



Office of the Town Manager  
Frank Cassidy

**Warrenton Town Council**

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Paul Mooney, At Large  
David McGuire, At Large

# STAFF REPORT

<b>Council Meeting Date:</b>	January 9, 2024
<b>Agenda Title:</b>	Zoning Ordinance Text Amendment - Assembly Uses in the Industrial District
<b>Requested Action:</b>	Hold a Public Hearing
<b>Department / Agency Lead:</b>	Community Development
<b>Staff Lead:</b>	Heather Jenkins, Zoning Administrator

## **EXECUTIVE SUMMARY**

Article 3, Section 3-4.12 – *Industrial District* currently permits several uses as by-right Permitted Uses where people gather for social, entertainment, cultural, educational, and recreational purposes, such as Conference Centers, Institutional Buildings, and Private clubs, lodges, meeting halls, labor unions, fraternal organizations and sororities.

The Virginia Uniform Statewide Building Code classifies Places of Worship such as churches as an Assembly use, the same category as Conference Centers, Meeting Halls, Lodges, and other uses listed in the Ordinance as either by-right Permitted Uses or Permissible Uses with the approval of a Special Use Permit in the Industrial District. However, Places of Worship such as churches are not listed as either a Permitted Use or a Permissible Use in the Industrial District.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) is a federal law that prohibits a locality from imposing undue burdens or restrictions on land use for churches and other religious institutions through zoning regulations. Treating churches or other places of worship differently from other, similar uses, is a recognized claim of discrimination under RLUIPA.

Staff was approached by a property owner seeking to lease an existing building located within the Industrial District to a group that desires to establish a Place of Worship. Staff has been advised by legal counsel that the Ordinance should be amended to address the discrepancy between Places of Worship and other uses classified as Assembly uses by the Building Code that are currently allowed in the Industrial District

Town Council initiated a text amendment to Section 3-4.12 Industrial District on May 9, 2023, to address assembly uses in the Industrial District. The Planning Commission held two work sessions to discuss this item on August 22, 2023, and September 19, 2023. On November 28, 2023, the Planning Commission issued a recommendation of approval for “Option A”. Under Option A, Places of Worship are included as an allowable use in the Industrial District, and a threshold is set for any Assembly use upon exceeding a set size. Option A requires that all Assembly uses, including Places of Worship, must have the approval of a Special Use Permit from Town Council when consisting of 10,000 square feet or more of building area, and/or occupancy by more than 300 persons.

## BACKGROUND

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A Church (or place of religious worship) is defined in Article 12 of the Zoning Ordinance as:

*A building or structure, or group of buildings or structures, which by design and construction are primarily intended for activities that people regularly attend to participate in or hold religious services, meetings, and other activities. The term "church" shall not carry a secular connotation and shall include buildings in which religious services of any denomination are held.*

Zoning Ordinance Section 3-4 *Requirements for Base Zoning Districts* allows Churches/Places of Worship in all zoning districts except the Industrial district, as follows:

<b>Ordinance Section</b>	<b>Zoning District</b>	<b>Approval Process</b>
3-4.1	R-15 Residential District	Permissible with the approval of a Special Use Permit
3-4.2	R-10 Residential District	Permissible with the approval of a Special Use Permit
3-4.3	R-6 Residential District	Permitted with administrative approval
3-4.4	RT Residential Townhouse District	Permissible with the approval of a Special Use Permit
3-4.5	RMF Residential Multifamily District	Permissible with the approval of a Special Use Permit
3-4.6	R-40 Residential District	Permissible with the approval of a Special Use Permit
3-4.7	R-E Residential District	Permissible with the approval of a Special Use Permit
3-4.8	RO Residential Office District	Permissible with the approval of a Special Use Permit
3-4.9	PSP Public-Semi-Public Institutional District	Permitted with administrative approval
3-4.10	C Commercial District	Permitted with administrative approval
3-4.11	CBD Central Business District	Permitted with administrative approval
3-4.12	I Industrial District	<b>Not Permitted</b>

The Virginia Statewide Uniform Building Code (USBC) classifies different types of uses as Occupancy Groups, where uses in these groups have similar hazards and risks to building occupants. An Assembly use in the USBC is defined as the use of a structure for the gathering of persons for purposes such as civic, social, or religious functions; recreation, food or drink consumption, or waiting for transportation. A Place of Worship is considered to be a part of Assembly Group A-3, described in the USBC as where people occupy a structure for the purpose of worship, recreation or amusement. The USBC is a neutral way of classifying different uses that does not look at the specific location, property owner or tenant, but rather looks at the way in which people occupy the space, and so is useful as a tool to categorize those uses that are listed in the Zoning Ordinance without regards to zoning district, address, owner or tenant.

The Industrial district allows uses that are considered to be Assembly uses by the USBC, as either Permitted Uses (by-right) or Permissible Uses (by special use permit approval by Town Council), as listed below. A full list of all Permitted and Permissible Uses as found in Ordinance Section 3-4.12, classified by general Building Code group, is included with this staff report as [Attachment A](#).

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Use as Listed in the Zoning Ordinance	USBC Occupancy Group
Active and Passive Recreation and Recreation Facilities	Assembly (Facilities Only)
Broadcasting studios and offices	Assembly (Audience Only)
Cafeteria or snack bar for employees	Assembly
Conference Centers	Assembly
Health and Fitness Facilities	Assembly
Institutional buildings	Assembly
Motion picture studio	Assembly (Audience Only)
Private club, lodge, meeting hall, labor union, or fraternal organization or sorority	Assembly
Restaurant or cafeteria, drive-thru or otherwise	Assembly
Temporary fair and show grounds	Assembly

Allowing other Assembly uses, but not Places of Worship, is a difference in the way similar uses are treated. Under RLUIPA, treating Churches differently from other similar uses is a recognized claim of discrimination.

