



FREDERICK COUNTY PLANNING COMMISSION

April 11, 2012

TITLE: Priority 3 Zoning Ordinance Text Amendments

FILE NUMBER: ZT-12-01 through ZT-12-13

REQUEST: Recommendation

PROJECT INFORMATION:
N/A

APPLICANT/REPRESENTATIVES:
N/A

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

RECOMMENDATION: Staff requests a recommendation from the Planning Commission on each of the individual proposed Priority 3 Zoning Ordinance Text Amendments

ATTACHMENTS:
EXHIBIT 1- Priority 3 Text Amendments

STAFF REPORT

ISSUE

The Board of County Commissioners (BOCC) has received requests for review of specific sections of the zoning ordinance for possible revision. As the third phase of this process, Staff developed text amendments to implement the Priority 3 concepts. The amendments were presented to the BOCC at a worksession on March 1, 2012. These amendments are contained in Exhibit 1 - Priority 3 Text Amendments (ZT-12-01 through ZT-12-13). Staff is requesting a recommendation from the Planning Commission on each of the individual 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 second phase, Priority 2 Text Amendments were adopted by the BOCC and became effective November 7, 2011. This third phase, the drafting of Priority 3 amendments, is a result of a compiled list of potential amendments based upon a review of the Business Friendly Improvement Areas (BFIA).

It should be noted that the potential amendments have been compiled through public input, BOCC and Staff discussion over the last several months. Many amendments were identified through the BFIA process and are not specific action recommendations from Staff. For clarity, each amendment item overview identifies those action items initiated by Staff. In addition, the Zoning Ordinance Rewrite webpage includes links to text amendment public process documents (including public hearing and adopted ordinances) for previous amendments. These documents can be accessed through the following link: <http://www.frederickcountymd.gov/index.aspx?nid=3342>.

At the March 1, 2012 BOCC meeting, the Board directed Staff to move forward to public hearing with all but one of the Priority 3 Draft Text Amendments. The BOCC directed Staff to take no action on the potential reduction in the maximum number of domestic animals permitted as an accessory use on residential properties as initially included in the draft Priority 3 amendments (and the BOCC March 1st packet). The Draft Priority 3 amendments were presented to the Frederick County Planning Commission (FCPC) for review and comment at a worksession on March 14, 2012. It has been noted below, where the FCPC provided initial comments for Board consideration. Based on FCPC and BOCC input, and public comment at these meetings, Staff edited the draft amendments to create the Priority 3 Zoning Ordinance Text Amendments (ZT-12-01 through ZT-12-13).

ANALYSIS

The overview section below provides an issue summary of the specific amendments to the zoning ordinance as provided in Exhibit 1 - Priority 3 Text Amendments (ZT-12-01 through ZT-12-13).

Farm Animals as Accessory Use to Residential Districts (ZT-12-01)

Over the last several months Staff has received inquiries regarding the minimum acreage requirement for keeping of farm animals as an accessory use on residentially zoned properties. Section 1-19-8.240(A)(2)(b) of the zoning ordinance currently permits “keeping of farm animals in residential districts on a lot containing 3 acres or more provided no pens, stalls or runs will be located closer than 50 feet of any lot line.”

Several issues have been identified with these current regulations, including beekeeping and the keeping of 4H animals. Beekeepers within the County, that have contacted Staff, support clarification to the county zoning regulations that would allow and protect beekeeping on residential lots of less than 3 acres. However, neighbors of existing beekeepers are requesting that the existing regulations be maintained. In addition, it has been noted by Staff in the past that the 3 acre minimum can limit the keeping of animals for children and families participating in 4H clubs if the property does not meet the minimum requirement. The existing regulations do not account for the age, size, and duration of the animal kept on the property, such as those associated with a 4H project where the animal is raised and then sold.

BFIA ZON 44 requests review and evaluation of this existing provision, for potential reduction in the minimum 3 acre requirement. Due to the complexity of the issues, the many potential individual property characteristics within the County, and opposing opinions associated with these existing regulations, staff recommends creation of a new ‘Limited agricultural activity’ land use term. The ‘Limited agricultural activity’ land use would be permitted as a special exception in all residential zones with review and approval required by the Board of Appeals. The term, and special exception requirements, would create a specific process for permitting the types of activities described in the above paragraph that do not meet the existing regulations for accessory uses on residential properties, or do not meet the definition of Farm or Agricultural Activity provided within the zoning ordinance.

