

ORDINANCE NO. 7315-16

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 45, ZONING ORDINANCE, OF THE CODE OF THE CITY OF NEWPORT NEWS, VIRGINIA, ARTICLE XXVII., CONDITIONAL USE PERMITS, SECTION 45-2703, APPLICATION REQUIREMENTS; ARTICLE XXXII., BOARD OF ZONING APPEALS, SECTION 45-3203, PROCEDURE FOR REVIEW AND APPROVAL OF VARIANCES; SECTION 45-3204, PROCEDURE FOR REVIEW AND APPROVAL OF SPECIAL EXCEPTIONS; AND ARTICLE XXXIV., CHANGE OF REGULATIONS, SECTION 45-3404, PROCEDURE.

BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That Chapter 45, Zoning Ordinance, of the Code of the City of Newport News, Virginia, Article XXVII., Conditional Use Permits, Section 45-2703, Application requirements; Article XXXII., Board of Zoning Appeals, Section 45-3203, Procedure for review and approval of variances; Section 45-3204, Procedure for review and approval of special exception and Article XXXIV., Change of Regulations, Section 45-3404, Procedure, be, and the same hereby is, amended and reordained as follows:

CHAPTER 45

ZONING ORDINANCE

ARTICLE XXVII. CONDITIONAL USE PERMITS

Sec. 45-2703. Application requirements.

Applications for a conditional use permit shall meet the following requirements:

- (1) An application for a conditional use permit shall be filed with the director of planning.
- (2) Such applications shall be made in the name of, and signed by, the owner of the property or a person having power of attorney from the owner.
- (3) Such applications shall completely disclose the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the names of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500

shareholders. In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.

- (4) The application shall be accompanied by:
- a. A written description of the nature and extent of the specific use for which a conditional use permit is being requested and a written explanation of how the conditions of section 45-2702 have been satisfied in order to warrant approval of the requested permit.
 - b. A legal description of the property for which the conditional use is requested.
 - c. Ten (10) copies and one (1) eight and one-half (8 ½) inch by eleven (11) inch reproducible copy of a site plan including a drawing or drawings of the proposed conditional use; such drawing shall be drawn to scale and in such manner as to show clearly the following information:
 1. The actual dimensions and shape of the property;
 2. The exact size and location on the property of existing and proposed structures;
 3. The existing and proposed uses of all structures and open areas;
 4. The name of the owner, as well as the name of any other person preparing the plan, together with the north point, scale and number of sheets of the plan;
 5. Such additional supporting information as may be deemed necessary by the director of planning to perform the evaluations required herein, including but not limited to: topography, ingress and egress, traffic impact, vegetation, surrounding land uses, proposed connections to existing or proposed water, sewer and drainage facilities, and landscaping.
- (5) Applications shall not be processed unless the applicant provides satisfactory evidence that any delinquent real estate taxes owed to the city which have been properly assessed against the subject property have been paid.

ARTICLE XXXII. BOARD OF ZONING APPEALS

Sec. 45-3203. Procedure for review and approval of variances.

(a) An application for a variance may be made by any property owner, tenant, government official, department, board or bureau and shall be filed with the zoning administrator. Applications shall not be processed unless the applicant provides satisfactory evidence that any delinquent real estate taxes owed to the city which have been properly assessed against the subject property have been paid.

(b) Such application shall completely disclose the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the names of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.

(c) The board shall conduct a hearing on said application subsequent to the notice requirements contained in section 45-3202(e).

(d) "Variance" means, in the application of this chapter, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land; or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

- (1) The board shall not authorize a variance unless it finds:
 - a. That the strict application of this ordinance would unreasonably restrict utilization of the property or the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance and the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
 - b. That the authorization of such variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that

geographical area.

- c. That the condition or situation of the property concerned is not so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.
- d. That the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.
- e. That the relief or remedy sought by the variance application is not available through a special exception process or through modification of a zoning ordinance, both of which are authorized in this chapter.

