

**BOARD OF ZONING APPEALS  
CITY OF FREDERICKSBURG, VIRGINIA  
AGENDA  
October 17, 2016  
4:00 P.M.  
COUNCIL CHAMBERS, CITY HALL**

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1. Call To Order
2. Determination Of A Quorum
3. Determine Public Notice Requirements Have Been Met
4. Disclosure Of Ex Parte Communication
5. Disclosure Of Conflicts Of Interest
6. Approval Of Agenda
7. Review Of Proposed Unified Development Text Amendment

Documents:

[PROPOSED AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING FENCES, WALLS AND LOTS.PDF](#)

8. Review & Approval Of Minutes - May 16, 2016

Documents:

[2016-05-16 BZA MINUTES DRAFT.PDF](#)

9. Staff/Board Comments
10. Adjourn



## MEMORANDUM

**TO:** Chairman Helen Ross and Board of Zoning Appeals Members  
**FROM:** Marne E. Sherman, Development Administrator  
**RE:** Amendments to the Unified Development Ordinance Regarding Fences/Walls and Lots  
**DATE:** October 11, 2016

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### **ISSUE**

Amendments to the Unified Development Ordinance (UDO) regarding fences/walls and lots. The draft amendments authorize the Board of Zoning Appeals (BZA) to issue special exceptions from fence height regulations in any front yard (including a secondary front yard on a corner or through lot).

### **RECOMMENDATION**

Provide feedback, if any, on the draft ordinance.

### **BACKGROUND**

City residents, living on corner lots and through lots, have sought changes to the UDO to permit fences and walls exceeding four feet in height within areas of secondary front yards. Specifically, this is the area of a corner lot or through lot that many homeowners perceive as their side or back yards as they run to the side of or behind the house, along a secondary street frontage. Residents would like to enclose this area of the lot to gain privacy from the street and neighboring uses. In some cases, there are neighborhoods with established (currently non-conforming) patterns of corner lots with six foot tall fences along the secondary front lot line. The City also contains unique lots with special circumstances (such as incompatible neighboring uses, topography, or high volume streets) that may warrant special consideration to permit taller fences and walls on a residential lot.

In May, City Council directed staff to present alternatives to the UDO to permit taller fences and walls within the secondary front yard, in keeping with traditional neighborhood patterns. These alternatives were presented to City Council during a work session on June 28, 2016. Staff formalized the June recommendations in the attached draft of related UDO amendments. The draft also presents general updates pertaining to fences and walls in all zoning districts and other UDO sections that were affected by definition and process changes.

On September 13, 2016, City Council approved Resolution 16-82 to formally initiate the text amendment process. A public hearing on the draft amendments is scheduled before the Planning Commission on October 12.

The UDO amendments would provide additional flexibility for fences on corner lots and through lots; decrease permitted fence heights from six feet to four feet in any front yard of lots zoned Commercial; authorize the Board of Zoning Appeals to issue special exceptions from fence height regulations in any front yard (including a secondary front yard on a corner or through lot); prohibit the use of barbed wire or razor wire except in an Industrial district; and clarify terms, figures, measurements, and tables related to sight triangles, lot types, required yards, and building fronts on lots in all zoning districts.

### **CURRENT REGULATION**

The previous Zoning Ordinance and current UDO Section 72-56.2.B. regulate that “in any front yard of a site in any R District, a fence or wall shall not exceed four feet in height back to the front of the principal structure on the site. This provision shall also apply to residential uses in other districts.” There are two presumptive reasons for the limitation - bulk/mass in the front yard and safety along public spaces.

#### *Bulk/Mass in a Front Yard*

The general purpose of a minimum front yard setback is to provide for open areas and access to and around structures, for visibility and traffic safety, access to natural light, ventilation and direct sunlight, separation of incompatible land uses, and space for privacy, landscaping and recreation. The code currently allows for four foot fences to be placed anywhere on a residential lot and allows for taller fences to be placed in keeping with the minimum front yard setback. Just as the code limits principal structures (houses) and accessory structures (sheds and garages) from placement within close proximity to a street in residential zoning districts, fence heights are limited due to the mass and bulk they also create along the street. Fences along the street have the ability to provide privacy for the individual lot owner, but they may also disrupt an entire block face if not constructed in harmony<sup>1</sup> with the context of adjacent properties.

#### *Safety along Public Spaces*

As taller structures are placed nearer to the street, there is a potential heightened risk to public safety. Taller fences within front yards can create potential sight distance conflicts with vehicles utilizing driveways and alleys intersecting with pedestrians on public sidewalks. Additionally, taller fences may increase potential dangers along the sidewalk by creating dark areas and places for people to hide if the fence is not adequately setback or built with a certain level of transparency.

### **PROPOSAL**

To address the public’s desire to allow taller fences/walls within the secondary front yard while maintaining good design in relation to bulk/mass and safety, staff recommends changes to the UDO which will:

#### *Article 2 Administration*

- Establish criteria and permit the BZA to issue and revoke Special Exceptions for fences within any front yard. To address unique lots in the City, the BZA will hold a public hearing and evaluate the location, materials, and height of the proposed fence and consider their effect on adjacent properties, public safety, and the character and pattern of development in the

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<sup>1</sup> Virginia Code § 15.2-2283. One of the purposes of zoning ordinances is to “facilitate the creation of a convenient, attractive and harmonious community.”

surrounding neighborhood. The standard for issuance of a Special Exception is lesser than for a variance which requires the demonstration of a hardship or that the associated ordinance would unreasonably restrict the utilization of the property.

Article 4 Accessory Use Standards

- Clarify that fences are permitted within a required yard.
- Update the term “double frontage lot” to “through lot.”

Article 5 Fences and Walls

- Reduce fence heights on property zoned Commercial from six feet to four feet in any front yard.
- Permit fence heights to exceed four feet, up to six feet, in secondary front yards on lots zoned Residential, Commercial, and Planned Development that meet certain established criteria. Examples include: lots with a secondary front yard that adjoins another secondary front yard or instances where an existing accessory structure on a lot already encroaches into a secondary front yard.



*Example of two corner lots with adjoining secondary front yards where fences/walls would be permitted up to six feet in height within the secondary front yard.*

- Increase the maximum permitted fence height from 24 inches to 40 inches within a sight triangle (in accordance with Virginia Department of Transportation standards).
- Prohibit the use of barbed wire, razor wire, or similar fence materials on properties zoned Residential, Commercial, or Planned Development and on properties used for residential purposes.
- Remove references to transparent and opaque fences.

- Update Figure 72-56.2 Fence and Wall Location.

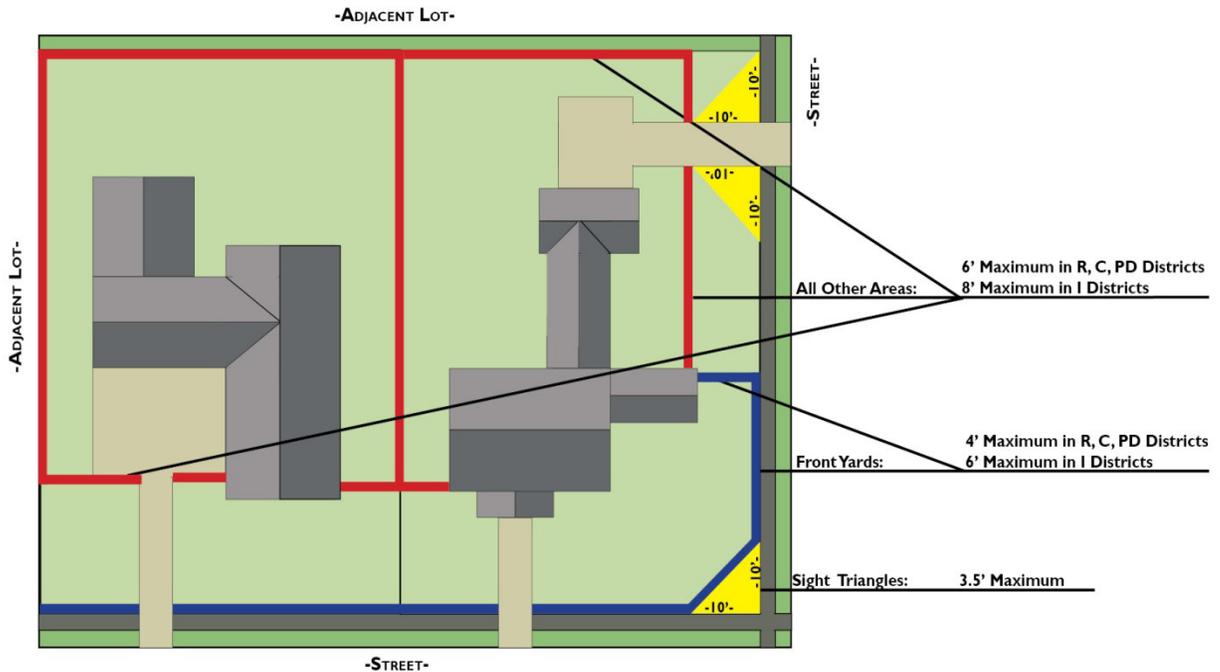


Figure 72-56.2 Fence and Wall Location

Article 6 Non-conforming Structures, Minor Alterations

- Identify that fences are non-conforming structures which qualify for alteration when they meet the listed criteria.

