



Frederick County

Zoning Ordinance Evaluation

November 6, 2024



 **BERKLEY**
GROUP

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Overview

Purpose and Scope

The Zoning Ordinance is one of the key tools Virginia localities use to regulate the use and development of land. As part of Frederick County's full review of its Zoning Ordinance, the County commissioned a diagnostic study to examine the Ordinance for compliance with the *Code of Virginia* and other land use and development best practices.

Berkley Group, a Virginia-based local government consulting firm, completed this assessment, which included the following tasks:

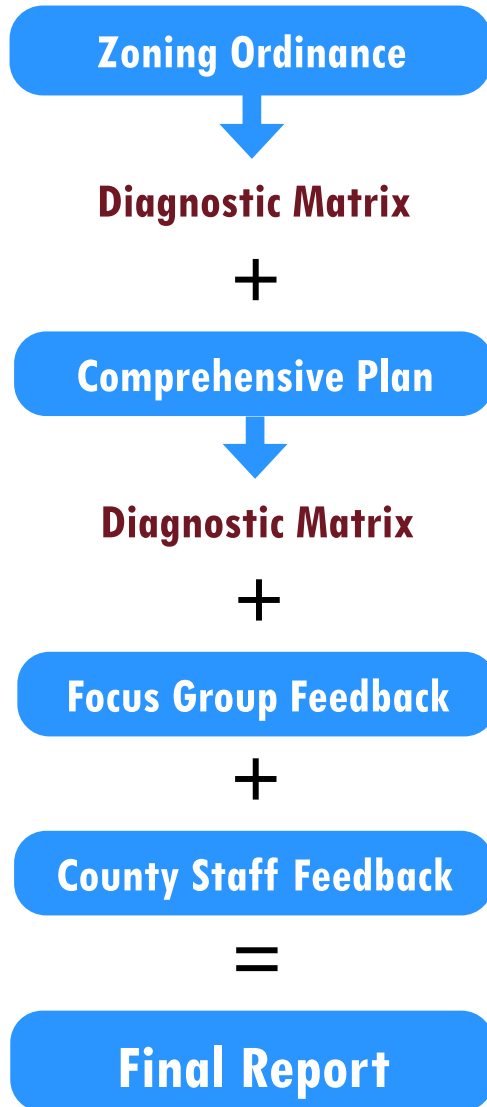
- Analyze the Zoning Ordinance, Chapter 165, found in the Code of Ordinances for Frederick County, Virginia, for compliance with the *Code of Virginia*;
- Provide best practice recommendations, along with recommendations for alignment with the County's Comprehensive Plan;
- Incorporate known Ordinance strengths and weaknesses as provided by County staff knowledgeable with zoning regulations; and
- Conduct a focus group with individuals who have a thorough working knowledge of the County's Zoning Ordinance, including developers, engineers, and builders.

Process

The diagnostic process began in July 2024 with a kick-off meeting between the Berkley Group project team and County staff to discuss broad community goals and specific issues with the County's Zoning Ordinance. In September 2024, Berkley Group facilitated a focus group to gain an in-depth perspective on how the zoning regulations affect stakeholder organizations or businesses, along with what changes they would recommend (see [Appendix C](#) for a full summary of the discussion). Focus group participants included representatives from local developers, engineers, land use-oriented committees, and the County Planning Commission. Feedback received from staff and focus group participants was considered in tandem with a comprehensive review of the Zoning Ordinance to assess how the regulations provided for in this Ordinance comply with applicable state requirements and achieve the County's stated land use and development goals.

The Frederick County Zoning Ordinance was assessed for compliance with each pertinent section of the *Code of Virginia* Title 15.2, Chapter 22: Planning, Subdivision of Land and Zoning and analyzed for potential improvements to structure and content. Additionally, a broad review of Frederick County's current Comprehensive Plan identified opportunities to implement policies and strategies through a Zoning Ordinance update. These diagnostic matrices are included as [Appendices A and B](#) for easy reference and examination.

This report identifies actions Frederick County should take to strengthen the Ordinance and ensure complete compliance with the *Code of Virginia*. Specific actions are also recommended to improve the consistency, clarity, and completeness of the Zoning Ordinance. These recommended changes will improve the ability of public officials, citizens, and other stakeholders to better understand, administer, and use the Ordinance in practice.



Key Findings

Frederick County's Zoning Ordinance should be revised to reflect current best practices in zoning and land use; to strengthen and enhance the ability to implement the strategies and priority items of the current Comprehensive Plan; and to improve clarity and ease of use with the following actions, in no particular order:

- The Zoning Ordinance should be reorganized and streamlined into a user-friendly, clearly written document. This is to aid staff with administration and enforcement and the community with general interpretation and use.
- The Zoning Ordinance should be updated to achieve full compliance with the *Code of Virginia*, as detailed in the recommendations of [Appendix A](#).
- All application and notice procedures should be consolidated into a single article, including the procedure for the advertisement and notification of public hearings.
- Dimensional standards in all primary zoning districts should be reviewed and updated to ensure that they are clear and fully facilitate the type of development that meets each district's stated intent. All zoning districts should have clear and consistently applied dimensional standards. For ease of use, dimensional standards should be organized in a table format.
- The Zoning Ordinance would benefit from updated graphical representations coupled with including additional types of graphics. This includes tables and charts to convey information, such as a use permissions matrix, district standards table, and design standards illustrations, among others.
- The Zoning Ordinance should be reviewed and updated annually with the Planning Commission and Board of Supervisors. This is a best practice technique which ensures that the ordinance not only remains compliant with the *Code of Virginia*, but also relevant and responsive to community needs and priorities.



The Zoning Ordinance is the local code that provides regulations and requirements for the use and development of land in Frederick County. Zoning divides a locality into specific districts and establishes regulations concerning the use, placement, spacing, and size of land and buildings within the respective districts. The Zoning Ordinance is the primary instrument used by localities to implement the long-range vision found in the Comprehensive Plan. Frederick County's Zoning Ordinance can be updated and improved to better manage land development activities, enhance clarity, and ensure compliance with the Code of Virginia. Specific recommendations for state code compliance are included in Appendix A and summarized throughout this report.

Federal and State Compliance

Any Zoning Ordinance update should incorporate current *Code of Virginia* references and address recent amendments to the *Code*. The Ordinance does not account for several recent updates to the *Code of Virginia*, including those related to public noticing, Ordinance administration, and solar photovoltaic and energy storage project approvals. The Zoning Ordinance diagnostic ([Appendix A](#)) itemizes each state code section that must be addressed. Charts depicting the compliance with each pertinent section of the *Code of Virginia* are included on the following page.



This set of diagrams showcases the Zoning Ordinance's overall applicability and compliance with the Code of Virginia's zoning regulations. A detailed analysis of each code section is provided in Appendix A; these charts offer a broad look at Frederick County's standing.

Chart 1 highlights the percentages of the Code of Virginia regulations that are and are not applicable to the Zoning Ordinance. The applicable percentage includes both mandatory and optional provisions.

Chart 2 highlights the collective percentage of the Zoning Ordinance that fully complies, does not comply, or partially complies with the mandatory sections of Code of Virginia.

Chart 3 highlights the percentage of optional provisions that are included, not included, or partially included in the Zoning Ordinance.

Chart 1
Applicability of
Code of Virginia Sections

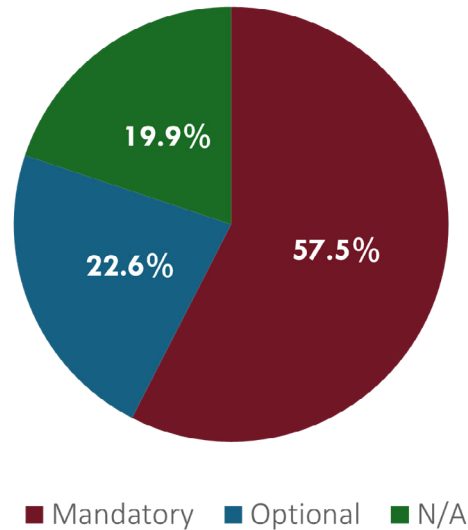


Chart 2
Compliance with
Mandatory Sections*

**Chart does not include Optional or Not Applicable percentages*

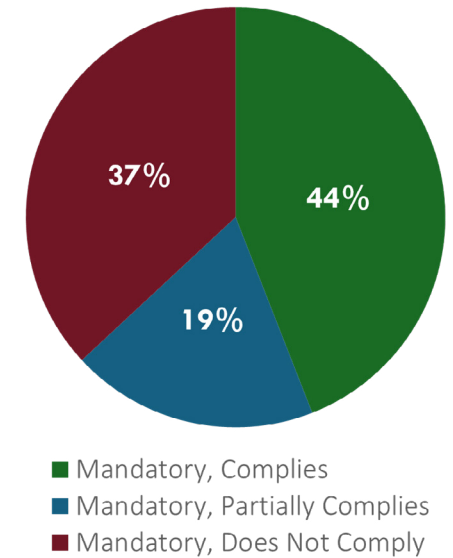
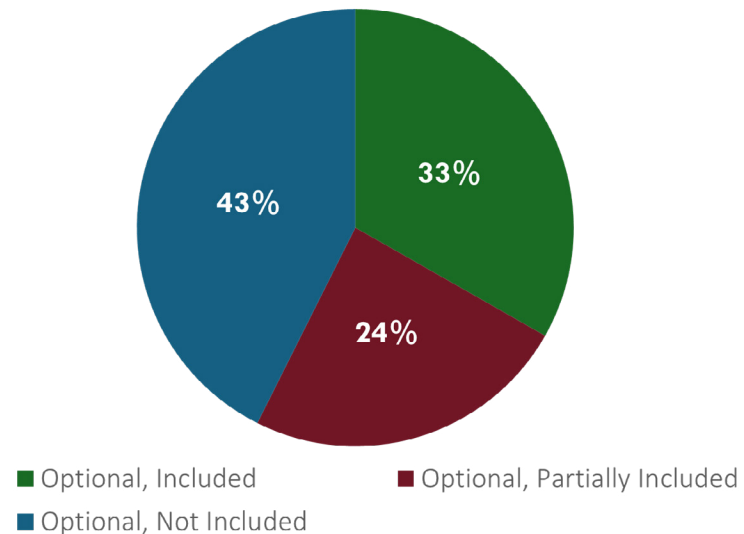


Chart 3
Optional* Provisions Usage

**Total Optional provisions = 23% of all provisions*



Berkley Group typically recommends the following structure for zoning ordinances:

- 1. In General**
- 2. Administration**
- 3. Permits and Applications**
- 4. Primary Zoning Districts**
- 5. Overlay Zoning Districts**
- 6. Use Matrix**
- 7. Use Standards**
- 8. Community Design Standards**
- 9. Nonconformities**
- 10. Definitions**

The County's Subdivision Ordinance can also be added as an article to promote cohesiveness and transparency, if desired.

Organization

The Zoning Ordinance has not been wholly updated since 1990, instead being amended as needed through the years. This has led to ambiguity and conflicting provisions, making administration and interpretation burdensome. The Ordinance should be reorganized and streamlined for clarity, with conflicting or redundant provisions removed. A restructuring may also be necessary to ensure “like” provisions are included in the appropriate Article or Division.

The current Ordinance tends to utilize lengthy paragraphs, making it difficult to follow more complex requirements. Future updates should seek to streamline text, avoiding the use of jargon if possible and using concise multi-level lists to replace overly lengthy text. In some instances, tables could be used to entirely replace bodies of text; this would improve readability and expedite the process of making future text amendments.



Administration

The current Zoning Ordinance lacks information regarding the specific powers and procedures of the Board of Supervisors as related to zoning and the Planning Commission. The Administration article of the Ordinance should include a section to codify the powers, duties, and procedures as they are assigned in the County, and ultimately dictated by the *Code of Virginia*. This section would also house the Board of Zoning Appeals (BZA) language from Article X of the current Ordinance. Additionally, it could include the powers and duties of the Historic Resources Advisory Board (HRAB).

Currently, there are many instances where provisions of the Ordinance can be waived or modified after a public hearing before the Board of Supervisors. While allowing some flexibility in Ordinance standards can be positive, minor modifications may not always warrant a full public hearing process. The County should consider where administrative waivers and/or modifications can be utilized in lieu of waivers before the Board to reduce the time and cost burden for an applicant and the Board's workload.

Civil Penalties

Frederick County amended the Zoning Ordinance in 2020 to update enforcement procedures to align more closely with the *Code of Virginia*. The Ordinance does not currently provide procedures for civil penalties for zoning violations in the Ordinance, although the Ordinance includes a provision authorizing the Board of Supervisors to adopt civil penalties. As a best practice, the County should introduce civil penalties and implement such penalties as a first line of defense, moving to misdemeanors as appropriate. Utilizing this more gradual approach will ease the burden of enforcement, save the County time and money, and allow the most effort to be put towards repeat or serious violations. A uniform schedule and summons procedure should be applied for civil penalties as detailed in the *Code of Virginia*. Procedures for civil penalties, along with other procedures for code enforcement, would be addressed under the Administration article of the Ordinance.

Cash Proffers

The *Code of Virginia* allows localities to accept cash proffers with development applications to mitigate impacts or provide for certain improvements, provided that specific criteria are met. Frederick County's Zoning Ordinance does include language for the acceptance of cash proffers, although it should be revised to better align with *Code of Virginia* § 15.2-2297. State code requires cash proffers to be directly related to the specific development being permitted, which is not explicitly included in the current Ordinance. It is recommended to include direct reference to applicable sections of the *Code of Virginia* and state that acceptance and expenditure of cash proffers will comply with said state code.

Permits and Applications

Procedures and standards for permits and applications are a major component of a Zoning Ordinance. Additionally, having clear and consistently applied standards for permits and applications can also signal Frederick County as a business-friendly community. County staff has received negative feedback regarding the site plan, minor site plan, and illustrative sketch requirements. Berkley Group recommends multiple changes to these requirements to reduce confusion and ensure zoning requirements are consistently applied.

The Ordinance currently states either a site plan or illustrative sketch plan is required for a Conditional Use Permit (CUP) only, and the Zoning Administrator is given broad authority to not only determine which type of plan is required, but to waive or alter requirements. As a best practice to reduce the time and cost burden of the application process, and to remove inconsistently applied standards, Berkley Group recommends eliminating the site plan requirement at the application stage and only requiring an illustrative sketch plan. This should be applied consistently across all rezoning, CUP, and variance applications, regardless of the use or zoning district. Site plans should then be uniformly required for all development after any required zoning approval has been granted but before construction has commenced. If desired, some flexibility can be provided by including a provision that the Zoning Administrator may

require a site plan if review of a sketch plan reveals that the application is overly complex. This provision could include specific parameters for when this is required, such as traffic counts and acreage. Some localities also choose to waive site plans for agricultural uses and single-family residential development that is not part of a larger development.

Additionally, the Ordinance states that applicants shall provide comments on the site plan from various agencies; as a best practice, County staff should be coordinating the process of reviewing and compiling comments from other agencies. The Ordinance also states that the Zoning Administrator may submit site plans to the Planning Commission for review and recommendation, but only provides vague criteria for what would warrant this more extensive review. If the Planning Commission desires to continue review and recommendation of site plans, this should either be required for all site plans, or more specific circumstances articulated as to when this type of review should occur.

Minor site plans are commonly utilized around Virginia for development that does not have as significant of a disturbance. However, some localities have found that it is best to only have one type of site plan to ease the burden of staff review. If Frederick County decides to eliminate a minor site plan requirement, coordination

should occur first against applicable MS4 and erosion and sediment control (E&S) ordinances to ensure there would not be gaps created in the application process.

Frederick County also currently includes a master development plan (MDP) process in its Ordinance, which serves as an intermediate plan between a conceptual plan and a full site plan. The purpose of the MDP is to demonstrate the characteristics of the property proposed for subdivision and/or development and ensure that all applicable Ordinance requirements have been satisfied. However, applicants are currently permitted to waive an MDP if a site plan is submitted, although the site plan requirements are more stringent than those of an MDP and so the two should not be considered interchangeable. If the County requires a conceptual sketch at the application stage, and then a site plan prior to construction, the need for an MDP would be eliminated, which would provide greater clarity to applicants. One component of an MDP submittal that the County may choose to retain is the preapplication conference provision, which can be either recommended or required for all zoning approvals and site plan submittals. If a preapplication conference is required, it should be either required for all zoning applications or be completely clear as to what circumstances warrant the preapplication conference.

District Standards

The Zoning Ordinance establishes district standards that address height, area, setbacks, and lot coverage. These district standards should be evaluated to ensure consistency and that the standards are promoting the desired type of development in each district, with changes being made where necessary.

District standards for each specific zoning district are included throughout the Ordinance, with additional relevant regulations in Part 201, Supplementary Use Regulations. As utilized in § 165-601.02 of the Ordinance, all district standards should be organized in a tabular format broken out by district type (e.g., agricultural, residential, industrial, planned development). Focus group participants expressed concern with the standards for the Residential Performance (RP) district in particular. Introducing graphics and tables is a fundamental improvement that improves usability and serves as a helpful exercise to identify and eliminate potentially conflicting standards. The use of updated and additional graphics may also help to illustrate how certain dimensional standards, such as maximum height, are measured.

Additionally, both County staff and focus group participants noted the lack of residential rezonings over the last decade. As Frederick County is projected to continue growing, zoning requirements should be proactive in ensuring

that any new residential growth is not only feasible in targeted growth areas, but high-quality and appropriate for the context of the surrounding area. One implementation step in facilitating this is reducing the minimum overall required development area of planned development districts to allow thoughtful development to occur on smaller tracts of land.

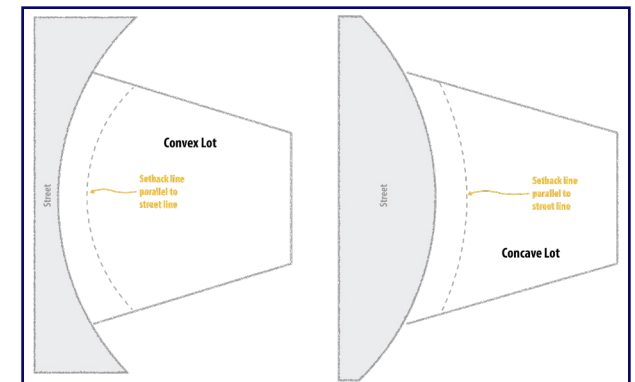
Height

The current height requirements were identified by both County staff and focus group participants as a frequent limiting factor in development; therefore, maximum permitted heights for all zoning districts should be evaluated with changes being made where necessary. These limitations cause issues with attracting development in the commercial and industrial districts, and can also inhibit redevelopment, particularly for stacked townhouses and other forms of “missing middle” housing development such as duplexes and triplexes.

Setbacks

County staff and focus group participants noted the need to closely review the setbacks in all zoning districts, but especially the residential and industrial districts. Setback requirements for all districts should be stated clearly and consistently; there is currently ambiguity as to where and how setbacks are measured. For example, in the RA district, setbacks are applied

based on the primary use of the adjoining parcel, which is not a best practice and should be applied based on the primary use of the subject parcel. Additionally, current setbacks are not always in line with the type of development envisioned by each underlying zoning district; this is a barrier to achieve residential infill development and other land use goals as envisioned by the County’s Comprehensive Plan. Setbacks should therefore be updated to ensure that they are easily applied, appropriate, and in line with the goals and desires of the County and its residents.



Example setback measurement graphic | Spotsylvania County, VA (draft Ordinance)

Transfer of Development Rights

Article III of the current Zoning Ordinance encompasses Frederick County's Transfer of Development Rights (TDR) Program regulations. This program allows property owners in rural areas to sell the development rights to their land as credits that can be applied in designated areas of Frederick County. The Ordinance includes most definitions and provisions provided by *Code of Virginia* §§ 15.2-2316.1 and 15.2-2316.2; however, it should also define "severance of development rights" as provided in state code. Additionally, the definition of "development rights" should be updated to better align with what is provided in the *Code of Virginia*. All other TDR related definitions and provisions should be reviewed and updated as needed.