(e) In authorizing a variance, the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinances. The use or the structure permitted by the variance may not be expanded, unless the expansion is within an area of the site or part of the structure for which no variance is required. Where expansion is proposed within an area of the site or part of the structure for which a variance is required, the expansion may not occur unless an additional variance is obtained.

Sec. 45-3204. Procedure for review and approval of special exceptions.

(a) Applications for special exceptions may be made by any property owner, tenant, government official, department, board or bureau and shall be filed with the director of planning or his authorized representative. Applications shall not be processed unless the applicant provides satisfactory evidence that any delinquent real estate taxes owed to the city which have been properly assessed against the subject property have been paid.

(b) The board shall refer all special exception applications to the city planning commission for its recommendation. The city planning commission shall review the referred application and submit its recommendation to the board within sixty (60) days of the first meeting of the planning commission subsequent to referral. The planning commission report shall state whether the proposed special exception is in harmony with the intent of the applicable regulations in this zoning ordinance. In making its report, the planning commission may recommend to the board any conditions which should be attached to the special exception as to make it compatible with surrounding development. Failure of the planning commission to report within the prescribed

sixty-day period shall be construed as an affirmative recommendation.

(c) Prior to action by the planning commission on any special exception, the applicant must meet with the director of planning, or his representative, to determine the appropriateness of the application and who may require such supporting information as he may deem to be necessary, including:

- (1) A legal description of the property for which the special exception is requested.
- (2) Complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the names of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.
- (3) Ten (10) copies and one (1) eight and one-half (8 ½) inch by eleven (11) inch reproducible copy of a plan, including a drawing or drawings of the proposed special exception. Such drawing shall be drawn to scale in such manner as to show clearly the following information:
 - a. The actual dimensions and shape of the property.
 - b. The exact size and location on the property of existing and proposed structures.
 - c. The existing and proposed uses of all structures and open areas.
 - d. The name of the owner, as well as the name of any other person preparing the plan, together with the north point, scale and number of sheets of the plan.
 - e. Such additional supporting information as may be deemed necessary by the director of planning to perform the evaluations required herein, including but not limited to topography, ingress and egress, vegetation, surrounding land use, proposed connections to existing or proposed water, sewer and drainage facilities.

(d) After notice as specified in section 45-3202(e), the board shall conduct a hearing on the application. The board may approve or deny the application and may impose such conditions relating to the use for which a special exception is granted as it may deem necessary in the public

interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

- (e) The board shall be authorized to hear and decide only those special exceptions listed below:
 - (1) The board may grant a special exception increasing the height and or floor area of accessory buildings and structures provided that:
 - a. The height or floor area increase is in harmony with the appearance of surrounding properties and does not create a harmful effect to the neighborhood; and
 - b. The accessory building and structure shall have at least the same required rear and side yard setbacks as the main building.
 - c. The board, as a condition of approval, may require additional side and rear yard setbacks for the accessory building and structure to be heightened or enlarged.
 - (2) A nonconforming lot of record having less than fifty (50) feet of frontage may be improved with a single-family detached dwelling provided that:
 - a. The single-family dwelling shall be two (2) stories or of similar design to abutting structures.
 - b. The front yard setback of the single-family dwelling shall be the average of the setbacks of existing buildings on the block, but not less than fifteen (15) feet.
 - c. The minimum side yard setback shall be five (5) feet.
 - d. An attached or detached garage shall be provided. However, if the garage is attached, it shall be attached on the side of the dwelling and recessed eighteen (18) feet from the front of the dwelling or attached in the rear of the dwelling.
 - e. The proposed dwelling is in harmony with the appearance of surrounding properties and does not create a harmful effect to the neighborhood.
 - (3) The board may grant as a special exception in the C1, C2 or C3 zoning districts the construction of a driveway for ingress and egress to any use permitted in the C2, C3, M1 or M2 zoning districts subject to the following provisions:

- a. Access to the site does not otherwise exist over a public street.
 - b. A report is obtained from the director of planning to the effect that a public street is not essential to serve the special use being developed or other lands in the same proximity.
 - c. It is the judgment of the board that the proposed use and the potential vehicular traffic produced will not adversely affect the general character and development of the immediate area.
- (4) The board may grant as a special exception a reduction of the required number of offstreet parking spaces provided that:
- a. Any such reduction is limited to:
 - 1. Community facilities, recreational services, utilities, educational services, transportation, wholesaling and warehousing, open industrial, limited industrial, and heavy industrial uses as specified in Article IV, section 45-402 Summary of Uses by District;
 - 2. Commercial and related uses listed in section 45-3004(d);
 - 3. Uses authorized by and located within the Neighborhood Conservation District as defined by Article XXXI;
 - 4. Multiple-family housing for disabled persons or the elderly.
 - b. Applications for parking space reductions using off-site parking plans shall meet the following criteria:
 - 1. The proposed development of the premises shall be for the following uses:
 - a. Commercial and related uses listed in section 45-3004(d).
 - b. Community facilities, recreational services, utilities, educational services, transportation, wholesaling and warehousing, open industrial, limited industrial and heavy industrial uses as specified in Article IV, Section 45-402, Summary of Uses by District
 - 2. Off-site parking plans shall meet the following criteria:

- a. The applicant shall demonstrate that off-site spaces are available to serve the uses proposed for the premises and such off-site spaces are within eight hundred (800) feet walking distance of a building entrance or use on the premises proposed for the parking reduction. The applicant shall demonstrate that safe and convenient pedestrian access is provided from the designated use to the off-site parking facility or that transportation is available from the off-site parking site to the premises.
 - b. The applicant shall demonstrate that the off-site parking spaces are available on a long-term basis of not less than twenty (20) years.
 - c. After approval of an off-site parking plan, the city zoning administrator shall approve no changes which would increase the parking needs of the affected premises served by that plan unless additional parking spaces are made available to serve the premises and the new off-site parking plan is approved by the zoning administrator.
3. A parking reduction which was granted based on an off-site parking plan shall be void in the event that said off-site parking plan is terminated in whole or in part.
 4. This ordinance shall not be interpreted to prevent parking reductions employing both on-premises shared parking plans and off-site parking plans in appropriate circumstances.
- c. The applicant proposing an on-site parking reduction for uses of community facilities, recreational services, utilities, educational services, transportation, wholesaling and warehousing, open industrial, limited industrial, and heavy industrial uses as specified in Article IV, section 45-402, Summary of Uses by District, or for any use in a neighborhood conservation district, shall clearly show that the proposed use:
 1. Requires a lesser amount of parking than specified in this chapter; and
 2. Provides an adequate amount of parking to accommodate employee and customer needs.
 - d. The applicant proposing on-site parking reductions for multiple-family

housing for disabled persons or the elderly shall show that the proposed use:

1. Requires a lesser amount of parking than specified in this chapter; and
 2. Provides an adequate amount of parking to accommodate employee and customer needs.
 3. Provided that the reduction shall not be to less than seventy-five (75) percent of a space per unit.
- e. The authorization of parking space reductions shall be limited to the specified use or uses for which the special exception is requested. Any enlargement of a building or change in use or uses shall be subject to the parking requirement as specified in this ordinance or as otherwise approved for increase or reduction as provided in this ordinance.
- (5) The board may grant as a special exception, in any district where such use is not permitted as a matter of right, facilities for the keeping of horses, ponies, or similar animals provided that:
- a. Such animals are exclusively kept for the recreational purposes of the family living on the premises.
 - b. The minimum area of any parcel used for the keeping of not more than two (2) such animals shall be five (5) acres. One-half ($\frac{1}{2}$) acre addition to the minimum lot area shall be required for each additional animal kept thereon.
 - c. Any building, structure or animal yard used for the housing of such animals shall be located not less than one hundred (100) feet from any property line and not less than one hundred seventy-five (175) feet from any adjacent dwelling.
 - d. Such use will not be detrimental to the character of the neighborhood and provided further that other conditions which are imposed to protect the character of the neighborhood shall be observed.
- (6) The board may grant an enlargement of nonconforming uses; provided that:
- a. All yards, height, and other applicable dimensional regulations of the district in which the use is located shall be observed.
 - b. Any enlargement of a use shall be made in conformity with the regulations

of the most restrictive district in which such use would ordinarily be permitted.