Article 8 Definitions and Interpretations

- Replace the term “double frontage lot” with “through lot.”
- Create the terms “Primary Front Yard” and “Secondary Front Yard.”
- Update of Figure 72-82.3A(4) Lot Types and 72-82.4A Yard Types to reflect text changes.

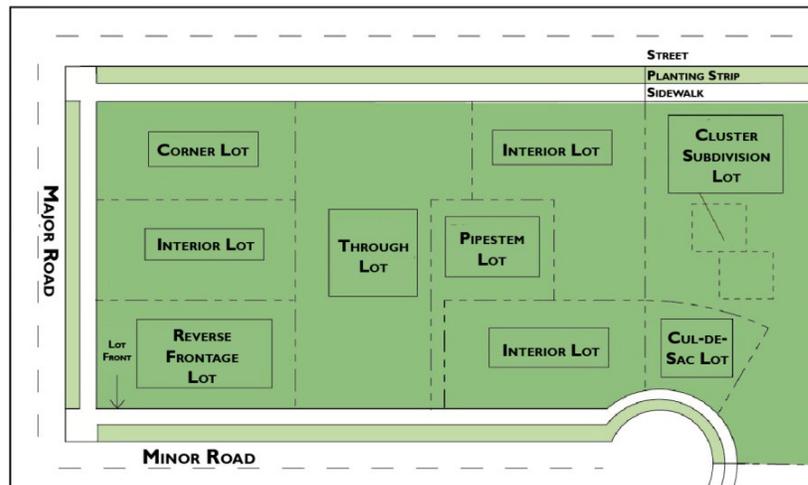


Figure 72-82.3A(4) Lot Types

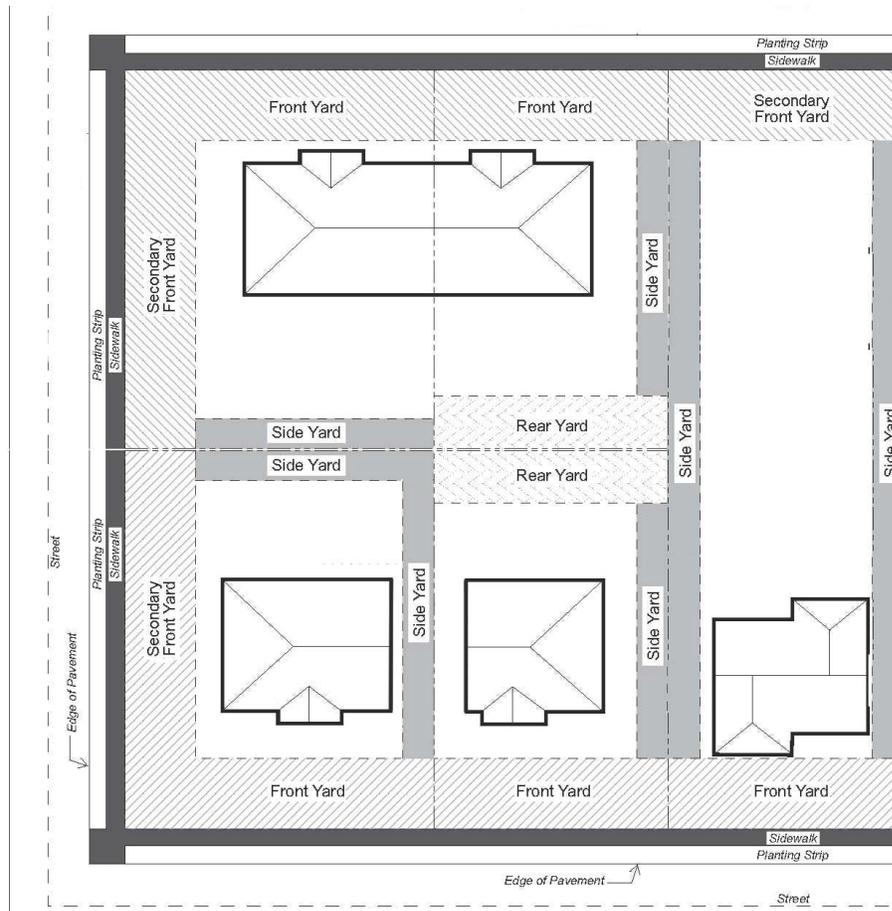


Figure 72-82.4A Yard Types

- Establish the criteria for measuring a sight triangle for the purposes of installing a fence.
- Remove the term Front (or primary façade) as it was replaced with Building Front during a previous text amendment.

Attachments: Draft Ordinance  
Frequently Asked Questions  
City Council Resolution 16-82



**MOTION:**

[date]

**SECOND:**

Regular Meeting  
Ordinance No. 16-\_\_

**RE: AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGULATIONS OF FENCES IN ALL ZONING DISTRICTS, INCLUDING CHANGES IN THE DEFINITIONS OF REQUIRED YARDS**

**ACTION: APPROVED; Ayes:0; Nays: 0**

**First read:** \_\_\_\_\_ **Second read:** \_\_\_\_\_

IT IS HEREBY ORDAINED by the Fredericksburg City Council that City Code \_\_\_\_\_, "\_\_\_\_\_" is amended as follows.

**I. Introduction.**

The City Council adopted a resolution to initiate this text amendment at its meeting on September 13, 2016. The Planning Commission held its public hearing on the amendment on \_\_\_\_\_, after which it voted to recommend the amendment to the City Council. The City Council held its public hearing on this amendment on \_\_\_\_\_.

The purpose of this amendment is to modify current zoning regulations for fences in all zoning districts, to provide additional clarity and flexibility in these regulations, while continuing to provide for adequate light, air, convenience of access, and safety from crime, and other dangers; to facilitate the creation of a convenient, attractive and harmonious community; and protect against loss of life, health, or property from fire. While the purpose of the ordinance is to change fence regulations, these changes require changes in the definitions of required yards, for purposes of implementing the new regulations and providing additional flexibility. In making these amendments, the City Council has considered the factors in Code of Virginia 15.2-2284. The City Council has determined that public necessity, convenience, general welfare and good zoning practice favor the amendment.

**II. City Code Amendment.**

1. City Code §72-21.7, "Development Review Structure," is amended to add authority for the Board of Zoning Appeals to issue *and revoke* special exceptions for fences, upon recommendation of the Zoning Administrator. Such decisions may be appealed to the Circuit Court. The table shall be amended to add the following data:

Specific Review Procedure	City Council	Planning Commission	Board of Zoning Appeals	Architectural Review Board	Zoning Administrator	Development Administrator
<i>Special exception, fence</i>		R	<D>		R	

2. City Code §72-22.8, “Variances, administrative appeals, and Zoning Map interpretations,” shall be amended as follows:

**Sec. 72-22.8. Variances, administrative appeals, *special exceptions*, and Zoning Map interpretations.**

- A. Purpose and applicability. This section sets forth the procedures *and criteria* for the Board of Zoning Appeals (BZA) to consider applications for variances, appeals of administrative actions, *applications for special exceptions, revocations of special exceptions*, and interpretations as defined in Code of Virginia §15.2-~~2209~~ 2309 and 15.2-~~2210~~ 2310.
- B. Process.
- (1) Applications for variances *and fence special exceptions* shall be made to the Zoning Administrator in accordance with the rules adopted by the BZA pursuant to Code of Virginia §15.2-2310.
- (2) A variance, appeal, *application for special exception, revocation of a special exception* or Zoning Map interpretation shall be authorized by the BZA after a public hearing and shall be in compliance with the required findings and procedures set forth within Code of Virginia §15.2-2309 *or this section*.

[the remainder of subsection (B), and subsections (C), (D), and (E) are not amended.]

