



DIVISION OF PLANNING FREDERICK COUNTY, MARYLAND

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To: Board of County Commissioners

FROM: Mark Depo, Deputy Director; Shawna Lemonds, Project Manager

DATE: May 19, 2009

RE: Site Plan Review: Review and Approval Procedures Draft Text Amendment

ISSUE

In an on-going effort to rewrite the zoning ordinance Staff is moving forward with the next identified theme which is the site plan review process.

One of the primary objectives of the overall update to this portion of the zoning ordinance is to formalize a staff level review process that has been long standing policy within the Division of Permitting and Development Review. This staff level review provides for expedient processing of applications where a Planning Commission review would be overly burdensome for the applicant with respect to processing time, and overly burdensome to the Planning Commission with respect to the low level of change and necessary review.

The proposed text amendment would edit and update Article II: Administration and Enforcement, Division 1. Administration; Article III: Review and Approval Procedures, Division 3. Site Plan Review; and Article VI: District Regulations.

BACKGROUND

In May of 2007 Planning Division Staff presented the Board of County Commissioners (BOCC) with a Staff Report outlining a theme based approach to updating the zoning ordinance. The BOCC Strategic Plan FY 2007-FY 2011 Goal #5 Land Use, Objective 1 initiated the examination of the zoning ordinance, determination of priorities for changes, and initiating a phased approach for zoning text amendments. In achieving that objective Staff is moving forward with specific areas within the zoning ordinance beginning with those areas that are determined to be most critical.

The Citizen Zoning Review Committee (CZRC) represented a diverse group of stakeholders from the County who met over several months and reviewed the zoning ordinance by theme. The CZRC Report summarizes recommended amendments and revisions to the zoning ordinance that were identified by the Committee. The Report provides the basis for review of themes, additional research, and eventual presentation of recommendations to the BOCC for text amendments to the zoning ordinance. The 2003 CZRC Report within the discussion of Administration and Enforcement, noted that "Past policy of Planning Commission granting staff authority to make minor site plan approvals should be reviewed and considered for a formal 'Staff Approval' process."

After review of the CZRC Report and input from the Division of Permitting and Development Review Staff, several areas within the site plan review portion of the zoning ordinance have been identified for updates. The edits and updates within the Site Plan Review section of the zoning ordinance will provide Staff, citizens, and applicants with a clear and concise set of regulations leading to an established level of expectation regarding development and processing of site plan review applications. In addition, adoption of the three levels of review into the zoning ordinance will formalize a process that has been established through policy over past years.

The draft text amendment includes updates and edits to the following sections of the zoning ordinance:

- Article II: Administration and Enforcement Existing Section 1-19-2.160
- Article III: Review and Approval Procedures Existing Sections 1-19-3.300 and 1-19-3.300.1
- Two new sections within Article III: Review and Approval Procedures Sections 1-19-3.300.3 and 1-19-3.300.4
- Two new divisions within Article VI: District Regulations
- Cross references to Site Plan Review within the zoning ordinance and other portions of the County Code have been researched and updated or edited as needed

In an on-going effort to correct errors in the zoning ordinance, Staff has identified duplicate text that should be deleted. The following minor edit has been included in the draft text amendment:

- Deletion of duplicate text located in Section 1-19-8.300 which should only be located in Section 1-19-8.700

The text amendment overview section below provides a summary of the proposed changes. The summary includes the zoning ordinance section and heading followed by a description for each proposed change. Within the attached Exhibit 1-Site Plan Review *Draft* Text Amendment, existing text in Article III: Review and Approval Procedures Sections 1-19-3.300 and 1-19-3.300.1 has been reorganized and expanded therefore, all text is shown in **BOLD CAPS** with proposed new text in **BOLD CAPS UNDERLINED**, and text for removal shown in **~~STRIKETHROUGH~~**. In addition, **BOLD CAPS DOUBLE UNDERLINED** represents text that is contained in active draft text amendments. Page numbers follow the zoning ordinance section number below to provide a reference to the location of the related text within the draft text amendment.

Within Exhibit 2 - Existing Site Plan Review Zoning Ordinance Text the existing Article II and Article III zoning ordinance text has been attached for reference purposes.

The Frederick County Planning Commission (FCPC) held a worksession to review and provide comment on the Site Plan Review *Draft* Text Amendment on April 29, 2009. At the worksession the Planning Commission provided comment on the three outstanding issues noted in the staff report below.

