



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Community Gardens and Farmers Markets Zoning Ordinance Amendment

On March 13, 2018, this topic was presented to the Development Process Committee for discussion. The committee supported the proposal and directed staff to move forward with a Zoning Ordinance Amendment to permit community gardens as a principal or accessory use with appropriate use limitations and to modify the existing farmers market standards. Since that date, staff has engaged in extensive outreach, a schedule of which is attached to this document. This document presents a discussion of the community garden and farmers market uses and related standards, as well as the associated changes necessary in the Zoning Ordinance.

Community Gardens

The term Community Garden is not specifically defined in the Zoning Ordinance. Gardening and composting is currently permitted as an accessory use in any zoning district provided it meets the definition of an accessory use (serves a principal use and is customarily found in association with a principal use). This has typically been applied to single family residential uses. Community gardens are specifically listed as an accessory use in the PRC District as a “garden plot(s) which are not connected with, incidental to, or on the same lot as a principal use, when the garden plot is not in association with the principal use.” By way of interpretation, community gardens could be considered accessory to uses such as places of worship, schools and parks. Community gardens have also been considered accessory uses within existing residential subdivisions when provided as a community amenity, similar to swimming pools/tennis courts or other provided recreational uses or open space.

Staff proposes to create a new community garden use and identify use standards that would mitigate any potential impacts on surrounding properties; the proposed text for which is attached to this document. The definition of a community garden specifically precludes the use from being considered agriculture, as it is not intended for community gardens to be exempt from building code or other state requirements. The definition also permits community gardens to be located both on the ground and on building rooftops, lending flexibility to the growing methods and in order to promote green building. Community gardens are not to be permitted on lots containing single family dwellings; however, the location of personal gardening for single family residential properties is expanded in this amendment to provide for further flexibility for the cultivation of herbs, fruits, flowers, vegetables, or ornamental plants that do not meet the definition of landscaping.

The proposed amendment revises the definition of open space to permit community gardens in common open space by right. Currently, only the PRC district specifically permits community gardens in common open space. Therefore, by expanding the definition of open space to include community gardens, homeowners or condominium associations will be able to establish community gardens subject to the proposed use standards, but without additional regulations, provided that proffers or other development conditions do not specifically preclude the use. Similarly, the proposed amendment permits

commercial and industrial developments to establish community gardens by right as accessory uses in open space, subject to the proposed use standards.

When a community garden is proposed as a principal use on land not designated as open space, then it could be permitted administratively with a Temporary Special Permit (TSP) provided that the garden area will occupy not more than two acres. An analysis of the Fairfax County sponsored community gardens shows that the majority of the existing gardens occupy less than two acres. However, a proposed community garden that will occupy between two and less than five acres, could be permitted by special permit with approval by the Board of Zoning Appeals. This process ensures that a larger garden, which could have larger visual, transportation and noise impacts would have the appropriate community review. Standards pertaining to transportation, bulk and location regulations, noise, hours of operation, signage and maintenance are addressed by the proposed TSP standards. In consultation with the Northern Virginia Soil and Water Conservation District, staff also recommends that a conservation plan be developed for each community garden to ensure proper environmental controls. Staff believes that a two-year permit would be appropriate to establish and maintain the garden while providing a sufficient timeframe for periodic review. There is no fee for obtaining that type of conservation plan. Temporary special permits are currently subject to a yearly fee of \$205, therefore staff believes that a two year permit with a fee of \$300 is reasonable. Staff will advertise a range of fees, including an option for a one-time \$300 fee with an annual renewal fee of \$50.

Farmers Markets

The Zoning Ordinance currently regulates farmers markets, as a temporary special permit use administratively approved by the Zoning Administrator with significant restrictions. Farmers markets are currently permitted to sell only seasonal or perishable produce, including flowers and plants during the months of April through November. Farmers markets are also limited to locating on a lot having frontage on a principal or minor arterial street. These markets have evolved over time to sell many different types of food items beyond just produce, as well as fiber and value added foods (such as cheese, jams, salsa and relishes). Mobile markets that bring fresh, local food products to offices, high-density residential complexes and commercial areas have also become more prevalent and do not meet the standards of the current temporary special permit.

