

MEETING DATE: February 20, 2008

PROJECT NAME/SITE PLAN #: ZT-07-16

APPLICANT: Board of County Commissioners

ENGINEER: N/A

ATTORNEY: N/A

REQUEST/PROPOSAL: The proposed ordinance changes would amend §§ 1-19-4, 1-19-168, 1-19-182, 1-19-289, 1-19-290; 1-19-304, 1-19-310, delete § 1-19-377 of the Frederick County Zoning Ordinance. The amendment would define and separate Landscape Contractor from Nursery Uses; indicate the appropriate districts for such uses and revise other pertinent section of the zoning ordinance. Definitions for hardware/garden center and yard storage are proposed along with changes to which districts they are permitted in.

ADDRESS/LOCATION: N/A

ZONING: RC, A, GC, HS, LI, GI

PLANNING REGION: N/A

WATER/SEWER CLASS: N/A

COMP PLAN/LAND USE: N/A

STAFF: Eric Soter, Planning Director

STAFF RECOMMENDATION: Staff recommends approval

EXHIBITS:

Exhibit #1: FcPc Staff Report

Exhibit #2: Background Info – Staff Report to BoCC for September 11th 2007 worksession

Exhibit #3: Draft Ordinance (will be provide at the FcPc meeting, if not emailed earlier)

BACKGROUND:

Note: As a matter of reference, the changes presented herein are as a result of the Staff Report to the BoCC Dated July 16th 2007 (subsequently presented to BoCC on September 11th 2007). That report provides the background, issues & opportunities and provides insight into how staff approached this task and why certain changes are being proposed in conjunction with the BoCC initiative of defining and separating out Landscape Contracting from Nursery Uses.

On September 11, 2007, staff met with the BoCC and discussed several direct and indirect issues regarding Landscape Contractor and Nursery Uses. The BoCC directed staff to research some Landscaping uses to better understand the effect on the uses that would become non-conforming uses if the text amendment were approved. The BoCC also agreed with staff's recommendations on direct and indirect issues that were presented in the September 11, 2007 report. Through consensus staff was directed to develop appropriate code changes to reflect those recommendations.

On December 17, 2007, the Board of County Commissioners (BoCC) directed staff to move forward with a text amendment to define & separate Landscape Contractor from Nursery uses; indicate the appropriate zoning districts for such use and revise other pertinent sections of the Zoning Ordinance to ensure orderly development of these uses and meet the purpose and intent of the RC, Ag and other districts

To that end, the proposal is to amend the following sections as noted in this report:

- § 1-19-4. Definitions
- § 1-19-168. Parking Space Requirements
- § 1-19-182. General Regulations - Division 6. Signs
- § 1-19-183. Signs Permitted and Regulated in The Zoning Districts
- § 1-19-289. Use Regulations for Specific Zoning Districts
- § 1-19-290. Design Requirements For Specific Districts
- § 1-19-304. General Commercial, Highway Service and Industrial Districts
- § 1-19-310. Contractor's Office and Storage in the Limited Industrial District
- § 1-19-377. Commercial Greenhouses or Nurseries in RC or A Districts

Specifically, the proposal is to add the following definitions:

§ 1-19-4 DEFINITIONS

HARDWARE/GARDEN CENTER. THE USE OF PROPERTY FOR THE RETAIL SALES OF VARIOUS BASIC HARDWARE LINES SUCH AS PLUMBING, HEATING, AND ELECTRICAL SUPPLIES AND TOOLS. THIS USE INCLUDES THE SALE OF RETAIL AND WHOLESALE PRODUCTS AND PRODUCE RELATED TO THE PLANTING, MAINTAINING, OR HARVESTING OF TREES, SHRUBS, PLANTS, GRASSES OR SOD, FERTILIZERS, SOILS, CHEMICALS, OR OTHER NURSERY GOODS AND RELATED PRODUCTS IN SMALL QUANTITY TO CONSUMERS INCLUDING RETAIL SALES OF POWER EQUIPMENT AND MACHINERY SUCH AS MOWERS, TRIMMERS, AND OTHER TOOLS AND IMPLEMENTS.

