



APPLICATIONS ACCEPTED: July 27, 2016
BOARD OF ZONING APPEALS: November 2, 2016 @ 9:00 a.m.

County of Fairfax, Virginia

October 26, 2016

STAFF REPORT

SPECIAL PERMIT SP 2016-DR-076

Concurrent with

VARIANCE APPLICATION VC 2016-DR-011

DRANESVILLE DISTRICT

APPLICANT: Milton Hamilton, Jr.

OWNER: Milton and Courtenay Hamilton

STREET ADDRESS: 809 Swinks Mill Road, McLean 22102

TAX MAP REFERENCE: 21-3 ((1)) 8A

LOT SIZE: 1.487 acres

ZONING DISTRICT: R-1

ZONING ORDINANCE PROVISIONS: 8-923, 18-401

SPECIAL PERMIT PROPOSAL: To permit a fence greater than 4.0 feet in height to remain in a front yard.

VARIANCE PROPOSAL: To permit two accessory storage structures and an accessory structure (patio/sport court) to remain in the minimum required front yard.

Heath Eddy, AICP

STAFF RECOMMENDATIONS: Staff recommends the following:

1. Approval of SP 2016-DR-076 for the fence greater than 4.0 feet in height to remain in the front yard with adoption of the Proposed Development Conditions contained in Appendix 1.
2. Denial of VC 2016-DR-011 based on the findings. However, should the Board choose to approved this request, staff recommends that it do so subject to the Proposed Development Conditions contained in Appendix 1.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

A copy of the BZA's Resolution setting forth this decision will be mailed within five days after the decision becomes final.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505**



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

SPECIAL PERMIT REQUEST

The applicant is seeking a special permit to permit a fence greater than 4.0 feet in height to remain in a front yard. The applicant is also requesting approval of a variance to permit two accessory storage structures and an accessory structure (a detached patio/sport court) to remain in the minimum required front yard.

A copy of the special permit and variance plat, entitled "Special Permit Plat Showing the Property Located at #819 Swinks Mill Road," prepared by Darryl Bowser, LS of RC Fields & Associates, Inc., dated November 4, 2015, last revised April 4, 2016 and received April 18, 2016, is included in the front of the staff report. Copies of the proposed development conditions, the statement of justification with select file photographs, and the affidavit are contained in Appendices 1 through 3, respectively.

CHARACTER OF THE SITE AND SURROUNDING AREA

The subject property is a one-story single family detached residence located on Swinks Mill Road. The residential property is located entirely within the RPA and almost completely in the floodplain of Scotts Run, which runs through the northern, eastern, and southern ends of the property, as shown in Figure 1, below. The residence includes two attached patios, a detached patio/sport court, a fence, and two storage sheds. The detached accessory structures are all subjects of this application. The property is significantly wooded, though there are open areas in the yard behind the fence. A cluster of bamboo is located between the Swinks Mill Road cartway and the front fence.

