

MEMORANDUM
COUNTY OF LOUDOUN

DATE: November 6, 2023
TO: Department and Agency Heads
FROM: Tim Hemstreet, County Administrator
SUBJECT: Action Report of the October 2, 2023, Board of Supervisors Zoning Ordinance Rewrite Work Session

Please work with staff to address the Board of Supervisors (Board) action as noted in the Action Report from the October 2, 2023, Board Zoning Ordinance Rewrite Work Session.

Link to webcast of meeting:

<https://loudoun.granicus.com/player/clip/7427>

CLOSED SESSION

Vice Chair Saines moved that the Board of Supervisors recess this public meeting and enter into closed session pursuant to Section 2.2-3711(A)(8) of the Code of Virginia to consult with legal counsel regarding legal considerations concerning proposed text and motions for modification provisions in the Zoning Ordinance Rewrite, a specific legal matter requiring the provision of legal advice of counsel. (Seconded by Supervisor Briskman. The motion passed 9-0.)

Motion to Adjourn Closed Session

Vice Chair Saines moved that the closed session be adjourned, that the Board of Supervisors reconvene its public meeting, that the minutes of the public meeting should reflect that no formal action was taken in the closed session, and further moved that the Resolution Certifying the Closed Session be adopted and reflected in the minutes of this public meeting. (Seconded by Supervisor Turner. The motion passed vial roll call vote 9-0.)

Resolution Certifying Closed Session

Whereas, the Loudoun County Board of Supervisors this 2nd day of October 2023, convened in closed session by an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act:

Now, therefore, be it resolved that the Board of Supervisors does hereby certify that to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements under the Freedom of Information Act were discussed in the closed session to which this certification applies; and (2) only such public business matters as were identified in the motions by which the said closed session was convened were heard, discussed or considered by the Board of Supervisors.

COMMITTEE OF THE WHOLE

Supervisor Turner moved that the Board of Supervisors enter Committee of the Whole. (Seconded by Vice Chair Saines. The motion passed 9-0.)

Motions from Prior Work Sessions

Motion 1

Supervisor Buffington moved to add the following language to the Introduction to clarify the County's decision-making authority:

- A. Territorial Application.** The regulations and restrictions in this Zoning Ordinance apply to all structures, land, water, and uses within the unincorporated area of Loudoun County, Virginia, except those areas determined by law to be under the sovereign control of the United States of America or the Commonwealth of Virginia and used for governmental purposes. Except as otherwise provided in this Zoning Ordinance, the Land Subdivision and Development Ordinance, or other applicable County or state regulation, the County possesses sole decision-making authority for land development in the unincorporated areas of Loudoun County, including but not limited to the Joint Land Management Areas surrounding incorporated towns, with no requirement for Town concurrence or approval.

(Seconded by Chair Randall. The motion passed 9-0.)

Motion 2

Supervisor Turner moved to change Agricultural Processing as a standalone, principal use from a Special Exception to a Minor Special Exception in the AR-1 and AR-2 zoning districts, and to make corresponding changes to the use-specific standards in Section 4.08.12. (Seconded by Supervisor Briskman. The motion passed 9-0.)

Motion 3

Supervisor Turner moved that the Board of Supervisors endorse Chapter 3: Uses of ZOAM-2020-0001, Zoning Ordinance Rewrite, as presented in Attachment 1 to the September 26, 2023, Board of Supervisors Committee of the Whole Work Session Supplemental Action Item, subject to all revisions reflected in the motions approved by the Board of Supervisors during its September 11, September 26, and October 2, 2023, Work Sessions.

Supervisor Turner further moved that the Board of Supervisors direct staff to make the additional staff recommended revisions as presented in Attachment 2 to the September 26, 2023, Board of Supervisors Committee of the Whole Work Session Supplemental Action Item, and Attachment 6, Correction Sheet, to the September 26, 2023, Supplemental Action Item. (Seconded by Chair Randall.)

Supervisor Turner withdrew his motion.

Motion 4

Vice Chair Saines moved that the Board direct staff to revise Table 4.06.02-1 Façade Standards to require all four sides of any data center building to meet the requirements of "principal facades",

including any necessary revisions to Section 4.06.02 formatting and language for consistency and clarity. (Seconded by Supervisor Briskman.)

Vice Chair Saines did not accept Chair Randall’s Friendly Amendment to limit the requirement of all four sides of any data center building to meet the requirements of “principal facades” to those adjacent to residential areas or roadways.

(The main motion FAILED 4-5: Supervisors Buffington, Glass, Kershner, Letourneau, and Umstatted opposed.)

Supervisor Letourneau moved that the Board direct staff to revise Table 4.06.02-1 Façade Standards to require all sides of any data center building facing residential or a public road to meet the requirements of “principal facades”, including any necessary revisions to Section 4.06.02 formatting and language for consistency and clarity. (Seconded by Chair Randall.)

