

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. ZOTA 2012-9: AMENDMENTS TO ARTICLES 1, 8 & 12 FOR MODIFICATIONS TO THE B-1 ZONE – petition for a Zoning Ordinance text amendment to Articles 1, 8, and 12 to make various modifications to the B-1 zone, including the addition of several new definitions.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *(Copies of the full proposed text are available upon request)*

Revised Staff Alternative Text:

8-16(c) Accessory Uses

1. Parking areas or structures.
2. One (1) dwelling unit for owners, operators, or employees of a permitted use, provided that such dwelling unit shall be a part of the building and located above or to the rear of such permitted uses.
3. Warehousing, wholesaling, and storage, excluding outdoor storage; and provided that no building for such accessory use shall have openings other than stationary windows or solid pedestrian doors within one hundred (100) feet of any residential zone.
- ~~4. The rental of trucks (single rear axle - 28' maximum overall length); trailers, and related items in conjunction with the operation of an automobile service station, provided the service station abuts a state or federal highway and does not abut a residential zone. No more than five (5) trucks shall be stored for longer than forty-eight (48) hours on any service station. A site plan shall be submitted for the approval of the Division of Building Inspection for the control of such activities and shall show the entire property, signs, parking and location of the proposed storage area.~~
- ~~4.5. The sale of malt beverages, wine, or alcoholic beverages, when accessory to a restaurant permitted under Section 8-16(b)(3). Such accessory use shall not devote more than twenty-five percent (25%) of its public floor area exclusively primarily to the preparation and service of such beverages, nor provide any separate outside entrances or separate identification signs for those areas.~~
- ~~6. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein.~~
- ~~5.7. Satellite dish antennas, as further regulated by Article 15-8.~~
- ~~6.8. One (1) or two (2) pool or billiard tables within an establishment.~~
7. Sidewalk cafés, when accessory to any permitted restaurant.
8. Retail sale of liquid propane (limited to 20 lb. containers), when accessory to the retail sale of merchandise or an automobile service station permitted under Article 8-16(b).
9. Indoor live entertainment and/or dancing, when accessory to a restaurant, brew-pub or banquet facility, but only when located more than one hundred (100) feet from a residential zone.
10. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein, when approved by the Planning Commission on a development plan.

8-16(d) Conditional Uses

1. Self-service car washes, provided that surface water from such establishments shall not drain onto adjacent property, and that adequate on-site storage lanes and parking facilities shall be provided so that no public way shall be used for such purposes.
2. Animal hospital or clinic, provided that all exterior walls are completely soundproofed, and further provided that animal pens shall be completely within the principal building and used for the medical treatment of small animals.
3. The rental of trucks (single rear axle - 28' maximum overall length); trailers and related items in conjunction with the operation of an automobile service station, provided that the service station abuts a state or federal highway ~~when abutting a residential zone~~. No more than five (5) trucks shall be stored for longer than forty-eight (48) hours on any service station. A site plan shall be submitted for the approval of the Board of Adjustment for the continued control of such activity and shall show the entire property, buildings, signs, parking and location of the proposed storage area.
4. A restaurant or brew-pub, without live entertainment or dancing, which devotes more than twenty-five percent (25%) of the establishment's public floor area ~~exclusively primarily~~ to the preparation and service of malt beverages, wine or alcoholic beverages.
5. Outdoor live entertainment and/or dancing, cocktail lounges, ~~brew-pubs~~ or night clubs [unless prohibited under Sections 8-16(e)(14) and (15)]. Such uses shall be located at least one hundred (100) feet from any residential zone and shall be sound-proofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
- ~~6. A combination business, office and residential project, provided the following conditions and requirements are met:
[including deletion of sub-sections a. - s. that follow]~~
- ~~6.7. Upholstery shop.~~
- 7.8. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
 - a. That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
 - b. That a reasonable degree of reclamation and proper drainage control is feasible; and

- c. That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
- 8.9. Gasoline pumps available to the public without an employee on site, provided a plan is approved by the Board of Adjustment for periodic inspection of the site by an employee for the following purposes:
- a. To check all operating equipment;
 - b. To check fire suppression system(s);
 - c. To check the condition of the fire alarm(s);
 - d. To check for indications of fuel leaks and spillage;
 - e. To remove trash from the site;
 - f. To monitor the general condition of the site.
- 9.40. ~~Assisted living facilities and~~ Rehabilitation homes, but only when located closer ~~more than~~ five hundred (500) feet from a residential zone.
10. Extended-stay hotels.
11. Parking lots, provided such uses conform to the conditions of Article 16.
12. Drive-through facilities for the sale of goods or products or the provision of services otherwise permitted herein, except as accessory uses herein.

