



## COMMUNITY DEVELOPMENT DIVISION FREDERICK COUNTY, MARYLAND

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To: Board of County Commissioners

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

DATE: September 29, 2011

SUBJECT: Priority 2 Zoning Ordinance Text Amendments (ZT-11-02 through ZT-11-13)

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### **ISSUE**

The Board of County Commissioners (BOCC) has received requests for review of specific sections of the zoning ordinance for possible revision. As the second phase of this process, Staff has developed text amendments to implement the Priority 2 concepts presented to the BOCC on July 28, 2011. These amendments are contained in Exhibit 1 - Priority 2 Text Amendments (ZT-11-02 through ZT-11-13). Staff is requesting a decision on each of the proposed text amendments.

### **BACKGROUND**

Several initiatives have been identified over the last several months to provide an avenue for citizen input regarding development regulations and processes. As part of this effort, Staff began a phased update to the zoning ordinance. The first phase, Priority 1 Text Amendments are complete and were adopted by the BOCC on May 17, 2011. The drafting of the Priority 2 amendments is a result of compiling the previously presented Potential Text Amendment List and the Business Friendly Improvement Areas (BFIA). The lists were created through public input, as well as BOCC and Staff discussion over the last several months. Several amendments were identified through the BFIA process and are not specific action recommendations from Staff. For clarity, those action items initiated by Staff have been noted below.

As part of this ongoing process, the Priority 2 Draft Text Amendment concepts were presented to the BOCC for direction on July 28, 2011. At that meeting, the BOCC directed Staff to move forward with developing text to implement the Priority 2 concepts. As directed by the BOCC at that meeting, changes to the text amendment process and the restricted funeral establishment concepts included in the July 28<sup>th</sup> packet will not be pursued. The Priority 2 concepts were also provided to the Frederick County Planning Commission (FCPC) as part of the August 10, 2011 packet with a request for review and comment. It has been noted below, where the FCPC provided initial comments. Based on FCPC and BOCC input, Staff created text amendments to implement the Priority 2 concepts.

The Priority 2 Text Amendments were presented to the BOCC at a worksession on September 1, 2011. At that meeting the BOCC initiated a text amendment and directed Staff to move forward to a public hearing. The FCPC held a public hearing on the proposed amendments on September 21, 2011. The details of the specific FCPC recommendations on each amendment are contained in the FCPC Transmittal Memorandum provided as part of this packet.

**RECOMMENDATION**

Staff requests a decision from the BOCC on each of the proposed Priority 2 Text Amendments (ZT-11-02 through ZT-11-13).

**ATTACHMENTS**

Exhibit 1 – Priority 2 Text Amendments (ZT-11-02 through ZT-11-13)

Exhibit 2 – Priority 2 Text Amendments Ordinance

**OVERVIEW**

The overview section below provides an issue summary of the specific amendments to the zoning ordinance as provided in Exhibit 1 - Priority 2 Draft Text Amendments (ZT-11-02 through ZT-11-13).

**LI/GI Industrial Standards (ZT-11-02)**

The current industrial district performance standards in §1-19-7.610(J)(4)(a) of the zoning ordinance restrict the storage capacity of flammable liquids and gases to the following:

Liquids	
LI District	60,000 gal.
GI District	120,000 gal.

Gases		
	Above Ground	Below Ground
LI District	150,000 SCF*	300,000 SCF
GI District	300,000 SCF*	600,000 SCF

\*SCF - Standard cubic feet at 60°F and 29.92 inches Mercury.

As noted in BFIA ZON-39, requests have been received to establish two different types of facilities that would exceed the currently permitted storage capacity. The first would permit the storage of Liquefied Petroleum Gas (LP-Gas) up to 1,000,000 gallons for wholesale distribution to local propane suppliers. The second would permit the storage of Flammable/Combustible Liquids up to 300,000 gallons for primarily farm and residential uses.

For the purposes of these regulations Liquefied Petroleum Gas (LP-Gas) is any material having a vapor pressure not exceeding that allowed for commercial propane composed predominately of the following hydrocarbons, either by themselves or as mixtures: propane, propylene, butane (normal butane or isobutane) and butylenes. Flammable/Combustible Liquids are: unleaded gasoline, regular and high octane gasoline, ultra low sulfur diesel (on-road diesel), low sulfur diesel (off-road/farm diesel), fuel-oil, bio-diesel and kerosene.

The current flammable liquid and gas storage capacity maximums were developed in the 1970's when the common types of products stored were leaded and unleaded gasoline, diesel, kerosene and propane and the volume of product used was much less than current demands. Since that time there has been an increase in the types of flammable liquids stored, the volume of products sold and the demand for the variety of products. In addition, fuel oil and propane have a much higher demand in the winter months and current restrictions do not permit sufficient on-site storage to meet this demand.

To address these issues, amendments to the zoning ordinance are proposed which would permit two different types of bulk storage facilities that are currently limited or prohibited due to the restrictions on the storage capacity of flammable liquids and gases within the LI and GI zoning districts. The amended regulations would permit bulk storage facilities intended to serve both residential and farm needs, utilizing above ground storage tanks of approximately 30,000 gallons each.