Supervisor Letourneau accepted Supervisor Briskman’s Friendly Amendment also add Park to the list of what would require a principal façade.

Supervisor Briskman moved to table the motion. (Seconded by Supervisor Umstatted. The motion passed 7-2: Supervisors Randall and Saines opposed.)

Motion 5

Vice Chair Saines moved that the Board direct staff to revise Table 4.06.02-2 to add a new requirement for soundproofing rooftop and ground-level mechanical equipment when a data center is located on a property adjacent to residential, which would read as follows:

For Data Centers on property adjacent to property with existing residential development, an approved CDP, or plat, or plan showing residential development, or Zoning District permitting residential uses, any Data Center Mechanical Equipment located on the property, whether on a roof top, on the ground level, or elsewhere on the exterior of the property, must be screened on all four sides by an acoustical barrier. For purposes of this section, acoustical barrier is defined as an exterior solid or louvred wall containing sound-proofing materials designed to absorb noise and protect neighboring properties from noise pollution. (Seconded by Supervisor Glass. The motion passed 9-0.)

Motion 6

Vice Chair Saines moved to revise Table 4.06.02-2.h. generator testing standards for Data Centers on property adjacent to property with existing residential development, an approved CDP, or plat, or plan showing residential development, or Zoning District permitting residential uses as follows:

- a. Generator testing is limited to between 5:00 p.m. and 7:00 a.m. between May 1 and September 30;
- b. Generator testing is limited to between 11:00 a.m. and 5:00 p.m. between October 1 and April 30; and,
- c. Except for generator testing or commissioning activities, generator use is limited to backup/emergency use only. (Seconded by Supervisor Letourneau.)

Vice Chair Saines accepted Supervisor Letourneau's Friendly Amendment to add "subject to Virginia Department of Environmental Quality regulations" to the motion.

(The motion, as amended, passed 8-1: Supervisor Umstattd opposed.)

Motion 7

Supervisor Turner moved to affirm the Planning Commission's recommendation that regulations for Virginia Farm Wineries, Limited Breweries, and Limited Distilleries be addressed in a future Comprehensive Plan Amendment and Zoning Ordinance Amendment. (Seconded by Supervisor Buffington. The motion passed 9-0.)

Motion 8

Supervisor Buffington moved that the Board endorse the Commission's revisions to Livery Stable regulations in the Draft Zoning Ordinance, and that further regulations pertaining to Livery Stables be addressed in a future Comprehensive Plan Amendment and Zoning Ordinance Amendment. (Seconded by Supervisor Kershner. The motion passed 9-0.)

Motion 9

Supervisor Turner moved to table this motion to a future work session. (Seconded by Vice Chair Saines.)

Supervisor Turner withdrew his motion.

ACTION ITEMS

1. ZOAM-2020-0001, Zoning Ordinance Rewrite – Chapter 5: Overlay Districts (2011 & 2022: Countywide)

Kate McConnell with the Department of Planning and Zoning provided a presentation to the Board to provide information on regulations and proposed revisions to the County's seven overlay districts (Airport Impact Overlay District; Floodplain Overlay District; Mountainside Overlay District; Limestone Overlay District; Quarry Notification Overlay District; Village Conservation Overlay District; and History Overlay District).

Link to presentation:

https://loudoun.granicus.com/player/clip/7427?meta_id=235695

Staff Contacts: Judi Birkitt & Daniel Galindo, Planning and Zoning

2. ZOAM-2020-0001, Zoning Ordinance Rewrite – Chapter 6: Natural and Environmental Resources (2011 & 2022: Countywide)

Brian Wegener with the Department of Planning and Zoning provided a presentation to the Board to provide information on regulations and proposed revisions to Chapter 6, Natural and Environmental Resources, including the River and Stream Corridor Resources and Steep Slope areas.

Link to presentation:

https://loudoun.granicus.com/player/clip/7427?meta_id=235699

Staff Contacts: Judi Birkitt & Daniel Galindo, Planning and Zoning

Motions for October 2, 2023, Work Session

Motion 10

Supervisor Turner moved that the Board of Supervisors direct staff to revise Village Conservation Overlay District Section 5.07.D. VCOD Development Standards to include language clarifying that VCOD Development Standards apply to all new construction, including additions to existing and accessory buildings, and new subdivisions within the VCOD, as follows:

The following development standards apply to all new construction, including additions to an existing building and accessory buildings, and new subdivisions within the VCOD. When the following development standards conflict with other provisions of the Zoning Ordinance, the following apply unless otherwise noted. (Seconded by Chair Randall.)

Supervisor Kershner moved to table this motion. (Seconded by Supervisor Umstattd. The motion to table failed 2-7: Supervisors Briskman, Buffington, Glass, Letourneau, Randall, Saines, and Turner opposed.)