- c. Any enlargement shall be limited to the same premises on which the use existed at the time it became nonconforming; provided, that in no case shall the nonconforming use be expanded across a zoning district boundary into a more restrictive district.
 - d. No enlargement of a building or use shall be made to create an entirely new use or to occupy more than one hundred (100) percent additional land area or floor space that was used at the time the use became nonconforming.
 - e. Such enlargement is in harmony with the surrounding neighborhood and such reconstruction or enlargement is in the general welfare of the public.
- (7) The board may authorize the outdoor storage of goods and materials when located in the C2 district; provided, that:
- a. Such storage is established as an accessory to a permitted use in the C2 district.
 - b. Materials so stored shall not be visible from any public right-of-way.
 - c. The storage of such goods or materials is screened or fenced in such manner so as not to detract from the character of the neighborhood.
 - d. Appropriate conditions in the form of screening and/or buffer area requirements shall be included to assure the protection of any adjacent residential district or development.
- (8) The board shall authorize as a special exception the use and/or reduction of any buffer area for uses associated with the higher intensity district and not otherwise permitted within the buffer area whenever the board finds the buffer area is screened or fenced in a manner that insures that any authorized concentration of people, cars, noise or associated activities will not adversely affect any use permitted in the abutting lower intensity district and the granting of such special exception is:
- a. Necessary for the reasonable use of the property;
 - b. Not detrimental to uses in or permitted in the abutting lower intensity district; and,

- c. Any reduction shall not reduce the required number of trees for the remaining buffer area.

The board in authorizing such special exceptions may impose reasonable conditions as may be required to insure compliance with this provision.

- (9) The board may grant a special exception for a kennel to be located in any residential district for no more than six (6) domesticated animals; provided;
 - a. All animals shall be maintained in a healthy condition or, if ill, shall be given appropriate treatment immediately.
 - b. Animal pens shall be large enough (within recognized standards) to provide freedom of movement for each animal contained therein.
 - c. Any animal pen must be located in the rear yard and at least ten (10) feet away from any property line.
 - d. Litter and bedding material shall be changed to prevent odor that could adversely affect or impact neighboring properties.
 - e. No person shall utilize any space for the keeping of animals in any manner that is detrimental to the use of the adjacent property or that, because of odor, noise or attraction of flies or other pests, reduces or otherwise unreasonably restrict the rights of adjacent property owners to enjoy the use of their property.
 - f. No person shall permit the drainage from any space devoted to animals to contaminate or pollute any stream, watercourse or drainageway, natural or manmade.
 - g. No person shall store, stockpile or permit any accumulation of animal waste in any manner whatsoever that, due to odor, attraction of flies or other pests or for any other reason, diminishes the rights of adjacent property owners to enjoy reasonable use of their property.
 - h. Such kennel will not adversely affect or impact neighboring properties.
- (10) The board may grant a special exception reducing or eliminating privacy fencing or treed buffers provided all of the following are met:
 - a. Any such reduction or elimination is limited to:

1. Community facilities as specified in Article IV., section 45-402, Summary of Uses by District.
 2. Uses authorized by and located within the Neighborhood Conservation district as defined by Article XXXI.
- b. That the applicant shall clearly show that the proposed surface lot:
1. Requires a lesser amount of fencing or tree screening or no fencing or tree screening; and
 2. The applicant shall clearly demonstrate that the reduction or elimination of the fencing or tree screening is necessary by reason of surface lot location, location of existing fencing, location of adjacent residences and other special circumstances as may warrant such reduction or elimination.