At their meeting on March 1, 2012 the Board directed staff to move forward to public hearing with proposed amendments to create the ‘Limited agricultural activity’ land use permitted by special exception, and to include criteria to specifically address bees. In addition, the Board directed staff to conduct further research to determine how current regulations address odors related to the keeping of farm animals in residential districts, and whether the land use would be subject to nutrient management plan requirements.

Special exception criteria to specifically address bees have been included, and are further discussed below, under the heading of section 1-19-8.325 Limited Agricultural Activity in Residential Districts.

The Frederick County Code addresses odor in Chapter 1-3 Air Quality Control, section 1-3-6 Gas, Vapor, and Odor emissions where it is stated that “No person shall cause, suffer, allow or permit the discharge into the atmosphere of gases, vapors or odors beyond the property line in such a manner that a nuisance or air pollution is created.” In addition, Staff has added a new special exception criterion in section 1-19-8.325(C), further discussed below, to address this issue.

The Code of Maryland Regulations (COMAR) Title 15 Section 15.20.07.01 through .07 outline Agricultural Operation Nutrient Management Plan Requirements. The regulations require the development and implementation of nutrient management plans for a farm or agricultural operation. Based on the provisions in this section an agricultural operation means a business activity that “...produces an agricultural product, including livestock...” and “Has a gross annual income of \$2,500 or more, or has eight or more animal units.” Animal unit is a unit of measurement equivalent to 1,000 pounds of live animal weight.

Furthermore, 15.20.07.04(D) provides that an operator may request an exemption from the nutrient management requirements for certain activities including research, education, and demonstration. Subsection (F) specifically states that 4-H or other agricultural youth organization projects may be exempt in certain circumstances where the \$2,500 threshold is reached or exceeded.

Therefore, the operation conducted in conjunction with the keeping of farm animals may or may not be exempt from the nutrient management plan requirements depending on the specific number of animals, the amount of profit earned, and whether the operation is a part of a 4-H or other agricultural youth organization project. For these reasons, Staff encourages individuals keeping farm animals to contact the Maryland Department of Agriculture to ensure compliance with nutrient management plan regulations.

Lastly, the Board requested that Staff provide information regarding the potential processing of 'Limited agricultural activity' as a temporary special exception rather than a standard special exception. As provided in section 1-19-8.300 of the zoning ordinance, temporary special exceptions are valid for one year and may be renewed by the Board of appeals at the end of that time. If the use exists for 5 years, the Board is required to hold a hearing prior to the issuance of the renewal. At this time temporary special exceptions are indicated with the letter "T" in section 1-19-5.310 Use Table. The processing of 'Limited agricultural activity' as a temporary special exception is an option for processing of this land use. The temporary process will require the applicant to comply with a yearly review and approval by the Board of Appeals to ensure compliance with special exception criteria. If the approval is renewed for 5 consecutive years in a row then the Board of Appeals must hold a public hearing. However, this raises the issue of when a "temporary" special exception becomes permanent or something other than temporary.

At their meeting on March 14th, the Planning Commission discussed concerns in regards to the lack of minimum acreage requirements in the proposed criteria for the 'Limited agricultural activity'. Planning Commission concerns centered on the ability of the Board of Appeals to deny an application where the subject property contained insufficient acreage for the keeping of the number or type of proposed farm animals. Staff discussed the fact that there were many different situations and farm animals that might be addressed by the proposed use, and therefore, typical minimum acreage requirements would be difficult to craft for all of these potential situations.

As directed, Exhibit 1 – Priority 3 Text Amendments include the following amendments to address the keeping of farm animals on lots less than 3 acres as an accessory use in residential districts.

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

This existing section of the zoning ordinance would be amended to create the new land use term 'Limited agricultural activity' to be permitted in all residential zoning districts through the special exception process. At this time the processing is based upon the standard special exception process rather than the temporary special exception.

If the Board directs staff to process the 'Limited agricultural activity' as a temporary special exception, the land use term would be changed to 'Temporary limited agricultural activity' within section 1-19-5.310, with the processing mechanism reflected as 'E' for special exception.

ARTICLE VIII: SPECIFIC USE REGULATIONS

DIVISION 2. ACCESSORY USES

§ 1-19-8.240. ACCESSORY USES ON RESIDENTIAL PROPERTIES.

This existing section of the zoning ordinance would be amended to provide a cross reference to the newly created 'Limited agricultural activity' to accomplish the changes as discussed above and created within section 1-19-5.310 and section 1-19-8.325.

DIVISION 3. SPECIAL EXCEPTION USES

§ 1-19-8.325. LIMITED AGRICULTURAL ACTIVITY IN RESIDENTIAL DISTRICTS.