LANDSCAPE CONTRACTOR. A BUSINESS PRINCIPALLY ENGAGED IN THE DESIGNING, INSTALLING, PLANTING OR MAINTAINING OF YARDS, GARDENS OR OTHER GROUNDS OFFSITE TO INCLUDE THE FOLLOWING: LANDSCAPE INSTALLATION, CARE AND MAINTENANCE SERVICES; LAWN CARE SERVICES (I.E. FERTILIZING, MOWING, SEEDING, SOD LAYING, SPRAYING); PLANT, SHRUB AND TREE SERVICES (I.E., BRACING, PLANTING, PRUNING, REMOVAL, SPRAYING, TRIMMING); SEASONAL PROPERTY MAINTENANCE SERVICES (I.E., SNOW PLOWING IN WINTER, LANDSCAPING DURING OTHER SEASONS)

NURSERY RETAIL. THE USE OF PROPERTY FOR THE PLANTING, MAINTAINING AND HARVESTING OF TREES, SHRUBS, PLANTS, GRASSES OR SOD FOR SALE TO OTHER NURSERIES, LANDSCAPE CONTRACTORS, RETAIL OUTLETS. THIS USE INCLUDES ON-SITE PUBLIC RETAIL SALES RELATED TO THE PLANTING, MAINTAINING, OR HARVESTING OF TREES, SHRUBS, PLANTS, GRASSES OR SOD, FERTILIZERS, SOILS, CHEMICALS, OR OTHER NURSERY GOODS AND RELATED PRODUCTS IN SMALL QUANTITY TO CONSUMERS.

NURSERY WHOLESALE. THE USE OF PROPERTY FOR THE PLANTING, MAINTAINING AND HARVESTING OF TREES, SHRUBS, PLANTS, GRASSES OR SOD FOR SALE TO OTHER NURSERIES, LANDSCAPE CONTRACTORS OR RETAIL OUTLETS.

YARD STORAGE. THE USE OF PROPERTY FOR THE STORAGE, STOCKPILING, OR SAFEKEEPING OF ANY EQUIPMENT, PRODUCTS OR MATERIALS (IN USABLE CONDITION) WHICH ARE NOT BEING SPECIFICALLY DISPLAYED AS MERCHANDISE OR FOR THE PURPOSE OF OUTDOOR SALES DISPLAY.

§ 1-19-168. PARKING SPACE REQUIREMENTS.

For the purpose of this chapter, the following parking space requirements will apply. **WHERE THE USE IS NOT SPECIFICALLY LISTED OR INCLUDED IN A GENERAL CATEGORY AND THEREFORE THE NUMBER OF OFF-STREET PARKING SPACES REQUIRED IS NOT PROVIDED, THE PARKING REQUIREMENTS SHALL BE DETERMINED BY THE PLANNING COMMISSION OR ITS DESIGNEE AT THE TIME OF SITE PLAN APPROVAL. THE PARKING REGULATIONS SHALL BE BASED UPON THE CAPACITY OF THE FACILITY, ITS ASSOCIATED USES, AND A STUDY OF SUFFICIENT PARKING DEMAND PREPARED BY THE APPLICANT. THE STUDY SHALL PROVIDE SUFFICIENT INFORMATION TO DEMONSTRATE THAT PARKING DEMAND FOR THE SPECIFIC LAND USE WILL BE SATISFIED.**

§ 1-19-182. GENERAL REGULATIONS.

The following regulations will apply to all permitted sign uses.

(J) WHERE A USE AND ITS ALLOWABLE SIGNAGE IS NOT SPECIFICALLY LISTED IN THIS SECTION, OR INCLUDED IN A GENERAL CATEGORY IN § 1-19-183, OR PROVIDED FOR IN ANY OTHER SECTION OF THIS CHAPTER AND THEREFORE THE PERMITTED SIGNAGE IS NOT PROVIDED, THE ZONING ADMINISTRATOR SHALL DETERMINE THE PERMITTED SIGNAGE, THE MAXIMUM SIZE AND HEIGHT, AND SETBACKS AND ANY OTHER CONDITIONS APPLICABLE THERETO USING DIVISION 6 SIGNS AND ANY OTHER SIGNAGE PROVISIONS IN THE ZONING ORDINANCE AS A BASIS FOR SUCH DETERMINATION.

§ 1-19-183. SIGNS PERMITTED AND REGULATED IN THE ZONING DISTRICTS.

| Sign Type | | Maximum Size Permitted ¹ | | Zoning District Permitted | Setback From Property Line ³ | | | Conditions Required to be Met |
|-----------|-------------------------------------------------|-------------------------------------|------------------------------|---------------------------|-----------------------------------------|------|------|-------------------------------|
| | | Area sf = sq. feet | Height ² f (feet) | | Front | Side | Rear | |
| (6) | Farm product sales, NATURAL RESOURCES | (16 sf) | (12 f) | C and A districts | NA | NA | NA | One sign per street frontage |

§ 1-19-290. DESIGN REQUIREMENTS FOR SPECIFIC DISTRICTS.

| <i>Use Classification</i> | <i>Minimum Lot Area*</i> | Minimum Lot Area per Unit | Lot Width* | Front Yard* | Side Yard* | Rear Yard* | Height |
|---------------------------------------|--------------------------|---------------------------|------------|-------------|------------|------------|------------|
| <i>Limited Industrial District LI</i> | | | | | | | |
| NATURAL RESOURCES | 5 ACRES | — | 300 | 40 | 50 | 50 | 30' |

§ 1-19-304. GENERAL COMMERCIAL, HIGHWAY SERVICE AND INDUSTRIAL DISTRICTS.

