



Z M O D

**Development Standards, Parking, and Signs –
Public DRAFT**

October 2019

CLARION

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Article 2: Zoning Districts

[PART OF SEPARATE INSTALLMENT]

Article 3: Overlay and Commercial Revitalization Districts¹

[PART OF SEPARATE INSTALLMENT]

Article 4: Use Regulations

[PART OF SEPARATE INSTALLMENT]

¹ Currently Article 7.

Article 5: Development Standards²

5100. Lot, Bulk, and Open Space Regulations³

1. General Dimensional Standards⁴

- A.** The dimensional standards for residential, commercial, industrial, planned, overlay, and commercial revitalization districts are shown in the description for each district as follows:
- (1)** Standards for Residential Districts in [reference to Section 2102].
 - (2)** Standards for Commercial Districts in [reference to Section 2103].
 - (3)** Standards for Industrial Districts in [reference to Section 2104].
 - (4)** Standards for Planned Districts in [reference to Section 2105].
 - (5)** Standards for Overlay and Commercial Revitalization Districts [reference to Article 3].
- B.** Such dimensional standards are also subject to the standards in this section unless this section expressly states otherwise.

2. Lot and Bulk Regulations⁵

A. Lot Size Requirements⁶

- (1)** In this Ordinance, lot size requirements may be expressed in terms of:
 - (a)** Minimum lot area;
 - (b)** Minimum lot width; and
 - (c)** Minimum district size, which is only applicable for proposed rezonings and cluster subdivisions.
- (2)** In the R-C, R-E, R-1, R-2, R-3, and R-4 Districts, minimum lot area and lot width requirements are presented for conventional subdivision lots and cluster subdivision lots that may be allowed in accordance with the provisions of 5100.2.O, as applicable. In the R-2, R-3, R-4, R-5, R-8, R-12, R-16, R-20, and R-30 Districts, minimum lot area and lot width requirements are also presented for affordable dwelling unit developments.
- (3)** No parcel may be rezoned to a given district unless it meets the applicable minimum district size, except:⁷

² Most of the text has been edited for clarity and readability, often without footnote; however, reorganization of material and content changes are footnoted throughout.

³ These standards include further details and explanation of measurement of the various dimensional standards established in the zoning districts. In subsequent drafts, specific dimensional standards may be relocated from the zoning districts tables to this section, or vice versa. References to “yard” were replaced with “setback” throughout.

⁴ New section.

⁵ Carried forward from Part 4 of Article 2, with revisions as noted. Qualifying lot standards were separated from qualifying setback standards.

⁶ From Sect. 2-306. Relocated from new Article 2 (Districts draft). Did not carry forward Par. 3 of Sect. 2-306 because it is unnecessary and confusing, except as indicated in 2.A with “may be” (not all districts have a minimum district size).

⁷ Par. 4A and 4B of Sect. 2-306 are not carried forward. A waiver of district size is allowed by special exception (current sect. 9-610).

- (a) By the Board acting on its own motion; or
 - (b) As a part of a rezoning or special exception, by the provisions of 5100.2.J.
- (4) All uses are subject to the lot size requirements specified for a given district. In the R-C, R-E, R-1, R-2, R-3, and R-4 Districts, non-residential uses are controlled by the provisions presented for conventional subdivision lots, either the average or minimum lot area, whichever is greater. However, when minimum requirements are specified for specific uses elsewhere in this Ordinance, those minimum requirements will apply.
- (5) Except for transmission lines in the public right-of-way or easements totaling less than 25 feet in width, no land area that is encumbered by any covenant, easement, or interest that would permit the establishment of power distribution facilities, including high power transmission lines, ground transformer stations, and natural gas, petroleum, or other transmission pipelines is considered in the computation of minimum lot area or minimum district size.

B. Bulk Regulations⁸

- (1) In this Ordinance, bulk regulations are expressed in terms of the following and are further defined in Article 9: *Definitions*:⁹
- (a) Maximum building height;
 - (b) Minimum setbacks; and
 - (c) Maximum floor area ratio.
- (2) Except as may be qualified by the provisions of this Ordinance, no structure or part of a structure may be built, moved, used, occupied, or arranged for use on a lot that does not meet all minimum bulk regulations presented for the zoning district in which it is located.

C. Height Regulations¹⁰

- (1) Maximum building height applies to all structures in the zoning district except those structures or appurtenances listed below, unless a lower maximum height is established for a given use elsewhere in this Ordinance.¹¹
- (2) The height limitations of this Ordinance do not apply to structures such as barns, silos, flagpoles, birdhouses, flues, monuments, or roof structures such as chimneys, spires, cupolas, gables, mechanical penthouses, domes, , television antennas, water towers, water tanks, smoke-stacks, or other similar roof structures and mechanical appurtenances provided that:
- (a) When located on a building roof, no such structures may cumulatively occupy an area greater than 25 percent of the total roof area.

⁸ From current Sect. 2-307. Relocated from new Article 2 in the Districts draft. “Minimum yard requirements” were revised to “setbacks” throughout.

⁹ The term angle of bulk plane and the related term effective building height have been deleted. See the cover memo for the Districts draft for additional discussion of this change. Cross-references to specific defined terms will be added with a subsequent consolidated draft.

¹⁰ Carried forward from 2-506, “Structures Excluded from Maximum Height Regulations,” except deleted “scenery lofts” and applied the height exemption generally to birdhouses rather than only to purple martin birdhouses.

¹¹ From Par. 3 of Sect. 2-307.

- (b) No such structure may be used for any purpose other than a use accessory to the principal¹² use of the building.
- (c) Air-conditioning units on building roofs are subject to the height limitations unless the units are located in a penthouse or are completely screened on all four sides, with such penthouse or screening designed as an integral architectural element of the building.
- (3) Freestanding structures must be located in accordance with section 4102.7.
- (4) A parapet wall, cornice, or similar projection may exceed the height limitations by a maximum of three feet if the projection does not extend more than three feet above the roof level of the building.
- (5) Rooftop guardrails required by the Virginia Uniform Statewide Building Code for safety reasons are excluded from building height limits.

D. Setback Regulations

(1) Minimum Setbacks

Minimum setbacks are subject to the following:¹³

- (a) Minimum setbacks are specified for each zoning district, except as may be further qualified by other provisions of this Ordinance.
- (b) Minimum setbacks apply to all buildings and structures as they relate to the lot lines and public streets.
- (c) For single family attached dwellings, minimum side setbacks do not apply to interior units; however, minimum setback requirements for freestanding accessory structures are included in [*reference to Article 4*].
- (d) In the case of single family detached dwellings without individual lots, groups of single family attached or stacked townhouse dwellings or multiple family structures, the minimum distance between structures may not be less than the sum of the minimum setbacks for the individual structures, determined as if a lot line were located between the structures drawn perpendicular to the shortest line between them.
- (e) In the Planned Districts, where minimum setbacks are not proffered, the minimum setback is one-half the distance of the yard that has been established by the location of the principal structure.¹⁴

(2) Reduction in Setbacks and Open Space Not Permitted¹⁵

Except as qualified in the following subsections, no setbacks or other open space provided on any lot for the purpose of complying with this Ordinance may be reduced in width or area to less than what is required by this Ordinance, and no such setback or open space area may be used to satisfy the setback or open space requirements for any other lot.

¹² Revised from “main use.”

¹³ From Par. 4 of Sect. 2-307

¹⁴ The second sentence of Sect. 2-412 about setbacks in P districts is carried forward, and the PCC District was added. The third sentence of Sect. 2-412 is not included, as setbacks between buildings are not carried forward except where specifically noted elsewhere.

¹⁵ Carried forward from 2-410.

(3) Setback Requirements for Lots without Structures¹⁶

The minimum setbacks apply to lots occupied by a permitted use without structures unless otherwise specified in this Ordinance; however, front, side, and rear setbacks are not required on lots used for agricultural purposes, open public areas, or open space.

(4) Corner Lots¹⁷

The following regulations apply to corner lots:

(a) Lot Lines and Yards:

1. The two yards lying between the principal building and the intersecting streets are both deemed to be front yards.
2. The shorter street line will be deemed to be the front lot line, regardless of the location of the principal entrance or approach to the main building.

(b) Sight Distance Requirements on Corner Lots:¹⁸

On every corner lot, sight distance must be maintained in accordance with the following standards:

1. The sight distance triangle is formed by the by the street lines of a lot and a line drawn between points established in accordance with the following (see Figure 5100.1 below):
 - a. For a lot having an interior angle of 90 degrees or more at the street corner: Points must be 30 feet from the property lines extended.
 - b. For a lot having an interior angle of less than 90 degrees at the street corner: Points must be 30 feet from the property lines extended, plus one foot for every ten degrees or fraction by which such angle is less than 90 degrees.
2. Sight distance must be maintained between two horizontal planes, one of which is three and one-half feet, and the other ten feet above the established grade of either street. If no grade has been officially established, sight distance must be maintained above the average elevation of the existing surface of either street at the center line. (see Figure 5100.1 below.)
3. This sight distance triangle must be maintained clear of structures and plantings, except for a post, column, or trunk of a tree (not to include branches or foliage) equal or lesser than one foot in diameter.
4. In conjunction with the approval of a rezoning or special exception application, the Board may modify the sight distance requirements on a corner lot based upon an evaluation of the specific development proposal which may consider the demonstrated compliance with sight distance requirements of the Virginia Department of Transportation and a specific sight distance analysis or any other relevant design guidelines that would demonstrate safe and adequate vehicular, bicycle, or pedestrian movements at an intersection.

¹⁶ Carried forward from 2-411.

¹⁷ Relocated from definition of "yard, front."

¹⁸ Carried forward from 2-505.

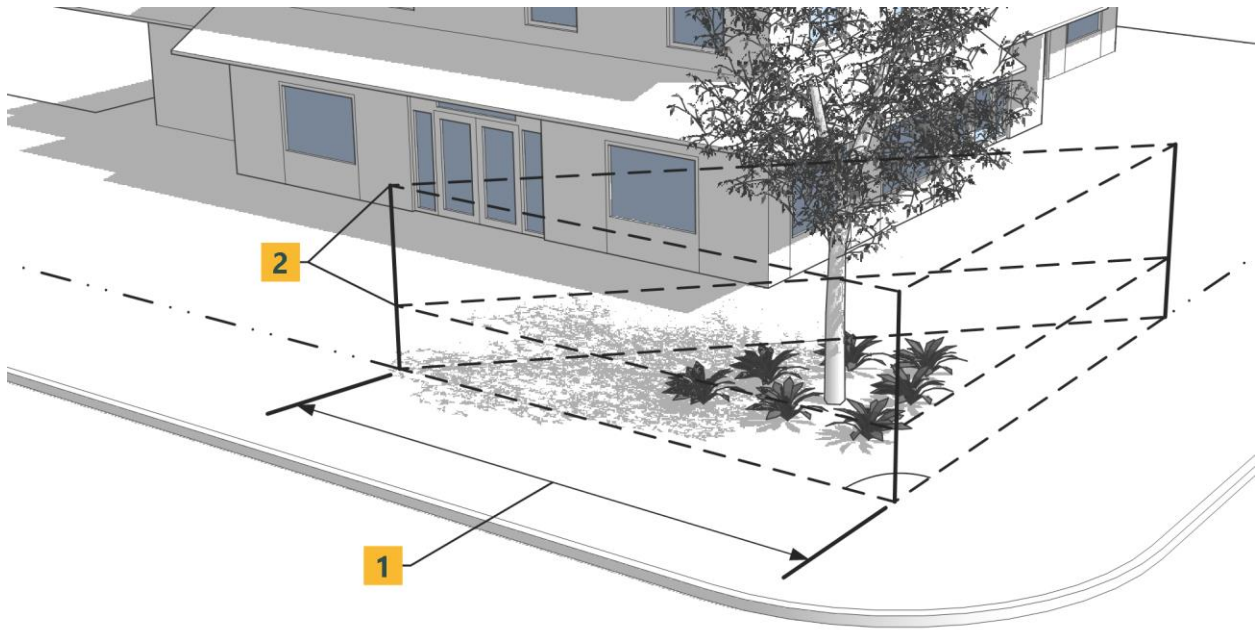


Figure 5100.1: Sight Distance Requirements

(5) Permitted Extensions into Minimum Required Setbacks¹⁹

(a) Extensions for Any Structure

1. Awnings, cornices, canopies, eaves, or other similar architectural features may extend up to three feet into any minimum required setback if the feature is not located within two feet of any lot line and is at least ten feet above finished ground level. Permanent canopies over fuel pump islands that have supports located on the pump islands may extend into minimum required setbacks but may not extend into any required transitional screening areas or overhang travel lanes, service drives, or sidewalks.
2. Belt courses, sills, and similar ornamental features may extend up to 12 inches into any minimum required setback.
3. Open fire escapes, smokeproof enclosures, uncovered stoops and any stairs, heating, ventilation, and air conditioning (HVAC) equipment, pool pumps, generators, and similar required features and equipment²⁰ may extend up to five feet into any minimum required setback if the individual feature is not more than ten feet in width and is not located within five feet of any lot line.

¹⁹ Carried forward from 2-412, except “leaders” has been deleted, and the provision allowing carports to extend 5 feet into a required side setback has not been carried forward. The fire safety structures have been updated.

²⁰ Replaces “air conditioners and heat pumps.”

4. Bay windows and chimneys may extend up to three feet into any minimum required setback if the feature is not more than ten feet in width and is not located within five feet of any lot line.
5. Any improvement for the purposes of providing reasonable accommodations pursuant to the Americans with Disabilities Act (ADA)²¹ may extend into any minimum required setback.
6. For lots in the Planned Districts where minimum setbacks are not proffered, extensions listed in this subsection are permitted into the established setback specified in subsection 5100.2.D(1)(e).

(b) Extensions for Decks or Patios²²

Table 5100.1 below summarizes the extensions allowed for decks or patios by structure type. For the purposes of this table, the following applies:

1. Height is measured from finished ground level to the highest part of the deck floor.
2. “Not closer than” is in reference to location from the lot line.
3. The extension that is most restrictive applies.
4. A deck may have an 'open-work' railing or wall, not over four feet in height, with at least 50 percent of the area open in an evenly distributed pattern.²³
5. An open deck may include the following:²⁴
 - a. A deck that is less than or equal to four feet in height may include lattice below the deck.
 - b. A deck of any height may include lattice on no more than two sides extending from the dwelling. The lattice may extend up to eight feet in height from the deck floor.
 - c. A deck of any height may include modifications at or above the railing such as pergolas, trellises, and overhanging planters.

²¹ Replaces “any accessible improvement.”

²² A new separate definition for patio has been added. The same setbacks as decks have been carried forward but may be revised with a future draft.

²³ Relocated from the definition of a deck.

²⁴ The allowance for lattice and other deck modifications is new.

TABLE 5100.1: Permitted Extensions for Decks or Patios				
Attached to Single Family Detached Dwelling				
Height Less than or Equal to Four Feet			Height Greater than Four Feet	
Setback	Open	Roofed	Open	Roofed
Front	6 feet into setback, but not closer than 14 feet	No extension	No extension	No extension
Side	5 feet into setback, but not closer than 5 feet	No extension	No extension	No extension
Rear	20 feet into setback, but not closer than 5 feet	12 feet into setback, but not closer than 5 feet	12 feet into setback, but not closer than 5 feet	No extension
Attached to Single Family Attached Dwelling				
Height Less than or Equal to Three Feet			Height Greater than Three Feet	
Setback	Open	Roofed	Open	Roofed
Front	No extension	No extension	No extension	No extension
Side of End Units	5 feet into setback, but not closer than 5 feet	No extension	No extension	No extension
Rear	Decks on interior units can extend to rear; end units not closer than 5 feet	12 feet into setback, but no closer than 5 feet	12 feet into setback, but no closer than 5 feet [1]	No extension
Stacked Townhouse, Multifamily, Industrial, Commercial, or Institutional Structures				
Width	Height Less than or Equal to Three Feet		Height Greater than Three Feet	
Less than 10 feet	6 feet into any yard		3 feet into any yard	
Greater than 10 feet	No reduction			
NOTES:				
[1] If the rear yard is 17 feet or less and abuts open space or a utility easement with a minimum width of 10 feet, the deck or patio may encroach to no closer than 2 feet.				

A graphic of a deck extending into setback will be inserted with a subsequent draft.

(c) Extensions by Special Permit Approval

The BZA may approve a special permit to modify the provisions of this subsection in accordance with subsection 5100.2.D(11)(e).

(6) Setbacks for Residential Reverse Frontage Lots²⁵

- (a)** For any residential reverse frontage lot along a major thoroughfare, the minimum front setback applies to the yard in front of the principal entrance or containing the approach to the primary building occupying the lot. The opposing yard is deemed to be the rear yard and is subject to the rear setback requirements unless qualified below.

²⁵ Carried forward from 2-413.

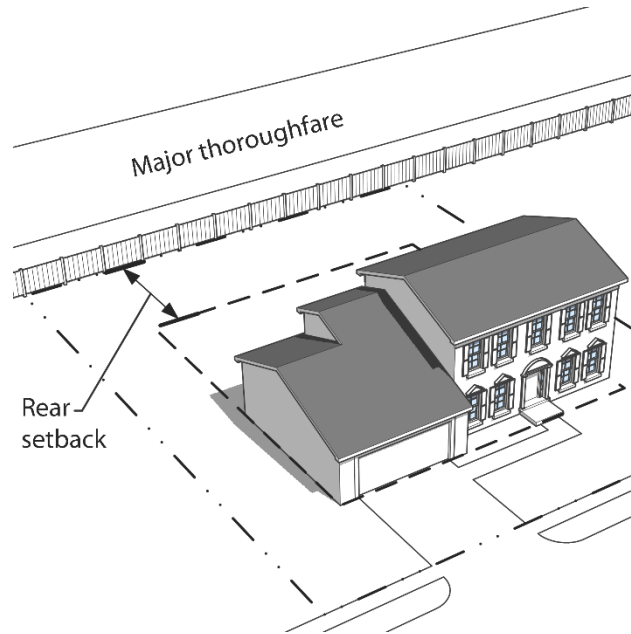


Figure 5100.2: Rear Setback on Reverse Frontage Lot

- (b) A privacy fence or wall may be approved by the Director in the rear and side yards of residential reverse frontage lots, provided such fence or wall does not obstruct the view of traffic from an intersecting street and maintains the minimum sight distance acceptable to the Virginia Department of Transportation for the permitting of entrances onto a thoroughfare of the class involved.²⁶
- (c) Accessory uses are permitted within the rear and side yards of residential reverse frontage lots, but only in accordance with [reference to 4102.7)], and subject to the minimum sight distance requirements as stated above.

(7) Setbacks from Specific Highways and Railroad Tracks²⁷

The following minimum distances must be maintained between all principal buildings and rights-of-way.

- (a) All principal buildings must be setback from the rights-of-way of interstate highways, the Dulles International Airport Access Highway, and the combined Dulles International Airport Access Highway and Dulles Toll Road, as follows:
 1. Residential buildings - 200 feet
 2. Commercial and industrial buildings - 75 feet
- (b) Residential buildings²⁸ must be setback a minimum of 200 feet from all railroad tracks, except for those tracks associated with regional rail transit facilities.
- (c) Deviations from the provisions of subsections 1 and 2 above may be permitted with Board approval of appropriate proffered conditions if it finds that such deviations will

²⁶ Shortened substantially to simply rely on the Virginia Dept. of Transportation standards.

²⁷ Carried forward from 2-414. Deleted “abutting” from the title so the requirements would apply to all lots within the specified distances.

²⁸ Modified from “dwellings” to be consistent with previous standard.

further the intent of this Ordinance, the comprehensive plan, and other adopted County policies.

- (d) The setbacks required in this subsection do not apply in those instances where a lot has been recorded prior to August 14, 1978.

(8) Setbacks from the Floodplain²⁹

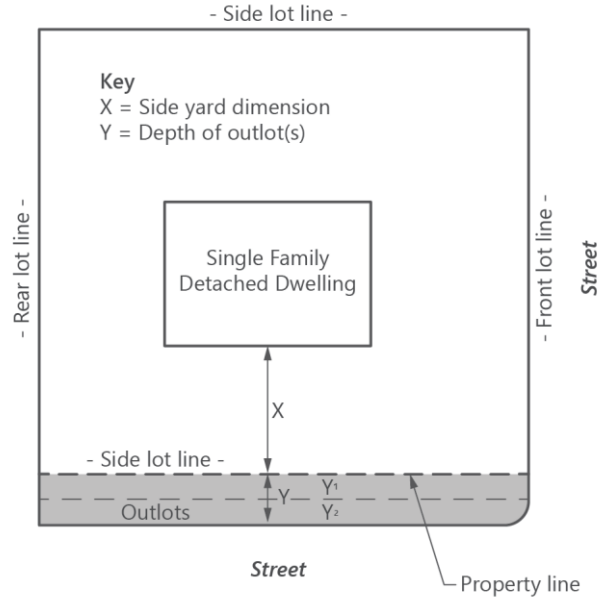
Setbacks from the edge of a floodplain are specified in section 5105.

(9) Setbacks on Lots Abutting Outlots Contiguous to Streets³⁰

- (a) When a lot abuts an outlot that is contiguous to a street, the minimum distance between the principal structure on the building lot and the street line of the outlot must be equal to or greater than the minimum required front setback for the district in which the lot is located.
- (b) If two or more contiguous outlots are located between a lot and a street line, a distance equal to or greater than the minimum required front setback for the district in which the building lot is located must be maintained between the principal structure on the lot and such street line. In addition, the minimum setback of the lot abutting the outlot must be equal to or greater than the applicable minimum required setback for the district in which the building lot is located.
- (c) The Board may modify this requirement in conjunction with the approval of a rezoning or special exception when it is determined that such modification will have minimal adverse impacts on adjacent properties.

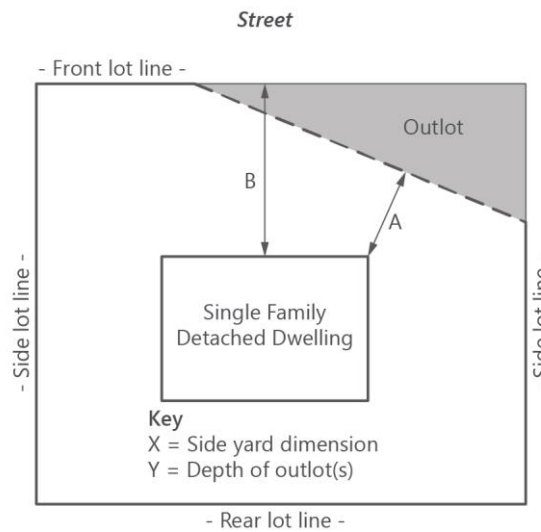
²⁹ Reference to relocated Sect. 2-415.

³⁰ Carried forward from 2-423.



- Notes: (1) $X+Y$ (or $X+Y^1&Y^2$) - must be equal to or greater than the required front minimum yard of the district in which located.
- (2) X - must be equal to or greater than the minimum required side yard of the district in which located.

Figure 5100.3: Outlot Setback Measurements (I)



- Notes: (1) A - must be equal to or greater than the required side yard of the district in which located.
- (2) B - must be equal to or greater than the minimum required front of the district in which located.

Figure 5100.4: Outlot Setback Measurements (II)³¹

(10) Setbacks on Through Lots³²

On a through lot, the two yards lying between the principal building and the two or more public streets are deemed to be front setbacks and will be controlled by the provisions for same, except as qualified in 5100.2.D(6) for residential lots having reverse frontage, and except in those instances where one of the public streets is an alley.

(11) Reductions in Setback Requirements**(a) Acquisition, Condemnation, or Dedication for Public Purposes**

1. On lots where a yard is reduced below the minimum setback by condemnation or by acquisition for public purposes by any governmental agency, the Director will approve a 20 percent reduction of the minimum setback from the new lot line created by the condemnation or acquisition.³³
2. The dedication of land for a service drive, bus turnout, or bus shelter to the County or to the Virginia Department of Transportation does not affect the applicable minimum setback requirements. The minimum setback is established from the lot line as it existed prior to such dedication, except in no instance may a building be erected closer than 15 feet from the nearest street line. This subsection does not apply to lots that contain a single family detached dwelling unit.³⁴

(b) Design Guidelines for Specified Areas in the Comprehensive Plan

The minimum setback requirements may be reduced for developments located in areas where specific design guidelines have been established in the comprehensive plan, such as in Community Business Centers, Commercial Revitalization Areas, and Transit Station Areas. Such reductions may be approved by the Board, in conjunction with the approval of a rezoning or special exception, or by the Director in approving a site plan, when it is determined that such reduction is in accordance with the comprehensive plan. However, setbacks within a Commercial Revitalization District are as provided in section 3102.³⁵

(c) Errors in Building Location – Zoning Administrator Authorized Reductions³⁶

The Zoning Administrator may approve a reduction in the minimum setback requirements when a building or freestanding accessory structure (whether existing or partially constructed) does not comply with the minimum setback requirements applicable at the time such building or accessory structure was erected. A reduction may be approved in accordance with the following provisions:

1. The Zoning Administrator determines that:
 - a. The error does not exceed ten percent of the measurement that is involved;

³¹ The notes in Figures 5100.3 and 5100.4 will be updated to use the term setbacks instead of minimum required yards.

³² Relocated from current definition of “yard, front.”

³³ Carried forward from 2-417.

³⁴ Carried forward from 2-420.

³⁵ Carried forward from 2-418. Did not carry forward last sentence “Yard requirements in a Commercial Revitalization District and any allowable reductions thereof, shall be in accordance with the provisions of that district.” That is assumed given the exception at the beginning of the paragraph.

³⁶ Carried forward from 2-419, except the finding that a noncompliance was done “in good faith” has been removed.

- b.** The noncompliance was done through no fault of the property owner, or was the result of an error in the location of the building or structure subsequent to the issuance of a Building Permit, if required;
 - c.** It will not impair the purpose and intent of this Ordinance;
 - d.** It will not be detrimental to the use or enjoyment of other property in the immediate vicinity;
 - e.** It will not create unsafe conditions regarding other properties or public streets;
 - f.** Compliance with the minimum setback requirements would cause unreasonable hardship upon the owner; and
 - g.** It will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district.
- 2.** In approving such a reduction or modification under the provisions of this subsection, the Zoning Administrator may allow only the minimal reduction necessary to provide reasonable relief and may prescribe conditions such as landscaping and screening measures to assure compliance with the intent of this Ordinance.
 - 3.** The Zoning Administrator may not waive or modify the criteria necessary for approval as specified in this subsection.
 - 4.** If there is an error greater than ten percent of the subject measurement request, a reduction or modification may be granted by the BZA in accordance with (d) below.
 - 5.** The BZA may also grant a reduction of the minimum setback requirements or a modification of the accessory structure location requirements due to an error in building location that is no greater than ten percent of the measurement involved when such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property; or in conjunction with another special permit for an error in building location on the property that exceeds ten percent.

(d) Errors in Building Location – BZA Authorized Reductions³⁷

The BZA may approve a special permit to allow a reduction to the minimum setback requirements for any building or a modification to the location regulations of any freestanding accessory structure existing or partially constructed that does not comply with such requirements applicable at the time such building or structure was erected, but only in accordance with the following provisions:

- 1.** The BZA must determine that:
 - a.** The error exceeds ten percent of the measurement involved; or
 - b.** The error is up to ten percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of another special permit or application for a variance on the property;

³⁷ Carried forward from Sect. 8-914, except the finding that a noncompliance was done “in good faith” has been removed, and the submission requirements will be relocated to the new Article 8 – Administration and Procedures.

- c.** The noncompliance was done through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required;
 - d.** It will not impair the purpose and intent of this Ordinance;
 - e.** It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
 - f.** It will not create an unsafe condition regarding other properties or public streets;
 - g.** Compliance with the minimum setback requirements or location regulations would cause unreasonable hardship upon the owner; and
 - h.** It will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
- 2.** In granting such a reduction or modification, the BZA may allow only a reduction or modification necessary to provide reasonable relief and may, prescribe conditions, including landscaping and screening measures, to assure compliance with the intent of this Ordinance.
 - 3.** The BZA does not have the power to waive or modify the standards necessary for approval as specified in this section.

(e) Special Permit Approval for Reduction of Setback Requirements³⁸

The BZA may approve a special permit to allow a reduction of setback requirements subject to the following:

- 1.** Only the following setback requirements are subject to special permit approval:
 - a.** Minimum required setbacks, as specified in the residential, commercial, industrial, and planned development districts in Article 2. These setbacks may not be subject to proffered conditions or development conditions related to setbacks and may not be depicted on an approved conceptual development plan, final development plan, development plan, special exception plat, special permit plat, or variance plat.
 - b.** Setback regulations for pipestem lots and lots contiguous to pipestem driveways set forth in 5100.2.L(2) .
 - c.** Accessory structure location requirements set forth in 4102.7.A.6.
 - d.** Regulations on permitted extensions into a minimum setback as set forth in 5100.2.D(5).
- 2.** Approval of a reduction of setback requirements may not result in any setback that is more than 50 percent of the requirement or permitted encroachment, as measured from the lot line to the closest point of the proposed structure.
- 3.** A reduction of setback requirements for a., b., and c. above may not result in any setback of less than five feet.

³⁸ Carried forward from Sect. 8-922, except the submission requirements will be relocated to the new Article 8 – Administration and Procedures.

- 4.** The reduction may not result in the placement of a detached accessory structure in a front yard where the placement of such accessory structure is not otherwise permitted in that yard.
- 5.** This special permit only applies to those lots that contain a principal structure and use that complied with the minimum setback requirements in effect when the use or structure was established.
- 6.** The resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first expansion request. The resulting gross floor area of any subsequent addition is limited to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion request, regardless of whether such addition complies with the minimum setback requirements or is the subject of a subsequent setback reduction special permit. If a portion of a single family detached dwelling is to be removed, no more than 50 percent of the gross floor area of the existing dwelling at the time of the first yard reduction may be removed. The gross floor area of a single family dwelling for the purpose of this subsection is deemed to include the floor area of any attached garage.
- 7.** The resulting gross floor area of an existing accessory structure and any addition to it must be clearly subordinate in purpose, scale, use, and intent to the principal structure on the site.
- 8.** The BZA must determine that the proposed development will be in character with the existing on-site development in terms of the location, height, bulk, and scale of the existing structure(s) on the lot.
- 9.** The BZA must determine that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, and scale of surrounding structures, topography, existing vegetation, and the preservation of significant trees as determined by the Director.
- 10.** The BZA must determine that the proposed development will not adversely impact the use or enjoyment of any adjacent property including issues related to noise, light, air, safety, erosion, and stormwater runoff.
- 11.** The BZA must determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. Specific factors to be considered include the following:
 - a.** The layout of the existing structure;
 - b.** Availability of alternate locations for the addition;
 - c.** Orientation of the structure(s) on the lot;
 - d.** Shape of the lot and the associated setback designations on the lot;
 - e.** Environmental characteristics of the site, including presence of steep slopes, floodplains or Resource Protection Areas;
 - f.** Preservation of existing vegetation and significant trees as determined by the Director;
 - g.** Location of a well or septic field;

- h.* Location of easements;
- i.* Preservation of historic resources; and
- j.* Any additional relevant site considerations.³⁹

12. The BZA may impose conditions it deems necessary to satisfy these criteria, such as a maximum gross floor area, floor area ratio, lot coverage, landscaping, and screening requirements.

E. Maximum Density⁴⁰

(1) The maximum density specified for a given zoning district may not be exceeded, except as permitted by the provisions of subsections 5100.2.G, 5101, or Article 4. Maximum density means the number of dwelling units per acre, except in the PRC District where it means the number of persons per acre.

(2) Density Penalty

(a) Maximum density is calculated on the gross area of the lot, except when 30 percent or more of the area of the lot is comprised of any or all the following features:

- 1.** Floodplains, and adjacent slopes in excess of 15 percent grade as measured from the floodplain until a minimum 50-foot wide plateau occurs such that a principal structure could be constructed;
- 2.** Quarries;
- 3.** Marine clays; and
- 4.** Existing water bodies, unless a water body is a proposed integral design component of an open space system for a development, in which case total density credit is calculated including the area of the water body.

(b) When 30 percent or more of the area of the lot is comprised of any or all of the features above, then 50 percent of the maximum permitted density is calculated for that area. The 50 percent density limitation applies, although that area may be used for open space, parks, schools, rights-of-way, utility easements, or other uses as may be presented in the following subsections. The density penalty of this subsection does not apply in the PRC District or to floor area ratio.

Example: Density Penalty Calculations

Site Area	38.28 ac
A. Floodplains and adjacent steep slopes	18.3 ac
B. No quarries exist on site	n/a
C. Areas of marine clays	12.2 ac
D. No bodies of water exist outside the floodplain	

³⁹ Replaces the BZA consideration of the specific factors “including, but not limited to.”

⁴⁰ From current Sect. 2-308. Relocated from Districts draft.

Site area consisting of A-D above	30.5
Percent of site consisting of A-D above	79.7%
Percent of site consisting of A-D above that is in excess of 30%	49.7%
Zoning District: R-2, maximum density 2 du/ac:	
49.7% of 38.28 = 19.02 @ 50% (1 du/ac) = 19.02	
50.3% of 38.28 = 19.26 @ 100% (2 du/ac) = 38.53	
19.02 + 38.53 = 57.54 = 57 total dwelling units allowed	

(3) Density or Floor Area Ratio Credit

- (a) Except in the PRC District, in cases where area within a lot is in a major utility easement or right-of-way acquired after the August 14, 1978, no density or floor area ratio credit may be calculated on such area; except that such credit may be allowed by the Board, by the approval of a special exception pursuant to [reference to special exception procedures], for major utility easements granted after the August 14, 1978, when the grantee of the easement is the Board, or an authority or other governmental organization appointed by the Board.
- (b) For the purpose of this subsection, a major utility easement or right-of-way is one having a width of 25 feet or more that is located entirely outside of a right-of-way.
- (c) In cases where an area within a lot is needed by the County for a public park, school site, other public facility site, mass transit facility or street improvement, or public street right-of-way,⁴¹ density or floor area ratio credit is calculated on that area severed for those purposes in accordance with the following:
1. There is approval of density or floor area ratio credit prior to the recordation of the dedication or conveyance among the County's land records by:
 - a. The Board in approving a rezoning or special exception application when dedication or conveyance is part of the application;
 - b. The Director in approving a subdivision plat in accordance with Chapter 101 of The Code, or a site plan in accordance with [reference to relocated Article 17] of this Ordinance, when dedication or conveyance is part of the subdivision plat or site plan; or
 - c. The County Executive or designee when the dedication or conveyance is not proposed as part of the approval of a rezoning, special exception, subdivision plat, or site plan.
 2. Such approval must be based upon the following:
 - a. The area to be dedicated or conveyed is necessary for the public facility site or use, and is suitable in location, size, shape, condition, and topography;

⁴¹ Did not carry forward "and there are no encumbrances to the title to that area that would interfere with its use" since that is a separate requirement outside of the land use ordinance.

