



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of July 8, 2006

DATE: June 22, 2006

SUBJECT: Zoning Ordinance Amendments to Section 1. Definitions, Section 31. Special Provisions, and Section 35. Nonconforming Buildings and Uses, of the Arlington County Zoning Ordinance (1) to clarify, by amending the definition of lot, that the requirement for minimum street width necessary to build structures on lots is 30 feet of public right-of-way and that lots fronting on a public right-of-way that is less than 30 feet wide may not be built upon; (2) to clarify, by amending the regulations in Section 31.A.15., that a prerequisite to the creation of by-right split-lots is to demonstrate to the satisfaction of the Zoning Administrator that the property proposed to be subdivided into split-lots would meet the definitions and all subdivision and zoning requirements necessary to create one interior lot and one pipe-stem lot with a minimum frontage of 40 feet, and (3) to change the time within which property owners are permitted to restore nonconforming uses from one year to two years as called for by the Code of Virginia.

C. M. RECOMMENDATION:

Adopt the attached ordinance to amend Sections 1., 31. and 35. of the Arlington County Zoning Ordinance to clarify (1) the definition of lot; (2) the standards for the creation of split-lots; and (3) the time within which property owners are permitted to restore nonconforming uses; to facilitate the creation of a convenient, attractive and harmonious community; and for other reasons required by the public necessity, convenience and general welfare and good zoning practice.

ISSUES: None.

SUMMARY: These Zoning Ordinance Amendments would address several issues that have been discovered to cause confusion in the administration of the Ordinance. They represent clarifications, not changes to current requirements. These amendments would address (1) the requirement that a lot have frontage on a street with a minimum right-of-way width of 30 feet in order to construct buildings on the lot; (2) the standards for determining when a split-lot subdivision should be approved; and (3) the time period within which property owners are permitted to restore nonconforming uses. This last amendment will align the Zoning Ordinance with the time permitted in the Code of Virginia.

County Manager: _____

County Attorney: _____

Staff: Terry Russell, Zoning Administrator

PLA-4385

DISCUSSION:

DEFINITION OF LOT: The Zoning Administrator issued a determination that new buildings could not be constructed on two lots because the lots were not located on a street with a width of 30 feet. This has been the County's long-standing interpretation of the Zoning Ordinance requirements. The Zoning Administrator's determination was appealed to the Board of Zoning Appeals (BZA). The BZA overturned the Zoning Administrator's determination, apparently based on some confusion generated by the definition of lot. The proposed amendment would make it clear that lots are not buildable unless located on streets with a minimum width of 30 feet of right-of-way. Amending the definition of lot and the regulations contained in Section 31.c.4. regarding the erection of buildings would clarify the Zoning Ordinance with regard to this requirement.

SPLIT-LOT: The Zoning Administrator has interpreted the Zoning Ordinance provisions for the creation of split-lots to require proof that the proposed split-lot development meets the standards for the creation of a conforming interior lot plus a pipe-stem lot with a minimum street frontage of 40 feet. An applicant for a subdivision appealed the Zoning Administrator's determination to the BZA. The proposed amendment would make this standard clear.

In March of 2003 the County Board amended the Zoning Ordinance to change the definition of a pipe-stem lot, to amend provisions regarding the approval of pipe-stem lots and development on those lots, and to add a provision for split-lot development. These amendments were the third in a series of Zoning Ordinance amendments intended to address issues raised by the community regarding in-fill residential development.

Pipe-stem lot development emerged as an in-fill development issue as residents increasingly identified pipe-stem lot development as having a negative impact on the neighborhood. Dwellings on such lots often appeared tucked-in out of place behind other houses. The nature of pipe-stem lot development put houses adjacent to the back yards of neighboring houses thus disturbing the natural landscape setting of the middle of residential blocks. The study of these lots resulted in recommendations by the Planning Commission and the County Manager to regulate pipe-stem lots more rigorously.

The County Board amended the Zoning Ordinance, in summary, as follows:

1. Amended the definition of *lot, pipe-stem*.
2. Added a definition of *lot, split-*.
3. Amended *Unified Residential Development* (31.A.13.) to provide a special exception process for the modification of regulations by the County Board for unified residential development proposals that contain two lots, instead of the previous minimum of three lots.
4. Added Section 31.A.15. *Split-lots*. to provide a method to create two lots as a matter of right as an alternative to pipe-stem lot development.

5. Amended Section 32.D. establishing minimum yards of 25 feet on any side in a pipe-stem lot.

When the County Board adopted these amendments, language directly stating that an applicant must show that he or she could do a pipe-stem subdivision on the lot was dropped. However, some wording that split-lot is "an alternative to pipe-stem" remains. Staff believes this language would incorporate the requirement that only property that could have been subdivided into a pipe-stem lot under the un-modified pipe-stem standards can be used for split lot. The amendment is proposed to clarify that.

The Zoning Administrator rejected two split-lot subdivision proposals because they did not and could not meet the standard for the creation of split-lots in that they were not alternatives to pipe-stem lot development. The applicant appealed the Zoning Administrator's determination on each proposed split-lot subdivision to the Board of Zoning Appeals. These cases have been deferred by the BZA at the request of the appellant to July 12, 2006.

The proposed Zoning Ordinance Amendment would clarify the Zoning Ordinance and reflect the Zoning Administrator's interpretation of the Ordinance so that citizens, developers and staff will more easily understand the regulations and requirements regarding split-lot development.

NONCONFORMING USES: The Zoning Ordinance permits nonconforming uses to be restored without losing nonconforming status if restored within one year. However, a number of years ago the Virginia Code was changed to only authorize such an ordinance if it allowed the use to cease for up to two years. The County Ordinance has been interpreted in a way that is consistent with the State Code, but an Ordinance amendment is recommended to clarify this issue. The proposed amendment would change the time period for which a nonconforming use must cease before the right to that use is lost to two years to align the Zoning Ordinance with the Code of Virginia.

