



FAIRFAX COUNTY

PROPOSED ZONING ORDINANCE AMENDMENT

STAFF REPORT

Special Permit Fees and Other Minor Revisions

May 18, 2021

Hearing Dates

Planning Commission: June 16, 2021

Board of Supervisors: July 13, 2021

Staff Contact

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Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).



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Table of Contents

- Background..... 3
- Proposed Changes 3
 - ❖ Application Fees 3
 - ❖ Use Table Permissions..... 4
 - ❖ Deck and Patio Extensions 4
 - ❖ Front Yard Driveway Surfacing 5
 - ❖ PDC District Standard 5
 - ❖ Summary of Special Permits 5
- Summary..... 5
- Appendix..... 5
 - Appendix 1: Proposed Text 6

Background

On March 23, 2021, the Board of Supervisors adopted a new and modernized Zoning Ordinance (zMOD) that will take effect on July 1, 2021. As part of this new Ordinance, the Board adopted standards regulating the height of flagpoles. On lots developed with single-family dwellings or manufactured homes, flagpoles are limited to 25 feet in height; on lots with other uses, flagpoles are limited to 60 feet in height. The Board also included provisions to allow an increase in flagpole height with approval of a special permit from the Board of Zoning Appeals. However, because a fee for this special permit had not been specifically advertised, the Board directed staff to process a separate amendment to establish a fee that is commensurate with other similar fees in the Zoning Ordinance. The Board also directed that the amendment should proceed expeditiously, given the July 1, 2021, effective date for the new Zoning Ordinance.

The proposed changes outlined below include a fee for the increase in height for a flagpole, as well as fees for three other special permit application types that were added in the new Ordinance without an advertised fee, and several other corrections that have been identified.

Proposed Changes

The proposed changes are discussed below and are shown in Appendix 1.

- ❖ **Application Fees.** New fees are proposed to be added to subsection 8102.1, Table 8102.1, for the four special permit (SP) application types listed below. These special permits were added with zMOD and absent a specific fee, the general fee of \$16,375 applies. The review time based on the complexity of these application types is unlikely to support the need for the \$16,375 fee, and other applications for special permits that apply to residential lots are typically in the range of \$435 to \$910.
 - *Increase in Flagpole Height* (subsection 4102.7.A(16)) – This SP allows an increase in flagpole height above 25 feet on a lot developed with a single-family dwelling or manufactured home and above 60 feet for a lot developed with another use. A fee of \$435 is recommended for this application based on the limited staff review anticipated.
 - *Increase in the Height of a Freestanding Accessory Structure* (subsection 4102.7.A(6)(c)) – This SP allows the height of an enclosed freestanding accessory structure on a lot of 36,000 square feet or less and developed with a single-family detached dwelling to exceed 20 feet. An application fee of \$910 is recommended. This SP and the following one involve the review of additional bulk and coverage on a lot and are similar to the SP application for a reduction of setbacks and increase in rear yard coverage, which also have a fee of \$910.
 - *Increase in the Cumulative Square Footage of Freestanding Accessory Structures* (subsection 4102.7.A(6)(d)) – This SP allows the cumulative square footage of enclosed freestanding accessory structures to exceed 50 percent of the gross floor area of the principal dwelling on a lot of 36,000 square feet or less and developed with a single-

family detached dwelling. As discussed above, an application fee of \$910 is recommended.

- *Accessory Structures on Through Lots* (subsection 5100.2.D(7)(b)) – This SP allows freestanding accessory structures in the front yard that functionally serves as the rear yard of a through lot. A fee of \$910 is also recommended for this application. Under the previous Ordinance, a variance would be required to approve accessory structures in a front yard which has an application fee of \$910.

A range of \$435 to \$910 will be advertised for Board consideration for each of the fees. No changes to the standards associated with these special permit applications are proposed. Additionally, a minor edit is proposed to the name of the SP application fee for an increase in fence or wall height in the Fee Schedule to coincide with the name used elsewhere in the Ordinance.

Several additional revisions have been made in the Fee Schedule to correct inadvertent omissions. The special permit for a Reduction of Required Setbacks for a Single-Family Lot and the special exception for a Home Day Care Facility have been included. In the portion of the table for amendments to pending applications and extensions of time, the reference to administrative permit (AP) applications has been deleted from the heading, and in the fees for amendments to previously approved and currently valid applications, the table has been revised to correct the application types.