- b.** The area to be dedicated or conveyed, except for the area dedicated for public streets other than major thoroughfares, is in accordance with the adopted comprehensive plan. Where the proposed public facility site or use requires approval under Section 15.2-2232 of the Code of Virginia, such approval must be obtained prior to the granting of any credit; and
 - c.** The area to be dedicated or conveyed will be deeded to the County, and the dedication or conveyance will not be made in exchange for monetary compensation.
- 3.** Prior to the dedication or conveyance, a plat of dedication showing the land area to be severed, the resultant lot, and its appropriate density or floor area ratio allocation must be submitted to and approved by the Director. That plat and an irrevocable dedication or conveyance to the County must be recorded among the land records of the County. Following such recording, any reallocation of the density or floor area ratio credit requires the submission to and approval by the Director of a revised plat, which must also be recorded among the land records of the County. Density or floor area ratio credit approved after February 28, 1995, and in accordance with this subsection runs in perpetuity with the land remaining. Density or floor area ratio credit approved prior to February 28, 1995 was approved for that one time and does not apply to any future development that is not consistent with the development approved at the time of the granting of the credit.

F. Limitations on Subdivision of Lots⁴²

Subdivisions are only permitted where the resultant lots meet the minimum provisions of this Ordinance, except for a minor adjustment of lot lines or consolidation of lots as may be permitted under subsection J below.

G. Limitation on the Number of Dwelling Units on a Lot⁴³

- (1)** A maximum of one dwelling unit on any one lot is permitted. A dwelling unit may not be located on the same lot with any other principal building. This provision does not preclude:
- (a)** Multifamily dwelling and stacked townhouse units as permitted by this Ordinance;
 - (b)** Accessory uses or associated service uses as permitted by the provisions of sections 4102.1.G, 4102.7, 4102.7.C, and 4102.7.M;
 - (c)** Accessory dwelling units as approved by the BZA in accordance with section 4102.7.B;
 - (d)** Single family attached dwellings in a rental development;
 - (e)** Condominium development as provided for in [*reference to relocated Sect. 2-518*]; or
 - (f)** Wireless facilities and associated support structures in accordance with [*reference to relocated Sect. 2-514, 2-519, 2-520, and 2-522*].

⁴² Carried forward from 2-401.

⁴³ Carried forward from 2-501. The second paragraph regarding a dwelling for a proprietor or employee is not carried forward, but the links to caretaker quarters and residence for manager or employee in Article 4 are added. A new use standard will be added for the residence for manager or employee to capture the setback requirement from this section, which will be 4107.7.M.

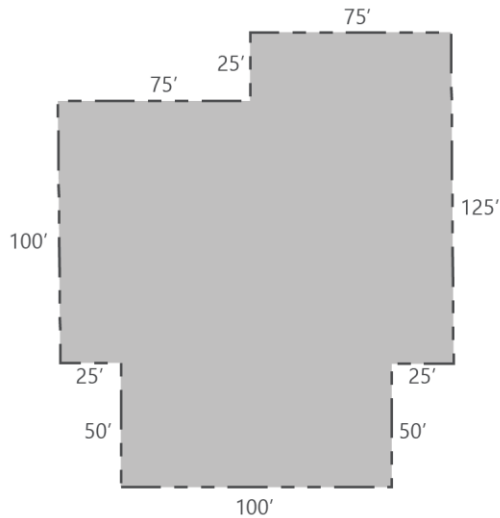
H. Shape Factor Limitations⁴⁴

- (1)** To provide for the orderly subdivision of land and to avoid irregularly-shaped lot configurations, lots located in the R-E, R-1, R-2, R-3, R-4, R-5, or R-8 Districts and the single family portions of a PDH, PDC, or PRC District may be subdivided if the following shape factor limitations are met:⁴⁵
- (a)** All lots must have a shape factor less than or equal to 35, except as follows:
- 1.** Lots with shape factors greater than 35 but less than 50 may be permitted with special exception approval by the Board in accordance with subsection C(3) below.
 - 2.** This requirement does not apply to lots designated as open space.
 - 3.** This requirement may be modified by the Board for lots depicted on an approved development plan in a PRC District, lots depicted on an approved final development plan in a PDH or PDC District, and lots located in a cluster subdivision approved under the provisions of 5100.2.O.⁴⁶
- (b)** Lots located within the R-2, R-3, or R-4 Districts that are approved by the Director for cluster development, or lots that are subject to a waiver of the minimum lot width requirements approved by the Board in accordance with [reference to relocated Part 6 of Article 9], must exclude the pipestem portion of a pipestem lot from the shape factor computation. The lot perimeter includes the width of the pipestem portion of the lot at the point where it joins the main portion of the lot.
- (2)** In the R-C District, except for lots designated as open space, or lots developed under the cluster provisions of 5100.2.O, all lots must have a shape factor less than or equal to 60. Lots with shape factors greater than 60 but less than 100 may be permitted with special exception approval by the Board in accordance with subsection H(3) below.

⁴⁴ New heading. Carries forward Sect. 2-401 and Sect. 9-626.

⁴⁵ Condensed the standard and did does not carry forward “and used for any use permitted in the zoning district in which located under this Ordinance pursuant to a Building Permit,” since the uses on the property is regulated by Article 4.

⁴⁶ Combines Paragraphs 2A and B of Sect. 2-401. Reconciles an inconsistency between Par. 2 and 2A for the P districts by adding a reference to Board modification.



$$\frac{\text{Perimeter}^2}{\text{Area}} = \text{Shape factor}$$

Example:

Perimeter = 650'
Area = 21875 sq. ft.

$$\frac{\text{Perimeter}}{\text{Area}} = \frac{650^2}{21,875} = \frac{422,500}{21,875} = \frac{422,500}{21,875}$$

Figure 5100.5: Shape Factor Calculation

- (3)** The Board may approve a modification of the shape factor limitations set forth above in accordance with the [reference to special exception procedures]. The applicant must provide sufficient justification for the increase in shape factor to show compliance with the following requirements:
- (a)** In the R-C, R-E, R-1, R-2, R-3, R-4, R-5, and R-8 Districts, the Board may approve a lot with a shape factor greater than 35, but less than 50, if it determines that a portion of the property is required for a wastewater or stormwater management facility or a stream valley trail as an outlot within the proposed subdivision. The Board must find that there is no alternative location on the property being subdivided for the proposed facility or trail.
 - (b)** In the R-C District, the Board may also approve a lot with a shape factor greater than 60, but less than 100, if it determines that the increase in shape factor results in a development that minimizes the impact on existing vegetation, topography, historic resources, or other environmental features.

I. Subdivided Parcels not included on Single Family Dwelling Unit Lot⁴⁷

Any area of a subdivided parcel that is not included as a part of an individual lot for a single family dwelling unit, including areas established to meet the open space requirements of this Ordinance, must be recorded with the instruments of subdivision, covenants, or other restrictions and designate the proposed use of such areas.

J. Permitted Reductions in Lot Size Requirements⁴⁸

- (1)** Any lot recorded prior to March 1, 1941, or any lot that met the requirements of the Zoning Ordinance in effect at the time of recordation, is not required to meet the minimum district

New heading name; carries forward from Sect. 2-402. This may be relocated to the new procedures section.

⁴⁸ Carried forward from 2-405.

size, lot area, lot width, and shape factor requirements of the district, provided the lot meets all other regulations of this Ordinance.⁴⁹ This provision does not apply to any lot that is rezoned or subdivided, except for:

- (a)** A subdivision resulting from a voluntary dedication by the owner, or a condemnation or acquisition of a portion of the subdivision for public purposes by any governmental agency; or
- (b)** A subdivision for a minor adjustment of lot lines, which may be permitted by the Director in accordance with Chapter 101 of the County Code and the following:
 - 1.** Such subdivision may only consolidate land area of contiguous lots, or rearrange lot lines to reallocate land area between contiguous lots such that the reconfigured lots contain either the same lot area that existed prior to the adjustment of the lot lines or a greater area than existed prior to the adjustment of the lot lines, resulting in a reduced number of lots; and
 - 2.** No additional lots or outlots are created, there is no increase in the maximum density, and the resultant lot lines do not create any new or increase any existing noncompliance regarding minimum lot area, lot width, shape factor, or minimum setback requirements; or
 - 3.** A minor adjustment of lot lines may occur between corner lots and contiguous lots that changes the road frontage or orientation of the lots, provided that no additional lots or outlots are created, the number of lots that do not comply with the current minimum lot width requirements is not increased, and the amount of the lot width noncompliance is not increased. In addition, the adjustment of lot lines may not create or increase any existing noncompliance regarding minimum lot area, shape factor, or minimum setback requirements.
- (2)** Any lot that did not meet the requirements of the Zoning Ordinance in effect at the time of recordation is not required to meet the minimum district size, lot area, lot width, and shape factor requirements of the district, provided:
 - (a)** The lot is depicted in a metes-and-bounds description or on a subdivision plat not approved by the County, and such description or plat was recorded among the land records of Fairfax County prior to March 25, 2003;
 - (b)** The lot described in the metes-and-bounds description or on the plat was identified as a separate lot on the Fairfax County Real Property Identification Map and was taxed as a separate parcel on or before March 25, 2003;
 - (c)** The lot contained a principal structure on March 9, 2004 that was:
 - 1.** Occupied or had been occupied at any time within five years prior to March 9, 2004; or
 - 2.** Under construction pursuant to a Building Permit and a Residential or Nonresidential Use Permit was issued within 12 months after March 9, 2004; and
 - (d)** Except for the minimum district size, lot area, lot width, and shape factor requirements of the district, all other regulations of this Ordinance must be satisfied, including the bulk and permitted use regulations applicable to the underlying zoning district.

⁴⁹ Did not carry forward the statement that the lot “may be used for any use permitted in the zoning district in which located under this Ordinance.” Uses are regulated by Article 4.

K. Waiver of Minimum Lot Size Requirements⁵⁰

- (1) In conjunction with a rezoning or special exception, the Board may approve a waiver of the following lot size requirements:
 - (a) R districts, except for all cluster subdivisions other than the R-1 Cluster – minimum district size or lot width requirements
 - (b) C districts – minimum lot area or lot width requirements
 - (c) I districts – minimum district size, lot area, or lot width requirements
- (2) In approving the waiver, the Board must make the following findings:
 - (a) The lot has not been reduced in width or area since August 14, 1978;
 - (b) The applicant has demonstrated that the waiver results in a development that preserves existing vegetation, topography, historic resources, and environmental features; provides for reduced impervious surface; maintains or improves stormwater management systems; and mitigates other similar impacts;⁵¹
 - (c) The subject lot will not have any adverse effect on the existing or planned development of properties or on area roadways; and
 - (d) The waiver may only be approved if the remaining provisions of this Ordinance are satisfied.

L. Pipestem Lots and Setbacks⁵²

- (1) When necessary to achieve more creative planning and preservation of natural property features or to provide for affordable dwelling unit developments, the Director may approve pipestem lots either as a single lot or in a group of up to five lots, but only in accordance with the provisions of the Public Facilities Manual and at least one of the following:
 - (a) Affordable dwelling unit developments required under Section 5101 below;
 - (b) Residential cluster subdivisions approved under 5100.2.O;
 - (c) When shown on an approved proffered generalized development plan in the R-5 or R-8 District;⁵³
 - (d) When shown on an approved final development plan in the PDH or PDC District;
 - (e) When shown on an approved PRC plan in the PRC District; or
 - (f) In conjunction with the approval of a special exception waiving minimum lot width requirements pursuant to 5100.2.J.
- (2) **Setbacks for Pipestem Lots and Lots Contiguous to Pipestem Driveways⁵⁴**
 - (a) The minimum front setback on a pipestem lot is 25 feet. The setback is measured from the lot line or the edge of the pipestem driveway pavement, whichever results in a greater setback. In an affordable dwelling unit development, the lesser of 25 feet or the minimum front setback requirement of the district in which the lot is located applies.

⁵⁰ Carried forward from 9-610

⁵¹ Revised and clarified the reference to demonstrable impacts with “mitigates other similar impacts.”

⁵² Carried forward from 2-406.

⁵³ Reconciled inconsistencies by removing the R-12 District where single family detached dwellings are not permitted, and the exception from meeting lot width requirements.

⁵⁴ Carried forward from 2-416.

- (b) On a lot contiguous to a pipestem driveway serving more than one pipestem lot, in addition to the minimum front setback requirements of the district, the area contiguous to the pipestem driveway must also meet a minimum required front setback of 25 feet as measured from the lot line formed by the pipestem or the edge of the pipestem driveway pavement, whichever results in a greater setback. Such lot configuration is not deemed a corner lot. In an affordable dwelling unit development, the lesser of 25 feet or the minimum front setback requirement of the district applies.



Figure 5100.6: Setback Measurement on Pipestem Lots

- (3) Where lots with pipestem driveways are created in accordance with the approval of a variance granted by the BZA, such lots will be treated as “pipestem lots” for the purpose of this Ordinance.

M. Residential Access to Public Street⁵⁵

All dwelling units must have access to a dedicated public street, except as provided by section 5107, Private Streets.

N. Limitation on Driveways for Uses in C and I Districts⁵⁶

A driveway for a use in any C or I District is prohibited in any R District unless the use served by the driveway is also allowed in the R District in which the driveway is located; or unless the driveway is approved by the Board in accordance with the provisions of [reference to special exception procedures] For the purpose of this subsection, a travel lane is not a driveway. The Board must determine the following:

- (1) The proposed driveway will not unduly impact the use or development of adjacent properties in accordance with the comprehensive plan; and

⁵⁵ Carried forward from 2-407, renamed heading.

⁵⁶ Carried forward from 2-511 and 9-616.

- (2) No other means of access is reasonable available; or
- (3) The proposed access will result in a minimized traffic impact on the streets in the vicinity.

0. Cluster Subdivisions⁵⁷

(1) Where Permitted

- (a) Cluster subdivisions may be permitted in the R-2 District with a minimum district size of two acres or greater and may be permitted in the R-3 and R-4 Districts with a minimum district size of three and one-half acres or greater, with approval by the Director pursuant to Chapter 101 of The County Code, *The Subdivision Ordinance*.
- (b) Cluster subdivisions may be permitted in the R-C, R-E, and R-1 Districts and may be permitted in the R-3 and R-4 Districts with a minimum district size of two acres or greater but less than three and one-half acres with special exception approval by the Board pursuant to this section.

(2) Post-July 1, 2004 Rezoning and Special Exceptions

- (a) Applications after July 1, 2004, are subject to the following:
 - 1. Special exception approval of new cluster subdivisions in the R-2 District and new cluster subdivisions in the R-3 and R-4 Districts with a minimum district size of three and one-half acres or greater are not permitted.
 - 2. The Board may approve a proffered rezoning to the R-2 District, or a proffered rezoning to a R-3 or R-4 District with a minimum district size of three and one-half acres or greater, for the development of a cluster subdivision without bonus density when the application is for a rezoning to a residential district with a higher permitted maximum density than the existing zoning district. In conjunction with Board approval of such a proffered rezoning, all minimum district size, lot area, lot width, shape factor, and open space requirements of the district and all applicable cluster subdivision provisions of Chapter 101 of The County Code, *The Subdivision Ordinance*, must be met without modification or waiver. The provisions of [reference to relocated Sect. 18-204] apply to such approved proffered rezoning.
 - 3. The Board may approve a proffered rezoning to the R-C, R-E, or R-1 District or a proffered rezoning to a R-3 or R-4 District with a minimum district size of two acres but less than three and one-half acres, for the development of a cluster subdivision without bonus density when the application is for a rezoning to a residential district that has a higher permitted maximum density than the permitted maximum density of the existing zoning of the subject property.
 - 4. The Board may approve a rezoning to a PDH District for a development wholly or partially containing single family detached dwellings without bonus density, provided that the application is for rezoning to a PDH District that has a higher permitted maximum density than the permitted maximum density of the existing zoning of the subject property or is a rezoning from a district that permits cluster development with Director approval. Rezoning to a PDH District for a development containing single family detached dwellings is prohibited when the existing zoning of the property has the same permitted maximum density as the requested PDH

⁵⁷ Carried forward from 2-421.

District and such existing zoning permits cluster development with Board approval. In addition, rezoning to a PDH District is prohibited where the application request is from the R-5 District to the PDH-5 District or from the R-8 District to the PDH-8 District for development containing single family detached dwellings.

(3) Pre-July 1, 2004 Cluster Subdivisions⁵⁸

- (a)** Cluster subdivisions in the R-C, R-E, R-1, R-2, R-3, and R-4 Districts that were approved by proffered rezoning by the Board prior to July 1, 2004, continue to be subject to the proffered rezoning approval. Amendments to such proffered rezonings may be filed and considered in accordance with the provisions of [*reference to relocated Sect. 18-204*]. Minor modifications to such subdivisions may be permitted pursuant to [*reference to relocated Sect. 18-204*].
- (b)** Special exceptions for cluster subdivisions in the R-C, R-E, R-1, R-2, R-3, and R-4 Districts that were approved by the Board prior to July 1, 2004 and established remain valid, and the cluster subdivision is subject to the special exception approval and any development conditions imposed by such approval. Amendments to such special exceptions may be filed and considered in accordance with the provisions of [*reference to relocated Sections 9-014*] and 5100.2.O]. Minor modifications to such subdivisions may be permitted pursuant to [*reference to relocated Sect. 9-004*].
- (c)** Cluster subdivisions in the R-E, R-1, R-2, R-3, and R-4 Districts that were approved administratively by the Director prior to October 20, 1987, or that are subject to the grandfathering provisions adopted pursuant to Zoning Ordinance Amendment ZO 87-150⁵⁹, may continue pursuant to any conditions of such approval. Any modification to such subdivision may be approved by the Director, pursuant to the requirements of this section and Chapter 101 of The County Code, *The Subdivision Ordinance*.

(4) Standards for a Cluster Subdivision⁶⁰

The Board may approve, either in conjunction with the approval of a rezoning or as a special exception, a cluster subdivision in an R-C, R-E, or R-1 District or a cluster subdivision in a R-3 or R-4 District which has a minimum district size of two acres or greater but less than three and one-half acres, but only in accordance with the provisions of this section. Special exceptions for cluster subdivisions in the R-2 District and cluster subdivisions in the R-3 or R-4 Districts that were approved by the Board prior to July 1, 2004, will remain valid and the cluster subdivisions will continue pursuant to such special exception approval and any development conditions imposed by such approval. Amendments to such special exceptions for cluster subdivisions must be reviewed in accordance with the provisions of [*reference to special exception procedures*] and the following.

- (a)** It must be demonstrated by the applicant that the location, topography, and other physical characteristics of the property are such that the cluster development will:

⁵⁸ Removed “except that no amendment may be filed or approved that permits the cluster subdivision to be enlarged, expanded, increased in density, or relocated,” as this is in conflict with the State Code.

⁵⁹ This reference may be updated.

⁶⁰ From Sect. 9-615, renamed from “provisions for a cluster subdivision.” The submission requirements will be relocated to the new Article 8 – Administration and Procedures.

1. Preserve the environmental integrity of the site by protecting and promoting the preservation of features such as steep slopes, stream valleys, desirable vegetation, or farmland, and either:
 - a. Produce a more efficient and practicable development; or
 - b. Provide land necessary for public or community facilities.
 2. Be in accordance with the comprehensive plan and the established character of the area. To accomplish this end, the cluster subdivision must be designed to maintain the character of the area by preserving, where applicable, rural views along major roads and from surrounding properties through the use of open space buffers, minimum yard requirements, varied lot sizes, landscaping, or other measures.
- (b) In no case may the maximum density specified for the applicable district be increased nor other applicable regulations or use limitations for the district be modified or changed; however, the Board may approve a modification to the minimum lot size or setback requirements when it can be concluded that the modification is in keeping with the provisions of this section and the applicable zoning district. No lot may extend into a floodplain and adjacent slopes in excess of 15 percent grade or Resource Protection Area unless approved by the Board based on a determination that:
1. The floodplain and adjacent slopes in excess of 15 percent grade or Resource Protection Area, by reason of its size or shape, has no practical open space value;
 2. The amount of floodplain and adjacent slopes in excess of 15 percent grade or Resource Protection Area on the lot is minimal; and
 3. The lot otherwise meets the required minimum lot area specified for the district in which located.
- (c) Upon Board approval of a cluster subdivision, a cluster subdivision plat may be approved in accordance with the plat approved by the Board, the provisions of this section and the cluster subdivision provisions presented in the zoning district regulations.
- (d) In the R-C District, in addition to subsection (4)(a) above, the applicant must demonstrate that the cluster subdivision and the use of its open space is designed to achieve runoff pollution generation rates no greater than would be expected from a conventional R-C District subdivision of the property.

P. Compliance with Other Applicable Regulations and Standards⁶¹

No structure may be allowed if it is precluded by any provision of The County Code or is subject to any applicable requirements of the Virginia Uniform Statewide Building Code that conflict with the zoning approval.⁶²

⁶¹ Carried forward from 2-422.

⁶² Did not carry forward “, including but not limited to, any fire rating wall and limits on the percentage of wall openings.”

Q. Major Underground Utility Easements⁶³

- (1)** After June 27, 1995, no land area that is encumbered by any major underground utility easement and that is located outside of a public right-of-way may be obstructed, restricted, or impeded in any manner by any new structure, building, plantings, stockpiling of material, or use except for the following when approved by the Director. Such approval may include the imposition by the Director of conditions related to maintaining the structural integrity of the transmission pipeline.
- (a)** Transmission pipelines and appurtenant structures and facilities, to include temporary structures used in conjunction with the maintenance or repair of the underground utility lines.
 - (b)** Aboveground utility crossings and underground crossings of franchised cable television lines and crossings of underground utilities including, but not limited to storm drains, water and sanitary sewer lines, liquid petroleum lines, gas lines, electric and telephone cables, as specified in [*reference to relocated Par. 1A of Sect. 2-104*].
 - (c)** Erosion and sediment controls.
 - (d)** Temporary equipment crossings provided transmission pipelines are adequately protected from any adverse impacts caused by such crossing.
 - (e)** Crossings of railroad tracks, private streets, driveways, trails, sidewalks, and public rights-of-way provided such facilities will not adversely impact the structural integrity of transmission pipelines.
 - (f)** Trails as shown on the comprehensive plan provided such trails will not adversely impact the structural integrity of transmission pipelines.
 - (g)** Recreational facilities limited to open play areas and athletic fields not containing any permanent structures other than fencing, backstops, benches, bleachers, scoreboards, and other similar accessory structures, provided that under no circumstances may mechanical equipment of any type be permitted to be used in the installation or removal of such structures and further provided that such facilities will not adversely impact the structural integrity of transmission pipelines.
 - (h)** Off-street surface parking facilities in accordance with the provisions of the Public Facilities Manual provided such facilities will not adversely impact the structural integrity of transmission pipelines.
 - (i)** Garden or landscaping with low growing plants or ornamental type shrubbery, with no vegetation having a maximum expected height of more than four feet, provided that under no circumstances may mechanical equipment of any type be permitted to be used in the planting or removal of such vegetation.
 - (j)** Accessory structures such as playground equipment, children’s playhouses, doghouses, fences, storage structures, and other similar structures that do not require approval of a Building Permit, provided that under no circumstances may mechanical equipment of any type be permitted to be used in the installation or removal of such structures and further provided such structures will not adversely impact the structural integrity of transmission pipelines.

⁶³ Carried forward from 2-515.

- (k) Any vegetation required by this Ordinance must be planted and maintained in such a manner that will not obstruct, restrict, or impede any major underground utility easement.
- (2) This Section is not construed to restrict measures necessary to identify the location of a transmission pipeline facility as required by the County or to restrict an operator or agent of a transmission pipeline facility from providing maintenance or emergency service to the underground facilities.

R. Lots Bordered by Access Easements⁶⁴

- (1) The following apply when a lot is bordered by a public or private street on one side and an access easement on another side:
- (2) The lot is not considered a corner lot or a through lot unless the access easement serves more than five existing or potential lots or dwelling units based on the existing zoning or comprehensive plan.
- (3) If the access easement serves five or fewer existing or potential lots or dwelling units based on the existing zoning or comprehensive plan, the setback from the access easement is 25 feet, measured from the edge of pavement or face of the curb within the easement and not from the easement line itself.

3. Open Space Requirements⁶⁵

- A. The open space requirements for any given district are minimums, and the required open space must be located on the same lot as the primary use, unless otherwise specifically required elsewhere in this Ordinance. Open space requirements are generally presented as a percent of the gross area of the lot.
- B. No part of required open space may later be reduced below the minimum requirements of this Ordinance or used in any manner contrary to this Ordinance. Open space may not be disturbed in any manner without the approval of the Director.
- C. Calculation of open space area is based on the following rules:
 - (1) In cases where the balance of land not contained in lots and streets is needed by the County for parks, recreational areas, or stream valleys, and is suitable in location, size, shape, condition, and topography for the needed purposes as determined by the Director, then such land must be deeded to the County for such purpose. This land is referred to as dedicated open space and is given full credit in satisfying the open space requirement for a given district.
 - (2) In cases where a given area within a lot is needed by the County for a school site, 50 percent of the required area is given credit for satisfying the open space requirement of the district in which located.
 - (3) In cases where the balance of land not contained in lots and streets is not needed by the County for those purposes set forth in subsections (1) and (2) above, then the Director may approve the conveyance of those lands to a nonprofit organization as provided for in Section

⁶⁴ Carried forward from Interpretation 16 of the Zoning Ordinance.

⁶⁵ From current Sect. 2-309, revised for clarity and to update cross-references. This material was relocated from the previous draft Article 2 – Zoning Districts. Article 2, Part 7 was relocated to Section 5106, *Common Open Space*. The requirement for a minimum 50-foot dimension has been replaced with a reference to usable open space.

5106. Such land is referred to as common open space and is given full credit in satisfying the open space requirement for a given district.
- (4)** In cluster subdivisions, at least 75 percent of the minimum required open space or one acre, whichever is less, must be provided as a contiguous area of usable open space. For cluster subdivisions in which the required open space will approximate five acres in area, the open space must generally be so located and have dimension and topography to be usable open space, unless a deviation is permitted according to the following:
 - (a)** For cluster subdivisions in the R-C, R-E, and R-1 Districts when the Board approves a waiver of open space requirements as a special exception or with appropriate proffered conditions; or
 - (b)** For cluster subdivisions in the R-3 and R-4 Districts that have a district size of two acres to less than three and one-half acres, when the Board finds that the deviation will further the intent of the Ordinance, the comprehensive plan, and other adopted policies.
 - (c)** No deviation from this provision is permitted for cluster subdivisions in the R-2 District, or in cluster subdivisions in the R-3 and R-4 Districts that have a minimum district size of three and one-half acres or greater.
 - (5)** Open space in a major utility easement or right-of-way is subject to the following:
 - (a)** Fifty percent of the area that lies within a major utility easement or right-of-way may be calculated as open space, but only if the remaining rights of the easement or right-of-way is dedicated for recreational or open space use.
 - (b)** Lands that lie within a major utility easement or right-of-way may not constitute more than 30 percent of the total land area needed to satisfy the open space requirement for a given district.
 - (c)** For the purpose of this provision, a major utility easement or right-of-way is one having a width of 25 feet or more that is located entirely outside a street right-of-way.
 - (6)** Open space credit may not be given for lands that are included in or reserved for the right-of-way of any street, for any mass transit facility, or for any public facility except as qualified above.
 - (7)** In the administration of these provisions, the Director has the authority to determine whether lands qualify as open space and whether those lands are common open space, dedicated open space, landscaped open space, or recreational open space.
 - (8)** The Board may waive the open space requirement presented for a given zoning district in accordance with the provisions of [*reference to relocated Sect. 9-612*].
 - (9)** Any area required for interior parking lot landscaping must not comprise more than 25 percent of the total required open space.⁶⁶

⁶⁶ Relocated from the definition of open space.

5101. Affordable Dwelling Unit Program⁶⁷

1. Purpose⁶⁸

The Affordable Dwelling Unit (ADU) Program is established to assist in the provision of affordable housing for persons of low and moderate income. The program is designed to promote a full range of housing choices and to require the construction and continued existence of affordable dwelling units that are integrated and dispersed within the development.

2. Applicability⁶⁹

The requirements of the Affordable Dwelling Unit Program apply to any site or portion thereof at one location which is the subject of an application for rezoning, special exception, site plan, or subdivision plat approval, which includes 50 or more dwelling units at an equivalent density greater than one unit per acre and which is located within an approved sewer service area, except as may be exempt under the provisions of subsection 5101.3 below.

A. Site or Portion Thereof

- (1) For purposes of this Ordinance, "site or portion thereof at one location" includes all adjacent undeveloped land of the property owner or applicant, the property lines of which are contiguous or nearly contiguous at any point, or the property lines of which are separated only by a public or private street, road, highway or utility right-of-way or other public or private right-of-way at any point, or separated only by other land of the owner or applicant, which separating land is not subject to the requirements of this section.
- (2) Sites or portions thereof at one location includes all land under common ownership or control by the owner or applicant, including, but not limited to, land owned or controlled by separate partnerships, land trusts, or corporations in which the owner or applicant (to include members of the owner or applicant's immediate family) is a partner, beneficiary, or is an owner of one percent or more of the stock, and other such forms of business entities. Immediate family members include the owner or applicant's spouse, children, and parents. However, in instances in which a lending institution, such as a pension fund, bank, savings and loan, insurance company or similar entity, has acquired, or acquires an equity interest by virtue of its agreement to provide financing, such equity interest will not be considered in making determinations of applicability.

B. Submission and Application Information

- (1) At the time of application for rezoning, special exception, site plan, or subdivision plat approval, the owner or applicant must submit an affidavit including the following information:
 - (a) The names of the owners of each parcel of the sites or portions thereof.

⁶⁷ Carried forward from Sect. 2-800, with revisions as noted. This section would benefit from substantive changes as part of a second phase of zMOD amendments, and if possible, the addition of an on-line calculator to enable applicants to determine the ADU requirements for specific development proposals before applications for a specific project are submitted to the County.

⁶⁸ Carried forward and condensed from Sect. 2-801.

⁶⁹ Subsections A through F carried forward from Sect. 2-802; Subsection G carried forward from 2-816, with revisions as noted.

- (b) The Fairfax County Property Identification Map Number, parcel size and zoning district classification for each parcel which is part of the site or portion thereof.
- (2) An owner or applicant may not avoid the requirements of this section by submitting piecemeal applications for rezoning, special exception, site plan, or subdivision plat approval for less than 50 dwelling units at any one time. However, an owner or applicant may submit a site plan or subdivision plat for less than 50 dwelling units if the owner or applicant agrees in writing that the next application for the site or portion thereof will meet the requirements of this section when the total number of dwelling units in the current application and the next application has reached 50 or more. This written statement must be recorded in the Fairfax County land records and must be indexed in the names of all owners of the site or portion thereof.
- (3) The County will process site plans or subdivision plats proposing the development or construction of affordable dwelling units within 280 days after the receipt of the application, provided that such plans and plats substantially comply with all ordinance requirements when submitted. The calculation of the review period includes only that time the plans or plats are in for County review and does not include time for revisions or modifications by the applicant in order to comply with the requirements of this Ordinance.

C. Independent Living Facilities

For independent living facilities approved by special exception or as part of a rezoning, affordable dwelling units are required in accordance with 4102.4.O.

D. Compliance with Federal, State and Other Local Laws⁷⁰

- (1) A development which provides, pursuant to federal, state or other local programs, the same or more number of affordable dwelling units as the number of affordable dwelling units required under subsection 5101.4 below, subject to terms and restrictions equivalent to the requirements of this section, may be determined by the Zoning Administrator to satisfy the requirements of the Affordable Dwelling Unit Program.
- (2) The rents and sales prices for affordable dwelling units provided pursuant to federal, state or other local programs must be in accordance with the rules and regulations governing such programs and these units must be marketed in accordance with such rules and regulations provided rents and sale prices must not exceed those set pursuant to this section.

3. Developments Exempt from the Affordable Dwelling Unit Program⁷¹

The requirements of this section do not apply to the following:

- A.** Any multifamily dwelling unit structure which is constructed of Building Construction Types 1, 2, 3 or 4, as specified in the Virginia Uniform Statewide Building Code (VUSBC).
- B.** Applications for rezoning or special exception or amendments to such rezoning or special exception approved before July 31, 1990, or applications for rezoning or amendments to rezonings approved before January 31, 2004, for elevator multifamily dwelling unit structures that are four stories or more in height and constructed of Building Construction Type 5

⁷⁰ Carried forward from Sect. 2-816, relocated to applicability section for internal consistency.

⁷¹ Carried forward from Sect. 2-803, with revisions as noted.

(combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC), which either:

- (1) Include a proffered or approved generalized, conceptual, final development plan or development plan, or special exception plat which contains a lot layout; or
 - (2) Include a proffered or approved total maximum number of dwelling units or FAR; or
 - (3) Include a proffered or approved unit yield per acre less than the number of units per acre otherwise permitted by the applicable zoning district regulations; or
 - (4) Fully satisfy the provisions of subsection 5101.2.D.
- C.** Applications for a proffered condition amendment, development plan amendment, or special exception amendment, which deal exclusively with the following issues or combinations of those issues:
- (1) Building relocation, ingress or egress, storm water drainage, or other engineering or public facilities issues;
 - (2) The preservation of historic structures;
 - (3) Child care centers;
 - (4) Changes in the size of units, reductions in the number of units, or changes in dwelling unit type which propose no increase in density over the previously approved density;
 - (5) The addition of a special exception use or special permit use; and
 - (6) Despite the definition of “site or portion thereof at one location” in subsection 5101.2.A, an application filed after March 31, 1998, is exempt if it proposes to add land area, but no additional dwelling units, to a previously exempt development. If additional dwelling units are proposed, the previously approved development continues to remain exempt if density for the new units is calculated only over the new land area. But if the density calculation for the new dwelling units includes the total land area, then the entire development is subject to this section.⁷²
 - (7) Conversion to condominium of developments which were built pursuant to site plans filed or preliminary subdivision plats approved on or before July 31, 1990.
- D.** Site plans filed and preliminary subdivision plats approved on or before July 31, 1990, and not exempt under subsections B, C, or D above:
- (1) Provided that one or both of the following conditions are met:
 - (a) Such site plan is approved within 24 months of the return of the initial submission to the applicant or agent; and a building permit(s) for the structure(s) shown on the approved site plan is issued in accordance with [*reference to relocated Par. 1 of Sect. 17-110*]; and the structure(s) is in fact constructed in accordance with such building permit(s); and
 - (b) Such preliminary plat is approved and a final plat is approved and recorded in accordance with the provisions of Chapter 101 of The County Code, Subdivision Ordinance.
 - (2) Such site plans may, at the owner's option, be revised or resubmitted in order to comply with the requirements of this section. Such revision or resubmission will be processed expeditiously in accordance with the provisions of subsection 5101.2.B(3) above.

⁷² Revised to clarify how this provision is applied.

- E.** Site plans for elevator multifamily dwelling unit structures that are four stories or more in height and are to be constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC) filed on or before January 31, 2004, provided such site plan is approved within 12 months of the return of the initial submission to the applicant or agent, the site plan remains valid, a building permit(s) for the structure(s) shown on the approved site plan is issued and that the structure(s) is in fact constructed in accordance with such building permit(s).
- F.** Any independent living facility for low income residents approved in accordance with this Ordinance in which not less than 70 percent of the dwelling units are provided for those residents whose annual household income is not more than 50 percent of the median income for the Washington Metropolitan Statistical Area (WMSA) and not more than 30 percent of the dwelling units are provided for residents whose annual income is not more than 70 percent of the median income for the WMSA.

4. Affordable Dwelling Unit Calculations⁷³

- A.** For rezoning and special exception applications approved after March 31, 1998, or for proffered rezoning applications approved prior to that date, which specifically provide for the applicability of an amendment to this section:
 - (1)** If the application requests approval of single family detached dwelling units, single family attached, or stacked townhouse dwelling units:
 - (a)** The lower and upper end of the density range set forth in the comprehensive plan applicable to the application property is increased by 20 percent for purposes of calculating the potential density which may be approved by the Board.
 - (b)** For the purposes of administration of this Sect. 5101, where the comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range is determined in accordance with subsection 5101.4.D below.
 - (2)** If the application requests approval of non-elevator multifamily dwelling unit structures; or elevator multifamily dwelling unit structures which are three stories or less in height:
 - (a)** The lower and upper end of the density range set forth in the comprehensive plan applicable to the application property is increased by ten percent for purposes of calculating the potential density which may be approved by the Board. However, at the applicant's option, the range set forth in the comprehensive plan is increased by 20 percent for purposes of calculating maximum potential density.
 - (b)** For the purposes of administration of this Sect. 5101, where the comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range is determined in accordance with 5101.4.D below.
 - (3)** Required affordable dwelling units must comply with the following:
 - (a)** If the total number of dwelling units approved by the Board or if the total number of dwelling units shown on the subsequent site plan or subdivision plat is less than the total number approved by the Board, provides for a density at or below the low end of the density range specified in the comprehensive plan prior to application of the bonus density permitted for affordable dwelling developments, then no affordable dwelling

⁷³ Carried forward from Sect. 2-804. The example calculations have not been carried forward because they do not reflect the current typical types of projects.

units are required and the applicable zoning district regulations for affordable dwelling unit developments do not apply.

- (b) If the total number of dwelling units approved by the Board or if the total number of dwelling units shown on the subsequent site plan or subdivision plan is less than the total number approved by the Board, provides for a density which is above the low end of the density range specified in the comprehensive plan prior to application of the bonus density permitted for affordable dwelling unit developments, affordable dwelling units must be provided in accordance with the following formulas:

Where:

A = Approved Density, the dwelling units per acre approved by the Board or as shown on the approved site plan or subdivision plat.

L = Low End of Density Range, the lower limit of the density range specified in the comprehensive plan in terms of dwelling units per acre or calculated in subsection D below for the development site prior to application of the permitted density increase for affordable dwelling unit developments.

H = High End of Density Range, the upper limit of the adopted comprehensive plan in terms of dwelling units per acre or calculated in subsection D below prior to application of the permitted density increase for affordable dwelling unit developments.

Notes:

[1] The numbers 5.0, 6.25 and 12.5 in the formulas below and in subsection 5101.4.B(4) represent absolute numbers, not percentages.

[2] The denominators in the formulas express the adjusted density range of the comprehensive plan in accordance with the applicable density bonus.

- 1. For developments with a 20 percent density bonus:

$$ADU\% = 12.5 \times \frac{A-L}{1.2(H-L)}$$

- 2. For multifamily dwelling unit developments with a 10 percent density bonus and for the multifamily dwelling unit component of a mixed unit development with a 10 percent density bonus:

$$ADU\% = 6.25 \times \frac{A-L}{1.1(H-L)}$$

- (c) In no event will the requirement for affordable dwelling units exceed either 6.25 percent for those development for which a ten percent increase in density has been applied to the density range specified in the comprehensive plan or 12.5 percent for those developments for which a 20 percent increase in density has been applied.

- B. For rezoning applications approved after January 31, 2004 which request approval of elevator multifamily dwelling unit structures that are four stories or more in height and are to be constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC):

- (1) The lower and upper end of the density range set forth in the comprehensive plan applicable to the application property is increased by 17 percent for purposes of calculating the potential density which may be approved by the Board.

- (2) For the purposes of administration of this Sect. 5101, where the comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range is determined in accordance with 5101.4.D below.
- (3) The provision of affordable dwelling units or, in the case of a modification approved by the ADU Advisory Board, the conveyance of land, contribution to the Fairfax County Housing Trust Fund or combination thereof, as provided for in subsection 5101.8.F(3) below, satisfies the development criteria in the comprehensive plan which relate to the provision of affordable housing.
- (4) Required affordable dwelling units must comply with the following:
- (a) If the total number of dwelling units approved by the Board or if the total number of dwelling units shown on the subsequent site plan or subdivision plat is less than the total number approved by the Board, provides for a density which is at or below the low end of the density range specified in the comprehensive plan prior to application of the bonus density permitted for affordable dwelling developments, then no affordable dwelling units are required and the applicable zoning district regulations for affordable dwelling unit developments do not apply.
- (b) If the total number of dwelling units approved by the Board or if the total number of dwelling units shown on the subsequent site plan or subdivision plat is less than the total number approved by the Board, provides for a density which is above the low end of the density range specified in the comprehensive plan prior to application of the bonus density permitted for affordable dwelling unit developments, affordable dwelling units for which the rental or sales price is controlled pursuant to the provisions of this section must be provided in accordance with the following formulas:
- For developments with 50 percent or less of the required parking for multifamily dwelling units provided in the above- or below-surface structures:

$$ADU\% = 6.25 \times \frac{A-L}{1.17(H-L)}$$
 - For developments with more than 50 percent of the required parking for multifamily dwelling units provided in above- or below-surface structures:

$$ADU\% = 5.0 \times \frac{A-L}{1.17(H-L)}$$
 - The terms uses in these formulas are as described in subsection 5101.4.A(3)(b) above.
- (c) In no event will the requirement for affordable dwelling units exceed either 6.25 percent in accordance with subsection (b)1 above or 5.0 percent in accordance with subsection (b)2 above, as applicable, for those development in which a 17 percent increase in density has been applied to the density range specified in the comprehensive plan.
- (5) If the provision of affordable dwelling units and bonus market rate dwelling units requires a change from Building Construction Type 5 to Types 1, 2, 3 or 4, as specified in the Virginia Uniform Statewide Building Codes (VUSBC), as demonstrated by the applicant and confirmed by the County, then the affordable dwelling unit provisions are not applicable.

- C.** When the requirement for affordable dwelling units, as calculated in accordance with the above paragraphs, results in a fractional unit of less than 0.5, the number is rounded down and any fractional unit of 0.5 or greater is rounded up to produce an additional affordable dwelling unit.⁷⁴
- D.** For the purposes of administration of this section, where the comprehensive plan does not specify a density range in terms of dwelling units per acre, the following apply:
- (1)** Where the plan specifies an upper density limit in terms of dwelling units per acre, but there is no lower density limit, then the low end of the density range is 50 percent of the upper density limit specified in the plan.
 - (2)** Where the plan specifies a maximum number of dwelling units for an area, but no density range in terms of dwelling units per acre is specified, the density range is determined as follows:
 - (a)** The upper density limit is equal to the maximum number of dwelling units specified in the plan divided by the land area covered by the plan recommendation, and
 - (b)** The lower density limit is equal to 50 percent of the upper density limit calculated above.
 - (3)** Where the plan specifies a square footage or floor area ratio (FAR) range for residential uses for a specific area, but no density range in terms of dwelling units per acre:
 - (a)** The dwelling unit per acre density range for single family dwelling unit developments and multifamily dwelling unit developments that do not have an elevator, or have an elevator and are three stories or less in height, is determined by dividing the residential square footage specified in the comprehensive plan by an average dwelling unit size for the proposed dwelling unit type within the development.
 - (b)** The dwelling unit per acre density range for multifamily dwelling unit developments consisting of four stories or more with an elevator, the dwelling unit per acre density range is determined by multiplying the residential square footage specified in the comprehensive plan by 85 percent, and dividing that product by an average dwelling unit size for the proposed dwelling unit type within the development.
 - (4)** When the plan specifies only a maximum square footage or FAR, and does not specify residential density, the residential density range is determined as follows:
 - (a)** The upper density limit is equal to the maximum number of dwelling units calculated in subsections A, A(3)(c), or C as applicable, divided by the land area covered by the plan recommendation, and
 - (b)** The lower density limit is equal to 50 percent of the upper density limit calculated pursuant to subsection (a) above.

E. Opt-In Provisions⁷⁵

- (1)** Affordable dwelling units may be provided, at the developer's option, in any residential development in the R-2 through R-30 and P Districts which is not required to provide affordable dwelling units pursuant to the provisions of this section. Such development is

⁷⁴ Carried forward from Par. 7 of Sect. 2-804

⁷⁵ From Par. 5 of Sect. 2-802

- subject to the applicable zoning district regulations for affordable dwelling unit developments as modified by the following:
- (a) For single family detached, single family attached, and stacked townhouse dwelling unit developments, a density bonus of up to 20 percent may be approved by the County, provided that not less than 12.5 percent of the total number of dwelling units are provided as affordable dwelling units.
 - (b) For multifamily dwelling unit structures that do not have an elevator, or have an elevator and are three stories or less in height:
 1. A density bonus of up to ten percent may be approved by the County, provided that not less than 6.25 percent of the total number of dwelling units are provided as affordable dwelling units; or
 2. A density bonus of between ten and 20 percent may be approved by the County, provided that not less than 12.5 percent of the total number of dwelling units are provided as affordable dwelling units.
 - (c) For multifamily dwelling unit structures that have an elevator and are four stories or more in height:
 1. If 50 percent or less of the required parking is provided in parking structures, a density bonus up to 17 percent may be approved by the County, provided that not less than 6.25 percent of the total number of dwelling units are provided as affordable dwelling units; or
 2. If more than 50 percent of the required parking is provided in parking structures, a density bonus of up to 17 percent may be approved by the County, provided that not less than five percent of the total number of dwelling units are provided as affordable dwelling units.
 - (d) In order to qualify for consideration of a density bonus, the affordable dwelling units must comply with all applicable provisions of this section and be of the same dwelling unit type as the market rate units constructed on the site.
 - (e) The Affordable Dwelling Unit Advisory Board does not have authority to modify the percentage of affordable dwelling units required under this subsection 5101.2, nor to allow the construction of affordable dwelling units which are of a different dwelling unit type from the market rate units on the site.
- (2) For developments which were rezoned prior to July 31, 1990:⁷⁶
- (a) For single family dwelling unit developments which are not otherwise exempt under subsection 5101.3 above, the total maximum number of dwelling units permitted under the approved density, exclusive of additional units allowed pursuant to this subsection may be increased by up to 20 percent.
 1. If a 20 percent increase in density is obtained, not less than 12.5 percent of the adjusted total maximum number of dwelling units must be affordable dwelling units.

⁷⁶ The required ADUs in subsections 1 and 2 are the same. In the consolidated draft of zMOD, these two sections may be combined, and the introductory paragraph be revised to cover both types of development.

5. Additional Development Regulations⁷⁷

A. Compliance with Zoning District Regulations⁷⁸

Any development that provides affordable dwelling units on site or that includes bonus market rate dwelling units on site pursuant to the provisions of this section, must comply with the respective zoning district regulations, including but not limited to bulk regulations, unit type, open space, and lot size regulations, which apply to affordable dwelling unit developments.

B. Integration and Dispersion of Affordable Dwelling Units⁷⁹

- (1) In affordable dwelling unit developments where the dwelling unit type for the affordable dwelling unit is different from that of the market rate units, the affordable dwelling units must be integrated within the developments as determined by the Board or the Zoning Administrator.
- (2) In affordable housing developments where the affordable dwelling units are provided in a dwelling unit type which is the same as the market rate dwelling units, the affordable dwelling units must be dispersed among the market rate dwelling units as determined by the Board or the Zoning Administrator.

C. Required Bedroom Mix⁸⁰

In multifamily dwelling developments, the number of bedrooms in affordable dwelling units must be proportional to the bedroom mix of market rate units, unless the owner elects to provide a higher percentage of affordable dwelling units with a greater bedroom count.

D. Provisions for Manufactured Home Parks⁸¹

To encourage the redevelopment of manufactured home parks to house low and moderate income families in Fairfax County, in conjunction with the review and approval of a rezoning application and proffered generalized development plan, the Board may grant an increase in the number of mobile homes or dwelling units per acre permitted in the R-MHP District by a factor of 50 percent. Where deemed necessary, in granting such increase in density for the provision of moderately-priced housing units, the Board may waive other regulations of the R-MHP District and the provisions of subsection 5100.2.E(2) related to lots comprised of marine clays.

E. Affordable Dwelling Unit Specifications⁸²

- (1) The Fairfax County Redevelopment and Housing Authority (FCRHA) will develop specifications for the prototype affordable housing products both for sale and rental, which

⁷⁷ This section consolidates several short freestanding sections from different locations in Art. 2-800.

⁷⁸ Carried forward from Sect. 2-805, with revisions as noted.

⁷⁹ Relocated from Sect. 2-801 (purpose and intent).

⁸⁰ Relocated from Sect. 2-806 because this concerns project design rather than site plan or plat designation and is a site plan designation.

⁸¹ Carried forward from Sect. 2-820, with revisions as noted. Revised name from “mobile home parks.”

⁸² Carried forward from Sect. 2-809, with revisions as noted. Did not carry forward the final paragraph that describes the purpose of the program.

specifications must be reviewed and approved by the Affordable Dwelling Unit Advisory Board before becoming effective. All building plans for affordable dwelling units must comply with the specifications.

- (2) Any applicant or owner may voluntarily construct affordable dwelling units to a standard in excess of such specifications, but only 50 percent of any added cost for exterior architectural compatibility upgrades (such as brick facade, shutters, bay windows, etc.) and additional landscaping on the affordable dwelling unit lot may be included within recoverable costs, up to a maximum of two percent of the sales price of the affordable dwelling unit, with the allowance for additional landscaping not to exceed one-half of the above-noted two percent maximum.

F. Limitations on Building Permits and Residential Use Permits⁸³

In the administration of the Affordable Dwelling Unit Program, the design and construction specifications established in both rental and sales prices must be structured to make the units affordable to households whose incomes do not exceed 70 percent of the median income of the Washington Standard Metropolitan Statistical Area.

- (1) In any development, except for one that is comprised solely of rental multifamily units, building permits may be issued for all of the dwelling units in the development; however, Residential Use Permits (RUPs) may not be issued for more than 75 percent of the total number of units in the development until such time as RUPs have been issued for at least 75 percent of the affordable dwelling units in the development. Additionally, in accordance with subsection 5101.8 below, the required Notice of Availability and Sales Offering Agreement must be submitted prior to the issuance of the first RUP for any affordable dwelling unit in the development.
- (2) A development which is comprised solely of rental multifamily units is not subject to the limitations on the issuance of Residential Use Permits contained in this section, except in accordance with subsection 5101.8.B below, which requires execution of a Notice of Availability and Rental Offering Agreement prior to the issuance of the first RUP for the development.

6. Designation of Affordable Dwelling Units on Subdivision/Site Plans⁸⁴

- A. Approved site plans and record subdivision plats for all development except rental multiple-family developments under single ownership must designate the specific lots or units which are the affordable dwelling units required pursuant to this section.
- B. Approved site plans or building plans for all multifamily developments must note the number of affordable dwelling units by bedroom count and the number of market rate dwelling units by bedroom count, and that notation is a condition of the approved site plan and building plan to demonstrate compliance with 5101.5.C.
- C. Affordable dwelling units included on approved site plans and recorded subdivision plats are deemed to be features shown for purposes of Section 15.2-2232 of Va. Code Ann. and, do not require further approvals pursuant Section 15.2-2232 of Va. Code Ann. in the event the Fairfax County Redevelopment and Housing Authority acquires or leases such units.

⁸³ Carried forward from Sect. 2-808, with revisions as noted.

⁸⁴ Carried forward from Sect. 2-806, with revisions as noted.

- D.** For multiple section developments where all the required affordable dwelling units are not to be provided in the first section of the development, the site plan or record subdivision plat for the first section and all subsequent sections must contain a notation identifying in which section(s) the affordable dwelling units will be or have been provided and a total of all affordable dwelling units for which such site plan(s) or subdivision plat(s) have been approved.

7. Condominium Developments⁸⁵

A. Developments Initially Constructed as Condominiums

If a development is initially built as a condominium and such development is subject to the requirements of this Section 5101, the affordable dwelling units required pursuant to this section be specifically identified on the approved site plan, building plans and designated as part of the recorded condominium declaration.

B. Developments Initially Constructed as Rental Projects

If a development is initially built as a rental project under single ownership and such development was subject to the requirements of this section and is later converted to a condominium:

- (1)** The provisions of subsection 5101.4 above apply to such condominium development.
- (2)** The affordable dwelling units required pursuant to this section must be specifically identified by unit number as part of the recorded condominium declaration.
- (3)** The sales price for such affordable dwelling units being converted will be established by the County Executive pursuant to this section. If the owner of such condominium conversion elects to renovate the affordable dwelling units, the Affordable Dwelling Unit Advisory Board will consider the reasonable cost of labor and materials associated with such renovation, which costs will be factored into the Advisory Board's recommendation to the County Executive respecting the permissible sales prices for such renovated affordable dwelling units.
- (4)** For any condominium conversion development for which an application for registration of a condominium conversion was filed with the Virginia Real Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, after February 28, 2006, the affordable dwelling units may not be retained as rental units within a condominium conversion development if such units are also subject to condominium conversion.
- (5)** For any condominium conversion development for which the initial sale of individual units occurred on or after February 28, 2006, the term of sales price control for affordable dwelling units must be for a period of 30 years and the units must be priced in accordance with the provisions of this Part. Upon any resale or transfer to a new owner of such affordable dwelling unit within the initial 30-year period of sales price control, the sales prices for each subsequent resale or transfer for each such affordable dwelling unit to a new owner must be controlled for a new 30-year period commencing on the date of such resale or transfer of the affordable dwelling unit. Each initial 30-year control period and each subsequent 30-year control period may be referred to as the renewable sale price control period or control period.⁸⁶

⁸⁵ Carried forward from Sect. 2-807, with revisions as noted.

⁸⁶ Definition will be moved to Article 9.

- (6) For any condominium conversion development for which an application for registration of the condominium conversion was filed with the Virginia Real Estate Commission pursuant to Sect. 55-79.89 of the Code of Virginia, as amended, on or before February 28, 2006, the affordable dwelling units may be retained as rental units within the development. The condominium declaration and an amended covenant associated with the affordable dwelling units must specifically set forth:
- (a) For condominium conversion developments for which the initial sale of individual units occurred before February 28, 2006, the term of sales price control for affordable dwelling units must be for a period of 20 years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required for the development.
 - (b) All rental affordable dwelling units within the development must be transferred to the same entity or individual.
 - (c) The affordable dwelling units must be rented in accordance with the rental provisions of the ADU Program, including but not limited to, pricing and monthly reporting, and no additional condominium or homeowner association fees may be assessed to the tenants of the affordable dwelling units.
 - (d) Parking for the affordable dwelling units must be provided in accordance with the applicable provisions of the Zoning Ordinance with at least the minimum number of required spaces retained and made available for use by the affordable dwelling unit tenants.
 - (e) The affordable dwelling units must be provided in substantially the same bedroom mix as the market rate units in the development.
 - (f) The tenants of the rental affordable dwelling units must have access to all the site amenities that were provided when the affordable dwelling units were originally established in the development.
 - (g) All other covenants set forth in the original covenants and all regulations set forth in the Zoning Ordinance must remain in full force and effect.
- (7) The rental tenant occupants of the affordable dwelling units subject to the condominium conversion must have the right to purchase the dwelling unit they occupy at the sales price established by the County Executive pursuant to this section. The Fairfax County Redevelopment and Housing Authority must have the right to purchase any or all of the affordable dwelling units that are not purchased by such rental tenant occupants at the sales price established for such units by the County Executive pursuant to this section and in accordance with the provisions of subsection 5101.8.C(2)(b) below.

8. Administration of ADU Program

A. For-Sale Affordable Dwelling Units⁸⁷

(1) Administrative Authority

The sale of affordable dwelling units is regulated by the Fairfax County Redevelopment and Housing Authority. The Authority may adopt reasonable rules and regulations to assist in the regulation and monitoring of the sale and resale of affordable dwelling units, which may include giving a priority to persons who live or work in Fairfax County.

⁸⁷ Carried forward from Sect. 2-810, with revisions as noted.

(2) Initial Right to Purchase

- (a) The Fairfax County Redevelopment and Housing Authority has an exclusive right to purchase up to one-third of the for sale affordable dwelling units within a development for a 90-day period beginning on the date that a complete Notice of Availability and ADU Sales Offering Agreement, submitted by the owner, is executed by the Redevelopment and Housing Authority.
1. The Notice of Availability must be in writing and may be sent by the owner at any time after the issuance of a building permit for affordable dwelling unit and approval of the sales price for the unit by the County Executive, but must occur prior to the issuance of the first Residential Use Permit for any affordable dwelling unit in the development. The notice must be in the form prescribed by the Housing and Redevelopment Authority, must advise the Authority that a particular affordable dwelling unit or units are or will be completed and ready for purchase, and must include specific identification of the unit or units being offered; the number of bedrooms, floor area, and amenities for each unit; the approved sales price for each unit, and evidence of issuance of a building permit(s) for the unit(s).
 2. If the Authority elects to purchase a particular affordable dwelling unit, the Redevelopment and Housing Authority will so notify the owner in writing and an all cash closing must occur within 30 days from the end of the respective 90-day period, provided a Residential Use Permit has been issued for the unit prior to closing.
- (b) The remaining two-thirds of the for sale affordable dwelling units within a development and any units which the Fairfax County Redevelopment and Housing Authority does not elect to purchase must be offered for sale exclusively for a 90-day period to persons who meet the income criteria established by the Redevelopment and Housing Authority, and who have been issued a Certificate of Qualification by the Redevelopment and Housing Authority. This 90-day period begins on the date that a complete Notice of Availability and ADU Sales Offering Agreement, submitted by the owner, is executed by the Redevelopment and Housing Authority.
1. Such written notice may be sent by the owner at any time after the issuance of a building permit for the affordable dwelling unit and approval of the sales price for the unit by the County Executive. The Notice of Availability must be in the form prescribed by the Redevelopment and Housing Authority, must advise the Authority that a particular affordable dwelling unit or units are or will be completed and ready for purchase, must include the information described in subsection B1 above, and must provide marketing materials concerning the units and the development to be used in the sale of the units.
 2. After the first 30 days of the 90-day period referenced in this paragraph, the Authority may elect to purchase up to one-half of the affordable dwelling units offered pursuant to this paragraph by giving written notice of its election to do so for those units then available within the 90-day period, which notice must provide for an all cash closing within 30 days from the end of the 90-day period, provided a Residential Use Permit has been issued prior to closing.

(3) Sale of Remaining Units to Nonprofit Housing Groups

- (a)** After the expiration of the 60 days of the 90-day period(s) referenced in subsection (2) above, the affordable dwelling units not sold must be offered for sale to nonprofit housing groups, as designated by the County Executive, subject to the established affordable dwelling unit prices and the requirements of this section. The nonprofit housing groups have a 30-day period within which to commit to purchase the units. This 30-day period begins on the date of receipt of written notification from the owner, sent by registered or certified mail, advising them that an affordable dwelling unit is or will be ready for purchase.
- (b)** The notice must state the number of bedrooms, floor area and amenities for each unit offered for sale. Such written notice may be sent by the owner any time after the commencement of the 90-day period referenced in subsection (2) above.
- (c)** If a nonprofit housing group elects to purchase a particular affordable dwelling unit, it must so notify the owner in writing and an all cash closing must occur within 30 days after the end of the 30-day period, provided a Residential Use Permit has been issued for the unit prior to closing.

(4) Sale to General Public⁸⁸

After the expiration of the time period(s) referenced in subsections (2) and (3) above, the affordable dwelling units not sold may be offered to the general public as for sale units subject to established affordable dwelling unit prices and the requirements of this section.

(5) Sales Prices and Cost Factors

- (a)** A schedule of County-wide cost factors and the cost calculation formula used to determine sales prices will be established initially and may be amended periodically by the County Executive, based upon a determination of all ordinary, necessary and reasonable costs required to construct the various affordable dwelling unit prototype dwellings by private industry in Fairfax County, after consideration by the County Executive of written comment from the public, the Fairfax County Redevelopment and Housing Authority and the Affordable Dwelling Unit Advisory Board, and other information which may be available, such as the area's current general market and economic conditions.
- (b)** Sales prices include, among other costs, a marketing and commission allowance of 1.5 percent of the sales price for the affordable dwelling unit, provisions for builder-paid permanent mortgage placement costs and buy-down fees, and closing costs, except pre-paid expenses required at settlement, but do not include the cost of land.
- (c)** There will be a semiannual review and possible adjustment in affordable dwelling unit sales prices which will then be applied to the affordable dwelling unit sales prices initially established by the County Executive adjusted according to the percentage change in the various cost elements as indicated by the U.S. Department of Commerce's Composite Construction Cost Index or such other comparable index or indices selected by the County Executive and recommended by the Affordable Dwelling Unit Advisory Board.

⁸⁸ The provision, "or may be offered as rental units subject to the requirements of this Part to persons who meet income requirements hereunder" from Par. 5 of Sect. 2-810 is not carried forward because it hasn't been utilized and conflicts with other provisions of the Ordinance.

- (d) The sales prices for affordable dwelling units within a development must be established such that the owner/applicant does not suffer economic loss as a result of providing the required affordable dwelling units. “Economic loss” means that the owner or applicant of a development fails to recoup the cost of construction and certain allowances determined by the County Executive for the affordable dwelling units pursuant to this section, exclusive of the land acquisition cost and cost voluntarily incurred, but not authorized under this section, upon the sale of an affordable dwelling unit.
- (e) For the purposes of this section, the “annual household income” does not include the income of any live-in aide when determining the eligibility of the qualified household, provided such live-in aide meets the standards set forth in the U.S. Department of Housing and Urban Development (HUD) regulations, Article 24, of the Code of Federal Regulations, Section CFR 5.403 and 982.316, and is further subject to Public and Indian Housing Notices PIH 2008-20 and 2009-22 and any future applicable notices issued by HUD.

B. Rental Affordable Dwelling Units⁸⁹

(1) Administrative Authority

The Fairfax County Redevelopment and Housing Authority may adopt reasonable rules and regulations to assist in the regulation and monitoring of the rental of affordable dwelling units, which may include giving a priority to persons who live or work in Fairfax County.

(2) Initial Right to Lease

- (a) The Redevelopment and Housing Authority or its designee has an exclusive right to lease up to one-third of the rental affordable dwelling units within a single family detached or attached dwelling unit development during the control period.
 1. For the initial rentals of units within a single family detached or attached dwelling unit development or multifamily dwelling development, the owner must send the Redevelopment and Housing Authority a Notice of Availability and ADU Rental Offering Agreement in a form prescribed by the Authority, to advise that a particular affordable dwelling unit or units are or will be completed and ready for rental. Such written notice may be sent by the owner at any time after the issuance of a building permit for the affordable dwelling units which are being offered for rental. Such Notice of Availability and ADU Rental Offering Agreement must be submitted to and executed by the Authority prior to the issuance of the first Residential Use Permit for any dwelling within the development. The notice must state the number of bedrooms, floor area, amenities and rent for each unit offered for rental. If the Authority elects to assume control for a particular affordable dwelling unit, the Redevelopment and Housing Authority will so notify the owner in writing within 30 days from the execution of the notice by the Redevelopment and Housing Authority.
 2. For multifamily dwelling developments, for 30 days after execution of the Notice of Availability described in subsection 1 by the Authority, up to one-third of the rental affordable dwelling units, which units must be of proportional bedroom count to the market rate units in the multifamily development, must be made available to households meeting owner’s normal rental criteria, other than income, having state or local rental subsidies, and certified as eligible by the Authority at rents affordable

⁸⁹ Carried forward from Sect. 2-811, with revisions as noted.

to households with incomes up to 50 percent of the Washington Standard Metropolitan Statistical Area median income. If the name of a qualifying tenant is not made available to the owner by the Authority, at the end of the 30-day notice period, the owner may rent the unit(s) to households with income up to 50 percent of the median income for the Washington Standard Metropolitan Statistical Area at a rent affordable to such a household.

- (b)** At the owner's option, the Authority may lease additional rental units at the affordable dwelling unit or market rent as appropriate.
- (c)** The remaining two-thirds of the for rental affordable dwelling units within a development, which units must be of proportional bedroom count to the market rate units in the multifamily development, must be offered to persons who meet the established income criteria.
 - 1.** Any affordable dwelling units required pursuant to this section which are not leased by the Fairfax County Redevelopment and Housing Authority must be leased for a lease period of between six months and one year to tenants who meet the eligibility criteria established by the Authority. The lease agreements for such units must include conditions which require the tenant to occupy the unit as his or her domicile, which prohibit the subleasing of the unit, which require continued compliance with the eligibility criteria established by the Authority, and which require the tenant to annually verify under oath, on a form approved by the Authority, his or her annual income and such other facts that the landlord may require in order to ensure that the tenant continues to meet the eligibility criteria established by the Authority.

(3) Continued Tenant Eligibility Required

- (a)** Eligible tenants must continue to meet the income criteria established by the Fairfax County Redevelopment and Housing Authority in order to continue occupancy of the affordable dwelling unit. However, a tenant who no longer meets such criteria may continue to occupy an affordable dwelling unit until the end of the lease term. Affordable dwelling units not leased by the Authority may not be subleased.
- (b)** By the end of each month, the owner of a development containing rental affordable dwelling units leased to individuals other than the Fairfax County Redevelopment and Housing Authority must provide the Authority with a statement verified under oath which certifies the following as of the first of such month:
 - 1.** The address and name of the development and the name of the owner.
 - 2.** The number of affordable dwelling units by bedroom count, other than those leased to the Authority, which are vacant.
 - 3.** The number of affordable dwelling units by bedroom count which are leased to individuals other than the Authority. For each such unit, the statement must contain the following information:
 - 4.** The unit address and bedroom count.
 - 5.** The tenant's name and household size.
 - 6.** The effective date of the lease.
 - 7.** The tenant's (household) income as of the date of the lease.

- 8. The current monthly rent.
- 9. That to the best of owner's information and belief, the tenants who lease affordable dwelling units meet the eligibility criteria established by the Authority.
- 10. The owner must provide the Authority with a copy of each new or revised annual tenant verification obtained from the renters of affordable dwelling units pursuant to subsection 5101.8.B(2)(c)_above.

(4) Rental Prices and Cost Factors

- (a) For single family detached or attached dwelling units, County-wide rental prices are established initially by the County Executive, based upon a determination of all ordinary, necessary and reasonable costs required to construct and market the required number of affordable dwelling rental units by private industry in the area, after consideration by the County Executive of written comments from the public, the Fairfax County Redevelopment and Housing Authority and the Affordable Dwelling Unit Advisory Board, and other information which may be available, such as the area's current general market and economic conditions. In establishing rental prices, consideration will be given to reasonable and customary allowances in the rental industry for construction, financing and operating costs of the rental units.
- (b) For multifamily dwelling units, County-wide rental prices are established by the County Executive in accordance with the following:
 - 1. Two-thirds of the affordable units in multifamily dwelling unit structure developments, which are not otherwise exempt under subsection 5101.3 above, are established according to the following formula which is based on 65 percent of the median income for the Washington Standard Metropolitan Statistical Area.
 - 2. This base figure will be adjusted by the following factors for different multifamily dwelling unit sizes based on the number of bedrooms in the dwelling unit:

Number of Bedrooms	Adjustment Factor
Efficiency (0 bedroom)	70%
1 Bedroom	80%
2 Bedroom	90%
3 Bedroom	100%

- 3. The result of this calculation for each size multifamily dwelling unit is then divided by 12, then multiplied by 25 percent and rounded to the nearest whole number to establish the rent for the unit, excluding utilities.
- 4. One-third of the affordable units in multifamily dwelling unit structure developments, which are not otherwise exempt under subsection 5101.3 above, are established according to the following formula which is based on 50 percent of the median income for the Washington Standard Metropolitan Statistical Area. This base figure will be adjusted by the same factors set forth in subsection 2 above and the results of this calculation for each size dwelling unit is then divided by 12, then multiplied by 25 percent and rounded to the nearest whole number to establish the rent for the unit, excluding utilities.
- 5. Rental prices for affordable dwelling units in independent living facility projects which have a monthly charge which combines rent with a service package will be established on a case by case basis after consideration of written comments from

the public, the Fairfax County Redevelopment and Housing Authority, and the Affordable Dwelling Unit Advisory Board.

