



DOCKET ITEM #6

Text Amendment #2020-00005

Practical Updates

CONSENT AGENDA ITEM

If no one asks to speak about this case prior to the hearing, it will be approved without discussion as part of the Consent Agenda.

Issue: Initiation of a text amendment and public hearing and consideration of a text amendment to the Zoning Ordinance to amend Section 1-700 to add to the list of zones the RMF Zone; to amend definitions for floor area (Section 2-145(A)(11) and (12)), medical care facilities (Section 2-174) and townhouse dwelling and two-family dwelling (Sections 2-138 and 2-140); to amend the RB and RM zone grandfathering provisions (Section 3-707(B) and 3-1108 (B)); to amend Section 3-1406 to add the effective date of the ordinance; to allow open porches meeting specific criteria in required side yards (Sections 7-202 and 11-302); to add Section 7-202(E) to allow fences taller than 6 feet between residential properties and certain other uses; to clarify provisions regarding fences on corner lots (Sections 7-1700, 7-1701 and 7-1702); to amend Section 11-804 to remove reference to a repealed law; to amend various provisions related to the Board of Zoning Appeals to comply with the Code of Virginia (Sections 11-1008, 11-1103 11-1104, and 11-1207); to amend Section 12-101 to expand the applicability of the residential reversion criteria; to amend Section 12-102(D) to correctly reference the KR zone and apply residential reuse to specific blocks along King Street.	Planning Commission Hearing:	September 1, 2020
	City Council Hearing:	September 12, 2020
Staff: Tony LaColla, AICP, Division Chief – Land Use Christina Brown, Assistant City Attorney Mary Christesen, Zoning Manager Sam Shelby, Urban Planner		

tony.lacolla@alexandriava.gov
christina.brown@alexandriava.gov
mary.christesen@alexandriava.gov
sam.shelby@alexandriava.gov

I. Issue

The existing Zoning Ordinance dates to 1992, with changes to sections of the Zoning Ordinance occurring over time. Through use of the Ordinance, multiple errors have been identified that may have occurred during previous rewrites or amendments to the regulations. Some changes have produced redundancies or may conflict with other regulations within the Zoning Ordinance. In addition, over time, the Director of Planning and Zoning has provided interpretations of the Zoning Ordinance to provide clarity in the application and administration of the regulations generally or as applied to certain aspects of property or the built form. Interpretations of common internal staff interpretation require codification within the City's Zoning Ordinance.

This update also incorporates changes to the Code of Virginia pertaining to conditional zoning and Board of Zoning Appeals procedures and standards to include provisions for persons with disabilities.

The purpose of the proposed zoning text amendments is to modify and amend various sections of the City's Zoning Ordinance to correct errors, modernize and update regulations to accommodate changes in practices and codify on-going staff interpretations. The following is a summary list of the proposed zoning changes discussed in detail in this report with the specific text changes shown in Attachment 1:

- **General Regulations**
 1. Add RMF zone to list of established zones
- **Amend Definitions**
 1. Amend the definition for townhouses and two-family dwellings
 2. Amend the definition for height of building
 3. Amend the definition for medical care facility
- **Technical errors**
 1. Correct references within the definition for floor area ratio
 2. Amend the references to dwelling units in RB and RM zones
 3. Add date RMF zone became effective
 4. Remove language 11-1207 that was only effective until 7.1.17
- **Accessory Uses and Structures**
 1. Allow open front porches in required side yards when it does not extend beyond the side walls of the existing building
 2. Allow additional fence height between residential properties and certain other uses
 3. Amend and clarify the regulations for fences on corner and through lots
- **Development Approvals and Procedures**
 1. Amend conditional zoning to remove language as adopted by the Code of Virginia
- **Board of Zoning Appeals**
 1. Add a time period for the Board of Zoning Appeals to respond to a writ of certiorari as adopted by the Code of Virginia

2. Amend the standards of a variance to include provisions for persons with disabilities and to add to the conditions and restrictions for variances meeting that standard as adopted by the Code of Virginia
3. Add certified mail as an additional method of providing notice as adopted by the Code of Virginia
4. Amend the Special Exception to correct numbering and remove repetitive language
- **Noncomplying Structures**
 1. Remove residential reuse section that referenced the incorrect zoning designation and incorporate the intent into the residential reversion standards
 2. Amend the residential reversion section to expand the eligibility criteria

II. Background

Since the current Zoning Ordinance was adopted in 1992, there have been changes to certain sections to update zoning regulations to more closely align with current planning strategies and emerging principles. Through use of the amended Zoning Ordinance, staff has identified errors and inconsistencies within the text language and identified certain regulations that appear to unintentionally restrict the placement and location of certain uses and structures. Throughout the past year staff has identified various text language challenges of the Zoning Ordinance and recommend providing practical updates to these regulations to better align the Zoning Ordinance with the current use of property within the City.

III. Discussion of Proposed Text Changes

The proposed text amendments seek to modify certain Zoning Ordinance regulations by codifying additional definitions, provide clarification, and incorporate practical updates to Zoning Ordinance regulations. Additionally, the text amendments will correct errors in the Ordinance. Below is a description of the proposed modifications to the city's Zoning Ordinance.

A. Amend General Regulations

In 2019, the RMF, Residential Multifamily zone was added to the ordinance, but was inadvertently left out of the section 1-700, which lists all the zones in the City. Staff proposes to add RMF to the list.

