



County of Fairfax, Virginia

MEMORANDUM

DATE: March 6, 2019

TO: Board of Supervisors

FROM: Andrew Hushour 
Deputy Zoning Administrator, Zoning Administration Division (ZAD)

SUBJECT: Revised Text for Zoning Ordinance Amendment Re: Article 12, Signs, and Related Provisions
Board of Supervisors Public Hearing: February 5, 2019
Decision Deferred to March 19, 2019 at 3:30 p.m.

Background:

On February 5, 2019, the Board of Supervisors held a public hearing on the referenced amendment and received the staff comment and public input. The Board deferred the decision to March 19, 2019, to allow staff time to conduct additional research regarding the proposed prohibition of off-premise signs and its legal justification, to present other language related to the definition of a sign, and to prepare appropriate grandfather provisions. The Board also requested that staff brief the Board on these topics at its Development Process Committee meeting on March 12, 2019.

Attached is revised text for your consideration, as well as the chart that summarizes the various potential options for each of the major issue areas that are discussed in Part III of the Staff Report dated November 19, 2018, to include the staff and Planning Commission recommendations. The revised text is based on the version of the amendment as recommended by the Planning Commission. Therefore, all changes identified in the revised text are based on discussion and input received at the Board public hearing and in the following weeks. As always, the Board still has maximum flexibility to make changes or propose alternate recommendations within each of the major issue areas, assuming such changes or recommendations are within the scope of the advertisements, all of which is discussed in detail in the Staff Report.

Substantive Revisions:

1. Definition of "Sign" - Section 12-102 (pages 2-3 of revised text)

After the February 5th public hearing, staff continued to receive feedback from certain stakeholders as to whether or not the Planning Commission's recommendation clearly articulated the scope of regulation for larger scale non-residential development such as shopping centers and office parks, which are often served by private, internal travel ways. Staff has further refined the definition of "Sign," to include any device or structure "*which is visible from any public or private street and is used to direct attention to identify a permitted land use. For non-residential developments, this definition is not intended to include private streets or other privately maintained access ways that do not directly connect to a public street.*"

The revised language further clarifies that a sign does not include those things that are *only* visible from private streets or other privately maintained access ways that do not directly connect to a public street, or otherwise designed to function like a public or private street.

2. MINOR SIGNS FOR NON-RESIDENTIAL USES – Section 12-105(5)(B) (pages 7-8 of revised text)

Based on feedback received following the Board hearing, staff is proposing an alternative to Par. 5B of Sect. 12-105 for the Board’s consideration. This paragraph sets forth the allowable number of minor signs for all non-residential land uses that do not have frontage on a major thoroughfare. As recommended by staff and the Planning Commission, these uses would be allowed a total of 24 square feet of minor signs per lot but the signs can only be building-mounted. However, staff has received feedback that the prohibition of freestanding minor signs could penalize those land uses that do not have buildings in visible proximity to a street. Therefore, the alternative keeps the same total of 24 square feet but it removes the building-mounted only restriction and allows up to 2 freestanding signs per lot, which is similar to the provision for non-residential land uses with frontage on a major thoroughfare, found in Par. 5A.

3. OFF-PREMISES SIGNS – Section 12-106(3) (page 9 of revised text)

This proposed change is in response to public testimony made at the February 5th public hearing, regarding the possibility of allowing off-site real estate signs, which is deemed to be commercial activity, in residential districts. The revised draft text provides three options:

- (i) Option 1: Prohibition on all off-premise commercial signs. Off-premises non-commercial signs would not be prohibited.
- (ii) Option 2: Allow one off-premise commercial sign to be displayed as a yard sign in any residential district and limited to 4 square feet in size.
- (iii) Option 3: Eliminate the prohibition of off-premises signs. This option would require several deletions in the draft: the deletion of the definition of “off-premise sign” in Section 12-102, the reference to “off-premise signs” in Par. 2 of Section 12-103, and Par. 3 of 12-103, which states that signs are accessory uses that must be located on the same lot as their principal use. The following chart identifies some of the benefits and challenges of each option:

Option	Benefits	Challenges
Total Prohibition	Uniformly applies prohibition of off-premise commercial speech.	Provides no flexibility and no room for interpretation.
One Off-Premise Sign as a Yard Sign	Allows limited commercial speech on residentially zoned property but does not completely open up residential areas to the activity.	Difficult to enforce; in order to verify complaint, staff would have to evaluate speech on all yard signs displayed and make judgement call as to what is commercial speech and what is not.