Cluster Subdivisions

Frederick County allows for cluster subdivisions as required by *Code of Virginia* § 15.2-2286.1. The County's Zoning Ordinance currently permits cluster subdivisions by-right in the Rural Areas (RA) and Residential Performance (RP) districts. The cluster provisions included in the RA district are currently vague and should be explicitly stated as cluster requirements; this may help implementation in practice. Cluster provisions in both the RA and RP districts can also provide more clear guidance for open space and provide smaller minimum lot sizes. This applies mainly in the RA district, where a decrease to one acre would likely be appropriate in a cluster development and align more closely with the provided setbacks. Additionally, it is worth noting that the RP district requires no more than 50% of the required open space to be within lakes and ponds, floodplain, wetlands, or steep slopes, even for clustered residential development. However, per state code, localities are not permitted to require delineation of slopes or riparian areas in the open space included in a cluster development.

It may be useful for the County to consolidate all cluster provisions into an individual section or table for ease of use, administration, and future amendments.

Table IV-9. Cluster Development Standards									
Zoning District ¹		Standard							
		Maximum Density	Minimum Lot Area (sq. ft.)	Minimum Lot Width (feet)	Minimum Setbacks (feet)			Minimum Cluster Development Setback (feet)	
					Front	Side	Rear	Any Public Road(s)	All Other Property Lines
A-2		1 du / 2 gross acres	40,000	110	30	10	30	300	100
A-3		1 du / gross acre	20,000	100	30	10	30		
R-1 and R-2									
With Public Water and Sewer	Single Family Dwelling	2.9 du / gross acre	8,000	60	15	8	20	If abutting an A-2 or A-3 district, as above.	
	Duplex		4,000	50	10	5	20		
With Public Water or Sewer	Single Family Dwelling	1.7 du / gross acre	12,000	60	15	8	20		
	Duplex		8,000	50	15	5	20		
R-3									
Public Water and Sewer Required	Single Family Dwelling	2.9 du / gross acre	6,500	60	15	6	20	If abutting an A-2 or A-3 district, as above.	
	Duplex		4,000	50	15	5	20		
	Townhouse	8 du / gross acre	1,200	18	10	10 (end unit)	20		
Notes:									
¹ Agricultural districts can be served by private, public, or a combination for water and sewer connections.									

Example cluster development standards table | King George County, VA

Overlay Districts

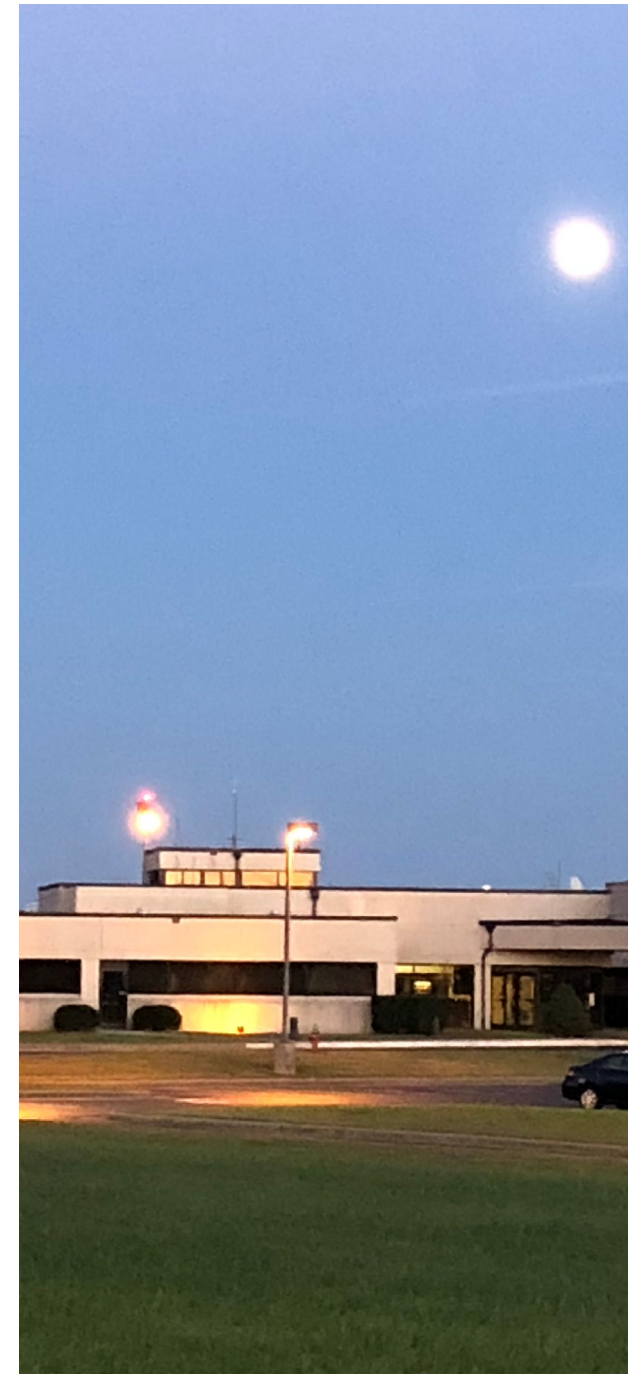
Frederick County's Zoning Ordinance establishes five overlay districts in Article VII; specifically, the specifically the Airport (AP1), Floodplain Districts (FP), Historic Area (HA), Interstate Area (IA), and Traditional Neighborhood Design-Business (TNDB) Overlay Districts. Although they are included in the Ordinance, none have been applied to any specific areas or parcels in the County and designated on the Zoning Map, with the exception of the IA overlay district.

Frederick County should undertake a County-initiated map amendment to apply all overlay zoning districts to appropriate areas. This is a best practice seen in most Virginia localities, as is not typical to expect developers to apply for both an overlay and a primary district due to the significant time and cost burdens. This map amendment process will prevent spot applications of overlays, which works against providing cohesive, high-quality development that achieves specific and often hyperlocal goals.

These overlay districts should also undergo a review with updates where needed and desired. Several recommendations for the County's overlay districts include reviewing the AP1 and FP district language against the state model ordinances and aligning overlay districts with updated uses and permissions. Additionally, the TNDB district was specifically identified by focus group participants as a zoning district in need of

greater flexibility for design requirements such as landscaping, off-street parking, and open space. Design requirements can also address blocks and streets, materiality, and colors.

County staff identified the HA district as one that appears overly restrictive. While the language in this district is largely consistent with similar overlays in other Virginia localities, one potential improvement that would improve implementation is applying the HA district to any designated local, state, and/or federal historic districts; this eliminates the need for applying district boundaries based on criteria that could be more subjective in nature. Once these are designated, the list of criteria for future designations should then be shortened for brevity. The Historic Resources Advisory Board (HRAB) could also be tasked with conducting the bulk of research and analysis in processing applications; some localities choose to use this approach. It may also be helpful to create a clear division for Certificate of Appropriateness (CA) that guides development in these areas upon designation; some localities also choose to allow exemptions for certain development in historic overlays, such as signage and agricultural or horticultural uses. Exemptions are currently not provided for in the Ordinance.



Some uses can be streamlined to eliminate redundancy and combine specific terms into broad categories. For example, “data entry, data processing, data verification, and optional canning data services” and “Finance and Insurance, Holding, and Office of Real Estate” can be combined into “Office, General.” Additionally, the “library” use could be combined with the “public buildings” use that is included in the current Zoning Ordinance.

Uses and Definitions

Definitions

The definitions section of the Zoning Ordinance should be reviewed and updated for consistency, clarity, and ease of interpretation. The County should ensure that every land use permitted in the Ordinance has an accompanying definition, and that all definitions are clear to avoid interpretation issues. All terms and uses required by the *Code of Virginia* and pertinent to Frederick County should be included with an accompanying reference to the appropriate section of the *Code*; for example, “affordable housing” and “incentive zoning”. Terms that are not pertinent to the County, such as “military installation”, “working waterfront”, and “working waterfront development area”, do not need to be included. Currently, many uses identified in the Ordinance are not defined, such as “car wash” and “gasoline station”; additionally, many of the *Code*-mandated use terms are not included, such as “family day home.” Focus group participants noted this as an issue in understanding and applying the Ordinance.

Uses

Definitions should be closely reviewed for opportunities to consolidate similar uses under more general use types for easier administration, interpretation, and flexibility. Some uses can be streamlined to eliminate redundancy and combine specific terms into broad categories.

The County initiated text amendments in late 2023 and early 2024 to align the uses in commercial and industrial districts with the North American Industry Classification System (NAICS). This was a significant step in modernizing the Zoning Ordinance and implementing the goals of the County’s Economic Development Authority (EDA); however, all uses, regardless of where they are permitted, should be reviewed and modernized to provide flexibility to adapt to new uses. This eases administration and development while also reducing requests for zoning text amendments; this also serves to benefit the County’s economic development goals. Examples of outdated uses include “rooming/boarding house” and “mobile home.” Examples of modern uses seen in many Virginia localities that should be introduced are “mobile restaurant”, “data center”, and “brewery.”

Additionally, County staff and focus group participants also identified the need to introduce additional housing types, along with clear and appropriate definitions, such as back-to-back townhomes, quadplexes, and 2-over-2 units. Expanding the defined and permitted housing types in the County will help to provide a broader selection of housing for the County’s workforce.

Use Permissions

Currently, use regulations are provided as lists in district-by-district articles of the Zoning Ordinance. As a best practice, many localities utilize a composite use matrix that shows all districts, uses, and how those uses are regulated. Berkley Group recommends adding at least one use matrix to the Ordinance as a fundamental improvement in lieu of listing uses in each district article. If a use matrix – or matrices – are incorporated, it provides a user with a location to easily identify where a use is permitted, either “by right” or “by conditional use permit” without looking in multiple sections of the Zoning Ordinance. The use matrix can also identify if a use has associated performance standards, and where in the Ordinance those standards are located. This is particularly useful for potential businesses considering locating or relocating in Frederick County. Utilizing a use matrix also makes it easy for the County to ensure uses are appropriately permitted, to avoid conflicts or repetition, and to streamline the process of adding new uses in the future. All existing uses should be reviewed to make sure they are permitted in appropriate zoning districts.

Use	Districts										Use Performance Standards
	R-1 Low Density Residential	R-2 Medium Density Residential	R-3 High Density Residential	R-MH Manufactured Home Residential	DT Downtown District	C-1 General Commercial	C-2 Highway Commercial	I-1 Light Industrial	I-2 Heavy Industrial	R-PRD Planned Residential Development	
	B = By-Right CUP = Conditional Use Permit Blank = Not Permitted										
Residential											
Adaptive Reuse Residential					CUP						7-2-1
Bed and Breakfast	CUP	CUP	CUP		B	B				CUP	7-2-2
Dwelling, Manufactured Home				B							7-2-3
Dwelling, Multi-Family			B		CUP					B	7-2-4
Dwelling, Single Family	B	B	B							B	
Dwelling, Two-Family			B							B	
Dwelling, Townhouse			B							B	7-2-5
Family Health Care Structure, Temporary	B	B	B	B						B	7-2-6
Family Day Home (1-4 Individuals)	B	B	B	B						B	
Family Day Home (5-12 Children)	CUP	CUP	CUP	CUP						CUP	
Group Home, Large			CUP								

Example use matrix | City of Emporia, VA

Use performance standards are a valuable tool to enhance the quality and character of development while limiting adverse impacts on potentially incompatible uses. The below uses are examples of ones that often benefit from additional performance standards:

- **Campgrounds**
- **Data Centers**
- **Event Venues**
- **Manufactured Home Parks**
- **Short-Term Rentals**
- **Smoke / Vape Shops**
- **Truck Stops**
- **Utility-Scale Solar Energy Facilities**

Use Performance Standards

Use performance standards are additional regulations above and beyond what is required by the underlying zoning district to enhance the quality and character of development and to limit adverse impacts on potentially incompatible uses. Uses that are largely permitted by right but that may have more significant impacts – for example, a gas station adjacent to a residential district – should be given appropriate use standards to help ensure a business-friendly development process while simultaneously addressing potential conflicts between uses.

The existing Zoning Ordinance includes use performance standards for some permitted uses, but not all. All uses permitted in the Ordinance should be reviewed and given use performance standards as needed. County staff has specifically noted the need for additional performance standards for self-service storage facilities. Often, performance standards can be utilized in lieu of Conditional Use Permit (CUP) requirements. This means that a use requested frequently for a conditional use permit can be changed to a by-right use and customary conditions of the permits would be inserted as regulations within the use performance standards article. Establishing use performance standards in lieu of a conditional use process for commonly requested uses can alleviate staff, Planning Commission, and Board time on repeated applications while still ensuring

impacts on neighboring properties are minimized. This also demonstrates the County's commitment to being a business-friendly community.

It is also recommended to consolidate all use performance standards in a singular article and organize by use category (e.g., agricultural use standards, residential use standards, industrial use standards) for ease of administration and to avoid redundancy. Currently, performance standards are scattered throughout the Ordinance, including within some use definitions; this organizational approach makes it difficult for a user to understand requirements and can increase the risk of conflicts and redundancies when amendments are made.

Accessory Structures and Dwellings

Accessory Dwelling Units (ADUs) are an easy tool for Frederick County to support general housing availability and flexibility where appropriate. The Zoning Ordinance includes setbacks for accessory structures but does not include definitions for the terms “accessory structure” or “accessory dwelling unit.” Accessory structures and ADUs – both detached and attached – should be clearly differentiated to clarify the difference between a structure that is meant as a live-in unit and a structure that is meant for non-residential purposes, such as a shed or workspace. Additionally, ADUs

should be permitted by-right with performance standards in appropriate residential districts. These standards can be tailored to the specific impacts of ADUs and address items such as minimum and maximum floor area and size – which is already partially addressed – parking, location, and the amount of ADUs permitted per parcel. The use performance standards must carefully address impacts without stifling housing development.

Affordable Dwelling Units

County staff has noted the potential importance of addressing affordable dwelling units through the Zoning Ordinance; this would be most effective and easily implementable when coupled with adding new residential uses and further addressing ADUs. A best practice for facilitating the provision of affordable dwelling units is through implementing density bonuses, which allow for a specified increase above and beyond the maximum density if certain development criteria are met. This allows for flexibility and high-quality development while being less demanding than a traditional affordable dwelling unit ordinance. If a traditional ordinance is desired, *Code of Virginia* § 15.2-2305 would govern and require the ordinance to address housing needs, provide a full range of housing choices, and encourage the construction and continued existence of housing affordable to low- and moderate-income residents. The County would also be permitted to provide for density bonuses,

establish enforcement mechanisms, and establish qualifying County-wide affordable dwelling unit sales prices based on local market conditions, among other items.

Kennels

County staff has specifically noted the need to better differentiate between kennels; specifically, those used primarily for breeding versus those used primarily for boarding. The lack of separate terms and definitions has caused challenges in administration and enforcement. Berkley Group recommends defining two separate kennel uses, one commercial and one private. The differentiation between the two is based both on the number of dogs and whether the activity is occurring in exchange for monetary compensation. This is because breeding and boarding both have similar impacts. This will provide the County with flexibility to apply different use performance standards for different intensities of the use, preventing undue regulation on smaller kennels where animal keeping is not conducted in exchange for compensation. Berkley Group typically recommends incorporating standards for both types of kennels that address additional setbacks, minimum lot area, screening, and waste cleanup. If animal welfare is a concern, performance standards for commercial kennels can also address the maximum number of animals allowed to be kept on the premises at any one point in time.

Green Infrastructure

Accessory uses such as small-scale or rooftop solar facilities, in addition to electric vehicle chargers, can all be incorporated into the Zoning Ordinance to provide the community with alternative energy sources while helping Frederick County move towards a greener and more resilient community. Furthermore, while the County's Director of Public Works has full discretion over low-impact development (LID) practices, the Ordinance's requirements relating to LID and stormwater management should be clarified to help promote more sustainable practices and clear confusion. Additional community design standard recommendations can be found on page 19.



Example of Low-Impact Development (LID) Measure
Photo Credit: H2OC Stormwater Program

Solar Energy Facilities

Solar energy facilities have emerged in the past decade as a new and considerable use in localities throughout Virginia. Between 2020 and 2023, the Board of Supervisors considered and approved four utility-scale solar facilities. The Ordinance should ensure compliance with all state code elements relating to solar projects, as several new regulations have been added in recent years. All current language and references to the *Code of Virginia* provided in the Ordinance should be reviewed and amended to ensure that the correct sections are being integrated into the County's regulations. All definitions and siting agreement language should be incorporated into the Zoning Ordinance as provided by state code.

The County currently conditionally permits utility-scale solar facilities. Use performance standards for solar energy facilities are not required by the Code of Virginia; however, proactively establishing such standards in addition to the customary conditions of CUPs would benefit the County. Berkley Group typically recommends the inclusion of standards to address decommissioning and bonding; open space and wildlife corridors; noise; setbacks; landscaping and screening; maintenance; and emergency ingress/egress. Given the scale and extent of these types of uses, as well as their impact on rural and agricultural landscapes, performance standards can help to further mitigate potentially adverse impacts on surrounding areas. This also helps to facilitate

a baseline consistency across applications, regardless of their individual size or location.

Battery Energy Storage Facilities

Like data centers, battery energy storage facilities are becoming an increasingly desirable use, both as a principal use and as accessory to utility-scale solar energy facilities to capture, store, and release excess energy. The County's Zoning Ordinance does not address this use. It is recommended that Frederick County proactively define, permit, and provide standards for battery energy storage facilities to prepare for potential applications. Use standards for these facilities often address noise, screening, fire protection, and setbacks.

Data Centers

Data centers are becoming increasingly common in Virginia, and Frederick County has seen growing interest in data center development in recent years. The Zoning Ordinance lightly addresses data centers through the intent statement of the Technology-Manufacturing Park district, but otherwise does not specifically define or regulate the use. However, County staff is currently working on a text amendment to address this and provide clear guidance for data centers. As part of the upcoming text amendment, data centers should be clearly defined and permitted. Use performance standards to mitigate impacts of data centers should also be included as desired to align with current industry best practices. Implementing

appropriate use standards for data centers can address various concerns around this use, including noise, water quality, landscaping and screening, façade design, security fencing and lighting, decommissioning, and connecting to transmission lines.



Data Center in Haymarket, Virginia
Photo Credit: Virginia Mercury (Hugh Kenny)

Community Design Standards

Landscaping, Buffers, and Screening

Landscaping requirements are one of the tools Virginia localities have available to them to enhance community character, protect environmental resources, and reduce the impact of potentially incompatible uses. Local ordinances often require landscaping and screening as part of development or land disturbing activities. These requirements are typically reviewed through an application which includes a landscape plan submitted as a part of any development approval. Specific requirements focus on site design, transitional areas, and screening.

Frederick County's Zoning Ordinance currently addresses landscaping, buffers, and screening requirements in Article II of the Zoning Ordinance. Focus group participants identified the need for clearer standards relating to landscaping bonds and their release. Additionally, Article XI, Buffer and Screening Diagrams, states that diagrams are included at the end of the chapter; however, no diagrams appear to be included. This should be reconciled through a reorganization of the landscaping provisions, relocating all to a single article that contains all community design standards including, but not limited to, landscaping, signs, and parking. Diagrams and plates are beneficial in providing visual examples and should be clearly integrated once updates to the structure and content of Ordinance

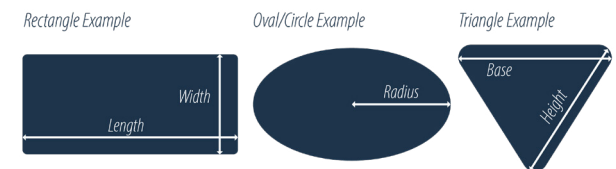
regulations have occurred. Included in a review and update of landscaping provisions should be a review of the approved plantings/species list and the minimum sizes to determine if these regulations achieve the overall intent of the County's landscaping requirements.

In some cases, landscaping and buffering are required based on the underlying use, not the base district. Recommend applying landscaping and buffering on the underlying zoning district. This is because if a use changes, but the zoning stays the same, the property owner – or adjacent property owner – does not have to completely alter buffering for a use that is likely similar in nature.