B. Definitions

1. *Remove the term party wall from the definition of townhouse and two-family semi-detached dwellings.* The term *party wall* references a specific type of construction of a wall separating two dwellings. For many existing structures, and particularly historic structures, it is difficult or impossible to determine if they meet the technical definition of a *party wall*. Staff proposes to remove that terminology

and identify the dwelling type by its exterior configuration rather than interior wall construction, which is more properly the purview of the Zoning Ordinance.

2. *Remove language from the definition of building height 2-154(F).*
This section requires properties within ten feet of the right of way line to have their building height measured from average finished grade or curb grade which ever is less. This requirement is not currently applied to any properties and is difficult to interpret as there is no definition for *right of way line*, the definition of curb grade doesn't account for corner lots and this definition conflicts with other aspects of the definition of building height that require height to be measured from average existing grade.
3. *Amend the definition of medical care facility to align with current business models for health care.* Staff proposes to expand the definition of a medical care facility to include medical related uses that were previously excluded including emergency medical treatment, health professional offices and medical laboratories. These changes are proposed to keep up with trends within the medical field which tend to offer more services in smaller scale facilities that were previously only offered in hospitals and to include health professional offices that are often wanting to collocate with these other types of services.

C. Technical Errors

In applying the Zoning Ordinance, staff has identified a couple of unintentional errors that apparently occurred with previous rewrites and amendments. Staff has proposed to remove this duplicative and erroneous language with this text amendment.

1. *Correct references within the definition for floor area ratio.* Under the list of excludable areas from floor area ratio the wrong section number is listed for sheds and small accessory structures. Staff proposed to remove references to 7-202(B)(4) from both 2-145(A) and (B) and replace with 7-202(C)(2).
2. *Amend the references to dwelling units in RB and RM zones.* Currently, both the RB and RM zones have grandfathering language that allows for the development of certain substandard lots of record. The RB zone allows for a *single-family dwelling* and the RM zone allows a *single-family residence*. A single-family residence is not a use listed in the Zoning Ordinance and staff has consistently interpreted it to mean single-family dwelling. The definition of a single-family dwelling states it must be detached, which creates difficulties designing homes to fit on these often narrow, substandard lots. Developers have gotten around this provision by constructing dwellings that appear attached but are technically detached structures. There is no benefit to requiring this type of construction and it is often costly to property owner. Staff proposes to change the text to allow a *dwelling unit* on these lots, which would allow for one townhouse dwelling, a single-family dwelling or one-half of a semi-detached two-family dwelling.

3. *Add date the RMF zone became effective.* When the Ordinance was adopted last year, the effective date was inadvertently left out. Staff proposes to include the effective date of March 16, 2019.
4. *Remove language 11-1207 that was only effective until July 1, 2017.* Staff proposes to remove language that was no longer effective as of July 1, 2017, as denoted in the text but was not deleted as it should have been.

D. Accessory Uses and Structures

1. *Allow open front porches in required side yards when it does not extend beyond the side walls of the existing building.* Since the Zoning Ordinance was amended in 2018 to allow open front porches as a permitted obstruction in the required front yard, there have been several instances of property owners wanting to build a front porch meeting the new front yard requirements but because of the location on the existing dwelling within the required side yard or yards, the width of the front porch is either reduced or the applicant must seek approval from the Board of Zoning Appeals (BZA). Staff proposes these open front porches be permitted in required side yards if not located any closer than the existing side walls of the dwelling and the porch must remain open. Since the 2018 porch amendments, the BZA unanimously approved two cases for porches that would have been permitted under the proposed changes. No neighbors spoke in opposition to these requests.
2. *Allow additional fence height between residential properties and certain other uses.* Staff proposes to allow a fence up to ten feet in height to be constructed within required side and or rear yard setbacks between residential properties and public or private academic schools. Typically, only a six-foot fence is permitted with the required side and rear property lines. There are instances where a six-foot fence is not sufficient to adequately screen the residential property from the noise, traffic and lights associated with public or private academic school uses. Nuisances such as these are further exacerbated when there is a change in topography between the two properties.
3. *Amend and clarify the regulations for fences on corner and through lots.* In October 2019, City Council approved changes to regulations regarding fences on corner and through lots. After a year of applying the regulations, the updated terminology did not clarify this complicated section as much as staff had hoped it would. To this end, staff proposes changes to Zoning Ordinance section 7-1700. The only substantive change would be to allow fencing that runs parallel to the front building wall facing the primary front yard up to the front building wall. Currently, these fences are required to be located behind the existing dwelling and are only permitted on interior lots. Staff proposes no changes to the regulations regarding fencing that runs parallel to the secondary front lot line. Staff also recommends adjustments to the overall structure of this section for simplicity's sake. Further, staff recommends replacing certain terminology to establish consistency with the rest of the Zoning Ordinance and replacing the

current graphic with updated graphics to illustrate fences on corner and through lots.

E. Development Approvals and Procedures

1. *Amend conditional zoning to the sentence referencing the Code of Virginia.* The Code of Virginia section cited has been repealed and the provisions related to conditional zoning have been significantly revised and expanded since this language was adopted. To the extent the City is bound by provisions of the state code, it undertakes the required analysis related to each conditional zoning situation but due to the recent frequent changes to the law does not propose to cite to these provisions of the Code of Virginia in the Zoning Ordinance.

