



By-Right Versus Discretionary Development

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City Council Briefing, October 1, 2024



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Monthly Land Use Report

- Included in Friday Package (generally 3rd Friday of the month)
- Includes information from:
 - Permits & Inspections
 - Development Services Center (DSC)
 - Planning Administration
- Updated to include:
 - Designation for discretionary items in DSC Site Plan approval section
 - Meeting Log

SEPTEMBER 2024

MONTHLY LAND USE REPORT

Section 1 – Permits & Inspections Report
(Reporting Period August 2024)

Section 2 – Development Services Center Report
(Reporting Period August 2024)

Section 3 – Planning Commission Report
(Reporting Period September 2024)

Presentation Overview

- Zoning Ordinance Overview
- Zoning Evaluation of Land Use Applications
- By-Right versus Discretionary Development
 - Definitions
 - Land Use Tables
 - Establishing the type of development
- Development Application Review Process
- Examples of Land Use Applications' Evaluation
 1. Owl's Creek Oyster Bar
 2. Proposed multi-family, Sandbridge- 3713 Sandpiper Road
 3. 525 Kempsville Apartments
 4. Panera Bread - Lynnhaven Mall

Zoning Ordinance Overview - Intent

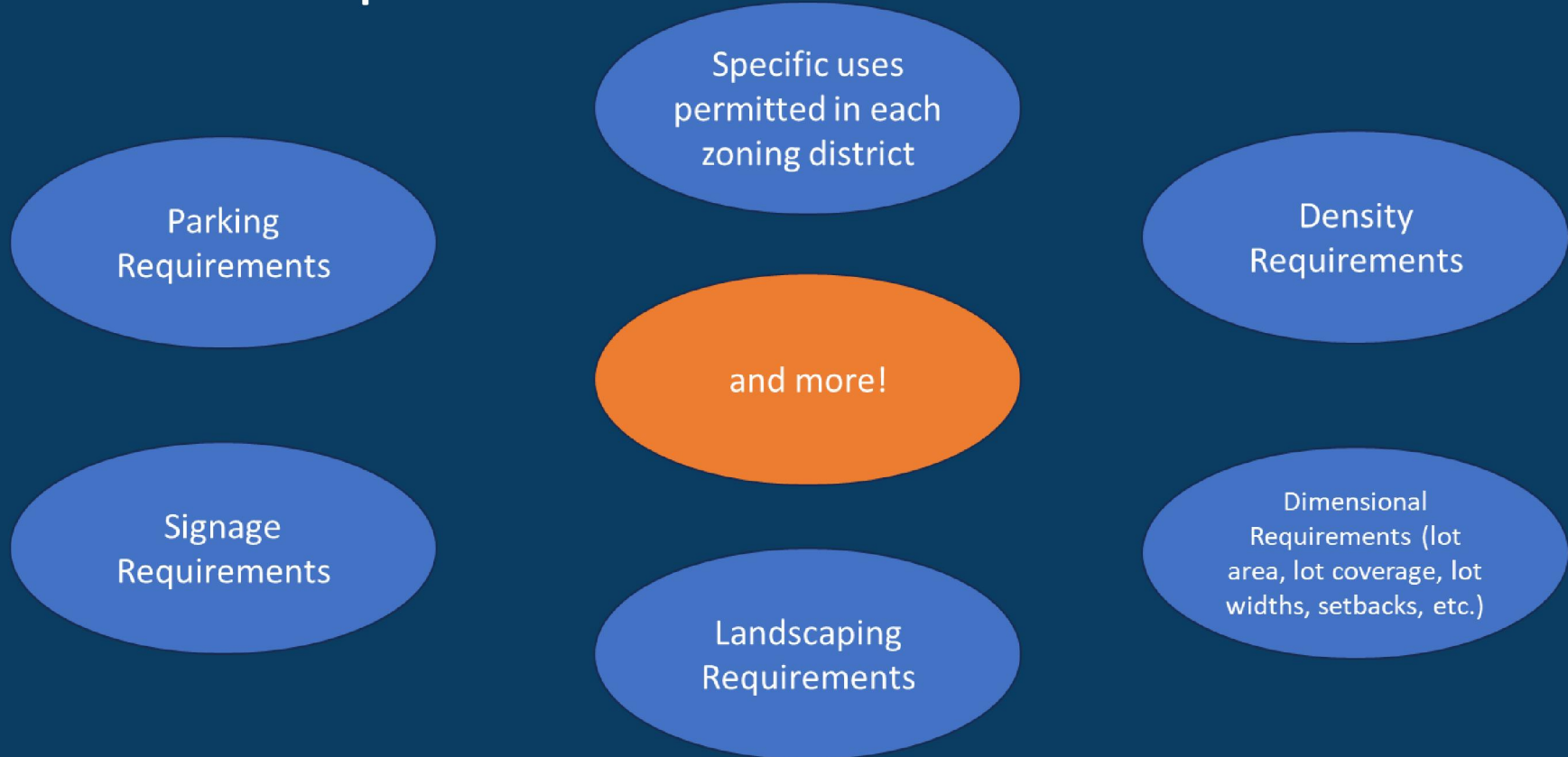
Intent of the Zoning Ordinance

“...to promote and protect the health, safety and general welfare of the people of the city.”

“...by encouraging the most desirable use of the land . . . and by encouraging the most appropriate use and occupancy of buildings...”

Zoning Ordinance Overview - Provisions

The Zoning Ordinance provides...



Zoning Ordinance Overview – Basic Elements

The Basic Elements of the Zoning Ordinance

1. Uses
2. Development Standards
3. Nonconformities
4. Discretionary Applications
5. Procedures
