

**C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENTS**

- 1. **ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES FOR PLACES OF WORSHIP** - petition for a Zoning Ordinance text amendment to Article 8-1 of the Zoning Ordinance to increase the size of allowable accessory structures.

REQUESTED BY: Bharatiya Temple and Cultural Center

PROPOSED TEXT: (Note: Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion to the current Zoning Ordinance.)

**ARTICLE 8-1: AGRICULTURAL RURAL (A-R) ZONE**

**8-1(d)Conditional Uses** (Permitted only with Board of Adjustment approval.)

- 20. Places of religious assembly which may be allowed an additional 10,000 square feet of building over and above their existing square footage, provided that the structure(s) existed or the religious entity had approval of the Board of Adjustment and owned 20 or more contiguous acres prior to the adoption of the Rural Land Management Plan on April 8, 1999.

Places of religious assembly may erect accessory structures, without permanent walls, provided that the size of the accessory structures shall not exceed thirty-five percent (35%) of the floor area of the principal structure. The accessory structures shall not count against the otherwise allowed 10,000 square feet for a principal structure.

**STAFF ALTERNATIVE TEXT:**

(Note: Staff alternative text is noted with **bold underline** text below)

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The Zoning Committee Recommended: **Approval.**

The Staff Recommends: **Approval of the Staff Alternative Text,** for the following reasons:

- 1. The proposed text amendment to allow accessory structures for places of religious assembly is consistent with the community's goals of preservation of the agricultural and rural character that makes Lexington-Fayette County unique. The proposed restriction will limit accessory structures in size and scope so they will not have a detrimental effect on the Agricultural Rural (A-R) zoned land in the Rural Service Area.
- 2. The proposed text amendment complies with the requirements of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

Staff Presentation – Ms. Wade presented and summarized the staff report and recommendations for this text amendment, which were distributed to the Planning Commission. She said that the applicant is Bharatiya Temple and Cultural Center and they are asking to allow accessory structures without permanent walls for places of worship, and for such structures to not count towards the existing 10,000 square-foot limitation in the Agricultural Rural (A-R) zone. She said the applicant is proposing limiting any such accessory structure(s) to 35% of the principal structures on the property. She said that limitations are being proposed to prevent excessive use of the structures and to prevent them from being enclosed in the future, circumventing the requirements of the Zoning Ordinance. She said the applicant's proposed text is in addition to what is currently a conditional use in the Agricultural Rural (A-R) zone, (number 20). By allowing it as a part of the conditional use, an applicant would need to go the Board of Adjustment in order to be permitted to have this accessory use.

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Ms. Wade gave a brief history of the 10,000 square-foot restrictions for conditional uses in the Agricultural Rural (A-R) zone. She said that in 1994, the Urban County Council initiated changes to the (A-R) zone, and their primary concern was land use incompatibility in the Rural Service Area for some conditional uses; the 10,000 square-foot limitation was implemented for non-agricultural conditional uses; a 10-acre minimum was established for single-family and conditional uses; a 300-foot setback was established; the reduced number of principal and conditional uses was reduced; and extensive research was conducted about places of religious assembly in the Rural Service Area. She said that in 2004, the question of "if an existing church or temple existed in the Agricultural Rural (A-R) zone, does the church get an additional 10,000 square-feet", was brought to the Board of Adjustment. The Board was determining on a case-by-case basis if that was permitted or not. She said due to the number of these cases a text amendment to change the language of the Zoning Ordinance to clarify the standard was processed. She said that in 2017, there was another text amendment to change the language of the conditional uses from "churches and Sunday schools" to "places of religious assembly."

Ms. Wade also referenced chapter 2 of the Rural Land Management Plan. This portion of the Plan provides information regarding religious land uses in Rural Service Area. She said that many religious assemblies are not located in Agricultural Rural (A-R) zones, but approximately 45 of them are located within the Agricultural Rural (A-R) zone. She also said that the Planning Commission should consider the Religious Land Use and Institutionalized Person Act (RLUIPA) federal law that was adopted in 2000. This law was intended to protect and ensure fair and equal treatment of religious land uses within a community, and to protect these entities from discrimination by zoning or landmarking laws. She said that the community can't infringe on the religious practices of any group through its land use regulations.