1. Staff level review of an expansion of square footage:
During discussions the FCPC commented that a staff level review of an increase in square footage would be appropriate within the parameters of 10% or 2,000 square feet of the FCPC approved square footage. Text has been added to section 1-19-3.300.1 (A)(2)(c) to provide for this review.
2. Extension for 'good cause shown by the applicant':
The FCPC discussed that an extension beyond 3 years should be considered for a site development plan approval as provided in section 1-19-3.300.1(F).

3. Processing of public buildings and properties:
The FCPC commented that if the BOCC should remove public buildings and properties and other references to County activities being subject to the zoning ordinance then maintaining at least a FCPC general review and comment on the proposed development should be considered.

A more complete discussion of these items is included under the heading of Outstanding Issues on page 5 below.

TEXT AMENDMENT OVERVIEW

ARTICLE II: ADMINISTRATION AND ENFORCEMENT

DIVISION 1. ADMINISTRATION

§1-19-2.160. Planning Commission. [pg. 1]

This existing section of the zoning ordinance contains an explanation of site plan review for high intensity development within the County as well as the Planning Commission role in approval.

Changes to this section were made to simplify the explanation of the Planning Commission role and to remove process oriented language that may conflict with portions of the site plan review process contained in other areas of the zoning ordinance.

ARTICLE III: REVIEW AND APPROVAL PROCEDURES

DIVISION 3. SITE PLAN REVIEW

§1-19-3.300. Purpose and Intent

§1-19-3.300.1 Review and Approval Procedures

§1-19-3.300.2 Concept Plan

§1-19-3.300.3 Site Plan Review Application

§1-19-3.300.4 Approval Criteria

Existing sections 1-19-3.300 through 1-19-3.300.1 provide the review and approval process for site plan review and briefly discuss the type of standards and conditions that may be applied to an application.

These sections of the zoning ordinance were reorganized, edited, and expanded to include two new sections (1-19-3.300.3 and 1-19-3.300.4) to provide a description of the site plan review process and to formalize existing policy regarding the three types of review procedures. The new heading titles will provide consistency with the reorganization and renumbering of the zoning ordinance as well as other current draft text amendments. References to the Zoning Administrator have been replaced by The Division of Permitting and Development Review where appropriate. In addition, existing language was edited and clarified for ease of understanding and consistency with other sections of the zoning ordinance.

§1-19-3.300. Purpose and Intent [pg. 1]

The title of section 1-19-3.300 Procedures was replaced with the title of Purpose and Intent. This section has been updated to provide an explanation of the purpose of site plan review and also ties this section to the administration and enforcement language within Article II.

§1-19-3.300.1 Review and Approval Procedures [pg. 2-5]

The title of section 1-19-3.300.1 Specific Standards and Conditions was replaced with the title of Review and Approval Procedures. This section provides an explanation of the three site plan review procedures: Type I-Planning Commission, Type –II Limited, and Type III-Administrative. Single-agency and multi-agency review have been specified within the review procedures where it has been determined that input from other County Divisions or agencies outside of County government would or would not be required.

The Type I-Planning Commission review represents those applications that are the most complex in nature and may, in addition to the zoning ordinance, include review of standards in the County Comprehensive Plan or County Code. Those uses included in a Type I-Planning Commission review are represented in Section 1-19-5.310 (A) Use Table by a ‘PS’, principal permitted use subject to site development plan approval. Planning Commission review may also be required within other sections of the zoning ordinance such as a floating zoning district or special exception. Included in this section are limitations on requests for modifications to a Planning Commission approved site development plan, in proposed section 1-19-3.300.1(A)(1)(b).

The Type II-Limited procedure is a staff level review that involves multi-agency review and comment. The modifications are limited to those listed in the zoning ordinance and may not involve modifications that require Planning Commission review of Adequate Public Facilities (APFO), Forest Resource Ordinance (FRO), or Stormwater Management (SWM) review. This section (proposed 1-19-3.300.1(A)(2)(f)) also provides for staff level review of development of Public Parks where a Master Plan has been approved by the BOCC. This text has been included as discussed during worksessions regarding the *Ag/RC Draft Text Amendment* to address duplicative review by the FCPC of public parks during the development process.

It is possible for an applicant to combine a Type III-Administrative modification with a Type II-Limited modification in a single application which would then be reviewed under the most comprehensive procedure.

