' and gallery would fall into 'Museums' which are permitted in the VC, HS, and GC. 'Museum, gallery' and 'Hobby shop' would then be defined and added to Section 1-19-4.

#### Farm Equipment Sales or Service

'Farm equipment sales or service' is permitted as a special exception in the Agricultural zone. The CZRC recommended strengthening the special exception criteria. Staff recommends defining the use and adding criteria similar to those for automobile repair shops in the A district (Section 1-19-399). For example, criteria could be added to limit parking to areas outside of setbacks, require landscaping to include screening where adjacent to a residential use or zoning district, and limit location of the use to arterials rather than merely paved surfaces. Although the recommendation was specifically to address 'Farm equipment sales or service' the existing special exception criteria in Section 1-19-382 also apply to feed or grain mills in the A district, and Agricultural wholesaling or processing in the A and RC districts. The recommended addition of criteria could apply specifically to 'Farm equipment sales or service' or it could be extended to all uses included in the heading.

In addition the Section 1-19-382 heading should be clarified to refer to 'Agricultural products processing' rather than 'Agricultural wholesaling or processing'.

#### Horse tack and Saddlery Shop

'Horse tack and saddlery shop' has been included in the discussion of 'Riding stable'.

### **Commercial Business and Personal Services**

#### Country Inn

'Country Inn' is a principal permitted use as a special exception in both the RC and A zoning districts. The CZRC recommended that the definition of Country Inn be improved to distinguish the use from a Bed and Breakfast and the conversion date (1/24/77) within the definition should be updated to reflect the current date of the new ordinance. The BOCC discussion on 9/11/07 noted that the scale and intensity of the use is limited by special exception requirements.

A change to the date as recommended by the CZRC would provide for a Country Inn to be established in newer structures rather than those existing only in 1977. Staff recommends that the date within the definition remain the same. A change to the date would allow for the expansion of this use within the RC and A zoning districts. Existing Country Inn regulations provide an opportunity to utilize historic structures for purposes other than residential. The 1977 date limits the number of structures that can be converted to this use, prevents construction of new buildings for this purpose, and existing special exception criteria address expansion.

A new definition proposed for the use will distinguish between a Country Inn and a Bed and Breakfast. A Country Inn is primarily for restaurant facilities but can also provide 8 or fewer guest rooms, banquet facilities, catering service or meeting rooms.

Related Issue #1: Existing sign regulations for Country Inn, Antique artisan and craft shops are inconsistent. In addition, sign provisions in Section 1-19-183 Signs Permitted and Regulated in the Zoning Districts permit 'Farm product sales' up to 16 square feet per street frontage. Sign provisions could be amended to provide consistency.

Related Issue #2: The new definition for Country Inn would permit up to 8 guest rooms and specifically permit the ancillary uses of banquet facilities, catering service, or meeting rooms in addition to the previously permitted/defined dining facilities. Section 1-19-393 (D) of the zoning ordinance provides that "...Conversion of existing structures may include the expansion of such structures; however, the existing external appearance of the structure must be maintained although it may be upgraded, repaired or expanded." Existing special exception criteria do not provide limitations on the expansion of the use.

Past applications have included and been approved for significant expansions (for example 5,930 square feet). Due to the potential size of the structure and proposed permitted ancillary uses, Staff recommends review and direction from the BOCC on this issue. For example Loudon County, Va. uses a limitation of "...any expansion or enlargement of such structure shall not exceed 15% of the total floor area..." as of a particular date. This limitation to expansion would address intensity threshold concerns associated with an expansion to the definition and permitted ancillary uses.

## **Wholesaling and Processing**

### Explosive Materials Storage

'Explosive Materials Storage' is permitted as a special exception in the A zone. The use is not permitted in any other zoning district in the County. Although the use is not defined in Section 1-19-4, a definition for 'explosives' does exist. The CZRC recommendations include a reference to the updated National Fire Protection Code. However, existing special exception criteria in Section 1-19-402(B) includes a reference to the "National Fire Protection 495 code, 1985 (NFPA), as amended *from time to time*" (emphasis added), which addresses the CZRC concerns.

Staff notes that existing special exception criteria require updating to remove Section 1-19-402 (E) to remove the reference to a conservation zone and the requirements of Section 1-19-302 as the use is not permitted in the RC zoning district.

On 9/11/07, the BOCC discussed removing this use from the A zone and permitting it in the General Industrial (GI) zone instead. However, the location of GI near General Commercial zoning districts and high population areas within our growth areas raises concerns with the inherent volatility of the products associated with the use. Staff recommends consideration of removing this use from the use regulations altogether. As the County population has grown tremendously in the past years it is a challenge to locate this use appropriately to protect the citizenry and personal property of County residents. In researching this use Staff found that established businesses located in Washington County currently meet most of the need for this business within Frederick County.

