



**REGULAR MEETING
FREDERICK COUNTY BOARD OF SUPERVISORS
WEDNESDAY, NOVEMBER 13, 2019 AT 7:00 P.M.
BOARD ROOM, COUNTY ADMINISTRATION BUILDING
107 NORTH KENT STREET, WINCHESTER, VIRGINIA**

Planning Commission Business – Public Hearing

- 1. AN ORDINANCE AMENDING THE FREDERICK COUNTY CODE, CHAPTER 165 ZONING, ARTICLE I GENERAL PROVISIONS; AMENDMENTS; AND CONDITIONAL USE PERMITS, PART 101 – GENERAL PROVISIONS §165-101.02 DEFINITIONS AND WORD USAGE; ARTICLE II SUPPLEMENTARY USE REGULATIONS; PARKING; BUFFERS; AND REGULATIONS FOR SPECIFIC USES, PART 204 – ADDITIONAL REGULATIONS FOR SPECIFIC USES §165-204.26 PUBLIC UTILITIES; ARTICLE IV AGRICULTURAL AND RESIDENTIAL DISTRICTS, PART 401 – RA RURAL AREAS DISTRICT, §165-401.02 PERMITTED USES, PART 402 – RP RESIDENTIAL PERFORMANCE DISTRICT, §165-402.02. PERMITTED USES; PART 403 – MH1 MOBILE HOME COMMUNITY DISTRICT, §165-403.02 PERMITTED USES; ARTICLE V PLANNED DEVELOPMENT DISTRICTS, PART 502 – RESIDENTIAL RECREATIONAL COMMUNITY DISTRICT, §165-502.04 PERMITTED USES; ARTICLE VI BUSINESS AND INDUSTRIAL DISTRICTS, PART 602 – B1 NEIGHBORHOOD BUSINESS DISTRICT, §165-602.02 ALLOWED USES, PART 603 – B2 GENERAL BUSINESS DISTRICT §165-603.02 ALLOWED USES, PART 604 – B3 INDUSTRIAL TRANSITION DISTRICT, §165-604.02 ALLOWED USES, PART 606 – M1 LIGHT INDUSTRIAL DISTRICT, §165-606.02 ALLOWED USES, PART 608 – EM EXTRACTIVE MANUFACTURING DISTRICT, §165-608.02. PERMITTED USES, PART 609 – HE HIGHER EDUCATION DISTRICT, §165-609.02 PERMITTED USES. REVISION TO THE FREDERICK COUNTY ZONING ORDINANCE TO INCLUDE A DEFINITION FOR PUBLIC UTILITIES THAT INCLUDES UTILITY-SCALE SOLAR POWER GENERATING FOR PUBLIC UTILITIES THAT INCLUDES UTILITY-SCALE SOLAR POWER GENERATING AND AMENDMENTS TO THE SUPPLEMENTAL USE REGULATION FOR PUBLIC UTILITIES. (MR. CHERAN)**

- 2. AN ORDINANCE AMENDING THE FREDERICK COUNTY CODE, CHAPTER 165 ZONING, ARTICLE I GENERAL PROVISIONS; AMENDMENTS; AND CONDITIONAL USE PERMITS, PART 101 – GENERAL PROVISIONS §165-101.02 DEFINITIONS AND WORD USAGE, PART 103 – CONDITIONAL USE PERMITS §165-103.03 CONDITIONS; ARTICLE II SUPPLEMENTARY USE REGULATIONS; PARKING; BUFFERS; AND REGULATIONS FOR SPECIFIC USES, PART 204 – ADDITIONAL REGULATIONS FOR SPECIFIC USES, §165-204.32, COUNTRY GENERAL STORE WITHOUT FUEL SALES;**

ARTICLE IV AGRICULTURAL AND RESIDENTIAL DISTRICTS, PART 401 – RA RURAL AREAS DISTRICT, §165-401.02 PERMITTED USES, §165-401.03 CONDITIONAL USES. REVISION TO THE FREDERICK COUNTY ZONING ORDINANCE THAT THE CONDITIONAL USE IN THE RA DISTRICT IS THAT THE USES, AND SCALE OF THE USES, ARE APPROPRIATE FOR THE ZONING DISTRICT IN WHICH THEY ARE IDENTIFIED. (MR. CHERAN)

“Only Planning related items are identified above. The full Board of Supervisors Agenda is located on the Board of Supervisors homepage under Meeting Agenda on the Frederick County Webpage”

Planning Commission Business
Public Hearings

Item No. 1



MEMORANDUM

TO: Frederick County Board of Supervisors

FROM: M. Tyler Klein, AICP, Senior Planner 

SUBJECT: Ordinance Amendment – Public Utilities including utility-scale solar power generating facilities – Public Hearing

DATE: November 5, 2019

This is a proposed amendment to Chapter 165 – Zoning Ordinance to provide:

1. A definition for “Public Utilities” that includes utility-scale solar power energy generating facilities;
2. A definition for “decommissioning” and “utility-scale solar power generating facilities,” consistent with the *Code of Virginia*; and
3. Additional regulations for specific uses that requires utility-scale solar generating energy facilities to make arrangements, including financial security, for decommissioning consistent with/as required by the *Code of Virginia*, and site plan review/approval only for utility-scale solar power generating facilities.

