



**ARLINGTON COUNTY, VIRGINIA**  
ARLINGTON COUNTY PLANNING COMMISSION

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CLERK

January 20, 2015

Arlington County Board  
2100 Clarendon Boulevard  
Suite 300  
Arlington, Virginia 22201

**SUBJECT:**            5.    **Request to Advertise (RTA)** amendments to the Arlington County Zoning Ordinance, Articles 1-18 and Appendices A and B, to incorporate a use classification system; update use tables and definitions; update use standards, including new standards for short term uses and accessory uses; and incorporate other minor updates throughout the Ordinance to codify administrative practices, increase clarity and consistency, and correct errors.

**RECOMMENDATION:**    **Adopt the attached resolution to authorize advertisement of public hearings by the Planning Commission on February 9, 2015 and the County Board on February 21, 2015, to consider proposed amendments to the Arlington County Zoning Ordinance, Articles 1-18 and Appendices A and B, to incorporate a use classification system; update use tables and definitions; update use standards, including new standards for short term uses and accessory uses; and incorporate other minor updates throughout the Ordinance to codify administrative practices, increase clarity and consistency, and correct errors with the following amendments:**

- 1) **Section 12.10.8 Storage pods [subsequently changed to 12.10.7 Portable storage devices] be clarified to reflect that there is no time limit when a storage pod is within the allowable buildable setbacks.**
- 2) **Change the 90 day limit on storage pods up to five feet from the property line to 180 days.**

Dear County Board Members:

The Planning Commission heard these items at its January 14, 2015 public hearing. Deborah Albert, CPHD gave a presentation on the background of the Zoning Ordinance update, community outreach, and proposed changes to the Zoning Ordinance. Arlova Vonhm, CPHD was also present.

### **Public Speakers**

Robert Mandle, COO, Crystal City Business Improvement District (CC BID) said that a zoning determination providing in essence a flexible overlay district has been successful in allowing flexibility, creativity, and innovation in placemaking, banner installations, temporary art installations and many other dynamic and bold initiatives. However, historic commercial vacancy rates have slowed progress, particularly in the context of private redevelopment. Uncertainty in planned public infrastructure investments has also not helped. To the County's credit, many existing regulatory policies are being revisited to seek out ways to address Arlington's challenges. The CC BID needs policies to encourage innovation and creativity flexibility in a way that facilitates the economic competitiveness of this vital business district. He used the example of the recent signage overhaul that missed an opportunity to bring forward revisions to properties under comprehensive sign plans. It also didn't address newly emerging promotional strategies called "creative expressive marketing" which is not only a temporary way to promote the incredible companies located in Arlington, but also encourage retention of those companies. A recent promotion of the premiere of Downton Abbey on PBS via a four-story banner on the side of a building was successful and yielded invaluable press for Crystal City and Arlington as home to a nationally recognized institution. The County's response to this successful promotional effort was a signage violation citation. Similarly, the proposed Retail Plan inhibits creativity and flexibility by prescribing what types of retail can be located where, making it more difficult to achieve the plan's underlying vision of facilitating successful retail streets. The proposed short-term use standards compromise the goal of promoting temporary uses as a placemaking tool by embracing overly burdensome regulations. If these policies were already in place, the very successful Art Underground program which utilizes long vacant retail spaces as gallery and artist studio spaces would likely not have ever launched. He expressed that the overlay approach does not burden property owners, has already proven to be successful, and ensures creativity and flexibility which would go a long way toward enhancing Arlington's economic competitiveness for years to come.

### **Planning Commission Committee Reports**

Commissioner Iacomini noted that the Zoning Committee (ZOCO) report had been distributed and suggested topics for discussion. She drew attention to the use classification system, specifically asking for thoughts on whether the retail uses listed are helpful when new uses are proposed or are responsive to new commercial environments. For short-term use standards, she noted the ZOCO discussion about construction equipment being permitted in R setbacks, and storage units in single-family areas. The proposed allowed period for Pop-up parks has been reduced to one year from three years and there remains a question of whether there should or could be more public notice sent to civic associations about permissions granted for pop-up parks. Commissioner Iacomini reminded her colleagues this is an RTA. If there remain issues with some proposed language, the Commission would want to make sure staff prepares the wording of the RTA to allow discussion of these issues during the advertisement period.