Removal of the use from the use regulations would eliminate the concentrated, large storage facility as a primary use. However, the use of detonable materials would continue to be permitted and regulated as an accessory to a primary permitted use in the GI zone as provided in Section 1-19-370 (l)(2)(b) Industrial District Performance Standards.

## **Automobile and Related Services**

### Automobile Repair or Service Shop

'Automobile repair or service shop' is a principal permitted use as a special exception in the A zoning district. This use was discussed by the CZRC and the BOCC for removal as a permitted use in the A zone but no consensus was reached. However, Staff has recognized that many of the historically established auto repair facilities in the A zone are closing or relocating. The use is defined in Section 1-19-4 of the zoning ordinance as "Any building or lot used for major automobile repair or body work and may have automobile servicing, including the sale of fuels, oils, or parts, as an accessory use." As a primary permitted use, construction or use of a primary commercial structure for this purpose is expected and the definition permits major repair or body work as well as retail sales. Existing special exception criteria in Section 1-19-399 do not limit the size of the primary structure, but do address screening, landscaping, and intensity by requiring a screened parking area for no more than 5 vehicles.

'Automobile repair or service shop' is also permitted in the Village Center zoning district which provides for a more appropriate location for this type of use. Village Center zoning is located throughout the County and would serve those areas outside of the larger population centers replacing the need for permitting the use in the A zone. For these reasons the need for this use in the Agricultural district has been reduced and Staff recommends removing 'Automobile repair or service shop' as permitted in the Agricultural zone.

### School Bus Parking

Discussion of school bus parking has been included under the heading of Animal Care and Service.

### Storage Tanks, Gasoline

'Storage Tanks, Gasoline' is a principal permitted use as a special exception in the A zone. The CZRC and the BOCC recommended removing the use as permitted in the A zone and permitting only as an accessory use. Staff concurs with this recommendation. The existing regulations permit gasoline storage tanks as a stand-alone primary use in the Agricultural district. Removal of this use will not have a detrimental effect on existing or future agricultural operations and would reduce confusion. If removed as a primary permitted use as a special exception, a gasoline storage tank would continue to be permitted as an accessory use to existing and future agricultural uses. Adding a definition will reduce confusion as Section 1-19-4 defines gasoline but not 'Storage tanks, gasoline'.

Related Issue: As listed in Section 1-19-289 'Storage tanks, gasoline' is also permitted in the R1, R3, R5, R8, R12, R16, HS, GC, LI, and GI zoning districts. As described in previous text, the use permits a stand-alone facility. If the BOCC determines that this use should remain in the zoning ordinance for clarification purposes, it would better fit within the accessory use regulations in Section 1-19-198 through 1-19-205 specifically within the HS, GC, LI and GI zoning districts. In the past, it was more of a possibility for residential uses to have individual gasoline storage tanks. However, with the regulation of these tanks and the nature of their contents, Staff does not recommend continuing to permit this use as an accessory in the residential zones.

Existing tanks would continue as legal non-conforming uses. If the BOCC finds that this use should be permitted as an accessory use in the A zone, Staff recommends limiting the use to a 'Farm' as defined in Section 1-19-4. As an accessory use, the separate listing would be removed from the use regulations in Section 1-19-289 and the special exception criteria would be moved to the newly created section within the accessory standards.

## **Animal Care and Service**

### Kennel, and Animal Hospital or Veterinary Clinic

'Kennel', and "Animal hospital or veterinary clinic" are permitted in the A zone as special exceptions. Staff has identified several housekeeping type edits that should be made to the existing special exception criteria in Section 1-19-385. These edits would remove the reference in the heading and in item (B) to kennels in the RC as the use is not permitted. Staff also recommends updating the definition of kennel and removing 'Animal boarding place' in Section 1-19-4 which refers to commercial kennel a use not currently listed in the use regulations.

Related Issue #1: Neither the existing special exception criteria or definition of kennel limit the number of animals to be boarded. However, applications in the past have requested approval for up to 300 animals in one location. In that instance, the Board of Appeals did set a maximum number of animals at 100. Staff requests direction from the BOCC as to whether a maximum number of animals at one location should be set. Staff has concerns regarding proper care for animals numbering in the hundreds as well as the intensity (noise, traffic, waste management) that would inevitably develop due to the number of customers and staff required at a large-scale facility of this type.

Related Issue #2: Currently listed uses and definitions do not provide for a pet grooming, pet training, and/or pet day care facility in the County. The CZRC recommended the addition of 'Animal Training' to the Use Table Regulations and permitting the use as a special exception in the RC zone. Staff recommends adding 'Pet training/daycare/grooming facility' to the use regulations under the category of 'Commercial Uses – Retail' rather than Animal Care and Service. The 'Pet training/daycare/grooming facility' would be permitted subject to the site development plan approval (PS) process in the VC and GC zoning districts. Although currently permitted as accessory uses to other permitted primary uses, Staff has experienced increased requests for approval of these uses as independent facilities. Staff does not recommend permitting these uses in the A or RC zoning districts as a primary use due to their commercial nature. These uses will continue to be permitted as a customary accessory use to a kennel or veterinary clinic.

