

# COUNTY OF YORK

## MEMORANDUM

**DATE:** August 4, 2015 (PC Mtg. 8/12/15)

**TO:** York County Planning Commission

**FROM:** Timothy C. Cross, AICP, Principal Planner

**SUBJECT:** Application No. ZT-164-15, York County Board of Supervisors: Proposed Zoning Ordinance Text Amendments to Reflect State Code Changes

### ISSUE

At its June 16 meeting, the Board of Supervisors sponsored this application to amend the York County Zoning Ordinance to incorporate changes to the *Code of Virginia* that were approved by the 2015 General Assembly and have been signed by the Governor

### CONSIDERATIONS/CONCLUSIONS

Three bills relating to localities' zoning review procedures were approved in the 2015 session of the Virginia Assembly. These bills and the proposed Zoning Ordinance amendments are summarized below:

- House Bill 1849 made various changes to the standards and procedures to be followed by local boards of zoning appeals when reviewing applications for variances. The effect of this bill is essentially to lower the threshold that applicants must meet in order to have a variance request granted by the BZA. Rather than find that strict application of the ordinance would “result in unnecessary or unreasonable hardship to the property owner” in order to grant a variance – the current standard – the BZA need only find that it would “unreasonably restrict the utilization of the property.” The bill also adds parcel shape and building height to the types of zoning provisions that can be deviated from through the granting of a variance and makes various other changes, many of which are simply changes in numbering and formatting in the State Code. One substantive change, however, is that the bill clarifies that for any BZA application, the burden of proof falls on the applicant to demonstrate that the request meets the criteria for a variance or, in the case of an appeal of a decision of an administrative officer in the enforcement of the Zoning Ordinance (i.e., the Zoning Administrator or a Zoning Enforcement Officer), that the officer’s decision was incorrect.

To provide for consistency with Sections 15.2-2201 and 15.2-2309, and 15.2-2314 of the *Code of Virginia*, changes are proposed to the definition of *Variance* in Section 24.1-104 of the Zoning Ordinance and to the *Powers and Duties* of the Board of Zoning Appeals set forth in Section 24.1-901.

- In 2010, the General Assembly amended Section 15.2-2303.1:1 of the *Code of Virginia* to mandate a delay for the payment of certain per-dwelling-unit cash proffers until after the final inspection of the subject property and prior to the issuance of a certificate of occupancy (rather than, for example, at the time of Building Permit issuance). This provision was originally due to expire on July 1, 2014, but the General Assembly extended the expiration date to 2015 in 2011 and then to 2017 in 2012. Senate Bill 1257, adopted in the 2015 session, removed the expiration date altogether. Accordingly, the expiration date referenced in Section 24.1-114(d)(4) of the Zoning Ordinance is proposed to be deleted.
- Section 15.2-2259 of the *Code of Virginia* sets forth time limits – 60 days for initial review and 45 days for subsequent reviews – for local governments to complete their review of site plans and subdivision plans and plats. In 2008 the Virginia General Assembly amended this section by establishing additional provisions applicable only to localities with more than 90,000 residents. These provisions, which apply only to commercial and industrial plans and plats, specify that after the initial review, localities can comment only on those items that were identified as deficient in the initial review and on changes to the plan made by the applicant to address review comments on the initial plan. In addition, a provision was added stating that a commercial plan or plat is deemed to be approved if the locality fails to approve or disapprove it within the prescribed time limits. There is also a provision negating the approval (or *deemed* approval) of any commercial plan or plat when a deficiency, if left uncorrected, would violate local, state, or federal law, regulations, or mandatory VDOT or other engineering and safety requirements. Senate Bill 1355, approved in 2015, removed the 90,000-resident population threshold from the special provisions for commercial plans and plats, thereby expanding their applicability to all localities in the Commonwealth, including York County. This makes it necessary to revise the Site Plan review procedures set forth Section 24.1-505(c) of the Zoning Ordinance to reflect these requirements. Proposed text amendment language to accomplish this is set forth in proposed Resolution No. PC15-15. (A corresponding set of amendments to the subdivision review procedures in the Subdivision Ordinance has been sponsored by the Board and will be considered under a separate application.)

## **RECOMMENDATION**

The proposed text amendments will bring the Zoning Ordinance into conformance with the revised *Code of Virginia* provisions. Accordingly, staff recommends that the Commission forward the proposed Zoning Ordinance text amendments set forth in proposed Resolution No. PC15-15 to the Board of Supervisors with a recommendation of adoption.

