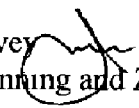


**ACTION ITEM  
BOARD OF SUPERVISORS**

**DATE** December 2, 2008

**TO** Board of Supervisors

**FROM:** Jeffrey A Harvey   
Director of Planning and Zoning


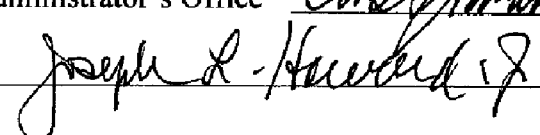
**ISSUE** Amend Various Sections of the Zoning Ordinance Pertaining to Nonlisted Uses

**STAFF RECOMMENDATION** Approval

**BUDGET IMPACT** N/A

**ATTACHMENTS** (3)

- |     |                        |     |                                 |
|-----|------------------------|-----|---------------------------------|
| [1] | Background Report      | [3] | Reso/ <u>Ord</u> /Proc # O08-72 |
| [2] | PC Minutes dtd 9/17/08 | [ ] | Reso/Ord/Proc #                 |
| [ ] |                        | [ ] | Reso/Ord/Proc #                 |

**REVIEW** [X] County Administrator's Office   
 [X] Legal   
 [ ] \_\_\_\_\_

- |                     |                    |                         |
|---------------------|--------------------|-------------------------|
| [ ] Consent Agenda  | [ ] Other Business | [X] Public Hearing      |
| [ ] Discussion Item | [ ] Presentation   | [ ] Unfinished Business |
| [ ] New Business    |                    |                         |

**PRESENTATION BY.** Jeffrey A Harvey  
Director of Planning and Zoning

**ELECTION DISTRICT** N/A

### **BACKGROUND REPORT**

**Proposed Ordinances O08-72** – Amends Stafford County Code, Section 28-37, Nonlisted uses, of the Zoning Ordinance. The purpose of this amendment is to remove the request for a Conditional Use Permit for uses not specifically listed in Table 3.1

Uses permitted in Table 3.1 are either permitted by-right or by the issuance of a Conditional Use Permit (CUP). The issuance of the CUP is based upon the merits of the application. The Board currently addresses nonlisted uses by requiring the issuance of a CUP or a text amendment to the Zoning Ordinance.

The Planning Commission recognizes that the process of governing of nonlisted uses must be a consistent process. Some jurisdictions require the issuance of a CUP for nonlisted uses, while others authorize the Zoning Administrator determine a similar use listed in the Zoning Ordinance. The nonlisted use would be subject to the same regulations and restrictions as the similar use. Some jurisdictions require an amendment to the Zoning Ordinance determining the appropriate zoning districts and permissibility of the use. The Planning Commission desires an amendment to the Zoning Ordinance to determine the appropriate zoning district and permissibility of a nonlisted use.

Proposed Ordinance O08-72 removes the current regulations allowing nonlisted uses to be permitted by the issuance of a Conditional Use Permit. The amendment further clarifies that, except as otherwise provided, the Zoning Ordinance shall be exclusive in nature and only those uses specified shall be permitted in the zoning districts. It also specifies that a use is prohibited if it is not listed in the zoning district. In the event that a use is not listed, it may be permitted only after an appropriate amendment to the Zoning Ordinance as described in Article XVIII, Amendments to text. Article XVIII requires that amendments be initiated by the Planning Commission or the Board.

Proposed Ordinance O08-72 was recommended for approval by the Planning Commission on September 17, 2008.

Staff notes that the Board recently initiated a Conditional Use Permit for a nonlisted use as a Society for the Prevention of Cruelty to Animals (SPCA). Should the Board adopt proposed Ordinance O08-72 staff recommends the Board enact an exemption for applications currently under review.

As written today, the Zoning Ordinance provides the Board of Supervisors with significant flexibility in allowing unlisted uses through the Conditional Use Permit process. This is an important flexibility because future economic development opportunities that come to the County may not fit into a current zoning classification. If this amendment is adopted and the Board wishes to permit a business in the County that is not listed in the Zoning Ordinance, the Board must approve a Zoning Text Amendment to allow the business. This could add six months or more to the approval process for the business.

