

# APPEAL STAFF REPORT & RECOMMENDATION TO THE TOWN OF DUMFRIES BOARD OF ZONING APPEALS

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**Project Name:** AMG Motors - Expansion of a Nonconforming Use

**Case Number:** ZA12-002

**Location Address:** 17575 Old Stage Coach Road

**GPIN:** 8289-03-7309

**Zoning District:** B-1 Business, General

**Applicable Laws:** Dumfries Town Code Chapter 70: Article III Division 6. - Business, General District B-1 & Article V. - Nonconforming Uses and Virginia State Code Section 15.2-2307.

**Appellant:** Najafe Asad

**Meeting Date:** February 20, 2013

**Request:** To reverse the determination of the Zoning Administrator for the issuance of zoning violation V12-072, which finds the appellant in violation of expanding a nonconforming use.

**Staff Contact:** Morgan Brim, Town Planner/Zoning Administrator

## Recommendation

Uphold the Zoning Administrator's determination in finding the appellant in violation of Town Code Section 70-576(1), which states: "No such nonconforming use and/or structure shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on January 18, 1979, or at the effective date of any amendment of this chapter, unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district."

## Background:

In September of 2011, the Town of Dumfries Town Council enacted zoning text amendments to several zoning districts found in chapter 70 of the Town Code. These amendments dealt specifically with allowable uses, conditional uses and accessory uses in the B-1, B-2 and FB/O-1 zoning districts. Among these amendments, "automotive sales and service" was eliminated from the B-1 zone, which resulted in existing automotive establishments becoming nonconforming uses.

On July 16, 2012, the Zoning Administrator and Building Official observed construction activities occurring on the subject property, 17575 Old Stage Coach Road. Upon further inspection it was found that the appellant was in the finishing stages of enclosing an open porch on the west side of the primary building on the property. Staff soon discovered that no building permit had been issued for the work. The building official issued a stop work order, which halted construction. On July 26, the Zoning Administrator issued a notice of violation (V12-073) and determined that enclosing the porch constituted an expansion of the nonconforming use of the property, "automotive sales". On August 24, 2012, the appellant submitted an application of appeal regarding the Administrator's zoning violation. The Administrator scheduled a public hearing before the Board of Zoning Appeals for February 20, 2013.



## Staff Analysis:

The appellant is attempting to appeal zoning violation V12-072, which establishes the enclosure of the west porch of the building housing offices for AMG Motors, as an expansion of a nonconforming use. In a letter from the appellant's engineer, Musa Hossein, he states the following as the reason for enclosing the porch *"the porch as become an attractive nuisance for people looking to drink in a secluded area after dark, as beer bottles and cans have been routinely discovered by AMG staff in the mornings on and underneath the floor of the open porch. With no security fence enclosing the property there is no impediment to people seeking a convenient and secluded placed to gather and consume alcohol after dark."*

The installation of fencing is allowed by ordinance and as the engineer states *" With no security fence enclosing the property there is no impediment..."*, he acknowledges that fencing could solve the property's security problems. The property owner could also install lighting within darkened areas of the property. Another solution could be the removal of the porch from the house. If the porch attracts after hour loitering, removing it could eliminate the hiding places that some of these people visit the site for. The point being, the appellant should have first considered other alternatives that align with the current Town Code.

Mr. Hossein's letter also indicates that the appellant assumed the enclosure of the porch would *"be in conformance with Town Code Section 70-576(1)"*. However, there is no record of the appellant contacting the Town in regards to a building permit for the structure. This small act would have put the appellant in touch with a staff member familiar with Town ordinances. He would have then become cognizant of his inability to expand the structure.

The appellant indicates that the enclosure of the porch is not an addition to the structure and that the nature of the business would not change. Town Code Section 70-1(c) defines addition as *"Any construction which increases the size of a building or structure."* The appellant's actions not only expanded the roofline of the building, but added square footage of usable office space. Thus, the square footage of office space being used for "automotive sales" is now expanded, providing additional space for more employees and customers, creating greater opportunity to sell more automobiles. This enclosure has taken an outdoor porch space and converted it into usable office space which *"results in an increase in nonconformity"*.