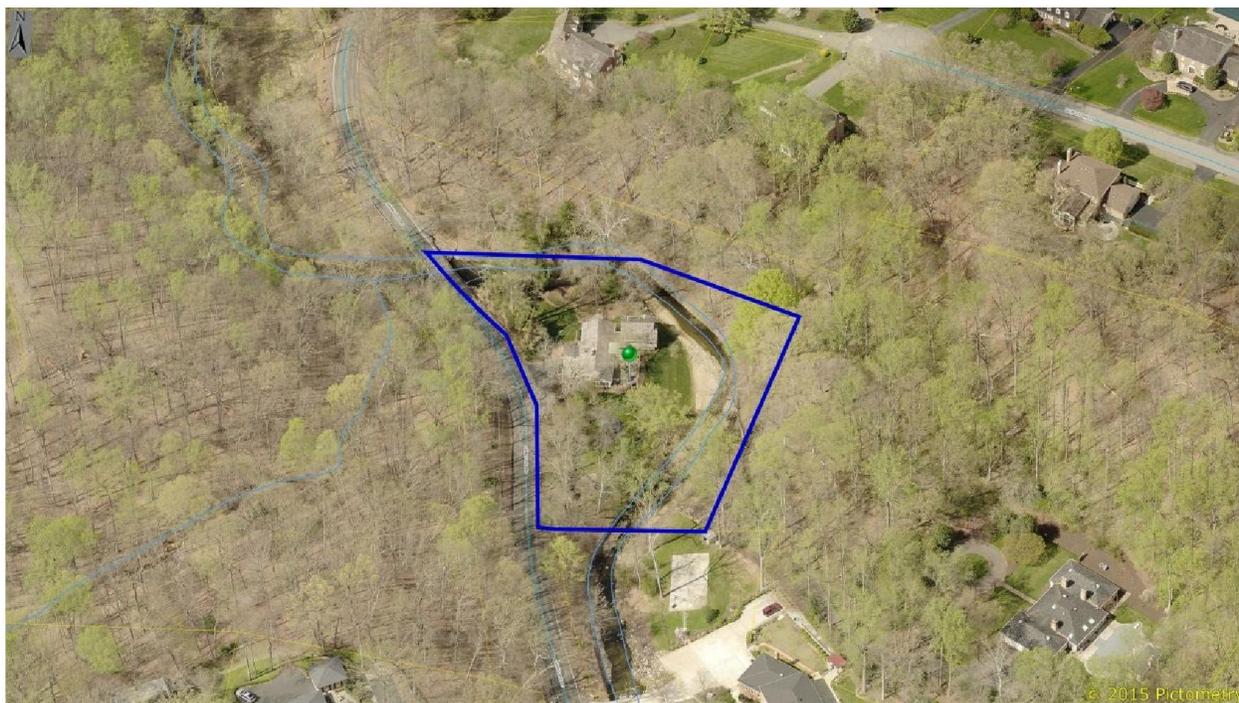


Figure 1: House location overhead view. Source: Pictometry

The property was one of the few in the area developed prior to 1950, but today the area

has filled in with low density residential neighborhoods, mostly above the floodplain and out of the RPA.

BACKGROUND AND HISTORY

The residence was constructed in 1949, pursuant to Variance #914 approved on July 20, 1948, to reduce the front yard setback to 18.2 feet from Swinks Mill Road. A copy of the record of this decision is included in Appendix 4. A subsequent boundary survey was filed in 1966 with a revision to the certificate of occupancy which showed the front yard at 32.9 feet from the centerline of the roadway. This survey also showed an approved carport which is currently located on the property. The carport was approved for construction with the residence. A kitchen addition was approved and constructed in 1980. The current owner received approval to construct a 1-story elevated addition pursuant to the floodplain regulations then in effect in 1998, and there is record of interior remodeling in 2001.

In addition to the house and carport, there is a brick rimmed patio in front of the residence, which was constructed by the County as a flood control structure, and another concrete patio on the back. The property has two sets of 6-foot high wood fences in the front yard (the subject of the Special Permit request), a 4-foot high metal fence, a smaller 4-foot high fence behind the taller fence closer to the front of the residence, two storage sheds (the subject of the Variance request) and an asphalt detached patio next to a basketball standard, that was formerly used as a sport court.

This is the second special permit/variance request for the subject property, but the first since 1948. County records indicate that the following special permit/variance applications have been approved within 1,000 feet of the subject property:

- VC 88-D-010, approved on April 19, 1988, to permit the enclosure of an existing carport for a garage and addition of a second story over the garage that is 15 feet from the street line at 919 Swinks Mill Road;
- VC 92-D-036, approved on July 8, 1992, to permit construction of a deck 14.75 feet from the side lot line at 964 Saigon Road, and
- VC 01-D-202, approved on February 19, 2002, to permit construction of an accessory structure 13 feet from a side lot line at 950 Saigon Road.

DESCRIPTION OF THE APPLICATION

A complaint was filed with the Department of Code Compliance (DCC) in July 2014 regarding the fence located in the front yard. The initial complaint was with regard to the fence in front of and north of the residence. According to the DCC investigator, the complaint was filed by a recipient of a similar complaint in the area who responded by filing complaints on all other violators in the immediate area.

DCC opened an investigation on July 20, 2014, and inspected the property on July 23, 2014. The DCC investigator determined that the fence violated Sects. 10-104.3B and 2-

302.6 of the Zoning Ordinance, because the property is not the minimum two acres in size that would permit the existing fence to be taller than 4.0 feet. A Notice of Violation (NOV) was issued on July 29, 2014 for the fence.

The applicant filed the special permit application in February 2015, but applications acceptance determined from review of the submitted plat drawing that the applicant also had two storage sheds and an asphalt patio located in the minimum required front yard, which is not permitted under the Zoning Ordinance, necessitating the filing of a variance application. The applicant filed the variance application in April 2016 and the two applications were officially accepted as concurrent applications in July 2016.

The applicant is requesting approval of the following:

1. **Special Permit:** approval to permit a fence taller than 4.0 feet to remain in the front yard. A fence is only permitted to be a maximum of 4.0 feet in height in the front yard, which is the portion of the property closer to the front lot line than the existing residence, which is shown at 33.5 feet from the front lot line. The fence is no taller than 6.0 feet and is designed with a “scalloped” top with a variable height. The request is for the entirety of the fence from the driveway north of the residence, and then again the southernmost approximately 35 feet near the south side lot line.

