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Updated: 3/30/15

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Zoning Interpretation Record

Subject of Interpretation:

A-1 Rural Cluster Subdivisions – Minimum Lot, Width, and Depth requirements

Zoning Ordinance Reference (Article and Section):

Section 26-30

Interpretation:

Article 5, Section 1.12(2a) states that there shall be no minimum lot area for Rural Cluster Subdivisions. Article 5, Section 1.7(1.a) exempts Rural Cluster subdivisions from the 10 acre minimum lot size as well as the minimum lot width and depth requirements otherwise mandated in the A-1 zoning district. Therefore, Rural Cluster subdivisions are not subject to any minimum lot area, width, or depth requirements.

Single family dwellings, whether A-1 or A-1 Rural Cluster are required to meet minimum setback requirements per Article 5, Section 1.8.

Examples:

Lots within an A-1 Rural Cluster subdivision propose lot widths of less than 250' along a 50' right of way. The lot otherwise conforms to the other requirements of the district.

This interpretation has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013:

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Daycares (including pre and aftercare programs) in churches/ all other places of worship

Zoning Ordinance Reference (Article and Section):

Sections 26-20.21 and 26-21.14

Interpretation:

A new church or an existing non-conforming church that proposes to expand its original area by more than 50% requires a Conditional Use Permit (CUP). A Special Exception (SE) is required to operate a daycare (including pre- and aftercare programs). The following describes the various circumstances in which a CUP, CUP amendment, or Special Exception may be required when operating a daycare in a church or other place of worship:

- A new church, with accessory daycare, needs only a CUP. The daycare is accessory and subordinate to the principal use of the property as a church.
- An existing church, with a CUP, that is proposing a daycare but has no need to expand the facilities only requires the SE for the daycare.
- An existing church, without a CUP, seeking to add a daycare program, but not otherwise requiring a CUP per Hanover County requirements for church expansion, needs an SE to operate the daycare.
- An existing church, with or without a CUP, requires a CUP, or CUP amendment to expand facilities to support the daycare if:
    - The church does not have a CUP, and the expansion is more than 50% of the original church area, then the CUP is needed (as in the first example listed above, the daycare will be considered accessory and subordinate to the principal use of the property as a church and will be addressed through the CUP).
    - If the church has a CUP, and the expansion is not shown on the sketch plan, then a CUP amendment is necessary to amend the approved sketch plan, and likewise, the daycare will be addressed through the CUP and is considered accessory and subordinate to the principal use of the property as a church.

This interpretation, originally approved April 1, 2010, has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013:

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Family Divisions for Spouses

Zoning Ordinance Reference (Article and Section):

Sections 25-31-33

Interpretation:

Under the provisions of the Zoning Ordinance, a homestead lot can be created for the spouse of the property owner in certain circumstances. The homestead lot must meet certain criteria outlined in the Article 10, Section 3B. In addition, the Subdivision Ordinance provides that divisions of property for a spouse, either through the homestead provisions of the Zoning Ordinance or pursuant to the general regulations in the Zoning Ordinance, are exempt from general subdivision regulations. The Zoning and Subdivision Ordinances, however, clearly provide that the homestead provisions of the Zoning Ordinance and the family exception provisions of the Subdivision Ordinance cannot be used for the purpose of circumventing the ordinance requirements. In order to ensure that the purpose of allowing homestead lots and divisions for family members in situations involving spouses, the property owner shall indicate with the family division application who will own the remaining tract of land. The reason that the Planning Department requires this additional information is because typically spouses reside in the same dwelling. In certain circumstances the intent of the Ordinances may be satisfied; for example, if the remaining tract of land is given or sold to an eligible family member, the creation of the homestead lot or the family division may be acceptable. Under no circumstances can the creation of the homestead lot or a family division be used to transfer property to an individual who does not fall within the definition of a "family member" within the homestead and family division provisions.

This interpretation, originally approved December 18, 2008, has been updated to reflect code references from the amended Subdivision Ordinance, adopted on September 26, 2010.