F. Board of Zoning Appeals

1. *Add a time period for the Board of Zoning Appeals to respond to a writ of certiorari as adopted by the Code of Virginia.* This provision has been updated to reflect amendments to the Code of Virginia that must be followed by the City.
2. *Amend the standards of a variance to include provisions for persons with disabilities and to add to the conditions and restrictions for variances meeting that standard as adopted by the Code of Virginia.* This provision has been updated to reflect amendments to the Code of Virginia that must be followed by the City.
3. *Add certified mail as an additional method of providing notice as adopted by the Code of Virginia.* This provision has been updated to reflect amendments to the Code of Virginia that must be followed by the City.
4. *Amend the Special Exception to correct numbering and remove repetitive language* Staff proposes changes to Zoning Ordinance section 11-1302(C) related to special exceptions for front porches. These changes would remove repetitive language and provide consistency with the proposed language for section 7-202(E) related to front porches.

G. Noncomplying Structures

1. *Remove residential reuse section that referenced the incorrect zoning designation and incorporate the intent into the residential reversion standards.* Section 12-102(D) residential reuse basically allowed the 1500 block of King Street to be converted back to residential regardless of the current zoning requirements, but incorrectly references the CD zone. This section was not updated in 2005 when King Street was rezoned to KR. This section can no longer be correctly applied. Staff proposes removing this section and creating similar criteria and incorporating the intent into the existing residential reversion criteria. In 12-102(D) only the 1500 block of King Street was identified for residential reuse. Staff has found that there are portions of the different blocks along King Street, that have a different development pattern that is more consistent with residential development than the rest of King Street. Portions of

the north side of the 1400 and 1500 block of King Street and the south side of the 1600 block of King Street are setback from the front property line and have an elevated first floor at least 3.00 feet above grade at the front building wall. Staff proposes to address these properties specifically within the criteria for residential reversion, because the residential is not a permitted use on the ground floor along King Street, yet these properties lend themselves well to residential uses and were originally developed as such.

2. *Amend the residential reversion section to expand the eligibility criteria.* Since the adoption of the residential reversion ordinance in 2019, several properties have successfully reverted back to their original residential uses without the need for any public hearing process. However, the BZA has heard a few cases and staff has received inquiries on several more cases that do not meet the requirements because either the building was expanded or the lot was subdivided while the property was used commercially, often in the 70's or 80's and the property does not meet the current zone requirements. Additionally, many of these properties, specifically in Old Town were rezoned in 1992 after the changes to the lot or building were made, so they may have complied with previous zone requirements, but not the current post 1992. Staff proposes to add June 24, 1992, the date of the comprehensive rezoning of the City to the criteria for residential reversions.

IV. Recommendation

Staff recommends that the text amendments contained in Attachment 1, be initiated and recommend approval of each of the attached Zoning Ordinance text changes.

Staff: Tony LaColla, AICP, Division Chief – Land Use Services
Christina Brown, Assistant City Attorney
Mary Christesen, Zoning Manager
Sam Shelby, Urban Planner

Attachment #1

ARTICLE I. – GENERAL REGULATIONS

Sec. 1-700 - Establishment of zones.

(A) This ordinance establishes the following zones, listed below in the order of their restrictiveness, with the most restrictive zone listed first:

RT/Townhouse Zone

RMF/Residential multifamily Zone

ARTICLE II. – DEFINITIONS

Sec. 2-100 - Definitions.

2-138 - Dwelling, townhouse.

One of a series of three or more attached dwelling units separated from one another by continuous vertical ~~party~~ walls without openings from basement to roof or roofs.

2-140 - Dwelling, two-family.

A building designed for or intended to be occupied by not more than two families living independently of each other. This use shall include both duplex (one dwelling unit above another in a single detached building) and semi-detached (two dwelling units having a common vertical ~~party~~ walls) dwellings. In the case of a semi-detached dwelling, no less than 50 percent of the common ~~party~~ wall of one of the two dwelling units shall be opposite the common ~~party~~ wall of the other.

2-145 - Floor area.

- A. For residential dwellings in the R-20, R-12, R-8, R-5, R-2-5, and single-family and two-family dwellings in the RA and RB zones (not including property located within the Old and Historic Alexandria and Parker-Gray Districts), the floor area of the building or buildings on a lot or tract or tract of land (whether "main" or "accessory")

is the sum of all gross horizontal areas under roof on a lot. It shall include all space seven feet or more in height. These areas shall be measured from exterior faces of walls or any extended area under roof and are to be measured from the shared lot line in the case of party walls. Floor area with a ceiling height 15 feet or greater shall be counted twice. Floor area with a ceiling height 25 feet or greater shall be counted three times. This space shall be based on permanent construction whether or not provided with a finished floor or ceiling. Excluded from floor area shall be:

(11) Sheds and other small accessory buildings in accordance with section 7-202(B)(4)(C)(2).

- B. For properties except for those specified in subsection A. above, the floor area of the building or buildings on a lot or tract or tract of land (whether "main" or "accessory") is the sum of all gross horizontal areas under roof on a lot. These areas shall be measured from the exterior faces of walls or any extended area under roof and are to be measured from the shared lot line in the case of party walls. It shall include all space seven feet or more in height. It shall include all space within an above grade parking garage. This space shall be based on permanent construction whether or not provided with a finished floor or ceiling. Excluded from floor area shall be:

(12) Sheds and other small accessory buildings in accordance with section 7-202(B)(4)(C)(2).

2-154 - Height of building.

The vertical distance measured from average finished grade to the highest point of the building, except that:

~~(F) In the case of a building with ten feet or less horizontal distance between the building setback line and the right-of-way line, height shall be measured from the average finished grade or the curb grade, whichever is less.~~

2-174 - Medical care facility.