The following provisions shall be applicable in the General Commercial, Highway Service and Industrial Districts.

(E) STORAGE AND OPERATIONS. NOTWITHSTANDING OTHER PROVISIONS OF THIS CODE, ALL OPERATIONS AND THE STORAGE OF EQUIPMENT, MATERIALS OR PRODUCTS IN THE GC OR HS DISTRICTS SHALL BE CONDUCTED WITHIN COMPLETELY ENCLOSED BUILDINGS OR STORAGE MAY BE PERMITTED OUTDOORS ONLY WHEN COMPLETELY SCREENED BY A WALL, OPAQUE FENCE, OR PLANTING SO THAT SUCH MATERIALS WILL NOT BE VISIBLE FROM A PUBLIC WAY OR ADJOINING PROPERTY. THE PLANNING COMMISSION SHALL DETERMINE THE MOST APPROPRIATE SCREENING FOR THE USE.

§ 1-19-310. CONTRACTOR'S OFFICE, EQUIPMENT, AND MATERIAL STORAGE YARD; AND YARD STORAGE IN THE LIMITED INDUSTRIAL DISTRICT.

The storage of contractor's construction equipment and ~~supplies-MATERIALS; OR YARD STORAGE~~ in the Limited Industrial District shall be permitted only if:

- (A) The contractor's main office **OR THE YARD STORAGE MAIN OFFICE** is located on the same lot or immediately adjacent to the lot on which the construction equipment and supplies will be stored; and
- (B) The contractor's construction equipment and ~~supplies-MATERIALS; OR THE YARD STORAGE~~ are stored, maintained and repaired in an accessory structure or structures which are fully enclosed on at least 3 sides and screened from public view on the fourth side unless enclosed; and
- (C) The storage structure(s) on any lot shall not exceed a .25 floor/area ratio for the lot on which it is located and in no event shall the storage structure area exceed 25,000 square feet. The storage building shall comply with the setback requirements for principal structures in the LI District and shall meet all other criteria of this code for accessory structures in the LI District.

~~§ 1-19-377. COMMERCIAL GREENHOUSES OR NURSERIES IN RC OR A DISTRICTS.~~

~~The following provisions shall apply in commercial greenhouses or nurseries in RC and A Districts.~~

- ~~(A) Lot size, setback and height requirements are the same as other natural resource uses.~~
- ~~(B) The parking requirements of §§ 1-19-166 through 1-19-169 of this Code will be met; however, no parking area is permitted within the required yard setback.~~
- ~~(C) Any proposed exterior lighting will be reviewed and approved by the Board of Appeals. Such lighting will not cause glare onto adjacent properties.~~
- ~~(D) One freestanding sign no more than:
 - ~~(1) Fifteen feet in height;~~
 - ~~(2) Twenty-five square feet in area per face;~~
 - ~~(3) Fifty square feet total face area is permitted, subject to the normal setback requirement for natural resource uses.~~~~
- ~~(E) The subject property must have frontage and access on a paved public road.~~
- ~~(F) Within the RC District, the requirements of § 1-19-302 of this Code will be met.~~
- ~~(G) Petroleum, flammable liquid, or hazardous substance storage tanks shall have 100% catchment basin, or double-walled containment and a spill protection overflow alarm. This does not apply to propane or natural gas tanks.~~
- ~~(H) Shall comply with § 1-6-50 Wellhead Protection Ordinance at site plan approval.~~

Attached is additional information the BoCC requested regarding existing uses and the effect the proposed changes would be on their status as either conforming or non-conforming uses. At the BoCC direction staff also attempted to notify all known Commercial Greenhouse/Nursery Uses that may be affected by the proposed changes.

