

# Department of Planning and Zoning

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LOB #75:

## **ZONING INTERPRETATIONS, INQUIRIES AND APPEALS**

### **Purpose**

The Fairfax County Zoning Ordinance is intended to promote the public health, safety and general welfare and to implement the Comprehensive Plan for the orderly and controlled development of the County. It is the duty and responsibility of the Zoning Administrator to implement and enforce the Zoning Ordinance, including its interpretation and administration. The administration of the Zoning Ordinance includes responding both verbally and in writing to citizens, business owners, staff and other stakeholders about requests for zoning interpretations and information, as well as making Zoning Administrator determinations as specified in the Zoning Ordinance, such as minimum yard requirements (setbacks) for a given property and the issuance of food truck permits.

The ability to appeal either determinations made by the Zoning Administrator or Notices of Violation (NOVs) issued for Zoning Ordinance violations allows County residents, business owners, or other aggrieved stakeholders to exercise due process through a Board of Zoning Appeals public hearing process.

### **Description**

The Zoning Interpretations, Inquiries and Appeal LOB is performed by staff in the Ordinance Administration Branch. This LOB is responsible for several tasks and functions which are designed to help in the administration and implementation of the Zoning Ordinance. The primary functions include:

- **Zoning Compliance Letters**: provide property-specific zoning history and compliance status;
- **Use Determinations**: identify what a particular use is within the Zoning Ordinance and what may be required to establish that use in a particular location;
- **Accessory Structures/Use Determinations**: clarify what size and location of accessory uses/structures are permitted on a given property;
- **Vested Rights Determinations**: analyze whether the provisions of Virginia Code § 15.2-2307 are applicable to a noncompliant structure, thereby giving it legal right to remain even though such structure does not meet the current requirements;
- **Yard Determinations**: clarify the minimum yard requirements (setbacks) for a given property;
- **Setback Certifications**: determine whether the required setbacks were met during certain residential construction projects;
- **Zoning Verification for State Licensing**: family day homes, junk yards, vehicles sales and certain other uses require a license from the Commonwealth of Virginia before establishment of the use. Prior to issuing the license, the Commonwealth requires confirmation from the local jurisdiction that local zoning requirements have been satisfied;
- **Food Truck Permits**: issue food truck location and operator permits;
- **Virginia Code § 15.2-2232 Application Reviews** - provide guidance to Planning and Zoning Evaluation Division staff on whether the Zoning Ordinance requirements are met for proposed telecommunications facilities and public facilities; and
- **Lot Validation Requests**: provide guidance on whether a specific property is buildable from a zoning and subdivision perspective.

# Department of Planning and Zoning

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The processing of appeal applications is mandated by state code provisions, and allows County residents, business owners, or other aggrieved stakeholders to appeal Notice of Violations (NOVs) issued for Zoning Ordinance violations, as well as to appeal determinations made by the Zoning Administrator. The processing of an appeal includes the acceptance of the application, legal advertisement, historic research and coordination with the appellant and appropriate staff. A staff report outlining the Zoning Administrator's position is prepared and staff presents its position at the Board of Zoning Appeals (BZA) public hearing. The BZA makes the final decision on the appeal. For appeal applications that are based on NOVs, the primary emphasis is placed on trying to obtain compliance by seeking other remedies, such as site plan or special permit approval. The appeals process also includes the maintenance and update of the appeals database and files.

## Benefits

Benefits of the LOB include:

- Promotes the public health, safety and welfare;
- Provides citizens and business owners with certainty and guidance on how property can be developed, thereby allowing financial and business decisions to be made concerning property;
- Allows certain uses to be established, thereby promoting economic development within the County; and
- Allows County residents, business owners, or other aggrieved stakeholders to appeal NOVs issued for Zoning Ordinance violations, as well as to appeal determinations made by the Zoning Administrator; thereby, exercising the right to due process.

## Mandates

Pursuant to Sect. 18-103 of the Zoning Ordinance, the Zoning Administrator shall administer and interpret the Zoning Ordinance. All of the functions of this LOB are directly involved in the administration and interpretation of the Zoning Ordinance.

Zoning Appeals are mandated by Virginia Code §§ 15.2-2308 (Boards of Zoning Appeals to be Created; Membership, Organization, etc.) and 15.2-2309 (Powers and Duties of Boards of Zoning Appeals). The County's implementation of these requirements is governed by the Zoning Ordinance provisions of Part 3 of Article 18 of the Zoning Ordinance.

## Trends and Challenges

The following trends and challenges have been identified:

- Changes in state and federal regulations and court rulings have reduced the localities ability to regulate certain uses or activities. For example, changes to the Code of Virginia have resulted in more uses to be vested as nonconforming uses and have limited almost all local regulations for agricultural uses including farm wineries, farm breweries and farm distilleries. In addition, changes in federal telecommunication regulations have allowed more expansions of telecommunication facilities to be permitted without local jurisdiction review. Becoming familiar with and understanding the practical applications of the new state and federal regulations and court rulings is a challenge for the County.
- Economic development and the facilitation of new business is a County goal; however, a strict interpretation of the zoning regulations may at times make it difficult to promote economic development. The challenge is to promote economic development while maintaining consistency in interpretation and adherence to the zoning regulations.