6. Definitions
7. Official Zoning Map

Zoning Evaluation of Land-Use Applications

Step 1. Zoning Map

- Establishes the official Zoning District

Step 2. Establish Use

- Principal Uses (By-right)
 - Primary uses and accessory uses
- Conditional Uses (City Council approval required)
 - Site-specific conditions may be required

Step 3. Development Standards

- Minimum requirements of the Zoning Ordinance
- Exceptions or special criteria (Variance or City Council approval)

By-Right versus Discretionary Development - Definitions

1. Principal Uses (By-Right)

- Uses that are allowed automatically and are typical/desired for the zoning district.
- Examples: single-family dwellings in residential districts; retail in business districts.
- Typically, by-right uses only have to meet the minimum standards of the ordinance.

2. Conditional Uses (Discretionary Applications)

- Uses that may create adverse or unique impacts on surrounding properties.
- Require special consideration and conditions to promote desired outcome.
- City Council can impose appropriate regulations in addition to the ordinance requirements.

3. Accessory Uses

- Uses that are clearly incidental and customarily found in connection with the primary use.

By-Right versus Discretionary Development – Land Use Tables

- Establishing the difference between by-right and conditional uses and structures is the premise in which land use tables are built upon.
- Every permitted use or structure (by-right or conditional) is listed in the land use tables.
- The Zoning Administrator has the responsibility to interpret uses that are not clear or do not fit into a specific category.

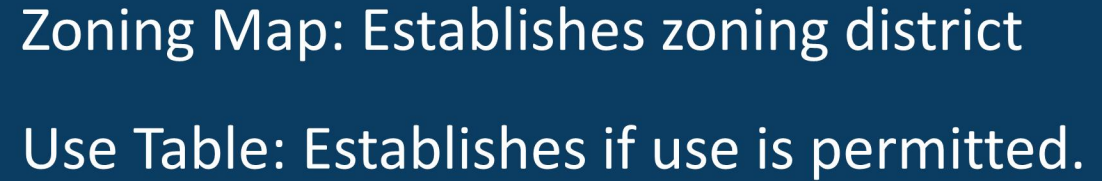
By-Right versus Discretionary Development – Permitted Uses

Permitted uses are listed in the Land Use Table for each specific zoning district.