A wholesale LP-Gas bulk plant (distribution center), would provide storage of LP-Gas for local propane suppliers, addressing the peak winter month shortage noted above. The request is to permit storage of up to 1,000,000 gallons of LP-Gas to accommodate this type of facility.

A typical supplier of farm and residential uses would develop a combination flammable/combustible and LP-Gas distribution center, with storage of 30,000 gallons of each of the eight flammable/combustible liquids (totaling 240,000 gallons), and a minimum of two 30,000 gallon tanks of LP-Gas. The request is to permit storage of up to 300,000 gallons of flammable/combustible liquids to accommodate this type of facility.

The Planning Commission commented at their meeting on August 10<sup>th</sup> that setbacks should be increased beyond those currently provided within the zoning ordinance, in addition, they noted that the Division of Fire and Rescue should review and comment on this request during consideration of the increase in storage capacity included in the proposed amendments. Staff has worked with the Division of Fire and Rescue as well as the Office of Life Safety while reviewing the request and crafting the proposed amendments. One comment by DFRS staff indicated they would like to have a mechanism wherein they can determine if they can handle a potential situation with regards to their operations. Planning staff will continue to work with DFRS to identify the best method to achieve the result, as it may simply be through a pre-application meeting requirement to identify alternative fire protection strategies for the respective sites, as part of our policies and procedures. A further discussion of setbacks is provided below.

At their public hearing on September 21<sup>st</sup>, the Planning Commission recommended denial of this text amendment and stated that more information was needed on this topic to provide appropriate requirements for site plans. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

The following amendments to the zoning ordinance are proposed in Exhibit 1 – Priority 2 Text Amendments to address these issues.

ARTICLE VII: SUPPLEMENTARY DISTRICT REGULATIONS  
DIVISION 5. COMMERCIAL DISTRICTS  
§ 1-19-7.510. GENERAL COMMERCIAL, HIGHWAY SERVICE.

This existing section of the zoning ordinance provides supplementary regulations for the General Commercial (GC) and Highway Service zoning districts. As noted below, the Highway Service zoning district will be deleted from the zoning ordinance as it is not longer applied to properties within the County. However, the regulations pertaining to storage of flammable liquids in 1-19-7.510 (D) (within the GC district) are proposed for deletion due to the fact that 'Petroleum products storage' (as provided in section 1-19-5.310 Use Table) is not permitted in the GC zoning district.

DIVISION 6. INDUSTRIAL DISTRICTS  
§ 1-19-7.610. INDUSTRIAL DISTRICT PERFORMANCE STANDARDS.

Existing text within this section of the zoning ordinance has been edited to provide for the storage of LP-Gas and Flammable/Combustible Liquids within the LI and GI zoning districts. The maximum storage capacity has been increased to 1,000,000 gallons for LP-Gas in subsection (J)(3)(a) and to 300,000 gallons for Flammable/Combustible Liquids in (J)(3)(b).

Based on the recommendations of the Frederick County Division of Fire and Rescue, subsection (J)(3)(c) prohibits the blending of fuels due to the explosive hazard associated with this activity. Subsection (J)(3)(d) requires adherence to the Frederick County Fire Prevention Code and the National Fire Protection Association (NFPA) Standards 58, 30, and 30A.

The NFPA standards are utilized by the majority of east coast jurisdictions and outline required separation distances between petroleum product storage containers, buildings, and adjoining property lines. The NFPA standards contain much more detailed requirements than what are currently provided in the zoning ordinance, and for these reasons, existing section 1-19-7.610(J)(3) and (4) are proposed for deletion. Inclusion of the NFPA standards into the zoning ordinance will codify the current policy and practice of applying these standards to petroleum product storage facilities.

Subsection (J)(3)(e) includes a proposed minimum lot area of 5 acres for a petroleum product storage facility with product storage capacity of 300,000 gallons or more. The minimum lot area is based on industry input regarding the minimum lot size necessary for site design of a facility of this type.

ARTICLE XI: DEFINITIONS  
DIVISION 1. DEFINITIONS  
§ 1-19-11.100. DEFINITIONS.

This existing section provides definitions for land use terminology within the zoning ordinance. Definitions for Liquefied Petroleum Gas (LP-Gas), Combustible Liquids, Flammable Liquids, and Petroleum Products Storage are proposed to provide further direction regarding changes in previous sections to address petroleum product storage. In an effort to reduce confusion between proposed standards/terminology and past standards/terminology, the definition of Oil, Petroleum Products, and Their By-Products has been proposed for deletion.

**Return PDR/PDE terminology back to MXD/PUD (ZT-11-03)**

In November of 2010 the Planned Development Districts Text Amendment (ZT-10-04) became effective. The text amendment created the Planned Development Residential (PDR) and the Planned Development Employment (PDE) floating zones. The PDR zone is a rewrite of the Planned Unit Development (PUD) provisions and the PDE zone is a rewrite of the Mixed Use Development (MXD) provisions. The intent of the floating zone rewrite was to combine and standardize the floating zone requirements and processes to provide consistency throughout the zoning ordinance. The amendment revised and adopted a combined two-step planned development floating zone in section 1-19-10.500 Planned Development Districts. Many of the original provisions remain after adoption of the rewrite.