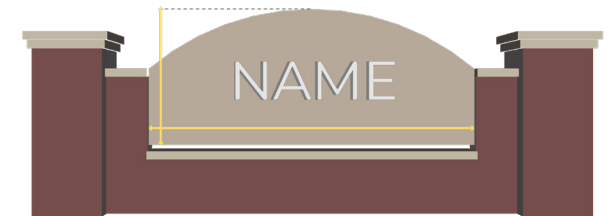
Signs

There are many community benefits to regulating the physical qualities of signs, including reducing clutter, minimizing distractions to drivers, and enhancing community aesthetics. The County amended its sign regulations in 2023 to conform with Virginia's model ordinance, although the dimensional standards for signs remained relatively unchanged. Focus group participants specifically noted that the Ordinance language for the height measurement of entry monument signs is vague and unclear and would benefit from clarification. Sign regulations can also be communicated effectively using graphics and tables; recommend including additional graphic

components to visualize sign dimensional standards and permissions, improving the ability of the general public to use and understand the Ordinance.



Freestanding Sign Example



Wall Sign Example



Wall Sign Example - Letters Only



Example sign graphic | King George County, VA

Open Space

Frederick County's Ordinance provides open space requirements for certain zoning districts, such as the Residential Performance (RP), Residential Planned Community (R-4), and Medical Support (MS) districts. It is recommended to review all open space provisions throughout the Ordinance to ensure the appropriate type of development. As a specific example, the current Ordinance states that no more than 50 percent of the required open space in the R-4 district can be located within environmental areas such as lakes and ponds; wetlands; and steep slopes. The County should assess this requirement and consider reducing it to a lower percentage, or introduce language that encourages these lakes, ponds, and wetlands to be integrated as features in the development. The County can also consider designating minimum percentages of active and passive recreational areas within the open space.

Sidewalks

Sidewalk standards, and when they are required, were identified by both County staff and focus group participants as an area in need of significant improvement. The current Ordinance's sidewalk regulations have resulted in undesirable occurrences of "sidewalks to nowhere." This term refers to disconnected sidewalks that have no connecting sections or meaningful destinations. A potential solution to prevent this type of development pattern could be to consider establishing sidewalk

requirements for the community as a whole in lieu of an individual, first come-first serve basis.

Another option is to allow payments in lieu of construction. This may be appropriate in circumstances where the site's topography makes sidewalk development impractical or if the County has determined that sidewalks are unnecessary in the specific area but needed elsewhere. *Code of Virginia* § 15.2-2241 states that this is permissible in a Subdivision Ordinance. However, if this approach is utilized, the payments would eventually have to be used on construction improvements reasonably relevant to the property the fee was initially collected from. The Subdivision Ordinance would also need to clearly articulate conditions under which payment in lieu is acceptable, how fees are calculated, and how the fees will be expended. It is also recommended to amend the Comprehensive Plan to include robust language supporting the continued expansion of pedestrian infrastructure, including designation of specific locations. In any case, development of a payment in lieu system should occur in tandem with the County's Finance Department to discuss establishing, holding, and release of funds.

Parking

The Zoning Ordinance currently provides minimum parking requirements largely based on floor area and number of employees, depending on the use; these should be closely reviewed and updated as needed. The residential



parking requirements are currently located in the specific zoning districts' section rather than being included in the table of minimum required parking spaces. It is recommended to relocate the residential parking requirements to the table provided in § 165-202.01 of the Ordinance, so all off-street parking requirements are clearly organized and communicated.

Parking requirements should reflect updated uses, ensuring that new uses have parking standards as appropriate and any uses that have been either consolidated or eliminated are removed from parking standards. Modern parking solutions, such as bicycle parking and electric vehicle (EV) charging stations, should also be addressed in off-street parking standards. Both bicycle parking and EV charging stations should be required in mixed-use, commercial, and industrial districts to address increasing demand for alternative methods of transportation; this is usually included as a minimum percentage based on the total square footage of parking area.

Another way to modernize parking is through revising shared parking requirements. Shared parking requirements should prescribe a maximum distance that off-site spaces can be from the subject use. Shared parking requirements should also be determined based on a calculation that factors in time of day, land use type, and the minimum parking required, rather than simply basing it on the sum of the minimum required for multiple uses. Credits can be provided towards shared parking based on availability of bicycle parking, municipal parking facilities, other off-site parking facilities, and/or sidewalks.

Frederick County may consider the feasibility of introducing allowances for on-street parking in relation to the minimum parking required for a development. On-street parking should be credited toward the minimum parking requirements for development but should also place a cap on the amount of linear feet of off-street parking that is able to be credited. For each side of the street where on-street parking is utilized, the Ordinance should require an increase in road width to accommodate both parked vehicles and allow for the safe passage of traffic, including emergency vehicles. Any on-street parking spaces used to count towards minimum parking should also be clearly striped.

Additionally, the County can explore the option of utilizing parking maximums to promote development, limit sprawl, and reduce stormwater runoff by eliminating expanses of pavement; this was noted by County staff

as a potential change. As Frederick County remains a largely car-dependent locality, parking maximums are likely only appropriate within mixed-use, commercial, and industrial areas within the UDA, where sidewalks, bike lanes, and public transit are more likely to be provided in future years. These maximums can be calculated as a ratio based on the gross floor area of the use; additional considerations for peak demand can be added into the formula. The County can include a provision that allows exceptions to be granted administratively, if desired.

Regarding the layout of parking lots, the current regulations for minimum parking area dimensions and parallel parking dimensions are overly specific and should be simplified. Consideration should also be given to exempting all parking lots in the RA district from landscaping requirements. Additionally, perimeter landscaping requirements should be based on the length of contiguous property line and not square footage. Provisions for shrubs should also be introduced to perimeter landscaping requirements in lieu of the hedge/berm requirement; this will increase flexibility and creativity in perimeter landscaping. For interior landscaping, consideration should be given to only requiring interior landscaping for parking lots with fifty or more spaces to ease the burden on property owners of smaller, less intensive uses. Another recommendation that provides greater flexibility with future development and stormwater reduction is introducing standards for acceptable permeable surfaces in parking lots.

Parking Modernization Checklist:

- ✓ **Reorganize and consolidate all parking requirements into a single table**
- ✓ **Ensure new uses are reflected in requirements**
- ✓ **Introduce bicycle parking & EV parking standards**
- ✓ **Adjust shared parking standards**
- ✓ **Introduce on-street parking allowances, with safety & design standards**
- ✓ **Explore options for introducing parking maximums**
- ✓ **Adjust parking area dimensions**
- ✓ **Provide greater flexibility & simplicity in parking lot landscaping requirements**

Nonconformities

Legally nonconforming lots, structures, and uses are those which were legally established according to applicable zoning laws at the time the lot, structure, or use began, but which do not meet current zoning regulations. The *Code of Virginia* allows localities to permit nonconforming lots, structures, and uses to continue, provided they are not enlarged, extended, reconstructed, or structurally altered unless such changes comply with current zoning regulations.

The Zoning Ordinance provides nonconformities language in Article IX, which is largely in compliance with *Code of Virginia* requirements. However, there is state-mandated language regarding vested rights that is not included. The missing language should be included in the Zoning Ordinance to achieve full compliance with the *Code of Virginia*. It is also best practice to clearly state that occasional, temporary, or illegal use of land or buildings is not sufficient to establish the existence of a nonconforming use. This helps increase legal protection for the County.



Comprehensive Plan Findings

The 2035 Frederick County Comprehensive Plan was adopted in 2017 and last amended in 2021. The Plan includes goals and strategies for eight main plan elements: Urban Areas; Rural Areas; Residential Development; Business Development; Transportation; Public Facilities; Natural Resources; and Historical Resources.

As the County's primary land use tool, the Zoning Ordinance is the primary means of implementing the goals, objectives, and implementation strategies of the Comprehensive Plan. Amendments would therefore allow the Zoning Ordinance to be a more responsive document, increasing successful implementation of the Comprehensive Plan.

A list of selected strategies from the Comprehensive Plan, along with potential Ordinance amendments that could serve to implement each strategy, is included in [Appendix B](#). However, it should be noted that the provided appendix is not a comprehensive look at all goals and strategies provided within the Comprehensive Plan; some goals and strategies are shared among various plan elements or simply not directly relevant to the Zoning Ordinance. The included goals and strategies were chosen to highlight the key themes and strategies most relevant to the Zoning Ordinance. The following are several examples of recommended Ordinance amendments to achieve closer alignment between the Ordinance and Comprehensive Plan:

- Reduce the minimum size of the R-4 and R-5 districts to facilitate the development of master planned communities on smaller acreages.
- Adjust the gross densities listed in the Residential Performance (RP) district to apply evenly and better facilitate a more diverse variety of residential development.
- Identify, define, and appropriately permit new economic development-oriented uses, including but not limited to data centers, live-work units, electric vehicle (EV) stations, and small-scale manufacturing or makers' spaces.
- Continue to review permitted uses in the office, manufacturing, industrial, and mixed-use zoning districts to ensure alignment with economic development goals and reflect changes to industry types.
- Similarly, consolidate "like" manufacturing and industrial uses for simplicity and to allow for greater flexibility as technology advances and new industries emerge.
- Introduce additional guidelines for sign materiality, landscaping, and color to the County's overlay districts.
- Review street tree permissions in the TNDB overlay to ensure a

balance between providing enhanced landscaping and being overly restrictive.

- Review and amend landscape buffers; apply all required buffers based on the underlying zoning districts rather than uses.
- Review the Zoning Ordinance annually; consider including representatives from the Virginia Department of Transportation (VDOT) and/or WinFred Metropolitan Planning Organization (MPO) when evaluating possible changes relating to transportation infrastructure requirements.





Priority Items for an Ordinance Update

The following items, in no particular order, should be prioritized in future Zoning Ordinance updates:

Organization, Structure, Administration, and Code of Virginia Compliance

- Ensure that all required items of the *Code of Virginia* are clearly incorporated into the Zoning Ordinance. Applicable optional provisions should be incorporated, as desired by the County.
- Clearly define all uses and incorporate any missing *Code of Virginia* use definitions. Examples of Code-supplied use terms that need to be introduced into the Ordinance include “family day home”.
- Consolidate the Zoning and Subdivision Ordinances into a single, clearly organized document. This should include a comprehensive review of the Subdivision Ordinance’s regulations along with any updates as needed.
- Use clear and concise language in a multi-level list format, avoiding the use of jargon and paragraphs of text whenever possible.
- Provide clear procedures and powers for Planning Commission and the Board of Supervisors as related to zoning.

Districts, Uses, and Performance Standards

- Review and update district standards to ensure they are facilitating the type of desired development in Frederick County’s growth area. Specific and high-priority updates include reviewing and revising purpose and intent statements, ensuring that setback and height standards are facilitating desirable development, and reducing the minimum lot size for districts to better facilitate both infill and new development on small to medium-sized tracts of land.
- Undertake a County-initiated map amendment to apply all overlay zoning districts to appropriate areas. Review all overlay zoning districts and amend as needed to ensure they are facilitating the type and quality of development envisioned in each respective area.
- Reorganize use performance standards into a single Article of the Ordinance. Ensure all use performance standards are clearly articulated, especially for higher-impact uses. Consider where use performance standards can be used in lieu of conditional use permits with lengthy conditions.
- Update community design standards for clarity and to eliminate overly complex and onerous requirements, such as those related to buffering and sidewalks.

Recommended Next Steps

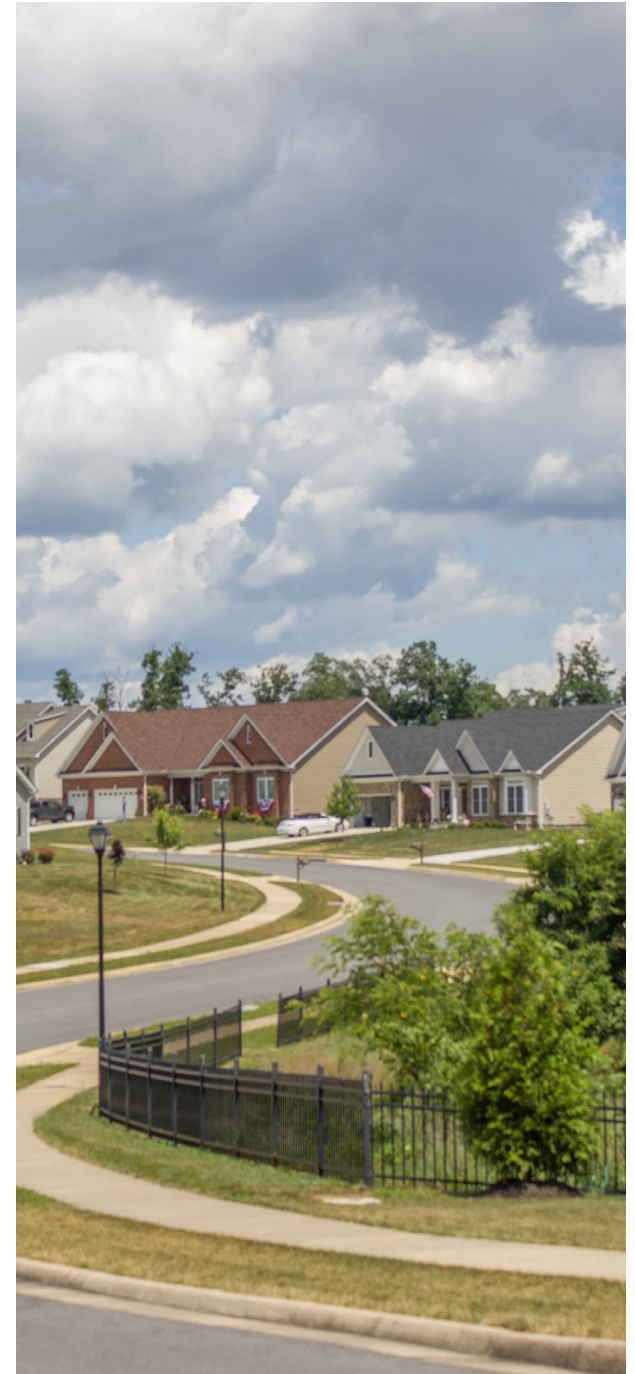
Berkley Group will present the findings of this diagnostic report to Frederick County staff, Planning Commission, and Board of Supervisors in November 2024. Reviewing and discussing this report will help build a strong foundation for future updates to the County's Zoning Ordinance.

Public engagement is a necessary component of drafting land use regulations. Public engagement should occur as the first step to an update process, prior to any drafting and editing. By doing so, Frederick County can ensure that its regulations are truly able to address the community's needs. Engagement with the public can also benefit the County by serving to build trust in government and establish transparency in the drafting process.

Effective public engagement is facilitated through providing opportunities for in-person engagement through workshops, open houses, or interactive pop-up meetings, as well as virtual engagement through surveys, interactive mapping, or online meetings. The frequency and style of engagement can be tailored depending on project schedule and budget, but regardless of time and financial constraints, it is important to ensure that all community members are aware of the intended Ordinance changes and have available opportunities to participate.

The immediate next steps for Frederick County are as follows:

- Determine which components of this report will be prioritized for inclusion in future updates to the Zoning Ordinance. Planning and Development staff will include amendments in future work programs.
- Determine whether the County would like to undergo a full Ordinance update or a partial update to address the highest priority items.
- Conduct additional public engagement with the community to determine community goals and priorities.





Conclusion

Frederick County should be commended for its efforts to ensure an effective, efficient, and State-compliant Zoning Ordinance. As noted in this report, the County's Zoning Ordinance will require revision and restructuring for conformity with the *Code of Virginia*, as well as modern best practices related to zoning, land use, and development.

The recommendations outlined in this report constitute a detailed analysis of the County's Zoning Ordinance. Revising the County's zoning regulations according to these recommendations will ensure that the Ordinance is legally defensible, eases administrative burden for staff, facilitates a balance between supporting development growth while preserving rural character, and reduces impacts from differing or incompatible uses. An updated Zoning Ordinance will also ensure modernity with new uses and aid in fully realizing the future envisioned in Frederick County's Comprehensive Plan. Keeping this land use tool up-to-date and in compliance with the *Code of Virginia* should be a commitment the County upholds on an ongoing basis, including periodic reviews and text amendments.

Berkley Group looks forward to supporting Frederick County as it continues to achieve its land use and development goals and priorities.

APPENDIX

**Appendix A: Code of
Virginia Diagnostic Matrix** 28

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Appendix A: Code of Virginia Diagnostic Matrix

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
1.	2200	Declaration of legislative intent	Yes	§ 165-101.01	<p>This section of the Code of Virginia provides the purpose of Chapter 22 of the Code of Virginia, which is subsequently the purpose for each of the tools discussed therein (Comprehensive Plan and Ordinances).</p> <p>Article I of the Zoning Ordinance incorporates this requirement through direct reference to this section of state code, as amended.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia.</p>
2.	2201	Definitions	Partial	§ 165-101.02	<p>This section of the Code of Virginia provides foundational definitions for terms used throughout the Chapter 22 regulations of the Code of Virginia and in locality Zoning Ordinances.</p> <p>Section 16-101.02 of the Zoning Ordinance includes some of the terms and definitions provided by this section of the Code of Virginia but does not include all the terms.</p> <p>Frederick County should compare their definitions to those provided in this section of the Code of Virginia and update accordingly to better align with that which is provided in § 15.2-2201. Examples of definitions that could be introduced into the Zoning Ordinance are “incentive zoning” and “affordable housing.” Terms that do not apply to Frederick County, such as “military installation” and “working waterfront development area”, do not need to be included.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
3.	2202	Duties of state agencies; electric utilities	N/A	N/A	<p>This section of the Code of Virginia states that any department, board, bureau, commission, or other agency of the Commonwealth that proposes a project in any locality shall, upon the request of the local Planning Commission, furnish reasonable information requested by the local Planning Commission relative to the proposed plans.</p> <p>This section of the Code of Virginia does not need to be included in the Zoning Ordinance, but the Zoning Administrator and Planning Commission should be aware of this Section of the Code.</p>
4.	2203	Existing Planning Commissions and boards of zoning appeals; validation of plans previously adopted	Partial	§ 165-1001.01 § 165-1001.02	<p>This section of the Code of Virginia states that upon adoption of Chapter 22 of the Code of Virginia, already established Planning Commissions and boards of zoning appeals would continue to operate as if they were created under the terms of Chapter 22.</p> <p>Article X provides for the establishment, organization, powers, and duties of the Board of Zoning Appeals (BZA). While § 165-1001.01 makes a general reference to state code, as a best practice, § 15.2-2203 of the Code should be cited to allow for automatic incorporation of future amendments.</p> <p>Statutory provisions of the Planning Commission are not included in the Zoning Ordinance.</p> <p>Recommend including direct reference to this section of state code, as amended.</p>