- F. *Review authority and criteria, special exceptions; fences. The Board of Zoning Appeals may hear and decide applications for a special exception from the regulations governing fence heights in any front yard (including a secondary front yard) in any zoning district. The board may impose such conditions relating to the fence as it may deem necessary in the public interest, including limiting the duration of the special exception, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. In considering an application, the Board shall apply the following criteria:*
- (1) *Whether approval of the special exception will impair an adequate supply of light or air to adjacent property, or cause or substantially increase the danger of fire or the spread of fire, or endanger the public safety.*

- (2) *Whether the proposal will be compatible with the existing character and pattern of development in the surrounding neighborhood and facilitate an attractive and harmonious community.*
- (3) *Whether the application represents the only reasonable means and location on the lot to accommodate the proposed fence given the natural constraints of the lot or the existing development on the lot.*
- (4) *Whether the size, configuration, existing mature vegetation or trees, or other unusual characteristic of the lot requires an exception from the zoning requirements in order to provide a reasonable fenced area without creating significant impact to adjacent properties or the neighborhood.*
- (5) *The height of the proposed fence and the use of opaque or transparent materials; the use of a buffer area between the public right of way and the fence. The fence shall not exceed six feet in height.*

~~F.~~ G. *The Board of Zoning Appeals is authorized to revoke a special exception previously granted by it, if the board determines that there has not been compliance with the terms or conditions of the special exception. No special exception may be revoked except after notice and hearing as provided in this section. However, when giving any required notice to the owners, their agents, or occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.*

H. Appeals. Any person or persons jointly or severally aggrieved by an action of the BZA ~~on a~~ variance application, or any aggrieved taxpayer or any officer, department, board or bureau of the ~~locality~~ City may file with the Clerk of the Circuit Court for the City of Fredericksburg, a petition, specifying the grounds on which aggrieved within 30 days after the final decision of the Board, pursuant to Code of Virginia §15.2-2314.

3. City Code §72-42.3, "Location of accessory uses or structures," shall be amended as follows:

**Sec. 72-42.3. Location of accessory uses or structures.**

- A. No accessory use or structure shall occupy more than 30% of the rear yard.
- B. No accessory structure *except a fence* shall be located in the any front yard. No accessory structure requiring a building permit shall be closer to a front lot line than the principal structure.
- C. No accessory use or structure shall be closer than five feet to a side or rear lot line, except that if the principal structure has a setback of less than five feet, then the setback of an accessory structure may be the same as exists for the principal structure.

- D. No accessory structure shall be located within any platted or recorded easement or over any known utility unless written authorization is provided from the easement holder or the City, as appropriate.
  - E. An accessory structure may be located within ~~rear~~ *a secondary front yard* of a ~~double frontage through~~ lot provided:
    - (a) The lot is zoned with a nonresidential, mixed-use, or planned development district designation;
    - (b) The lot across the street *from the secondary front yard* has a nonresidential, mixed-use, or planned development district designation;
    - (c) The accessory structure does not exceed 12 feet in height, or one story, whichever is less;
    - (d) The accessory structure setback is at least five feet from the ~~rear~~ *secondary front* lot line; and
    - (e) The area between the accessory structure and adjacent street includes landscaping that is capable of screening the structure when it is mature.
4. City Code §72-56.1, "Location requirements," shall be amended as follows:

**Sec. 72-56.1 Location requirements.**

- A. General.
  - (1) Fences or walls shall be located outside of the public right-of-way, ~~and may not exceed 24 inches in height if located within a required sight triangle.~~
  - (2) Fences and walls are permitted on the property line between two or more parcels of land held in private ownership.
  - (3) Fences and walls may be located within any required yard.

[The remaining subsections of §72-56.1 are not amended.]

5. City Code §72-56.2, "Height standards," shall be amended as follows:

**Sec. 72-56.2. Height standards.**

- A. All fences and walls shall conform to the standards in Table 72-56.2, Fence and Wall Height. In all cases, heights are measured from established grade on the highest side of the fence or wall (see Figure 72-56.2, Fence and Wall Location).

Current Table 72-56.2, "Fence and Wall Height," is repealed and replaced with the following table:

Table 72-56.2: Fence and Wall Height (effective [date])		
Zoning district	Location	Maximum height
Residential	Any location on a vacant lot	48"
Residential Commercial	Between a front lot line and the front of the principal building	48"

Planned Development	Within a secondary front yard	48"
	Any other location on the lot	72"
Industrial	Between the front lot line and the front of the principal building	72"
	Within a secondary front yard	72"
	Any other location on the lot	96"
Any zoning district	Within a sight triangle	40"

*B. The following exceptions to the general height regulations apply to corner and through lots:*

Zoning district	Location	Special Circumstance	Maximum Height
Residential Commercial Planned Development	Secondary front yard	The secondary front yard abuts a primary front yard of another lot.	72" if the fence is no closer to the secondary front property line than the front of the abutting principal structure.
		The secondary front yard abuts the secondary front yard of another lot.	72"
		An accessory structure is located within the secondary front yard.	72" if the fence is no closer to the secondary front lot line than any side of the accessory structure

**NOTES:**

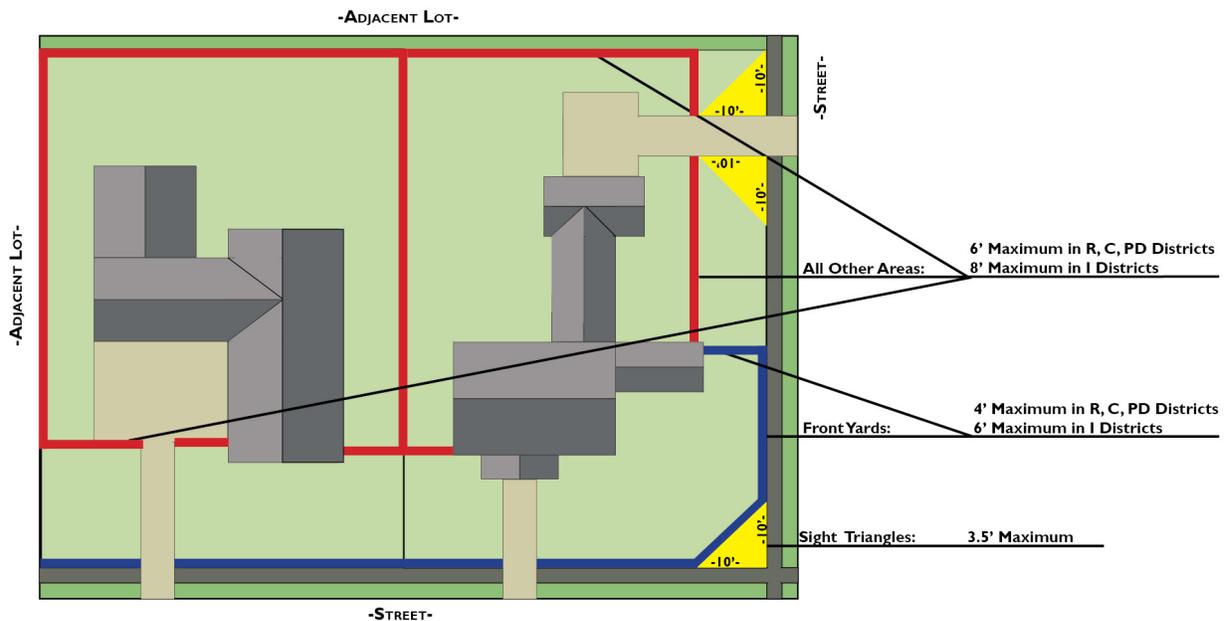
~~[1] Transparent fences or walls are constructed so that 50% or more of the fence or wall is visually permeable.~~

- A. The Zoning Administrator may approve fences or walls exceeding six feet in height in any side or rear yard in a residential, commercial, or planned zoning district, if the adjacent property is in a nonresidential zoning district, or if there are unique topographic or other physical circumstances on the property that were not created by the property owner. The Zoning Administrator may condition approval on a prescribed setback from the property line. A fence or wall in any residential zoning district shall not exceed six feet in height above the existing grade in any side or rear yard of a site up to the front of the principal structure on the site. This provision shall also apply to fences and walls located on lots used for residential uses in other zoning districts. The Development Zoning Administrator may approve fences or walls exceeding six feet in height if the adjacent property is in a nonresidential zoning district or if there are unique topographic or other physical circumstances not created by the property owner. Additional setbacks may be required by the Development Administrator for such taller fences.*

- B. ~~In any front yard of a site in any R District, a fence or wall shall not exceed four feet in height back to the front of the principal structure on the site. This provision shall also apply to residential uses in other districts.~~
- C. ~~For vacant sites in residential districts, fences or walls may not exceed four feet in height.~~
- B. *The Zoning Administrator may approve fences or walls exceeding the maximum height in any yard in an industrial district if there are unique topographic or other physical circumstances not created by the property owner. The Zoning Administrator may condition approval on a prescribed setback from the property line. A fence or wall shall not exceed eight feet in height in any yard of any industrial or commercial use permitted by the provisions of this subsection unless the Development Administrator authorizes such fences or walls to exceed eight feet. The Development Administrator may approve fences or walls to exceed eight feet if there are unique topographic or other physical circumstances not created by the property owner. Additional setbacks may be required by the Development Administrator for such taller fences. Additional setbacks may be required by the Development Administrator for such taller fences.*
- C. No fence or wall shall be constructed in a manner or in a location that impairs safety or sight-lines for pedestrians and vehicles traveling on public rights of way.