The Zoning Committee Recommended: Approval, including the Staff Alternative Text, for the reasons provided by staff.

The Staff Recommends: Approval, including the Staff Alternative Text, for the following reasons:

1. The text amendment will be in agreement with the Implementation Element and Table of the 2007 Comprehensive Plan, which identified the "neighborhood business zone rewrite" as a necessary task following the completion of the *Non-Residential Infill Study*. The Study suggested adjusting land uses permitted within the Neighborhood Business (B-1) zone and relaxing setbacks and height limitations.
2. The proposed amendment meets many of the recommendations of the *Non-Residential Infill Study*, and accomplishes other minor improvements to the B-1 zone to make it more compatible with residential neighborhoods.
3. The creation of a "form-based neighborhood business project" will provide added flexibility for redevelopment in the Infill and Redevelopment Area, and will provide for more compatible development with the existing character of an area.

Staff Presentation: Ms. Wade presented the staff report for this proposed text amendment, explaining that the impetus behind it came from the 2007 Comprehensive Plan Implementation chapter. She said that the first step in the process toward initiation of this request was the *Non-Residential Infill Study*; the staff then analyzed the data from that study and used it to make adjustments to the B-1 zone.

Ms. Wade stated that, based on the *Non-Residential Infill Study*, along with input from the Downtown Development Authority, the Infill & Redevelopment Steering Committee, and the Divisions of Building Inspection and Planning, the staff is proposing four types of changes to the text of the B-1 zone: 1) yard and height requirements; 2) off-street parking requirements; 3) special provisions; and 4) principal, accessory, and conditional uses.

With regard to the proposed changes to the height and yard requirements in the B-1 zone, Ms. Wade said that, currently, the height of a building is limited to 25 feet, unless it has a top floor with a residential use. In that case, the height can extend to 35 feet. The yard restrictions are currently set at 20-foot minimum front yards, with provisions in the defined Infill & Redevelopment Area to allow a property to match the front yards on either side of it. There are no current restrictions for side and rear yards, unless the property is located adjacent to a more restrictive zone. Using a rendered graphic on the overhead, Ms. Wade explained that, if a typical urban B-1 parcel was surrounded by R-1C zoning, it would be required to adhere to an eight-foot side yard and 10-foot rear yard, with a minimum landscape buffer of five feet wherever the residential and business zones were adjoining. In a rural B-1 zone surrounded by A-R zoning, 25-foot side and rear yards would be required, with a landscape buffer of 15 feet.

Ms. Wade stated that the *Non-Residential Infill Study* made some general statements about encouraging higher allowances for building height, even near single-family residential areas. In addition, the I/R study promoted increasing site coverage, which would require minimizing yard requirements as much as possible. Given that direction, the staff is suggesting two different types of changes with regard to height and yard requirements. The first proposed change would create a "build to" range in the B-1 zone, so that the setback would be between 10 and 20 feet for all buildings. The result of this amendment would be an increase in buildable area to the rear of a property, and the location of parking to the side or rear, with the structure pushed closer to the front of the lot. The staff also recommended increasing the maximum height to 35 feet for all B-1 zones, with no changes to the side or rear yard, open space, or lot coverage, which all currently have no limitations.

Ms. Wade stated, with regard to off-street parking requirements, that they are found in each zone. The I/R Study recommended a re-evaluation of current parking requirements, which the staff performed, using the American Planning Association standards for parking. The staff found that most of the uses were in line with the recommended parking standards,

* - Denotes date by which Commission must either approve or disapprove request.

and needed only a few changes. The staff is recommending a reduction in parking for arcades; the addition of animal grooming facilities and mail service facilities as new uses, with parking standards for each; and the addition of clothing alterations, tailoring services, and tattoo parlors as new uses, to be grouped with shoe repair shops, which have a parking requirement of one space for every 200 square feet.