The intent of the terminology change from PUD to PDR and MXD to PDE within the text amendment was to simply provide a more updated nomenclature.

However, Staff recognizes that the transition to the new terminology has resulted in confusion for users and has been difficult for many to accept and apply. Therefore, Staff recommends returning to the previous terminology without change to the existing regulations, including maintaining the transitional provisions (section 1-19-10.500.11) which apply to PUD and MXD developments approved prior to adoption of ZT-10-04.

Edits as proposed in Exhibit 1, to section 1-6A of the Moderately Priced Dwelling Unit provisions, 1-16 Subdivision, 1-19 zoning ordinance, 1-20 Adequate Public Facilities, and 1-21 Forest Resources of the Frederick County Code, will return existing PDR/PDE terminology to PUD/MXD. No changes to the existing regulations or requirements are proposed as part of this text amendment. No comments have been received from the municipalities with APFOs that were notified as part of the amendment process.

At their public hearing on September 21<sup>st</sup> the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

#### **Land Use Restrictions within the Priority Preservation Areas (ZT-11-04)**

An item within the Business Friendly Improvement Areas list (BFIA ZON-24), requests a discussion of differential Ag and RC land use restrictions within the Priority Preservation Areas (PPA).

Within the zoning ordinance the only provision related to the PPA is contained within the Open Space Recreation (OSR) floating zone in section 1-19-10.1000. The OSR floating zone was created to provide for the development of large-scale recreational uses in areas with an Agricultural/Rural County Comprehensive Plan land use designation.

The floating zone provides for location and siting of these types of facilities to areas contiguous to a community growth boundary to provide a transition between growth areas and existing agricultural uses, to mitigate or minimize impact to surrounding properties, mitigate or avoid traffic congestion which improves pedestrian and roadway safety, and to maintain the purpose of the Agricultural/Rural areas identified in the County Comprehensive Plan.

It should be noted that the intent of the floating zone is to restrict development of large recreational facilities, on parcels with a Agricultural/Rural Comprehensive Plan land use designation, to those that meet the specific size and location requirements (minimum parcel size, roadway standards, within or contiguous to a community growth boundary).

The size and location requirements within section 1-19-10.1000 (B)(1)(e) state that “the tract of land receiving the Open Space Recreation District shall not be located within a Frederick County priority preservation area.” This requirement was added by the prior BOCC during adoption of this zoning district with the intent of protecting a PPA from development of large scale recreational uses.

The purpose of the PPA’s (as provided for in House Bill 2 adopted by MD General Assembly in 2006) are to target and prioritize land preservation easement purchases and other incentives to preserve agricultural land. The PPA’s act to target land preservation efforts and build critical masses of protected lands on the highest priority properties.

Consideration of the PPA during the development review process is consistent with the purpose and intent of the Agricultural zoning district and the intent of the agricultural preservation program. However, during review and approval of the OSR floating zone there was much discussion regarding where the requirement should be located within the overall provisions. Currently, the requirement is contained within the size and location criteria. To that end, an applicant could not even apply for such a use if it were in a designated PPA.

At that time it was discussed whether the PPA component should be located within the approval criteria (section 1-19-10.1000(C)). If the PPA component were moved from the existing size and location criteria and into the approval criteria, it would permit a tract of land within a PPA to apply for the floating zone. During the evaluation of the approval criteria, the PPA component would be considered as a part of the overall application based on a specific review criterion that could include evaluation factors such as location, soil classification, and development potential among others.

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

The following amendments to the zoning ordinance are proposed in Exhibit 1 – Priority 2 Draft Text Amendments to address this issue.

ARTICLE X: OPTIONAL METHODS OF DEVELOPMENT  
DIVISION 10. OPEN SPACE RECREATION FLOATING ZONING DISTRICT  
§ 1-19-10.1000 OPEN SPACE RECREATION FLOATING ZONING DISTRICT

Provisions related to the PPA have been proposed for deletion from subsection (B) Size and Location and added to subsection (C) Approval Criteria. The proposed text in subsection (C) provides for analysis and consideration of the PPA through evaluation factors. The evaluation factors mirror those found in the Comprehensive Plan which were used to create the PPA boundaries. Each property proposed for the Open Space Recreation District which falls within a PPA will be evaluated based on size and location, quality of the soils, and other agricultural easements nearby, all of which may contribute to the desirability of agricultural preservation of the property in the future.

Moving this requirement and creating an approval criterion will enable the BOCC and Staff to evaluate the unique characteristics of each individual property rather than prohibiting application of the zoning district to a property which may not contain significant soil, size, or location attributes.

**Accessory Apartments (ZT-11-05)**

Several permitted uses within the zoning ordinance have been identified by Staff for amendments related to current processing. Item ZON-47 within the Business Friendly Improvement Areas notes that there are several special exception uses that could be processed administratively (accessory apartments and temporary mobile homes) or through site plan review (animal hospital or veterinary clinic in GC and automobile repair or service shop in the LI).

Currently accessory apartments are permitted solely by special exception with specific criteria in section 1-19-8.321 of the zoning ordinance. These existing criteria provide guidance on the location and intensity of the apartment, including a restriction that: accessory apartments to be located within an accessory structure shall be no larger than 600 square feet (1-19-8.321(E)).