Option	Benefits	Challenges
No Prohibition	Allows commercial speech on residentially zoned property. No enforcement challenges, as the sign message is never considered. Would also allow off-premise signs for non-profits and other community groups that would be deemed commercial activity with regards to signs.	No limit to the activity; since staff cannot limit one commercial activity over another, any commercial speech would be permissible – to include off-premise and on-site commercial speech. On-site commercial speech could also include signs for home occupations and short-term lodging.

Option 2 presents enforcement challenges since it would require County staff, as part of a compliance investigation, to make and defend a finding as to whether a particular *message* is commercial or non-commercial. This underscores staff’s statements in the staff report and throughout the amendment process - that off-premise sign regulation is an all-or-nothing proposition. Option 3 also presents some challenges, as it would allow unfettered commercial speech in residential areas, thereby disrupting residential areas by introducing commercial activity. From a historical zoning perspective in Fairfax County, signs have always been considered to be accessory uses and, therefore, must be located on the same lot as their principal use. Therefore, commercial speech is typically found in non-residential zoning districts and only in residential zoning districts when authorized as part of a special permit or special exception approval for a non-residential use such as a place of worship. Furthermore, with no prohibition at all, staff cannot differentiate between different types of commercial speech, meaning that the current Ordinance prohibition of signs for home occupations, such as a home child care, would be unenforceable and may lead to unknown unintended consequences. For these reasons, staff continues to prefer the Planning Commission recommendation, Option 1, to prohibit off-premise signs.

In addition, the Board also requested that staff research how other jurisdictions regulate off-premise signs. The following chart provides a sample of jurisdictions that have adopted new sign regulations in the past few years:

Jurisdiction	Off-premise Sign Regulations
City of Alexandria	Allows temporary off-premise signs, with a maximum display time of 90 days. The size varies depending on zoning district but is 10 square feet total for residential lots, with a maximum sign size of 4 square feet. A permit is required.
Arlington County	All off-premise signs advertising any commercial activity, product, or services, are prohibited.

Jurisdiction	Off-premise Sign Regulations
Loudoun County	Allows up to 32 square feet of off-premise signs on any lot, with a maximum display time of 120 days; a permit is required.
City of Norfolk	All off-premise signs are prohibited, except for public service message boards.
Prince William County	Allows “off-site advertising” signs for non-residential land uses in three non-residential zoning districts. One such sign is allowed, up to 100 square feet; special permit approval is required.

In addition to these substantive changes, the revised text also includes two clarifying changes to Section 12-103, Applicability, found on pages 3 & 4. These include adding language to Par. 1 and a new Par. 6.

Staff has also proposed grandfathering provisions that will be included as part of the adopted text. As proposed, the following permanent signs would receive grandfather status:

- Permanent building-mounted signs and freestanding signs, approved with a building permit and any required, corresponding sign permit.
- Permanent freestanding signs located on property owned by Fairfax County, the Fairfax County Park Authority or Fairfax County Public Schools. It is noted that this only applies to freestanding signs and does not require any prior permit approval.
- Signs approved by the Board of Supervisors in conjunction with an approved Comprehensive Sign Plan or Special Exception.
- Signs approved by the Board of Zoning Appeals in conjunction with an approved Special Permit.

In addition, a separate provision is proposed for electronic display signs, which grandfathers any digital sign that was approved with a building permit and any required, corresponding sign permit. However, the performance standards proposed as part of the new Sign Ordinance, such as the message change limitations and the dimming requirement, would apply since these attributes can easily be changed. Finally, staff has also included a clarifying provision that states that all other sign types, including minor signs, have no grandfather status and must comply with the provisions of the adopted Sign Ordinance.

Staff will be available on March 12, 2019, to address any questions and this Memorandum will be distributed and posted as an Addendum to the Staff Report.

Enclosed Documents:

- Attachment 1 – Revised Text
- Attachment 2 – Comparison Chart of Options

Attachment 3 – Grandfather Provisions

cc: Board of Supervisors

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