Any installation, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of ~~two or more non-related~~ mentally or physically sick or injured persons, or for the ~~care of two or more non-related~~ persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, or physically disabled; including but not limited to emergency medical treatment, health professional office, medical laboratory, intermediate care facility, extended care facility, mental hospital, mental retardation facility, medical school, outpatient surgery centers, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation, ~~and~~ trauma units, substance abuse outpatient or day programs; and other related institutions and facilities, whether operated for profit or nonprofit, and whether privately owned or operated by a local government unit. This term shall not include a ~~health profession office, first aid station for emergency medical treatment,~~ housing for the elderly, ~~medical laboratory, hospital,~~ nursing home or a facility which has as its primary purpose residential accommodation. Nothing in this definition is intended to interfere with or restrict the use of a dwelling unit by a family as that term is defined in this article, wherever such use is allowed in the zones.

ARTICLE III. – RESIDENTIAL ZONE REGULATIONS

DIVISION B. - TOWNHOUSE AND MULTIFAMILY ZONES

3-700 – RB/Townhouse Zone

3-707 - Certain structures, lots and uses inconsistent with these provisions.

All land within the RB zone must be used and developed in compliance with the RB zone regulations unless otherwise provided in this ordinance or by the following exceptions:

(B) Any land zoned to RB prior to February 27, 1973 may be developed at a minimum lot size of 1,600 square feet per dwelling; provided however that if the lot was recorded prior to December 28, 1951, the lot may be developed with a ~~single-family~~ dwelling unit and accessory structures at the lot size shown on the recorded plat.

3-1100 – RM/Townhouse zone.

3-1108 - Certain structures, lots and uses inconsistent with these provisions.

All land within the RM zone shall be used and developed in compliance with the RM zone regulations unless otherwise provided by this ordinance or by the following exceptions, which exceptions shall nevertheless be subject to sections 3-1106(A)(1) and 3-1107.

(B) Any lot of record on February 10, 1953 which does not comply with the lot area or width regulations of the RM zone may be developed with a dwelling unit ~~single-family residence~~ with accessory structures.

Sec. 3-1400 - RMF/Residential multifamily zone.

3-1406 - Floor area ratio.

The permitted floor area ratio of a development in the RMF zone shall be as follows:

(B) Special use permit. The floor area ratio may be increased to an amount not to exceed 3.0 if the applicant commits to providing committed affordable housing in the building or project which is the subject of the permit application in compliance with the following requirements:

(3) Rents payable by households for the committed affordable units shall not, on average, exceed the maximum rents allowed under the Federal Low-Income Housing Tax Credit program for households with incomes at 40 percent of the area median income for the Washington D.C. Metropolitan Statistical Area. Average rents payable by households for the committed affordable units may be increased up to the maximum rents allowed under the Federal Low-Income Housing Tax Credit program for households with incomes at 50 percent of the area median income for the Washington D.C. Metropolitan Statistical Area subject to the submission of a revised affordable housing plan. Any existing housing assistance payment contract in effect as of ~~[effective date of the ordinance]~~ March 16, 2019 and any extension thereof or new contract which maintains the material aspects of the existing contract shall be deemed to be in compliance with this subsection.

ARTICLE VII. - SUPPLEMENTAL ZONE REGULATIONS

Sec. 7-200 - Permitted structures in required yards.

7-202 - Permitted obstructions.

The following obstructions shall be permitted when located in a required yard and placed so as not to obstruct light and ventilation and when otherwise permitted by law:

(E) For any residential lot, single-story front porches with a maximum depth of ten feet shall be permitted in any required front or side yard provided that the porch shall be located on the first floor or at ground level and the front yard shall not be reduced to less than ten feet. Front porches shall not extend into required side yards further than the walls that face the side yards of the existing dwelling unless such extension complies with the regulations for the zone in which it is located.

(F) Open and closed fences which do not exceed ten feet in height shall be permitted in any required side or rear yard between residential properties that abut a property developed with a public or private academic school.

Sec. 7-1700 - Fences on corner and through lots.

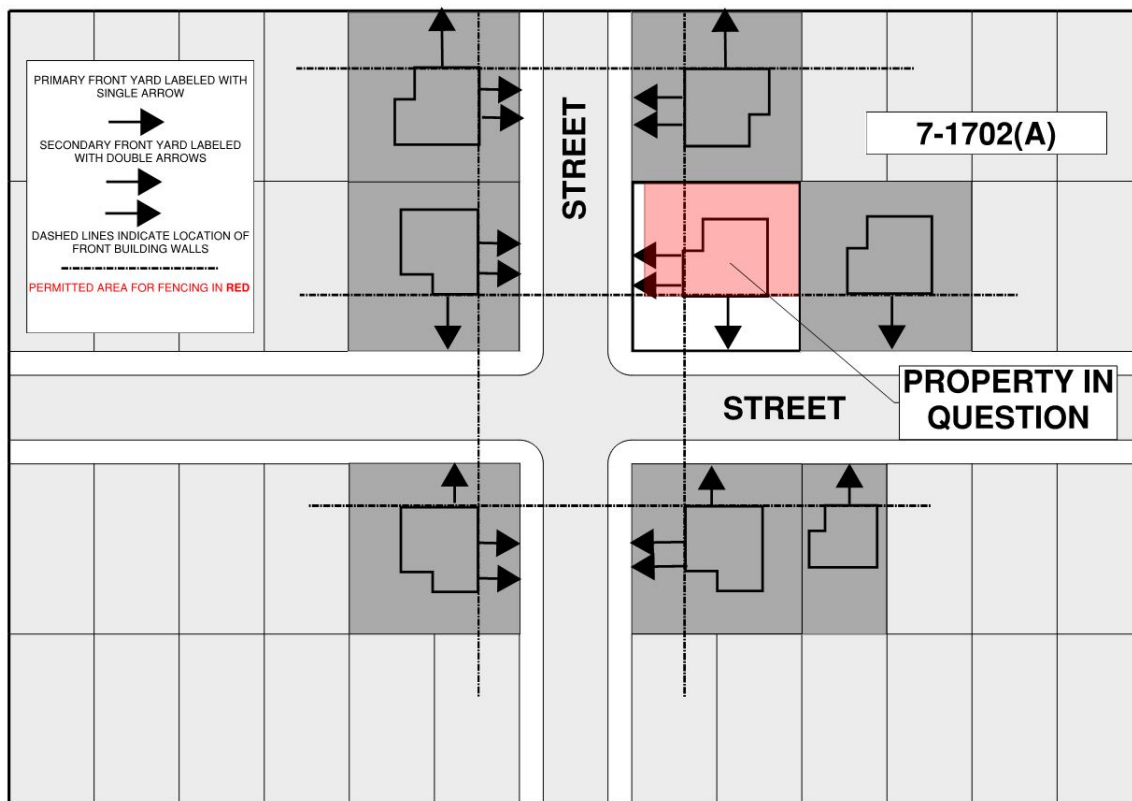
7-1701 – Open and closed fences less than six feet in height. ~~Front yards and secondary front yards.~~

