COUNTY OF YORK
MEMORANDUM

DATE: October 8, 2001 (BOS Mtg. 10/16/01)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Application No. ZT-60, York County Planning Commission - Zoning Ordinance "Housekeeping" Amendments

This application has been sponsored by the Planning Commission to allow consideration of various "housekeeping" amendments to the Zoning Ordinance. Some of the proposed amendments are needed to keep the Ordinance consistent with recent State Code changes. Others are proposed because, during the day-to-day administration of the Ordinance, staff continues to discover technical "glitches" in certain provisions that seem to be imposing unintended consequences. And finally, some of the proposals are suggested to address issues that have been discussed either by the Planning Commission or the Board of Supervisors in connection with other zoning applications (for example, the proposed requirements for "full cut-off" light fixtures). None of these issues have been of such significance that they needed to be sponsored as individual amendment requests; however, the list has now grown to the point that the Planning Commission considered it appropriate to initiate this application.

The proposed amendments, as recommended by the Planning Commission, are contained in the attached proposed Ordinance. The recommended changes are discussed in the following summary:

Summary of Issues and Suggested Amendments

1. 24.1-104 - *Definitions*

Revise and/or add definitions of the following terms to provide clarification and eliminate possible need for administrative interpretations:

Dwelling, accessory unit – the proposed revision will clarify what constitutes an accessory apartment and indicate that a kitchen is not necessary in order for a unit to be considered an "accessory apartment."

Full cut-off luminaire – this proposed definition is associated with the proposal to add language requiring the use of this type of fixture in an effort to prevent / minimize light spill-over onto properties and rights-of-way.

Nightclub – the discussion that occurred during consideration of the marinas text amendment pointed out the need to clarify the definition of nightclub and also to provide a listing for such uses in the Table of Land Uses. The proposed revision identifies the two characteristics (sale of alcoholic beverages and late night operations) that make it advisable to distinguish such uses and give close consideration to the suitability of proposed locations.

Surface Mine – the proposed revision would eliminate the "loophole" that allows major excavation work under the guise of constructing an accessory pond/lake. The proposal would set the maximum size of an excavation for such purpose at 1-acre and would strengthen the administrative authority to prevent commercial borrow operations.

The Planning Commission's recommendation also included a proposal to add several definitions associated with *Continuing Care Retirement Facilities* including *Assisted Living Facility; Congregate Care Facility; and, Independent Living Facility*. However, since the Planning Commission's action, several questions requiring additional research have been posed to staff concerning these types of facilities. Staff will not be able to complete this research in time for the October 16th hearing. Therefore, I have not included these proposed definitions in the attached proposed Ordinance. Once the staff has completed its research and compiled the additional information, it will be forwarded to the Board for consideration and possible sponsorship of a follow-up amendment.

2. 24.1-113(c)(2) - *Planning Commission Review of Amendments*

As was noted recently during consideration of the marinas text amendment, the State Code now provides that the Planning Commission may take up to 100 days (rather than 90 days) to report its recommendation to the Board of Supervisors. Making this slight change would provide the opportunity for the Commission to deliberate on an issue at up to three consecutive regular monthly meetings (if it needed that amount of time) before having to send a recommendation to the Board (or being considered to have recommended approval by default). This amendment would increase the Commission's ability to thoroughly study complex issues without needing to schedule a special meeting. The proposed amendment would also insert language from the Code of Virginia indicating that the Board may prescribe a shorter review period if it so desires (on a case-by-case basis).

3. 24.1-114(b)(3) - *Conditional Zoning*

The proposed revision would insert new language added to Section 15.2-2298 of the Code of Virginia pertaining to limitations on "reasonable conditions" and specifically disallowing any proffer requiring an assessment for maintenance of a publicly-owned facility.

4. 24.1-115(c) *Special Use Permits*

Section (1): This proposed revision is intended to specifically define what is meant by the term "establish" as it used in connection with automatic termination of a use permit if not "established" within two (2) years of the date of Board approval. Staff and the Planning Commission recommend that a use involving building construction be considered "established" if at least the foundation is complete and a building permit is valid and continues to be diligently pursued. This

threshold would recognize the possibility that a large-scale project authorized by Special Use Permit (e.g., a "big-box" development) might not be complete and occupied, even though it has been pursued diligently since use permit approval (e.g. – through site plan preparation, review and approval, building plans preparation, review and approval, site work, etc.). Strict interpretation of the term "establish" in the current context would require the use to be complete and in operation within the two-year period. Staff does not believe the provision was intended to void a permit for a use being diligently pursued and, therefore, recommends insertion of the clarifying language.

Section (3): This proposed revision is intended to make it more clear that any expansion of a Special Permit Use that has become *nonconforming* is subject to the limitations of Article VIII (Nonconforming Uses). Additional clarifications are recommended concerning uses which once required a special use permit but no longer do. The suggested language indicates that the use permit conditions associated with the use would continue in effect unless they were more restrictive than those that would apply to the use in a "matter-of-right" status.

5. 24.1-252 - *Access*

Revised language is proposed to clarify that the intent of this section (as it was originally developed in 1995) is to require special review and consideration of *non-residential access* to a residential subdivision street (i.e., a street platted and constructed in conjunction with the development of a residential subdivision), in contrast to other Secondary System roads that happen to provide access to residential uses but which were not created as part of a residential subdivision (e.g., Lakeside Drive, Burts Road, etc). Also, language is proposed to clarify that access to a use is considered part of the use and requires an appropriate zoning classification (i.e., an equivalent or a greater intensity), unless it is over a public right-of-way. This proposed change adds back into the Ordinance language that was inadvertently dropped in the 1995 comprehensive amendments. This is intended to make it clear, for example, that a commercial driveway cannot be established across residentially zoned property. (Note: the language recommended by the Planning Commission has been adjusted slightly to make it clear that access through a higher intensity zoning classification is acceptable).

6. 24.1-260(f) - *Site Lighting* (new)

This proposed new section would require any new or modified land use or development to use "full cut-off" lighting fixtures compliant with the standards established by the Illuminating Engineering Society of North America. The provisions would apply to any new fixture with an intensity level greater than 3,000 initial lumens. The 3,000 lumens threshold is recommended in order to exempt typical residential lighting. In addition, exemptions are recommended for various other types of lighting applications (emergency, decorative, security, etc.). These provisions would not require the preparation of special lighting plans and studies as long as documentation is provided to indicate the use of a full cut-off fixture (i.e., pictures/specifications from a lighting catalog, etc.)

7. 24.1-271 - *Residential Accessory Uses*

Language is proposed in the first paragraph of this section to make it clear that the establishment of accessory uses and structures is dependent on the commencement of the principal use or the commencement and continuation of construction on the principal structure. This proposed language more clearly states what is inferred by definitions and has been the practice in York County; however, it also proposes the construction of fences be exempt from this rule to ensure that fences constructed for security or other reasons are not prohibited.

Section (h) is proposed to be modified to address commercial vehicle parking. This proposed language codifies the currently implied intent to limit commercial vehicle parking (on private property, as distinct from parking on a right-of-way) to those vehicles used by the occupant of the principal dwelling as transportation to and from their employment and having a load capacity of 1-ton or less.

Section (j) is proposed to be modified to allow more flexibility in the location and construction of privacy fences on lots that have more than one street frontage and to allow flexibility in the provision concerning the "finished side" of the fence. The proposed language would allow a case-by-case determination on multiple frontage lots so that 6-foot fences could be erected to provide privacy in "front yards" (by definition) that function as side or rear yards based on the orientation of the building. In addition, the "good-side-out" exception would provide a way to recognize topographic conditions, adjacent land use conditions or other extenuating circumstances that would make it unnecessary to turn the finished side of the fence out.

8. 24.1-272 - *Commercial / Industrial Accessory Uses*

Identical language to clarify timing of establishment / construction and to provide flexibility in orienting the "finished" side of fences.

9. 24.1-283(e) and (g) - *Home Occupations / Home Occupations w/ Non-resident Employee*

This proposed adjustment is intended to restore the original intent of these sections by deleting subsection (g) and inserting the language as a new subparagraph (3) under subsection (e). This change will make home occupations with non-resident employees working on the site subject to the two-year time limit (which was the original intent when this section was first adopted in 1985). This requirement was inadvertently set out as a separate subsection when the comprehensive ordinance amendments were adopted in 1995, which makes the limitation applicable to all home occupations unless specifically stated otherwise in a use permit approval. The theory behind the requirement is that a home occupation that has grown to the extent of having non-resident employees on site should begin to look toward growing into commercially-zoned space within a two year period.

10. 24.1-302 - *Uses Not Listed*

Correct the section reference (for Prohibited Uses) to read section 24.1-307, rather than 24.1-306.

11. 24.1-306 - *Table of Land Uses*

It is recommended that listings be provided for the following uses which are not currently identified in the Table:

- *Bingo Hall* – this proposed listing would provide a specific reference to this use, thus avoiding the need for any administrative determination as to how it should be categorized. This is the category under which the County's only existing bingo hall was authorized.

- *Catering Kitchens/Services* - although not specifically listed, these types of uses have been authorized in the County under an administrative interpretation that they are similar to carry-out/delivery-only restaurants. Separate listing is proposed in order to reflect this interpretation and provide guidance to prospective businesses.

- *Nightclub* – the discussion on the marinas text amendments pointed out that "nightclubs" were a defined, but not listed, land use. This proposed listing would make the establishment of new "nightclubs" subject to a use permit requirement, primarily because of the potential for late-night impacts on nearby residential areas.

- *Commercial Reception Hall / Conference Center* – The Table of Land Uses currently provides a listing for "Public/Semi-Public Conference Center" but there is no similar listing for commercial facilities. This proposal would establish such uses as Special Permit uses in the NB and LB districts and as Permitted uses in the GB and EO districts.

- *Taxi or Limousine Service* – This type of use is not specifically mentioned in the Table of Land Uses. The proposed listing would establish the use as Permitted in the GB and IL zoning districts.

- *Towing Service/Auto Storage or Impound Yard* – These types of uses are not automobile graveyards, but they could transform to that if not carefully monitored. Therefore, it is proposed that they be listed as by Special Permit uses in the IL and IG districts.

It should be noted that the Planning Commission's recommendation also included a proposal to establish listings for the several types of "continuing care retirement facilities." However, as noted above in the discussions concerning Definitions, staff is conducting additional research on the issue of continuing care retirement facilities in response to questions raised since the Commission's action. Therefore, I have deleted the recommendations concerning these types of facilities from the proposed Ordinance pending preparation of a follow-up report for the Board's consideration.

12. 24.1-443 - *Standards for Flea Markets*

The proposed amendment indicates that a Special Use Permit, rather than Temporary Administrative Permit, is required. This change eliminates an inconsistency between this section and the Table of Land Uses set out in Section 24.1-306, where it indicates that flea markets require a Special Use Permit.

13. 24.1-601(c) - *Off-Street Parking*

This proposed revision would stipulate that parking requirements for *bingo halls*, in addition to *theaters*, must be separately calculated as a principal use when located in a shopping center. This recommendation is based on the heavy individual parking demands associated with bingo halls. Staff proposes this change in recognition of the parking problems that have continually plagued the Grafton Shopping Center since the bingo establishment began operation. In that particular case, parking availability was calculated based on the overall center; however, the bingo operation has had significantly greater parking generation than would a typical shopping center use.

14. 24.1-701 - *Signs*

This proposed minor amendment to the definition of "political sign" has been recommended by the County Attorney to ensure consistency with recent Court decisions. The amendment clarifies that political signs can refer to candidates or to issues.

15. 24.1-703 - *Signs*

Correct a scriveners error in the heading of the table by changing "Limitation Type" to "Illumination Type."

16. 24.1-704 - *Signs*

This proposed revision is intended to clarify that the limitation on political headquarters signs applies only to those signs which are in excess of the signage otherwise allowable on the subject parcel. In other words, political headquarters signs can be allowed even if the parcel has already used its maximum sign allowance.

17. 24.1-707 - *Signs*

This proposed change, as recommended by the County Attorney, will ensure consistency with recent Court decisions. It would eliminate the requirement for removal of Exempt political signs within seven (7) days of an election.

18. 24.1-805(c) - *Nonconforming Uses*

This proposed language provides reference to the specific section that regulates modifications of special uses which become nonconforming uses. It is a companion to the changes proposed in Section 24.1-115 c)(3). The current wording can be interpreted to give such uses greater rights that other nonconforming uses, which seems contrary to good zoning practice.

19. 24.1-901 - *Appeals*

The proposed revisions reflect recent changes in the Code of Virginia

20. 24.1-903 - *Appeals*

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Planning Commission Recommendation

The Planning Commission considered these proposed amendments at its meeting on September 12, 2001 and, subsequent to conducting a public hearing, voted 5:0 to recommend approval.

County Administrator Recommendation

These proposed amendments will help clarify several sections of the Zoning Ordinance that are open to debate and interpretation. In addition, the amendments will address certain provisions that are having unintended effects. Finally, the amendments will insert new provisions to deal with certain issues and circumstances not currently covered by the Ordinance. I believe that the amendments are consistent with good zoning practice and, as did the Planning Commission, I recommend approval (with the exception of the proposals concerning continuing care retirement facilities). This can be accomplished thorough the adoption of proposed Ordinance No 01- 20.

Carter/3337:jmc
Attachments

- Excerpts from unapproved Planning Commission minutes dated September 12, 2001
- Proposed Ordinance No. 01-20