

**Board of Supervisors**  
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Gary F. Snellings, Vice Chairman  
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Thomas C. Coen  
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Wendy E. Maurer  
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June 1, 2018

Thomas C. Foley  
County Administrator

Mr. Roy R. Shannon Jr.  
c/o Rich, Rosenthal, Brincefield, Manitta, Dzubin & Kroeger, LLP  
Agent for Everett Lovell  
201 North Union Street, Suite 230  
Alexandria, VA 22314

**SUBJECT: *Application 18152246; Zoning Administrator Determination; Tax Map Parcel Nos. 39P-A, 39P-B, 39P-C, 39P-1, 39P-1A, 39R-A, 39R-B, 39R-C, 39R-1, 39R-2, 39R-3, 39R-4, 39R-5, 39R-6, 39R-7, 39R-8, 39R-9 and 39R-10***

Dear Mr. Shannon:

This letter is in response to your request for a Zoning Administrator Determination on the issues you cite in regards to the Zoning Reclassification Application #RC17152031 and the Conditional Use Application #CUP17152030 (CUP). This determination will be based on the current Zoning Ordinance regulations.

Application #RC17152031 requested to amend the proffered conditions of Ordinance O07-73 and the Board of Supervisors approved Ordinance O17-45 at its meeting on December 19, 2017. In addition, the Board also approved Resolution R17-138 which approved Conditional Use Permit CUP 17152030.

1. Is a "drive-through" permitted in a B-2 district under the Zoning Ordinance?

*Yes, with an approved conditional use permit allowing for such use per Ordinance O18-08 ("O18-08").*

2. Is a "drive-through" allowed at the Project site?

*Yes, with an approved conditional use permit allowing for such use per O18-08. There has been no conditional use permit granted for the Project site that allows for the construction or operation of a drive-through.*

3. May an applicant obtain approval for a "drive-through" in a B-2 district by obtaining a conditional use permit?

*Yes.*



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4. Can the Planning Commission consider and recommend for approval a conditional use permit that allows for a "drive-through" at the Project site?

*Yes, per O18-08.*

5. Can the Board consider and approve a conditional use permit that allows a "drive-through" at the Project site?

*Yes, per O18-08.*

6. May an applicant obtain approval for a "drive-through" in a B-2 district by "proffering" to construct and operate a "drive-through"?

*No, the Board of Supervisors may accept such a proffer, but the acceptance of the proffer does not supersede the requirements of the Zoning Ordinance to permit such a use. Proffers are restrictions on uses, not approvals of uses, and as such they do not serve to allow for uses which are not permitted by the Zoning Ordinance.*

7. Can the Planning Commission consider and recommend for approval the acceptance of the Project applicant's "proffer" to construct and operate a "drive-through" in a B-2 district?

*Yes, subject to the qualifications referred to above in response to question 6.*

8. Can the Board consider and approve the acceptance of the Project applicant's "proffer" to construct and operate a "drive-through" in a B-2 district?

*Yes, subject to the qualifications referred to above in response to question 6.*

9. Is a "drive-through" pharmacy permitted in a B-2 district under the Zoning Ordinance?

*Yes, with an approved conditional use permit allowing for such use per O18-08.*

10. Is a "drive-through" pharmacy permitted at the Project site?

*Yes, with an approved conditional use permit allowing for such use per O18-08.*

11. May an applicant obtain approval for a "drive-through" pharmacy in a B-2 district by obtaining a conditional use permit?

*Yes, per O18-08.*

12. Can the Planning Commission consider and recommend for approval a conditional use permit that allows a "drive-through" pharmacy at the Project site?

*Yes, per O18-08*

13. Can the Board consider and approve a conditional use permit that allows a "drive-through" pharmacy at the Project site?

*Yes, per O18-08*

14. May an applicant obtain approval for a "drive-through" pharmacy in a B-2 district by "proffering" to construct and operate a "drive-through" pharmacy?

*No, see the response above to question 6.*

15. Can the Planning Commission consider and recommend for approval the acceptance of the Project applicant's "proffer" to construct and operate a "drive-through" pharmacy at the Project site?

*Yes, subject to the qualifications referred to above in response to question 6.*

16. Can the Board consider and approve the acceptance of the Project applicant's "proffer" to construct and operate a "drive-through" pharmacy at the Project site?

*Yes, subject to the qualifications referred to above in response to question 6.*

17. Can a conditional use permit be issued for a use in a zoning district if that use is not permitted in that zoning district under the Zoning Ordinance?

*No, unless the use is a "nonlisted use." The zoning ordinance provides for a conditional use permit to be approved for a "nonlisted use." If the use is listed in Table 3.1 of the Zoning Ordinance, however, then it cannot be permitted by conditional use permit as a "nonlisted use." See County Code § 28-37.*

18. Can the Planning Commission consider and recommend for approval the granting of a conditional use permit allowing an applicant's use of its property that is not permitted under the Zoning Ordinance for that property?

