

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

Application No. ZT-171-16, York County Board of Supervisors: Request to amend the Section 24.1-801 of the York County Zoning Ordinance to provide that for any nonconforming use for which a business license was issued for such use and the holder of such business license has operated continuously in the same location for at least 15 years and has paid all local taxes related to such use, the holder of such business license may apply for a rezoning or a Special Use Permit without having to pay a filing fee.

Mr. Cross summarized the staff report dated August 30, 2016. He explained that a change to the Code of Virginia adopted by the General Assembly in its 2016 session needs to be incorporated into the Zoning Ordinance, and he recommended that the Commission recommend approval of the proposed text amendment through the adoption of proposed Resolution No. PC16-17.

Mr. Myer asked if the term “all local taxes” refers to business taxes, real estate taxes, property taxes, etc.

Mr. Cross responded that he interprets it to include all taxes assessed by the locality.

Mr. Myers asked if he is correct in saying that the holder of the business license would not necessarily be the owner of the property.

Mr. Cross said that it correct.

Mr. Barnett added that the law does not confer on the holder of the business license any opportunity to apply for a rezoning or use permit without the property owner’s consent.

Chair Jons opened the public hearing.

There being no one present wishing to address the Commission on this application, **Chair Jons** closed the public hearing.

Ms. Magowan moved the adoption of Resolution No. PC16-17.

A RESOLUTION TO RECOMMEND APPROVAL OF AN APPLICATION TO AMEND CHAPTER 24.1, ZONING, SECTION 24.1-801, OF THE YORK COUNTY CODE TO INCORPORATE A PROCEDURAL CHANGE NECESSITATED BY LEGISLATION ADOPTED BY THE 2016 VIRGINIA GENERAL ASSEMBLY

WHEREAS, on June 21, 2016, the York County Board of Supervisors sponsored Application No. ZT-171-16 to amend Section 24.1-801 of the York County Zoning Ordinance to incorporate the provisions set forth in House Bill 367, adopted by the Virginia General Assembly in the 2016 session and signed by the Governor; and

WHEREAS, said application has been referred to the York County Planning Commission for review and recommendation in accordance with applicable procedures; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of September, 2016, that Application No. ZT-171-16 be, and it is hereby, forwarded to the York County Board of Supervisors with a recommendation of approval to amend Section 24.1-801 of the York County Zoning Ordinance to read and provide as follows:

Sec. 24.1-801. Nonconforming uses.

- (a) *Enlargement or extension.* A nonconforming use shall not be enlarged, extended, reconstructed, or structurally altered except in conformance with the provisions of this section.
- (1) Structural additions, either attached or detached, may be made to single-family detached residences located in non-residential districts provided that such additions comply with all applicable setback and yard requirements for the district in which located and that the minimum open space provisions for said district are observed.
 - (2) No other nonconforming uses shall be enlarged or extended in any way except and unless the board shall authorize such enlargement or expansion through the issuance of a special exception which shall be processed and administered in the same way as are special use permits, provided, however, in addition to the standards set out in article I, the board shall consider whether the character of the existing use will be preserved in the event of the proposed enlargement. All owners of property located within five hundred feet (500') of the subject parcel, whether abutting or not, shall be sent notice of public hearings pertaining to the request. In no case shall the nonconforming use be permitted to expand by more than fifty percent (50%) of its size measured in building floor area on the date that it became nonconforming.
- (b) *Discontinuance.* In the event a nonconforming use ceases for any reason for a period of more than two (2) consecutive years, such nonconforming use shall not be reestablished. For purposes of this section, the term "discontinued" shall mean a cessation of a use or of any portion of a use, regardless of any intent by the user or owner to reestablish the use in the future. Discontinuance shall not be synonymous with abandonment and this shall be construed to incorporate both time and place, such that if the nonconforming use ceases in a particular structure or location for more than two (2) years even though it continues elsewhere on the same lot or parcel, the nonconforming use may not be reestablished in the structure or location where it was discontinued.
- (c) *Damage or destruction.* In the event a nonconforming use, or the structure(s) associated with that nonconforming use, is damaged or destroyed by a natural disaster or other cause beyond the control of the owner, such use and associated structure(s) may be reestablished or reconstructed within two (2) years of the date of such damage or destruction provided, however, that such reestablishment or reconstruction shall not have the effect of enlarging or extending the nonconforming use or associated structure(s), unless in conformance with the provisions of section 24.1-801(a) above. However, if the nonconforming use is in an area under a federal disaster declaration and the damage or

destruction is a direct result of the conditions that gave rise to the declaration, then the allowable timeframe for reestablishment or reconstruction shall be four (4) years. For a use which is dependent upon occupancy of a destroyed or damaged structure, the use shall be deemed to be reestablished upon the issuance of a building permit for the structure, provided the completion of the structure is thereafter diligently pursued. In the event the use does not involve a structure, the actual operation and conduct of the use shall be the measure of reestablishment. After two (2) years, or four (4) years if applicable, of the damage or destruction, all nonconforming use rights shall be lost.