This newly created section will provide specific criteria for review and approval of the 'Limited agricultural activity' land use, in addition to the general special exception criteria located in section 1-19-3.210.

Subsection (A) duplicates existing criteria for keeping of farm animals on 3 acres or more (located in section 1-19-8.240(A)(2)(b)) and establishes setbacks for the activity. Subsection (B) requires adherence to other applicable provisions within the zoning ordinance. Subsection (C) is duplicated from existing home occupation provisions in section 1-19-8.240(A)(5)(a)(4) and requires that the use shall not cause any odor, dust, smoke, vibration or unreasonable noise which can be detected at or beyond the property line. Remaining provisions in subsection (D) specifically address beekeeping and were crafted based on review of peer county regulations as well as review of State and Federal (USDA) guidance.

The special exception process and the newly created criteria allow the Board of Appeals to review each application for a 'Limited agricultural activity' based on that particular location and set of circumstances.

ARTICLE XI: DEFINITIONS

DIVISION 1. DEFINITIONS

§ 1-19-11.100 DEFINITIONS.

To provide further clarification to Staff and the general public, a definition for 'Apiary', 'Bee Colony' and 'Limited Agricultural Activity' have been created within this existing section.

Limited Funeral Establishments (ZT-12-02)

A request has been received to re-consider allowing Restricted Funeral Establishments in the Resource Conservation (RC) zoning district as originally outlined in ZON 52, and included with the Priority 2 text amendment concepts.

In part, the request would allow embalming as an accessory use to a single family dwelling in the RC zoning district. The re-consideration has been included in the BFIA as ZON 58.

The original request was to permit a Restricted Funeral Establishment in the RC zoning district through the existing Home Occupation standards in section 1-19-8.240(A)(5). Section 1-19-8.240 provides general standards applying to all home occupations, and further provides limitations on home occupations with "no impact", and home occupations with "minor impact". The home occupation standards with minor impact permit a slightly more intensive operation, including employment of nonresident employees.

The information submitted with the original request asserted that the use is licensed by the Maryland Board of Morticians and Funeral Directors as outlined in the Code of Maryland Regulations (COMAR) Title 10 Department of Health and Mental Hygiene, and will only provide transportation, embalming/restorative, storage, dressing, casketing, cosmetology and related services for bodies in preparation for burial usually on behalf of funeral homes.

It was noted that although these businesses would be licensed, they would not be authorized or permitted to provide funeral services to the general public, such as religious ceremonies, viewings, processions, or retail sales of caskets or other funeral accessories but can provide a valuable service on a sub-contracting basis to established funeral homes.

In addition, the request states that there are no commercial activities associated with the proposed use other than the services provided to and for the bodies and there are no hazardous or toxic wastes or chemicals that pose a particular risk to the environment. The request provides that the RC zoning district is appropriate for the proposed use due to the typical large lot size and very low density residential character.

The BOCC considered the original request as part of the Priority 2 concepts presented by Staff as an Administrative Item on July 28, 2011. There were concerns discussed at that time (based upon available information) that the requested change was not consistent with current home occupation standards, as the current definition of home occupation found in section 1-19-11.100 of the zoning ordinance specifically excludes mortuary establishments as a permitted use. In addition there were concerns that permitting Restricted Funeral Establishments in this manner may confuse and permit expansion of crematory operations into the RC zone.

Since that initial meeting, the applicant presented further details about the operation to the BOCC. Based upon this information the applicant is requesting reconsideration of the issue. Staff has also gathered further details from the applicant and the Frederick County Health Department.

At their meeting on March 1, 2012 the BOCC considered all of this information and directed Staff to move forward to public hearing with amendments to create the 'Limited funeral establishment' land use. The 'Limited funeral establishment' would be permitted as an accessory to a Single-Family detached dwelling in the Resource Conservation zoning district. Accessory uses are administratively approved by the zoning administrator and may include specific criteria which must be met. The following amendments to the zoning ordinance, as provided in Exhibit 1, have been crafted to address the issue.

ARTICLE VIII: SPECIFIC USE REGULATIONS

DIVISION 2. ACCESSORY USES

§ 1-19-8.230.1 LIMITED FUNERAL ESTABLISHMENT ACCESSORY TO A SINGLE-FAMILY DETACHED DWELLING IN THE RC ZONING DISTRICT.

This new section of the zoning ordinance would be created to provide for a 'Limited funeral establishment' as an accessory use to a single family detached dwelling. Several criteria have been crafted based upon similar existing processes within the zoning ordinance.