- (c) Rental prices for affordable dwelling units must be established such that the owner/applicant does not suffer economic loss on the development solely as a result of providing rental affordable dwelling units.
- (d) There will be a semiannual review and possible adjustment in affordable dwelling unit rental prices which will then be applied to the affordable dwelling unit rental prices initially established by the County Executive, adjusted according to the percentage change in the various cost elements as indicated by the U. S. Department of Commerce's Composite Construction Cost Index or such other comparable index or indices that are selected by the County Executive and recommended by the Affordable Dwelling Unit Advisory Board. In setting adjusted rental prices, the County Executive may establish different rental classifications and prices which reflect the age and condition of the various rental developments within Fairfax County. Rental prices for multifamily dwelling units will be adjusted in accordance with the formulas set forth in subsection (b) above.
- (e) For the purposes of the section, the "annual household income" does not include the income of any live-in aide when determining the eligibility of the qualified household, provided such live-in aide meets the standards set forth in the U.S. Department of Housing and Urban Development (HUD) regulations, Article 24, of the Code of Federal Regulations, Section CFR 5.403 and 982.316, and is further subject to Public and Indian Housing Notices PIH 2008-20 and 2009-22 and any future applicable notices issued by HUD.

C. Covenant, Price, and Financing Control of Affordable Dwelling Units⁹⁰

(1) Term of Affordable Dwelling Unit Price Control

Except as qualified by this section, subsequent price control of affordable dwelling units must comply with the following:

- (a) For affordable dwelling units for which the initial sale or rental occurred prior to March 31, 1998, the prices for subsequent resales and re-rentals must be controlled for a period of 50 years after the initial sale or rental transaction for the respective affordable dwelling unit, provided that the control period may be amended upon recordation of a revised covenant. Such revised covenant is subject to the following:
 1. For individual affordable dwelling units conveyed prior to March 31, 1998, the owner may modify the existing covenant recorded with such conveyance by recording a revised covenant in the form prescribed by the Redevelopment and Housing Authority. If the recordation of such modified covenant occurs prior to February 28, 2006, the 15-year control period with respect to for sale units and the 20-year control period with respect to rental units is deemed to have commenced on March 31, 1998. If the recordation of such modified covenant occurs on or after February 28, 2006, the renewable sales price control period of 30 years applies with

⁹⁰ Carried forward from Sect. 2-812, with revisions as noted. These types of administrative regulations generally do not appear in zoning ordinances because of the difficulty of amending them when administrative practices change over time. We recommend when this Sect. 5101 is substantively revised this section be removed and located in an administrative manual outside the Zoning Ordinance.

respect to for sale units and the 30-year control period with respect to rental units applies and is deemed to have commenced on March 31, 1998. Any revised covenants hereafter recorded that reduce the control period from 50 years must expressly provide that the terms and conditions of other previously recorded covenants continue to apply, as amended to include terms and conditions in accordance with the terms required by this subsection (3).

- (b) For affordable dwelling units for which the initial sale/rental occurred on or after March 31, 1998, and before February 28, 2006, the prices for subsequent resales must be controlled for a period of 15 years and re-rentals must be controlled for a period of 20 years after the initial sale or rental transaction for the respective affordable dwelling unit; or
- (c) For affordable dwelling units for which the initial sale occurred on or after February 28, 2006, the price for subsequent resales must be controlled for a period of 30 years after the initial sale. However, upon any resale or transfer to a new owner of such affordable dwelling unit within the initial 30-year period of control, the prices for each subsequent resale or transfer to a new owner must be controlled for a new 30-year period commencing on the date of such resale or transfer of the affordable dwelling unit. Each initial 30-year control period and each renewable subsequent 30-year control period may be referred to as a sales price control period. For any affordable dwelling unit that is owned for an entire 30-year control period by the same individual(s), the price control term will expire and the first sale of the unit after such expiration must be in accordance with subsection (6) below; or
- (d) For affordable dwelling units for which the initial rental occurred on or after February 28, 2006, the prices for later re-rental must be controlled for a period of 30 years after the initial rental.

(2) Covenants Required for For-Sale Affordable Units

In developments containing affordable dwelling units offered for sale, Affordable Dwelling Unit Program covenants applicable to the affordable dwelling units, running in favor of and in the form prescribed by the Fairfax County Redevelopment and Housing Authority, must be recorded simultaneously with the final subdivision plat or, in the case of a condominium, recorded simultaneously with the condominium declaration. All initial and any subsequent or revised Affordable Dwelling Unit Program covenants thereafter recorded must expressly provide the following:

- (a) The dwelling unit may not be resold during any sales price control period set forth in this subsection 5101.8.C for an amount that exceeds the limits set by the County Executive and, prior to offering the dwelling unit for sale, the sales price must be approved by the Department of Housing and Community Development.
- (b) Each time the unit may be offered for resale during any sales price control period set forth in this subsection 5101.8.C it must first be offered exclusively through the Fairfax County Redevelopment and Housing Authority. The owner of each such unit to be resold must provide the Authority with written notification sent by certified mail that the affordable dwelling unit is being offered for sale. The Authority has the exclusive right to purchase such unit at a purchase price that does not exceed the control price of the unit at that time as established in accordance with this Part.
- (c) The Fairfax County Redevelopment and Housing Authority will notify the owner in writing within 30 days after receipt of the written notification from the owner advising

whether or not the Authority will enter into a contract to purchase the unit on the form approved by the and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions. An all cash closing must occur within 90 days after receipt by the Authority of the written notification of the owner offering the unit for sale, in the event that all such conditions of the contract are satisfied. The Authority may either take title to the affordable dwelling unit and amend and restate the covenants applicable to that unit to make the covenants consistent with the then current provisions of this section or may assign the contract of purchase to a qualified homebuyer with a condition of the assignment being that such amended and restated covenants would be recorded and effective as express terms of the deed of resale. Affordable dwelling units so acquired or contracted for purchase by the Authority must be resold to qualified homebuyers in accordance with the Affordable Dwelling Unit Program.

- (d)** For the initial sale of an affordable dwelling unit after the expiration of any sales price control period set forth in this subsection 5101.8.C, it must first be offered exclusively to the Fairfax County Redevelopment and Housing Authority for 60 days. Regardless of whether or not the Authority purchases the unit, one-half of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price (as adjusted in accordance with subsection 5101.8.C(5) below) must be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County.
- (e)** The unit is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
- (f)** For the initial and revised covenants recorded before July 2, 2002:

 - 1.** The covenants are senior to all instruments securing permanent financing, and are binding upon all assignees, mortgagees, purchasers and other successors in interest. However, the covenants may provide that, in the event of foreclosure, the covenants are released.
 - 2.** Any or all financing documents must require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and that the Fairfax County Redevelopment and Housing Authority has the right for a 60-day period to cure such a default.
- (g)** For any individual affordable dwelling unit initially conveyed between July 2, 2002 and February 28, 2006 and the resale of any individual affordable dwelling unit conveyed between July 2, 2002 and February 28, 2006, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded between July 2, 2002 and February 28, 2006:

 - 1.** The covenants are senior to all instruments securing financing, and are binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants are released in the event of foreclosure by an Eligible Lender, as such term is defined in subsection 5101.8.C(8)(b) below, as and only to the extent provided for in subsection 5101.8.C(8)(b) below.
 - 2.** Any and all financing documents must require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the

County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Authority has the right to cure such delinquency or other event of default within a period of 90 days immediately after receipt by the Authority of such notice.

3. No sale, transfer or foreclosure affects the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in this section.
 4. Each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit is required prior to foreclosure to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least 90 days prior written notice thereof.
 5. The unit is subject to all of the provisions set forth in subsection 5101.8.C(8)(b) below and includes those provisions.
 6. The total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units may not exceed the owner's purchase price (as adjusted in accordance with subsection 5101.8.C(5) below). Any financing in excess of the owner's purchase price (as adjusted in accordance with subsection 5101.8.C(5) below) may not be secured by any interest in the applicable individual for sale affordable dwelling unit.
- (h) For any individual affordable dwelling unit initially conveyed on or after February 28, 2006, the resale during the sales price control period of any individual affordable dwelling unit conveyed on or after February 28, 2006 and for the conversion of rental affordable dwelling units to condominiums on or after February 28, 2006, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to February 28, 2006, and for initial and revised covenants recorded on or after February 28, 2006:
1. The covenants are senior to all instruments securing financing, and are binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants are released in the event of foreclosure by an Eligible Lender, as such term is defined in subsection 5101.8.C(8)(b) below, as and only to the extent provided for in subsection 5101.8.C(8)(b) below.
 2. Any and all financing documents must require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Authority has the right to cure such delinquency or other event of default within a period of 90 days immediately after receipt by the Authority of such notice.
 3. No sale, transfer or foreclosure affects the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
 4. Each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit is required prior to foreclosure to provide the County Executive and

the Fairfax County Redevelopment and Housing Authority at least 90 days prior written notice thereof.

5. The unit is subject to all of the provisions set forth in subsection 5101.8.C(8)(b) below and includes those provisions.
6. The total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units may not exceed the owner's purchase price (as adjusted in accordance with subsection D below). Any financing in excess of the owner's purchase price (as adjusted in accordance with subsection D below) may not be secured by any interest in the applicable individual for sale affordable dwelling unit.
7. Upon any resale or transfer to a new owner of such affordable dwelling unit within the initial 30-year control period, the prices for each subsequent resale or transfer to a new owner must be controlled for a new 30-year period commencing on the date of such resale or transfer of the affordable dwelling unit.

(3) Buyer's Notice of Covenants and Restrictions⁹¹

- (a) At the time of the initial sale of an individual affordable dwelling unit, which sale occurs on or after March 31, 1998, the owner or applicant must provide in the sales contract for each affordable dwelling unit offered for sale a copy of the recorded covenant running with the land in favor of the Redevelopment and Housing Authority. The owner or applicant must include in the deed for each affordable dwelling unit sold an express statement that the affordable dwelling unit is subject to the terms and conditions of the Affordable Dwelling Unit Program covenants recorded pursuant to this section with a specific reference to the deed book and page where such covenants are recorded.
- (b) At the time of the initial sale and any resale of an individual affordable dwelling unit, which sale or resale occurs on or after July 2, 2002, the owner or applicant must also include in the deed for each affordable dwelling unit sold an express statement that the total aggregate amount of indebtedness that may be secured by the affordable dwelling unit is limited and that other terms and conditions apply, including but not limited to a right for the Fairfax County Redevelopment and Housing Authority or a nonprofit agency designated by the County Executive to acquire the affordable dwelling unit on certain terms in the event of a pending foreclosure sale, as set forth in the Affordable Dwelling Unit Program covenants or in the Affordable Dwelling Unit Program set forth in the Fairfax County Zoning Ordinance, as it may be amended.

(4) Authority's Right to Purchase Units or Qualify Purchasers

- (a) The owner of each affordable dwelling unit to be resold during any sales price control period and, subject to the provisions of subsection 5101.7.B(6) above, for the conversion of rental affordable dwelling units to condominium affordable dwelling units, must provide the Fairfax County Redevelopment and Housing Authority written notification sent by certified mail that the affordable dwelling unit is being offered for sale.
- (b) The Fairfax County Redevelopment and Housing Authority has the exclusive right to purchase such unit at a purchase price that may not exceed the control price of the unit

⁹¹ Unnumbered sections of Sect. 2-812 have been numbered.

at that time as established in accordance with this section and such owner must sell the unit to the Fairfax County Redevelopment and Housing Authority if requested.

- (c) The Authority must notify the owner in writing within 30 days after receipt of the written notification from the owner advising whether or not the will enter into a contract to purchase the unit on the form approved by the Authority and subject to certain conditions, such as acceptable condition of title and acceptable physical and environmental conditions.
- (d) An all cash closing must occur within 90 days after receipt by the Authority of the written notification of the owner offering the unit for sale, in the event that all such conditions of the contract are satisfied.
- (e) The Authority may either take title to the affordable dwelling unit and amend and restate the covenants applicable to that unit to make the covenants consistent with the then current provisions of this section or may assign the contract of purchase to a qualified homebuyer with a condition of the assignment being that such amended and restated covenants would be recorded and effective as express terms of the deed of resale.
- (f) Affordable dwelling units so acquired or contracted for purchase by the Authority must be resold to qualified homebuyers in accordance with its Affordable Dwelling Unit Program.
- (g) If the Authority does not elect to purchase an available affordable dwelling unit, for the first 60 days individual affordable dwelling units are offered for resale, the units must first be offered exclusively through the Authority to persons who meet Authority's criteria, and who have been issued a Certificate of Qualification by the Authority. Upon the expiration of the 60-day period, the unit may be offered for sale to the general public to persons who meet income requirements hereunder and at the current controlled price as set pursuant to subsection 5101.8 above.

(5) Sales Price and Adjustments

- (a) Affordable dwelling units offered for sale during any control period may not be offered for a price greater than the original selling price plus a percentage of the unit's original selling price equal to the increase in the U. S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Fairfax County Redevelopment and Housing Authority in accordance with its regulations to be:
 - 1. Substantial and appropriate replacements or improvements of existing housing components; and/or
 - 2. Structural improvements made to the unit between the date of original sale and the date of resale, plus an allowance for payment of closing costs on behalf of the subsequent purchaser which must be paid by the seller.
- (b) Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural improvements are as set forth by the Fairfax County Redevelopment and Housing Authority.
- (c) No increase in sales price is allowed for the payment of brokerage fees associated with the sale of the unit, except that:

1. With respect to units purchased and resold by the Fairfax County Redevelopment and Housing Authority, an increase of 1.5 percent of the resale price is allowed for marketing and transaction costs, and
2. With respect to resales by other owners, an increase of 1.5 percent of the sales price is allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the Commonwealth of Virginia who meets the qualifications determined by the Redevelopment and Housing Authority and who serves as a dual agent for both the qualified buyer and the seller in the resale of the affordable dwelling unit in accordance with sales procedures approved by the Authority. The 1.5 percent fee must be paid to such real estate broker or agent by the seller at the time of settlement of the resale of the affordable dwelling unit as part of the disbursement of settlement proceeds.

(6) Initial Sale After End of Price Control Period

- (a) For the initial sale of an affordable dwelling unit after the end of any control period, the Fairfax County Redevelopment and Housing Authority has the exclusive right to purchase the unit. The owner of each such unit must provide the Authority with written notification sent by registered or certified mail that the unit is for sale. If the Authority elects to purchase such unit, the Authority will so notify the owner in writing within 30 days of receipt of the written notification from the owner and the all cash closing must occur within 60 days after receiving such notification.
- (b) Whether or not the Redevelopment and Housing Authority elects to purchase such unit, one-half of the amount of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Authority in accordance with its regulations to be:
 1. Substantial and appropriate replacements or improvements of existing housing components; and/or
 2. Structural improvements made to the unit between the date of the owner's purchase and the date of resale must be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in the County as part of the disbursement of settlements proceeds.
- (c) Such equity interest of the Fairfax County Housing Trust Fund applies to each affordable dwelling unit. Notice of such equity interest of the Trust Fund may be evidenced by a document recorded among the land records of Fairfax County, Virginia, encumbering any affordable dwelling unit.
- (d) Net sales price excludes closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller.
- (e) All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, must be paid by the seller. Any such amounts required to be paid by the seller may not reduce the amount, as determined in accordance with this

paragraph, required to be contributed to the Trust Fund pursuant to this subsection 5101.8.C(6).

(7) Covenants Required for Rental Affordable Units

- (a)** In the case of a rental project having received zoning approval before February 28, 2006, where such approval includes a proffered condition or approved development plan that addresses affordable dwelling units in accordance with this section, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any affordable dwelling units, the owner must record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority which provides that for 20 years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required under this section, which date must be later specified in the covenant, that:
- 1.** No such unit may be rented for an amount which exceeds the limits set by the County Executive;
 - 2.** The project is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance;
 - 3.** The covenant is senior to all instruments securing permanent financing; and
 - 4.** The covenant is binding upon all assignees, mortgagees, purchasers and other successors in interest.
- (b)** In the case of a rental project that receives zoning approval on or after February 28, 2006, or that received zoning approval before February 28, 2006 where such approval does not include a proffered condition or approved development plan that addresses affordable dwelling units in accordance with this section, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any affordable dwelling units, the owner must record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority which provides that for 30 years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required under this section, which date must be later specified in the covenant, that:
- 1.** No such unit may be rented for an amount which exceeds the limits set by the County Executive
 - 2.** The project is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance
 - 3.** The covenant is senior to all instruments securing permanent financing; and
 - 4.** The covenant is binding upon all assignees, mortgagees, purchasers and other successors in interest.
- (c)** For initial and revised covenants recorded:
- 1.** Before July 2, 2002, the covenants must provide that in the event of foreclosure, the covenants are released;
 - 2.** Between July 2, 2002, and February 27, 2006, the covenants terminate in the event of the foreclosure sale of a rental project by an Eligible Lender, in accordance with subsection 5101.8.C(8)(b) below;

3. After February 28, 2006, the covenants remain in full force and effect in the event of the foreclosure sale of a rental project by an Eligible Lender, in accordance with 5101.8.C(8)(b) below. Additionally, prior to the issuance of the first Residential Use Permit for any of the dwelling units within the development, the owner must provide the Notice of Availability and Offering Agreement required by subsection (a) above.

(d) Continual Applicability of Rental Rate Limits

Rentals subsequent to the initial rental during the 20- or 30-year control period, as applicable, may not exceed the rental rate established by the County Executive pursuant to subsection 5101.8.B(4)(d)⁹² above.

(e) Option for Rezoning and Payment⁹³

1. For multifamily dwelling re-rentals that were initially rented before February 28, 2006:
 - a. All of the relevant provisions of this section apply for the 20-year control period except as described below:
 - b. After the initial ten years and after provision of 120 day written notice to the Fairfax County Redevelopment and Housing Authority and the tenants of the affordable dwelling units, the owner may elect to file a rezoning application and comply with whatever requirements result therefrom, or may elect to pay to the Fairfax County Housing Trust Fund an amount equivalent to the then fair market value of the land attributable to all bonus and affordable dwelling units and provide relocation assistance to the tenants of the affordable dwelling units in accordance with the requirements of Article 4 of Chapter 12 of The Code.
 - c. If the requirements above are satisfied, the units previously controlled by this section as affordable dwelling units are released fully.
2. For multifamily dwelling re-rentals that were initially rented on or after February 28, 2006, all of the relevant provisions of this section apply for the 30-year control period; and that the provision for an early release of the covenants after the initial ten years described above do not apply.

(8) Requirements for Affordable Dwelling Unit Financing

The financing of affordable dwelling units provided pursuant to this section must comply with the following:

- (a) For initial and revised covenants recorded before July 2, 2002, the covenants must provide that:
 1. The covenants are senior to all instruments securing permanent financing, and are binding upon all assignees, mortgages, purchasers and other successors in interest. However, the covenants may provide that, in the event of foreclosure, the covenants are released.
 2. Any and all financing documents must require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written

⁹² Cross-reference may be changed to 5101.8.E (not just subsection 4).

⁹³ Relocated from 2-812.9 to this location to be closer to rental ADU requirements since it only applies to rentals.

notice of any delinquency or other event of default under a mortgage and the Authority has the right for a 60-day period to cure such a default.

- 3.** Any and all financing documents must provide that, in the event of foreclosure of projects and units subject to the requirements of this section that are comprised of rental or for sale affordable dwelling units, the lender must give written notice to the Fairfax County Redevelopment and Housing Authority of the foreclosure sale at least 30 days prior to the foreclosure sale and in the case of individual for sale affordable dwelling units, the Housing Authority has the right to cure the default.
- (b)** For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002:
- 1.** The covenants are senior to all instruments securing financing, and are binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants are released in the event of foreclosure by an Eligible Lender, as and only to the extent provided for in subsection 5 below.
 - 2.** Any and all financing documents must require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Authority has the right to cure such delinquency or other event of default within a period of 90 days immediately after receipt by the Authority of such notice.
 - 3.** No sale, transfer or foreclosure affects the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
 - 4.** The total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling unit may not exceed the owner's purchase price (as adjusted in accordance with subsection 5101.8.C(5) above). Any financing in excess of the owner's purchase price (as adjusted in accordance with subsection 5101.8.C(5) above) may not be secured by any interest in the applicable individual for sale affordable dwelling unit.
 - 5.** An Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on a rental project or on an individual for sale affordable dwelling unit or a refinancing of such institutionally financed purchase money deed of trust by an institutional lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing.⁹⁴ An Eligible Lender has the right to foreclose on a rental project or an affordable dwelling unit and the covenants on the rental project or affordable dwelling unit terminates upon such foreclosure by the Eligible Lender in the event that the rental project or the affordable dwelling unit is sold by a trustee on behalf of the Eligible Lender to a

⁹⁴ Definition will be moved to Article 9.

bona fide purchaser for value at a foreclosure sale and all the requirements of the Affordable Dwelling Unit Program as set forth in this section, the covenants, and applicable regulations with respect to such foreclosure sale are satisfied.

- 6.** In the case of foreclosure on an individual for sale affordable dwelling unit, the requirement for satisfaction of the covenants include but are not limited to the Eligible Lender having provided the County Executive and the Redevelopment and Housing Authority written notice of the foreclosure sale proposed and having provided the Right to Cure and the Right to Acquire, as such terms are defined in subsection 5101.8.C(8)(b)7 below. In the case of foreclosure on a rental project, an Eligible Lender is not required to provide the Right to Cure and the Right to Acquire.
- 7.** Each Eligible Lender with respect to an individual for sale affordable dwelling unit must also provide a right to cure any delinquency or default (Right to Cure), and a right to acquire an individual for sale affordable dwelling unit subject to the foreclosure notice given pursuant to subsection 11 below (Right to Acquire).⁹⁵
- 8.** The Right to Cure or the Right to Acquire, as applicable, may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a nonprofit agency designated by the County Executive in the event the Authority elects not to exercise its right, at any time during such 90-day period after the Authority has received notice of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale. An affordable dwelling unit so acquired must be acquired for the purpose of resale of such unit to persons qualified under the Affordable Dwelling Unit Program and not for conversion of the affordable dwelling unit to a rental unit.
- 9.** The Right to Acquire entitles the Redevelopment and Housing Authority or the nonprofit agency designated by the County Executive to acquire the affordable dwelling unit at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the affordable dwelling unit owed to the Eligible Lender including principal, interest, and fees that together in the aggregate do not exceed the amount of the owner's purchase price (as adjusted in accordance with subsection 5101.8.C(5) above), and other reasonable and customary costs and expenses (the Outstanding First Trust Debt),⁹⁶ with no owner, prior owner or other party, whether secured or not, having any rights to compensation under such circumstances.
- 10.** In the event that neither the Fairfax County Redevelopment and Housing Authority nor the nonprofit agency designated by the County Executive exercises the Right to Acquire and the individual for sale affordable dwelling unit is sold for an amount greater than the Outstanding First Trust Debt, one-half of the amount in excess of the Outstanding First Trust Debt must be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.
- 11.** Each Eligible Lender and any other lender secured by an interest in a rental project or an individual for sale affordable dwelling unit is required prior to foreclosing to

⁹⁵ Definition will be moved to Article 9.

⁹⁶ Definition will be moved to Article 9

provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least 90 days prior written notice thereof.

- 12.** All financing documents for financing secured by an individual for sale affordable dwelling unit must state that the Eligible Lender's financing provides the Right to Cure and Right to Acquire which may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a nonprofit agency designated by the County Executive in the event the Authority elects not to exercise its rights, at any time during such 90-day period after the Authority has received notice, as applicable, of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale.

(9) Applicability of Restrictions to Pre-July 2, 2002 Covenants

The provisions set forth in subsections 5101.8.C(2)(f) and 5101.8.C(8)(b) above apply and the applicable covenants are deemed to incorporate such provisions, whether or not expressly set forth in such covenants, to any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002.

(10) Foreclosure Proceed Payments to Housing Trust Fund

In the event of a foreclosure sale of any affordable dwelling unit after September 14, 2004, the following shares of the proceeds of such foreclosure sale must be paid to the Fairfax County Housing Trust Fund to promote housing affordability in the County:

- (a)** For any individual affordable dwelling unit initially conveyed on or after July 2, 2002, and any individual affordable dwelling unit resold and conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002, in the event that the individual for sale affordable dwelling unit is sold at the foreclosure sale for an amount greater than the Outstanding First Trust Debt, as such term is defined in subsection 5101.8.C(8)(b)9 above, one-half of the amount in excess of the Outstanding First Trust Debt must be paid to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds.
- (b)** For all other individual affordable dwelling units:
 - 1.** one-half of the amount of the difference between the net sales price paid by the purchaser at such sale and the foreclosed owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Redevelopment and Housing Authority in accordance with its regulations to be:
 - a.** Substantial and appropriate replacements or improvements of existing housing component; and/or
 - b.** Structural improvements made to the unit between the date of the foreclosed owner's purchase and the date of resale

(the “Housing Trust Fund Share”) must be contributed to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds.

2. Net sales price excludes closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller.
3. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, must be paid out of proceeds of the foreclosure sale that are not the Housing Trust Fund Share, as determined in accordance with this paragraph, or must be otherwise paid by the foreclosed owner.
4. Any such amounts required to be paid by the foreclosed owner may not reduce the Housing Trust Fund Share, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

D. Occupancy of Affordable Dwelling Units⁹⁷

- (1) Before an individual may purchase an affordable dwelling unit, he or she must obtain a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority. Before issuing a Certificate of Qualification, the Authority must determine that the applicant meets the criteria established by the Authority for low- and moderate-income persons.
- (2) Before an individual may rent an affordable dwelling unit, he or she must meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority for persons of low and moderate income. The landlord/owner is responsible for determining that the tenant meets the eligibility criteria.
- (3) Except for circumstances referenced in subsections 5101.8.A(4) and 5101.8.C(4) above, it is a violation of this Ordinance for someone to sell an affordable dwelling unit to an individual who has not been issued a Certificate of Qualification by the Fairfax County Redevelopment and Housing Authority.
- (4) Except as provided for in subsection 5101.8.B(3)(a) above, it is a violation of this Ordinance for someone to rent or continue to rent an affordable dwelling unit to an individual who does not meet or fails to continue to meet the income eligibility criteria established by the Fairfax County Redevelopment and Housing Authority.
- (5) Purchasers or renters of affordable dwelling units must occupy the units as their domicile and must provide an executed affidavit on an annual basis certifying their continuing occupancy of the units. Owners of for sale affordable dwelling units must forward each such affidavit to the Fairfax County Redevelopment and Housing Authority on or before June 1 of each year that they own the unit. Renters must provide such affidavit to their landlords/owners by the date that may be specified in their lease or that may otherwise be specified by the landlord/owner.
- (6) In the event the renter of an affordable dwelling unit fails to provide his or her landlord/owner with an executed affidavit as provided for in the preceding paragraph within 30 days of a written request for such affidavit, then the lease automatically terminates,

⁹⁷ Carried forward from Sect. 2-813, with revisions as noted.

becomes null and void, and the occupant must vacate the unit within 30 days of written notice from the landlord/owner.

- (7)** Except as provided for in subsection 5101.8.B(3)(a) above, in the event a renter of an affordable dwelling unit no longer meets the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority, as a result of increased income or other factor, then at the end of the lease term, the occupant must vacate the unit.
- (8)** In the event a renter fails to occupy a unit for a period in excess of 60 days, unless such failure is approved in writing by the Fairfax County Redevelopment and Housing Authority, a default occurs. The lease automatically terminates, becomes null and void, and the occupant must vacate the unit within 30 days of written notice from the landlord/owner.
- (9)** In addition to subsections (6), (7), or (8) above, if the landlord/owner immediately designates an additional comparable unit as an affordable dwelling unit to be leased under the controlled rental price and requirements of this section, the renter of such unit referenced in subsections (6), (7), or (8) above may continue to lease such unit at the market value rent.

E. Affordable Dwelling Unit Advisory Board⁹⁸

- (1)** The Affordable Dwelling Unit (ADU) Advisory Board consists of nine members appointed by the Board. Members must be qualified as follows:
 - (a)** Two members must be either civil engineers or architects, each of whom must be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom must have extensive experience in practice in Fairfax County.
 - (b)** One member must be a representative of a lending institution which finances residential development in Fairfax County.
 - (c)** Four members must consist of:
 - 1.** A representative from the Fairfax County Department of Housing and Community Development.
 - 2.** A residential builder with extensive experience in producing single family detached and attached dwelling units.
 - 3.** A residential builder with extensive experience in producing multifamily dwelling units.
 - 4.** A representative from either the Fairfax County Department of Public Works and Environmental Services or the Department of Planning and Zoning.
 - (d)** One member must be a representative of a nonprofit housing group which provides services in Fairfax County.
 - (e)** One member must be a citizen of Fairfax County.
 - (f)** At least four members must be employed in the private sector.
- (2)** Each member of the ADU Advisory Board are appointed to serve a four-year term. Terms are staggered such that the initially constituted Board consists of four members appointed to

⁹⁸ Carried forward from Sect. 2-814, with revisions as noted. This section will be relocated to Article 8, Procedures, so it can appear together with the descriptions and listed powers of other County advisory and decision-making groups in one place in the Ordinance.

- four-year terms; three members appointed to three-year terms; and two members appointed to two-year terms.
- (3)** The ADU Advisory Board advises the County Executive respecting the setting of the amount and terms of all sales and rental prices of affordable dwelling units.
 - (4)** The ADU Advisory Board is authorized to hear and make final determinations or grant requests for modifications of the requirements of the Affordable Dwelling Unit Program, except that the ADU Advisory Board does not have the authority to:
 - (a)** Modify or reduce the Affordable Dwelling Unit Adjuster required pursuant to subsection 5101.4 above;
 - (b)** Modify the unit specifications established by the Fairfax County Redevelopment and Housing Authority pursuant to 5101.5.E(1) above;
 - (c)** Modify the eligibility requirements for participation in the ADU Program;
 - (d)** Modify any proffered condition, development condition or special exception condition specifically regarding ADUs;
 - (e)** Modify the zoning district regulations applicable to ADU developments;
 - (f)** Hear appeals or requests for modifications of affordable dwelling unit sales or rental prices;
 - (g)** Modify the provisions of subsection 5101.4 above regarding the percentage of affordable dwelling units required or to allow the construction of affordable dwelling units which are of a different dwelling unit type from the market rate units on the site; or
 - (h)** Modify the provisions of subsection 5101.7.B(4) or 5101.7.B(5) above regarding the conversion of rental developments to condominium and the establishment of new condominium developments.
 - (5)** The ADU Advisory Board elects its Chairperson and may adopt rules and regulations regarding its formulation of a recommendation regarding the amounts and terms of sales and rental prices of affordable dwelling units and the procedures to be followed by an applicant seeking a modification of the requirements of the Affordable Dwelling Unit Program.
 - (6)** Any determination by the ADU Advisory Board requires the affirmative vote of a majority of those present. A quorum consists of no less than five members. All determinations and recommendations must be rendered within 90 days of receipt of a complete application.

F. Modifications to the Affordable Dwelling Unit Program⁹⁹

- (1)** Requests for modifications to the requirements of the Affordable Dwelling Unit Program as applied to a given development may be submitted in writing to the ADU Advisory Board. Such application must include an application fee as provided for in [*reference to relocated Sect. 18-106*] and the applicant must specify the precise requirement for which a modification is being sought and must provide a description of the requested modification and justification for such request. In the case of a modification request filed pursuant to subsection (3) below, the applicant must demonstrate in detail how such request complies with the required findings by the ADU Advisory Board for such modification as listed in

⁹⁹ Carried forward from Sect. 2-815, with revisions as noted. This section may be relocated to the Article on Procedures and Administration, since it describes procedure related to the Zoning Ordinance.

