



MEMORANDUM

To: Development Review and Regulations Committee

From: Candice E. Perkins, AICP, Senior Planner *CEP*

Subject: February Meeting and Agenda

Date: February 16, 2011

The Frederick County Development Review and Regulations Committee (DRRC) will be meeting on Thursday, February 24, 2011 at 7:00 p.m. in the **first floor conference room (purple room)** of the County Administration Building, 107 North Kent Street, Winchester, Virginia. The DRRC will discuss the following agenda items:

AGENDA

- 1) **Waiver of the Public Hearing Requirement for Proffer Amendments.** Discussion on revisions to the Frederick County Zoning Ordinance to allow the Board of Supervisors to waive the public hearing requirement for proffer revisions when the revision does not affect use or density (change is in accordance with the Code of Virginia).
- 2) **Aboveground Public Utilities.** Discussion on revisions to the Frederick County Zoning Ordinance to require a Conditional Use Permit for aboveground public utilities.
- 3) **2011 Work Priorities.** Update on the 2011 DRRC work program priorities.

Please contact this office if you will not be able to attend the meeting. Thank you.

Access to this building is limited during the evening hours. Therefore, it will be necessary to enter the building through the rear door of the four-story wing. I would encourage committee members and interested citizens to park in the County parking lot located behind the new addition or in the joint Judicial Center parking lot and follow the sidewalk to the back door of the four-story wing.

CEP/bhd

Attachments

Item #1: Public Hearing Requirement for Proffer Revisions

Staff has been informed that a change to the Zoning Ordinance is appropriate to enable a new State Code provision in regards to proffer revision. The Code of Virginia contains an enabling legislation that allows the Board of Supervisors to waive the public hearing requirement for proffer revisions when the proposed revision does not affect conditions of use or density.

If the DRRC is supportive of this ordinance amendment, staff will forward it to the Planning Commission and Board of Supervisors for their consideration.

**Attachments: 1. Revised ordinance with additions shown in bold underlined italics.
2. State Code Reference.**

§ 165-102.06 Conditional rezoning.

The applicant for a rezoning may proffer in writing, before the public hearing by the Board of Supervisors, conditions to be placed on the approval of the rezoning.

A. Procedures. Proffers shall be presented to and considered by the Planning Commission at the advertised public hearing for the rezoning. The Planning Commission shall make a recommendation on the acceptance of the proffers and the rezoning to the Board of Supervisors following the procedures described for amendments to this chapter. Proffers shall be received in writing, signed by the owner and applicant, at least five (5) days prior to the advertised hearing of the Board of Supervisors.

1) The Board of Supervisors may amend proffers once the public hearing has begun, or thereafter, if the amended proffers do not affect the conditions of use or density in such a way as to make the use or density of the property more intense than originally proposed. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

2) *Proffer Amendments. In accordance with § 15.2-2302 of the Code of Virginia, when an amendment to a previously approved proffered condition is requested by the proffesor, and where such amendment does not affect conditions of use or density, the Board of Supervisors may waive the requirement for a public hearing. Once so amended, the proffered conditions shall continue to be an amendment to the zoning ordinance and may be enforced by the zoning administrator pursuant to the applicable provisions of this Chapter.*

Code of Virginia

§ 15.2-2302. Same; amendments and variations of conditions.

There shall be no amendment or variation of conditions created pursuant to the provisions of § 15.2-2297 until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204. However, where an amendment to proffered conditions is requested by the proffesor, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of conditions created pursuant to § 15.2-2298 or 15.2-2303. Once so amended, the proffered conditions shall continue to be an amendment to the zoning ordinance and may be enforced by the zoning administrator pursuant to the applicable provisions of this Chapter (§ 15.2-2200 et seq.).

(1978, c. 320, § 15.1-491.6; 1997, c. 587; 2009, c. 315.)

Item #2: Aboveground Public Utilities

Staff has been requested to draft an amendment to the Zoning Ordinance to require aboveground utilities to have a conditional use permit. Currently, public utilities such as water/sewer facilities, poles, transformers, and distribution facilities are permitted in all Zoning Districts.

Staff has prepared a draft amendment to the Zoning Ordinance that eliminates all references to public utilities within the individual zoning districts. Instead of the individual references, one supplementary use regulation has been drafted that pertains to utilities. The proposed amendment would require that any aboveground facilities (unless specifically exempt) would require approval of a Conditional Use Permit prior to construction. Through the CUP process, the proposed facility would need to provide their general location and utility details and the proposed facility would need to be in conformance with the Comprehensive Plan. Exemptions from the process include railroad facilities, underground utilities, and certain types of facilities that have been included as part of a Master Development Plan, Subdivision Design Plan, or Site Plan Process.

Staff is seeking a recommendation from the DRRC on this proposed ordinance amendment. This recommendation will be forwarded to the Planning Commission and Board of Supervisors.

- Attachments:**
- 1. Revised ordinance with additions shown in bold underlined italics.**
 - 2. Zoning Districts with proposed deletions shown in strikethrough.**
 - 2. State Code Reference.**

Article II
SUPPLEMENTARY USE REGULATIONS, PARKING, BUFFERS, AND REGULATIONS FOR SPECIFIC
USES

Part 204 – Additional Regulations for Specific Uses

§ 165-204.26. Public Utilities , Conditional Use Permit Required.

- A. Aboveground Utilities. In all Zoning Districts, no public utility facility or public service corporation facility other than a railroad facility, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the Planning Commission and Board of Supervisors through the Conditional Use Permit Process as being substantially in accordance with the adopted Comprehensive Plan.
- B. Exemptions. The following shall be exempt from the Conditional Use Permit Requirement:
- a. Railroad facilities;
 - b. Underground facilities;
 - c. Aboveground electric, telephone, or cable television poles and/or lines, and pump stations, which above ground electric, telephone, or cable television poles and/or lines, and pump stations are both necessary to serve and wholly contained within a residential, commercial or industrial development approved through a Master Development Plan, Subdivision Design Plan, or Site Plan Process; and
- C. Those facilities which are subject to exclusive regulation by appropriate federal and/or state regulatory agencies.

Part 401 – RA Rural Areas District

§ 165-401.02 Permitted uses.

Structures and land shall be used for one of the following 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 utilities, railroad companies or public agencies.~~

Part 402 – RP Residential Performance District

§ 165-402.02 Permitted uses.

A. All uses shall be developed in accordance with an approved master development plan unless otherwise waived under Article VIII of this chapter.

~~(6) Utilities necessary to serve residential uses, including poles, lines, distribution transformers, pipes and meters.~~

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.~~

Part 502 – R5 Residential Recreational Community District

§ 165-502.04 Permitted uses.

~~P. Public sewer and water facilities and lines.~~

Part 504 – MS Medical Support District

§ 165-504.02 Permitted uses.

B. Structures are to be erected or land used for one or more of the identified uses. The permitted uses are identified by Standard Industrial Classification. All uses described by Standard Industrial Classification are allowed only if the major group, industry group number, or industry number general group titles are used.

(6) Other related uses:

~~On-site utility systems (As defined)~~

Part 602 – B1 Neighborhood Business District

§ 165-602.02 Allowed Uses.

~~Public utility distribution facilities~~

Part 603 – B2 Business General District

§ 165-603.02 Allowed Uses.

~~Public utility distribution facilities~~

Part 604 – B3 Industrial Transition District

§ 165-604.02 Allowed Uses.

~~Public utility distribution facilities~~

Part 606 – M1 Light Industrial District

§ 165-606.02 Allowed Uses.

~~Public utility distribution facilities~~

Part 608 – EM Extractive Manufacturing District

§ 165-608.02 Permitted uses.

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

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.~~

Code of Virginia

§ 15.2-2232. Legal status of plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. **Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof.** In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. Following the adoption of the Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.1-23.03 and written notification to the affected local governments, each local government through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of corridors of statewide significance within its boundaries.

Item #3: 2011 Work Program

2011 DRRS Work Program Priorities	
Rank	Project Title – Future Projects
1	Complete a comprehensive review and revision of Chapters 165 & 144 of the Frederick County Code.
2	Ordinance to regulate Small Wind Energy Systems and Wind Farms
3	Complete revision of the RP (Residential Performance) housing types
4	MEDCottages Addition
5	LEED – Green standards implementation
6	Develop a process and standards for the implementation of proportional site development improvements
7	Revised Homeowners Association (HOA) standards
8	Tractor Trailer Parking Requirements (on-site)
9	Evaluate and enhance the business and industrial districts to promote County economic development strategies and opportunities
10	Develop design standards for commercial corridors within the County, primarily those leading into the City of Winchester
11	Affordable / Workforce Housing initiatives
12	Revisions to the OM District Intent
13	Develop a new residential district for the Rural Community Centers (RCC's)
14	New Residential District to implement the Round Hill Land Use Plan
Ongoing Projects	
1	Continued development of the TND District
2	Sign Ordinance Revisions
3	Revised landscaping and screening requirements – Chapter 165 Zoning
4	New Residential District to implement the Round Hill Land Use Plan