



# FAIRFAX COUNTY

## PROPOSED ZONING ORDINANCE AMENDMENT

### STAFF REPORT

## Historic Overlay Districts - State Code Revisions

**May 19, 2021**

#### Dates

**Authorization: April 13, 2021**  
**Planning Commission: June 9, 2021**  
**Board of Supervisors: June 22, 2021**

#### Staff Contact

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Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).



PLANNING & DEVELOPMENT

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## Background

The proposed Zoning Ordinance Amendment is not listed on the 2020 Zoning Ordinance Amendment Work Program (ZOAWP) but was prepared in response to a directive by the Board of Supervisors (Board) to analyze state code changes contained in [Senate Bill SB1457](#).

In 2021, the General Assembly adopted SB1457 which amended Virginia Code § 15.2-2306: Preservation of historical sites and architectural areas, to add a new subsection (D). This new subsection which became effective on April 7, 2021, authorizes a locality utilizing the urban county executive form of government to include a provision in an ordinance adopted under § 15.2-2306 that would (i) allow public access to any historic area, landmark, building, structure, or land; or (ii) provide that no subdivision may occur within any historic district unless approved by the review board or, on appeal, by the governing body of the locality as being compatible with the historic nature of such area, landmarks, buildings, or structures therein. This provision applies only to a parcel or parcels that collectively are (i) adjacent to a navigable river and a national park and (ii) in part or as a whole subject to an easement granted to the National Park Service or Virginia Outdoors Foundation on or after January 1, 1973.

On April 13, 2021, the Board of Supervisors (Board) approved the creation of the Wellington at River Farm Historic Overlay District. The Board also directed staff to analyze SB1457 and recommend possible changes to the Zoning Ordinance. The proposed amendment text language is enclosed as Appendix 1. Additionally, a copy of the Board Resolution authorizing this amendment is enclosed as Appendix 2 and a copy of SB1457 is enclosed as Appendix 3.

## Current Zoning Ordinance Provisions

Currently, there are 14 Historic Overlay Districts (HODs) established within Fairfax County that are protected by special Zoning Ordinance provisions. One of these provisions in the Zoning Ordinance authorizes the Architectural Review Board (ARB) to review and approve applications for building permits and sign permits. Another provision limits the ARB's purview to reviewing and making recommendations on all applications for rezoning, special exception, special permit, or variance, and any site plan, subdivision plat, grading plan, and sports illumination plan in HODs.

## Proposed Changes

The proposed amendment in this report is based on the new Zoning Ordinance (zMOD<sup>1</sup>), adopted March 23, 2021, which has an effective date of July 1, 2021. Staff proposes that this amendment be adopted to coincide with the July 1, 2021, effective date of zMOD.

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<sup>1</sup><https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zmod/zmod-adopted-ordinance.pdf#page=1>

- ❖ **Changes to the ARB’s Powers and Duties.** As mentioned above, SB1457 authorizes the County, as an urban county executive form of government, to include a provision in its HOD regulations requiring that no subdivision occur within a HOD unless approved by the ARB or, on appeal, by the Board. Currently, the Zoning Ordinance limits the ARB’s authority to only review and make recommendations on subdivision plat applications. Consistent with SB1457, the proposed amendment will now authorize the ARB to hear and decide applications for any proposed subdivision—including any subdivision plat, plan, or construction plan—of any parcel(s) within a HOD whose district-specific regulations require such ARB approval.
- ❖ **Changes to the Administration of HOD regulations.** This amendment also proposes to add a new Zoning Ordinance subsection 3101.6.B.2 to provide for the ARB to hear and decide applications for any proposed subdivision—including a subdivision plat, subdivision plan or construction plan—of any parcel(s) within an HOD whose district-specific regulations require such ARB approval and to clarify the standards by which the ARB must conduct its review.
- ❖ **Changes to the Wellington at River Farm HOD (WHOD).** The WHOD is the latest addition to the HODs in the County and was established on April 13, 2021, with the Board’s approval of a Zoning Ordinance amendment creating new regulations emphasizing the protection of existing features of historic significance, such as contributing structures, cultural landscapes, viewsheds, and potential archeological resources in the WHOD. The Zoning Ordinance amendment was adopted concurrently with a Comprehensive Plan Amendment addressing the proposed establishment of the WHOD and a rezoning application adding the WHOD to the property and defining the boundaries of the property on the Zoning Map. The WHOD is comprised of a single, 27.58-acre property located at 7931 East Boulevard Drive (Tax Map Parcel 102-2 ((1)) 20) and encompasses the property in its entirety.

