

**BOARD OF SUPERVISORS
ACTION ITEM**

15

SUBJECT: ZOAM 2013-0005, Resolution of Intent to Amend the Revised 1993 Zoning Ordinance to Implement the Route 28 Corridor Plan by Creating New Overlay Districts and a Planned Development Zoning District

ELECTION DISTRICTS: Algonkian, Broad Run, Dulles, Sterling

CRITICAL ACTION DATE: At the pleasure of the Board

STAFF CONTACTS: Michael “Miguel” Salinas, Project Manager
Julie Pastor, AICP, Director, Department of Planning

RECOMMENDATION:

Staff: Staff recommends that the Board of Supervisors adopt a Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance to implement the Route 28 Corridor Plan (Attachment 1).

EXECUTIVE SUMMARY:

The Route 28 Corridor, including the Route 28 Tax District, has long been envisioned to develop as a major employment center in Loudoun County due to its proximity to a highly skilled and educated workforce, immediate access to a regional transportation network, and adjacency to a world class international airport. As such, development in the corridor is critical for both the protection of the Tax District and the fiscal health of the County.

On March 15, 2011, the Board of Supervisors adopted Comprehensive Plan Amendment, CPAM 2009-0001 Route 28 Keynote Employment Policies. The adoption of the CPAM changed the Revised General Plan Keynote Employment land use policies for a specified study area within the Route 28 Corridor.

To implement the recommendations of the Route 28 Corridor Plan, revisions are proposed to the Revised 1993 Loudoun County Zoning Ordinance (“the Ordinance”). The amendments (draft regulations) propose to add a new Division D, *Route 28 Corridor* to Article IV, *Special and Overlay Districts*. This Division adds the following new districts: Route 28 CO (Corridor Office) Optional Overlay, Route 28 CM (Corridor Mixed-Use) Planned Development District, Route 28 CB (Corridor Business) Optional Overlay, and Route 28 CI (Corridor Industrial) Optional Overlay. In addition, the amendments propose to revise Article VIII, *Definitions*, to add and/or revise definitions for uses and terminology used in the new Route 28 Corridor districts. The draft regulations, along

with the Zoning Discovery Report (see below), prepared by the consultant team can be viewed at the project website, www.loudoun.gov/route28.

BACKGROUND:

The Board of Supervisors initiated the Route 28 Comprehensive Plan, CPAM 2009-0001 to allow the Route 28 Corridor north of Dulles Airport to develop as a major employment center in Loudoun County due to its proximity to a highly skilled and educated workforce, immediate access to a regional transportation network, and adjacency to a world class international airport. On March 15, 2011, the Loudoun County Board of Supervisors approved the Route 28 Keynote Employment Policies (also known as the Route 28 Corridor Plan) Comprehensive Plan Amendment, or CPAM (Supervisors Buckley, Kurtz, McGimsey, Miller, Waters, York –Yes; Burk, Burton Delgaudio – No). The plan provides a vision and blueprint for development within the Route 28 Corridor.

The Route 28 Corridor Plan amends the Revised General Plan to establish an airport-anchored gateway to the County. The Route 28 Corridor Plan calls for a consistent pattern of employment-based development, with a variety of office development options ranging from suburban, lower-density office to medium-density, compact, pedestrian-oriented office clusters and higher-density, transit-oriented mixed-use office centers. New residential development is limited to three Mixed-Use Office Centers along the Corridor. The Plan also accommodates flex and industrial development, primarily focused along the Route 606 corridor adjacent to Washington Dulles International Airport.

The Board of Supervisors directed staff to seek outside consultant assistance to complete the zoning ordinance amendments necessary to implement the Route 28 Corridor Plan. A contract was awarded to a consultant team led by White & Smith, LLC, and including Parsons Brinckerhoff, the National Center for Smart Growth at the University of Maryland, and Robert Charles Lesser & Company, to prepare a background diagnosis and zoning amendments to implement the Route 28 Corridor Plan. The County also appointed an interagency Zoning Implementation Steering Committee (ZISC) and a stakeholder Zoning Technical Advisory Committee (ZTAC) to work with the consultant team and provide feedback on the reports and draft zoning documents. The ZTAC members were identified with representatives from a stakeholders' network cultivated during the Route 28 CPAM process and membership included representatives from the Business-Friendly ZOAM Stakeholders Group to facilitate coordination between the two projects.

