

**BOARD OF SUPERVISORS
BUSINESS MEETING
ACTION ITEM**

SUBJECT: **Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance in Regard to the Legislative Application Review Process**

ELECTION DISTRICT: Countywide

CRITICAL ACTION DATE: At the pleasure of the Board

STAFF CONTACTS: Mark Stultz, AICP, CZA, Zoning Administrator, Planning and Zoning
Alaina Ray, AICP, Director, Planning and Zoning
Kenny Young, Assistant County Administrator
Courtney R. Sydnor, Deputy County Attorney
Leo P. Rogers, County Attorney

PURPOSE: The purpose of this item is for the Board of Supervisors (Board) to consider initiating amendments to the Revised 1993 Loudoun County Zoning Ordinance that would (i) implement a process whereby Zoning Amendment and Special Exception applications are sent to public hearing early in the application cycle so that public comments and concerns may be adequately addressed through the review process and to avoid circumstances in which the Board considers a legislative application for the first time on the critical action date; and (ii) amend provisions regarding the commencement and tolling of time-periods for Planning Commission recommendation and Board action on Zoning Amendment and Special Exception applications (i.e. critical action dates).

RECOMMENDATIONS: Staff recommends that the Board adopt the proposed Resolution of Intent to Amend (ROIA) included as Attachment 1.

BACKGROUND: At the February 6, 2018 Business Meeting, the Board voted (9-0) to adopt the 2018 ZOAM Work Program, which included amendments to the legislative land use application review process in Article 6 of the Revised 1993 Loudoun County Zoning Ordinance (Zoning Ordinance). Specifically, the Work Program indicates that the Board desires to implement changes to the legislative review process to enhance efficiency and improve outcomes for all stakeholders, by sending applications to Planning Commission (Commission) public hearing sooner rather than later so that so that public comments and concerns may be more fully understood and addressed through the review process. The Work Program also indicates that the Board desires to address the critical action dates for Commission and Board action.

There have been frequent occasions when the Board's public hearing on a legislative land use application occurs on the critical action date. Typically, the public hearing is the first time an application is presented to the Board. Thus if members of the public and/or the Board raise issues or concerns about an application, the applicant must agree to an extension of the critical action date in order for those matters to be addressed and resolved. In addition, public comments and Board discussion during the public hearing often result in last minute changes to the proffer statement for a rezoning application. Even if the applicant consents to an extension of the critical action date, the extension is usually for a limited period of time. The limited extension may not be adequate for staff and the applicant to address all outstanding issues as thoroughly and thoughtfully as would be possible if the application were presented to the Board earlier in the process.

To address this reoccurring issue, staff recommends that Zoning Amendment and Special Exception applications be presented to the Board for an initial public hearing early in the process, so that public comment and Board concerns may be addressed throughout the review process by staff, the applicant and the district supervisor. Thereafter, the application would be referred to the Commission for public hearing and recommendation, and a second Board public hearing would occur following the Commission recommendation. This amended process would avoid circumstances where an application is presented to the Board for the first time on the critical action date, and ensure that there is adequate time for the applicant to fully and thoroughly address public comments and Board member concerns. The result should be that at its second public hearing the Board is presented with a high quality application that has been fully vetted with any significant material issues already resolved.

The specific amendments proposed in the ROIA are as follows:

- Amend Section 6-1200, et seq., Special Development Approvals, Zoning Amendments, to amend the review schedule for Zoning Amendment applications as follows: (i) initial referral review; (ii) initial public hearing before the Board of Supervisors, at which the Board may provide direction to staff and the Planning Commission; (iii) further review by staff, referral agencies and the district supervisor, and resubmission by applicant; (iv) application referred to the Planning Commission by the Director of Planning and Zoning; (v) Planning Commission public hearing and recommendation; (vi) resubmission by applicant, as and if appropriate, to address Planning Commission recommendations; (vii) final application submitted to Board of Supervisors for public hearing and decision.
- Amend Section 6-1210(F) to provide that the 100-day period for Planning Commission recommendation and the 12-month period for Board of Supervisors action shall commence on the date of the first meeting of the Planning Commission following the date on which the Director of Planning and Zoning refers a Zoning Amendment application to the Planning Commission; and amend such other provisions of Section 6-1200, et seq., to

specify that these time periods will not be tolled unless the applicant requests a deferral of the critical action date.

- Amend Section 6-1300, et seq., Special Development Approvals, Special Exception, to amend the review schedule for Special Exception Applications as follows: (i) initial referral review; (ii) initial public hearing before the Board of Supervisors, at which the Board may provide direction to staff and the Planning Commission; (iii) further review by staff, referral agencies and the district supervisor, and resubmission by applicant; (iv) application referred to the Planning Commission by the Director of Planning and Zoning; (v) Planning Commission public hearing and recommendation; (vi) resubmission by applicant, as and if appropriate, to address Planning Commission recommendations; (vii) final application submitted to Board of Supervisors for public hearing and decision.
- Amend Section 6-1308(B) to impose a 100-day period for Planning Commission recommendation and a 12-month period for Board of Supervisors action on Special Exception applications, which dates shall commence on the date of the first meeting of the Planning Commission following the date on which the Director of Planning and Zoning refers a Special Exception application to the Planning Commission; and amend such other provisions of Section 6-1300, et seq., to specify that the time periods applicable to Special Exception applications shall not be tolled unless the applicant requests a deferral of the critical action date.
- Amend such other Articles, Sections, Subsections and provisions of the Zoning Ordinance as necessary to implement and maintain consistency with the foregoing amendments or as otherwise necessary to correct typographical errors, section and subsection numbering, and formatting within, update cross-references to, and further clarify the requirements of, the above-mentioned Articles, Sections, Subsections, and provisions of the Zoning Ordinance.

