



**PUBLIC NOTICE
WILLIAMSBURG CITY COUNCIL**

The Williamsburg City Council will hold a public hearing on Thursday, June 9, 2011, 2:00 p.m. in the Stryker Building, 412 North Boundary Street, to consider the following:

PCR #11-009, -010, -011: Zoning Ordinance Housekeeping Amendments [amend Group Home definition (Sec. 21-2); amend provisions pertaining to civil penalties for zoning violations, Zoning Administrator's notices and Board of Zoning Appeals procedures (Secs. 21-29, 21-98, 21-99 and 21-101); and add provisions to allow temporary health care structures as accessory buildings in all single-family zoning districts (Sec. 21-603 and 21-620)].

Additional information is available at www.williamsburgva.gov/Index.aspx?page=483 or at the Planning Department [(757) 220-6130], 401 Lafayette Street. Interested citizens are invited to attend this hearing and present their comments to the Council.

If you are disabled and need accommodation in order to participate in the public hearing, please call the City Manager's office at (757) 220-6100, (TTY) 220-6108, no later than 12:00 noon, Thursday, June 2, 2011.

Donna F. Scott
City Council Clerk



CITY OF WILLIAMSBURG
MEMORANDUM

DATE: May 19, 2011

SUBJECT: Zoning Ordinance Housekeeping Amendments

Three Zoning Ordinance text amendments are proposed to incorporate changes to the State Code that govern the City's Zoning Ordinance. These are mandatory changes that must be made to bring the Zoning Ordinance into agreement with the State Code.

PCR #11-009 – Amend definition of Group Home (Sec. 21-2)

This changed adds “not more than eight aged, infirm or disabled persons together with one or more resident counselors or other staff persons” to the definition of a Group Home.

PCR #11-010 – Amend provisions pertaining to civil penalties for zoning violations, Zoning Administrator's notices and Board of Zoning Appeals procedures (Secs. 21-29, 21-98, 21-99 and 21-101)

These changes apply to cases appealed to the Board of Zoning Appeals: no civil penalty shall accrue during the 30 day appeals period; the Zoning Administrator's notice shall include a statement of the applicable appeal fee and a reference to where additional information regarding the filing of an appeal may be found; the fee shall not exceed the costs of advertising the appeal and reasonable costs; and the Board of Zoning Appeals shall not be a party to the proceedings in a judicial review.

PCR #11-010 – Add provisions to allow temporary health care structures as accessory buildings in all single-family zoning districts (Sec. 21-603 and 21-620)

This change allows temporary health care structures in all single-family zoning districts. These are structures for use by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by the caregiver as the caregiver's residence. Only one such structure is allowed on any lot or parcel of land. The structure must be removed within 30 days from the date that the mentally or physically impaired person is no longer in need of the assistance provided for in this section.

STAFF RECOMMENDATION

Staff recommended that Planning Commission recommend to City Council approval of the text amendments for PCR #11-009, #11-010 and #11-011, as detailed in the attached ordinances.

PCR #11-009, -010, -011

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PLANNING COMMISSION RECOMMENDATION

Planning Commission held a public hearing on these text amendments on May 18. No one spoke at the public hearing. Planning Commission recommended, by a vote of 6-0, that City Council approve the text amendments for PCR #11-009, #11-010 and #11-011, as detailed in the attached ordinances.

CITY COUNCIL PUBLIC HEARING

The City Council public hearing is scheduled for June 9 at 2:00 p.m. in the Council Chamber at the Stryker Building, 412 North Boundary Street.



Reed T. Nester, AICP
Planning Director

ORDINANCE #11-__
PROPOSED ORDINANCE #11-__

**AN ORDINANCE AMENDING CHAPTER 21, ZONING, ARTICLE I, IN
GENERAL, SECTION 21-2 DEFINITIONS PERTAINING TO THE
DEFINITION OF “GROUP HOME”
(PCR #11-009)**

WHEREAS, Section 21-2 of Article I, Chapter 21 of the Williamsburg Code sets forth various definitions applicable to the remainder of said Chapter; and

WHEREAS, as required by Sec. 15.2-2291 A of the Virginia Code as in force on the date of adoption thereof, subparagraph (5) under “Dwelling” defines “Group Home” as “group homes or other residential facilities licensed by the department of mental health, mental retardation and substance abuse services occupied by not more than eight mentally ill, mentally retarded or developmentally disabled persons together with one or more resident counselors or other staff persons. Mental illness and developmental disability do not include current illegal use of or addiction to a controlled substance as defined in Code of Virginia, § 54.1-3401. For purposes of single-family residential occupancy, a group home shall be deemed to be a family”; and