The WHOD is located adjacent to the George Washington Memorial Parkway (previously known as the Mount Vernon Memorial Parkway), which is a unit of the National Park Service listed on the [National Register of Historic Places](#) and is bounded by the Potomac River, a navigable river to the east, meeting the first part of the conditions contained in SB1457. Additionally, the WHOD is encumbered by two existing easements that were added after January 1, 1973. The first open space easement is located on the eastern edge of the property along the Potomac River and was granted to the Virginia Outdoors Foundation in 1978. The second easement, granted in 1979, runs along the western edge of the property and adjacent to the George Washington Memorial Parkway and is held by the National Park Service. It requires the encumbered part of the property to be used as open space only. With the existence of either one of these two easements, the WHOD meets the second criteria contained in SB1457, which appertains to a parcel(s) within an HOD that is subject, in whole or in part, to an easement

granted to the National Park Service or Virginia Outdoors Foundation on or after January 1, 1973. Thus, the WHOD meets the requirements of SB1457.

The changes to the WHOD include requiring any subdivision—including a subdivision plat, subdivision plan or construction plan—to be reviewed and approved by the ARB. Furthermore, new subsection 3101.19.C(4) is proposed to be added allowing the Board, in conjunction with proposed development or as otherwise appropriate, to impose or accept any condition or restriction it deems necessary to ensure any use proposed within the WHOD will be compatible with and will not adversely affect any residential area and may include a condition to allow public access to the WHOD and its landmark, buildings, structures, and land as permitted by local, state, and federal law.

Staff recommends approval of the proposed amendment with a delayed effective date to coincide with the July 1, 2021, effective date of zMOD.

## Appendix

Appendix 1 – Proposed Text

Appendix 2 – Board Resolution

Appendix 3 – SB1457

1 In the amendment shown below, text to be deleted is identified with strike-through and  
2 highlighting and text to be added is shown in red and underlined.

3 **INSTRUCTION:**

- 4 1. Amend subsection 3101.6.B to require ARB approval of certain subdivisions as shown below.  
5 2. Amend subsection 3101.19.C by adding new subsections (1) and (4) and renumber the  
6 remaining subsections as shown below.

# 7 Article 3 – Overlay and Commercial 8 Revitalization Districts

## 9 3101. Historic Overlay Districts

### 10 6. Administration of Historic Overlay District Regulations

#### 11 B. Zoning Applications, and Site, Subdivision, Grading and Sports Illumination Plans

12 (1) ARB review and recommendation is required on applications for a rezoning, special  
13 exception, special permit, and variance, and for site plans, subdivision plats (except  
14 when review and approval is expressly required), grading plans (except when review and  
15 approval is expressly required), and sports illumination plans. This review must  
16 include consideration of the potential impact of the proposal on the historical,  
17 architectural, or archaeological significance of the district. In addition, the following  
18 should also be considered:

19 ~~(1)~~ (a) The impact of the proposed use, including the intensity, density, and scale of  
20 development, on existing conditions in the district;

21 ~~(2)~~ (b) Any change to the visual character of the district including views to and from  
22 historic, contributing, and non-contributing properties;

23 ~~(3)~~ (c) The location of buildings, structures, streets, parking areas, and planting and  
24 landscape features;

25 ~~(4)~~ (d) Any change to existing grades, drainage patterns, landscaping, or similar  
26 features as a result of permanent or temporary site construction activities; and

1 ~~(5)~~ (e) Any change to non-structural site elements, such as vehicular access, yard  
2 requirements, or utility easements that may affect the historic character of the  
3 district.

4 (2) ARB review and approval is required of any application for a proposed subdivision—  
5 including any subdivision plat, plan, or construction plan—of any parcel or parcels  
6 within a Historic Overlay District whose district-specific regulations require such ARB  
7 approval.

8 (a) Any ARB approval must include a determination that the proposed subdivision  
9 would be compatible with the historic nature of the district, including with its  
10 landmarks, buildings, or structures.

11 (b) In addition, the ARB’s review also includes consideration of the standards in  
12 subsection 3101.6.B(1) above.

## 13 19. Wellington at River Farm Historic Overlay District

### 14 C. Additional Standards

15 (1) Any application for a proposed subdivision—including a subdivision plat, subdivision  
16 plan or construction plan—requires review and approval by the ARB, in accordance  
17 with subsection 3101.6.B(2).

18 ~~(1)~~ (2) Any use approved must utilize the existing historic resources on the property and  
19 demonstrate that the use, including any proposed new improvements or  
20 additions, will be in harmony with the district-specific purpose of the Wellington  
21 at River Farm HOD.