# Department of Planning and Zoning

- There is increasing demand to update outdated land uses and definitions to reflect changing development trends. Examples include: micro-breweries; changes in the restaurant industry; and new types of housing that serve the aging and disabled.
- The number of setback certifications and zoning compliance letters has increased over the past several years. Given the expected short turnaround on these requests, staff is required to spend a disproportionate time on these requests and is unable to spend time on other functions.
- Increase in staff turnover due to retirements and cross agency promotional opportunities. As such, the challenge is to find qualified new staff and to provide the appropriate training.

## Resources

Category	FY 2014 Actual	FY 2015 Actual	FY 2016 Adopted
<b>LOB #75: Zoning Interpretations, Inquiries and Appeals</b>			
<b>FUNDING</b>			
<u>Expenditures:</u>			
Compensation	\$864,879	\$906,140	\$931,133
Operating Expenses	76,431	66,955	66,758
<b>Total Expenditures</b>	<b>\$941,310</b>	<b>\$973,095</b>	<b>\$997,891</b>
General Fund Revenue	\$80,714	\$104,655	\$86,234
<b>Net Cost/(Savings) to General Fund</b>	<b>\$860,596</b>	<b>\$868,440</b>	<b>\$911,657</b>
<b>POSITIONS</b>			
Authorized Positions/Full-Time Equivalents (FTEs)			
<u>Positions:</u>			
Regular	12 / 12	13 / 13	13 / 13
<b>Total Positions</b>	<b>12 / 12</b>	<b>13 / 13</b>	<b>13 / 13</b>

## Metrics

Metric Indicator	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
Number. of Compliance Letters completed	276	264	339	340	340
Percent of Compliance Letters completed within 30 days of receipt	96%	81%	73%	80%	95%
Number of Setback Certifications completed	679	611	709	730	700
Percent of Setback Certifications completed within 7 days of receipt	88%	81%	75%	94%	85%
Number of Appeals accepted	37	16	32	20	20
Number of Appeals completed	14	13	17	20	20

## Department of Planning and Zoning

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The metrics for the Zoning Interpretations, Inquiries and Appeals measure the number of compliance letters and setback certifications completed, the percentage of compliance letters that are completed within 30 calendar days from receipt, the percentage of setback certifications that are completed within 7 calendar days of receipt, and the number of appeals accepted and completed. Although the desired goal is to complete 100 percent of compliance letters within 30 days from the receipt of the request and to complete 100 percent of setback certifications within 7 days from the receipt of the request, these goals are unattainable for a variety of reasons, including staff workloads and the amount of time and research that is required to complete certain complicated compliance letters and setback certifications. Therefore, the goal of the compliance letter metric, which is the same as an existing performance measure, is to complete 95 percent of the compliance letters within 30 calendar days. The goal of the setback certification metric is to complete 85 percent of the setback certifications within 7 calendar days.

There is a direct correlation between the economy and the number of compliance letters and setback certifications. Setback certifications are required for those new single family detached dwellings (SFD) or additions to SFDs when such structure is within 2 feet of a minimum required setback. Banks and other lending institutions typically require compliance letters prior to real estate transaction. As the economy and real estate market improve, the number of compliance letters and setback certifications also increases. The improved economy reflects the 23 percent increase in the number of compliance letters in FY 2015 from the previous two fiscal years and the 16 percent increase in the number of setback certifications between FY 2014 and FY 2015. However, there is some economic uncertainty in the Washington metropolitan area due to the potential loss of Federal government jobs and Federal government contracts in the area. Given the current economic conditions, it is anticipated that the number of compliance letters and setback certifications should remain fairly constant through FY 2017.

Due to the increased volume of setback certifications, compliance letters, and the fact that the same staff do both the setback certifications and compliance letters, the percentage of compliance letters that have been completed within 30 days of receipt has declined from 96 percent in FY 2013 to 73 percent in FY 2015. The percentage of setback certifications completed within 7 days of receipts has declined from 88 percent in FY 2013 to 75 percent in FY 2015. The decline can also be attributed to the increase in staff turnover due to retirements and cross agency promotional opportunities. It is anticipated that as vacancies are filled and the staff becomes more experienced, compliance letters and setback certifications will be completed in a shorter time frame and the percentage of compliance letters completed within 30 days of receipt and the percentage of setback certifications completed within 7 days of receipt should increase.

Given that over 90 percent of Appeal Applications are associated with NOVs, the number issued by the Department of Code Compliance is the biggest factor in determining the number of appeal applications accepted in any given year. The number of appeals accepted in a given year can vary significantly. For example, there were 16 appeals submitted in FY 2014, and 37 appeals submitted in FY 2013. Based on the number of appeals that have been submitted thus far in FY 2016, it is anticipated that the number of appeals in FY 2016 and beyond will remain consistent. An appeal is considered completed when the Board of Zoning Appeals makes a determination on the appeal or when the appeal is withdrawn. The primary goal in all appeals that involve NOVs is to obtain compliance, and such compliance may be obtained by obtaining site plan, special permit, special exception, or some other sort of zoning approval. If the reason for the appeal is resolved, the appeal becomes moot and the appeal can be withdrawn. However, it can take a considerable amount of time to gain compliance, particularly if the appellant is uncooperative. Given the number of current active appeals and the amount of time it typically requires to process an appeal, it is anticipated that the number of completed appeals for the next two fiscal years should be consistent, but slightly higher than the FY 2015 number of completed appeals.