- Uses and structures permitted by-right (principal) are indicated with a “P”
- Uses and structures permitted as conditional are indicated with a “C”
- Uses and structures that are not listed or indicated with an “X” are prohibited

Use	B-1	B-1A	B-2	B-3	B-4	B-4C	B-4K
Dwellings, Multi-family	X	X	X	X	P	C	C
Eating and drinking establishments with drive-through windows, except as specified below	X	X	P	P	P	X	C
Eating and drinking establishments without drive-through windows, except as specified below	P	P	P	P	P	X	P

Establishing the type of development:

BY-RIGHT VERSUS DISCRETIONARY DEVELOPMENT | 11 

Development Application Review Process

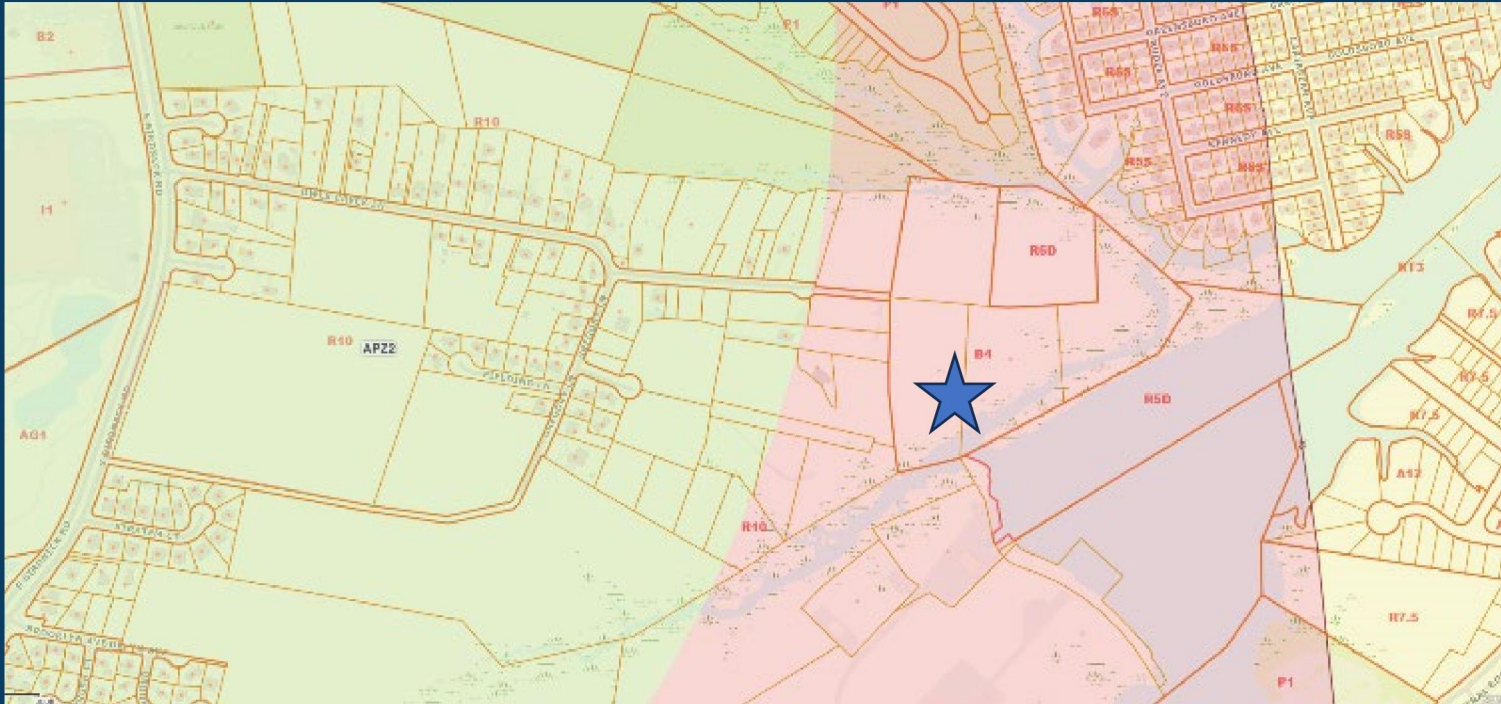
Discretionary development only

1. Application submitted to Planning Department
2. Staff evaluation and recommendation
3. Planning Commission recommendation (public comment available)
4. City Council decision (public comment available)