Staff proposes to modify Sect. 8-810 of the Zoning Ordinance regarding temporary farmers markets to permit them for a two-year period with year-round operation. Staff proposes to eliminate regulations that require location on an arterial road. An analysis of County-sponsored farmers markets has found that half of the existing markets do not meet the locational requirements of the current standards, with no associated land use impacts that staff is aware of, therefore justifying removal of the requirement. The proposed amendment will also add a definition of "farmers market" that limits the items for sale to farm products or value-added farm products and eliminates the word temporary. A mobile market would be considered a farmers market and would be required to obtain a temporary special permit for every location. As with community gardens, a farmers market TSP would be valid for a period of two years, at a cost of \$300. Staff will advertise a range of fees, including an option for a one-time \$300 fee with an annual renewal fee of \$50.

Open Air Produce Stands

Staff has performed a review of the special permits issued over the last twenty years and has determined that only one special permit has been issued, but is no longer valid, for an open air produce stand. As per Sect. 8-909, these uses are only permitted in a Community Business Center (CBC), as designated in the Comprehensive Plan. The sale of produce and seasonal items have been accommodated in CBCs and other areas as retail sales approved by way of a site plan or as seasonal sales approved with a temporary special permit for a period of 21 days. Therefore, the use is obsolete and all references to the use are proposed to be removed from the Zoning Ordinance.

Gardens

Gardens are an accessory use that are permitted on single family residential lots. On lots less than 36,000 square feet, gardens, not to be confused with landscaping, are allowed only in the side and rear yards. However, some residential lots have sufficient sun and growing space in the front yard only, yet gardening is not currently permitted on lots of less than 36,000 square feet. Staff proposes to permit gardening in the front yard no closer than 15 feet to the front lot line and limited to no more than 100 square feet in area, similar to the regulations for basketball standards. Retaining walls with a height of more than three feet require a building permit, therefore staff recommends to permit raised gardening beds in the front yard with a maximum height of three feet. Composting would not be permitted in the front yard of a lot less than 36,000 feet, nor in the minimum required front yard of a larger lot.

Next Steps

Staff requests guidance on the proposed regulations and anticipates to bring this amendment to the Board for authorization on March 19, 2019. Questions and comments can be directed to Jennifer Josiah, Senior Assistant to the Zoning Administrator at jennifer.josiah@fairfaxcounty.gov or 703-324-1314.

Attachments

1. Outreach Schedule
2. Draft Text
3. Existing Special Permit Standards

**Community Gardens and Sales of Garden/Farm Products Zoning
Ordinance Amendment Outreach**

<i>Date</i>	<i>Group</i>
December 15, 2017	HEAL Team
March 5, 2018	zMOD Leadership/Content Team
March 8, 2018	zMOD Citizens Group
March 15, 2018	Fairfax Food Council Steering Committee
May 4, 2018	Partnership for a Healthier Fairfax Community Health Improvement Program (CHIP) 2.0: Transforming Our Communities Together
May 21, 2018	Zoning Open House, Colvin Run Elementary School
May 23, 2018	Fairfax Food Council Spring Summit
May 23, 2018	Zoning Open House, Chantilly High School
May 24, 2018	Zeponic Farms Hydroponic Container Farm Tour
June 4, 2018	Zoning Open House, South County High School
June 5, 2018	Meeting with Allyson Gibson, Pocket Farms
June 6, 2018	Meeting with ZED regarding previously approved entitlements
June 14, 2018	Meeting with FCPA Community Gardens and Farmers Markets Coordinators (Pam Smith, Patricia Dietly & Chelsea Roseberry)
August 7, 2018	Lee Pyramid School Resource Fair
August 8, 2018	Oak Marr Farmers Market (National Farmers Market Week)
August 9, 2018	Justice Pyramid School Resource Fair
August 10, 2018	McLean Farmers Market (National Farmers Market Week)
August 14, 2018	Mount Vernon Pyramid School Resource Fair
August 18, 2018	South Lakes Pyramid Resource Fair
October 3, 2018	Know Your Local Government: Become Engaged – Providence District

