



STAFF REPORT

Council Meeting Date:	September 19, 2023
Agenda Title:	Zoning Ordinance Text Amendment - Assembly Uses in the Industrial District
Requested Action:	Hold a Work Session
Department / Agency Lead:	Community Development
Staff Lead:	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 Building Code classifies Churches as an Assembly use, the same category as Conference Centers, Meeting Halls, Lodges, and other uses listed in the Ordinance as by-right Permitted Uses in the Industrial District. However, 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.

Town Council initiated a text amendment to Section 3-4.12 Industrial District on May 9, 2023, to authorize staff to research possible changes to the Ordinance to address Assembly uses in the Industrial District. Potential ordinance changes include:

- a. Adding Churches as a Permitted (by-right) Use in the Industrial District so that the use requires administrative approval by the Zoning Administrator and/or Building Official; *or*
- b. Modifying the Ordinance to state that all Assembly-type uses in the Industrial District are Permissible Uses that require the approval of a Special Use Permit by Town Council through the public hearing process; *or*
- c. Removing all Assembly-type uses from the list of Permitted and Permissible Uses so that these uses are prohibited altogether in the Industrial District; *or*
- d. Making no change to the Ordinance, so that Churches are not an allowable use in the Industrial District in contrast with other Assembly-type uses.

UPDATE - SEPTEMBER 19, 2023

On August 22, 2023 the Planning Commission held a work session to discuss a proposed Zoning Ordinance text amendment to Article 3, Section 3-4.12 – *Industrial District*, regarding assembly uses in the district. During the work session additional information was requested to inform the Commission in their discussion and staff's preparation of draft Ordinance language.

BACKGROUND

A Church (or place of religious worship) is defined in Article 12 of the 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.

Section 3-4 Requirements for Base Zoning Districts allows Churches in all zoning districts except the Industrial district, as follows:

Ordinance Section	Zoning District	Approval Process
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	Not Permitted

The Ordinance currently allows other assembly-type uses in the Industrial District. Section 3-4.12.2 includes Conference Centers, Institutional Buildings, and Private club, lodge, meeting hall, labor union or fraternal organization or sorority as Permitted Uses (by-right), where these uses are classified as assembly uses.

Use categories that are listed as Permitted Uses (by-right) within the Ordinance require administrative approvals prior to commencement of the use. Administrative approvals include approval of a Site Development Plan per Article 10, approval of a Building Permit for any changes to existing structures or construction of new buildings, and approval of a Zoning Permit for any new or altered use within an existing structure.

Staff was approached by a property owner seeking to lease an existing building located within the Industrial district to a group that desire to establish a Church. As the Zoning Ordinance does not list Churches as either a permitted or permissible use in the district, staff is not able to process and approve a change of use permit. Staff has been advised by legal counsel that the Ordinance must be amended to permit a Church within the Industrial district prior to the issuance of any administrative approval to allow the commencement of a Church use.

Town Council's initiation of a text amendment to Article 3 was the first step in the process to revise the Ordinance as prescribed in Article 11, Section 11-3.9 *Zoning Amendments*. Following the work session by the Planning Commission, the next step in the text amendment process is to schedule the item for public hearing where the Planning Commission may hear public input and make a recommendation of approval or denial. Per Section 11-3.9.7 *Planning Commission Review*, the planning commission must make a recommendation to Town Council within 100 days after the first public hearing. Upon recommendation by the Planning Commission, the text amendment will then be placed on the Town Council agenda for public hearing and final decision.

UPDATE - SEPTEMBER 19, 2023

During the work session, members of the Commission asked for additional information for discussion. The questions and summaries are provided below.

Undeveloped Parcels in the Industrial District

There are currently 76 industrial-zoned parcels within the Town, totaling approximately 290 acres of industrial-zoned tax parcel land. There are a total of 18 parcels that are either undeveloped or are currently developed with structures but are likely candidates for redevelopment. These 18 parcels total approximately 151 acres of industrial-zoned land, or approximately 52 percent of all industrial zoned parcel area within the Town. The 151 acres includes the Walker Drive rezoning area and the Amazon Data Services property, where legislative approvals have been granted but no site plan approvals or building/zoning permits have been issued to vest the use. A tabulation of the undeveloped parcels along with location, ownership, and acreage, has been provided as Attachment A.

Benchmark Communities – Assembly Uses in Industrial Districts

The Town currently allows several uses within the Industrial District that are categorized as Assembly uses by the Statewide Uniform Building Code, to include recreational facilities, conference centers, and clubs; however, the Town does not allow Churches within the Industrial District, which is a religious assembly use. Staff reviewed other jurisdictions within the region, and found that most jurisdictions either allow assembly uses, as well as religious assembly uses, within their respective industrial zoning districts, or, do not allow any type of assembly use to be established in an industrial-zoned district. Similar to the Town, Fauquier County allows several assembly uses such as recreational facilities, museums, and restaurants within industrial-zoned areas, but churches (*Places of Worship*) are not permitted. A tabulation of five other benchmark towns and cities, as well as Fauquier County, has been provided as Attachment B, to show whether assembly uses and religious assembly uses are allowed in industrial-zoned areas, as well as the general approval process.