Ms. Wade said the staff is supporting the applicant's proposal and doesn't believe that it will unduly infringe on the Rural Service Area, and that it is consistent with the Rural Land Management Plan. She said that the staff is recommending two changes to the text amendment that was requested by the applicant. One of them, is a correction, adding a comma in the first paragraph. The second change is "the" to "these" in the applicant's proposed text. This will clarify that only the structure without permanent walls will not count toward the 10,000 square foot limitation. She said that the staff is recommending approval for the staff alternative text.

Ms. Wade noted that one email was received and is specific regarding the applicant, and she reminded the Planning Commission to concentrate more on the policy decision. She also noted that there are some incorrect statements in the email. This email was distributed to Planning Commission members.

Commission Questions – Ms. Plumlee asked if the openness of the accessory use count against the 10,000-feet, so that perhaps a ball field could be built. Ms. Wade said that an athletic/recreational field is an accessory to any permitted use and once a church or religious assembly has a conditional use, they can install a recreational field as long as it doesn't have an impact to the square-footage. Ms. Plumlee said that this lot is a non-conforming use. Ms. Wade said that this lot is not non-conforming, it is a legally created lot and has a conditional use was approved by the Board of Adjustment, which is a permitted use not a non-conforming use.

Mr. Owens asked if this is a 10-acre site. Ms. Wade said that she hasn't specially researched the applicant's property because this isn't the hearing for that matter. Mr. Owens asked if there are any non-conforming lots that are less than 40-acres in the rural areas. Ms. Wade said that there are a number of A-R parcels that are less than 40 acres. She said that doesn't prohibit the Board of Adjustment from considering a conditional use on those lots. Mr. Owens said that there is also language that says that conditional uses on a non-conforming lot shall not increase the non-conformity of the use. Ms. Wade said that it shall not increase the non-conformity of the use. Ms. Tracy Jones, Department of Law, was asked to clarify. Ms. Jones said that this is being proposed by a specific applicant, but this is a text amendment; this isn't a zone change and is not specific to their property. If this text amendment is enacted, it will be added to the conditional use list in the Zoning Ordinance and it will apply to every case, which will be evaluated by the Board of Adjustment. Ms. Wade said that Article 4 details non-conforming lots and uses, which can be addressed more generally in a work session if there are questions or concerns.

*Note: Mr. Berkley left the meeting at this time.*

Ms. Plumlee asked if this is an accessory use if it is approved. Ms. Wade said that this is for an accessory structure. She said the staff believes that the principal use, which is the place of religious assembly, is asking to construct a structure to hold their existing conditional use in an outdoor setting, if granted from the Board of Adjustment. This will not be an additional use. Ms. Plumlee referenced Article 8-1(d)21, and said going forward and said that there isn't any use that describes a religious building with conditions that they would have to have. Ms. Wade said that the Board of Adjustment would consider that on a site-by-site basis. Ms. Plumlee asked why this is a text amendment and not going before the Board of Adjustment. Ms. Wade said that the Board of Adjustment doesn't have the authority to consider text amendments. She said that this is a policy for the Planning Commission and the Council, not the Board of Adjustment, to decide on how the Zoning Ordinance will read.

Applicant Presentation – Mr. Murphy, attorney representing the petitioner, said there is a petition with 356 signatures, which was submitted to the record. He gave a brief synopsis of the Hindu traditions and said that some religious observances are required

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to be held outdoors. He said that they have been holding these events outdoors with rented tents and the cost is keeping them from holding these outdoor observances as often as they are supposed to. He said that they would like to construct a picnic shelter, without any walls, which they discovered was technically considered a structure, by the Zoning Ordinance and Building Code. He said that in the Agricultural Rural (A-R) zone, churches are limited to 10,000 square feet and this temple is not eligible for any of the exceptions because they require that something had been built prior to 1995.