In accordance with the Scope of Work, the consultant team has worked with County staff, conducted stakeholder interviews and meetings with the ZISC and ZTAC, and held two public open houses. The significant level of community involvement is consistent with the County's past strategic planning efforts for the corridor. Since 2009, interviews and Board forums were held with

commercial property owners, developers, and HOA representatives in the Corridor prior to the initiation of the CPAM and interactive visioning workshops with stakeholders were also conducted in 2010 that culminated in the detailed policies of the Route 28 Corridor Plan.

The consultant team prepared reports that summarized the research and analysis conducted in preparation for drafting the new districts, and tested the regulations using the CommunityViz® analysis tool. The reports prepared by the consultant team included a Zoning Discovery Report that provided a background analysis of the zoning issues, alternative zoning strategies, and a draft outline of new zoning district regulations. The team also prepared two additional reports: a benchmarking analysis of other communities with similar regulatory settings and a summary of stakeholder interviews. Both reports were included in the comprehensive Zoning Discovery Report which can be viewed on the project website at www.loudoun.gov/route28.

Draft regulations as amendments to the Revised 1993 Zoning Ordinance were initially prepared by the consultant team in November 2012. Since that time, the draft amendments underwent multiple rounds of circulation, review, comment, testing, and revision by the ZTAC, ZISC, and County staff. The consultant team was also in regular communication with the County Attorney's Office to ensure that the zoning approach selected in the draft amendments are in legal conformance to County and State codes and regulations, particularly the Route 28 Tax District legislation that affects properties in the Route 28 Corridor. The final draft amendments prepared by the consultant team are based on the outcomes of the final County and stakeholder group reviews along with public comments.

The latest open house was held on April 8, 2013 at Loudoun Water. At this forum, County staff presented an overview of draft amendments, and copies of the amendments were distributed. Stakeholders expressed support for the draft zoning amendments and suggested minor changes that are supported by the Route 28 Plan policies.

During the course of the project scope that led to the development of the draft regulations, several communication milestones were conducted by County staff with the Board. In March of 2012, an item was presented to the Board with information that the consultant team was selected, project kick-off was expected to occur in late spring, and one-on-one interviews with members of the Board of Supervisors were anticipated in the project orientation phase. The Board was also informed that the draft amendments prepared for legislative review and adoption would be expected no later than March 2013. In September of 2012, the Board was given a status update on the project including the activities of the project orientation phase, the creation of the ZISC and ZTAC, and the upcoming release of the Zoning Discovery Report. The Board was notified via email on the posting of the report on the project website in October of 2012. In March of 2013, the Board received an information item that included a description of the open house held at Loudoun Water in November

of 2012, a brief overview of the draft amendments, and a scheduled second open house in early April at Loudoun Water. Lastly, the item noted that final draft amendments would be completed by the end of April 2013; with the one-month difference in the original timeline attributed to significant review, testing, and revisions.

DRAFT AMENDMENTS:

The County is seeking several different outcomes with the draft regulations including: 1) implementation of the Route 28 Corridor Plan, 2) integration of Route 28 Corridor standards with the County's zoning ordinance, 3) translation of the draft regulations into a user-friendly format, 4) application of incentive-based approaches to create the development standards that the County desires for the corridor, and 5) incorporation of flexibility while maintaining fidelity to the Route 28 Corridor Plan policies. Keeping these outcomes in mind, the following is a brief description of the amendments to the Revised 1993 Zoning Ordinance.

The draft regulations prepared by the consultant team amend the Revised 1993 Zoning Ordinance by:

- A. Adding the Route 28 Corridor District Regulations: The regulations for Corridor Office (CO), Corridor Mixed-Use (CM), Corridor Business (CB), and Corridor Industrial (CI) Zoning Districts are proposed to be added to Article IV *Special and Overlay Districts*; Division D *Route 28 Corridor*, in its entirety - beginning with Section 4-2201.
- B. Revising Article VIII, Definitions: Article VIII is proposed to be revised and/or added to as necessary to define terminology used in the proposed amendments.

