PROPOSED ZONING ORDINANCE AMENDMENT

Editorial and Minor Revisions to Articles 2, 7, 10, 16, 17, 18 and 19

PUBLIC HEARING DATES

Planning Commission May 16, 2019 at 7:30 p.m.

Board of Supervisors June 25, 2019 at 4:00 p.m.

PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314

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STAFF COMMENT

Background
The proposed amendment addresses several unrelated provisions of the Zoning Ordinance, including one item from the 2018 Priority 1 Zoning Ordinance Amendment Work Program, related to garage and yard sales as an accessory use, as well as several new items that were identified after the adoption of the 2018 Work Program. These new items include changing references related to the Department of Planning and Zoning name change throughout the Zoning Ordinance, clarifying that solar collection systems are a permitted accessory use, revising the provisions related to the ability of the Board of Zoning Appeals (BZA) to reconsider its decisions, and adding clarifying language related to searches, inspections, and permit revocations.

Current Provisions and Proposed Changes
The provisions impacted by this proposed amendment do not relate to one another in any way, but are packaged together simply because they are minor or editorial in nature. As such, a description of each element of the proposed amendment is set forth by topic area, as follows, and is presented in the order in which they first appear in the Zoning Ordinance:

Department of Planning and Zoning Name Change
Effective July 1, 2019, the Department of Planning and Zoning will be renamed to the Department of Planning and Development. Because the department name is referenced in several places throughout the Zoning Ordinance, changes are needed to Articles 2, 7, 16, 17 and 18.

Solar Collection Systems as an Accessory Use
Pursuant to the Board of Supervisors’ solar power initiative, this amendment will expressly set forth that a solar collection system is a permitted accessory use to any residential or non-residential structure. This change to Par. 2 of Sect. 10-102 will further the opportunity to become a SolSmart-designated community by promoting and encouraging energy efficiency and conservation efforts throughout the County. Currently, the Zoning Ordinance does not expressly set forth that solar panels are a permitted use, but they have been allowed as an accessory use by the longstanding determination of the Zoning Administrator.

Garage and Yard Sales as an Accessory Use
Included in the 2018 Priority 1 Zoning Ordinance Amendment Work Program is a clarification item to further describe the types of items that can be sold at a garage/yard sale. As set forth in Par. 9 of Sect. 10-102, the intent of a garage or yard sale is to offer used household and personal items for sale up to twice a year on a residentially used lot. Typically, sales involving customers coming to a residential property are not permitted, but garage/yard sales are allowed as a limited exception. The amendment will clarify that garage/yard sales are also permitted in the residential portion of a P-District and will further clarify that the types of products for sale are limited to typical household and personal items—not the sale of items that have been specifically purchased, produced, refurbished or fabricated for resale. This change will address a limited number of circumstances where yard sales have been used to resell refurbished appliances, yard
equipment, and crafts.

**Finality of Decisions of the BZA and Reconsideration of Actions**

Par. 6 of Sect. 18-109 establishes the procedure for reconsideration of an action by the Board of Supervisors, Planning Commission and BZA. The provisions currently allow the BZA to entertain a motion to reconsider “prior to the filing of the original decision in the office of the BZA.” The proposed changes to Par. 6 of Sect. 18-109 will specifically set forth that the BZA may not entertain a motion to reconsider an action, and amended Sect. 19-211 will specifically state that the decisions and findings of the BZA that resolve the merits of an appeal or application or dismiss such a filing with prejudice on a procedural basis are final decisions and are subject only to subsequent judicial review. These changes are in accordance with the Virginia Supreme Court’s decision in *West Lewinsville Heights Citizens Ass’n v. Bd. of Supervisors*, 618 S.E.2d 311, 315 (Va. 2005), as well as a recent Circuit Court decision in *Bd. of Supervisors v. Bd. of Zoning Appeals*, CL2018-15190. Staff further believes these changes are necessary to clarify any ambiguity regarding when a BZA decision becomes final, which will simplify the process for future appeals.

**Violations, Infractions, and Penalties: Searches, Inspections, and Permit Revocations**

The current provisions of the Zoning Ordinance state that the Zoning Administrator may revoke a Residential or Non-Residential Use Permit to terminate a violation. However, there are other types of use permits issued by the Zoning Administrator that also may be revoked, including a Home Occupation Permit, Food Truck Permit, and Short-Term Lodging Permit. The placement of this provision in Par. 3 of Sect. 18-901 has created confusion about the revocation process. Staff proposes this minor edit to clarify that a notice of violation may also include a warning that any applicable use permit will be revoked upon expiration of the appeal period associated with the notice of violation. This makes clear that revocations—like all notices of violation—will be subject to review of the BZA and potentially the Circuit Court in the event the landowner (or other responsible party) appeals.

