MEMORANDUM

DATE: January 24, 2011

TO: Policy Committee

FROM: Christopher Johnson, Principal Planner

SUBJECT: Commercial Districts, Ordinance Changes

I. Introduction

In June 2008, staff began the process of updating the Commercial Districts to increase predictability, consistency and flexibility in the development review process. The series of amendments to the LB, Limited Business, B-1, General Business, M-1, Limited Business/Industrial and M-2, General Industrial ordinances adopted by the Board of Supervisors in August 2008 and February 2010 helped initiate staff efforts to implement the Business Climate Task Force recommendations accepted by the Board of Supervisors in 2008. Since beginning the ordinance update, staff has processed the two amendments mentioned above that added permitted uses to the LB, B-1, M-1, and M-2 districts and a third, adopted by the Board in June 2010 which implemented many of the SSPRIT committee recommendations to amend the administrative and Planning Commission review criteria and procedures for conceptual plans, site plans and subdivisions.

II. Discussion Items

A. Review of Specially Permitted Uses in the Commercial Districts

Since the Business Climate Task Force recommendations were accepted by the Board of Supervisors in January 2008, staff has processed two amendments to the commercial districts that moved specially permitted uses to by right uses. The two amendments were not intended to be the only review of the uses in each of the districts; in fact, they were thought to be the non-controversial amendments as none of the uses which were transitioned to by-right had ever triggered the need for an SUP application within the past ten years. Staff will closely examine all specially permitted uses in each of the four commercial districts and make additional recommendations in the coming months to determine if any additional specially permitted uses can be shifted to administrative approval as a by-right use. For some uses, staff may employ the use of performance standards that, if adhered to, can move a specially permitted use to a by-right use. For example, in the LB, Limited Business district, a convenience store without the sale of fuels, currently a specially permitted use, could shift to by-right if it can be demonstrated that a to be determined numerical standard for parking, landscaping/buffering and distance from residentially zoned property is met. Traffic generation could still result in the proposed use triggering commercial SUP requirements (discussed later in this report) but the potential exists to address the impacts of greatest concern for particular uses with performance standards and not require a legislative review process.

B. **Sustainability Audit**

The following list of recommendations was provided by the consultant as part of the sustainability audit. Due to the number of possible changes, staff has included a brief recommendation or justification after each item.

1. *Ensure zoning regulations are redevelopment-ready and don't contain provisions to encourage sprawl. The criteria for site plan review under Section 24-147 could be expanded to allow larger projects to have administrative review if they are considered infill redevelopment sites. The change should be considered if it is determined to be a real incentive.*

   The SSPRIT committee recommendations reviewed by the Planning Commission and Board of Supervisors last spring included a review of the Development Review Committee triggers in Section 24-147. At that time, the Planning Commission recommended retaining the threshold for DRC review for buildings or groups of buildings over 30,000 SF and deleted recommended language eliminating DRC review of all industrial and office buildings in binding master planned industrial and office parks. The Planning Commission recommendations were later adopted by the Board of Supervisors in June 2010. There may be value in considering an exemption for certain commercial redevelopment projects, but staff does not recommend providing a blanket exemption for all infill projects. Autumn West would be a prime example of an infill project that warranted DRC review under the existing requirements and triggers.

2. *The B-1 district should provide standards for uses with unique buildings such as big-box developments, drive-through uses or vehicle service uses to ensure adaptability of the site for future uses.*

   This is an idea that has merit and is worthy of additional discussion. Greater utilization of the enhanced conceptual plan review process could help identify issues that could help not only the proposed development but also allow for a wider range of redevelopment opportunities.

3. *The M-1 district can be used as a flexible/business service/light industrial district to allow developers to easily supply space in response to market demands. This would include a review of the permitted uses and possible expansion to the uses to allow customer-service oriented light industrial uses.*

   Two amendments to the list of permitted uses in the M-1 district have already been considered by the Planning Commission and Board of Supervisors but there may be selected specially permitted uses that could be shifted to the by-right category given the addition of performance based measures that would address principle impact related concerns.

4. *The LB, B-1 and MU districts require 50-foot front yard setbacks. There may be some area where the Comprehensive Plan recommends creating a more pedestrian-friendly street and the setback could be further reduced and/or build-to requirements adopted with minimal front-yard parking.*

The Mixed Use district already provides this sort of flexibility to create more pedestrian friendly development. Consideration of setback waivers in LB and B-1 districts is best handled on a case by case basis with specific consideration given to the surrounding development to create greater harmony with the character of the existing developments.