Discretionary and by-right development

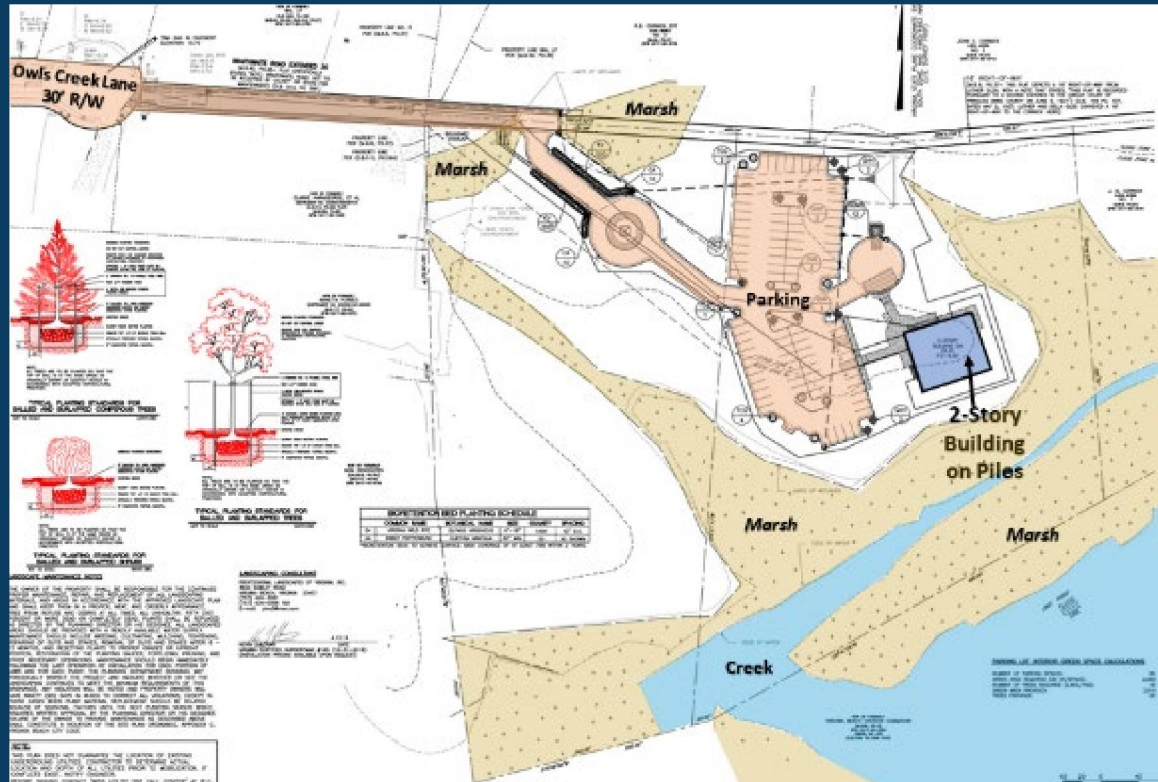
1. Site plan submitted to Planning (DSC)
2. Building Plans submitted to Planning (Permits and Inspections), may be concurrent with site plan
3. Zoning review
4. Site plan approval
5. Post approval conditions addressed (sureties, plats, easements, etc.)
6. Site plan released
7. Permits obtained

Example #1 - Owls Creek Oyster Bar - Location



- Zoning: B-4
- Noise Zone: >75 dB
- Flood Zone: AE, BFE=8'