The applicant’s justification is that the current fence replaced an older painted stockade fence that was actually taller than the current fence, and therefore was replacing a structure already in place and the current fence has been in place for 20 years. More importantly, the fence is necessary because Swinks Mill Road is a heavily traveled commuter route between Old Dominion Drive and Georgetown Pike, and the fence has become essential to provide a visual barrier for the privacy of the residents.

2. **Variance:** approval to permit two accessory storage structures and the detached patio to remain in the minimum required front yard. Sect. 10-104.10 of the Zoning Ordinance states that no accessory storage structure or accessory structure (detached patio) is permitted in the minimum required front yard for lots greater than 36,000 square feet in area. The minimum required front yard in the R-1 District is 40 feet; the sheds are located 30.7 and 31.9 feet from the front lot line, and the patio is located approximately 36 feet from the front lot line. Therefore the applicant is requesting approval for sheds that encroach on the minimum required front yard by 8.1 and 9.3 feet, and for the patio that encroaches on the minimum required front yard by 4 feet. In addition, the shed located on the south side lot line is 8.6 feet in height; pursuant to Sect. 10-104.10, the shed is required to comply with the minimum side yard of the R-1 District, which is 20 feet. The location of this shed is addressed in the analysis.



Figure 3: The area of the 6-foot fence in front of the residence. Source: Applicant.



Figure 4: The area of the 6-foot fence along the south end of the property. Source: Applicant.



Figure 5: The typical traffic pattern on Swinks Mill Road in front of the subject property, near the south side lot line. Source: Applicant.



Figure 6: Morning traffic as seen from the front patio, behind the subject fence. Source: Applicant.



Figure 7: The storage sheds subject to the variance request. Also shown here is the asphalt pad. The basketball standard is on the left edge in this image. Source: Applicant.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: II
Planning District: McLean
Planning Sector: Spring Hill (M6)
Plan Map: Residential

There are no specific recommendations for the subject property, though the sector is developed as stable residential neighborhoods. Infill development in these neighborhoods should be of a compatible use, type and intensity and in accordance with the guidance provided by the Policy Plan under Land Use Objectives 8 and 14.

Zoning Ordinance Requirements (Appendix 7)

The subject property is zoned R-1, which has the following lot size and bulk regulations.

Bulk Standards (R-1)		
Standard	Required	Provided
Minimum Lot Size	36,000	1.487 acres
Minimum Lot Width	150 feet	351.86 feet
Maximum Building Height	35 feet	16.6 feet (residence)
Minimum Front Yard	40 feet	33.5 feet*
Minimum Side Yard	20 feet	70.3 feet (nearest to residence)
Minimum Rear Yard	25 feet	>25 feet

*Approved by Variance #914.

Extensions and Accessory Structures on Property Subject to Special Permit or Variance Requests – R-1 District		
Standard	Required	Requested
Fence in front yard	Maximum height 4 feet	6 feet (existing)
Accessory storage structure #1 (8.3 feet in height)	Not permitted in the minimum required front yard (40 feet) ; taller than 8.5 feet must be 20 feet from side lot line	30.7 feet from front lot line
Accessory storage structure #2 (8.6 feet in height)		31.9 feet from front lot line 0 feet from side lot line
Accessory structure (patio/sport court)		36 feet from front lot line

This special permit application is subject to the following provisions of the Zoning Ordinance and are provided as Appendices 7 and 8.

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 Group 9 Standards
- Sect. 8-923 Provisions for Increase in Fence Height in Any Front Yard
- Code of Virginia, Sect. 15.2-2309, Variance Standards

The following is staff’s analysis of the Zoning Ordinance provisions and the proposal to permit a fence greater than 4.0 feet in height to remain in the front yard.

General Standards for Special Permit Uses (Sect. 8-006)

Standards 1 and 2 Comprehensive Plan/ Zoning District	The Comprehensive Plan recommends residential uses and the property is developed with a residential use. The R-1 District allows for a special permit application for fences greater than 4.0 feet in height located in the front yard.
Standard 3 Adjacent Development	The property is similar to other properties in the vicinity. The nature of the subject property is wooded and located in floodplain, but other residences along Swinks Mill Road also have the same features. There are other fences in the vicinity that are taller than 4.0 feet, according to the DCC.