Figure 72-56.2, "Fence and Wall Location," is repealed and replaced with the following figure:

Figure 72-56.2. Fence and Wall Location (effective date: \_\_\_\_\_)



[Section 72-56.3, "Maintenance," is not amended.]

6. New section 72-56.4 is added as follows:

**Sec. 72-56.4. Fence materials.**

*No barbed wire, razor wire, or similar fence material is permitted in residential, planned development, or commercial zoning district or on a lot containing or adjacent to a residential use.*

7. City Code §72-63.3, "Minor alterations," [to nonconforming structures] is amended as follows:

**Sec. 72-63.3. Minor alterations.**

Minor alterations shall not be deemed a change in the structural condition of the property, for purposes of § 72-61.1C. Minor alterations are alterations that meet one or more of the following criteria:

- A. The alterations consist of cosmetic modifications, interior renovations and similar improvements to a nonconforming residential structure and such alterations do not increase the land area occupied by any portion of the nonconforming building or structure, and shall not increase the gross floor area of any nonconforming building or structure.
- B. The alterations do not increase the extent of the structure's nonconformity with the minimum site or yard requirements of the zoning district.
- C. The alterations consist of a substantially similar replacement of an existing residential accessory building or structure including, but not limited to, a *fence*, storage shed, garage or swimming pool, may be permitted and shall not be required to meet more restrictive setbacks enacted since the date the accessory structure became nonconforming, however, all other zoning regulations for the district in which the accessory structure is located shall apply.

8. City Code §72-82.3A, "Lots," is amended as follows:

**Sec. 72-82.3A. Lots.**

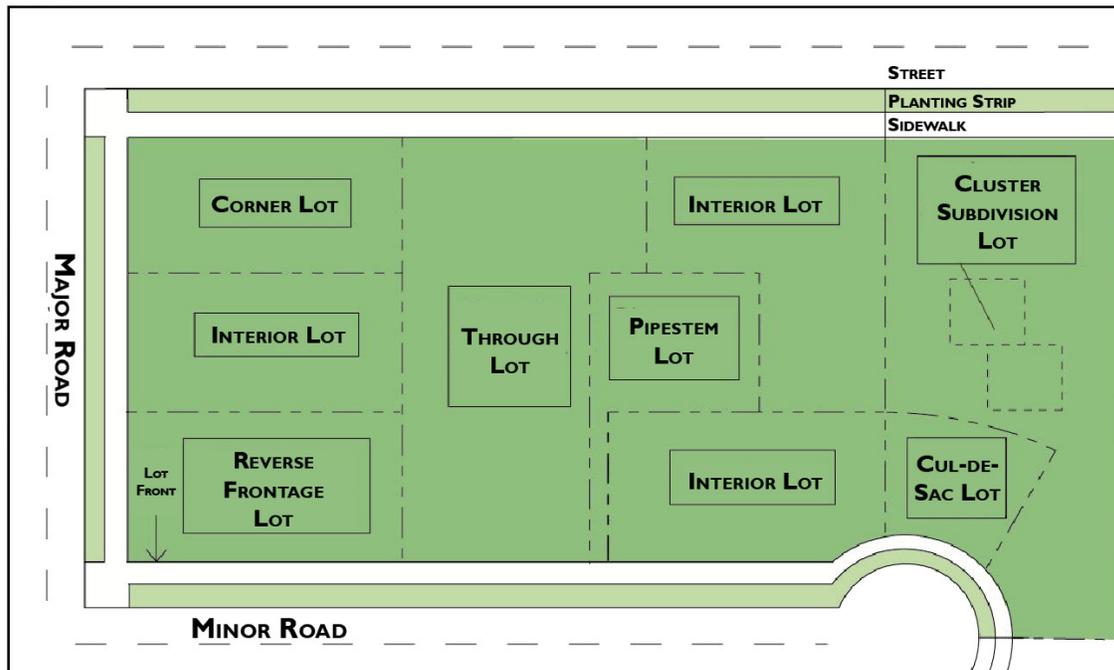
[Subsections A (1), (2), and (3) are not amended.]

- (4) Lot types.
  - (a) Cluster subdivision lot. A cluster subdivision lot is a building lot located within a cluster subdivision.
  - (b) Corner lot. A corner lot is located at the intersection of two or more streets (other than alleys), regardless of whether or not such streets intersect at right angles.

- (c) Cul-de-sac lot. A cul-de-sac lot is located on the head or turnaround of a cul-de-sac with side lot lines on a tangent to the arc of the right-of-way.
- (d) ~~Double-frontage~~ *Through* lot. A ~~double-frontage~~ *through* lot is a lot other than a corner lot with frontage on more than one street other than an alley.
- (e) Interior lot. An interior lot is a lot other than a corner lot with only one frontage on a street other than an alley.
- (f) Pipestem lot. A pipestem lot is a lot which does not abut a public street other than by a driveway affording access to the lot.
- (g) Reverse-frontage lot. A reverse-frontage lot is a corner lot, intentionally designed so that the front lot line faces a local street rather than facing a parallel major thoroughfare.

Figure 72-82.3A(4), "Lot Types," is repealed and replaced by the following table:

Figure 72-82.3A(4). Lot Types (effective date: \_\_\_\_\_)



B. ~~General~~ Pipestem lot requirements.

(1) Pipestem lots.

[The existing text is re-numbered as sub- paragraphs 1, 2, 3, and 4.]