5. *In the M-2 district, heavy industrial uses should be required to provide an additional buffer or separation when located near a residential district. Buffers should apply to truck parking and outdoor storage areas in addition to buildings.*

   Property zoned M-2 located adjacent to residential development is rare but utilizing enhanced buffers and landscaped areas can help minimize the impacts of industrial development.

6. *Heavy industry uses and uses with large amounts of truck traffic should be separated from residential areas through buffers and large setbacks. Truck loading area locations need to be considered in relation to nearby residential. These requirements should be added to the M-1 and M-2 districts.*

   Similar to the previous comment with the exception of the notion that performance measures could be added which would help ensure that areas within industrial zoned properties that tend to produce noise and other impacts be located in a manner which minimizes the impact on surrounding properties, especially residential development.

C. **Performance Standards**

It has been suggested that consideration be given to incorporating many of the special use permit conditions often recommended by staff into performance based standards in each of the four commercial districts. Conditions addressing the impacts created by site lighting such as glare, the provision of enhanced landscaping along Community Character Corridors, concealment of objectionable features such as dumpsters, the development of water conservation standards, limitations on site clearing, preparation of tree preservation plans, the provision of Low Impact Development measures and limitations on signage are examples of the types of performance based standards which can be drafted into the ordinance.

D. **Development Review Committee Threshold (Section 24-147)**

1. <u>Description of issue/problem</u>

   Part of the discussion about providing more predictability to developers concerns the role of the Development Review Committee. The zoning ordinance also requires DRC review of buildings or groups of buildings over 30,000 SF, fast food restaurants and shopping centers. Subdivisions that propose 50 or more lots are also required to be reviewed by the DRC even if they are part of a master planned development that was approved legislatively through the rezoning or SUP process. The DRC also recommends the granting of waivers, modifications and exceptions in certain circumstances and reviews site plans when there are unresolved problems between the applicant, adjacent property owners or any departmental reviewing agency.

2. History

The Planning Commission and Board of Supervisors considered amendments to the DRC triggers outlined in Section 24-147 last year and opted to leave the majority of the existing triggers intact. The only trigger which was deleted was site plans which propose two entrances on the same road. Staff forwarded the recommendations of the SSPRIT committee for consideration and included was a recommendation to raise the trigger for DRC review from 30,000 SF to 50,000 SF. The Board opted to retain the existing building size trigger. Other SSPRIT committee recommendations which were adopted by the Board include the addition of a consent item section on the monthly agenda to process non-controversial items and the creation of an enhanced conceptual plan review process. By creating a two-pronged approach to plan reviews, the role of the DRC in guiding the development plan review process becomes more strategic as its input is received at a stage when the plans are more adaptable. Because enhanced conceptual plan reviews are voluntary, applicants have the option of bypassing DRC review when fully engineered site plans have been submitted to the County.

3. Solutions and policy options

Staff initiated one additional change to the DRC agenda with the creation of a section for DRC considerations. Several applicants have taken advantage of this opportunity to present draft building elevations for preliminary review in advance of submitting an SUP application or site plan and a handful of other applicants have brought forward conceptual proposals to solicit DRC input on matters such as consistency with the Comprehensive Plan land use designation and identification of key decision points to be considered as plans are finalized and prepared for submittal to the County. Staff has received positive feedback on this new element of the agenda from DRC members, County plan review agencies and applicants and their technical advisors.

4. Staff recommendation

Staff recommends the Policy Committee consider the merits of continuing to shift the role of the DRC to being a strategic body that guides the development review process from the front end through offering feedback and suggestions on conceptual proposals versus a body that does the bulk of their work on the back end of the review process when there is little flexibility to shape development projects given the amount of time and money that has been spent bringing proposals and plans forward. Staff sees advantages for continuing this shift in the role of the DRC as a strategic body and recommends a reconsideration of the continued reliance on ordinance based triggers for DRC review. By allowing the DRC to focus on enhanced conceptual plan reviews, determinations of master plan consistency, consideration of waivers, exceptions and modifications, and other review responsibilities assigned to the DRC through proffers and SUP conditions, staff will be empowered to utilize their collective expertise in managing the review of site plans and subdivisions and cutting down on the number of resubmittals and the time it takes to review plans.

