



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** September 2, 2021

**TO:** Board of Supervisors

**FROM:** Leslie B. Johnson *LBJ*  
Zoning Administrator

**SUBJECT:** Follow Up Review of Zoning Ordinance Amendment Re: Community Gardens, Farmers Markets and Accessory Front Yard Gardens

Zoning Ordinance Amendment (ZOA) 19-481, was adopted by the Board of Supervisors (the “Board”) on June 25, 2019, to address growing trends, locally and nationally, for a greater connection to our food and, in turn, small-scale, local food production. This amendment focused on three key areas, creating a new process for establishing community gardens, broadening the locations and standards for operating a farmer’s market, and allowing gardening as a permitted accessory use in the front yard of single-family dwellings, subject to certain standards. The amendment established use standards that attempted to effectively mitigate potential impacts on neighboring properties or uses. A copy of the [Staff Report](#) is linked here. Allowing gardening as an accessory use in the front yard received the most feedback and citizen input. As a result, the Board, as a follow-on motion, requested that staff report back to the Land Use Policy Committee (previously the Development Process Committee), approximately 18 months from the effective date of this amendment, which was June 26, 2019, on any complaints filed regarding gardens and/or related front yard structures. The Board stipulated that the requested report should include the specific basis of the complaint and the resolution of the complaint.

### **Accessory Front Yard Garden Standards**

Gardening was permitted prior to the amendment and still is permitted, in the side and rear yards of any residentially zoned single-family lot, without size or location restriction. ZOA 19-481 permitted gardens in front yards as an accessory use on all single-family residential lots. The regulation of front yard gardens by ZOA 19-481 attempt to mitigate some of the seasonal visual impacts of gardens by providing specific size and location standards, while also supporting community demand for fresh and accessible home-grown foods. As part of the Zoning Ordinance Modernization Project (zMOD), staff carried forward the adopted regulations regarding front yard gardens and added a definition of gardening:

#### ***“Gardening and Composting***

*An area of cultivated ground or a structure such as a planter box, pot, or raised bed, devoted in whole or in part to (1) the growing of herbs, fruits, or vegetables for consumption, or (2) composting.”*



All front yard gardens are subject to the following area and location regulations stated in subsection [4102.7.A](#) (General Standards for Freestanding Accessory Structures) and depicted in [Figure 4102.4](#).

1. *On a lot that is larger than 36,000 square feet, accessory structures, except for composting, may be located in the front yard but may not be located in the minimum front setback as specified in the applicable zoning district regulations, except as listed in subsection 3 below.*
3. *Only the following freestanding accessory structures or uses may be located in a front setback as specified in subsection 1 above, or a front yard as specified in subsection 2 above, unless otherwise allowed by another provision of this Ordinance:*
  - c) *Gardening not to exceed a maximum area of 100 square feet and located no closer than 15 feet to any front lot line or street line (see Figure 4102.4: Garden Setbacks). Composting is not permitted in any front yard.*