9. City Code §72-82.4, "Required yards," is amended as follows:

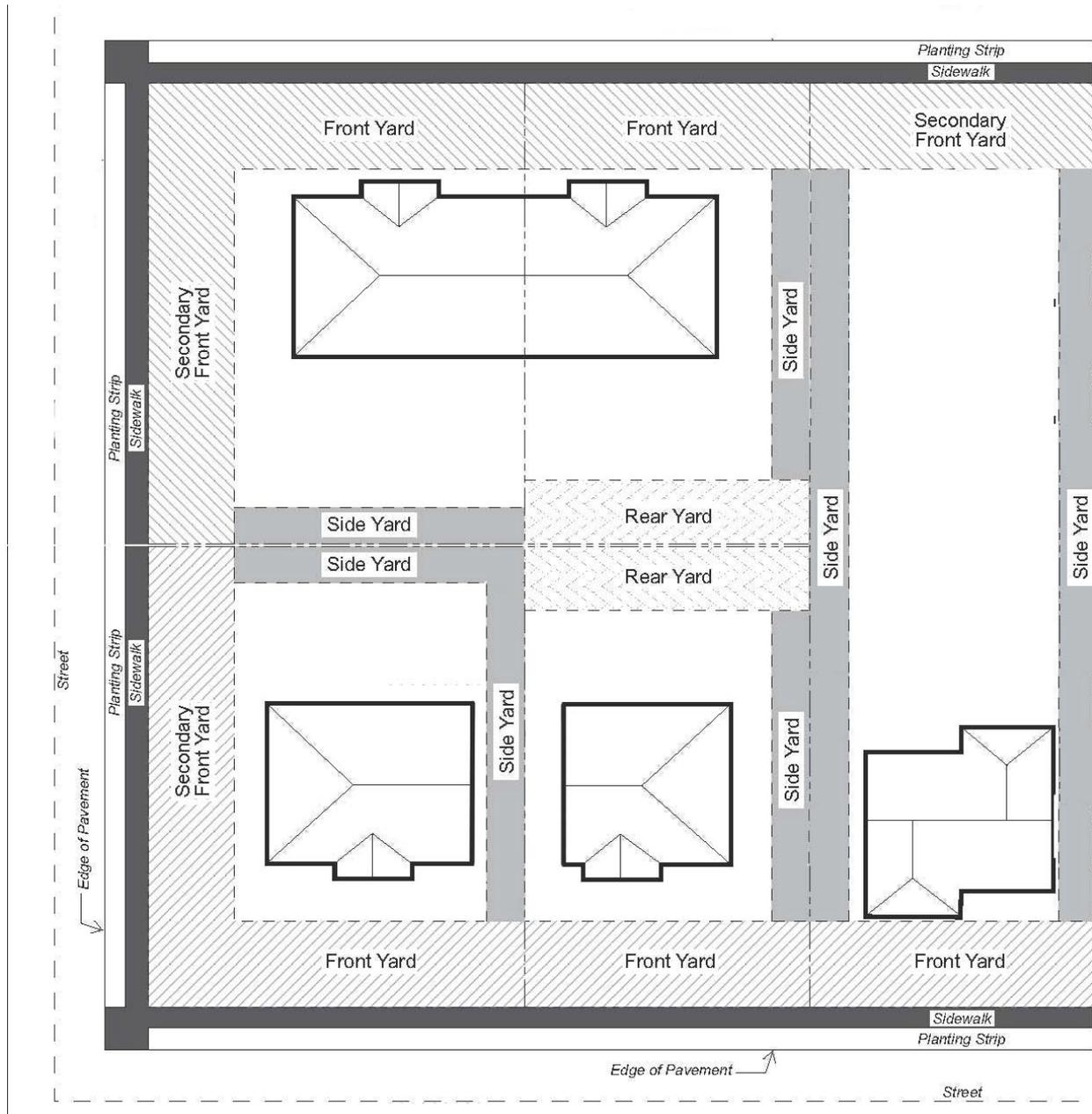
**Sec. 72-82.4. Required yards.**

**A. ~~Definitions/measurement.~~ Yard Types.**

- (1) Setback. The term "setback" refers to the distance by which any portion of a building or structure shall be separated from a lot line.
- (2) Front yard. ~~The~~ A front yard is an area of a lot adjacent to its front lot line, measured by the length of the front lot line, extending from one side lot line to the other side lot line, and the width of the required front setback.
- (3) *Primary front yard: for corner lots and through lots, the front yard that contains the building front.*
- (4) *Secondary front yard: a front yard of a corner or through lot that does not contain the building front. A secondary front yard begins at the point where it intersects with the primary front yard and extends to the side property line.*
- (5) Rear yard. The rear yard is an area of a lot adjacent to its rear lot line, measured by the length of the rear lot line, extending from one side lot line to the other side lot line, and the width of the required rear setback.
- (6) Side yard. The side yard is an area of a lot adjacent to its side lot line, measured by the length of the side lot line, extending from the edge of the front setback line to the edge of the rear setback line, and the width of the required side setback.

Figure 72-82.4A, "Yard Types," is replaced with the following figure:

Figure 72-82.4A. Yard Types (effective date: \_\_\_\_\_)



B. General setback requirements.

- (1) Separation. When the standards in this chapter call for a separation between two different use types or development features, separation shall be measured from the closest edge of one lot to the closest edge of the other lot.

- (2) Averaging setbacks. When zoning district standards permit or require determination of a *any* front or side setback through averaging, the average yard shall be calculated by using the methods set forth here. The dimensions of existing yards shall be determined through the best information reasonably available, including, in order, surveys of record, on-site measurements, or the 2010 tax maps. The median is the type of average that shall be applied. The median front yard shall be calculated by using existing principal buildings along the same block face. The median side yard shall be determined by using lots or parcels of similar width located on the same block face. Each side yard median (left and right) shall be calculated and applied separately. If the foregoing measurements do not establish a clear pattern of development, then the administrator may use the opposite block face to establish the average front or side yard.

[Figure 72-82.4B, "Average Setback Measurement," is not amended.]

- (3) Corner lots *and through lots*. On a corner lot or ~~double-frontage~~ *through lot*, the yards adjacent to the front lot lines shall be considered front yards and the remaining yards shall be considered side yards.
- (4) Setbacks following government acquisition of land. Where land acquisition for a public purpose reduces the distance between an existing legally established structure and an adjacent lot line to an amount less than the minimum required, the resulting distance shall be deemed the minimum setback for the lot.
- (5) Sight triangles. Regardless of the setbacks applied in a district, no structure *except a fence* shall be permitted within the required sight triangle. *For fences, a sight triangle is the triangle formed by the two right-of-way lines at a street intersection, or the intersection of a driveway and a street, and a line connecting those two lines 10 feet from their intersection.*
- (6) Uncovered terraces. Required yard setbacks shall not apply to uncovered terraces, uncovered patios and unroofed porches not more than 30 inches above existing grade in residential zoning districts or 15 inches in nonresidential and mixed-use zoning districts.

10. City Code §72-84.0, "Definitions," is amended as follows:

~~Front (or primary) façade – The side or elevation of a structure that contains the structure’s architectural front, or the portion of the structure facing the street from which the structure derives its street address.~~

*FRONT LOT LINE -- the street line(s) that form(s) the boundary of a lot; or, where a lot does not abut a street other than by its driveway, or is a through lot, the lot line which faces the building front.*

**SEC. III. Effective Date.**

This ordinance is effective immediately.

**Votes:**

**Ayes:**

**Nays:**

**Absent from Vote:**

**Absent from Meeting:**

Approved as to form:

\_\_\_\_\_  
Kathleen Dooley, City Attorney  
\*\*\*\*\*

***Clerk's Certificate***

*I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 16- duly adopted at a meeting of the City Council meeting held Date, 2016 at which a quorum was present and voted.*

\_\_\_\_\_  
***Tonya B. Lacey, CMC***  
***Clerk of Council***

**1. What does the UDO regulate as a “fence?”**

A “fence” is a structure used to delineate a boundary or act as a barrier or means of protection, confinement, or screening.<sup>1</sup> The fence regulations apply equally to “walls.”<sup>2</sup> The regulations apply to the construction of a new fence or wall, or the reconstruction or replacement of a new fence or wall.<sup>3</sup> The regulations do not apply to temporary fencing for construction sites, tree protection,<sup>4</sup> or retaining walls.

**2. What general rules apply to the location of a fence or wall?**

Fences and walls may be located in any of the required minimum yards (front, side, rear)<sup>5</sup> so long as they are located outside the public right of way.<sup>6</sup> They may be located on the property line between two or more parcels of private property.<sup>7</sup> They may be located within utility easements, with the permission of the easement holder.<sup>8</sup>

If a fence is located within a “sight triangle,” then it shall not exceed 40 inches in height.<sup>9</sup> If a fence is located within a required “buffer,” then it shall not disturb or damage vegetation within the buffer. Perimeter fencing within a buffer for a single (multi-lot) development shall be a uniform style.<sup>10</sup>

**3. What are the general rules for the height of fences?**

Generally speaking, rules for the maximum permitted height of a fence depend on two factors: (1) the zoning district, and (2) the location of the fence on the lot. The limitations on fence height within the sight triangle are the strictest, due to their direct impact on public safety.

Zoning district	Location	Maximum height
Any	Within a sight triangle	40”
Residential	Any location on a vacant lot	48”
Residential Commercial Planned Development	Between the front lot line and the front of the principal building	48”
	Any other location on the lot	72”
Industrial	Between the front lot line and the front of the principal building	72”
	Any other location on the lot	96”

<sup>1</sup> §72-84, Definitions.

<sup>2</sup> References to “fences” in this FAQ apply equally to walls.

<sup>3</sup> §72-56.0(B)(1).

<sup>4</sup> §72-56.0(B)(2).

<sup>5</sup> §72-56.1(A)(3).

<sup>6</sup> §72-56.1(A)(1).

<sup>7</sup> §72-56.1(A)(2).

<sup>8</sup> §72-56.1(B).

<sup>9</sup> §72-56.1(A)(1). Ordinarily, no structures are permitted within a required sight triangle. (§72-82.4(B)(5)).

<sup>10</sup> §72-56.1(D).

**4. What are the regulations for maximum fence heights on corner or through lots?**

Corner or through lots pose special considerations for maximum fence heights, since they have at least two “front yards.” The basic regulations for front yards apply to both of the front yards of a corner or through lot, unless special circumstances apply:

Zoning district	Location	Special Circumstance	Maximum Height
Residential Commercial Planned Development	Secondary front yard of a corner or through lot	The secondary front yard abuts a primary front yard.	72” if the fence is not closer to the secondary front property line than the front of the abutting principal structure.
		The secondary front yard abuts the secondary front yard of another lot.	72”

**5. What are the regulations for maximum fence height for other special circumstances?**

At this time, the regulations recognize one additional special circumstance that justifies a higher maximum fence height:

Zoning district	Location	Special Circumstance	Maximum Height
		An accessory structure is located on the same lot as the proposed fence.	72” if the fence is not closer to the secondary front property line than any side of the accessory structure.

**6. Who may grant a case-by-case exception from the fence height regulations?**

The Board of Zoning Appeals is authorized to grant a special exception, on a case-by-case basis, from the regulations governing fences in *any front yard* (primary or secondary) in any zoning district. The BZA holds a public hearing on the exception application and applies criteria established by City Council, to decide whether the exception is in the public interest.<sup>11</sup> The Planning Commission is entitled to notice of these applications, and it may either appear at the BZA public hearing or send a written comment or recommendation.<sup>12</sup> The BZA may impose conditions on the permit; and it is authorized to revoke a special exception it previously granted, if it determines there has not been compliance with the terms or conditions of the permit, after notice and a public hearing.

