



PLANNING COMMISSION

AGENDA for January 12th 2021

This meeting will be held in a hybrid format both in-person and via Zoom. The meeting will take place in Council Chambers, City Hall, 2039 Sycamore Avenue. Participants must wear masks and practice social distancing. Two-way communication will be provided via Zoom for Planning Commission members and the public.

Zoom call details:

Time: Tuesday January 12th, 2020 7:00 PM

<https://us02web.zoom.us/j/85847046847>

Meeting ID: 858 4704 6847

(646) 558-8656

AGENDA

PUBLIC HEARING

- 1) Zoning Text Amendment to clarify permitted temporary buildings for uses incidental to construction;
- 2) Zoning Text Amendment to repeal the build-to line (zero setback requirement) in the Mixed Business Zone;
- 3) Zoning Text Amendment creation Section 507, Frontage and Private Streets, to clarify street frontage requirements for new development, private streets, and street design standards;
- 4) Zoning Text Amendment to revise Section 706, Sign Regulations, simplifying the ordinance and reducing permitting requirements

REGULAR MEETING

Call to Order by Chairman and Roll Call

Public Comment

Review and Adoption of Minutes

Minutes of December 8th 2020 meeting

Report of Secretary

Old Business

1. Discuss and vote on zoning text amendment for private roads and frontage
2. Discuss and vote on zoning text amendment for signage
3. Discuss and vote on zoning text amendment for build-to line

New Business

1. Zoning text amendment: temporary buildings for uses incidental to construction

Adjournment

Members and Term Expirations

Dennis Hawes, Chairman, 7/31/2024

Mike Ohleger, Vice-Chairman, 6/30/2022

Sandy Burke, 8/31/2021

Marolyn Cash, 6/30/2024

Lucy Ferrebee, 9/30/2023

Melvin Henson, City Council Representative,
9/30/2023

~~Preston Manuel, 12/31/2020~~

Timothy Petrie, 12/31/2024

Jay Scudder, Ex Officio member

Staff

Tom Roberts, Director of Community & Economic Development

City Hall, 2039 Sycamore Avenue, Buena Vista VA 24416

(540) 261-8607 | troberts@bvcity.org | buenvistava.org/planning

Meetings

Members of the Buena Vista Planning Commission meet in Council Chambers, 2039 Sycamore Avenue, at 7:00 p.m. on the 2nd Tuesday of each month, unless otherwise announced. Meetings may be held and business conducted without a quorum, but no votes may be taken unless a quorum is present. A majority of members constitutes a quorum. A motion passes with a majority vote; a tie constitutes defeat of the motion.



PLANNING COMMISSION

MINUTES of December 8th 2020

Members of the Buena Vista Planning Commission met in a hybrid format, both in person at City Council Chambers and virtually via Zoom at 7:00 PM on Tuesday, December 8th, 2020.

Members Present:

Dennis Hawes, Chairman
Michael Ohleger, Vice-Chairman
Sandy Burke
Lucy Ferrebee
Marolyn Cash
Melvin Henson, City Council Representative
Timothy Petrie

Members Absent:

Preston Manuel
Jay Scudder, Ex Officio member

Staff Present:

Tom Roberts, Director of Community & Economic Development

Meeting is called into order and roll was called.

REGULAR MEETING

Minutes

Mrs. Burke asked for clarification on an item mentioned in the discussion of the zoning map amendment for 2776 Maple Ave—what was meant by the reference to City property and paper streets. Mr. Roberts explained that the City owns a parcel bounded by Ridge Avenue (also platted as Spring Street) and undeveloped portions of 28th Street and Birch Avenue.

Mr. Ohleger motioned to approve the minutes as presented, Marolyn seconded, and all voted to approve.

New Business

Discuss temporary buildings for uses incidental to construction

The discussion focused on the development at 708 E 25th Street. Prior to the meeting, Mr. Ohleger had seen a “tiny house” on the property and asked Mr. Roberts about what it was, with the understanding that “tiny houses” generally are not permitted in the City. Mr. Roberts had explained prior to the meeting that the owners were occupying a temporary building incidental to construction, which was permitted under the zoning code.

Mr. Roberts displayed photos that Mr. Ohleger had taken and recapped the concerns raised by Mr. Ohleger: use of the tiny house for occupancy; what constitutes a temporary building

incidental to construction; whether the water and sewer connections are up to code; and what permanent structure is under construction.

Mr. Roberts explained that he had met with the owners several times over the course of 2020. They plan to live in the “tiny house” structure on wheels while building the permanent house, then structurally connect the tiny house to the permanent house. The permanent building under construction is a shed. Water and sewer connections were discussed extensively with Public Works and the owners planned to install a grinder pump.

Alan McMahan, Building Official, and Mr. Roberts were not aware until the last week that the owners had move the trailer to the site and were occupying it. The last permit/inspection they obtained was for temporary electric pole. Mrs. Cash said that she had asked Mr. Roberts about the trailer earlier in the fall, and Mr. Roberts admitted he did not recall that and had not checked on the site, but probably had assumed that they had obtained the building permit from Mr. McMahan. The “tiny house” trailer already had zoning approval in early September.

The primary zoning issue is Mr. Roberts’s interpretation to allow residential occupancy of a temporary building incidental to construction. The “tiny house” on this property is permitted as a temporary building incidental to construction. Mr. Roberts stated that he is happy to change that interpretation going forward and draft a zoning text amendment to clarify that such temporary buildings may not be occupied as a dwelling. Mr. Ohleger pointed out that his concern is the duration of construction and the duration of occupancy of the “tiny house” structure.

Mr. Petrie honed in on the fact that currently, the trailer is only permitted for electricity, and not for water or sewer. In particular there are some concerns about the grinder pump installation, which appears to be in a trash can. (Mr. Roberts and Mr. McMahan plan to go to the site in the next day or two to inspect for code violations.)

Mr. Hawes stated that in his experience, temporary buildings incidental to construction are usually foreman’s offices on a larger project but not a heated and insulated and plumbed structure where people live. Also, he asked how one could have a building incidental to construction when there was not a building permit. Mr. Roberts responded that they owners had not followed the correct process and that needed to be fixed, and the he will propose a narrower definition for future temporary buildings on construction sites.

Mr. Ohleger asked for more information including a site plan and timeline for their project.

Mr. Henson pointed out that there is an underground storm sewer running through this site. Mr. Roberts agreed and explained that the owners had designed the structures to avoid the easement over the storm sewer.

Mrs. Cash asked how they access the property, and Mr. Roberts responded that they come up the alley from 24th Street.

Mr. Hawes noted that he appreciates that City staff are trying to say “yes” to development, but that this project seemed to get out of hand and they did not follow the process.

Secretary’s Report

Mr. Roberts spoke about the items in the written report.

Adjournment 8:00 PM

Approved: _____



PLANNING COMMISSION Staff Report

Zoning Text Amendment

Temporary buildings incidental to construction

1/5/2021

Synopsis

Clarifies code to prohibit temporary dwellings incidental to construction.

Analysis

Most of the City's zones allow "temporary buildings for uses incidental to construction" as a permitted accessory use. This broad term is not defined in the code so could encompass a temporary on-site dwelling occupied during construction of a permanent house. We determined this is not desirable, so the language needs to be narrowed.

The proposed text amendment would replace the phrase "temporary buildings for uses incidental to construction" with "temporary office or storage building for use during construction." This clearly disallows a temporary dwelling, be it a recreational vehicle or a tiny house etc. and is a simple solution. The language requiring the use to be removed remains. The revised text would be substituted every time it occurs in the code, as listed below. The only zones which do not have this use listed are Conservation, Recreational, B2 Planned Business, and General Manufacturing.

Text

R1 Low Density Residential District

~~602.04-4 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

602.04-4 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

R2 Residential

~~603.04-4 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

603.04-4 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

R3 Residential Limited

~~604.04-4 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

604.04-4 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

R4 Medium Density Residential

~~605.04-4 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

605.04-4 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

R5 Residential

~~606.04-2 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

606.04-2 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

R6 Residential Planned Unit Development

~~607.06-2 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

607.06-2 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

B1 General Business District

~~608.05-3 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

608.05-3 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

LM Light Manufacturing

~~610.04-1 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

610.04-1 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

MU Mixed Use

~~614.05-8 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

614.05-8 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

MB Mixed Business

~~616.11-5 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

616.11-5 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

INST Institutional

~~617.04-3 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

617.04-3 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

PUD-RES-HT Hilltop Residential Planned Unit Development

~~618.05-2 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

618.05-2 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

MXB-HT Mixed Business—Hilltop

~~618.54.03-c Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

618.54.03-c Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;

MUC Mixed Use Corridor

~~619.04-5 Temporary buildings for uses incidental to construction work, such buildings shall be removed upon completion or abandonment of the construction work;~~

619.04-5 Temporary office or storage building for use during construction, which shall be removed upon completion or abandonment of the construction work;



PLANNING COMMISSION Staff Report

Zoning Text Amendment

Sec 616.16 Yards (Mixed Business)

8/26/2020

Synopsis

Repeal highly restrictive build-to line requirement in the Mixed Business zone.

Summary

616.16 requires that new commercial or multifamily buildings must be built up to the sidewalk on the front of the property. This is a serious and extremely restrictive requirement, and does not match the type of development on the 29th Street corridor. It is not necessary because building design is already reviewed through the Seminary Hill Historic District Overlay design review process.

Analysis

Current text:

616.16-1 On in-fill lots in the district located on Beech Avenue and on 29th Street west of Ridge Avenue, new commercial and multifamily buildings shall be located at the front lot line maintaining the traditional downtown pattern of adjacency to the pedestrian way. New business buildings are required to abut adjacent structures. However, buildings requiring access to rear or side parking areas will be allowed a one travel lane width a maximum width of 18 feet.