5.	2204	Advertisement of plans, ordinances, etc.	Yes	<p>§ 165-102.02 § 165-102.03 § 165-102.04</p>	<p>Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference.</p> <p>This section of the Code of Virginia was updated in 2023 and 2024 to streamline advertising and notice requirements for plans and ordinance amendments. Notably, the requirements related to “descriptive summaries” of subject parcels and the length of time required to advertise have been revised. The 2024 update changed the timeframe for advertising public hearings in some newspaper published or having general circulation in the locality: the first notice is now required to appear no more than 28 days before the public hearing and the second notice must not appear less than seven days before the date of the public hearing.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia through stating that all necessary public notices shall be given as required by § 15.2-2204.</p> <p>While the Zoning Ordinance complies with the requirements of the Code of Virginia, recommend strengthening the Ordinance through:</p> <ul style="list-style-type: none"> • Consolidating all application and notice procedures – including those for variances, appeals, rezonings, and CUPs – into a singular division of the Ordinance. • Providing greater clarity for sign posting requirements, including when multiple signs may be necessary and when they must be posted in advance of a public hearing (see Line 6, below). • Consider enabling an optional provision that in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner. State code allows this written notice to be mailed registered, certified, or first class; if this optional provision is included, Frederick County should specify their procedure.
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	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
6.	2205	Additional notice of planning or zoning matters	Optional, Yes	§ 165-102.02	<p>This section of the Code of Virginia allows a locality, in addition to specific notice required by law, to provide notice by any method on any planning or zoning matter that it deems appropriate for notice.</p> <p>§ 165-102.02 requires applicants to post an easily visible sign on the property stating that zoning action is pending.</p>
7.	2206	When locality may require applicant to give notice; how given	Optional, Not Included	No Reference	<p>This section of the Code of Virginia allows for a locality to require the applicant of any application to the local governing body, local Planning Commission, or board of zoning appeals to be responsible for all required notices.</p> <p>The Zoning Ordinance does not incorporate this optional provision.</p> <p>If Frederick would like to include this optional provision, recommend incorporating text and include reference to this section of the Code of Virginia.</p>
8.	2207	Public notice of juvenile residential care facilities in certain localities	N/A	N/A	<p>This section of the Code of Virginia allows a locality (which does not have an applicable zoning ordinance) to require public notice and hearing for any applicant who wishes to establish a public or private detention home, group home or other residential care facility for children in need of services or for delinquent youth.</p> <p>This section of the Code of Virginia does not apply to Frederick County, as there is an existing Zoning Ordinance in effect. This Ordinance update will address the public hearing process requirement for these facilities.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
9.	2208	Restraining violations of the chapter [Chapter 22 of the Code of Virginia]	Yes	§ 165-101.08	<p>This section of the Code of Virginia allows any violation or attempted violation of the Zoning Ordinance to be restrained, corrected, or abated by injunction or other appropriate proceeding.</p> <p>Frederick County includes this requirement in the Ordinance. <i>See Line 12 for additional information and recommendations regarding civil penalties.</i></p> <p>Recommend including direct reference to this section of state code.</p>
10.	2208.1	Damages for unconstitutional grant or denial by locality of certain permits and approvals	Yes	No Reference	<p>This section of the Code of Virginia states that any applicant aggrieved by a grant or denial of any zoning-related approval or permit – when such grant or denial was unconstitutional pursuant to either federal or state law – shall be entitled to compensatory damages.</p> <p>While appeals by aggrieved parties are briefly mentioned as related to the Board of Zoning Appeals in § 165-1001.02, the Zoning Ordinance does not include language specifically addressing damages for an unconstitutional grant or denial; however, these determinations are likely occurring in practice in the event of an appeal by an aggrieved party.</p> <p>This section of the Code of Virginia does not need to be included in the Zoning Ordinance, but the Zoning Administrator and Planning Commission should be aware of this provision to ensure compliance with Code of Virginia in practice.</p>
11.	2208.2	Damages for an enforcement action undertaken by a locality with willful disregard for applicable law	Yes	No Reference	<p>Code of Virginia § 15.2-2208.2 states that anyone against whom an enforcement action is carried out by a locality – where the enforcement action was based upon willful disregard for applicable law – shall be entitled to an award of compensatory damages.</p> <p>This section of the Code of Virginia does not need to be included in the Zoning Ordinance, but the Zoning Administrator and Planning Commission should be aware of this provision to ensure compliance with Code of Virginia in practice.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
12.	2209	Civil penalties for violations of zoning ordinance	Optional Partially Included	§ 165-101.08	<p>This section of Code of Virginia states that this schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$200 for the initial summons and not more than \$500 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000.</p> <p>Section 165-101.08 states that failure to comply with the provisions of the Zoning Ordinance will result in a misdemeanor, with fines of not less than \$10 or more than \$1,000. Further failure to remove or abate the zoning violation within a specified time will result in a separate misdemeanor with additional fines of not less than \$10 or more than \$1,500. Violations related to exceeding the maximum number of unrelated persons in a single-family dwelling may be fined up to \$2,000, with failure to abate the violation punishable by additional fines. This same section also authorizes the Board of Supervisors to adopt an ordinance to establish civil penalties in accordance with state code, but it is unclear whether Frederick County has acted upon this provision.</p> <p>If the County has not done so already, recommend establishing civil penalties, in accordance with this section of the Code of Virginia, as a first line of defense for violations of the Zoning Ordinance. This streamlines the process for simple, non-recurring violations and, coupled with misdemeanors, allows a multi-level approach to enforcement that many localities find useful. Additionally, recommend including direct reference to §15.2-2209, as amended; this is a best practice for transparency in enforcement if civil penalties have already been adopted.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
13.	2209.1	Extension of approvals to address housing crisis	N/A	N/A	<p>To assist in addressing the housing crisis of the late 2000s and 2010s, Code of Virginia § 15.2-2209.1 extended the approval of final site plans, special exceptions, special use permits, and rezonings (if valid as of January 1, 2017) to July 1, 2020, and allows further extensions of approval by the locality.</p> <p>The extension period has passed; this does not need to be addressed in the Zoning Ordinance and it is not recommended to further extend the approval period as described in this section of state code. <i>See Lines 14 and 16 for additional extension provisions in the Code of Virginia.</i></p>
14.	2209.1:1	Extension of approvals to address the COVID-19 pandemic.	Yes	No Reference	<p>To address impacts on the development industry resulting from the COVID-19 pandemic, this section of the Code of Virginia extends approvals of plats, final site plans, special exceptions, special use permits, and rezonings (if valid as of July 1, 2020) to July 1, 2025, and allows further extensions of approval by the locality.</p> <p>A text amendment is not necessary to comply with this section of the Code of Virginia, but Frederick County should be implementing this in practice.</p>
15.	2209.1:2(A)	Period of validity for solar photovoltaic and energy storage projects	No	No Reference	<p>Initial approval of a special permit for a solar photovoltaic or energy storage project shall provide the landowner or developer with a minimum of three years to commence the project. Applications for minor modifications to the permit do not constitute a waiver of the provisions and do not extend the period of validity.</p> <p>This section of the Code of Virginia went into effect on July 1, 2024; Frederick County has not yet incorporated this into the Zoning Ordinance.</p> <p>Recommend including the text as provided for in this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
16.	2209.1:2(B)	Extension of land use approvals for solar photovoltaic and energy storage projects	Yes	No Reference	<p>Code of Virginia § 15.2-2209.1:2 allows any valid special exception, special use permit, conditional use permit, or any modifications of these for a solar photovoltaic or energy storage project outstanding as of July 1, 2023, any deadline in the permit or Ordinance requiring the project to commence within a certain time may be extended by a resolution from governing body until July 1, 2026, or longer as agreed to by the locality.</p> <p>A text amendment is not necessary to comply with this section of the Code of Virginia, but Frederick County can consider whether to implement in practice.</p>
17.	2209.2	Public infrastructure maintenance bonds	N/A	N/A	This section of the Code of Virginia applies only to the City of Charlottesville.
18.	2209.3	Residential land development and construction fee transparency; annual report	Yes	No Reference	<p>Each locality with a population greater than 3,500 must submit an annual report by March 1 of each year to the Department of Housing and Community Development (DHCD) totaling the revenue collected by the locality over the preceding calendar year in connection with residential land development and construction activities.</p> <p>This section of the Code of Virginia applies to Frederick County, as its population is greater than 3,500.</p> <p>A text amendment is not necessary to comply with this section of the Code of Virginia, but County staff should be aware of this section of the Code and plan to submit annual reports by March 1 as required.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
19.	2210 - 2222	Local Planning Commissions	Yes	Various	<p>These sections of the Code of Virginia regulate the required establishment, authority, purpose, and procedures of local Planning Commissions.</p> <p>Various sections throughout the Zoning Ordinance state the role and responsibility of the Planning Commission during various processes (amendments, application hearings, etc.); however, the Zoning Ordinance does not provide a dedicated section with powers and regulations for the Planning Commission. This is likely because this is addressed at least partially in Part I, Chapter 21 of the County Code of Ordinances, which includes direct reference to Code of Virginia § 15.2-2212 and § 15.2-2217.</p> <p>While evaluation of Part I, Chapter 21 is not included in this diagnostic report, recommend additional review of this Chapter by the County Attorney to ensure complete alignment of these provisions with the Zoning Ordinance and current Code of Virginia language.</p>
20.	2222.1	Coordination of state and local transportation planning	Yes	No Reference	<p>This section of the Code of Virginia requires the Virginia Department of Transportation (VDOT) to review comprehensive plan amendments and rezonings that will substantially affect transportation on state-controlled highways.</p> <p>A text amendment is not necessary to comply with this section of the Code of Virginia, but Frederick County should be implementing this in practice.</p>
21.	2223 - 2232	The comprehensive plan	N/A	N/A	<p>Code of Virginia §§ 15.2-2223 through 15.2-2232 regulate the requirements and provisions for comprehensive plans.</p> <p>These sections of the Code of Virginia are not relevant to this diagnostic but are included to reflect the full list of sections provided in Chapter 22 of Title 15.2 of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
22.	2233 - 2238	The official map	Yes	§ 165-101.05	<p>Code of Virginia §§ 15.2-2233 through 15.2-2238 provide the requirements for a locality's official map. These sections grant Planning Commissions the authority to request a map be made that shows streets, waterways, and public spaces. For localities without an official map, these sections regulate the process for adoption and certification of the official map. Where an official map is already adopted, these sections regulate map amendments and modifications. Copies of the adopted official map must be sent to the Commonwealth Transportation Board.</p> <p>The Zoning Ordinance satisfies the fundamental requirements set forth in the Code of Virginia for managing and amending official zoning maps. Frederick County should be implementing these sections of the Code of Virginia in practice during any consideration involving the official map.</p>
23.	2239	Capital improvement plan (CIP)	N/A	N/A	<p>Code of Virginia § 15.2-2239 authorizes the Planning Commission to prepare a CIP based on a locality's comprehensive plan.</p> <p>Inclusion of this section is not applicable to the Zoning Ordinance; however, it is listed here as it is another important land use tool for the County to utilize.</p>
24.	2240 - 2245; 2247 - 2257; 2260 - 2269; 2271 - 2279	Land subdivision and development	N/A	N/A	<p>Code of Virginia §§ 15.2-2240 through 15.2-2279 regulate land subdivisions and development. Every locality must have a subdivision ordinance and ensure the orderly subdivision of land. The County's Subdivision Ordinance is a separate chapter of County Code (Chapter 144) outside of the Zoning Ordinance.</p> <p>These sections of the Code of Virginia regarding subdivisions are not relevant to this diagnostic but are included to reflect the full list of sections provided in Chapter 22 of Title 15.2 of the Code of Virginia.</p> <p>Recommend separate review of the Subdivision Ordinance to confirm compliance with current Code of Virginia language.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
25.	2246	Site plans submitted in accordance with the zoning ordinance	No	§ 165-802.01	<p>The Code of Virginia requires that site plans submitted for compliance with the Zoning Ordinance must also comply with the Code of Virginia bonding and performance release requirements.</p> <p>This section of the Zoning Ordinance can be strengthened with a purpose statement that clearly specifies that the purpose is to ensure compliance with the Zoning Ordinance, with a reference to this section of the Code of Virginia.</p>
26.	2258	Site plan requirements for submission for approval	No	§ 165-802.03	<p>This section of the Code of Virginia requires that a site plan include the locations of drainage districts, dam break zones, graves/burial sites, and areas of joint locality control.</p> <p>The Zoning Ordinance does not address dam break zones, graves/burial sites, nor areas of joint control as it relates to site plan requirements.</p> <p>Recommend requiring dam break zones, graves/burial sites, and any areas of joint control to be delineated on site plans.</p>
27.	2259	Local Planning Commission or other agent to act on site plan or plan of development	No	No Reference	<p>This section of the Code of Virginia establishes a required timeline for the review and approval or disapproval of site plans and plans of development. Generally, a plan must be approved or disapproved within 60 calendar days of the first submittal, and within 45 calendar days of resubmittals, except where state agency reviews require longer timeframes in accordance with § 15.2-2222.1. Plans requiring state agency review must be transmitted within 10 business days of receipt. As of July 1, 2024, this process must be the same for both residential development projects and commercial development projects.</p> <p>The Zoning Ordinance does not address the timeframe for review and approval or disapproval of development plans.</p> <p>Recommend including the text as written in this section of the Code of Virginia. A direct reference to § 15.2-2259, as amended, can also be utilized.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
28.	2270	Vacation of interests granted to a locality as a condition of site plan approval	No	No Reference	<p>This section of the Code of Virginia provides two methods that allow a locality to vacate any interest in streets, alleys, easements for public rights of passage, easements for drainage, and easements for a public utility that were granted as a condition of a site plan approval.</p> <p>While the County's Subdivision Ordinance references this Section of state code, there are no references in the Zoning Ordinance. Recommend including a reference to § 15.2-2270 for vacating such interests to the County that were granted as a condition of site plan approval.</p>
29.	2280	Zoning general description	Partial	<p>§ 165-101.04</p> <p>Article 4, Various</p> <p>§ 165-702.01</p>	<p>This section of the Code of Virginia allows for localities to regulate items such as the use of structures, buildings, and land; size, height, area, etc. of buildings; the area of land, water, and air space; and the excavation or mining of soil or other natural resources.</p> <p>Section 165-101.04 references the purpose of the Zoning Ordinance to address the use of land, lot dimensions, and other supplementary development regulations. The purpose and intent of each zoning district is specified in individual sections of Article 4; the floodplain district also has a specified purpose & intent with direct reference to this section of state code.</p> <p>The Zoning Ordinance partially complies with this section of the Code of Virginia. Full compliance can be achieved through editing language to more closely align with what is established in Code of Virginia § 15.2 2280, and including a direct reference to this Section. Also recommend establishing this language in the general purpose and intent of all County overlay districts, rather than in the floodplain district alone.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
30.	2281	Zoning jurisdiction of localities	No	No Reference	<p>This section of the Code of Virginia states that a county shall have jurisdiction over unincorporated areas and a municipality shall have jurisdiction over any incorporated areas.</p> <p>While this may be inferred, recommend adding a reference to this section of the Code of Virginia in Article 1, Part 101 that states Frederick County shall have jurisdiction over its unincorporated areas.</p>
31.	2282	Uniformity of regulations	Partial	Various	<p>This section of the Code of Virginia states that regulations within a district must be uniform for each class or kind of building and use, but the regulations in one district may differ from those in other districts.</p> <p>Articles IV – VI generally comply with this requirement, but this is inferred; specific reference to the provisions of this section of the Code of Virginia is not provided.</p> <p>Recommend explicitly stating that regulations set by the Zoning Ordinance within each district shall apply uniformly to each class or kind of structure or land. Recommend clearly defining the classes of residential dwellings and basing standards on the individual lot size.</p>
32.	2283	Purpose of zoning, mandatory provisions:	<i>(See Lines 32-44)</i>		
33.	i.	Provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime, and other dangers.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
34.	ii.	Reduce or prevent congestion in the public streets	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must reduce or prevent congestion in the public streets.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
35.	iii.	Facilitate the creation of a convenient, attractive, and harmonious community	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must facilitate the creation of a convenient, attractive, and harmonious community.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
36.	iv.	Facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
37.	v.	Protect against destruction of or encroachment upon historic areas and working waterfront development areas	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must protect against destruction of or encroachment upon historic areas and working waterfront development areas.</p> <p>As an inland locality, Frederick County does not have any established working waterfront development areas, so it is unnecessary to include reference to those. However, reference to historic areas should be included; recommend including text as provided for historic areas in this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
38.	vi.	Protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic, or other dangers.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
39.	vii.	Encourage economic development activities that provide desirable employment and enlarge the tax base	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must encourage economic development activities that provide desirable employment and enlarge the tax base.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
40.	viii.	Provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
41.	ix.	Protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
42.	x.	Promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
43.	xi.	Provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard	N/A	No Reference	<p>This section of the Code of Virginia states that regulations within a district must provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard.</p> <p>Neither Frederick County nor its adjacent jurisdictions have military bases, installations, or airports; therefore, it is unnecessary to include reference to these.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
44.	xii.	Reasonable modifications in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.) or state and federal fair housing laws, as applicable	No	No Reference	<p>This section of the Code of Virginia states that regulations within a district must provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.) or state and federal fair housing laws, as applicable.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
45.	-	Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water	No	N/A	<p>This section of the Code of Virginia states that regulations within a district must include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water.</p> <p>Recommend including text as provided for in this section of the Code of Virginia.</p>
46.	2283.1	Sexual offender treatment services prohibition in residential area	Yes	No Reference	<p>The Zoning Ordinance does not list this use as permitted in residential districts, therefore it is not permitted and complies with this section of the Code of Virginia.</p>
47.	2284	Matters to be considered in drawing and applying zoning ordinances and districts	No	No Reference	<p>This section of the Code of Virginia states the basis and considerations for how zoning ordinances, districts, and amendments thereof should be determined.</p> <p>The Zoning Ordinance neither includes a reference to this section of state code nor includes applicable language from this section.</p> <p>Recommend including the text as written in this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
48.	2285	Zoning ordinance and map development, adoption, and amendments - process	Yes	§ 165-101.05 Part 102, Various	<p>This section of the Code of Virginia specifies the process for a Planning Commission to prepare and adopt a proposed zoning ordinance and/or official map, and amendments thereto.</p> <p>Section 165-101.05 establishes the official Zoning Map. Part 102 addresses the process for zoning text map amendments, including requirements for public notice in accordance with Code of Virginia §15.2-2204.</p> <p>While this section of the Code of Virginia allows up to 100 days for the Planning Commission to review and make a recommendation to the governing body, Frederick County provides a 90-day timeframe. The Zoning Ordinance complies with this Section of the Code of Virginia, but recommend amending the timeframe from 90 days to 100 days to allow for the full amount of time permitted by state code. Additionally, recommend providing greater clarity for the process of zoning text amendments.</p>
49.	2286 (A)	Permitted provisions in zoning ordinances:	<p><i>(See Lines 49-64)</i></p> <p>This Section of the Code of Virginia provides optional provisions. Frederick County should consider the provisions listed below for inclusion in the updated ordinance, if not already included.</p>		
50.	1.	Variances and special exceptions	Optional, Included	§ 165-702.21 Part 103, Various	<p>The Zoning Ordinance allows for variances and conditional use permits. Part 103 provides that the Planning Commission must make a recommendation for conditional use permits, and such recommendation must be taken to the Board of Supervisors for approval or disapproval. The Board of Zoning Appeals hears and decides variance requests.</p> <p>The Zoning Ordinance can be enhanced by clearly integrating specific provisions into sections related to administrative procedures and special approvals, such as Article I – Part 102, Article I – Part 103, and Article X – Part 1001. These sections typically define the conditions under which variances and special exceptions can be approved, the application process for such approvals, and the criteria required for consideration. Strengthening these areas will help ensure consistency and clarity in the zoning approval process.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
51.	2.	Annexation or boundary adjustment provision	Optional, Not Included	No Reference	<p>This item of the Code of Virginia allows a locality to temporarily apply the Zoning Ordinance to any property coming into the jurisdiction by annexation or otherwise.</p> <p>Recommend including this provision to allow the temporary application of the ordinance to any property coming into the territorial jurisdiction of Frederick County – by annexation or otherwise.</p>
52.	3.	Governing body special exception permits	Optional, Included	§ 165-103.03	<p>This item allows a locality to impose conditions with special use permits and specifies provisions for special use permits related to affordable housing. Such conditions may include a period of validity; a July 1, 2024 state code amendment requires that for residential projects, the period of validity must be at least three years.</p> <p>Part 103 of the Zoning Ordinance provides for conditional use permits and allows conditions to be imposed. The Zoning Ordinance does not address period of validity for CUPs; Frederick County is likely addressing this in practice on a case-by-case basis. Specific language related to affordable housing CUP conditions is not included in the Ordinance. While affordable housing conditional use provisions are not required to be included in the Zoning Ordinance, Frederick County should be aware of this Code section and carefully evaluate the potential impacts of any conditions associated with a proposed affordable housing development. Language as provided for in this Section of the Code of Virginia could also be directly incorporated into the Ordinance, if desired by the County.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
53.	4.	Zoning administrator authorities, provisions, and processes	Optional, Partially Included	§ 165-101.06	<p>This item provides for the administration and enforcement of the Ordinance including the appointment or designation of a Zoning Administrator.</p> <p>Article 1 – Part 101 provides the establishment and duties of the Zoning Administrator, including some language verbatim from this Section of state code.</p> <p>Recommend updating the powers and duties of the Zoning Administrator and all relevant processes in accordance with this section of the Code of Virginia. Also recommend providing all language from this section of state code in a singular Administration Article of the Zoning Ordinance.</p>
54.	5.	Imposition of penalties - misdemeanor fines	Optional, Partially Included	§ 165-101.08	<p>This section of the Code of Virginia allows localities to impose penalties, in the form of a misdemeanor punishable by a fine of no more than \$1,000, for violations of the zoning ordinance. Additional penalties are specified for failure to abate a violation and for violations regarding too many unrelated people living in a single-family dwelling.</p> <p>Frederick County's Zoning Ordinance includes this language in § 165-101.08. However, the Zoning Ordinance does not address penalties related to residential occupancy. Additionally, while civil penalties are briefly mentioned in the Ordinance, it is unclear whether the Board of Supervisors has adopted such penalties as an enforcement mechanism, and when these are leveraged as opposed to misdemeanors (see Line 12).</p> <p>Recommend including a direct reference to this section of the Code of Virginia, as amended, in the Zoning Ordinance. As a best practice, if the County has not done so already, introduce civil penalties for zoning violations, and consolidate civil penalties and misdemeanor penalties into a single section and including a reference to the Code of Virginia sections. Civil penalties should be used as the first line of defense; the County can then move to misdemeanors as appropriate.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
55.	6.	Collection of fees	Optional, Included	§ 165-102.02	<p>This section of the Code of Virginia authorizes the collection of fees to offset the costs of inspections, permitting, advertising, and other expenses directly related to administering the Zoning Ordinance.</p> <p>Frederick County's fees for zoning-related items are included in a separate fee schedule; this is referenced in § 165-102.02.</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia.</p>
56.	7.	Zoning ordinance amendment timelines and process	Optional, Included	§ 165-102.01 § 165-102.04	<p>This section of the Code of Virginia states that the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. The governing body must also decide within 12 months unless postponed or withdrawn by the applicant.</p> <p>Section 165-102.01 states that amendments may be initiated by the Board of Supervisors, the Planning Commission, or a property owner. Section 165-102.04 further states that "The Board shall act on rezoning petitions within 12 months of the time when the petition was received by the Zoning Administrator. Should a request for a rezoning be disapproved by the Board of Supervisors, at least 12 months shall expire before another application for rezoning of substantially the same land to the same zoning district designation shall be considered."</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia.</p>
57.	8.	Plan of development submission and approval	Optional, Included	Part 801 Part 802	<p>This provision allows for the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.</p> <p>Frederick County refers to this as the Master Development Plan. Site plans are also required for specified projects.</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
58.	9.	Mixed use or PUD developments	Optional, Included	Article V	<p>Article V of the Zoning Ordinance establishes three planned development zoning districts: Residential Planned Community (R4), Residential Recreational Community (R5), and Medical Support (MS).</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia.</p>
59.	10.	Incentive zoning administration	Optional, Not Included	§ 165-302.03	<p>This provision allows for the administration of incentive zoning as appropriate, to accomplish a locality's development goals. An example would be increased project density or other benefit in return for the developer meeting certain criteria for environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, or historical preservation.</p> <p>While the County, to some degree, incentivizes flexibility in residential development through the Transfer of Development Rights (TDR) program, the County does not otherwise provide for incentive zoning in the Ordinance.</p> <p>Incentives/bonuses may be considered by Frederick County, if desired, to facilitate higher residential densities where appropriate; enhanced site design; and affordable housing in residential, planned unit, and mixed-use districts.</p>
60.	11.	Downzoning tax credit	Optional, Not included	No Reference	<p>This provision allows for the downzoning of a landowner's undeveloped or underdeveloped property in exchange for tax credits. This can be used to defer development.</p> <p>While the County, to some degree, utilizes a "credit" system through the Transfer of Development Rights (TDR) program, the County does not otherwise provide for downzoning tax credits in the Ordinance.</p> <p>Frederick County should consider whether additional downzoning tax credit provisions are an appropriate land use tool to introduce into the Zoning Ordinance, although this is not a common practice.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
61.	12.	Environmental site assessments and review	Optional, Not included	No Reference	<p>This provision allows localities to require Phase I environmental site assessments (ESAs) in accordance with the U.S. Environmental Protection Agency's regulations and the standards of the American Society for Testing and Materials.</p> <p>Frederick County should consider requiring Phase I Environmental Site Assessments (ESAs) for large developments or uses that may adversely impact the natural environment to identify potential environmental contamination before development. This helps protect public health, ensure safe land use, and mitigate liability for both the locality and developers by adhering to established environmental standards and regulations.</p>
62.	13.	Safety standards for solar panels and battery technologies	Optional, Not Included	No Reference	<p>This provision allows localities to incorporate safety standards for solar panels and battery technologies used as part of solar energy facilities.</p> <p>Frederick County allows for utility-scale solar energy facilities as a conditional use. Battery storage uses/projects are not addressed in the Ordinance. Specific use performance standards or other requirements for utility-scale solar energy facilities are not clearly articulated.</p> <p>Recommend incorporating provisions for nationally accepted environmental protection and product safety standards for solar panels and battery technologies to ensure the safety, reliability, and efficiency of solar photovoltaic projects. This promotes sustainable energy development, protects public health and the environment, and provides clear guidelines for developers, aligning local projects with established best practices and industry standards.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
63.	14.	Environmental disclosure and remediation	Optional, Not Included	No Reference	<p>This provision allows localities to require the disclosure and remediation of contamination and other adverse environmental conditions of a property prior to approval of subdivision and development plans. This requirement is typically applicable for industrial redevelopment projects, or sites once occupied by gas stations, dry cleaners, etc.</p> <p>Recommend incorporating this language as part of the Site Plan and Master Development Plan requirements.</p>
64.	15.	Single-family residential occupancy regulations	Optional, Included	§ 165-101.02	<p>This section of the Code of Virginia allows for the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement complies with applicable local, state, and federal fair housing laws.</p> <p>Section 165-101.02 defines single-family as “A single person, or two or more persons related by blood or marriage occupying a dwelling, living together and maintaining a household, which may include not more than one unrelated person; however, not more than four unrelated persons occupying a dwelling, living together and maintaining a household shall be deemed to constitute a single family.”</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
65.	16.	Zoning inspection warrants	Optional, Not included	No Reference	<p>It is a best practice to include this provision, as it allows for a locality to acquire a warrant if there is a suspected Zoning Ordinance violation.</p> <p>The Zoning Ordinance does not include this provision.</p> <p>Recommend adopting this provision as allowed by the Code of Virginia. The intent of this provision is to prevent unethical searches of private property. If the County is receiving repeated complaints, but is not able to gain access to the property, this is a provision that can be utilized. Frederick County can also implement this in practice without a text amendment, but including direct reference in the Zoning Ordinance helps provide greater transparency to the public.</p>
66.	2286 (B)	Payment of outstanding debt, taxes, fees	Optional, Partially Included	§ 165-102.02	<p>This provision allows for a locality to require applicants for special use permits, rezonings, variances, and permits to first prove all taxes have been paid and there are no other outstanding charges that constitute a lien on the property.</p> <p>The Ordinance establishes the requirement for rezonings but not for other provisions.</p> <p>The Zoning Ordinance can be strengthened by including a direct reference to this section of state code. Additionally, it is recommended to include this requirement for all applicable application types and not just rezonings.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
67.	2286.1	Open space provision, cluster dwellings	Partial	§ 165-402.07 § 165-402.09	<p>This section of the Code of Virginia regulates residential cluster developments to preserve open space. These provisions apply to localities with growth rates of 10% or more, but not to localities with population densities greater than 2,000 per square mile. Frederick County's growth from 2010 to 2020 was 16.7% and density is 219.76 per square mile; therefore, this section of the Code of Virginia applies.</p> <p>Cluster subdivisions are permitted in the RP and RA districts, which also allows for their development in subsequent residential zoning districts. However, the RP district requires no more than 50% of the required open space to be within lakes and ponds, floodplain, wetlands, or steep slopes, even for clustered residential development. However, per state code, localities are not permitted to require delineation of slopes or riparian areas in the open space included in a cluster development.</p> <p>Recommend reviewing and updating cluster provisions for clarity. Recommend removing the open space requirement mentioned above for cluster development in the RP/subsequent districts.</p>
68.	2287	Optional requirement regarding property interest of local officials	Optional, Not included	No Reference	<p>This section of the Code of Virginia requires that applicants disclose any members of the planning commission or governing body that have a vested interest in property being considered for zoning action.</p> <p>Recommend adopting this optional provision as outlined in the Code of Virginia to clarify and to increase transparency in the application and review process.</p>
69.	2287.1	Disclosures in land use proceedings	N/A	N/A	This section of the Code of Virginia only applies to Loudoun County.