~~For purposes of this section only, the front yard of a corner lot which contains a building's architectural main entrance shall be considered a front yard and shall occupy the area between the front property line and the main building line. The other front yard on the corner lot shall be considered a secondary front yard and shall, n~~ Notwithstanding any other provisions of this ordinance save the permitted obstructions listed in section 7-200 and vision clearance requirements of section 7-800, open and closed fences not exceeding six feet in height shall be subject to the provisions of permitted on corner and through lots in required secondary front yards when in compliance with this section 7-1700. ~~with regard to permitted fences.~~

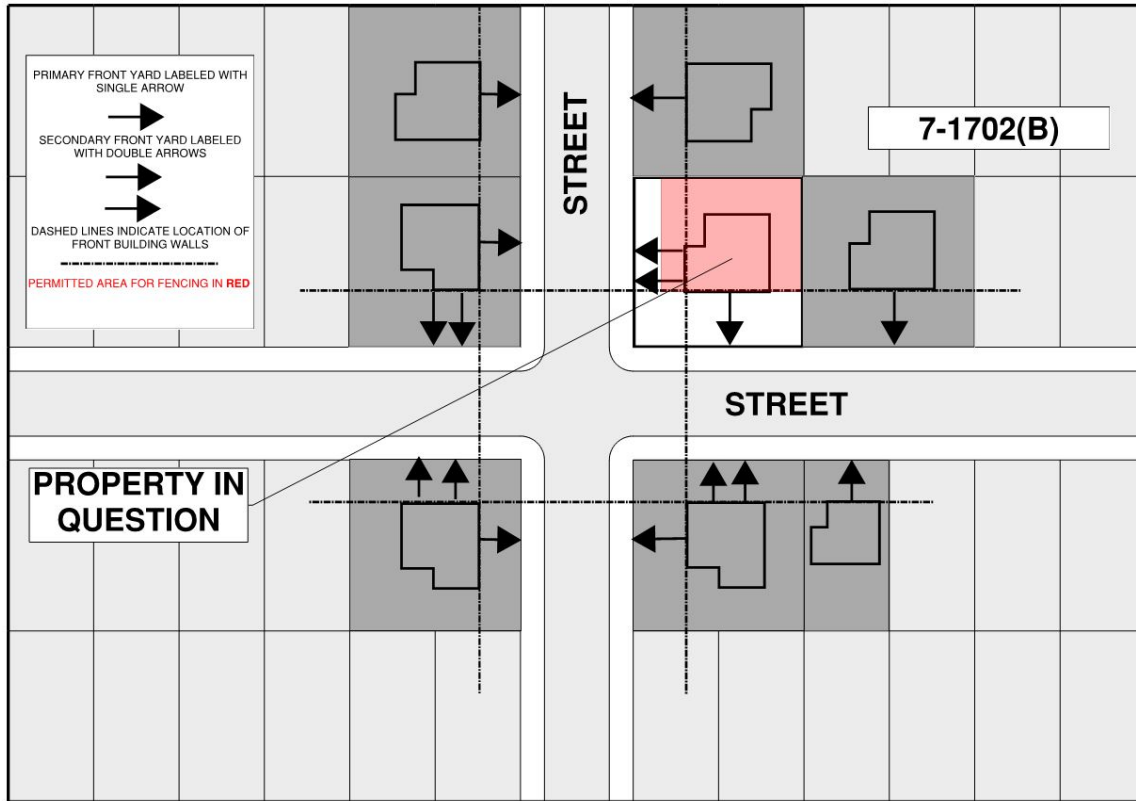
Sec. 7-1702 – Corner lots. ~~Fences in secondary front yards.~~

On corner lots, open and closed fences not exceeding six feet in height shall be located behind the front building wall facing the primary front yard. These fences shall be setback a minimum horizontal distance from the secondary front lot line established by either (A) or (B), below:

- (A) Except for cases governed by section 7-1702(B)(1)(c) fences shall be ~~it is~~ setback from the edge of the sidewalk by two feet or if there is no sidewalk at least two feet from the secondary front lot property line.