With regard to the proposed amendments to the special provisions section of the Zoning Ordinance, Ms. Wade said that the Non-Residential Infill Study suggested two major changes. She explained that, in many of the B-1 zones, there are uses that are out of scale with the surrounding neighborhood; there is an existing restriction to limit the structure size of a big-box store that sells grocery items. The staff is recommending that that limit be applied to any structure in the B-1 zone, which should address the scale issue that the I/R Study suggested be remedied by limiting uses in the B-1 zones. The second proposed change to the special provisions section would create a form-based neighborhood business project, which would allow a great deal of flexibility for developers and the Planning Commission to meet the needs of the community. A Form-Based Neighborhood Business Project would be required to be at least an acre in size; be approved by the Planning Commission; and have a Final Development Plan approved prior to the issuance of any building permit. The lot, yard, and height setbacks would also be flexible, based on the neighborhood setting and context. Each project would require the submission of an area character and context study, prepared by an architect or urban design professional, to include information documenting the architectural setting and character of the area, and how their project would be incorporated into the neighborhood. Those study submissions would also require the presentation of renderings or other graphic materials to the Planning Commission for their approval. Ms. Wade stated that the staff believes that a good existing example of this concept is the Chevy Chase Plaza, which respects the character of the neighborhood and is integrated into its existing fabric, although it does not meet the typical setbacks and other requirements of the B-1 zone.

Ms. Wade said, with regard to the proposed use changes, that this text amendment would add a few new uses; move some uses from conditional to principal; specifically name tattoo parlors, which have been considered as beauty shops; and make the Form-Based Neighborhood Business Project a principal use. With regard to accessory uses, the proposed text amendment would make sidewalk cafes and the retail sale of propane listed uses. For conditional uses, the staff is proposing to add extended-stay hotels and parking lots as conditional uses. Parking structures with a B-1 use on the first floor could be considered as a principal use, but such structures without 25% of the first floor dedicated to a B-1 use would become a conditional use. The staff is also proposing text to allow a drive-through facility as an accessory use when the Planning Commission approves it on a development plan, but a conditional use when not approved by the Commission. Ms. Wade explained that there are many existing banks with drive-through facilities that are zoned P-1, and each such facility requires the approval of the Board of Adjustment, so the same treatment of drive-throughs would apply in that zone as well.

Ms. Wade stated, with regard to the proposed deletions, that the staff is proposing to delete hospitals and combination business, office, and residential projects from the list of conditional uses. She noted that the combination business, office, and residential project concept has not been used since the development of Chevy Chase Plaza, and the staff believes that it is overly restrictive, since it is required to be at least 20 acres in size. In addition, indoor theaters would be limited in size to three screens or stages. Truck rentals would become a conditional use across the board, since the axle size of the truck is the current determining factor as to whether that use is conditional or accessory, and the staff believes that that restriction is awkward and difficult to apply.

Ms. Wade said that there are several additional changes proposed to Article 8, due to the "trickle-down" effect of making changes to the B-1 zone. In addition, the staff is proposing to add the following new definitions: animal grooming facility; mail service facility; tattoo parlor; primary entrance; cocktail lounge; and nightclub, and to add the Expansion Area zoning categories to the existing definition of "business zone," industrial zone," and "residential zone."

Ms. Wade stated that, since the proposed text amendment was first drafted a year ago, other text amendments have been approved that have affected the B-1 zone, one of which dealt with banquet facilities. The staff felt that one of the changes to the banquet facilities text, which refers to outdoor live entertainment, was still unclear; so they are proposing additional changes to clarify that language. In addition, they are proposing to add language to allow the Board of Adjustment to impose time restrictions on outdoor live entertainment venues in order to minimize nuisances to the surrounding neighborhoods.

Ms. Wade stated that the Zoning Committee recommended approval of this request at their meeting in August of 2012, but they also recommended a change to the text relating to miniature golf courses at the request of Richard Murphy, attorney. The staff had originally recommended removing "miniature golf course" from the B-1 zone and moving it to the B-3 zone, but the Zoning Committee recommended keeping the use in the B-1 zone. The staff made the necessary changes to the proposed text; but Mr. Murphy noted just prior to this hearing that the Zoning Committee recommended deleting the word "outdoor" from the section pertaining to miniature golf courses, so that one of his clients could construct a mixed, indoor/outdoor course. Ms. Wade noted that the staff is recommending that the Commission delete the word "outdoor" from the proposed text as included in their notebooks, per the Zoning Committee recommendation and make miniature golf courses a permitted use in the B-3 zone, where most other recreation and entertainment-type uses are

permitted. She said that the staff is recommending approval of this request, with those changes, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Ms. Plumlee thanked the staff for their diligent work on the proposed text amendment, but noted that she believed that there were still some principal uses in the B-1 zone that might not be appropriate for neighborhood-oriented businesses, including: research, development, or testing laboratories; radio and tv studios; and business colleges, technical or trade schools, or institutions. She added that she is not in favor of tattoo parlors.