Accessory structures are restricted in size by section 1-19-4.300 through 1-19-4.300.2 which states that the total square footage of all floors of accessory structures located on residentially zoned properties shall not exceed that of the dwelling, and shall not exceed the greater of one-half the footprint of the principal dwelling or six hundred square feet.

Accessory apartments provide opportunities for affordable housing and a mixture of dwelling types throughout the County. The 'Accessory apartment' land use was originally added to the Use Table in 1990 by the BOCC at that time, in response to calls for more affordable housing units for low and moderate income residents and more flexibility for accommodating family members wishing to live closer together such as an in-law suite.

Over 100 of these applications have been prepared and presented to the Board of Appeals since adoption of the provisions, with only 2 denials. The 2 denials were based on information that the applicants had legal residences elsewhere and would not be living on-site, a requirement based on current special exception criteria.

Although the processing of accessory apartments has been successful, obstacles have been identified such as the expense, necessary time for review, and the small square footage permitted for a detached accessory apartment (600 square feet) which precludes provision of an adequate size living space.

The Citizen's Zoning Review Committee discussed Accessory Apartments and noted that relaxing the regulations to permit additional accessory apartments would help achieve the goals of affordable housing as well as in-law housing. It was also stated that a special exception process may not be necessary in all residential districts with clearly defined regulations and approval process.

For these reasons amendments are proposed that would permit accessory apartments through a two-tier review where a majority of applicants would be processed as an accessory use (staff level administrative approval) rather than as a special exception.

### ***Accessory Apartments as Accessory Use***

The first-tier would permit a Limited Accessory Apartment within a single family dwelling and no greater than 800 square feet to be located within an accessory structure, as an accessory use.

The existing definition in section 1-19-11.100 of the zoning ordinance provides that an Accessory Apartment is "an independent, self-contained dwelling unit within a single-family dwelling, or within an accessory structure located on the same lot as a single-family dwelling." Therefore, the accessory apartment would be permitted as an accessory use to the single family dwelling and would not appear in the Use Table consistent with the processing of other accessory uses within the zoning ordinance.

The zoning ordinance currently provides for processing of accessory uses with additional criteria in Article VIII: Specific Use Regulations; Division 2. Accessory Uses. Accessory uses are approved by the Zoning Administrator as part of an application for a principal permitted use, or subsequent to the initial approval.

Although an increase is proposed from 600 to 800 square feet for a Limited Accessory Apartment to be located within an accessory structure, there may be specific situations where the 800 square feet is unnecessarily limiting and restrictive such as on a large parcel. Larger parcels may include a larger residence which would permit a larger accessory structure, and most likely contain sufficient lot size to address compatibility issues regarding the increase in activity. For these reasons, a second-tier special exception process is proposed.

### ***Accessory Apartments as a Special Exception***

The second-tier would permit an Accessory Apartment over 800 square feet, to be located in an accessory structure, to apply for a special exception (maintaining special exception criteria in section 1-19-8.321). This process will provide flexibility where an existing residence is large enough to permit a larger accessory structure (based on provisions in section 1-19-4.300 through 1-19-4.300.2 as noted above). The use would continue to be permitted in the same zoning districts as currently permitted.

Through the special exception process, the Board of Appeals will have an opportunity to address the nature and intensity of the proposed operation, parking, and the road system among other general criteria in existing section 1-19-3.210, as well as the specific special exception criteria remaining in section 1-19-8.321.

The changes as discussed would permit a Limited Accessory Apartment as an accessory use in all zoning districts where they are currently permitted based on applicable criteria. An Accessory Apartment larger than 800 square feet to be located in an accessory structure would be permitted by special exception. The existing definitions in section 1-19-11.100 would be updated to reflect the changes above.

The Planning Commission noted at their meeting on August 10<sup>th</sup> that the change in review process was supported but the existing review criteria should be maintained. A discussion of the review criteria is provided below.

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

The following amendments to the zoning ordinance are proposed in Exhibit 1 – Priority 2 Draft Text Amendments to implement the changes as discusses above.

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

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

###### **§ 1-19-5.310. USE TABLE.**

This existing section of the zoning ordinance provides direction regarding the permitted uses within the zoning ordinance and the required development review process. A footnote has been proposed for this section which provides that accessory apartments less than or equal to 800 square feet to be located within an accessory structure shall be reviewed as an accessory use not requiring special exception approval. Cross references outline the procedures for accessory apartments requiring a special exception and provisions related to accessory uses on residential properties.

#### **ARTICLE VIII: SPECIFIC USE REGULATIONS**

##### **DIVISION 2. ACCESSORY USES**

###### **§ 1-19-8.212. ACCESSORY APARTMENTS IN THE RC, A, R1, R3, R5, R8, R12, R16, AND VC DISTRICTS**

This is a new section of the zoning ordinance which provides for the processing of accessory apartments. It also provides for accessory apartments no greater than 800 square feet to be located in an accessory structure as an accessory use to a single family dwelling.

