

ZONING ORDINANCE TEXT AMENDMENT (TA-22-06)
Structures or Portions of Structures Permitted in Required Setback Areas
November 22, 2022 Board of Supervisors Meeting – SCHEDULE PUBLIC HEARING
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Description:

Proposed text amendment to amend Code of Clarke County Chapter 200, Zoning Ordinance (Article I) Section 7.1.2C (Uses and Structures Permitted in Required Setback Areas). The purpose is to specify the types of “architectural features” and “mechanical equipment” which may be located in a setback area, and to remove “swimming pools (above or in ground)” from the list of building elements that may be located within a setback area by up to 50%.

Requested Action:

Schedule Public Hearing for the December 20, 2022 Board of Supervisors meeting.

Staff Analysis:

Section 7.1.2C allows certain structures and building features to be located in a setback area either subject to or without restriction. Structures and building features that may be located in a setback area without restriction include:

- Driveways or patios with an elevation that is no more than 24 inches above grade.
- Fences and walls up to seven (7) feet in height or hedges.

“Building elements” may project into a required setback area but not more than 50% of the required setback. These include:

- Porches, balconies, and decks that do not have more than 36 square feet and do not have roofs
- Steps without roofs
- Bay or bow windows
- Projecting roof elements without columns
- Chimneys
- Eaves
- Architectural features
- Swimming pools (above or in ground)
- Mechanical equipment

Gasoline pump canopies are also allowed to project into a setback area but cannot be closer than 10 feet to any property line or right of way.

The Planning Commission's Ordinances Committee and Staff evaluated the following issues with this section in developing the proposed text amendment.

“Mechanical equipment”

The term “mechanical equipment” (a “building element” which may project up to 50% into a required setback area) is currently undefined but could apply to any of a building's mechanical systems including heating, cooling, electrical, water, or sewer/sewage disposal systems. A common application would be an outdoor heat pump or a window air conditioning unit – equipment that is typically attached to or located freestanding in close proximity to the building it serves.

In recent years, Staff has encountered situations in which mechanical equipment located away from a building has qualified for a 50% setback reduction. Freestanding solar panels serving a single-family dwelling are considered to be mechanical equipment and can be located a significant distance from the dwelling. A structure used to house an outdoor wood furnace or backup generator could also qualify for the 50% setback reduction if used exclusively for the mechanical equipment.

This interpretation may not be consistent with the original intent of this section to provide relief for “building elements.” All of the items in the list of building elements are features which are part of or attached to a structure with the exception of “swimming pools (above ground or in ground)” – the issue of pools is addressed later in this memo. Freestanding solar panels and outbuildings housing mechanical equipment including backup generators are more recent structures likely not contemplated when this section was originally created.

There is also the possibility that an accessory structure approved for a 50% setback reduction could be used for storage or other purposes and not just to house mechanical equipment. In one recent example, a property owner had an illegally located, unpermitted accessory structure (pergola). The structure was converted into a support structure for solar panels which allowed it to be legally located within the 50% reduced setback area but it also resulted in the pergola having a roof. Staff included a condition on the zoning permit, affirmed by the applicant, that the structure could not be used for any other purposes such as a carport or storage. This and other similar situations could result in ongoing issues with permit compliance especially with subsequent owners.

To address this issue, new language is added to “mechanical equipment” to clarify that the 50% setback reduction does not apply to equipment “housed within or supported on a separate, freestanding structure such as an outdoor wood furnace or solar panels.” If adopted, these structures – including freestanding solar panels – would have to comply with the standard setback requirements for an accessory structure. If an applicant has trouble complying with the standard setback requirement, they may still be eligible to apply for a variance.

Further clarification is needed to address other above-ground, freestanding structures associated with a building's mechanical systems that should be allowed in setback areas. These include:

- Well structures such as a well head
- Onsite sewage disposal system structures such as a riser or associated equipment
- Structures associated with the building's electrical or telecommunications systems including transformers, equipment boxes, meters, dish antennae, and utility poles

Placement of these structures is governed by other bodies of law or, in the case of public utility equipment, are often required to be located on or near lot lines. Staff has never interpreted these features as being subject to zoning setbacks but by definition they would be considered “structures” that must be located in compliance with setback requirements.

To address this potential conflict, new language is added to allow freestanding structures associated with a private well or onsite sewage disposal system to be located in setback areas subject to any State or local ordinance requirements which govern their installation. This would make it clear that Virginia Department of Health regulations and the County's Septic and Well Ordinances would be the sole authority for placement of these structures on a lot. New language is also included to allow structures owned or provided by a public utility company or telecommunications service provider for the provision of electric, telephone, or internet service to be located in setback areas subject to any State or local ordinance requirements which govern their installation. This provision would not apply to a pole-style antenna or telecommunications tower which would be considered a wireless communications facility (WCF).

