



CITY OF POQUOSON

PLANNING DEPARTMENT

500 CITY HALL AVENUE, POQUOSON, VIRGINIA 23662-1996
(757) 868-3040 TELEPHONE (757) 868-3105 FAX

To: The Honorable City Council

Through: City Manager

From: Wally Horton, Director of Community Development

Date: March 25, 2019

Subject: Proposed Amendment to Zoning Ordinance Section 1-8 to Clarify Requirements for Applications for Uses Not Specifically Permitted

Recently, the following section of the Zoning Ordinance regarding Conditional Use Permits has been subject to conflicting interpretations due to the vague and ambiguous language of the requirement. Below is the current wording:

“Section 1-8. - Application for use not specifically permitted.

If, in any district established under this ordinance, a use is not specifically permitted and an application is made by a property owner to the zoning administrator for such use, the zoning administrator shall refer the application to the planning commission which shall make its recommendations to the city council within 60 days.”

Rather than argue over what Section 1-8 means, it is clear that the language is in need of rewording in order to provide coherence and clarity on the issue. Therefore, Staff has provided two possible replacement passages. One suggestion would make clear the first interpretation; the other the second interpretation.

The Planning Commission chose to recommend by a 5-1 vote the following language at its February 21, 2019 public hearing:

Section 1-8. - Application for use not specifically permitted.

If, within a particular zoning district established under this ordinance, a use is not specifically permitted and an application is made by a property owner to the zoning administrator for such use, the zoning administrator shall refer the application to the planning commission which shall make its recommendations to the city council within 60 days. Such an application shall not be made if the use is explicitly forbidden in the district for which the use is proposed.

Comprehensive Plan Guidance

There is guidance in the City of Poquoson 2018-2038 Comprehensive Plan for this clarification. Strategies in Chapter 8 - Land Use (beginning on Page 8-17) include:

#21. Review and update City Zoning, Subdivision, Site Plan, and Sign ordinances to ensure coherence, clarity and compliance with current law and development practices.

Staff Recommendation

By adopting this option, this Section of the Zoning Ordinance will be more coherent in that the intent is clarified for any future prospective applicant.

A proposed Ordinance is presented for your consideration.

CWH



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(757) 868-3040 TELEPHONE (757) 868-3105 FAX

To: The Honorable Chairwoman and Members of the Planning Commission

From: Wally Horton, Director of Community Development

Date: February 21, 2019

Subject: **Text Amendment:** To existing Zoning Ordinance (Appendix A) Section 1-8.

Recently, the following section of the Zoning Ordinance regarding Conditional Use Permits has been subject to conflicting interpretations due to the vague and ambiguous language of the requirement. Below is the current wording:

"Section 1-8. - Application for use not specifically permitted.

If, in any district established under this ordinance, a use is not specifically permitted and an application is made by a property owner to the zoning administrator for such use, the zoning administrator shall refer the application to the planning commission which shall make its recommendations to the city council within 60 days."

As discussed at the Planning Commission work session on January 24, 2019, two main opposing interpretations have been derived from the language.

1. That if a use is not allowed in a particular zoning district, an application for a Conditional Use Permit (CUP) may be submitted. For example, if a use is not allowed in the Village Commercial (VC) District, a CUP may be applied for to permit that use in VC.
2. More lately, the interpretation of Section 1-8 has been that a use would have to be an unlisted one in each and every zoning district in order for a CUP to be allowed for contemplation of the use. For example, if a use is not allowed in the VC District, but is allowed in B-2 or R&D, the use is not eligible for a CUP in the VC District.

Rather than argue over what Section 1-8 means, it is clear that the language is in need of rewording in order to provide coherence and clarity on the issue. Therefore, Staff has provided two possible

replacement passages. One suggestion would make clear the first interpretation; the other the second interpretation.

Below are the options:

Option One

Section 1-8. - Application for use not specifically permitted.

If, within a particular zoning district established under this ordinance, a use is not specifically permitted and an application is made by a property owner to the zoning administrator for such use, the zoning administrator shall refer the application to the planning commission which shall make its recommendations to the city council within 60 days. Such an application shall not be made if the use is explicitly forbidden in the district for which the use is proposed.

OR

Option Two

Section 1-8. - Application for use not specifically permitted.

If, within the entirety of the zoning districts established under this ordinance, a use is not specifically permitted and an application is made by a property owner to the zoning administrator for such use, the zoning administrator shall refer the application to the planning commission which shall make its recommendations to the city council within 60 days. Such an application shall not be made if the use is explicitly forbidden in the district for which the use is proposed.

As you can see:

Option 1 would allow a more liberal application of the Conditional Use provisions of Section 1-8. It would allow applications for a Conditional Use Permit if the use is not currently allowed within the particular Zoning District that the property is zoned to.

Option Two would preclude an application for a Conditional Use Permit to instances where the proposed use is not currently allowed at all in the existing Zoning Districts of the City. This would more closely match uses to appropriate zoning districts, while still allowing for application for uses not currently contemplated by the Zoning Ordinance.

Comprehensive Plan Guidance

There is guidance in the City of Poquoson 2018-2038 Comprehensive Plan for this clarification.

Strategies in Chapter 8 - Land Use (beginning on Page 8-17) include:

#21. Review and update City Zoning, Subdivision, Site Plan, and Sign ordinances to ensure coherence, clarity and compliance with current law and development practices.

Staff Recommendation

By recommending one or the other of the presented options, this Section of the Zoning Ordinance will be more coherent in that the intent is clarified for any future prospective applicant.

CWH

ORDINANCE NO _____

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
BY REVISING APPENDIX A, ARTICLE I, SECTION 1 – 8,
APPLICATION FOR USE NOT SPECIFICALLY PERMITTED**

BE IT ORDAINED by the Council of the City of Poquoson, Virginia:

Section 1: That the Zoning Ordinance of the City of Poquoson, Virginia be amended by revising Appendix A, Article I, Section 1 - 8 pertaining to Application for Use Not Specifically Permitted to read as follows:

Section 1 - 8. Application For Use Not Specifically Permitted.

If, within a particular zoning district established under this ordinance, a use is not specifically permitted and an application is made by a property owner to the Zoning Administrator for such use, the Zoning Administrator shall refer the application to the Planning Commission which shall make its recommendations to the City Council within 60 days. Such an application shall not be made if the use is explicitly forbidden in the district for which the use is proposed.

Section 2: That this ordinance shall be in effect 30 days from its adoption.

ADOPTED: _____

TESTE: _____
City Clerk