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Parking Requirements for Ozone After School Care, a day care facility proposed to be located on GPIN 7788-92-5767, within an existing 13,260 sq.ft. building

Zoning Ordinance Reference (Article and Section):

Section 26-251

Interpretation:

When daycare uses include indoor playfields, basketball courts, and the like, parking shall be computed based on the following:

Areas devoted to classrooms, offices, reception, food preparation, and other uses typically associated with a daycare shall provide parking based on the Nursery School parking category.

Areas devoted to indoor playfields shall provide parking by the following formula:

Max. # of children x 35 sq.ft. = total square footage required for recreation.

This total shall be added to the square footage devoted to traditional daycare uses and the parking generator shall be applied to the total square footage.

Examples:

Ozone After School Care operates a program for middle –school children in a 13,260 sq.ft. building. Approximately 1,300 sq.ft. is devoted to classroom/office space. The remainder of the building is used for indoor athletic courts. This business model is atypical of daycare uses which generally have the recreation areas located outside and therefore are not part of the parking calculations.

This interpretation, originally approved July 14, 2009, has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013.

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Security Fences in Required Front Yard for Daycare

Zoning Ordinance Reference (Article and Section):

Sections 26.21.14, 26-36.15, 26-60.2.c., 26-142.2, and 26-249(a)

Interpretation:

Day nurseries or child or adult day care centers are permitted with a Special Exception in the A-1 Agricultural District, the AR-6 Agricultural Residential District, the RS Single Family Residential District, the R-5 Multiple-Family Residential District, the OS Office/Service District, and the R-1, R-2 and R-3 Single-Family Residential Districts.

While the OS Office/Service District Regulations provide that a fence taller than 4 feet may be permitted, even within a front yard, the zoning regulations for the other zoning districts listed above do not generally permit fences taller than 4 feet in height. The fence height regulations in those districts are governed by Section 26-249 of the Zoning Ordinance, which provides that "An ornamental wall or fence not more than four (4) feet in height may be permitted in any front yard except as specified in Section 4.8 [corner visibility]."

Security fences are required as part of the operations of a typical day care center. If the permitted fence for security of children's activity area extends into a designated front yard, it may exceed four (4) feet as long as its primary function is security and not as an ornamental feature of the day care center. No access to the fenced enclosure would be permitted except by latched gate or through an attached building.

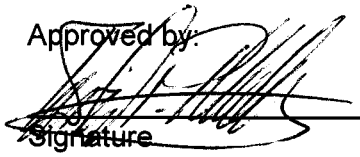
The location and height of the fence should be shown on plans submitted as part of the request for a Special Exception.

Examples:

A daycare is required to enclose the play area with a six (6) foot security fence. The play area will be partially located within the front yard setback. The fence may also be located within the front yard setback in order to enclose the play area.

This interpretation, originally approved January 29, 2009, has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013.

Approved by:



Signature

4/7/15

Date

David P. Maloney

Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Setback in A-1 District for a non-enclosed structure used for livestock (pigs). The structure in question is covered and open on three sides.

Zoning Ordinance Reference (Section):

Section 26-18 [A-1 District, Permitted uses], Section 26-6 [Definitions]

Interpretation:

The A-1 District regulations provide that any building used for the keeping of livestock shall be located at least two hundred (200) feet from any side or rear lot line.

The Zoning Ordinance contains the following definitions:

Building: Any structure having a roof supported by columns or walls, which is intended to house persons or animals or store personal property.

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including but without limiting the generality of the foregoing, mobile homes, signs (except for purposes of setback requirements), swimming pools, backstops for tennis courts, and pergolas.

The 200' setback in the A-1 District specifically applies to a "building" that is used for the "keeping" of livestock. The use of the word "keeping" in the district regulations and the words "intended to house persons or animals" in the definition of "building" indicate that the intent of the setback regulations are for (1) structures that are enclosed to allow for the housing of animals or the storage of property which (2) keep or house animals.

A covered structure that is not enclosed and is not intended to house animals is not a "building" for purposes of the A-1 district regulations. Accordingly, for this structure which is not accessory to a another principal building or structure on this parcel, the required setback is 25' from the side property line and 30' from the rear property line and not 200 feet as is the case for buildings that are used for keeping livestock.