Ms. Plumlee opined that it is important to consider how the B-1 uses could impact the rural B-1 areas, outside the Urban Service Area boundary. She was concerned that "establishments primarily engaged in agriculture sales and services," greenhouses, nurseries, and hatcheries are prohibited uses in the B-1 zone, since rural area B-1 locations would be ideal for those types of uses.

Ms. Wade stated, with regard to the uses to which Ms. Plumlee referred as possibly inappropriate for the B-1 zone, that the staff researched those uses and determined that deleting them might create a large number of non-conformities, so they attempted to avoid deleting uses whenever possible. With regard to rural B-1 sites, she said that the staff has been working on a text amendment for recreational uses in the agricultural zones, and they believe that it will address some of Ms. Plumlee's concerns. Ms. Wade noted that many of the existing rural B-1 sites are not large enough to accommodate a nursery or greenhouse; but, since those uses are permitted in the agricultural zones, they could locate on a parcel adjacent to a B-1 parcel. She added that the staff is not sure that it would be appropriate to permit those uses in the urban B-1 areas, which comprise nearly 90% of all of the B-1-zoned land in the County.

Mr. Owens stated that, at first, it seemed that agricultural sales and services would be appropriate in the B-1 zone, because of how well they would fit in the rural B-1 areas. However, he does not believe that that type of use would be appropriate in the urban B-1 areas. He added that the recreational ZOTA group did not discuss greenhouses and agricultural sales as part of that process, but he believed that it might be appropriate to address those uses as part of that text amendment. Mr. Owens added that he did agree with Ms. Plumlee's comment that laboratories and research centers might not be appropriate uses in the B-1 zone.

Ms. Roche-Phillips stated that requiring existing B-1 areas to adhere to a form-based code could result in "robbing them of their inherent character." She said that she believes that the B-1 zone is intended for smaller-scale business areas, and suggested that form-based code development might be more appropriate for the larger-scale, more intense B-2B zone.

With regard to the proposed additions to the permitted uses, Ms. Roche-Phillips stated that she did not agree that some of those uses would be appropriate in the rural B-1 areas, including brewpubs. She noted that a recent article in the *Lexington Herald-Leader* had indicated that the rural areas support a large number of jobs, and she did not believe the Planning Commission should allow "incremental uses to encroach on" a regional economic engine. Ms. Roche-Phillips added that she believed that the Commission should carefully consider the compatibility of the urban and rural areas, including the proposed changes to setbacks. She opined that, although the B-1 zone has needed revision for some time, the proposed text amendment might be too ambitious.

Mr. Berkley asked if someone who wished to locate an agricultural sales business in one of the agricultural zones would be forced to have the property rezoned in order to do so, since the recreational ZOTA would apply only to the agricultural zones. Ms. Wade answered that the agricultural zones are being reviewed for recreational uses, and, in some cases, some of the agricultural/recreational uses suggested might encourage related retail sales of some sort, such as selling pumpkins. Mr. Berkley asked if it would be more appropriate to make those types of retail sales a conditional use in the agricultural zones. Ms. Wade responded that that was possible.

Mr. Owens stated that, since there are B-1 zones located both within and outside of the Urban Service Area, some uses, such as greenhouses and agricultural sales, might not fit in both situations.

Mr. Berkley said that one recently approved project, The Apiary, is proposing to have a greenhouse in the B-1 zone. Ms. Wade answered that that property is actually zoned B-4, and she was unsure if it would actually be considered a greenhouse.

Mr. Cravens asked if the Form-Based Neighborhood Business Project would be optional, and if a developer could choose to meet the regular requirements of the B-1 zone instead. Ms. Wade responded that that was correct, and noted that the use of the Form-Based Neighborhood Business Project would be the only way that the 40,000 square-foot restriction could be exceeded. She added that the staff has had some discussions with the Kroger company with regard to their existing store on Euclid Avenue, which is zoned B-1. The only way that facility could be expanded would be via the form-based option, or if the property was rezoned. Mr. Cravens opined that the form-based option is a good tool for use in the Infill & Redevelopment Area, since those redevelopment projects often need require greater flexibility.