The Route 28 Corridor regulations create a new Division "D" to Article 4 of the Revised 1993 Zoning Ordinance. The regulations create three optional overlay (CO, CB and CI) districts and one planned development (CM) district specific to the Route 28 Corridor. The optional overlays are applied differently than the traditional overlay concept. With the traditional overlay, properties are subject to additional regulations or restrictions to the underlying zoning, or base zoning district. The overlays in the Route 28 Corridor regulations are optional methods of development for property owners; if the property owner voluntarily elects to use an overlay, the regulatory standards of the overlay would then substitute for the underlying regulations. The CM district is not an optional overlay, rather it is a planned development district that includes multi-family residential. As such, the CM district will replace the existing zoning district only when a Zoning Map Amendment (ZMAP) to that district is approved by the Board.

The optional overlay and planned development district provisions include two (2) types of development: Standard Method and Optional Method. The Standard Method development includes

basic use, building height, setback and floor area ratio (FAR) standards. This type of development is very similar to development in most of the County's underlying zoning district regulations, including the existing PD-OP, PD-IP, PD-RDP and PD-GI zoning districts that comprise most of the land area within the Route 28 Corridor. The Standard Method offers higher development potential and contemporary development standards that are not possible under the existing zoning districts. Optional Method development allows higher FAR and lot coverage, process streamlining and other regulatory incentives, and design controls and amenities that do not apply to Standard Method development.

The strategic approach taken with the zoning ordinance amendments were based on a number of considerations, including:

1. The Route 28 Corridor Plan contains very specific design and aesthetic policies for development. Under Virginia State Code, design controls are largely restricted to those that are based on incentives, and as such limits the County's ability to apply mandatory design controls in zoning districts that have an aesthetic purpose. This necessitates the need to develop zoning districts that offer two methods of development; the Standard Method similar to the County's conventional zoning districts, and an Optional Method with more prescriptive design controls reflective of the policies in the Route 28 Corridor Plan but inclusive of incentives.
2. The Route 28 Tax District legislation prohibits the County from changing the regulations applicable to commercial and industrial-zoned property within the District without the property owners' permission. The optional overlay districts do not make the existing zoning regulations on properties stricter or remove existing zoning rights in place under the 1972, 1993, and Revised 1993 Zoning Ordinance regulations. Because these are overlay districts, the existing zoning districts remain on the zoning map. Instead, property owners could choose to develop under their existing zoning district regulations or choose the optional overlay district regulations. This approach also targets incentives available under the Route 28 regulatory framework without engaging in a unilateral rezoning in violation of the zoning freeze in the tax district legislation.
3. Because the tax district legislation prohibits the County from changing the regulations on commercial and industrial-zoned properties, and the County is restricted in its ability to mandate design controls, building effective incentives into the regulations are very important. In exchange for more prescriptive design controls in the four proposed zoning districts under the Optional Method, the Route 28 Corridor regulations offer a number of incentives. For example, the zoning districts are "hybrid" zoning districts in that the standards are a hybrid of conventional and form-based zoning that include graphics with the

accompanying text. The “hybrid” districts provide more clear development expectations while providing greater flexibility in the application of zoning standards such as setbacks, building height, and lot coverage. With development outcomes that are clearly understood, applications to develop under the optional overlays can be permitted administratively with more consistent and predictable decisions than the lengthy negotiations oftentimes conducted as part of a legislative review.

Additional incentives in the regulations under the Optional Method include: 1.) increased lot coverages and floor area ratios; 2.) reduced setbacks; 3.) elimination of bulk plane standards; 4.) reduced parking ratios; 5.) with the exception of the CM district, elimination of minimum district size; 6.) flexibility and certainty in the application of zoning standards that offer more predictable and consistent decisions, and 7.) longer time periods to build out a project without a zoning approval (such as a zoning permit, site plan, special exception, or concept development plan) expiring. Further, access of the development options under the optional overlays is streamlined; development does not require a legislative remapping or zoning conversion process. Property owners may elect to develop per the optional overlay regulations and file a site plan under the Standard or Optional Method, provided they file an election to waive the protections of the Route 28 Tax District legislation. Development then proceeds under the Revised 1993 Zoning Ordinance.