Examples:

A property zoned A-1 contains a structure that has a roof and a single wall. The purpose of the structure is to provide coverage for a water trough and/or animal feed and to provide temporary shelter for animals from the sun, rain, or snow. This is not a "building" for purposes of the special setback regulations as it is neither enclosed nor intended to be the primary shelter for livestock; therefore, it may be constructed provided it meets the setback regulations governing accessory structures.

Interpretation by:

John C. Bender — 12/13/13

Signature — Date

John A. Bender

Printed Name

Approved by:

12/13/13

Signature — Date

David P. Malone

Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Setback requirements for non-subdivision corner lots

Zoning Ordinance Reference (Article and Section):

Section 26-243

Interpretation:

Lots that are not within a subdivision and which are considered "corner lots" shall be required to maintain a front yard setback along the street upon which the majority of the lots in the block front. The required setback for the side yard shall be a minimum of one-half the required front yard setback.

Examples:

Property owner has requested a variance from the Zoning Ordinance setback requirements for a lot that fronts on 2 major thoroughfares. This is a non-subdivision lot and could be considered a double frontage lot. If this was located within a subdivision, the corner lot setback rules would apply.

This interpretation, originally approved June 8, 2010, has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013.

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Screening of parking areas within 50' of a residential district

Zoning Ordinance Reference (Article and Section):

Section 26-256(h)

Interpretation:

The intent of this section is to provide screening of parking areas from residential uses. There are a number of uses that are permitted in residential districts that are not traditional residential uses. When a property zoned for residential use is developed in such a way as to preclude its use for a residence (or residences), the need for a visual screen is no longer present. In order to demonstrate that a property otherwise zoned for residential use will not be developed for residential purposes, the applicant must provide copies of recorded documents or evidence of a peculiar feature on the property zoned for residential use that limit the use of that property in perpetuity to something other than a residence. If such a showing can be made, no screen shall be required in accordance with Section 26-256(h).

Examples:

A commercial development proposes a parking lot within 50' of an adjacent property zoned R-4, containing a BMP. The adjacent property abuts the commercial development on one side and a public road on the other side. The approved conceptual plan for the adjacent property indicates the property will be used only as a BMP, the owner has entered into a maintenance agreement for the facility with the County which prohibits the development of the property for residential purposes, and those agreements have been recorded in the Clerk's Office. No screen shall be required along this common property line.

This interpretation, originally approved February 11, 2011, has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013.

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Substantial conformity with Sketch Plan approved with Conditional Use Permits (CUP) where proposal is to exceed the approved floor area – by no more than 10%- how to determine "substantial conformity" when there is more than one building.

Zoning Ordinance Reference (Article and Section):

Section 26-325

Interpretation:

The Zoning Ordinance requires that an applicant requesting a conditional use permit submit a sketch plan for the proposed use. As part of the approval of a request for a CUP, the Board of Supervisors imposes a condition that the development of the property be in substantial conformity with the submitted sketch plan. This sketch plan is not fully engineered and field conditions may require minor modifications at the time of construction. In interpreting the term 'substantial conformity' for the area of buildings shown on the sketch plan, the Planning Department has permitted applicants to exceed the area shown to a minor degree, but in no case can the amount be greater than ten percent of the area shown. For CUPs that contain only one structure, this means that the building, as constructed, cannot exceed the amount shown by more than ten percent. For CUPs that contain multiple structures, the **total** floor area provided may exceed that shown on the sketch plan by ten percent. This can be done at the time of original construction or during a later renovation of the building(s). If it is done at a later time, it can be accomplished through a Minor Site Plan Amendment.
This interpretation does not apply, however, when the proposed expansion would change the character of the use, substantially alter the sketch plan layout configuration, or result in a building no longer complying with conditions related to building elevations (if any). In those instances, an amendment to the CUP would be required, even if the difference in floor area of the building(s) did not exceed the approved amount by more than ten percent. In addition, the ten percent deviation is only permitted when compared to the original approved floor area; it is not measured using any areas (whether constructed at the time of site plan approval or any subsequent Minor Site Plan Amendment) that are in excess of the original area.