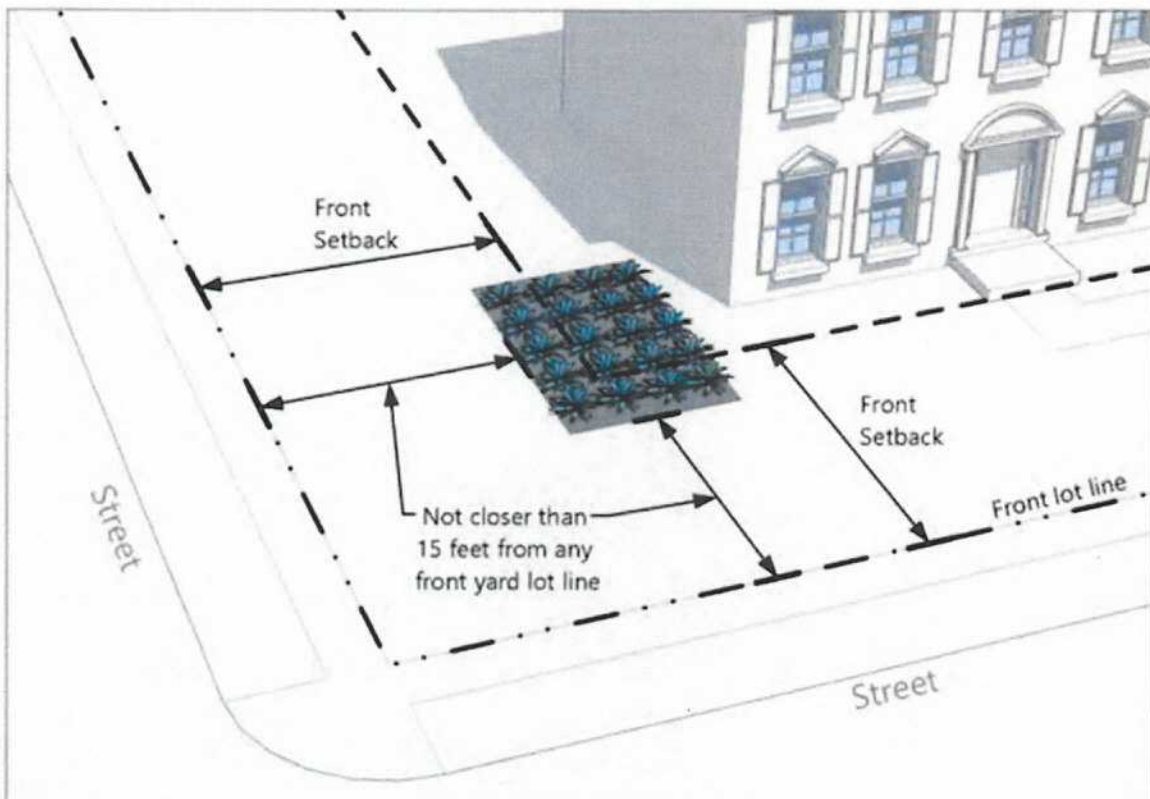


Figure 4102.4: Garden Setbacks

In summary, on lots 36,000 square feet or smaller, front yard gardens are limited to 100 square feet in size. On lots larger than 36,000 square feet, front yard gardens are limited to 100 square feet within the front yard setback but may exceed 100 square feet outside of the setback.



### **Complaints**

From June 26, 2019, (effective date of ZOA 19-481) to June 1, 2021, the Department of Code Compliance (DCC) received 17 complaints regarding front yard gardens and/or accessory structures in the front yard related to gardening. Out of the 17 complaints received, five were determined to be unfounded based on inspections which determined compliance with Zoning Ordinance provisions. Below is a summary of the issues associated with the remaining 12 complaints.

- Of the 12 complaints received, five were in whole or in part related to accessory structures in the front yard related to gardening, which exceeded four feet in height. On lots that contain less than 36,000 square feet, structures over four feet in height are generally prohibited in a front yard, with certain exceptions such as trellises and basketball standards. The height of these structures ranged from seven feet to twelve feet and included fences, planter boxes, and trellises.
- The remaining seven complaints related to gardens which were over 100 square feet in size and/or were located closer than fifteen feet to the front property line. These gardens ranged from just over 100 square feet to approximately 2,500 square feet. Only one of the gardens was located on a lot over 36,000 square feet.
- Seven complaints were resolved by the property owner without issuance of a notice of violation (NOV), by one or more of the following remedial steps:
  - Reducing the size of the garden to 100 square feet or less.
  - Moving the front yard garden and/or accessory structure so that they met the required 15-foot setback from a front lot line.
  - Reducing the size or height of accessory structures.
  - Removal of accessory structures located in the front yard.
- Four NOVs were issued. One NOV resulted in compliance through issuance of a court order. The other three were resolved following the remedial steps outlined in the NOV.
- One complaint was unresolved and is still under investigation at the time of this memorandum.
- A breakdown of the number of founded complaints received per Magisterial District is as follows:
  - Braddock District: Five Complaints
  - Dranesville District: Two Complaints
  - Springfield District: Two Complaints
  - Mason District: One Complaint
  - Mount Vernon District: One Complaint
  - Providence District: One Complaint

### **Community Gardens**

The amendment also established a new community garden use and added a community garden definition:

***“Community Garden***

*Any 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.*

*This use does not include the bona fide production of crops, animals, or fowl. A community garden may be divided into separate plots for cultivation by one or more individuals or 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. Community gardens are not deemed to be an agricultural use, except when accessory to a lot that is principally used for agriculture.”*

It is important to note that a private garden on a single-family detached lot is not a community garden and community gardens are not considered to be agriculture. The amendment revised the definition of [open space](#) to permit community gardens in common open space by-right when located on a lot with a principal use. Therefore, by expanding the definition of open space to include community gardens, homeowners’ or condominium associations can establish community gardens. Community gardens may be located at ground level and on building rooftops, lending flexibility to growing methods and to promote green building. Similarly, the amendment permitted community gardens in association with nonresidential uses, such as religious assembly, schools, community swim, tennis and recreation clubs as well as in conjunction with commercial establishments such as office and restaurants, as accessory uses subject to the use standards found in subsection [4102.8.B](#) of the Zoning Ordinance.