From a general urban design standpoint, there is logic to this requirement if you have a uniform urban downtown where all the buildings are up against the sidewalk. Picture the 2000 or 2100 block of Magnolia Avenue. But this is not the character of development along Beech Avenue or 29th Street, where you have many buildings set back from the street. This requirement could force a destructive new urban streetscape onto 29th Street.

This requirement is unnecessary because new development must follow the Buena Vista Design Guidelines. The Guidelines promulgate many aspects of good urban design while retaining the flexibility for buildings to be set back from the street, if appropriate. Further, the Planning Commission will review any new buildings on Beech or 29th Street because they are in the Seminary Hill Historic District Overlay.

History

It is hard for me to locate early versions of the Mixed Business zone text to determine whether this text was original to the zone or added later. However, it is clear that in 2007, the Planning Commission and Council reviewed and repealed another provision of the Mixed Business zone text that had almost the same effect. This was in connection with the approval and construction of the building at 2453/2463 Beech Avenue, Keiser's Appliances and Flowers and Things.

The following text was repealed in 2007. Note that only recently was the Mixed Business zone relocated from Article 1700 to Article 600 where it was renumbered.

1706.10 New commercial buildings in this district along Beech Avenue are required to have a "0" lot line on Beech Avenue and are required to front onto Beech Avenue. On all other streets buildings may not set back any further than adjacent structures on contiguous lots.

A zero lot line means the building must be built up to the property line. It is unclear why this was repealed, but there is another section at 1716 that requires exactly the same thing but is worded differently.

Current Applicability

Under current code, if a developer wished to build an apartment building on a vacant lot on 29th Street with 3 or 4 units, it would be required to abut the sidewalk. It is hard to imagine that being harmonious with the neighborhood, to borrow wording from the Seminary Hill Historic District review criteria. The River Rock Village duplexes built by Darlene Stoddard narrowly missed this requirement because they are two-family dwellings, not multifamily.

Recommendation

Staff recommend repeal of this very specific and limiting site design requirement. There are several other code provisions that address site design to ensure good urban design and aesthetics, so this is unnecessary.



PLANNING COMMISSION Staff Report

Zoning Text Amendment

Section 507 Frontage and Private Streets

12/30/2020

Synopsis

New zoning code section to clearly address street frontage and street development standards.

Summary:

- Clarifies requirements for developed public street frontage for new construction
- Allows private streets in limited circumstances and establishes construction standards
- Creates process to apply for reduction in minimum frontage requirement—for example, to create “flag lots” on a cul de sac.
- Affirms City’s authority over location and construction of driveways and private access roadways

Analysis

Overview

Current code does not adequately the relationship between street development and new construction. Because interest in new home construction in the City is frequently at the edge of existing neighborhoods and sometimes involves platted but unbuilt streets, it is critical to spell out in more detail frontage requirements and whether or not private streets may be built. While new construction is generally positive, substandard public infrastructure (roads, utilities, etc.) leads to poor service to residents and maintenance problems in the future.

Public and Private Streets

Proper development of public streets is essential because only streets meeting specific VDOT standards are eligible to receive lane mile payments, which are a share of state gas tax revenue. Narrow or gravel roads are not eligible for payments. However, construction of a new street to VDOT standards to serve one or two houses is usually not cost-effective.

This proposed text makes it clear that in most cases new development may only be built on streets accepted into the City’s street system and maintained by the City. For its part, the City will only accept new streets or street extensions which meet VDOT standards. However, there are a few sections of public streets maintained by the City which do not meet VDOT standards and which have developable building lots, such as the 1800 block of Pine Ave and the 2400 block of Spruce Ave; property owners may build houses here.

The exception to the public street requirement is that the text provides limited circumstances under which private streets may be built. Private streets serving more than two lots must be built to VDOT standards, the street must be on private land (i.e. not in a platted street or alley), and there must be a legal instrument ensuring perpetual maintenance (such as a homeowners’ association).

Frontage

The table of dimensional regulations found in Section 630 of the zoning code provides frontage requirements for most but not all zones. The new text provides a minimum frontage for all zones if one is not elsewhere specified, and it provides a mechanism for reducing the required frontage on a case by case basis via a special exception issued by the Board of Zoning Appeals.

History

The Planning Commission reviewed and discussed multiple drafts of this text between December 2019 and March 2020. The latest version reflects their feedback. A Planning Commission public hearing was planned but Covid-19 interfered with the ability to have meetings.



507 Frontage and Private Streets

DRAFT text

12/30/2020

507.00 Frontage and Private Streets

507.01 Findings and Intent; standards promulgated

507.01-1 Adequate access to all properties is essential for the safety of persons and property. Emergency vehicles shall be able to access all properties and buildings in order to provide fire protection and medical services. Emergency vehicles are often larger and heavier than standard passenger vehicles and require special consideration in the design and construction of streets and driveways.

507.01-2 Streets, whether publicly or privately owned, are shared among multiple users who include both property owners and the general public. As shared spaces with multiple users, adequate legal agreements are essential to sustainable long-term maintenance of the roadway and other features of the street.

507.01-3 It is the intent of this ordinance to promulgate the goals of safe accessibility and long-term maintenance by regulating the construction of buildings in relation to streets and the use of land for public and private streets.

507.01-4 All references to City, State, Commonwealth, or VDOT standards mean the current version of the Virginia Department of Transportation (VDOT) Road Design Manual. The purpose of adhering to these standards is to ensure quality design and construction as well as eligibility for lane mile payments for public streets.

507.02 Except as otherwise stated, a principal building or structure may be erected, or a primary use established, only on a lot which possesses frontage on one of the following:

507.02-1 A public street accepted into and maintained as part of the road system of the City or Commonwealth.;

507.02-1.01 A street is considered to be public if it has been dedicated as a future public street; the City has stated that it will accept this street in the future; it meets applicable design standards; and the cost of its construction is bonded with the City or otherwise financially ensured.

507.02-2 A private street which meets the requirements below. Private streets are intended to provide flexibility of site design in comprehensive residential and commercial developments where legal and organizational infrastructure exists to insure adequate long-term maintenance of roadways, and to provide cost-effective access to lots not directly abutting public streets.

507.02-2.01 Private streets are prohibited in public rights-of-way. If a public right of way is vacated by the City for the purpose of construction of a private street, the City may require dedication of an access easement and may reserve the right to buy back the right of way for future construction of a public street.

507.02-2.02 Private streets serving three (3) to ten (10) lots shall be constructed, at a minimum, to VDOT Standards for Mountainous Terrain. Private streets serving eleven (11) or greater lots shall, at a minimum, be designed to VDOT Rolling Terrain Standards.

507.02-2.03 Traffic control devices, signage, and other features of private roads shall conform to accepted industry standards.

507.02-2.04 At each intersection of a private street and a public street, the City shall post a sign stating that the street is a private street.

507.02-2.05 A homeowners' association, deed of easement or other agreement, shall be established to provide for the permanent maintenance of the private street(s). The homeowners' association shall include, or the deed of easement or other agreement shall burden, all lots abutting the private street.

507.02-2.06 Private streets approved and constructed after January 1 2020 that are not constructed in accordance with the Virginia Department of Transportation standards shall be privately maintained and shall not be eligible for acceptance into the City's road system or the system of state highways unless improved to current Virginia Department of Transportation standards with funds other than those appropriated by the General Assembly and allocated by the Commonwealth Transportation Board.

507.02-3 Exceptions to frontage requirement

507.02-3.01 On a lot with a primary structure in existence on January 1 2020 and which abuts an existing private street or unimproved public street, new uses and accessory structures may be permitted.

507.02-3.02 Structures or uses may be erected or established on a lot which does not abut a public street as part of a Planned Unit Development (PUD) approved by City Council.

507.02-3.03 Non-residential structures or uses may be erected or established on a lot which does not abut a public street, provided the Zoning Administrator has determined the following:

507.02-3.03-1 A permanent access easement has been recorded providing adequate vehicular access from the structure or use to a street constructed to the standards of the city and dedicated as a public street; and

507.02-3.03-2 Direct access from said structure or use to a public street is not feasible.

507.03 Minimum frontage

507.03-1 Except as otherwise stated, no principal building, structure, or use may be erected or established on any lot which does not possess the minimum street frontage specified for said building, structure, or use by this ordinance or by an approved Plan of

Development. Street frontage requirements may be found in Section 630 Table of Setbacks, or elsewhere in this ordinance.

507.03-2 The minimum street frontage for any use in any zone, if not otherwise specified elsewhere in this code or in an approved plan of development, shall be 25 feet.

507.03-3 Minimum street frontage requirements may be reduced by a Special Exception approved by the Board of Zoning Appeals. The following conditions apply:

507.03-3.1 Adequate access to buildings and property for emergency responders and emergency vehicles must be provided. Lot frontage must provide for vehicular access via a driveway, or driveway access must be provided with a deeded easement or similar instrument.

507.03-3.2 The configuration of lots and streets shall be consistent with the development of a well-connected street grid as promulgated in the Comprehensive Plan. The creation of cul-de-sacs and dead-ends should respond to terrain features such as steep slopes or streams, or to other features that make extension of public streets infeasible.

507.03-3.3 The configuration of lots or their access shall not hinder or obstruct construction of future private or public streets. The Board of Zoning Appeals may consider the existence of access easements and future roadway reservations.

507.03-4 Where the principal building is located on the same lot as a private street, or portion of a private street, providing principal means of access to said building, frontage may be measured as the horizontal edge of the private street right-of-way located within the lot.

507.03-4 The entire portion of a lot which abuts a street constructed to the standards of the City and dedicated as a public street shall be improved to City standards by the developer when the lot is developed.

507.04 Access control. All driveways and access points to public streets are subject to the approval of the City Manager or his designee and compliance with other applicable requirements of the Land Development Regulations.

DEFINITIONS

~~302.04-4 Driveway means any private way thoroughfare provided for the principal purpose of providing vehicular access to an off-street parking area or service in the case of drive-in type uses.~~

A private way which establishes a connection between an off-street parking space or an off-street loading space and a street.

