



DUMFRIES, VIRGINIA

Virginia's Oldest Continuously Chartered Town
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John Wilmer Porter Building
17755 Main Street
Dumfries, Virginia 22026-2386
Tel: 703-221-3400 / Fax: 703-221-3544
www.dumfriesva.gov

MEMORANDUM

TO: Town of Dumfries Planning Commission
FROM: Nick Rogers, AICP, Community Development Director
DATE: August 3rd, 2016
MEETING: **Monday, August 8th, 2016**
RE: ZTA 2016-001: Review of Temporary Use Permit program and regulations

Executive Summary

Staff has targeted the Zoning Ordinance's temporary use regulations (Appendix 1) for review and revision. The initial adoption of the temporary use regulations dates back to 1995, with minor adjustments made since 1995. The regulations cover a wide variety of uses, many of which are accessory to primary uses and should not require separate permitting. The deposit amounts prescribed in the Ordinance would not cover the Town's costs to clear trash, debris, and other refuse in the event of a violation, and the amounts should instead be listed in the Fee Schedule. The Zoning Ordinance limits the number and frequency of events, but hampers allowable activity in commercial districts and public parks. The yard sales regulations have not accomplished the intended goals of curbing impromptu sales along the Town's most visible streets. The regulations contain unnecessary burdens for nonprofit groups.

On August 3rd, 2016, Town Council approved by motion a suspension of the maximum cap for Temporary Use Permits that can be issued for the same lot during a calendar year. The suspension period shall expire on Monday, November 7th, 2016. Council's suspension affords staff time to coordinate the review of a Zoning Text Amendment (ZTA) simultaneously with the Planning Commission and Town Council with a target amendment date for the Council's November 1st, 2016 regular meeting on second reading.

Issues with Current Ordinance

Expansive List of Uses: Section 70-22 give the Zoning Administrator the ability to issue Temporary Use Permits for the following list of activities:

- Roadside stands for the temporary retail sales of seasonal and holiday goods
- Carnivals
- Circuses
- Craft fairs
- Concerts
- Flea markets
- Car shows

- Meetings
- Religious activities not held on church property
- Business catered events
- Similar outdoor activities
- Yard sales

This list covers a broad scope of activities which are often ancillary to a primary use and do not generate impacts requiring regulation, permitting, and enforcement. Events aiming to draw large crowds from outside Dumfries, such as carnivals and circuses, can be collected in a single definition to eliminate confusion and to simplify this section of the Zoning Ordinance. Moreover, virtually any organized event in one of the Town's public parks requires a temporary use permit.

Deposits: For roadside stands, permit applicants must provide a \$100 bond, cash escrow, or other suitable guarantee to insure that the conditions of the Temporary Use Permit are met. The Zoning Ordinance clarifies that the bond "shall be forfeited to the town if the site is not adequately cleared of all trash debris, signs and temporary structures, [if] the activity remains on the site after expiration of the permit, or [if] violations of this section or the conditions of the permit are established." For all other temporary uses, the applicant must provide a \$250 bond.

These bond amounts were written into the Zoning Ordinance when the temporary use regulations were originally adopted in 1995, preventing readjustment of the bond amount during periodic reviews of the Town's adopted Fee Schedule. The staff time required to properly administer this bond collection and release pulls staff time away from core functions. The Town Treasurer, her Administrative Assistant, the Community Development Director, and the Code Official all have steps in this process for every Temporary Use Permit issued.

Staff recommends that the bonding requirement be retained, but referenced to the most recently adopted Fee Schedule as with other planning and zoning applications in Dumfries. By reducing the scope of Temporary Use Permits to only the most significant events, the staff time needed to process the bond can be justified. The Zoning Ordinance's existing enforcement regulations, using Notices of Violation and court summons as necessary, are more appropriate tools for ensuring property owners comply with the temporary use regulations.

Annual Limits: The Zoning Ordinance restricts temporary uses to six permits for any one property during a single calendar year. For roadside stands, the limit is four permits during the same period. Yard sales are permitted three times a year. Each permitted event must be separated by at least 30 days from the previously permitted event.