E. **Commercial Special Use Permit Threshold (Section 24-11)**

1. Description of issue/problem

In the zoning ordinance there are two main ways a development can trigger the need for a Special Use Permit: 1) by specific use and 2) by the commercial SUP thresholds in Section 24-11. In each of the zoning districts there are lists of uses that are permitted

by-right and uses that require a special use permit. Obviously, the latter group requires Board of Supervisors approval. Section 24-11 of the zoning ordinance also imposes thresholds for developments that can require an SUP as well. Commercial uses that exceed 10,000 sq. ft. or uses that generate more than 100 peak hour trips trigger the need for an SUP. When they were established as SUP triggers, it was generally believed that uses that exceeded those standards would have a greater impact on the community and therefore required an extra level of review.

2. History

Since 2002, Staff has processed twenty five Special Use Permit applications triggered by Section 24-11. The majority of those cases were located in the B-1 and M-1 zoning districts. Please refer to the attachment for a listing of these cases.

3. Comprehensive Plan GSAs, public input, and PC and BOS direction

ED 1.5 - Continue to analyze County regulations, policies, and procedures to ensure that they do not unnecessarily inhibit commercial and industrial development.

ED 1.6 - Support the recommendations of the Business Climate Task Force Report as determined by the Board of Supervisors.

LU 1.2.2 - Amending the Zoning Ordinance such that allowed intensities within commercial zoning districts are consistent with intensities recommended by the Comprehensive Plan.

4. Solutions and policy options

Staff researched the following localities and has included information about their building size thresholds for Special Use Permit/Conditional Use Permit review:

- Chapel Hill, NC: special use permit for developments over 20,000 SF or disturbed area over 40,000 SF
- Cambridge, MA: special use permit for developments over 50,000 SF, except special districts where the threshold is 20,000 SF
- Bennington, VT: conditional use permit for any development over 30,000 SF
- Homer, AK: conditional use permit for proposed retail developments over 15,000 SF
- Mt. Shasta, CA: special use permit for developments over 20,000 SF
- Taos, NM: special use permit required for stores over 30,000 SF
- Westford, MA: special use permit required for stores from 30,000 to 60,000 SF (stores over 60,000 SF prohibited)
- Coconino County, AZ: conditional use permit required for stores over 25,000 SF
- Santa Maria, CA: developments over 15,000 SF

5. Staff Recommendation

Staff recommends increasing the commercial square footage trigger for a SUP to 20,000 SF, but recommends leaving the peak hour trip trigger at 100 trips. While the size of the structure can have varying degrees of impact, peak hour trips represent a quantifiable impact on the community. Requiring a traffic impact study and a Special Use Permit allows the development to be evaluated based on the existing and proposed conditions and allows the impacts of the development to be mitigated through the legislative

review process. If the peak hour trip trigger is raised, then developments that have an impact on the community's transportation infrastructure will be allowed by-right and may not otherwise be required to mitigate those impacts.

F. **Conclusion**

Staff requests the Policy Committee provide guidance on which measures may be the most appropriate in providing the predictability, consistency and flexibility desired in the Commercial districts.

Attachments:

1. Commercial SUP List, 2002 – 2010
2. Zoning Ordinance, Section 24-11, Site Plan, Criteria for Review
3. Zoning Ordinance, Section 24-147, Special Use Permit Requirements for Certain Commercial Uses

James City County Commercial SUP List

Zoning	Zoning District	Case Name	Commercial SUP Reason (24-11):
LB	SUP-0017-2009	Freedom Market	Convenience store with fuel sales
B-1	SUP-0009-2009	Jamestown Road Walgreens	14,500 square foot building and traffic generation over 100 peak hour trips
B-1	SUP-0033-2007	Williamsburg Auto Group	Auto sales and service and building size of 23,000 square feet
B-1	SUP-0032-2007	Basketville/Fleet Brothers	Vehicle and trailer sales and 8,000 sq. ft. building expansion
B-1	SUP-0032-2006	Prime Outlets Expansion	5,000 square foot building expansion
B-1	SUP-0030-2006	Jamestown Rd Service Station LLC	Automobile and gasoline service station
B-1	SUP-0021-2006	Pleasant Hill Station	Automobile service and traffic generation over 100 peak hour trips
B-1	SUP-0020-2006	Whythe-Will Commercial Expansion	Change of use resulting in 28,888 square feet of commercial /retail building
B-1	SUP-0018-2006	Stuckey's Redevelopment	Automobile gasoline and service and traffic generation over 100 peak hour trips
B-1	SUP-0004-2006	Prime Retail Expansion	81,000 square foot building expansion
B-1	SUP-0025-2005	Prime Outlets SUP Amend.	5,700 square foot building expansion
B-1	SUP-0023-2005	TGI Fridays	Traffic generation over 100 peak hour trips
B-1	SUP-0022-2005	Shops at Norge Crossing, LLC	13,000 square foot building
B-1	SUP-0036-2004	Farm Fresh Gas Pumps	Automobile and gasoline service station
B-1	SUP-0025-2004	Bay Lands Federal Credit Union at Norge	Traffic generation over 100 peak hour trips
B-1	SUP-0024-2004	Basketville of Williamsburg	7,500 square foot building expansion of retail space
B-1	SUP-0030-2003	Chesapeake Bank at Lightfoot	Traffic generation over 100 peak hour trips
B-1	SUP-0004-2002	J.W. Crossing Shopping Center Expansion	17,000 square foot building expansion
M-1	SUP-0008-2009	CVS at Norge	13,225 square foot building and traffic generation over 100 peak hour trips
M-1	SUP-0016-2008	Walgreens at Norge	14,751 square foot building and traffic generation over 100 peak hour trips
M-1	SUP-0036-2006	Williamsburg Pottery Factory	Buildings with a combined total of 61,000 square feet and traffic generation over 100 peak hour trips