WHEREAS, Subparagraph B of Virginia Code Sec. 15.2-2291 has now been amended to require that certain assisted living facilities in which aged, infirm or disabled persons reside be classified as single family residences; and

WHEREAS, pursuant to the Dillon Rule as in effect in the Commonwealth of Virginia, it is necessary to amend the Williamsburg Zoning Ordinance accordingly;

NOW, THEREFORE, BE IT ORDAINED, that sub-paragraph (5) under the definition of “Dwelling” that appears in Section 21-2 of Article I, Chapter 21 of the Williamsburg Code is hereby AMENDED to read:

- (5) *Group Home* means group homes or other residential facilities licensed by the department of mental health, mental retardation and substance abuse services occupied by:
- a. not more than eight mentally ill, mentally retarded or developmentally disabled persons together with one or more resident counselors or other staff persons. Mental illness and developmental disability do not include current illegal use of or addiction to a controlled substance as defined in Code of Virginia, § 54.1-3401; or by.
 - b. not more than eight aged, infirm or disabled persons together with one or more resident counselors or other staff persons.

For purposes of single-family residential occupancy, a group home shall be deemed to be a family.

This ordinance shall become effective on the tenth day following its passage.

Adopted: _____

Clyde A. Haulman, Mayor

Donna Scott, City Council Clerk

ORDINANCE #11-__
PROPOSED ORDINANCE #11-__

**AN ORDINANCE AMENDING CHAPTER 21, ZONING, ARTICLE II
ADMINISTRATION, SECS. 21-29, 21-98, 21-99 and 21-101,
PERTAINING TO CIVIL PENALTIES FOR ZONING VIOLATIONS;
ZONING ADMINISTRATOR'S NOTICES AND BOARD OF ZONING
APPEALS PROCEDURES
(PCR #11-010)**

WHEREAS, the Virginia General Assembly by House Bill 1063 amended certain provisions of Virginia Code Sections 15.2-2311 and 2314 pertaining to the content of certain notices to be given by zoning administrators and Board of Zoning Appeals procedures; and

WHEREAS, under the Dillion Rule as in force in the Commonwealth of Virginia pertinent provisions of the City's zoning laws must be amended accordingly;

NOW, THEREFORE, BE IT ORDAINED, Section 21-29 of Division 1, and 21-98, 21-99 and 21-101 of Division 5, Article II of Chapter 21 of The Williamsburg Code are hereby AMENDED as follows:

Sec. 21-29. Violation and penalty.

(a) All city officials and employees who are vested with duty or authority to issue permits or licenses shall adhere to the provisions of this chapter. They shall issue permits for uses, buildings or purposes only when they comply with the provisions of this chapter. Any permit or license issued in conflict with the provisions of this chapter shall be null and void.

(b) The following persons shall be jointly and severally liable for any violation of this chapter that causes, permits a violation of the zoning ordinance, or fails to abate such violation after notice of such violation has been given to such person within the time frame specified in such notice:

- (1) Any owner who holds fee simple title to such real property, whether as sole owner or co-owner thereof; and whether such co-ownership is as a tenant by the entireties, joint tenant or tenant in common, and also including any trustee that holds title to real property, excluding, however, a trustee under any deed of trust on the property
- (2) Any tenant occupies the property, whether or not for compensation
- (3) Any person who is in charge of one or more of the development, maintenance, occupancy or use of the property.

The city may proceed against any one or more of said persons for violation of this chapter, and each person proceeded against shall be punished by assessment of a civil penalty of \$200.00 of the initial summons and \$500.00 for each additional summons.

- (1) Each day during which the violation is found to exist shall constitute a separate offense; however, in no event shall penalties for specified violations arising from the same operative set of facts be charged more frequently than once in any ten-day period, nor shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000.00. No civil penalty shall accrue or be assessed during the pendency of the 30 day appeal period provided for under sec. 21-98 of this code.
- (2) Each violation shall be subject only to the civil penalty set forth unless such violation results in injury to one or more persons, in which case the violation may, at the option of the zoning administrator, be prosecuted as a class 4 misdemeanor. In the event of such election, no civil penalty shall be assessed as to such violation.
- (3) If a person charged with a violation does not elect to enter a waiver of trial as hereinafter provided, the violation shall be tried in the general district court for the city and the County of James City in the same manner and with the same right of appeal as provided by law.
- (4) Any person subject to civil penalty and summoned for a violation may appear in person or in writing by mail to the department of finance prior to the date fixed for trial in court. Such person may enter a waiver of trial, admit liability and pay the civil penalty assessed hereunder. Such persons shall be informed of their right to stand trial and that such person's signature to an admission of liability will have the same force and effect as a judgment in court.
- (5) An admission or finding of liability shall not be a criminal conviction for any purpose.