The proposed criteria would provide direction regarding the activity and intensity permitted in association with the 'Limited funeral establishment', reduce potential conflicts with other existing land use terms within the zoning ordinance, limit impacts to surrounding properties, and attempt to bring the proposed use into compliance with the intended character of the RC zoning district.

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

Lastly, a definition for 'Limited funeral establishment' has been proposed based upon State regulation of this land use. A cross reference to accessory use provisions in section 1-19-8.230.1 provides consistency throughout the zoning ordinance.

Communication Towers (ZT-12-03)

Communication Towers are currently permitted in the zoning ordinance through the special exception process in the RC and A zoning districts (including subsequent site development plan review and approval), and through site development plan review and approval in the GC, ORI, LI, and GI zoning districts. Communication Towers are also permitted in the Mineral Mining floating zone and non-residential portions of the MXD floating zone.

Amendments to the zoning ordinance in 1999 created specific provisions to address Communication Towers permitted through site development plan review in section 1-19-8.420 Communication Towers, and by special exception in 1-19-8.332 Communication Towers in A and RC zoning districts.

The existing text in section 1-19-8.420 applies to all applications for communication towers (subsequent to special exception approval for those in the RC or A district) and includes a criterion that requires removal of the tower within 90 days if the tower ceases to be used for wireless communications for a period of 6 months. Companion language also requires a posting of acceptable monetary guarantee to assure removal of the tower under these circumstances.

As noted in ZON 59 of the BFIA, a request has been received to consider amendments to the existing provisions for Communications Towers to address those towers in existence prior to November 26, 1999.

The proposed changes would amend section 1-19-8.420.2(B) to require removal of communication towers in existence prior to 1999, if they cease to be used for wireless communications for 12 months.

Information submitted in support of the request states that older towers should be treated similarly to those which are approved today, meaning that they should be removed if not in service. According to the request, the removal of these older towers will minimize the visual blight on the landscape.

It should be noted that the requested amendments would be enforced subject to complaint, similar to other zoning ordinance violations. In addition, the existing text in 1-19-8.420.2(B) requiring posting of an acceptable monetary guarantee with the County, is conducted as the last step in the site development plan review process and therefore would not be applicable to those existing towers erected prior to November 26, 1999. Therefore, the funds required for enforcement of the provision would not be available for those towers erected prior to November 26, 1999. Lack of funding for removal of the tower makes enforcement of these requested revisions extremely difficult to enforce and potentially costly for the County.

In addition, the County generally limits 'reaching back' on prior approvals through regulatory means to limit their use.

Generally, structures erected in conformance with the law as it existed at the time the structure was erected are deemed lawful. In the event a subsequent change in the applicable law would not allow the structure to be erected as it currently exists, the structure would remain lawful as a non-conforming structure as provided for in section 1-19-4.220.

A non-conforming structure is lawful and allowed. Requiring removal of a non-conforming structure (communications tower or other structure) might result in a taking of property requiring compensation to the landowner. Lastly, Staff is unaware of a significant outcry regarding the presence of an inactive tower. To that end, staff does not recommend changes to these regulations.

At their meeting on March 1st the Board directed Staff to move forward to public hearing with the proposed amendments to the zoning ordinance to address this issue. The following amendments, as provided in Exhibit 1, were submitted to address the issue.

ARTICLE VIII. SPECIFIC USE REGULATIONS

DIVISION 4. PERMITTED USES

§ 1-19-8.420 COMMUNICATION TOWERS.

§ 1-19-8.420.2 CRITERIA

Amendments to this existing section would add text, as discussed above, to require removal of communication towers in existence prior to 1999, if they cease to be used for wireless communications for 12 months.

Bed and Breakfast in the Residential Zoning Districts (ZT-12-04)

In June of 2009 text amendment ZT-09-03 became effective, which included amendments that deleted the 'Boarding house or tourist home' land use term within the zoning ordinance, and replaced it with 'Bed and breakfast'. In addition, a definition was created for 'Bed and breakfast' within section 1-19-11.100.

The intent of the amendments was to update the terminology in the zoning ordinance and create a tiered system of transient lodging, with land uses such as County Inn and Hotel/motel representing more intensive types of lodging and the 'Bed and breakfast' land use representing less intensive lodging.

The zoning ordinance currently defines 'Bed and breakfast' (B&B) as "An owner-occupied residence, in which primarily sleeping accommodations are provided for compensation to transient guests in not more than four guest rooms. A B&B may include the provision of meals for overnight guests only. A B&B is not a home occupation. (See: Country Inn)."

