



STAFF REPORT

Council Meeting Date:	November 28, 2023
Agenda Title:	Zoning Ordinance Text Amendment - Assembly Uses in the Industrial District
Requested Action:	Hold a Public Hearing
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 Virginia Uniform Statewide 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.

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. Staff has been advised by legal counsel that the Ordinance should be amended to address the discrepancy between Churches and other, similar Assembly uses 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. On August 22, 2023 the Planning Commission held a work session where additional information was requested to inform the Commission in their discussion and staff’s preparation of draft Ordinance language. On September 19, 2023 the Planning Commission held a second work session, at the conclusion of which the Commission indicated that the text amendment should be placed on the next available public hearing agenda, where two different ordinance options should be prepared for consideration.

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.

PROCESS

Town Council's initiation of a text amendment to Article 3 on May 9, 2023 was the first step in the process to revise the 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 churches 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.

At the end of the work session on September 19, 2023, the Planning Commission directed staff to prepare draft ordinance language for review, and to schedule the text amendment for public hearing at the next available meeting. The staff reports, agenda documents, and presentation slides for both work sessions have been included as attachments to this staff report so as to provide a record of the information presented to the Planning Commission that guided development of the draft ordinance language.

As a part of the public hearing process, the Planning Commission will hear public input, and make a recommendation to Town Council. Per Section 11-3.9.7 *Planning Commission Review*, the planning commission must make a recommendation to Town Council within 100 days following the first work session on August 22, 2023. Upon recommendation by the Planning Commission, the text amendment will then be placed on the Town Council agenda for public hearing and final decision.

STAFF RECOMMENDATION

As directed by the Planning Commission during their September 19, 2023 work session, staff has prepared two versions of draft ordinance language pertaining to assembly uses in the Industrial district - Option A and Option B. Both options include a revision to the language in Section 3-4.12.1 *Legislative Intent*, where the revised descriptive paragraph includes the potential for limited assembly uses. The change to the Legislative Intent is to acknowledge the existing assembly uses currently allowed in the district, as well as the businesses currently established within the Industrial district that include activities that are classified as assembly uses per the Virginia Uniform Statewide Building Code. A summary of both Option A and Option B is included below.

Option A:

- Revises the Legislative Intent in Section 3-4.12.1 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 Churches 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.

Under Option A, churches will be added to the list of Permitted Uses (by-right) per Section 3-4.12.2; all other assembly uses that are currently allowed by-right shall remain as Permitted Uses. However, all assembly uses, to include churches, will require the approval of a Special Use Permit by Town Council per Section 3-4.12.3 if those uses occupy 10,000 square feet or more of building space, or include more than 300 persons.

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 churches (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 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.

Option B:

- Revises the Legislative Intent in Section 3-4.12.1 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 Churches as a Permitted, by-right use in the Industrial district, where the use is located in an existing building or less than 500 persons.
- Includes a threshold for all allowable assembly uses, set at 500 or more 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.

Under Option B, Churches will be added to the list of Permitted Uses (by-right) per Section 3-4.12.2, where the Church use will be located in an existing building, or if the church will include less than 500 persons. Where any Church is proposed as a new use in a new building to be constructed, or for 500 persons or more, this will require the approval of a Special Use Permit by Town Council per Section 3-4.12.3. Additionally, all assembly uses that are

currently allowed in the Industrial district as Permitted, by-right uses per Section 3-4.12.2 will require the approval of a Special Use Permit by Town Council per Section 3-4.12.3, where that use includes 500 or more persons.

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 ability for Churches to be a by-right Permitted use in existing buildings will allow smaller church groups to move into and use existing buildings that have already been constructed, while helping to reserve the remaining undeveloped Industrial-zoned land for manufacturing, processing, and other light-industrial development, as is called for in the Comprehensive Plan. Additionally, smaller Church groups are less likely to generate heavy traffic or other impacts on area roadways that serve businesses in Industrial-zoned areas. Where Churches are proposed as new development on vacant parcels, the requirement for a Special Use Permit per Section 3-4.12.3 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.

The 500-person threshold for assembly uses was chosen so as to avoid impacting most existing businesses that are established within the Industrial district, allowing these businesses the ability to continue their current operations and for some moderate expansion without the need for a legislative approval process. The 500-person threshold to trigger the requirement for a Special Use Permit per Section 3-4.12.3 will ensure that larger assembly uses will be adequately evaluated through a public hearing process, and any potential negative impacts moderated through the legislative approval process.

Staff is requesting that the Planning Commission hold a public hearing to discuss draft Ordinance language, and provide guidance to staff on what specific 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*. Should the Commission be ready to make a final recommendation to Town Council for specific ordinance language, two resolutions have been prepared, to include Option A and Option B as summarized above. Per Section 11-3.9.7 *Planning Commission Review*, the planning commission must make a recommendation to Town Council within 100 days following the first work session, which falls on Thursday, November 30, 2023.

Service Level / Policy Impact

None

Fiscal Impact

A fiscal impact analysis has not been conducted.

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: Resolution - Option A
2. Attachment B: Resolution - Option B
3. Attachment C: Staff Report and Agenda Packet, Planning Commission Work Session August 22, 2023
4. Attachment D: Presentation Slides, Planning Commission Work Session August 22, 2023
5. Attachment E: Staff Report and Agenda Packet, Planning Commission Work Session September 19, 2023
6. Attachment F: Presentation Slides, Planning Commission Work Session September 19, 2023