



MEMORANDUM

To: Mayor and Town Council

From: David Levy, AICP, Director of Planning and Zoning

Kelly O'Brien, AICP, CZA, Deputy Director of Planning and Zoning

Date: April 12, 2024 (update of April 8, 2024 memo)

Re: Follow-Up to Code Adoption (Part 3) - Summary of Council Guidance on Pinned Items

Update

On April 8, 2024, the Town Council continued the “pinned items” discussion of the items remaining after the February 12, 2024 work session. Councilmember Springsteen requested the addition of a new topic related to public improvements in Windover Heights and the review process. The Council voted to identify this topic as one of high priority. The other topic voted as high interest is the buffer between residential and non-residential uses. Staff will bring both of these topics back to the Council with more detailed information for discussion and action.

Two items, numbers 7 and 8, calling for changes to maximum permitted height, were voted as “Not in Favor.” No further action will be taken on these topics.

The final three topics addressed during the meeting related to architectural features on building roofs, including “non-enclosed shade structures.” The Council voted to label these as “Low Interest.” They will be reviewed later after the “High Interest” topics have been addressed.

Background

During the February 12, 2024, Town Council work session, staff presented a table of topics for discussion that identified potential zoning and subdivision code amendments that were not addressed prior to adopting the code update on October 23, 2023, for various reasons. The sources of these proposed amendments range from comments from the public hearings, Town Council member comments, Planning Commission recommendations, zoning consultant recommendations, and staff recommendations. These comments and topics are identified as “pinned items” for further discussion.

To assist with the discussion, staff categorized the “pinned items” into three categories of status:

- 1) **Minor edit** – These are items that either require more clarification, errors missed in the draft prior to adoption, or other minor changes that do not alter the current code or require more discussion.
- 2) **Research Needed** – These items are either too broad for a minor edit, require consultation with subject matter experts, or require further study by staff before a code amendment recommendation can be made.
- 3) **Policy Decision**—These items require the Town Council to discuss and make decisions on policy before any code amendment recommendations can be made. They include topics such as building height, Church Street Vision, lot coverage, signs, the subdivision process, uses, and more.

During the February 12, 2024 work session, the Mayor and Council agreed with the staff’s recommendation to begin with the “minor edit” items. The seven items identified as minor edits were given a priority of “high interest.” Staff will work on preparing these text amendments and bring them to the Council for review and potential recommendation to the Planning Commission within the next few months.

The “Research Needed” items were discussed next. The following is a summary of the topics discussed and next steps:

- **Housing affordability/diversity**—The council has identified this topic as a top priority. Staff is preparing a presentation for the Council to discuss at a work session on May 13, 2024.
- **Lighting Standards** – Staff is preparing a Request for Proposals (RFP) with the Finance Department to hire a lighting consultant to assist with developing standards for the town code and design standards.
- **Park Zone Standards** – This item was identified as “low interest.” No specific timeline for review has been set at this time. Planning and Zoning staff will meet with Parks and Recreation staff to identify any issues and bring it forward for Council discussion at a future work session.
- **Parking Standards**—The consultant, Nelson Nygaard, presented the parking study's findings and recommendations to the Planning Commission and will present them to the Town Council at the April 15 work session.
- **Satellite antennae**—This item was identified as “low interest.” This topic will be rolled into a larger review of the Town’s wireless code regulations. No specific timeline has been set at this time.
- **Sidewalks**—The zoning consultant recommended reviewing the Town’s code language related to sidewalk dedication for any constitutional issues. The Town Attorney stated

that the Town has the authority to require it from the State of Virginia, and therefore, there is no issue. The comprehensive plan update will include revisions to the road categorization map that will address the required right-of-way width and sidewalk dedication.

- **Subdivision Lot Shape Factor**—Staff will review options for increasing lot regularity in proposed subdivisions and present their findings to the Council at a future work session.
- **Continuing Care Facilities**— Staff will work with Fairfax County’s advisory board to determine proposed use standards and a process for the advisory board’s review and recommendation of proposed facilities.
- **Wireless Facilities Standards** – Staff will review current code language in other jurisdictions and return to the Council at a work session with a summary of the findings, possible code amendments, or possibly a recommendation to work with a consultant to develop standards for the Town.
- **Seasonal Outdoor Dining** – Staff is working on administrative options to streamline the review process with the Board of Architectural Review.
- **Violations and Penalties** – Staff will review the current violations and penalties and related state code sections. If any changes are proposed after review, staff will return to Council for approval.
- **Windover Heights** – Staff will review the Windover Heights district with the Windover Heights Board of Review as part of the comprehensive plan update.