Related Issue #3: As a retail establishment 'Pet store' should be moved from the category of 'Animal Care and Service' to 'Commercial Uses – Retail'. This would be consistent with the existing listing of 'Horse tack and saddlery shop' in the commercial retail category.

### Riding Stable – Commercial or Club

'Riding stable – commercial or club' is permitted as a special exception (E) in the RC zone and subject to site development plan approval (PS) in the A zone. The existing definitions in Section 1-19-4 do not contain 'Riding stable'. In discussions Staff identified two different types of stables 'Boarding stable' and 'Commercial boarding stable'. 'Boarding stable' includes the boarding of horses and associated riding. 'Commercial boarding stable' reflect a more intensive use including boarding, riding, instruction, jumping, showing with a club or by the owner. The commercial use may also include a show ring with lighting. The boarding stable would be permitted subject to design regulations (P) in both the A and RC zones. The commercial riding stable would be permitted as a special exception in the RC zone and permitted subject to site development plan approval (PS) in the A zone. Section 1-19-4 definitions will be updated to reflect both types of stables. The review criteria in Section 1-19-407B would continue to apply and the heading would be updated. As proposed, the definitions would also regulate the intensity through a minimum lot size per horse.

These recommended changes would clearly identify the small scale boarding stable not currently identified in Section 1-19-289 and clarify the components of the larger commercial operation.

Related Issue: Currently 'Horse tack and saddlery shop' is permitted in the A zone as a special exception. However, as an independent primary use a 'Horse tack and saddlery shop' would be commercial in nature with fairly limited special exception criteria (Section 1-19-398). As most uses of this type would typically locate in a commercial area or associated with a riding stable or similar use, Staff recommends removing the use as a principal use in the A zone. Instead, the use would be added as an accessory use to a commercial boarding stable much like Carroll County currently permits. This would be accomplished through provisions added to Division 7 Accessory uses and structures within the zoning ordinance.

### School Bus Parking

Existing definitions contained in Section 1-19-4 of the zoning ordinance do not include 'School bus parking'. The use is permitted as a special exception in the A and RC zones. The CZRC recommended adding performance standards to the special exception criteria. This use as a special exception would not include the parking of a bus on a property where the owner also acts as a school bus driver. The special exception would be a commercial operation where a property is used for the primary purpose of bus parking/storage. A definition will be added to Section 1-19-4 to provide this distinction. As restricted by the special exception criteria (1-19-408) the use would be a fairly low intensity income generating source on A zoned property.

Staff recommends updating the special exception criteria for clarity to address screening and parking in setbacks using the criteria in Section 1-19-399 Automobile Repair Shop in the Agricultural zone. Section 1-19-408(B) should be edited to reflect wording contained in Section 1-19-399(E) to address screening. Section 1-19-408(C) should be edited to state that no parking of buses shall be permitted within the required setbacks of: 40 feet front yard, 50 feet side yard, and 50 feet rear yard similar to other non-residential use setbacks in the A zone. Clarification of 1-19-408 (C) & (H) should occur. The wording seems unclear and may no longer be applicable. Lastly, 'School bus parking' is located in the category of 'Animal Care and Service' within Section 1-19-289 Use Regulations. Staff recommends moving the use to the category of 'Automobile and Related Services'.

## **Commercial Amusements**

### Motorcycle Hill Climb

'Motorcycle hill climb' is currently permitted as a temporary use (T) as a special exception (see §1-19-213) in the A zone. The CZRC recommended that the use continue but that performance standards related to setbacks, noise limitations, hours of operation, amount of use, dust and other nuisance impacts across property lines should be created. Currently there are no specific provisions within §1-19-213 Temporary Structures and Uses to address 'Motorcycle Hill Climb' similar to those that are listed for a Temporary Mobile Home (§1-19-213 (C)), or Temporary Accessory Apartment §1-19-213(E)). A consensus vote by the BOCC when reviewing the CZRC recommendations approved the removal of "Motorcycle Hill Climb" as a permitted use in the A zoning district. This use is a commercial operation with considerable noise, soil erosion, and intensity issues. Therefore, Staff concurs with the BOCC recommendation to remove 'Motorcycle hill climb' as a permitted use in the A zone. The use would remain as a temporary use in the GI zoning district.