- subsection (4) below and why the requirements of this section cannot be met on the applicant's property.
- (2)** An applicant must promptly provide such additional information in support of the request for a modification as the Affordable Dwelling Unit Advisory Board may require.
 - (3)** In addition, in exceptional cases, instead of building the required number of affordable dwelling units, the ADU Advisory Board may permit an applicant to:
 - (a)** Convey the equivalent amount of land within the development for which a modification is sought to the Fairfax County Redevelopment and Housing Authority which would be necessary to provide the required number of affordable dwelling units. In such instances, the total number of dwelling units which the applicant may build on the remainder of the site is reduced by the number of affordable dwelling units required pursuant to subsection 5101.4 above; or
 - (b)** Contribute to the Fairfax County Housing Trust Fund an amount equivalent to the fair market value for the lot on which the affordable dwelling unit would otherwise have been constructed; or
 - (c)** Provide any combination of affordable dwelling units, land, or contribution to the Fairfax County Housing Trust Fund.
 - (4)** Permitting an applicant to meet the requirements of the Affordable Dwelling Unit Program by providing either land or contributions to the Fairfax County Housing Trust Fund pursuant to subsection (3) above is not favored. However, such modifications may be allowed upon demonstration by the applicant and a finding by the ADU Advisory Board that:
 - (a)** The provision of all the affordable dwelling units required is physically or economically infeasible;
 - (b)** The overall public benefit outweighs the benefit of the applicant constructing affordable dwelling units on the site; and
 - (c)** The alternative will achieve the objective of providing a broad range of housing opportunities throughout Fairfax County.
 - (5)** The ADU Advisory Board will act on requests for modifications within 90 days of receipt of a complete application. The 90-day time period is tolled during the time it takes the applicant to provide information requested pursuant to subsection (2) above.
 - (6)** The ADU Advisory Board may approve, deny, or may approve in part a request for a modification filed pursuant to this subsection.
 - (7)** Persons aggrieved by the affordable dwelling unit for sale and rental prices established by the County Executive pursuant to the provisions of this section, including decisions pursuant to subsection 5101.7.B(3) above, may appeal such prices to the Board. Such appeal must be filed with the Clerk to the Board and must specify the grounds upon which aggrieved and the basis upon which the applicant claims the established for sale or rental prices should be modified. The Board will act within 90 days of receipt of a complete application for appeal. An appeal to the Circuit Court is provided in subsection 5101.8.H below.
 - (8)** The time limits set forth in Sections 15.2-2258 through 15.2-2261 of Va. Code Ann. will be tolled during the pendency of an application filed pursuant to subsections (1) or (7) above.

G. Violations and Penalties¹⁰⁰

In addition to the provisions set forth in *[reference to relocated Part 9 of Article 18]*, the following apply whenever any person, whether owner, lessee, principal, agent, employee or otherwise, violates any provision of this section, or permits any such violation, or fails to comply with any of the requirements of this section:

- (1)** Owners of affordable dwelling units who fail to submit executed affidavits or certifications as required by this section will be fined 50 dollars per day per unit until such affidavit or certificate is filed, but only after written notice and a reasonable time to comply is provided. Fines levied pursuant to this subsection (1) will become liens upon the real property and will accumulate interest at the judgment rate of interest.
- (2)** Renters of affordable dwelling units who fail to submit executed affidavits or certifications as required by this Part, are subject to lease termination and eviction procedures as provided in subsection 5101.8.D above.
- (3)** Owners and renters of affordable dwelling units who falsely swear or who execute an affidavit or certification required by this section knowing the statements contained in that affidavit or certification to be false are guilty of a misdemeanor and will be fined \$1,000.00.
 - (a)** Fines levied against owners pursuant to this subsection 5101.8.D(3) will become liens upon the real property and will accumulate interest at the judgment rate of interest.
 - (b)** Renters of affordable dwelling units who falsely swear or who execute an affidavit or certification required by this section knowing the statements contained in that affidavit or certification to be false are also subject to lease termination and eviction procedures as provided in subsection 5101.8.D above.
 - (c)** Owners of individual affordable dwelling units who falsely swear that they continue to occupy their respective affordable dwelling unit as their domicile are subject to mandamus or other suit, action or proceeding to require such owner to either sell the unit to someone who meets the eligibility requirements established pursuant to this section or to occupy such affordable dwelling unit as a domicile.

H. Enforcement and Court Appeals¹⁰¹

- (1)** The Board or designee have all the enforcement authority provided under its Zoning and Subdivision Ordinances to enforce the provisions of the Affordable Housing Dwelling Unit Program.
- (2)** In addition to the provisions of Section 15.2-2311 of Va. Code Ann., any person aggrieved by a decision of the ADU Advisory Board or by the Board in the case of a decision made by the latter regarding an appeal of affordable dwelling unit for sale and rental prices, or by any decision made by an administrative officer in the administration or enforcement of the Affordable Dwelling Unit Program, may appeal such decision to the Circuit Court for Fairfax County by filing a petition of appeal which specifies the grounds upon which aggrieved within 30 days from the date of the decision.

¹⁰⁰ Carried forward from Sect. 2-817, with revisions as noted. This section will be moved to Article 8, Procedures, and consolidated with similar provisions from other portions of the Zoning Ordinance.

¹⁰¹ Carried forward from Sect. 2-818, with revisions as noted. This section will be moved to Article 8, Procedures, and consolidated with similar provisions from other portions of the Zoning Ordinance.

- (3) Any petition of appeal properly filed pursuant to subsection (2) above does not constitute a de novo proceeding and will be considered by the Circuit Court in a manner similar to petitions filed pursuant to Section 15.2-2314 of Va. Code Ann.

5102. Earthborn Vibration Standards¹⁰²

1. Required Performance Level¹⁰³

No use, operation, or activity may cause or create earthborn vibrations in excess of the peak particle velocities prescribed below. However, Extraction Activities are subject to compliance with the performance standards presented in [reference to 4102.6.G, Extraction Activities].¹⁰⁴

2. Administration of Vibration Standards¹⁰⁵

A. Generally

For the purpose of administering the vibration standards, the standards are divided into Groups I and II. Table 5102.1 sets forth the applicable performance standard that must be met in each zoning district.

B. Method of Measurement¹⁰⁶

- (1) Measurements are made at or beyond the adjacent lot line, the nearest R District boundary line, or the nearest district boundary line as indicated below. Ground-transmitted vibration will be measured with a seismograph or other instruments capable of recording vibration displacement and frequency, particle velocity, or acceleration simultaneously in three mutually perpendicular directions.
- (2) The maximum particle velocity is the maximum vector sum of three mutually perpendicular components recorded simultaneously. Particle velocity may also be expressed as 6.28 times the displacement in inches multiplied by the frequency in cycles per second.
- (3) For the purpose of this Ordinance, steady state vibrations are vibrations that are continuous, or vibrations in discrete impulses more frequent than 60 per minute. Discrete impulses that do not exceed 60 per minute are considered impact vibrations.

C. Vibration Standards¹⁰⁷

(1) Applicability of Group I and II Standards¹⁰⁸

The vibration standards apply as indicated in the Table below.

¹⁰² Carried forward from current Article 14 with the relocation of references to the standards related to air pollution, fire and explosion hazards, radiation hazards, electromagnetic radiation and interference, liquid and solid waste, and noise to Article 4. The second and third paragraphs of Sect. 14-101 will be included with the relocated Article 15.

¹⁰³ Carried forward from 14-801.

¹⁰⁴ Carried forward from Sect. 14-102. This will also be clarified in the standards for Extraction Activities in Article 4.

¹⁰⁵ Carried forward from 14-103.

¹⁰⁶ Carried forward from 14-802.

¹⁰⁷ Combined the standards for Groups 1 and II since there is currently a lot of overlap.

¹⁰⁸ Carried forward from Table III.

TABLE 5102.1: Required Vibration Standards (Group I or Group II)	
Zoning District	Required Vibration Standards
All Residential Districts	Group I
C-1 through C-8 Districts	Group I
I-1 through I-4 Districts	Group I
I-5 and I-6 Districts	Group II
P Districts	Required performance standards for uses in P Districts equate to those standards for uses in the most similar R, C, or I District, as determined by the Zoning Administrator.

(2) Maximum Vibration Levels¹⁰⁹

Uses subject to the Group I and Group II standards may not cause steady state vibrations to exceed the maximum permitted particle velocities described in Table 5102.2 below. Where more than one set of vibration levels apply, the most restrictive govern. Readings may be made at points of maximum vibration intensity.

TABLE 5102.2: Maximum Permitted Steady State Vibration Levels		
Location (at lot line)	Maximum peak particle velocity (inches per second)	
	GROUP I	GROUP II
In a Residential District	0.02	0.02
At or beyond adjacent lot lines, except a Residential District	0.05	0.10

(3) Exceptions for Hours of Operation and Impact Vibrations

- (a) Between the hours of 8:00 PM and 7:00 AM, the permissible vibration levels indicated above for Residential Districts are reduced to one-half the indicated values.
- (b) Impact vibrations are permitted at twice the values stated above.
- (c) For uses subject to the Group II standards, when the frequency of impacts does not exceed one per day, the maximum vibration level, measured across lot lines, must not exceed 0.4 inches per second.

5103. Water and Sewer Facility Requirements¹¹⁰

All structures built after the effective date of this Ordinance must meet the requirements for sanitary sewer and water facilities as set forth in Chapters 67.1, 68.1 and 101 of The County Code, and the Public Facilities Manual.

1. Location

An individual sewage disposal system or private water supply system is an integral part of the principal use and must be located on the same lot as the principal use.¹¹¹ In the event an existing system fails, is condemned, or acquired for a public purpose, a replacement system may be installed in accordance with the following:

- A. If a location conforming with the above is not available, a replacement system may be installed at any location acceptable to the Director of the Health Department, either on the lot of the

¹⁰⁹ Carried forward from 14-803 and 14-804.

¹¹⁰ Carried forward from 2-503.

¹¹¹ Did not carry forward “and within a zoning district that permits the principal use served by the system.”

principal use or within a recorded perpetual easement approved by the County Attorney on a contiguous lot; and

- B.** Such a replacement system is limited to the size and capacity required to serve the existing principal use, and may not be further expanded; and
- C.** Such a replacement system may not serve new construction, except as may be allowed by [reference to relocated Article 15].

2. Approval by Health Department

- A.** An individual sewage disposal system or private water supply system requires the approval of the Director of the Health Department and may be located in any part of any front, side, or rear setback. This provision is not a basis for a waiver or modification of transitional screening or barriers, which must be provided in accordance with the requirements of Section 5108.6.
- B.** Structures either existing as of October 31, 1988, or grandfathered by the Board on October 31, 1988, that do not have an individual sewage disposal system or private water supply system located on the same lot with the structure or within a zoning district that permits the structure may be remodeled or enlarged provided such construction does not result in additional bedrooms, the addition of an appliance or fixture, or other rooms or facilities that would require an expansion or enlargement of the nonconforming system.

5104. Grading, Erosion, Sediment Control, and Drainage¹¹²

1. General Limitations on the Removal and Addition of Soil¹¹³

No soil may be removed from or added to any lot in any zoning district except in accordance with the following:

A. Areas Smaller than 2,500 Square Feet

- (1)** Sod and soil may be removed from or added to any lot to a depth of not more 18 inches without approval of a grading plan. This provision does not apply to the temporary storage of topsoil by a garden center.
- (2)** Any sod and soil removal or addition within a major underground utility easement is only permitted in accordance with subsection 5100.2.Q. In a floodplain, sod and soil may be removed in accordance with this subsection; however, the addition of sod and soil may only be permitted in accordance with the provisions of subsection 5105 below.
- (3)** Removal, dumping, filling, or excavation necessary for construction is permitted in accordance with an approved site plan or approved plans and profiles for a subdivision.
- (4)** Grading of land is permitted in accordance with a grading plan approved by the Director. The Director must determine that the amount of soil removal or fill and proposed grading is necessary to establish a use permitted in the zoning district in which the use is located, and that the grading plan provides for even finished grades that meet adjacent property grades and do not substantially alter natural drainage. Such plans must include siltation and erosion control measures in conformance with Chapter 104 of The County Code.

¹¹² This Section carries forward standards for land regulations (2-600) and floodplain regulations (2-900).

¹¹³ Carried forward from 2-601.

B. Areas Smaller than 5,000 Square Feet

For disturbed areas of 5,000 square feet or less that do not require the installation of water quality controls or other drainage improvements, sod and soil may be removed or added and grading of land may be permitted by the Director in accordance with the following:¹¹⁴

- (1) Where the removal or addition of sod and soil or the grading of land results from the:
 - (a) Demolition of a single family dwelling;
 - (b) Demolition of an accessory structure to a single family dwelling;
 - (c) Construction of an addition to a single family dwelling as defined in Chapter 61 of The County Code; or
 - (d) Construction of an accessory structure to a single family dwelling.
- (2) Disturbance must be shown on a plat that meets the following:
 - (a) Must be certified by a land surveyor, engineer, landscape architect, or architect authorized to practice as such by the State;
 - (b) Must meet the requirements of [*reference to relocated Part 6 of Article 18*]; and
 - (c) Must include siltation and erosion control measures in accordance with Chapter 104 of The County Code.

C. Other Activities

Any other grading, excavating, mining, burrowing, or filling of land not listed above may be permitted only in accordance with an approved extraction activity or solid waste disposal facility.

2. Erosion and Sediment Control Regulations¹¹⁵

For the purpose of mitigating¹¹⁶ harmful effects of erosion and siltation on downhill or downstream properties during and after development, adequate erosion and sediment controls must be provided by the property owner during all phases of clearing, filling, grading, and construction. Plans and specifications for such controls must be submitted to and approved by the Director in accordance with the Public Facilities Manual.

3. Drainage, Floodplains, Wetlands and Resource Protection Areas¹¹⁷

- A. No building may be erected and no change may be made to the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, in any manner that will obstruct, interfere with, or change the drainage of such land without providing adequate drainage related to the changes made, as determined by the Director in accordance with the provisions of the Public Facilities Manual. Such a finding must take into account land development that may take place in the vicinity under the provisions of this Ordinance.
- B. No filling, change of contours, or establishment of any use may be permitted in any floodplain except as permitted by subsection A above, or subsection 5105 below.

¹¹⁴ This portion of the grading standards were substantially restructured for clarity.

¹¹⁵ Carried forward from 2-603, revised for clarity.

¹¹⁶ Revised from current "alleviating."

¹¹⁷ Carried forward from 2-602 and 2-604.

- C.** No filling, change of contours, or establishment of any use or activity may be permitted in any wetlands except as permitted by Chapter 116 of The County Code.
- D.** No filling, change of contours, or establishment of any use or activity may be permitted in any Resource Protection Area except as permitted by the provisions of Chapter 118 of The County Code.
- E.** No building may be erected, and no filling or cutting, change in contours, or establishment of any use or activity may be permitted within a major underground utility easement except as approved by the Director in accordance with subsection 5100.2.Q.
- F.** A subdivider or developer of land is required to pay a pro-rata share of the cost of providing reasonable and necessary drainage facilities in accordance with the Public Facilities Manual.

5105. Floodplain Regulations¹¹⁸

These regulations are intended to further the County’s participation in the National Flood Insurance Program authorized under the National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.); provide for safety from flood and other dangers; protect against loss of life, health, or property from flood or other dangers; and preserve and protect floodplains in as natural a state as possible to preserve wildlife habitats, to maintain the natural integrity and function of the streams, to protect water quality, and to promote ground water recharge.¹¹⁹

1. Applicability and Disclaimer¹²⁰

- A. The floodplain regulations apply to all land within a floodplain as defined in Article 9.¹²¹ In addition, in accordance with subsections 5105.5 and 5105.6.C, these regulations apply to land outside the floodplain on lots that contain floodplain and on lots that abut a lot containing floodplain.
- B. The degree of flood protection required by these regulations, the Virginia Uniform Statewide Building Code, and the Public Facilities Manual is considered reasonable for regulatory purposes. Larger floods may occur on rare occasions or flood heights may be increased by man-made or natural causes, such as bridge openings restricted by debris. These regulations do not imply that areas outside the floodplain, or land uses permitted within such areas, will be free from flooding and flood damages under all conditions. The granting of a permit or approval of a site, subdivision, or land development plan in an identified floodplain area does not constitute a representation, guarantee, or warranty of any kind by any official or employee of the County of the practicability or safety of the proposed use, and does not create any liability upon the County, its officials, or employees.¹²²

2. Administration of the Floodplain Regulations¹²³

A. Director Determination

The Director is responsible for the administration of the floodplain regulations. The Director must review all proposed uses and development to determine whether the land on which the proposed use or development is located is within a floodplain. The Director may require additional information from the applicant, including an engineering study of the floodplain. The Director will determine whether the proposed use or development may be permitted in accordance with subsection 3 or if it requires the approval of a special exception in accordance with subsection 4 below. Any approval by the Director must be in writing and must specify

¹¹⁸ Carried forward from Part 9, 2-900.

¹¹⁹ Carried forward from 2-901.

¹²⁰ Carried forward from 2-902. Added “applicability and disclaimer” heading.

¹²¹ Did not carry forward the sentence that the floodplain limits on the Zoning Map are a guide. County maps contain disclaimers. Added “or within proximity to” because certain regulations, e.g., the 15-foot setback, apply adjacent to a floodplain.

¹²² Relocated from 2-902.5 because it has more to do with applicability of the regulations than the administration of the regulations.

¹²³ Carried forward from 2-902.

conditions deemed necessary to ensure that the proposed construction and use conform to these regulations.¹²⁴

B. Review Criteria

Any decision of the Director or Board regarding a use in a floodplain must be based on consideration of the following:

- (1) Type and location of proposed structure and use;
- (2) Site access;
- (3) Frequency and nature of flooding;
- (4) Nature and extent of any proposed grading or fill;
- (5) Impact of proposal on the floodplain on properties upstream and downstream;
- (6) Potential of proposal to cause or increase flooding or to jeopardize human life;
- (7) Impact of the proposed use on the natural environment and on water quality; and
- (8) Other site-specific factors deemed relevant for consideration by the Director or the Board.¹²⁵

C. Compliance with National Flood Insurance Program

The Director of the Department of Public Works and Environmental Services (DPWES) must collect and maintain records necessary for the County's participation in the National Flood Insurance Program. Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Director of DPWES or designee must notify the Federal Insurance Administrator or require the applicant to notify the Federal Insurance Administrator of any change in base flood elevation in any Special Flood Hazard Area (SFHA) depicted on the County's Flood Insurance Rate Map (FIRM) by submitting technical and scientific data to the Federal Emergency Management Agency (FEMA) for a Letter of Map Revision.

3. Permitted Uses¹²⁶

- A.** Except as provided in subsection (10) below for cluster subdivisions, the uses and changes to topography identified below may be permitted in a floodplain upon a determination by the Director that such use is permitted in the zoning district in which it is located, and that the use or change to topography is in accordance with these floodplain regulations and the Public Facilities Manual. Any use or change to topography not meeting the qualifications below may be permitted by the Board with the approval of a special exception.
- (1) Changes to topography that do not require major fill.¹²⁷
 - (2) Any use or change to topography within a minor floodplain. A minor floodplain, as established in the floodplain definition in Article 9, is a floodplain with a drainage area greater than 70 acres but less than 360 acres.

¹²⁴ This last sentence is new here; relocated from current Sect. 2-903.

¹²⁵ Revised wording to include (h) instead of the current reference to consideration of "at least all of the following."

¹²⁶ Carried forward from 2-903.

¹²⁷ Relocated from bottom of the list.

- (3)** Agricultural operations if the use does not require the approval of a Building Permit or require major fill. Such uses must be operated in accordance with a conservation plan prepared in accordance with the standards of the Northern Virginia Soil and Water Conservation District.
- (4)** Uses and structures accessory to single family detached and attached dwellings such as play areas, lawns, paved tennis or play courts, trails, gardens, patios, decks, and docks, that do not require major fill; and accessory structures such as children's playhouses, doghouses, storage structures, and other similar structures that do not require approval of a Building Permit or require major fill. All structures must be anchored to prevent flotation.
- (5)** Community, commercial, and public recreational uses such as golf courses, driving ranges, picnic grounds, boat launching ramps, parks, wildlife and nature preserves, hunting and fishing areas, and hiking, bicycle, and equestrian trails. This provision does not permit a paved tennis or play court exceeding 5,000 square feet in area, swimming pool, or any use requiring the approval of a Building Permit or requiring major fill.
- (6)** Off-street parking and loading areas including aisles and driveways that do not exceed 5,000 square feet in area, that will have one foot or less depth of flooding and that will not require major fill.
- (7)** Metrorail, railroad track, and roadway floodplain crossings meeting applicable WMATA, VDOT, and Fairfax County design requirements and where any additional rise in water surface will not have an adverse effect upon the floodplain or will be set aside in an easement. A stream channel relocation proposed in conjunction with a crossing is subject to the provisions of the Public Facilities Manual.
- (8)** Public and private utility lines, and all public uses and public improvements performed by or at the direction of the County, including channel improvements and erosion control, reservoirs, storm water management, and best management practice facilities and similar uses. The installation of such facilities must be accomplished with appropriate easements or agreements and with the minimum necessary disruption to the floodplain. Ponds, reservoirs, storm water management, and best management practice (BMP) facilities in floodplains with a drainage area of 360 acres or greater that are designed to serve a specific private development may be permitted only with Board approval of a special exception in accordance with these floodplain regulations.
- (9)** Permitted accessory structures, other than those specified in subsection (4) above, and additions to single family detached and attached dwellings constructed prior to August 14, 1978, subject to the following conditions:
 - (a)** The estimated cost of the addition or accessory structure is less than 50 percent of the market value as determined by the Department of Tax Administration of the existing structure.
 - (b)** The lowest part (i.e., the bottom of the floor joists or top of a concrete slab on grade) of the lowest floor including basement of any such structure may be constructed less than 18 inches above the 100-year flood level provided it is determined that there is less than one percent chance of flooding the structure in any given year, i.e., the structure is higher than the 100-year flood level.
 - (c)** The lowest part of the lowest floor of any accessory structure not meeting the requirements of (9)(b) above may be constructed below the base flood elevation provided the following standards are met:

1. The size of the accessory structure does not exceed 1,000 square feet of gross floor area.
 2. The accessory structure will only be used for parking or storage purposes.
 3. The accessory structure will be constructed using flood-damage resistant materials and all interior walls and floors constructed using unfinished material.
 4. The accessory structure will be anchored and floodproofed in accordance with the Virginia Uniform Statewide Building Code.
 5. Any mechanical, electrical, and utility equipment in the accessory structure must be elevated to or above the base flood elevation.
- (d) The Director may require the applicant and owners to sign an agreement holding Fairfax County harmless from all adverse effects that may arise as a result of the construction and establishment of the proposed use within the floodplain. Such hold harmless agreement must be recorded with the land records of Fairfax County.
- (10) For all cluster subdivisions in the R-2 District, and cluster subdivisions in the R-3 and R-4 Districts with a minimum district size of three and one-half (3.5) acres or greater, only the following uses and improvements may be permitted by the Director, provided that the encroachments for such uses and improvements are the minimum necessary and minimize disturbance to the floodplain to the greatest practical extent:
- (a) Driveways that do not exceed 5,000 square feet in area and will not require major fill;
 - (b) Extension of or connection to existing public and private utilities;
 - (c) Trails depicted on the comprehensive plan trails map or trails connecting to trails depicted on the comprehensive plan trails map;
 - (d) Channel improvements and erosion control measures performed by or at the direction of, or as required by the County;
 - (e) Regional stormwater management facilities included in the regional stormwater management plan; or
 - (f) Roadway floodplain crossings, as qualified by (7) above.¹²⁸
- B. For the purpose of this subsection, major fill includes any fill, regardless of amount, in an area greater than 5,000 square feet, or any fill in excess of 278 cubic yards in an area of 5,000 square feet or less. The cumulative area of any fill and pavement permitted under A(1) through A(6) above may not exceed an area of 5,000 square feet for all uses on a lot.
- C. The provisions above that exclude uses requiring a Building Permit do not apply when such Building Permit is required for structures such as retaining walls, fences, ramps, or trail bridges.

4. Special Exception Uses¹²⁹

- A. All uses permitted by right, special exception, or special permit that are not approved by the Director under subsection 3 above may be permitted in the floodplain upon the approval of a special exception by the Board. Such special exception is subject to conformance with the

¹²⁸ Current reference is to paragraph 6(a), which does not exist.]

¹²⁹ Carried forward from 2-904.

provisions of these floodplain regulations, the applicable special exception or special permit standards, and the standards and criteria set forth in the Public Facilities Manual.¹³⁰

B. In addition to the submission requirements for all special exception uses set forth in [*reference to relocated Sect. 9-011*], the following information must be submitted for all special exception applications for uses in a floodplain¹³¹:

- (1)** The following must be shown and certified on the plat provided with the application:
 - (a)** Delineation of the floodplain and the source of floodplain information, such as Federal Emergency Management Agency, United States Geological Survey, Fairfax County, or other;
 - (b)** Existing and proposed topography with a maximum contour interval of two feet;
 - (c)** Both normal and emergency ingress and egress from highway or street;
 - (d)** Nature and extent of any proposed fill and any proposed compensatory cut areas with quantities;
 - (e)** The location and dimensions of any structure or part of any structure that is proposed to be located in the floodplain;
 - (f)** Elevation of the nearest 100-year floodplain, and the exact distance from the structure to the floodplain line at the nearest point; and
 - (g)** Lowest floor elevation, including basement, of all existing and proposed buildings, and information relative to compliance with Federal and State floodproofing requirements.
- (2)** A written statement providing the following information:
 - (a)** Any existing or anticipated problems of flooding or erosion in the area of the application, including upstream and downstream from the application property; and
 - (b)** Whether additional Federal or State permits are required.
- (3)** When structures are proposed, the following information must be provided:
 - (a)** The proposed use of the structure;
 - (b)** A statement certifying all floodproofing proposed and indicating compliance with all County, State, and Federal requirements. This certification must be signed, sealed, and indicate the address of the certifying professional and it must cover all structural, electrical, mechanical, plumbing, water, and sanitary facilities connected with the use; and
 - (c)** A signed affidavit acknowledging that the applicant is aware that flood insurance may be required by the applicant's lending institution and that the flood insurance rates may increase because of increases in risks to life and property.
- (4)** Any additional information as may be deemed necessary by the Director, including engineering studies or detailed calculations for any proposed drainage improvement.

¹³⁰ Did not carry forward the “purpose and intent of this zoning ordinance.” Also did not carry forward “Uses permitted by special exception or special permit are subject to their respective fees in addition to the fee for a Category 6 special exception use.” All fees will be relocated to the procedures article.

¹³¹ Did not carry forward reference to Category 6 special exception uses. Uses in the floodplain are one of the Category 6 special exception uses. These submittal requirements will be relocated to the administration and procedures with subsequent drafts.

5. Setbacks from the Floodplain¹³²

- A.** No dwelling or portion of a dwelling may be located within 15 feet of the edge of a floodplain, except as provided for in subsection 5100.2.D(5). The location of a property line between the floodplain and a dwelling does not eliminate the need to meet this minimum 15-foot setback.¹³³ The Director may approve the following additional exceptions:
- (1)** The location of dwellings within 15 feet of a permanent water surface of any appropriately designed impoundment; or
 - (2)** The location of additions within 15 feet of the edge of a floodplain for single family detached and attached dwellings constructed prior to August 14, 1978, based on consideration of the following factors:
 - (a)** Type and location of proposed structure;
 - (b)** Nature and extent of any proposed grading or fill;
 - (c)** Impact of proposal on the floodplain on properties upstream and downstream;
 - (d)** Potential of proposal to cause or increase flooding or to jeopardize human life;
 - (e)** Impact of the proposed use on the natural environment and on water quality; and
 - (f)** Other site-specific factors deemed relevant for consideration by the Director.¹³⁴
- B.** For the purpose of this Ordinance, 15 feet is considered the minimum setback from the floodplain. However, dwellings and additions proposed within a floodplain under subsections 5105.3.A(9) and 5105.4 may be permitted without this 15-foot setback.¹³⁵

6. Use Limitations¹³⁶

- A.** All permitted and special exception uses in a floodplain must comply with the following use limitations.
- B.** Except as may be permitted by subsections 5105.3.A(7) and 5105.3.A(8) above, any new construction, substantial improvements, or other development, including fill, when combined with all other existing, anticipated, and planned development, may not increase the water surface elevation above the 100-year flood level upstream and downstream, calculated in accordance with the Public Facilities Manual.
- C.** The lowest part (i.e., the bottom of the floor joists or top of a concrete slab on grade) of the lowest floor, including any basement must be at least 18 inches above the water-surface elevation of the 100-year flood level calculated in accordance with the Public Facilities Manual. This requirement for an 18-inch vertical separation applies to development within a floodplain, any lot where a floodplain is located, or on any lot that abuts a lot where a floodplain is located, for the following:
- (1)** Any new or substantially improved dwelling or manufactured home.

¹³² Carried forward from Sect. 2-415.

¹³³ Added clarification that the setback from the floodplain applies even if there is a property line in between.

¹³⁴ Replaced the statement that the Director will consider "at least all of" with item 6.

¹³⁵ Carried forward from the Par. 10 of Sect. 2-905, except the reference to Chapter 118 remains under Use Limitations below.

¹³⁶ Carried forward from 2-905.

- (2)** Any proposed addition to an existing dwelling, except as may be permitted by subsection 3.A(9)(b) above.

For development on land outside the floodplain, this subsection C may be modified by the Director in accordance with the standards set forth in the Public Facilities Manual.¹³⁷

- D.** No structure or substantial improvement to any existing structure may be allowed unless adequate floodproofing is provided in accordance with this section or under the Virginia Uniform Statewide Building Code.
- E.** Stable vegetation must be protected and maintained in the floodplain to the extent possible.
- F.** Storage of herbicides, pesticides, or toxic or hazardous substances as set forth in Title 40, Code of Federal Regulations, Parts 116.4 and 261.30 et seq., is prohibited in a floodplain.
- G.** For uses located in a floodplain, other than those specified in subsections 3.A(3) and 3.A(4) above, the applicant must demonstrate the extent to which:
- (1)** There are no other feasible options available to achieve the proposed use;
 - (2)** The proposal is the option that is least disruptive to the floodplain; and
 - (3)** The proposal meets the environmental goals and objectives of the comprehensive plan for the subject property.
- H.** Nothing in these floodplain regulations is deemed to prohibit the refurbishing, refinishing, repair, reconstruction, or other similar improvements of the structure for an existing use provided such improvements are done in conformance with the Virginia Uniform Statewide Building Code, [*reference to relocated Article 15*] of this Ordinance, and the requirements of 5105.6.G above.
- I.** All uses and activities are subject to the provisions of Chapter 118 of The County Code.
- J.** When as-built floor elevations are required by federal regulations or the Virginia Uniform Statewide Building Code for any structure, such elevations must be submitted to the Land Development Services Department on a standard Federal Emergency Management Agency (FEMA) Elevation Certificate upon placement of the lowest floor, including basement, and prior to further vertical construction. If a nonresidential building is being floodproofed, then a FEMA Floodproofing Certificate must be completed in addition to the Elevation Certificate. In the case of special exception uses, the Elevation Certificate must demonstrate compliance with the approved special exception elevations.
- K.** The construction of all buildings and structures are subject to the requirements of the Virginia Uniform Statewide Building Code.
- L.** All recreational vehicles within a floodplain must either:
- (1)** Be on site for fewer than 180 consecutive days;
 - (2)** Meet the requirements of this section and the Virginia Uniform Statewide Building Code for anchoring and elevation of manufactured homes; or
 - (3)** Be fully licensed and ready for highway use. A recreational vehicle is deemed ready for highway use if it is on wheels or a jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

¹³⁷ This standard has been revised to clarify where the 18" freeboard is required, consistent with long-standing implementation. The reference to Director modification is new.

- M.** All necessary permits required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, as amended, 33 U.S.C. § 1334, must be obtained.
- N.** Areas designated as floodplains by FEMA must not have their base flood elevations altered without approval from FEMA.¹³⁸ If any new construction, substantial improvements, or other development, including fill, when combined with all other existing, anticipated, and planned development, results in change in the base flood elevation in any Special Flood Hazard Area (SFHA) depicted on the County's Flood Insurance Rate Map (FIRM), the applicant must notify the Federal Insurance Administrator of the changes by submitting technical or scientific data to FEMA for a Letter of Map Revision, as soon as practicable but, not later than 6 months after the date such information becomes available or the placement of fill, whichever comes first. If the projected increase in the base flood elevation is greater than one foot, the applicant must also obtain approval of a Conditional Letter of Map Revision from the Federal Insurance Administrator prior to the approval of construction.
- O.** In riverine situations, adjacent communities and the Virginia Department of Conservation and Recreation must be notified prior to any alteration or relocation of a watercourse depicted on the Flood Insurance Rate Map (FIRM) and copies of such notifications must be submitted to the Federal Insurance Administrator. The flood carrying capacity within the altered or relocated portion of any watercourse must be maintained.

7. Definitions¹³⁹

Definitions pertaining to the interpretation and administration of these floodplain regulations are in Section 9102.

5106. Common Open Space and Improvements

1. Applicability¹⁴⁰

This section applies to the following features in residential developments where such features are proposed to be dedicated or conveyed for public use or are to be held in common ownership by the occupants of the development:

- A.** All lands in common open space areas designed for the mutual benefit of occupants of the development, where such lands are not on individual lots or intended to be dedicated or conveyed for public use, regardless of whether such common open areas are required by this Ordinance;
- B.** All private streets, driveways, parking bays, uses, facilities, and buildings or portions thereof, provided for the common use, benefit, or enjoyment of the occupants of the development, regardless of whether such improvements are required by this Ordinance;
- C.** Where a condominium development is proposed, such development must be established and regulated in accordance with the Condominium Laws of Virginia; and
- D.** All lands to be deeded or conveyed for public use.

¹³⁸ Carried forward from the floodplain definition.

¹³⁹ The floodplain definitions in current 2-906 were relocated to Article 9.

¹⁴⁰ Carried forward from Sect. 2-701.

2. General Requirements¹⁴¹

All lands and improvements in 1.A through 1.C above must comply with the following:

A. Establishing Separate Entity or Organization

- (1) The applicant or developer must establish a nonprofit organization or other legal entity under the laws of Virginia for the ownership, care, and maintenance of all such lands and improvements.
- (2) Such organization must be created by covenants and restrictions running with the land and must be composed of persons all having ownership within the development. Such organization is responsible for the perpetuation, maintenance, and function of all common lands, uses, and facilities.
- (3) Such organization, and covenants as described below, must continue in effect to control the availability of the facilities and land provided and to maintain the land and facilities for their intended function.¹⁴² Such organization may not be dissolved nor dispose of any common open space, by sale or otherwise, except to an organization conceived and organized to own and maintain the common open space, without first offering to dedicate the same to the County or other appropriate governmental agency.
- (4) An adjacent development may join the organization for purposes of using the open space pursuant to *[reference to relocated Sect. 16-404]*.¹⁴³

B. Covenant Requirements

- (1) All lands and improvements must be described and identified including location, size, use, and control in a restrictive covenant, and such covenant must establish the method of assessment for maintenance.
- (2) These covenants must be written to run with the land and be in full force and effect for a period of not less than 20 years and will be automatically extended for successive periods of 20 years unless terminated in a manner established in these regulations.
- (3) These covenants must become part of the deed to each lot or parcel within the development.