“Architectural Features”

Another concern is the building element “architectural features.” This term is not defined however Staff interprets it to mean parts of a building that are purely decorative in nature and are not required structural elements. This interpretation is consistent with the other items on the list of “building elements” such as bay or bow windows and projecting roof elements without columns. Staff is concerned that “architectural features” could be interpreted more broadly by applicants or future staff members to include almost any part of a building. To clarify this term, it would be modified to read, “Decorative architectural features which are not required structural elements of the building.” This would also codify the current interpretation of the term.

“Swimming Pools”

“Swimming pools (above or in ground)” would be deleted from the list of structures eligible for a 50% setback reduction. A swimming pool is not a “building element” and, as with freestanding structures housing mechanical equipment, can be located a significant distance from the primary dwelling. A swimming pool can also have a greater visual impact depending upon its size, decking, and mechanical equipment than a small accessory structure not eligible for a 50% setback reduction would have. If deleted, swimming pools would have to be located entirely within the required building envelope. As with the proposed change to “mechanical equipment,” an applicant may be eligible to apply for a variance if they cannot comply with the setback requirements.

Additional Changes

- Modifications to the section title and introduction to clarify that this section applies to “structures” and not to “uses” as there are no uses (as enumerated in Zoning Ordinance

Section 5) included in this section. Also replacing “shall” with “may” to clarify that items in this section may be allowed in the setback area if the applicant demonstrates full compliance with ordinance requirements.

- Add “freestanding” to “walls” to make it clear that this does not refer to a wall of a building or other structure.
- Delete “hedges” as a listed feature that can be in a setback area. Specifically allowing hedges to be located within a setback area could result in conflicts with Section 7.1.1F which prohibits vegetation – including hedges – from being placed or allowed to grow to produce a sight distance impediment. This is the only context in which the Zoning Ordinance currently regulates “hedges.” Since “hedges” are not considered to be structures, they would be allowed in setback areas whether or not they are specifically listed in Section 7.1.2C unless they constitute a sight distance impediment.

Proposed text amendment language is included at the end of this report.

Planning Commission Recommendation:

Following a duly advertised Public Hearing on November 4, 2022, the Commission voted 9-0-2 (Hunt, King absent) to recommend adoption of the proposed text amendment.

Staff Recommendation:

Staff has no outstanding concerns with the adoption of this text amendment.

History:

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| September 2, 2022. | Presented to Commission’s Ordinances Committee for discussion. Committee agreed by consensus to forward issue and Staff’s recommendations to the full Commission for discussion. |
| October 4, 2022. | Presented to the Planning Commission at their Work Session for initial discussion. |
| October 7, 2022. | Commission voted 9-0-2 (Staelin absent; Kreider ineligible) to initiate consideration of the text amendment and to schedule Public Hearing for the November 4 Business Meeting. |
| November 4, 2022. | Commission voted 9-0-2 (Hunt, King absent) to recommend adoption of the text amendment. |
| November 22, 2022. | Placed on the Board of Supervisors meeting agenda to schedule Public Hearing. |

Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

C. ~~Uses and~~ Structures or Portions of Structures Permitted in Required Setback Areas.

No ~~structure or~~ portion of any ~~building structure~~ shall be permitted in any required setback area, however, the following ~~uses and~~ structures ~~shall~~ **may** be permitted in required setback areas, subject to the limitations established below.

1. Driveways or patios with an elevation that is no more than 24 inches above grade.
2. Fences and **freestanding** walls up to seven feet in height ~~or hedges~~.
3. Building elements as enumerated below. Such elements or equipment may project into any required setback area, but shall be set back from property lines at least 50% of the minimum setback requirement:
 - Porches, ~~balconies, or~~ decks ~~that do not have more than~~ **with a maximum area of** 36 square feet and ~~do not have~~ **without** roofs
 - Steps without roofs
 - Bay or bow windows
 - Projecting roof elements without columns
 - Chimneys
 - Eaves
 - **Decorative architectural features which are not required structural elements of the building**
 - ~~Swimming pools (above or in-ground)~~
 - Mechanical equipment **essential to the building's heating, cooling, electrical, water or sewer/sewage disposal systems. This provision shall not apply to mechanical equipment housed within or supported on a separate, freestanding structure such as an outdoor wood furnace or solar panels except as described in subsections 4 and 5 below.**
- 4. ~~Freestanding structures associated with a private well (such as a well head) or onsite sewage disposal system (such as a riser and associated equipment) may be located within a setback area subject to compliance with any other State or local ordinance requirements which govern the installation of such features.~~**
- 5. ~~Structures owned or provided by a public utility company or telecommunications service provider for the operations of an electrical, telephone, or internet system (such as a transformer, equipment box, meter, dish antenna, or utility pole) may be located within a setback area subject to compliance with any other State or local ordinance requirements which govern the installation of such features. This subsection shall not apply to wireless communication facilities (WCFs) per Section 5 (Uses).~~**
- 6.** Gasoline pump canopies shall not be closer than 10 feet to any property line or right-of-way.