



Frank Simeck, CZA
Zoning Administrator

TO: Vienna Construction Industry
FROM: Frank Simeck, CZA Zoning Administrator
DATE: April 9, 2021
SUBJECT: Zoning Administrator Determination – “Should lot coverage be based on pre or post-dedicated lot size for the dedication of land for public use?”

The purpose of this document is to clarify the Towns interpretation of Town Code section § 18-203 – as quoted above.

Issue:

The Town of Vienna zoning ordinance, in particular Section 18-203, does not provide specific criteria for determining the lot coverage calculation on a parcel of land after the subject property has dedicated land for sidewalk frontage improvements.

Per Virginia State Code Sec. 15.2-2286, “[T]he zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance ... His authority shall include ... (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under §15.2-2307 or subsection C of §15.2-2311.”

Relevant Virginia State Code Section:

Sec. §15.2-2242. (9). – Optional Provisions of a Subdivision Ordinance.

Provisions requiring that where a lot being subdivided or developed fronts on an existing street, and adjacent property on either side has an existing sidewalk or when the provision of a sidewalk, the need for which is substantially generated and reasonably required by the proposed development, is in accordance with the locality’s adopted comprehensive plan, a locality may require the dedication of land for, and construction of, a sidewalk on the property being subdivided or developed. Nothing in this paragraph shall alter in any way any authority of localities or the Department of Transportation to require sidewalks on any newly constructed street or highway.

Relevant Town Code Sections:

- Sec. §18-15.F – Lot Coverage Area Requirements.
- Sec. §17-67.1. - Dedication of Sidewalks for Single-Lot Development.
- Sec. §17-67.2. - Completion of Sidewalks for Single-Lot Development.
- Sec. §18-203. - Nonconformance Caused by Government Action or Dedication.

Please be aware of the following provisions from the Vienna Town Code that address these types of issues:

Sec. 18-15. - Area requirements.

The following area requirements shall apply in the RS-16 zone:

F. *Lot coverage.* Not more than 25 percent of a lot shall be covered by buildings, accessory buildings, automobile parking spaces and access, sport courts, tennis courts, patios and terraces. Decks, as regulated in section 18-169, may not cover more than five percent of the total area of a lot.

Sec. 17-67.1. - Dedication of Sidewalks for Single-Lot Development.

The developer of any lot shall dedicate land along the lot frontage for sidewalk, curb, and gutter improvements as shown on the adopted Town Pedestrian Plan. Dedication of such improvements shall be in accordance with the standards set forth in this Code.

Sec. 17-67.2. - Completion of Sidewalks for Single-Lot Development.

- (a) The developer of any lot that fronts an existing street and where adjacent property on either side has an existing sidewalk, shall dedicate land, construct a sidewalk and connect such new sidewalk to the existing adjacent sidewalks. Such new sidewalk shall be constructed in accordance with the standards set forth in this Code.
- (b) Upon application by the developer to the Town Council, the Town Council may, in its discretion, waive the construction of such new sidewalk and permit the deposit of designated funds for such construction in accordance with sections 17-65 and 17-65.1.

Sec. 18-203. - Nonconformance Caused by Government Action or Dedication.

- (1) The provisions of this article shall not apply to those cases where the requirements of this chapter pertaining to yard setbacks, minimum lot dimensions, building line restrictions, and parking, cannot be met:
 - A. By reason of either the lawful action of a federal, state or local government in acquiring lands for roads or other public purposes; or
 - B. By the dedication of land by the owner thereof which is duly accepted by the appropriate government for public benefit and use.
- (2) Provided, however, that the requirements of this chapter had been or could have been met prior to such government action or dedication.
- (3) Provided, further, that such dedication or acquisition for public use shall not be deemed to authorize any subsequent increased or additional departure from the strict application of all other provisions of this chapter.
- (4) Provided, further, that the nonconformance with the requirements of this chapter pertaining to yard setbacks, minimum lot area, minimum lot dimensions, building line restrictions, and parking is caused by dedication for the purpose of widening existing streets and dedicated rights-of-way only and not by dedication of partial or total right-of-way requirements for proposed streets within a proposed subdivision.

Determination:

As Zoning Administrator for the Town of Vienna, it is my interpretation of § 18-203—as quoted above—that lot coverage calculations, as regulated under Section 18-15, and by reference Sections 18-24.F and 18-33.F, shall be based on a pre-dedicated lot area, prior to any dedication of land for the purpose of widening dedicated right-of-way. This determination is not applicable to lots being subdivided.

CC: Cindy Petkac, Director of Planning & Zoning
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