Commissioner Forinash asked if the comments about how the new use classification system attempts to streamline the process for short-term uses and marketing activities was discussed at ZOCO. Commissioner Iacomini responded that it was, but not in the same way it was presented this evening during staff's comments when it was noted that the new retail plan did not need to be considered at the same time as the proposed Zoning Code changes currently before the Commission.

### **Planning Commission Discussion**

Commissioner Gutshall asked how the short term use standards or classifications were related to signage. Ms. Albert responded that the proposed amendments are not related to sign regulations and there is only one small change to Article 13 to extend institutional sign provisions to all public civic and institutional uses, as defined by the proposed use classification system.

Commissioner Siegel asked if staff was aware of the concerns of the CC BID. Ms. Albert responded staff is aware of those concerns and there was a specific focus group discussion with all of the BIDs and partnerships. Staff heard in the meeting that the CC BID wanted total flexibility to do anything they want. They also want interim uses for a longer time frame. Interim uses (longer term uses) may be requested on site plan properties through site plan amendments. The proposed Zoning Ordinance amendments would allow short term uses to be approved by the Zoning Administrator (ZA).

Ms. Albert said staff is aware that the CC BID has a special "overlay district" that was issued by the ZA as an administrative change that covers the entire boundary of the CC BID. It is a stop-gap measure because of difficulty approving these uses. The County wants to allow short term activities, but is not comfortable extending the "overlay" approach, and is looking for something applicable to more than just the CC BID or even all the BIDs. While it has worked well in the interim for Crystal City, staff does not view it as a long term solution. The proposed amendments are intended to be more broadly applicable.

Commissioner Siegel understands that staff's purview is the entire County but if Crystal City has experienced success with the overlay on a temporary basis, and asked why it cannot be expanded and whether it would create problems or conflicts with the general project on temporary uses and signs. Ms. Albert responded that the County does not see it as a permanent solution. The County has no intention of doing it again. The proposed provisions could be made more flexible or we could create an overlay in the Zoning Ordinance, but staff is trying to do something that would be more broadly applicable. The CC BID and Rosslyn BID have certain standing, but for example the Clarendon Business Alliance or Columbia Pike Revitalization Organization have different partnerships where the authority and boundaries may not be as clear.

Commissioner Siegel asked if staff does have a solution that is not in conflict with the initiatives of the CC BID. Ms. Albert responded the solution is the proposed Section 12.10 (short term uses) of the amendments being proposed and staff does not believe it is in conflict with the CC BID.

Commissioner Forinash asked what would happen to that administrative change for the CC BID "overlay district" if the proposed amendments were adopted. Ms. Albert said she did not know.

Commissioner Ciotti asked if we have enough rules to prevent chaos but still provide enough flexibility so that Arlington does not discourage people who are coming in with new ideas that we haven't considered yet because the County needs a one size fits all regulatory process.

Ms. Albert responded that the proposed use classification is expressly designed to allow greater flexibility to the types of uses by listing characteristics rather than a series of specific uses. This will allow the ZA to look at the characteristics of the use that is being proposed, allow flexibility in fitting uses into different categories, and allow hybrid uses that might fit into multiple categories and therefore be appropriately interpreted through similar use interpretation to fit into more than one envelope.

Commissioner Ciotti expressed concern that the underground art scene may not have happened with more constraining obligations for permitting. Staff responded that in terms of a short-term use versus a permanent use, the short-term use provision is designed to allow more flexibility with site plan properties. For example if you want to do an art show in a by-right building for three days there's nothing to stop you from going to the ZA if it is a use allowed in the zoning district and getting a Certificate of Occupancy. The short term use process is designed to give more flexibility whereas through the legislative process we have limited the uses allowed on that property through site plan conditions. If a site plan is approved for office, for example, the ZA doesn't have the authority to allow anything else.

Commissioner Ciotti responded that it is discouraging that the CC BID received a citation for their PBS display and it seems like the County is missing the boat. Ms. Albert responded there is nothing in these provisions related to sign regulations.

Commissioner Sockwell asked how non-seasonal retail uses such as magazines stands or a flower kiosk would work in terms of the use classification scheme for short term uses. Ms. Albert said seasonal is not used in the ordinance and stands are not required to be seasonal. They get up to 90 days per year just like any use. If it is a year round use, the County has provisions for kiosks that are specific, and she was unsure whether or not the Ordinance allows for such use year round outside of a kiosk use.