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
70.	2288	Localities may not require special exception permits for certain agriculture activities	Yes	§ 165-401.02	<p>This provision specifies that special use permits may not be required for production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification.</p> <p>Frederick County does not require conditional use permits for agricultural/silvicultural activities in the RA district.</p> <p>The Zoning Ordinance complies with this Section of the Code of Virginia.</p>
71.	2288.01	Localities may not require special exception permits for small biomass conversion	Yes	No Reference	<p>This section of the Code of Virginia restricts localities from requiring a special use permit for small-scale conversion of biomass to alternative fuel.</p> <p>The Zoning Ordinance does not mention biomass conversion, meaning it is a prohibited use and would not require a conditional use permit.</p> <p>Recommend defining small-scale conversion of biomass and including as a permitted use in appropriate districts. Additionally, if the use is introduced, the development of use performance standards would clearly address impacts on adjoining properties.</p>
72.	2288.1	Localities may not require a special use permit for certain residential uses	Yes	Article IV Various	<p>This section of the Code of Virginia states that no local ordinance shall require a special use permit for development and construction of residential dwellings at the use, height, and density permitted by right under the local zoning ordinance. Special use permits may be used for certain developments that exceed density requirements, involve nonresidential uses, or are located in areas of steep slopes.</p> <p>The Zoning Ordinance permits various types of residential units by right in each residential district as appropriate and does not require a conditional use permit for any particular density. The Zoning Ordinance complies with this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
73.	2288.2	Localities may not require special exception permits for certain temporary structures (tents)	Yes	No Reference	<p>This section of the Code of Virginia restricts localities from requiring a special use permit for a temporary (less than three days) tent to be constructed on private property that will be primarily used for private or family-related events.</p> <p>The Zoning Ordinance does not require conditional use permits for temporary structures; temporary structures are not directly addressed. The Zoning Ordinance therefore complies with this section of the Code of Virginia, but if temporary uses/structures are introduced into the Zoning Ordinance, recommend specifying that private/family-oriented tents are excluded from conditional use permit requirements.</p>
74.	2288.3	Localities may not unduly regulate farm wineries	Yes	§ 165-204.22 § 165-401.02	<p>This section of the Code of Virginia restricts localities from unduly regulating licensed farm wineries.</p> <p>Frederick County defines “farm winery” in the Ordinance and references the section of the Code of Virginia. The use is also permitted by-right in the RA district. The Ordinance does include performance standards for farm wineries; however, because these standards are intended to mitigate adverse impacts, they do not unduly regulate the use.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia.</p>
75.	2288.3:1	Limited brewery license; local regulation of certain activities	Yes	§ 165-204.22 § 165-401.02	<p>This section of the Code of Virginia states that local restrictions upon activities of legally licensed breweries to market and sell their products shall be reasonable and shall consider the economic impact on such activities.</p> <p>Frederick County defines “farm brewery” in the Ordinance and references the Code of Virginia. The use is also permitted by-right in the RA district.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
76.	2288.3:2	Limited distiller's license; local regulation of certain activities.	Yes	§ 165-204.22 § 165-401.02	<p>This section of the Code of Virginia states that local restrictions upon activities of legally licensed distilleries to market and sell their products shall be reasonable and shall consider the economic impact on such activities.</p> <p>Frederick County defines "farm distillery" in the Ordinance and references the Code of Virginia. The use is also permitted by-right in the RA district.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia.</p>
77.	2288.4	Extension of expiration dates for special use permits	N/A	N/A	This section of the Code of Virginia expired in 2011 and therefore does not apply.
78.	2288.5	Definition and uses of cemetery	Partial	§ 165-401.02	<p>This section of the Code of Virginia clarifies the meaning of <i>cemetery</i> and includes secondary uses that must be included in their approval. Applicable zoning regulations still apply.</p> <p>The Zoning Ordinance permits cemeteries in the RA district but does not provide a definition for <i>cemetery</i>.</p> <p>Recommend adding a definition of <i>cemetery</i> that aligns with the definition provided in this section of the Code of Virginia.</p>
79.	2288.6	Agricultural operations; local regulation of certain activities	Yes	§ 165-101.02 § 165-401.02	<p>This section of the Code of Virginia restricts localities from regulating agricultural operations such as agritourism and the processing/sale of products.</p> <p>The Zoning Ordinance allows for agritourism as a by-right use in the RA zoning district and defines agritourism as provided in § 3.2-6400 of the Code of Virginia.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
80.	2288.7	Solar facilities; local regulation	Partial	§ 165-201.03 § 165-401.02	<p>This section of the Code of Virginia speaks to allowing small-scale solar facilities, which are typically mounted over a building, parking lot, or other previously disturbed areas and have a disturbance of less than two acres.</p> <p>Frederick County allows for small-scale solar facilities, although they are not clearly defined/identified with applicable performance standards.</p> <p>It is recommended to introduce roof-mounted and ground-mounted solar (accessory or small-scale solar) as distinct, standalone uses in the zoning ordinance with clear definitions. Additionally, the County should assess and determine in which zoning districts these solar facilities could be allowed by-right. This approach would establish clear guidelines for solar energy systems and streamline the approval process for solar projects in appropriate areas, aligning with the County's sustainability goals.</p>
81.	2288.8	Special exceptions for solar photovoltaic projects	Optional, Partially Included	§ 165-201.03 § 165-401.02	<p>This section of the Code of Virginia enables localities to grant special exceptions for electric energy or energy storage projects and localities may grant conditions of the dedication of real property or cash payments for construction of public improvements.</p> <p>The Zoning Ordinance permits <i>utility-scale solar power generating facilities</i> conditionally. Other energy storage projects are not defined or discussed in the Ordinance. The Ordinance does not incorporate the optional provision to grant conditions of the dedication of real property or cash payments.</p> <p>Recommend identifying, defining, and appropriately permitting battery energy storage facilities. The County can consider whether it would like to specify that it accepts the dedication of real property or cash payments for construction of public improvements as conditions of a CUP.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
82.	2289	Optional requirement of disclosure of real parties in interest for special exception permits, special use permits, amendments to the zoning ordinance, or variances	Optional, Included	§ 165-101.09	<p>This section of the Code of Virginia allows a locality to require any application for a special use permit, zoning text or map amendment, or variance to disclose the equitable ownership of the land to be included in the application and all parties of interest.</p> <p>Frederick County's Board of Supervisors, Planning Commission, and Board of Zoning Appeals can require full ownership disclosure from applicants, except for publicly traded corporations with over 500 shareholders.</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia. Recommend including direct reference to this section of state code to strengthen the Ordinance.</p>
83.	2290	Manufactured housing uniformity (by-right in Ag areas)	Partial	§ 165-401.02	<p>This section of the Code of Virginia requires that the placement of manufactured houses on a permanent foundation and on individual lots be permitted in all agricultural districts, subject to development standards.</p> <p>Frederick County allows <i>mobile homes</i> by-right in the RA district. Technically speaking, <i>mobile home</i> refers to housing with a non-permanent foundation that was constructed before new, nationwide regulatory guidance was enacted in 1976. <i>Manufactured housing</i> is the correct terminology, as pre-1976 mobile homes should be either phased out or brought up to standard.</p> <p>While Frederick County is likely allowing manufactured housing on a permanent foundation by-right in the RA district in practice, the Zoning Ordinance should still be updated to reflect the correct terminology and achieve full compliance with this section of the Code of Virginia. A direct reference to state code can also be included, if desired. District regulations and performance standards identified in the MH1 District (Part 403) should also be reviewed.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
84.	2291	Assisted living and group homes of 8 or fewer residents	Yes	§ 165-101.02 § 165-401.02 § 165-402.02 § 165-504.02	<p>This provision restricts localities from prohibiting up to 8 unrelated persons residing in a single household, provided they meet they meet certain disability requirements.</p> <p><i>Group home</i> is defined in the Ordinance and is permitted by-right in the RP, MS, and subsequent residential districts, while adult care residences and assisted living facilities are listed as conditional uses in the RP district (meaning they are similarly permitted in subsequent residential districts). <i>Adult care residences</i> and <i>assisted living facility</i> are both defined; however, amendments should be made to reflect the most recent language from state code. Additionally, based on the definition of <i>adult care residence</i>, it seems to be considered as assisted living and therefore should not be permitted conditionally.</p> <p>Recommend reviewing definitions of <i>group home</i>, <i>adult care residence</i>, and <i>assisted living facility</i> to include reference to the Code of Virginia. Use permissions should also be updated accordingly, particularly for <i>adult care residences</i>.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
85.	2292	Zoning provision/definition family day home	Partial	No Reference	<p>This section of the Code of Virginia supplies provisions for home-based daycares serving up to four children and 5-12 children. If serving 1-4 children, the family day home shall be considered residential occupancy by a single family. If serving 5-12 children, the family day home may be approved administratively after a 30-day period for adjacent property owners to be notified and present any objections.</p> <p>The Zoning Ordinance neither identifies family day home as a use nor defines the term, although the definition of <i>day-care facility</i> specifies that it would be more than five children.</p> <p>Recommend introducing family day home as a permitted use in the Zoning Ordinance, with a definition guided by state code. This is typically best done through splitting the use into two – one for 1-4 children and the other for 5-12 children – to allow for conditional use permits and/or performance standards for the larger day home use if desired. Both family day home uses should be permitted in all zoning districts that allow single-family homes.</p>
86.	2292.1	Provision for temporary family health care structure	Yes	§ 165-101.02 § 165-204.27	<p>This provision states that temporary family health care structures shall be considered as a permitted accessory use in a single-family residential zoning district.</p> <p><i>Temporary family health care structure</i> is defined in the Ordinance and given use performance standards, which use language verbatim from this section of the Code of Virginia. The use is also permitted by-right in the RA, RP, R4, and R5 zoning districts.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
87.	2292.2	Waiver of zoning permit requirements; child day programs	Optional, Not Included	No Reference	<p>Allows localities to waive requirements for zoning permits for a child day care in an office building, as long as such facility meets the requirements for state licensure as a child day program.</p> <p>This is a new and optional state code provision that went into effect on July 1, 2024. Frederick County should consider whether they would like to incorporate this into the Zoning Ordinance.</p>
88.	2293	Airspace subject to zoning ordinances	No	No Reference	<p>This provision states that a Zoning Ordinance shall be applicable to the superjacent airspace of any nonpublic-owned land area.</p> <p>The Zoning Ordinance does not include language that subjects the airspace to the regulations of the Ordinance, though this Code of Virginia provision would still apply, along with any applicable regulations from the Federal Aviation Administration (FAA).</p> <p>Recommend including this language as written in the Code of Virginia.</p>
89.	2293.1	Amateur radio antenna placement	No	No Reference	<p>This section of the Code of Virginia states that amateur radio antennas shall be reasonably accommodated with the minimum regulation necessary. In localities having a population density of 120 persons or less per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 75 feet above ground level or (ii) restrict the number of support structures.</p> <p>Frederick County's population density was approximately 109.9 persons per square mile according to the 1990 U.S. Census; therefore, this section of state code applies. However, the Zoning Ordinance neither defines amateur radio antennas nor permits it as a use.</p> <p>Recommend defining and appropriately permitting <i>amateur radio antenna</i> as a use, in alignment with this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
90.	2293.2	Regulation of helicopter use	Yes	§ 165-502.04	<p>This section of the Code of Virginia provides for localities to require special use permits for repetitive helicopter landings and departures on the same parcel of land.</p> <p>The R5 district permits heliports by-right, which complies with this section of state code, but the Ordinance lacks a definition and specific performance standards for them.</p> <p>Recommend introducing a definition for heliport; use performance standards may be added if desired to help mitigate impacts on adjacent properties. The County should also consider whether it would like to permit heliports conditionally rather than by-right, as is allowed by this Section of the Code of Virginia.</p>
91.	2294	Airport safety zoning	Yes	§ 165-701.02	<p>This section of the Code of Virginia requires that any locality that hosts a licensed airport or United States government or military air facility is located, or approach slopes and other safety zones of a licensed airport shall provide for the regulation of the height of structures and natural growth. The Code of Virginia allows this to be a standalone ordinance, or through an overlay district/zone within the Zoning Ordinance.</p> <p>The Ordinance establishes the AP1 Airport Overlay District, which includes all of the land and airspace of Frederick County with elevations equal to and above the approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces as they apply to the Winchester Regional Airport.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
92.	2295	Optional aircraft noise attenuation ordinances	Optional, Included	§ 165-701.05	<p>This section of the Code of Virginia provides that a locality may enforce building regulations relating to the provision and installation of acoustical treatment measures. Additionally, this section of the Code of Virginia allows a locality to adopt a noise overlay zone that regulates noise and sounds differently than base districts.</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia.</p>
93.	2295.1	Optional mountain ridge construction ordinances	Optional, Not Included	No Reference	<p>This section of the Code of Virginia allows a locality with a protected mountain ridge to impose additional restrictions as part of an overlay zoning district to those mountain ridges to regulate the height and location new development.</p> <p>Frederick County likely has a protected mountain ridge(s) as defined by this section of the Code of Virginia but does not include a protection mountain ridge construction overlay in the Zoning Ordinance.</p> <p>Frederick County may consider creating a mountain ridge overlay zoning district to preserve the natural landscape, protect sensitive ecosystems, maintain scenic views, mitigate erosion and landslide risks, and ensure the safety of residents and properties in mountainous areas. These regulations aim to balance development needs with environmental conservation and community safety concerns specific to mountainous terrain.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
94.	2295.2	Optional authority to create zoning modification in dam break inundation zones	Optional, Not Included	No Reference	<p>This section of the Code of Virginia allows a locality to, by ordinance, require modification of an application for zoning modification or a special use permit for the area of a development that is proposed within a mapped dam break inundation zone.</p> <p>Frederick County has several dam break inundation zones, according to the Virginia Flood Risk Information System (VFRIS). However, there is no overlay to address development in these zones, nor are these zones required to be delineated as part of a site plan or master development plan.</p> <p>Frederick County should require all applications for development to indicate if they are located within a dam break inundation zone to enhance public safety and minimize risk. This would be done through requiring delineation of a dam break inundation zone on a site plan and master development plan.</p>
95.	2296	Conditional zoning - legislative policy	Yes	§ 165-102.06	<p>The Zoning Ordinance provides for conditional zoning at the time of rezoning and therefore complies with this section of the Code of Virginia.</p> <p>To further strengthen compliance with state code, recommend adding the following language to a new section under § 165-102.06 that provides the purpose and intent of conditional zoning: <i>As authorized under the Code of Virginia §§ 15.2-2296 through 15.2-2303, as amended, reasonable conditions may be voluntarily proffered for the protection of the community when combined with existing Zoning Ordinance district regulations.</i></p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
96.	2297	Conditional zoning - rezoning/map amendments	Optional, Partially Included	§ 165-102.06	<p>This provision allows for voluntary proffers as part of rezoning applications, provided that certain conditions are met. Cash proffers and public dedications to the locality as restricted.</p> <p>Section 165-102.06 of the Zoning Ordinance provides for property owners to voluntarily proffer conditions with a rezoning application and has incorporated some, but not all, of the language from this section of the Code of Virginia. The Ordinance also gives examples of types of conditions that may be proffered. One of these conditions states “Cash contributions for road improvements or for planned facilities identified in the Frederick County Capital Improvements Plan”; however, per state code, cash contributions cannot be made for improvements that are not directly related to the specific development.</p> <p>Recommend updating current proffer language to better align with what is provided for in this section of the Code of Virginia, including a direct reference to state code, as amended.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
97.	2298	Conditional zoning - high-growth amendments	Yes	§ 165-102.06	<p>This section of the Code of Virginia establishes that the Zoning Ordinance must provide for the voluntary proffering of reasonable conditions, by the owner, prior to a public hearing before the governing body provided that (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan as defined in § 15.2-2223.</p> <p>This section applies to (i) any locality which has had population growth of 5% or more from the next-to-latest to latest decennial census year; (ii) any city adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties and any town located in that county.</p> <p>This section applies to Frederick County, as the growth rate was approximately 16.75% from 2010-2020. <i>See Lines 95-96 and 98-102 for additional proffer comments.</i></p> <p>The Zoning Ordinance complies with this section of the Code of Virginia.</p>
98.	2299	Conditional zoning - enforcement	Yes	§ 165-102.06	<p>This provision specifies the authority of the Zoning Administrator to administer and enforce proffers.</p> <p>Section 165-102.06 specifies that the Zoning Administrator has the authority to enforce any conditions attached to a rezoning.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia, although including a direct reference to this section of state code could strengthen the Ordinance.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
99.	2300	Conditional zoning - records	Partial	§ 165-102.06	<p>This provision specifies how zoning map amendments and proffers must be retained for public record.</p> <p>Section 165-102.06 includes some of the provided language; however, it is lacking information related to updating the index annually by November 30.</p> <p>Recommend adding all applicable language from, and general reference to, this section of the Code of Virginia.</p>
100.	2301	Conditional zoning - petitions for review of decision	No	No Reference	<p>This provision specifies the process for aggrieved parties to petition a decision of the Zoning Administrator.</p> <p>Section § 165-102.06 discusses appeals to the BZA by aggrieved parties, but there is no other related language in the context of conditional zoning.</p> <p>Recommend adding all applicable language from, and general reference to, this section of the Code of Virginia.</p>
101.	2302	Conditional zoning - amendments and variations	Partial	§ 165-102.06	<p>This section of the Code of Virginia specifies the process for proffer amendments.</p> <p>Section 165-102.06 includes direct reference to, and some language verbatim from, this Section of the Code of Virginia. However, the Ordinance is not clear that proffers can undergo nonsubstantive amendments prior to the public hearing. The Ordinance also states that the Board of Supervisors may amend proffered conditions “when the proposed amendment provides a benefit to the County”, which is not a state code-provided situation for when proffer amendments are acceptable.</p> <p>Recommend updating the Zoning Ordinance to more closely align with the language as provided for in this Section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
102.	2303	Conditional zoning - certain localities	N/A	N/A	<p>This section of the Code of Virginia applies to:</p> <ul style="list-style-type: none"> • counties where the urban county executive form of government is in effect; or • cities/towns/counties adjacent to or completely surrounded by such a county; and • counties east of the Chesapeake Bay. <p>This section of the Code of Virginia does not apply to Frederick County.</p>
103.	2303.1	Binding development agreements - certain localities	N/A	N/A	This section of the Code of Virginia only applies to New Kent County.
104.	2303.1:1	Cash proffer collected - process	No	No Reference	<p>This section of the Code of Virginia provides that per-unit cash proffers cannot be accepted until after final inspection and prior to certificate of occupancy.</p> <p>Frederick County accepts cash proffers under state code and as related to impacts. The Zoning Ordinance does not include specific language related to timing/acceptance of cash proffers.</p> <p>Recommend including this language to conform with this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
105.	2303.2	Proffered cash payments and expenditures - process	No	No Reference	<p>This section of the Code of Virginia requires localities that accept cash proffers to begin construction, site work, engineering, right-of-way acquisition, surveying, or utility relocation on the improvements for which the cash payments were proffered within 12 years of receiving full payment.</p> <p>Frederick County accepts cash proffers; however, this language from the Code of Virginia is not reflected in the Zoning Ordinance.</p> <p>Recommend including a statement in the Zoning Ordinance that states "Frederick County shall expend, track, and monitor cash proffers in accordance with § 15.2-2303.2 of the Code of Virginia."</p>
106.	2303.3	Cash proffers requested or accepted by a locality - process	No	No Reference	<p>This section of the Code of Virginia restricts localities from requiring cash proffer payments prior to issuance of building permits and specifies that cash proffers amounts scheduled to increase annually shall not exceed the annual rate of inflation.</p> <p>The Zoning Ordinance does not include this language.</p> <p>Recommend incorporating the requirements for a locality to accept a cash proffer, as outlined in this section of the Code of Virginia.</p>
107.	2303.4	Provisions applicable to certain proffers	No	No Reference	<p>This section of the Code of Virginia provides that no locality can require an unreasonable proffer for residential development or uses, but allows on-site and off-site proffers that the applicant deems reasonable.</p> <p>The Zoning Ordinance does not include this language.</p> <p>Recommend incorporating the language from this section of the Code of Virginia and providing a reference in the Zoning Ordinance as a best practice.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
108.	2304	Affordable dwelling ordinances - certain localities	N/A	N/A	This section of the Code of Virginia is only applicable to the Counties of Fairfax, Arlington, Albemarle, and Loudoun, and the Cities of Alexandria and Fairfax.
109.	2305	Affordable dwelling ordinances	Optional, Not included	No Reference	<p>This section of the Code of Virginia allows localities to establish an affordable housing dwelling unit program to address housing needs. The Zoning Ordinance does not address affordable housing.</p> <p>This section of the Code of Virginia is an optional provision that may be considered for inclusion in the Zoning Ordinance.</p>
110.	2306	Optional historical site preservation	Optional, Partially Included	Part 703	<p>This section of the Code of Virginia allows localities to adopt ordinances protecting historic resources and/or create a historic district. The governing body may also appoint a review board to administer the ordinance. As of July 1, 2024, localities are also permitted to establish a civil penalty for the razing, demolition, or moving of a building or structure that occurs in violation of a historic ordinance.</p> <p>Frederick County has adopted a Historic Area Overlay Zone (HA) that satisfies the intent of this Section of the Code of Virginia, but this overlay has not yet been applied in practice. The County also provides for a Historic Resources Advisory Board (HRAB) that administers the Ordinance.</p> <p>Consider a County-initiated zoning map amendment to apply the HA overlay zone in desired areas. Frederick County should also establish civil penalties, if not established already by the Board of Supervisors, as provided for in this Section of the Code of Virginia (see Line 12).</p>
111.	2306.1	Establishment of working waterfront development areas	N/A	N/A	There are no designated working waterfronts in Frederick County.