Town Council initiated a text amendment to Article 3 on May 9, 2023, the first step in the process to revise the Zoning Ordinance as prescribed in Article 11, Section 11-3.9 *Zoning Amendments*. Following the initiation by Town Council, the Planning Commission held two work sessions on August 22, 2023, and September 19, 2023, to investigate how assembly uses are currently treated within the Industrial district, how Places of Worship are treated in nearby benchmark communities, and how the desire to include some assembly uses within the Industrial district meets the intent of the Comprehensive Plan.

As a part of the September 19, 2023, work session, the Planning Commission directed staff to prepare two different options for consideration, Option A and Option B. Each option included a threshold, where any assembly use exceeding a certain size and/or intensity would require the approval of a Special Use Permit from Town Council, so as to reserve the remaining large tracts of developable land for industrial uses as called for in the Warrenton Plan 2040 Comprehensive Plan, and to moderate traffic impacts on area roadways generated by large gatherings of people.

During the November 28, 2023, public hearing, the Planning Commission unanimously recommended approval of Option A:

- Revises the Legislative Intent in Section 3-4.1.1 to include limited assembly uses to the descriptive paragraph, to more closely match the mixture of use categories that are currently allowed in the district as well as the existing assembly-type businesses that are established in the district.
- Adds Places of Worship as an allowable use in the Industrial district.
- Includes a threshold for all allowable assembly uses, set at 10,000 square feet or more of building area, or more than 300 persons, where any assembly use meeting this threshold will require the approval of a Special Use Permit by Town Council per Section 3-4.12.3.

The 10,000 square feet/300 persons threshold to differentiate between assembly uses that should be Permitted by-right, and those assembly uses that should be Permissible with the approval of a Special Use Permit, was selected for two reasons. First, the threshold was selected so as to emulate the threshold set for Places of Worship in Fauquier County. Having similar thresholds for approval processes should provide a level of parity between the two jurisdictions, so that approval processes in both jurisdictions are comparable. Second, those assembly uses that include 10,000 square feet or more of building area or more

than 300 persons, are those uses which are more likely to have an impact on surrounding roadway networks, potentially generating a higher peak usage than smaller/less intensive assembly uses. The Commissioners felt that assembly uses that are potentially more impactful on area roadways should have an additional level of review to ensure that any potential negative impacts on the surrounding industrial businesses are adequately evaluated and mitigated through a public hearing and legislative approval process. A copy of the staff report and attachments from the November 28, 2023, Planning Commission public hearing is included with this staff report as [Attachment B](#).

## **STAFF RECOMMENDATION**

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Staff requests that Town Council hold a public hearing to discuss draft Ordinance language. Should Town Council be prepared to make a motion of approval, staff recommends that Town Council adopt the ordinance language of Option A, to include a 10,000 square feet/300 person threshold, as recommended for approval by the Planning Commission on November 28, 2023. An Ordinance has been provided for consideration as [Attachment D](#).

## **Service Level/Collaborative Impact**

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Allowing a Place of Worship as either a Permitted or Permissible use in the Industrial District would resolve the inconsistency between the Zoning Ordinance list of allowable uses and Federal law. Given that Town Council amends the Zoning Ordinance to include Places of Worship as an allowable use in the Industrial District, any potential Place of Worship use must obtain all required approvals prior to occupancy or commencement of the use. For all Permissible Uses, the approval of a Special Use Permit from Town Council would be the initial approval required, where any applicant must demonstrate compliance with all standards and requirements listed in Ordinance Article 11, Section 11-3.10 *Special Use Permits and Waivers*. For both Permissible Uses and by-right Permitted Uses, applicants must obtain the approval of a Site Development Plan per Ordinance Article 10 *Site Development Plans*, as well as a Zoning/Building Permit per Article 11, Sections 11-3.4 and 11-3.5, to demonstrate compliance with all applicable standards and requirements of the Zoning Ordinance, such as access, parking, lighting, landscaping, utilities and performance guarantees.

## **Policy Direction/Warrenton Plan 2040**

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Large, undeveloped Industrial-zoned parcels are limited within the Town, and the Comprehensive Plan calls for the need to retain land within the Town for future light industrial and manufacturing businesses to provide employment opportunities for Town residents. The proposed 10,000 square feet/300 person Special Use Permit threshold for assembly uses will allow an additional level of review to ensure that any potential negative impacts on the surrounding industrial businesses are adequately evaluated and mitigated through a public hearing and legislative approval process.

## **Fiscal Impact**

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A fiscal impact analysis has not been conducted.

## **Legal Impact**

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Zoning Ordinance Section 3-4.12 Industrial District allows several assembly-type uses as Permitted Uses (by-right) with administrative approval, or as Permissible Uses (with approval of a Special Use Permit). A Place of Worship is recognized as an assembly use by the Virginia Statewide Uniform Building Code; however, the Ordinance does not allow a Place of Worship within the Industrial District. Treating a Place of Worship differently from other, similar uses, is a recognized claim of discrimination under the Religious Land Use and Institutionalized Persons Act.

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## **ATTACHMENTS**

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1. Attachment A: List of Uses by Building Code Group
2. Attachment B: Staff Report - Planning Commission Public Hearing – November 28, 2023
3. Attachment C: Proposed Text Amendment - Red Line
4. Attachment D: Ordinance