RECOMMENDATION:

Staff recommends approval

| Selected Existing Businesses | | | | |
|----------------------------------------------------------------|----------------------------|--------|------------------------------|--------------------------------------------------------|
| Effect of the Proposed Text Amendment (As of December 1, 2007) | | | | |
| Facility | Location TM/Grid/Parcel | Zoning | Current 1-19-289 | Proposed 1-19-289 |
| Poole B-87-24 | 48/24/61 | Ag/RC | Comm. Greenhouse/ Nursery | Landscape Contractor Non-Conforming |
| Bussard B-89-06 B-93-50 | Lot 2 88/5/141 | Ag | Comm. Greenhouse/ Nursery | Landscape Contractor Yard Storage Non-Conforming |
| Hall/Classic B-94-42 B-02-13 | Lot 1 33/16/22 | Ag | Comm. Greenhouse/ Nursery | Landscape Contractor Non-Conforming |
| Wilks/ Mr. Naturals B-86-36 | 40/22/97 | Ag | Comm. Greenhouse/ Nursery | Retail Nursery Conforming |
| Potomac Gardens B-88-61 B-02-06 | 96/20/44 | Ag | Comm. Greenhouse/ Nursery | Retail Nursery Conforming |
| Johnson Hydro-seed B-06-40 | 96/7/235 | Ag | Comm. Greenhouse/ Nursery | Landscape Contractor Non-Conforming |
| Sugarloaf B-04-47 | Lot 2 95/19/187 | Ag | Comm. Greenhouse/ Nursery | Landscape Contractor Non-Conforming |
| Stone Garden Garden/Craft Shop SP-93-28 | 40/19/285 | VC | Garden/Craft Shop | Garden Center Conforming |



**DIVISION OF PLANNING
FREDERICK COUNTY, MARYLAND**

Winchester Hall 12 East Church Street Frederick, Maryland 21701 (301) 600-1138

To: Board of County Commissioners

FROM: Eric Soter, Acting Planning Director

DATE: July 16, 2007 – For September 11, 2007 Worksession

RE: Request for further direction to initiate Zoning Text Amendment regarding Landscape Contractor, and Nursery Uses

ISSUE:

Should the Board of County Commissioners direct staff to move forward with a text amendment to define & separate Landscape Contractor from Nursery uses; indicate the appropriate zoning districts for such use and revise other pertinent sections of the Zoning Ordinance to ensure orderly development of these uses and meet the purpose and intent of the RC, Ag and other districts?

BACKGROUND:

Since at least 1985 the County has treated 'Landscape Contracting' as a use similar in scope and nature as a Commercial Greenhouse/Nursery use listed in the Use Table of the County's Zoning Ordinance. Such uses have included nursery stock storage and greenhouse operations, but also vehicle maintenance and snow removal operations. Staff can identify approximately 55 operations that have established themselves during this period, the majority in agricultural zoning as a special exception. Several landscape contractor operations did locate in industrial zones during this same time period.

Planning staff have heard comments from residents during review hearings that landscape contractors should be classed as industrial uses rather than agricultural uses, with the storage of chemicals involved on site and vehicle maintenance as they relate to water sources being primary concerns. Further, as these uses typically involve a number of workers coming to the site for equipment and supplies, traffic impacts on the neighborhood become a concern as well. Following the BoCC direction on May 10th staff met with Commissioner Hagen regarding his issues about landscape contractor uses. Staff also briefly visited a half-dozen existing commercial greenhouse and nurseries. It became apparent that there are concerns that a functional difference exists between field nurseries and sod farming and such activities as landscape contractors, landscape installation services, lawn maintenance services and shrub/tree pruning and removal services. Although staff may not feel that a complete separation of these uses is as clear as some may believe, there nonetheless is opportunity for improvement to the current code to provide a clearer distinction between the various uses now grouped under the "Commercial Greenhouse/Nursery" term.

During prior reviews of the zoning ordinance; the CZRC noted that the signage provisions were adequate for commercial greenhouse nurseries but noted no other specific recommendation; the BoCC indicated that the intensity of the business use should be considered when deciding what the standard of road was set for a particular business. Although not solely related to Landscape Contracting or Nurseries, a need was identified to include a Heavy Equipment

Related Services use separate in the use table, define it and provide design provisions. This may be beneficial in determining the appropriate locations and definitions for uses similar to a landscape contractor in terms of intensity and land usage.

Staff also believes any discussion of the subject should include the status of existing conforming landscape activities and gathering of input regarding what impacts they may face if regulations are changed. As with any text amendment process a number of workshops and hearings may be anticipated.

In mid-May of 2007 Commissioner Hagen met with staff to discuss differentiation between nursery and landscape contractor uses and how the Zoning Ordinance and County practice may need revision to clarify these uses, the measures used to review these uses and types of review to be applied to these uses. Staff met with the Board of County Commissioners on June 5, 2007 at which time the members directed staff to draft possible text changes to the Zoning Ordinance and to return to them for more discussion.