Commissioner Ciotti asked about the guy who pops up selling umbrellas or selling flowers at the top of the escalator. Ms. Albert said technically they are not allowed right now. Or it is possible they may be regulated under another County Ordinance.

Commissioner Gutshall asked if this applies to Girl Scout cookies in front of a grocery store or Metro. Ms. Albert responded there are provisions to allow established retail to have outdoor sales a certain number of times per year. Ms. Albert responded the Girl Scouts would have to get Metro's permission to sell at Metro, and she is not sure how such use would be regulated by Zoning, although there could possibly be a provision under vending regulations.

Commissioner Gutshall asked if the way that staff is reclassifying creates a greater burden on code enforcement. Ms. Albert responded the use classification system is really not related to the standards for short terms uses currently or in the future and doesn't change our policies with regard to enforcement.

Commissioner Siegel said that in staff's view, the short-term use standards do not prohibit the kinds of activities that the CC BID wants to do and has been able to do under the overlay. Ms. Albert responded that the proposal is significantly based on input from the CC BID about the types of uses that they want to do but it will not be as flexible as a blanket "overlay" that says they can do short-term uses anytime they want. It is less flexible than what they have now, but it extends those privileges to other BIDs and partnerships in other areas. Commissioner Siegel asked what privileges. Ms. Albert responded for example using vacant space in buildings for short-term uses to other areas.

Commissioner Cole asked for discussion of the scope issue in terms of amendments that would be disallowed after advertisement compared to amendments allowed now. Ms. Albert responded that tweaks would be okay but something completely different or a different approach would not be within scope. Generally, the scope of advertisement is defined by the difference between what is allowed now and what is proposed.

Commissioner Siegel was concerned that she does not fully understand the particular details where the CC BID feels the proposed short term rules will be too restrictive.

Mr. Mandle responded that he was expanding on the bigger picture. The overlay can be used to solve other economic competitiveness problems in Crystal City. It may not prohibit uses, but it does make it harder. If minor site plan amendments were required for five vacant retail spaces, the Art Underground would likely not have happened.

Commissioner Forinash responded that his understanding is that they wouldn't need site plan amendments but rather short term use permits. Ms. Albert concurred and said they would apply for a permit for short-term use for 90 days at a time, and this could be approved by the Zoning Administrator.

Commissioner Cole asked how the conversion of residences to hotels would impact someone who wants to convert their house to a Bed & Breakfast. Ms. Albert responded that Bed & Breakfasts are allowed subject to use permit approval and the Ordinance already includes specific standards that would apply. Bed & Breakfasts are a different use than hotels.

Commissioner Cole asked if fire stations in C districts are a new provision and if there is a related history. Ms. Albert responded there is not a lot of history, but that generally public facilities are included in the Zoning Ordinance in long lists of uses which are inconsistent (e.g. sometimes listing fire stations, libraries and art galleries, other times listing libraries and fire stations, etc.). Staff concluded that it is intended to allow public facilities, such as fire stations in all commercial/mixed use districts. In some places where they are already allowed, they are allowed by-right. Where they are proposed to be added, they are proposed to require a use permit.

Commissioner Cole referred to a discussion at ZOCO involving used car lots and the likelihood that many used car lots in Arlington are used as storage lots. This provision allows a unique opportunity to address this issue by establishing a use standard for vehicle sales and services. To require something that has a use permit for vehicle sales and service to actually do what the use permit is for makes sense, and it is possible to establish an absurdly low use requirement so that a used car lot

would have to sell a vehicle once or twice a year. Ms. Albert responded that if this is an issue it could be addressed by enforcement since there are definitions for vehicle sales rental and leasing facilities and for vehicle storage lots. If your Certificate of Occupancy is for one of those uses, it is expected that that is what you are doing. Staff does not feel a use standard is needed for every use. Commissioner Cole responded that typically the way the ordinance is enforced is by complaint. This is a circumstance where there is not a bothersome activity going on per se but it is bothersome in a passive way. There is a way to track it if there are taxes that reach down to the County. If we are not getting any of the taxes we ought to be able to track that outside of the complaint system. Ms. Albert responded that whether or not there was a use standard would not change the enforcement. Commissioner Cole responded only to the extent that there would be a metric if there were a use standard requiring sales of a certain number of cars.