FISCAL IMPACT: None.

CONCLUSION:

ORDINANCE TO AMEND, REENACT, AND RECODIFY SECTION 1. DEFINITIONS, SECTION 31. SPECIAL PROVISIONS, AND SECTION 35 NONCONFORMING BUILDINGS AND USES (1) TO CLARIFY, BY AMENDING THE DEFINITION OF LOT, THAT THE REQUIREMENT FOR MINIMUM STREET WIDTH NECESSARY TO BUILD STRUCTURES ON LOTS IS 30 FEET OF PUBLIC RIGHT-OF-WAY AND THAT LOTS FRONTING ON A PUBLIC RIGHT-OF-WAY THAT IS LESS THAN 30 FEET WIDE MAY NOT BE BUILT UPON; (2) TO CLARIFY, BY AMENDING THE REGULATIONS IN SECTION 31.A.15., THAT A PREREQUISITE TO THE CREATION OF A SPLIT-LOT IS TO DEMONSTRATE TO THE SATISFACTION OF THE ZONING ADMINISTRATOR THAT THE PROPERTY PROPOSED TO BE SUBDIVIDED WOULD MEET ALL UN-MODIFIED REQUIREMENTS NECESSARY TO CREATE ONE INTERIOR LOT AND ONE PIPE-STEM LOT AND (3) TO CHANGE THE TIME WITHIN WHICH PROPERTY OWNERS ARE PERMITTED TO RESTORE NONCONFORMING USES FROM ONE YEAR TO TWO YEARS AS CALLED FOR BY THE CODE OF VIRGINIA.

BE IT ORDAINED, by the County Board of Arlington that Sections 1., 31, and 35 of the Arlington County Zoning Ordinance are amended in order to facilitate the creation of a convenient, attractive and harmonious community; and for other reasons required by the public necessity, convenience and general welfare and good zoning practice:

SECTION 1. DEFINITIONS

* * *

Lot. A designated parcel, tract or area of land having its principal frontage upon a street or a place permitted under the subdivisions ordinance and established by plat or subdivision, ~~or as otherwise permitted by law to be used, developed or built upon as a unit.~~

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SECTION 31. SPECIAL PROVISIONS

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A. Use

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15. *Split-Lots:* Split-Lots shall be permitted, as a matter of right, only in "R-20" One-Family Dwelling Districts, "R-10" One-Family Dwelling Districts, "R-8" One-Family Dwelling Districts, "R-6" One-Family Dwelling Districts, "R-5" One-Family, Restricted Two-Family Dwelling Districts, and "R2-7" Two-Family and Town House Districts, as an alternative to pipe-stem lot development. Split-lot Residential Developments are permitted only when the applicant has demonstrated to the satisfaction of the Zoning Administrator, which may include

a survey plat, that the property that is the subject of the split-lot application meets all ordinance standards to create one interior lot and one pipe-stem lot. The pipe-stem lot that can be created must have a minimum frontage of 40 feet on a public street. Except as specifically provided below, Split-Lot Residential Developments shall satisfy all applicable subdivision and zoning requirements, including those for minimum lot area, setback and yards, coverage, parking, and building height, and all of the following requirements:

- a. Split-Lot Residential Development shall be permitted only on sites that have a minimum lot frontage of one hundred forty (140) feet in R-20 One-Family Dwelling Districts; one hundred twenty (120) feet in R-10 One-Family Dwelling Districts; one hundred ten (110) feet in R-8 One-Family Dwelling Districts; one hundred (100) feet in R-6 One-Family Dwelling Districts; and ninety (90) feet in R-5 One-Family, Restricted Two-Family Dwelling District and "R2-7" Two-Family and Town House Districts.
- b. Split-Lot Residential Development shall be defined as the subdivision of one lot into two by adding a straight lot line that extends from the midpoint of the front lot line to the midpoint of the rear lot line.
- c. The minimum lot width for any lot created under the Split-Lot provision shall be: seventy (70) feet in R-20 One-Family Dwelling Districts; sixty (60) feet in R-10 One-Family Dwelling Districts; fifty-five (55) feet in R-8 One-Family Dwelling Districts; fifty (50) feet in R-6 One-Family Dwelling Districts; and forty-five (45) feet in R-5 One-Family, Restricted Two-Family Dwelling Districts and "R2-7" Two-Family and Town House Districts.

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C. Area.

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- 4. *Erection of Building:* Every building hereafter erected shall be located on a lot with frontage on a public street having a minimum width of 30 feet as defined in this ordinance. In all "R" Districts, except in town house dwelling developments, there shall be no more than one (1) main residential building and its accessory buildings on one (1) lot.

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SECTION 35. NONCONFORMING BUILDINGS AND USES

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B. Nonconforming Use of Buildings.

- 1. *Continuation and Change of Use:* Except as otherwise provided in this section:

- a. The nonconforming use of a building or structure, existing at the time this ordinance became effective, may be continued;
- b. The use of a nonconforming building or structure may be changed to a use of the same or more restricted classification, but where the use of a nonconforming building or structure is hereafter changed to a use of a more restricted classification, it shall not thereafter be changed to a use of a less restricted classification; and
- c. ~~A vacant nonconforming building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied within a period of one (1) year after the effective date of this ordinance, and the use of a nonconforming building or structure which becomes vacant after the effective date of this ordinance, may also be occupied by a use for which the building or structure was designed or intended if so occupied within a period of one (1) year after the building becomes vacant.~~ Any use of land, buildings or structures that does not conform to the zoning for the district in which such land, building or structure is situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two (2) years.

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