The above changes to the supplemental regulations for specific uses section does not affect current public utilities, including water/sewer treatment and distribution facilities.

The General Assembly amended the Code of Virginia (§15.2-22.41.2) to include decommissioning of solar energy facilities effective July 1, 2019. Previously, the County Attorney and Staff provided a determination that was shared with the Board of Supervisors on July 2018, stating that utility-scale solar power generating energy facilities would qualify as a “public utility” type-facility and would otherwise be allowed by-right in the County’s RA (Rural Areas) Zoning District (and other zoning districts where public utilities are permitted by-right).

This item was proposed by the County Attorney and Staff and discussed by the Development Review and Regulations Committee (DRRC) at their June 27th, July 25th, and August 22nd regular meetings. The DRRC agreed with the proposed changes from August 22nd, and the item was forwarded to the Planning Commission for discussion. The Planning Commission discussed this item on September 4th and the Board of Supervisors discussed this item on September 25th. During their discussion, the Board directed Staff to also provide a definition for “decommissioning” and

“utility-scale solar power energy generating facilities” and the item was sent forward, with requested amendments, for public hearing. The Planning Commission held a public hearing on the ordinance amendment on October 16th. No members of the public spoke, and the Planning Commission unanimously sent the item forward to the Board of Supervisors with a recommendation of approval.

The attached document shows the existing ordinance with the proposed changes (with bold italic for text added). **This proposed amendment is being presented to the Board of Supervisors as a public hearing item. A decision by the Board of Supervisors, on this proposed Zoning Ordinance text amendment is sought.** Please contact me if you have any questions.

Attachments:

- 1. Revised ordinance with additions shown in bold underlined italics.**
- 2. Code of Virginia §15.2-2241.2**
- 3. Memo to the Board of Supervisors, July 26, 2018**
- 4. Resolution**

MTK/pd

ARTICLE I
General Provisions; Amendments; and Conditional Use Permits

Part 101
General Provisions

§ 165-101.02 Definitions and word usage.

Decommissioning

The removal and proper disposal of solar energy equipment, facilities, or devices on real property that has been determined by the County to be subject to § 15.2-2232 of the Code of Virginia and therefore subject to § 15.2-2241.2 of the Code of Virginia. "Decommission" includes the reasonable restoration of the real property upon which such solar equipment, facilities, or devices are located, including (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices.

Public Utilities

Power generating facilities, booster or relay stations, transformer substations, transmission lines and towers, pipes, meters and other facilities (including utility-scale solar power generating facilities), and sewer and water treatment facilities including sewer and water transmission lines. Such facilities may be owned by public utilities, public agencies, those operators with a Certificate of Public Convenience, or those that are operating under a Permit by Rule (PBR).

Utility-Scale Solar Power Generating Facilities

Any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight. Any such facility primarily designed or intended to offset personal energy consumption by the owner of the facility does not constitute a utility-scale solar power generating facility.

ARTICLE II
Supplementary Use Regulations; Parking; Buffers; and Regulations for Specific Uses

Part 204
Additional Regulations for Specific Uses

§ 165-204.26. Public Utilities

1. Public utilities. Lot requirements for lots used by political subdivisions, municipal corporations, the Virginia Department of Transportation, the Frederick-Winchester Service Authority, or the Frederick ~~Water County Sanitation Authority~~ for public utility purposes shall be as follows:

- A. In all zoning districts, the Zoning Administrator shall have the authority to determine the minimum lot size necessary for such public utilities and the appropriate setbacks for such lots used for public utility purposes.
- B. Such lots shall be exempt from the individual on-site sewage disposal system requirements.
- C. Such lots may be accessed by private access easements; any such easement shall be a minimum of 15 feet in width.
- D. **For Public Utilities – Utility-Scale Solar Power Generating Facilities a site plan, in accordance with Article VIII, shall be submitted to and approved by Frederick County, prior to the establishment of the use.**

2. Public Utilities - Utility-Scale Solar Power Generating Facilities. Any owner, lessee, or developer of real property for the purposes of solar power energy generation shall enter into a written agreement, prior to site plan approval, with Frederick County to decommission solar energy equipment, facilities, or devices pursuant to the terms and conditions of § 15.2-2241.2(B) of the Code of Virginia.