ISSUES: The proposed ZOAM will have substantial impacts and will generate strong interest. It is anticipated that extensive interdepartmental coordination and outreach to stakeholders, the public and the Zoning Ordinance Action Group (ZOAG) – beyond what is involved in the mandated public hearing process – will be conducted to obtain key input regarding the ZOAM.

FISCAL IMPACT: This ZOAM can be completed using existing staff resources in the County Attorney’s Office and the Department of Planning and Zoning.

ALTERNATIVES: The following alternatives have been identified for the Board’s consideration:

1. The Board may adopt the ROIA.
2. The Board may forward this item to the Transportation and Land Use Committee for further discussion.
3. The Board may postpone initiation of the proposed amendments to a later date.

4. The Board may take no action.

DRAFT MOTIONS:

1. I move that the Board of Supervisors adopt the Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance in Regard to the Legislative Application Review Process, as provided in Attachment 1 of the December 4, 2018, Board of Supervisors Business Meeting Action Item.

OR

2. I move an alternate motion.

ATTACHMENTS:

1. Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance in Regard to the Legislative Application Review Process

BOARD OF SUPERVISORS OF LOUDOUN COUNTY

RESOLUTION OF INTENT TO AMEND THE REVISED 1993 LOUDOUN COUNTY ZONING ORDINANCE IN REGARD TO THE LEGISLATIVE APPLICATION REVIEW PROCESS

WHEREAS, the Board of Supervisors wishes to initiate amendments to the Revised 1993 Loudoun County Zoning Ordinance (the “Zoning Ordinance”) in furtherance of the purposes of zoning as set out in Virginia Code § 15.2-2283 and to further implement the comprehensive plan; and

WHEREAS, the Board of Supervisors wishes to initiate amendments to the legislative review process prescribed in Article 6 of the Zoning Ordinance applicable to Zoning Amendment and Special Exception applications to enhance efficiency and improve outcomes for all stakeholders. In particular, the Board of Supervisors wishes (i) to implement a process whereby Zoning Amendment applications are sent to public hearing early in the application cycle so that public comments and concerns may be adequately addressed through the review process and to avoid circumstances in which the Board of Supervisors considers a legislative application for the first time on the critical action date; and (ii) to amend provisions regarding the commencement and tolling of time-periods for Planning Commission recommendation and Board of Supervisors action on Zoning Amendment and Special Exception applications.

WHEREAS, at the February 6, 2018 Business Meeting, the Board of Supervisors voted 9-0 to adopt the 2018 ZOAM Work Program which included such amendments to the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors states its intention to amend the Revised 1993 Loudoun County Zoning Ordinance as follows:

- Amend Section 6-1200, et seq., Special Development Approvals, Zoning Amendments, to amend the review schedule for Zoning Amendment applications as follows: (i) initial referral review; (ii) initial public hearing before the Board of Supervisors, at which the Board may provide direction to staff and the Planning Commission; (iii) further review by staff, referral agencies and the district supervisor, and resubmission by applicant; (iv) application referred to the Planning Commission by the Director of Planning and Zoning; (v) Planning Commission public hearing and recommendation; (vi) resubmission by applicant, as and if appropriate, to address Planning Commission recommendations; (vii) final application submitted to Board of Supervisors for public hearing and decision.
- Amend Section 6-1210(F) to provide that the 100-day period for Planning Commission recommendation and the 12-month period for Board of Supervisors action shall commence on the date of the first meeting of the Planning Commission following the date on which the Director of Planning and Zoning refers a Zoning Amendment application to the Planning Commission; and amend such other provisions of Section 6-1200, et seq., to specify that these time periods will not be tolled unless the applicant requests a deferral of the critical action date.

- Amend Section 6-1300, et seq., Special Development Approvals, Special Exception, to amend the review schedule for Special Exception Applications as follows: (i) initial referral review; (ii) initial public hearing before the Board of Supervisors, at which the Board may provide direction to staff and the Planning Commission; (iii) further review by staff, referral agencies and the district supervisor, and resubmission by applicant; (iv) application referred to the Planning Commission by the Director of Planning and Zoning; (v) Planning Commission public hearing and recommendation; (vi) resubmission by applicant, as and if appropriate, to address Planning Commission recommendations; (vii) final application submitted to Board of Supervisors for public hearing and decision.
- Amend Section 6-1308(B) to impose a 100-day period for Planning Commission recommendation and a 12-month period for Board of Supervisors action on Special Exception applications, which dates shall commence on the date of the first meeting of the Planning Commission following the date on which the Director of Planning and Zoning refers a Special Exception application to the Planning Commission; and amend such other provisions of Section 6-1300, et seq., to specify that the time periods applicable to Special Exception applications shall not be tolled unless the applicant requests a deferral of the critical action date.
- Amend such other Articles, Sections, Subsections and provisions of the Zoning Ordinance as necessary to implement and maintain consistency with the foregoing amendments or as otherwise necessary to correct typographical errors, section and subsection numbering, and formatting within, update cross-references to, and further clarify the requirements of, the above-mentioned Articles, Sections, Subsections, and provisions of the Zoning Ordinance.

BE IT FURTHER RESOLVED, that (1) these amendments are in furtherance of the public necessity, convenience, general welfare, and good zoning practice; and (2) these amendments are in furtherance of the orderly subdivision of land and its development; and (3) Staff is directed to prepare draft amendments for consideration; and (4) the proposed amendments on these matters be brought forward for notice, hearing, Planning Commission recommendation and Board of Supervisors' action.