Subsections (A) through (D) and subsection (F) have been duplicated from the existing special exception criteria in section 1-19-8.321. Subsection (E) has been amended to permit a maximum square footage of 800 when located in an accessory structure rather than the original 600 square foot maximum. Proposed subsection (G) is a new requirement which provides for notification of adjacent property owners. Subsections (H) through (J) mirror special exception requirements, and subsection (K) has been added to provide the zoning administrator with the authority to revoke the approval due to noncompliance.

Existing special exception criteria (1-19-8.321) subsections (H) (regarding addressing) and (K) (regarding Zoning Administrator approval rather than Planning Commission) have not been included in this new section as they are not relevant to the accessory approval process.

### DIVISION 3. SPECIAL EXCEPTION USES

#### § 1-19-8.321. ACCESSORY APARTMENTS GREATER THAN 800 SQUARE FEET TO BE LOCATED IN AN ACCESSORY STRUCTURE.

This existing section of the zoning ordinance has been updated to mirror changes made to other sections that provide for processing of accessory apartments as an accessory use.

### ARTICLE XI: DEFINITIONS

#### DIVISION 1. DEFINITIONS

##### § 1-19-11.100 DEFINITIONS

The existing definition of Accessory Apartment has been amended and the term Limited Accessory Apartment has been created to reflect the changes as described above.

#### **Temporary Mobile Homes (ZT-11-06)**

As noted under the heading of Accessory Apartments above, the processing of temporary mobile homes has been identified by Staff for review (ZON-47).

The zoning ordinance currently permits Temporary Mobile Homes by special exception within the Resource Conservation (RC), Agricultural (A), and R1 (residential) zoning districts.

Temporary structures and uses requiring special exception approval are processed based on the specific criteria in section 1-19-8.300 of the zoning ordinance (in addition to the general special exception criteria contained in section 1-19-3.210). The Temporary Mobile Home as a special exception is permitted based on several criteria including a minimum lot size, restriction permitting only single-wide mobile homes, setback and location requirements, site plan approval by Planning Commission, a requirement that the resident of the mobile home be an immediate family member of the family owning and residing on the subject lot, and that the occupant of the mobile home or of the principal dwelling must have a physical or mental condition or excessive age which requires constant care and attention.

Most of the criteria outlined in this section are straightforward and could be addressed through Staff level review. Most importantly, the requirement of a physical or mental condition is met through a medical evaluation and certification by a physician.

Based on this evaluation, the zoning ordinance is proposed for amendment to permit a Temporary Mobile Home as an accessory use where specific provisions have been met. As noted above, accessory uses are currently approved by the Zoning Administrator as part of an application for a principal permitted use, or subsequent to the initial approval.

The Planning Commission commented at their August 10<sup>th</sup> meeting that there should be a yearly review of the Temporary Mobile Home approval to prevent the unit from being rented out once the original reason for the approval no longer exists.

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

The following amendments to the zoning ordinance are proposed in Exhibit 1 – Priority 2 Draft Text Amendments to implement the changes as discussed above.

ARTICLE V: ZONING MAP AND DISTRICTS  
DIVISION 3. USE TABLE  
§ 1-19-5.310. USE TABLE.

The Use Table has been amended to remove Temporary Mobile Home. As previously noted the zoning ordinance does not provide for processing of accessory uses within the Use Table, therefore the proposed deletion is consistent with current policy and practice.

ARTICLE VIII: SPECIFIC USE REGULATIONS  
DIVISION 2. ACCESSORY USES  
§ 1-19-8.213. TEMPORARY MOBILE HOME

This new section has been created to provide direction for the processing of Temporary Mobile Homes as an accessory use. The provisions in existing section 1-19-8.300 (B) have been deleted and moved into this new section.

Within section 1-19-8.213 subsections (A) through (E) mirror existing requirements in section 1-19-8.300 (B) however, a requirement for a physician's certification has been added to subsection (B), and subsection (E)(4) has been updated to refer to the Zoning Administrator rather than the Planning Commission as approval authority. In addition subsections (F) through (I) have been added to provide consistency between Temporary Mobile Home requirements and other temporary residential requirements within the zoning ordinance such as those for Accessory Apartments.

DIVISION 3. SPECIAL EXCEPTION USES  
1-19-8.300. TEMPORARY STRUCTURES AND USES REQUIRING SPECIAL EXCEPTION APPROVAL.

Within this existing section the provisions for Temporary Mobile Homes (subsection (B)) and Temporary Accessory Apartments (subsection (C)) are proposed for deletion. Although the deletion of the Temporary Accessory Apartment provisions have been included in this section for discussion, the deletion provides consistency with the changes proposed for Accessory Apartment approvals as described above.

If the proposed processing change for Accessory Apartments from special exception to accessory use is approved, this section will no longer be necessary and would create confusion with the new provisions.

**Animal hospital or Veterinary clinic in GC (ZT-11-07)**

The zoning ordinance currently permits Animal Hospital or Veterinary Clinic as a special exception in the Agricultural (A), Village Center (VC), and General Commercial (GC) zoning districts. As noted in BFIA ZON-47, this land use has been identified by Staff as one that should be evaluated for possible changes to current processing.