C. Maintenance Requirements

(1) Routine Maintenance Allowed

No lands in common open space may be denuded, defaced, or otherwise disturbed in any manner at any time without the approval of the Director. However, routine maintenance as specified below is permitted without approval of the Director, provided such maintenance is allowed under any applicable proffered conditions, applicable conditions of special exceptions or special permits or other applicable laws and ordinances, and provided such common open space does not contain areas used to comply with Best Management Practices such as floodplains and conservation easements.

¹⁴¹ Carried forward from Sect. 2-702. These standards were reorganized with new headings for clarity.

¹⁴² Did not carry forward the reference to protecting from additional and unplanned densities.

¹⁴³ Relocated from Par. 14 of Sect. 2-702.

- (a) Routine maintenance of common open space limited to the removal of dead, diseased, dying or hazardous trees or shrubbery;
 - (b) Removal and replacement of dead landscaping and screening materials;
 - (c) Installation of supplemental plantings;
 - (d) Removal of noxious vegetation such as poison ivy or greenbrier;
 - (e) Lawn care and maintenance;
 - (f) Repair and replacement of picnic and play equipment; or
 - (g) Similar routine maintenance.
- (2) County Not Responsible for Maintenance¹⁴⁴**
- Except as provided for in subsection C(3) below, the County is not responsible for maintaining any common open space or improvements required by this Ordinance. Where the County becomes the owner of such open space or improvements, under the provisions of subsection A(3) above, the County's only responsibility is to the general public of the entire County.
- (3) Procedures for Enforcement of Deficiencies**
- (a) If the Director determines that the public interest requires assurance for adequate maintenance of common open space areas and improvements, the Director may require that the covenants creating such organization provide that in the event the organization or any successor organization, at any time fail to maintain the common open space in reasonable order and condition in accordance with the approved plans, the County may serve notice in writing to the organization or the residents of the development specifying how the organization has failed to maintain the common open space and demanding that such deficiencies be cured within 30 days. Such notice must state the date and place of a public hearing to be held within 20 days of the notice.
 - (b) At such hearing the County may modify the terms of the original notice as to the deficiencies and may grant an extension of time for curing such deficiencies.
 - (c) If the deficiencies are not be cured within 30 days or any granted extension, the County, to preserve the taxable values of the properties within the development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for one year.
 - (d) County entry and maintenance does not vest any public rights to use the common open space except when the area is voluntarily dedicated to the public by the owners.
 - (e) Before the expiration of the one-year County maintenance period, the County must call, on its own initiative or at the request of the organization, a public hearing before the Board upon notice in writing to the organization or to the residents of the development, at which the organization must demonstrate why such maintenance by the County should not, at the election of the Board, be extended for another one-year period.
 - (f) If the Board determines that the organization is ready and able to maintain the common open space in reasonable condition, the County must cease maintenance of the area at the end of the one-year period.
 - (g) If the Board determines that the organization is not ready and able to maintain the common open space in a reasonable condition, the County may continue to maintain

¹⁴⁴ Carried forward from Sect. 2-705.

the common open space during the next succeeding year, and subject to a similar hearing and determination in each year thereafter.

- (h) The covenants creating the organization must provide that the cost of maintenance by the County will be assessed ratably against the properties within the development that have a right of enjoyment of the common open space or improvements, and that such assessment must be paid by the owners of said properties within 30 days after receipt of a statement.

3. Submission Requirements¹⁴⁵

- A.** Prior to the dedication or conveyance of those features described in subsections 5106.1.A and 1.B above, the following documents must be submitted to and approved by the County:
- (1) The articles of incorporation or other organizational documentation.
 - (2) The by-laws of the organization.
 - (3) The covenants or restrictions related to the use of common property, including the system and amounts of assessments for perpetuation and maintenance.
 - (4) A fiscal program for a minimum of 10 years, including adequate reserve funds for the maintenance and care of all lands, streets, facilities, and uses under the purview of the organization.
 - (5) A document granting the right of entry upon such common property to the County law enforcement officers, rescue squad personnel, and the firefighting personnel while in the pursuit of their duties; and, in the case of private streets and common driveways, permitting the enforcement of cleared emergency vehicle access.
 - (6) A complete listing of all land, buildings, equipment, facilities, and other holdings of the organization, and a complete description of each.
 - (7) A recommended maintenance timing schedule for facilities¹⁴⁶ including streets, street signs, pools, sidewalks, parking areas, and buildings.
 - (8) A copy of the proposed notice that will be given to prospective buyers regarding the organization, assessments, and fiscal program.
 - (9) A copy of the Deed of Conveyance and a Title Certificate or, at the discretion of the Director, a commitment for a policy of title insurance issued by an insurance company authorized to do business in the Commonwealth of Virginia, assuring unencumbered title for all lands proposed to be conveyed to the County, other appropriate governmental agency, or other organization.
- B.** The documents in subsection A above must be reviewed and approved by the Director and the County Attorney, and such approval is required prior to recording any final plat or approving a final site plan. Such documents, once approved, become part of the recorded subdivision plat or approved site plan.

¹⁴⁵ Carried forward from Sect. 2-703. Did not repeat the term “nonprofit” in this subsection since it is described earlier in these regulations.

¹⁴⁶ Did not carry forward “major” since that term is not defined.

5107. Private Streets¹⁴⁷

1. Applicability¹⁴⁸

- A.** Private streets may be allowed in commercial and industrial districts, and multifamily dwelling developments.
- B.** With the approval of the Director, private streets may also be allowed in:
 - (1)** Single family attached and stacked townhouse dwelling developments;
 - (2)** Single family detached dwelling developments in the Planned Districts and in the R-5, R-8, and R-12 Districts; and
 - (3)** Single family attached dwelling units when located in a single family detached affordable dwelling unit development in the R-2, R-3, and R-4 Districts.
- C.** Single family detached dwelling developments that are not subject to the Subdivision Ordinance in Chapter 101 may also have private streets, but such streets do not have to meet the standards in this section.

2. Ownership, Care and Maintenance

In no event may a private street within a residential development be approved except in accordance with the provisions of Section 5106.

3. Standards and Limitations¹⁴⁹

A. General Design Limitations

- (1)** Private streets are limited to those streets that are not required or designed to provide access to adjacent properties as determined by the Director.
- (2)** Private streets must be designed and constructed in accordance with the standards presented in the Public Facilities Manual.
- (3)** No private street in a residential development that will be owned and maintained by an organization as provided for in section 5106 may exceed 600 feet in length unless approved by the Director or by the Board in conjunction with a rezoning or special exception.
- (4)** The length and geometric design of the street is subject to the approval of the Director based on the following considerations:
 - (a)** Means of access to adjoining properties;
 - (b)** Traffic movement and volume through the development;
 - (c)** Access for emergency and maintenance vehicles,
 - (d)** Parking; and
 - (e)** Proposed provisions for maintenance and preservation of natural features of the property.

¹⁴⁷ Carried forward from current Part 3 – 11-300.

¹⁴⁸ Carried forward from Sect. 11-301

¹⁴⁹ Combines current 11-302 through 11-305, but does not carry forward “economy of development” consideration.

B. Ingress and Egress Easements

Ingress and egress easements for public emergency and maintenance vehicles must be granted to the County over all private streets.

5108. Landscaping and Screening¹⁵⁰

The purpose of this section is to provide for landscaping and screening to create an attractive and harmonious community by minimizing the impact of dissimilar uses on adjoining or nearby uses. Protection of neighborhood character is achieved by preserving existing vegetation and requiring the planting and maintenance of vegetative screening and other barriers. Natural resource conservation is promoted, including soil, air, and water quality. Provisions in this section lessen the impact of wind, heat, noise, dust, and other debris, as well as motor vehicle headlight glare or other artificial light intrusion.

Appropriate landscaping provides shade and contributes toward compliance with the Federal Clean Air Act by reducing levels of carbon dioxide and helping to alleviate atmospheric heat island production and other negative effects on the air quality and ozone levels produced by accelerated fuel evaporation from vehicles parked on non-shaded pavement. Provisions also promote adequate planting areas for healthy development of trees.¹⁵¹

1. Applicability and Administration¹⁵²

- A. The Director is responsible for the administration of this section.
- B. The provisions of this section apply to all development subject to the provisions of [*reference to relocated Article 17*].

2. Landscaping Plan and Planting Requirements¹⁵³

- A. A landscaping plan must be submitted as required by [*reference to relocated Article 17*] and may be required for a minor site plan as determined by the Director.
- B. Landscaping plans must be drawn to scale, including dimensions and distances, and clearly delineate all existing and proposed parking spaces or other vehicle areas, access aisles, driveways, and the location, size, and description of all landscaping materials in accordance with the Public Facilities Manual and the requirements of this section.
- C. Landscaping required by this section must be shown on the landscape plan and must be completed according to specifications prior to approval of any Residential or Nonresidential Use Permit in accordance with [*reference to relocated Sect. 18-704*].

3. General Landscaping Standards¹⁵⁴

The following standards apply to the preservation, installation, and maintenance of all landscaping, screening, and barriers required by this section.

¹⁵⁰ This Section includes the standards from the current Article 13, with revisions as noted.

¹⁵¹ Purpose and intent statements substantially consolidated for landscaping, parking lot landscaping, and transitional screening sections 13-101, 13-201, and 13-301.

¹⁵² Carried forward from 13-102, except the exemption for site plans filed prior to December 10, 1977.

¹⁵³ Carried forward from 13-105.

¹⁵⁴ Carried forward from 13-104.

A. Conformance with Public Facilities Manual

The planting and maintenance of all trees and shrubs must be in accordance with the Public Facilities Manual.

B. Size and Spacing

- (1) All trees required by this section must be a minimum of five feet in height at the time of planting.
- (2) Generally, planting required by this section should be in an irregular line and spaced at random.

C. Existing Vegetation

- (1) Existing vegetation that is suitable for use in compliance with the requirements of this section and the Public Facilities Manual, may and should be used as required planting.¹⁵⁵
- (2) Existing vegetation in a Resource Protection Area may be used to meet the requirements of this section with approval of the Director. Any addition or removal of vegetation in a Resource Protection Area is subject to Chapter 118 of The County Code as approved by the Director.¹⁵⁶

4. Maintenance¹⁵⁷

- A. The owner, or his agent, is responsible for the maintenance, repair, and replacement of all landscaping materials and barriers as may be required by this section.
- B. All plant material must be tended and maintained in a healthy growing condition, replaced when necessary due to poor health or unsafe conditions, and kept free of refuse and debris.
- C. Fences and walls must be maintained in good repair. Openings within the barriers may be required by the Director for accessibility to an area for necessary maintenance.
- D. When tree conservation is required on individual lots in residential districts, the homeowner, subsequent to Residential Use Permit issuance, is not precluded from adding, removing, or relocating such landscaping.
- E. All landscaping must be installed and maintained in substantial conformance with any proffered conditions or with any approved conceptual or final development plan, general development plan, development plan, PRC plan, special exception, special permit, or variance as determined by the Zoning Administrator. Any removal or replacement of required landscaping requires approval by the Director after coordination with the Zoning Administrator.
- F. The removal or replacement of any landscaping depicted on an approved site plan that is not subject to any of the approvals listed in subsection E above requires Director approval.
- G. Any landscaping required by subsections E and F above that is removed or replaced without the written permission of the Director must be replaced at the owner's expense with new

¹⁵⁵ Did not carry forward "when supplemented so as to provide planting and screening in accordance with the purpose and intent of this Article."

¹⁵⁶ Deleted references to the types of vegetation that may be added, as these are specified elsewhere.

¹⁵⁷ Carried forward from 13-106.

landscaping of the appropriate species and equal to or as large in total canopy area at the time of planting as the required landscaping that was removed as determined by the Director.¹⁵⁸

5. Parking Lot Landscaping¹⁵⁹

A. Interior Parking Lot Landscaping¹⁶⁰

(1) Amount Required

- (a) Any parking lot containing 20 or more spaces must include interior landscaping covering a minimum of five percent of the total area of the parking lot.
- (b) Such landscaping must be in addition to any planting or landscaping within six feet of a building, any planting or landscaping required as peripheral planting by subsection B below, and any transitional screening required by subsection 6.B below.

(2) Planting Requirements

- (a) The primary landscaping materials used in parking lots must be trees that provide shade or will provide shade at maturity. Shrubs and other live planting material may be used to complement the tree landscaping but may not be the sole contribution to the landscaping.
 - (b) Landscaping should be dispersed throughout the parking area to maximize shade for the vehicles using the parking lot.¹⁶¹
- (3) The interior dimensions of any planting area must be large enough to protect all landscaping materials in conformance with the Public Facilities Manual.
 - (4) The Director may waive or modify the requirements of these planting requirements for any use in an I district where vehicles are parked or stored, provided the use is screened from view of all adjacent property and all public streets.
 - (5) The Board, in conjunction with the approval of a rezoning or special exception, may approve a waiver or modification of the requirements of these planting requirements. Such waiver or modification may be approved:
 - (a) For an interim use of a specified duration, or where deemed appropriate due to the location, size, surrounding area, or configuration of the parking lot; and
 - (b) Where such waiver or modification will not have any harmful effect on the existing or planned development of adjacent properties.
 - (6) In a Commercial Revitalization District and in the PTC District, interior parking lot landscaping must be provided in accordance with the provisions of the respective district.

¹⁵⁸ This standard has been clarified to focus on the required replacement canopy.

¹⁵⁹ Carried forward from Part 2, 13-200.

¹⁶⁰ Carried forward from 13-202.

¹⁶¹ Revised from “reasonably dispersed throughout the parking lot” to clarify the purpose and guide the implementation of this requirement.

B. Peripheral Parking Lot Landscaping¹⁶²

For any parking lot containing 20 or more spaces where transitional screening is not required by subsection 6.B below, peripheral parking lot landscaping is required as follows:

(1) Property Does Not Abut Street Right-of-Way

When the property line abuts land that is not in the right-of-way of a street, a landscaping strip must be provided between the parking lot and the abutting property lines, except where driveways or other openings may necessitate other treatment, in accordance with the Public Facilities Manual.¹⁶³

(2) Property Abuts Street Right-of-Way

Where the property line abuts the right-of-way of a street:

- (a) A landscaping strip ten feet in width, which may not include a sidewalk or trail, must be located between the parking lot and the property line.
- (b) At least one tree for each 40 feet must be planted in the landscaping strip; however, trees are not required to be planted on 40-foot centers.
- (c) Where peripheral landscaping required by this subsection conflicts with street planting regulations of the Virginia Department of Transportation, the regulations of the latter govern.

(3) Exceptions

- (a) The Board, in conjunction with the approval of a rezoning or special exception, and the BZA, in conjunction with the approval of a special permit, may approve a waiver or modification of the requirements of this subsection and the requirement to provide a ten-foot minimum distance between a front lot line and an off-street parking space established in 6100.2.A. Such waiver or modification may be approved:
 1. For an interim use of a specified duration, or where deemed appropriate due to the location, size, surrounding area, or configuration of the parking lot; and
 2. Where such waiver or modification will not have any harmful effect on the existing or planned development of adjacent properties.
- (b) In a Commercial Revitalization District and in the PTC District, peripheral parking lot landscaping must be provided in accordance with the provisions of the respective district.

6. Transitional Screening and Barriers¹⁶⁴

A. Applicability¹⁶⁵

- (1) Transitional screening and barriers must be provided within the zoning district and on the lot of the use indicated in the left column of Table 5108.2 where it is contiguous or across the street from land used or zoned for uses indicated across the top of Table 5108.2.
- (2) Where the structure will contain more than one use or category of uses as presented in Table 5108.2, the more stringent requirements of the table apply. The Director may allow

¹⁶² Carried forward from 13-203.

¹⁶³ The specific width of the landscaping strip has been deleted and will be determined in the PFM.

¹⁶⁴ Carried forward from Part 3, 13-300.

¹⁶⁵ Carried forward from 13-302, renamed from “general provisions” to “applicability.”

the lesser requirements with a finding that the need for the more stringent requirements is eliminated by the arrangement of the uses.

- (3) In addition to the standards established in Article 4 for a particular use, all uses allowed by special exception or special permit are required to provide transitional screening and barriers as determined by the Board or BZA, using Table 5108.2 as a guide.
- (4) Transitional screening and barriers are not required between different dwelling unit types within an affordable dwelling unit development.
- (5) In a Commercial Revitalization District and in the PTC District, transitional screening and barriers must be provided in accordance with the provisions of the respective district.

B. Transitional Screening Requirements¹⁶⁶

(1) Types of Transitional Screening

There are three different transitional screening requirements as identified in Table 5108.2 that must be provided pursuant to Chapter 12 of the Public Facilities Manual and as follows:

(a) Transitional Screening I

Transitional Screening I consists of an unbroken strip of open space a minimum of 25 feet wide and planted with all of the following:

1. A mixture of large and medium evergreen trees and large deciduous trees that achieve a minimum ten-year tree canopy of 75 percent or greater;
2. A mixture of trees consisting of at least 70 percent evergreen trees, and consisting of no more than 35 percent of any single species of evergreen or deciduous tree; and
3. A mixture of predominately medium evergreen shrubs at a rate of three shrubs for every ten linear feet for the length of the transition yard area. The shrubs must generally be located away from the barrier and staggered along the outer boundary of the transition yard.

(b) Transitional Screening II

Transitional Screening II consists of an unbroken strip of open space a minimum of 35 feet wide and planted with all of the following:

1. A mixture of large and medium evergreen trees that achieves a minimum ten-year tree canopy of 75 percent or greater; and
2. The same mixture of trees and shrubs as provided in subsections (a)2 and (a)3 above.

(c) Transitional Screening III

Transitional Screening III consists of an unbroken strip of open space a minimum of 50 feet wide planted as required in subsections (b)1, (a)2, and (a)3 above.

¹⁶⁶ Carried forward from 13-303. Did not carry forward paragraphs 1 and 2 from 13-303 since they were related to barriers (and are repeated in the current 13-304).

C. Barrier Requirements¹⁶⁷

(1) Barrier Location

- (a) Barriers must be generally located between the required transitional screening and the use requiring such screening so that the maximum effective screening is provided from the existing or proposed first floor level of adjoining development, as determined by the Director.
- (b) Bracing, supports, or posts must be located on the side of the barrier facing the use requiring the barrier.

(2) Types of Barriers

- (a) Table 5108.2 identifies different barrier requirements, which must be provided in accordance with Table 5108.1. Where options are presented in Table 5108.2 for a type of barrier, the choice of the barrier type is at the applicant’s discretion.
- (b) In unusual circumstances related to topography, or to alleviate specific problems with nuisance issues such as glare and noise, the Director may require the use of an earth berm or more specialized barrier material in lieu of, or in combination with, any of the barrier types set forth below.

TABLE 5108.1: Barrier Requirements by Type			
Barrier Type	Height	Materials	Other Standards
A	42-48 inches	Wall of brick or architectural block	Faced on the side of the existing use; may be required to be faced on both sides as determined by the Director.
B	42-48 inches	Solid wood or otherwise architecturally solid fence	N/A
C	42-48 inches	Evergreen hedge	Planting size minimum 36 inches and planted 36 inches on center.
D	42-48 inches	Chain link fence	May be required by the Director to have inserts in the fence fabric, to be coated, or to be supplemented by trees and shrubs.
E	6 feet	Wall of brick or architectural block	Faced on the side of the existing use; may be required to be faced on both sides as determined by the Director.
F	6 feet	Solid wood or otherwise architecturally solid fence	N/A
G	6 feet	Chain link fence	May be required by the Director to have inserts in the fence fabric or be coated.
H	6 feet	Variety of trees	One row of 6-foot trees averaging 50 feet on centers. This requirement may be omitted when the building is six feet or less from the property line.

¹⁶⁷ Carried forward from 13-304.

TABLE 5108.2: Transitional Screening and Barrier Types by Use¹⁶⁸ Roman numerals in individual cells represent transitional screening type required (I, II, or III) Letters in individual cells represent barrier type required (A through H) * Denotes "as may be required by the Director"																		
Use #	Use	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
1	Dwelling, single family detached																	
2	Dwelling, single family attached	I B, A*																
3	Bed and breakfast Dwelling, multifamily Group household Live-work development Manufactured home Stacked townhouse	I D, E or F	I															
4	Adult day care center Child care center Religious assembly School, private	I D, E or F	I D, E or F	H														
5	Club, service organization, or community center Community swim, tennis, and recreation club Cultural facility or museum Golf course or country club	I D, E or F	I D, E or F	I D, E or F	A, B or C	H				H								
6	Congregate living facility Medical care facility Continuing care facility	II D, E or F	II D, E or F	I D, E or F														
7	Cemetery Financial institution	I D, E or F	I D, E or F	I B or C	H													

¹⁶⁸ Carries forward the Transitional Screening and Barrier Matrix in Article 13, with the uses updated based on the uses in new Article 4. New uses have been integrated based on current practice or the most similar use.

TABLE 5108.2: Transitional Screening and Barrier Types by Use¹⁶⁸ Roman numerals in individual cells represent transitional screening type required (I, II, or III) Letters in individual cells represent barrier type required (A through H) * Denotes "as may be required by the Director"																		
Use #	Use	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
8	Animal shelter	II	II	I	I	H												
	Business service	D or	D or	D or	A, B													
	Catering	F, E*	F, E*	F, E*	or C													
	Convenience store																	
	Crematory																	
	Data center																	
	Funeral home																	
	Household repair and rental service																	
	Kennel																	
	Office																	
	Office in a residential district																	
	Pet grooming establishment																	
	Personal service																	
	Restaurant																	
	Restaurant, carryout																	
	Retail sales, general																	
	Smoking lounge																	
	Veterinary hospital																	

TABLE 5108.2: Transitional Screening and Barrier Types by Use¹⁶⁸ Roman numerals in individual cells represent transitional screening type required (I, II, or III) Letters in individual cells represent barrier type required (A through H) * Denotes "as may be required by the Director"																		
Use #	Use	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
9	Airport	III	III	II	D, E	H												
	Adult entertainment	E, F	E, F	E, F	or F													
	Car wash	or G	or G	or G														
	Commercial off-street parking																	
	Drive-through financial institution																	
	Drive-through pharmacy																	
	Drive-through, other																	
	Drug paraphernalia																	
	Garden center																	
	Goods distribution hub																	
	Helipad																	
	Pawnshop																	
	Public entertainment																	
	Restaurants with drive-through																	
	Retail sales, large																	
	Transit facilities																	
	Truck rental establishment																	
	Vehicle fueling station																	
Vehicle repair and maintenance, light																		
Vehicle sales, service, and rental																		
10	Hotel or motel	II	II	I	H	H												
		E, F	E, F	E, F														
		or G	or G	or G														
11	Campground	II	II	I	D, E	H												
	Indoor commercial recreation	D, E	D, E	D, E	or F													
	Outdoor commercial recreation	or F	or F	or F														

TABLE 5108.2: Transitional Screening and Barrier Types by Use¹⁶⁸ Roman numerals in individual cells represent transitional screening type required (I, II, or III) Letters in individual cells represent barrier type required (A through H) * Denotes "as may be required by the Director"																			
Use #	Use	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
12	Agricultural operation	II D, E or F	II D, E or F	II D, E or F	I A, B or C	D, E or F													
	Agritourism, other																		
	Alternate uses of public facilities																		
	Banquet or reception hall																		
	College or university																		
	Convention or conference center																		
	Craft beverage production establishment																		
	Farm winery																		
	Health and exercise facility																		
	Independent living facility																		
	Marina																		
	Quasi-public park, playground, or athletic field																		
	Religious assembly with private school, specialized instruction center, or child care center																		
	Religious group living																		
	Residence hall																		
	Retreat center																		
	Riding or boarding stable																		
	Specialized instruction center																		
	Stadium or arena																		
	Zoo or aquarium																		
13	Production or processing as permitted in I-3, I-4 Districts	II D, E or F	II D, E or F	II D, E or F	D, E or F	H	H		H	H									
	Self-storage																		
	Small-scale production establishment																		
	Wholesale facility																		

TABLE 5108.2: Transitional Screening and Barrier Types by Use¹⁶⁸ Roman numerals in individual cells represent transitional screening type required (I, II, or III) Letters in individual cells represent barrier type required (A through H) * Denotes "as may be required by the Director"																		
Use #	Use	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
14	Solar power facility Utility facility, light	III D, E or F	II D, E or F	II D, E or F	I D, E or F	I D, E or F	I A, B or C	I A, B or C	D, E or F	D, E or F								
15	Building materials storage and sales Contractor's office & shop Freight distribution hub New vehicle storage Specialized equipment and heavy vehicle sale, rental, or service Storage yard Utility facility, heavy Vehicle transportation services Warehouse	III D, E or F	III D, E or F	III D, E or F	I D, E or F	I D, E or F	I A, B or C	I A, B or C	D, E or F	D, E or F								
16	Extraction activities Junkyard Petroleum products storage facility Production or processing as permitted in I-5, I-6 Districts Recycling center Vehicle repair and maintenance, heavy Vehicle storage or impoundment yard	III D, E or F	III D, E or F	II D, E or F	I D, E or F	I D, E or F	I D, E or F	I D, E or F	I D, E or F	I A, B or C	I A, B or C	I A, B or C	D, E or F				I A, B or C	
17	Production or processing, heavy Mixed waste reclamation facility Solid waste disposal facility	III D, E or F	III D, E or F	II D, E or F	I D, E or F	I A, B or C	I D, E or F	I D, E or F	I A, B or C	I A, B or C	I A, B or C	I A, B or C	D, E or F				I D, E or F	I D, E or F
18	Public use	See most similar use																

7. Waivers and Modifications to Transitional Screening and Barriers¹⁶⁹

Transitional screening and barriers may be waived or modified pursuant to this subsection. The Board, in conjunction with a rezoning or special exception application, or the Director may attach conditions to any waiver or modification that would assure that the results of the waiver or modification would be in accordance with the purpose and intent of this section. The Board or Director may waive or modify transitional screening and barriers as follows:

- A.** Between uses developed under a common development plan in the PDC or PRM Districts or a common development or site plan or series of development or site plans within a PRC District when compatibility between uses has been addressed through a combination of the location and arrangement of buildings or through architectural or landscaping treatments.
- B.** Transitional screening may be waived or modified where the building, a barrier, or the land between that building and the property line has been specifically designed to minimize adverse impact through a combination of architectural and landscaping techniques.
- C.** Where the strict application of the transitional screening and barrier provisions would reduce the usable area of a lot due to lot configuration or size to a point that would preclude a reasonable use of the lot, provided the side of a building, a barrier, or the land between that building and the property line has been designed to minimize adverse impact through a combination of architectural and landscaping techniques.
- D.** The transitional screening yard width and planting requirements may be reduced as much as two-thirds where a seven-foot brick or architectural block wall is provided instead of the barrier required. Such wall may be reduced to a height of six feet where the Director deems such a height will satisfy the purpose and intent of this section.
- E.** Where the adjoining land is designated in the comprehensive plan for a use that would not require transitional screening between the land under site plan and the adjoining property.
- F.** Where the adjacent property is zoned to allow a use similar to the parcel under site plan.
- G.** Where the adjoining property is used for any public purpose other than a school or hospital.
- H.** Where adjacent residential property is used for any use permitted by the Board or BZA as a special exception or special permit use except for a child care center or private school.
- I.** When the adjoining land is in a residential district and is used for off-street parking as permitted by the provisions of 6100.2.B.
- J.** Where the subject property abuts a railroad, interstate highway right-of-way, the right-of-way of the Dulles International Airport Access Highway or the combined Dulles International Airport Access Highway and Dulles Toll Road.
- K.** The barrier requirement may be waived or modified where the topography of the lot providing the transitional screening and the lot being protected is such that a barrier would not be effective.
- L.** The barrier requirement may be waived or modified for single family attached dwelling units where a six-foot fence is provided to enclose a privacy yard on all sides, and such fence is architecturally designed and coordinated with landscaping techniques to minimize adverse impact on adjacent properties.

¹⁶⁹ Carried forward from 13-305, except when adjoining land is used for a sawmilling operation or a wayside stand. In addition, private school of special education (new specialized instruction center) has not been carried forward.

- M.** For any public use when such use has been specifically designed to minimize adverse impact on adjacent properties.
- N.** In affordable dwelling unit developments, where the strict application of the provisions of this section would preclude compliance with the provisions of Section 5101.

8. Tree Conservation¹⁷⁰

Tree conservation must be provided as required by Chapter 122 of The Code and the Public Facilities Manual.

5109. Outdoor Lighting¹⁷¹

The purpose of this section is to establish outdoor lighting standards to reduce the impacts of glare, light trespass, and light pollution; promote safety and security; and encourage energy conservation.¹⁷²

1. Applicability¹⁷³

- A.** Except as provided in subsection 2 below, these outdoor lighting standards apply to the installation of new outdoor lighting fixtures or the replacement of existing outdoor fixtures. Replacement of a fixture includes any change of fixture type or change to the mounting height or location of the fixture.¹⁷⁴
- B.** Outdoor lighting fixtures lawfully existing prior to June 17, 2003, that do not conform to the provisions of this section are deemed to be a lawful nonconforming use and may remain. A nonconforming lighting fixture that is changed to or replaced by a conforming lighting fixture is no longer deemed nonconforming and must be in accordance with the provisions of this section.
- C.** For existing vehicle fueling stations, vehicle sales, service, and rental establishments, and outdoor recreation and sports facilities that do not comply with the applicable maintained lighting levels specified in subsection 4 below, replacement of or the addition of new lighting fixtures is permitted in accordance with the following:¹⁷⁵
 - (1)** There may be replacement or addition of new lighting fixtures only when the replacement or addition will not increase the noncompliance with the applicable maintained lighting level requirements of subsection 4 below.
 - (2)** A new canopy, display area, or lighted field or court may be added to the existing use only if the new canopy, display area, or playing field or court is in conformance with all the requirements of this section.

2. Exemptions¹⁷⁶

The following are exempt from the provisions of this section:

¹⁷⁰ Carried forward from 13-401.

¹⁷¹ Carried forward from Part 9 of Article 14 with revisions as noted. Additional revisions that are the subject of a separate pending Zoning Ordinance amendment will be incorporated with a subsequent draft.

¹⁷² Carried forward from 14-901. Changed "overlighting" to light pollution.

¹⁷³ Carried forward from 14-902. General Provisions relocated to a standalone subsection.

¹⁷⁴ Routine maintenance exemption relocated to the exemptions subsection.

¹⁷⁵ Use standards modified for consistency with new Article 4, *Use Regulations* throughout this section.

¹⁷⁶ Carried forward from 14-905.

- A.** Lighting fixtures and standards required by the Federal Communications Commission, Federal Aviation Administration, Federal and State Occupational Safety and Health Administrations, or other federal, state, or county agencies, to include street lights within the public right-of-way.
- B.** Outdoor lighting fixtures required by law enforcement, fire and rescue, the Virginia Department of Transportation, or other emergency response agencies to perform emergency or construction repair work, or to perform nighttime road construction on major thoroughfares.
- C.** Routine lighting fixture maintenance, such as changing lamps or light bulbs, ballast, starter, photo control, housing, lenses, and other similar components, do not constitute replacement and may be permitted if the changes do not result in a higher lumen output.¹⁷⁷
- D.** Holiday lighting fixtures.
- E.** Neon lighting used to outline a structure.
- F.** Motion activated light fixtures located as follows:
 - (1)** On lots developed with single family dwellings when such lighting fixtures:
 - (a)** Emit initial lighting levels of 6,000 lumens or less;
 - (b)** Are extinguished within five minutes upon cessation of motion; and
 - (c)** Are aimed such that the lamp or light bulb portion of the lighting fixture is not visible at five feet above the property boundary; or
 - (2)** On all other lots when such lighting fixtures are aimed such that the lamp or light bulb portion of the lighting fixture is not directly visible at five feet above the property boundary.
- G.** On lots developed with single family dwellings, outdoor lighting fixtures with initial light outputs of 2,000 lumens or less are not subject to the provisions of subsections 3.A, 3.C(3), and 3.E below.

3. General Provisions

Except as provided in 4.B below, or exempted in 2 above, all outdoor lighting fixtures must comply with the following:

A. Lighting Fixtures and Mounting

- (1)** Full cut-off lighting fixtures must be mounted horizontal to the ground and must be used for all outdoor lighting unless otherwise specifically provided in this section, and all lighting fixtures located within those portions of open-sided parking structures that are above ground. For the purposes of this provision, an open-sided parking structure is a parking structure that contains exterior walls that are not fully enclosed between the floor and ceiling. Within an open-sided parking structure, the ceiling or walls of the structure may be used to meet the full cut-off angle requirements.¹⁷⁸ An example of a full cut-off lighting fixture is shown in Figure 5109.1 below.

¹⁷⁷ Relocated from Par. 1 of Sect. 14-902, applicability and general provisions.

¹⁷⁸ This sentence is relocated from the current definition in Article 20 for a full cut-off lighting fixture.

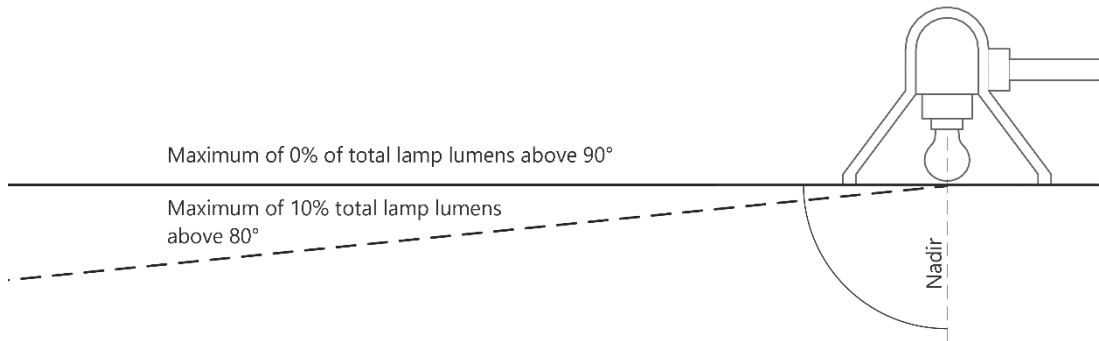


Figure 5109.1: Full Cut-Off Lighting Fixture

- (2) Except for internally illuminated signs, the use of lighting fixtures that are enclosed in clear or translucent white, off-white, or yellow casing are prohibited on the roofs of buildings or on the sides of canopies.
- (3) The following lighting must consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light is substantially confined to the object intended to be illuminated and, where necessary, directional control shields must limit stray light and protect motorists and pedestrians from glare (see Figure 5109.2:
 - (a) Lighting used to illuminate flags, statues, signs, or any other objects mounted on a pole, pedestal, or platform; and
 - (b) Spotlighting or floodlighting used for architectural or landscape purposes.



Lighting used for architectural/landscaping lighting shall be aimed and controlled so that light is confined, as much as possible, to the objects that are intended to be lit.

Figure 5109.2: Uplighting Examples¹⁷⁹

¹⁷⁹ The illustration will be revised in a future draft to show more directed light.

- (4) All outdoor lighting fixtures must be aimed, located, and maintained so as not to produce disability glare. The lighting fixtures specified in 3.A and 3.B above are excluded from this provision. (See Figure 5109.3.)
- (5) High intensity light beams in the form of outdoor search lights, lasers, or strobe lights are prohibited.

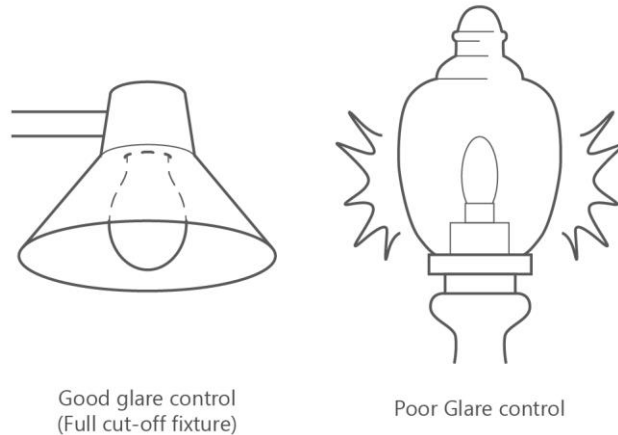


Figure 5109.3: Glare Control on Lighting Fixtures

B. Internally Illuminated Signs

Internally illuminated signs must have an opaque background with translucent text and symbols, or a translucent background that is not white, off-white, or yellow in color. All illuminated signage located on the sides of a canopy must be internally illuminated or backlit.

C. Height and Location of Light Poles¹⁸⁰

- (1) Maximum height of lighting fixtures on light poles:
 - (a) No maximum height for lighting fixtures associated with outdoor recreation and sports facilities playing fields and courts.
 - (b) 40 feet as measured from the ground level or the surface on which the light pole is mounted to the bottom of the lighting fixture.
 - (c) 20 feet as measured from the top of the pole to the surface on which the pole is mounted for light poles mounted on the top of parking structures.
- (2) Light poles must be located in accordance with the following:
 - (a) **All Lots**
Unless further restricted elsewhere in these standards:
 1. Parking lot light poles may be located in any yard;
 2. Light poles that do not exceed seven feet in height may be located in any yard;
 3. Light poles greater than seven feet in height are subject to the minimum setback requirements of the zoning district in which located.

¹⁸⁰ Carried forward from Par. 14 of Section 10-104.

(b) Lots with Single Family Dwellings

Light poles that exceed seven feet in height are subject to the location regulations of [reference to subsection 4102.7.A(6)].

- (3)** In addition to the above, on lots that abut property that is residentially zoned and developed, vacant, or homeowner’s association open space, all outdoor lighting, including light poles located on top of any parking structure, must be either:
- (a)** Mounted at a height measured from grade to the bottom of the lighting fixture, including the height of the parking structure when located on top of a parking structure, equal to or less than the value $3 + (D/3)$, where D is equal to the horizontal distance in feet from the light source to the nearest residential lot line extended vertically; or
 - (b)** Equipped with supplemental opaque shielding on the residential property side of the lighting fixture to reduce glare caused by direct light source exposure. (See Figure 5109.4.)

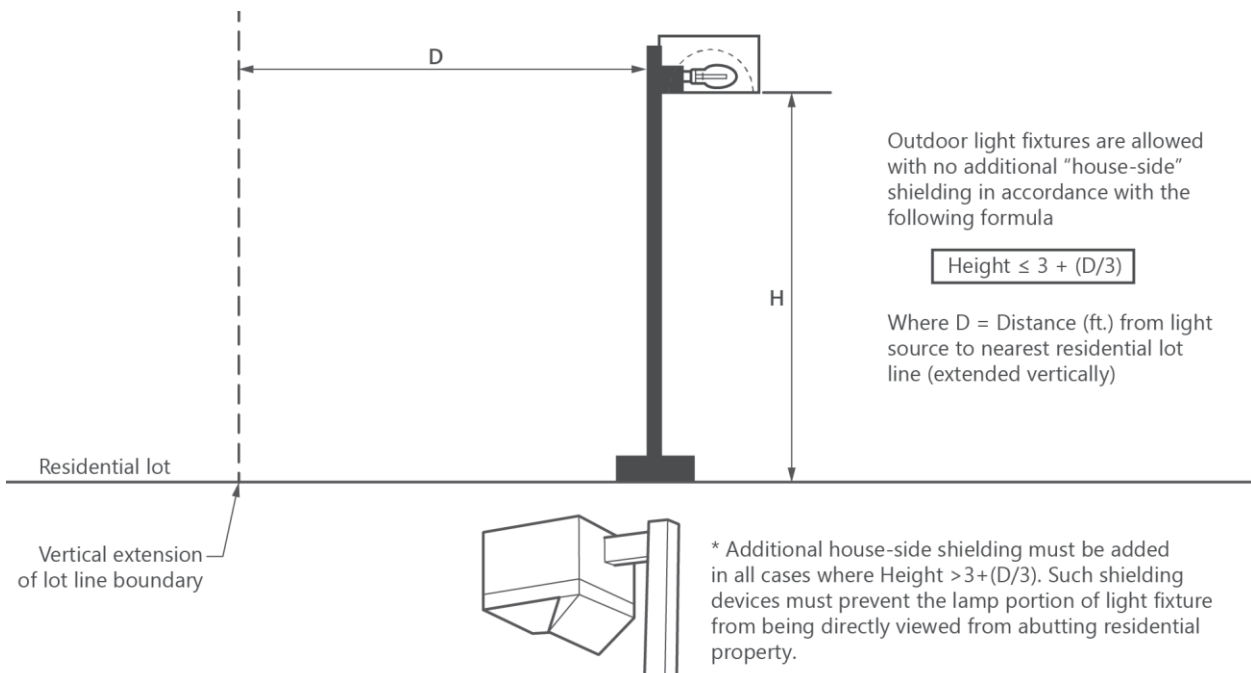


Figure 5109.4: Mounting Height or House-Side Shielding

D. Nonresidential Lots Dimming Requirement

On all nonresidential lots that contain a minimum of four parking lot light poles, parking lot lighting levels for ground surface parking lots and the top levels of parking structures must be reduced by a least 50 percent of full operational levels within 30 minutes after the close of business. This provision does not require parking lot lighting levels to be reduced to less than 0.2 footcandles as measured horizontally at the surface on which the light pole is mounted. This reduced lighting level must be achieved by:

- (1)** Extinguishing at least 50 percent of the total number of pole mounted lamps;
- (2)** Dimming lighting levels to no more than 50 percent of the levels used during business or activity hours; or
- (3)** Some combination of (a) and (b).

E. Construction Sites

Lighting used for construction sites must consist of the following:

- (1) All construction site lighting, with the exception of lighting that is used to illuminate the interiors of buildings under construction, must use full cut-off or directionally shielded fixtures that are aimed and controlled so the directed light is substantially confined to the object intended to be illuminated. Directional control shields must be used where necessary to limit stray light.
- (2) Frosted light bulbs or other translucent covers¹⁸¹ must be used to light the ten-foot outermost perimeter area of the interiors of any buildings under construction that contain five or more stories. For the purposes of this subsection 5109.3.E, a building is no longer considered under construction once exterior walls and windows are installed and permanent lighting replaces temporary lighting as the primary source of light for the building.

4. Lighting Standards for Certain Uses¹⁸²

A. Vehicle Fueling Stations and Vehicle Sales, Service, and Rental

Outdoor lighting fixtures associated with vehicle fueling stations and vehicle sales, service, and rental establishments are subject to the following:

- (1) The following must not exceed a maintained lighting level of 30 footcandles as measured horizontally at grade. However, a higher or lower maintained lighting level, not to exceed 50 footcandles, may be specifically approved by the Board in conjunction with the approval of a special exception, development plan, or proffered rezoning:
 - (a) Vehicle fueling station canopy lighting; and
 - (b) Outdoor display area lighting used in conjunction with a vehicle sales, service, and rental establishment
- (2) All underside canopy lighting must consist of full cut-off fixtures.
- (3) For the purposes of this section, outdoor display areas include all display and storage areas for vehicles offered for sale or rent and the associated travel lanes.
- (4) A photometric plan is required for these uses in accordance with one of the following:
 - (a) As part of the submission of a special exception, development plan, or rezoning application, and subject to approval by the Board. The approved photometric plan must be submitted as part of a site plan submission for the use. Upon written request with justification, the Zoning Administrator may modify a submission requirement of subsection (5) below if it is determined that the requirement is not necessary for an adequate review of the photometric plan.
 - (b) As part of a site plan submission, or as a separate submission when site plan approval is not required, and subject to review and approval by the Director. Upon written request with justification, the Director may modify a submission requirement of subsection (5) below if it is determined that the requirement is not necessary for an adequate review of the photometric plan.

¹⁸¹ The allowance for translucent covers is new.

¹⁸² Carried forward from 14-903.

- (5) A photometric plan must be prepared by a lighting professional that is certified by the National Council on Qualifications for the Lighting Professions (NCQLP), or a State licensed professional engineer, architect, landscape architect, or land surveyor and must contain the following:
 - (a) Location and limits of the canopy or outdoor display area at a scale of not less than 1 inch equals fifty feet (1" = 50').
 - (b) Location and height of all canopy lighting and all pole, building, or ground-mounted lighting fixtures for an outdoor display area.
 - (c) A photometric diagram showing predicted maintained lighting levels produced by the proposed lighting fixture facilities.
- (6) When site plan approval is not required and the plan is submitted as a separate submission, five copies of a photometric plan must be submitted to the Director for review and approval and is subject to a fee as provided for in [reference to relocated Article 17].

B. Outdoor Recreation Lighting Requirements¹⁸³

(1) Applicability

- (a) When illuminated playing fields or courts, individually or cumulatively, exceed 10,000 square feet in area, or have associated light poles that exceed 20 feet in height, the playing fields or courts are subject to the provisions of this subsection.
- (b) Playing fields or courts not meeting the thresholds in (a) above are not subject to this subsection.
- (c) For the purposes of this subsection, the perimeter area defined in (3)(b) below must be included in the area of the playing field/court. The playing field or court must be located so that the perimeter area is on the subject property.¹⁸⁴
- (d) Other components of such facilities, including parking lots, administrative offices, restrooms, ticket sales, concession stands, and bleachers or other spectator viewing areas, are not subject to this subsection, but must comply with the other requirements of this section.

(2) Sports Illumination Plan

A sports illumination plan is required in accordance with one of the following:

- (a) As part of the submission of a special exception, special permit, development plan, or rezoning application. A sports illumination plan is subject to approval by either the BZA in conjunction with a special permit or the Board in conjunction with a special exception, development plan, or proffered rezoning and a sports illumination plan approved by the BZA or Board must be submitted as part of a site plan submission for such use. Upon a written request with justification, the Zoning Administrator may modify a submission requirement of (3) below if it is determined that the requirement is not necessary for an adequate review of the sports illumination plan.
- (b) For a facility that is permitted by right in the zoning district in which it is located, as part of the site plan submission, or as a separate submission when site plan approval is not required. Upon a written request with justification, the Director may modify a

¹⁸³ Carried forward from 14-904.

¹⁸⁴ Added a clarification that the required perimeter areas must be located on the subject property.

submission requirement of (3) below if it is determined that the requirement is not necessary for an adequate review of the sports illumination plan. Such sports illumination plan is subject to review and approval by the Director.

(3) Submittal Requirements

A sports illumination plan must be prepared by a lighting professional that is certified by the National Council on Qualifications for the Lighting Professions (NCQLP) or a State licensed professional engineer, architect, landscape architect, or land surveyor and must contain the following:

- (a)** The boundaries, dimensions, and total land area of the property at a designated scale of not less than one-inch equals fifty feet (1" = 50'). For proposed uses on large tracts of land where the lighted playing field or court occupies a small portion of the site, the boundaries, dimensions and total land area of just the lighted playing field or court with perimeter areas, must be provided, at a designated scale of not less than one inch equals fifty feet (1" = 50'), with a graphic that depicts the location of the fields and courts in relation to the perimeter lot lines of the entire property.
- (b)** Location and limits of playing fields and courts, to include a perimeter area. For baseball and softball fields, the perimeter area must extend 30 feet in a direction perpendicular to the foul lines and away from the field. The perimeter area for rectangular playing fields, such as soccer, football, lacrosse, and field hockey, must extend 20 feet from the side lines and 30 feet from the end lines. The perimeter area for all other playing fields and courts must extend ten feet beyond the playing field or court boundary.
- (c)** Location, height, and illustration of each style of all pole, building, and ground-mounted lighting fixtures for the playing field or court.
- (d)** A photometric diagram showing predicted maintained lighting levels for the proposed playing field or court and associated perimeter area lighting.

(4) Lighting Standards

- (a)** The lighting for playing fields or courts and associated perimeter areas must comply with the maximum footcandle levels indicated for the specific uses listed in Table 5109.1 below, unless a lesser limit is specifically approved by the Board in conjunction with the approval of a special exception, development plan, or proffered rezoning, or by the BZA in conjunction with the approval of a special permit. Footcandle measurements are measured horizontally three feet above grade level and must represent maintained lighting levels. The Zoning Administrator will determine maximum permitted lighting levels for outdoor recreation and sports facilities that are not listed in Table 5109.1.
- (b)** All playing field and court lighting fixtures must use full cut-off or directionally shielded lighting fixtures, aimed toward the playing field or court and shielded in directions away from the playing field or court to minimize glare and light trespass onto adjacent properties.
- (c)** The use of outdoor playing field and court lighting is prohibited between the hours of 11:00 PM and 7:00 AM, unless other hours are specifically approved by the Board in conjunction with the approval of a special exception, development plan, or proffered rezoning, or by the BZA in conjunction with the approval of a special permit.
- (d)** When site plan approval is not required and the plan is submitted as a separate submission, five copies of the plan must be submitted to the Director for review and approval and is subject to a fee as provided for in *[reference to relocated Article 17]*.

TABLE 5109.1: Maximum Permitted Levels of Illumination for Outdoor Recreation and Sports Facilities

Facility or Use	Specific Lighted Area	Maximum Illumination Maintained (footcandles)
Archery range		10
Baseball and softball	Infield	60
	Outfield	40
Baseball (professional)	Infield	150
	Outfield	100
Baseball hitting ranges		50
Basketball, volleyball		30
Field hockey, football, soccer, lacrosse, track & field		50
Go-cart tracks		30
Golf courses	Tee boxes, greens	5
	Fairways	3
Golf driving ranges	Tee boxes	20
	Fairways	3
	Greens	5
Golf, miniature		20
Horse riding rings and show areas		30
Ice skating, ice hockey, and roller-skating rinks		50
Swimming pools	Pool surface	10
	Pool deck	30
Tennis courts (college and high school)		60
Tennis courts (recreational)		40

Article 6: Parking and Loading

6100. Off-Street Parking

1. Applicability¹⁸⁵

A. Generally

- (1) In any R, C, or I district, all structures built, and all uses established must provide accessory off-street parking in accordance with this Article, unless an alternative is approved for a Commercial Revitalization District under subsection 6100.6.D.
- (2) In the PDH, PDC, PRC, PRM, and PCC Districts, the provisions of this Article have general application as determined by the Director.
- (3) In the PTC District, off-street parking must be provided in accordance with section 6102. The provisions of this Article¹⁸⁶ have general application as determined by the Director.
- (4) Subject to the approval of a parking redesignation plan pursuant to subsection 6100.2.C(5)(b) for an existing use located in the Tysons Corner Urban Center but not in the PTC District, an owner may voluntarily elect to reduce the number of off-street parking spaces required for the site to a number between what is currently approved for the site and the applicable minimum parking rate specified for the PTC District. This voluntary parking reduction is not available if the currently approved number of parking spaces on the site is specified by a special exception, special permit, or proffered condition.
- (5) For the redevelopment of an existing property that includes the retention of some uses or structures and the elimination of some on-site parking during the redevelopment process, the Board, in conjunction with a rezoning or special exception, or the Director, in conjunction with a site plan, may approve a temporary reduction or relocation of the minimum required off-street parking spaces subject to a time limitation and demonstration by the applicant that adequate measures will be taken to ensure the continuation of safe and adequate use of the property.

B. Change in Use or Expansion, or Enlargement of an Existing Structure or Use

- (1) Off-street parking for a change in use or an expansion or enlargement of an existing structure or use must comply with the following:
 - (a) For a change in use that results in the same or lesser parking requirement than the previous use, no additional parking is required. For a change in use that results in a greater parking requirement than the previous use, the minimum off-street parking requirement established in this Article must be provided for the new use, unless a reduction is approved in accordance with 6100.5 or 6100.6.¹⁸⁷
 - (b) The expansion or enlargement of an existing structure or use must provide the minimum off-street parking requirements established this Article for the area or

¹⁸⁵ Carried forward from 11-101.

¹⁸⁶ Updated reference from 6-509 and 11-102. The current standards from 11-102 have been reorganized into multiple sections within this Article (location, use, adjustments, etc.).

¹⁸⁷ The references to reduction processes are added for clarification.

capacity of such expansion or enlargement. Compliance with the minimum off-street parking requirements is not required when the expansion or enlargement is to provide an accessibility improvement.

- (2) For special exception and special permit uses, the approving body may require compliance with this Article for the entire structure or use, as expanded or enlarged.
- (3) The provisions of this section 6100 do not apply to motor vehicle storage or display parking areas associated with a vehicle sales, service, and rental establishment.

2. Off-Street Parking Layout and Design

A. General Location¹⁸⁸

- (1) All required off-street parking spaces must be located on the same lot as the structure or use to which they are accessory, except as authorized in subsection C(2) below.
- (2) Unless otherwise authorized in this Ordinance, parking structures and carports are subject to the minimum setback requirements applicable in the zoning district in which they are located, except parking structures that are completely underground may be located in any required setback, but not closer than one foot to any lot line.
- (3) Unless otherwise authorized in this Ordinance or modified by the Board or BZA pursuant to 5107.6, off-street parking spaces located on the ground and open to the sky may be located in any required setback but may not be closer than ten feet to any front lot line. The following are exempt from this ten-foot minimum distance requirement:
 - (a) Parking spaces for single family attached dwellings in parking bays; and
 - (b) Parking spaces on the same lot with single family detached, attached, and stacked townhouse dwellings, provided such spaces do not encroach into any sidewalk or trail.¹⁸⁹
- (4) Off-street parking facilities for a structure or use permitted only in a C or I District may not be located in an R District, except upon approval as a special exception by the Board as provided below.¹⁹⁰

B. Parking in Residential Districts¹⁹¹

The Board may approve a special exception authorizing a parcel of land in an R district to be used for off-street parking of motor vehicles, but only in accordance with the following:

- (1) Such parcels may not charge a fee for parking purposes.
- (2) Such off-street parking facilities may only be used for the parking of vehicles in operating condition. No motor vehicle repair work except emergency service may be permitted in association with any such off-street parking.
- (3) Such off-street parking spaces must be provided with safe and convenient access to a street. If any space is located contiguous to a street, the street side must be curbed, and ingress and egress must be provided only through driveway openings through the curb of such

¹⁸⁸ Carried forward from Paragraphs 1 and 8 of Sect. 11-102.

¹⁸⁹ Added the new stacked townhouse dwelling use.

¹⁹⁰ Carried forward from Paragraph 3 of Sect. 11-102

¹⁹¹ Carried forward from 9-609.

dimension, location, and construction as may be approved by the Director in accordance with the Public Facilities Manual.

- (4) Such off-street parking areas must comply with the provisions of 6100.2.C(3).
- (5) Such off-street parking spaces and areas must comply with the geometric design standards presented in the Public Facilities Manual.
- (6) No parking of vehicles is allowed closer to any lot line that abuts an R district than a distance equal to the dimension of the abutting corresponding yard as required by this Ordinance.

C. Off-Street Parking Design

(1) Generally¹⁹²

- (a) Required off-street parking spaces and their appurtenant aisles and driveways may not be encroached upon or reduced in any manner except with approval by the Board in accordance with the provisions of this Ordinance, or except with approval by the Director in any of the following circumstances. This provision does not negate pipestem lots otherwise allowed under the provisions of 5100.2.L.
 1. Such space may be reduced by the amount to which other space, conforming to the provisions of this Ordinance, is provided for the use that is involved;
 2. Such space may be reduced by an amount which is justified by a reduction in the need by reason of a reduction in the size or change in the nature of the use;
 3. Such space may be reduced by reason of the provision of conveniently available parking space in a parking lot established by a public authority for which the developer has made payment in accordance with the provisions of subsection 6100.5; or
 4. Such space may be reduced for an existing structure or use to provide an accessibility improvement.
- (b) All off-street parking spaces must be provided with safe and convenient access to a street. If any such space is located contiguous to a street, the street side must be curbed, and ingress and egress may be provided only through driveway openings whose dimension, location and construction is approved by the Director in accordance with the provisions of the Public Facilities Manual.

(2) Accessible Parking¹⁹³

- (a) When provided as an accessibility improvement, accessible off-street parking spaces and related access aisles and accessible routes must comply with the provisions of the Virginia Uniform Statewide Building Code (VUSBC) and the Public Facilities Manual.
- (b) The number of accessible parking spaces must be included in the required number of parking spaces.
- (c) Each accessible parking space must be designated as reserved for persons with disabilities by an above grade sign in conformance with the design and content specifications of the Public Facilities Manual.

¹⁹² Carried forward from Paragraphs 7 and 10 of Sect. 11-102.

¹⁹³ Carried forward from Par. 2 of Sect. 11-102.

(3) Off-Street Parking Surface Area¹⁹⁴

- (a)** All off-street parking areas, including aisles and driveways, except those required for single family detached dwellings, must be constructed and maintained with a dustless surface in accordance with construction standards presented in the Public Facilities Manual. The Director may approve a modification or waiver of the dustless surface requirement in accordance with the Public Facilities Manual.
- (b)** Surfaced area includes asphalt, poured or precast concrete, brick, stone, gravel, or any other impervious surface, or grasscrete or other similar pervious surface. On a pipestem lot, the surfaced area within the pipestem driveway is not included in this limitation.
- (c)** In the R-1, R-2, R-3 and R-4 Districts, for single family detached dwellings on lots containing 36,000 square feet or less, all parking for vehicles or trailers in a front setback must be on a surfaced area, except for temporary parking on an unsurfaced area in a front setback for a period not to exceed 48 hours for loading, unloading, cleaning, or repair of vehicles or trailers.
- (d)** In the R-1 and R-2 Districts, no more than 25 percent of any front yard and in the R-3 and R-4 Districts, no more than 30 percent of any front yard may be surfaced area for a driveway or vehicle or trailer parking area. These limitations may be exceeded for a surfaced area that is:
 - 1.** Limited to two side-by-side parking spaces if the surfaced area is not more than 25 feet long and 18 feet wide;
 - 2.** On a lot that has its primary access from a major thoroughfare and consists of two side-by-side parking spaces and a vehicular turn-around area as long as the surfaced area is not more than 25 feet long and 18 feet wide and the turn-around area does not exceed 150 square feet; or
 - 3.** Provided as an accessibility improvement as approved by the Zoning Administrator.

(4) Off-Street Parking Dimensional Standards¹⁹⁵

- (a)** All off-street parking spaces and areas must comply with the geometric design standards presented in the Public Facilities Manual.
- (b)** All required stacking spaces must be a minimum of 18 feet in length. In addition, the geometric design of the stacking aisle(s), including but not limited to the radius and width of the travel aisle, is subject to the approval of the Director.

(5) Off-Street Parking Area Markings¹⁹⁶**(a) Generally**

All parking spaces, except those provided for and on the same lot with single family detached, attached, and stacked townhouse dwellings, must be clearly marked in accordance with the design guidelines set forth in the Public Facilities Manual and are subject to the approval of the Director.

¹⁹⁴ Carried forward from second paragraph of Par. 8 of Sect. 11-102 and Par. 11 of Sect. 11-102.

¹⁹⁵ Carried forward from Paragraphs 12 and 13 of Sect. 11-102.

¹⁹⁶ Carried forward from Par. 12 of Sect. 11-102.

(b) Redesignation Plan

1. Except for public commuter park-and-ride lots that use existing off-street parking spaces accessory to another use, any proposal to redesignate parking space delineations that changes the existing space size, configuration, or number require approval by the Director subject to the following:
 - a. The applicant must submit a plan certified by an engineer or land surveyor authorized by the State to practice as such;
 - b. Such plan must show all off-street parking spaces, related driveways, loading spaces and walkways, indicating the type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided and the number required by the provisions of this Article;
 - c. A plan may not be approved that reduces the number of parking spaces below the minimum number required by this Article.
2. A redesignation plan to provide an accessibility improvement does not need to be certified by an engineer or land surveyor and any such plan that reduces the number of parking spaces below the minimum requirements of this Article may be approved.

D. Parking Alternatives**(1) Shared Off-Street Parking¹⁹⁷**

Off-street parking spaces may serve two or more uses when the total number of spaces provided equals the sum of the minimum spaces required for each separate use except as may be permitted under subsections 6100.2.B; 6100.5.F, 5.G, and 5.H; [*reference to 4102.1.G*]; and the provision in Table 6100.1 for a Religious Assembly with Private School, Specialized Instruction Center, or Child Care Center; or a previously approved parking reduction based on a proffered transportation demand management program.

(2) Off-Site Parking¹⁹⁸

Required off-street parking spaces may be located on a lot contiguous to the lot they serve subject to the following standards:

- (a) The lot has the same zoning classification as the lot where the use it serves is established; and
- (b) The lot is either under the same ownership or is subject to agreements or arrangements satisfactory to the Director that will ensure the continuing availability of such spaces sufficient to serve the use.

¹⁹⁷ Carried forward from 11-102(4).

¹⁹⁸ Carried forward from Paragraph 1 of Sect. 11-102. [to reduce confusion with different referencing styles, let's use the format in our current ZO for the footnote references to the current ZO; please revise throughout]

E. Additional Parking¹⁹⁹

Additional off-street parking may be added to an existing development that met the parking requirement in effect at the time of its development, but that does not comply with the current requirements, in order to minimize the degree of current noncompliance.

F. Use of Off-Street Parking Areas²⁰⁰

- (1) Required off-street parking spaces and their appurtenant aisles and driveways that are not fully used during the weekday may be used for a public commuter park-and-ride lot when established and operated in accordance with a public commuter park-and-ride lot agreement approved by the Board.
- (2) For a use where the minimum number of required parking spaces is provided on site in accordance with this Article, but additional off-site parking may be desired, the Director may, subject to conditions the Director deems appropriate, approve the use of a portion of an adjacent site's required parking spaces based on the sum of the hourly parking demand of such uses when the applicant has demonstrated that the use of such spaces will not adversely affect the site or the adjacent area.
- (3) All off-street parking facilities may only be used for the parking of vehicles in operating condition by patrons, occupants, or employees of the use to which such parking is accessory. No motor vehicle repair work except emergency service is permitted in association with any required off-street parking facilities.

3. Calculation of Off-Street Parking²⁰¹

- A. Where a given use or building contains a combination of uses, parking must be provided on the basis of the sum of the required spaces for each use, except as may be permitted by subsection 4102.1.G for associated service uses.
- B. When the number of spaces calculated results in a number containing a fraction, the required number of spaces will be the next higher whole number.
- C. Where the required number of parking spaces is not identified for a particular use, and where there is no similar general type of use listed, the Zoning Administrator will determine the number of spaces required. When the amount of parking spaces required is uncertain for a proposed use, the maximum requirement for the general type of use that is involved governs.
- D. Gross floor area is determined in accordance with the gross floor area definition, except that:
 - (1) Outdoor display and sales area and areas within a cellar not used exclusively for storage or for mechanical equipment is included as gross floor area; and
 - (2) Mall areas in shopping centers of less than 1,000,000 square feet of gross floor area, calculated as the sum of all floors in the mall, measured from the interior faces of the walls of the mall, are excluded from gross floor area.

¹⁹⁹ Carried forward from Par. 24 of Sect. 11-102

²⁰⁰ Carried forward from Paragraphs 4 and 9 of Sect. 11-102

²⁰¹ Carried forward from Paragraphs 16, 17, 18, 19, 21, and 25 of Sect. 11-102. Statement describing calculations on an employee or person basis was not carried forward since that is specified in the parking table.

4. Minimum Required Off-Street Vehicle Parking Spaces²⁰²

A. Table of Required Parking Spaces

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces	
Use	Minimum Parking Requirement
AGRICULTURAL AND RELATED USES	
Agricultural and Related Uses	
Agricultural Operation	No minimum requirement
Agritourism, Other	[To be inserted with the pending Zoning Ordinance amendment for agritourism]
Farm Winery, Limited Brewery, or Limited Distillery	[To be inserted with the pending Zoning Ordinance amendment for agritourism]
Stable, Riding or Boarding	As determined by the Director, based on a review of each proposal to include such factors as the number of spaces to accommodate employees, horse trailers, students, customers, and guests anticipated to be on site at any one time, and the availability of areas on site that can be used for auxiliary parking in times of peak demand.
RESIDENTIAL USES	
Household Living	
Dwelling, Multifamily	1.6 spaces per unit
Dwelling, Single Family Attached	2.7 spaces per unit where only 1 such space is required to have convenient access to the street
Dwelling, Single Family Detached	2 spaces per unit for lots with frontage on a public street and 3 spaces per unit for lots with frontage on a private street, where only 1 such space is required to have convenient access to a street
Dwelling, Stacked Townhouse	2.3 spaces per unit
Group Residential Facility	Applicable rate for the dwelling unit type
Live-Work Development	Applicable office rate or as reduced by the Board
Manufactured Home	1.5 spaces per unit
Group Living	
Congregate Living Facility	1 space per 3 residents, plus 1 additional space for each employee
Group Household	[insert reference to special permit standard] ²⁰³
Religious Group Living	1 space per 2 sleeping accommodations based on the occupancy load of the building, plus 1 additional space for each manager or employee
Residence Hall	1 space per guest accommodation
PUBLIC, INSTITUTIONAL, AND COMMUNITY USES	
Community, Cultural, and Educational Facilities	
Alternate Uses of Public Facilities	See most similar use
Child Care Center	Maximum daily enrollment of 99 children or less: 0.19 spaces per child Maximum daily enrollment of 100 or more children: 0.16 spaces per child
Club, Service Organization, or Community Center	1 space per 3 persons based on the occupancy load, plus 1 space per employee

²⁰² Carried forward from Sections 11-103, 11-104, 11-105, and 11-106. The uses are updated based on the use tables in new Article 4, with new uses assigned the currently used rate from the LDS Land Development table, previous zoning applications, or the most similar rate when there isn't a current rate.

²⁰³ A new special permit standard will be added for the BZA to require a sufficient number of spaces for residents and staff.

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
College or University	Determined by the Director based on 1 space per faculty and staff member and other full-time employee, plus a sufficient number of spaces to accommodate the anticipated number of students and visitors who will drive to the institution at any one time, including consideration of the occupancy load of all classroom facilities, auditoriums and stadiums, the availability of mass transportation, and the availability of areas on site that can be used for auxiliary parking in times of peak demand. ²⁰⁴
Community Swim, Tennis, and Recreation Club	<p>Community Pool: 1 space for every 7 persons lawfully permitted in the pool at one time, plus 1 space per employee. The Director may reduce this standard based on the number of members who are within a reasonable walking distance of the pool.</p> <p>Tennis Club: 4 spaces per court, plus required spaces for affiliated uses, such as restaurants.</p> <p>Recreation Club without swimming or tennis: determined by the Director</p>
Convention or Conference Center	1 space per 3 persons based on the occupancy load, plus 1 space per employee
Cultural Facility or Museum	1 space per 300 square feet of gross floor area
Public Use	<p>Determined by the Director based on the number of spaces required to accommodate employees, public use vehicles anticipated to be on-site at any one time, visitor parking, and the availability of areas on site that can be used for auxiliary parking in times of peak demand. The number of spaces required for government office use may not be less than that required for office.</p> <p>Library: 7 spaces per 1,000 square feet of gross floor area</p> <p>Park: See Quasi-public Park, Playground, or Athletic Field</p> <p>School: See School, Private</p>
Religious Assembly	1 space per 4 seats in the principal place of worship. The number of spaces may be reduced by the Director, subject to conditions the Director deems appropriate, by not more than 50 percent when generally located within 500 feet of any public parking lot or any commercial parking lot where sufficient spaces are available by permission of the owner(s) without charge, during the time of services to make up the additional spaces required.
Religious Assembly with Private School, Specialized Instruction Center, or Child Care Center	The sum of the parking requirements for each use. The Director may reduce the minimum parking requirement, subject to conditions the Director deems appropriate, if the Director determines that fewer spaces will adequately serve all the uses on-site due to the sum of the hourly parking demand for such uses.
School, Private	<p>Determined by the Director based on the occupancy load of all classroom facilities, auditoriums and stadiums, proposed special education programs, and student-teacher ratios, and the availability of areas on site that can be used for auxiliary parking in times of peak demand; but in no instance less than:</p> <p>Elementary or Intermediate: 1 space per faculty and staff member and other full-time employee, plus 4 spaces for visitors; or</p> <p>High School: 0.3 space per student, based on the maximum number of students attending classes at any one time</p>
Specialized Instruction Center	2 spaces per each 3 employees, plus a sufficient number of spaces to accommodate all persons anticipated to be on-site at any one time under normal operating conditions.
Funeral and Mortuary Services	
Cemetery	As determined by the Director, based on a review of each proposal to include such factors as the number of spaces required to accommodate employees and visitor parking.
Crematory	1 space per employee on major shift, plus 1 space per company vehicle and piece of mobile equipment
Funeral Home	1 space per 4 seats in the main chapel or parlor, plus 1 space per 2 employees, plus 1 space for each vehicle used in connection with the business

²⁰⁴ Revised to allow the Director’s determination to be based on all factors.