~~302.06-11 Frontage means the minimum width of a lot measured from one side lot line to the other, along a straight line on which no point shall be farther away from the street upon which the lot fronts, or from the front edge of the lot, than the building setback line as defined and required herein.~~

The horizontal length of the front lot line of a lot or parcel which abuts a street. If a lot has frontage on more than one street, frontage on one street only may be used to satisfy the minimum lot frontage.

~~302.20-11 Street means the principal means of access to abutting properties.~~ [DUPLICATE DEFINITION]

~~302.20-12 Street centerline means a line generally parallel to the right-of-way lines divides the street right-of-way.~~

A line established as a center line of a street by any state, City or other official agency or governing body having jurisdiction thereof and shown as such on an officially adopted or legally recorded map. If there is no official center line of a street, the center line shall be a line lying midway between the street or right-of-way lines thereof. Where street lines are indeterminate and a pavement or a traveled way exists, the center line shall be established by the Zoning Administrator or shall be assumed to be a line midway between the edges of such pavement or traveled way.

~~302.20-14 Street, internal, means a private street providing access to lots within a development, but not including driveways.~~

~~302.20-16 Street, major, means a heavily traveled thoroughfare or highway that carries a large volume of through traffic, or anticipated traffic exceeding 500 vehicles per day.~~

~~302.20-17 Street, other, means a street that is used primarily as a means of public access to the abutting properties with anticipated traffic of less than 500 vehicles per day.~~

~~302.20-18 Street (road) means any public thoroughfare which affords the principal means of access to abutting property.~~

Street means any improved thoroughfare which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley. Also known as a road.

Street, private means a street which is not publicly owned and maintained.

Street, public means a street owned, accepted, and maintained by the City of Buena Vista or other applicable governmental entity.



CITY OF BUENA VISTA

Planning & Community Development
2039 Sycamore Avenue
Buena Vista VA 24416

STAFF REPORT

DATE: 6 January 2020
TYPE: Zoning Text Amendment
SUBJ: Section 507 Frontage requirements

Synopsis

New zoning code section to more clearly require frontage on an improved public street for new construction.

Overview

Because of the City's originally platting, there are many lots that lack frontage on developed public streets. While there are currently minimum lot frontage requirements in residential zones, the zoning code does not adequately address access and development of lots without public street frontage. Use of private driveways across public rights-of-way (ROW) creates multiple problems.

The proposed ordinance clarifies this ambiguity and codifies recent City policy. Key features:

- Requires new construction to have frontage on a developed public street
- Exceptions for non-residential buildings and buildings within a Planned Unit Development
- Creates process to apply for reduction in minimum frontage requirement—for example, to create “flag lots” on a cul de sac.
- Affirms City's authority over location and construction of driveways and private access roadways

Analysis

Background and Need

The City has many platted but unbuilt streets, and therefore many platted lots which have no developed public street frontage. While many streets were built over the decades by both the private and public sectors, there remain some houses still served by private driveways that traverse public ROW (usually undeveloped streets), and property owners routinely inquire about potential development on lots which have no public street frontage. This dilemma primarily affects residential uses.

In recent years, the City's policy has been to require frontage on a developed public street to issue a permit for a new house. This policy has been to address the issues that arise from substandard private roads, which include:

- Conditions of these roads can be poor, making access by emergency vehicles difficult
- Maintenance responsibility for private driveways on public ROW is unclear
- Residents often expect the City to maintain these roads, which can be costly (gravel, labor, erosion)
- Gravel roads cannot be effectively plowed for snow
- Gravel roads cannot withstand high traffic volume
- Gravel roads, especially those inconsistently maintained, do not contribute to an orderly and prosperous appearance for the City and do not contribute positively to property values
- Roads that are not improved to meet VDOT standards and accepted into the City road system do not receive the state tax allotments

In addition to these problems, allowing private or substandard road development poses other issues for the overall transportation network and for infrastructure development.

The City's original street grid is good city planning—it creates a convenient network for vehicles that is also walkable. Ad hoc creation of private driveways typically does not extend streets all the way through to the next cross street, thus creating cul de sacs and dead ends that do not help overall connectivity. In some cases, creation of these driveways can obstruct or complicate future construction of public streets.

In addition to roads that allow access to property, houses must be served by other utilities such as water, sewer, gas, electric, telephone, etc. Most of the lots fronting on existing public streets have utility availability already at the property line for all of these, because the infrastructure was put in decades ago with the street. While there are tap fees and main extension fees (after the first 50'), expanding the utility infrastructure of the City creates both immediate and long-term costs to the City that are not recouped in fees or even in taxes and utility bills. (This is basic math—if tax revenue from houses actually covered government services, then we would not have tens of millions of dollars of water, sewer, and road deferred maintenance.) Essentially, extending infrastructure is only cost-effective if it is paid primarily or entirely by the developer.

Lastly, regulation of private streets is critical because residents depend on their streets for emergency services. If a street serving multiple houses is poorly designed or poorly maintained, it may be difficult or impossible for first responders to access it. Reids Hill Road is an example of this: the narrowness, grade, and poor surfacing make it difficult for first responders to get to. Similarly, standard trash trucks cannot traverse Reids Hill Road, making trash pickup more expensive for the City.

What is a public street?

What is a “developed public street”? In this context:

- Paved street built to minimum City standards (which are essentially Virginia Department of Transportation [VDOT] standards)
- Formally accepted into the City's street system
- Eligible for lane mile payments by VDOT

Any gravel road and any “private” road does not meet this definition.

The minimum requirements for VDOT to accept a street into the urban maintenance inventory are somewhat detailed and include certain exceptions and special cases, but can be summarized as

- 50' wide unrestricted right-of-way and 30' of hard surface (i.e. pavement) for roads platted/constructed after 1950
- 30' wide unrestricted right-of-way and 16' of hard surface for roads platted prior to 1950 (this applies to most streets in Buena Vista)
- Streets constructed after 1996 that meet the then-current version of the Subdivision Street Requirements design standards (this applies to many residential developments)

Private streets in planned developments

Most of the questions about private driveways and roads in Buena Vista arise from individual lots. However, new planned developments (e. g. PUDs) and multi-building multifamily developments sometimes include private streets. Developers working at this scale have the capacity to design and construct streets that meet or City/VDOT standards, or at a minimum address key concerns such as emergency vehicle accessibility, surface stability, stormwater management, etc. Also, these projects require one or more levels of review including PUD approval, site plan approval, subdivision approval, or conditional use permitting, allowing staff and the Planning Commission to analyze and impose requirements on streets and access control.

For these reasons, private streets in master planned developments pose less of a concern than private driveways or streets across public ROW or associated with one-off houses. Still, if the entities assigned with maintenance responsibilities for private streets (such as an HOA) abdicate this responsibility or dissolve, these streets may end up a City responsibility if they are the only means of accessing homes. This possibility should be considered in reviewing any development.

Existing Code

As mentioned earlier, current code specifies minimum lot frontages for most residential uses and zones, but does not explicitly state that frontage is required to build as a general rule. For example, in R3, the minimum lot frontage for a new single-family home is 50', which is the width of one standard lot. For uses or zones with no minimum frontage specified, frontage on a public street is not required. However, in general the code is written assuming that buildings will have frontage on public streets.

Private streets are referenced in the zoning code in the subsection on townhouses, but it is never specified under what circumstances they may or may not be allowed.

Draft Code

The draft code section is situated in Article 5 Application of Zoning Regulations. Other provisions found in this article relate to very basic rules that apply to all zoning districts. This frontage requirement is similar to other sections in this article.

The new section is designed to require public road frontage for all new development, but to provide some limited exceptions:

- Existing developed lots. For example, if a resident of Deerhaven Drive wished to erect a shed in his back yard. Deerhaven is a private road.

- Planned Unit Developments. PUDs must supply detailed design and construction standards and are legislatively reviewed and approved by Planning Commission and City Council.
- Non-residential structures that have permanent access easements. For example, a secondary structure part of an industrial compound which happens to lie on a separate tax parcel that does not have road frontage.

The new section does not prohibit private roads per se.

The new section affirms the minimum street frontage requirements found in the dimensional regulation table and establishes an across-the-board minimum where the table is silent, but establishes a process to request reductions of these minimums. The generic minimum is the width of the narrowest standard lot that occurs in the City. Essentially, this provides a mechanism to allow cul de sacs with pie-shaped or “flag” lots on a case-by-case basis with appropriate review by staff and the Board of Zoning Appeals. While continuation of the street grid is important as discussed above, there are instances where dead ends and cul de sacs make common sense due to topography or adjacent property circumstances.

This review process is assigned to the BZA because they are empowered by the Code of Virginia to approve special exceptions, which are considered legislative acts. Planning Commission cannot do this except through the conditional use permit process, which must go through City Council. Using the BZA streamlines the process for the applicant—only one review meeting and a lower cost.

Currently, the frontage minimums can only be reduced through the variance or modification process. The Code of Virginia sets the bar fairly high for modifications or variances, requiring that property owners have a significant hardship and face a unique circumstance. Typically the development scenarios discussed above do not rise to that threshold.

The new section also addresses how the frontage is developed. The City’s policy in recent years has been to require new construction to build curb and gutter on residential lots, if it does not already exist. This is sound policy because it will improve the continuity of the curb and gutter in neighborhoods, improve stormwater management and erosion control, and improve property values.

This provision requires that whatever portion of the lot abuts a developed City street must be improved. For example, if a house is built at the end of a City street and the property fronts 150’ onto an avenue, but the pavement and only extends 75’ along that property, then the owners must only build 75’ of curb and gutter.



CITY OF BUENA VISTA
Planning & Community Development
2039 Sycamore Avenue
Buena Vista VA 24416

STAFF REPORT

DATE: 4 March 2020
TYPE: Zoning Text Amendment
SUBJ: Section 507 Frontage and Private Streets

Synopsis

New zoning code section to more clearly address street frontage and street development standards.