Staff has evaluated the processing of this land use within all three districts. Many of the existing special exception criteria in section 1-19-8.338 specifically apply to development within the A zoning district. The criteria provide parameters for development of this type of land use to ensure compatibility with agricultural activities, residential uses, and the rural character of the environment.

The Village Center zoning districts across the County contain historic villages with a mixture of residential and commercial land uses in a compact development pattern. This compact pattern creates a compatibility concern between certain types of commercial development and its proximity to residential uses.

After evaluation of these factors, it is recommended that the special exception process remain in both the A and VC zoning districts. However, the GC zoning district is generally intended for higher intensity land use than the A or VC districts. Residential land uses are not permitted within the GC zoning district therefore it does not contain compatibility issues between residential and commercial land uses and does not contain the inherent issues related to those historic development patterns.

Therefore, processing of animal hospital or veterinary clinic through site development plan review (PS) in the GC zoning district is proposed. A new section would be created within the zoning ordinance to contain the relevant criteria (duplicated from existing special exception criteria) related to the processing of the use through site development plan review.

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

The following amendments to the zoning ordinance as provided in Exhibit 1 would implement these changes.

**ARTICLE V: ZONING MAP AND DISTRICTS**

**DIVISION 3. USE TABLE**

**§ 1-19-5.310. USE TABLE.**

The Use Table has been amended to permit Animal Hospital or Veterinary Clinic in the GC district through the site development plan review process (PS) rather than special exception (E).

**ARTICLE VIII: SPECIFIC USE REGULATIONS**

**DIVISION 3. SPECIAL EXCEPTION USES**

**§ 1-19-8.338. KENNELS, ANIMAL HOSPITALS OR VETERINARY CLINICS IN THE A, VC, AND GC DISTRICTS.**

The existing special exception criteria have been amended to remove references to the GC zoning district.

## DIVISION 4. PERMITTED USES

### § 1-19-8.405. ANIMAL HOSPITAL OR VETERINARY CLINIC IN THE GC DISTRICT

A new section 1-19-8.405 has been created to include the relevant portions of the existing special exception criteria that permit the use to be established under relatively the same criteria but through the site development plan review process rather than as a special exception.

### **Automobile Repair or Service Shop in LI (ZT-11-08)**

The zoning ordinance currently permits automobile repair or service shop in the Highway Service (HS), General Commercial (GC), and General Industrial (GI) zoning districts through site development plan approval (PS), and by special exception (E) in the Village Center (VC) and Limited Industrial (LI) zoning district. As previously noted by Staff, this land use could be evaluated for changes to current processing (ZON-47).

The existing special exception criteria in section 1-19-8.325 address the compatibility of the land use with surrounding and adjacent parcels, as well as the overall aesthetic of the development. However, the criteria do not address issues specific to the LI zoning district.

Therefore, the processing of automobile repair or service shop through site development plan approval (PS) in the LI zoning district has been proposed.

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

The following amendments are proposed in Exhibit 1.

## ARTICLE V: ZONING MAP AND DISTRICTS

### DIVISION 3. USE TABLE

#### § 1-19-5.310. USE TABLE.

The Use Table has been amended to permit Automobile Repair or Service Shop within the LI zoning district through the site development plan review process (PS) rather than special exception (E).

## ARTICLE VIII: SPECIFIC USE REGULATIONS

### DIVISION 3. SPECIAL EXCEPTION USES

#### § 1-19-8.325. AUTOMOBILE REPAIR OR SERVICE SHOP IN THE LIMITED INDUSTRIAL DISTRICT.

The existing special exception criteria are proposed for deletion. Separate special exception criteria exist in section 1-19-8.324 to provide for the processing of Automobile Repair or Service Shop in the VC zoning district. Therefore, this existing section which applies to processing of the use within the LI is no longer needed.

## DIVISION 4. PERMITTED USES

### § 1-19-8.406. AUTOMOBILE REPAIR OR SERVICE SHOP IN THE LIMITED INDUSTRIAL DISTRICT.

The relevant portions of the existing special exception criteria have been edited and placed in this new section. The criteria permit the use to be established under relatively the same criteria but through the site development plan review process rather than as a special exception.

Subsection (A) has been edited (from the existing special exception criteria) to remove specific setback standards related to the proposed use. Section 1-19-6.100 Design Requirements for Specific Districts requires Automobile Services to be setback 25' from the front property line, an amount equal to the height of the building from the side property line, and 20' from the rear property line. The existing setbacks required within the special exception criteria appear excessive considering the proposed use is generally viewed to be compatible with other land uses permitted within the LI zoning district. In addition, proposed subsection (B) through (D) (duplicated from existing special exception criteria) provide that outdoor work and storage of parts, equipment and vehicles, shall be contained within a screened parking area which reduces potential conflict. The increased setback where adjacent to a residential land use, as required within the existing special exception criteria, has been maintained in the proposed site development plan review provisions.

Subsection (C) within the existing regulations has been proposed for deletion. The provision requires that the driveway or access be paved by concrete, asphalt or stone surface. The driveway or access materials will be reviewed by Staff and the Planning Commission at the time of Site Development Plan Review. Separate provisions within the zoning ordinance and policy and practice at the time of Planning Commission review, address surface materials. Therefore the reference has not been included in the proposed provisions within this section.