Commissioner Cole learned that although he owns two abutting lots and thought he could construct a garage on the vacant lot to serve his house, he was told he cannot do that because a garage is an accessory use and allowed only as accessory to a principal use, and the vacant lot has no principal use on it, which seems to be arbitrary and restrictive. Ms. Albert responded it is not arbitrary, and is a standard for accessory uses throughout the country and is the County's current practice although it is not codified in the zoning ordinance. However, the issue is something that could potentially be addressed through a request for a buildability letter, which the Zoning Administrator would consider in this type of situation.

Commissioner Cole asked when the Crystal City "overlay" was implemented. Mr. Mandle responded approximately two years ago. Commissioner Cole asked staff if there was interest in codifying this in order to protect the CC BID and extend the privileges elsewhere. Ms. Albert responded the ordinance is taking this idea and making it applicable County-wide through use standards instead of an overlay district that is limited to certain geographic areas. Commissioner Cole asked if the overlay district would continue to exist. Ms. Albert responded it was an administrative change that specifically identified a geographic area. It is not on the zoning map and is not a rezoning. The ZA approved a blanket administrative change for all buildings within a specific boundary to allow the type of short term uses we are proposing to codify, such as craft fairs, fashion shows and similar uses. There are other uses that the CC BID would have liked to have done that are not covered by that administrative change which includes some outdoor activities and temporary structures. However, it is correct that the proposed standards certainly do not accommodate all of the uses the CC BID would like. In some ways this proposal will take away flexibility but in other ways it will add flexibility. Commissioner Cole asked if administrative rulings go away or are they regularly reviewed. Ms. Albert responded that she will find out.

Commissioner Cole said he understood it is a coincidence that this zoning ordinance update is moving at the same time as the Retail Action Plan and asked how retail is affected by what is happening with the use classification and how it changes current practice. Ms. Albert responded it will give a clearer understanding of what are retail sales or personal service. For by-right uses and uses that can be considered under site plan, it will codify current practice, but will not change policy. It is in site plan conditions where distinctions in types of uses are made, and the clarity in the Zoning Ordinance will give us an opportunity to create more transparency and clarity in those site plan conditions. It does not impact our existing practice.

Commissioner Cole said it complements the proposed Retail Plan policy of defining streets in different categories. Ms. Albert said staff has worked with Arlington Economic Development (AED) to make sure the terminology and documents complement each other as well as complements the existing retail plan, but the Zoning Ordinance provides additional clarity on current practice rather than implementing policy proposed initially in that plan.

Commissioner Gutshall asked staff if there were any data available on the number of complaints against storage pods by residents.

Ms. Albert responded there are no hard data. Zoning inspectors said they have had complaints and DES often gets a lot of questions about pods placed in the ROW because ROW permits can get expensive and they allow 30 days with no extensions. DES staff often provide feedback to residents that there are other options for storage and suggest to people that they may proceed putting a storage pod on private property, for which they indicate that pods must meet setbacks, and the applicant should discuss with Zoning. There are currently a lot of people interested in the rules but staff does not have hard data about complaints.

Commissioner Gutshall asked if staff is clarifying something that is longstanding practice. Ms. Albert responded that the proposed ordinance provides additional flexibility by allowing storage pods within 5 feet of any lot line rather than current setbacks. Storage pods are 8.5 in height and up to 18 feet long, and staff believes that is reasonable given the neighbor would have to live with it for up to 90 days. There is no time limit if it is placed within the buildable area of the property and staff can clarify that language if it is not clear. Commissioner Gutshall said the proposal here is not more restrictive in any way and creates flexibility and his issue is how aware are people of this requirement and the larger question of how zoning and zoning enforcement interacts with the community. This is a missed opportunity to make something more helpful and more than 90 days would be reasonable since most people do not mind if the neighbor had a pod in their driveway.