The Zoning Ordinance is particularly burdensome for businesses which host customer appreciation days and other related functions. The Ordinance forces businesses to go through a tedious permitting process for functions associated with their primary use.

Events held in the Town's three public parks are currently limited to these provisions. The Town, as well as organizations such as Historic Dumfries Virginia, Inc. which coordinate events in public parks, are restricted to spacing out their events at 30-day intervals, and limited to no more than six events a year. These limitations conflict with the Comprehensive Plan's recommendations to

provide locations to engage in active recreational activities and to provide venues for promoting cultural arts, entertainment opportunities, family gatherings, and social events¹.

Permits for Public Parks: The Temporary Use Permit administration is serving a similar role to that of a community park use permitting program. Such programs allow for the collection of usage fees from park patrons who would like to schedule an event in a public park. The fees collected are typically earmarked in the municipality's budget for capital improvements in the park system. This is an inappropriate usage of the Temporary Use Permit program, as scheduled events in parks are compatible uses of public park land. A public park use permitting program, administered through an adopted community park use policy, can better offset the costs of staff's administrative time, secure funding for ongoing park maintenance and improvements, and provide the identical control over who may or may not schedule events in the Town's three public parks.

Yard Sales: Section 70-22, Paragraph 3 contains the Town's regulations associated with yard sales. This section was recently added by Town Council in 2014 to regulate the location and frequency of the sale of goods outside of a structure on a temporary basis. In particular, Council adopted text that prohibited such sale of goods along Route 1, Main Street, Fraley Boulevard, Graham Park Road, and Route 234.

Since the adoption of this text on September 9, 2014, staff has issued three permits for yard sales. Staff recognizes the Council's concerns with impromptu sales of goods in the Town's parking lots, particularly along the Town's most visible corridors. This section of the temporary use regulations can be revised to address this concern by focusing staff time and resources on the Town's visible corridors and not on residential yard sales that do not impact the surrounding neighborhood.

Nonprofit Organizations: Section 70-23 includes a number of regulations for nonprofits that are included for indeterminable reasons. Nonprofit are required to submit copies of their tax exempt status with their Temporary Use Permit applications, and are required to have a representative present at all times during a permit's hours of operation. Such regulations do not mitigate adverse impacts of temporary uses, and they create administration burdens for staff and applicants.

Staff has spoken with representatives of nonprofits who were under the impression that permit fees and deposits could be waived due to their nonprofit status. No such waiver provisions exist in the Zoning Ordinance, but the existing regulations and application form give the impression that nonprofit status would allow for special consideration that is not written into the law.

¹ Town of Dumfries Comprehensive Plan, Parks and Recreation, Implementation, p. 72
<http://www.dumfriesva.gov/wp-content/uploads/2014-Comprehensive-Plan-Final-Draft.pdf>

Recommendation

Staff recommends that the Planning Commission review the existing text and provide comments and feedback to staff at the August meeting. Staff further recommends the following:

1. Creating a definition for temporary uses in §70-1, while reducing the types of land use activity that would be defined as a temporary use;
2. Retaining the existing regulations that are necessary for permitting temporary uses that will have impacts on the health, safety, and public welfare of the Town's residents and merchants. Such uses would include, for example, carnivals, circuses, and concerts;
3. Removing the bond amounts and directing applicants to the adopted Fee Schedule;
4. Eliminating the 30-day period of separation from previous events on that lot;
5. Eliminating the maximum number of permits that can be issued for the same lot in a calendar year;
6. Revising the yard sales provisions to match Town Council's goals of prohibiting impromptu sales of goods along the Town's key transportation corridors;
7. Exempting property owned by the Town of Dumfries from compliance with the temporary use regulations; and,
8. Removing the language requiring additional regulations for nonprofit organizations.

Comments and feedback would be incorporated into draft text to be circulated to the Commission for further review in advance of the Commission's September meeting. Town Council will seek a recommendation from the Planning Commission after a duly advertised public hearing to take place at the September 12th, 2016 meeting. This recommendation enables Council to hold its own public hearing and first reading of the ZTA at its October 5th, 2016 regular meeting. If adopted by Council, it would go into effect after second reading at the November 1st, 2015 regular meeting.