Permitted and Permissible Uses in the Industrial District

Article 3 of the Zoning Ordinance states the intent of the Industrial District as:

*It is the intent of this district to implement the Town's Comprehensive Plan by providing for a variety of **light manufacturing, fabricating, processing, wholesale distributing, and warehousing uses** appropriately located for access by highways and providing a controlled environment within which signing is limited, uses are to be conducted generally within completely enclosed buildings, and a moderate amount of landscaping is required. In order to preserve the land for industry, to reduce extraneous traffic, and avoid future conflicts between industry and other uses, **business and service uses are limited primarily to those which will be useful to employees in the district** and future residential uses are restricted. [emphasis added]*

The list of permitted and permissible uses found in Sections 3-4.12.2 and 3-4.12.3 include uses that align with main intent of the District as stated above as '*light manufacturing, fabricating, processing, wholesale distributing, and warehousing*', to include such listed uses as Contractor's Office and Warehouse, Laboratories, Light Manufacturing, Fuel Distribution Storage Yards, and Lumber and Building Supply. The list of permitted and permissible uses also include those use categories that are '*useful to employees in the district*' such as Cafeteria or Snack Bar for Employees, Restaurant, Health and Fitness Facilities, and Mobile Food Vendors.

There are permitted and permissible use categories listed in Sections 3-4.12.2 and 3-4.12.3 which do not appear to strictly align with the stated intent of the Industrial District, nor do they appear to be limited to those businesses that would be *useful to employees*, to include Private Club, Lodge or Meeting Hall, Institutional Buildings (museums, libraries, art galleries), or Conference Center. The list of permitted and permissible uses found in the Ordinance also include use categories that do not appear to align with the stated intent of the district for *light manufacturing, fabricating, processing, wholesale distributing, and warehousing*, to include Medical or Dental Clinics, and Business, Professional or Administrative Offices. A tabulation of all Permitted and Permissible Uses as allowed in Sections 3-

4.12.2 and 3-4.12.3, along with the associated Uniform Statewide Building Code Use Group, is provided as Attachment C.

Existing Businesses Located in the Industrial District

A tabulation of the existing businesses that are located within the Industrial District areas is provided as Attachment D. As shown in this tabulation, there are numerous professional offices and medical/dental clinics located in the Industrial-zoned area that extends from Academy Hill Extended, to East Lee Street (Area B on the included map). Of the existing businesses that are established within the Industrial-zoned area that extends from Old Meetze Road to the southern boundary of the Town, these existing businesses are primarily those that are more closely aligned with industrial-type activities, such as warehousing, contracting businesses, and fuel storage.

Walker Drive Rezoning – Proposed Use Chart

The area of the Walker Drive rezoning, divided into six land bays, extends from Academy Hill Road to East Lee Street. The project was approved as Planned Unit Development District (PUD), overlaying parcels located within the Industrial District per Ordinance Section 3-5.2. The approved rezoning, case number ZMA-2016-01, included a list of proposed uses within each land bay. The proposed uses, listed as general office, retail, restaurant, entertainment, multi-family, and health club, include uses that are categorized as Assembly-type uses per the Statewide Uniform Building Code, specifically *restaurant* and *entertainment*. This project has received the required legislative approval, however has not yet received site development plan approval or building/zoning permit issuance to vest the project; as such, any changes to Section 3-4.12 – *Industrial District* as a part of this text amendment may affect this project. A copy of the chart of proposed uses for the Walker Drive Rezoning as well as the land bay map has been included as Attachment E.

STAFF RECOMMENDATION

Staff is requesting that the Planning Commission hold the work session, and provide guidance to staff on what ordinance language is most appropriate to promote the health, safety and general welfare of the public as required by Section 15.2-2283 of the Code of Virginia, and to ensure that public necessity, convenience, general welfare and good zoning practice is achieved as stated in Ordinance Section 11-3.9.1 *Authority for Change*.

UPDATE – SEPTEMBER 19, 2023

Staff requests that the Planning Commission provide guidance on the following:

1. What draft ordinance language is preferred by the Commission members, such as options a-d, or otherwise?
 - a. Adding Churches as a Permitted (by-right) Use in the Industrial District so that the use requires administrative approval by the Zoning Administrator and/or Building Official; or
 - b. Modifying the Ordinance to state that all Assembly-type uses in the Industrial District are Permissible Uses that require the approval of a Special Use Permit by Town Council through the public hearing process; or
 - c. Removing all Assembly-type uses from the list of Permitted and Permissible Uses so that these uses are prohibited altogether in the Industrial District; or
 - d. Making no change to the Ordinance, so that Churches are not an allowable use in the Industrial District in contrast with other Assembly-type uses.
2. Should the stated intent of the Industrial District, as found in Section 3-4.12.1 – Legislative Intent, be revised to reflect the mix of uses that are allowed or established in the district?
3. Given guidance on the above two questions, is this text amendment ready to proceed to public hearing?

Service Level / Policy Impact

None

Fiscal Impact

None

Legal Impact

Ordinance Section 3-4.12 Industrial District allows several assembly-type uses as Permitted Uses (by-right) with administrative approval. Treating churches or other places of worship differently from other, similar uses, is a recognized claim of discrimination under the Religious Land Use and Institutionalized Persons Act.

ATTACHMENTS

1. Attachment A: Undeveloped Parcels in the Industrial District
2. Attachment B: Benchmark Communities – Assembly Uses in Industrial Districts
3. Attachment C: Permitted and Permissible Uses in the Industrial District
4. Attachment D: Existing Businesses Located in the Industrial District
5. Attachment E: Walker Drive Rezoning – Proposed Use Chart