*Yes, if such use is permitted as a listed in Table 3.1 of the Zoning Ordinance as a conditional use permit use, or if it is a nonlisted use.*

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19. Can the Board consider and approve the granting of a conditional use permit allowing an applicant's use of its property that is not permitted under the Zoning Ordinance for that property?

*Yes, if such use is permitted as a listed in Table 3.1 of the Zoning Ordinance as a conditional use permit use, or if it is a nonlisted use.*

20. May an applicant "proffer" a use of its property that is not permitted under the Zoning Ordinance for that property?

*Yes, subject to the qualifications referred to above in response to question 6.*

21. Can the Planning Commission consider and recommend for approval the acceptance of an applicant's "proffer" to use its property in a manner that is not permitted under the Zoning Ordinance for that property?

*Yes, subject to the qualifications referred to above in response to question 6.*

22. Can the Board consider and approve the acceptance of an applicant's "proffer" to use its property in a manner that is not permitted under the Zoning Ordinance for that property?

*Yes, subject to the qualifications referred to above in response to question 6.*

23. If an automated gate is used at the entrance of a commercial property is that considered a "restricted access entrance?"

*No. The restricted access entrance is defined in the Zoning Ordinance as an entrance to a residential development from a public street to a private street or access way equipped with a gate, gatehouse, or security cameras. An automated gate at an entrance of a commercial property is not regulated as a restricted access entrance by the Zoning Ordinance.*

24. If a manned gate is used at the entrance of a commercial property is that considered a "restricted access entrance?"

*No. The restricted access entrance is defined in the Zoning Ordinance as an entrance to a residential development from a public street to a private street or access way equipped with a gate, gatehouse, or security cameras. A manned gate at an entrance of a commercial property is not regulated as a restricted access entrance by the Zoning Ordinance.*

25. If a security guard is used at an entrance to a commercial property is that considered a "restricted access entrance?"

*No. The restricted access entrance is defined in the Zoning Ordinance as an entrance to a residential development from a public street to a private street or access way equipped with a gate, gatehouse, or security cameras. A security guard used at an entrance to a commercial property is not regulated as a restricted access entrance by the Zoning Ordinance.*

26. In accordance with the Zoning Applications, if the Project (i) is enclosed within a security fence, (ii) has only one vehicular access point, and (iii) that one access point has a security gate with a guard, and requires an identification check, then is the Project considered to have a "restricted access entrance"?

*According to the Zoning Ordinance, a restricted access entrance is defined as an entrance to a residential development from a public street to a private street or access way equipped with a gate, gatehouse, or security cameras. The Zoning Ordinance only regulates restricted access entrances when constructed and used by residential developments. Restricted access entrances<sup>1</sup> may be utilized by other uses, but they are not regulated as "restricted access entrances" under the Zoning Ordinance.*

27. Does the Zoning Ordinance only permit "restricted access entrances" in residential developments?

*The Zoning Ordinance only regulates restricted access entrances when constructed and used by residential developments. Restricted access entrances may be utilized by commercial uses, but they are not regulated as "restricted access entrances" under the Zoning Ordinance*

28. Under the Zoning Ordinance, can "restricted access entrances" be installed and operated in non-residential developments?

*Not as that term is defined by the Zoning Ordinance. See the response to question 27 above.*

29. Does the Zoning Ordinance permit "restricted access entrances" in a B-2 district?

*Not as that term is defined by the Zoning Ordinance. See the response to question 27 above.*

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<sup>1</sup> In this zoning determination references to "restricted access entrances" being used by commercial properties should not be construed to mean that such commercial entrances are regulated under the Zoning Ordinance as the defined term "restricted access entrances."

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30. Under the Zoning Ordinance, is a commercial development permitted to have only one access point to a public road?

*Yes, depending on the development. In some cases more access points may be required.*

31. Under the Zoning Ordinance, is a development in a B-2 district permitted to only have one access point to a public road?

*Yes, see the response to question 30 above.*

32. May a "restricted access entrance" be installed and operated in a commercial development accessed by a public road, without first performing a traffic impact analysis ("TIA")?

*Not as that term is defined by the Zoning Ordinance. The use by a commercial development of a restricted access entrance does not by itself implicate the TIA requirements.*

33. May a "restricted access entrance" be installed and operated in a commercial development accessed by a public road?

*Not as that term is defined by the Zoning Ordinance. See the response to question 27 above.*

34. May a "restricted access entrance," accessed by a public road, be installed and operated in a B-2 district, without first performing a TIA?