- ❖ **Use Table Permissions.** The permissions for three uses were inadvertently omitted in subsection 4101.3, Table 4101.1, due to a formatting error. The proposed amendment restores the permissions in the previous Zoning Ordinance to allow a Farmers Market by administrative permit (AP) in the R-A District, Single-Family Attached Dwellings in an Affordable Dwelling Unit Development by right (P) in the R-2, R-3, and R-4 Districts, and Multifamily Dwellings in an Affordable Dwelling Unit Development by right in the R-5 and R-8 Districts.
- ❖ **Deck and Patio Extensions.** As part of zMOD, a provision was added in subsection 5100.2.D(5)(c)4 to allow decks or patios that are eight inches or less in height, whether they are attached or detached, to extend into any setback. This change was intended to exempt these at grade features from the limits on extensions that otherwise apply to decks and patios. However, it was intended that this exemption apply only in the side and rear yards. At grade patios and decks that are attached to the dwelling should continue to be subject to the front yard extension provisions. Detached decks and patios have, by long-standing interpretation, been considered to be freestanding accessory structures and would only be permitted in a front yard on a lot larger than 36,000 square feet per the freestanding

accessory structure regulations in subsection 4102.7.A. The proposed change restores the previous interpretation for the front yard by clarifying that the exemption for at grade decks or patios applies in the side and rear yards only.

- ❖ **Front Yard Driveway Surfacing.** In the previous Zoning Ordinance, parking was required to be on a surfaced area, except on a temporary basis, in the front yard on a lot of 36,000 square feet or less and developed with a single-family detached dwelling in the R-1 through R-4 Districts. With zMOD, in subsection 6100.2.B(2), the provision was inadvertently changed to apply to the front setback instead of the entire front yard. The proposed revision replaces the word “setback” with the word “yard” to restore the previous provision.
- ❖ **PDC District Standard.** A minor edit is proposed to delete an extraneous word from subsection 2105.4.C(1)(a)1. This edit has no impact on the meaning of the provision.
- ❖ **Summary of Special Permits.** Article 8 includes Table 8100.2, which lists the various types of special permit applications that are not included in the use tables together with a cross-reference to the use-specific standards for that special permit. The cross-reference for one of the special permits, Certain Additions to an Existing Single-Family Detached Dwelling, has been corrected.

Summary

The proposed amendment establishes application fees for four special permits that were added with zMOD to establish fees that are commensurate with the fees of other similar special permit applications. The amendment also corrects several permissions, application types in the Fee Schedule, and other standards. It is recommended that the amendment become effective at 12:01 a.m. on the day following adoption.

Appendix

Appendix 1 – Proposed Text

1 In the revisions shown below, text to be deleted is identified with strike-through and highlighting and
2 text to be added is shown in red and underlined.

3 **INSTRUCTION:** Revise subsection 2105.4.C(1)(a)1 by deleting the word “for” in the second sentence as
4 shown below.

6 Article 2 – Zoning Districts

7 2105. Planned Districts

8 4. PDC Planned Development Commercial District

9 C. Additional Standards

10 Secondary Uses

11 (a) Secondary uses are only permitted in a PDC District containing one or more principal
12 uses. Unless the Board modifies the gross floor area in conjunction with a conceptual
13 development plan approval to implement the comprehensive plan, the gross floor area
14 is limited as follows:

- 15 1. The gross floor area of dwellings may not exceed 50 percent of the gross floor area
16 of all principal uses in the development, except for floor area for affordable and
17 market rate dwelling units that comprise the increased density in accordance with
18 Section 5101. The floor area for dwellings is determined in accordance with the
19 gross floor area definition, except for the following features are not included:
 - 20 a. Balconies, porches, decks, breezeways, stoops, and stairs that may be covered
21 but have at least one open side; and
 - 22 b. Breezeways that may be covered but have two open ends.
 - 23 c. For the purpose of this subsection, an open side or open end has no more than
24 50 percent of the total area between the side(s), roof, and floor enclosed with
25 railings, walls, or architectural features.

INSTRUCTION: Revise Table 4101.1: to add a “P” to allow Dwelling, Multifamily – ADU Development as a permitted use in the R-5 and R-8 Districts and to allow Dwelling, Single Family Attached – ADU Development as a permitted use in the R-2, R-3, and R-4 Districts; and to add an “AP” to allow an administrative permit for Farmers Market in the R-A District, as shown below.