Subsection (F) within the existing regulations has also been proposed for deletion. The existing provision regulates sign size, height and setback. The zoning ordinance provides for signs related to 'commercial and industrial owner identification and product' within industrial districts in section 1-19-6.320 (7). Therefore separate provisions within the site development plan review criteria are not necessary.

#### **Sign Calculation Use vs. Zoning District (ZT-11-09)**

The zoning ordinance contains sign regulations in sections 1-19-6.300 through 1-19-6.340. Generally, signage is calculated based on the proposed use. However, discrepancies have been identified by Staff based on the permitted signage for a proposed use and the zoning district where the development will occur (as noted in BFIA ZON-45).

Specifically, places of worship are grouped with other institutional uses in item (4) of section 1-19-6.320 Signs Permitted and Regulated in the Zoning District and limited to a total of 32 square feet. This issue has been identified as a concern particularly where a place of worship is located within a commercial or industrial zoning district. Land uses located within commercial or industrial zoning districts are generally regulated by provisions in item (7). However, a place of worship locating within a commercial or industrial district would be limited to 32 square feet due to the specifics provided in item (4). Generally within the zoning ordinance the more specific provisions apply.

Over the years places of worship have expanded into commercial and industrial zoning districts, which should be reflected within the sign regulations.

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

The following amendments have been proposed to address this issue.

ARTICLE VI: DISTRICT REGULATIONS

DIVISION 3. SIGNS

§ 1-19-6.320. SIGNS PERMITTED AND REGULATED IN THE ZONING DISTRICT

The place of worship land use term has been added to item (7) within this section. This change will create consistency between sign requirements for places of worship and other land uses within commercial and industrial zoning districts. Existing regulations in item (4) will remain in order to provide for those institutional uses (including places of worship) permitted in other zoning districts.

**Sign Calculation for Multiple Lot Frontage (ZT-11-10)**

Within the zoning ordinance, Section 1-19-6.320 footnote “F” provides the maximum sign size permitted for those parcels where the entrance to the building faces a direction other than a public street. However, the text does not address those situations where the parcel contains a building facing multiple public streets. Without further direction provided within the ordinance, it has been the policy and practice to calculate sign allotments for each public street frontage. As noted by Staff in ZON-46 this section should be evaluated for a potential increase in signage for buildings facing multiple public streets.

Therefore, the text in this footnote should be amended to align the existing provisions with past policy and practice.

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

The following amendments have been proposed to address this issue.

ARTICLE VI: DISTRICT REGULATIONS

DIVISION 3. SIGNS

§ 1-19-6.320. SIGNS PERMITTED AND REGULATED IN THE ZONING DISTRICT.

The text in footnote “F” has been amended within this section to state “Where the building faces multiple public streets, F shall equal the total of measurement A and measurement S.”

### **Outdoor Storage in the LI and GI (ZT-11-11)**

The zoning ordinance currently requires outdoor storage in the industrial zoning districts to be screened by a wall, opaque fence, or planting so that the materials will not be visible from a public way or adjoining property (section 1-19-7.600(D) and 1-19-7.610(A)). However, this existing language does not account for development where adjoining properties are similar in use and therefore full screening between adjoining properties may not be necessary. As noted in ZON-48, these requirements could be amended to provide needed flexibility.

Although the original issue as identified in ZON-48 includes discussion of commercial districts, it appears that this issue is related to those uses within the industrial districts therefore, as recommended by Staff and as directed by the BOCC at the July 28<sup>th</sup> meeting, the changes to the existing requirements focus on the industrial districts rather than the General Commercial (GC) district. Land uses permitted within the General Commercial district are varied and with opportunity for higher turnover, may create compatibility issues where screening between uses has not been provided.

While researching this topic Staff found that section 1-19-8.430 Contractor's Office and Storage in the Limited Industrial District may also require amendments to create consistency regarding outside storage in the LI district throughout the zoning ordinance. Existing text in section 1-19-8.430 requires that contractor's construction equipment and supplies in the LI District shall be permitted (in addition to other provisions) where stored, maintained and repaired in an accessory structure or structures which are fully enclosed on at least 3 sides and screened from public view on the fourth side unless enclosed. This was identified as an issue that could be addressed by adding flexibility and permitting the Planning Commission to waive or modify the text to address the specific development proposed. At their September 1<sup>st</sup> meeting, the BOCC directed Staff to amend this section to provide flexibility to address this issue.

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

Therefore, the following amendments have been proposed in Exhibit 1 to implement the changes as discussed above.

#### **ARTICLE VII: SUPPLEMENTARY DISTRICT REGULATIONS**

##### **DIVISION 6. INDUSTRIAL DISTRICTS**

##### **§ 1-19-7.600. INDUSTRIAL DISTRICTS.**

##### **§ 1-19-7.610. INDUSTRIAL DISTRICT PERFORMANCE STANDARDS.**

Existing regulations within these sections have been amended to permit the Planning Commission to waive or modify the requirement of full screening where it has been determined that adjoining properties are similar in use.