<p>Standard 4 Pedestrian/Vehicular Traffic</p>	<p>The residential driveway is off Swinks Mill Road, which is a high traffic commuter corridor connecting Old Dominion Drive with Georgetown Pike. The proposal does not impact the existing traffic patterns. VDOT noted in comments to staff that the bamboo along the fence is a safety concern; a development condition is included to address this.</p>
<p>Standard 5 Landscaping/Screening</p>	<p>The proposal is to permit the continued use of an effective screen for the residential use on the property. No additional screening is necessary.</p>
<p>Standard 6 Open Space</p>	<p>There is no prescribed open space requirement for individual lots in the R-1 District.</p>
<p>Standard 7 Utilities, Drainage, Parking, and Loading</p>	<p>There are no changes to proposed utilities. DPWES had comments and recommendations specific to the storage sheds but had no comments regarding the existing fence.</p>
<p>Standard 8 Signs</p>	<p>No signage is proposed.</p>

Standards for all Group 9 Uses (Sect. 8-903)

<p>Standard 1 Lot Size and Bulk Regulations</p>	<p>The subject property conforms to all lot size and bulk regulations in the R-1 District, with the exception of the minimum front yard for the residence (approved by variance in 1948), the fence and the storage sheds.</p>
<p>Standard 2 Performance Standards</p>	<p>The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance.</p>
<p>Standard 3 Site Plan</p>	<p>No site plan is required.</p>

Provisions for Increase in Fence Height in Any Front Yard (8-923)

<p>Standard 1 Fence Shall Not Exceed 6 feet in Height</p>	<p>The existing fence is 6 feet tall measured to the tops of the “scallop” in compliance with the requirements of Sect. 10-104.3J of the Zoning Ordinance.</p>
<p>Standard 2 Meet Sight Distance Requirements</p>	<p>The property driveway is off Swinks Mill Road. The fence north of the driveway is located so that it is outside of the sight distance and does not impede visibility for the residents or adjacent properties.</p>
<p>Standard 3 Proposed Fence Height is Warranted</p>	<p>The applicant states that the fence is warranted based on the lack of privacy for the residence along what has become a very busy commuter roadway. Given the shallow front yard, maintaining the existing fence line would be an effective screen and security feature for the subject property.</p>
<p>Standard 4 Fence is in Character with On-site and Off-site Uses</p>	<p>The fence is in character with the surroundings, and blends into the existing landscape.</p>

<p>Standard 5 Fence Will Not Adversely Impact Other Properties</p>	<p>The fence has been in place for many years and there have been no complaints or other issues with its location. The current NOV is based on a complaint filed by another violator seeking to force compliance with the requirements of the Zoning Ordinance on other properties in the area.</p>
<p>Standard 6 BZA May Impose Conditions</p>	<p>Proposed development conditions are included in Appendix 1.</p>
<p>Standard 7 Meet Submission Requirements</p>	<p>A copy of the plat is included in the beginning of this report.</p>
<p>Standard 8 Architectural Depictions Provided</p>	<p>Images of the fence and the surrounding area are provided in Appendix 2.</p>

Variance Analysis

In addition to meeting the definition of a variance, an application must satisfy a specific set of criteria in order for the Board to grant a variance. According to the recently amended Code of Virginia, Sec. 15.2-2309, a variance meeting the definition shall be granted if the following elements are met:

1. The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance (Sect. 15.2-2309.2)

In staff's opinion, the strict application of the locational restrictions under Sect. 10-104.10 would not unreasonably restrict utilization of the property nor create a hardship. The storage sheds are located entirely within the minimum required front yard. The property appears to have alternative locations available that would comply with the minimum standard of 40 feet, including directly behind the carport. Almost the entire property is located in the Scotts Run floodplain, including the entire developed portion of the property. Nevertheless, requiring the moving of the existing sheds closer to the residence would not be precluded by the floodplain regulations. DPWES recommends that regardless of location that the sheds be anchored into the ground to prevent flooding carrying them off the property.

With respect to the detached patio, the structure poses no impact on the surroundings, though only a small portion is included in the minimum front yard. The strict application of the locational restrictions under Sect. 10-104.12 would not unreasonably restrict utilization of the property. It would require removal of a portion of the detached patio, but it would not create a hardship as strictly applied.

2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance (Sect. 15.2-2309.2(i))

The applicant purchased the property in 1995, and states that the older, larger shed was already in place at that time, as was the detached patio (then in use as a basketball court). However, the applicant placed the smaller shed on the property five years ago. So in one case the hardship was created by the applicant.