The following is a summary of the topics discussed that require “Policy discussion” and next steps:

- **Accessory Dwelling Units** – This topic will be included in the housing affordability and diversity discussion.
- **Board of Architectural Review** – The Council was not in favor of the review of the Board of Architectural Review structure or rules in Chapter 4 of the Town Code as recommended by members of the public and the zoning consultant.
- **Tree Canopy** – Proposed changes to tree canopy requirements are being addressed in the proposed tree ordinance currently under review by the Town Council.

The remainder of the “Policy discussion” items were left for further discussion at a future work session or meeting.

The attached table summarizes the items discussed in this memorandum. The green shading indicates the guidance provided by the Council regarding priority. The red text under the Staff Comments column are notes from the Council comments during the February 12, 2024, work session.

REF #	PRIORITY			Article	Section/ Figure	Topic	Suggested Code Amendments	Source of Suggestion	Staff Comments/ Notes from Council Meeting	STATUS
NEW	High Interest	Low Interest	Not in Favor			Windover Heights	Process for determining if sidewalks are required in Windover Heights historic district	Town Council	"No improvements the default" unless deemed necessary by DPW, recommended by PC or WHBR; meaningfully incorporate WHBR; Two pieces of code in conflict with each other now, regarding requiring sidewalks; could be two-step process - change default with input from WHBR and PC, second part worth discussing what the right answer is for public infrastructure over time in this area; stormwater mgmt issues; need resolved quickly (next 4-5 months); discussion with DPW and Town Attorney; Town Atty recommend separating issues, swm from sidewalks;	Policy decision
6	High Interest	Low Interest	Not in Favor	5A/5B		Buffers	"Increase buffer between non residential use and residential use to 20ft. Mandate Native Trees and Shrubs be used."	Public Comments	Policy decision that would require more discussion through work session(s) prior to approval process. Bring back table to discuss	Policy decision
7	High Interest	Low Interest	Not in Favor	2		Building Height	Increase maximum permitted heights in certain zones or districts.	Public Comments	Policy decision that would require more discussion through work session(s) prior to approval process.	Policy decision
8	High Interest	Low Interest	Not in Favor	2		Building Height	Reduce maximum permitted heights in Corporate Park (CP) or Mill District (M)	Public Comments	Policy decision that would require more discussion through work session(s) prior to approval process.	Policy decision
9	High Interest	Low Interest	Not in Favor	2	Sect 18-212.1	Building Height	Suggest flexibility regarding architectural features above the height maximum on buildings	Town Council	Policy discussion is needed. Clarification on what qualifies as a parapet or whether a decorative roof is allowed even if not screening equipment. Interested in formula that includes height variability.	Policy decision
29	High Interest	Low Interest	Not in Favor	2		Pergolas	Include "non-enclosed shade structures" as permitted architectural feature allowed to exceed building height	Public Comments	Policy decision that would require more discussion through work session(s) prior to approval process.	Policy decision
30	High Interest	Low Interest	Not in Favor	2		Pergolas	Allow "non-enclosed shade structures" to exceed building height only after BAR recommendation and Council approval	Public Comments	Policy decision that would require more discussion through work session(s) prior to approval process.	Policy decision