It is important to note that the optional overlay districts will need to be targeted and mapped to the Route 28 Corridor Plan area by the Board in conformance with the Land Development Patterns map contained in the plan.

If the Resolution of Intent to Amend is approved by the Board, the amendments will be scheduled to be heard at the July 16, 2013 Planning Commission Public Hearing.

ISSUES:

The consultant team has identified two incentives that could be considered in the draft regulations, as outlined below. Should the Board recommend approval of the Resolution of Intent to Amend, these considerations will be discussed during the legislative review and adoption process in accordance with the final phase of the Route 28 Corridor Zoning Implementation project.

A key concern for implementing the Route 28 Corridor Plan is that the Route 28 Tax District legislation locks in the existing zoning district classifications and regulations for properties in the tax district, and the corridor plan includes many urban design metrics that state law would not allow outside of an incentive zoning or planned development framework. This concern is heightened by a soft office market for higher density Class A Office, which increases the risks for property owners who want to build the high quality office and employment uses that are called for in the Route 28 Corridor Plan. In addition, the County’s Business-Friendly ZOAM recently expanded the range of

uses currently available in the existing zoning districts, creating less of an incentive for property owners to change their existing zoning standards. Therefore, it is important to consider realistic incentives that encourage property owners to opt into the new zoning district regulations.

A. Reducing Roadway / LOS Standards

The consultant team included a provision in an early draft of the zoning amendments that suggests reducing trip reductions and the acceptable level of service (LOS) for the CM district. This would reflect the internal capture of trips that result from mixed use development, recognize the availability of alternative travel modes, and offset additional costs and risks associated with the urban design, minimum height, and other regulations required in the district.

This incentive was removed at the request of County staff. The incentive for a reduction in LOS is inconsistent with the current LOS policies in the 2010 Countywide Transportation Plan (CTP), which identify LOS 'D' as the minimum acceptable LOS. The staff also noted that LOS is not referenced anywhere else in the Revised 1993 Zoning Ordinance and adequate LOS and mitigation of transportation impacts resulting from proffered rezonings are policy issues with specific policies regarding the LOS 'D' standard. Should the Board of Supervisors wish to establish exceptions to the LOS 'D' standard for certain types of development and/or development in certain locations, such as the "fair share" methodology adopted as part of the 2010 CTP, County staff noted that a Comprehensive Plan Amendment (CPAM) to amend the CTP would be the appropriate process.

Consultant Recommendation: The Consultant and County staff agree that the LOS reductions are inconsistent with the County's current Countywide Transportation Plan (CTP). However, LOS reductions for compact, mixed use development are commonly used in other jurisdictions for this kind of development. In addition, it would create a useful incentive for property owners to use the new zoning district regulations and would be limited to the CM district.

B. The Provision of a "Reversion" Procedure

The County's current election process for opting into the Revised 1993 Zoning Ordinance regulations requires applicants to waive the protections of the Route 28 Tax District, and to agree that their property is bound by the current zoning regulations. This election is permanent. After filing an election, property owners do not have the option to revert to the zoning that was in place when the election was filed.

The Route 28 Corridor Districts use the existing election procedure. However, an early draft of the regulations proposed by the consultant would allow property owners to revert to their existing regulations if their plans under the new regulations did not materialize. Applicants who did not begin construction within 10 years of filing an election were allowed to either file a new election, or

to proceed with development under the zoning regulations in effect when the election was filed. This was done to reduce the risk of opting into the new regulations, and to create an incentive for property owners to file plans under the new regulations.

This incentive was removed at the request of County staff. Staff has concerns regarding the consequences associated with permitting property owners to revert back to their previous zoning district after a specific amount of time. Revised General Plan policies seek to promote converting to an appropriate zoning district in the 1993 Revised Zoning Ordinance consistent with the County's overall land use vision (*Revised General Plan, Chapter 6, Route 28 General Policies, Policy 22*). Staff is unsure how the vision of a consistent development pattern will be met when a property owner may go back and forth between the existing zoning ordinance and the ordinance that previously governed their property.