Examples:

A church requests a Minor Site Plan Amendment that includes an enlargement of the detached community building (one of several buildings that were approved with the CUP). The proposed expansion of the building constitutes a 50% increase in the size of that building, but constitutes less than 10% of the total floor area approved as part of the CUP. Since the total expansion does not exceed 10% of the total approved floor area, the expansion can be allowed without an amendment to the CUP. The applicant must still satisfy all requirements for Minor Site Plan Amendments.

This interpretation, originally approved August 14, 2009, has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013.

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Location of Street Trees Within VDOT Right-of-Way in RS District

Zoning Ordinance Reference (Article and Section):

Section 26-61(b)(1)

Interpretation:

In an RS District, street trees may be planted within the VDOT right-of-way if the following criteria are met:

1. There is a minimum of 6 foot separation between the back-of-curb, at the roadway's edge, to the pedestrian walkway.

2. The area is void of public utility lines, save for service laterals that run generally perpendicular to the right-of-way line.

3. Planting of street trees in the right of way shall cause no sight distance obstructions.

4. The right-of-way width complies with County and VDOT requirements and there are no plans or potential for future widening or improvements that would threaten the street trees.

5. County review departments of Planning, Public Utilities, Public Works have no concerns regarding placement of the trees.

6. The County is presented with an executed agreement with VDOT approving the planting and guaranteeing future maintenance by a legally established entity.

7. The 10' wide easement designated for planting as stipulated in Section 26-61(b)(1) is still provided.

Examples:

In Rutland, Section 1 construction of large homes with substantial porches and stairways make it impractical to place street trees outside of the right-of-way and in the 10 foot planting easement. However, their sidewalk placement, six feet from the curb and gutter, allows them to meet VDOT's requirements to plant trees in the right of way and enter into a maintenance agreement with VDOT.

This interpretation, originally approved July 13, 2009, has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013.

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Storage of commercial vehicles in residential district.

Zoning Ordinance Reference (Article and Section):

Sections 26-19.12, 26-34.12, 26-44.10, 26-58.9, and 26-71.11

Interpretation:

The storage of certain commercial vehicles are allowed in all residential districts. The storage of these vehicles are allowed based on the capacity of the vehicle. In the past, the capacity limitation has been one (1) ton. The issue has arisen that most non-commercial vehicles either meet or exceed this capacity requirement. Recent ordinance updates have defined truck sales in the B-3, General Business District and the capacity of these vehicles have been specifically addressed to reflect state commercial vehicle standards.

B-3, General Business District- Section 26-128 (c)(1)d.
"Truck Dealers (new vehicles) including sales, service, and repairs, including body and fender repairs, limited to pick up or panel trucks with a gross vehicle weight rating of 19,500 pounds or less."

In residential districts, a resident may store one (1) commercial vehicle and it's gross vehicle weight may not exceed 19,500 pounds. This vehicle must be stored in the side or rear yard, or in the driveway. The vehicle shall not be parked in other areas of the property for display purposes or be utilized for signage.

Examples:

An individual who lives in the RC district has a commercial van that gross vehicle weight is 10,000 pounds. The vehicle has current license plates and a valid inspection decal. The commercial vehicle may be parked behind the residence, in the side yard, or in the driveway (which may be in front of the residence), but cannot be stored on the grass or anywhere else in the front yard.

This interpretation has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013.

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name

Zoning Interpretation Record

Subject of Interpretation:

Vesting of Special Exceptions (SE) and Conditional Use Permits (CUP)

Zoning Ordinance Reference (Article and Section):

Section 26-327

Interpretation:

Article 9, Section 9.1 states the following: *Approval of a conditional use permit or special exception shall be valid for a period of one (1) year after the date of approval and, thereafter, shall be void unless substantial construction or use has been initiated during the one-year period.*

A CUP or SE is vested when the site plan has been approved and legal land disturbance has taken place on the property. If no site plan or land disturbance is required, then the use approved with a CUP or SE must be initiated within one (1) year.

Examples:

An applicant inquired about whether a Special Exception required an extension if the site had site plan approval but no land disturbance had taken place.

This interpretation, originally approved August 31, 2010, has been updated to reflect code references from the amended Zoning Ordinance, adopted on January 9, 2013.

Approved by:

Signature

4/7/15
Date

David P. Maloney
Printed Name