Article 4 – Use Regulations

4101. Use Tables

3. Use Table for Residential, Commercial, and Industrial Districts

TABLE 4101.1: Use Table for Residential, Commercial, and Industrial Districts

P = permitted; SE = special exception; SP = special permit; *blank cell* = not allowed
 A = allowed as accessory use only; A+ = permitted as an associated service use; AP = allowed with approval of administrative permit

| Use | Residential Districts | | | | | | | | | | | | | | | Commercial Districts | | | | | | | | Industrial Districts | | | | | | Use-Specific Standards NOTE: General Standards also apply | | | | | | |
|--|-----------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|---------------|----------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|----------------------|---------------|---------------|---------------|---------------|---------------|--|---------------|---------------|---------------|----------------------|----------------------|----------------------|
| | R-A | R-C | R-E | R-1 | R-2 | R-3 | R-4 | R-5 | R-8 | R-12 | R-16 | R-20 | R-30 | R-MHP | C-1 | C-2 | C-3 | C-4 | C-5 | C-6 | C-7 | C-8 | I-1 | I-2 | I-3 | I-4 | I-5 | I-6 | | | | | | | | |
| RESIDENTIAL USES | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Household Living: uses characterized by residential occupancy of a dwelling unit that functions as a single household | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Dwelling, Multifamily | | | | | | | | | | | | | | | P | P | P | P | | | | | | | | | | | | | | | | | | |
| Dwelling, Multifamily – ADU Development | | | | | | | | | P | P | P | P | | | | | | | | | | | | | | | | | | | | | | | | |
| Dwelling, Single-Family Attached | | | | | | | | P | P | P | P | P | | | | | | | | | | | | | | | | | | | | | | | | 4102.3.B |
| Dwelling, Single-Family Attached - ADU Development | | | | | P | P | P | P | P | P | P | P | | | | | | | | | | | | | | | | | | | | | | | | |
| Dwelling, Single-Family Detached | P | P | P | P | P | P | P | P | P | | | | | P | | | | | | | | | | | | | | | | | | | | | | 4102.3.C |
| TEMPORARY USES | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Community Garden | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | A AP SP | 4102.1.I 4102.8.B | | |
| Construction Site Office and Storage | | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | 4102.1.I 4102.8.C |
| Farmers Market | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | 4102.1.I 4102.8.D | |
| Food Truck | | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP SE SP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | AP | 4102.1.I 4102.8.E | |

1 **INSTRUCTION:** Revise subsection 5100.2.D(5)(c)4. by adding “side or rear” before setback in the first
2 sentence as shown below.

3 4 **Article 5 – Development Standards**

5 **5100. Lot, Bulk, and Open Space Regulations**

6 **2. Lot and Bulk Regulations**

7 **Setback Regulations**

8 **(5) Permitted Extensions into Minimum Required Setbacks**

9 **(c) Extensions for Decks or Patios**

10 Table 5100.1 below summarizes the extensions allowed for decks or patios by structure
11 type. For the purposes of this table, the following applies:

- 12 **1.** Height is measured from the lowest point of finished ground level adjacent to the
13 structure to the highest part of the deck floor.
- 14 **2.** “Not closer than” is in reference to location from the lot line.
- 15 **3.** The extension that is most restrictive applies.
- 16 **4.** An attached or detached deck or patio is permitted to encroach into any side or
17 rear setback if it is less than or equal to eight inches above finished ground level. A
18 deck or patio greater than 8 inches above finished ground level is subject to the
19 permitted extensions in Table 5100.1. The standards in subsections 7 and 8 below
20 do not apply to detached decks or patios; any screening or design features on
21 detached decks or patios are subject to the applicable regulations for fences or
22 freestanding accessory structures.

1 **INSTRUCTION:** Revise subsection 6100.2.B(2) by deleting “setback” and replacing it with “yard” as
2 shown below.
3

4 **Article 6 – Parking and Loading**

5 **6100. Off-Street Parking**

6 **2. Off-Street Parking Standards, Layout, and Design**

7 **B. Parking in Residential Districts**

- 8 (2) In the R-1, R-2, R-3, and R-4 Districts, for single-family detached dwellings on lots containing
9 36,000 square feet or less, all parking for vehicles or trailers in a front setback yard must be
10 on a surfaced area, except for temporary parking on an unsurfaced area in a front setback
11 yard for a period not to exceed 48 hours for loading, unloading, cleaning, or repair of
12 vehicles or trailers.
13

INSTRUCTION:

1. In subsection 8100.4.A, Table 8100.2, Summary of Special Permits, replace the subsection cross-reference for Certain Additions to an Existing Single-Family Detached Dwelling with a reference to subsection 5100.2.D(11)(f).
2. Revise the portion of the fee schedule, Table 8102.1, relating to special permits by adding fees for special permits for Accessory Structures on Through Lots, Increase in the Cumulative Square Footage of Accessory Structures, Increase in Flagpole Height, and Increase in the Height of Freestanding Accessory Structures; by reordering the words to read, "Fence or Wall"; and by listing the fee for Reduction of Required Setbacks for a Single-Family Lot, as shown below.
3. Revise the portion of the fee schedule relating to special exceptions by listing the fee for Home Day Care Facility; and by deleting an incorrect and unnecessary reference and correcting a typographical error, as shown below.
4. Revise the portion of the fee schedule relating to pending amendments and extensions of time by deleting the reference to "AP," specifying the types of applications that the fees for amending a previously approved application apply to, and by correcting a typographical error, as shown below.

