

**County of Fairfax, Virginia  
Planning Commission Meeting  
May 16, 2019  
Verbatim Excerpt**

ZONING ORDINANCE AMENDMENT – ARTICLES 2, 3, 6, 8, 10, 18 AND 20 COMMUNITY GARDENS, FARMERS MARKETS, GARDENING AS AN ACCESSORY USE AND RELATED CHANGES (Countywide)

During Commission Matters (Decision Only) (Public Hearing on this application was held on April 24, 2019)

Commissioner Hart: Thank you, Mr. Chairman. On April 24, the Commission held a public hearing on a proposed Zoning Ordinance Amendment regarding community gardens, farmers markets, gardening as an accessory use, and related changes and deferred decision twice. I believe we are now ready to move this item forward to the Board of Supervisors. I want to thank the citizens who came out to the public hearing and those who submitted written and electronic comments to the Commission. I also want to thank staff, particularly Jennifer Josiah and Donna Pesto, as well as the Zoning Administrator, Leslie Johnson, for their fine work on this project, including extensive and patient outreach with citizens with a spectrum of opinions. This amendment resolves a number of wording issues, updating the current Ordinance. The amendment will facilitate beneficial and useful activity by residents both to allow potential gardening opportunities for apartment dwellers and on community association common area, as well as promoting resident accessibility to fresh and locally-sourced food through farmers markets in furtherance of the Board's objectives of a healthy and sustainable community. Ultimately, and largely thanks to the outreach efforts of staff over several months, the amendment package was not controversial, except for one aspect, whether to allow gardens in the front yards of single-family homes and townhouses. We have a long history of supporting gardening in Virginia. Thousands of tourists visit Mount Vernon, Monticello, and other historic sites to enjoy the gardens there. Fairfax County also maintains public gardens, such as Meadowlark Gardens, which are heavily visited, and residential gardening is a popular activity for many residents, supporting our local economy and many businesses. The Park Authority also allows the public to rent garden plots at Greenspring Gardens, which have become popular. Despite our traditions, the Zoning Ordinance, however, currently prohibits front yard gardens in Fairfax County, although some illegal gardens are in existence. Some residents feel strongly that front yard gardens will detract from residential character. Others feel that our restrictions are outdated and the prohibition is excessive and invites ridicule. Our definitions of front yards also may restrict or prohibit some residents on corner lots, through lots, and other configurations from enjoying the gardening their neighbors are allowed to pursue. We received many comments and opinions on the both sides of the issue, and I recognize that we were not able to reach a consensus with everybody. Ultimately, I have concluded that staff's recommendation as set forth in the staff report reflects a reasonable compromise and appropriate resolution of this difficult issue. Sometimes there may be a temptation to over-think or overregulate certain aspects of human behavior through the Zoning Ordinance. Neighborhood character can be changed by poor landscaping or lack of maintenance, but I believe that staff's balanced recommendation of allowing front yard gardens, but limiting the front yard garden area to a maximum of 100 square feet or 10-by-10 and locating the garden at least 15 feet back from the front line is an appropriate compromise, and that based on the photographs, no such garden will overwhelm the neighborhood. I also believe that most of these small gardens will blend in with the surrounding landscaping and that these small gardens will not be particularly noticeable in context in communities with a homeowners association subject to restrictive covenants or architectural

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rules, the association also still retains whatever ability it possesses to prohibit the gardens if they feel that such a prohibition is appropriate subdivision by subdivision, or enforce existing covenants. I also believe that the vast majority of homeowners would be responsible gardeners and that they will take pride in their front yard efforts, which will not detract in any meaningful way from the residential character of the districts. I will, however, have a follow-on motion to monitor this issue. With respect to the procedural question raised by Mount Vernon Council, yes, a variance application would be possible with a case-by-case review and public hearing, and subject to development conditions from the Board of Zoning Appeals if a resident wanted to reduce the 15-foot setback for a front yard garden. With respect to the question about plant structures, the moveable temporary stands or etageres for flowerpots are not deemed a permanent structure and are already allowed. Front yard structures generally are beyond the advertised scope of this amendment but may be revisited later in the context of zMOD or the Work Program. The amendment has staff's favorable recommendation, with which I concur, and I believe staff's suggested language is as close as we're going to get to consensus. I believe after review of all the submissions that staff's conclusion is the correct one. Therefore, Mr. Chairman, I FIRST MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING COMMUNITY GARDENS, FARMERS MARKETS, GARDENING AS AN ACCESSORY USE, AND RELATED CHANGES AS ADVERTISED AND AS SET FORTH IN THE STAFF REPORT DATED MARCH 19, 2019, TO TAKE EFFECT AS 12:01 A.M., ON THE DAY FOLLOWING ADOPTION.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded Mr. Ulfelder. Is there a – Ms. Strandlie? Is there a discussion of the motion? Ms. Strandlie.

Commissioner Strandlie: Thank you very much. I was not here for the public hearing, but I did watch the public hearing, and after reviewing that and hearing from constituents in Mason and actually being on the phone with an HOA president on the way to this meeting, I would like to -- I think it is important we delete the provision for the community – for the gardens in the front yards. A side yard or a backyard garden should be sufficient to accommodate all the things that were brought up during the - the Planning Commission hearing about the soil, about the lighting, but maintaining the ambiance in the front and – the front of the home, plus the issues with being able to ensure code compliance for this issue. So, I would support the motion, minus the provision for the garden in the front yard.

Chairman Murphy: Mr. Hart?

Commissioner Hart: Is that a motion?

Commissioner Strandlie: I will make a friendly – a motion – friendly. Excuse me. Not a friendly motion. A MOTION TO...

Chairman Murphy: Amend.

Commissioner Strandlie: AMEND, TO DELETE THE FRONT YARD GARDEN.

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Chairman Murphy: Is there a second?

Commissioner Tanner: Second.

Chairman Murphy: Can we do that? Okay. Seconded by Mr. Tanner. Is there a discussion of that motion? Yes, Mr. Ulfelder.

Commissioner Ulfelder: I am going to oppose the motion and I'd like to tell a brief story. My youngest son and his family live across the river in Tacoma Park and my oldest grandson some years ago, when he was younger and I was too, tried to start a garden in their backyard. He, they lived in a long, but narrow lot. It had a pretty good-sized back yard. They were older homes and they were overshadowed by some majestic oak trees and other trees and he tried to start a garden back there for two years and it just didn't work. In fact, the lawn back - the grass back there doesn't grow very well either. The front of the house, which faces south, had a nice front yard and he decided he ought to move his garden out there, where there was sun and it would work. And he worked that garden for about four years, and grew different vegetables and so on, that they used in salads and in their - as part of their diet, and the only problem was he didn't - he didn't follow the 15 yard - 15-foot setback, and they had about a two-foot retaining wall, and so the pests that were the biggest problem were the two-legged pests - the people walking up and down the sidewalk, when they would see a ripe cucumber, would grab it out of his garden, but the point is, it -- and it was discussed at the time of the hearing that there are situations where the back, and in some cases side yards, just don't get enough sun and are not adequate for a garden. I think that a 100 square-foot maximum with a setback that the Zoning Ordinance proposes is adequate. I think it's a good first step. Many other places have gone further. In fact, Florida this year passed a state law that preempts localities from banning front yard gardens, and I, so I think this is where things are going. I think people are understanding - under the guise of sustainability and they are more interested in growing some of their own food, that some people who haven't got the option ought to do it in their back yard or side yard, ought to have the option to do it in their front yard, so I will oppose the motion.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. Commissioner Ulfelder said I think, pretty much what I would say about the amendment. I neglected to mention the follow-on motion, in that it was actually in discussions with Commissioner Ulfelder and staff that we came up with this, but my intention would be to recommend that this be monitored for a period of 18 months and particularly with respect to the idea of maintaining character of residential neighborhoods, and we can revisit this, if this turns out to be a problem. I think that we are mature enough as a county that we can handle different types of vegetation in a front yard without doing violence to the fabric of the community. I think that some people wouldn't know whether a plant was a vegetable or a fruit or a flower or something else, or a weed, unless you told them, and many people wouldn't notice the difference between the 10-by-10 vegetable patch or an herb garden or something else. We recognize, also, that it's very difficult to prohibit these totally and that there are gardens already. And I think that's enough. If we in 18 months decide this didn't work out, maybe we're back to where we started, but I think we can handle 10-by-10 gardens that are set back and we'll see what happens.