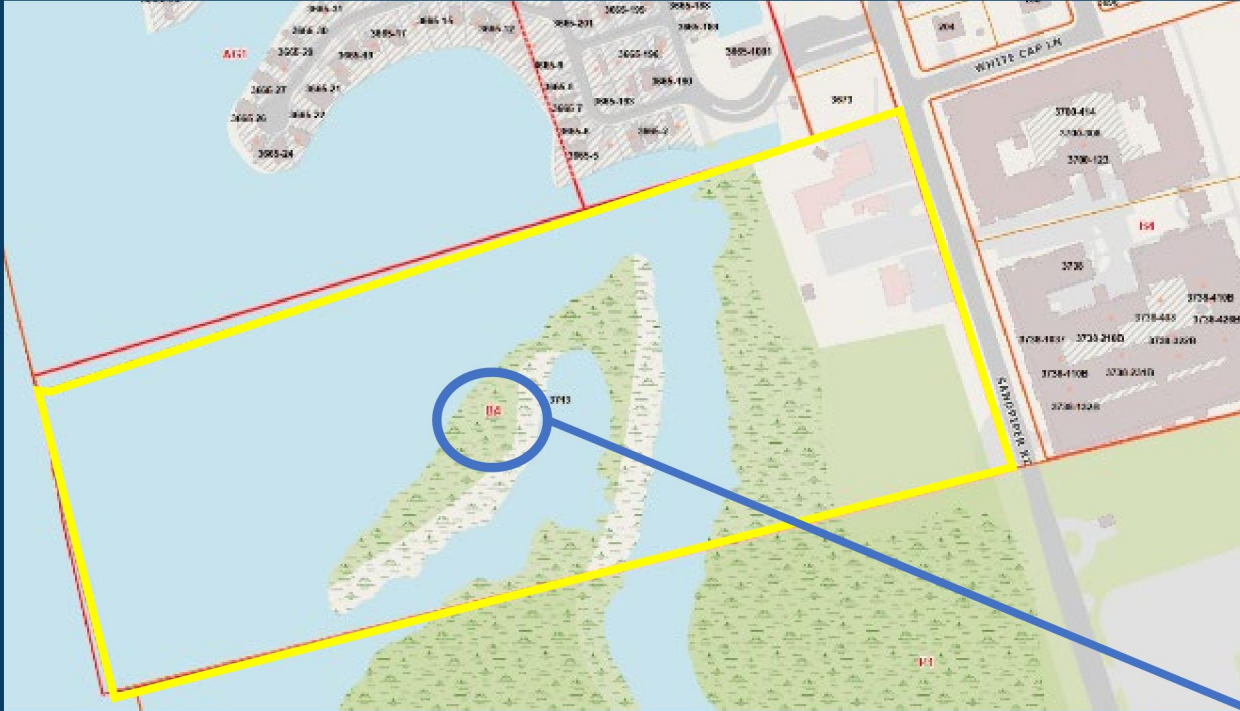
Example #1- Owls Creek Oyster Bar - Proposal



- Proposed Use - Restaurant (5,000 SF)
- Parking spaces = 95
- Use is a principal use (by-right)

Use	B-1	B-1A	B-2	B-3	B-4	B-4C	B-4K
Eating and drinking establishments without drive-through windows, when not freestanding and incorporated inside a mixed use building, except as otherwise specified in this section	X	X	X	X	X	P	P
Eating and drinking establishments with drive-through windows, except as specified below	X	X	P	P	P	X	C
Eating and drinking establishments without drive-through windows, except as specified below	P	P	P	P	P	X	P

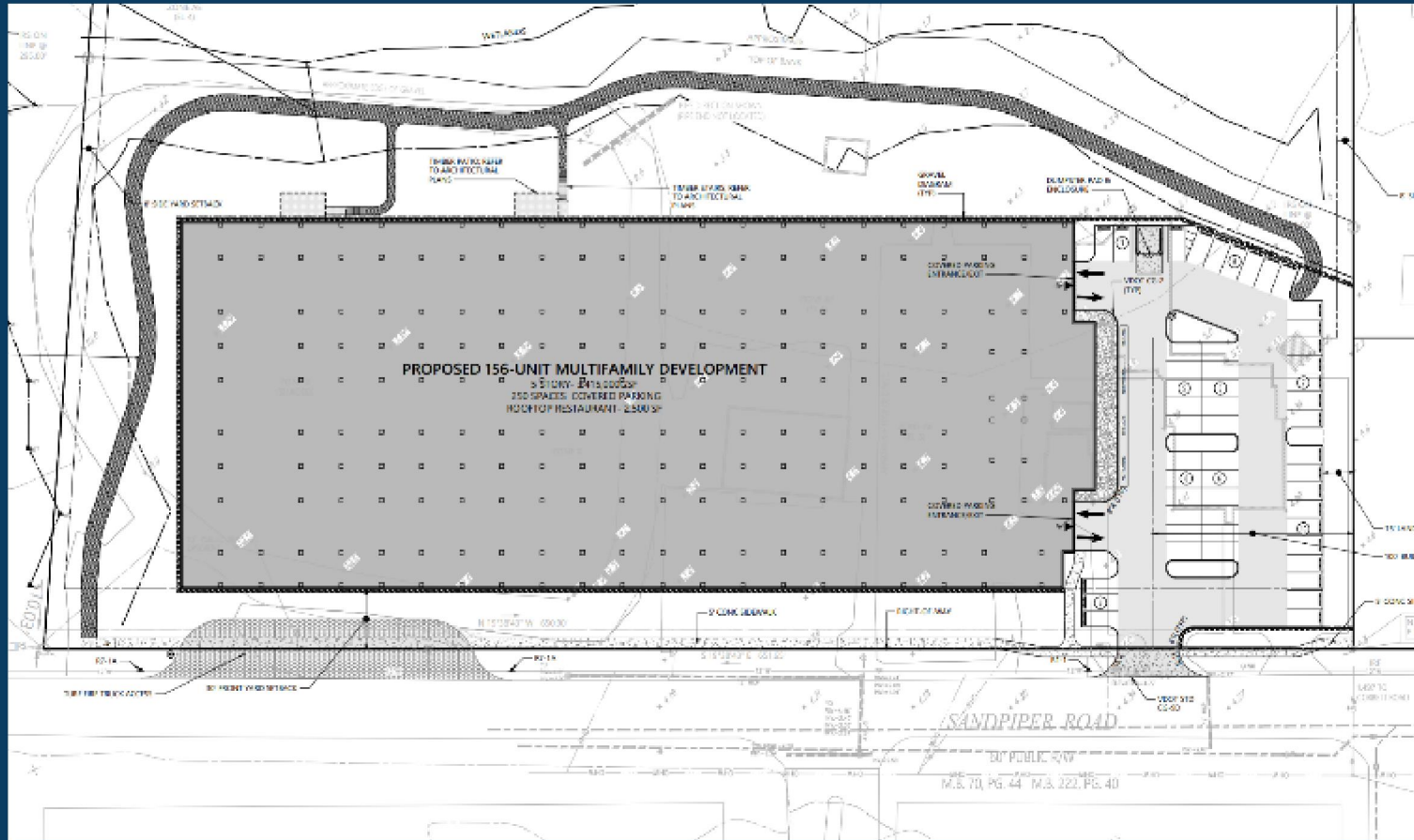
Example #2- Sandbridge Multi-Family - Location



- Zoning: B-4 (Mixed-Use District)
- Proposed Use: Multi-family dwellings
- Use is a principal use (by-right)

Use	B-1	B-1A	B-2	B-3	B-4	B-4C	B-4K
Dwellings, Attached	X		X	X	P	X	P
Dwellings, Multi-family	X	X	X	X	P	C	C

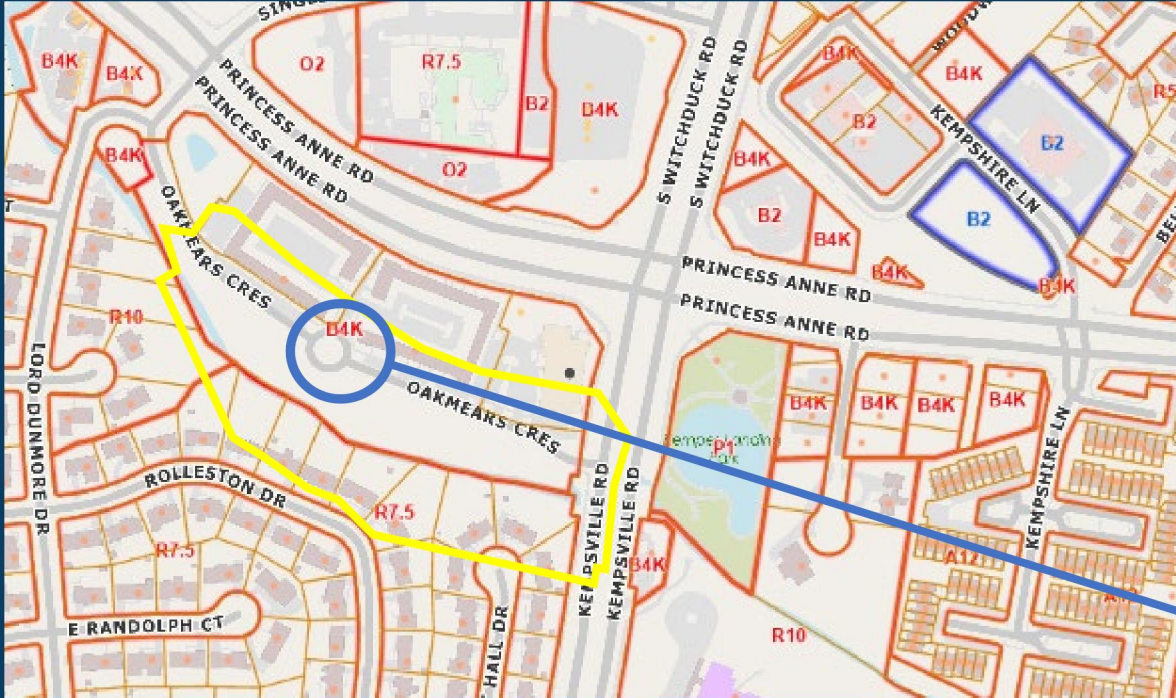
Example #2- Sandbridge Multi-Family - Proposal



Zoning Ordinance regulations:

- Density
- Parking
- Setbacks
- Height
- Lot Coverage
- Landscaping/buffering

Example #3 - 525 Kempsville Apartments - Location



- Zoning: B-4K (Kempsville Historic District)
- Proposed Use: Multi-family dwellings
- Use requires conditional approval

Use	B-1	B-1A	B-2	B-3	B-4	B-4C	B-4K
Dwellings, Attached	X		X	X	P	X	P
Dwellings, Multi-family	X	X	X	X	P	C	C

Example #3 - 525 Kempsville Apartments - Proposal



Specific Conditions of Approval:

- Elevations
- Site layout
- Finish materials
- Traffic study
- Nature trails
- Signage
- Archaeological survey