Update

The Staff Report on this amendment from January 2020 covered much of the background and reasons for this text update, so this staff report primarily addresses the concerns raised at the January Planning Commission meeting, additional research, and changes to the text.

Refined focus

Most of the concern with the first draft was centered on the ability to develop individual lots in Buena Vista that lack frontage on a developed public street. The previous staff report discussed problems with substandard streets at length, but the basic issues that this text needs to address are

1. Ensuring emergency vehicles can access all homes
 - The City has a responsibility to require this just as much as it has a responsibility to enforce the building code such that homes are safe to live in. Fire trucks must be able to get close to a house—we all know that house fires happen in Buena Vista, even in newer homes.
2. Ensuring that every street has a legally responsible entity for maintenance, and a funding source
 - Streets cost money to maintain. The City cannot be burdened with the ownership or maintenance responsibility of streets for which it cannot receive state tax allocations.

Other Localities

Cities

Generally, cities do not permit private streets. In some cases, there are exceptions for PUDs and clustered developments like townhouses.

- Lexington does not permit private streets. 360-11 A “The subdivider shall dedicate to the city all land required for streets as provided in this chapter...”

- Lynchburg only permits private streets in a PUD, a cluster commercial development, or townhouse development (24.1-28 (b)).
- Roanoke only allows private streets in PUDs (31.1-300 (f)).
- Staunton puts it very bluntly: 17.15.030 “Private streets prohibited. There shall be no private streets platted in any subdivision. Every subdivided property shall be served from a publicly dedicated street.”

Additionally, all these cities require that streets are built to VDOT standards (or in some cases locality-specific standards, such as Lynchburg, which are more stringent than VDOT standards and often include sidewalks or street trees).

Outside of subdivision ordinances, which only apply to certain development scenarios, the general zoning ordinances of a number of cities include provisions requiring frontage on public streets. These mirror the same requirements of the subdivision ordinances. Examples:

Staunton:

§5.2.1. Access Required

A. Minimum Improved Street Frontage

1. Except as otherwise stated, no principal building, structure or use may be erected or established on any lot which does not abut on a street constructed to the standards of the City and dedicated as a public street to the City or the State (See also City Code, Chapter 74, Subdivision Regulations).

2. All street frontage adjacent to building sites shall be improved to City standards across the entire frontage of the parcel.

Winchester:

SECTION 18-14. ERECTION OF BUILDINGS. *Every building hereafter erected shall be located on a lot as herein defined, said lot having its principal frontage on a public street of record, except as otherwise permitted in this Ordinance for townhouses and planned development.*

Williamsburg:

Sec. 21-608. - Street frontage for lots. *Every building that is erected shall be located on a lot having its principal frontage on a public street; on a private street which existed prior to January 1, 1966, and which has been recorded in the clerk's office of the circuit court of the city and the County of James City; or on a private street which is shown on a subdivision plat for a planned development or townhouse development which has been duly approved by the city and which has been recorded in the aforesaid clerk's office. Lots in new subdivisions for single-family detached and duplex dwellings shall front on public streets.*

Counties

Counties generally allow private roads under limited circumstances, related again to maintenance responsibility, accessibility, and development density. Their regulation is usually through the subdivision ordinance because they are less likely to deal with previously platted lots. The important distinction between private and public streets in counties (and cities too) is whether the street is built to a standard acceptable to VDOT. If it is built to VDOT standards, then it can become part of the secondary road system and maintained by VDOT. It is hard to imagine good reasons to keep a street private if it is eligible to become part of the secondary road system.

Rockbridge includes the following provision:

904.02-1 Streets serving three (3) to ten (10) lots may be public or private, but, at a minimum, shall be designed to VDOT Standards for Mountainous Terrain.

Thus, in Rockbridge, roads serving one or two lots/houses do not have a minimum standard of construction or requirement to be public. For 3-10 lots the street must meet one of VDOT's lowest standards.

Amherst County is somewhat more permissive than Rockbridge. It allows private streets that are not built to any VDOT or County standards in subdivisions but "Each such street or road may provide access to a maximum of five (5) lots all of which shall be ten (10) acres or greater in size." Thus, private roads not built to VDOT standards are only allowed in large-lot subdivisions with five or fewer lots.

Development potential and revenue sources

Should Buena Vista follow how other cities regulate, and prohibit private streets except in PUDs and townhome developments? This is essentially the original draft ordinance. Should Buena Vista allow private roads in limited circumstances, such as accessing a couple houses? Does the potential development payoff of increased tax revenue, or additional residents, justify a relaxed approach?

The Commission was provided with a list of houses which, it was asserted, could not be built if private streets below VDOT standard were prohibited. It is important to note that any new ordinance would not be retroactive, and all the listed houses could continue as legal residences. Further, many of the opportunities for creation of private streets or for development without public street frontage are either "taken" (already developed) or impractical for construction (by reason of topography or creeks etc.).

Below are the houses listed grouped by how they are situated, with assessed values.

At the end of a public street

2615 Hawthorne Ave	\$236,600.00
1780 Holly Ave	\$144,700.00
1910 Holly Ave	\$101,600.00
1870 Holly Ave	\$78,900.00
2605 Laurel Ave	\$308,200.00
2614 Cedar Ave	\$190,200.00
1710 Holly Ave	\$146,200.00
2475 Hickory Ave	\$205,800.00

None of these houses have the required minimum frontage on a developed public street that meets VDOT standards. They are at the ends of various numbered streets where they "peter out" on the eastern edge of the city, for the most part. However, all of these homes would be permitted under the proposed text with a simple reduction in required frontage. The street termination could become a "cul de sac" of sorts. The developer would be responsible for a short section of curb & gutter (less than for a standard 50' or 100' lot probably!) to properly finish off the cul de sac.

On a substandard street located in the public right of way

1615 Spruce Ave	\$114,200.00
1635 Spruce Ave	\$94,700.00
2665 Hawthorne Ave	\$248,900.00
2645 Hawthorne Ave	\$279,500.00
1825 Pine Ave	\$203,200.00
1810 Pine Ave	\$146,200.00

These houses are all located on a street which does not meet VDOT standards but is a platted street owned by the City. The 1600 block of Spruce is where the “Loughead houses” are located, which were built then abandoned over this very concern of street construction standards and responsibility for development. The 2600 block of Hawthorne Avenue, while paved and maintained by the City, is not wide enough to meet VDOT standards for lane mile payments. The 1800 block of Pine Avenue is gravel and poses consistent drainage and erosion issues—which would have been avoided with curb and gutter directing runoff to storm drains.

Looking forward to future development on the streets listed above, there is one potential homesite on the 2600 block of Hawthorne and one potential homesite on the 1800 block of Pine which would not have VDOT-standard public street frontage. The 1600 block of Spruce has five potential homesites.

Lastly, 2500 Hickory Ave (\$274,100) is located on a private driveway serving only itself which is located (for the most part) on private property—a vacated portion of 26th Street. This house would be permitted under the proposed text under new provisions related to private driveways on private property.

Revenue Analysis

The annual payment for fiscal year 2020 from VDOT for each lane mile of roadway with the local functional classification (the lowest vehicle volume) is \$12,734.62. Thus for a typical Buena Vista city block 400 feet long, with two way traffic, the annual payment is \$1,936.82. This funding from VDOT is restricted to maintenance and administration directly related to roadways.

The real estate tax revenue from a house assessed at \$200,000, at the current tax rate of \$1.21/\$100, is \$2,420 annually. Of course, the majority of this revenue is allocated to other City services.

Changes to Proposed Text

The text has been overhauled to address streets more broadly and lay out provisions for private streets in more detail.

- Intent statement added
 - This section explains the reason for this regulation and provides a basis for interpretation. Also clearly states what we mean by “VDOT standard”.
- Private streets
 - Existing private streets are grandfathered in for the most part
 - Must be on private property to ensure the City doesn’t get stuck with maintenance responsibility. Also considering text that would give the City some rights if a

paper street were vacated in order to build a private street, then the City later wanted to repurchase the vacated street to have a public street.

- Must be built to VDOT standards if serving 3 or more lots (Mountainous Terrain), just like Rockbridge County
- Requires signage to indicate it is a private street
- Considering text that would prohibit future use of VDOT funds to upgrade new, substandard private streets to VDOT standards (borrowed from Amherst). This is to prevent the “backdoor”/”loophole” of a developer slapping down a gravel road then seeking VDOT funds to upgrade/reconstruct it to a higher standards.
- Exceptions to frontage requirement the same
- Minimum frontage section mostly the same
 - Added text on how to calculate frontage where a private street is on the same lot as a building
- Definitions – redefined multiple important words
 - Driveway – simpler text
 - Frontage – much simpler text for a critical word
 - Street centerline – modern definition that reflects how street centerlines are used in mapping today
 - Internal street – removed word that limited this definition to private streets
 - Major/other streets – these terms do not occur anywhere else in zoning ordinance and are unnecessary distinctions
 - Street – Clearer definition; not an alley
 - Private street – very simple new definition
 - Public street – very simple new definition

GEOMETRIC DESIGN STANDARDS FOR RURAL LOCAL ROAD SYSTEM (GS-4)

TRAFFIC VOLUME	TERRAIN	DESIGN SPEED (MPH)	MINIMUM RADIUS	(9) MINIMUM STOPPING SIGHT DISTANCE	(2) MINIMUM WIDTH OF SURFACING OR PAVEMENT	(3) (4) (5) MINIMUM WIDTH OF GRADED SHOULDERS CUT & FILL		(6) MINIMUM WIDTH OF DITCH FRONT SLOPE	(7) SLOPE	NEW AND RECONSTRUCTED MINIMUM BRIDGE WIDTHS AND VERTICAL CLEARANCES
						With GR	Without GR			
(1) ADT OVER 2000	LEVEL	50	760'	425'	24'	12'	8'	6' @ 4:1	CS-4, 4A / 4C	See Footnote (8)
	ROLLING	45	589'	360'						
		40	446'	305'						
	MOUNTAINOUS	35	316'	250'						
		30	215'	200'				4' @ 3:1		
(1) ADT 1500 TO 2000	LEVEL	50	760'	425'	22'	10'	6'	6' @ 4:1	CS-4, 4A /4C	
	ROLLING	45	589'	360'				CS-3, 3A / 3B		
		40	446'	305'						
	MOUNTAINOUS	35	316'	250'						
		30	215'	200'				4' @ 3:1		
(1) ADT 400 TO 1500	LEVEL	50	760'	425'	22'	9'	5'	6' @ 4:1	CS-1	
	ROLLING	45	589'	360'						
		40	446'	305'	20'					
	MOUNTAINOUS	35	316'	250'				4' @ 3:1		
		30	215'	200'						
CURRENT ADT UNDER 400	LEVEL	45	589'	360'	18'	8'	2'	4' @ 3:1	CS-1	
		40	446'	305'						
	ROLLING	35	316'	250'						
		30	215'	200'						
	MOUNTAINOUS	25	135'	155'						
		20	77'	125'						

GENERAL NOTES

Low design speeds are generally applicable to roads with winding alignment in rolling or mountainous terrain where environmental conditions dictate.