Reconstruction of structures pursuant to the above provisions shall be in compliance with the terms of the Virginia Uniform Statewide Building Code and all applicable terms of the Floodplain Management Overlay District regulations (section 24.1-373 of this chapter) and in a manner that eliminates or reduces nonconforming features to the extent possible. The reconstruction of any nonconforming structures shall be in accordance with the terms of section 24.1-802.

Nothing in this section shall be construed to prohibit normal and ordinary repairs and maintenance for a structure housing a nonconforming use. However, owner-initiated demolition and rebuilding/reconstruction of all or any structural portion of a building housing such use, shall not be permitted unless the need for demolition is the result of a natural disaster or other cause beyond the control of the owner.

Nothing in this section shall be construed to prevent the removal of a valid nonconforming manufactured housing unit from property and its replacement with another comparable manufactured housing unit in accordance with section 24.1-802(c).

- (d) *Changes in use.* A nonconforming use may at any time, upon approval of a site plan submitted in accordance with article V of this chapter, be changed to a conforming use or to a use which is more nearly conforming with the regulations of the district in which it is located.
- (e) *Movement.* Except as provided in section 24.1-801(a) above, no nonconforming use shall be moved in whole or in part on the same lot or parcel or to any other lot or parcel which is not properly zoned to permit such use.
- (f) *Construction.* Except as provided in section 24.1-801(a) above, no additional structures which do not conform to the requirements of this chapter shall be erected in connection with such nonconforming use of land.
- (g) *Rezoning/Special Use Permit.* 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 15 years and has paid all local taxes related to such use, the holder of such business license may apply for a rezoning or a special use permit without charge for fees associated with such filing.

On roll call, the vote was:

Yea: (5) Myer, Magowan, Peterman, Phillips, Jons
Nay: (0)

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2016:

Present

Vote

Jeffrey D. Wassmer, Chairman
Sheila S. Noll, Vice Chairman
Walter C. Zaremba
W. Chad Green
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE TO AMEND CHAPTER 24.1, ZONING, SECTION 24.1-801, OF THE YORK COUNTY CODE TO INCORPORATE A PROCEDURAL CHANGE NECESSITATED BY LEGISLATION ADOPTED BY THE 2016 VIRGINIA GENERAL ASSEMBLY

WHEREAS, on June 21, 2016, the York County Board of Supervisors sponsored Application No. ZT-171-16 to amend Section 24.1-801 of the York County Zoning Ordinance to incorporate the provisions set forth in House Bill 367, adopted by the Virginia General Assembly in the 2016 session and signed by the Governor; and

WHEREAS, said application has been referred to the York County Planning Commission for review and recommendation in accordance with applicable procedures; and

WHEREAS, the Planning Commission recommends approval of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the ____ day of _____, 2016, that Application No. ZT-171-16 be, and it

is hereby, approved to amend Section 24.1-801 of the York County Zoning Ordinance to read and provide as follows:

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 - (2) No other nonconforming uses shall be enlarged or extended in any way except and unless the board shall authorize such enlargement or expansion through the issuance of a special exception which shall be processed and administered in the same way as are special use permits, provided, however, in addition to the standards set out in article I, the board shall consider whether the character of the existing use will be preserved in the event of the proposed enlargement. All owners of property located within five hundred feet (500') of the subject parcel, whether abutting or not, shall be sent notice of public hearings pertaining to the request. In no case shall the nonconforming use be permitted to expand by more than fifty percent (50%) of its size measured in building floor area on the date that it became nonconforming.
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or reconstruction shall not have the effect of enlarging or extending the nonconforming use or associated structure(s), unless in conformance with the provisions of section 24.1-801(a) above. However, if the nonconforming use is in an area under a federal disaster declaration and the damage or destruction is a direct result of the conditions that gave rise to the declaration, then the allowable timeframe for reestablishment or reconstruction shall be four (4) years. For a use which is dependent upon occupancy of a destroyed or damaged structure, the use shall be deemed to be reestablished upon the issuance of a building permit for the structure, provided the completion of the structure is thereafter diligently pursued. In the event the use does not involve a structure, the actual operation and conduct of the use shall be the measure of reestablishment. After two (2) years, or four (4) years if applicable, of the damage or destruction, all nonconforming use rights shall be lost.

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- (e) *Movement.* Except as provided in section 24.1-801(a) above, no nonconforming use shall be moved in whole or in part on the same lot or parcel or to any other lot or parcel which is not properly zoned to permit such use.
- (f) *Construction.* Except as provided in section 24.1-801(a) above, no additional structures which do not conform to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

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