The B&B land use is permitted by site development plan review in the Resource Conservation (RC), Agricultural (A), Village Center (VC), Mixed Use (MX) and General Commercial (GC) zoning districts where existing criteria in section 1-19-8.410 are met.

The RC and A zoning districts are generally of larger lot size and more rural in nature than the VC, MX, and GC zoning districts, and therefore associated impacts to neighboring properties in these zones would be minimized. The VC and MX districts permit residential and commercial development, increasing the level of expected intensity of permitted land uses. The GC zoning district permits commercial development and the majority of development permitted in this district would not be impacted by the uses or activities associated with a B&B.

However, ZON 61 requests consideration of permitting a B&B in the R3 zoning district through the special exception process due to a potential need for additional opportunities for overnight stay for visitors to the County.

Staff has reviewed the existing regulations for transient housing and the specific B&B requirements, as well as B&B processes and companion regulations in other jurisdictions.

Based on this review, Staff would recommend evaluation of which residential zoning districts, in general, are appropriate for B&B establishments rather than considering whether the use should be permitted in only the R3 zone.

In this instance special exception processing, rather than site development plan review, seems to be the appropriate mechanism due to the potential impact of a B&B on the surrounding neighborhood. Where a use permitted by site development plan review is permitted by right (where certain criteria are met), a special exception requires a case-by-case analysis of adverse affect on neighboring property based on specific criteria. This allows the Board of Appeals to review each application for a B&B based on that particular location and set of circumstances.

Not all residential neighborhoods may be appropriate for a B&B and the special exception process will address this issue more appropriately than site development plan review. In addition, special exception or conditional use is the processing mechanism used by the majority of our comparison jurisdictions (Carroll County, Harford County, Howard County, and the City of Frederick) for review of a B&B (or similar use) within a residential zoning district.

At their meeting on March 1st, the Board directed Staff to move forward to public hearing with amendments to permit a B&B processed by special exception in all residential districts, as well as amendments to existing B&B provisions as recommended by Staff.

The following amendments to the zoning ordinance, as provided in Exhibit 1, address this request.

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

This existing section has been amended to provide for the processing of the 'Bed and breakfast' land use by special exception in all residential zoning districts.

ARTICLE VI: DISTRICT REGULATIONS
DIVISION 2. PARKING AND LOADING
§ 1-19-6.220. PARKING SPACE REQUIREMENTS AND DIMENSIONS.

This existing section has been amended to provide a cross reference within the parking standards to the newly created special exception criteria in section 1-19-8.326.

ARTICLE VIII: SPECIFIC USE REGULATIONS
DIVISION 3. SPECIAL EXCEPTION USES
§ 1-19-8.320. GENERALLY.

Staff recommends amending this existing section to provide conformance with the site development plan review procedures located in section 1-19-3.300 through 1-19-3.300.4 which provides for 3 site development plan review types. This amendment will provide increased flexibility in processing and align existing text with current practice.

ARTICLE VIII: SPECIFIC USE REGULATIONS

DIVISION 3. SPECIAL EXCEPTION USES

§ 1-19-8.326. BED AND BREAKFAST IN THE RESIDENTIAL ZONING DISTRICTS.

The existing site development plan review criteria in section 1-19-8.410 have been duplicated and placed in this new section which provides for review of Bed and Breakfast within the residential zoning districts through the special exception process.

As part of this process, Staff recommends deletion of the minimum lot size provision in both the existing regulations and proposed regulations. The A and RC zoning districts are large lot districts by nature, and the minimum 1 acre lot size is in conflict with intended development patterns in the VC, GC, and MX districts.

Minimum lot size requirements are provided for all zoning districts in a separate section of the zoning ordinance (1-19-6.100). The minimum lot size for the district would dictate the development pattern, as well as the parking requirements. The existing definition of B&B restricts the number of guest rooms to four and provision of meals to overnight guests only. Landscaping requirements will be addressed at the time of site development plan approval, adding buffering and screening where needed.

ARTICLE XI: DEFINITIONS

DIVISION 1. DEFINITIONS

§ 1-19-11.100 DEFINITIONS.

Lastly, Staff recommends editing the existing definition of B&B to refer to an owner-occupied single family detached dwelling rather than an owner occupied residence. This change will provide consistency between the definition and the Use Table in section 1-19-5.310, and provide further clarity regarding development of the proposed land use.