Chairman Murphy: Yes, Mr. Clarke.

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Commissioner Clarke: Thank you, Mr. Chairman. Growing up in a farming community and having gardens, if you drove down the road that I grew up on, you looked at my parent's garden, it was awesome. It was great. Look across the street at my uncle's garden, you'd be like eh, you know, it just – it wasn't that good. And granted, we are mature in the county, yes, but we all don't have that green thumb that we think we may have. I'm glad to hear the follow-on motion that's being proposed and watching this over 18 months, and in the real estate world, in terms of looking at values, I don't know or I haven't seen enough information, or we don't have enough information how that would impact the values. Some neighborhoods, community gardens is just fine and appropriate, maybe. In my neighborhood, where I live now, now that we are bringing this amendment forward, I'm starting to notice some illegal front yard gardens. But saying all of that, I'm just concerned about the neighborhoods that it may not be appropriate for and does not have a HOA or covenants that would prohibit it, so that's, that's my concern with the front yard gardens. And I wanted to add that, and I know Mount Vernon Council did support the front yard gardens with the stipulation in the language that Commissioner Hart has mentioned, so I wanted to add that piece and we see where the vote goes from here.

Chairman Murphy: Thank you very much. Mr. Tanner.

Commissioner Tanner: Thank you Mr. Chairman. I actually agree with Commissioner Hurley on this – or sorry, Commissioner Strandlie on this one, in the sense that, I believe this whole plan amendment is a great idea. I think the intention is great, but when you start talking about regulating our front yard gardens, there's a lot that goes into it. You know. For one, keeping pests out, what does that fencing look like? Now you have this big mesh box in the middle of the front yard, and to your point Commissioner Clarke, curb appeal is a great part about that. You know, in any kind of home sale. My biggest concern with this one was the HOAs. If the HOAs were, you know, already have that in covenants, that's great, they can still prohibit it for their communities. But if it's not already there because they figured it wasn't allowed anyway, then what would be the steps for them to actually go back and put that into their covenants and make a choice there? And for most situations, I know especially for ours, it's a – it's an expensive and long, arduous process, so I don't think having that, you know, having that there, having this language in there, you know, at least the intent, or what we're trying to do at least gives that power back to the HOAs. So, I do agree with Commissioner Strandlie and believe that section should be struck.

Chairman Murphy: Further discussion? Yes, Mr. Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: Yes, I am going to support this motion. I agree with my colleagues on this. The one – if we had a situation where it was a one, two, three, a back yard doesn't work, side yard doesn't work. Oh okay, then the front yard, but what this does is it basically allow a front yard garden without, with - with no intent of trying to use the backyard. I just think that the indication of the potential neighborhood impact is not fully addressed by this, and I don't think that the – the front yard should be the location of first resort. If it is the location of last resort, that would be a different matter, so I will support this motion.

Chairman Murphy: Further discussion? Yes, Ms. Cortina.

Commissioner Cortina: Well, speaking as a gardener, the thing about gardening is that you don't decide where things will grow. The plants decide, and it's - it's the sunniest spot. Wherever the

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sunniest spot is. And most of us do not have sunny spots in the backyard. If we do, we have a single-family house because of the trees. And really, the only option is the front yard. If you could plant in the backyard and you had enough sun, that would be the preference anyway, because it keeps other people away from your plants and your produce, so it's really, by default, having a front yard garden in most cases really is because of the sun. So, I'm in favor of having the front yard gardens. I am in favor of having them wherever the sun shines. So, thank you for that.

Commissioner Niedzielski-Eichner: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Niedzielski-Eichner: May I ask a question?

Chairman Murphy: Sure.

Commissioner Niedzielski-Eichner: So, Mr. Tanner raises the question of – we all – many of our neighborhoods have particularly, if we want to have wildlife – wildlife and particularly gardens, are in conflict. Mr. Tanner's point is in order to protect the garden, there are certain structures that have to be put in place to do that. How do we respond to that context? And I'm asking Commissioner Cortina. What is your view of that?

Commissioner Cortina: Well again, in terms of deer, I – I didn't have a problem with deer because I used the garden at the garden plot. I just didn't have enough sun. But there are always some kind of things that get into your garden, and you can't keep them out. It's just how much you know how prolific your tomato vines are. And again, the people that took the most product from me were really the folks that – that were on two legs, as you say. So, the issue is really that you tend to grow enough that you can take some in and you lose a few to, you know, a rabbit or something like that. It is not a big deal.

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: To Commissioner Niedzielski-Eichner's question, this paragraph is overlaid into an Ordinance that restricts a lot of other things for other reasons anyway. Fencing would be governed by the same provisions that govern fences existing. Fences are limited to four feet in a front yard and I think seven or eight in a side and rear, and subject to some other – I mean there's a way to get a special permit to go a little higher in a front yard or maybe you could get a variance in some unusual circumstance. And along certain types, certain classifications of roads, you could be, you could technically be in a front yard, but have a higher fence under the Ordinance, so you might not be able to see what is behind the fence. But fences are already regulated in the Ordinance, and a fence that would keep deer out or the fence that would be high enough to keep deer out, if it exists, would probably not be a front yard fence anyway, because they can step over a 4-foot or 6-foot fence. As far as structures, we've struggled with this on a number of cases. Now – and this is going to be a horrendous verbatim, and now you know why deferred this twice and maybe I should have deferred it again. One timber high, I think the Zoning Administrator has okayed as a landscaping feature. Three timbers high was a violation,

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when that came up, and I'm not sure we've settled on what happens if they have two timbers, but they need a retaining wall building permit if they're over a certain number of inches. The permutations of garden structures are going to be governed by whatever else is in the Ordinance, and I think the issue about that Commissioner Migliaccio had about the, whatever they are called with the flower pots in them – if it's a temporary moveable thing, it's allowed anyway. That's to the going to be a violation. If you put three timbers high and fill it with dirt, you may have a problem and Ms. Pesto, I don't know if I put my foot in it here, but two timbers, I can't remember.