- (B) Where the secondary front yard of the property in question is located on a block face on which the principal structures on the abutting properties face the street, fences ~~of between four and six feet in height~~ shall be permitted if located no closer to the secondary front lot property line than half the distance between the secondary front lot property line and the front building wall facing the secondary front yard.



(1) — ~~Corner lots.~~

~~(a) — It is located no closer to the front secondary yard property line than the rear building wall that adjoins the secondary front yard.~~

~~(b) — Except for cases governed by section 7-1702(B)(1)(c), it is set back from the edge of the sidewalk by two feet or if there is no sidewalk at least two feet from the property line.~~

~~(c) — Where the secondary front yard is located on a block face on which the principal structures on the abutting properties face the street, a fence of between four and six feet in height shall be permitted if located no closer to the property line than half the distance between the property line and the building face.~~

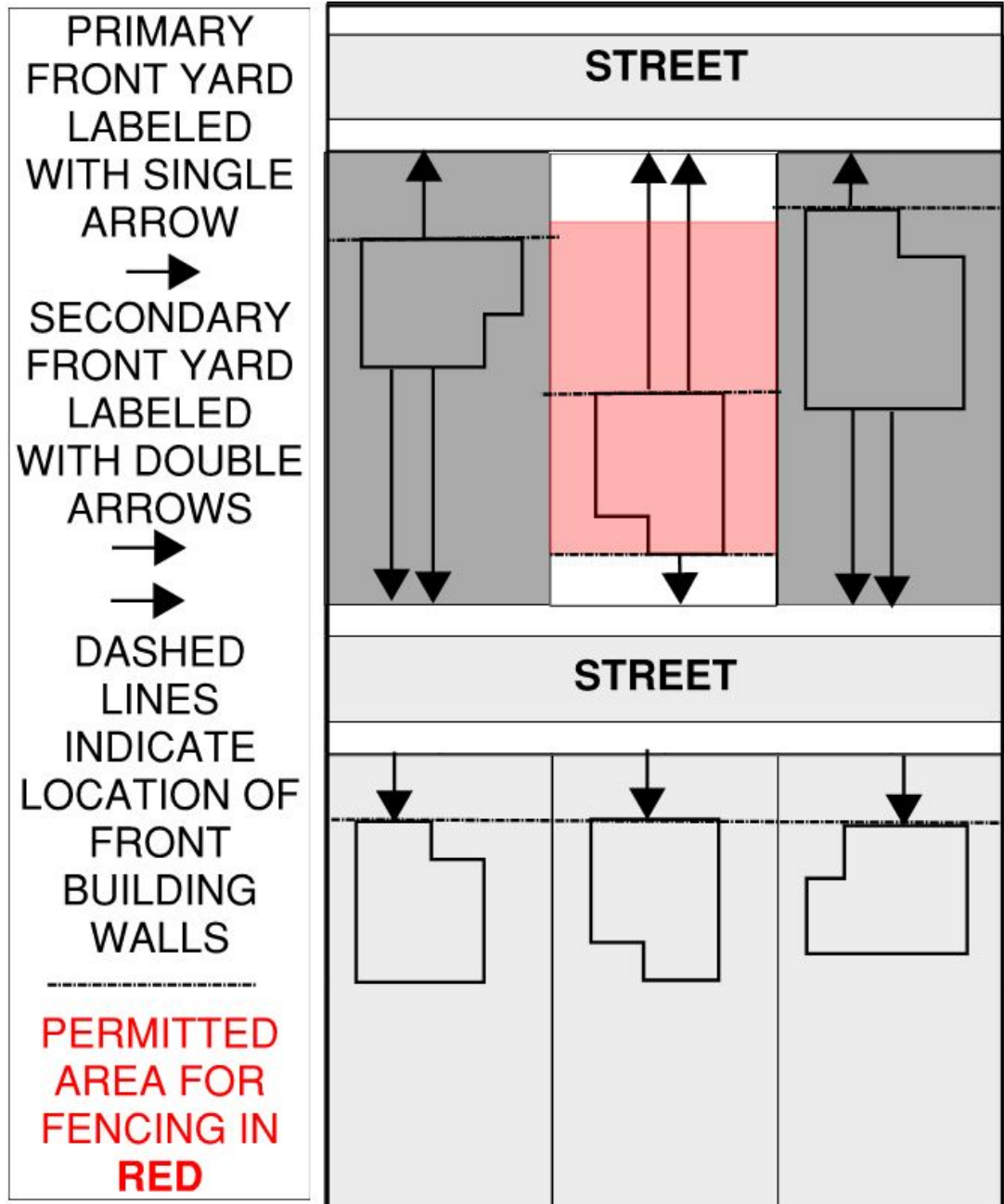
Sec. 7-1703 – Through lots.

(2) — ~~Through lots.~~

On through lots, open and closed fences not exceeding six feet in height shall be setback a minimum horizontal distance from the secondary front lot line established by either (A) or (B), below:

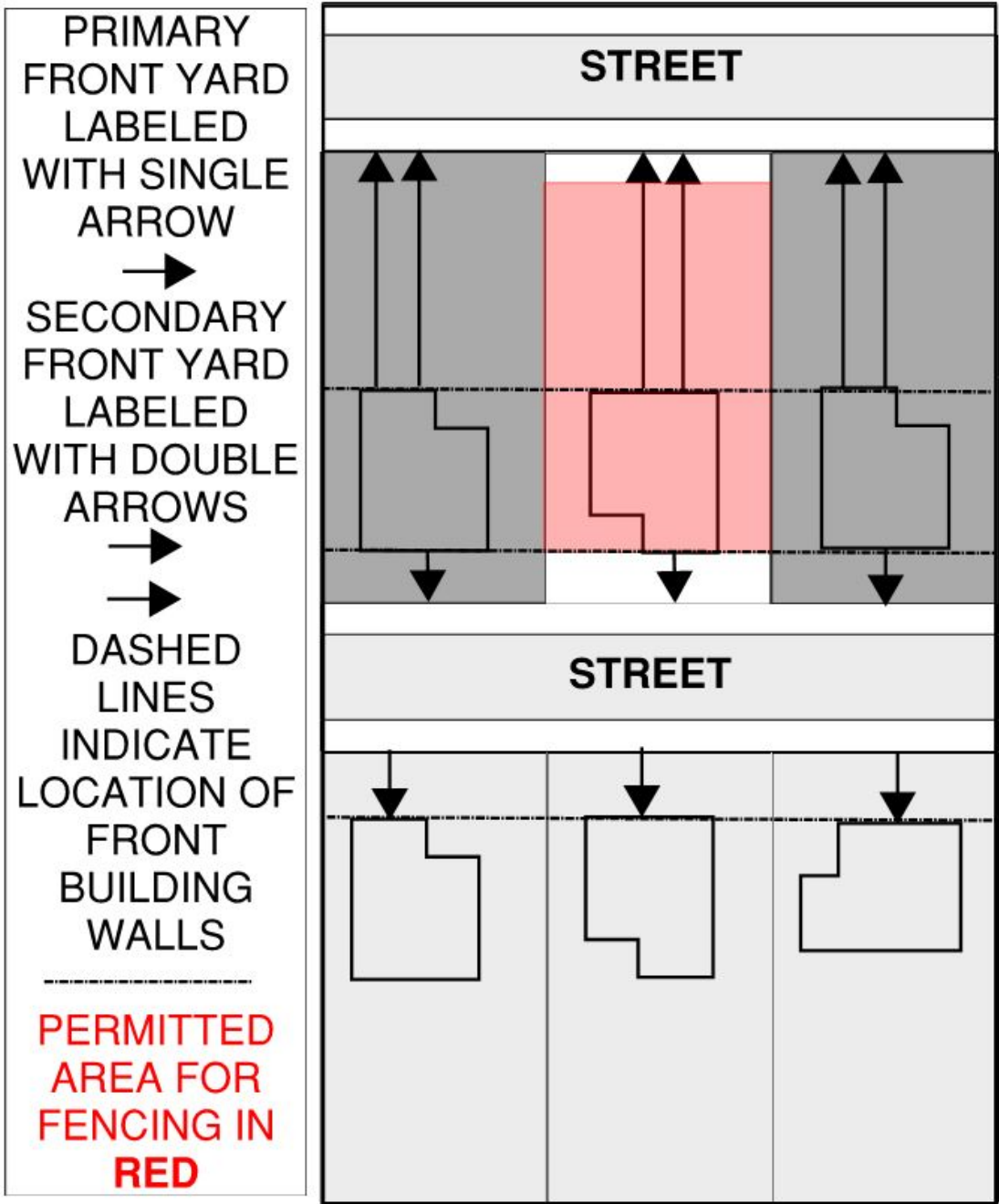
(A) Where the secondary front yard of the property in question is located on a block face on which the principal structures on the abutting properties on the same side of the street face that street, a fences of between four and six feet in height shall be permitted if located no closer to the secondary front lot property line than half the distance between the secondary front lot property line and the average setback utilizing the two abutting properties.

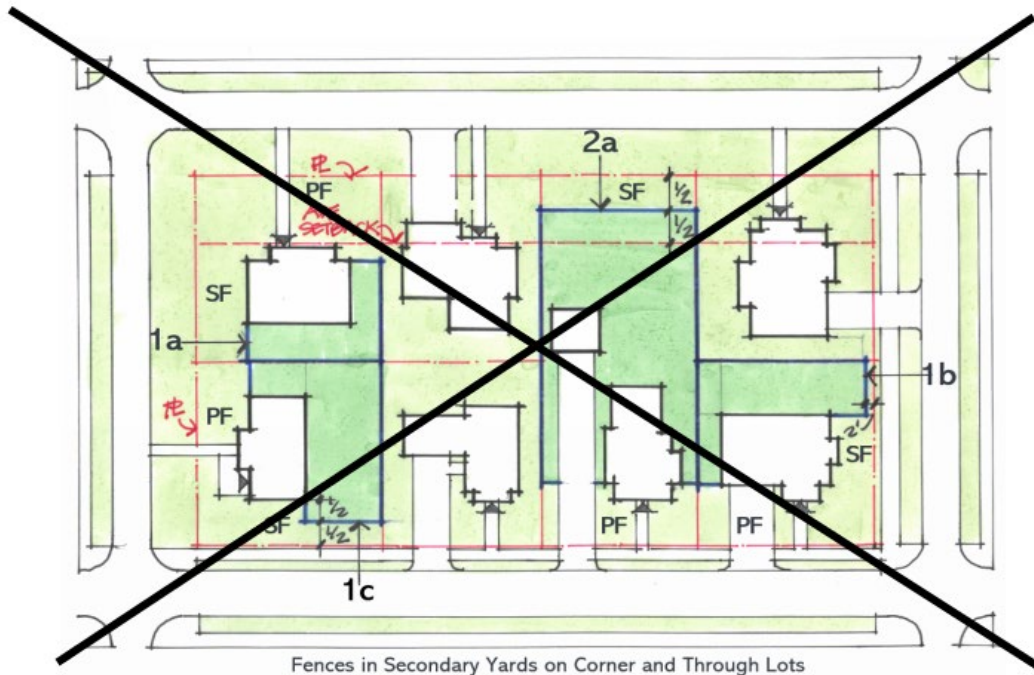
SECTION 7-1703(A)



- (B) Where the secondary front yard of the property in questions is located on a block face on which the principal structures on the abutting properties on the same side of the street do not face such street or there is no abutting house(s), a fences of between four and six feet in height shall be permitted if located three feet from the secondary front lot property line.