High design speeds are generally applicable to roads in level terrain or where other environmental conditions are favorable.

Intermediate design speeds would be appropriate where terrain and other environmental conditions are a combination of those described for low and high speed.

For minimum design speeds for 250 ADT and under, see AASHTO Green Book, Chapter 5, Section 5.2.1, page 5-2, Table 5-1.

Standard TC-5.11R superelevation based on 8% maximum is to be used.

In incorporated towns or other built-up areas, Urban Standard GS-8 may be used. "Built-up" is where there is sufficient development along the roadway that justifies a need to channelize traffic into and out of properties utilizing curb and gutter.

For Passing Sight Distance Criteria See AASHTO Green Book, Chapter 3, Section 3.2.4, page 3-8.

For maximum grades relative to terrain and design speed, see AASHTO Green Book, Chapter 5, Section 5.2.1, page 5-3, Table 5-2.

For Recreational Access Road design standards, see AASHTO Green Book, Chapter 5, Section 5.4.2, page 5-24.

FOOTNOTES

- (1) Use Design Year ADT for new construction and reconstruction projects in accordance with Road Design Manual, Chapter 2A, "REQUEST FOR TRAFFIC DATA" and Form LD-104. For RRR projects or roads with ADT < 400, See Road Design Manual, Appendix A, "GUIDELINES FOR RRR PROJECTS."
- (2) Lane width to be 12' at all interchange locations.
- (3) In mountainous terrain or sections with heavy earthwork, the graded width of shoulder in cuts may be decreased by 2', but in no case shall the cut shoulder width be less than 2'.
- (4) Minimum shoulder slope shall be 8% on low side and same slope as pavement on high side (See St'd. GS-12).
- (5) When the mainline is 2 lanes provide 4' wide paved shoulders (right and left) when design year ADT exceeds 2000 VPD, with 5% or more truck and bus usage. Provide 5' wide paved shoulder when design year ADT exceeds 2000 VPD, with 5% or more truck and bus usage and the route is an AASHTO approved U.S. Bicycle Route (1, 76 or 176) or designated as a bicycle route on a locally adopted transportation plan. All shoulders not being paved will have the mainline pavement structure extended 1' on the same slope into the shoulder to eliminate raveling at the pavement edge. For additional guidance on shoulder widths, see AASHTO Green Book, Chapter 5, Section 5.2.2, page 5-6.
- (6) A hydraulic analysis is necessary to determine actual depth requirement.
- (7) Additional or modified slope criteria to be applied where shown on typical sections.
- (8) See Manual of the Structure and Bridge Division – Volume V – Part 2 Design Aids – Chapter 6 Geometrics.
- (9) For additional information on sight distance requirements on grades of 3 percent or greater, see AASHTO Green Book, Chapter 3, Section 3.2.2, page 3-2, Table 3-2.

FIGURE A - 1 - 4*

GEOMETRIC DESIGN STANDARDS FOR URBAN LOCAL STREET SYSTEM (GS-8)

	DESIGN SPEED (MPH)	MINIMUM RADIUS		(1) MAXIMUM PERCENT OF GRADE	(10) MINIMUM STOPPING SIGHT DISTANCE	(2) MINIMUM WIDTH OF LANE	(3) STANDARD CURB / CURB & GUTTER	BUFFER STRIP WIDTH	(5) MINIMUM SIDEWALK WIDTH	(6) SLOPE	NEW AND RECONSTRUCTED MINIMUM BRIDGE WIDTHS AND VERTICAL CLEARANCES
		U	ULS								
STREET WITH CURB & GUTTER	30	251'	273'	15	200'	10'	(12) CG-2 / CG-6	(4)	5'	2:1	See Footnote (9)
	25	155'	167'		155'						
	20	87'	92'		125'						
	DESIGN SPEED (MPH)	MINIMUM RADIUS		(1) MAXIMUM PERCENT OF GRADE	(10) MINIMUM STOPPING SIGHT DISTANCE	(2) MINIMUM WIDTH OF LANE	(7) (11) MINIMUM WIDTH OF GRADED SHOULDERS CUT & FILL		(8) MINIMUM WIDTH OF DITCH FRONT SLOPE	SLOPE	
		U	ULS				With GR	Without GR			
(11) STREET WITH SHOULDER DESIGN	30	251'	273'	15	200'	10'	12'	8'	4' @ 3:1	3:1	
	25	155'	167'		155'						
	20	87'	92'		125'						

GENERAL NOTES

Design Speed is not a major factor for local streets. For consistency in design elements, design speeds ranging from 20 to 30 mph may be used, depending on available right of way, terrain, adjacent development and other area controls.

In the typical street grid, the closely spaced intersections usually limit vehicular speeds, making the effect of a design speed of less significance.

Design speeds exceeding 30 mph in residential areas may require longer sight distances and increased curve radii, which would be contrary to the basic function of a local street.

Standard TC-5.11U (Urban) superelevation based on 4% maximum.

Standard TC-5.11ULS (Urban Low Speed) superelevation based on 2% maximum may be used with a design speed of 45 mph or less.

For minimum widths for roadway and right of way used within incorporated cities or towns to qualify for maintenance funds see [Code of Virginia Section 33.2-319](#).

FOOTNOTES

(1) Grades in commercial and industrial areas should be less than 8 percent; desirably, less than 5 percent. For maximum grades relative to terrain and design speed, see AASHTO Green Book, Chapter 5, Section 5.2.1, page 5-3, Table 5-2.

(2) Where feasible, lanes should be 11' wide and in industrial areas should be 12' wide; however, where available or attainable right of way imposes severe limitations, 9' lanes can be used in residential areas and 11' lanes can be used in industrial areas.

(3) Or equivalent City or Town design.

(4) For buffer strip widths see [Appendix A\(1\), Section A\(1\)-1 Bicycle & Pedestrian Facility Guidelines](#).

(5) A width of 8' or more may be needed in commercial areas.

(6) 3:1 and flatter slopes shall be used when the right of way is behind the sidewalk (or sidewalk space) in residential or other areas where slopes will be maintained by the property owner.

(7) When Design year ADT exceeds 2000 VPD, with greater than 5% total truck and bus usage: Provide 4' wide paved shoulders when the graded shoulder is 5' wide or greater. Provide 5' wide paved shoulder when design year ADT exceeds 2000 VPD, with 5% or more truck and bus usage and the route is an AASHTO approved U.S. Bicycle Route (1, 76 or 176) or designated as a bicycle route on a locally adopted transportation plan. All shoulders not being paved will have the mainline pavement structure extended 1', on the same slope, into the shoulder to eliminate raveling at the pavement edge (See Standard GS-12 for shoulder design).

(8) A hydraulic analysis is necessary to determine actual depth requirement.

(9) See [Manual of the Structure and Bridge Division – Volume V – Part 2 Design Aids – Chapter 6 Geometrics](#).

(10) For additional information on sight distance requirements on grades of 3 percent or greater, see AASHTO Green Book, Chapter 3, Section 3.2.2, page 3-2, Table 3-2.

(11) For information on reduced shoulder widths, see AASHTO Green Book, Chapter 5, Section 5.2.2, page 5-6, Table 5-5.

(12) Where bicycle accommodation is next to curb or curb and gutter, mountable curb (CG-3) or mountable curb and gutter (CG-7) shall be used for design speeds of 45 mph and below.

FIGURE A - 1 - 8*



PLANNING COMMISSION Staff Report

Zoning Text Amendment

Section 706 Signage

12/30/2020

Synopsis

Adopt a new sign ordinance to improve clarity, conform to modern case law, and reduce permitting requirements.

Summary:

- Completely new text
- Conforms to current sign regulation case law regarding free speech, religious liberty, etc.
- Reduces complexity of sign regulation and allows many signs to be erected without a permit

Analysis

Overview

The current sign regulations are 15-20 years old, and some provisions are no longer legal based on court cases during that time. Also, the ordinance is not well suited to Buena Vista's particular needs—there is unnecessarily complexity in defining types of signs and regulating different parameters of the signs.

The proposed text loosens sign regulations overall and allows some signs to be erected without a permit, for instance most window signs and temporary signs on private property. In some cases, the current sign ordinance technically requires a permit for these, but the City does not pursue or enforce this—for example the "Thank you Jesus" yard signs many residents have.

History

The text is based on the Virginia Local Government Attorney's association model sign ordinance, and much of the work drafting the alterations to the model for Buena Vista was done by Timothy Mack, an intern with the City. The Planning Commission reviewed and discussed the proposed text between October 2019 and March 2020, and planned to take to public hearing in April 2020.