ATTACHMENT 1

October 4, 2018	Community Gardens Briefing with Supervisor Gross
October 17, 2018	Know Your Local Government: Become Engaged – Providence District
December 11, 2018	Agricultural and Forestal District Advisory Board Presentation and Discussion
January 2, 2019	Meeting with SDID (Bruce McGranahan)
January 4, 2019	Meeting with Northern Virginia Soil and Water Conservation District (Laura Grape and Willie Woode)

DRAFT TEXT FOR COMMUNITY GARDENS/FARM MARKETS AND OTHER RELATED CHANGES

CHANGES REGARDING COMMUNITY GARDENS

NEW DEFINITION AND USE STANDARDS

COMMUNITY GARDEN

Land or rooftop area used for the cultivation of herbs, fruits, flowers, vegetables, or ornamental plants by more than one person, household, or a nonprofit organization for personal or group use, consumption, or donation and not for the bona fide production of crops, animals or fowl. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be cultivated collectively by members of the group and may include common areas and accessory structures maintained and used by group members. A community garden does not include a private garden on a lot that contains a single family detached dwelling. Except when located as an accessory use on a lot that is principally used for agriculture, community gardens are not deemed to be an agricultural use.

ADD NEW USE OF COMMUNITY GARDENS TO PART 8, TEMPORARY SPECIAL PERMITS, OF ARTICLE 8, SPECIAL PERMITS, ADD A NEW SECTION

8-813 Standards and Time Limits for Community Gardens

Community gardens may be permitted in all zoning districts subject to the following conditions:

1. A community garden of not more than two acres is permitted, except that a request for a community garden of more than two acres, but less than five acres may be approved by the BZA, in accordance with Sect. 009, above. An application for approval by the BZA must be filed a minimum of ninety (90) days prior to the date on which the permit is to take effect.
 - A. The cumulative area of all structures associated with the community garden is limited to 250 square feet, except as may be approved by the BZA in accordance with Par. 1, above.
 - B. A community garden may not be located closer than 15 feet to the front lot line and 25 feet from the side and rear lot lines. (*Advertised a range of 15 to 50 feet from all lot lines*)
 - C. All accessory structures must comply with the location regulations, as specified in Sect. 10-104.
 - D. Designated composting areas may not be located in the minimum required front yard, must be screened from adjoining residential property with either a fence or other adequate screening material, and must be maintained in a manner that protects adjacent

properties from nuisance odors, runoff and pests.

- E. Adequate parking and safe ingress and egress to the adjacent street must be provided.
- F. Only practices and equipment commonly used in residential gardening may be used.
- G. The hours of operation are limited from 7:00 A.M. to dusk and no lighting is permitted. Any activities shall be subject to compliance with the noise standards set forth in Chapter 108.1 of The Code. *(Advertised a range from unlimited to dawn to dusk)*
- H. Signage is permitted, in accordance with the provisions of Article 12.
- I. Community gardens and the area surrounding community gardens must be maintained in good condition, including restoration if the use ceases.
- J. A Conservation Plan approved by the Northern Virginia Soil and Water Conservation District is required for the garden and all activity in and around the garden must adhere to the recommendations of the Plan.
- K. Adherence to the land regulation provisions of Part 6 of Section 2 is required, as determined by the Director.
- L. Every two years, the community garden manager must file a special permit application with the Zoning Administrator on forms furnished by the County, accompanied by a fee of \$300 made payable to the County of Fairfax. Such special permit application must be accompanied by: *(Advertised to allow a period of permit validity of one to five years and a fee of \$205 to \$500 with a renewal fee of \$50)*
 - (1) Location map and property address
 - (2) Name and contact information of community garden manager
 - (3) Permission of property owner
 - (4) Description of the proposed operation and any other activities proposed to take place on the site, including number of persons proposed to utilize the garden at any one time
 - (5) Three copies of a plat drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), which may be prepared by the applicant, and must contain the following information:
 - (a) The dimensions of the lot, the boundary lines thereof, and the area of land contained therein;