Mr. Murphy clarified the size of the existing building; the PVA lists the property as having 17,000 square feet of built space. He said that it's only 10,000 square feet and the footprint of the building is deceiving, which is less than 8,500 square feet. He said that the second floor is a loft floor and is only about 1,500 square feet and the building total square footage is less than 10,000 square feet.

Mr. Murphy said that the applicant is very mindful of the need to preserve the agricultural character of the of the A-R zone. He said that after conferring with the staff; they concluded that churches are a conditional use in A-R zones, so that this will listed as part of that conditional use. He said that if the alternate text is approved, the applicant will then have the right to apply to the Board of Adjustment for permission to build their shelter. He said that this structure is limited to 35% of the floor area of the principal structure. This structure would not be any type of shed, for storage, and will not have any walls or restroom facilities.

Mr. Murphy said that the applicant didn't mention the requirements of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) because they are asking permission not demanding. He said that the staff referenced it, and stated that governments can't overly burden religious organizations unless there is a compelling government interest or unless the least restrictive means of complying with that interest. He said that is why there are so many restrictions with this text amendment.

Commission Questions - Mr. Wilson asked again what the square footage of the church is. Mr. Murphy said that the temple has a total of 10,000 square feet, with both floors. Mr. Wilson also asked if this structure will be limited strictly for the church's use and not to be rented for private events. Mr. Murphy said that the structure will not be open to the public, only available to members of this temple.

Mr. Brewer said that the Planning Commission should not be making their decision based on this specific property but upon the totality of how this can be used throughout the urban county area. He said that the questions of the uses of this shelter should be set aside and the Planning Commission should be focusing on this text amendment.

Mr. Wilson said that he wanted to know what the applicant's intent would be for the shelter.

Mr. Murphy said that they agree to limit the outdoor structure to be available only for the religious purposes of the church or place of religious assembly for which it is associated with. Mr. Wilson said that he agrees with these limitations.

Mr. Forester said that the applicant's intent is very clear and asked for clarification of Mr. Wilson's comments. Mr. Wilson said that the staff's recommendation states "that places of religious assembly may erect accessory structures, without permanent walls, provided that the size of the accessory structures shall not exceed thirty-five percent (35%) of the floor area of the principal structure." He said that it doesn't state that it can or can't be used for commercial purposes.

Ms. Richardson said that the Board of Adjustment will need to determine if any structures can be built on these properties. She said that this is just text of the Zoning Ordinance. Mr. Wilson said that this will affect all churches that want to take advantage of this provision.

Ms. Mundy said that the Planning Commission is having to view this as an overall conditional use. She said that she has experience with many churches related to these restrictions, and this particular applicant wants to increase their total square footage that is permitted in the A-R zone. She expressed concern about increasing the square footage above 10,000.

Citizen Comment – There were no citizens present to speak to this application.

Applicant Rebuttal - Mr. Murphy said there most likely will be other churches that would like to install this type of structure but the same restrictions must apply; the openness, no walls; no restroom facilities; and the size of the structure. This text amendment only gives them the right to ask the Board of Adjustment. He said that the Board of Adjustment will ask these same questions regarding the individual circumstances of each property.

Staff Rebuttal – The staff didn't have a rebuttal at this time.