Donna Pesto, Zoning Administration Division, Department of Planning and Zoning: Thank you, Donna Pesto, Zoning Administration. Essentially, we use a rule of thumb of about 18-inches. So, some people use stone, some people use timber, some people use, you know, whatever, to line their gardens with. When you get above that, it starts to take more of a structure form on. The - the retaining wall issue, that's always a separate issue. That's subject to separate permits and there is no limitation. It it's genuinely a retaining wall, that means it has to be retaining something, and that's usually for reasons other than gardening. It's usually for slope issues and other things, so – you know, I think for the most part, things that normally demarcate a garden would be permitted under, under these provisions.

Commissioner Hart: We get into a weird area, unless we have a front yard of a lot that's above 36,000 square feet. If we're below 36,000 square feet, which most of the lots are the, a structure in the front yard is prohibited, except we have exceptions, like we can have a flag pole or bird bath or I think a fountain, but like sheds and garden-type potting sheds and things like that, you couldn't have that in a front yard. Some of that is may be looked at in zMOD, but the whole area of structures in a front yard is whole another quagmire. This is really just a square of dirt in the ground and what plants you choose to put in it.

Ms. Pesto: That's the intent. Yes, sir.

Chairman Murphy: Yes. Further discussion? Mr. Clarke.

Commissioner Clarke: Okay. Question for Commissioner Hart. The 18-month period, so how will we revisit this in 18 months? Or what's the process?

Commissioner Hart: Well, I can read what the follow-on motion was. We haven't got there yet, but it was going to be In order to ensure that the changes proposed by this amendment maintain neighborhood character, I move the Planning Commission recommend to the Board of Supervisors that staff be directed to report back to the Planning Commission and Board in 18 months following adoption on any complaints that have been filed regarding gardens and/or related structures in the front yard. Such report should include the specific basis of the complaint and the resolution of the complaint. That was the product of Commissioner Ulfelder's concern and staff's response and some discussions back and forth, but we thought, you know, let's look at this, let's do it for a year and a half, let's see what happens, and then if we messed up, we can tighten it up.

Commissioner Clarke: So, in history have we passed something like this and then rolled back? Has that been able to scale something back?

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Commissioner Hart: We've revisited things, I'd say when we set a time limit, it always ends up taking longer, but I mean the intention is there. I don't think anybody is particularly opposed to that. We wouldn't be proposing staff to do something for nothing. If this is something we're uncertain about, yeah maybe so.

Chairman Murphy: Mr. Ulfelder.

Commissioner Ulfelder: We included such a motion in connection with the short-term rental provisions, which I think the – the study or whatever we are going to call it, is probably, has a few big problems because of the fact, the legal challenges to that Ordinance, but we did include the follow-on motion that asked them to come back to the Board and the Planning Commission with information, based on the experience - the initial experiences with that Ordinance.

Chairman Murphy: Mr. Migliaccio and then Ms. Strandlie.

Commissioner Migliaccio: Just on that point. Even different item was our new APR process, Fairfax Forward, that was countywide and we took a, we revisited that and decided it wasn't what we wanted and we redid it. And so, this is minor in comparison to some of the implications for the APR process. But to the motion, I am going to not support Commissioner Strandlie's motion. I think that front yards can be appropriate for gardens because you do need your full front back, side, to decide, as Commissioner Cortina mentioned. The soil may be different in the front. You may be more acidic in the back because your neighbor has pine needles, and only certain things can grow, the sun is only on certain areas in your yard, so I think I think with the appropriate follow-on motion, I will be supporting Commissioner Hart's main motion. Thank you

Chairman Murphy: Mrs. Strandlie.

Commissioner Strandlie: One of the problems with this, and also the follow-on motion, is that it's complaint-driven. I think that if anything should happen, there should be a proactive staff study of what the impact is. So, I think that is a false and a loophole in this that will not solve the problem that we are facing.

Chairman Murphy: Mr. Migliaccio.

Commissioner Migliaccio: Based on that, our whole zoning is complaint driven. I mean, if your neighbor doesn't mind that you're doing something, zoning enforcement is not going out as, the nanny state.

Commissioner Strandlie: Right. No, I understand that. But in a case where we have a study, we have an 18-month look back, I think there should be something a little more proactive than just the complaint driven process.

Chairman Murphy: Mr. Sargeant. Did you have something? I'm not trying to coax you.

Commissioner Sargeant: No. I'm – I think we're fine. I just would note all the specifics that are not allowed, no closer than 15 feet, composting not permitted, no accessory uses or structures, no

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lighting allowed, and we are looking at a review period after this. So, that would my intention to support the original motion.

Chairman Murphy: All those in favor of the motion.

Commissioner Niedzielski-Eichner: Chairman? Chairman, let me just one note. I'm persuaded with the follow-on motion. My main concern is the protection of the character of the neighborhood. I'm concerned for fencing, that seems to be something I missed in terms of the overall Ordinance, other provisions within the Ordinance. The other thing, I believe, the thing I worry about is equipment and other ancillary facilities that are associated with gardening, but that seems to be addressed as well. So, with particularly then, with the follow-on motion where we do have the ability to revisit this matter, I'm gonna change my position and vote in opposition to the amendment in support of the main motion.

Chairman Murphy: Further discussion, he asked hesitantly? Yeah. Thank you. All those in favor of the motion as articulated by Ms. Strandlie to delete gardens in the front yard, say aye.

Commissioners Strandlie and Tanner: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Chairman Murphy: The nays have it. The motion fails. Who supported it? Mrs. Strandlie and Mr. Tanner. Return to the main motion, Mr. Hart.

Commissioner Hart: Yes. Thank you. Well, the main motion I thought was okay. I mean I have the follow-on motion. We have to vote on the main motion first.

Chairman Murphy: All those in favor of the main motion as articulated by Mr. Hart, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Tanner abstains.

Commissioner Strandlie: No.

Chairman Murphy: And Ms. Strandlie votes no. Mr. Hart.

Commissioner Hart: Yeah, thank you, Mr. Chairman. Next time I'll just keep deferring it. This always happens. Well, I read the follow-on motion, I'll read it again. In order to ensure that the changes proposed by this amendment maintain neighborhood character, I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT STAFF BE DIRECTED TO REPORT BACK TO THE PLANNING COMMISSION AND BOARD IN 18 MONTHS FOLLOWING ADOPTION ON ANY COMPLAINTS THAT HAVE BEEN FILED REGARDING GARDENS AND/OR RELATED STRUCTURES IN THE FRONT YARD. SUCH REPORT SHOULD INCLUDE THE SPECIFIC BASIS OF THE COMPLAINT AND THE RESOLUTION OF THE COMPLAINT.



Commissioner Sargeant: Second.

Chairman Murphy: Seconded Mr. Sargeant. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

The amendment to the main motion failed by a vote of 2-10. Commissioners Strandlie and Tanner voted in favor.

The main motion carried by a vote of 10-1-1. Commissioner Strandlie voted in opposition. Commissioner Tanner abstained from the vote.

The follow-on motion carried by a vote of 12-0.