Further clarifications are proposed to Par. 4 of Sect. 18-901 to expressly state that nothing in the Zoning Ordinance authorizes an unconstitutional inspection or search of a property. In accordance with the Virginia and United States Constitutions, all searches and inspections require a warrant unless the property owner, tenant or other authorized party has consented to the search or inspection; another exception to the warrant requirement applies; or the search or inspection is conducted in accordance with a court order.

Both of these changes codify the pre-existing policies of the Zoning Administrator and Department of Code Compliance and do not reflect an actual change in practice.

**Conclusion**

The proposed amendment updates and clarifies certain provisions and provides for a few minor revisions to the Zoning Ordinance. Staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption, with the exception of the changes related to the Department name, for which staff recommends an effective date of 12:01 a.m. on July 1, 2019.
PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of April 9, 2019, and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 2, General Regulations, by amending Part 8, Affordable Dwelling Unit Program, to revise Par. 1C4 of Sect. 2-814, Affordable Dwelling Unit Advisory Board, to read as follows:

1. The Affordable Dwelling Unit (ADU) Advisory Board shall consist of nine (9) members appointed by the Board of Supervisors. Members shall be qualified as follows:

   C. Four members shall consist of:

       4. A representative from either the Fairfax County Land Development Services or the Department of Planning and Zoning Development.

Amend Article 7, Overlay Districts, to amend Part 2, Historic Overlay Districts, as follows:

- Amend the lead in and closing paragraphs of Par. 3 of Sect. 7-203, Establishment of Districts, to read as follows:

  3. The Department of Planning and Zoning Development, in cooperation with the ARB and the Fairfax County History Commission, shall prepare and submit a report to the Planning Commission and Board of Supervisors evaluating the proposal to establish or amend a Historic Overlay District. Such report shall identify the Historic Overlay District boundaries as well as the historic, architectural, archaeological, or cultural significance of buildings, structures, or sites to be protected, and describe present trends, conditions and desirable public objectives for preservation. In addition, such report shall include the following specific information:

  (Retain Subparagraphs A through F)

  The report for a request to revise an existing Historic Overlay District may contain all or part of the information set forth above as deemed appropriate by
the Department of Planning and Zoning Development in conjunction with the ARB and the Fairfax County History Commission.

- Amend Par. 3D of Sect. 7-204, Administration of Historic Overlay District Regulations, to read as follows:

3. ARB approval shall be required prior to the issuance of Building Permits by the Director and approval of sign or small cell facility permits by the Zoning Administrator for the following:

D. Zoning Permits or Zoning Approvals for the installation of any new utility or transmission poles or their associated facilities located on, adjacent to, or visible from a major thoroughfare, historic byway, road listed or determined to be eligible for listing in the National Register, or a contributing or historic property in a Historic Overlay District. The ARB will recommend approval or denial of any permit application no later than 45 days after a complete application is filed with the Department of Planning and Zoning Development. If such recommendation is not rendered within that time, the Zoning Administrator may consider the recommendation of the ARB in making the final decision on the permit, provided that the recommendation is made within any applicable deadline under local, state, or federal law for action on such permit application.

Amend Article 10, Accessory Uses, Accessory Service Uses and Home Occupations, by amending Part 1, Accessory Uses and Structures, by amending Paragraphs 2 and 9 of Sect. 10-102, Permitted Accessory Uses, to read as follows:

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.

2. Antenna structures and solar collection systems.

9. Garage and yard sales, in R districts and in the residential portion of a P district, shall be permitted not more than twice in any one calendar year and shall be limited to the sale of typical household and personal items that have not been specifically purchased, produced, refurbished, or fabricated for resale.

Amend Article 16, Development Plans, as follows:

- Amend Part 2, Procedures for Review and Approval of a PRC District, by revising Paragraphs 4, 5 and 6 of Sect. 16-201, Comprehensive Plan Approval, to read as follows:
4. Ten (10) copies of the proposed comprehensive plan and development schedule shall be submitted to the Director of the Department of Planning and Zoning (DPZ) Development (DPD) along with a written request for the consideration of an amendment to the adopted comprehensive plan.

5. Upon receipt, the Director of DPZ DPD, in accordance with adopted procedures for consideration of comprehensive plan amendments, shall cause a thorough review of the proposed amendment by all appropriate agencies. Upon a finding that additional information may be needed to complete the review, the Director of DPZ DPD shall request same of the applicant.

6. As part of the review, the Director of DPZ DPD shall cause a complete analysis of the proposed development schedule and the impact of the development on all public facilities and utilities.

- Amend Part 3, Submission Requirements for a PRC District, by revising the introductory paragraph and Par. 10 of Sect. 16-201, Comprehensive Plan Approval, to read as follows:

The submission of a proposed amendment to the adopted comprehensive plan of the County to permit a planned residential community as required by Sect. 201 above shall be filed with the Director of the Department of Planning and Zoning (DPZ) Development (DPD) in ten (10) copies and shall include the information set forth below. All submission requirements shall become the property of the County. Once established, the submission requirements for any amendment to the adopted planned residential community comprehensive plan initiated by an applicant, other than the Planning Commission or Board, shall be those requirements deemed necessary for a review of such amendment, as determined by the Director of DPZ DPD.