SECTION 7-1703(B)





ARTICLE XI. - DEVELOPMENT APPROVALS AND PROCEDURES

DIVISION B. - DEVELOPMENT APPROVALS

Sec. 11-800 – Zoning amendment.

11-804 - Conditional zoning.

As part of an application for a map amendment a property owner may proffer in writing the provision of reasonable conditions to apply and be part of the rezoning sought to be approved by said application. Proffered conditions shall include written statements, development plans, profiles, elevations, and/or other demonstrative materials and shall be subject to the following procedures and regulations:

(C) Such proffered conditions shall become a part of the zoning regulations applicable to the property in question, unless changed by a subsequent map amendment which is not part of the comprehensive implementation of a new or substantially revised zoning ordinance, and such conditions shall be in addition to the specific regulations set forth in this ordinance for the zone in question. ~~Unless a contrary provision has been~~

~~proffered by the applicant and accepted, any change in the zone applicable to land on which proffers have been accepted shall comply with the provisions of Code of Virginia, § 15.1-491(a).~~

DIVISION C. - BOARD OF ZONING APPEALS

Sec. 11-1000 - Board of zoning appeals.

11-1008 - Final decisions subject to judicial review.

All final decisions of the board shall be subject to judicial review in the following manner.

(C) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board or, if no secretary exists, the chair of the board, which shall not be less than ten days and may be extended by the court. Once the writ of certiorari is served, the board of zoning appeals shall have 21 days or as ordered by the court to respond. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(G) Costs shall not be allowed against the city or council, unless it shall appear to the court that ~~it~~ the city or council acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.

Sec. 11-1100 – Variance.

11-1103 - Standards for variances.

The board of zoning appeals shall not vary the regulations of this ordinance as authorized above unless it finds that:

(B) 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, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability;

11-1104 - Conditions and restrictions.

The board may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to reduce, minimize, or mitigate the effect of such variance upon other property in the neighborhood, and better to carry out the general intent of the ordinance. The board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. In addition, a variance shall specify whether it is granted generally for all potential uses or whether its effect is limited to specific uses of the property. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted. Failure to comply with any such conditions and restrictions shall constitute a violation of this ordinance. Violations of this ordinance may be enforced and penalized in accordance with section 11-200.

Sec. 11-1200 – Appeals.

11-1207 - Written notice or order.

Any written notice of a zoning violation or a written order of the director shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with section 11-1200 and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. ~~[Effective until 7/1/17] The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the director that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy~~

~~the notice requirements of this section.] [Effective on 7/1/17—~~The appeal period shall not commence until the statement is given and the written notice of a zoning violation or a written order of the director is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission.}

Editor's note— {See} Code of Virginia § 15.2-2311.

Sec. 11-1300 – Special exception.

11-1302 - Special exception established.

A lot developed with a single family, two family, or townhouse dwelling may be the subject of a special exception from the following zoning requirements pursuant to this section 11-1300:

(C) – Yard and setback requirements for a front porch subject to the following requirements:

(1) The applicant for a front porch shall demonstrate by clear and convincing evidence that the proposed front porch is compatible with the existing building architecture, neighboring properties and neighborhood character. ~~and will comply with the following requirements:~~

~~(a) A front porch shall not extend into required side yards further than the walls that face the side yards of the existing dwelling portion of the front porch shall extend beyond either end of the front building facade unless such extension complies with the regulations for the zone in which it is located.~~

~~(b) The roof line of the porch shall be in scale with the existing building architecture.~~

ARTICLE XII. - NONCOMPLIANCE AND NONCONFORMITY

Sec. 12-100 - Noncomplying structures.

12-101. - Terms defined.

(B) A building on a lot that does not meet the current zoning requirements for residential use, that was originally constructed or principally used prior to June 24, 1992 as a residence, may be reverted from commercial use to a residential use and shall be a noncomplying structure provided that:

- (1) The proposed residential use is permitted in the zone or is located in a building which faces the north side of the 1400 or 1500 block of King Street, or the south side of the 1600 block of King Street, which is setback from the front property line and has a first floor at least 3.00 feet above grade at the front building wall;
- (2) The proposed residential use contains a number of dwelling units equal to or less than previously existed on the property;
- (3) Since the most recent conversion to a commercial use, or since June 24, 1992, whichever is more recent, there has been no expansion to the structure and no changes to the lot of record that increase the degree of noncompliance for a residential use; and
- (4) Since the building was last a residential use, the number of parking spaces has not been reduced notwithstanding the requirements to provide parking in section 8-200.

12-102 - Noncomplying structures.

Noncomplying structures shall be permitted to continue indefinitely and shall be considered legal structures, but subject to the following restrictions:

~~(D) — Residential reuse. A building which faces the unit through 1500 block of King Street and which is a noncomplying structure because it exceeds the floor area ratio of the CD zone, may be converted from nonresidential to same residential use, notwithstanding any requirement of the CD zone applicable to residential uses, provided that a special use permit is approved to allow such conversion.~~