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
112.	2307	Protection of vested rights for non-conforming uses	Partial	Article IX, Various	<p>This section of the Code of Virginia regulates vested rights in properties with nonconforming structures or uses.</p> <p>Article IX of the Zoning Ordinance provides for nonconforming uses, lots, and structures; however, it does not include all language related to vested rights that is provided in this Section of state code.</p> <p>Recommend including all language from, and direct reference to, this Section of the Code of Virginia.</p>
113.	2307.1	Commercial fishing	N/A	N/A	<p>This section of the Code of Virginia requires that registered commercial fishermen and seafood buyers who have operated their businesses from their waterfront residences for 20+ years shall not be prohibited from continuing their businesses.</p> <p>As an inland locality, these provisions do not apply to Frederick County.</p>
114.	2308	Board of Zoning Appeals (BZA)	Yes	§ 165-1001.01 § 165-1001.02	<p>This section of the Code of Virginia provides for the establishment of Boards of Zoning Appeals (BZAs).</p> <p>The Zoning Ordinance provides information related to the establishment of the BZA.</p> <p>Recommend updating these provisions of the Zoning Ordinance to include direct reference to this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
115.	2308.1	Boards of zoning appeals, ex parte communications, proceedings	No	No Reference	<p>This section of the Code of Virginia regulates ex parte communications between the BZA and non-legal staff or applicants.</p> <p>The Zoning Ordinance does not address ex parte communications, although this may be occurring in practice.</p> <p>Recommend adding this language and a reference to this section of the Code of Virginia.</p>
116.	2309	Zoning appeal board powers and duties	Partial	§ 165-1001.01 § 165-1001.02	<p>This section of the Code of Virginia establishes the powers and duties of the Board of Zoning Appeals (BZA)</p> <p>Article X establishes the establishment, organization, powers, and duties of the BZA. Section 165-1001.01 states that the BZA will “organize and conduct itself according to all requirements of the Code of Virginia” but otherwise does not reference this Section and does not include all of the language.</p> <p>Recommend including language from, and direct reference to, this section of the Code of Virginia.</p>
117.	2310	Application for special exceptions and variance	Partial	Part 103, Various § 165-1001.02	<p>This section of the Code of Virginia specifies application procedures for special exceptions/special use permits and variances.</p> <p>Part 103 provides the application procedures for conditional use permits. Variances are addressed in § 165-1001.02. However, the Zoning Ordinance does not address reconsideration of variance/CUP applications that are materially the same as an original submittal.</p> <p>Recommend including language from, and direct reference to, this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
118.	2311	Optional appeals to Board of Zoning Appeals - process	Yes	§ 165-1001.02	<p>This section of the Code of Virginia specifies the application process for appeals to the BZA.</p> <p>These provisions are largely reflected in § 165-1001.02.</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia.</p>
119.	2312	Appeals to Board procedure - process	Yes	§ 165-1001.02	<p>This section of the Code of Virginia specifies the review procedures for appeals to the BZA.</p> <p>Section 165-1001.02 provides that the Board of Zoning Appeals shall decide on an appeal within 60 days. This 60-day timeframe is less than the maximum 90-day timeframe provided; therefore, the Zoning Ordinance complies with this section of the Code of Virginia. However, Frederick County can consider updating the Zoning Ordinance to allow for the maximum 90-day timeframe for a decision on an appeal.; this allows the BZA more time and flexibility for decision-making.</p>
120.	2313	Prevention of construction not in accordance with ordinance - process	No	No Reference	<p>This section of the Code of Virginia allows the court to hear issues regarding building construction that may be in violation of the Zoning Ordinance without going to the BZA.</p> <p>Recommend including the language provided in this section of the Code of Virginia.</p>
121.	2314	Writ of Certiorari to review Board's decision	No	No Reference	<p>The Zoning Ordinance does not include this language.</p> <p>Recommend including direct reference to this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
122.	2315	Conflict of state and local ordinance	Yes	§ 165-101.04	<p>Where there are conflicts with other statutes, ordinances, or regulations, the more restrictive provision shall apply.</p> <p>Language in § 165-101.04 meets the intent of this section.</p> <p>Recommend adding direct reference to this Section of the Code of Virginia.</p>
123.	2316	Validation of ordinances prior to 1971	N/A	N/A	Frederick County's Zoning Ordinance was adopted on February 14, 1990; therefore, this section of the Code of Virginia does not apply.
124.	2316.1	Definitions regarding transfer of development rights (TDRs)	Optional, Partially Included	§ 165-101.02 § 165-301.03	<p>This section of the Code of Virginia establishes the definitions for Transfer of Development Rights programs.</p> <p>Most of the definitions provided for in this Section of the Code of Virginia are included in § 165-101.02, with the exception of <i>severance of development rights</i>. Additionally, the definition of development rights does not include uses, which is included in state code.</p> <p>Recommend adding the state code definition of <i>severance of development rights to the Zoning Ordinance</i>. Recommend reviewing all definitions and updating as needed to align with those provided in this Section of the Code of Virginia.</p>
125.	2316.2	Optional provisions for transfer of development rights	Optional, Included	Article 3	<p>This section of the Code of Virginia allows localities the option to establish TDR programs, in which a locality may designate receiving areas/properties that shall receive development rights <u>only</u> from certain sending areas/properties. This is typically used by counties as a rural area preservation tool.</p> <p>Article 3 establishes Frederick County's TDR program. Direct reference to this Section of the Code of Virginia, as well as Code of Virginia § 15.2-2316.1, is included in the purpose statement.</p> <p>The Zoning Ordinance has incorporated this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
126.	2316.3	Definitions regarding small cell facilities	Yes	§ 165-204.19	<p>This section of the Code of Virginia establishes the definitions for telecommunications facilities.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia by including a direct reference. However, to promote usability of the Ordinance, recommend incorporating all terms and definitions from this Section of state code into the definitions article of the Ordinance.</p>
127.	2316.4	Permitting and review of small cell facilities	Yes	§ 165-204.19	<p>This section of the Code of Virginia establishes the permitting/review processes for small cell facilities and establishes administrative review requirements when conditions are met.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia through the inclusion of both direct references and verbatim language.</p>
128.	2316.4:1	Zoning; Other wireless facilities	Yes	§ 165-204.19	<p>This section of the Code of Virginia requires that localities cannot require a special use permit, special exception, or a variance for “administrative-review eligible projects.”</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia through the inclusion of both direct references and verbatim language. For clarity, however, recommend adding a definition of <i>administrative review-eligible projects</i> and establishing them as a by-right use in applicable districts.</p>
129.	2316.4:2	Application reviews for small cell facilities	Yes	§ 165-204.19	<p>This section of the Code of Virginia establishes the guidelines for the review of applications for small cell facilities. It explicitly prevents applications from being denied for various reasons and states the type of requirements that localities cannot require in their applications.</p> <p>The Zoning Ordinance complies with this section of the Code of Virginia; also see Lines 126, 127, and 128 for recommendations.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
130.	2316.4:3	Additional provisions for zoning applications of telecommunications facilities	Partial	§ 165-204.19	<p>This section of the Code of Virginia establishes that localities cannot require zoning approval for routine maintenance or for the replacement of existing wireless facilities.</p> <p>This is partially included in § 165-204.19; however, recommend adding language from (B) of this Section of state code that addresses limitations on the number of new structures of wireless facilities that can be installed in a specific location.</p>
131.	2316.5	Moratorium on zoning applications from wireless service providers prohibited	Yes	No Reference	Frederick County does not have a moratorium on zoning applications from wireless service providers. The Zoning Ordinance therefore complies with this section of the Code of Virginia.
132.	2316.6	Siting of solar projects and energy storage projects – definitions	No	No Reference	<p>This section of the Code of Virginia provides definitions that pertain to § 15.2-2316.6 et. seq. of the Code of Virginia.</p> <p>The Zoning Ordinance does not include these terms and definitions.</p> <p>Recommend incorporating the definitions as provided by this section of the Code of Virginia.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
133.	2316.7	Negotiations; siting agreement	Partial	§ 165-204.26	<p>This section of the Code of Virginia requires that any applicant for a solar project or an energy storage project give written notice to the locality and request a meeting, where applicant and locality shall discuss and negotiate a sitting agreement. This section of the Code of Virginia also provides language for siting agreements contents.</p> <p>The Zoning Ordinance appears to have attempted compliance through incorporating a direct reference to the Code of Virginia in § 165-204.26, but the Section referenced in the Zoning Ordinance is incorrect as it addresses mandatory provisions of a subdivision ordinance.</p> <p>Recommend including direct reference to this Section of the Code of Virginia to achieve full compliance.</p>
134.	2316.8	Powers of host localities	N/A	N/A	<p>This section of the Code of Virginia states the powers of localities regarding the siting of solar facilities. Powers include hiring consultants, discussing a siting agreement with an applicant, entering into a binding siting agreement, and presenting the agreement at a public hearing.</p> <p>No action is required for compliance; Frederick County only needs to be aware of it.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
135.	2316.9	Effect of executed siting agreement; land use approval	No	No Reference	<p>This section of the Code of Virginia states that all land use approvals shall be necessary for a solar facility; a siting agreement shall deem the project in accordance with a Comprehensive Plan, but other land use approvals will be required; and that a governing body cannot deny approval solely based on the absence of a siting agreement. This section of the Code also only applies for sites larger than 5 MW.</p> <p>The Zoning Ordinance does not include this language; also see Line 133.</p> <p>Recommend including a section to provide regulations specifically for siting of solar projects, following the outline of the provisions of § 15.2-2316.6 et. seq. of the Code of Virginia. Recommend including these provisions as provided in §15.2-2316.9 of the Code of Virginia.</p>
136.	2317	Road Impact Fees - Applicable to 20k persons +5% growth, or 15% growth	Optional, Not Included	No Reference	<p>This section of the Code of Virginia speaks to road impact fees. It is applicable to localities with a population of 20,000 and at least a 5% growth rate, or any locality with at least 15% growth rate.</p> <p>Frederick County exceeds both the population and growth rate thresholds but has not adopted road impact fees. See Lines 137--146 for additional items related to road impact fees.</p>
137.	2318	Definitions	<i>Required <u>if</u> Road Impact Fees Ordinance Adopted</i>	No Reference	<p>This section of the Code of Virginia includes definitions for terms relating to road impact fees.</p> <p>Frederick County has not adopted regulations that govern road impact fees.</p>
138.	2319	Impact fee authority		No Reference	<p>This section of the Code of Virginia allows applicable localities to impose road impact fees on new developments to pay all or part of the cost of reasonable road improvements that benefit new development.</p> <p>Frederick County has not adopted regulations that govern road impact fees.</p>

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
139.	2320	Impact fee service area establishment	<i>Required <u>if</u> Road Impact Fees Ordinance Adopted</i>	No Reference	This section of the Code of Virginia states that applicable localities shall delineate one or more impact fee service areas within its comprehensive plan. Frederick County has not adopted regulations that govern road impact fees.
140.	2321	Adoption of road improvement program (must be done prior to impact fee adoption)		No Reference	This section of the Code of Virginia requires that prior to adopting any system of impact fees, road improvements needs must be assessed – and adopt a road improvements plan after a public hearing. Frederick County has not adopted regulations that govern road impact fees.
141.	2322	Adoption of impact fee, schedule		No Reference	This section of the Code of Virginia requires that an adopted ordinance or regulation for impact fees contain a schedule of fees. Frederick County has not adopted regulations that govern road impact fees.
142.	2323	Applicability of fees		No Reference	This section of the Code of Virginia requires that an adopted ordinance or regulation for impact fees contain a schedule of fees. Frederick County has not adopted regulations that govern road impact fees.
143.	2324	Credit against fees		No Reference	This section of the Code of Virginia requires that the value of any dedication, contribution, or construction from the developer for off-site road or other transportation improvements benefiting the impact fee service area shall be treated as a credit against the impact fees project. Frederick County has not adopted regulations that govern road impact fees.
144.	2325	Updating plan of impact fee		No Reference	This section of the Code of Virginia requires that the road improvement plan, that is the basis of the impact fees, be updated every two years; with amendments to impact fee schedule, as appropriate. Frederick County has not adopted regulations that govern road impact fees.