(c) In addition to pursuing the penalties provided in section 21-29(b) above, the zoning administrator may bring additional legal action to ensure compliance with this chapter, including injunction, abatement or other appropriate action or proceeding.

(d) For purposes of this chapter, owner means the person or entity shown on the city's current real estate assessment records or the fee simple title holder(s) of the property if ownership has changed since such tax assessment records were last updated; tenant means any person, other than the owner, who resides at or otherwise occupies the subject property, with or without a valid lease and whether or not compensation is paid for said residence or not.

Sec. 21-98. Appeal to the board of zoning appeals.

(a) An appeal to the board may be taken by any person aggrieved or by an officer, department, board or bureau of the city affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter or any ordinance adopted pursuant thereto. Any written notice of a zoning violation or a written order of the zoning administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. Such notice shall also include a statement of the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs.

(b) An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

(c) In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.

Sec. 21-99. Procedure on appeal.

(a) All applications or appeals to the board shall be made to the zoning administrator, and shall be accompanied by a filing fee in the amount listed on the fee schedule adopted by city council.

(b) The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within 90 days of the filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the members of the board present and voting shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter to effect any variance from this chapter. The board shall keep minutes of its proceedings and other official actions, which shall be filed in the office of the board and shall be public records. The chairperson of the board, or, if absent, the acting chairperson, may administer oaths and compel the attendance of witnesses.

Sec. 21-101. Judicial review of decisions of the board of zoning appeals.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer or any officer, department, board or bureau of the city, may ~~present to~~ file with the clerk of the circuit court of the city a petition that shall be styled "In Re: [date] Decision of the Board of Zoning Appeals of the City of Williamsburg" specifying the grounds on which aggrieved within 30 days after the filing of the decision ~~in the office of the board~~. The proceedings before the circuit court shall be in accordance with applicable state law. Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by applicable state law. City Council, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

This ordinance shall become effective on the tenth day following its passage.

Adopted: _____

Clyde A. Haulman, Mayor

Donna Scott, City Council Clerk

ORDINANCE #11-__
PROPOSED ORDINANCE #11-__

AN ORDINANCE AMENDING CHAPTER 21, ZONING, ARTICLE IV, SECS. 21-603(a) and (i) AND ADDING SEC. 21-620, PERTAINING TO TEMPORARY FAMILY HEALTH CARE STRUCTURES AS ACCESSORY USES IN SINGLE FAMILY ZONING DISTRICTS (PCR #11-011)

WHEREAS, House Bill 1307 (codified as Virginia Code § 15.2-2292.1), requires that all Virginia localities permit temporary family health care structures as accessory uses in all single family zoning districts; and

WHEREAS, under the Dillon Rule as in force in the Commonwealth of Virginia, all localities therein must amend their zoning laws to comply with such mandate;

NOW, THEREFORE, BE IT ORDAINED that in order to comply with the mandate of House Bill 1307, Sec. 21-603 (a) and (i) of Article IV, Chapter 21 of the Williamsburg Code is hereby AMENDED, and a new Sec. 21-620 is added, all as set forth below:

Sec. 21-603. Accessory buildings.

(a) In all districts, accessory buildings shall not be located in a front yard area, unless specifically allowed by the provisions of this chapter. Temporary health care structures are allowed as accessory buildings in all single family zoning districts as provided in Section 21-620 of this Code.

(b) Accessory buildings, in any residential district, shall not exceed 24 feet in height, but in no case shall exceed the height of the main building. In all other districts accessory buildings shall not exceed 35 feet in height.

(c) Accessory buildings shall have a footprint area that is less than 50 percent of the footprint area of the main building, and shall not occupy more than 30 percent of the rear yard area in residential districts, nor more than 50 percent of the rear yard area in all other districts.

(d) Accessory buildings shall be located at least three feet from side lot lines, and at least five feet from rear lot lines, unless otherwise specified by this chapter, and shall not be connected to the main building except by an open breezeway with no side enclosure (excluding screens), other than railings, that are more than 18 inches in height.

(e) Accessory buildings on corner lots shall not project beyond the required side yard on the street side of the corner lot.