**ARTICLE IV
Agricultural and Residential Districts**

Part 401
RA Rural Areas District

§ 165-401.02. Permitted Uses

~~**Q.** Public utility generating, booster, or relay stations, transformer substations, transmission lines and towers, pipes, meters and other facilities, railroad facilities and sewer and water facilities, and lines owned by public facilities, railroad companies or public agencies. Public Utilities~~

Part 402
RP Residential Performance District

§ 165-402.02. Permitted Uses

B. Structures and land shall be used for one of the following uses:

~~**(6)** Utility distribution facilities necessary to serve residential uses, including, but not limited to, poles, lines, distribution transformers, pipes, and meters. Public Utilities excluding energy generating facilities.~~

Part 403
MH1 Mobile Home Community District

§ 165-403.02. Permitted Uses

~~**H.** Public utilities including poles, lines, distribution transformers, pipes and meters, water and sewer facilities and lines. Public Utilities excluding energy generating facilities.~~

ARTICLE V
Planned Development Districts

Part 502
R5 Residential Recreational Community District

§165-502.04. Permitted uses.

P. ~~Public sewer and water facilities and lines.~~ ***Public Utilities excluding energy generating facilities.***

ARTICLE VI
Business and Industrial Districts

Part 602
B1 Neighborhood Business District

§165-602.02. Allowed Uses.

~~Public utility distribution facility~~ *Public Utilities excluding energy generating facilities.*

Part 603
B2 General Business District

§165-603.02. Allowed Uses.

~~Public utility distribution facility~~ *Public Utilities excluding energy generating facilities.*

Part 604
B3 Industrial Transition District

§165-604.02. Allowed Uses.

~~Public utility distribution facility~~ *Public Utilities*

Part 606
M1 Light Industrial District

§165-606.02. Allowed Uses.

~~Public utility distribution facility~~ *Public Utilities*

Part 608
EM Extractive Manufacturing District

§165-608.02. Permitted Uses.

~~*K. Public utilities, including poles, lines, distribution transformers, pipes, meters, and sewer facilities.*~~
Public Utilities.

Part 609
HE Higher Education District

§165-609.02. Permitted uses.

~~*B. Utilities necessary to serve allowed uses, including poles, lines, distribution transformers, pipes and meters.*~~ *Public Utilities excluding energy generating facilities.*

CHAPTER 743

An Act to amend the Code of Virginia by adding a section numbered **15.2-2241.2**, relating to rezoning and site plan approval; decommissioning solar energy equipment, facilities, or devices.

[H 2621]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered **15.2-2241.2** as follows:

§15.2-2241.2. *Bonding provisions for decommissioning of solar energy equipment, facilities, or devices.*

A. *As used in this section, unless the context requires a different meaning:*

"Decommission" means the removal and proper disposal of solar energy equipment, facilities, or devices on real property that has been determined by the locality to be subject to §15.2-2232 and therefore subject to this section. "Decommission" includes the reasonable restoration of the real property upon which such solar equipment, facilities, or devices are located, including (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices.

"Solar energy equipment, facilities, or devices" means any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight.

B. *As part of the local legislative approval process or as a condition of approval of a site plan, **any locality shall require** an owner, lessee, or developer of real property subject to this section to enter into a written agreement to decommission solar energy equipment, facilities, or devices upon the following terms and conditions: (i) if the party that enters into such written agreement with the locality defaults in the obligation to decommission such equipment, facilities, or devices in the timeframe set out in such agreement, the locality has the right to enter the real property of the record title owner of such property without further consent of such owner and to engage in decommissioning and (ii) such owner, lessee, or developer provides financial assurance of such performance to the locality in the form of certified funds, cash escrow, bond, letter of credit, or parent guarantee, based upon an estimate of a professional engineer licensed in the Commonwealth, who is engaged by the applicant, with experience in preparing decommissioning estimates and approved by the locality; such estimate shall not exceed the total of the projected cost of decommissioning, which may include the net salvage value of such equipment, facilities, or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.*

CHAPTER 744

An Act to amend the Code of Virginia by adding a section numbered **15.2-2241.2**, relating to rezoning and site plan approval; decommissioning solar energy equipment, facilities, or devices.

[S 1091]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered **15.2-2241.2** as follows:

§15.2-2241.2. *Bonding provisions for decommissioning of solar energy equipment, facilities, or devices.*

A. *As used in this section, unless the context requires a different meaning:*

"Decommission" means the removal and proper disposal of solar energy equipment, facilities, or devices on real property that has been determined by the locality to be subject to §15.2-2232 and therefore subject to this section.