The Planning Commission and the Board are currently considering revisions to the Comprehensive Plan. Once a new Comprehensive Plan is adopted, the next step would be a re-write of the Zoning Ordinance to ensure consistency with the new Comprehensive Plan. With the Comprehensive Plan and the Zoning Ordinance in a state of flux, the Board may wish to defer action on this proposal and consider it with the re-write of the Zoning Ordinance.

- 1 Amendment to Zoning Ordinance - Amendment to Section 28-37, Nonlisted uses, of the Zoning Ordinance, pursuant to O08-72. The amendment will no longer permit an application for a Conditional Use Permit when a use is not listed in any zoning districts in Table 3.1. The use may only be permitted after appropriate amendment to the text of the zoning ordinance.

Jamie Stepowany presented the staff report. He stated uses not specifically listed in Table 3.1 were permitted by the issuance of a Conditional Use Permit. The issuance of the CUP was based on the merits of the application and not the appropriateness of the zoning district it was located in. The Board of Supervisors had dealt with nonlisted uses by requiring the issuance of a CUP or by an amendment to the Zoning Ordinance. The Planning Commission desires an amendment to the Zoning Ordinance to determine the appropriate zoning districts and permissibility of a nonlisted use. He stated Ordinance O08-72 would amend Section 28-37. It would remove the current regulation pertaining to uses which were not specifically permitted in Table 3.1 but may be permitted by the issuance of a CUP. It also would specify that a use was prohibited if it was not listed in that zoning district. As a result, an amendment to the Zoning Ordinance was required for a use not listed in a specific zoning district. He stated the proposed amendment would clarify the process by recognizing nonlisted uses and establish a consistent process determining the appropriate zoning district and permissibility of a nonlisted use. Staff recommended approval of the proposed amendment.

Mr. Howard asked where the definitions in table 3.1 were. He stated they were looking at an Ordinance that he was not familiar with.

Mr. Stepowany stated in Section 28-35.

Mr. Howard stated if the Ordinance was saying if it was not listed.

Mr. Stepowany stated currently if the use was not listed in any district then an applicant could submit an application for the issuance of a CUP in the zoning district they desire to have. The Planning Commission had reviewed and made recommendations on a couple of these CUPs, one being the Teen Challenge which was a CUP for the Teen Challenge at a specific property because that type of use was not listed. Another was the mulch and stone sale as that was not listed. Since it was not listed anywhere in any of the uses tables in 3.1, an applicant could come in for a CUP or the Board of Supervisors may request an amendment to the Zoning Ordinance which they did for the stone and mulch sale where they requested to have it listed as a permitted use in the A-1 zoning district. He stated if it was listed in one zoning district, you were not authorized to get a CUP to have it in another. That was the current requirement. He stated if it was a type of use that was only listed in B-2, you could not come in and get a CUP in B-1 unless it was listed as being allowed by a CUP in B-1.

Mr. Howard stated they would have to go for a rezoning instead.

Mr. Stepowany stated that was correct and they would have to go for a rezoning or a text amendment through the Board of Supervisors to make it a type of use in B-1.

Mr. Howard stated they would no longer permit anyone to submit an application for a CUP for a use that was not listed in one of those uses. He asked what the difference was from a rezoning perspective to a CUP perspective.

Mr Stepowany stated he wanted to clarify that there were two scenarios The rezoning was if it was listed in one zoning He stated they had to do that for Cox Communications

Ms Kirkman stated to clarify that would happen now and it would still happen in the future

Mr Stepowany stated yes that would happen now and it would still happen Cox Communication was zoned B-1 and they thought it was zoned R-1 but they wanted to expand their communication facility and communication facilities were not permitted in the R-1 or B-1 zoning district so they came in for a rezoning to A-2 so they could expand He stated that was the current process The CUP would be like for the Teen Challenge or the stone and mulch sales which were not listed in any of the use tables in 3.1 The non-listed use section allowed a use that was not listed anywhere to apply for a CUP and whichever property they were interested in was the basis for their CUP He stated what this amendment would require was that use to be listed in the zoning ordinance within the specific zoning district to be permitted or require a CUP or a special exception He asked if that made sense

Mr Howard stated yes but he did not think that was the way Mr Stepowany was initially stating it The amendment no longer would permit an application for a CUP that was not listed in 3.1

Mr Stepowany stated that was correct

Mr Di Peppe stated as a rationale he was assuming from a staff point of view that was not listed anywhere they could come ask for and put anything anywhere if it was not listed This was kind of tightening it up so that they could be more specific about what particular activities they would want in each particular zoning district and not have something come in and go this was not listed anywhere so they would get to ask for it anywhere