22 ~~(2)~~ (3) Any new improvement and addition—including structure, sign, fence, street  
23 furniture, outdoor graphic, and public and private utilities—must be in  
24 conformance with adopted Design Guidelines for the Wellington at River Farm  
25 HOD ~~Historic Overlay District~~ and must be designed in a manner that will protect  
26 and preserve the existing historic resources, viewshed, archaeological resources,  
27 and historical character of the area.

28 (4) In association with proposed development or as otherwise appropriate, the Board  
29 may impose or accept any conditions or restrictions it deems necessary to ensure  
30 any proposed use will be compatible with and not adversely affect any residential  
31 area. This may include a condition to allow public access to the Wellington at River

Farm HOD and its landmark, buildings, structures, or land as permitted by local, state, and federal law.

**INSTRUCTION: Revise subsection 8103.4.C to add a new subsection (3) and renumber remaining subsections accordingly, as shown below.**

# Article 8 – Administration, Procedures, and Enforcement

## 8103. Review and Decision-Making Bodies

### 4. Architectural Review Board

#### B. Powers and Duties

The ARB has the following powers and duties:

- (1) In a Historic Overlay District, to hear and decide applications for building permits and sign permits.
- (2) To review and make recommendations on all applications for rezoning, special exception, special permit, and variance, and any site plan, subdivision plat, grading plan, and sports illumination plan in Historic Overlay Districts.
- (3) To hear and decide applications for any proposed subdivision—including any subdivision plan, plat, or construction plan—of any parcel or parcels within a Historic Overlay District whose district-specific regulations require such ARB approval.
- ~~(3)~~ (4) To propose, as deemed appropriate, the establishment of additional Historic Overlay Districts and revisions to existing Historic Overlay Districts.
- ~~(4)~~ (5) To assist and advise the Board, the Planning Commission, and other County departments and agencies in matters involving historically, architecturally, culturally, or archaeologically significant sites and buildings such as appropriate land usage, parking facilities, and signs.
- ~~(5)~~ (6) To assist the Zoning Administrator in reviewing of applications for new utility distribution or transmission poles 50-foot or lower in height proposed to be constructed



1 within the right-of-way of a Virginia Byway, or on property that is both adjacent to a  
2 Virginia Byway and listed on the County Inventory of Historic Sites. To assist the Zoning  
3 Administrator, the ARB may provide application specific recommendations or formulate  
4 general recommended criteria or design guidelines for the installation of such poles in  
5 these areas.

6 ~~(6)~~ (7) To advise owners of historic buildings or structures on problems of preservation.

7 ~~(7)~~ (8) To formulate recommendations concerning the establishment of an appropriate  
8 system of markers for Historic Overlay Districts and selected historic sites and buildings,  
9 including proposals for the installation and care of such markers.

10 ~~(8)~~ (9) To advise the Board of Supervisors in the preservation, restoration, and conservation  
11 of historic, cultural, or archaeological buildings, sites, or areas in the County by  
12 cooperating with and enlisting assistance from the Fairfax County History Commission,  
13 the Virginia Department of Historic Resources, the National Trust for Historic  
14 Preservation, and other interested parties, both public and private.

15 ~~(9)~~ (10) To make available to the Fairfax County Library, on request, copies of reports, maps,  
16 drawings, and other documents bearing on the historical significance and architectural  
17 history of landmarks considered by or brought to the attention of the ARB, and permit  
18 copies to be made for permanent keeping in the library's historical collection.

19 ~~(10)~~ (11) To employ secretarial assistance and pay salaries, wages, and other incurred  
20 necessary expenses, in accordance with appropriations by the Board.

21

**WELLINGTON AT RIVER FARM HISTORIC OVERLAY DISTRICT AMENDMENT  
RESOLUTION**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held electronically (due to the State of Emergency caused by the COVID-19 pandemic), on Tuesday, April 13, 2021, at which a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, on April 13, 2021, the Board adopted an amendment to the Zoning Ordinance establishing the Wellington at River Farm Historic Overlay District (“WHOD”), and it adopted a corresponding amendment to the Comprehensive Plan and a rezoning to establish the boundaries of the WHOD; and

**WHEREAS**, the WHOD’s boundaries include the entirety of the Wellington at River Farm property located at 7931 East Boulevard, Alexandria, Virginia (“the River Farm property”); and

**WHEREAS**, during the 2021 legislative session, the General Assembly adopted SB1457, which took effect on April 7, 2021, and would allow the County to include a provision in a historic overlay district ordinance to allow for public access to this historic area, landmark, building, structure, or land subject to the HOD, or provide that no subdivision shall occur within the HOD unless approved by the ARB or, on appeal, by the Board as being compatible with the historic nature of the area, landmarks, buildings, or structures within the HOD; and

