



Land Development Services

Technical Bulletin

Subject: Changes to the Nonresidential Use Permit
(NonRUP) Process

Date: 10/24/22

No.: 22-10

Summary: The purpose of this technical bulletin is to provide notification and guidance regarding changes to the administrative processes related to the review and issuance of Nonresidential Use Permits (NonRUPs) for all nonresidential land uses in Fairfax County. **Beginning Oct. 31, 2022, the Zoning Administration Division, Department of Planning & Development (DPD), will no longer administer the review and issuance of NonRUPs.** Instead, the Building Division of Land Development Services (LDS) will be the new administrative authority for this process.

Effective Date: October 31, 2022

Background: Staff in DPD and LDS have been coordinating on proposed changes to improve the NonRUP processes for all applicable stakeholders. These proposed changes are driven in part by changes to the Virginia Uniform Statewide Building Code (VUSBC) and a desire to better align staff resources while enhancing customer service. The timing of this change has been coordinated to align with the upcoming fourth release of the Planning and Land Use System (PLUS), where the NonRUP record workflow will be located under the Building tab and will allow concurrent review by all applicable agencies. With the transfer of the issuing authority from DPD to LDS, all regulatory requirements will be maintained and all agencies currently participating in NonRUP review—including DPD, the Fire Marshal, and the Health Department—will continue to do so. No changes to the Zoning Ordinance requirements for obtaining a NonRUP, the permit document itself, or the \$70 application fee are proposed. For more background, please see the Memorandum to the Fairfax County Board of Supervisors dated Sept. 27, 2022 that follows this bulletin.

As of Oct. 31, 2022, questions regarding the submission and review of NonRUPs should be directed to the Building Division, LDS at 703-631-5101, TTY 711.

Approved by:

Jay Riat, P.E., Building Official and Director
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County of Fairfax, Virginia

MEMORANDUM

DATE: September 27, 2022
TO: Board of Supervisors
FROM: Leslie B. Johnson, Zoning Administrator *Leslie B. Johnson*
Jay S. Riat, Building Official *Jay S. Riat* 09/26/2022 | 15:59:54 EDT
SUBJECT: Proposed Changes to the Nonresidential Use Permit Process

Since December 2021, the Department of Planning and Development (DPD) and Land Development Services (LDS) have been coordinating on proposed changes to improve the County’s Nonresidential Use Permit (NonRUP) processes. These proposed changes have been driven in part by changes to the Virginia Uniform Statewide Building Code (VUSBC) and a desire to better align staff resources, while enhancing customer service. The timing of this effort is appropriate, as the design and upcoming fourth release of the PLUS system—which includes the NonRUP task workflow—presents an opportunity to make meaningful changes.

Background

A NonRUP is a permit issued by the Zoning Administrator before any occupancy, use, or change of use may be established in a nonresidential structure. The permit ensures that the structure and its use conform with the Zoning Ordinance and have passed all required final inspections by LDS, the Health Department, and the Office of the Fire Marshal. Currently, this permit is administered by DPD. By contrast, a residential use permit (RUP) certifies that a *dwelling* is compliant with the Zoning Ordinance and is safe for occupancy; the RUP is administered and issued by LDS.

Section 8100.9 of the Zoning Ordinance sets forth the process and minimum requirements for the issuance of a NonRUP. Section 8100.9.A(1) of the Ordinance states that “[o]ccupancy, use of a structure or premises, or a change in use are not permitted until a . . . Nonresidential Use Permit has been approved in accordance with this section [and a NonRUP] . . . is required to approve both the initial and continued occupancy and use of the structure or land to which it applies.” (Emphasis added.) Under subsection 8100.9.A(4), once an application for a NonRUP has been submitted to the Zoning Administrator, “the permit will be issued if it conforms with this Ordinance, all other applicable laws and ordinances, proffered conditions, and conditions of special exceptions, special permits, or variances, as certified to the Zoning Administrator.. .” Subsection 8100.9.B sets forth the minimum requirements that must be met before a NonRUP is issued. These include that all applicable final inspections have been passed—such as building, electrical, plumbing, mechanical, fire, and health codes—and that site-related improvements such as street access and final grading have been completed. Once the Zoning Administrator has reviewed the application and determined that all minimum requirements have been met, the NonRUP can be issued.

A NonRUP must be issued for *any use*—meaning the initial occupancy of a new building or tenant space *or* any subsequent use or tenant that seeks to occupy the same space, which is often referred to as a “change in use.” The review of a NonRUP application can vary in length of time and complexity, depending on whether the building space is brand new or existing and what uses occupied a particular space before the proposed use.

In addition to a NonRUP issued under the Zoning Ordinance, any new building or structure must obtain a Certificate of Occupancy (CO) from the Building Official under Part I of the VUSBC (the Virginia Construction Code or VCC). A new CO may also be required for a “change in occupancy,” which occurs when a change to the use of a building or structure changes the construction requirements for the new use. The CO certifies that the building or structure complies with the VCC and “any pertinent laws or ordinances.” VCC § 116.1. Recognizing the overlapping requirements of the NonRUP and the CO, they are issued by DPD in a single document carrying the signatures of both the Zoning Administrator and the Building Official.

Current Process & Challenges

The Zoning Permits Section (ZPS) in the Zoning Administration Division of DPD currently administers the NonRUP and CO processes. The review fee is \$70, and the process typically takes five to seven business days from acceptance to issuance, assuming the application is complete, and all applicable inspections were approved before submission. Over the past five fiscal years, ZPS has approved an average of 1,875 NonRUPs per year.¹

The challenges for ZPS in issuing NonRUPs result from its dual role set forth in Section 8100.9 of the Ordinance. As the Zoning Administrator’s agent, ZPS is responsible for evaluating the proposed use to determine compliance with the Zoning Ordinance and zoning-related approvals, including:

- Determining the proposed use and whether it is permitted in the applicable zoning district.
- Identifying whether the use requires special permit or special exception approval and determining if such approval has been granted.
- Ensuring compliance with any proffers associated with an approved rezoning or development conditions associated with some other zoning approval.
- Reviewing the site to determine whether approved parking is adequate, and the site is generally in compliance.

ZPS is also responsible for verifying compliance with all other minimum requirements set forth in Subsection 8100.9.B, as discussed above. Even when an applicant proposes no physical change to a particular tenant space, a “change of occupancy” under the VCC requires a new CO. Such a change might also require additional building permits to officially change the building use group of the physical space, or otherwise certify that the proposed use is appropriate for the space, if it was previously constructed for a different building use group.

Reviews for proposed new uses that meet the Zoning Ordinance requirements and don’t result in a change of building use group or zoning use are straightforward and the requested NonRUP is typically issued in one to two business days. However, for all other scenarios, LDS’s review of building and site related requirements can be more complicated and take longer to ensure that a proposed use can safely occupy a building or structure and a CO can be issued. This lengthens the review time before the NonRUP can be issued, as it cannot be issued until all outstanding building related matters are addressed and all necessary inspections are completed.

¹ The fiscal data for number of approved NonRUPs is as follows: FY2018 – 2,051; FY2019 – 1,869; FY 2020 – 2,084; FY2021 – 1,643; and FY2022 – 1,727.

A New Process

The PLUS system presents a unique opportunity to make meaningful changes to the important regulatory functions of administering and issuing NonRUPs and Cos, and in streamlining the review process.

Although the NonRUP process is based on Zoning Ordinance provisions, most of the compliance questions raised by a NonRUP application fall under LDS's purview. Accordingly, DPD and LDS recommend that the administrative functions related to issuing NonRUPs be transferred to LDS. As proposed, the Zoning Administrator would delegate her issuing authority to the Building Official and his designee in LDS's Building Division, subject to DPD's review of the zoning aspects of a NonRUP application. LDS has the staff and expertise to help applicants navigate the aspects of the NonRUP review process that are largely outside DPD's scope of review. This is already occurring with the RUP process, as LDS already issues RUPs. With the PLUS system, it might be possible to eventually align the processes and eliminate unnecessary confusion among applicants as to what type of use permit they need, and how they obtain it. A future PLUS enhancement could see the process further streamlined, where the RUP or NonRUP is no longer an independent workflow, separate from permitting, but the final step of the larger permit review process. In this scenario, an applicant would no longer have to separately request the RUP or NonRUP, as it would be automatically issued as the conclusion of the permit process.

With the transfer of the issuing authority from DPD to LDS, it is important to stress that all regulatory requirements will be maintained. All agencies currently participating in NonRUP review—including, DPD, the Fire Marshal, and the Health Department—will continue to do so. DPD will continue to review the zoning and use-related aspects of a NonRUP application. In PLUS, DPD will have the ability to review NonRUP applications early in the process, alongside all other review agencies. Currently, County staff is not proposing any changes to the requirements necessary for obtaining a NonRUP, the permit document itself, or the \$70 application fee. Furthermore, a Zoning Ordinance text amendment will not be necessary, as the Zoning Administrator can issue the Building Official a formal delegation of authority.

Staff is in the process of preparing a Letter to Industry to alert the development community, business organizations, and applicants that LDS will be taking over the administrative functions of NonRUP issuance. Staff will also be conducting outreach to groups such as the Northern Virginia Building Industry Association and the National Association for Industrial and Office Parks.

If you have any additional questions, please contact us at any time.

cc: Bryan Hill, County Executive
Rachel Flynn, Deputy County Executive
Jill Cooper, Director, Clerk Services
Elizabeth Teare, County Attorney
Bill Hicks, Director, Land Development Services
Tracy Strunk, Director, Department of Planning & Development
John Walser, Deputy Fire Chief, Office of the Fire Marshal
Pieter A. Sheehan, Director, Environmental Health, Fairfax County Health Department
Andrew B. Hushour, Assistant Zoning Administrator