	VA Code Section 15.2-	Intent	Compliance	Existing ZO Section	Consultant Comments/Recommendations
145.	2326	Proceeds use	<i>Required <u>if</u> Road Impact Fees Ordinance Adopted</i>	No Reference	<p>This section of the Code of Virginia requires that a road improvement account be established for the impact fee service area and all funds collected through impact fees shall be deposited in an interest-bearing account. Interest earned on deposits becomes funds of the account. The use of the funds shall be for road improvements benefiting the impact fee service area.</p> <p>Frederick County has not adopted regulations that govern road impact fees.</p>
146.	2327	Refund of impact fee		No Reference	<p>This section of the Code of Virginia requires that a locality refund any impact fee for which construction of a project is not completed within a reasonable period, not to exceed fifteen years.</p> <p>Frederick County has not adopted regulations that govern road impact fees.</p>
147.	2328	Applicability of Impact Fees	N/A	N/A	<p>This article of the Code of Virginia applies to “urban counties” that have established an urban transportation service district in accordance with § 15.2-2403.1 prior to December 31, 2008. An “urban county” in this context had a population greater than 90,000 according to the 2000 Census and did not maintain its roads as of January 1, 2007.</p>
148.	2329	Imposition of impact fees	N/A	N/A	<i>See Line 147.</i>

	Additional Comments	Consultant Recommendations
A.	General Comments	In Frederick County, while some sections of the Zoning Ordinance have been updated to align with recent Code of Virginia requirements, many parts of the Ordinance remain unchanged. Although Frederick County may be following current Code provisions in practice, the Zoning Ordinance would benefit from incorporating clear references to all mandatory requirements of the Code of Virginia, including revised language as applicable.
B.	Organization	<p>The Zoning Ordinance could greatly benefit from a reorganization of the content. Berkley Group’s suggested improvements include:</p> <ul style="list-style-type: none"> • Consolidate all application and notice procedures into a single article, which should include the language for all application processes and procedures, including the procedure for advertisement and notification of public hearings. • Create one article to contain all responsible bodies and their compositions, powers, and duties (Board of Supervisors, Planning Commission, and Board of Zoning Appeals). Ensure all provided language from the Code of Virginia is clearly incorporated. • Create one article for use performance standards for all uses; ensure use performance standards are consolidated in this article and removed from any definitions or district standards (also see G, below). • Consider consolidating the Subdivision Ordinance into a standalone article of the Zoning Ordinance. This helps to ease administration of land use-related regulations. • Use structured multi-level lists in lieu of lengthy paragraphs to improve readability and ease the process of making future text amendments. • The current flowcharts and plates in the Zoning Ordinance are helpful visual aids but are dated and will likely need to be updated as text amendments are made. Consider where other visuals, such as flowcharts, graphics, and tables, can be incorporated to help break down complex regulations. <p>Berkley Group typically recommends the following organization: General (effective date, severability, applicability, jurisdiction, conflict, etc.); Administration; Permits & Applications; Primary Districts (including dimensional standards); Overlay Districts; Use Matrix; Use Performance Standards; Community Design Standards; Nonconformities; Subdivision; and Definitions. This can be modified with consideration of the specific administration needs identified by County staff.</p>
C.	In General and Administration	<p>The current Ordinance’s largest compliance issues are related to provisions of the Code of Virginia that outline the purpose and intent of zoning ordinances, as well as administrative procedures. A future update should prioritize clearly articulating the following items, as guided by state code:</p> <ul style="list-style-type: none"> • Purpose and intent of the Zoning Ordinance; • Powers and duties of the Zoning Administrator and Planning Commission; • Ex parte communications; and • Other enforcement procedures, such as civil penalties (see E, below) and optional warrants.

	Additional Comments	Consultant Recommendations
D.	Definitions	It is recommended to update or add definitions for all permitted uses and state-mandated uses/terms to ease administration of the Ordinance and reduce the need for interpretations. The following definitions and/or uses should be introduced into the Zoning Ordinance: <i>cemetery, small- and medium-scale solar facility, amateur radio tower, small cell facility, administrative review only project, and small biomass conversion.</i>
E.	Enforcement	The Ordinance includes language authorizing the Board of Supervisors to adopt a schedule for civil penalties in line with the Code of Virginia; however, it is unclear whether this has occurred and if civil penalties are being administered in practice. If civil penalties have not been established, recommend establishing these types of penalties as a first step for violations of the Zoning Ordinance, pursuant to Code of Virginia § 15.2-2209. This eases the burden of administration for minor violations. Regardless of whether or not civil penalties have been established, the Zoning Ordinance should clearly spell out the process for administering these types of penalties, and when misdemeanors can be pursued as an enforcement mechanism. This allows for transparency in the administration and enforcement of the Ordinance.
F.	Uses/Use Matrix	<p>Uses for each district should be comprehensively updated and streamlined for all permitted and conditional uses. Outdated use terms should be eliminated, and modern, relevant uses should be incorporated. It is also recommended to consolidate specific terms into broader categories to simplify regulations.</p> <p>Many localities utilize a composite use matrix that shows all districts, uses, and how those uses are regulated. As a fundamental improvement, Berkley Group recommends utilizing this use matrix in lieu of listing permitted and conditionally permitted uses in each district section.</p>

	Additional Comments	Consultant Recommendations
G.	Use Standards	<p>Use standards provided in the current Ordinance should be evaluated to determine where use standards should be introduced to ensure greater control over certain by-right uses, promote aesthetically pleasing development, and mitigate negative external impacts on surrounding properties. Frederick County staff has specifically noted the potential need to introduce use standards for self-storage facilities.</p> <p>The Zoning Ordinance establishes use standards for certain terms that are clearly defined and recognized as permitted uses. However, some terms, such as cemeteries and family day homes, are not specifically defined or listed as allowable uses in any of the district regulations, leaving ambiguity around how they should be regulated. All use standards should be organized into one article to create a user-friendly Ordinance and ease administration. Additionally, this will ensure that standards are consistently applied for uses. Some of the definitions in Article I, along with individual district standards, contain use standards, which as noted by staff, have created inconsistencies and difficulties in applying the Ordinance.</p> <p>During the process of updating the Zoning Ordinance, the specific standards for how land can be used, as well as the types of uses allowed, will change over time. These changes will be informed by feedback from both the staff working on the update and the community members, who will express what kinds of uses (such as residential, commercial, industrial, etc.) are needed. Additionally, the input will help determine how much regulation is necessary to maintain a fair balance between different interests and ensure that development benefits the entire community.</p>
H.	Solar Energy Facilities	<p>While utility-scale solar energy facilities are not as commonly requested of a use as they have been in previous years, Frederick County still needs to ensure compliance with all required state code elements for solar projects. The currently included Code of Virginia references should be reviewed and amended to ensure the correct sections are being integrated. Additionally, all definitions and siting agreement language should be incorporated as provided for in the Code of Virginia.</p> <p>While not required by the Code of Virginia, Frederick County should clearly articulate use performance standards for solar uses. Berkley Group typically recommends including standards that address decommissioning and bonding; open space and wildlife corridors; noise; setbacks, landscaping, and screening; maintenance; and emergency ingress/egress.</p>

	Additional Comments	Consultant Recommendations
I.	Setback and Site Dimension Chart	<p>Recommend consolidating all setback and site dimension information into one table for each zoning district, which can include maximum height, setbacks, lot size, lot width, etc. This organization method provides the reader one place for each districts' dimension information. Additionally, dimensional standards for each zoning district should be assessed to ensure they are appropriate and in line with the goals and desires of the County and its residents. County staff and focus group stakeholders specifically noted that minimum setbacks and maximum height should be closely evaluated for all districts, but especially for residential and industrial districts.</p> <p>Provisions related to subdivisions should be addressed in the Subdivision Ordinance, not the Zoning Ordinance, for clarity. The exception is standards for cluster development, which should be consolidated into a singular section for usability and administration (see Line K).</p>
J.	Overlay Districts	Frederick County currently has five overlay zoning districts established in the Zoning Ordinance; however, none of them have been applied to specific parcels/areas through a zoning map amendment, although the floodplain overlay and airport overlay are likely being administered in practice due to their incorporation of federal regulations. Frederick County should undergo a County-initiated map amendment to apply all overlay zoning districts. Putting the onus on the property owner to apply for rezonings for both a base district and an overlay district is not a commonly used best practice as it can inhibit good development through the higher time and cost burden.
K.	Cluster Subdivisions	Cluster subdivisions are currently permitted by-right in the Rural Areas (RA) and Residential Performance (RP) district; however, the RA cluster standards are unclear and need to be stated explicitly. Cluster provisions in both the RA and RP districts can also provide more clear guidance for open space and provide smaller minimum lot sizes. It may be useful for the County to consolidate all cluster provisions into an individual section or table for ease of use, administration, and future amendments.
L.	Community Design Standards	The Zoning Ordinance includes standards for landscaping/screening, lighting, and signage, but these standards are unclear and would benefit from a review and a reorganization. Recommend introducing more comprehensive standards for walls/fences, open space, visibility clearance, and utilities. Sidewalk and street standards should align with Virginia Department of Transportation (VDOT) standards whenever possible.
M.	Ordinance Review	As a best practice, the Zoning Ordinance should be reviewed annually by County Staff and Planning Commission to incorporate updates that reflect new provisions of the Code of Virginia, identify new uses, and identify and remedy problematic regulations and processes. If desired, the Board of Supervisors could also participate in the review process. This maintenance technique is a best practice to keep Frederick County's land use tools relevant and responsive to the needs of the community.
Source: https://law.lis.virginia.gov/vacode/title15.2/chapter22/		

Appendix B:

Comprehensive Plan Diagnostic Matrix

A Comprehensive Plan is the policy tool that lays the groundwork for how a community would like to develop over time. As the primary tool to implement the Comprehensive Plan, the Zoning Ordinance should align with the Plan to the extent possible.

The following chart outlines the implementation strategies in The Comprehensive Plan for Frederick County (as adopted on November 10, 2021), that are *most relevant* to zoning regulations¹. The chart also details specific regulatory actions that would serve to implement each strategy.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Urban Areas	5	Focus new growth in the Urban Development Area (UDA) and Sewer and Water Service Area (SWSA).	<ul style="list-style-type: none"> Consider increasing the minimum lot area of rural preservation lots in the RA district. Require that all new development in districts except the RA district connect to public utilities where available and provide utility connections where utilities are not available. Require certain high-intensity uses, such as data centers and mixed-use development, to occur on public water and sewer.
	6	Provide for various densities within the urban areas to encourage concentrated growth. Support a range of housing options in suburban areas, neighborhood villages and urban centers.	<ul style="list-style-type: none"> Require at least two different types of housing in the R-4 and R-5 districts, even if single-family detached residential is not provided. Consider permitting tiny homes and cottage court communities with appropriate definitions and design standards. Consider developing a density bonus point system (separate from the County's transfer of development rights program) to encourage housing supply while ensuring high-quality and sustainable development patterns. Ensure definitions of residential uses are clear; for example, "multiplex" and "accessory dwelling". Reduce the minimum size of the R-4 and R-5 districts to facilitate the development of master planned communities on smaller acreages. Adjust the gross densities listed in the RP district to apply evenly and better facilitate a more diverse variety of residential development.
	6	Ensure land use applications incorporate the principles of Neighborhood Design identified in this chapter for neighborhood villages and urban centers.	<ul style="list-style-type: none"> Consider establishing form-based zoning regulations in certain districts – or amending the TNDB overlay to introduce elements of form-based zoning – that prioritize the physical form and appearance of developments. Consider introducing density bonuses, reduced parking requirements, or expedited permitting for projects that incorporate mixed-use development, higher-density housing, and public spaces, as outlined in the Neighborhood Design chapter.