TCC

Attachments:

- Proposed Resolution No. PC15-15

PLANNING COMMISSION  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Planning Commission held in the Board Room, York Hall, Yorktown, Virginia, on the \_\_\_\_ day of \_\_\_\_\_, 2015:

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Present

Vote

Todd H. Mathes, Chair  
Glenn A. Brazelton, Vice Chair  
Montgoussaint E. Jons  
Timothy D. McCulloch  
Richard M. Myer, Jr.  
Melissa S. Magowan  
Robert W. Peterman

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On motion of \_\_\_\_\_, which carried \_\_\_\_, the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF AN APPLICATION TO AMEND VARIOUS SECTIONS OF CHAPTER 24.1, ZONING, OF THE YORK COUNTY CODE TO BRING THEM INTO CONFORMANCE WITH THE CODE OF VIRGINIA AS A RESULT OF LEGISLATION ADOPTED BY THE 2015 VIRGINIA GENERAL ASSEMBLY

WHEREAS, the York County Board of Supervisors has sponsored Application No. ZT-164-15 to amend the Zoning Ordinance by incorporating changes made to the Code of Virginia by the Virginia General Assembly in the 2015 session and signed by the Governor; and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; 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 \_\_\_\_ day of \_\_\_\_\_, 2015 that Application No. ZT-164-15 be, and it is

hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to amendments to the listed sections of Chapter 24.1 of the York County Code to read and provide as follows:

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## ARTICLE I. IN GENERAL

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### Sec. 24.1-104. Definitions.

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*Variance.* In the application of this chapter, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the chapter would ~~result in unnecessary or unreasonable hardship to the property owner~~unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and purpose of this chapter, and, if granted, would result in substantial justice being done.~~It shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

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### Sec. 24.1-114. Conditional zoning.

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#### (d) *Effect of conditions.*

- (1) The provisions of this section shall be considered separate from, supplemental to and in addition to the provisions contained elsewhere in this chapter or other county ordinances. Nothing contained in this section shall be construed as excusing compliance with all other applicable provisions of this Code.
- (2) Once proffered and accepted by the board as part of an amendment to the zoning map, such conditions shall continue in full force and effect until amended as provided herein.
- (3) Conditions once proffered and accepted by the board shall immediately become effective with approval of the application to amend the zoning map. Upon approval, any site plan, subdivision plat, or development plan thereafter submitted for the development of the property in question shall

be in conformance with all proffered conditions and no development shall be approved by any county official in the absence of said conformance.

- (4) In the event proffered conditions include the dedication of real property or the payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for which said property is dedicated or cash is tendered are included in the capital improvement program, except that items which are not normally included in such capital improvement program may be accepted at any time. In the event a proffer ~~accepted prior to July 1, 2017, which~~ involves a pledge of a cash payment for residential construction on a per-dwelling unit or per-home basis, the cash payment pursuant to such proffer shall be collected or accepted only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property.

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## ARTICLE V. SITE PLANS

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### Sec. 24.1-505. Review and approval procedures for site plans.

- (a) While not required, developers and property owners are encouraged to present informally conceptual plans to the Department of Environmental and Development Services at a preapplication conference. Applicants should provide preliminary site sketches and plan information prior to the scheduled conference.
- (b) The department of environmental and development services shall be responsible for review of the site plan for general completeness and for compliance with established administrative requirements and for coordinating and monitoring the review process. In fulfilling this responsibility, the department may transmit copies of site plans to appropriate departments, agencies, and officials for their review, comment, and recommendations.
- (c) The zoning administrator shall be the final plan approving authority. No final action shall be taken until the comments and recommendations of all reviewing agencies, and departments and officials have been received. Except under abnormal circumstances, all reviews shall be completed and the final decision of the zoning administrator rendered within sixty (60) days of the submission of a site plan having all the necessary elements as prescribed in section 24.1-502. In the event a final decision cannot be rendered within sixty (60) days, the applicant may request and shall be given written notice of such delay and the reasons therefor. Where review by one (1) or more state agencies, including but not limited to the health department and/or department of transportation, is necessary, the zoning administrator shall act upon the plan no later than thirty-five (35) days after the receipt of all comments or approvals of such state agency or agencies.

- (d) The zoning administrator may act in any of the following manners on site plans:
- (1) *Disapproval* - shall indicate that there are significant deficiencies in the plan as submitted and that the ability to correct them is in doubt or that even if the deficiencies were to be corrected, the plan may not be approvable in accordance with section 24-500(b).
  - (2) *Preliminary approval* - shall indicate that there are deficiencies in the depicted plan which must be corrected prior to final approval being granted; however, such action shall constitute assurance that if the corrections are made in the stipulated manner, final approval will be granted.
  - (3) *Final approval* - shall indicate that the site plan as depicted, or subject to certain noted conditions, is fully approved and, upon the issuance of all relevant permits, construction activities may commence. A site plan shall be deemed to have received final approval once it has been reviewed and approved by the zoning administrator and the only requirement remaining to be satisfied in order to obtain a building permit is the posting of any performance guarantees.
- (e) Upon action by the zoning administrator, the applicant shall be notified in writing of such action and the reasons therefor.
- (e) Site plans which have received preliminary approval or have been disapproved by the zoning administrator may be resubmitted for review at no additional fee provided that such resubmission occurs within six (6) months of the date on which notice of preliminary approval or disapproval was transmitted to the applicant and that a written narrative statement describing how each of the preliminary approval conditions or reasons for disapproval and staff recommendations have been addressed on the revised site plan. For site plans having received preliminary approval, only those plan sheets on which revisions have been made need to be resubmitted. For disapproved plans, entire plan sets shall be resubmitted. Revised site plans submitted later than six (6) months shall be reviewed as a new submission and shall be subject to any changes in county ordinances which have occurred in the intervening time period, and shall require the payment of the requisite review fee.
- (f) For a resubmitted site plan solely involving a parcel or parcels of commercial real estate, the zoning administrator shall act on the plan within forty-five (45) days provided, however, that where review by one or more state agencies is necessary, the comments or approvals of such state agency or agencies shall be provided within thirty-five (35) days of their receipt by the zoning administrator. In reviewing such a plan, the zoning administrator shall consider only the deficiencies identified in the review of the initial site plan that have not been corrected in such resubmission and any deficiencies that arise as a result of the corrections made to