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As always, please feel free to contact me at nrogers@dumfriesva.gov or at 703-221-3400 (ext. 146) with questions or other discussion matters.

Attachments:

1. Proposed review schedule for ZTA 2016-001
2. Existing Zoning Ordinance Text for Temporary Uses

REVIEW MEETING SCHEDULE

**Zoning Text Amendment
ZTA 2016-001
Temporary Use Regulations**

Planning Commission Work Session	August 8, 2016
Town Council Work Session	August 16, 2016
Town Council Authorization for Public Hearing Advert.	September 6, 2016
Planning Commission Public Hearing	September 12, 2016
Town Council Public Hearing (1 st reading)	October 5, 2016
Town Council Consent Agenda (2 nd reading)	November 1, 2016

1 Sec. 70-22. - Temporary uses.

2 The following temporary activities, and activities of a similar nature, may be administratively
3 approved in any zoning district by the zoning administrator through the issuance of a temporary use
4 permit when, in the administrator's judgment, the public health, safety and welfare will not be
5 impaired, and when the use is not so recurring in nature as to constitute a permanent use, and when
6 the following enumerated conditions are met:

7 (1) Roadside stands for the temporary retail sales of seasonal and holiday goods, excluding
8 fireworks, for a period not to exceed 30 consecutive days, and provided that:

- 9 a. No structure of a permanent nature shall be constructed;
- 10 b. Removal of temporary structures shall be guaranteed in writing, and such structures
11 shall be removed within 48 hours after permit expiration;
- 12 c. Written approval of the owner of the site shall be obtained. This approval shall identify
13 the site address, owner's name, owner's mailing address, owner's telephone number,
14 owner's acknowledgment of proposed activity and dates activity is to operate;
- 15 d. Adequate and safe ingress and egress, such that the normal traffic pattern shall not be
16 disrupted, shall be provided;
- 17 e. Removal of all freestanding signs, trash, or debris from the site and the immediate
18 vicinity, upon termination of the activity shall be guaranteed in writing, and
19 accomplished within 24 hours after permit expiration;
- 20 f. Documentation or a letter of permission shall be provided stating the specific location
21 of rest rooms that will be available to the applicant throughout the duration of the
22 activity. Adequate sanitary facilities shall be provided at the site, if deemed necessary
23 by the administrator, for the intended activity and, when necessary, shall be approved
24 by the health department;
- 25 g. A bond, cash escrow or other suitable guarantee in the amount of \$100.00 shall be
26 provided to insure that conditions of the permit will be met;
- 27 h. The bond or other guarantee, required by subsection (a)(1)g., of this section, shall be
28 forfeited to the town if the site is not adequately cleared of all trash debris, signs and
29 temporary structures, the activity remains on the site after expiration of the permit, or
30 violations of this section or the conditions of the permit are established (but nothing in
31 this forfeiture provision shall limit the town's ability to enforce this section in any
32 manner provided by law);
- 33 i. No more than four such permits shall be issued for the same lot during a calendar year;
34 and
- 35 j. Adequate parking for the activity intended, but no less than four parking spaces, shall
36 be provided on-site. Parking or stopping in public rights-of-way shall be prohibited,
37 unless approved by the state department of transportation and/or the town public works
38 department.

39 (2) Carnivals, circuses, craft fairs, concerts, flea markets, car shows, meetings, religious
40 activities not held on church property, business catered events, and similar outdoor activities,
41 for a period not to exceed 14 days, provided that:

- 42 a. All the standards of subsections (1)a—(1)f., of this section shall be met;
- 43 b. Carnivals and circuses shall be sponsored by a town or the county nonprofit benevolent,
44 religious, educational, patriotic, civic or charitable organization or recognized chapter
45 thereof;
- 46 c. Adequate parking for the intended activity shall be provided on the site or on property
47 immediately contiguous to the site. Parking or stopping in public rights-of-way shall be
48 prohibited unless approved by the state department of transportation and/or the town
49 public works department;
- 50 d. A bond, cash escrow or other suitable guarantee in the amount of \$250.00 shall be
51 provided to insure that conditions of the permit will be met;
- 52 e. The bond, or other guarantee, required by subsection (2)d., of this section shall be
53 forfeited to the town if the site is not adequately cleared of all trash, debris, signs and
54 temporary structures, the activity remains on the site after expiration of the permit, or
55 violations of this section or the conditions of the permit are established (but nothing in
56 this forfeiture provision shall limit the town's ability to enforce this section in any
57 manner provided by law; and
- 58 f. No more than six such permits shall be issued for the same lot during a calendar year.
- 59 (3) Yard sale — The sale of used or unwanted household goods being personal items, held on
60 private property. The temporary sale of goods will be allowed provided that they shall not
61 be held on: Rt. 1, Main Street, Fraley Boulevard, Graham Park Road, and Rt. 234. Yard sales
62 may be held, provided that:
- 63 a. A permit is obtained from the town prior to the event, and will be issued free of charge;
- 64 b. Permits shall only be issued to property owner/s or to a tenant with written permission
65 by the property owner/s;
- 66 c. No more than three permits will be issued per lot in a 12-month period;
- 67 d. All yard sale permits are temporary in nature and shall be valid for no longer than two
68 days;
- 69 e. All merchandise and staging equipment must be removed at the conclusion of the sale;
- 70 f. A setback of 10 feet must be maintained from any street, front, side, or rear yard;
- 71 g. Temporary signs may be allowed in accordance with section 70-14 of the Zoning
72 Ordinance, however signs for yard sales may not be displayed longer than five days
73 prior to the event, and must be removed once the sale is over;
- 74 h. This section shall not pertain to businesses displaying/selling wares outdoors on their
75 property.

76 (Ord. of 8-1-1995, § 1(15-21); Ord. of 8-7-2007(1), § 1; Ord. No. O-2014-008, 9-9-2014)

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78 Sec. 70-23. - Temporary use general standards.

79 (a) Temporary use permits shall be issued in accordance with the following standards:

80 (1) Each activity or event shall be separated by a period of not less than 30 consecutive days
81 from the previous event on that lot.

82 (2) No violation of law occurs in connection with the activity. Any illegal activity shall be
83 grounds for immediate termination of the permit by the zoning administrator. Termination
84 of the permit for this or other proper reason shall be accomplished by posting a notice of
85 violation at the temporary use site.

86 (b) Only one temporary use permit can be active on a lot at any time, unless an event or activity is
87 sponsored, managed or operated by a nonprofit organization, and in the judgment of the zoning
88 administrator, adequate space exists for two temporary uses and the goals of section 70-22 et
89 seq., are not jeopardized. In the event the zoning administrator so finds, no more than two events
90 or activities can be active on the same lot at the same time.

91 (c) Nonprofit organizations shall submit a copy of tax exempt status or other documentation with
92 the temporary use permit application to demonstrate bona fide nonprofit or not for profit status.

93 (d) For any temporary activity sponsored, managed or operated by a nonprofit organization, a
94 representative from the nonprofit organization shall be present at the activity at all times it is in
95 operation.

96 (e) All temporary activities and any appurtenant structures, signs, goods and other features must be
97 set back from any public right-of-way at least 20 feet.

98 (f) No temporary use permit shall be issued to an applicant until at least 30 days after any permit
99 issued to that applicant on a adjoining lot has expired.

100 (g) The zoning administrator may deny approval of all temporary activities on a site for a period of
101 up to one year if any temporary activity is commenced without or prior to all required approvals
102 by the town or other agencies, or the conditions of a previously issued permit were violated.

103 (h) Temporary activities authorized in accordance with section 70-22 shall be subject to all other
104 applicable town permits and approvals including, but not limited to; schematic layouts,
105 occupancy permits, hazardous use permits, itinerant vendor licenses, sign permits and similar
106 requirements.

107 (i) Additional conditions may be required, as deemed reasonable and necessary by the zoning
108 administrator, for any temporary activity.

109 (Ord. of 8-1-1995, § 1(15-22))