REF #	PRIORITY			Article	Section/ Figure	Topic	Suggested Code Amendments	Source of Suggestion	Staff Comments/ Notes from Council Meeting	STATUS
4	High Interest	Low Interest	Not in Favor	4B/5A/5B		Bicycle Parking	Revise Paragraph 4(C) to require a minimum of 7' of opening clearance for bicycle lockers (instead of the 5' that was adopted)	Planning Commission	Minor edit that could be made and brought forward for approval process without additional study.	Minor edit
5	High Interest	Low Interest	Not in Favor	8	Sect 18-173.15	Blighted property a nuisance	Bring back language that was not included in the new code, permitting the Town Council to declare a property as blighted.	Staff	Very early in the Code Create process, this language was not brought forward based on the understanding that the provision is an action of the building official (Fairfax County). However, it did remove a potential power of the Town Council. Minor edit that could be made and brought forward without additional study	Minor edit
12	High Interest	Low Interest	Not in Favor	4		Driveways	Require a five (5) foot minimum radius for driveways.	Planning Commission	Minor edit that could be made and brought forward for approval process without additional study.	Minor edit
13	High Interest	Low Interest	Not in Favor	2	Sect 18-220	Duplexes	Duplexes: Units per gross area is set at 20 per acre, which is much more than the 10 per acre allowed for townhouses and cottage houses. Should this be set to 10 per acre?	Town Council	Minor edit that could be made and brought forward for approval process without additional study. Staff recommends revising the Two-unit Attached development site from 10,000 sf to 8,000 sf min and the units per gross acre from 20 to 10.	Minor edit
17	High Interest	Low Interest	Not in Favor	8	Sect 18-854	Inoperative Motor Vehicles	The new language regarding inoperative motor vehicles is the same as Section 18-153.1 of the prior code and could use clarification.	ZoneCo	Staff agrees that the section is unclear and could use updating.	Minor edit
18	High Interest	Low Interest	Not in Favor	5B	Sect 18-561	Landscaping	Add required planting buffer table that was inadvertently left out.	Staff	Minor edit that could be made and brought forward for approval process without additional study.	Minor edit
23	High Interest	Low Interest	Not in Favor	4		Mechanical & Utility	Add standard as follows: "[m]echanical equipment located on the ground floor should be screened, whenever possible, with fencing, walls, mural wraps and/or landscaping. Such equipment shall not be permitted in Open Space required pursuant to this Article."	Planning Commission	Minor edit that could be made and brought forward for approval process without additional study.	Minor edit
16	High Interest	Low Interest	Not in Favor	2		Housing Affordability	Make changes to zoning to promote affordable housing	Public Comments	This topic is broad and could take many pathways. Research and work sessions would be appropriate for the Council to define goals, and then to develop policy. This effort could be combined with the Council's Housing Diversity priority. Fold into housing diversity discussion. Include Accessory dwelling units, multifamily requirements, etc for high level discussion. Proposed state legislature related to ADU	Research needed / Policy Decisions
19	High Interest	Low Interest	Not in Favor	4A/4B/5A/5B		Lighting	Revise lighting standards and consider engaging a lighting consultant	Planning Commission	Staff recommends working with an expert consultant on lighting to assist in developing lighting standards. Any revision will require work session(s) and and policy development. Collaboration with the Board of Architectural Review, which also seeks better guidance on lighting for its own work, may be useful.	Research needed
25	High Interest	Low Interest	Not in Favor	8	Sect 18-835(10)	Park Zone	What is the standard of review for a Park Zone application? The ordinance should state expressly what test is being applied.	ZoneCo	Requirement for site plan approval in Park zones was brought forward from Section 18-126.10 of the prior code. Staff work with Parks and Recreation, and a work session, may be needed.	Research needed / Policy decision

