



CITY OF POQUOSON

PLANNING DEPARTMENT

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To: The Honorable City Council

Through: City Manager

From: Wally Horton, Director of Community Development

Date: May 13, 2019

Subject: Text Amendment to existing Zoning Ordinance (Article III) Section 3-6.3(1)

Overview

In 2012 Staff was tasked with creating an ordinance that would provide allowances for side setbacks on non-conforming lots, as this was one of the primary variance requests considered by the City's Board of Zoning Appeals (BZA). In considering a variance request the BZA must ensure that it meets six necessary findings as required by the State. One of those findings is that "the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the ordinance". With the number of setback requests increasing, it was apparent that such an amendment was in order.

Now, as the number of properties benefitting from this ordinance amendment has increased, it has been noted that the properties in the RS zoning district are at a distinct disadvantage. The criteria for reducing side yard setbacks in Article III, Section 3-6.3(1) currently reads as follows:

- (1) The exterior portion of the structure nearest the adjacent property neighboring the side yard, must be constructed using two hour rated fire materials, as defined by the Virginia Uniform Statewide Building Code.

As written, this allows the side setbacks on properties in the R-1 and R-2 zoning districts, which typically require two 15-foot side yard setbacks, to be reduced to anywhere from 14 feet to 10 feet before requiring the two hour fire rating; however, properties in the RS zoning district, which requires two 20-foot side yard setbacks, must use two hour fire rated materials if the side property lines are reduced to anywhere from 19 feet to 10 feet. Since the fire rating requirement is a more of a safety than a zoning item it seems logical to provide consistency across all three single-family zoning districts by requiring the fire rated materials for any setback less than 15 feet.

In writing the original Article III, Section 3-6.3(1), Staff consulted with the Fire Department and Building Official to determine whether any consideration should be given to the potential proximity of one primary structure to another. It was agreed that a provision for the requirement of fire rated materials to prevent potential fire safety issues should be added; however, this requirement was intended for walls, not doors and windows. Therefore, to clarify this requirement, the exclusion of fire rated doors and windows has been added to the amendment.

With this amendment Article III would read as follows:

ARTICLE III. - NONCONFORMING USES AND STRUCTURES

Section 3-6.3. - Lots not meeting minimum lot frontage and lot area requirements in residential districts.

- (a) Primary structures, located on residential lots not meeting the minimum lot frontage or lot area requirement for their district, may encroach into the required side yard area provided that they maintain a side yard setback of no less than ten feet. Additionally, for lots fronting on more than one street that have at least one front of insufficient width, primary structures may encroach into any required side yard area on the property provided that they maintain a side yard setback of no less than ten feet.

In addition, the following criteria must be met:

- (1) The exterior portion of ~~the~~ any primary structure that will be located less than 15 feet from the side property line through this provision, nearest the adjacent property neighboring the side yard, must be constructed using two hour rated fire materials, excluding doors and windows, as defined by the Virginia Uniform Statewide Building Code.
- (2) No principal structure shall exceed the maximum allowable width for a principal structure located on a minimally conforming lot in its respective zoning district.

Lots meeting the minimum lot frontage and lot area requirements are not subject to these allowances and must meet the minimum side yard setback requirements established for their zoning district.

Comprehensive Plan Guidance

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

Under Chapter 8 – Land Use (Beginning on Page 8-17) strategies 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

It is staff's opinion that the proposed change would provide consistency across the three single-family zoning districts and a more practical fire safety requirement. The Planning Commission, following its April 15, 2019 public hearing, voted 5-0 to recommend approval to the City Council of this proposed amendment.

CWH

ORDINANCE NO.

**AN ORDINANCE APPROVING AN AMENDMENT OF THE ZONING ORDINANCE
BY REVISING APPENDIX A, ARTICLE III, SECTION 3-6.3(1) PERTAINING TO
NONCONFORMING USES AND STRUCTURES**

WHEREAS, a proposed amendment of Appendix A, Section 3-6.3(1) of the Zoning Ordinance pertaining to Nonconforming Uses and Structures has been submitted to read as follows:

Section 3-6.3. - Lots not meeting minimum lot frontage and lot area requirements in residential districts.

- (a) Primary structures, located on residential lots not meeting the minimum lot frontage or lot area requirement for their district, may encroach into the required side yard area provided that they maintain a side yard setback of no less than ten feet. Additionally, for lots fronting on more than one street that have at least one front of insufficient width, primary structures may encroach into any required side yard area on the property provided that they maintain a side yard setback of no less than ten feet.

In addition, the following criteria must be met:

- (1) The exterior portion of ~~the~~ any primary structure that will be located less than 15 feet from the side property line through this provision, nearest the adjacent property neighboring the side yard, must be constructed using two hour rated fire materials, excluding doors and windows, as defined by the Virginia Uniform Statewide Building Code.
- (2) No principal structure shall exceed the maximum allowable width for a principal structure located on a minimally conforming lot in its respective zoning district.

Lots meeting the minimum lot frontage and lot area requirements are not subject to these allowances and must meet the minimum side yard setback requirements established for their zoning district.

WHEREAS, a public hearing to receive public comments and review the amendments was held before City Council on May 13, 2019; and

WHEREAS, careful and thorough consideration was given the amendment; and

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

Section 1: That the proposal to amend Article III, Section 3-6.3(1) of the Zoning Ordinance pertaining to Nonconforming Uses and Structures, is hereby approved.

Section 2: That this resolution shall be in effect on and after 30 days from its adoption.

ADOPTED: _____

TESTE: _____

City Clerk