The main motion passed 6-1-0-2: Supervisor Umstattd opposed; Supervisors Buffington and Kershner abstained.

Board Request:

Supervisor Kershner requested staff to confirm if these motions will affect the development of the new fire station in Philomont.

Motion 11

Supervisor Turner moved that the Board of Supervisors direct staff to revise Village Conservation Overlay District Section 5.07.D.1. Building Height to clarify that the only buildings to be used to determine building height are those that have the same number of stories as those provided to meet Section 5.07.D.2.a., Building Features, as follows:

- 1. Building Height.** Proposed buildings must have a building height no greater than 25% higher than the average height of principal buildings on the same side of the road within 150 feet of both sides of the lot or lots being developed that have the same number of stories that are provided by the proposed building to meet Section 5.07.D.2.a. The building height is not permitted to exceed the maximum building height permitted in the underlying zoning district.

(Seconded by Vice Chair Saines. The motion passed 8-0-0-1: Supervisor Kershner abstained.)

Motion 13

Supervisor Turner moved that the Board of Supervisors direct staff to revise Village Conservation Overlay District Section 5.07.D.4. Average Front Yard as follows:

Average Front Yard. Notwithstanding the front yard requirements for the underlying zoning district, the depth of a front yard on a lot on which a principal building or an addition to an existing principal building is proposed must have a front yard depth that is within 25% of the average distance between principal buildings and front lot lines of lots on the same side of the road and within 150 feet of both sides of the lot being developed. For nonconforming front yards with principal buildings that encroach into right-of-way, a 0-foot front yard will be used in the average front yard depth calculation. (Seconded by Vice Chair Saines. The motion passed 7-1-0-1: Supervisor Umstatted opposed; Supervisor Kershner abstained.)

Motion 14

Turner moved that the Board of Supervisors direct staff to revise Village Conservation Overlay District Section 5.07.D.9. Variation of Lot Sizes and Dimensions to include language that clarifies lots used to determine lot width are only those located in the VCOD and excludes Average Side Yard and Average Rear Yard requirements from projects subject to Section 5.07.D.9. (new subdivisions containing six or more lots), as follows:

9. **Variation of Lot Sizes and Dimensions.** In all new subdivisions containing 6 or more lots, a mixture of lot sizes and dimensions must be provided as follows:
 - a. No more than 33% of all lots are permitted to be similar in total lot area. For purposes of this Section 5.07.D.9., “similar” lot areas are defined as within 500 square feet of each other;
 - b. The lot width for new lots must be within 51% of the average of the smallest lot width and the largest lot width of existing residential lots within 300 feet of the subject lot or lots to be subdivided and in the VCOD. **Exception.** If the subject lot or lots to be subdivided is not within 300 feet of an existing residential lot in the VCOD, the lot width requirement does not apply;
 - c. Average side yard requirements pursuant to Section 5.07.D.5. and average rear yard requirements pursuant to Section 5.07.D.6 do not apply;
 - d. Larger and wider lots are encouraged on corners; and
 - e. Smaller lots are encouraged adjacent to parks and open spaces.

(Seconded by Supervisor Briskman. The motion passed 7-1-0-1: Supervisor Umstatted opposed; Supervisor Kershner abstained.)

Motion 15

Supervisor Turner moved that the Board of Supervisors endorse Chapter 5: Overlay Districts of ZOAM-2020-0001, Zoning Ordinance Rewrite, as presented in Attachment 1 to the October 2, 2023, Board of Supervisors Committee of the Whole Work Session Supplemental Action Item, subject to all revisions reflected in the motions approved by the Board of Supervisors during its October 2, 2023, Work Session.

Supervisor Turner further moved that the Board of Supervisors direct staff to make the additional staff recommended revisions as presented in Attachment 2 to the October 2, 2023, Board of Supervisors Committee of the Whole Work Session Supplemental Action Item, and Attachment 4,

Correction Sheet, to the October 2, 2023, Board of Supervisors Committee of the Whole Work Session Supplemental Action Item. (Seconded by Chair Randall. The motion passed 7-2: Supervisors Kershner and Umstattd opposed.)

Motion 16

Supervisor Turner moved that the Board of Supervisors endorse Chapter 6: Natural and Environmental Resources of ZOAM-2020-0001, Zoning Ordinance Rewrite, as presented in Attachment 1 to the October 2, 2023, Board of Supervisors Committee of the Whole Work Session Supplemental Action Item, subject to all revisions reflected in the motions approved by the Board of Supervisors during its October 2, 2023, Work Session.

Supervisor Turner further moved that the Board of Supervisors direct staff to make the additional staff recommended revisions as presented in Attachment 2 to the October 2, 2023, Board of Supervisors Committee of the Whole Work Session Supplemental Action Item. (Seconded by Chair Randall. The motion passed 8-1: Supervisor Umstattd opposed.)

The Board took no action on Motions 9 ,12, 17, and 18.