### Golf Course and Country Club

The zoning ordinance provides for several types of golf and golf related uses. However, they are not consistently permitted or prohibited based on intensity or other similar standards. These differences have made it difficult to review and recommend changes within existing parameters and still achieve the objective of addressing intensity, and purpose and intent of the A and RC zones. 'Golf Course and Country Club' is a principal permitted use subject to site development plan approval in the A zone. 'Chip and Putt' is currently not permitted in the A zone. 'Golf, driving range' is a special exception in the A zone, and although 'Golf, miniature' is not permitted outright in the A zone it is permitted as an accessory use to a 'Golf, driving range' in Section §1-19-403. In addition, Staff is aware that several golf related uses exist throughout the County most likely containing both conforming and legal non-conforming uses. For these reasons Staff focused review of these uses within the context of the intensity, and purpose and intent of the A zoning district as well as which uses would be more appropriately located in the Open Space/Recreation floating zone.

Staff recommends that 'Golf course and country club' be removed from the use table and replaced with 'Golf course'. The new use would be defined to include country club, pro shop and other ancillary uses as customary accessory uses to a golf course. This use would be permitted in the A zone through the Open Space/Recreation floating zone and continue as currently permitted in the residential zones. Staff recommends criteria for approval of 'Golf course' through the floating zone that requires the use to locate adjacent to growth areas, having frontage on or access to a collector or arterial with a minimum paved surface width. This type of use would typically locate in this area and would provide a transition between growth areas and Agricultural uses providing a buffer.

Staff recommends adding 'Outdoor recreation center' as a new use to clarify the location of the many golf related uses within the use regulations. 'Outdoor recreation center' would be defined as those uses where a golf driving range, chip and putt, miniature golf, batting cage/range, putting green, or other similar uses are located. Due to the increased need for land area when co-locating these uses, 'Outdoor recreation center' would be permitted in the A zone through the floating OS zone when either a golf driving range or chip and putt are located together with any of the other permitted uses. The use would also be permitted subject to site development plan approval (PS) in the GC, LI, and GI without co-location restrictions allowing one or more of the uses to develop together or independently. As these uses are typically located together the independent uses would be removed from the use table and replaced by 'Outdoor recreation center'. This will eliminate the confusion of where and why golf related uses have been permitted or prohibited in specific zones. The same criteria for location of a golf course in the A zone could be extended to the 'Outdoor recreation center' through the floating zone.

### Zoological Gardens

'Zoological gardens' are currently listed in the use regulations as a permitted use in the HS and GC zoning district. The zoning ordinance does not contain a definition for Zoological Gardens. The CZRC recommended permitting the use in the A zone as a special exception and permitting the larger uses as a special exception in the RC. There was also discussion about arboretums and botanical gardens. The BOCC also recommended that Zoological gardens be permitted in the A zone as a special exception but recommended that the larger uses be permitted in an Open Space floating zone rather than in the RC. In reviewing these items, Staff discussed the differences between a zoological garden, arboretum, and botanical garden. Staff also noted that the existing Catoctin Wildlife Preserve and Zoo is currently zoned HS and is recommended for GC zoning in the current Thurmont Region update. To address these issues Staff would recommend editing the term within the use regulations and adding a definition for 'Zoo/botanical garden/arboretum'. These types of uses are commercial amusements and more appropriately located in the HS and GC zones. Therefore, Staff does not recommend expanding the use into the A or RC zone.

Related Issue: It is possible that a large 'Zoo/botanical garden/arboretum' may desire location in the County and would require a large parcel(s) that would be cost prohibitive or unavailable in the GC or HS zoning districts. Due to the potential intensity of the use, Staff requests direction whether to include 'Zoo/botanical garden/arboretum' as a permitted use in the Open Space/Recreation floating zone.

### Sports training facility

'Sports training facility' is a special exception in the A zone with an existing definition and criteria contained in Section §1-19-410. Specific issues have been raised with the amount of impervious surface that is permitted, as well as a very large minimum lot size at 50 acres. Permitted uses include field athletics but also rather intensive indoor sports. The definition of the use permits enclosed facilities with the only limitation being the 7 acre maximum building/enclosed area/impervious lot coverage criterion. Staff reviewed this use with an attempt to identify which uses would be appropriately located in the A zone while furthering the intent of the zone and providing opportunities for sporting and recreational activities.

Staff recommends replacing the existing use with 'Indoor sports recreation facility' and 'Outdoor sports recreation facility'.

The 'Indoor sports recreation facility' would be defined in Section §1-19-4 as a building to include such uses as rock climbing, paint ball, lasertag and other similar uses. The use would continue to be permitted as PS in the GC and LI zones. The 'Outdoor sports recreation facility' would be permitted in the A zone through the existing special exception criteria (Section §1-19-410) with the definition moving to Section §1-19-4, changes to restrict impervious surface to required parking/sanitary facilities as required by the Health Department/and accessory structures, require that clearing shall be minimized, and a possible reduction in minimum lot size. The outdoor use would be intended to provide for outdoor recreation on non-governmental lands with limited modification of a site such as field sports, hiking, and bicycling. Governmental facilities such as County parks would be processed through the 'Public buildings and properties' use.