The photo below on the top left shows the building before the enclosure was constructed. It appears that the enclosure also extended the roof line a few feet to the west. The photo to the right shows the enclosure after construction. Please note the change in the roof line as compared with the before and after photos. The 'before construction' photo shows a straight horizontal roof line while the 'post construction' photo shows a slope, indicating where the roof was expanded. This expansion also indicates that the porch was not simply enclosed, but that the size of the enclosed space is actually larger than the previous porches' footprint. The photos below also show a new porch and staircase has been constructed adjacent to the addition.





**Alternatives:**

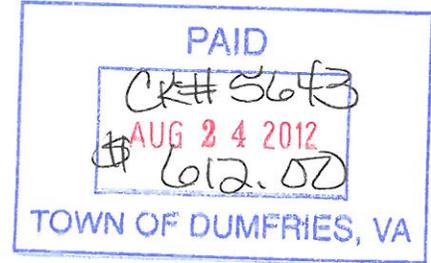
The appellant maintains the opportunity to come into compliance with the Zoning Ordinance by removing the enclosed addition and bringing the building back to its original footprint. It is clear that more appropriate solutions to the security issues cited by the appellant are available.

**Summary:**

The ability for an appellant to appeal a determination of the Zoning Administrator to the Board of Zoning Appeals is intended to allow for the remedy of an error of the judgment of the Zoning Administrator. The appellant bears the burden of proof to show the error in the judgment of the Zoning Administrator. The letter narrating the appellant justification for an appeal does not provide any evidence of error of the Zoning Administrator. It simply provides a reason why the addition was constructed, security purposes, but lacks proof of error in the zoning violation issued by the Administrator. It is not the job of the Board to determine if the addition is needed, only if the determination made by the Zoning Administrator is in error.

**Attachments:**

1. Application of Appeal
2. Letter - Statement of Appeal
3. Violation V12-072
4. Stop Work Order
5. Photo of Post and Preconstruction Conditions
6. Dumfries Fee Schedule



Town of Dumfries Zoning Department

Board of Zoning Appeals

# VARIANCE/APPEAL APPLICATION

Application for:  Variance  Appeal

## I. APPLICANT INFORMATION

Applicant's Name:

Najafe Asad

Street Address:

17575 Old Stage Coach Road

City: Dumfries State: VA Zip: 22026

Phone #: 703-441-8200 Fax #: 703-441-0800

E-Mail #: amgmotors@comcast.net

## II. OWNER INFORMATION

Property Owner's Name:

Najafe Asad

*(Indicate if different than applicant or enter "same" if applicant is the owner.)*

Street Address:

17575 Old Stage Coach Road

City: Dumfries State: VA Zip: 22026

Phone #: Same Fax #: Same

E-Mail #: Same

\* If applicant is not the owner, an Owner's Consent form must accompany this application.

## III. SUBJECT PROPERTY INFORMATION

Tax Map#: 6289-03-7309

Premise Address:

17575 Old Stage Coach Road, Dumfries, VA

Zoning District: B-1

Existing Use: Auto sales

Proposed Use: Same

**FOR OFFICE USE ONLY**

Application Accepted By: \_\_\_\_\_

Date: \_\_\_\_\_

Application #: \_\_\_\_\_ Fees Paid:  Yes  No

**IV. GENERAL INFORMATION**

Has a previous application been filed for a variance in connection with this property?

Yes  No

*If yes, please provide the date of application* \_\_\_\_\_

What code section of the zoning ordinance is the applicant seeking relief from as a result of a variance?

Chapter 70, Section \_\_\_\_\_ which pertains to \_\_\_\_\_

Is the subject property located within a flood district?  Yes  No

Is the subject property located within a Resource Protection Area?  Yes  No

Is the subject property located within an Overlay District?  Yes  No

*If yes, please specify which one:*

Has a Conditional Use Permit been issued for the existing/proposed use?  Yes  No

Are there any proffers associated with this property?  Yes  No

*If yes, please provide a copy.*

**V. VARIANCE JUSTIFICATION**

Please provide a narrative which specifies the reason(s) the above referenced variance(s) are necessary.

You may use additional sheets, if necessary.