KAS



**FAIRFAX  
COUNTY**

# **STAFF REPORT**

V I R G I N I A

## **PROPOSED ZONING ORDINANCE AMENDMENT**

**Articles 2, 3, 6, 8, 10, 18 and 20 of the Zoning Ordinance Regarding  
COMMUNITY GARDENS, FARMERS MARKETS, GARDENING AS AN ACCESSORY  
USE AND RELATED CHANGES**

### **PUBLIC HEARING DATES**

**Planning Commission**

**April 24, 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**

**March 19, 2019**

JEJ



Americans With Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

## STAFF COMMENT

The 2018 Zoning Ordinance Amendment Work Program (ZOAWP), adopted by the Board of Supervisors on July 10, 2018, listed Agricultural Districts and Uses as a Priority 1 item, divided into six separate categories and separated into two tiers.

The First Tier items consisted of:

- Community Gardens/Urban Agriculture;
- Sales/distribution of Garden/Farm Products (including wayside stands, farm markets, open air produce stands, farmers markets); and
- Residential Gardening as an Accessory Use.

The Second Tier items consisted of:

- Agritourism Uses;
- Industrial, Commercial and Container Agriculture; and
- Industrial Composting.

These items were added to the ZOAWP in response to the growing trends in both Virginia and nationally for a greater connection to our food and, in turn, small-scale, local food production. The proposed amendment addresses the three sub-topics in the Agricultural Districts and Uses topic set forth in the 2018 Priority 1, First Tier ZOAWP. The second tier item regarding industrial, commercial and container agriculture was partially addressed in the recently adopted small-scale production establishment amendment.

### **Background**

Over the last few decades, people have shown more interest in the origin of their food and, consequently, the demand for locally grown, sustainably produced food has grown rapidly. Schools have installed vegetable and fruit gardens on-site and have created curriculums for tending the garden and healthy eating. Community gardens are being established in both urban and suburban areas and have extensive wait lists for a garden plot as demand grows. Balcony gardening can be seen in high density residential areas and more and more local residents have turned to in-home food production for sale at farmers markets to supplement their incomes. Community Supported Agriculture (CSA) is a model that many farms have adopted and is so popular that obtaining a share is, in some cases, a competitive process.

With the move toward environmental consciousness, many municipalities have adopted green building standards including green roofs, which have also evolved into rooftop vegetable and fruit gardens. Some of these rooftop gardens are commercial enterprises, providing produce to local restaurants and CSAs; however, some serve traditional community garden purposes. Throughout the nation, gardening is being done on land that was never envisioned for gardens, including the space between the sidewalk and the street, front yards, empty lots, and on the walls of existing structures (vertical gardening). Workshops on how to plant an edible landscape and professional firms that design such landscapes are becoming more numerous in communities. Trend lines reflect that people want to know what's in their food, where it was grown, and how it was grown. Some small-scale traditional farms today provide increasingly popular educational

components, hosting school and scout group field trips and offering canning and other farm-related classes.

In addition, farmers markets have evolved over time to sell many different types of food items beyond just produce, fiber, and plants. Farmers markets now serve as community gathering places that offer locally grown produce, eggs, dairy, meats, baked goods, and value-added products, such as jams, jellies, salsas, and pickles. Mobile markets that bring fresh, local food products to office, high density residential complexes and commercial areas have also become more prevalent and are a key mechanism for bringing fresh fruits, vegetables and other healthy foods to areas with limited access. This amendment provides a balanced approach to providing easier access to fresh, healthy food to residents in all areas of the County while ensuring that the uses of community gardens, farmers markets and residential gardening are established to be good neighbors.

### **Stakeholder Outreach**

Staff presented the concepts of this amendment to the Board's Development Process Committee (DPC) on March 13, 2018 and presented draft text to the DPC on January 29, 2019. Staff has engaged in significant outreach for this amendment since mid-2017 to citizens in a myriad of interest areas. Neighborhood and Community Services invited the Department of Planning and Zoning to participate in four school resource fairs in different parts of the County in August, 2018. Zoning Administration Division staff created an informational flyer and staffed a booth at these fairs, answering questions and handing out information about the amendment to thousands of parents and school children. Staff also operated a booth at two farmers markets during National Farmers Market Week in August, 2018 and spoke with farmers and customers at the farmers markets throughout the year. In addition, the Zoning Administration Division staff held Zoning Open Houses on three dates throughout the County where this amendment was presented along with other pending amendments. Coordination with the Fairfax Food Council, Healthy Environment and Active Living Team, Partnership for a Healthier Fairfax Community Health Improvement Plan (CHIP 2.0) program, Fairfax County Park Authority Community Gardens and Farmers Markets Coordinators, Northern Virginia Soil and Water Conservation District (NVSWCD), and Land Development Services (LDS) was carried out throughout 2018 and into early 2019 to ensure that the policies proposed in this amendment were realistic and implementable. This amendment was also presented to the zMOD Citizens Group, the Agricultural and Forestal District Advisory Board, and other citizen groups where constructive feedback was given. Staff has also scheduled meetings with several citizens groups in McLean and Mason Districts.

### **Analysis of Other Jurisdictions' Regulations**

As Fairfax County has developed, the trends have shown less emphasis on large farm production and more emphasis on smaller types of food production, such as community gardens, urban agriculture and small-scale farms. Other jurisdictions in the area have also experienced the trends that Fairfax County is seeing and have enacted policies and ordinances in response. Arlington County has amended its Zoning Ordinance to permit open air markets in every zoning district, with certain limitations. Arlington has also included community gardens in its agriculture definition, permitting the use of agriculture in almost every zoning district by right and Loudoun County permits community gardens as principal uses in areas designated for open space.

No locality in the Commonwealth, Washington D.C., or Montgomery County, MD, regulates the time of year that farmers markets may operate. However, most jurisdictions require a special permit or special exception for location of a farmers market unless it is located on the farm property or on a property which permits retail sales. Many jurisdictions rely on market managers to regulate the goods sold and the vendors permitted. A jurisdictional comparison of farmers market regulations is included as an attachment to the Staff Report.

Numerous nonprofits throughout the Commonwealth are working to connect residents with local food providers, such as small farmers, community gardens, farmers markets, mobile markets, and culinary entrepreneurs. The common goal is to foster resilient food systems that will help alleviate food insecurity. Amending the Zoning Ordinance to better reflect the trends as described above is a necessary step in providing a resilient food system in Fairfax County.