<sup>11</sup> See the criteria in §72-22.8(F).

<sup>12</sup> Code of Virginia §15.2-2310.

The Zoning Administrator may approve a fence or wall exceeding 6 feet in height in any side or rear yard in a residential, commercial, or planned zoning district, if the adjacent property is in a nonresidential zoning district, or if there are unique topographic or other physical circumstances on the property (that were not created by the property owner).

In addition, the Zoning Administrator may approve a fence or wall exceeding the permitted height in any yard in an industrial zoning district, if there are unique topographic or other physical circumstances on the property (that were not created by the property owner).

The Zoning Administrator may require any taller fence to be set back from the property line an appropriate distance to mitigate the impacts of the taller height.

## **7. What other restrictions are imposed on fences?**

The City does not permit the use of barbed wire, razor wire, or similar fence materials in any zoning district except an industrial zoning district.<sup>13</sup>

A fence within a sight triangle may not impair safety or sight-lines for pedestrians or vehicles traveling in the public rights of way.<sup>14</sup>

A nonconforming fence may be replaced with a substantially similar fence in the same location, without bringing the new fence into compliance with current regulations.<sup>15</sup>

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<sup>13</sup> New §72-56.4.

<sup>14</sup> §72-56.1(E).

<sup>15</sup> §72-63.3.

**8. Please define the terms that are used in these regulations.**

Please refer to the following definitions and illustrations:

*Buffer:* An area of natural or planted vegetation adjoining or surrounding a use and unoccupied in its entirety by any building, structure, paving or portion of such use, for the purposes of screening and softening the effects of the use, no part of which is used for recreation or parking.<sup>16</sup>

*Building front:* That one face or wall of a building architecturally designed as the front of the building, which normally contains the main entrance for use by the general public.<sup>17</sup>

*Corner lot:* A lot located at the intersection of two or more streets (other than alleys) regardless of whether the streets intersect at right angles.<sup>18</sup>

*Front lot line:* the street line that forms the boundary of a lot; or, where a lot does not abut a street other than by its driveway, or is a through lot, the lot line which faces the Building Front.

*Front yard:* the area of a lot adjacent to its front lot line, measured by the length of the front lot line, extending from one side lot line to the other side lot line, and the width of the required front setback.<sup>19</sup>

*Nonconforming:* a fence or wall lawfully constructed, which does not comply with current regulations.<sup>20</sup>

*Primary front yard:* for corner lots and through lots, the area between the front lot line and the Building Front.<sup>21</sup>

*Secondary front yard:* a front yard of a corner or through lot that does not contain the Building Front. A secondary front yard begins at the point where it intersects with the primary front yard.<sup>22</sup>

*Sight triangle:* the triangle formed by the two right-of-way lines at a street intersection, or the intersection of a driveway and a street, and a line connecting those two lines 10 feet from their intersection.<sup>23</sup>

*Through lot:* A lot other than a corner lot, with frontage on more than one street other than an alley.<sup>24</sup>

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<sup>16</sup> §72-84.0. See Article 5 of the UDO for buffer yard requirements.

<sup>17</sup> §72-84.0.

<sup>18</sup> §72-82.3(A)(4)(b).

<sup>19</sup> §72-82.4.

<sup>20</sup> §72-61.1.

<sup>21</sup> §72-82.4.

<sup>22</sup> §72-82.4.

<sup>23</sup> §72-82.4(B)(5).

<sup>24</sup> §72-82.3(A)(4)(d).



**MOTION: KELLY**  
**SECOND: WITHERS**

**September 13, 2016**  
**Regular Meeting**  
**Resolution No. 16-82**

**RE: INITIATING A UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENT TO CHANGE THE REGULATIONS OF FENCES IN ALL ZONING DISTRICTS, INCLUDING CHANGES IN THE DEFINITIONS OF REQUIRED YARDS**

**ACTION: APPROVED: Ayes: 7; Nays: 0**

**WHEREAS**, the City Council proposes to amend the Unified Development Ordinance regulations for fences in all zoning districts, to provide clarity and flexibility in these regulations, while continuing to provide for adequate light, air, convenience of access, and safety from crime, and other dangers; to facilitate the creation of a convenient, attractive and harmonious community; and protect against loss of life, health, or property from fire. While the purpose of the ordinance is to change fence regulations, these changes require changes in the definitions of required yards, for purposes of implementing the new regulations and providing additional flexibility.

**WHEREAS**, in proposing these amendments, the City Council has considered the factors in Code of Virginia 15.2-2284; the City Council has determined that public necessity, convenience, general welfare and good zoning practice favor the amendment.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council does hereby initiate an amendment to City Code Chapter 72, the Unified Development Ordinance, to modify the regulations for fences in all zoning districts. City Council refers this proposal to the Planning Commission for review, public hearing, and recommendation under the procedures set forth in City Code §72-22.1.

**Votes:**

**Ayes:** Greenlaw, Withers, Devine, Duffy, Ellis, Frye, Kelly

**Nays:** None

**Absent from Vote:** None

**Absent from Meeting:** None

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***Clerk's Certificate***

*I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 16-82 duly adopted at a meeting of the City Council meeting held September 13, 2016, at which a quorum was present and voted.*

  
\_\_\_\_\_  
**Tonya B. Lacey, CMC**  
**Clerk of Council**



**Minutes**  
**Board of Zoning Appeals**  
May 16, 2016  
Council Chambers, City Hall  
Fredericksburg, Virginia

**MEMBERS PRESENT**

Helen P. Ross, Chair  
Jay Jarrell III, Vice-Chair  
Matthew Muggeridge  
Beatrice Paolucci  
Richard Conway, Alternate

**MEMBERS ABSENT**

**STAFF**

Mike Craig, Zoning  
Administrator  
Kathleen Dooley, City  
Attorney  
Phaun Moore, Secretary

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Ms. Ross called the meeting to order at 4:00 p.m.

**OPENING REMARKS**

Ms. Ross determined that a quorum was present and public notice requirements had been met.

**ELECTION OF OFFICERS**

Ms. Paolucci nominated Ms. Ross as Chair. Mr. Jarrell seconded. Ms. Ross accepted. Mr. Jarrell nominated Ms. Paolucci as Vice-Chair. Mr. Muggeridge seconded. Ms. Paolucci accepted.

**DISCLOSURE OF EX PARTE COMMUNICATIONS**

Ms. Ross asked if any Board member had engaged in *ex parte* communications on any item before the Board. Ms. Paolucci said that she had done some research in preparation for the hearing. She said she had gone to the City's Real Estate Department and the Court House, and had communicated with the City's IT department.

**DISCLOSURE OF CONFLICTS OF INTEREST**

Ms. Ross asked if any Board member had any conflicts of interest on any item before the Board. No one indicated that they had any conflicts of interest.

**APPROVAL OF AGENDA**

There were no additions or changes to the agenda.

Ms. Paolucci made a motion to accept the agenda as presented. The motion carried unanimously.

## APPLICATIONS

1. **AP 2016-02: The Bragg Hill Corporation** appeals the Zoning Administrator's determination that a certain parcel of land consisting of 0.806 acres more or less is zoned to the City's R-2 Residential Zoning District. The property is shown on the GIS system as GPIN 7870-00-3906. The property has no assigned address but is generally located on the west side of Wicklow Drive between the Bragg Hill townhomes fronting on Rann Court to the south and the Sunshine Ballpark to the north. The City's Official Zoning Map shows the property as being zoned R-2. The Bragg Hill Corporation contends the property was rezoned to R-12 in 2014 as part of Ordinance 14-06.

Ms. Dooley discussed whether the applicant was an aggrieved party to file an appeal. Bragg Hill Corporation is the owner of property that is adjacent to the subject parcel but the parcel itself has been conveyed by separate deed to Mr. Glazebrook and Mr. Degen.

Ms. Dooley stated that there was a two part inquiry to determine standing when the appellant is not the landowner. Ms. Dooley referenced a 2013 decision by the Virginia Supreme Court in a case involving the Friends of the Rappahannock. The question in that case was whether adjacent landowners have an interest that makes them an aggrieved party. The Virginia Supreme Court looked at two factors; one, do the appellants own property that is nearby; and, two whether the complainant has alleged facts demonstrating a particularized harm to some personal or property right or the imposition of a burden or obligation on the petitioner different from that suffered by the general public.

Ms. Dooley stated that the Bragg Hill Corporation did not address these two inquiries in their appeal letter and it is up to them to address them before the board.

Mr. Craig discussed his determination that the subject parcel was zoned R-2. He introduced a document entered into the record by Ms. Paolucci prior to the meeting from the City's land records. He introduced a second document that was Mr. Leming's reaction to correspondence between Ms. Paolucci and Ms. Kim Williams earlier in the day. He introduced a third set of documents that were labeled supplemental exhibit.