\_\_\_\_\_  
This is an appeal, and not an application for a variance. It is filed by, and on behalf  
of the owner of the property in question. A statement of appeal is  
attached hereto and incorporated herein by reference.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# Owner's Consent Form

I/We, the Owner(s) of the property listed below, hereby grant permission for the applicant, \_\_\_\_\_ to seek a \_\_\_\_\_ as requested in the Board of Zoning Appeals Application relating to property located at \_\_\_\_\_ on Assessor's Parcel(s) \_\_\_\_\_.

\* \_\_\_\_\_  
*Date Signature*

\_\_\_\_\_  
*Printed Name*

~ NOTARY ~  
SUBSCRIBED & SWORN TO Before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
*Notary Public*  
My Commission Expires: \_\_\_\_\_



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Fax: 703-822-5914

August 22, 2012

The Town Of Dumfries Board of Zoning Appeals  
17755 Main Street  
Dumfries, Virginia 22026-2386

Attn: Morgan Brian, Zoning Administrator

RE: Violation Number V12-072  
GPIN 8289-03-7309  
AMG Motors  
17575 Old Stage Coach Road  
Dumfries, Virginia 22026

Dear Sirs:

AMG Motors has been conducting sales of luxury and high-end automobiles at the referenced location for the last 8 years. During this time their business has expanded due to their strict professionalism in sales and service and client liaison. Additionally AMG Motors has diligently paid all applicable local and state taxes and employs sales people who live locally in the town of Dumfries.

The office of AMG motors is located in a two story wood frame structure totaling roughly 1600 sq ft. in gross area including a one story extension on the east side of the structure that was present at the time of the sale of the property to the current owners. On the west side of the structure, there is an open porch with a sloped roof which was also inherited with the structure by the current owners.

Over the years, the porch as become an attractive nuisance for people looking to drink in a secluded area after dark, as beer bottles and cans have been routinely discovered by AMG staff in the mornings on and underneath the floor of the open porch. With no security fence enclosing the property there is no impediment to people seeking a convenient and secluded place to gather and consume alcohol after dark.

Considering the above, the owners of AMG decided to enclose the porch, which in their opinion would dress up the building and eliminate the aforementioned nuisance. In doing so, the owners assumed that the enclosure of the open porch would be in conformance with Town Code Section 70-5769(1). Town Code 70-5769(1) prohibits a nonconforming use or change to a use not permitted in the district only, neither of which, according to the owners applied to the enclosure of the porch as the nature of the business was not going to change, nor would additional land be occupied.

In September 2011, the Town of Dumfries, without the knowledge of the current owners or due notification to the owners, passed an amendment to the zoning ordinance for zone B-1 where the referenced business is located, eliminating Automobile Sales and Services as an allowable land use. As a result, in light of the amendment and unknown to the current owners, the enclosure of the porch



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now constitutes a non conforming use and the owners have been served notice to remove the enclosure of the porch and restore the porch to the original condition.

We find this notice disturbing since it effectively eliminates AMG's business of automotive sales without their knowledge and also unknown to them, seeks to stifle any attempts by AMG to dress up the structure and prevent misuse of the structure after hours.

Based on the above, we appeal the decision by the Town of Dumfries to not find AMG motors in violation of an ordinance that is unfair based on the reasons stated above, and we request the Town of Dumfries to approve the enclosure of the porch for the reasons stated above. In making their decision we sincerely hope that the esteemed board will also take into account the contributions made to the community by AMG Motors as a business entity and as a local employer.

If you have any questions or concerns, please do not hesitate to call or email.

Sincerely

Musa Hossein, PE  
Consulting Engineer, [musa.hossein@cfsengineers.com](mailto:musa.hossein@cfsengineers.com)

Cc: Secretary of the Planning Commission



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

**Uniform Notice of Violation**

Owner: NAJAFE ASAD

Violation Number: V12-072

Site Address: 17575 Old Stage Coach Road

GPIN: 8289-03-7309

An inspection on July 16, 2012 of the property located at 17575 Old Stage Coach Road, Dumfries, VA, over which you have control, has been made and the following violation(s) observed. **Violations noted below must be corrected on or before this date: August 28, 2012, except as otherwise noted in this violation. Failure to comply may result in the issuance of a criminal summons and court appearance. Your immediate action is required.**