Signage for Professional Office As Residential Accessory Use (ZT-12-05)

The zoning ordinance, in section 1-19-8.240(A)(6), currently permits professional offices as an accessory use to residential properties where specific criteria have been met. However, the existing provisions do not provide for permitted signage associated with the accessory use.

Staff initiated this item, ZON 62, with the intent of providing clearer direction regarding the amount of signage permitted in conjunction with this accessory use.

At the March 1st worksession, the Board directed Staff to move forward to public hearing with the proposed amendments, as provided in Exhibit 1, to address this issue.

ARTICLE VI: DISTRICT REGULATIONS

DIVISION 3. SIGNS

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

A new entry in the existing sign regulations table has been created, 'Professional office as accessory use on residential properties' as item (5a), to permit these signs with a maximum size of 6 square feet and maximum height of 6 feet.

These provisions are somewhat similar to established sign allotments for sale or rent directional signs, and the height permitted for home occupation signs.

In conjunction with the revisions to address professional office signs, amendments to address setbacks associated with home occupation signs have also been included. The existing sign setbacks have been difficult to meet at certain times in the past due to existing structure placement and differing setbacks within existing zoning districts. The proposed changes to item (5) would standardize and reduce setbacks for home occupation signs providing increased flexibility in sign placement and standardize the maximum height in non-residential districts.

The proposed changes will provide consistency for signage associated with this type of development and provide clear direction for staff and the public.

Video Lottery Facility (ZT-12-06)

The BOCC 2012 Legislative Package includes a legislative proposal to permit video lottery terminals (slots) for use by local charitable organizations.

The proposal supports increased efforts by the local charitable organizations in Frederick County to raise funds for use in the community as opposed to using taxpayer dollars to achieve the same results. However, the zoning ordinance currently prohibits video lottery facilities in Frederick County and therefore exists in direct conflict with the current BOCC proposal. Therefore, as noted in ZON 63, consideration should be given to removing the restrictions that prohibit video lottery terminals within the County to align the zoning ordinance with the BOCC legislative package.

As directed by the BOCC at their March 1st worksession, amendments to delete text within sections 1-19-5.310 Use Table, 1-19-8.800 Prohibition of Video Lottery Facilities, and 1-19-11.100 Definitions (as proposed in Exhibit 1) will move forward to public hearing to address this issue.

Transit Signage (ZT-12-07)

As outlined in the BOCC 2010-2014 Strategic Plan Goal #6, Objective 3 TransIT Services of Frederick County is in the process of developing a program to lease advertising space on passenger bus shelters as a revenue source to offset the cost of operating local transit services. One of the first steps in implementing this objective, as noted in ZON 64, is a text amendment to the zoning ordinance which would permit this type of signage within the right-of-way where it is currently prohibited.

At the March 14th worksession, the Planning Commission expressed concern that the County fully consider the content of signs that will be permitted on the transit shelters. The concerns centered on precluding offensive messages or text that may be placed on the shelters due to the inability to regulate content of signage. The Planning Commission discussed the desire for full consideration of this issue prior to implementation of this program.

At their worksession on March 1st the BOCC directed Staff to move forward to public hearing with the following amendments to the zoning ordinance, as provided in Exhibit 1, to address this issue.

ARTICLE VI: DISTRICT REGULATIONS
DIVISION 3. SIGNS
§ 1-19-6.310. GENERAL REGULATIONS.

Subsection (A) of this existing section currently provides that no sign, other than an official traffic sign will be located within the right-of-way lines of any street, except subdivision, community, and temporary real estate signs. To implement the advertising program, bus shelter signage has been added to this existing language as exempt signage.

Piecemeal Zoning Map Amendments (ZT-12-08)

As noted in the zoning ordinance, the zoning map may be amended by changing the zoning district boundaries or by changing from one zoning district to another. This act is accomplished through a zoning map amendment. The zoning ordinance currently provides for a zoning map amendment through the floating zone reclassification or the individual zoning map amendment process.

Zoning ordinance section 1-19-3.110.2 restricts submission of an application for an individual zoning map amendment to the months of April and October, although the floating zone process is not restricted in this manner.

This existing restriction on application submission is legacy text that was most likely instituted to provide Staff with a tool to manage the significant number of applications that were received at that time. Over the years the number of applications has decreased and this text is no longer needed.

At their worksession on March 1st the BOCC directed Staff to move forward to public hearing with the following amendments to the zoning ordinance, as provided in Exhibit 1, to address this issue.

ARTICLE III: REVIEW AND APPROVAL PROCEDURES
DIVISION 1. ZONING AMENDMENTS
§ 1-19-3.110 ZONING MAP AMENDMENTS
§ 1-19-3.110.2 APPLICATION.

