

COUNTY OF YORK

MEMORANDUM

DATE: September 15, 2016 (BOS Mtg. 10/4/16)

TO: York County Board of Supervisors

FROM: Neil A. Morgan, County Administrator 

SUBJECT: Application No. ZT-171-16, York County Board of Supervisors: Proposed Zoning Ordinance Text Amendment to Reflect State Code Change

ISSUE

At its June 21 meeting, the Board sponsored this application to amend the York County Zoning Ordinance to incorporate a change to the *Code of Virginia* that was approved by the 2016 General Assembly and signed by the Governor.

CONSIDERATIONS/CONCLUSIONS

House Bill 367, adopted by the 2016 General Assembly and signed by the Governor, provides that if a use does not conform to the zoning prescribed for the district in which such use is situated, and if (i) a business license was issued by the locality for such use and (ii) the holder of such business license has operated continuously in the same location for at least fifteen years and has paid all local taxes related to such use, the locality shall permit the holder of such business license to apply for a rezoning or a Special Use Permit without charge by the locality or any agency affiliated with the locality for fees associated with such filing.

The intent of this bill as it was originally drafted was to address a situation that occurred in 2014 in the City of Chesapeake where, according to media reports, a business license was wrongly issued to a business that had not obtained the required conditional use permit. More than twenty years later, the proprietor was informed by the City that he needed to apply for a use permit that would likely require him to make various improvements to his property. The bill as originally drafted would have allowed localities to designate unlawful uses as legal nonconforming uses (i.e., “grandfather” them) as long as they have operated for at least fifteen years, have no history of code violations or neighbor complaints, and have consistently paid their local taxes in a timely manner. Through the legislative process, the language was changed substantially to the version that was ultimately adopted, the effect of which appears to bear little relation to the bill’s original intent of providing relief to businesses permitted to operate on account of an error on the part of the locality.

The practical effect of this law in York County is that from now on, the owner of *any* nonconforming use meeting the three criteria – i.e., possesses a Business License, has been in continuous operation for at least fifteen years, and has paid all local taxes related to the use – can apply for a rezoning or a Special Use Permit without having to pay the

normally required filing fee. These application fees are intended to help defray the cost of advertising the public hearings required by the *Code of Virginia*; as such this change imposes an unfunded mandate on localities.

Whatever the deficiencies and likely consequences – intended and unintended – of this new law, it needs to be incorporated into the Zoning Ordinance. The Zoning Ordinance text amendments contained in proposed Ordinance No. 16-11 will bring the nonconforming use provisions set forth in Section 24.1-801 of the Zoning Ordinance into conformance with Section 15.2-2307.C of the *Code of Virginia*.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered this application at its September 14 meeting and, subsequent to conducting a public hearing at which nobody spoke, voted 5:0 (Messrs. Brazelton and King absent) to recommend approval.

COUNTY ADMINISTRATOR RECOMMENDATION

I recommend that the Board adopt the proposed Zoning Ordinance text amendments set forth in proposed Ordinance No. 16-11.

Cross/3496

Attachments:

- Planning Commission minutes excerpts, September 14, 2016
- Proposed Ordinance No. 16-11