address deficiencies identified in the initial submission. Failure to approve or disapprove a resubmitted commercial site plan within the specified time periods shall cause the plan to be deemed approved. Notwithstanding the approval or deemed approval of any proposed commercial site plan, any deficiency in any proposed plan, that if left uncorrected, would violate local, state or federal law, regulations, mandatory Department of Transportation engineering and safety requirements, and other mandatory engineering and safety requirements, shall not be considered, treated, or deemed as having been approved. Should any resubmission include a material revision of infrastructure or physical improvements from the earlier submission, or if a material revision in the resubmission creates a new required review by the Virginia Department of Transportation or by a state agency or public authority authorized by state law, then the zoning administrator's review shall not be limited to only the previously identified deficiencies of prior submittals and may consider deficiencies initially appearing in the resubmission because of such material revision.

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## ARTICLE IX. APPEALS

### **Sec. 24.1-900. Board of zoning appeals established.**

Pursuant to the requirements of title 15.2, Code of Virginia, there is hereby established a Board of Zoning Appeals for the County of York, Virginia.

The board of zoning appeals shall consist of five (5) residents of the county, one (1) of whom may be a member of the planning commission, each to be appointed by the judge of the county circuit court. The terms of office, organization, and procedures of this board shall be in accordance with the provisions established by section 15.2-2308, Code of Virginia.

### **Sec. 24.1-901. Powers and duties.**

The board of zoning appeals shall have all the powers and duties as prescribed in section 15.2-2309, Code of Virginia, and as set forth below:

- (a) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or any amendment thereto or any modification of zoning requirements pursuant to section 24.1-902. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such pre-

sumption of correctness by a preponderance of the evidence. The board shall consider ~~the purpose and intent of~~ any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with Section 15.2-2309 of the Code of Virginia, notwithstanding any other provision of law, general or special.

- (b) To authorize ~~Notwithstanding any other provision of law, general or special, to grant~~ upon appeal or original application in specific cases ~~such a variance from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship;~~ ~~provided that the spirit of this chapter shall be observed and substantial justice done as follows:~~ the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance and the criteria set out in Section 15.2-2309 of the Code of Virginia.

(1) When a property owner can show that the owner's ~~Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and~~

a. ~~the property interest for which the variance is being requested was acquired in good faith and where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property, or where the board of zoning appeals is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter.~~

a.b. ~~the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;~~

- c. the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
  - d. the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
  - e. the relief or remedy sought by the variance application is not available through the granting of a special use permit by the board of supervisors or the process for modification of a zoning ordinance pursuant to Section 24.1-113 of this chapter at the time of the filing of the variance application.
- (2) ~~No such variance shall be authorized by the board of zoning appeals unless it finds:~~
- a. ~~That the strict application of the provisions of this chapter would produce undue hardship;~~
  - b. ~~That the hardship is not shared generally by other properties in the same zoning district and the same vicinity;~~
  - c. ~~That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and~~
  - d. ~~That the condition or situation of the property concerned or the intended use of the property is not of such a general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.~~
- (23) In accordance with section 15.2-2309, Code of Virginia, in authorizing granting a variance, the board of zoning appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a performance guarantee to ensure that the conditions imposed are being and will continue to be complied with.
- (34) Notwithstanding any other provision of law, general or special, any deviation from the normally applicable regulations of this chapter that is approved by the authorization of a variance shall thereafter be considered a conforming feature of the property. However, any construction authorized by such variance shall be allowed to expand further only to the extent that

such expansion conforms with all applicable requirements of this chapter. Any expansion proposed within an area of the site or part of the structure which does not conform to all applicable zoning standards shall be permitted only if authorized by approval of another variance request.

- (c) To hear and decide applications for interpretation of the zoning map where there is any uncertainty as to the location of a district boundary.
- (d) None of the provisions of this section shall be construed as granting the board of zoning appeals the power to reclassify property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the board of supervisors.

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