The April and October limitation found in this existing section, as noted in ZON 65, has been deleted which would permit an application for an individual zoning map amendment in any month of the year.

MPDUs in the R1 Zoning District (ZT-12-09)

The County Code and zoning ordinance provide development density bonuses for developments including 25 units or more on public water and sewer when providing moderately priced dwelling units (MPDU). The purpose of the MPDU program is to increase the supply of moderately priced housing units as a function of the development process. However, the current provisions do not apply within the R1 zoning district, although there are developments reflecting R1 zoning and County water and sewer. The MPDU program was recently changed to allow for a “fee-in-lieu” of building the MPDU’s on-site. If required for R1 developments there is potential for increased revenue for this program.

At their worksession on March 1st the BOCC directed Staff to move forward to public hearing with the following amendments to the zoning ordinance, as provided in Exhibit 1, to address this issue.

§ 1-6A-5. REQUIREMENT TO BUILD MPDU'S; AGREEMENTS; ALTERNATIVES.

The MPDU program is intended to increase the county's supply of moderately priced housing units as a function of the development process. This existing section of the County Code outlines requirements and density bonuses as permitted as part of the MPDU program. The R1 district has been added as a zoning district where density bonuses are permitted. This language will work together with the text as proposed below in section 1-19-8.620.5 to provide for MPDU's within the R1 district.

DIVISION 6. OTHER

§1-19-8.620.2 SCOPE AND REQUIREMENTS.

§1-19-8.620.3. DENSITY BONUS.

§1-19-8.620.5. LOT AREA, WIDTH AND YARD MEASUREMENTS.

These existing sections of the zoning ordinance provide direction regarding an increase in density for specific zoning districts above the standard number of dwelling units and a reduction in certain area and dimensional requirements where certain requirements are met.

Existing provisions for the previously mentioned increase and reductions are provided for each zoning district within section 1-19-8.620.5.

The amendments would provide the opportunity for MPDUs (as well as the density bonus option) within the R1 zoning district or allow with the 'fee-in-lieu' option. The proposed design requirements (setbacks, lot width, minimum lot area, and height) have been crafted based on similar reduction rates for other existing zoning districts, while keeping in mind the unique characteristics of the R1 zoning district.

Mineral Mining Floating Zoning District (ZT-12-10)

The zoning ordinance includes a mineral mining floating zone in section 1-19-10.400 with the purpose of providing for the development of needed mineral resources in areas where such resources exist subject to adequate safeguard for the conservation of the environment.

The existing regulations require coordination with the State of Maryland surface mining permit process. Section 1-19-10.400.2 General Provisions subsection (C) Application Process, item (1)(e), states that the applicant shall submit "*A copy of the application for surface mining permit and evidence of its filing with the State of Maryland.*" According to information submitted to Staff, the Maryland Department of the Environment (MDE) permit application procedure requires proof that the land to be used for the mining operation, already has the appropriate zoning.

MDE confirmed that the surface mining permit applicant may apply for the permit prior to the approved zoning being applied to the subject property.

However, the zoning must be approved and applied prior to approval of the surface mining permit. An applicant applying for the surface mining permit prior to zoning approval, risks the loss of all MDE application fees and their time if the zoning is denied. These conflicting regulations cause a timing issue for those mining operations attempting to complete long-range planning. As noted in ZON 68 a request has been received to consider revising the zoning ordinance to address this issue.

In reviewing the mineral mining floating zone, Staff noted several areas where existing regulations could be amended to improve clarity. For example, although, the application process provisions in section 1-19-10.400(C)(1)(b) require submission of a site plan, remaining sections of the Code do not provide clear direction on gaining site development plan approval. In past practice, site development plan approval is the process utilized to ensure the proposed development complies with the Development Standards contained in existing section 1-19-10.400(D).

In addition, an effort has been made through past text amendments to create consistency in layout and function within the zoning ordinance. For this reason, the mineral mining floating zone has been updated to provide consistency with other more recently updated floating zones.

Amendments to the zoning ordinance as proposed in Exhibit 1 would address these issues. As part of this process existing text, for the most part, has remained intact and has been rearranged to provide consistency with layout and function to align this district with other existing floating zoning districts within the ordinance.

In addition, the conflicting permit requirements in existing section 1-19-400.2(C)(1)(e) have been deleted and existing text in section 1-19-10.400.2(E)(4) has been replaced with a statement that all mineral mining operations shall conform to State of Maryland permits and other approvals. These amendments will address the inconsistencies and safeguard that the operation is required to comply with State, Federal or other approvals.