### **Current Zoning Ordinance Provisions**

The existing regulations for farmers markets restrict the types of products that can be sold as well as the periods during the year that the markets can operate. It is important to note that all special permit uses, including temporary special permit uses, are subject to the general standards located in Sect. 8-006, as well as any additional standards specified for a particular use. Current regulations for the uses addressed in this amendment can be found below:

<i>Use</i>	<i>Permitted By Right</i>	<i>Conditionally Permitted*</i>	<i>Zoning Ordinance Section</i>	<i>Current Standards</i>
<b><i>Farmers markets</i></b>	By Temporary Special Permit (TSP) only	All districts except R-A, R-P and I-I	Sect. 8-810	<ul style="list-style-type: none"> <li>• April through November, daylight hours</li> <li>• Adequate off street parking and safe ingress and egress</li> <li>• Frontage on or safe and convenient access to a principal or minor arterial street</li> <li>• No storage of vehicles, canopies, display items or produce when market is not in operation</li> <li>• No structures allowed</li> <li>• Seasonal or perishable produce, including flowers and plants</li> <li>• (1) sign per Sect. 12-103</li> </ul>
<b><i>Gardening as an accessory use</i></b>	All		Sect. 10-102	Not permitted in the minimum required front yard on any lot or in the front yard of any lot less than 36,000 sf
<b><i>Open air produce</i></b>	C-5, C-6, C-7, C-8	R-A, R-P, R-C, R-E,	Sect. 8-909	<ul style="list-style-type: none"> <li>• 2-acre minimum for lot area</li> </ul>

<i>Use</i>	<i>Permitted By Right</i>	<i>Conditionally Permitted*</i>	<i>Zoning Ordinance Section</i>	<i>Current Standards</i>
<i>stands</i>	All districts where retail sales are permitted	R-1, R-2, R-3, R-4, R-5, R-8, R-12, R-16, R-20, R-30, R-MHP, PDH, PRC, I-I, I-1, I-2, I-3, I-4, I-5, I-6		<ul style="list-style-type: none"> <li>• Seasonal or perishable produce, including flowers and plants</li> <li>• Must be located in CBC</li> <li>• Adequate off street parking and safe ingress and egress</li> <li>• Comply with bulk regulations of zoning district</li> <li>• April through November, daylight hours</li> <li>• (1) sign per Sect. 12-103</li> </ul>

*\*conditionally permitted by Special Permit (SP), Special Exception (SE) or with other use standards*

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 identified 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 when the gardening is specifically related to the principal use on the lot. 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.

## **Proposed Zoning Ordinance Amendments**

Although the ZOAWP lists wayside stands and farm markets as items to be considered in the First Tier subtopic for Sales/distribution of Garden/Farm Products, those specific uses are not included in this analysis nor in the proposed changes. In March 2018, staff proposed to the Board of Supervisors’ Development Process Committee changes to the existing wayside stand provisions by expanding the districts in which the use would be permitted, however feedback from the Committee Members indicated that no changes to the current regulations were warranted. Additionally, staff has determined that farm markets, not to be confused with farmers markets, are more closely related to agritourism, and therefore will be included in the upcoming amendment pertaining to that subtopic.

## **Community Gardens**

Staff proposes to create a new community garden use and identify use standards that would mitigate any potential impacts on surrounding properties. 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 when located on a lot with a principal use. Currently, only the PRC district permits garden plots (to be renamed to community gardens with this amendment) 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 non-residential developments, such as places of worship, office, and other commercial and industrial developments, schools, et cetera 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. Standards pertaining to parking, adequate ingress/egress, bulk and location regulations, noise, hours of operation, signage and maintenance are addressed by the proposed amendment. A standard of 250 square feet, cumulatively, for accessory structures, such as sheds and message boards/kiosks, is also proposed and is advertised with a range of up to 750 feet for the Board's discretion.

An analysis of the Fairfax County sponsored community gardens on parkland 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. An application fee of \$435 for review by the BZA is proposed, which is commensurate with the lower application fees for items such as home child care facilities, accessory dwelling units, modification to the limitation on the keeping of animals and an increase in fence or wall height in the front yard. A range between \$0 and \$910 has been advertised for the BZA application fee for the Board's consideration.

In consultation with staff from both Land Development Services (LDS) and the Northern Virginia Soil and Water Conservation District (NVSWCD), staff also recommends that a conservation plan be developed for each community garden with more than 5,000 square feet of disturbed area to ensure proper environmental controls and that no erosive condition is created. 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 such conservation plan and staff from both agencies have committed to developing educational materials to help guide residents through the process and to establish guidelines for best practices. Temporary special permits are currently subject to a yearly fee of \$205, therefore staff believes that a two year permit with an initial fee of \$205 and a bi-annual renewal fee of \$50 is

reasonable, however staff has advertised a range of fees and permit validity to accommodate Board consideration of alternatives to this recommendation. Any expansion of an existing community garden, as determined by the Zoning Administrator, would also require a full review, at the \$205 fee, and the issuance of a new temporary special permit.

### **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 farmers markets to permit them for a two-year period with year-round operation in applicable zoning districts. Staff proposes to eliminate the “temporary” designation in the name of the use and the 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. Value-added farm products can include items made from farm products, such as pickles, salsa, baked goods, lotions, candles and hemp products. 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 \$205 with a bi-annual renewal fee of \$50, however staff has advertised a range of fees and permit validity to accommodate Board consideration of alternatives to this recommendation. Any expansion of an existing farmers market would also require a full review, at the \$205 fee, and the issuance of a new temporary special permit.

### **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. 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 has been accommodated in CBCs and other areas as retail sales approved by site plan or as seasonal sales approved with a temporary special permit for a period of 21 days. Therefore, the use is obsolete, and staff proposes to remove all references to the use from the Zoning Ordinance.

### **Gardening as an Accessory Use**

Gardens, for the cultivation of herbs, fruits, flowers, vegetables or ornamental plants, are an accessory use that is permitted on single family residential lots and elsewhere when deemed



accessory to the principal use. 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 in that area 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. 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. Staff recommends these specific regulations in terms of size and setback, but has advertised a range of unlimited area for the standards to allow for discretion in the adoption of the regulations.

### **Implementation of Proposed Changes**

Staff is developing an implementation plan for the new and revised temporary special permit process for community gardens and farmers markets. While not part of the Zoning Ordinance text, a revised permit application form and temporary special permit will be developed in conjunction with this amendment. As discussed above, staff from LDS and NVSWCD is developing educational guidance for community gardens to ensure that no erosive state is created and to guide applicants through the conservation plan process. Staff has also worked closely with the Fairfax Food Council throughout the research phase of this amendment and will continue to help provide regulatory expertise to the Urban Agriculture Working Group and Food Access Working Group and other outreach opportunities that are requested. The proposed regulations are intended to achieve a balance between providing greater access to fresh food in Fairfax County while maintaining the overall character of neighborhoods. As such, staff recommends approval of the proposed amendments with an effective date of 12:01 a.m. on the day following adoption.

### **Conclusion**

Staff believes that this amendment provides a balanced approach to providing easier access to fresh, healthy food to residents in all areas of the County while ensuring that the uses of community gardens, farmers markets, and residential gardening are established to be good neighbors. Staff recommends adoption of the proposed Zoning Ordinance amendments, with an effective date of 12:01 AM the day following adoption.

## PROPOSED AMENDMENT

*This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of March 19, 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.*

1 **Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3,**  
 2 **Definitions, by adding new definitions for COMMUNITY GARDENS and**  
 3 **FARMERS MARKETS and revising the current definition of OPEN SPACE to read**  
 4 **as follows:**

5  
 6 COMMUNITY GARDEN: Land or rooftop area used for the cultivation of herbs, fruits,  
 7 flowers, vegetables, or ornamental plants by more than one person, household, or a  
 8 nonprofit organization for personal or group use, consumption, or donation and not for  
 9 the bona fide production of crops, animals or fowl. Community gardens may be divided  
 10 into separate plots for cultivation by one or more individuals or may be cultivated  
 11 collectively by members of the group and may include common areas and accessory  
 12 structures maintained and used by group members. A community garden does not  
 13 include a private garden on a lot that contains a single family detached dwelling. Except  
 14 when located as an accessory use on a lot that is principally used for agriculture,  
 15 community gardens are not deemed to be an agricultural use.