3. The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area (Sect. 15.2-2309.2(ii))

In staff's opinion, the granting of the variance will not be a substantial detriment to the adjacent property or nearby properties in the vicinity. The sheds are located behind the existing front fence, for which staff sees a justification to retain at the existing height. Therefore, the visual impact of the sheds in the minimum required front yard would be mitigated by this screening feature. The detached patio is entirely screened by the existing fence, and poses no impact on the adjacent property to the south.

4. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general reduction to be adopted as an amendment to the ordinance (Sect. 15.2-2309.2(iii))

The subject property meets the minimum lot size and bulk regulations of the R-1 District except for the front yard in front of the residence, which was reduced by a variance approval in 1948. The limitation of the property is the unusual shape and the location almost entirely within the floodplain. However, this condition affects the entire lot. There are conforming locations on the property where both sheds could be placed. The detached patio could be located anywhere behind the minimum front yard, and poses marginal impact on the surrounding floodplain.

5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property (Sect. 15.2-2309.2(iv))

The variance request is to allow for two existing storage sheds to remain in the minimum required front yard, exempting them from the provisions in Sect. 10-104.10B of the Zoning Ordinance, and to allow for a detached patio to remain in the minimum required front yard, reducing the front yard by 4 feet under the provisions required under Sect. 10-104.12C. However, the residential use of the property is not affected by this application and is permitted in the R-1 District.

6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application (Sect. 15.2-2309.2(v))

The applicant has no other form of remedy under the Zoning Ordinance other than a variance except to move the storage sheds to a location outside of the minimum required front yard and in compliance with Sect. 10-104.10, and to remove the portion of the detached patio located in the minimum front yard in compliance with Sect. 10-104.12.

CONCLUSION

Staff believes that the subject application is in conformance with the applicable Zoning Ordinance provisions with respect to the fence greater than 4.0 feet in height in the front yard. Staff does not believe the variance request meets the standards to permit the variance. Specifically, the applicant does not meet the hardship standard as listed in Standard 1. Staff sees no practical difficulty in moving the storage sheds to another location on the property in compliance with the requirements of Sect. 10-104.10, or in removing part of the patio to comply with the requirements of Sect. 10-104.12.

RECOMMENDATION

Staff recommends approval of SP 2016-DR-076 for the fence greater than 4.0 feet in height in the front yard, with adoption of the Proposed Development Conditions contained in Appendix 1.

Staff recommends denial of VC 2016-DR-011 based on the findings. However, should the Board choose to approve this variance request, staff recommends it do so subject to the Proposed Development Conditions contained in Appendix 1.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

APPENDICES

1. Proposed Development Conditions
2. Applicant's Statement of Justification and Select File Photographs
3. Applicant's Affidavit
4. Available Street File Records
5. Notice of Violation – dated July 29, 2014
6. Agency Comments
7. Applicable Zoning Ordinance Provisions
8. Code of Virginia Variance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2016-DR-076****October 26, 2016**

If it is the intent of the Board of Zoning Appeals to approve SP 2016-DR-076 located at Tax Map 21-3 ((1)) 8A to permit a fence greater than 4.0 feet in height to remain in the front yard pursuant to Section 8-923 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This special permit is granted for the fence in the front yard as shown on the plat entitled "Special Permit Plat Showing the Property Located at #819 Swinks Mill Road," prepared by Darryl Bowser, LS of RC Fields & Associates, Inc., dated November 24, 2015, last revised April 4, 2016, and approved with this application, as qualified by these development conditions.
2. The applicant shall trim back the bamboo outside the fence such that the first 30 feet in front of the fence (taken from the southernmost point of the fence in front of the residence) is cleared of bamboo growth.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall take effect upon adoption of a resolution of approval by the Board of Zoning Appeals.

PROPOSED DEVELOPMENT CONDITIONS**VC 2016-DR-011****October 26, 2016**

If it is the intent of the Board of Zoning Appeals to approve VC 2016-DR-011 located at Tax Map 21-3 ((1)) 8A to allow accessory storage structures and an accessory structure (patio/sport court) to remain in the minimum required front yard, pursuant to Section 18-401 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This variance is granted for the accessory storage structures and accessory structure (patio/sport court) in the front yard as shown on the plat entitled "Special Permit Plat Showing the Property Located at #819 Swinks Mill Road," prepared by Darryl Bowser, LS of RC Fields & Associates, Inc., dated November 24, 2015, last revised April 4, 2016, and approved with this application, as qualified by these development conditions.
2. The applicant shall anchor the accessory storage structures to the ground to prevent flotation, pursuant to Sect. 2-903.3 of the Zoning Ordinance.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.