



Department of Planning
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To: Planning Commission
From: Planning Staff
Date: February 7, 2023
RE: CA-23-01 (City-wide) – By request of City Council, the City of Portsmouth proposes to amend *City Code Ch. 40.2 Zoning Ordinance* (including without limitation *Sec. 40.2-532(I)* and *Sec. 40.2-533(I)*) to allow City Council to elect to reconsider Zoning Map Amendments and Use Permits that were previously denied, prior to the end of the current one-year waiting period for refile denied applications.

Summary Dates:

Planning Commission Public Hearing:	February 7, 2023
City Council Reading and Public Hearing (tentative):	March 14, 2023

Summary Facts:

I. ACTION REQUESTED

To amend the City's Zoning Ordinance to allow City Council to elect to reconsider denied Use Permit and Rezoning applications

II. APPLICANT

The City of Portsmouth by resolution of City Council

III. PROPERTY OWNER

Not Applicable

IV. LOCATION & LEGAL DESCRIPTION

City-wide

V. PURPOSE & RECOMMENDATION

Staff recommends approval of the proposed amendments in order to grant City Council the flexibility to reconsider denied applications prior to the end of the one-year waiting period.

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VI. FINDINGS OF FACT

a. Background

From time to time, public necessity, convenience, general welfare, and good zoning practice warrant the evaluation and consideration of modifications to the City of Portsmouth Zoning Ordinance. The Zoning Ordinance should be maintained as a living document, adjusting to the needs of the community as determined to be appropriate by the Planning Commission and City Council.

Currently, the City of Portsmouth Zoning Ordinance requires a one-year waiting period before applications for the same or substantially the same Use Permit or Rezoning request that are denied by City Council can be resubmitted. Code of Virginia § 15.2-2286 authorizes, but does not mandate, a waiting period not to exceed one year.

On January 10, 2023, City Council adopted a resolution initiating an amendment to the City's Zoning Ordinance to allow City Council to elect to reconsider denied Zoning Map Amendment, Zoning Text Amendment, and Use Permit applications prior to the end of the one-year waiting period.

b. Proposed Amendments

The following amendments are proposed to *City Code Ch. 40.2 Zoning Ordinance*. The proposed amendments are listed in *Attachment a*.

- Amend Sec. 40.2-532(l) to permit City Council to vote to reconsider an application to amend the Zoning Ordinance text or to amend the Zoning Map that was previously denied.
- Amend Sec. 40.2-533(l) to permit City Council to vote to reconsider an application for a Use Permit that was previously denied.
- Amend Sec. 40.2-532(l) and Sec. 40.2-533(l) to include the procedural process for the reconsideration of denied applications.
 - Motion to reconsider an application must be made at the City Council's initiative, not the applicant's initiative.
 - Motion to reconsider an application must be approved by a majority vote of a quorum of City Council members.
 - Motion to reconsider an application must be made at a meeting following the meeting at which the application was denied.
 - The reconsideration does not require any action by Planning Commission.
 - An additional City Council public hearing shall be required to reconsider the application. The public hearing must be advertised in accordance with state and city requirements.
 - Following the public hearing, City Council will vote to either approve or deny the application.
 - Applications are not eligible for reconsideration if one year or more has passed since the date the application was denied.

VII. STAFF RECOMMENDATION

Staff recommends approval of the proposed amendments to *Zoning Ordinance Ch. 40.2 of the City Code* in order to improve the development process, as well as to reasonably and objectively meet the needs of the citizens and businesses while maintaining the health, safety, and welfare of the public.

VIII. ATTACHMENTS

a. Proposed Amendments

CA-23-01 Proposed Zoning Ordinance Amendments

Interpretation: Added language is shown by underlining. Deleted language is shown by ~~strikethrough~~.

1. SUBSECTIONS 40.2-532 OF THE CITY CODE IS PROPOSED TO BE AMENDED AS FOLLOWS:

Sec. 40.2-532(I) Administration – Zoning Text and Zoning Map Amendments (Rezoning)

(I) Effect of Denial

- (1)** If an application to amend the text of this Ordinance or the Zoning Map is denied by City Council, no other application for substantially the same change shall be filed until twelve (12) months from the date of the denial.
- (2)** Notwithstanding subsection 40.2-532(I)(1) above, City Council may, by majority vote of a quorum, elect to reconsider an application to amend the text of this Ordinance or the Zoning Map that was previously denied prior to the end of the twelve (12) month waiting period for refiling denied applications.
 - a. Any motion to reconsider an application shall be on City Council’s own initiative and may be made at any meeting, which is subsequent to, but not more than twelve (12) months after, the meeting at which the application was denied. No applicant shall have the right to request or petition City Council for reconsideration.
 - b. If City Council elects to reconsider an application, then City Council shall conduct an additional public hearing on the application. The public hearing shall be duly noticed in accordance with Code of Virginia § 15.2-2204. After the public hearing is concluded, City Council may vote to approve or deny the application.
 - c. The reconsideration shall not require a recommendation or any other action from the Planning Commission.

2. SUBSECTIONS 40.2-533 OF THE CITY CODE IS PROPOSED TO BE AMENDED AS FOLLOWS:

Sec. 40.2-533(I) Administration - Use Permits

(I) Effect of Denial

- (1)** If an application for a Use Permit is denied by City Council, no other application for substantially the same use may be filed until twelve (12) months from the date of the denial.
- (2)** Notwithstanding subsection 40.2-533(I)(1) above, City Council may, by majority vote of a quorum, elect to reconsider an application for a Use Permit that was previously denied prior to the end of the twelve (12) month waiting period for refiling denied applications.
 - a. Any motion to reconsider an application shall be on City Council’s own initiative and may be made at any meeting which is subsequent to, but not more than twelve (12) months after, the meeting at which the application was denied. No applicant shall have the right to request or petition City Council for reconsideration.
 - b. If City Council elects to reconsider an application, then City Council shall conduct an additional public hearing on the application. The public hearing shall be duly noticed in accordance with Code of Virginia § 15.2-2204. After the public hearing is concluded, City Council may vote to approve or deny the application.
 - c. The reconsideration shall not require a recommendation or any other action from the Planning Commission.