Ms. Plumlee stated that, despite the proposed recreational ZOTA, she was still concerned about rural B-1 areas, since that ZOTA will address only the agricultural zones. Ms. Wade responded that the text of that ZOTA has not yet been drafted, since the summary report has not been filed. Mr. Sallee opined that, after attending many of the recreational ZOTA meetings, the first prohibited use currently listed in the B-1 zone might be a section that this future text amendment would address.

Mr. Owens asked if the proposed text amendment would permit buildings of 35 feet in height, without the existing stipulation that the third floor of the building must be residential. Ms. Wade said that that was correct, and noted that it was intended to provide more flexibility. Mr. Owens asked if the staff was proposing to delete Business Office & Residential Projects as a conditional use. Ms. Wade answered that the staff is proposing to delete that use, if the Commission chooses to add the Form-Based Neighborhood Business Project. With regard to the proposed change to parking requirements, Mr. Owens asked if it was necessary to maintain a minimum number of three parking spaces in areas where the requirement is one space for every two hundred square feet. He said that he would prefer to see the requirement for a minimum number of parking spaces eliminated, given the importance of limiting the amount of impervious surface on a property.

Audience Comment: Richard Murphy, attorney, stated that he had spoken to the Zoning Committee in August of 2012 on behalf of Collins Bowling Center, who had a plan approved to construct a miniature golf course in conjunction with their bowling facility. He said that the original staff report on this request recommended removing miniature golf as a permitted use in the B-1 zone, but, following the discussion with the Zoning Committee, the Committee decided to recommend that it be added back to the B-1 zone; and permitted indoors or outdoors. Mr. Murphy said that he had spoken with the staff prior to this hearing, and the staff was agreeable to removing the word "outdoor," since that was an oversight in the revised staff report.

Discussion: Mr. Owens asked, with regard to Ms. Wade's comment about the creation of non-conformities if some of the principal uses were removed from the B-1 zone, if the staff knew approximately how many such non-conforming uses would be created. Ms. Wade answered that the staff had not researched exactly how many non-conformities would be created.

Ms. Plumlee stated that she believed that the proposed text amendment needed additional "tweaking" prior to the Commission making a decision.

Ms. Blanton stated that she believed that it would be appropriate for the Commission to vote on this request today, with the knowledge that some of their concerns would be resolved with the drafting of the recreational ZOTA. Mr. Owens opined that that text amendment should address those issues, and it could be expected to be completed within the next four to six months.

Director Comments: Mr. King agreed with Mr. Owens' assessment, noting that the staff would have to wait for the final report from the committee prior to drafting their work into a specific text.

Mr. Berkley asked if the prohibited uses related to agricultural sales and greenhouses should be moved to conditional uses, until such time as the recreational ZOTA is completed. Mr. Owens responded that, since urban and rural B-1 areas must be considered, he believed that the proposed text should be left as it is at this time, and it will be addressed by the upcoming text amendment.

Motion: A motion was made by Mr. Cravens and seconded by Ms. Blanton to approve ZOTA 2012-9, for the reasons provided by staff, with the changes recommended by staff with regard to miniature golf courses

Discussion of Motion: Ms. Roche-Phillips stated that she did not believe that the Form-Based Neighborhood Business Project was appropriate for the B-1 zone, and she did not believe that this proposed text amendment should go forward without further revisions.

Mr. Cravens asked if the Form-Based Neighborhood Business Project had been part of the proposed text amendment from the outset. Ms. Wade answered that it had. Mr. Sallee added that the concept was presented to the Commission at one of their work sessions in 2012. Mr. Cravens stated that he believed that it was a good idea, and he supported it. Ms. Roche-Phillips stated that she supported the concept of form-based codes, but did not believe that the B-1 zone was the appropriate location for it. Ms. Wade noted that a task force was currently considering the creation of form-based codes for the downtown zones. Mr. King added that that task force elected not to pursue a form-based code, but rather a Design Excellence program with architectural guidelines, etc. Ms. Roche-Phillips asked if that program would be restricted to a particular district. Mr. King answered that phase one of the program would apply to all of the B-2 zones.

Action: Mr. Cravens' motion carried, 5-3 (Beatty, Brewer, and Penn absent; Owens, Plumlee, and Roche-Phillips opposed).