James City County Commercial SUP List

Zoning	Zoning District	Case Name	Commercial SUP Reason (24-11):
M-1	SUP-0002-2006	Busch Gardens- New France expansion (Griffon)	7,500 square foot building expansion of retail space
M-1	SUP-0037-2006	The Candle Factory	Buildings with a combined total of 98,900 square feet and traffic generation over 100 peak hour trips
M-1	SUP-0022-2003	Busch Gardens -DarKastle - Oktoberfest Expansion	40,000 square foot building
MU	SUP-0007-2005	New Town, Langley Federal Credit Union	16,000 square foot building and traffic generation over 100 peak hour trips

(b) All site plans shall be kept on file in the planning division and will be available for review by all interested persons during normal business hours for no less than five working days prior to receiving preliminary approval. This five-day period shall begin at the time the applicant has submitted sufficient evidence to the planning director that all adjacent property owners have been notified as required in this article. (Ord. No. 31A-132, 10-14-91)

Sec. 24-147. Criteria for review.

(a) Upon application and review, the development review committee (DRC) and the commission, or the commission's designee(s), shall consider site plans if any of the following conditions are present:

(1) The site plan proposes:

a. a single building or group of buildings which contain a total floor area that exceeds 30,000 square feet or a multifamily unit development of 50 or more units, which is not subject to a binding master plan that has been legislatively approved; or
b. a fast food restaurant; or
c. a shopping center; or

(2) There are unresolved problems between the applicant, adjacent property owners or any departmental reviewing agency.

(b) Site plans which meet any of the conditions listed above shall generally be reviewed by the DRC and the commission in accordance with section 24-148. However, the commission's designee may consider and review, pursuant to section 24-149, any site plan which the development manager determines, creates or significantly expands a use which contributes to the achievement of the economic development goals of the Comprehensive Plan.

(c) If site plans do not qualify for review by the commission or its designees under this section, they may be considered and reviewed administratively by the zoning administrator.
(Ord. No. 31A-132, 10-14-91; Ord. No. 31A-136, 1-6-92; Ord. No. 31A-157, 11-12-94; Ord. No. 31A-191, 4-13-99; Ord. No. 31A-246, 6-22-10)

Sec. 24-148. Procedure for commission review of site plans.

(a) The applicant shall submit to the planning director, or his designee, ten copies of the site plan and pay the appropriate application fee. Site plans shall first be reviewed by the DRC who shall forward a recommendation to the commission. In order for site plans to be considered by the DRC at one of its regularly scheduled monthly meetings, such site plans shall be received by the planning division at least five weeks in advance of the respective DRC meeting.

(b) Upon meeting all submittal requirements, the site plan shall be reviewed by the planning division and other agencies of the county, state and/or federal governments as deemed necessary by the planning director. The planning division shall prepare a composite report on the proposed site plan which shall include review requirements by other agencies. The DRC shall consider the composite report and the site plan and make a recommendation to the commission.