**WHEREAS**, this bill applies to property adjacent to a navigable river and a national park and subject to an easement granted by the National Park Service or the Virginia Outdoors Foundation on or after January 1, 1973; and the River Farm property meets those conditions; and

**WHEREAS**, in light of SB1457’s grant of additional historical preservation authority, it is appropriate for the Board to consider an amendment to the Zoning Ordinance that corresponds with this new legislation; and

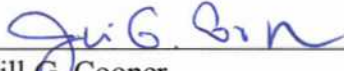
**WHEREAS**, by adoption of this Resolution, the Board directs staff to prepare and advertise public hearings on a proposed amendment to the Fairfax County Zoning Ordinance to implement the new authority in SB1457, as appropriate; and

**WHEREAS**, the public necessity, convenience, general welfare, and good zoning practice require consideration of this proposed Zoning Ordinance amendment; and

**NOW, THEREFORE, BE IT RESOLVED**, for the foregoing reasons, the Board of Supervisors authorizes the advertisement of the public hearing during which the Planning Commission and the Board will consider the proposed Zoning Ordinance amendment as recommended by staff.

**ADOPTED** this 13th day of April, 2021.

A Copy – Teste:

  
\_\_\_\_\_  
Jill G. Cooper  
Clerk for the Board of Supervisors

**CHAPTER 531**

*An Act to amend and reenact §[15.2-2306](#) of the Code of Virginia, relating to preservation of historic sites.*

[S 1457]

Approved April 7, 2021

Be it enacted by the General Assembly of Virginia:

1. That [§15.2-2306](#) of the Code of Virginia is amended and reenacted as follows:

[§15.2-2306](#). Preservation of historical sites and architectural areas.

A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by [§15.2-2201](#), and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or highways (as designated pursuant to Title 33.2, including [§33.2-319](#) of that title) found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts therein or in a contiguous locality. A governing body may provide in the ordinance that the applicant must submit documentation that any development in an area of the locality of known historical or archaeological significance will preserve or accommodate the historical or archaeological resources. An amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance with the provisions of Article 7 ([§15.2-2280](#) et seq.) of this chapter. The governing body may provide for a review board to administer the ordinance and may provide compensation to the board. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.

2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.

3. The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body. The filing of the petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the decision of the governing body if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the governing body.

In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same

schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows: three months when the offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or more.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

The authority to enter into contracts with any person, firm or corporation as stated above may include the creation, by ordinance, of a resident curator program such that private entities through lease or other contract may be engaged to manage, preserve, maintain, or operate, including the option to reside in, any such historic area, property, lands, or estate owned or leased by the locality. Any leases or contracts entered into under this provision shall require that all maintenance and improvement be conducted in accordance with established treatment standards for historic landmarks, areas, buildings, and structures. For purposes of this section, leases or contracts that preserve historic landmarks, buildings, structures, or areas are deemed to be consistent with the purposes of use, observation, education, pleasure, and welfare of the people as stated above so long as the lease or contract provides for reasonable public access consistent with the property's nature and use. The Department of Historic Resources shall provide technical assistance to local governments, at their request, to assist in developing resident curator programs.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no approval of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

C. Any locality that establishes or expands a local historic district pursuant to this section shall identify and inventory all landmarks, buildings, or structures in the areas being considered for inclusion within the proposed district. Prior to adoption of an ordinance establishing or expanding a local historic district, the locality shall (i) provide for public input from the community and affected property owners in accordance with [§15.2-2204](#); (ii) establish written criteria to be used to determine which properties should be included within a local historic district; and (iii) review the inventory and the criteria to determine which properties in the areas being

considered for inclusion within the proposed district meet the criteria to be included in a local historic district. Local historic district boundaries may be adjusted to exclude properties along the perimeter that do not meet the criteria. The locality shall include only the geographical areas in a local historic district where a majority of the properties meet the criteria established by the locality in accordance with this section. However, parcels of land contiguous to arterial streets or highways found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures, or districts therein, or in a contiguous locality may be included in a local historic district notwithstanding the provisions of this subsection.

*D. Any locality utilizing the urban county executive form of government may include a provision in any ordinance adopted pursuant to this section that would allow public access to any such historic area, landmark, building, or structure, or land pertaining thereto, or providing that no subdivision shall occur within any historic district unless approved by the review board or, on appeal, by the governing body of the locality as being compatible with the historic nature of such area, landmarks, buildings, or structures therein with regard to any parcel or parcels that collectively are (i) adjacent to a navigable river and a national park and (ii) in part or as a whole subject to an easement granted to the National Park Service or Virginia Outdoors Foundation granted on or after January 1, 1973.*

2. That an emergency exists and this act is in force from its passage.