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City of Buena Vista Land Development Regulations Signage

Section 706

Draft 12/29/2020

706.00 Findings, Purpose and Intent; Interpretation

706.00-1 Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height and condition of all signs placed on private and public property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and harmonious community, protection against destruction of or encroachment upon historic areas, and the safety and welfare of pedestrians and wheeled traffic, while providing convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, size and purpose of all signs. This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article which can be given effect without the invalid provision.

706.00-2 Signs not expressly permitted as being allowed by right or by conditional use permit under this article, by specific requirements in another portion of this chapter, or otherwise expressly allowed by City Council are forbidden.

706.00-3 A sign placed on land or on a building for the purpose of identification, protection or directing persons to a use conducted therein shall be deemed to be an integral but accessory and subordinate part of the principal use of land or building. Therefore, the intent of this article is to establish limitations on signs in order to ensure they are appropriate to the land, building or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests identified in subsection (a) of this section.

706.00-4 These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

706.00-5 These regulations do not regulate every form and instance of visual speech that may be displayed anywhere within the jurisdictional limits of the City. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.

706.00-6 These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

706.01 Definitions: For the purposes of this section, and when applicable other sections of the Land Development Regulations, the following words are defined.

706.01-1 *A-frame sign* means a two-faced sign with supports that are connected at the top and separated at the base, forming an “A” shape not more than four feet high. These are also referred to as “sandwich board” signs. An A-frame sign may be permanent or temporary.

706.01-2 *Advertising* means any words, symbol, color or design used to call attention to a commercial product, service, or activity.

706.01-3 *Animated sign* means a sign or part of a sign that is designed to rotate, move or appear to rotate or move, or has a conspicuous and intermittent variation in illumination, message or physical position of any or all of its parts. Such a sign is sometimes referred to as a “moving sign.”

706.01-4 *Awning sign* means a sign placed on the surface of an awning.

706.01-5 *Banner* means a temporary sign of flexible material affixed to a framework or flat surface.

706.01-6 *Building frontage* means the length of the main wall of a building which physically encloses usable interior space, and which is the architecturally designed wall that contains the main entrance for use by the general public.

706.01-7 *Bulletin board* means a wall or freestanding sign or sign structure designed for posting multiple smaller signs or notices, usually intended to be seen by pedestrians. Items posted on a permanent bulletin board are considered changeable sign copy.

706.01-7 *Business sign* means a sign which directs attention to a commercial product, service or activity

706.01-8 *Canopy sign* means a sign attached to a canopy.

706.01-9 *Changeable copy sign* means a sign or part of a sign that is designed so that characters, letters or illustrations can be changed or rearranged without altering the face or surface of the sign. This includes chalk boards, white boards, and similar surfaces used as signs, but does not include *Electronic Message Boards*.

706.01-10 *Comprehensive sign plan* means a

706.01-11 *Electronic message board sign* is an electronically controlled internally illuminated sign which displays text or images that change less than once every minute.

706.01-12 *Feather sign* is a lightweight, portable sign mounted along one edge on a single, vertical, flexible pole the physical structure of which at may resemble a sail, bow, or teardrop.

706.01-13 *Flag* means a piece of cloth or similar material, attachable by one edge to a pole or rope and used as a symbol or decoration; this includes pennants.

706.01-14 *Flashing sign* means a sign that includes lights that flash, blink, or turn on and off intermittently.

706.01-15 *Freestanding sign* means any non-portable sign supported by a fence, retaining wall, or by upright structural members or braces on or in the ground and not attached to a building.

706.01-16 *Ground-mounted sign* means a freestanding sign that is supported by structures or supports in or upon the ground and independent of any support from any building or wall.

706.01-17 *Height*, means the maximum vertical distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of:

706.01-17.1 Existing grade prior to construction; or

706.01-17.2 The newly established grade after construction, exclusive of any filling, berming, mounding or excavating primarily for the purpose of mounting or elevating the sign.

706.01-18 *Holiday displays* mean temporary, non-advertising displays erected on a seasonal basis in observance of religious, national, or state holidays.

706.01-19 *Illegal sign* means any sign erected without a required permit or which otherwise does not comply with any provisions of this article.

706.01-20 *Illuminated sign* means a sign that is backlit, internally lighted, or indirectly lighted, but does not include a neon sign.

706.01-21 *Inflatable sign* means a sign consisting of balloons and/or inflatables made of firm or soft materials used for the purpose of attracting attention.

706.01-22 *Marquee* means a permanent structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall and generally designed and constructed to provide protection against the weather.

706.01-23 *Marquee sign* means a sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed or both types of lettering in use.

706.01-24 *Minor sign* means a wall or freestanding sign not exceeding two (2) square feet in area, not exceeding four feet in height, and not illuminated.

706.01-25 *Monument sign* means a freestanding sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign.

706.01-26 *Neon sign* means a sign containing exposed tubes filled with light-emitting gas.

706.01-27 *Nonconforming sign* is any sign which was lawfully erected in compliance with applicable regulations of the City/County/Town and maintained prior to the effective date of this chapter of the zoning ordinance and which fails to conform to current standards and restrictions of the zoning ordinance.

706.01-28 *Off-premises sign* means a sign that directs attention to a business, product, service or activity at a location other than the premises on which the sign is erected.

706.01-29 *Portable sign* means any temporary sign not affixed to a building, structure, vehicle or the ground. It does not include a flag or banner.

706.01-30 *Projecting sign* means any sign, other than a wall, awning or marquee sign, affixed to a building and supported only by the wall on which it is mounted.

706.01-31 *Public area* means any public place, public right-of-way, any parking area or right-of-way open to use by the general public, or any navigable body of water.

706.01-32 *Public art* means items expressing creative skill or imagination in a visual form, such as painting or sculpture, which are intended to beautify or provide aesthetic influences for public areas or areas which are visible from the public realm.

706.01-33 *Roof sign* means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.

706.01-34 *Sculptural sign* means a spherical, freeform, or other nonplanar sign. Such sign may be a freestanding sign, projecting sign, or roof sign.

706.01-35 *Sign means* any object, device, display, structure, or part thereof, visible from the public right-of-way or area open to use by the general public which is designed and used to attract attention to an institution, organization, business, product, service, event, or location by any means involving words, letters, figures, designs, symbols, fixtures, logos, colors, illumination, or projected images. The term does not include public art, architectural elements incorporated into the style or function of a building, or flags of any nation, state, or other geopolitical entity not related to a commercial business, product or service. The term “sign” also does not include the display of merchandise for sale on the site of the display.

706.01-36 *Sign face* means the portion of a sign structure bearing the message.

706.01-37 *Sign structure* means any structure bearing a sign face; or any portion of a sign, including the area devoted to message or display, and all poles, posts, supports, uprights, bracing, framework, border, background and structural trim.

706.01-38 *Temporary sign* means a sign that ~~can be~~ **is** displayed for no more than 30 consecutive days at one time; for a maximum of two (2) 30-day periods, separated by no less than one week, during a calendar year.

706.01-39 *Vehicle or trailer sign* means any sign attached to or displayed on a vehicle or trailer, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service or activity. Any such vehicle or trailer shall, without limitation, be considered to be used for the primary purpose of advertising if it fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle or trailer.

706.01-40 *Wall sign* means any sign attached to a wall or painted on or against a flat surface of a structure, including the roof. Wall signs shall include murals.

706.01-41 *Window* means a transparent or translucent element of the building envelope, bounded by a frame of another material, allowing transmission of light into a building. A single window is a visually-identifiable discrete architectural unit, but may be comprised of multiple sashes or panes of glass.

706.01-42 *Window sign* means any sign visible outside a window and attached to or within 18 inches in front of or behind the surface of a window.

706.02 Permit Required. A sign permit is required prior to the display and erection of any sign except as provided in subsection 706.03.

706.02-1 Application for permit; signs permitted by right.

706.02-2 An application for a sign permit shall be filed with the City on forms furnished by the City. The applicant shall provide sufficient information to determine if the proposed sign is permitted under the zoning ordinance and other applicable laws, regulations, and ordinances. An application for a temporary sign shall state the dates intended for the erection and removal of the sign.

706.02-2.1 The Zoning Administrator or designee shall promptly process the sign permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application within 20 business days after receipt. Any application that complies with all provisions of this zoning ordinance, the building code, and other applicable laws, regulations, and ordinances shall be approved.

706.02-2.2 If the application is rejected, the City shall provide a list of the reasons for the rejection in writing. An application shall be rejected for non-compliance with the terms of the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

706.02-3 Permit fee. A nonrefundable fee as set forth in the fee schedule adopted by the City Council shall accompany all sign permit applications.

706.02-4 Duration and revocation of permit. If a sign is not installed within six months following the issuance of a sign permit (or within 30 days in the case of a temporary sign permit), the permit shall be void. The permit for a temporary sign shall state its duration, not to exceed 30 days unless another time is provided in the zoning ordinance. The City may revoke a sign permit under any of the following circumstances:

706.02-4.1 The City determines that information in the application was materially false or misleading;

706.02-4.2 The sign as installed does not conform to the sign permit application;
or

706.02-4.3 The sign violates the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

706.02-5 Application for permit; special exceptions.

706.02-5.1 Comprehensive sign plans may be approved by special use permit in districts for uses allowed by special use permit. Signage included in an approved comprehensive sign plan may deviate from regulations within this ordinance; provided that the intent of this ordinance is maintained.

706.03 Permit Not Required

706.03-1 Signs erected by a governmental body or required by law.

706.03-2 Flags up to 16 square feet in size not containing any commercial advertising; provided, that no freestanding pole shall be erected in the public right-of-way nor be within five (5) feet of a service drive, travel lane or adjoining street.

706.03-3 The changing of messages on signs with movable lettering, or the changing of flyers on bulletin boards

706.03-4 The repair and maintenance of an existing permitted sign.

706.03-5 One or more temporary signs with an aggregate area of twelve (12) square feet.

706.03-6 Not more than two minor signs per parcel.