Commission Discussion - Mr. Owens said that he viewing the global aspect of this application and said that the Planning Commission does get site specific on text amendments and said that those details don't apply. He said the Planning Commission predecessors had made the 10,000 square-foot limitation. The 2013 Comprehensive Plan, the revised Rural Land Management Plan, and the 2018 Goals and Objectives all state to preserve the rural character of the rural area. He

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said that he believes this is a non-conforming lot and the use on it has restrictions. Ms. Wade interrupted and asked him to not be specific to the applicant's property and said that is not the role of the Planning Commission at this time. Mr. Owens continued and said that the 10,000 square-foot limit is in the Zoning Ordinance, for all non-agricultural conditional uses in the rural area, for a reason. He asked how this will be regulated to prevent commercial activities from taking place in these structures. He said that the applicant is asking for "non-permanent wall," he asked if that meant that roll-up walls could be used. He said that he believes the 35% is excessive and if it is allowed, a larger facility could ask and they could go to 7,000 square feet.

Mr. Cravens said that he doesn't see the difference between this and farms. He said that farms are allowed to do assemblies without permission.

Ms. Plumlee said that plenty can go wrong with this, such as, enforcement which will be difficult. She said that it challenges the rural area as we know it now.

Mr. Brewer said that he doesn't agree with making policy based on religion. He said that the role of the Planning Commission is to give the entities permission to ask the Board of Adjustment and to trust that body to regulate the restrictions.

Mr. Forester said that as a past member of Board of Adjustment, they have made restrictions and enforcement regulations on properties.

Mr. Wilson said that is confident that the Board of Adjustment will be asking similar questions that the Planning Commission is concerned about and the applicants have agreed that this will only be used for religious purposes.

Action - A motion was made by Mr. Owens, seconded by Ms. Plumlee, and failed 4-5 (Brewer, Cravens, Forester, Richardson, and Wilson opposed; Berkley and Penn absent) for disapproval of ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES FOR PLACES OF WORSHIP, for the following reasons:

1. This text amendment doesn't support the intent of the A-R zone, because allowing increases to accessory structures to religious organizations permitted as a conditional use with or without walls for use doesn't promote agriculture or related uses, and doesn't preserve the rural character of the Rural Service Area.
2. The proposed text amendment will create an additional accessory use to a conditional use that will allow more structures in the A-R zone, which will not promote agriculture nor preserve rural character, and therefore should not be allowed in this zone.

Commission Discussion – Mr. Wilson said that he would like to add to the text amendment that the space can't be rented out for commercial use.

Ms. Wade said that if the Planning Commission's intention is to change the text, she requested that the staff have a recess to review the member's suggested text.

Action – A motion was made by Mr. Cravens, seconded by Ms. Richardson, to approve ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES FOR PLACES OF WORSHIP, for the alternative text provided by the staff.

Discussion on the Motion – Ms. Mundy said that there should be a limit of commercial use of that structure, to prevent sales, parties, etc. Mr. Owens said that he agrees with Ms. Mundy's suggestion and would also like to remove the 35% of the floor area of the principal structure. Mr. Wilson said that would require an amended motion. Mr. Brewer said that he would like to defer back to the recommendation from the staff, to take a recess to draft a revised text for this amendment.

*Planning Commission took a recess at 3:42 p.m. until 3:55 p.m.*

Action – Mr. Cravens amended his motion, seconded by Ms. Richardson, to approve ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES FOR PLACES OF WORSHIP, for the revised alternative text provided by the staff, as follows:

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Commission Discussion – Mr. Brewer asked staff to verify the existing, prohibited uses, in the A-R zone. Ms. Wade said that one of the restrictions that was added during the Tourism and Recreation ZOTA in the prohibited use list is #25, which states; special events; parties; festivals; concerts; and children’s rides related to a commercial purpose. She said that the staff believes that places of religious assembly would not be able to rent out their facilities for a commercial purpose, because that would be a prohibited use. She said that the Board of Adjustment could specifically add that to their restrictions on an individual property. She said to the Planning Commission that the Planning Division is a cohesive staff and even though the Zoning Compliance section doesn’t attend these hearings, we all do meet as a staff to discuss Board of Adjustment cases, as well as, the cases that come before the Planning Commission. She said that the concerns that are being voiced here are relayed back to the rest of the staff.

Motion passes 7-2 (Owens and Plumlee opposed; Berkley and Penn absent).

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