County staff also noted that during the Route 28 Business Outreach project, Route 28 Corridor property owners cited converting their property to the current zoning ordinance requires a lengthy and cumbersome legislative process, making it difficult to respond to market advantages. However, the current draft allows for an administrative conversion process to develop under the optional overlays. Stakeholders also cited the various zoning ordinances that govern the Route 28 Corridor do not provide a predictable pattern of development. While it is the property owner's choice to convert to the current zoning ordinance, allowing property owners to revert back to a prior zoning ordinance exacerbates uncertainty with development patterns.

Consultant Recommendation: Consultant and County staff recognize that, if a property owner were to revert to their prior zoning after initially opting into the new Route 28 zoning districts, this could have an effect on surrounding property owners. A neighboring property owner who has an existing, high quality office development or who proceeds with development could find themselves next to a warehouse or other type of development allowed by the existing PD-OP, PD-IP or other zoning classification that is inconsistent with the vision established by the Route 28 Corridor Plan. However, the Route 28 Corridor Plan includes some aggressive zoning metrics (such as minimum height requirements) and design standards that will create additional expense and risk for applicants. With the current, soft office market for higher density Class A Office, there could be a greater risk that applicants will, instead, choose to forego using the Route 28 zoning district regulations at all. This could also result in development that is inconsistent with the Route 28 Corridor Plan's vision for the corridor. In addition, applicants who invest in property under the Route 28 Corridor Plan, proceed to development, and find tenants for their property after using the new regulations, are highly unlikely to abandon their plans, demolish their property and revert to the existing regulations once they are successful in the marketplace. Therefore, the County could consider a procedure that gives applicants an assurance that, if they use the new regulations, they are not giving up rights that they have under their existing zoning.

FISCAL IMPACT:

A contract was awarded to White & Smith, LLC in March 2012 to prepare the necessary amendments to the 1993 Revised Zoning Ordinance to add zoning district regulations to implement the Route 28 Corridor Plan.

ALTERNATIVES:

1. Do not proceed with the Resolution of Intent to Amend and discontinue work on any amendments to the 1993 Revised Zoning Ordinance on this topic at this time.
2. Adopt a Resolution of Intent to Amend the 1993 Revised Zoning Ordinance.

DRAFT MOTION:

1. I move that the Board of Supervisors adopt the Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance contained in Attachment 1 for the purpose of implementing the Route 28 Corridor Plan to add new optional overlay and planned development districts.

OR

2. I move an alternative motion.

ATTACHMENTS:

1. Resolution of Intent to Amend

BOARD OF SUPERVISORS OF LOUDOUN COUNTY

RESOLUTION OF INTENT TO AMEND THE REVISED 1993 ZONING ORDINANCE

June 5, 2013

WHEREAS, the Board of Supervisors wishes to initiate amendments to the Loudoun County Zoning Ordinance in furtherance of the purposes of zoning as set out in § 15.2-2283 of the Code of Virginia and to further implement the comprehensive plan; and

WHEREAS, the Board of Supervisors wishes to initiate amendments to the Loudoun County Zoning Ordinance to implement the recommendation of the Route 28 Corridor Plan, dated March 2011; to add new optional overlay and planned development zoning districts for use along the Route 28 Corridor; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors states its intention to amend the Loudoun County Zoning Ordinance to adopt new or revised provisions on the following matters:

1. Revise Article IV to add the following new districts for use along the Route 28 corridor: Route 28 CO (Corridor Office) Optional Overlay, Route 28 CM (Corridor Mixed-Use) Planned Development District, Route 28 CB (Corridor Business) Optional Overlay, and Route 28 CI (Corridor Industrial) Optional Overlay.
2. Revise other Sections of the Zoning Ordinance as necessary to reference the new Route 28 Corridor optional overlay and planned development districts.
3. Revise and/or add Ordinance definitions (Article 8) as necessary to define terminology used in the proposed amendments.

BE IT FURTHER RESOLVED that (1) these amendments are in furtherance of the public necessity, convenience, general welfare, and good zoning practice; (2) that these matters be referred to the Planning Commission for preparation of ordinances; and (3) the proposed amendments on these matters be brought forward for notice, hearing, Planning Commission recommendation and Board of Supervisors' action.