16  
 17 FARMERS MARKET: A regularly occurring market that sells farm products or value-  
 18 added farm products directly to the general public.

19  
 20 OPEN SPACE: That area within the boundaries of a lot that is intended to provide light and air,  
 21 and is designed for either scenic or recreational purposes. Open space ~~shall~~ must, in general, be  
 22 available for entry and use by the residents or occupants of the development, but may include a  
 23 limited proportion of space so located and treated as to enhance the amenity of the development  
 24 by providing landscaping features, screening for the benefit of the occupants or those in  
 25 neighboring areas, or a general appearance of openness.

26  
 27 Open space may include, but need not be limited to lawns, decorative planting,  
 28 walkways, active and passive recreation areas, children's playgrounds, fountains, swimming  
 29 pools, undisturbed natural areas, ~~agriculture,~~ community gardens, wooded areas, water bodies  
 30 and those areas where landscaping and screening are required by the provisions of Article 13;  
 31 provided, however, that the area required for interior parking lot landscaping ~~shall~~ must not  
 32 comprise more than twenty-five (25) percent of the total required open space. Open space ~~shall~~  
 33 does not include driveways, parking lots, or other vehicular surfaces, any area occupied by a  
 34 building, nor areas so located or so small as to have no substantial value for the purposes stated

1 in this definition. Within a residential subdivision, open space ~~shall be~~ is composed of only those  
 2 areas not contained in individually owned lots. For the purpose of this Ordinance, open space  
 3 ~~shall include~~ and be qualified as LANDSCAPED OPEN SPACE, COMMON OPEN SPACE,  
 4 DEDICATED OPEN SPACE, and USABLE OPEN SPACE, all as defined herein.

5  
 6 **Amend Article 2, General Regulations, Part 7, Common Open Space and Common**  
 7 **Improvement Regulations as follows:**

8  
 9 - **Amend Sect. 2-702, General Requirements by revising the lead-in paragraph and**  
 10 **Par. 5 as follows:**

11  
 12 All lands and improvements set forth in Par. 1, 2, and 3 of Sect. 701 above ~~shall~~ must be  
 13 established and maintained in accordance with the following requirements:

- 14  
 15 5. No lands in common open space may be denuded, defaced or otherwise disturbed in any  
 16 manner at any time without the approval of the Director. However, routine maintenance  
 17 of common open space limited to the removal of dead, diseased, dying or hazardous trees  
 18 or shrubbery; removal and replacement of dead landscaping and screening materials;  
 19 installation of supplemental plantings or a community garden; removal of noxious  
 20 vegetation such as poison ivy or greenbrier; lawn care and maintenance; or repair and  
 21 replacement of picnic and play equipment; or similar routine maintenance will be  
 22 permitted without approval of the Director; provided such maintenance is allowed under  
 23 any applicable proffered conditions, applicable conditions of special permits or special  
 24 exceptions or other applicable laws and ordinances and further provided that such  
 25 common open space does not contain areas used to comply with Best Management  
 26 Practices such as floodplains and conservation easements.

27  
 28 **Amend Article 3, Residential Districts, as follows:**

29  
 30 - **Amend Sect. 3-A03 Special Permit Uses, in the R-A District by amending Par. 3, Group**  
 31 **8 – Temporary Uses to add a new Par. C and D, as follows:**

- 32  
 33 3. Group 8, Temporary Uses, limited to:

34  
 35 C. Community gardens

36  
 37 D. Farmers markets

38  
 39 - **Amend Sect. 3-P03 Special Permit Uses, in the R-P District by amending Par. 5, Group**  
 40 **8 – Temporary Uses to add a new Par. G and H, as follows:**

- 41  
 42 5. Group 8, Temporary Uses, limited to:

43  
 44 G. Community gardens

45  
 46 H. Farmers markets

- 1  
2 - **Amend Sect. 3-C03, Special Permit Uses, in the R-C District by amending Par. 5, Group**  
3 **8 – Temporary Uses to revise Par. F and add a new Par. H, as follows:**

4  
5 5. Group 8, Temporary Uses, limited to:

6  
7 F. ~~Temporary f~~Farmers<sup>2</sup> markets

8  
9 H. Community gardens

- 10  
11 - **Amend Sections 3-E03 and 3-103, Special Permit Uses, in the R-E and R-1 Districts by**  
12 **amending Par. 7, Group 8 – Temporary Uses to revise Par. F and add a new Par. H, as**  
13 **follows:**

14  
15 7. Group 8, Temporary Uses, limited to:

16  
17 F. ~~Temporary f~~Farmers<sup>2</sup> markets

18  
19 H. Community gardens

- 20  
21 - **Amend Sections 3-203, 3-303, 3-403, Special Permit Uses, in the R-2, R-3 and R-4**  
22 **Districts by amending Par. 6, Group 8 – Temporary Uses to revise Par. F and add a**  
23 **new Par. H, as follows:**

24  
25 6. Group 8, Temporary Uses, limited to:

26  
27 F. ~~Temporary f~~Farmers<sup>2</sup> markets

28  
29 H. Community gardens

- 30  
31 - **Amend Sections 3-503, 3-803, 3-1203, 3-1603, 3-2003, 3-3003, and 3-M03 Special Permit**  
32 **Uses, in the R-5, R-8, R-12, R-16, R-20, R-30, R-MHP Districts by amending Par. 4,**  
33 **Group 8 – Temporary Uses to revise Par. F and add a new Par. H, as follows:**

34  
35 4. Group 8, Temporary Uses, limited to:

36  
37 F. ~~Temporary f~~Farmers<sup>2</sup> markets

38  
39 H. Community gardens

- 40  
41 **Amend Article 6, Planned Development District Regulations, Part 3, PRC Planned**  
42 **Residential Community District by revising Par. 1A of Sect. 6-302, as follows:**

43  
44 **Sect. 6-302 Permitted Uses**  
45

1 Subject to the use limitations set forth in Sect. 305 below and the exceptions permitted by  
 2 Sections 303 and 304 below, the following and similar uses as may be approved shall be  
 3 permitted only in those locations respectively designated Residential, Neighborhood  
 4 Convenience Center, Village Center, Town Center and Convention/Conference Center on an  
 5 approved development plan and PRC plan, if applicable, prepared in accordance with the  
 6 provisions of Article 16.

7  
 8 A. The following uses are permitted in those areas approved for Residential Uses:

- 9  
 10 (1) Accessory uses, accessory service uses and home occupations as permitted by  
 11 Article 10 to include ~~garden plots~~ community gardens which are not connected  
 12 with, incidental to, or on the same lot with a principal use.

13  
 14 **Amend Article 8, Special Permits, Part 8, Group 8 Temporary Uses as follows:**

- 15  
 16 - **Amend Sect. 8-801, Group 8 Special Permit Uses to revise Par. 7 and add new Par. 10,  
 17 as follows:**

18 7. ~~Temporary f~~Farmers' markets.

19  
 20 10. Community gardens.