Commissioner Iacomini asked how staff would know when the 90 days is expired if there is no permit required for the storage devices. Ms. Albert said she does not anticipate Zoning Enforcement will be out searching for storage units, but if there was a complaint there would have to be some documentation. Commissioner Iacomini said if a neighbor complains about a storage unit that is within the required setback for four months the inspector would go out and say to the owner of the unit when did you put it there? The owner says 3 months and the neighbor says 4 months. Ms. Albert indicated she would follow-up with Zoning Enforcement about how this would be handled. Commissioner Iacomini indicated she is all for allowing something that is more flexible but if you're going to do something and put limits on it, then there should be an enforcement mechanism.

Commissioner Cole asked if it is possible to put a storage pod on an abutting vacant lot if it is within the setback limits. Ms. Albert responded Zoning would have more information on that situation. Commissioner Cole asked if you can park a car in the storage pod. Ms. Albert said parking is generally an accessory use and therefore could not be regularly parked on a vacant lot. The text clarifies that the intent of the proposed standards is that portable storage devices are allowed for storage of household goods as opposed to storage of something like construction equipment (or other goods).

Commissioner Gutshall asked about the definition of guest houses and kitchen facilities. Ms. Albert said in Section 12.9.10 guesthouses are an existing provision in the zoning ordinance that has been moved into the accessory use standard. The existing standard is that guest houses may be used for temporary guests of the occupants of the premises and shall not have kitchen facilities and cannot be rented or otherwise used as a separate dwelling. There is no definition for kitchen facilities but there is a longstanding zoning interpretation. Commissioner Gutshall asked if kitchen facilities are part of the effort to codify practices. Ms. Albert said that it was explicitly excluded from the scope because one of the criteria for the update were things that were going to be controversial or require extensive policy discussions were not going to be included. Commissioner Gutshall asked about the intent of adding introductory text which says guest houses are permitted only when accessory to one-family detached dwellings and meeting the following standards. Ms. Albert responded the intent was to clarify that it is single-family and not two-family or multi-family. Staff tried to clarify by moving the provision within the Ordinance, but the practice has not changed. Commissioner Gutshall asked if temporary guest is defined and if not was that also on the list of too hot to touch. Ms. Albert said it is not defined and has not come up and so is not on a list.

Commissioner Siegel stated that individual short term events would be allowed up to 90 days per year and any combo of consecutive days up to the 90 day limit. The language does not specify renewable and it is 90 days within a 1 year period and asked if any consideration of something renewable would be outside the scope of the RTA. Ms. Albert responded there are two other ways something could be allowed. If the use is already allowed under the site plan or it is a by-right property, they are not subject to the 90 day limit. In that case, it could be approved administratively. If the desire is for a different use for longer than 90 days on a site plan property that is specifically approved for something else, the applicant could request a site plan amendment be considered by the County Board. A site plan is something that went through an extensive public process that was then approved by the County Board for specific uses. The 90 days is a time frame staff thought would balance the ability to allow some short term events without jeopardizing a legislative approval that the County Board made, and the associated expectations that the community has for use of that property. In response to Commissioner Siegel's question, Ms. Albert indicated that if a longer timeframe were desired for the proposed administrative approval or short term use, it would have to be advertised as such. If a shorter time frame (e.g. 45 days) were desired, it would likely be within scope of the advertisement as proposed.

### **Planning Commission Motion**

Commissioner Iacomini made a motion that the Planning Commission recommend that the County Board adopt the resolution attached to the draft staff report dated January 7, 2015 to authorize advertisement of public hearings by the Planning Commission on February 9, 2015 and the County Board on February 21, 2015, to consider proposed amendments to the Arlington County Zoning Ordinance, Articles 1-18 and appendices A and B, to incorporate a use classification system; update use tables and definitions; update use standards, including new standards for short term uses and accessory uses; and incorporate other minor updates throughout the Ordinance to codify administrative practices, increase clarity and consistency, and correct errors. Commissioner Cole seconded the motion.

Commissioner Cole sought unanimous consent to amend the main motion to recommend to the County Board that it amend the staff proposal to add to it a use standard for vehicle sales and service that would require the sale of two vehicles per calendar year to qualify for a permit for vehicle sales lot. Commissioner Forinash objected.

Commissioner Cole moved to amend the main motion to recommend to the County Board that it amend the staff proposal to add to it a use standard for vehicle sales and service that would require the sale of two vehicles per calendar year to qualify for a permit for vehicle sales lot. Commissioner Gutshall seconded the motion.