A community garden can be permitted as a principal use by an administrative permit in accordance with subsection [4102.8.B](#), provided that the garden area will occupy no more than two acres. Currently only one permit has been issued since the approval of the amendment. The DCC has not received any complaints regarding community gardens, since the effective date of ZOA 19-481. A dedicated [website](#) was developed to provide information and resources to the public regarding community gardens.

### **Commercial Gardening as a Small-Scale Production Establishment**

While not part of ZOA 19-481, staff has received inquiries regarding gardening as a small-scale production establishment, which is defined as follows:

*“An establishment where shared or individual tools, equipment, or machinery are used to make or **grow products** on a small scale, including the design, production, processing, printing, assembly, treatment, testing, repair, and packaging, as well as any incidental storage, retail or wholesale sales and distribution of such products. Typical small-scale production establishments include, but are not limited to, **vertical farming** or the making of electronics, food products, non-alcoholic beverages, prints, household appliances, leather products, jewelry and clothing/apparel, metal work, furniture, glass, ceramic or paper, together with accessory uses such as training or educational programs. Agriculture, craft beverage production establishment, restaurant, restaurant with drive-through, or carryout restaurant are not small-scale production establishments.”*

The commercial growing of products or vertical farming (such as hydroponics), on a small scale is considered a small-scale production establishment. Small-scale production establishments are permitted by-right in the C-3, C-4, C-5, C-6, C-7, C-8 Districts, in the I-3 District, and in the PDH, PRC, PDC, and PRM District when shown on an approved development plan, subject to the use standards located in subsection [4102.6.N](#) of the Zoning Ordinance which include, among other



things, maximum gross floor area (GFA) limitations as shown in the table below. If a site is subject to a zoning entitlement, an amendment may be required prior to the establishment of small-scale production. Examples of small-scale production include locating within a commercial or [industrial center](#) or in a separate structure such as a [shipping container](#).

Zoning District	Maximum Gross Floor Area (square feet)
C-3, C-4, C-5, C-6	6,000
C-7, C-8, I-3	10,000
PDH, PDC, PRC, PRM	10,000 or as modified by the Board in conjunction with the approval of a development plan

### **Summary**

Since adoption of ZOA 19-481, staff has received comments from the Fairfax Food Council suggesting that the 100 square foot front yard garden limitation be increased, to facilitate an increased level of personal gardens and that small scale production of produce be permitted on residential lots for resale at farmers markets or part of a CSA (community supported agricultural) use. The Zoning Ordinance does not regulate the distribution of excess produce from a personal garden. Produce could be donated or shared with neighbors/friends. However, if an individual wants to establish a business selling excess produce from their personal garden<sup>1</sup>, it would be treated as a home-based business (HBB) and would require special permit approval, pursuant to subsection [4102.7.H](#) of the Zoning Ordinance.

During the processing of the amendment, front yard gardens received significant input from the community and there was a wide range of opinions expressed on the appropriate size and location for this use. As noted in the complaint summary above, front yard garden regulations have generated few complaints, and, so far, appear to be an appropriate regulatory approach to this issue. Staff has developed a front yard garden [website](#) as an additional resource and to provide more clarity related to gardening as an accessory use to single-family dwellings. A list of Frequently Asked Questions (FAQs) will be added to the website.

Department of Planning and Development staff is available to discuss this topic in more detail at an upcoming Land Use Policy Committee meeting. Please feel free to contact, Austin Gastrell, Planner II (DPD) if you have any questions.

cc: Planning Commission  
Bryan J. Hill, County Executive  
Rachel Flynn, Deputy County Executive  
Elizabeth D. Teare, County Attorney  
Barbara Byron, Director, Department of Planning and Development  
Jack Weyant, Director, Department of Code Compliance  
Jill Cooper, Director, Department of Clerk Services  
William Mayland, Deputy Zoning Administrator, Department of Planning and Development  
Austin Gastrell, Planner II, Department of Planning and Development

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<sup>1</sup> A garden within a shipping container, would be prohibited on a lot developed with a residential dwelling, pursuant to subsection [4102.7.A\(12\)](#) of the Zoning Ordinance.