



Memorandum

Planning Division • Community Development

900 Church Street
Lynchburg, Virginia 24504
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To: Planning Commission

From: Tom Martin, AICP, City Planner

CC: Public

Date: September 23, 2015

Re: Zoning Ordinance Revision

On September 23, the Planning Commission will conduct a public hearing concerning the comprehensive rewrite of the Zoning Ordinance. The current Zoning Ordinance was adopted by City Council in 1978.

Starting in 2012, City Council, Planning Commission, city staff and the public started working towards revising the Ordinance to better meet the City's needs and the Goals, Strategies & Policies of the *Comprehensive Plan 2013-2030*.

On August 26, 2015, the City's Consultant Michael Lauer, Planning Works & City Staff discussed issues identified at public meetings held on August 25th & 26th. At the work session, Planning Commission directed staff to make the following changes to the draft text:

- P5 – occupancy standard effective date established as June 1, 2016, unless the property owner provides a copy of a valid lease executed prior to September 1, 2015 that allows for greater occupancy in accordance with old standards. If the lease is provided, the occupancy will be authorized for a period not to exceed 2 years from the lease execution date.
- P68 – Raising of large farm animals within R-C districts is limited to sites with 10 acres or more.
- P73, 77, and 82 – added examples of uses allowed by Conditional Use Permit in R-1, R-2, and R-3 districts that exceed occupancy limits.
- P117 – added glass and stone to the list of acceptable building materials in the B-4 district and excluded cinder block and unfinished concrete.
- P152, 160, and 168 – altered ordinance to allow dwellings and agricultural uses existing prior to December 13, 1988 by right and removed the non-conforming status for residential uses in industrial districts.

- P253 – Exemption for underground utilities for lots of record prior to the establishment of this ordinance and additions to structures existing at the time of this ordinance.
- P254 – Removed proposed provision that would have allowed detached garages in front yards.
- P257 – Reduced lot area requirement for keeping up to 2 large farm animals to 5 acres or more. 3 or more require 10 acres.
- P361 – Added definition of large farm animal to be an animal with an adult weight of 50lbs or more that may be kept for agricultural purposes (does not include dogs).

These changes are outlined in red in the September 23, 2015 draft Zoning Ordinance. Page numbers have been added for your convenience.

On September 10m, 2015, staff met with representatives from American Electric Power (AEP) to discuss the proposed lighting sections of the ordinance. Based upon this discussion staff is recommending Planning Commission consider the following changes:

- P243 – Outdoor Lighting changes
 - Allow exceptions to height standards when there is a master lighting plan in place and a qualified lighting professional has certified that the spillover lighting does not exceed ordinance requirements.
 - Changed general standards to only restrict spill over lighting at residential property lines
 - Changed measurement units from lumens per square foot to footcandles (they are equivalent units)
 - Increased brightness of spillover lighting and on-site lighting standards, but maintained prohibition on direct spillover lighting
 - Added uniformity ratio, which tends to reduce shadowing and improve safety
 - Made allowances for uplighting of signs, architectural features and landscaping provided that the lighting is angled away from property lines
 - Clarified metering and measurement standards

The proposed changes to the outdoor lighting requirements have not been included in the September 23, 2015 draft ordinance. A copy of revised Section 35.2-65 is attached for your consideration.

Another item for the consideration of the Planning Commission is related to nonconforming duplexes located within the R-1, Low Density Residential District & R-2, Low-Medium Density Residential District. Typically these duplexes were either annexed into the City or became nonconforming due to a zoning district change.

Section 35.2-41.3 (c) & 35.2-42.3 (c) state: Not more than three (3) unrelated individuals may occupy a lot unless the uses is allowed pursuant to a use authorized by conditional use permit (i.e., bed & breakfast boarding house, dormitories/sororities/fraternities and large group homes).

In instances concerning nonconforming duplexes, in which both units are rented and not owner occupied, the above provision would eliminate the ability to rent both units to any more than three (3) unrelated individuals.