In reviewing the current ordinance with the goal of meeting the intent of the BoCC direction as well as the purpose of the RC district

§ 1-19-238. RESOURCE CONSERVATION ZONING DISTRICT (RC).

The purpose of the Resource Conservation Zoning District is to allow low intensity uses and activities which are compatible with the goal of resource conservation to be located within mountain and rural wooded areas. Areas within this district include mountain areas, rural woodlands, and cultural, scenic, and recreation resource areas. Environmentally sensitive areas within the resource conservation zone, including steep slopes, wetlands and the habitats of threatened and endangered species, will be protected from development.

...and the Ag District

§ 1-19-239. AGRICULTURAL ZONING DISTRICT (A).

The purpose of the Agricultural District (A) is to preserve productive agricultural land and the character and quality of the rural environment and to prevent urbanization where roads and other public facilities are scaled to meet only rural needs.

...staff recommends the BoCC consider the following as part of any text amendment:

- Distinguish between Landscape Contractors and Nurseries (Wholesale and Retail) by defining Landscape Contracting and adding it to the list of contractors in use table along with 'Contractors, Fencing, Siding, Pool' where they are permitted only in the GC, LI and GI districts with site plan approval.
- Distinguish between a Wholesale Nursery and a Retail Nursery by providing separate definitions and indicating that the Wholesale Nursery is permitted by right "P" (with zoning certificate) in the Ag, RC, GC, LI, and GI Districts. Wherein the Retail Nursery is permitted with site plan approval "PS" in RC, AG, GC, LI and GI.
- Distinguish between Nursery Retail and a Garden Center by providing definitions for a Garden Center and permitting in the VC and GC with site plan approval.
- Distinguish between Landscape Contractors and other Contractors and Storage Yard through the use table

Specifically the proposal is to amend section 1-19-4 Definitions, by adding definitions for the

following uses and inserting them into the use table as indicated in the table on the following page.

LANDSCAPE CONTRACTOR – A BUSINESS PRINCIPALLY ENGAGED IN THE DESIGNING, INSTALLING, PLANTING OR MAINTAINING OF YARDS, GARDENS OR OTHER GROUNDS OFFSITE TO INCLUDE THE FOLLOWING:

- Landscape installation, care and maintenance services,
- Lawn Care Services (e.g. fertilizing, mowing, seeding, sod laying, spraying)
- Plant, Shrub and Tree Services (i.e., bracing, planting, pruning, removal, spraying, surgery, trimming)
- Seasonal property maintenance services (i.e., snow plowing in winter, landscaping during other seasons)

NURSERY WHOLESALE – THIS USE INCLUDES THE PLANTING, MAINTAINING AND HARVESTING OF TREES, SHRUBS, PLANTS, GRASSES OR SOD FOR SALE TO OTHER NURSERIES, LANDSCAPE CONTRACTORS OR RETAIL OUTLETS.

NURSERY RETAIL - THIS USE INCLUDES THE PLANTING, MAINTAINING AND HARVESTING OF TREES, SHRUBS, PLANTS, GRASSES OR SOD FOR SALE TO OTHER NURSERIES, LANDSCAPE CONTRACTORS, RETAIL OUTLETS AND INCLUDES ON-SITE PUBLIC RETAIL RELATED TO THE PLANTING, MAINTAINING, OR HARVESTING OF TREES, SHRUBS, PLANTS, GRASSES OR SOD, FERTILIZERS, SOILS, CHEMICALS, OR OTHER NURSERY GOODS AND RELATED PRODUCTS IN SMALL QUANTITY TO CONSUMERS.

HARDWARE/GARDEN CENTER – THIS USE INCLUDES THE RETAIL SALES OF VARIOUS BASIC HARDWARE LINES SUCH AS PLUMBING, HEATING, AND ELECTRICAL SUPPLIES AND TOOLS INCLUDING THE SALE OF RETAIL AND WHOLESALE PRODUCTS AND PRODUCE RELATED TO THE PLANTING, MAINTAINING, OR HARVESTING OF TREES, SHRUBS, PLANTS, GRASSES OR SOD, FERTILIZERS, SOILS, CHEMICALS, OR OTHER NURSERY GOODS AND RELATED PRODUCTS IN SMALL QUANTITY TO CONSUMERS INCLUDING RETAIL SALES OF POWER EQUIPMENT AND MACHINERY SUCH AS MOWERS, TRIMMERS, AND OTHER TOOLS AND IMPLEMENTS.