"Decommission" includes the reasonable restoration of the real property upon which such solar equipment, facilities, or devices are located, including (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices.

"Solar energy equipment, facilities, or devices" means any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight.

B. *As part of the local legislative approval process or as a condition of approval of a site plan, a locality shall require an owner, lessee, or developer of real property subject to this section to enter into a written agreement to decommission solar energy equipment, facilities, or devices upon the following terms and conditions: (i) if the party that enters into such written agreement with the locality defaults in the obligation to decommission such equipment, facilities, or devices in the timeframe set out in such agreement, the locality has the right to enter the real property of the record title owner of such property without further consent of such owner and to engage in decommissioning, and (ii) such owner, lessee, or developer provides financial assurance of such performance to the locality in the form of certified funds, cash escrow, bond, letter of credit, or parent guarantee, based upon an estimate of a professional engineer licensed in the Commonwealth, who is engaged by the applicant, with experience in preparing decommissioning estimates and approved by the locality; such estimate shall not exceed the total of the projected cost of decommissioning, which may include the net salvage value of such equipment, facilities, or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.*



MEMORANDUM

TO: Frederick County Board of Supervisors

CC: Kris C. Tierney, County Administrator
Roderick B. Williams, County Attorney
Mike T. Ruddy, AICP, Director of Planning & Development
Mark R. Cheran, Zoning Administrator

FROM: M. Tyler Klein, AICP, Senior Planner 

SUBJECT: Solar (Photovoltaic) Energy Facilities Text Amendment – Update

DATE: July 26, 2018

This is an update to the proposed text amendment to Chapter 165 – Zoning Ordinance to add solar (photovoltaic) power generating facilities (i.e. solar farms) to the permitted use list for the RA (Rural Areas) Zoning District. This item was previously discussed by the Board of Supervisors on January 10th, February 14th and April 11th. Following our last discussion, the Board of Supervisors had directed Staff to make the proposed use a “conditional use” and provide additional supplemental use regulations to address abandonment on the facility and return of the land to its pre-development state. At the time of the presentation to the Board, the premise of the draft text amendment, as supported by the Development Review and Regulations Committee (DRRC), and previously discussed by the Planning Commission, was that because solar farms are typically “privately-owned”, they would not qualify as “public utility” generating facilities.

Since the Board discussion in April, the County Attorney and the Planning and Development Staff have met and determined that solar (photovoltaic) energy facilities would *appear* to qualify as “public utility generating” facilities and would otherwise today be allowed by-right in the County’s RA Zoning District. The Zoning Ordinance currently permits a by-right use in the RA Zoning District, “Public utility generating, booster, or relay stations, transformer substations, transmission lines, and towers, pipes, meters, and other facilities, railroad facilities, and sewer and water facilities and lines owned by public utilities, railroad companies or public agencies” (§165-401.02(Q)). The term “public utility” does not address the public or private nature of the ownership of the facility; most electricity generating facilities in the United States are owned by “private” entities as opposed to government, i.e. “public” entities.

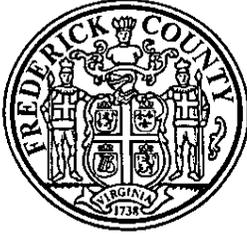
Further, the Frederick County Zoning Ordinance does not define the term “public utility” and definitions not included in the definitions section of the Zoning Ordinance “shall have the meaning ascribed to such word, term or phrase in the most recent addition of Merriam-Webster’s Dictionary unless, in the opinion of the Zoning Administrator, established customs or practices in Frederick

County, Virginia justify a different or additional meaning” (§165-101.02). Webster’s defines “public utility” simply as “a business organization (such as an electric company) performing a public service and subject to special governmental regulation.” This definition does not limit the concept of a “public utility” to entities that sell electricity directly to the public or to entities that are publicly traded and therefore does not exclude from its reach solar farms owned by non-publicly traded entities. Within the Code of Virginia §56-1, nothing in the definition of public service companies suggests a distinction between the types of companies that operate solar farms and the types of companies that operate other types of electricity generation facilities. State law specifically regulates solar facilities as it does other electricity generating facilities, regardless of the nature of ownership, by requiring the operator to seek a certificate of public convenience and necessity from the State Corporation Commission (SCC) (§56-265.2). The County would recognize a solar energy facility as a public utility under this interpretation.

This determination of solar electric generating facilities qualifying as a “public utility” would not preclude the Board of Supervisors in the future from further regulating solar (photovoltaic) energy facilities as allowed under the Code of Virginia or excluding them all from the current allowance in §165-401.02(Q). Staff notes that possible supplementary regulations as previously discussed, such as a requirement for removal of the facilities upon abandonment of use would place them in a category currently unique to telecommunications towers. As well, any requirement for a bond securing the removal of an abandoned facility might be sufficient economic disincentive as to preclude any use of the opportunity that would be enabled by the ordinance generally.

Please contact the County Attorney’s office or Planning and Development Staff directly with any questions or comments. Unless otherwise directed by the Board of Supervisors, Staff will proceed with the above interpretation to allow solar energy facilities (i.e. solar farms), by right, under the present allowance for public utilities in the RA Zoning District.

MTK/pd



ORDINANCE AMENDMENT

Action:

PLANNING COMMISSION: October 16, 2019

Recommended Approval

BOARD OF SUPERVISORS: November 13, 2019

**AN ORDINANCE AMENDING
THE FREDERICK COUNTY CODE
CHAPTER 165 ZONING**

ARTICLE I

GENERAL PROVISIONS; AMENDMENTS; AND CONDITIONAL USE PERMITS

PART 101 – GENERAL PROVISIONS

§165-101.02. DEFINITIONS AND WORD USAGE

ARTICLE II

**SUPPLEMENTARY USE REGULATIONS; PARKING; BUFFERS; AND REGULATIONS FOR
SPECIFIC USES**

PART 204 – ADDITIONAL REGULATIONS FOR SPECIFIC USES

§165-204.26. PUBLIC UTILITIES

ARTICLE IV

AGRICULTURAL AND RESIDENTIAL DISTRICTS

PART 401 – RA RURAL AREAS DISTRICT

§165-401.02. PERMITTED USES

PART 402 – RP RESIDENTIAL PERFORMANCE DISTRICT

§165-402.02. PERMITTED USES

PART 403 – MH1 MOBILE HOME COMMUNITY DISTRICT

§165-403.02. PERMITTED USES

ARTICLE V

PLANNED DEVELOPMENT DISTRICTS

PART 502 – RESIDENTIAL RECREATIONAL COMMUNITY DISTRICT

§165-502.04. PERMITTED USES

ARTICLE VI

BUSINESS AND INDUSTRIAL DISTRICTS

PART 602 – B1 NEIGHBORHOOD BUSINESS DISTRICT

§165-602.02. ALLOWED USES

PART 603 – B2 GENERAL BUSINESS DISTRICT
§165-603.02. ALLOWED USES
PART 604 – B3 INDUSTRIAL TRANSITION DISTRICT
§165-604.02. ALLOWED USES
PART 606 – M1 LIGHT INDUSTRIAL DISTRICT
§165-606.02. ALLOWED USES
PART 608 – EM EXTRACTIVE MANUFACTURING DISTRICT
§165-608.02. PERMITTED USES
PART 609 – HE HIGHER EDUCATION DISTRICT
§165-609.02. PERMITTED USES

WHEREAS, an ordinance to amend Chapter 165, Zoning to include a definition for “Public Utilities” that includes utility-scale solar power generating facilities, a definition for utility-scale solar power generating facilities, and a definition for decommissioning; and

WHEREAS, the proposed ordinance to amend Chapter 165, Zoning to includes additional supplemental use requirements for utility-scale solar power generating facility decommissioning and site plan requirements were considered; and

WHEREAS, the Planning Commission held a public hearing on this ordinance amendment on October 16, 2019; and

WHEREAS, the Board of Supervisors held a public hearing on this ordinance amendment on November 13, 2019; and

WHEREAS, the Frederick County Board of Supervisors finds that the adoption of this ordinance to be in the best interest of the public health, safety, welfare, and in good zoning practice; and

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that **Chapter 165 Zoning, is amended to include a definition for “Public Utilities” that includes utility-scale solar power generating facilities and solar power generating facility decommissioning requirements.**

Passed this 13th day of November 2019 by the following recorded vote:

Charles S. DeHaven, Jr., Chairman

Gary A. Lofton

J. Douglas McCarthy

Blaine P. Dunn

Shannon G. Trout

Robert W. Wells

Judith McCann-Slaughter

A COPY ATTEST

Kris C. Tierney
Frederick County Administrator

Item No. 2



MEMORANDUM

TO: Frederick County Planning Commission

FROM: M. Tyler Klein, AICP, Senior Planner 

SUBJECT: Ordinance Amendment – Conditional Use in the RA (Rural Areas) Zoning District – Public Hearing

DATE: November 5, 2019

The Board of Supervisors directed the Planning Commission to evaluate the CUP process and those listed conditional uses to ensure that the uses, and scale of the uses, are appropriate for the zoning district in which they are allowed. This would include identifying those uses that may be more appropriate in a commercial zoning district; such as larger service stations, motels, and larger retail stores.

As a result, this is a proposed amendment to Chapter 165 – Zoning Ordinance to:

1. Further define the conditional use country general store to exclude all fuel sales and cap the square footage allowed at 3,500 square feet (SF);
2. Providing additional regulations for specific uses (country general store);
3. Eliminate, combine, and refine certain conditional uses; and
4. Codify certain Zoning Determinations relating to home occupations, cottage occupations, and kennels to reduce the number of Conditional Use Permit (CUP) applications.

The purpose of the proposed amendment is to add clarity to specific uses where intensity of a given use is important in considering its appropriateness for a CUP; and to provide consistency in allowance and implementation of certain uses.

This item was discussed by the Development Review and Regulations Committee (DRRC) at their August 22nd regular meeting. The DRRC agreed with the proposed changes presented, and further amended the section to eliminate “treatment homes” from the conditional use list, and recommended the item be forwarded to the Planning Commission for discussion. The Planning Commission discussed this item on September 4th and the Board of Supervisors discussed this item on September 25th. The Board sent the item, as presented, forward to public hearing. The Planning Commission held a public hearing on the ordinance amendment on October 16th. No members of

the public spoke, and the Planning Commission unanimously sent the item forward to the Board of Supervisors with a recommendation of approval.

The attached document shows the existing ordinance with the proposed changes (with bold italic for text added). **This proposed amendment is being presented to the Board of Supervisors as a public hearing item. A decision by the Board of Supervisors, on this proposed Zoning Ordinance text amendment is sought.** Please contact me if you have any questions.

Attachments:

- 1. Revised ordinance with additions shown in bold underlined italics.**
- 2. Background on Conditional Use Permit approvals and country general stores.**
- 3. Resolution**

MTK/pd

ARTICLE I

General Provisions; Amendments; and Conditional Use Permits

Part 101

General Provisions

§165-101.02. Definitions and word usage.

COTTAGE OCCUPATION – An occupation or profession customarily carried out in a dwelling unit or accessory building, which:

- A. Actually is carried on wholly within the principle residential building or an accessory building or structure;
- B. Is carried on by no more than one person other than members of the family residing on the premises; and
- C. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and
- D. Serves more than five (5) customers per day.

COUNTY GENERAL STORE - A retail business, without accessory fuel sales, not to exceed 3,500 square feet gross retail floor area, allowed where specified in the rural zoning districts which sells groceries along with a variety of other retail goods.

HOME OCCUPATION - An occupation or profession customarily carried on in a dwelling unit, which:

- A. Actually is carried on wholly within the principle building or structure;
- B. Is carried on by members of the household residing on the premises;
- C. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes with no exterior display, no exterior storage of materials and no exterior indication of the home occupation or variation from the residential character of the principle building and neighborhood;
- D. Produces no offensive noise, vibrations, smoke, dust, heat, odor, glare, traffic hazard or congestion and does not adversely affect the surrounding properties; and
- E. Requires no internal or external alterations or construction features or equipment or machinery not customary in residential areas; and
- F. Serves no more than five (5) customers per day.

KENNEL - A place prepared to house, board, breed, handle, or otherwise care for dogs for sale or in return for compensation. One (1) litter of dogs breeding for compensation per household per year shall not be defined as a kennel and will be considered as a Home Occupation.

Part 103
Conditional Use Permits

§165-103.03. Conditions.

In granting a conditional use permit, the Board of Supervisors may place appropriate conditions on the permit. Such conditions shall be considered to be a part of the requirements of this chapter. Violations of the established conditions shall constitute violations of this chapter. The conditions established as a part of the approval of a conditional use permit may be modified only through the full application procedures described in this section. Conditions which may be placed on the conditional use permit may include but need not be limited to conditions which address the following issues:

GG. The expiration of the use following the sale or transfer of the property from the current owner(s).

HH. The expiration of the conditional use permit if the use is not established within 24 months of approval.

ARTICLE II

Supplementary Use Regulations; Parking; Buffers; and Regulations for Specific Uses

Part 204

Additional Regulations for Specific Uses

§165-204.32. Country General Store without fuel sales.

Country general stores located in the RA Rural Areas Zoning District shall meet the following requirements:

- A. **A country general store may not exceed 3,500 square feet (SF) of gross retail floor area.**
- B. **Country general stores may not include accessory fuel sales.**
- C. **A site plan shall be submitted to and approved by Frederick County prior to the establishment of the use.**
- D. **B2 General Business Zoning District standards apply including building height, building and parking setbacks, buffering, screening, and landscaping standards.**
- E. **All new buildings require building permits reviewed and approved by Building Inspections. Existing buildings should conform to the requirements under Article IX.**
- F. **Any expansion of an approved country general store, store requires approval of a new conditional use permit (CUP).**

Editor's Note: Retail uses with a square footage in excess of 3,500 SF or with fuel sales shall be located within or adjacent to a designated Rural Community Center, as defined in the Comprehensive Plan, and/or require a rezoning application to a business district.

ARTICLE IV

Agricultural and Residential Districts

Part 401

RA Rural Area District

§165-401.02. Permitted uses.

KK. Blacksmith shops (SIC 5431)

LL. Farriers

MM. Horseshoeing

NN. Taxidermists

§165-401.03. Conditional Uses.

A. Bed-and-breakfast; farm stay.

B. Country Clubs, with or without banquet facilities

C. Manufacture or sale of feed and other farm supplies and equipment.

D. Fruit packing plants.

E. B. Off-premise farm markets and wayside stands.

F. Off-premise wayside stands.

G. C. Country General Store without fuel sales.

H. Service stations.

I. D. Antique shops.

J. E. Restaurants *without drive-thru facilities provided the following conditions are met:*

(1) Restaurants shall have an approved drainfield; alternative waste systems including pump and hauls are prohibited.

K. F. Kennels

L. Petting farms.

M. Television or radio stations.

N. Motels.

O. G. Auction Houses

~~P. H.~~ Campgrounds, tourism camps, recreation areas and resorts.

~~Q. I.~~ Commercial outdoor recreation, athletic or park facilities, or Country Clubs with or without banquet facilities.

~~R. Nationally chartered fraternal lodges, civic clubs, social centers and their related facilities.~~

~~S. J.~~ Sawmills and planing mills, Type B.

~~T. Ambulance Services~~

~~U. K.~~ Retailing or wholesaling of nursery stock and related products.

~~V. L.~~ Landscape contracting businesses.

~~W. M.~~ Public Garages without body repair, provided that the following conditions are met:

- (1) All repair work shall take place entirely within and enclosed structure.
- (2) All exterior storage of parts and equipment shall be screened from the view of surrounding properties by an opaque fence or screen at least six feet in height. The fence or screen shall be adequately maintained.

~~X. Public Garages with body repair, provided that the following conditions are met:~~

~~(1) All repair work shall take place entirely within and enclosed structure.~~

~~(2) All exterior storage of parts and equipment shall be screened from the view of surrounding properties by an opaque fence or screen at least six feet in height. The fence or screen shall be adequately maintained.~~

~~Y. N.~~ Sand Shale and clay mining, provided the following conditions are met:

~~Z. O.~~ Cottage Occupations

~~AA. P.~~ Cottage occupation signs.

~~BB. Q.~~ Veterinary office, clinic, or hospital, including livestock services.

~~CC. R.~~ Day-care facilities.

~~DD. S.~~ Humanitarian aid organization office.

~~EE. T.~~ School (with residential component)

~~FF. Fruit and vegetable stand.~~

~~GG. Blacksmith shops.~~

~~HH. Farriers.~~

~~**II.** Horseshoeing.~~

~~**JJ.** Taxidermists.~~

~~**KK.** U. Welding repair.~~

~~**LL.** V. Flea markets, operated indoors or outdoors.~~

~~**MM.** Treatment home.~~

~~**NN.** W. Special event facility.~~

~~**OO.** X. Commercial shooting and archery ranges (indoor or outdoor).~~

~~**PP.** Y. Ice cream parlor or bakery.~~

~~**QQ.** Z. Craft and gift shops.~~

~~**RR.** AA. Offices and clinics of doctors of medicine, dentists and other health practitioners.~~

~~**SS.** BB. Slaughterhouse.~~

Background:

To provide additional perspective on conditional uses in the rural areas, Staff has included: 1) a history of conditional uses approved over the last 20-year period, and 2) a listing of the sizes of Country General Stores and select commercial/retail uses to assist when evaluating the scale of such uses.

1) Since 1999, the following conditional uses have been approved in the RA Zoning District (by type and number of approved applications):

- Special Event Facilities: 5
- Public Garages (with or without body repair): 13
- Kennels: 9
- Landscape Contracting Businesses/Retail Nurseries: 9
- Telecommunications Towers: 23
- Farmers Markets/Off-Premise Wayside Stands: 2
- Commercial Recreation (indoor or outdoor): 7
- Country General Stores: 7
- Motels/Bed & Breakfasts: 8
- Antique Shops: 3
- Restaurants: 3
- Day-Care Facilities: 14
- Welding Repair: 2
- Flea Markets: 1
- Taxidermy: 1
- Sand Mines: 3
- Campground: 1
- Veterinary Clinics: 2
- Fraternal Lodges: 1
- Misc. (don't fall under currently listed conditional uses): 3

2) For purposes of comparison, the square footage of select *Country General Stores* within the RA District is provided in addition to the square footage of select Commercial/Retail uses located within the County's Sewer and Water Service Area (SWSA).