¹ This assessment does not include *all* goals and strategies provided within the Comprehensive Plan; some strategies are shared among differing Plan elements while others are not directly relevant to the Zoning Ordinance.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Urban Areas (cont.)	6	Promote the location of community facilities as focal points within neighborhood villages and urban centers.	<ul style="list-style-type: none"> Review use permissions to allow a wider variety of community facilities and gathering spaces in the RP, R-5, and B-1 zoning districts. Provide more clear siting guidelines for community facilities and similar gathering spaces in predominately residential areas.
	6	Support high quality and innovative community designs within neighborhood villages and urban centers.	<ul style="list-style-type: none"> Provide greater specificity for low-impact development (LID) and best management practices (BMPs). Consider if and where green building techniques and energy-efficient designs should be required or incentivized. Set standards for creating functional and inviting public spaces, such as parks and plazas, particularly in the TNDB overlay and planned development districts.
	6	Encourage new developments to provide interconnected trail networks and on street shared travel ways.	<ul style="list-style-type: none"> Provide clear standards for the design, surface material, and accessibility of trails, sidewalks, and shared-use paths to ensure they are safe, usable, and meet community needs. Clearly state requirements for safety features, such as lighting and signage, along trails, sidewalks, and shared-use paths.
	7	Seek to attract uses that will generate the desired tax revenue and employment opportunities for the County.	<ul style="list-style-type: none"> Identify, define, and appropriately permit new economic development-oriented uses, including but not limited to data centers, live-work units, electric vehicle (EV) stations, pharmaceutical support services, and small-scale manufacturing or makers' spaces. Consider creating an expedited review process for commercial and industrial site plans that meet certain criteria.
Rural Areas	15	Preserve the desired physical characteristics of the rural areas. Avoid prime soils, minimize land disturbance and grading and minimize drainage changes.	<ul style="list-style-type: none"> Consolidate cluster development standards into a single section to promote clarity. Review standards to ensure the efficient use of land in rural areas. Clarify language related to cluster development in the RA District.
	15	Maintain transition areas between different uses, most importantly, between the rural and urban areas.	<ul style="list-style-type: none"> Remove the provision that allows Board of Supervisors waivers or modifications of buffers; allow modifications administratively. Ensure larger and more impactful uses (e.g., utility-scale solar) have performance standards to support additional screening and setbacks between incompatible uses.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Rural Areas (cont.)	15	Continue helping property owners find ways to keep properties intact rather than subdividing.	<ul style="list-style-type: none"> Address family member subdivisions in the Subdivision Ordinance for greater clarity. Consider increasing the minimum lot size for non-family member subdivisions in Rural Areas (RA); ensure the minimum lot size district-wide is adjusted as needed for consistency. Continue the County's Transfer of Development Rights (TDR) program; ensure optional elements of state code are wholly integrated into the Ordinance for increased clarity and transparency (see Appendix A).
	16	Follow changes to state code that would enable new land preservation tools.	<ul style="list-style-type: none"> Integrate all missing elements of state code that are required; consider including missing optional provisions, such as adaptive reuse incentives for historic properties (see Appendix A).
	16	Support the agricultural economy in Frederick County and adapt to evolving practices and new agricultural opportunities such as value-added activities and uses on farms that are a logical extension of the agricultural use.	<ul style="list-style-type: none"> Continue to allow agritourism by-right; consider including performance standards to mitigate impacts such as heavy traffic, noise, and parking. Clearly define and permit micro-breweries/wineries/cideries/distilleries. Clearly define and permit residential agriculture/domestic livestock (i.e., chickens, pigs).
	16	Identify and support local, regional, and national rural recreation opportunities within the County's rural areas.	<ul style="list-style-type: none"> Update the Ordinance to identify and appropriately permit uses such as small-scale outdoor recreation, event venues, and adventure and eco-tourism parks.
Residential Development	21	Higher density residential development is encouraged in close proximity to or mixed with commercial areas to enhance walkable access to employment,	<ul style="list-style-type: none"> Consider increasing the minimum percentage of commercial areas to be included in R-4 and R-5 district development. Enhance the R5 district by increasing flexibility for a mix of residential and commercial uses, promoting diverse development patterns and fostering walkable, mixed-use communities. Require bike parking areas to be installed at all new commercial, industrial, and mixed-use development.
	22	New residential neighborhoods should incorporate focal points, landscaping, recreational amenities, open space amenities (active, passive, and natural), located in close proximity to all dwellings, with an emphasis on the provision of usable open space that facilitates community interaction and promote a quality neighborhood development.	<ul style="list-style-type: none"> Establish specific requirements for the amount and type of usable open space (e.g., active parks, passive green areas, and natural spaces) that must be integrated into new residential developments. Review use permissions to allow a wider variety of community facilities and gathering spaces in the RP, R-5, and B-1 zoning districts. Provide clearer siting guidelines for community facilities and similar gathering spaces in predominately residential areas.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Residential Development (cont.)	22	Residential housing types and design guidelines should be flexible to accommodate evolving demographic trends, and to ensure that housing choices are maximized.	<ul style="list-style-type: none"> Allow at least two different types of housing in the R-4 and R-5 districts, even if single-family detached residential is not provided. Consider permitting tiny homes and cottage court communities with appropriate definitions and design standards. Consider establishing form-based zoning regulations in certain districts – or amending the TNDB overlay to introduce elements of form-based zoning – that prioritize the physical form and appearance of.
	22	Ensure that adequate housing options are available to the development community through the Zoning Ordinance. Investigate additional opportunities such as new or expanded manufactured housing developments and accessory units to help expand the housing supply and help meet the County’s affordable housing needs.	<ul style="list-style-type: none"> Introduce additional performance standards for accessory dwelling units (ADUs) to provide greater clarity and facilitate compatibility with existing neighborhoods; for example, off-street parking requirements and setbacks. Consider allowing detached ADUs in the RP district. Consider permitting tiny homes and cottage court communities with appropriate definitions and design standards.
Business Development	30	The rezoning process should be examined and streamlined as appropriate in order to encourage landowners of properties identified in Area Plans (see Appendix I) to proceed with rezoning.	<ul style="list-style-type: none"> Ensure all timeframes for application and site plan review align with Code of Virginia requirements (See Appendix A). Identify where conditionally permitted uses can instead be permitted by-right with performance standards to expedite development and reduce time and cost for property owners. Evaluate where waivers and modifications can be handled administratively rather than through a Board of Supervisors public hearing process.
	30	Review and revise the office and manufacturing zoning districts to further encourage development of targeted industries.	<ul style="list-style-type: none"> Increase maximum building heights in commercial and industrial zones to enable more dense and efficient development. Ensure permitted uses in the office, manufacturing, industrial, and mixed-use zoning districts align with economic development goals. Consolidate “like” manufacturing and industrial uses for simplicity and to allow for greater flexibility as technology advances and new industries emerge.
	32	Promote enhanced architectural/design requirements for future retail development, including structure appearance, landscaping, and signage.	<ul style="list-style-type: none"> Introduce additional guidelines for sign materiality, landscaping, and color to the County’s overlay districts. Review street tree permissions in the TNDB overlay to ensure a balance between providing enhanced landscaping and being overly restrictive. Review and amend landscape buffers; apply all required buffers based on the underlying zoning districts rather than uses.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Business Development (cont.)	32	Encourage mixed use developments for future residential and commercial developments.	<ul style="list-style-type: none"> Revise the Ordinance to allow mixed-use developments by-right in designated zones, specifying permissible combinations of residential and commercial uses. Define criteria for integrating residential and commercial spaces within the same project and establish design standards that ensure compatibility and functionality.
	34	Focus development in compact centers, using Neighborhood Design guidelines, and keeping the rural, agricultural landscape as part of the visitor experience in Frederick County.	<ul style="list-style-type: none"> Revise zoning regulations to concentrate development in designated compact centers, incorporating Neighborhood Design guidelines that emphasize walkability, mixed-use environments, and preservation of surrounding rural and agricultural landscapes. Require the use of vernacular materials for new development or redevelopment within the HA overlay.
	36	Value added processes and support businesses should be examined for location within the Rural Area. These processes currently are permitted in the business districts.	<ul style="list-style-type: none"> Review the list of permitted uses in the RA district and amend to permit support businesses by-right. Eliminate the conditional use permit (CUP) process for uses that do not overly detract from the surrounding character of RA districts.
	37	Continue to regulate solar facilities through the Conditional Use Permit process to protect adjacent properties and the agricultural/rural character of these areas.	<ul style="list-style-type: none"> Continue the practice as stated in the strategy; also introduce potentially associated uses such as battery energy storage facilities and data centers and permit appropriately.
	37	The County should ensure that the siting of new solar facilities do not detract from the agricultural and rural character within its rural areas and will protect agricultural and rural land for future use once decommissioned.	<ul style="list-style-type: none"> Provide more robust use performance standards for utility-scale solar energy facilities to better limit impacts on surrounding areas. These could include, but not be limited to: enhanced buffering and setbacks, requirements for wildlife corridors, and perimeter landscaping. Codify decommissioning requirements that integrate current industry best practices in addition to any applicable state code requirements.
Transportation	42	Match desired form of development to roadway classification to simplify the determination of which roadways receive which treatment. That is, different types of streets for different land uses. For example, some roadways would require a separate bicycle and pedestrian trail in order to be more accessible to bicyclists and pedestrians. In rural areas a wider shoulder section may be more appropriate.	<ul style="list-style-type: none"> Update zoning and transportation plans to align development forms with roadway classifications, specifying requirements such as separate bicycle and pedestrian trails for urban roads and wider shoulders for rural roads.
	43	Continue to monitor the County ordinances to ensure they meet the shifting needs of facility planning and VDOT standards.	<ul style="list-style-type: none"> Review the Zoning Ordinance annually; consider including representatives from the Virginia Department of Transportation (VDOT) and/or the WinFred Metropolitan Planning Organization (MPO) when evaluating possible changes relating to transportation infrastructure requirements.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Transportation (cont.)		Work with new development and redevelopment to implement the Eastern Road Plan through construction and preservation of rights-of-way.	<ul style="list-style-type: none"> Require the easement/conceptual area, as applicable, to be delineated on a site and master development plan. Integrate relevant zoning-related recommendations from the ongoing Eastern Frederick County Transportation Study into the Ordinance.
	44	Work with VDOT to create roadway design plans that meet standards while beautifying local gateways and commercial corridors.	<ul style="list-style-type: none"> Recognize the potential of the TNDB overlay to be used as a tool in enhancing the functionality and aesthetic benefits of Frederick County's major corridors; initiate a zoning map amendment to apply the TNDB to specific parcels as guided by the intent statement. Clearly define and permit appropriate uses in the TNDB, along with use performance standards, if different than those allowable in the underlying zoning district. Provide greater specificity in landscaping, off-street parking, and open space requirements in the TNDB. Introduce more robust design guidelines for signs in the TNDB, including materials and height. Provide greater specificity in materials and color requirements for development in the TNDB.
	44	Through the Transportation Committee, develop a plan and actively promote corridor beautification. This should include working with local institutions to create more attractive County entrances into their facilities.	<ul style="list-style-type: none"> Amend the Ordinance to strengthen corridor beautification guidelines, including requirements for landscaping, signage, and façade improvements along key routes and gateways. Specifically, this should occur in the HA (Historic Area), TNDB (Town and Neighborhood Development Business), and IA (Industrial Area) overlays.
	45	Analyze driving, road, and parking standards and actively seek the Fire and Rescue Department input for driveways and roads to ensure that all approved developments are accessible by fire equipment.	<ul style="list-style-type: none"> Include fire access requirements, such as minimum road widths, driveway dimensions, and parking regulations as use performance standards for uses that may require a higher level of emergency response and security (e.g., special events, data centers).
Public Facilities	61	Community facilities should generally be located within urban areas such as the County's Urban Development Area, Sewer and Water Service Area, and/or areas identified as future Urban Centers.	<ul style="list-style-type: none"> Review use permissions to allow a wider variety of community facilities and gathering spaces in the RP, R-5, and B-1 zoning districts. Provide clearer siting guidelines for community facilities and similar gathering spaces in predominantly residential areas. Clearly define and permit public uses and other private community gathering spaces, such as clubs, recreational facilities, event venues, and cultural spaces.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Public Facilities (cont.)	62	Encourage collaboration with the private sector to provide integrated infrastructure in the most efficient way possible.	<ul style="list-style-type: none"> • Ensure requirements and procedures for proffered rezonings align with required elements of state code (see Appendix A). • Continue to provide flexibility in the provision of open space, pedestrian paths, and recreational areas. • Consider requiring an impact analysis for R4 and R5 district development.
	69	Review land development regulations to ensure that appropriate standards are provided for open space recreational facilities in new developments.	<ul style="list-style-type: none"> • Provide greater flexibility in the types and amount of active recreation required in residential development. • Require minimum percentages for active versus passive recreation; ensure active and passive recreation are clearly defined.
	73	Locate fire and rescue stations on sites of between two and five acres to allow for future expansion. Sites may be smaller when developed as part of a Neighborhood Design in an Urban Center or Neighborhood Village.	<ul style="list-style-type: none"> • Identify emergency facilities as a permitted and defined use; establish the lot area guideline identified in the Comprehensive Plan as a use performance standard.
	73	Select and design sites to minimize the adverse impact of sirens and other noise on residential areas.	<ul style="list-style-type: none"> • Include performance standards for facilities with sirens and other noise-generating activities that serve to mitigate impacts, including but not limited to increased setbacks, enhanced landscaping, or other sound-buffering measures.
	82	Support and facilitate the development of high-speed wired and wireless telecommunication networks, including broadband technology, to support rural businesses and residents.	<ul style="list-style-type: none"> • Continue reviewing and permitting telecommunications facilities in accordance with Code of Virginia regulations; amend regulations as needed to achieve full compliance with the Code (see Appendix A).
Natural Resources	86	Water conservation and efficiency practices should be encouraged and practiced throughout the County.	<ul style="list-style-type: none"> • Consider allowing permeable surface materials for parking areas within the Sewer and Water Service Area; provide clear guidance as to what materials are considered acceptable.
	87	Watershed management throughout the County should encourage forested or vegetated streamside buffers to filter pollutants, stabilize stream banks and provide wildlife habitat.	<ul style="list-style-type: none"> • Implement regulations that prohibit or restrict development activities within designated buffer zones to protect and maintain their ecological functions.
	90	Protect floodplains and steep slopes from unsuitable uses and continue to recognize their value for stormwater management and ecological functions.	<ul style="list-style-type: none"> • Ensure zoning regulations protect floodplains and steep slopes from inappropriate uses. • Establish a development prohibition in the Ordinance for slopes exceeding 15-20%.
	90	Special consideration should be given in areas known for karst terrain prior to changes in land use. Prior to any development activities in areas known to have karst terrain, a geotechnical analysis should be performed by a certified geotechnical engineer and submitted to the Public Works Department for review.	<ul style="list-style-type: none"> • Require a geotechnical analysis for commercial, industrial, and large residential in known karst areas. Require submissions of these analyses to the Public Works Department for review and approval before issuing development permits.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Natural Resources (cont.)	90	Update all Zoning and Subdivision Ordinance requirements to ensure that dam break inundation zones are identified to minimize potential impacts resulting from future development.	<ul style="list-style-type: none"> Require dam break inundation zones to be delineated on site plans and master development plans (see Appendix A).
	94	Encourage the use of semi-pervious or pervious surfaces and other low impact development techniques, where appropriate. Shared parking areas and reduced parking requirements for developments should be utilized to reduce impervious areas.	<ul style="list-style-type: none"> Permit the use of permeable surfaces in off-street parking areas; this could also be leveraged as a density incentive. Increase parking lot landscaping requirements, including specification of the amount of interior landscaping that must be shade-giving trees. Specify a requirement for all off-street parking areas to be properly maintained, with adequate drainage facilities.
	94	Encourage the use of bio-retention whenever possible. Large impervious areas should take advantage of bio-retention in their parking lots.	<ul style="list-style-type: none"> Establish standards for passive open space in the Ordinance that encourage the integration of bio-retention areas and other low-impact development (LID) features as functional and aesthetic components of open space.
	97	Ensure that when new developments are planned, connectivity of greenways is included through the project.	<ul style="list-style-type: none"> Define standards for the design and placement of greenways, ensuring they are connected to existing networks and accessible to residents. Consider offering incentives such as density bonuses or expedited review processes for developments that include significant greenway connections. Implement easements or agreements within development approvals to ensure ongoing maintenance and connectivity of greenways.
	99	The County should seek to reduce habitat fragmentation by maintaining large contiguous areas of forests, meadows, wetlands and streams.	<ul style="list-style-type: none"> Consider developing a conservation zoning district to protect large areas of forests, meadows, wetlands, and streams from development. Enforce larger minimum lot sizes or density restrictions in the RA district as a means of maintaining habitat connectivity. Require wide buffer zones around sensitive natural features like wetlands and streams to preserve their ecological functions and reduce edge effects. Clarify language related to cluster development in the RA District.
	99	Large scale clearing of mature woodlands should be avoided during development activities.	<ul style="list-style-type: none"> Establish clear and straightforward requirements in the Ordinance for preserving mature woodlands, including restrictions on the amount of tree removal and requirements for replanting. Require buffer zones around mature woodlands to protect them from development activities and mitigate edge effects.

Plan Element	Page #:	Corresponding Strategy:	Action to be Taken in ZO Update:
Historic Resources	104	Archaeological surveys should be conducted prior to development, particularly any that involve battlefield areas, homesteads, Native American encampments, and waterways.	<ul style="list-style-type: none">• Ensure the Ordinance requires archaeological surveys before development for new development or redevelopment in the Historic District Overlay or adjacent to known battlefields.• Require known grave/burial sites and battlefields to be marked on site plans and master development plans (see Appendix A).
	104	Support the reuse and rehabilitation of historic structures to maintain character of community, both residential and business.	<ul style="list-style-type: none">• Add “adaptive reuse” as a permitted use in the Ordinance with a definition and performance standards.• Introduce civil penalties and fines for unapproved alteration or demolition of historic structures.

Appendix C: Focus Group Summary

A Focus Group is a form of public engagement designed to gain input from agencies, organizations, and businesses that have an interest in and experience with development and land use tools. The purpose of the focus group meeting was to gain detailed insight about how Frederick County's zoning regulations impact stakeholders' organizations or businesses and what changes they would recommend.

On September 9, 2024, Berkley Group facilitated a focus group with seven participants who have a thorough working knowledge of the County's Zoning Ordinance. Participants included members of the regional development community, including developers, engineers, and builders. The County's Planning Commission Chairman also participated; several members of the Planning and Development Department were in attendance to listen and answer questions or provide context as necessary.

The meeting began with Berkley Group presenting participants with an overview of the diagnostic process, including what will be evaluated for the final report. The participants were then asked a series of questions about the County's Zoning Ordinance with respect to development review processes, permitted uses, zoning districts, and community design standards. The following is a summary of the discussion:

General Comments and Organization

- The Zoning Ordinance is unique in how it's set up, in that it bases densities on unit types and mixes rather than districts.
- This Ordinance isn't terribly burdensome to figure out.
- Utilities are pushed outside of the right-of-way, but Frederick Water doesn't like locating their equipment in easements.
- The Zoning Ordinance does a good job of designating areas for denser growth, but the County could improve the facilitation within the designated Urban Development Area (UDA).
- The recent Ordinance change from Standard Industrial Classification (SIC) to the North American Industry Classification System (NAICS) for uses was a good improvement and opened development a little more.
- The general preference is to have as many references to the *Code of Virginia* as possible, especially for definitions.
- Many commissioners and members of the public are not familiar with the Ordinance and need additional education and help interpreting the Ordinance.
- If the goal is to attract businesses and grow the County's tax base, the Ordinance's regulations need to make it easier for them to locate in the County.

Permits and Applications

- The Site Plan process needs to be assessed for improvement.
- The administrative determination process outlined in the Zoning Ordinance is consistent and simple to follow.

- The rezoning process is generally okay but could explore a more user-friendly approach to approval; there haven't been many residential rezonings in the County – the most recent being 2015.
- It seems that rezonings are approved easier outside of the UDA, rather than inside which is counterintuitive to the purpose.
- There is a need to dovetail the land disturbance and building permit processes between zoning types. Consider introducing a requirement to prohibit an occupancy permit until curb and gutter have been installed.
- Overall, guidance for simultaneous review of multiple permits and applications should be more clearly articulated.
- Determine if it's legally necessary for the Virginia Department of Transportation (VDOT) or County Sanitation to sign off on plats, and if not, consider removing this requirement – Frederick County currently requires this which adds another layer to the process.
- There is some hesitation with big businesses operating under a Conditional Use Permit (CUP). With larger, higher-cost developments, it's more beneficial to rezone to a more appropriate zoning district to allow by-right operation.
 - There is additional hesitation with CUPs due to their nature in that they grant the property owner a right that could be taken away at a later date.
 - There should be fewer CUPs for uses that are supporting agriculture.
- The rezoning process involves many outside opinions (e.g., Frederick Water, VDOT, etc.) which are outside the County's control; this also creates inconsistencies between requirements. Some of the Ordinance's current standards for utility placement and roads do not align with what Frederick Water and VDOT require.
- Site Plan requirements to justify traffic counts are cumbersome and are sometimes not worth it.

Zoning Districts and District Standards

- Height limitations are a frequent issue in attracting development in the commercial and industrial districts. These limitations also inhibit redevelopment, particularly for stacked townhouses and other forms of "missing middle" development.
- The use of waivers by the Board of Supervisors to modify certain district standards seems unnecessary; evaluate where changes could be made to allow administrative approval instead.
- The residential piece of the Residential Performance (RP) district is, overall, functional, and desirable to extend to other zoning districts.
- Consider amending certain zoning districts to allow for lot sizes between $\frac{3}{4}$ of an acre and 1 acre – currently only permitted in RP and Rural Areas (RA) districts.
- The RP zoning district needs to clarify how to complete recreation units and what exactly is being required.
- The Traditional Neighborhood Design-Business (TND-B) overlay zoning district needs to incorporate more flexibility – there are currently no properties in the County utilizing this overlay district.
- Consider amending existing zoning districts to allow for more staff review and flexibility, with the goal of increasing the appeal for infill development – Winchester could be a potential place to look for model language.

- The Sunnyside area, which has older housing stock, is an area of anticipated redevelopment in the next 20 years; this area is also inside the UDA. Consider how greater flexibility in development could be achieved in this area.
- The current Zoning Ordinance makes it difficult to meet setbacks and densities in relation to infill development. If the house's footprint is smaller, setbacks should be reduced accordingly.

Uses and Use Standards

- There should be a general review of all definitions included in the Ordinance. Some definitions are from the *Code of Virginia*, and some have been tailored more toward Frederick County's vision for a specific use. The County should be using state-code provided definitions whenever applicable.
- Some of the existing definitions are unclear and confusing – for example, “structure” and “recreation units” – and should be reviewed and revised to add additional clarity.
- The Zoning Ordinance's regulations for Accessory Dwelling Units (ADUs) should be reviewed – their development can be difficult due to the 25% maximum gross floor area.
 - There should be a difference between ADUs in the RP district and ADUs on rural lots, because of the lot size difference.
 - The recent Ordinance amendment to address floor area of an ADU in relation to the floor area of the primary residential structure has been beneficial in providing greater clarity and appropriately sized ADUs.
- Consider allowing developers to create their own housing unit type, creating flexibility for rezoning applications, which could help with issues presented by unique properties.
 - The R-4 district does this, but the minimum lot size is 100 acres, which is restricting – consider reducing that minimum requirement.
- Consider amending the Zoning Ordinance to define and permit additional housing unit types such as back-to-back townhomes, 2-over-2 units, quadplexes – especially for increasing the supply of workforce housing. This gives the County some level of flexibility for housing types that may not exist in the County yet.
- There is general support to amend the Zoning Ordinance to allow for tiny homes and/or tiny home communities in appropriate areas of the County.
- Allow residential dwellings over retail (vertical mixed-use) by-right in appropriate areas of the County.
- Uses in the B-2 district should be reviewed for compatibility.
- The Zoning Ordinance lacks coordination with VDOT in relation to design standards; the current standards make R-4 development difficult due to conflicting regulations between the Ordinance and VDOT standards.
 - The current Ordinance makes it difficult to accommodate density with cul-de-sacs, turnarounds, etc.
- Consider allowing private streets with standards for R-4 development, which would eliminate the need for additional VDOT review. A homeowners' association (HOA) could be responsible for maintaining private roads.

- The setbacks are restricting in some circumstances, such as a townhome development in the RP district surrounded by single-family. Consider eliminating the setback requirement between different residential types and apply one consistent setback requirement.
- The Zoning Ordinance should consider additional, more modern uses such as last-mile delivery services, which is the final phase of a delivery process where a shipment is delivered from a small, office-sized distribution center directly to a customer's home.
- Utilizing CUPs instead of rezonings for agricultural land may be more fitting, although this would require the establishment of appropriate development thresholds.
 - CUPs come down to how long the permit is good for, which is determined on a case-by-case basis.
- Incorporate flexibility for where facilities built for residents of a neighborhood (e.g., clubhouse with a restaurant) can be located. The Ordinance should be sure these uses and associated standards are clearly articulated.

Community Design

- Review landscaping requirements for the commercial and industrial zoning districts to incorporate more flexibility.
- Consider looking at landscaping requirements for the entire project, rather than individual lots – this gives some flexibility with the placement of the required trees.
- Street trees cause issues due to current setbacks – sight distance issues and utility problems occur.
- Small lot residential developments require trees, but the Ordinance does not specify how many are required.
- The Zoning District Buffer and Housing Type Buffer requirements significantly increase the cost of a development, and coupled with market conditions, makes it difficult to deliver higher density multi-family developments.
 - Consider focusing more on the quality of the buffer rather than the buffer width and length; additionally, these buffer requirements could potentially be removed in some circumstances such as a mixed-use development.
 - Prince William County utilizes performance thresholds that are focused more on commercial development; these could be a good example for Frederick County.
- The inactive buffer can house underground conduit, and the active buffer can accommodate parking – Seems like some of these requirements can be shifted around to provide developments with more flexibility.
- Assess the definition of the active road buffer for potential clarification.
- Evaluate the possibility of implementing a parking credit for unusable land.
- Evaluate the minimum size of a parking space and increase as needed – cars aren't getting any smaller, and current requirements are additionally unclear. On-street parking should be credited as part of meeting minimum parking requirements; there could be a provision included in the Ordinance that requires wider roads if on-street parking is used to meet minimum requirements.
- Consider allowing intersection lighting rather than requiring lighting on individual lots.

- Introduce Electric Vehicle (EV) charging space and equipment requirements – not necessarily require them, but at least be prepared with standards for developments that decide to include them. There has been more of a demand for this use recently.
- Revise height measurement for entry monument signs; the current language is vague and would benefit from clarification.
- Consider allowing for the adjustment of signage, height, etc. through CUPs.
- The Zoning Ordinance should provide clearer standards for landscaping bonds and their release.
- Consider amending the Zoning Ordinance to require developers to provide the right-of-way for future sidewalks instead of requiring sidewalks to be installed. This approach will help decrease the “sidewalks to nowhere” that are currently present in the County.
- Establish sidewalk requirements for the community as a whole instead of on an individual, first come-first serve basis.