The Type III-Administrative procedure is a single-agency staff level review that involves the least complex modifications. Again, the modifications are limited to those listed in the zoning ordinance and may not involve modifications that require Planning Commission review of APFO, FRO, or SWM review.

In Subsection (B) provisions have been included to permit an applicant to request an increase in review procedure (ie. Type II or Type III to a Type I). Subsection (C) permits Staff to require an increase in review procedure where it is determined that the application may have an adverse impact on surrounding properties, public facilities, or is inconsistent with the initial Type I-Planning Commission approval.

Existing text referencing procedures including an internal Division of Permitting and Development Review 90-day Planning Commission and Technical Advisory Committee schedule has been partially deleted and then updated to provide for an application completeness review. The 90-day Planning Commission and Technical Advisory Committee process and timing are not planned for changes, however, these are internal policies and for these reasons the text would be deleted.

It has been clarified, to follow current practice that an applicant may not file for a zoning certificate and building permit before receiving site plan approval. In addition, text has been added to provide an expiration date for site plan review applications that have not moved forward and received approval. The proposed language is similar to existing requirements for minor subdivision applications within the Frederick County Code Subdivision Regulations Section 1-16-8F.

Outstanding Issues

Three outstanding issues have been identified in this section of the draft text amendment. The first outstanding issue is in regards to a Staff level review of an expansion of square footage. Within the current draft text amendment Section 1-19-3.300.1 (A)(2) Type II – Limited, and in Subsection (A)(3) Type III – Administrative, the proposed process provides for footprint modifications tied to specific square footage thresholds. These proposed processes would permit Staff to review a request for a modification of a Type I – Planning Commission approved site development plan where the applicant is requesting a modification of a footprint of a certain size that does not involve an increase in square footage.

This type of situation has occurred in the past where a physical site constraint develops subsequent to a Planning Commission site development plan approval that would necessitate the shifting of a building footprint. As currently drafted this modification could be approved at the staff level. However, if this same physical site constraint were to require an increase of building square footage (even in a limited amount i.e. less than 2,000 sq. ft.), it would be required to return for Planning Commission review and approval.

Text could be added to provide for a staff level review of a modification involving an increase of square footage where the increase does not require a Planning Commission APFO, FRO, or SWM review.

Secondly, existing text in Section 1-19-3.300.1 (F), referring to an extension for 'good cause shown by the applicant' does not conform to Adequate Public Facilities timeframes, causes confusion by surrounding property owners, and increases related administrative processing. For these reasons the text referring to an extension for good cause is proposed for removal and would be replaced with an increase from 2 years to 3 years for expiration of an approved site development plan. The removal of the good cause language will bring Site Plan Review approval timeframes in conformance with the Adequate Public Facilities review and approval, reduce confusion by surrounding property owners, and reduce administrative functions related to processing.

The last outstanding issue is in regards to processing of public buildings and properties. As a matter of Maryland law, Frederick County is not subject to its own zoning laws and regulations. The Maryland appellate courts have said that, as a territorial division of the State, created and organized for public political purposes connected with the administration of state government, and specially charged with the administration and superintendence of the local affairs of the community, the County enjoys exemption from its zoning regulations, absent expression of a contrary intent expressed therein. See, Glascock v. Baltimore County, 321 Md. 118, 581 A.2d. 822, 927-28 (1990).

The inclusion in Chapter 1-19 of references to 'public buildings and properties,' and other references to County activities being subject to site plan review is, therefore, quite problematic.

These references in the Zoning Ordinance may very well be deemed the sort of 'expression of a contrary intent' which would remove from the BOCC and its divisions, departments and agencies the protection of this rule of law.

It is understandable that a county might, at first blush, feel it appropriate for County activities and projects to be subject to the same zoning processes that are applicable to non-governmental entities and persons. On deeper reflection, however, it appears that at least one rationale of this principle of law is to allow the county to act swiftly when necessary to secure the public health, safety and welfare. Such action, under the broad police power, is a part of the solemn obligation of the local legislative body to act for the good of all citizens. Spurious zoning appeals by an individual or small group could delay, if not preclude, the ability of the county to act for the common good. This solemn obligation to all citizens should not lightly be foregone.

It is for these reasons that Staff requests direction as to whether the 'Public buildings and properties' land use should continue to be subject to site plan review and whether other references to County activities should continue to be included in Chapter 1-19.

Staff requests direction regarding all of these outstanding issues.

§1-19-3.300.2 Concept Plan [pg. 5]

This section remains unchanged.