Lastly, transitional provisions are proposed in section 1-19-10.400.8 to provide conformity to those Mineral Mining operations depending on the specific approvals achieved at the time of ordinance adoption. At their worksession on March 1, 2012, the BOCC directed Staff to move forward to public hearing with the proposed amendments to address this issue.

Accessory Structures on Residential Properties (ZT-12-11)

The existing zoning ordinance addresses the size and location of accessory structures on residential properties. The provisions are located in two sections of the zoning ordinance (section 1-19-4.300.2 and 1-19-8.240) which causes confusion and possibility for error when searching for the correct provisions and when updates or edits are made.

Staff has initiated this issue to provide clear guidance in one location within the zoning ordinance, as noted in ZON 69.

Staff recommends duplicating and moving the provisions in section 1-19-4.300.2 subsection (A) (4) & (5) to section 1-19-8.240 and then deleting section 1-19-4.300.2 from the zoning ordinance to address this issue.

In addition, a cross reference has been added to 1-19-4.300.1 subsection (D), stating: "See also section 1-19-8.240 Accessory Structures on Residential Properties, in addition to the regulations in this section" to provide consistency throughout the zoning ordinance.

At their worksession on March 1, 2012, the BOCC directed Staff to move forward to public hearing with these proposed amendments.

Family Day Care Home (ZT-12-12)

The definition of Family Day Care Home, in section 1-19-11.100, provides that the use is permitted on residential properties as a home occupation with minor impact (section 1-19-8.240 (A)(5)(c)). In addition, the definition of Family Day Care Home restricts the number of children permitted in association with this use. The existing zoning ordinance regulations were created based upon State of Maryland regulations and parameters.

The State of Maryland recently revised the regulations related to Family Day Care Home, including a terminology change as well as an increase in the number of permitted children, creating inconsistencies with existing County provisions.

As described in ZON 70, a request has been received to amend County regulations to provide consistency with recent State amendments.

As proposed in Exhibit 1, the existing definition of 'Family Day Care Home' has been deleted and replaced with 'Family Child Care Home', and specific numbers have been eliminated to provide consistency with State provisions. The removal of specific numbers from the existing definition together with the addition of "as amended" will provide consistency between local and state regulations and remove the necessity of updating local regulations each time the number of permitted children is amended in State provisions.

At their worksession on March 1, 2012, the BOCC directed Staff to move forward to public hearing with these proposed amendments.

Farm Winery and Farm Brewery Tasting Room (ZT-12-13)

The existing zoning ordinance regulations permit the Farm Winery and Farm Brewery land uses in the Resource Conservation (RC) zoning district. However, the current regulations do not permit Farm Winery Tasting Room or Farm Brewery Tasting Room, land uses often associated with the winery or brewery. A request has been received (ZON 71) to consider permitting these tasting rooms in the RC zoning district through the site development plan review process.

Amendments to address this issue, as proposed in Exhibit 1, would include edits to section 1-19-5.310 Use Table to permit tasting rooms through the site development plan review process 'PS' in the RC zoning district. The proposed amendments would align the approval process for tasting rooms in the RC zoning district with the existing approval process for tasting rooms in the Agricultural zoning district.

At their worksession on March 1, 2012, the BOCC directed Staff to move forward to public hearing with these proposed amendments.

RECOMMENDATION

Staff requests a recommendation from the Planning Commission on each of the individual proposed Priority 3 Zoning Ordinance Text Amendments (ZT-12-01 through ZT-12-13).

EXHIBIT 1 - Priority 3 Text Amendments

PLANNING COMMISSION ACTION

MOTION TO RECOMMEND APPROVAL

I move that the Planning Commission **RECOMMEND APPROVAL** of the proposed text amendment [insert case number ZT-12-XX] based on the findings and conclusions of the staff report, and the testimony, exhibits, and documentary evidence produced at the public meeting.

MOTION TO RECOMMEND DENIAL

I move that the Planning Commission **RECOMMEND DENIAL** of the proposed text amendment [insert case number ZT-12-XX], based on the following:

1. Findings and conclusions of the staff report
2. Testimony, exhibits, and documentary evidence produced at the public meeting
3. [insert findings]

MOTION FOR ADDITIONAL RECOMMENDATION

I move that the Planning Commission make the following **ADDITIONAL RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS IN REGARDS TO TEXT AMENDMENT** [insert case number ZT-12-XX] [insert new condition or modification].