706.03-7 Movable A-frame signs which are erected for a duration of less than 24 hours at a time and which have a sign face of no more than six (6) square feet per side.

706.03-8 Pavement markings. Any sign applied directly and entirely to and flush with an asphalt, concrete, or similar paved surface.

706.03-9 One or more permanent window signs which do not exceed 25% of the area of a single window, where the aggregate area of window signs on the same elevation does not exceed 25% of the gross window area of the same elevation. Signs exceeding 25% of the area of a single window require a permit.

706.03-10 One or more bulletin boards with an aggregate area of twelve (12) square feet.

706.04 Prohibited Signs. In addition to signs prohibited elsewhere in this Code or by applicable state or federal law, the following signs are prohibited:

706.04-1 General prohibitions.

706.04-1.1 Signs that violate any law of the Commonwealth relating to outdoor advertising.

706.04-1.2 Signs attached to natural vegetation.

706.04-1.3 Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority. Any such sign is subject to immediate removal and disposal by an authorized city official as a nuisance.

706.04-1.4 Freestanding signs more than 25 feet in height.

706.04-1.5 Any sign displayed without complying with all applicable regulations of this chapter.

706.04-2 Prohibitions based on materials.

706.04-2.1 Animated signs. This subsection does not apply to flags expressly permitted under this article, or to content on electronic message board signs which changes no more often than once every minute (60 seconds).

706.04-2.2 Inflatable signs.

706.04-2.1 Flashing signs or other signs displaying flashing, scrolling or intermittent lights or lights of changing degrees of intensity, except where such signs are expressly permitted within this article.

706.04-2.3 Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas.

706.04-2.4 Signs that emit sound.

706.04-3 Prohibitions based on location.

706.04-3.1 Permanent off-premises business signs, unless specifically permitted by this chapter.

706.04-3.2 Signs erected on public land other than those approved by an authorized City official in writing. Any sign not so authorized is subject to immediate removal and disposal by any authorized official.

706.04-3.3 Signs extending above the roofline of a building or its parapet wall.

~~706.04-3.4 Neon signs, except in windows.~~

706.04-3.5 A sign that obstructs free or clear vision, or otherwise causes a safety hazard for vehicular, bicycle, or pedestrian traffic due to its location.

706.04-3.6 Sign constructed or attached so as to obstruct the use of any window, door, stairway or other opening for ingress, egress, ventilation, or light as required by the Virginia Uniform Statewide Building Code or any other applicable regulations.

706.05 Measurements of Sign Area and Height

706.05-1 Supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed. In such cases, the sign area shall be computed in accordance with the preceding provisions.

706.05-2 In instances where there are multiple tenants or users on a property or in a building, allowable sign area for all parties shall not exceed the maximum sign area computed as if there were a single tenant or user.

706.05-3 Sign area.

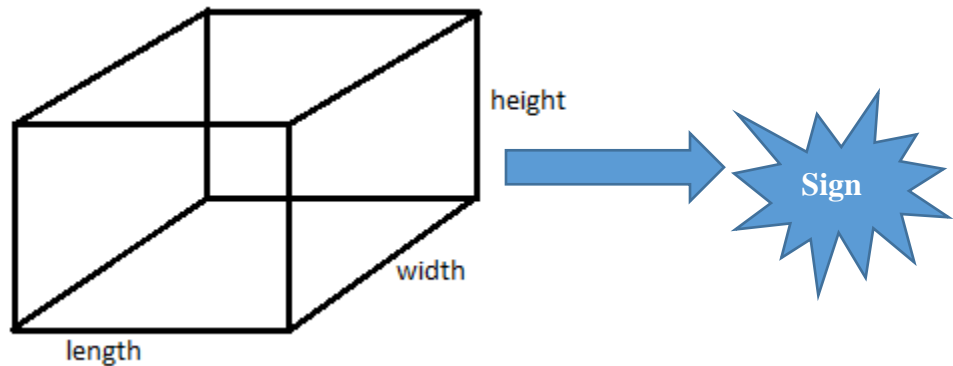
706.05-3.1 Sign area is calculated under the following principles:

706.05-3.1-1 With signs that are regular polygons or circles, the area can be calculated by the mathematical formula for that polygon or circle. With signs that are not regular polygons or circles, the sign area is calculated using all that area within a maximum of three abutting or overlapping rectangles that enclose the sign face.

706.05-3.1-2 The permitted area of a double-faced sign shall be considered to be the area on one side only. If one face contains a larger sign area than the other, the larger face shall be used in calculating the sign area. A double-faced sign must have an internal angle between its two faces of no more than 45 degrees.

706.05-3.1-3 For projecting signs with a thickness of four inches or more, the sign area also includes the area of the visible sides of the sign, calculated as a rectangle enclosing each entire side view.

706.05-3.1-4 For sculptural signs with varying dimensions and shapes, sign area is calculated by enclosing an imaginary rectangular prism around the shape of the sign. See below.



706.05-3.2 The supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure area are designed in such a manner as to form an integral background of the display.

706.05-4 Maximum height. The maximum height for any sign shall be 25 feet unless otherwise specified within this chapter

706.05-5 Window area. The gross window area of each elevation of a building shall be considered to be sum of the area of transparent or translucent window surfaces on the given building elevation.

706.06 Maintenance and Removal

706.06-1 All signs shall be constructed and mounted in compliance with the Virginia Uniform Statewide Building Code.

706.06-2 All signs and components thereof shall be maintained in good repair and in a safe, neat and clean condition.

706.06-3 The building official may cause to have removed or repaired immediately without written notice any sign which, in his opinion, has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such emergency removal or repair shall be at the expense of the owner or lessee thereof as provided in Chapter 14 of this Code.

706.06-4 The zoning official may cause to have removed immediately any temporary sign which is in violation of the provisions of this ordinance. The zoning official shall notify as soon as practicable the property owner, and party which appears responsible for the sign if different, in writing of the nature of the violation and removal of the sign.

706.06-5 The owner of any advertising sign, other than a permitted off-premises sign, located on commercial property where the use or business has ceased operating shall, within 60 days of the cessation of use or business operation, replace the sign face with a blank face until such time as a use or business has resumed operating on the property.

706.06-6 Any sign which constitutes a nuisance may be enforced and abated by the City under the provisions of Chapter 8 or Chapter 14 of the Code of the City of Buena Vista or Virginia Code §§ 15.2-900, 15.2-906, and/or 15.2-1115.

706.07 Illumination. All permitted signs may be backlit, internally lighted, or indirectly lighted, unless such lighting is specifically prohibited in this article.

706.07-1 In the case of indirect lighting, the source shall be so shielded that it illuminates only the face of the sign. However, shingle signs shall be indirectly illuminated or have shielded direct lighting, unless otherwise prohibited within this chapter. Indirect lighting shall consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light shall be substantially confined to the sign to minimize glare, sky glow, and light trespass. The beam width shall not be wider than that needed to light the sign.

706.07-2 Illumination shall be situated in a way that does not affect traffic and road safety, nor interfere with residential dwellings or neighboring businesses.

706.08 Nonconforming Signs

706.08-1 Signs lawfully existing on the effective date of this chapter or prior ordinances, which do not conform to the provisions of this chapter, and signs which are accessory to a nonconforming use shall be deemed to be nonconforming signs and may remain except as qualified below. The burden of establishing nonconforming status of signs and of the physical characteristics/location of such signs shall be that of the owner of the property. Upon notice from the zoning administrator, a property owner shall submit verification that sign(s) were lawfully existing at time of erection. Failure to provide such verification shall be cause for order to remove sign(s) or bring sign(s) into compliance with the current ordinance.

706.08-2 No nonconforming sign shall be enlarged nor shall any feature of a nonconforming sign, such as illumination, be increased.

706.08-3 Nothing in this section shall be deemed to prevent keeping in good repair a nonconforming sign. Nonconforming signs shall not be extended or structurally reconstructed or altered in any manner, except a sign face may be changed so long as the new face is equal to or reduced in height and/or sign area.

706.08-4 No nonconforming sign shall be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this article.

706.08-5 A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of its area may be restored within two (2) years after such destruction or damage but shall not be enlarged in any manner. If such sign is so destroyed or damaged to an extent exceeding fifty (50) percent, it shall not be reconstructed but may be replaced with a sign that is in full accordance with the provisions of this article.

706.08-6 A nonconforming sign which is changed to becoming conforming or is replaced by a conforming sign shall no longer be deemed nonconforming, and thereafter such sign shall be in accordance with the provisions of this article.

706.08-7 A nonconforming sign structure shall be subject to the removal provisions of Section 708 of the Land Development Regulations. In addition, a nonconforming sign structure shall be removed if the use to which it is accessory has not been in operation for a period of two years or more. Such structure sign shall be removed by the owner or lessee of the property. If the owner or lessee fails to remove the sign structure, the zoning administrator or designee shall give the owner fifteen (15) days' written notice to remove it. Upon failure to comply with this notice, the zoning administrator or designee may enter the property upon which the sign is located and remove any such sign or may initiate such action as may be necessary to gain compliance with this provision. The cost of such removal shall be chargeable to the owner of the property.

706.09 Non-Commercial Signs; substitution. Wherever this Article permits a sign with commercial content, non-commercial content is also permitted subject to the same requirements of size, color, illumination, movement, materials, location, height and construction.

706.10 Dimensional regulations for signage

	Wall	Freestanding	Awning, Marquee, Projecting	Flags	Window
Maximum Size	100% of wall	60 sq. ft. per sign	50% of wall area	8' x 12'	25% of gross window area per elevation
Minimum Setback	N/A	Height of sign; no setback for	N/A	Height of flagpole; no setback for	N/A

		signs under 5 ft. tall		flagpoles under 5 ft.	
Maximum Height	Height of wall	25ft.	Height of wall	45 ft.	N/A

706.10-1 City Council may approve a conditional use permit granting deviation from the dimensional regulations of this table if it finds that the deviation would be consistent with the intent of the regulations.