§1-19-3.300.3 Site Plan Review Application [pg. 6-7]

This section contains language that for the most part is existing however, a new section was created to provide consistency with other sections of the zoning ordinance updated during the reorganization and renumbering. Existing language has also been clarified regarding items necessary for an application to meet the standards found within the zoning ordinance.

§1-19-3.300.4 Approval Criteria [pg. 8]

A new section was created to provide a standard set of approval criteria for those applications receiving a Type I-Planning Commission approval or a minor modification to a previously approved project.

There are many other requirements outside of the zoning ordinance that an application must meet to receive approval (ie. APFO, SWM regulations, FRO, Streets and Roads Design Manual) however, this section provides an evaluation of whether the application meets zoning regulations. The evaluation and application of the criteria by the Planning Commission may also be influenced by any additional guidance or requirements found within specific applicable sections of the zoning ordinance such as a floating zoning district.

Existing criteria (Lighting, Public Utilities, Screening, and Common Areas) have been expanded to include an evaluation of Site Development, Transportation and Parking, and Natural Features. Language within the existing Public Utilities approval criterion has been updated to correspond to current language used to reflect an evaluation of public water and sewer facilities. The Common Areas criterion has been updated to reflect a Planning Commission evaluation of common areas associated with a development application.

The evaluation of lighting and screening has been incorporated into the Site Development approval criterion. In addition, two new divisions have been created to establish separate sections for placement of lighting and screening standards.

§1-19-4.110 Exemption of Essential Services [pg. 9]

Edits were made to this section of the zoning ordinance to provide for an increased size of 500 square feet for structures proposed with a nongovernmental utility. Based on Staff experience, the 240 square feet has proved insufficient for staff level processing of structures associated with cell tower construction and maintenance.

ARTICLE VI: DISTRICT REGULATIONS
DIVISION 4. LANDSCAPING AND SCREENING
§1-19-6.400. Screening
DIVISION 5. LIGHTING
§1-19-6.500. Lighting [pg. 9]

The new divisions within Article VI: District Regulations are: Division 4. Landscaping and Screening, and Division 5. Lighting.

The existing standards related to landscaping, screening, and lighting have been moved to these new divisions which follows the organization established through the reorganization and renumbering of the zoning ordinance.

These changes provide for a central location for design requirements related to development and will include Design Requirements and Modifications, Parking and Loading, Signs, Landscaping and Screening, and Lighting standards.

§1-19-2.110 Zoning Certificate and Building Permit
§1-19-5.310 Use Table
§1-19-8.250.1 Customary Accessory Uses [pg. 10]

Text within these existing sections have been updated to reflect the section numbers as proposed within the site plan review draft text amendment.

§1-19-8.300 Temporary Structures and Uses Requiring Special Exception Approval [pg. 10-12]

As part of the reorganization and renumbering of the zoning ordinance duplicate language exists within both Section 1-19-8.300 and Section 1-19-8.700. Only the language providing for those temporary uses requiring a special exception should be maintained in Section 1-19-8.300 and therefore Subsections (A) and (D) will be deleted. This same language will be maintained in Section 1-19-8.700 to provide for the correct processing of these land uses.

§1-19-8.620.1 Purpose and Description [pg. 12-13]

§1-19-10.500 Mixed-Use Development

§1-19-10.700.2 General Provisions

Text within these existing sections have been updated to reflect the section numbers as proposed within the site plan review draft text amendment.

§1-19-10.900 Institutional Floating Zoning District

§1-19-10.1000 Open Space Recreation Floating Zoning District [pg. 13-14]

Text within these sections proposed as part of the A/RC Use Table and Definitions *Draft Text Amendment* will be updated to reflect the new section numbers as proposed within the site plan review draft text amendment.

STAFF RECOMMENDATION

The focus of this text amendment is on updating and editing the zoning ordinance related to the purpose and intent, review and approval procedures, application requirements, and approval criteria for the site plan review process. The amendments are intended to provide Staff, citizens, and applicants with a clear and concise set of regulations for processing of site plan review applications. As discussed by the CZRC, adoption of the three levels of review into the Zoning Ordinance will formalize a process that has been established through policy over past years.

Staff requests direction from the Board of County Commissioners regarding the *Draft Site Plan Review text amendment* to the zoning ordinance.

EXHIBITS

Exhibit 1 - Site Plan Review *Draft Text Amendment*

Exhibit 2 - Existing Site Plan Review Zoning Ordinance Text