- 21  
 22  
 23 - **Amend Sect. 8-802, Districts in Which Group 8 Uses May be Located**

24  
 25 Group 8 uses may be allowed by special permit in the following districts:

26  
 27 R-A District: Limited to uses 1, 7, ~~8~~, ~~and 9~~ and 10

28 R-P District: Limited to uses 1, 2, 3, 5, 6, 7, ~~8~~, ~~and 9~~ and 10

29 All other R Districts: Limited to uses 1, 2, 3, 5, 6, 7, ~~8~~, ~~and 9~~ and 10

30  
 31 All P Districts: Limited to uses 1, 2, 3, 4, 5, 6, 7, ~~8~~, ~~and 9~~ (when located in a residential  
 32 portion of a P district), and 10

33  
 34 All C Districts: Limited to uses 1, 2, 3, 4, 5, 6, ~~7~~, ~~and 8~~ and 10

35  
 36 All I Districts except I-I: Limited to uses 1, 2, 3, 4, 5, 6, ~~7~~, ~~and 8~~ and 10

- 37  
 38 - **Amend Sect. 8-810, Standards and Time Limits for Temporary Farmers' Markets, as  
 39 follows:**

40  
 41 **8-810 Standards and Time Limits for ~~Temporary~~ Farmers' Markets**

42  
 43 ~~Temporary farmers markets shall be deemed temporary retail sales establishments and shall~~  
 44 ~~be allowed in all districts where retail sales establishments are permitted uses,~~  
 45 ~~notwithstanding the use limitations concerning outdoor storage and display of goods set forth~~  
 46 ~~in the district regulations. In all other districts, notwithstanding the provisions of Sect. 2-510~~

1 or the use limitations concerning retail sales set forth in the district regulations, temporary  
 2 farmers markets may be permitted subject to the following conditions:– A farmers market  
 3 may be permitted subject to the following conditions:

- 4
- 5 1. ~~Such temporary use may be permitted only during the months of April through~~  
 6 ~~November.~~
- 7
- 8 2. ~~1. No temporary special permit shall be issued unless a~~Adequate provision is made for  
 9 ~~off-street parking and safe ingress and egress to the adjacent street~~ must be provided.
- 10
- 11 3. ~~Such use shall be located on a lot having frontage on or safe and convenient access to a~~  
 12 ~~principal or minor arterial street as set forth in Appendix 8.~~
- 13
- 14 4. ~~2. No storage of vehicles, canopies, display items or produce shall be is~~ permitted when  
 15 the market is not in operation. Additionally, no permanent structures shall be are  
 16 allowed; ~~provided, however, that canopy tents, fabric canopies primarily attached to~~  
 17 vehicles, temporary portable shelving, portable tables, bins, hanging racks and similar  
 18 display items shall not be are not deemed structures.
- 19
- 20 5. ~~3. Sales shall be are limited to seasonal or perishable produce, including flowers and~~  
 21 ~~plants~~ agricultural products and items made from farm products, including vendor-  
 22 produced food, beverage, and other value-added items.
- 23
- 24 6. ~~4. The hours of operation are limited to daylight hours.~~
- 25
- 26 7. ~~One (1) temporary sign may be permitted in accordance with the provisions of Sect. 12-~~  
 27 ~~103~~
- 28
- 29 5. To establish a farmers market, an application must be filed with the Zoning Administrator  
 30 on forms furnished by the County, accompanied by the required fees in accordance with  
 31 Sect. 18-106. Permits are valid for a period of two years and may be renewed on a  
 32 biennial basis with approval of the Zoning Administrator. Any subsequent expansion or  
 33 change of permit holder or renewal of a farmers market permit may require submission of  
 34 a new application as determined by the Zoning Administrator. (*Advertised to allow the*  
 35 *Board to consider any fee of between \$0 and \$500 and a period of permit validity of up*  
 36 *to five years*)
- 37
- 38 6. Farmers markets may also be permitted on County owned and controlled property,  
 39 including the Park Authority or Fairfax County Public Schools, provided that such  
 40 farmers markets have the property owner's permission and comply with all other  
 41 applicable regulations.

- 42
- 43 - **Add a new Sect. 8-813, Standards and Time Limits for Community Gardens, as follows:**
- 44

45 **8-813 Standards and Time Limits for Community Gardens**

46

1 Community gardens may be permitted as either a principal use or an accessory use subject to  
2 any associated proffers or development conditions and to the following:

- 3  
4 1. A community garden may be permitted as a principal use in any district, subject to the  
5 following:  
6  
7 A. The land area for the community garden cannot exceed two acres in size, except that a  
8 community garden of more than two acres and less than five acres may be approved  
9 by the BZA, in accordance with Sect. 8-009. An application for approval by the BZA  
10 must be filed a minimum of ninety (90) days prior to the date on which the permit is  
11 to take effect. (*Advertised to allow the Board to consider any permitted size of less*  
12 *than five acres*)  
13  
14 B. The cumulative area of all structures associated with the community garden is limited  
15 to 250 square feet, except as may be approved by the BZA in accordance with Par. 1.  
16 All accessory structures must comply with the location regulations, as specified in  
17 Sect. 10-104. (*Advertised to allow the Board to consider up to 750 square feet*)  
18  
19 C. A community garden may not be located closer than 15 feet to the front lot line and  
20 25 feet from all other lot lines. (*Advertised to allow the Board to consider any*  
21 *setback in any yard of up to 100 feet*)  
22  
23 D. Designated composting areas may not be located in the minimum required front yard,  
24 must be screened from adjoining residential property with either a fence or other  
25 adequate screening material, and must be maintained in a manner that protects  
26 adjacent properties from nuisance odors, runoff and pests.  
27  
28 E. Adequate parking and safe ingress and egress to the adjacent street must be provided.  
29  
30 F. Only practices and equipment commonly used in residential gardening may be used.  
31 No lighting is permitted and all activities are subject to compliance with the noise  
32 standards set forth in Chapter 108.1 of The Code.  
33  
34 G. The hours of operation are limited from 7:00 A.M. to dusk. (*Advertised to allow the*  
35 *Board to consider unlimited hours of operation*)  
36  
37 H. Community gardens and the area surrounding community gardens must be  
38 maintained in good condition. In the event that the operation of the community  
39 garden ceases, the land or area must be restored, and all structures associated with the  
40 community garden must be removed from the property.  
41  
42 I. The operation of a community garden cannot create an erosive condition, as identified  
43 in Chapter 104 of The Code. A Conservation Plan approved by the Northern Virginia  
44 Soil and Water Conservation District is recommended for gardens of not more than  
45 5,000 square feet in area and is required for gardens greater than 5,000 square feet in  
46 area. All activity in and around the garden must adhere to the recommendations of the

1 Plan to preclude the development of erosive conditions. (*Advertised to allow the*  
 2 *Board to make a Conservation Plan optional or mandatory for all community*  
 3 *garden sizes)*

4  
 5 J. To establish a community garden, an application must be filed with the Zoning  
 6 Administrator on forms furnished by the County, accompanied by the required fees in  
 7 accordance with Sect. 18-106. Permits are valid for a period of two years and may be  
 8 renewed on a biennial basis with approval of the Zoning Administrator. Any  
 9 subsequent expansion or change of permit holder may require submission of a new  
 10 application as determined by the Zoning Administrator. (*Advertised to allow the*  
 11 *Board to consider any fee of between \$0 and \$500 and a period of permit validity of*  
 12 *up to five years)*

13  
 14 2. Community gardens may be permitted as an accessory use, for the exclusive use and  
 15 enjoyment of members of a homeowner association, condominium association, or non-  
 16 residential development, without approval of a temporary special permit, provided the  
 17 operation conforms to provisions A through I of Par. 1 above.