Related Issue: Several concerns regarding existing special exception criteria contained in Section §1-19-410 have been addressed. However, Staff requests direction whether the minimum lot size should be reduced as the criteria would apply to the newly created 'Outdoor sports recreation facility'.



## Open Space Institutional

### Airport, Public

Staff recommends processing of 'Airport, public' through the institutional floating zone due to the complex and high intensity nature of this type of development.

### Cemetery/Memorial Gardens

The CZRC recommended that Cemetery/memorial gardens should be limited in the RC zones. Currently the use is a special exception in the RC zone as well as 'Places of worship'. Staff would note that 'Cemetery/memorial gardens' are permitted only in the RC, A, and R-1 zoning districts.

Related Issue: 'Cemetery/memorial gardens' could be limited to location in the RC when associated with an existing or newly developed place of worship by adding the use as permitted as an accessory to 'Places of worship' in Section 1-19-196 through 1-19-206. See related 'Place of worship' discussion below.

### Fairgrounds

Both the CZRC and the BOCC reviewed 'Fairground' and recommended changes to the processing of this use. In Staff discussions it was identified that event centers have also been categorized within this use. A limited number of fairgrounds (likely only one) will ever be developed within the County but event centers will continue to be developed as the County grows. Staff recommends permitting 'Fairground' through the Open Space/Recreation floating zone in the A zone with criteria to include:

1. Minimum parcel size: 25 acres  
Maximum parcel size: 75 acres
2. The principal access shall be provided from an arterial or collector road as shown on the County Comprehensive Plan
3. Multiple vehicular entrances and exits shall be provided and located at least four hundred feet away from any road intersection
4. Submission of a traffic control plan detailing the control and flow of vehicle traffic during events including emergency access
5. No buildings or structures, including rides or apparatus, shall be located less than fifty feet from any parcel boundary or less than two hundred feet from any adjacent residential use or zoning district
6. No parking shall be located within the required setback areas
7. Such use shall operate for a period of time not to exceed 16 days per event
8. Landscaping, screening, and fencing with the intent of reducing impact on neighboring properties and enhancing the visual appeal of the project. All parking areas shall be fenced and screened from adjacent properties and roads with plantings including evergreens at least 6 feet in height.

A 'Fairground' definition will be created restricting uses to those typically associated with a County fairground facility. To address uses such as an events center as well as the growing desire to locate large places of worship on a regional scale, Staff recommends creating 'Places of assembly/event complex' as a new use. 'Places of assembly/event complex' will be defined to include religious activities on a regional scale and cultural or entertainment events conducted either indoor or outdoor. Due to the intensity and impact associated with these activities, Staff recommends processing the use through the Institutional floating zone.

#### Governmental, civic, nonprofit parks, recreation or educational areas

Staff discussed the 'Governmental, civic, nonprofit parks, recreation or educational areas' use. It was determined that existing uses such as 'Civic service club', 'Public buildings and properties', and proposed uses such as 'Rustic retreat/camp/outdoor club', 'Outdoor sports recreation facility', and 'Indoor sports recreation facility' would adequately address the uses that may be included in this term. Staff recommends deleting the term as it would be a duplication.

Related Issue: Staff recognizes that County parks have been processed through the Governmental, civic, nonprofit parks, recreation or educational areas' in the past. As recommended by Staff, processing County parks through 'Public buildings and properties' would require special exception approval in the RC zone and site development plan approval in the A zone. Staff recommends that 'Public buildings and properties' in the RC zone be processed subject to site development plan approval (PS) rather than as a special exception (E). Existing special exception criteria contained in Section 1-19-407 provide regulations which for the most part are duplications of existing language in other Sections of the zoning ordinance.

#### Trap, skeet, rifle, archery ranges, and hunting, fishing and gun clubs

'Trap, skeet, rifle, archery ranges, and hunting, fishing and gun clubs' and 'Hunting and fishing clubs without shooting ranges' were discussed by Staff to address those uses involving a shooting range and those without. Staff recommends adding 'Shooting range/club – trap, skeet, rifle, archery' to the use regulations to replace the existing shooting range use. This use would remain as a special exception in the A and RC zones with changes and additions to the existing special exception criteria in Section 1-19-390 to include the following:

- (A) **Structures associated with shooting ranges shall be located at least 250 feet from all property lines and public ways and 450 feet from occupied structures. Permanent structures shall be limited to those customarily associated with the principal use of the property as a shooting range.**
- (B-F) Remain unchanged
- (G) **Shooting ranges shall be constructed to eliminate danger to persons or property from flying projectiles. The area between the firing point and target shall be baffled, fenced, or otherwise shielded so that the fired projectiles cannot escape the range area. Safety design should be in accordance with accepted standards and practices.**
- (H) **Shooting ranges shall practice lead containment/collection of projectiles with best management practices for the individual site in accordance with nationally accepted standards to maximize containment.**
- (I) **The minimum lot size shall be 10 acres.**
- (J) **Discharging of firearms or release of arrows shall not be permitted within 500 feet of any property line.**
- (K) **The facility shall be designed so that topographic features of the site are used to enhance safety, minimize firearm noise, and maximize lead containment.**
- (L) **Manner and times of operation shall be approved by the Board of Appeals.**

#### Hunting and Fishing Clubs Without Shooting Ranges

'Hunting and fishing clubs without shooting ranges' will be incorporated into 'Rustic retreat/camp/outdoor club', a new use discussed below.

## **Institutional**

### Child care centers, Nursery school, Nursery school day care

'Child care centers', 'Nursery school', 'Nursery school day care' are currently permitted in the Institutional category as well as the governmental and nongovernmental category. Based on the existing definitions and governmental differentiation, Staff recommends removing 'Nursery school or day care' in the Governmental and Nongovernmental Utilities category and combining 'Nursery school' and 'Child care centers' and permitting them through the Institutional category in Section §1-19-289. The use would continue as a special exception in the Residential and GC zones.

Staff recommends removing 'Nursery school or day care' and 'Child care center' as a permitted use in the A zone. In-home child care currently provides this needed service without permitting commercial construction in the A zone. In-home care of children is permitted and regulated by the State and is also permitted as a home occupation within the County. In Maryland, family child care is regulated by the State through the Code of Maryland Regulations COMAR 13A.14.01. The State requires a specific process to be followed and permits 8 children in a family child care home. As a home occupation the scale and size of the use would be limited while still providing a needed service in the outlying areas.

Related Issue: To provide for existing regulations contained in 1-19-388 (A) specifically addressing child care when associated with places of worship, Staff would recommend adding this language to the newly created 'Place of worship, neighborhood scale' see discussion below.

### Civic Service Clubs

In reviewing 'Civic service club' Staff recommends that the use change from (P) to (PS) in the A zone, similar to 'Community center', to address concerns with traffic safety and intensity. These uses could alternatively be placed in the Institutional floating zone category. However, due to their limited intensity compared to other uses identified for the Institutional floating zone, the processing may be overly rigorous.

### Nursing homes

'Nursing homes' is currently recommended for removal as a permitted use in the A zoning district. The use would continue as permitted in the Residential and VC zones. Staff also recommends adding 'Continuing care retirement community' and 'Assisted living facility' to the use regulations. Each use is distinct and should be listed separately as well as defined. Staff recommends making changes to the zoning ordinance to accommodate development of these types of uses through the Institutional floating zone. Specific requirements for approval of each use will be included in the floating zone and the existing special exception criteria for Nursing homes would be removed. 'Continuing care retirement community' and 'Assisted living facility' have been added to the working table document to reflect the anticipated processing through the floating zone but the uses will not be added to the use regulations as part of this text amendment.

### Places of worship

Staff recommends adding 'Place of worship, neighborhood scale' as special exception in the A and RC utilizing Section 1-19-407E criteria (updating the heading), and adding the criteria in Section 1-19-388(A) to provide for child care associated with places of worship. This smaller neighborhood scale use will be limited to a maximum total of 25,000 square feet to include all primary structures and customary accessory buildings. Changes to existing criteria would limit parking to that number required by the zoning ordinance, frontage and access on an arterial or collector, and limitations on accessory uses to those that are customarily associated with the primary activity of a place of worship. This use would replace the existing 'Place of worship' use and work together with 'Place of assembly/event complex' to separate and define intensity and scale limitations for this type of use in the A and RC zones. As discussed above, the larger places of worship would be processed through the Institutional floating zone.

Related Issue #1: Staff recognizes the possibility of existing rural places of worship in the RC zoning district. In keeping with the definition of the RC zoning district Staff has recommended continuing places of worship through the special exception process. However, the recommended neighborhood scale maximum total of 25,000 square feet may be larger than the typical place of worship in the RC zone. Staff requests direction whether the maximum square footage for places of worship in the RC should be lower than what is permitted in the A zone. It should be noted that the Village Center zoning district is located throughout the County and serves the purpose of providing commercial zoning in rural areas. The need for places of worship could be met through the VC zoning rather than continuing to permit the use on RC zoned lands.

Related Issue #2: 'Places of worship' are permitted in the R-3 zoning district as a special exception but the criteria listed within Section 1-19-407C refer only to the RC zoning district. Staff recommends amending the use table to reflect the use as permitted through PS in the R-3 zone, consistent with other residential zones.

### Private schools

In reviewing regulations and recommendations addressing 'Private schools' and public schools, Staff found several areas that should be addressed. There is confusion in terminology within the zoning ordinance for processing of these uses. Section 1-19-4 existing definitions refer to 'Private educational institution' but not to 'Private schools' as listed in the use regulations. Section 1-19-394 refers to 'Schools in the RC district' which seems to apply to both public and private schools, but separate criteria located in Section 1-19-391 refer to 'Private schools'. In addition, 'Private schools' are permitted through the special exception process in the RC zoning district but 'Elementary and secondary' schools are not. To address these issues, Staff recommends defining 'Private schools' and clarifying and defining public schools to include 'Elementary and secondary **schools**'. Section 1-19-394 should be deleted and Staff recommends removing 'Private schools' as a permitted use in the RC zoning district. If removed as a permitted use in the RC, the special exception criteria in Section 1-19-391 heading would be edited and criterion (D) would be removed.

### Camps and retreats

Intensity and scale concerns regarding 'Camps and retreats' will be addressed by defining and separating the large-scale user from the less intensive natural resource user. 'Rustic retreats/camps/outdoor club' will replace 'Camps and retreats'. The 'Rustic retreat/camp/outdoor club' will continue to be permitted as a special exception in the A and RC zones utilizing the existing special exception criteria in Section 1-19-387. The use would move from the Institutional category to the Open Space and Institutional where 'Tent campground' and other open space uses are located.

Existing special exception criteria would be edited to include provisions for parking not to exceed the maximum number of required spaces co-located with any required access paving to meet paving requirements while utilizing the least amount of impervious surface necessary. The maximum total 25,000 square feet as provided for neighborhood scale places of worship could also be utilized for 'Rustic retreat/camp/outdoor club'.

Related Issue: Past applications for Camps and Retreats have included requests for approval of a dwelling for an owner/caretaker. Staff recommends adding language to the special exception criteria in Section 1-19-387 to address this issue.

#### Fire and rescue services

Staff recommends replacing 'Fire and rescue services' with 'Community fire and rescue services' representing non-governmental uses. Governmental fire and rescue services would be included in the 'Public buildings and properties' use. In addition, Staff recommends removing 'Community fire and rescue services' as a permitted use in the RC zone. The use would continue to be permitted in the A zone but only through the Institutional floating zone process and specifically where a finding is made that the area to be served by the proposed facility cannot be served by an alternate location in a zoning district where fire and rescue services are a permitted use.

### **Governmental and Nongovernmental Utilities**

#### College or University

Staff recommends continuing 'College or university' as a permitted use in the A zone however, due to the size and intensity of the use, the Institutional floating zone would better provide for adequate review and approval.

### **Solid Waste Operations**

#### Yard Waste

'Yard Waste' is currently permitted by special exception in the A and GI zone however there is no definition. Staff would recommend following the State definition for Natural Wood Waste Recycling Facility and adding the terms 'Limited wood waste recycling facility' and 'Unlimited wood waste recycling facility' to the use table within the category of 'Solid Waste Operations'. The uses would be defined in Section 1-19-4 and permitted in the A and GI zoning districts. The 'Limited wood waste recycling facility' would be processed as a special exception utilizing existing criteria in Section 1-19-404. 'Unlimited wood waste recycling facility' would be processed through the solid waste floating zone.

Related Issue: It appears that a wood waste recycling facility meets the definition of 'solid waste' and would therefore fall in the category of 'Solid waste system' as provided in the Frederick County Code Chapter 1-13-1 Definitions. Based on existing provisions in Chapter 2-13-3 and 2-13-3(d)5(III) a governmental use of this type would be exempt from planning regulations or zoning ordinances. Staff has recommended edits to Section 1-19-214 to clarify exemption language to provide consistency between Chapter 2 of the County Code and zoning ordinance.

## **OPEN SPACE AND INSTITUTIONAL FLOATING ZONES**

The Board has discussed a desire to create an Institutional floating zone as well as an Open Space/Recreation floating zone. In addition it has been widely discussed that there are several deficiencies within the existing PUD and MXD regulations.

To provide for the most comprehensive and streamlined process Staff recommends linking the creation of the two new zones with updates to the Planned Unit Development and Mixed Use Development regulations. If linked, Staff would recommend the creation of a consistent review and approval process that would be utilized by all floating zones. Separate purpose and objectives, location, development requirements, permitted uses, density and intensity, green area, public utilities and facilities requirements would be created or updated for each specific floating zone.

This provides not only for the creation of a streamlined, predictable process for applicants and Staff, but also for a comprehensive review of existing regulations. It also provides an opportunity to re-title the Division 4 heading to "Floating Zones" achieving one objective in the overall Zoning Ordinance update.

Institutional and open space/recreational uses are discussed within the existing Countywide Comprehensive Plan providing enough initial direction that creation of these floating zones can be reasonably coordinated with an ongoing update to the Comprehensive Plan.

As Staff reviewed the A and RC zoning districts several recommendations were made for the processing of specific uses through either the Institutional or Open Space/Recreation floating zone. These uses have been listed below within the suggested zone.

### **Open Space/Recreation**

- Recreational Vehicle Campground
- Golf Course
- Outdoor Recreation Center
- Zoo/Botanical Garden/Arboretum
- Fairground

### **Institutional**

- Public Airport
- Place of Assembly/Event Complex
- Nursing Home
- Assisted Living Facility
- Continuing Care Retirement Community
- Community Fire and Rescue Services
- College or university

Staff considered the advantages and disadvantages of utilizing floating zones, overlay districts, or a traditional Euclidean zone.

### **Floating Zone**

- Increased flexibility in siting and review
- Provides specific criteria for approval
- Areas for designation do not need to be identified ahead of time
- Cannot be applied during a comprehensive re-zoning

The creation of the proposed floating zones and removal of specific uses from Section 1-19-289 Use Regulations for Specific Zoning Districts may create legal non-conforming uses. Conforming status would then be received when a property owner requests the floating zone, completes the phasing process, and receives approval. Those uses where a property owner did not request and receive approval for floating zone application would remain legal non-conforming. Although a floating zone cannot be applied during a comprehensive re-zoning process, property owners have requested floating zone application during region plan updates. In those instances the floating zone phasing and approval was processed separately but concurrently with the comprehensive re-zoning process.

### **Overlay District**

- Floodplain District is an example
- Utilized in the past with positive results
- Requires a specific geographic area to be identified

As part of the discussion of the A and RC zone several uses have been identified for processing through the floating zones, but individual siting would be project specific.

### **Euclidean Zone**

- Available during a comprehensive rezoning
- Institutional or Open Space zoning is applied to a specific geographic area
- Existing uses continue with the current processing
- Flexibility in siting is lost

Again, the zone is applied to a predetermined geographic area through a land use plan designation. The Euclidean zone could be applied during a comprehensive re-zoning process but would then only be available on a piecemeal basis which would require a change or mistake review.

After reviewing the options, the creation of floating zones would address the desire to more closely regulate the siting of particular uses and create specific provisions to address their unique needs.

As recommended by Staff the Institutional and Open Space/Recreation floating zones are contemplated for those uses permitted in the Agricultural zone. However, Staff requests direction whether the floating zones should be applied to zoning, land use plan designation, or where the zoning and land use plan designation correspond. Currently, floating zones are applied to land use plan designations. For example, the PUD and MXD floating zones may be applied to land use plan designations of residential and ORI/LI respectively. However, as the County moves toward staging of development through land use plan designations with Agricultural zoning as a placeholder, permitting the 'Open Space/Recreation' or 'Institutional' floating zones to be applied to the Agricultural zoning district may create future conflicts. Property reflecting a residential land use designation with Agricultural zoning could be developed using the newly created floating zones if they are permitted for application to Agricultural zoning.

However, if the floating zones are applied merely to the land use plan designation of Agricultural/Rural, it may permit an application for approval of a development where a specific zoning has been applied for another purpose (residential, commercial, or industrial) but the land use designation was not changed.

If the uses included in the newly created floating zones are intended to occur in areas of Agriculture or Resource Conservation because of the nature of the proposed use as resource or agriculturally dependant, requiring an increased property size, or acting as a transition between growth areas and agricultural activities, then Staff would recommend application where the zoning and comprehensive land use designation correspond. In that way development and County objectives are met in a process that is anticipated and predictable.

Preliminary discussions regarding creating new floating zones and updating the existing MXD and PUD zones included several objectives:

- Create a single review and approval process for all floating zones
- Consideration of a two-phase process including Phase I Concept Plan and Phase II Execution
- Streamlined process for the Open Space/Recreation floating zone as most uses are lower intensity and most likely less complicated
- Specific approval criteria for each floating zone including purpose and objectives, location, development requirements, permitted uses, density and intensity, green area, public utilities and facilities requirements
- Minimum percentages of land use mixture for the MXD floating zone
- Requirement for a mixture of housing types within larger PUD floating zone projects
- Incorporate LEED and/or Low Impact Development requirements where appropriate
- Incorporate applicable elements of the Transit-Oriented Design Guidelines (2001)
- Incorporate applicable elements of the Frederick County Community Design Guidelines and Development Principles (2002)

### **STAFF RECOMMENDATION**

Staff requests direction regarding the proposed amendments to the Agricultural and Resource Conservation Zoning District regulations and floating zone options.