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26	High Interest	Low Interest	Not in Favor	5A/5B		Parking	Reevaluate parking standards and evaluate use of drive-throughs in different zones	Planning Commission	Policy decision that would require more discussion through work session(s) prior to approval process.	Research needed / Policy decision
27	High Interest	Low Interest	Not in Favor	5A		Parking	Parking standards for restaurants	Staff	Policy decision that would require more discussion through work session(s) prior to approval process. The current standard is 1 space per 4 seats. Required for both indoor and outdoor seating. Should it be based on square footage instead? Should outdoor seating continue to count towards parking?	Research needed / Policy decision
32	High Interest	Low Interest	Not in Favor	5A	Sect 18-538	Satellite antennae	Consider updating the standards for satellite antennae, as the language from this section is several decades old. The technology has likely changed and this language is generally ambiguous. Among other things, subsection 1(A) allows for one antenna per building under fourteen feet, but subsection 2(A) allows for one roof-mounted antenna per building under four feet.	ZoneCo and staff	This topic will require more information and conference session(s) prior to having text ready for public hearing. The Comprehensive Plan should have updated language, as well. Town Attorney proposed language, minor edit or roll into wireless discussion	Research needed/possibly minor edit
34	High Interest	Low Interest	Not in Favor	4A	Sect 18-402	Sidewalks	The Town's legal counsel should review the sidewalk dedication requirement, as this presents a potential constitutional issue. See <i>Knight v. Metro Gov't of Nashville & Davidson Cty.</i> , 67 F.4th 816 (6th Cir. 2023).	ZoneCo	The new adopted language was from the subdivisions section of the prior code (17-67.1) and was adopted in 2015. We have authority from state. Need to update comprehensive plan road types map.	Research needed
41	High Interest	Low Interest	Not in Favor	6	Sect 18-626	Subdivisions - Lot Shape Factor	Review lot shape factor standard to determine if it limits irregularly shaped lots as intended, or determine if there is a better option that the Town should adopt.	Planning Commission	The lot shape factor was created to provide a standard to limit irregularly shaped lots and lots referred to as "pipe stem" or "flag lots". Recent applications have brought into question how effective this metric is in achieving that goal. Staff recommends researching how this issue is addressed in other jurisdictions and bringing the matter to a work session for discussion. In place since 2008, a lot of research done, rarely an issue. Looked at many formulas, this is pretty common. Something making the frontage consistent may be more effective. Review options for creating more lot regularity in subdivisions. Closer to the street. Study overall regulations	Research needed
56	High Interest	Low Interest	Not in Favor	3		Uses	Potentially add use standards for Continuing Care Facilities and potentially work with Fairfax County's advisory board.	Town Council	Policy decision that would require more discussion through work session(s) prior to approval process.	Research Needed / Policy decision
57	High Interest	Low Interest	Not in Favor	3		Uses	Adopt standards for wireless facilities	Staff	This topic will require more information and conference session(s) prior to having text ready for public hearing. The Comprehensive Plan should have updated language, as well.	Research needed

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58	High Interest	Low Interest	Not in Favor	3		Uses	Seasonal Outdoor Dining - Staff has heard from businesses that the process is onerous.	Staff	Staff from Planning and Zoning and Economic Development recommend researching how seasonal outdoor dining has been addressed in other jurisdictions and working with the Board of Architectural Review to develop uniform design guidelines for outdoor dining to simplify and clarify the process for businesses. This topic will require future work session(s) prior to approval process. Staff working on administrative options. Streamline without taking advantage. Return to Council with update.	Research Needed / Policy decision
59	High Interest	Low Interest	Not in Favor	8		Violations and Penalties	Review and potentially revise fines for penalties.	Planning Commission	Policy decision that would require more discussion through work session(s) prior to approval process.	Research needed
60	High Interest	Low Interest	Not in Favor	8	Sect 18-839(3)	WHBR	The standard of review for the Windover Heights Board of Review Certificate of Appropriateness is ambiguous. Are all the factors given equal weight? Is any one factor dispositive or required? What is the overall test to which these factors weigh?	ZoneCo	Language in new code was brought forward from prior code with no changes. Would require discussions with WHBR and Town Attorney. There were more specific guidelines in the past. Neighborhood not in favor of those guidelines. Recommend board members look into at their level rather than ordinance level. Could come up with standards for public improvements in this area rather than Council review each time.	Research needed
1	High Interest	Low Interest	Not in Favor	2		ADUs	Allow Accessory Dwelling Units	Public Comments	This topic was part of discussions early in the Code Create process. The Council opted to defer this discussion until after the code update was adopted. This topic will require research, follow-up work session(s) and policy development prior to development of a draft for public hearings. This effort could also be combined with the new Council priority on Housing Diversity. Combine with housing diversity discussion.	Policy decision
2	High Interest	Low Interest	Not in Favor	Chapter 4		BAR	Changes to Board of Architectural Review (BAR) Structure and Rules	Public Comments	This request came as one testimony submission during the Code Create public hearing. It is not part of the zoning or subdivision code and was not part of the review. It would require policy discussion and decision from Council.	Policy decision
3	High Interest	Low Interest	Not in Favor	8	Sect 18-821(2)	BAR	Consider updating the criteria in Section 4-15 for the issuance of Board of Architectural Review (BAR) Certificates of Approval, so as to be more specific about which standards applies for which application types.	ZoneCo	Chapter 4, which establishes and defines the BAR, was not included in the Code Create update. Any amendments to Chapter 4 would require development of proposed changes and a public hearing.	Policy decision
43	High Interest	Low Interest	Not in Favor			Trees	Change tree canopy requirements	Public Comments	Being addressed currently as a separate ordinance.	Policy decision