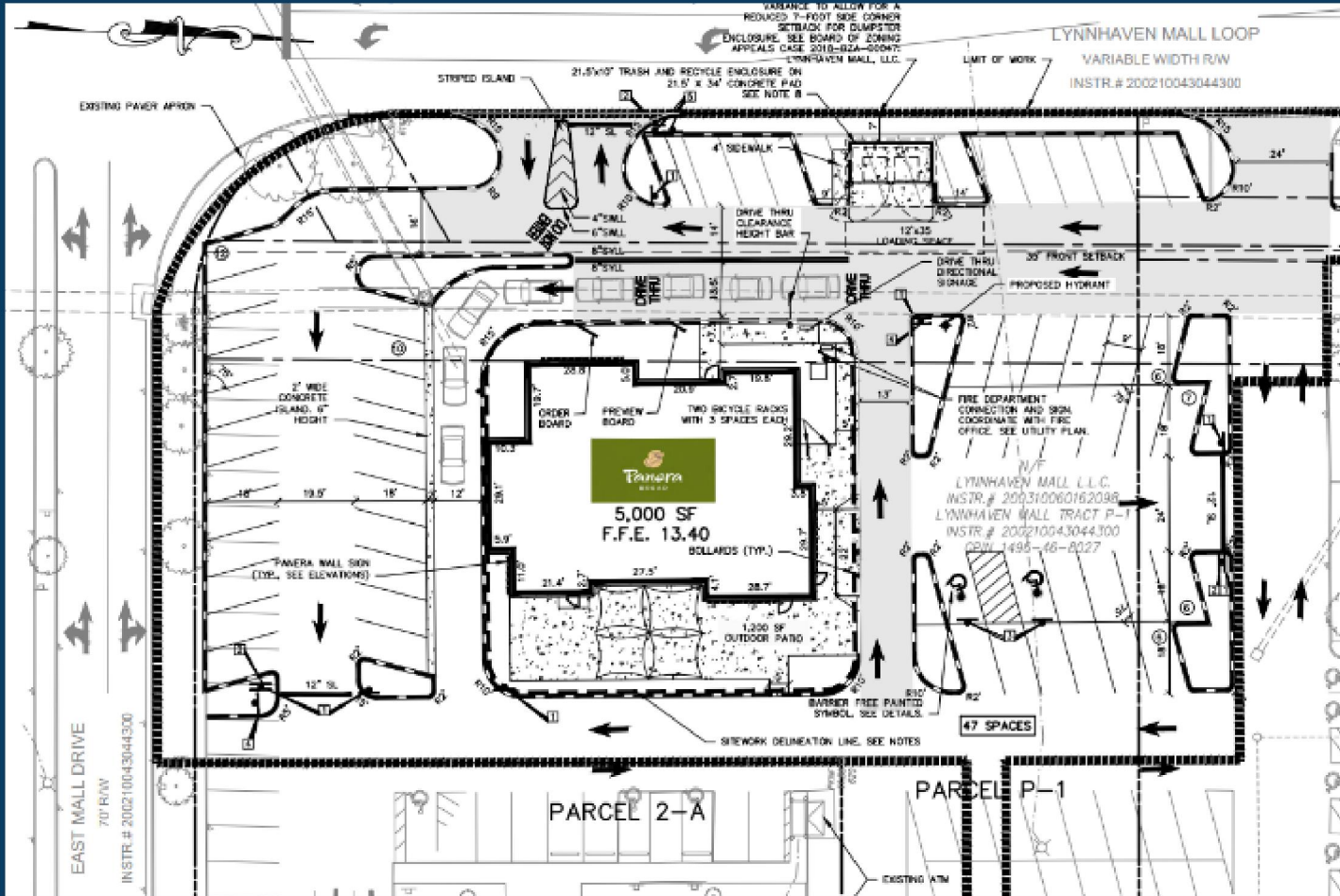
Example #4 - Panera Bread - Location



- Zoning: B-2 (Community Business District)
- Proposed Use: Restaurant with drive-through window

Use	B-1	B-1A	B-2	B-3	B-4	B-4C	B-4K
Eating and drinking establishments without drive-through windows, when not freestanding and incorporated inside a mixed use building, except as otherwise specified in this section	X	X	X	X	X	P	P
Eating and drinking establishments with drive-through windows, except as specified below	X	X	P	P	P	X	C
Eating and drinking establishments without drive-through windows, except as specified below	P	P	P	P	P	X	P

Example #4 - Panera Bread - Proposal



Zoning Ordinance regulations:

- Parking
- Setbacks
- Height
- Signage
- Landscaping/buffering
- Drive-through stacking

Questions?



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