**Violation:**

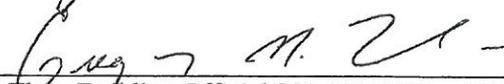
**Addition to Lawful Nonconforming Use:** Town staff observed the construction of an addition to the main building on site, which houses AMG Motors offices. The use of the property for motor vehicle sales is considered a lawful nonconforming use. **Town Code Section 70-576(1) states:** "No such nonconforming use and/or structure shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied on January 18, 1979, or at the effective date of any amendment of this chapter, unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district." The zoning ordinance for the B-1 zone, which your property is zoned, was amended in September 2011. This amendment included the elimination of "Automobile sales and service" as an allowable use. The addition to a structure on this property increases the square footage of the building and enlarges the nonconformity of the site and is therefore not permitted.

A \$500.00 fee plus a 2% levy totaling \$510.00 must be paid for failure to obtain a permit (See fee schedule attached).

**Remedy: Submit a demolition permit and pay demolition permit fee plus fee for failure to obtain a permit. Property must be returned to original condition before the addition was commenced.**

  
 Morgan Brinn, Zoning Administrator 801-221-3400 x 118

7/26/12  
 Date

  
 Greg Tkac, Building Official 801-221-3400 x 117

7/26/12.  
 Date

**RIGHT TO APPEAL**

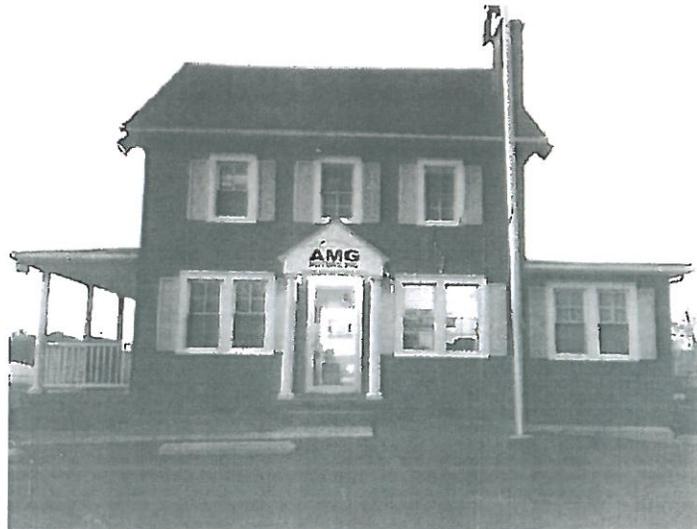
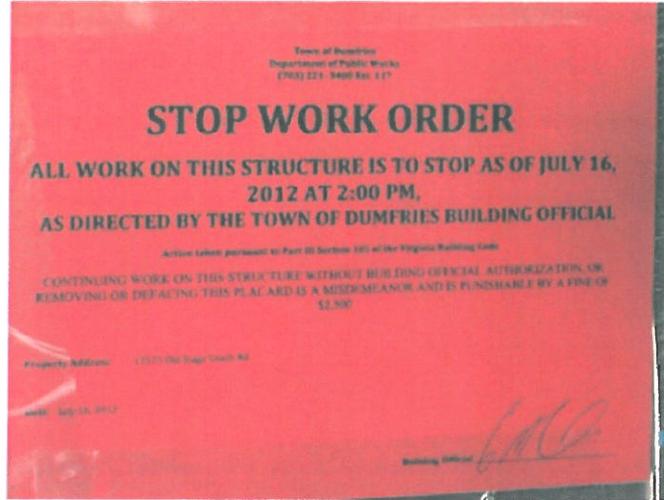
Any person in disagreement with the issuance of this NOTICE may appeal to the Town of Dumfries Board of Zoning Appeals in accordance with the Code of Virginia, Section 15.2-2311 et seq. and Section 70-618 of the Town of Dumfries Code of Ordinances. Applications for an appeal are available in Town Hall, and on the Town's website. The filing fee for an appeal is \$600, plus a 2% levy in the amount of \$12, for a total cost of \$612. The appeal must be filed within thirty (30) days from the date of this notice. If not appealed within 30 days of this notice, the decision shall be final and unappealable.