(e.1) Bus shelters designed for the protection and convenience of bus passengers, and serving Williamsburg Area Transport routes, may be located in a front yard area or street side yard area on a corner lot, subject to section 21-612, Visual obstruction. No setback from the street line shall be required. The location shall be subject to approval by the zoning administrator.

(f) Accessory buildings shall be located on the same lot as the main building.

(g) No accessory building or structure shall be erected on a lot more than three years in advance of the principal building.

(h) Where accessory buildings or structures are erected ahead of the principal building, they shall be placed so as not to prevent the eventual conforming location of the principal building.

(i) Except as otherwise provided in Section 21-620 (Temporary Family Health Care Structures), accessory buildings in residential districts shall be subject to the following:

- (1) No accessory building shall be used as a dwelling unit, for sleeping purposes, for servants' quarters, or for the rental of rooms.
- (2) Bathroom facilities shall be limited to a lavatory and water closet. Shower stalls and bathtubs shall be prohibited.
- (3) Kitchens shall be prohibited.
- (4) The board of zoning appeals may, as a special exception, approve additional bathroom facilities and/or kitchens, subject to the following:
 - a. The facility shall not be designed to allow the use of the accessory building as a dwelling unit or for the rental of rooms.
 - b. The proposed use of the accessory building shall be for a use permitted by this chapter.
 - c. The board may impose conditions regarding the use, location, character and other features of the accessory building, as it deems necessary in the public interest.
 - d. A certified copy of the board of zoning appeals' action, including conditions imposed, shall be recorded in the clerk's office of the circuit court of the city and the County of James City and indexed in the name of property owner.

- e. The board may revoke the special exception and require that the facilities be removed if the accessory building is utilized in a manner that violates the provisions of this chapter.
- (j) Skateboard ramps shall be prohibited.
- (k) Subsections (a) through (i) of this section shall not apply to the restoration or reconstruction and use of colonial accessory buildings that existed prior to 1800 and which are regulated by article III, division 12, Colonial Williamsburg historic area CW.

Sec. 21-620. Temporary Family Health Care Structures.

(a) Temporary family health care structures (i) for use by a caregiver in providing care for a mentally or physically impaired person and (ii) on property owned or occupied by the caregiver as the caregiver's residence shall be a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings; provided, however, that only one such structure shall be permitted on any lot or parcel of land. Except as hereinafter provided, such structures must comply with the requirements of sec. 21-603 of this Code. No special use permit shall be required.

- (b) For purposes of this section, the following definitions apply:
"Caregiver" means an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom the caregiver is caring.
"Mentally or physically impaired person" means a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in Virginia Code § 63.2-2200, as certified in a writing provided by a physician licensed by the Commonwealth.
"Temporary family health care structure" means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the Industrialized Building Safety Law (Virginia Code § 36-70 et seq.) and the Uniform Statewide Building Code (Virginia Code § 36-97 et seq.). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

(c) Any person proposing to install a temporary family health care structure shall first apply to the city's zoning administrator for a permit. Upon

payment by the applicant of a processing fee of \$100.00 and provision of sufficient proof of compliance with this section the zoning administrator shall issue the permit which shall expire upon the earlier of (i) the twelfth full calendar month following issuance or (ii) the first to occur of the cessation of occupancy by the qualifying occupant or of the occupant's qualifying impairment. Prior to the end of each annual permit term, upon the applicant furnishing satisfactory evidence to the zoning administrator that the temporary family health care structure remains on the property and continues to be occupied by the qualifying occupant, such permit shall be extended for an additional twelve months. Such evidence may include the inspection of the temporary family health care structure by the zoning administrator or the administrator's designee. The zoning administrator or his designee may also perform additional inspections at reasonable times convenient to the caregiver as deemed necessary by the administrator to confirm continuing compliance with this section.

(d) Any temporary family health care structure installed pursuant to this section must connect to the public water, sewer, and electric utilities that are serving the primary residence on the property and must comply with all applicable requirements of the Virginia Department of Health.

(e) No signage advertising or otherwise promoting the existence of the structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.

(f) Any temporary family health care structure installed pursuant to this section shall be removed within 30 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section.

(g) The zoning administrator may revoke the permit granted pursuant to subsection (c) if the permit holder violates any provision of this section. Additionally, the zoning administrator as agent of city council may seek injunctive relief or other appropriate actions or proceedings in the circuit court to ensure compliance with this section. The zoning administrator is vested with all necessary authority on behalf of city council to ensure compliance with this section.

This ordinance shall become effective on the tenth day following its passage.

Adopted: _____

Clyde A. Haulman, Mayor

Donna Scott, City Council Clerk