restrict an adequate supply of light and air to adjacent property, will increase congestion in the streets, will increase public danger from fire, will impair the character of the district or adjacent districts, will be incompatible with the Comprehensive Plan of James City County, will likely reduce or impair the value of buildings or property in surrounding areas, and whether such establishment or use will be in substantial accordance with the general purpose and objectives of this chapter. After a public hearing, if the planning commission determines the above considerations have been protected, the planning commission shall recommend to the board of supervisors that the special use permit be granted. The board of supervisors shall consider the recommendation of the planning commission and after a public hearing and a determination that the above considerations have been protected shall grant the special use permit. In those instances where the planning commission or the board of supervisors find that the proposed use may be likely to have an adverse affect, they shall determine whether such affect may be avoided by the imposition of special requirements or conditions, including, but not limited to, location, design, construction, equipment, maintenance and/or hours of operation, in addition to those expressly stipulated in this chapter and the commission may make their recommendation or the board of supervisors may grant the special use permit contingent upon the imposition of such special requirements or conditions. An application for a special use permit substantially the same as one previously denied shall not be reconsidered within a one-year period from the date the similar application was denied.
(Ord. No. 31A-88, § 20-10, 4-8-85; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-116, 11-6-89)

Sec. 24-10. Public hearing required.

Prior to issuance of a special use permit a public hearing shall be held by the planning commission and by the board of supervisors; provided, however, that a special use permit for a manufactured home, temporary classroom trailer, a family subdivision may be issued after a public hearing is held by the board of supervisors only. Whenever the planning commission is not required to hold a public hearing, it need not consider the permit nor make a recommendation to the board of supervisors for such permit.
(Ord. No. 31A-88, § 20-10.1, 4-8-85; Ord. No. 31A-108, 4-18-88; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-114, 5-1-89; Ord. No. 31A-201, 12-1-99)

Sec. 24-11. Special use permit requirements for certain commercial uses; exemptions.

(a) *General requirements.* A special use permit issued by the board of supervisors shall be required for:

(1) Any convenience store;

(2) Any commercial building or group of buildings which exceeds 10,000 square feet of floor area; or

(3) Any commercial building or group of buildings, not including office uses, which generates, or would be expected to generate, a total of 100 or more additional trips to and from the site during the peak hour of the operation, based on the application of the Institute of Transportation Engineers (ITE) traffic generation rates contained in the latest edition of its book entitled *Trip Generation*. The applicable trip generation rate shall be determined by the planning director. The planning director may permit other traffic generation rates to be used if an individual or firm qualified to conduct traffic engineering studies documents that the use would not reasonably be expected to generate the amount of peak hour traffic projected by application of ITE traffic generation rates, provided the documentation is acceptable to the planning director; or

(4) Automobile and gasoline service stations.

(b) *New buildings, additions or expansions.* A special use permit shall be required for a new building, addition or expansion when:

(1) In combination with the existing structure, it exceeds the thresholds set forth in paragraph (a);

(2) It adds 5,000 square feet or more of commercial floor area or, in combination with other new buildings, additions or expansions, generates 75 or more peak-hour trips than generated by the existing or approved use on May 21, 1990, or than approved in a special use permit, whichever is greater; and

(3) It is located on the same property as the existing structure or other parcel which is a logical component of such property. Factors to determine whether a parcel is a logical component include:

a. Common ownership or control of the parcels under consideration by the same person(s) or entity(ies), or similar or related entities;
b. Regardless of factor a. above, shared access to public roads, shared parking arrangements, shared traffic circulation or shared service areas; and
c. Proximity. For the purpose of this paragraph, "proximity" means adjacent parcels, parcels separated by property under common ownership or control by the same person(s) or entity(ies) or similar or related entities, or parcels separated by a public or private right-of-way.

(c) *Design and submittal requirements.* Any building or use and addition or expansion thereto requiring a special use permit under this section shall comply with the requirements of section 24-23.

(d) *Exemptions.* The following shall be exempt from the requirements of this section:

(1) Any use or building and expansion or addition thereto with preliminary site plan approval prior to May 21, 1990;

(2) Any use or building and expansion or addition thereto for which the start of construction began prior to May 21, 1990, in accordance with a site plan approved prior to that date;

(3) Any use or building and expansion or addition thereto shown on a proffered binding master plan that binds the general location of all of the features on the plan as required under this section;

(4) Any building located in a mixed use district, residential planned community district or planned unit development district; or

(5) Any building predominantly used as a warehouse, distribution center, office, or for other industrial or manufacturing purposes. For purposes of this exemption only, the term "predominantly" shall mean 85 percent of the total square feet of the building or more.

(Ord. No. 31A-121, 5-21-90; Ord. No. 31A-145, 7-6-92; Ord. No. 31A-155, 1-3-94; Ord. No. 31A-201, 12-1-99)

Sec. 24-12. Revocation of special use permits.

(a) The governing body may, by resolution, initiate a revocation of a special use permit. When initiated, the revocation process shall be handled as would a new application for a special use permit, following the procedures set forth in section 24-9 of this chapter.