#### **ARTICLE VIII: SPECIFIC USE REGULATIONS**

##### **DIVISION 4. PERMITTED USES**

##### **§ 1-19-8.430. CONTRACTOR'S OFFICE AND STORAGE IN THE LIMITED INDUSTRIAL DISTRICT.**

Existing regulations within these sections have been amended to permit the Planning Commission to waive or modify the requirement for storage, maintenance, and repair of contractor's equipment and supplies within an accessory structure where specific criteria are met.

### **Limited Roadside Stand (ZT-11-12)**

The zoning ordinance currently provides for Limited Roadside Stand operations subject to design regulations (P) in the Resource Conservation and Agricultural zoning districts, and through the site development plan approval process (PS) in the R1 and R3 residential districts, Village Center, Highway Service, and General Commercial zoning districts.

A Limited Roadside Stand is defined in the zoning ordinance in section 1-19-11.100 as “The use of no more than 300 square feet devoted to product sales, which may incorporate a structure, for the sale of agricultural products the majority of which are produced by the owner on site. This use does not include seasonal pumpkin patches, “pick your own” or “cut your own” produce or other agritourism enterprise activities conducted on a farm related to agriculture and accessory to the primary agriculture operation on the farm.”

The Limited Roadside Stand provisions were adopted in June of 2009 as part of the A/RC Use Table and Definitions text amendment (ZT-09-03). Previous to the 2009 amendments, all roadside stands were processed within the land use term of Roadside Stands Retail and Wholesale permitted solely through site development plan approval. It was the intent of the text amendment to create a limited operation for the small mom and pop stand (within the A and RC) where the traffic and building impact would be minimal and therefore a full site development plan process would not be required.

However, it has been noted in ZON-54 that a request has been received to increase the square footage permitted within the definition of Limited Roadside Stand in section 1-19-11.100. The 300 square feet has proven inadequate in providing sufficient space to conduct an operation, even on a limited scale. It has been suggested that the 300 square feet be increased to 1,500 square feet.

At their public hearing on September 21<sup>st</sup>, the FCPC discussed this amendment at length and agreement could not be reached. Therefore, the FCPC sends forth no recommendation on this specific text amendment. The details of the Planning Commission motions and votes on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

Based upon the request to increase the permitted square footage, following amendments are proposed in Exhibit 1.

### ARTICLE XI: DEFINITIONS DIVISION 1. DEFINITIONS § 1-19-11.100 DEFINITIONS

The existing definition of Limited Roadside Stand has been amended to increase the maximum square footage devoted to product sales from 300 square feet to 1500 square feet.

### **Highway Service Zoning District (ZT-11-13)**

This portion of the text amendment is Staff initiated and involves the removal of the references to the Highway Service zoning district from the zoning ordinance. The Highway Service zoning district is no longer applied to any parcels within the County.

During previous Region Plan updates, the Highway Service zoning district, as applied to specific properties, was replaced by General Commercial or another appropriate zoning district. The few remaining parcels with Highway Service zoning were rezoned during the last County Comprehensive Plan update and rezoning process.

The need for commercial uses that are solely highway oriented continues to decline as commercial uses serving both highway travelers and the local community have developed in the Community Growth Areas.

The location of commercial services primarily within growth areas is consistent with the goals, policies, and objectives of the Comprehensive Plan. Based on the fact that this zoning district is no longer applied within the County and that the purpose of the district is no longer consistent with the goals, policies, and objectives of the Comprehensive Plan, the district is being removed from the zoning ordinance.

For these reasons, the following references to the HS zoning district within the zoning ordinance are proposed for deletion:

- The purpose statement in §1-19-5.240 Commercial Zoning Districts
- Listing of permitted uses in §1-19-5.310 Use Table
- Design Requirements in §1-19-6.100
- Sign regulations in §1-19-6.320
- Supplementary district regulations in §1-19-7.510
- Accessory use regulations in §1-19-8.211
- Special exception for 'Recreational vehicle campground' in §1-19-8.356
- Special exception for 'Truck stops' in §1-19-8.357
- Within the Design Criteria for 'Communication towers' in §1-19-8.420.2
- Increased setback requirements within the Mineral Mining floating zoning district in §1-19-10.400.2
- Within the Home Occupation definition in §1-19-11.100

At their public hearing on September 21<sup>st</sup>, the FCPC recommended approval of this text amendment. The details of the Planning Commission recommendation on this text amendment can be found in the FCPC Transmittal Memorandum provided as part of this packet.

#### **Non-Governmental Utilities**

During the Potomac/Appalachian Trail Highline Project it was noted that the project would have a substantial impact to nearby residential uses, both during and subsequent to construction. ZON-51 requests amendments to the zoning ordinance and possibly the comprehensive plan to address the placement of PATH, other utilities, or a pumping station in a residential area.

This issue was originally included in the draft Priority 2 text amendments. The BOCC and staff received email correspondence from interested stakeholders requesting input into this issue for consideration in crafting amendments. Recommendations were not received prior to the distribution of the September 1, 2011 BOCC packet, therefore this issue has been removed from the Priority 2 text amendments and will move forward on a separate track.

#### **STAFF RECOMMENDATION**

Staff requests a decision from the BOCC on each of the proposed Priority 2 Text Amendments (ZT-11-02 through ZT-11-13).