Commissioner Iacomini stated that to require a specific type of business to prove sales when we do not require such information from other businesses seems discriminatory. She noted she is not a fan of used car lots, but requiring sales information would seem to put the County on a slippery slope that leads could lead into a quagmire.

Commissioner Ciotti stated she does not support the motion because it would require a lot further dialog and study and is unwilling to consider it in the context of the proposed updates.

Commissioner Forinash stated a concern that used car lots would simply manipulate the system to show sales where there are no sales and it would have no effect but is pleased it will show up in the letter to the Board and perhaps addressed through some other mechanism.

The Planning Commission voted against the motion 3-5 with Commissioners Cole, Brown, and Commissioners Sockwell in support and Commissioner Ciotti, Forinash, Gutshall, Iacomini, and Siegel against.

Commissioner Gutshall moved that the Planning Commission recommend to the County Board that Section 12.10.8 Storage pods be clarified to reflect that there is no time limit when a storage pod is within the allowable buildable setbacks. Commissioner Sockwell seconded the motion.

Commissioner Forinash asked if the motion was seeking clarification that storage pods within buildable part of the lots storage pods can essentially be permanently placed and it does not address storage pods within the five foot setback.

Commissioner Gutshall responded he is not referring to storage pods within the five foot setback and is simply seeking clarification.

Commissioner Siegel asked Commissioner Gutshall to read the zoning ordinance definition. Commissioner Gutshall read, "Storage pods of a maximum of eight feet in height and width and 18 feet in length for storage of household or other goods are permitted in R districts for up to 90 consecutive days one time per year subject to the following standard: storage pods should be placed no closer than 5 feet to any lot line and no permit for short term use shall be required." He added the definition says for up to 90 consecutive days but does not clarify that if you are not outside of your required setback but within five feet then the 90 days applies. The amendment is for staff to revise this to clarify that there is no time limit for a pod within the buildable area of the property. For example if we are talking about a side yard and the required setback is eight feet, if you are inside of eight feet then there should be no time limit because you are within your setback. Under the short term use provisions, you can be up to five feet and then the 90 day rule would kick in. The motion will go in our letter with the expectation that staff will clarify this by the time it gets to the Board.

Commissioner Ciotti asked if that is the right way to address this or should it have been done earlier as a question. Commissioner Gutshall responded that he tried to state the motion in an affirmative way so that this section is clear. He thought it was important in the motion because sometimes these things fall through the cracks.

The Planning Commission voted 7-1 to amend the main motion with Commissioners Brown, Cole, Forinash, Gutshall, Iacomini, Sockwell, and Siegel in support and Commissioner Ciotti opposed

Commissioner Forinash moved that the Planning Commission recommend that the County Board change the 90 day limit on storage pods up to five feet from the property line to 180 days. Commissioner Cole seconded the motion.

Commissioner Forinash explained that extend the RTA to 180 days gives the Board room to make a decision about the appropriate time limit.

The Planning Commission voted to support the motion 7-1 with Commissioners Brown, Cole, Forinash, Gutshall, Iacomini, Sockwell, and Siegel in support and Commissioner Ciotti opposed.

Commissioner Gutshall wanted to state publicly for the record that this update reflects a huge amount of work and sometimes his questions make it seem that he is less than satisfied with the effort but he believes we are all striving to make things even better so I appreciate all the work. His concern in general is that we have reached a point in this County that there's a bit of tone deafness in terms of what residents are looking for in ways of balancing protections versus allowing people to do things which are common sense. If we ever get to the conversation on the pods it would be illustrative or in terms of the nature of the comments from the BID and they have great success yet they are hit with a citation. That story plays out in low profile ways across the County and it builds resentment and mistrust of our government and it is corrosive. It is a symbol of where we are in the County right now. Whether it is growing pains or if it is a level of where we haven't caught up organizationally to where we should be in being responsive to the residents who are the County's customers, I don't know. But I hope we have the opportunity to explore further this year.

The Planning Commission voted to 8-0 to support the main motion with Commissioners Brown, Ciotti, Cole, Forinash, Gutshall, Iacomini, Siegel, and Sockwell in support.

Respectfully Submitted,  
Arlington County Planning Commission

A handwritten signature in black ink, appearing to read "Chris Forinash", written in a cursive style.

Christopher Forinash  
Planning Commission Chair