Commercial/Retail Properties (within SWSA):

- Family Dollar (Stephens City – B2) – 9,230 SF (SP #41-13)
- Dollar General (Middletown – B1) – 9,301 SF
- Dollar Tree (Winchester Gateway – B2) - +/- 14,000SF
- Dollar Tree (Stonewall Plaza – B2) – 13,600 SF
- The Country Store (Senseny Road – B1) – 4,872 SF

Average SF: 10,218 SF

**Note: Dollar General (Route 522N – RA) – 9,100 SF (proposed, withdrawn)*

County General Store Properties (within Rural Areas)

- Hogue Creek Market (Route 50W – RA) – 4,369 SF (approved CUP for *Country General Store*); with fuel sales
- Crossroads Grocery (Route 522N – RA) – 1,240 SF (approved CUP for *Country General Store*); with fuel sales
- Shawnee Springs Market (Route 522N – B2) – 6,520 SF (SP #19-86; note surrounded by RA zoned properties); with fuel sales
- Toms Market (Back Mountain Road – B1) – 3,016 SF; with fuel sales
- Gainesboro Market (Route 522N – RA) – 2,450 SF; with fuel sales

Average SF (County General Store): 3,519 SF



ORDINANCE AMENDMENT

Action:

PLANNING COMMISSION: October 16, 2019

Recommended Approval

BOARD OF SUPERVISORS: November 13, 2019

**AN ORDINANCE AMENDING
THE FREDERICK COUNTY CODE
CHAPTER 165 ZONING**

**ARTICLE I
GENERAL PROVISIONS; AMENDMENTS; AND CONDITIONAL USE
PERMITS**

**PART 101 – GENERAL PROVISIONS
§165-101.02. DEFINITIONS AND WORD USAGE
PART 103 – CONDITIONAL USE PERMITS
§165-103.03. CONDITIONS**

**ARTICLE II
SUPPLEMENTARY USE REGULATIONS; PARKING; BUFFERS; AND
REGULATIONS FOR SPECIFIC USES
PART 204 – ADDITIONAL REGULATIONS FOR SPECIFIC USES
§165-204.32. COUNTRY GENERAL STORE WITHOUT FUEL SALES**

**ARTICLE IV
AGRICULTURAL AND RESIDENTIAL DISTRICTS
PART 401 – RA RURAL AREAS DISTRICT
§165-401.02. PERMITTED USES
§165-401.03. CONDITIONAL USES**

WHEREAS, an ordinance to amend Chapter 165, Zoning to:

1. Further define the conditional use country general store to exclude all fuel sales and cap the square footage allowed at 3,500 square feet (SF);
2. Provide additional regulations for specific uses (country general store);

PDRes #19-19

3. Eliminate, combine, and refine certain conditional uses; and
4. Codify certain Zoning Determinations relating to home occupations, cottage occupations, and kennels to reduce the number of Conditional Use Permit (CUP) applications; was considered; and

WHEREAS, the Planning Commission held a public hearing on this ordinance amendment on October 16, 2019; and

WHEREAS, the Board of Supervisors held a public hearing on this ordinance amendment on November 13, 2019; and

WHEREAS, the Frederick County Board of Supervisors finds that the adoption of this ordinance to be in the best interest of the public health, safety, welfare, and in good zoning practice; and

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that **Chapter 165 Zoning, is amended to modify ARTICLE I - GENERAL PROVISIONS; AMENDMENTS; AND CONDITIONAL USE PERMITS, PART 101 – GENERAL PROVISIONS §165-101.02. DEFINITIONS AND WORD USAGE, PART 103 – CONDITIONAL USE PERMITS §165-103.03 CONDITIONS; ARTICLE II - SUPPLEMENTARY USE REGULATIONS; PARKING; BUFFERS; AND REGULATIONS FOR SPECIFIC USES; PART 204 – ADDITIONAL REGULATIONS FOR SPECIFIC USES, §165-204.32. COUNTRY GENERAL STORE WITHOUT FUEL SALES; ARTICLE IV - AGRICULTURAL AND RESIDENTIAL DISTRICTS; PART 401 – RA RURAL AREAS DISTRICT, §165-401.02. PERMITTED USES, §165-401.03. CONDITIONAL USES.**

Passed this 13th day of November 2019 by the following recorded vote:

Charles S. DeHaven, Jr., Chairman

Gary A. Lofton

J. Douglas McCarthy

Blaine P. Dunn

Shannon G. Trout

Robert W. Wells

Judith McCann-Slaughter

A COPY ATTEST

Kris C. Tierney
Frederick County Administrator