Applicable Uses in Current Ordinance

| | <i>Zoning Districts</i> | | | | | | | | | | | | | |
|--------------------------------------------------|-------------------------|---|----|----|----|----|-----|-----|----|----|----|-----|----|----|
| <i>Uses</i> | RC | A | R1 | R3 | R5 | R8 | R12 | R16 | VC | HS | GC | ORI | LI | GI |
| <i>Natural Resources Uses</i> | | | | | | | | | | | | | | |
| Commercial greenhouses and nurseries | E | E | | | | | | | | | PS | | PS | PS |
| <i>Commercial Uses – Retail</i> | | | | | | | | | | | | | | |
| Hardware | | | | | | | | | PS | | PS | | | |
| <i>Commercial Business and Personal Services</i> | | | | | | | | | | | | | | |
| Contractors, fencing, pool and siding | | | | | | | | | | | PS | | PS | PS |
| <i>Wholesaling and Processing</i> | | | | | | | | | | | | | | |
| Contractors, equipment and material storage yard | | | | | | | | | | | | | | PS |
| Contractors office and storage | | | | | | | | | | | | | PS | |
| Yard Storage | | | | | | | | | | | | | | PS |

Proposed Changes to Current Ordinance

| | <i>Zoning Districts</i> | | | | | | | | | | | | | |
|----------------------------------------------------------------|-------------------------|----|----|----|----|----|-----|-----|----|----|----|-----|----|----|
| <i>Uses</i> | RC | A | R1 | R3 | R5 | R8 | R12 | R16 | VC | HS | GC | ORI | LI | GI |
| <i>Natural Resources Uses</i> | | | | | | | | | | | | | | |
| Commercial greenhouses and nurseries | E | E | | | | | | | | | PS | | PS | PS |
| NURSERY WHOLESALE | P | P | | | | | | | | | P | | P | P |
| NURSERY RETAIL | PS | PS | | | | | | | | | PS | | PS | PS |
| <i>Commercial Uses – Retail</i> | | | | | | | | | | | | | | |
| Hardware/ GARDEN CENTER | | | | | | | | | PS | | PS | | | |
| <i>Commercial Business and Personal Services</i> | | | | | | | | | | | | | | |
| Contractors, fencing, LANDSCAPING , pool and siding | | | | | | | | | | | PS | | PS | PS |
| <i>Wholesaling and Processing</i> | | | | | | | | | | | | | | |
| Contractors, OFFICE equipment and material storage yard | | | | | | | | | | | | | PS | PS |
| Contractors office and storage* | | | | | | | | | | | | | PS | |
| Yard Storage | | | | | | | | | | | | | | PS |

Analysis:

Current County practice is to allow for landscape contractors to be considered under the special exception review in the Resource Conservation and Agricultural zoning districts. Such uses are also allowed in the GC, LI and GI zones with site development plan approval. The associated vehicle traffic, vehicle maintenance activity, outdoor storage and proximity of the sites storing snow removal chemicals to water sources have been concerns raised by citizens in recent hearings.

These proposed changes would provide clearer distinction between a nursery wholesale and retail operation, as well as a Garden Center. Furthermore, the Landscape Contractor operations would be specifically defined and not permitted in the same districts (RC and AG) as currently permitted in conjunction with a Commercial Greenhouse/Nursery but it would be permitted in perhaps a more appropriate district(s) GC, LI and GI.

The Nursery Wholesale and Retail uses should be considered permitted as proposed by staff and outlined above. There appears to be negligible benefit to require these uses to be approved as a special exception considering they are being proposed as redefined from what has been the interpretation in the past. In reviewing the specific special exception criteria under section § 1-19-377 (*Commercial Greenhouses or Nurseries in RC or A Districts*) the majority of these criteria refer to compliance with other sections of the zoning ordinance, which would be required regardless if it is permitted by right or by special exception. Notable exceptions are the lighting and the signage requirements as the current code does not specifically address commercial greenhouse and nursery in the RC or AG with regard to those two provisions.

Currently the specific criteria for a Commercial Greenhouse/Nursery as a special exception includes the following provisions (*which would be deleted in its entirety should the BoCC move forward with what staff has considered in not requiring a Nursery Wholesale or Retail to go through special exception approval*):

§ 1-19-377. COMMERCIAL GREENHOUSES OR NURSERIES IN RC OR A DISTRICTS.

The following provisions shall apply in commercial greenhouses or nurseries in RC and A Districts.