18  
 19 3. Community gardens may also be permitted on County owned and controlled property,  
 20 including the Park Authority or Fairfax County Public Schools, provided that such  
 21 community gardens have the property owner's permission and comply with all other  
 22 applicable regulations.

23  
 24 **Amend Article 8, Special Permits, Part 9, Uses Requiring Special Regulation, as follows:**

25  
 26 - **Amend Sect. 8-901, Group 9 Special Permit Uses to remove the Open-air produce**  
 27 **stands use from Par. 8, as follows:**

28  
 29 ~~8. Open-air produce stands.~~

30  
 31 - **Amend Sect. 8-902, Districts in Which Group 9 Uses May be Located, to remove Use**  
 32 **Number 8 from Paragraphs 1 and 2.**

33  
 34 - **Amend Sect. 8-909, Additional Standards for Open-Air Produce Stands to delete the**  
 35 **lead-in paragraph and provisions.**

36  
 37 **Amend Article 10, Accessory Uses, Accessory Service Uses and Home Occupations, Part 1,**  
 38 **Accessory Uses and Structures, of as follows:**

39  
 40 - **Amend Par. 10 of Sect. 10-102, Permitted Accessory Uses, as follows:**

41  
 42 **10-102 Permitted Accessory Uses**

43  
 44 Accessory uses and structures may include, but are not limited to, the following uses and  
 45 structures; any such use or structure must be in accordance with the definition of Accessory  
 46 Use contained in Article 20.



1  
2 10. Gardening primarily for the growth of herbs, fruits, vegetables, flowers and ornamental  
3 plantings but not including landscaping as defined in Article 20, and composting.

4  
5 - **Amend Par. 12 of Sect. 10-104, Location Regulations, as follows:**

6  
7 **10-104 Location Regulations**

8  
9 12. The following regulations shall apply to the location of all freestanding structures or uses  
10 except those specifically set forth in other paragraphs of this Section:

11  
12 C. No accessory structure or use, except a statue, basketball standard, ~~or~~ flagpole, or  
13 gardening in an area of not more than 100 square feet shall may be located (a) in any  
14 minimum required front yard on any lot or (b) in any front yard on any lot containing  
15 36,000 square feet or less. When located in a front yard, basketball standards and  
16 gardening shall may not be closer than fifteen (15) feet to a front lot line. Composting  
17 is not permitted in any front yard. Additionally, basketball standards may not be  
18 closer than and twelve (12) feet to a side lot line, and shall may not be used between  
19 the hours of 8:00 PM and 8:00 AM. *(Advertised to allow the Board to consider all of*  
20 *the following: unlimited area; no setback; and limited to only single family*  
21 *detached dwellings)*

22  
23 **Amend Article 18, Administration, Amendments, Violations and Penalties, by amending**  
24 **Part 1, Administration, Sect. 106, Application and Zoning Compliance Letter Fees, to**  
25 **modify the Group 8 special permit fees in Par. 1 to add farmers markets and community**  
26 **gardens and modify the Group 9 special permit fees to remove Open air produce stand, as**  
27 **follows:**

28  
29 1. Application for a variance, appeal, special permit or special exception:

30  
31 Group 8 special permit

- 32
- 33 • Temporary portable storage containers approved by the Zoning Administrator \$0
- 34
- 35
- 36 • All other uses approved by the Zoning Administrator \$205
- 37 *Advertised to allow the Board to consider a fee from \$0 to \$500 and permit validity*
- 38 *of up to five years for farmers markets and community gardens only.*
- 39
- 40 • Temporary portable storage containers approved by the BZA \$0
- 41
- 42 • Community gardens approved by the BZA \$435
- 43 *Advertised to allow the Board to consider a fee from \$0 to \$910*
- 44

1	• <u>Farmers markets and community gardens biennial renewal</u>	\$50
2	<i>Advertised to allow the Board to consider a fee from \$0 to \$500 and permit validity</i>	
3	<i>of up to five years.</i>	
4		
5	• All other uses approved by the BZA	\$16,375
6		
7	Group 9 special permit	
8		
9	• <del>Open air produce stand</del>	\$1810

**FARMERS MARKET REGULATIONS - JURISDICTIONAL COMPARISON**

JURISDICTION	DEFINED IN ORDINANCE	TIME OF YEAR	LOCATION FREQUENCY	USE TYPE	SIGNAGE	HOURS OF OPERATION	LOCATIONAL CHARACTERISTICS	PARKING	STRUCTURES	EQUIPMENT STORAGE	LIMITATIONS ON GOODS	
<b>Arlington County</b>	Open-air markets	No	No	Use Permit	No	Determined by County Board	Yes	Parking plan required during use permit process	No	No	No	
<b>Loudoun County</b>	Farm Market	No	Yes	By right Special Exception	No	No	Yes	Yes	Yes	No	Yes	
	Farm Market (off-site production)	No	Yes	Special Exception	No	No	Yes	Yes	Yes	Yes	Yes	
<b>Prince William County</b>	Farmer's Market	No	No	By right	No	No	No	No	No, definition says indoor or outdoor facility	No	Yes	
				Special Use Permit								
<b>City of Alexandria</b>	Farmer's Market	No	No	By right	No	7:00 a.m. to sundown	No	No parking requirement in Mount Vernon Avenue Urban Overlay Zone; Otherwise not detailed	No	No on-site storage of trailers	Yes	
				Special Use Permit								
				Administrative Approval								
<b>City of Falls Church</b>	No	No	No	No	No	No	No	No	No	No	No	
<b>City of Richmond</b>	No	No	No	No	No	No	No	No	No	No	No	
<b>City of Harrisonburg</b>	No, appears to be included as Public Use	No	No	Public uses allowed by right	No	No	Yes	No	No	No	Yes	
<b>City of Roanoke</b>	Community Market	No	No	By right	No	No	No	None required	No, definition says stalls or tables which are not enclosed in a building	No	Yes	
<b>City of Williamsburg</b>	No	No	No	Special Use Permit	Yes	No	No	None required	No	No	No	
<b>Town of Blacksburg</b>	Private Farmers Market	No	No	By right	Yes	Must be detailed in Market Plan	Yes	Yes	Yes	Yes	Yes	
	Public Farmers Market	No	No	By right	Yes	Must be detailed in lease agreement	Yes	Yes	Yes	Yes	Yes	
<b>Town of Christiansburg</b>	Farmers' Market	No	No	Conditional Use Permit	No	No	No	2 parking spaces for each rented stall, table or sales space	No, definition says outdoor site	No	Yes	
<b>OTHER</b>	<b>Washington D.C.</b>	Farmers Market	No	No	By right	No	No	Yes, for open space and parking lots	None required	No, definition says open area	No	Yes
	<b>Montgomery County, MD</b>	Farm Market, On-site	No	No	By right	No	No	Setbacks	Minimum of 3 parking spaces	No	No	Yes
		Rural Country Market	No	No	Conditional Use	No	No	Setbacks	Between 3.5-5 parking spaces	No	No	Yes