Article 8 – Administration, Procedures, and Enforcement

8102. Fee Schedule

1. Fee Schedule

TABLE 8102.1: FEE SCHEDULE

This table includes standard fees related to approvals under the Zoning Ordinance. Additional fees may apply related to review or approval by other County departments or governmental or quasi-governmental agencies, or in accordance with Appendix Q of the County Code.

| APPLICATION TYPE | | FEE [1] |
|--|---|----------|
| SPECIAL PERMITS [2] | | |
| Standard fees for special permit approvals are listed below. | | |
| General Fee Unless Otherwise Listed | | \$16,375 |
| Principal Uses | | |
| Community Swim, Tennis and Recreation Club | | \$4,085 |
| Group Household or Religious Group Living | | \$1,100 |
| Marina, Private Noncommercial | | \$4,085 |
| Religious Assembly | | \$1,100 |
| Religious Assembly with Private School, Specialized Instruction Center, or Child Care Center | Private School, Specialized Instruction Center, or Child Care Center with fewer than 100 children | \$1,100 |
| | Private School, Specialized Instruction Center, or Child Care | \$11,025 |

| | | |
|---|---|--|
| | Center with 100 children or more | |
| Stable, Riding or Boarding | | \$8,180 |
| Accessory and Temporary Uses | | |
| Accessory Living Unit | Special Permit | \$435 |
| | Renewal Fee | \$70 |
| Community Garden | | \$435 |
| Home Day Care Facility | | \$435 |
| Home-Based Business | | \$435 |
| Other Special Permits | | |
| <u>Accessory Structures on Through Lots</u> | | <u>\$910</u> [Advertised range: \$435 - \$910] |
| <u>Increase in the Cumulative Square Footage of Freestanding Accessory Structures</u> | | <u>\$910</u> [Advertised range: \$435 - \$910] |
| Increase in <u>Fence or Wall</u> or <u>Fence</u> Height | Dwelling, Single-Family | \$435 |
| | All Other Uses | \$2,500 |
| <u>Increase in Flagpole Height</u> | | <u>\$435</u> [Advertised range: \$435 - \$910] |
| <u>Increase in the Height of a Freestanding Accessory Structure</u> | | <u>\$910</u> [Advertised range: \$435 - \$910] |
| Increase in Percentage of Rear Setback Coverage | | \$910 |
| Installation or Modification of a Noise Barrier on a Single Residential Lot | | \$910 |
| Modification of Grade for Single-Family Detached Dwelling | | \$910 |
| Modification of Limits to Keeping of Animals | | \$435 |
| Modification of Minimum Setback Requirements | Error in Building Location | \$910 |
| | Certain Existing Structures and Uses | \$910 |
| | Certain Additions to Existing Single-Family Detached Dwelling | \$910 |
| | <u>Reduction of Required Setbacks for a Single-Family Lot</u> | <u>\$910</u> |
| | All Other Uses | \$8,180 |
| SPECIAL EXCEPTIONS [2] | | |
| Accessory Uses and Other Special Exceptions | | |
| <u>Home Day Care Facility</u> | | <u>\$435</u> |
| Modification of Shape Factor | | \$8,180 |
| Modification of Grade for Single-Family Detached Dwellings | | \$910 |
| Modification of Minimum Setback Requirements <u>per Sect. 5100.2.D(1)(g)</u> | Certain Existing Structures and Uses | \$910 |
| | Reconstruction of Certain Single-Family Detached Dwellings that are Destroyed by Casualty | \$0 |
| AMENDMENTS TO PENDING APPLICATIONS AND EXTENSIONS OF TIME [4][5] | | |
| Applications for Variances or AP, SP, or SE Approvals | | |
| Extension of Time for a Special Permit or Special Exception Per Subsection 8100.3.D(3) or 8100.4.D(3) | | 1/8 of Application Fee |
| Amendment to a Pending Application for a Variance, Special Permit, or Special Exception | | 1/10 of Application Fee |

| | | |
|---|---|--|
| Amendment to a Previously Approved and Currently Valid Special Permit <u>Application</u> | Change of Permittee Only <u>(SP)</u> | \$500 or 1/2 of Application Fee, Whichever is Less |
| | With No New Construction <u>(Variance, SP, or SE)</u> | 1/2 of New Application Fee |
| | With New Construction <u>(Variance, SP, or SE)</u> | New Application Fee |

1