- (A) *Lot size, setback and height requirements are the same as other natural resource uses.*
- (B) *The parking requirements of §§ 1-19-166 through 1-19-169 of this Code will be met; however, no parking area is permitted within the required yard setback.*
- (C) *Any proposed exterior lighting will be reviewed and approved by the Board of Appeals. Such lighting will not cause glare onto adjacent properties.*
- (D) *One freestanding sign no more than:
 - (1) *Fifteen feet in height;*
 - (2) *Twenty-five square feet in area per face;*
 - (3) *Fifty square feet total face area is permitted, subject to the normal setback requirement for natural resource uses.**
- (E) *The subject property must have frontage and access on a paved public road.*
- (F) *Within the RC District, the requirements of § 1-19-302 of this Code will be met.*

Additional General Criteria for Special Exceptions are also currently required, the specific findings the Board of Appeals must make includes the following (*these still remain in the code but a Nursery Wholesale or Retail would not be subject to them as proposed*):

§ 1-19-48. SPECIAL EXCEPTIONS.

- (B) *A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:*
- (1) *The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and*
 - (2) *The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and*
 - (3) *Operations in connection with any special exception use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics than would be the operations of any permitted use not requiring special exception approval; and*
 - (4) *Parking areas will comply with the off street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.*
 - (5) *The road system providing access to the proposed use is adequate to serve the site for the intended use.*

By defining Wholesale Nursery, Retail Nursery, and Landscape Contractor specifically, this will provide a clearer understanding of the use(s) permitted in the various districts and what level of approval must be received.

The next step in this analysis was to review direct and indirect changes as a result of the proposal to define Wholesale Nursery, Retail Nursery, and Landscape Contractor. Direct changes are those dealing specifically with these uses and other places in the code where they are currently addressed or will need to be addressed. Indirect issues are those that have the potential to result in an issue of interpretation and and/or an opportunity now exists to provide further clarification.

Direct Issue #1:

Review Section 1-19-168 Parking Space Requirements and identify any changes needed to implement the Nursery Wholesale, Nursery Retail, Garden Center and Landscape Contractors as currently proposed.

- Regardless if these changes are implemented there is a disconnect in our current parking regulations wherein the code does not provide for the required parking spaces for certain uses and/or use categories. As an example, the subject use 'Commercial Greenhouse and Nursery' is listed in the use table under the Natural Resources category. The Parking Space Requirements § 1-19-168 do not have a Natural Resources category therefore, one would look under the commercial uses for guidance as this is a commercial type use. Under the commercial use, there is a provision for "All other types of business or commercial uses permitted in any commercial district". Therefore, technically this does not provide specific guidance on what the parking requirements are when located in a district other than a commercial district.

- The opportunity exists to add some basic language in § 1-19-168 to allow for any use that is not specifically listed nor identified under a general category to use some other method of determining the parking requirements. This would be a band-aid approach until such time as the parking space requirements can be reviewed more thoroughly in the future.

Direct Issue #2:

Review Section 1-19-183 Sign Regulations and identify any changes needed to implement the Nursery Wholesale, Nursery Retail, Garden Center and Landscape Contractors as currently proposed.

- Current sign regulations for a commercial greenhouse/nursery is not addressed in the Sign Regulations section of the code but it is in the specific special exceptions criteria under § 1-19-377 wherein a maximum size and height are indicated.
- Like the parking regulations, there appear to be some disconnects in the Signage Requirements wherein some uses are not specifically listed nor identified under a general category in order to allocate some permitted amount of size.
- An argument could be made that the use is not permitted any signage at all. However, practice has likely been to allocate some signage based on the most appropriate/comparative use.
- The opportunity exists to add some basic language in § 1-19-183 to allow for any use that is not specifically listed nor identified under a general category to use some other method of determining the parking requirements.
- The opportunity also exists to provide for signage for natural resource uses that are not specifically listed. § 1-19-183 (F) 'Farm Product Sales' can be expanded to include 'and other Natural Resource Uses' in the RC and A. The current maximums are 16 sq. ft. for signage area and 12 ft. height for this category.

Direct Issue #3:

Review Section 1-19-290 Lot Area Requirements and identify any changes needed to implement the Nursery Wholesale, Nursery Retail, Garden Center and Landscape Contractors as currently proposed.

- Current provisions require any natural resource use in the RC, Ag, or GC, to have a 5-acre minimum lot requirement. There appears to be no issues with those provisions in redefining commercial greenhouse/nursery to the Wholesale and Retail nurseries for those districts.
- For the General Industrial District there appears to be no issue with regards to lot area requirements as there is a use classification that indicates 'All Permitted Uses'. Therefore no changes are anticipated/needed for this section.
- For the Limited Industrial district however, there is no apparent use classification for 'Natural Resources' uses in this district. There is a classification for wholesaling/processing, which would likely be utilized for a Nursery Wholesale operation if no changes were proposed. However, that still leaves the Nursery Retail operation without any specified lot area and yard requirements in the LI district.
- The opportunity exists to provide for lot are and yard requirements for either natural resources uses and/or Wholesale and Retail Nursery in the LI district.

Indirect Issue #1:

It became apparent that there were additional uses that were affected, potentially affected, or simply in need of cleanup/clarification as a result of the proposed changes to provide for separate definitions/approvals for Wholesale Nursery, Retail Nursery, and Landscape Contractor.

The first issue identified was that Garden Centers were not being appropriately captured in the Nursery or Landscape Contractors uses. After some discussion it was decided that this use is like, if not the same, as a hardware store. Since we did not have a definition of hardware store in the zoning ordinance, this provided an opportunity to create a definition and include Garden Center. No changes are proposed at this time for the districts in which a Hardware/Garden Center would be permitted. Hardware stores are currently permitted in VC and GC districts and are subject to any existing design criteria for those respective districts.

Although we did not make any specific recommendation to make additional changes to Hardware store other than to define and add the term Garden Center along with it, there is merit in considering creating an additional use and providing a definition for a Home Improvement Center in the future. A Home Improvement Center would be similar to a hardware/garden center as currently defined but perhaps be limited to the GC district and be of some minimal size to be considered a Home Improvement Center.

Indirect Issue #2:

Another issue that was identified and partially addressed deals with contractors office and storage use and the contractors, equipment and material storage yard use. Staff had to review how contractors are permitted as we were deciding on how to permit landscape contractors. It became apparent that the 'contractors office and storage' use and the 'contractors, equipment and material storage yard use' are essentially the same. The office and storage is permitted in LI and the materials and storage in the GI.

The only difference is that in the LI, the storage of contractor's construction equipment and supplies are subject to the provisions set forth § 1-19-310. The use (contractors) as defined refers to a certain type of contractor as it is defined, and does not necessarily cover all types of contractors that may be in existence. Contractor is defined in § 1-19-4 as:

CONTRACTOR. An individual, firm, or corporation undertaking the execution of any manmade change to improved or unimproved real estate, under the terms of a contract or agreement, including the construction, altering or demolishing of buildings or other structures; dredging, filling, grading, paving, excavating, or drilling of land; or installing, repairing or maintaining utilities.

Therefore, combining these two separate uses in the use table as indicated in the table on page 4 should provide more clarity in the approval process for a contractor falling under this definition. No changes are anticipated to the definition of contractor at this time.

Indirect Issue #3:

The other related issue that was identified is in regards to the yard storage use. Essentially, this is for storage of materials and/or equipment, and it is currently only permitted in the General Industrial (GI) district.

In relating this to the current provisions and what is being proposed, a contractor and/or some type of equipment and/or material storage would generally fall under one of three proposed categories

- in the 'commercial business and personal services' category as 'Fencing, Landscaping, Pool and Siding; permitted in the GC, LI, or GI districts; or
- in the 'wholesaling and processing' category as a Contractor as defined in § 1-19-4 in the LI or GI districts; or

- in the 'wholesaling and processing' category as Yard Storage in the GI district.

Due to the fact that the first two types of uses allow for certain contractors to be permitted in both the LI and GI districts, consideration should be given in the future to permit Yard Storage in the LI district with site plan approval (PS) but subject to provisions similar to contractors office and storage wherein the storage is required to be in enclosed structures.

Staff has had recent requests for certain types of contractors that do not fall under either the Fencing, Pool, Siding, Landscaping contractors, nor the general 'contractors' definition dealing with *'manmade changes to improved real estate'* that appear to be appropriate for the LI with certain provisions for the storage of materials and equipment. Therefore, certain contractor uses are limited to being permitted in the GI district only. A definition should be added for yard storage indicating it is a use for equipment and material storage and permit some incidental maintenance of the equipment.

Indirect Issue #4:

It should be noted that all uses in LI or GI zoning districts are subject to the performance standards such as storage and operations, noise, vibration, dust and particulates as outlined in § 1-19-307. Consideration needs to be given to requiring those uses that are permitted in the LI and GI districts that are also permitted in the GC district to be subject to § 1-19-307. In relating this to the issue at hand, a landscape contractor in an LI or GI district would be subject to these provisions but not if they were located in a GC district where it may be more appropriate to reduce the impact on surrounding uses from the operation.

RECOMMENDATION:

Staff recommends the BoCC review the brief, hold the worksession and provide further guidance to staff.