*No, because a restricted access entrance, as that term is defined by the Zoning Ordinance, would only be used in conjunction with a residential development, which a residential use is not a permitted use in the B-2 district.*

35. May an applicant rely upon an older completed TIA, if that TIA is based upon a proposed use at the Project site having a different Institute of Transportation Engineers ("ITE") category of use, and now the Project, per the Zoning Applications, has a different ITE category of use with a higher trip generation rate?

*Yes, if the use as proposed generates less traffic than previously approve use.*

36. May an applicant rely upon an older completed TIA, if that TIA is based upon a proposed use at the Project site having a "Medical Office" use under the ITE, and now the Project, per the Zoning Applications, will consist of a "Medical Clinic" use, with a higher trip generation rate?

*Yes, if the use as proposed generates less traffic than previously approve use.*

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37. When calculating "trip generation rates" or "vehicle trip ends" to determine whether a Project will require a TIA, if the Project involves multiple ITE categories of use, then must the applicant's calculation of its "trip generation rates" or "vehicle trip ends" include all ITE categories applicable to the Project?

*The TIA will only include the proposed principal uses for the site per the determination by Virginia Department of Transportation upon review of the proposed project.*

38. When calculating "trip generation rates" or "vehicle trip ends" to determine whether the Project will require a TIA, if the Project involves a "Medical Clinic" and a "Pharmacy with Drive-Through Window," which are distinct ITE categories of use, then must the applicant's calculation of its "trip generation rates" or "vehicle trip ends" include both the "Medical Clinic" and the "Pharmacy with Drive-Through Window"?

*See the response to question 37 above.*

You have thirty (30) days from the receipt of this letter in which to appeal this decision to the Board of Zoning Appeals (BZA), in accordance with Virginia Code § 15.2-2311, or this decision shall be final and unappealable. You may obtain the BZA appeal application at [www.staffordcountyva.gov](http://www.staffordcountyva.gov). The fee for a residential appeal application is \$616.50.

Sincerely,



Susan W. Blackburn  
Zoning Administrator

SWB:dk

Enclosure (1)

BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

ORDINANCE

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, George L. Gordon, Jr., Government Center, Stafford, Virginia, on the 6<sup>th</sup> day of February, 2018:

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<u>MEMBERS:</u>	<u>VOTE:</u>
Meg Bohmke, Chairman	Yes
Gary F. Snellings, Vice Chairman	Yes
Jack R. Cavalier	Yes
L. Mark Dudenhefer	Yes
Wendy E. Maurer	Yes
Cindy C. Shelton	No
George Washington District	Vacant

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On motion of Mrs. Maurer, seconded by Mr. Snellings, which carried by a vote of 5 to 1, the following was adopted:

AN ORDINANCE TO AMEND AND REORDAIN STAFFORD  
COUNTY CODE SEC. 28-35, "TABLE OF USES AND  
STANDARDS"

WHEREAS, the Stafford County Code (Code) provides for specific uses and how they are permitted within the zoning districts; and

WHEREAS, a conditional use permit (CUP) is required for a drive-through facility located in the Highway Corridor Overlay Zoning District; and

WHEREAS, the Board desires to allow drive-through facilities in other zoning districts with approval of a CUP; and

WHEREAS, the Board carefully considered the recommendations of the Planning Commission and staff, and the testimony, if any, received at the public hearing; and

WHEREAS, the Board finds that public necessity, convenience, general welfare, and good zoning practices require adoption of such an ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the 6<sup>th</sup> day of February, 2018, that Stafford County Code Sec. 28-35, "Table of uses and standards" be and it hereby is amended and reordained as follows, all other portions remaining unchanged:



Sec. 28-35. Table of uses and standards.

Table 3.1. District Uses and Standards

*B-1 Convenience Commercial.*

(b) *Conditional use permit:*

~~Restaurant with a drive-through facility.~~ Drive-through.

*B-2 Urban Commercial.*

(b) *Conditional use permit:*

Drive-through.

*B-3 Office.*

(b) *Conditional use permit:*

Drive-through.

*RBC Recreational Business Campus.*

(b) *Conditional use permit:*

Drive-through.

*RC Rural Commercial.*

(b) *Conditional use permit:*

Drive-through.

*SC Suburban Commercial.*

(b) *Conditional use permit:*

Drive-through.

*M-1, Industrial Light.*

(b) *Conditional use permit:*

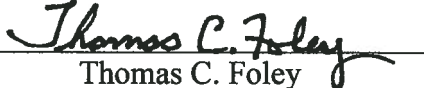
Drive-through.

*M-2 Industrial, Heavy.*

(b) *Conditional use permit:*

Drive-through.

A Copy, teste:

  
Thomas C. Foley  
County Administrator

TCF:JAH:sb