CITY OF BUENA VISTA

Planning & Community Development
2039 Sycamore Avenue
Buena Vista VA 24416

STAFF REPORT

DATE: 2/6/2020
TYPE: Zoning Text Amendment
SUBJ: New Sign Ordinance

Overview

A new sign ordinance is needed to conform to recent law, to better reflect the regulatory goals of the City, and to improve the process for permitting and enforcement of signage. Rather than rework existing adopted text or draft text from some years back, a model ordinance from the Local Government Attorneys of Virginia organization was used as the basis for the new text.

Analysis

Background

Sign regulation is nearly universal to zoning ordinances because signage can negatively impact the overall community if it gets “out of hand.” An extreme example would be a massive billboard in a residential neighborhood.

The current sign regulation text, Section 706, appears to have been written in the 1990’s or early 2000’s and has seen only minor edits since that time. The current text adequately addresses different types of signs and follows standard practice in sign regulation. However, the following needs were identified for revision:

- *Definitions* – Definitions of sign terms were incorporated with the definitions applicable to the entire land use regulations. Multiple terms are defined, but then never used in the actual code; and there are key words in the code that are not defined, resulting in lack of clarity on certain points.
- *Clear language and ease of application* – Because different types of signs are treated very differently (e.g. window versus ground versus wall) and because of the specificity of dimensional regulations, the code is complicated and difficult to navigate for a business that wants to put up a sign. Additionally, mural signs painted directly on a building require special approval by the Board of Zoning Appeals, adding an extra step and cost.
- *Conformity with Reed v Gilbert (2015)* – The Reed v Gilbert (2015) US Supreme Court case significantly impacted many sign regulation provisions, effectively broadening free speech rights and limiting the ways that localities can regulate signs. In very general terms, localities may not base regulatory categories on sign content. Multiple provisions and definitions in the current text need to be revised or struck to conform.
- *Suitability for Buena Vista* – What is appropriate for one town is not always appropriate for another.

- *Temporary Sign Regulations* – Temporary signs, both commercial and noncommercial, are the most common signs around town, yet the current regulations on them are conflicting and don't address all scenarios.

New Text

Primarily because of the need for greater simplicity and better legal compliance, staff chose to start from scratch rather than edit the existing text. A model ordinance crafted after the *Reed v Gilbert* decision was the starting point, which provided a fresh organization for the regulations. Because the text was entirely rewritten, a side-by-side comparison is not possible. This section highlights the meaningful changes.

The new rules were written to consider the actual “risks” to Buena Vista if a given sign were erected. In other words, if we allowed a certain type or size of sign, what is the “worst case scenario” in terms of neighborhood character, aesthetics, property values, etc. Limits and prohibitions were designed to prevent “worst case scenarios” but otherwise allow creativity and ease of permitting.

Definitions

The definition section was reduced dramatically, from 65 words to 41. Current code defines dozens of terms which do not occur in the code, making the definitions entirely superfluous. Additionally, many of those terms create content-based categories which cannot legally be treated differently by regulations. Only the terms necessary were given definitions.

More signs permitted by right without a permit

Currently, under the letter of the law, all signs visible from the public right-of-way require a permit. This is not always strictly enforced, especially in the case of political or ideological signs, because it would be administratively burdensome and would defy common sense.

The new text creates a class of signs that do not require any permit at all, so property owners may put these up at will. Among these are

- Temporary signs of any type with an aggregate area of 12 sq ft
- Up to two “minor signs” per parcel. This is a new term developed by localities after *Reed v. Gilbert*. In our new text, a minor sign is “a wall or freestanding sign not exceeding two (2) square feet in area, not exceeding four feet in height, and not illuminated.” This will cover a host of signs, including most political signs; “Thank you Jesus” ideological signs; small business identification signs; and so on.
- Window signs. Because of their low cost these are some of the most popular business signs, so allowing all window signs without a permit takes away one of the permitting steps for many new businesses. Window signs will be limited in all cases to 25% of the window.

Signs prohibited entirely

This list is very similar to the current list, as it includes animated or flashing or moving signs or signs that obstruct sightlines for motorists or pose a hazard to pedestrians. New or clarified prohibitions:

- Electronic message boards remain prohibited, but are now more clearly defined as electronically-controlled signs with a message or image that changes more frequently than once per minute.
- No sign (unless it is a wall sign attached to a building) can be more than 25 feet tall. This is actually an increase from 18 feet in current code, but is much simpler than the current table in which maximum height is determined by setback and sign face size.

Measurement of sign area

Current code has pages of rules for how to measure sign area and multiple diagrams. Because the new text has much simpler and looser limits on sign area, this specificity is not needed. New rules for sign area measurement are much simpler—basically, draw a rectangle around the sign and that’s the area.

Dimensional Regulations

This section, in combination with new definitions, shows the most dramatic changes. A single table with four rows and five columns replaces pages of rules for different sign types. The maximum sign area for wall (including mural), awning, marquee, and projecting signs is drastically increased. The setback rules for freestanding (including ground/monument) signs are drastically simplified, from a series of tables connecting sign face size, height, and setback to a single rule.

Process

This is the initial public presentation of the sign code draft. Close review by the Planning Commission and the public is desired and staff is sending out to local businesses and other entities that may be interested. Based on initial review, staff would proceed with Planning Commission Public Hearing at the March meeting followed by City Council Public Hearing and adoption in April.



CITY OF BUENA VISTA

Planning & Community Development
2039 Sycamore Avenue
Buena Vista VA 24416

STAFF REPORT

DATE: 3/4/2020
TYPE: Zoning Text Amendment
SUBJ: New Sign Ordinance

This staff report only addresses changes and the items raised at the last meeting. For the full discussion of this text amendment see the staff report from the February 2020 Planning Commission meeting.

Analysis

Items that were raised at the last meeting (grouped thematically not in the order raised).

1. Regulating “unprofessional” looking signs, e.g. hand-lettered signs. This is not feasible or legal to do, because one person’s hand-lettering looks like computer-designed font and another person’s looks like a three year old. We want to allow a wide variety of sign materials and paint/imaging types. Additionally, we should allow a business to represent themselves as they see fit.
2. Window signs
 - a. The point about facades with multiple windows was important. I reworked definitions and some other provisions so that you now have two categories:
 - i. Small window signs that are 25% or less of a single window – allowed without a permit
 - ii. Other window signs require a permit and are limited to 25% of the total window area of that elevation of that story. For example, on a downtown building with large storefront windows, the store could obscure one whole window as long as it was less than a quarter of their total storefront window area. This max would not count toward the offices renting the 2nd floor of the building, nor to window signage on the rear of the building where a second tenant rents space out.
 - iii. If you wanted a neon OPEN sign and it took up more than 25%, just get a permit.
 - b. Flyers in windows – I think the majority of these cases will fall under the 25%-of-single-window rule. For example, Original Italian frequently posts flyers but their storefront windows are large and I expect they do not obscure more than a quarter of the window with flyers. The intent of the limitation is that windows remain, for the most part, open to light transmission and visibility. If you want to have a

whole lot of flyers for the public, create a fixed bulletin board, which would not be a window.

3. Temporary sign duration limits, etc.

- a. On the particular issue of flyers and bulletin boards, I added a definition and provision for bulletin boards. I think these are more in the category of permanent signs with changeable message content than the category of temporary signs. This relieves shop owners from worrying whether a particular flyer has been up for 30 days, or whether they have exceeded the “minor sign” size limit with fliers.
- b. Replacement of one temporary sign with another containing the same message. The sign regulations and limits on temporary signs are based on the physical sign. We cannot regulate based on the specific content (beyond the commercial/noncommercial distinction), and it would be impossible anyway—I would have to determine over how similar two messages were. You can take down one temporary sign and put up another with the same message right after and they are different signs. This is an unavoidable weakness but I don’t expect it to be an issue very often.
- c. Clarifying about political signs. Right now we have a very “hands off” policy with these and people can put up whatever they want. Political signs are protected by state code and court decisions as important forms of free speech, but the point of our new sign code is that we are regulating based on size, type, height, location, and duration—not content. So there could be some political signs that would be prohibited. However, you could place political signs on your property under several provisions:
 - i. As permanent minor signs, totaling no more than 2 sq ft, without a permit
 - ii. As temporary signs, totaling no more than 12 sq ft, without a permit but only in place for 30 days
 - iii. As permanent freestanding signs, totaling no more than 60 sq ft and meeting setback formula, with a permit

Also remember that on Labor Day, most of the signs are actually placed in the public ROW, not on private property. The City has a lot more discretion on public property with signs.

4. Directional signage

- a. Clarified that permanent, off-premise, business signs (including directional signs) are prohibited. Temporary off-premise business signs would still be allowed.
5. Pavement signs – leaving this as is. Pavement markings are permitting without a permit on private property.
6. Roof signs – struck language prohibiting signs painted on the surface of a roof, and expanded definition of “wall sign” to incorporate roof surface signs.
7. Height limit – I added a CUP safety valve to all the dimensional regulations.

8. Flag size – Based on recommended height/size ratios for flags, I lowered the max height of flag poles to 45' and increased the max flag size to 8' x 12'. Unlikely to get many that big.
9. A-frame signs – clarified definition of these. If they are permanent then they are considered freestanding signs. If they are temporary they are considered portable signs. Freestanding sign setback rules apply to them, but it's moot because A-frame signs are limited to 4 feet in height, so there is zero setback anyway.
10. Seminary Hill Historic District overlay – there are no additional rules that apply to signs in the SHHD. The SHHD says only that signs must comply with Section 706 (what we are amending), and that you have to get a COA for them. I don't think there is a place in the new sign code text to refer to the SHHD, but I will definitely put it in the explanatory document for the public.

Process

This is the second round of review with the Planning Commission but we have not had the Public Hearing yet. I would like to hold Planning Commission Public Hearing at the April PC meeting, then have Council Public Hearing on May 7th.