**Via certified mail to:**

NAJAFE ASAD  
 3397 LABOUR DR  
 WOODBRIDGE, VA 22193

AMG Motors  
 17575 Old Stage Coach Road  
 Dumfries, VA 22026

Photos attached:



# Fee Schedule

for the Town of Dumfries, Virginia

*effective July 1, 2012*

<b>SITE PLAN REVIEW FEES</b>	
<b>Application</b>	<b>Fee</b>
Nonresidential Site Plan, Multi-Family Site Plan, and major revisions to an approved plan	\$1,000
Single-Family & Townhouse Subdivision Plan, Minor Nonresidential Site Plan, and Grading Plan (over 2,500 square feet)	\$500
Plat Review (Subdivision, easement, consolidation, vacation)	\$350
Waiver request	\$300
Pre-submission Meeting	\$100 per hour per discipline, \$75 minimum
Subsequent reviews and minor revisions to an approved plan	\$100/sheet

*The Zoning Administrator and Director of Public Works reserve the right to assign fees for items not shown above.*

<b>LABOR AND EQUIPMENT RATES</b>	
<b>Activity</b>	<b>Fee</b>
Labor, without tools	\$25 per hour
Labor, with tools including: Weed eater & cord, weed eater & blade, sidewalk edger, shovels, rakes, pitchforks, grubbing hoe, machete, bush axe, pruning saws, and hand pruners	\$35 per hour
Labor with chainsaw	\$35 per hour
Labor with push mower	\$35 per hour
Labor with riding behind mower	\$45 per hour
Labor with riding mower	\$45 per hour
Labor with tractor & bushhog	\$65 per hour
Labor with dump truck (minimum 5 ton)	\$75 per hour
Labor with pickup truck (minimum 3/4 ton)	\$40 per hour
Labor with stake body truck (minimum 1 ton)	\$50 per hour
Skid steer and attachments with operator	\$60 per hour
Mini excavator with operator	\$65 per hour
Small rubber-tire loader/scratcher with operator	\$65 per hour
Director of Public Works	\$100 per hour
Building Inspector	\$100 per hour
Administration	\$50 per hour

*Immediate response services (within 24 hours): additional 50% on labor and equipment rates*

*The Director of Public Works reserves the right to assign fees for items not shown above.*

## BUILDING FEES

Application	Fee
<b>Construction Plan Review</b>	
Residential Plan Review (new construction)	\$300
Residential Plan Review (additions, remodeling, alterations)	\$150
Commercial/Industrial Plan Review (new, additions)	\$300
Subsequent Review Fee	\$100 per sheet
Commercial/Industrial Plan Review (tenant layout, alterations)	\$150
Subsequent Review Fee	\$100 per sheet
<b>Residential Construction Permit Application</b>	
Residential (new construction)	\$700 minimum (Includes permit and 4 inspections*)
Residential (additions, remodeling, alterations)	\$500 (Includes permit and 4 inspections*)
Residential (Decks)	\$300 (Includes permit and 2 inspections*)
Residential (Plumbing)	\$50 permit fee \$100 per inspection**
Residential (HVAC)	\$50 permit fee \$100 per inspection**
Residential (Electrical)	\$50 permit fee \$100 per inspection**
Residential (Occupancy Permit)	\$50 permit fee \$100 per inspection**
<b>Commercial Construction Permit Application</b>	
Commercial (new, additions)	\$1,100 (Includes permit and 10 inspections*)
Commercial (tenant layout, alterations)	\$900 (Includes permit and 8 inspections*)
Commercial (Plumbing)	\$50 permit fee \$100 per inspection**
Commercial (HVAC)	\$50 permit fee \$100 per inspection**
Commercial (Electrical)	\$50 permit fee \$100 per inspection**
Commercial (Occupancy Permit)	\$50 permit fee \$100 per inspection**
Fire Marshal Inspection (sprinklers, fire alarm)	As set by Prince William County Fire Marshal's Office
<b>Other Fees</b>	
Minor Plan Review	Determined by Building Official
Site Inspection (storm sewer, water, sewer lines)	\$150 per inspection
Code Compliance Inspection (requested by customer)	\$200 per inspection
Pre-Design Meeting	\$100 per hour - \$75 minimum
Construction Meeting	\$100 per hour per discipline - \$75 minimum
Reinstatement of Rescinded or Suspended Construction Permit	\$100
Reinstatement of Responsible Parties for Construction Permits	\$100
<b>FAILURE TO OBTAIN PERMIT</b>	<b>\$500 plus cost of Permit</b>

\* Additional inspections: \$100 each

\*\* Inspections may be combined into one inspection at \$150

A 2% levy for building fees is already included in the cost shown above.

