

**STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT**

**ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES  
FOR PLACES OF WORSHIP**

**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.)

**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 REVIEW:**

Bharatiya Temple and Cultural Center has requested an amendment to the text of the Zoning Ordinance to allow places of religious assembly in the Agricultural Rural (A-R) zone to be allowed to construct an accessory structure or structures in excess of the 10,000 square-foot limitation established for all non-agricultural conditional uses in the zone. The applicant proposes limiting any such accessory structure(s) to thirty-five percent (35%) of the principal structure on the property and prohibiting permanent walls. These limitations are intended to prevent an accessory structure from being enclosed in the future, circumventing the requirements of the Zoning Ordinance.

Since January 1995, the A-R zone has permitted places of religious assembly (formerly regulated as "churches and Sunday schools") as a conditional use, with a maximum of 10,000 square feet for all structures. Prior to that date, there was no size limit for churches in the A-R zone. Places of religious assembly remain conditional uses in the Agricultural-Urban (A-U) zone, but are not limited to 10,000 square feet, unless required by the Board of Adjustment.

The 10,000 square-foot building restriction was established to protect the rural character of the county from the potential impacts that large scale churches and other institutional land uses can have on a community. Large churches (sometimes known as mega-churches) have become a growing trend across the United States and can create significant traffic issues, especially within a rural area without adequate roadways to handle high traffic demands.

Significant work was done in 1994 by an ad hoc committee established by the Urban County Council to evaluate all of the available land uses in the A-R zone. Prior to then, more than thirty conditional uses were allowed with Board of Adjustment approval in that zone. The ad hoc committee's work resulted in a large scale text amendment that eliminated many conditional uses and restricted the size of non-agricultural conditional uses to no more than 10,000 square feet in size. The 10,000 square-foot limit was based upon a review (in 1994) of the size of existing churches in the Rural Service Area (RSA). The largest church in the RSA at that time was just under 10,000 square feet in size. Generally, those conditional uses that consumed large amounts of land were eliminated or restricted in the A-R zone at that time.

In 2004, a follow-up text amendment added the clarification language currently found in the Ordinance, which allows a place of religious assembly to be a maximum of 20,000 square feet under certain circumstances and with Board of Adjustment approval. This amendment was consistent with the Board's decisions and staff interpretation of the 1995 text amendment change to the Ordinance. Approximately 45 places of religious assembly are located within the RSA, most of which have been newly constructed or have made additions since the regulations were modified in 1995.

The A-R zone covers most of the 200 square miles of the Rural Service Area of Fayette County. Any changes to the A-R zone should be thoroughly considered and required to undergo a comprehensive review because of the community's continued emphasis on the protection of the rural landscape, preservation of the agricultural character, and preservation of the community's cultural heritage. These community priorities were underscored when the Planning Commission adopted the 2017 Update to the Rural Land Management Plan.

In evaluating any amendment for places of religious assembly, the staff must consider the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), which was passed in 2000. This federal legislation is meant to ensure fair and equal treatment of religious land uses within a community (to protect these entities from discrimination by zoning or landmarking laws). In this way, it is important that the community not unduly infringe on the religious practices of any group through its land use regulations. Lexington-Fayette County allows places of religious assembly in all zones throughout the community, either as a principal or conditional use. In addition, places of religious assembly are grouped with other non-agricultural land uses (whether associated with assembly or not) in the A-R zone, and limited to a maximum of 10,000 square feet of total floor area. As with previously proposed changes to the zoning regulations that affect places of religious assembly within the RSA, the difficulty is balancing the community's adopted policies of agricultural and rural land preservation with the federal requirements for the regulation of churches and institutions under the requirements of RLUIPA.

In this case, the applicant met with the staff prior to filing the proposed text amendment to discuss the organization's goal, and the possible concerns about an amendment to the A-R zone. Such concerns expressed by the staff included an amendment that might allow or encourage a circumvention of the zoning regulations, or that might have a negative impact on the unique character of the RSA. The applicant's proposal balances the two by limiting accessory structures to 35% of the size of the permitted principal structure. Knowing that a principal structure for religious assembly could be 20,000 square feet in size in some circumstances, the proposed accessory structure(s) could be up to 6,000 square feet in size. However, such structures could not have any permanent walls (resulting in unconditioned space without restrooms). This would allow for religious or recreational use by an organization in support of their religious practices. These characteristics would generally not increase the assembly's seating and parking requirements, and therefore would not have a negative impact on the unique character of the RSA. In addition, any place of religious assembly that wishes to take advantage of the amendment would still need to seek permission from the Board of Adjustment.

While changes are proposed to this section of the Zoning Ordinance, the staff would like to suggest the addition of a comma to clarify the existing language about places of religious assembly, and to modify one

word (“the” to “these”) in the applicant’s request. The proposed change would clarify that only accessory structures without permanent walls would be excluded from the maximum square footage for the property.

**STAFF ALTERNATIVE TEXT:**

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

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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. **These** accessory structures shall not count against the otherwise allowed 10,000 square feet for a principal structure.

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).

TLW/AT/BJR/dw  
1/30/2018

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