- (b) The dimensions, height and distance to all lot lines of any existing and proposed structure, garden plots and parking area; and
 - (c) The signature and certification number, if applicable, of the person preparing the plat.
2. Community gardens, as an accessory use, for the exclusive use and enjoyment of members of a homeowner or condominium association, or non-residential development may be permitted without a temporary special permit subject to the provisions above.

CHANGES REGARDING FARMERS MARKETS

NEW DEFINITION

FARMERS MARKET

A regularly occurring market that sells farm products or value-added farm products directly to the general public.

MODIFY USE LIMITATIONS FOR FARMERS MARKETS

8-810 Standards and Time Limits for Temporary Farmers Markets

~~Temporary farmers markets shall be deemed temporary retail sales establishments and shall be allowed in all districts where retail sales establishments are permitted uses, notwithstanding the use limitations concerning outdoor storage and display of goods set forth in the district regulations. In all other districts, notwithstanding the provisions of Sect. 2-510 or the use limitations concerning retail sales set forth in the district regulations, temporary farmers markets may be permitted subject to the following conditions:—~~ A farmers market may be permitted subject to the following conditions:

- ~~1. Such temporary use may be permitted only during the months of April through November.~~
1. ~~2. No temporary special permit shall be issued unless a~~ Adequate provision is made for off-street parking and safe ingress and egress to the adjacent street must be provided.
- ~~3. Such use shall be located on a lot having frontage on or safe and convenient access to a principal or minor arterial street as set forth in Appendix 8.~~
2. ~~4. No storage of vehicles, canopies, display items or produce shall~~ will be permitted when the market is not in operation. Additionally, no permanent structures shall will be allowed, provided, however, that canopy tents, fabric canopies primarily attached to vehicles,

temporary portable shelving, portable tables, bins, hanging racks and similar display items ~~shall~~ will not be deemed structures.

3. ~~5.~~ Sales ~~shall~~ are limited to ~~seasonal or perishable produce, including flowers and plants~~ agricultural products and vendor-produced food and beverage items made from farm products.
4. ~~6.~~ The hours of operation are limited to daylight hours.
5. ~~7. One (1) temporary sign may be permitted in accordance with the provisions of Sect. 12-103~~ Signage is permitted, in accordance with the provisions of Article 12
6. Every two years, the farmers market manager must file a special permit application with the Zoning Administrator on forms furnished by the County, accompanied by a fee of \$300 made payable to the County of Fairfax. Such special permit application must be accompanied by:
(Advertised to allow a period of permit validity of one to five years and a fee of \$205 to \$500 with a renewal fee of \$50)
 - A. Location map and property address
 - B. Name and contact information of farmer's market manager
 - C. Permission of property owner
 - D. Description of the proposed operation and any other activities that will be conducted on site, including hours and days of operation and a description of any structures to be utilized.
 - E. Three copies of a plat drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), which may be prepared by the applicant, and must contain the following information:
 - (1) The dimensions of the lot, the boundary lines thereof, and the area of land contained therein;
 - (2) The dimensions, height and distance to all lot lines of any existing and proposed structure; and
 - (3) The signature and certification number, if applicable, of the person preparing the plat.

OTHER RELATED CHANGES

MODIFY DEFINITION AND GENERAL REQUIREMENTS FOR COMMON OPEN SPACE TO PERMIT COMMUNITY GARDENS

OPEN SPACE

That area within the boundaries of a lot that is intended to provide light and air, and is designed for either scenic or recreational purposes. Open space ~~shall~~ must, in general, be available for entry and use by the residents or occupants of the development, but may include a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features, screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness.

Open space may include, but need not be limited to lawns, decorative planting, walkways, active and passive recreation areas, children's playgrounds, fountains, swimming pools, undisturbed natural areas, agriculture, community gardens, wooded areas, water bodies and those areas where landscaping and screening are required by the provisions of Article 13; provided, however, that the area required for interior parking lot landscaping ~~shall~~ must not comprise more than twenty-five (25) percent of the total required open space. Open space ~~shall~~ does not include driveways, parking lots, or other vehicular surfaces, any area occupied by a building, nor areas so located or so small as to have no substantial value for the purposes stated in this definition. Within a residential subdivision, open space ~~shall be~~ is composed of only those areas not contained in individually owned lots. For the purpose of this Ordinance, open space ~~shall include~~ and be qualified as LANDSCAPED OPEN SPACE, COMMON OPEN SPACE, DEDICATED OPEN SPACE, and USABLE OPEN SPACE, all as defined herein.

2-702 General Requirements

All lands and improvements set forth in Par. 1, 2, and 3 of Sect. 701 above ~~shall~~ must be established and maintained in accordance with the following requirements:

5. No lands in common open space may be denuded, defaced or otherwise disturbed in any manner at any time without the approval of the Director. However, routine maintenance of common open space limited to the removal of dead, diseased, dying or hazardous trees or shrubbery; removal and replacement of dead landscaping and screening materials; installation of supplemental plantings or a community garden; removal of noxious vegetation such as poison ivy or greenbrier; lawn care and maintenance; or repair and replacement of picnic and play equipment; or similar routine maintenance will be permitted without approval of the Director; provided such maintenance is allowed under any applicable proffered conditions, applicable conditions of special permits or special exceptions or other applicable laws and ordinances and further provided that such common open space does not contain areas used to comply with Best Management Practices such as floodplains and conservation easements.

OTHER ARTICLE 8 CHANGES: REMOVE OPEN AIR PRODUCE STAND USE FROM SECT. 8-901, GROUP 9 SPECIAL PERMIT USES; SECT. 8-902, DISTRICTS IN WHICH GROUP 9 USES MAY BE LOCATED; AND SECT. 8-909, ADDITIONAL STANDARDS FOR OPEN AIR PRODUCE STANDS

MODIFY ACCESSORY USE LOCATION REGULATIONS TO PERMIT GARDENING IN ANY YARD

10-102 Permitted Accessory Uses

Accessory uses and structures may include, but are not limited to, the following uses and structures; any such use or structure must be in accordance with the definition of Accessory Use contained in Article 20.

10. Gardening primarily for the growth of herbs, fruits, vegetables, flowers and ornamental plantings but not including landscaping as defined in Article 20, and composting, subject to the following:
 - A. Gardening on not more than 100 square feet may be permitted in a front yard of a lot that contains a single family dwelling, but no closer than 15 feet to a front lot line. The sight distance requirements of Sect. 2-505 must be met. Raised garden beds with a height of not more than three feet may be permitted in a front yard. *(Advertised a range from two to four feet)*
 - B. Composting is not permitted in the front yard of any lot containing less than 36,000 square feet or the minimum required front yard of any lot that contains a single family dwelling.
 - C. Gardening and composting in the side and rear yard of any lot must comply with Par. 12 of Sect. 10-104, below.
 - D. Such accessory gardening and composting is not deemed to be a community garden as provided for in Sect. 8-813.

Existing Special Permit Standards – Article 8**PART 0 8-000 GENERAL PROVISIONS****8-006 General Standards**

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

PART 8 8-800 GROUP 8 TEMPORARY USES

8-801 Group 8 Special Permit Uses

1. Carnival, circus, festival, fair, horse show, dog show, steeplechase, music festival, turkey shoot, sale of Christmas trees or other seasonal commodities and other similar activities.
2. Construction material yards accessory to a construction project.
3. Contractors' offices and equipment sheds to include trailers accessory and adjacent to an active construction project.
4. Promotional activities of retail merchants.
5. Subdivision and apartment sales and rental offices.
6. Temporary dwellings or mobile homes.
7. Temporary farmers' markets.
8. Temporary mobile and land based telecommunication testing facility.
9. Temporary portable storage containers.

8-802 Districts in Which Group 8 Uses May be Located

Group 8 uses may be allowed by special permit in the following districts:

R-A District: Limited to uses 1, 8 and 9

R-P District: Limited to uses 1, 2, 3, 5, 6, 8 and 9

All other R Districts: Limited to uses 1, 2, 3, 5, 6, 7, 8 and 9

All P Districts: Limited to uses 1, 2, 3, 4, 5, 6, 7, 8 and 9 when located in a residential portion of a P district

All C Districts: Limited to uses 1, 2, 3, 4, 5, 6, 7 and 8

All I Districts except I-I: Limited to uses 1, 2, 3, 4, 5, 6, 7 and 8

8-803 Administration

1. Upon application as provided for in Sect. 010 above, the Zoning Administrator may issue a temporary special permit for any of the uses set forth in Sect. 801 above.
2. The application for a temporary special permit for all uses shall be filed at least three (3) weeks prior to the date on which the permit is to take effect, provided that the Zoning

Administrator may approve a lesser time period. The application forms shall provide such information as the Zoning Administrator shall find to be reasonably necessary for the proper administration of this Part.

3. A temporary special permit shall not exceed the time limit specified for a given use. Any request for a longer period of time or any renewal or extension of a permit may be approved by the BZA, subject to the same procedure as specified in Sect. 009 above for the original issuance of a special permit. An application for any such approval by the BZA shall be filed ninety (90) days prior to the date on which the permit is to take effect.
4. Upon the finding that the application does sufficiently comply with the standards set forth for the use in question as well as those general standards set forth in Sect. 006 above, the Zoning Administrator shall issue a temporary special permit, setting forth the duration of the permit and specifying such conditions as to hours, location, parking, traffic access, and safety requirements as will protect the health, safety and welfare of the public and which will protect adjoining properties from any adverse effects of the activity.
5. The Zoning Administrator may revoke a temporary special permit at any time on the failure of the owner or operator of the use covered by the permit to observe all requirements of the law with respect to the maintenance and conduct of the use and all conditions in connection with the permit that were designated by the Zoning Administrator in issuing the same. Notice of such revocation shall be made by letter from the Zoning Administrator to the owner or operator of the use for which the permit has been granted, hand-delivered or mailed, return receipt requested, setting forth the grounds upon which the permit was revoked, the date and time upon which the revocation is effective, and informing the owner or operator of the appeals procedure. Upon receipt of such notice, the owner or operator of such activity shall close operation of the activity forthwith. The foregoing provisions shall not be deemed to preclude the use of any other remedy prescribed by law or by this Ordinance with respect to violations of the provisions of this Ordinance.
6. An appeal by any person aggrieved by an action of the Zoning Administrator in granting or denying a temporary special permit may be made in accordance with the provisions of Part 3 of Article 18.
7. In the case of an appeal from the revocation of a temporary special permit, the aggrieved party may request a meeting with the Zoning Administrator to present his grounds for appeal. The Zoning Administrator shall meet with the aggrieved party within forty-eight (48) hours of the date upon which the appeal is received. Within twenty-four (24) hours of the date of the meeting, the Zoning Administrator shall inform the aggrieved party, in writing, of his decision to affirm, modify or rescind the revocation of the temporary permit.