Ms Kirkman stated she could give a couple examples They had an issue 4 years ago around tattoo parlors because they were not listed anywhere they could be applied for in any district under a CUP Last year the Zoning Administrator made a determination where there had been an inquiry about what would be needed to locate a Federal Prisoner Re-entry Program Because that was not a listed use anywhere the Zoning Administrator's determination was that they could apply for a CUP They really did have this kind of gaping hole in their Zoning Ordinance where if they did not specify the use in one of their districts, no matter how noxious the use may be, someone could apply for a CUP and, as they had been advised by the attorneys both here and as she had seen at the Board level, it was pretty hard to turn down CUPs and often there was litigation if they did She stated this was to tighten it up so that it would make it clear what the land uses were If there was a need to be identified over time for a type of use that had not been thought of in advance, that could be rectified through a text amendment to the Zoning Ordinance to add the list to Table 3.1 It would have to be initiated by staff, the Planning Commission or the Board and sometimes they would have an applicant that would initiate it

Mr Howard asked how an applicant would initiate it

Mr Stepowany stated he would initiate it based on the applicant's request

Mr Harvey stated by State Code it was either the Planning Commission or the Board of Supervisors that would initiate a zoning text amendment Staff could present information to the Commissioner of

the Board and they would make a determination if it would be worthy of going through a public hearing process, like they currently did with their ordinance committee

Mr Di Peppe opened the public hearing

With no one coming forward the public hearing was closed

Mr Rhodes made a motion recommend approval of O08-72 to the Board of Supervisors Mrs Carlone seconded The motion passed 6-0 (Mr Fields was absent)

**DRAFT**

PROPOSED

BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

ORDINANCE

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 2<sup>nd</sup> day of December, 2008

-----  
MEMBERS

VOTE

George H. Schwartz, Chairman  
M S "Joe" Brito, Vice Chairman  
Harry E. Crisp, II  
Mark Dudenhefer  
Paul V. Milde, III  
Cord A. Sterling  
Robert "Bob" Woodson

-----  
On motion of , seconded by , which carried by a vote of , the following was adopted

AN ORDINANCE TO AMEND AND REORDAIN THE COUNTY  
CODE BY AMENDING SECTION 28-37, NONLISTED USES OF  
THE ZONING ORDINANCE

WHEREAS, uses which are not specifically permitted anywhere in the Zoning Ordinance may be permitted by the issuance of a Conditional Use Permit, and

WHEREAS, the issuance of the Conditional Use Permit is based upon the merits of the application and not the appropriateness of that use because of its location in a particular zoning district, and

WHEREAS, in some cases, the Board desires an amendment to the Zoning Ordinance text to permit a use which is not specifically permitted anywhere in the Zoning Ordinance, and

WHEREAS, the Board desires consistent regulations when determining the appropriate zoning districts in which uses may be located, and

WHEREAS, the Board has carefully considered the recommendation of the Planning Commission, staff and the testimony at the public hearing, and

WHEREAS, the Board finds that public necessity, convenience, general welfare, and good zoning practice require adoption of such an ordinance,

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the 2<sup>nd</sup> day of December, 2008 that the Stafford County Code, Section 28-37, Nonlisted Uses of the Zoning Ordinance, be amended and ordained as follows, with all other portions remaining unchanged

**Sec 28-37 Nonlisted uses**

~~If a use is not specifically permitted anywhere in Table 3-1, an application may be made by a property owner to the administrator for such use as a conditional use pursuant to section 28-185.~~

Except as otherwise expressly provided herein, this Chapter shall be deemed exclusive in nature, and only those uses specified shall be permitted in the various zoning districts. If a use is not specified in a zoning district, it shall be prohibited in that district. In the event that a use is not permitted in any zoning district, it may only be permitted after appropriate amendment to the text of this Chapter as described in Article XVIII, Amendments to text.

BE IT FURTHER ORDAINED that this ordinance shall become effective on

\_\_\_\_\_

BE IT STILL FURTHER ORDAINED that applications for nonlisted uses in the process of a Conditional Use Permit be exempt from this amendment and shall be permitted upon the issuance of a Conditional Use Permit

AJR JAH JJs