10. Any additional information as deemed necessary by the Director of DPZ DPD.

Amend Article 17, Site Plans, to amend Part 2, Required Improvements, by revising Par. 2 of Sect. 17-201, Improvements to Be Provided, to read as follows:

2. Construction of trails or walkways in accordance with the general location shown on the adopted comprehensive plan together with such other connecting trails or walkways within the limits of the site plan. When such trails or walkways are to be constructed, fee title or easements shall be conveyed to the Board, Fairfax County Park Authority or Northern Virginia Regional Park Authority. The final location and design of trails or walkways are to be determined by the Director after review by the Fairfax County Department of Planning and Zoning Development and/or the Fairfax County
Amend Article 18, Administration, Amendments, Violations and Penalties, as follows:

- Amend Part 1, Administration, as follows:
  - Amend Sect. 18-106, Application and Zoning Compliance Letter Fees, to read as follows:

    All appeals and applications as provided for in this Ordinance and requests for zoning compliance letters shall be accompanied by a filing fee in the amount to be determined by the following paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be required where the applicant is the County of Fairfax or any agency, authority, commission or other body specifically created by the County, State or Federal Government. All fees shall be made payable to the County of Fairfax. Receipts therefore shall be issued in duplicate, one (1) copy of which receipt shall be maintained on file with the Department of Planning and Zoning Development.

- Amend Par. 6 of Sect. 18-109, Conduct of Public Hearings, to read as follows:

  6. An action may be reconsidered only upon motion of a member voting with the prevailing side on the original vote. A motion to reconsider must be made at the same or immediately subsequent regular meeting, and may be seconded by any member. Provided, however, that an action by the BZA may only be reconsidered prior to the filing of the original decision in the office of the BZA, except that the BZA may not entertain a motion for reconsideration.

- Amend Part 9, Violations, Infractions, and Penalties, by revising Paragraphs 3 and 4 of Sect. 18-901, General Provisions, to read as follows:

  3. Upon becoming aware of any violation of any provisions of this Ordinance, the Zoning Administrator shall serve a notice of such violation on the person committing or permitting the same, which notice will require such violation to cease within such reasonable time as is specified in such notice. The notice of violation may also include a warning that any previously issued use permit will be revoked upon expiration of the appeal period, unless an appeal has been filed or the violation has ceased. After such notice is sent and such violation is not ceased within such reasonable time as is specified in the notice, then the Zoning Administrator may proceed to remedy the violation as provided in Sections 902, 903 or 904 below, unless an appeal has been timely filed. Except as provided in Section 18-307, if a permit revocation is timely appealed, it does not take effect until the appeal has been withdrawn.
by the appellant or decided by BZA. The Zoning Administrator may also revoke a Residential or Non-Residential Use Permit to terminate the violation.

Any written notice of a zoning violation or a written order of the Zoning Administrator dated on or after July 1, 1993 shall include a statement informing the recipient that a right to appeal the notice of a zoning violation or a written order within thirty (30) days may exist in accordance with Sect. 15.2-2311 of the Code of Virginia and Part 3 of Article 18 of the Ordinance, except that a written notice of violation or a written order of the Zoning Administrator involving the violations set forth in Par. 2 of Sect. 18-303 above shall include a statement informing the recipient that a right to appeal the notice of violation or written order within ten (10) days may exist. The decision and permit revocation, if applicable, will be final and unappealable if not appealed within the specified time frames set forth in the notice or written order. The appeal period shall not commence until such statement is given.

4. In addition to the remedies provided in Par. 3 above, the Zoning Administrator or her agent may seek the issuance of an inspection warrant, initiate injunction, mandamus, or any other appropriate action to prevent, enjoin, abate or remove such erection or use in violation of any provision of this Ordinance. Such action may also be instituted by any citizen who may be aggrieved or particularly damaged by any violation of any provisions of this Ordinance. Nothing in this Ordinance may be construed to authorize an unconstitutional inspection or search. All searches or inspections authorized by this Ordinance require a warrant, court order, consent, or another exception to the warrant requirement.

Amend Article 19, Boards, Commissions, Committees, by amending Part 2, Board of Zoning Appeals, to revise Sect. 19-211, Decisions Subject to Judicial Review, to read as follows:

All decisions and findings of the BZA that resolve the merits of an appeal or application before the BZA, or dismiss such a filing with prejudice on a procedural basis, shall be final decisions; and shall be, in all instances, be subject only to judicial review in the manner provided by Article 7, Chapter 22, Title 15.2 of the Code of Virginia.