*The Building Official reserves the right to assign fees for items not shown above.*

## ZONING FEES

Application	Fee		
<b>Buildings, Occupancy, &amp; Accessory Structures</b>			
Zoning Approval for Occupancy (tenant known)	\$25		
Zoning Approval for accessory residential structures	\$25		
<b>Planning Applications</b>			
Application for Rezoning	For less than 3 acres:	\$2,000 + \$1,000 per acre or portion thereof;	
	for 3 or more but less than 6 acres:	\$4,750;	
	for 6 or more acres:	a base fee of \$6,250, plus the following fee per acre based on desired zoning district:	
		residential: \$175;	
		B-1: \$150;	
		B-2: \$125;	
FB/O-1: \$175;			
M-1: \$200			
Zoning Text Amendment	\$500		
<b>Special Exceptions</b>			
Conditional Use Permit (residential)	\$500		
Conditional Use Permit (non-residential)	Base fee:	\$500	
	Plus:	\$2,500 per acre or portion thereof above 1	
	Or, for these specific instances:		
	\$1,250	Adult day care facility or Child care facility over 1 acre	
	\$1,750	Religious institution without related services or Veterinary hospital with kennel over 1 acre	
	\$5,750	Motor vehicle sales or Religious institution with related services over 3 acres	
\$7,750	Marina over 5 acres		
<b>Board of Zoning Appeals</b>			
Appeal to the Board of Zoning Appeals	\$600		
Variance application to the Board of Zoning Appeals (residential)	\$600		
Variance application to the Board of Zoning Appeals (non-residential)	\$600		
<b>Architectural Review Board</b>			
Certificate of Appropriateness	\$25		

*For any applications that require public hearings, applicant is also responsible for the cost of advertising such public hearings*

*The Zoning Administrator reserves the right to assign fees for items not shown above.*

## ZONING FEES (cont'd)

### Zoning Determinations & Certifications

Certification of Non-Conforming Use (residential)	\$30
Verification of/interpretation of/changes to Non-Conforming Use (Commercial / Industrial)	\$30
Zoning Interpretations/ Proffer/ SUP Determinations	\$100
Zoning Certification Letter required by banks prior to lending	\$65
Zoning Compliance Certification - Signature of Zoning Administrator required on DMV forms (for Motor Vehicle sales, salvage, vehicle removal operator, etc.)	\$25
<b>Home Businesses</b>	
Home Occupation	\$25
Home Business	\$25
<b>Signs</b>	
Sign (new - also requires building permit, possibly electrical permit)	\$55.00 + \$1.00 per square foot, or \$75, whichever is less
Sign (reface - no building or electrical permit needed)	\$25.00 + \$1.00 per square foot, or \$50, whichever is less
Temporary Sign/ Banner	\$25 *,**
*Fee is waived for a single "Grand Opening" banner for new businesses upon initial start of business	
**Fee is waived once a year for businesses that have supplied proof of BPOL and submitted application for a business license by the required date (but a permit is still required and sign still must conform to Zoning Ordinance)	
*, ** In these instances, a permit is still required and sign still must conform to Zoning Ordinance	
Temporary Sign Deposit	Minimum \$50, subject to increase by the Zoning Administrator if previous approvals were violated in any way
<b>Temporary Uses</b>	
Temporary Use Permit	Minimum \$25 for small events, \$100 for medium-impact events, \$500 for large events such as carnivals and circuses
Temporary Use Deposit	Minimum \$50 for small events, \$500 for medium-impact events, \$5,000 for large events such as carnivals and circuses, subject to increase by the Zoning Administrator if previous approvals were violated in any way

*For any applications that require public hearings, applicant is also responsible for the cost of advertising such public hearings*

*The Zoning Administrator reserves the right to assign fees for items not shown above.*