(11) The board may grant as a special exception an increase to the maximum required number of off street parking spaces permitted for a retail store or personal service establishment, a furniture or appliance store, wholesale establishment or service shop and an enclosed mall building, provided that:

- a. Such increase will not be detrimental to the general character and development of the immediate area.
- b. Satisfactory evidence is provided that additional parking cannot be provided through sharing arrangements with adjoining properties.
- c. Any such increase in parking also shall meet the following criteria:
 1. If the site is wooded, a tree survey shall be conducted on the site prior to land clearance or work being conducted on the site and all trees of six (6) inch caliper or greater shall be saved within all green areas;
 2. Twenty-five percent (25%) of the total site shall be landscaped in accord with a plan developed by the applicant for the special exception and approved by the director of planning. The approved landscaping shall be installed and maintained by said applicant;
 3. A twenty-five foot landscape strip shall be installed and maintained along the site's existing or planned street frontage;

4. Notwithstanding any other provision in the City Code, the only freestanding sign on an undeveloped site shall be a ground sign; and
5. Notwithstanding any other provision in the City Code, if the site is already developed, any existing freestanding signs on site shall be removed and replaced with ground signs.

ARTICLE XXXIV. CHANGE OF REGULATIONS

Sec. 45-3403. Procedure.

(a) The petition for an amendment to the zoning ordinance shall be filed with the director of planning, who shall transmit one (1) copy to the director of codes compliance. At the time of such filing, the director of planning shall be consulted as to the appropriateness of the proposed amendments. Such petition shall include:

- (1) For a proposed amendment to the zoning ordinance text:
 - a. A suggested wording of the proposed revision properly referenced to the existing ordinance by article and section number;
 - b. The nature and extent of the amendment desired, together with an explanation of the reasons for seeking such change.
- (2) For a proposed amendment to the zoning map:
 - a. A legal description of the property for which the change of zoning is requested.
 - b. Three (3) plats showing the property drawn at a scale with sufficient references to existing streets and subdivisions to enable said property to be located on city maps, along with the area of proposed zoning change, in square feet or acres.
 - c. Complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the names of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. In

the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.

- d. The names and addresses as far as practicable of property owners abutting the property of which said change is requested. For this purpose, property separated from the petitioned property by a street shall be considered to abut said property.
- e. A statement indicating the intended use of the property under the proposed zoning classification.
- f. A statement signed by the property owner giving consent to the submission of the application when the property owner is not the applicant.
- g. A conditioned or unconditioned proffer statement.
- h. Ten (10) copies and one eight and one-half (8½) inch by eleven (11) inch reproducible copy of a more detailed plan as may be deemed necessary by the director of planning to perform the required evaluation. Such additional information may include, but need not be limited to: Topography, ingress and egress, location of buildings and improvements vegetations, surrounding land use, proposed connections to existing or proposed water, sewer and drainage facilities.

(b) All applications shall be annotated with either of the following statements:

- (1) "I hereby proffer that the development of the subject property of this application shall be in accordance with the conditions set forth in this submission." or
- (2) "I hereby proffer that the development of the subject property of this application shall not be subject to any additional conditions not otherwise provided for the requested zoning district by ordinance."

(c) The director of planning shall place the proposed amendment on the agenda of the planning commission for public hearing at a regular meeting to be held no later than sixty (60) days after the proposed amendment is filed. When the property under consideration drains into any of the city's reservoirs, comments from the director of waterworks shall be solicited prior to planning commission action. The planning commission shall transmit its report and recommendation to the city council within one hundred (100) days from the date of the first meeting of the planning

commission at which the proposed amendment first appears on the agenda for consideration. After such time, the council shall conduct its public hearing and take final action upon the petition. For the purpose of this article, the proposed amendment is deemed to be referred to the planning commission on the date the matter is to be first considered at a meeting by the planning commission.

2. That this ordinance shall be in effect on and after the date of its adoption, October 25, 2016.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON OCTOBER 25, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk