

## MEMORANDUM

# #2b

To: Loudoun County Planning Commission

From: Judi Birkitt, AICP, CZA, Deputy Director, Planning and Zoning  
Daniel Galindo, AICP, Director, Planning and Zoning

Date: December 2, 2022

Re: December 8, 2022, Planning Commission Information Item  
**ZOAM-2020-0001, Zoning Ordinance Rewrite – Chapter 3:  
Uses**

### **PURPOSE**

The purpose of this Information Item is to provide the Planning Commission (Commission) with a preview of draft Chapter 3: Uses, prior to the Commission Public Hearing planned for January 2023, specifically on the following topics related to Uses as discussed in this memorandum:

- Format
- Modernization and consolidation of use terminology
- Elimination of principal use allowances
- Addition to principal use allowances
- Identification of Special Exception (SPEX) uses that can be changed to by-right permitted uses
- Elimination of auxiliary uses

### **CHAPTER 3 USE TABLE FORMAT**

Chapter 3 consolidates the lists of permitted and SPEX uses from the text of each zoning district section into one Chapter organized into four sections: 3.01 Uses Generally, 3.02 Use Tables, 3.03 Accessory Uses, and 3.04 Temporary Uses. Section 3.02 Use Tables presents permitted and SPEX uses in tabular format for ease of use, organized by Loudoun County 2019 General Plan (2019 GP) Policy Area zoning district, as follows:

- 3.02.01 Urban and Suburban Policy Area Zoning Districts Use Table
- 3.02.02 Legacy Suburban Policy Area Zoning Districts Use Table
- 3.02.03 Transition, Rural, and JLMA Policy Area Zoning Districts Use Table
- 3.02.04 Legacy Transition, Rural, and JLMA Policy Area Zoning Districts Use Table
- 3.02.05 Countywide Zoning Districts Use Table

**MODERNIZATION AND CONSOLIDATION OF USE TERMINOLOGY**

The Commission will see that names of certain uses have been revised and/or consolidated to modernize terminology, minimize redundancy and conflicting language, avoid the need for interpretation, and streamline use of the Zoning Ordinance. Currently in the Revised 1993 Zoning Ordinance, certain uses are named differently in different zoning districts. And all the various ways to phrase a use are not currently defined, which leads to confusion. The modernization and consolidation of use names is proposed without changing the actual use permissions.

Examples of how the draft text proposes to modernize and consolidate use terminology from different zoning district permitted use listings is below:

<b>Current Zoning Ordinance Use Terminology</b>	<b>Draft Text Use Terminology</b>
Convent or monastery	Religious housing
Convent, monastery, or seminary	
Monastery or convent	
Seminary	
Storage for coal, lumber, building material, contractor equipment, and similar material	Industrial storage
Storage of empty solid waste vehicles and containers	
Storage, building material or contractor's equipment, coal, lumber	
Agricultural research facility	Agricultural education or research
Educational or research facilities use related to the agriculture, horticulture and animal husbandry uses in the district	
Agri-education	Park, Community
Park	
Park, active recreational uses	
Park, playground or plaza (public or private)	
Park, private	
Park, public	
Public or private playground or neighborhood park	
Community, neighborhood, or regional park, active recreation uses	

<b>Current Zoning Ordinance Use Terminology</b>	<b>Draft Text Use Terminology</b>
Community, neighborhood, or regional park, passive recreation uses	Park, Passive
Park, passive recreational uses	
Park, regional	Park, regional
Public or private playground or neighborhood park	
Antique shop	Retail, general
Art gallery	
Craft shop	
Pharmacy	
Pharmacy, with drive-through facilities	
Retail sales establishment	
Retail sales, accessory to residential use and occupying no more than 600 square feet of floor area per lot	
Retail sales, occupying less than 3,000 square feet of floor area per lot	
Retail sales, occupying more than 5,000 and less than 10,000 square feet of floor area per lot	
Retail sales, occupying no more than 5,000 square feet of floor area per lot	
Sale and storage of building materials and garden supplies	

A complete “crosswalk” document that compares Revised 1993 Zoning Ordinance terminology to the proposed draft terminology will be provided for the Commission Public Hearing planned for January.

**ELIMINATION OF PRINCIPAL USE ALLOWANCES**

The proposed Chapter 3 draft text does not set out to change most use permissions. If a use is currently permitted under the Revised 1993 Zoning Ordinance, it should continue to be permitted under draft text. However, there are a couple exceptions, where staff has suggested that a use permission be eliminated to better align with the 2019 GP or to address an ongoing administrative issue or policy matter. Below are proposed use eliminations:

- Remove *Cohousing* as a use permitted in the AR-1 and AR-2 zoning districts to address an ongoing administrative issue and a policy concern.
- Remove *Magazine contained explosives facility* as a use permitted by SPEX in the A-3 zoning district to address a policy concern as this use is too intensive for this rural district.
- Remove *Dwelling, single-family detached* and *Dwelling, single-family attached* as uses permitted in the Transit Related Center (TRC) Outer Core Subarea and Transit-Designed Supportive Area (TDSA) to implement a policy within the 2019 GP that promotes more density near transit.

Note that if/where the uses listed above legally exist in a zoning district where the permission for that use has been removed, the use may continue pursuant to nonconformance provisions in the ordinance. Draft Chapter 10: Nonconformities was reviewed by the Commission at the November 12, 2022, Work Session.<sup>1</sup>

### **REVISIONS TO CERTAIN RESIDENTIAL DWELLING TYPES TO PROMOTE ATTAINABLE HOUSING**

Certain dwelling types are proposed to be added to certain residential Legacy Zoning Districts, to reflect that the new Zoning Ordinance makes [Article 7](#), Administration and Regulation of Affordable Dwelling Unit Developments (ADUs), of the current Revised 1993 Zoning Ordinance (Section 7-100, Affordable Dwelling Unit Developments), ADU density and use bonuses are the standard for new development going forward.

For example, the current Revised 1993 Zoning Ordinance does not allow attached units in the R-2 zoning district but does allow up to 35% of the units in an R-2 ADU development to consist of attached units. The draft text now proposes to list attached units (*up to 35% of the units within a development*) as permitted in the R-2 zoning district as a matter of right, primarily to promote more housing options and attainable housing in the County. Below are the proposed use additions specific to the R-2 zoning district example:

- Add *Dwelling, single-family attached* as a use permitted in the R-2, R-3, and R-4 zoning districts, not to exceed 35% of the total number of dwelling units in a development.
- Add *Dwelling, multifamily* as a use permitted in the R-8 zoning district, not to exceed 50% of the total number of dwelling units in a development.

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<sup>1</sup> November 12, 2022, Planning Commission Work Session – [Item 1c - ZOAM-2020-0001, Zoning Ordinance Rewrite – Chapter 10: Nonconformities and Adaptive Reuse, Sections 10.01-10.04 Nonconforming Uses, Lots, and Structures](#)

### **SPEX TO PERMITTED**

A public comment theme, as well as the Zoning Ordinance Committee, suggests that the current Revised 1993 Zoning Ordinance has too many uses that require SPEX review and approval. The draft text will be responsive to this sentiment and will convert some SPEX uses to permitted uses subject to Chapter 4: Use-Specific Standards as appropriate. This is part of the on-going staff effort that is currently underway. Staff's recommendations will be ready for the Commission Public Hearing planned for January.

### **ELIMINATION OF AUXILIARY USES**

Currently in the Revised 1993 Zoning Ordinance, Planned Development-Office Park (PD-OP), Planned Development-Industrial Park (PD-IP), Planned Development-General Industry (PD-GI), and Commercial Light Industry (CLI) zoning district provisions allow "auxiliary uses" subject to regulations. Auxiliary uses are intended to serve users (i.e., employees) of an office or industrial park subject to restrictions to ensure the character of the office or industrial park is maintained. An example lifted from the PD-IP zoning district permitted use listing (Revised 1993 Zoning Ordinance: Section 4-300 PD-OP Planned Development - Office Park; Section 4-303 Permitted Uses) follows:

*Uses auxiliary to (which serve the users of) existing permitted principal uses within a specific industrial park, such as, but not limited to restaurants including drive-through facilities, personal service establishments, convenience food stores, and automobile service stations, not to exceed a total of ten percent (10%) of the total allowable floor area of the industrial park shown on a concept development plan.*

Auxiliary use provisions are administratively problematic for staff and applicants. Most auxiliary uses are also listed as principal uses that require SPEX review and approval, which can create conflict and confusion. And what happens when the subject property is not in an industrial park or subject to a concept development plan? How is allowable floor area calculated? Who tracks and enforces the extent of auxiliary uses within a development over time? These questions cause issues for staff and applicants alike.

To address these issues, the draft text removes the auxiliary use concept. Instead, the uses currently listed as auxiliary will be treated as principal uses. Auxiliary uses are also listed as principal uses in the respective zoning districts. And most require SPEX review and approval.

The draft text proposes to list these uses as principal uses only and allow them by-right or by SPEX, consistent with the current use listing in the Revised 1993 Zoning Ordinance. For example, in the current PD-IP zoning district, personal service establishment is listed as a by-right permitted auxiliary use subject to the regulations noted above (see italicized excerpt) and listed as a SPEX principal use. In the draft text, Personal Services (the new proposed use name)

is listed as a SPEX principal use in the Industrial Park (IP) zoning district,<sup>2</sup> just as it is in the current ordinance.

Note that where auxiliary uses legally exist in a zoning district where the permission for that auxiliary use has been removed, the use may continue pursuant to nonconformance provisions in the ordinance. Alternatively, to exceed the limitations of nonconformance, the owner could pursue approval for the use as a principal use.

A list of auxiliary uses currently permitted in the Revised 1993 Zoning Ordinance is included as Attachment 1 to the staff report.

### **PUBLIC COMMENT THEMES**

Major [public comment](#) themes are noted below:

1. **Allow more uses.** Comments express that a use should be permitted in a zoning district that does not currently permit the use, or that uses requiring SPEX review and approval should be permitted by-right.

*Staff response:* Staff does not recommend widespread changes to the way uses are allowed with the exceptions noted above to implement 2019 GP policies or promote attainable housing. Staff continues to identify uses that should be listed as permitted and SPEX uses that could be permitted by-right subject to Use-Specific Standards. These recommendations will be brought forward for the Commission Public Hearing planned for January.

2. **Allow fewer uses.** Comments indicate that there are too many uses allowed in rural zoning districts and within sensitive environmental overlays.

*Staff response:* Staff does not recommend eliminating land use allowances, with the exceptions noted above for administrative and/or policy reasons. Eliminating land use allowances in rural areas would create nonconformance issues for too many existing establishments and would be contrary to rural economy objectives. Staff anticipates that clearer and strengthened environmental and other requirements address this concern.

### **ATTACHMENTS**

1. Auxiliary Uses Crosswalk Table

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<sup>2</sup> As explained in a separate Information Item on Zoning Districts, some zoning districts will be renamed by removing the “PD” designation from the zoning district title. Planned Development-Industrial Park (PD-IP) in the current Zoning Ordinance will be Industrial Park (IP) in the draft text.