In regulating the existing nonconforming duplexes, staff presents the following three (3) options:

1. Adopt the draft ordinance as is. This would result in nonconforming duplexes to no longer be occupied by more than three (3) unrelated individuals between the two (2) units.
2. Require a conditional use permit (CUP) to be obtained.
3. Allow existing nonconforming duplexes to continue by considering the following provision: “Legally established nonconforming duplexes in the R-1, Low Density Residential District and R-2, Low-Medium Density Residential District existing at the time of the adoption of this Ordinance are allowed to remain. Each unit may be rented to no more than three (3) unrelated individuals.

It is staff’s recommendation that option #3 be included in the draft ordinance.

Planning Divisions Recommended Motion:

THAT THE PLANNING COMMISSION RECOMMENDS APPROVAL OF REPEALING TITLE 35.1 – ZONING ORDINANCE OF THE LYNCHBURG, VIRGINIA CODE OF ORDINANCES AND IN ORDER TO IMPROVE THE PUBLIC HEALTH, SAFETY, CONVENIENCE AND WELFARE OF THE CITIZENS OF LYNCHBURG AND TO PLAN FOR FUTURE DEVELOPMENT AS RECOMMENDED BY THE COMPREHENSIVE PLAN 2013-2030, THE PLANNING COMMISSION RECOMENDS ADOPTING TITLE 35.2 – ZONING ORDINANCE WHICH REWRITES, REFORMATS, AMENDS REENACTS AND RECODIFIES THE CITY OF LYNCHBURG ZONING ORDINANCE.

The draft zoning ordinance addresses most of the issues raised in the zoning diagnostic and discussed throughout the public participation process. During the drafting and subsequent to the initial public input sessions, the following additional issues have been raised that should be addressed through subsequent efforts. Some of these involve edits to the zoning ordinance, while others will be addressed through other sections of the City’s code and various planning initiatives.

Density incentives for multiple-household developments. While the draft zoning ordinance includes a number of incentives, the inclusion of incentives for water quality enhancements are anticipated emerge from the current water quality master planning effort. Incentives for work-force and other affordable housing provisions should follow a clear delineation of the needs and target products determination.

Other water quality provisions. In addition to the incentives identified above, the City’s water quality master planning initiative may result in modifications to the zoning ordinance and/or other portions of the City’s code. These provisions may address stormwater management facility design, parking and landscaping design, stream buffers and/or use restrictions in the resource conservation zoning district.

Provisions for temporary signs. The recent Supreme Court case of Reed v Gilbert has raised a number of questions about the most effective ways to regulate temporary signs. Despite the fact that the decision was unanimous, it is clear that at least six of the justices disagree with significant parts of the decision, which failed to overturn any previous decisions. In short, while the court called for strict scrutiny of any content-based regulations, the fact that different types of temporary signs (e.g. election signs, special events signs, construction project signs, real estate signs) typically have distinct characteristics for the durations that they are needed, a strict reading of the majority decision would mean that all would need to be treated identically because the distinctions can only be ascertained by the content of the signs.

Flood plain regulations. The City's current provisions have significant deviations from FEMA's model regulations. A more detailed analysis and discussion should occur before determining which portions of the model regulations should be incorporated into the zoning ordinance.

Lighting requirements for single-household and duplex lots. The Planning Commission concurred with the staff finding that the City lacks the resources to effectively address lighting for these properties, which typically does not even require a permit. Yet several residents have complained about nuisance lighting from other residences that significantly degrades their quality of life and enjoyment of their property. A review of current nuisance ordinance provisions should be conducted to determine the most effective way to address nuisance lighting on a case-by-case basis.

Telecommunications tower regulations. These regulations are already subject to a separate legal review process to ensure that they comply with detailed state and federal regulations and will likely need to be updated based on the findings of that analysis.

Residences in industrial districts. When the zoning ordinance was adopted, several neighborhoods were anticipated to be redeveloped for industrial purposes, but the homes were allowed to continue as conforming uses so that people could rebuild and expand their homes without limitation. Some of these neighborhoods have remained in tact and very little industrial activity has occurred due to parcel configurations, access, terrain and other issues. While staff considered the potential for rescinding the conforming status for these properties, staff and the Planning Commission concurred that subsequent analysis of the more than 200 homes that fall within industrial zoning districts is needed to determine the most reasonable options.