Mr. Craig stated that in February 2014 the City undertook a rezoning that contained an exhibit map. The City rezoned any vacant property or single family home lots, including what was then GPIN 7860-90-3994 from R-1 to R-2. The City also rezoned existing developments to zoning classifications that most closely mirrored their existing use. The Bragg Hill Townhomes were rezoned from R-1 to R-12, the Heritage Park Apartments were rezoned from R-1 to R-16, and the Riverview Apartment complex was rezoned from R-1 to R-30. The purpose of the rezoning was to bring existing uses into conformance with the zoning ordinance.

Mr. Craig stated that the City rezoned property based on address. If a parcel was vacant then the City relied on the GIS map and the GPINs assigned at that time. Ms. Williams provided an exhibit included in the staff report that showed how the GPINs were mapped at the time of the rezoning. The 0.806 parcel was included within GPIN 7860-90-3994 at the time of the City initiated rezoning.

Exhibit A to the City initiated rezoning clearly stated that GPIN 7860-90-3994 was rezoned from R-1 to R-2.

Mr. Craig stated that the 0.806 parcel was never reviewed by the City through a subdivision process. Prior to September 17, 2015 the parcel was never created as a separate GPIN in the GIS system. The 0.806 parcel was part of GPIN 7860-90-3994.

Mr. Craig stated that during a land transfer in October 2013, the Apellant's attorney applied GPIN 7860-90-9711 to the coversheet of the instrument transferring the document. The number was not assigned or reviewed by the City. The transaction was then transferred from the Clerk of Court to the City's Real Estate Department who assigned the information related to the 0.806 parcel to the mapped entity GPIN 7860-90-9711. The Apellant's Exhibit D and E shows that, based on the recording error, the underlying information associated with the 0.806 acre parcel was tied to the wrong GPIN, though the mapping was correct.

Mr. Craig stated the error in the land records dates back to confusion created by a difference between a plat in 1972 where the 0.806 is left out and a 1976 deed that includes the 0.806 parcel.

Mr. Craig stated that once the incorrect GPIN number was applied to the land transfer in 2013, that number would have been transferred from the Clerk's office to the City Treasurer where it would be used to generate tax bills.

Mr. Craig stated that after the City initiated rezoning, a contract purchaser had been working with the City to rezone both the 0.806 acre parcel and the larger parcel GPIN 7860-90-3994. The application was signed by Mr. Degen.

Mr. Craig stated that Mr. Degen had been working with the City to clear up tax confusion on the parcel in 2015 and that those efforts led to the assignment of a new GPIN number on the 0.806 acre parcel.

Mr. Craig stated that any excess taxes charged by the City would be remitted by the City.

Mr. Jarrell asked if the subject parcel was not listed in the 2014 rezoning.

Mr. Craig said the rezoning was done by GPIN number.

Ms. Dooley said the subject parcel was listed in the rezoning because it was part of the larger parcel on the Tax Map and it did not have its own independent parcel identification at the time of the rezoning.

Mr. Jarrell asked how many other circumstances in the City there were that have multiple parcels under one GPIN number.

Mr. Craig said there were a lot.

Ms. Paolucci questioned how the subject parcel became part of the larger parcel 7860-90-3994 rather than parcel 7860-90-9711.

Ms. Dooley said they believe the error was made originally with the 1972 plat and the 1976 deed but was not picked up when the City drew their original tax maps. The client's attorney applied the GPIN number for the smaller parcel when looking at these older documents.

Ms. Paolucci said she was on the City Council at the time of the 2014 rezoning and she believes the subject parcel was included in parcel 7860-90-9711.

Mr. Muggeridge asked how Supplemental Exhibit 5 clarified the Zoning Administrator's position.

Mr. Craig said that Supplemental Exhibit 5 was a voluntary proffer statement acknowledging that the entirety of the property including the 0.806 acre parcel was zoned low density residential and a request by one of the owners of the property to rezone the entirety of the property including the 0.806 acre parcel to R-12.

Mr. Muggeridge asked how Mr. Degen (the signore of the voluntary proffer statement was associated with the appellent).

Mr. Craig said that Mr. Degen was a member of the Bragg Hill Corporation with Mr. Glazebrook and that he is also part owner of the 0.806 acre property.

Ms. Paolucci stated that the application was from February 2014 but the parcel wasn't assigned a new GPIN until September 2015.

Mr. Craig said that was correct, however, there were three things going on. First was the City initiated rezoning, which occurred in early 2014. Second was the rezoning request which occurred after the rezoning. Third was the change in GPIN number which was related to City tax records.

Mr. Jarrell asked if staff reviewed and approved of the rezoning application.

Mr. Craig said the City accepted the application.

Mr. Jarrell stated that the GPIN of the 0.806 parcel was listed as GPIN 7860-90-9711 and could be seen as acknowledgement by the City that the 0.806 acre parcel was GPIN 7860-90-9711.

Mr. Conway asked what was the purpose of the City led rezoning.

Ms. Dooley stated that the R-1 designation was applied post annexation in 1984 and used as a holding zone until a more appropriate zoning district could be applied, which happened in 2014.

Mr. Muggeridge asked when the new GPIN number was applied.

Mr. Craig stated that the new number was applied in September 2015. The impetus for changing GPIN numbers is when a land owner or other person brings an error to the GIS department.

Mr. Muggeridge asked what the origin of the change in GPIN number was.

Mr. Craig stated that Mr. Degen had come in to the office stating that he was being taxed wrong on the parcel so as part of fixing that error, staff changed the GPIN number.

Ms. Ross called on the Appellant.

Mr. Clark Leming represented the Appellant and made a request for a five minute recess in order to call Mr. Degen and bring him to the meeting in order to respond to staff testimony.

Ms. Ross granted the recess.

After a five minute recess, Mr. Leming stated his intent to address standing and then substantive issues.

Mr. Leming stated that in October 2013 the Bragg Hill Community Corporation transferred the 0.806 acre parcel to the Bragg Hill Corporation. Mr. Leming stated that this 0.806 acre parcel was part of the 6.25 acres transferred to the Bragg Hill Community Corporation in 1976. In February 2015, the parcel was transferred to Mr. Glazebrook and Mr. Degen personally.

Mr. Leming stated that the Bragg Hill Corporation is an S corporation and Mr. Glazebrook owns 90% of the corporation. Mr. Degen owns 10%. Mr. Leming entered a form into the record showing the distribution of shares in the Bragg Hill Corporation.

Mr. Leming stated that the parcel was never merged into the larger 33.96 acre parcel. The reason that the Bragg Hill Corporation is an aggrieved party is that it is a small closely held corporation that Mr. Glazebrook largely controls. The letter from Mr. Craig that is being appealed was addressed to the Bragg Hill Corporation in care of Mr. Glazebrook. Largely speaking, the Bragg Hill Corporation and Mr. Glazebrook and Mr. Degen are very much the same entities and what is good for the Bragg Hill Corporation is good for Mr. Glazebrook and Mr. Degen.

Mr. Leming stated that the appeal was based on the determination letter.

Mr. Leming stated that Mr. Glazebrook had transferred the 0.806 parcel because Mr. Glazebrook wanted to move forward with the piece they believed was rezoned R-12 and that they were not ready to move forward on the larger parcel zoned R-2. The development on the R-12 parcel was to be a small demonstration project and that it would be harmful to the Bragg Hill Corporation if the smaller project – a ten unit subdivision - did not proceed.

Mr. Leming stated under § 15.2-2311 that a written notice or order shall be sent by registered or certified mail or posted at the last known address of the property owner. The letter did not come by registered or certified mail, it was simply mailed to him, which does not comply. The statute says that the only thing binding is the ultimate decision but not the procedural error where he was not properly served by the notice in the first place. The BZA should make a determination over whether a determination has been properly served in addition to the determination on whether or not the Bragg Hill Corporation has standing.

Mr. Leming stated that the 0.806 acres came from the Bragg Hill Community Corporation and the larger 6.25 acre parcel. The 0.806 acre parcel was never part of the larger 33.96 acre parcel.

Mr. Leming stated that the Commissioner of Revenue has consistently shown that the parcel was GPIN 7860-90-9711 all the way up to April 16, which was close to the date the appeal was filed. The zoning had changed, however, between January and April from R-12 to R-2. Mr. Leming stated that Mr. Degen, Mr. Glazebrook, nor the Commissioner of Revenue knew about the GPIN change in September 2015 and that the change was only made in response to the appeal.

Mr. Leming stated that GPIN 7860-90-9711 was clearly rezoned to R-12. He said the issue is what GPIN 7860-90-9711 was at the time of the rezoning and that all of the materials they have indicate that the 0.806 acre parcel was GPIN 7860-90-9711 at the time. Mr. Leming stated that everyone involved understood the 0.806 acre parcel was GPIN 7860-90-9711 at the time of the rezoning and that the zoning application as Supplemental Exhibit 5 backs that up.

Mr. Leming stated that the only entity that can rezone property is the City Council and that if the City wants to down zone the property than they will have to go through the process.

Mr. Leming called Mr. Degen to speak.

Ms. Ross asked if Mr. Leming was done with his presentation so that they could allocate time for Mr. Degen and / or Mr. Glazebrook to speak.

Mr. Leming stated that he was done with his presentation.

Mr. Degen stated that he had received a notice that the property was going to be rezoned to R-12 in 2014. When he went to check on the zoning he was told that the property was zoned R-2. His attorney told him that the R-12 zoning matched his notice and tax bill so he and his partner created an R-12 townhome plan and turned it in.

Mr. Glazebrook stated that he had his engineer add the property up, included the 0.806 acres and all easements that had been granted etc., and that they all add up to approximately 6.2 acres. He stated that his dad had built a ballfield on the parcel and that it was open space for the children of Bragg Hill to play on. He stated that the notice posted on the property showed GPIN 7860-90-9711.

Ms. Paolucci asked whether Mr. Glazebrook or Mr. Degen was aware that the GPIN number had been changed on September 17, 2015.

Mr. Glazebrook stated that was correct.

Ms. Paolucci asked Mr. Craig what the policy on notifying landowners of new GPIN numbers is.

Mr. Craig stated that there was a difference between the land records and the GPIN numbers. The land records hold all records of where property is subdivided. GPIN numbers are just a representation for tax purposes. The City's policy is that when someone comes in to correct an error in the City's GIS system that is when a GPIN number will be changed. Mr. Craig stated that Mr. Degen coming in to clarify the status of the property prompted the change in this case.

Ms. Paolucci asked whether the City went back to deeds at that point.

Mr. Craig stated that, yes, and in this case a plat was provided.

Mr. Muggeridge asked what the motivation was for obtaining the quit claim deed to Mr. Glazebrook and Mr. Degen.

Mr. Leming stated that the 0.806 parcel was the only parcel that was rezoned R-12 and could proceed with. He stated that the piece was also separate from the larger Bragg Hill masterplan that showed three more phases of development with an additional 168 units. The owners wanted to treat this property completely separate from the rest of the Bragg Hill development. He also stated that there were tax reasons to separate the two.

Mr. Muggeridge asked that if the City intended to rezone the parcel to R-2 but made errors and mistakes whether it was the Appellant's position that it didn't matter what they wanted to do, the City didn't do it right.

Mr. Leming stated that ultimately it came down to what the City actually did. Intent is not a valid consideration in challenging a zoning decision. Even if there was a mistake then the best intentions do not change that there was a mistake.

Mr. Jarrell wanted confirmation that the notification sign was posted on the 0.806 acres.

Mr. Glazebrook stated that it was found on the property of Bragg Hill Corporation and that it was found on the corner of the 33.96 acre parcel.

Mr. Lemming stated that he thinks it was to apply to both parcels because the other parcel listed is the big parcel.

Mr. Glazebrook stated that it was on the 33.96 acre parcel.

Mr. Jarrell asked for clarification.

Mr. Glazebrook stated that it was on a pile of rubbish, on the ground, up by the street, where it abuts the townhouses.

Mr. Jarrell asked a hypothetical, if the 0.806 acre parcel was shown on the colored map that the City relied on as being zoned to R-2 but inside the parcel the map shows R-12 what would the zoning be.

Mr. Leming stated that this enhances Mr. Glazebrook's position because despite the color, R-12 would be written within the parcel. The written word should supersede the legal significance of anything that's attached.

Mr. Jarrell asked what the legal principal of how a legal zoning ordinance is to be interpreted.

Mr. Leming stated that the zoning ordinance is not ambiguous. If there is an ambiguity, then like in contract law, the law is resolved against the drafter. In this case that is the City.

Mr. Jarrell asked Ms. Dooley if she agreed.

Ms. Dooley stated that there is no conflict within the ordinance itself. She stated that it was clear that GPIN 7860-90-9711 was rezoned to R-12 and that the GPIN 7860-90-3994 was rezoned to R-2 and that was in the ordinance itself. She stated that the 0.806 parcel was included in GPIN 7860-90-3994 and that there was no inconsistency between the map and the ordinance.

Mr. Jarrell said he respectfully disagreed and asked if she would answer the hypothetical questions.

Ms. Dooley stated that if there was an inconsistency then the rules of statutory construction would apply and the intent of the governing body would govern the interpretation of the ordinance.

Mr. Jarrell stated that he believed there were two GPIN 7860-90-9711 parcels. The original common area parcel was shown on the map as zoned R-12 and the separate 0.806 acre parcel was never shown as a separate GPIN number even though it's a separate parcel. In the written documentation, the 0.806 is part of GPIN 7860-90-9711 and is supposed to be zoned R-12. The other place, it is still GPIN 7860-90-9711 but is colored R-2. His question was, which governed.

Ms. Dooley referred to Ms. William's technical memo that showed what GPIN numbers were assigned to the subject parcel at the time City Council adopted their ordinance. At that time the parcel was identified as part of the big parcel that was rezoned from R-1 to R-2.

Ms. Ross opened up the public hearing to members of the public.

Faith Price, of 1018 Riverwalk Street, spoke in opposition to upholding the appeal.

Ms. Ross closed the public hearing.

Ms. Paolucci asked if Kim William's memo was something attached to the rezoning ordinance in 2014.

Ms. Dooley stated that the memo was produced for this hearing and it showed how the GPIN numbers had been assigned at the time of the rezoning and that at that time the 0.806 acre piece of land was part of GPIN 7860-90-3994.

Ms. Ross stated that there were two points before the board.

Mr. Muggeridge asked Mr. Jarrell if he agreed that the intent was to rezone the whole parcel and the subject parcel was entirely contained with GPIN 7860-90-3994.

Mr. Jarrell stated that he believed that the landowner believed that their parcel was part of GPIN 7860-90-9711 and that the notice to the landowner showed that parcel being rezoned to R-12.

Mr. Muggeridge stated that the notice requirement did not include the 0.806 parcel.

Ms. Paolucci stated that GPIN 7860-90-9711 was listed in the ad.

Mr. Jarrell stated that if there is any confusion over how it was noticed then the landowner did not have any control over the advertising or the rezoning and the board should hold against the City and in the landowner's favor.

Mr. Jarrell made a motion that Bragg Hill Corporation did have a case for appeal. Ms. Paolucci seconded. The motion carried unanimously.

Ms. Ross stated that she was looking for a motion on the second item, whether or not to uphold the Zoning Administrator's decision.

Mr. Muggeridge made a motion "the Zoning Administrator erred in determining that the Subject Parcel is now zoned to the City's R-2 Residential Zoning District and should be zoned R-12". Mr. Jarrell seconded.

Mr. Muggeridge asked Ms. Paolucci whether the intent of the Council was expressed in the ordinance.

Ms. Paolucci said yes. She stated that the ordinance specifically stated GPIN 7860-90-3994 and GPIN 7860-90-9711 and that they were differently zoned.

Mr. Muggeridge asked whether or not the City should have researched all parcels involved in the rezoning prior to using GPIN numbers to rezone.

Ms. Paolucci stated that it was a mass rezoning and that the City couldn't have done research and deed studies on every parcel.

Mr. Muggeridge asked whether or not the intent of the Council would matter more if the outcome was more serious.

Ms. Paolucci stated that the Council knew the difference between R-2, R-12, and R-16 and that the outcome would be that they could build ten townhomes on the property.

Mr. Conway stated that it was a City oversight on having this small parcel of land as R-2 with the rest of the surrounding parcel as R-12.

Ms. Paolucci stated it was an oversight that went all the way back to Spotsylvania County.

The motion carried 3-2 with Mr. Muggeridge and Ms. Ross opposed.

## **REVIEW OF MINUTES**

Mr. Muggeridge made a motion to approve the meeting minutes from April 18, 2016 as presented. Mr. Jarrell seconded. Motion carried 4-0-1 with Ms. Paolucci abstained because she was not present for the April 18, 2016 meeting.

## **STAFF / BOARD COMMENTS**

Mr. Craig informed the Board that there was not a meeting scheduled for June 2016.

Ms. Paolucci confirmed that the Appeal for the fence at 814 Cornell Street was still in limbo.

**ADJOURNMENT**

Mr. Muggeridge made a motion to adjourn. Ms. Paolucci seconded.

Meeting adjourned at 6:05 p.m.

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Helen P. Ross, Chair