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
Health Care	
Adult Day Care Center	1 space per 4 adults, based on the maximum number of adults licensed to attend the center, or other amount as the Board may require as part of an approved rezoning or special exception
Continuing Care Facility	0.75 spaces per separate unit or bed approved on the development plan
Independent Living Facility	1 space per 4 dwelling units, plus 1 space per 1 employee or staff member on the major shift, or such greater number as the Board may require
Medical Care Facility	<p>Hospital: 2.9 spaces per bed licensed by the Commonwealth of Virginia, plus additional or fewer spaces as deemed necessary based on specific analysis for each site.</p> <p>Institution providing intensive special medical or mental care: 1 space per 2 patients, based on the occupancy load, plus 1 space per employee or staff member on a major shift</p> <p>Assisted Living or Nursing Facility: 1 space per 3 residents, plus 1 additional space for each employee</p>
Transportation	
Airport	1 space per employee, plus 1 space for each vehicle used in connection with the facility, plus sufficient space to accommodate the largest number of vehicles anticipated to be on-site at any one time
Helipad	A minimum of 5 spaces for commercial helistops and a minimum of 2 spaces for non-commercial helistops
Transit Facilities	No minimum requirement, or as determined by the Board or Director
Utilities	
Solar Power Facility	1 space per 1.5 employees on the major shift, plus 1 space per company vehicle
Utility Facility, Heavy	1 space per 1.5 employees on the major shift, plus 1 space per company vehicle ²⁰⁵
Utility Facility, Light	1 space per 1.5 employees on the major shift, plus 1 space per company vehicle ²⁰⁶
Wireless Facility	No minimum requirement
COMMERCIAL USES	
Animal-Related Services	
Animal Shelter	<p>5,000 square feet of gross floor area or less: 10 spaces</p> <p>Greater than 5,000 square feet of gross floor area: 10 spaces; plus additional spaces as determined by the Director, based on the number of spaces required to accommodate employees and visitors anticipated to be on-site at any one time. Gross floor area does not include any outdoor exercise or dog run area that is enclosed by a roof or fencing material.</p>
Kennel	<p>5,000 square feet of gross floor area or less: 10 spaces</p> <p>Greater than 5,000 square feet of gross floor area: 10 spaces; plus additional spaces as determined by the Director, based on the number of spaces required to accommodate employees and visitors anticipated to be on-site at any one time. Gross floor area does not include any outdoor exercise or dog run area that is enclosed by a roof or fencing material.</p>
Pet Grooming Establishment	1 space per 200 square feet of gross floor area

²⁰⁵ Carried forward from “public utility establishment” parking standard.

²⁰⁶ Carried forward from “public utility establishment” parking standard.

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
Veterinary Hospital	<p>5,000 square feet of gross floor area or less: 10 spaces Greater than 5,000 square feet of gross floor area: 10 spaces; plus additional spaces as determined by the Director, based on the number of spaces required to accommodate employees and visitors anticipated to be on-site at any one time. Gross floor area does not include any outdoor exercise or dog run area that is enclosed by a roof or fencing material.</p>
Food and Lodging	
Bed and Breakfast	2 spaces per single family dwelling, where only 1 such space is required to have convenient access to a street; plus 1 space per guest room
Catering	1 space per employee on major shift, plus 1 space per company vehicle and piece of mobile equipment
Hotel or Motel	1 space per rental unit, plus 4 spaces per 50 rental units, plus required spaces for restaurants, assembly rooms, and affiliated facilities as determined by the Director.
Restaurant	<p>Gross floor area of less than 5,000 square feet: 10 spaces per 1,000 square feet and 10 spaces per 1,000 square feet of outside seating area in excess of 20 outdoor seats. Gross floor area of more than 5,000 square feet: 11 spaces per 1,000 square feet and 11 spaces per 1,000 square feet of outside seating area in excess of 32 outdoor seats. Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.</p>
Restaurant, Carryout	6.5 spaces per 1,000 square feet of gross floor area ²⁰⁷
Restaurant with Drive-through	<p>Gross floor area of less than 5,000 square feet: 12 spaces per 1,000 square feet, plus 12 spaces per 1,000 square feet of outside seating area in excess of 20 outdoor seats. Gross floor area of more than 5,000 square feet: 12 spaces per 1,000 square feet, plus 12 spaces per 1,000 square feet of outside seating area in excess of 32 outdoor seats.</p> <p>Stacking spaces: 11 for the drive-through window, with a minimum of 5 spaces designated for the ordering station. Such spaces must be designed to not impede pedestrian or vehicular circulation on the site or on any abutting street.</p> <p>Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.</p>
Retreat Center	1 space per rental unit, plus 4 spaces per 50 rental units, plus required spaces for restaurants, assembly rooms, and affiliated facilities as determined by the Director.
Office and Financial Institutions	
Alternative Lending Institution	4 spaces per 1,000 square feet of gross floor area
Drive-through Financial Institution	<p>4 spaces per 1,000 square feet of gross floor area for customer service, lobby, and teller area, plus additional space as required for any associated offices. Stacking spaces: 8 in front of the first window and 2 in front of each additional window; except that 5 may be permitted in front of each of the first 2 windows, provided that both windows remain open when the drive-through facility is operational.</p>
Financial Institution	4 spaces per 1,000 square feet of gross floor area for customer service, lobby, and teller area, plus required spaces for any associated offices

²⁰⁷ The prohibition on counting designated curb-side pickup spaces toward the minimum required parking is not carried forward.

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
Office	<p>50,000 square feet of gross floor area or less: 3.6 spaces per 1,000 square feet Greater than 50,000 but less than 125,000 square feet of gross floor area: 3 spaces per 1,000 square feet 125,000 square feet of gross floor area or more: 2.6 spaces per 1,000 square feet</p> <p>The size of the office building is based on the definition of gross floor area as set forth in Article 9: Definitions. Where more than one office building is located on a lot, gross floor area is based on each individual building and not on the total gross floor area of all buildings on the lot. Gross floor area as qualified in Subsection 6100.3 is used to determine the required number of parking spaces.</p> <p>Buildings connected by structures such as atriums, awnings, breezeways, carports, garages, party walls, or plazas are not considered one building.</p>
Office in a Residential District	3.6 spaces per 1,000 square feet
Personal and Business Services	
Business Service	1 space per 300 square feet of gross floor area
Household Repair and Rental Service	1 space per 200 square feet of gross floor area
Personal Service	1 space per 200 square feet of gross floor area
Recreation and Entertainment	
Banquet or Reception Hall	1 space per 3 persons based on the occupancy load; plus 1 space per employee
Campground	As determined by the Board or BZA
Commercial Recreation, Indoor ²⁰⁸	<p>Generally: 1 space per 3 persons based on the occupancy load; plus 1 space per employee</p> <p>Bowling Alley: 4 spaces per alley, plus 1 space per employee, plus such additional spaces as may be required herein for affiliated uses such as restaurants</p> <p>Commercial Swimming Pool: 1 space per 4 persons lawfully permitted in the pool at one time, plus 1 space per employee</p> <p>Theater: 0.3 space per seat or similar vantage accommodation</p>
Commercial Recreation, Outdoor	<p>Generally: 1 space per 3 persons based on the occupancy load plus 1 space per employee</p> <p>Swimming Pool, Commercial: 1 space per 4 persons lawfully permitted in the pool at one time, plus 1 space per employee</p>
Entertainment, Adult	0.3 space per seat
Entertainment, Public	1 space per 3 persons based on the occupancy load, plus one space per employee
Golf Course or Country Club	1 space per 4 members based on maximum anticipated membership
Health and Exercise Facility, Large	1 space per 3 persons based on the occupancy load, plus 1 space per employee
Health and Exercise Facility, Small	1 space per 3 persons based on the occupancy load, plus 1 space per employee
Marina, Commercial	As determined by the Director, based on a review of each proposal to include such factors as the number of spaces required to accommodate employees of the greatest shift, visitor parking, maximum number of members and the number of boat slips.
Marina, Private Noncommercial	As determined by the Director, based on a review of each proposal to include such factors as the number of spaces required to accommodate employees of the greatest shift, visitor parking, maximum number of members and the number of boat slips.

²⁰⁸ Retained the individual parking standards for each use type that was consolidated in the “commercial recreation, indoor” and “outdoor” use types.

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
Quasi-public Park, Playground, or Athletic Field ²⁰⁹	<p>Neighborhood Parks: Determined by the Director based on access to the park and the walking distance to the park from the surrounding development; the location of the park and the density of the surrounding development served; and the type and size of the proposed recreation uses or facilities.²¹⁰</p> <p>Urban Parks: No parking is required, provided such parks consist of urban style plazas, miniparks, and greenways, including trails, located within, contiguous to, or immediately across the street from urban, suburban and community business centers as defined in the plan, are oriented to pedestrian or bicycle use by the resident work force and adjacent residents, and provide open space and pedestrian oriented amenities.</p> <p>Community, District, Countywide and Regional Parks: As determined by the Director, based on the parking requirements for the most similar type of use or facility set forth herein.</p>
Smoking Lounge	1 space per 3 persons based on the occupancy load; plus 1 space per employee
Stadium or Arena	0.3 space per seat or similar vantage accommodation
Zoo or Aquarium	As determined by the Board or BZA
Retail Sales	
Convenience Store	6.5 spaces per 1,000 square feet of gross floor area Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces
Drive-through, Other	As required for the most similar use, plus 5 stacking spaces in front of each drive-through window
Drive-through Pharmacy	1 space per 200 square feet of net floor area for the first 1,000 square feet, plus 6 spaces per each additional 1,000 square feet, plus 5 stacking spaces in front of each drive-through window
Drug Paraphernalia Establishment	1 space per 200 square feet of net floor area for the first 1,000 square feet, plus 6 spaces per each additional 1,000 square feet
Garden Center	<p>Commercial Districts: 1 space per 200 square feet of net floor area for the first 1,000 square feet, plus 6 spaces per each additional 1,000 square feet</p> <p>Residential Districts: 1 space per 200 square feet of net floor area for the first 1,000 square feet, plus 6 spaces per each additional 1,000 square feet, plus 1 space per 500 square feet of outdoor sales/display area to include greenhouses used for the sales/display of plant materials, plus 1 space per employee and company/commercial vehicle and sufficient space for the parking of any related equipment for landscape contracting services as an accessory component; or as modified by the Board based on the specific characteristics of the garden center use such as the size, scale, or type of accessory uses, when it is demonstrated that fewer parking spaces would adequately serve the site.</p>
Pawnshop	1 space per 200 square feet of net floor area for the first 1,000 square feet, plus 6 spaces per each additional 1,000 square feet
Retail Sales, General	<p>Generally: 1 space per 200 square feet of net floor area for the first 1,000 square feet, plus 6 spaces per each additional 1,000 square feet</p> <p>Furniture or Carpet Store: 1 space per 500 square feet of net floor area, plus 1 space for each employee</p>
Retail Sales, Large	<p>Generally: 1 space per 200 square feet of net floor area for the first 1,000 square feet, plus 6 spaces per each additional 1,000 square feet</p> <p>Furniture or Carpet Store: 1 space per 500 square feet of net floor area, plus 1 space for each employee</p>

²⁰⁹ Did not carry forward language explaining the characteristics of neighborhood parks.

²¹⁰ The tennis court rate is not carried forward as it would be included in the rate determined by the Director.

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
Vehicle-Related Uses	
Car Wash	4 spaces per bay or stall; plus 1 space per employee for a self-service establishment, or 1 space per employee, plus sufficient area for 10 stacking spaces per bay or stall for an automated establishment
Commercial Off-street Parking	No minimum requirement
New Vehicle Storage	No minimum requirement
Truck Rental Establishment	1 space per 500 square feet of enclosed sales and rental floor area, plus 1 space per 2,500 square feet of open sales and rental display lot area, plus 1 space per employee, but never less than 5 spaces. When the enclosed office, sales, and rental area or employees are shared with another use for which parking has been provided, only the open sales and rental display area is required to be separately parked.
Vehicle Fueling Station ²¹¹	2 spaces per service bay, plus 6.5 spaces per 1,000 square feet of gross floor area devoted to the retail use, but never less than 5 spaces
Vehicle Repair and Maintenance, Heavy	2 spaces per service bay, plus 1 space per employee
Vehicle Repair and Maintenance, Light	1 space per 200 square feet of net floor area, plus 2 spaces per service bay, plus 1 space per employee
Vehicle Sales, Service, and Rental	1 space per 500 square feet of enclosed sales and rental floor area, plus 1 space per 2,500 square feet of open sales and rental display lot area, plus 2 spaces per service bay, plus 1 space per employee, but never less than 5 spaces
Vehicle Transportation Services	Based on the size and maximum number of company vehicles stored on site with a minimum of 1 space per 1 employee on major shift, plus 1 space per company vehicle stored on site.
INDUSTRIAL USES	
Freight Movement, Warehousing, and Wholesale Distribution	
Data Center	1 space per 1.5 employees based on the occupancy load, plus 1 space per company vehicle
Freight Distribution Hub	1 space per 1.5 employees on major shift, plus 1 space per company vehicle but with a minimum of 1 space per 1,000 square feet of gross floor area
Goods Distribution Hub	1 space per 1.5 employees on major shift, plus 1 space per company vehicle but with a minimum of 1 space per 1,000 square feet of gross floor area
Self-storage	3.2 spaces per 1,000 square feet of gross floor area of office space associated with the use plus 1 space per employee, and 2 spaces for a resident manager. The width of travel aisles for vehicular access and loading and unloading are subject to the approval of the Director
Warehouse	1 space per 1.5 employees on major shift, plus 1 space per company vehicle, plus sufficient space to accommodate the largest number of visitors anticipated to be on-site at any one time, but with a minimum of 1 space per 1,000 square feet of gross floor area
Wholesale Facility	1 space per 1.5 employees, plus 1 space per company vehicle, but with a minimum of 1 space per 1,000 square feet of gross floor area
Industrial Services and Extraction of Materials	
Building Materials Storage and Sales	1 space per 1.5 employees on major shift, plus 1 space per company vehicle, plus sufficient space to accommodate the largest number of visitors anticipated to be on-site at any one time, but with a minimum of 1 space per 1,000 square feet of gross floor area

²¹¹ Combined service station and service station/mini-mart, which had different parking rates. This proposed rate uses the rate associated with service station/mini-mart, but with the minimum of five spaces from the service station rate.

TABLE 6100.1: Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
Contractor’s Office and Shop	1 space per 1.5 employees on major shift, plus 1 space per company vehicle, plus sufficient space to accommodate the largest number of visitors anticipated to be on-site at any one time, but with a minimum of 1 space per 1,000 square feet of gross floor area
Extraction Activities	As determined by the BZA
Petroleum Products Storage Facility	1 space per 1.5 employees on the major shift, plus 1 space per company vehicle
Specialized Equipment and Heavy Vehicle Sale, Rental, or Service	1 space per 500 square feet of enclosed sales and rental floor area, plus 1 space per 2,500 square feet of open sales and rental display lot area, plus 2 spaces per service bay, plus 1 space per employee, but never less than 5 spaces
Storage Yard	1 space per 1.5 employees on major shift, plus 1 space per company vehicle, plus sufficient space to accommodate the largest number of visitors anticipated to be on-site at any one time, but with a minimum of 1 space per 1,000 square feet of gross floor area
Vehicle Storage or Impoundment Yard	1 space per 1.5 employees on major shift, plus 1 space per company vehicle, plus sufficient space to accommodate the largest number of visitors anticipated to be on-site at any one time, but with a minimum of 1 space per 1,000 square feet of gross floor area
Production of Goods	
Craft Beverage Production Establishment	1 space per 4 seats where seating is at tables, plus 1 space per 2 seats where seating is at a counter, plus 1 space per 2 employees. This rate applies to outdoor seating in excess of 20 outdoor seats for an establishment with a gross floor area of less than 5,000 square feet, or to outdoor seating in excess of 32 outdoor seats for an establishment with a gross floor area of 5,000 square feet or more ²¹²
Production or Processing	1 space per employee on major shift, plus 1 space per company vehicle and piece of mobile equipment
Production or Processing, Heavy	1 space per employee on major shift, plus 1 space per company vehicle and piece of mobile equipment
Small-scale Production Establishment	C-3, C-4, C-5, C-6, C-7, C-8, PDH, PDC, PRM, and PRC Districts: 1 space per employee on major shift, plus 1 space per company vehicle and piece of mobile equipment, but with a minimum of 1 space per 1,000 square feet of gross floor area I-3 District: 1 space per employee on major shift, plus 1 space per company vehicle and piece of mobile equipment
Waste and Recycling Facilities	
Junkyard	1 space per 1.5 employees on major shift, plus 1 space per company vehicle, plus sufficient space to accommodate the largest number of visitors anticipated to be on-site at any one time, but with a minimum of 1 space per 1,000 square feet of gross floor area
Mixed Waste Reclamation Facility	1 space per 1 employee on major shift, plus 1 space per company vehicle
Recycling Center	1 space per 1 employee on major shift, plus 1 space per company vehicle
Solid Waste Disposal Facility	1 space per 1 employee on major shift, plus 1 space per company vehicle

²¹² The same allowance for outdoor seating for restaurants is added for craft beverage production

B. Shopping Centers²¹³

(1) Parking Requirement Calculation

The off-street parking requirement established in Table 6100.2, applies to all uses in a shopping center, except that the following uses must comply with the standards established in Table 6100.1.

- (a) Areas occupied by offices;
- (b) Any restaurant or restaurant with drive-through establishment that exceeds 5,000 square feet of gross floor area; and
- (c) Hotels.

TABLE 6100.2: Shopping Center Minimum Required Off-Street Vehicle Parking Spaces

Shopping Center Size [1]	Minimum Parking Requirement
100,000 square feet gross floor area or less	4.3 spaces per 1,000 square feet of gross floor area [2]
100,001 to 400,000 square feet gross floor area	4 spaces per 1,000 square feet of gross floor area [2]
400,001 to 999,999 square feet gross floor area	4.8 spaces per 1,000 square feet of gross floor area [2]
1,000,000 or more square feet gross floor area	4 spaces per 1,000 square feet of gross floor area [3]

Notes:

- [1] The size of the shopping center is based on the definition of gross floor area as set forth in Article 9: Definitions, and includes any gross floor area devoted to offices, restaurants, restaurants with drive-through, and hotels. The gross floor area calculation as qualified in Subsection 6100.3 is used to determine the required number of parking spaces.
- [2] Theaters must provide an additional 0.3 spaces for each seat beyond 2,000 seats.
- [3] Theaters must provide an additional 6 spaces for each 100 seats beyond 750 seats.

- (2) Stacking spaces must be provided for those uses that have drive-through facilities.
- (3) Parking is not required for outdoor seating that is accessory to a restaurant, restaurant with drive-through, or craft beverage production establishment, up to a maximum of 20 outdoor seats for an establishment with a gross floor area of less than 5,000 square feet, and up to a maximum of 32 outdoor seats for an establishment with a gross floor area of 5,000 square feet or more. Parking is required for outdoor seating that exceeds the number of seats stated above, based on the square footage of the excess seating in accordance with the applicable parking requirements for such uses.
- (4) Spaces designated for curb-side pickup cannot be counted toward the minimum required number of parking spaces.

C. Transit Station Areas²¹⁴

For any development within an area designated in the comprehensive plan as a Transit Station Area, the following minimum off-street parking spaces are required:

²¹³ Carried forward from 11-104(23). Did not carry forward references to shopping center in current 11-104(9) “outdoor seating.” These standards are already addressed in the parking table under “restaurant” and “restaurant with drive-through.”

²¹⁴ Carried forward from 11-107. Did not carry forward reference for restaurant standards since those are based on the master parking standards (and thereby covered by the “all other uses” reference).

TABLE 6100.3: Transit Station Area Minimum Required Off-Street Vehicle Parking Spaces

Use	Minimum Parking Requirement
Dwelling, Multifamily and Stacked Townhouse ²¹⁵	0 or 1 bedroom: 1.3 spaces per unit 2 bedrooms: 1.5 spaces per unit 3 or more bedrooms: 1.6 spaces per unit
Office	0 to 0.25 miles from a metro station entrance along an accessible route: 2 spaces per 1,000 square feet of gross floor area More than 0.25 miles from a metro station entrance along an accessible route: 2.3 spaces per 1,000 square feet gross floor area
All other commercial uses, except restaurants ²¹⁶	80 percent of the parking rate established in Table 6100.1
All other uses	As established in Table 6100.1

5. Off-Street Parking and Stacking Alternatives Authorized by the Board

A. Parking Reductions Authorized by the Board

The Board may, subject to conditions it deems appropriate, reduce the total number of parking spaces required when the applicant has:

- (1) Demonstrated to the Board’s satisfaction that fewer spaces than those required by this Article will adequately serve two or more uses by reason of the sum of the hourly parking demand of such uses; and
- (2) Such reduction will not adversely affect the site or the adjacent area.

B. Transit-Related Parking Management²¹⁷

- (1) The Board may reduce the number of required off-street parking spaces, subject to conditions it deems appropriate, when a proposed development is within:
 - (a) Reasonable walking distance to a mass transit station that either exists or is programmed for completion within the same time frame as the completion of the subject development;
 - (b) An area designated in the comprehensive plan as a Transit Station Area;
 - (c) Reasonable walking distance to an existing transportation facility consisting of a streetcar, bus rapid transit, or express bus service or such a facility that is programmed for completion within the same timeframe as the completion of the subject development and will provide high-frequency service; or
 - (d) Reasonable walking distance to a bus stop(s) when service to this stop(s) consists of more than three routes and at least one route serves a mass transit station or transportation facility and provides high-frequency service.
- (2) Such reduction may be approved when the applicant has demonstrated that the spaces proposed to be eliminated are unnecessary based on the projected reduction in the parking demand resulting from its proximity to a mass transit station, transportation facility, or bus

²¹⁵ Stacked townhouses have been added based on current interpretation.

²¹⁶ With the use of classifications, this standard will now exclude “wholesale facility,” which will now fall under the Industrial classification, and it will include “truck rental establishment” and “hotel or motel,” which are included in the Commercial classification.

²¹⁷ Carried forward from Par. 5 of Sect. 11-102

- service, and such reduction will not adversely affect the site or the adjacent area, including potential impacts on existing overflow parking in nearby neighborhoods.
- (3) For the purposes of this provision, a determination regarding the completion time frame for a mass transit station or transportation facility must include an assessment of the funding status for the transportation project.

C. Off-Site Parking²¹⁸

(a) Generally

The Board, acting upon a specific request, may authorize an alternative off-site parking location if practical difficulties exist or if the public safety or public convenience would be better served, subject to conditions the Board deems appropriate in addition to the following:

1. Such required spaces will be subject to agreements or arrangements satisfactory to the Board that will ensure the continuing availability of such spaces sufficient to serve the use; and
2. The applicant must demonstrate to the Board's satisfaction that such required space is generally located within 500 feet walking distance of a building entrance to the use that such space serves; or
3. Such spaces will be provided off-site with access via a valet or shuttle service subject to agreements or arrangements approved by the Board that will ensure the operation of such service and that no adverse impacts will result on the site of the parking spaces or the adjacent area; or
4. Such required spaces will be accommodated in accordance with the provisions of Subsection (b) below.

(b) Community Business Centers²¹⁹

Within areas designated as Community Business Centers on the comprehensive plan, the Board may waive the requirement that all required off-street parking spaces be located on the same lot or on a contiguous lot as set forth in 6100.2.A above, provided the following conditions are met:

1. The developer submits an application to the Director stating the circumstances that make it impracticable to meet the requirements of this Article;
2. The developer agrees to pay to the County a sum for each space so eliminated, such sum to be set by the Board in an annually adopted schedule;
3. The County has plans for the erection of a public parking facility in the immediate area of the request; and
4. The County has provided for the development of such parking, at a time and in a quantity sufficient to meet the needs of the applicant's proposed use.

²¹⁸ Carried forward from 11-102(1).

²¹⁹ Carried forward from 11-102(6).

D. Stacking Spaces²²⁰

The Board may reduce the total number of stacking spaces required when it has been conclusively demonstrated that circumstances, site design or location do not warrant the number of spaces required and that such reduction will not adversely affect pedestrian or vehicular circulation on the site or on any abutting street.

E. Compact Car Parking Spaces²²¹

The same or fewer number of compact car parking spaces existing as of or grandfathered by the Board on September 19, 1988 may be retained in accordance with the conditions of the compact car approval, provided that the total number of parking spaces on-site is not reduced, except if:

- (1) Such reduction is to provide an accessibility improvement; or
- (2) Such reduction is a result of a reduction in land area by condemnation or by acquisition for public purposes by any governmental agency.

F. Hotel, Conference, or Convention Center in Proximity to an Airport²²²

For a hotel, conference, or convention center in proximity to an airport, the Board may, subject to conditions it deems appropriate, reduce the total number of off-street parking spaces otherwise required when it is warranted by a parking study, submitted by the applicant, that demonstrates that a reduction is justified based on actual parking usages at existing developments which are comparable in use and location.

G. Nonresidential Uses Within the Lake Anne Commercial Revitalization Area²²³

The minimum off-street parking requirements for any nonresidential use within the Lake Anne Commercial Revitalization Area as designated by the Board may be reduced by 20 percent by the Board when it is demonstrated by the applicant and determined by the Board that such reduction is in furtherance of the goals of the Area as set forth in the comprehensive plan. Such request may also be considered in conjunction with a rezoning or special exception application. The fee for a parking reduction established in [*reference to relocated Sect. 17-109*] is not applicable.

H. Other Parking Reductions²²⁴

For reductions that are not eligible for consideration under subsections 6100.5.A, B, F, or G; or the provisions in Table 6100.1 for a Religious Assembly with Private School, Specialized Instruction Center, or Child Care Center, the Board may, subject to conditions it deems appropriate, reduce the total number of parking spaces required when the applicant has demonstrated to the Board's satisfaction that, due to the unique characteristics of the proposed

²²⁰ Carried forward from Par. 20 of Sect. 11-102

²²¹ Carried forward from Par. 23 of Sect. 11-102

²²² Carried forward from Par. 27 of Sect. 11-102

²²³ Carried forward from Par. 28 of Sect. 11-102

²²⁴ Carried forward from Par. 26 of Sect. 11-102

use(s), the spaces proposed to be eliminated for the site are unnecessary and such reduction in parking spaces will not adversely affect the site or the adjacent area.

6. Parking Reductions or Alternatives Authorized by the Director

- A.** The Director may, subject to appropriate conditions, reduce by up to 30 percent the total number of parking spaces required by the strict application of this Article when:
- (1)** The applicant has demonstrated to the Director’s satisfaction that fewer spaces than those required will adequately serve two or more uses by reason of the sum of the hourly parking demand of such uses; and
 - (2)** Such reduction will not adversely affect the site or the adjacent area.
- B.** Such reductions may not be approved if:
- (1)** There is a pending rezoning, special exception, or proffered condition amendment application for the site; or
 - (2)** There is a Residential Permit Parking District within 1,000 feet of the subject site; or
 - (3)** The number of parking spaces on the site is specified by an approved proffered condition, special exception, special permit, or a parking reduction approved by the Board, unless the approval allows such administrative reductions.
- C.** Any reduction not meeting the requirements for approval by the Director under this paragraph may be approved by the Board pursuant to Subsection 6100.5 above.
- D.** In a Commercial Revitalization District, the Director may approve an alternative location in accordance with the above and the provisions of the Commercial Revitalization District.²²⁵

6101. Off-Street Loading

1. Applicability

A. Within the R, C, or I Districts

All structures and uses established after the effective date of this Ordinance must provide accessory off-street loading spaces in accordance with this section.

B. Within the PDH, PDC, PRC, PRM and PCC Districts

The provisions of this section have general application as determined by the Director.

C. Within the PTC District

Off-street loading must be provided in accordance with Section 6102, and the provisions of this section may be used as a guide.

²²⁵ From last paragraph of current 11-102(1).

D. Expansion or Enlargement of an Existing Structure or Use

When an existing structure or use is expanded, accessory off-street loading spaces must be provided in accordance with the following minimum requirements for the entire structure or use, as expanded or enlarged.

2. General Provisions

- A.** All required off-street loading spaces must be located on the same lot as the use served; however, the Director may waive such location requirement when the required off-street loading spaces are provided cooperatively for two or more uses, subject to arrangements that will assure the permanent availability of such spaces to the satisfaction of the Director.
- B.** Required off-street loading spaces and their appurtenant aisles and driveways may not be encroached upon or reduced in any manner except with approval by the Director in accordance with the following circumstances:
 - (1)** Such space may be reduced by the amount to which other space, conforming to the provisions of this Ordinance, is provided for the use that is involved;
 - (2)** Such space may be reduced in an amount which is justified by a reduction in the need by reason of a reduction in size or change in the nature of the use; or
 - (3)** Such space may be reduced for an existing structure or use to provide an accessibility improvement.
- C.** Loading spaces must be located at least 40 feet from the nearest point of intersection of the edges of the travelway or the curbs of any two streets.
- D.** Loading spaces may not be located in a required front setback.
- E.** Required off-street loading areas may not be used to satisfy the space requirement for any off-street parking facilities.
- F.** Loading areas must not interfere with the free circulation of vehicles in any off-street parking area.
- G.** No motor vehicle repair work, except emergency service, is permitted in association with any required off-street loading facility.
- H.** All off-street loading spaces must be provided with safe and convenient access to a street. If any such space is located contiguous to a street, the street side must be curbed, and ingress and egress may be provided only through driveway openings whose dimension, location, and construction is approved by the Director in accordance with the provisions of the Public Facilities Manual.
- I.** All off-street loading areas, including aisles and driveways, are required to be constructed and maintained with a dustless surface in accordance with construction standards presented in the Public Facilities Manual; however, the Director may approve a modification or waiver of the dustless surface requirement in accordance with the Public Facilities Manual.
- J.** All off-street loading areas must comply with the geometric design standards as may be defined by Land Development Services; but the required dimensions may not be less than 15 feet wide, 25 feet long and 15 feet high, except that where one such loading space has been provided, any additional loading space lying alongside, contiguous to, and not separated from such first loading space need not be wider than 12 feet.

- K.** Where a given use or building contains a combination of uses, loading facilities must be provided on the basis of the sum of the required spaces for each use.
- L.** If there is uncertainty with respect to the amount of loading space required by the provisions of this Ordinance as a result of an indefiniteness as to the proposed use of a building or land, the maximum requirement for the general type of use that is involved governs.
- M.** Uses for which off street loading facilities are required by this Article, but which are located in buildings that have a gross floor area that is less than the minimum above which off street loading facilities are required, must be provided with adequate receiving facilities as determined by the Director.
- N.** Where the required number of loading spaces is not set forth for a particular use, and where there is no similar type of use listed, the Zoning Administrator will determine the basis of the number of spaces to be provided.

3. Minimum Required Off-Street Loading Spaces

Minimum off-street loading spaces accessory to the listed uses must be provided in accordance with the following Tables; however, in no instance may more than five off-street loading spaces be required for a given use or building except as may be determined by the Director:

TABLE 6101.1: Minimum Required Loading Space Categories	
Standard Categories	Minimum Loading Space Requirement
Standard A	1 space for the first 5,000 square feet of gross floor area, plus 1 space for each additional 30,000 square feet or major fraction thereof
Standard B	1 space for the first 10,000 square feet of gross floor area, plus 1 space for each additional 15,000 square feet or major fraction thereof
Standard C	1 space for the first 10,000 square feet of gross floor area, plus 1 space for each additional 20,000 square feet or major fraction thereof
Standard D	1 space for the first 10,000 square feet of gross floor area, plus 1 space for each additional 25,000 square feet or major fraction thereof
Standard E	1 space for the first 10,000 square feet of gross floor area, plus 1 space for each additional 30,000 square feet or major fraction thereof
Standard F	1 space for the first 10,000 square feet of gross floor area, plus 1 space for each additional 100,000 square feet or major fraction thereof
Standard G	1 space for the first 25,000 square feet of gross floor area, plus 1 space for each additional 100,000 square feet or major fraction thereof

TABLE 6101.2: Minimum Required Loading Spaces	
Use ²²⁶	Minimum Loading Space Requirement
Business Service	Standard C
College or University	Standard F
Commercial Recreation, Indoor	Standard F
Congregate Living Facility	Standard F

²²⁶ The uses have been updated to correspond to the new Article 4.

TABLE 6101.2: Minimum Required Loading Spaces

Use ²²⁶	Minimum Loading Space Requirement
Continuing Care Facility	One space for the first 25,000 square feet of gross floor area plus one space for each additional building consisting of more than 100,000 square feet of gross floor area, except as may be modified by the Director
Dwelling, Multifamily	Standard G
Financial Institution or Drive-Through Financial Institution	Standard C
Funeral Home	Standard F
Hotel or Motel	Standard F
Household Repair and Rental Service	Standard C
Independent Living Facility	Standard F
Medical Care Facility ²²⁷	Standard F
Mixed Waste Reclamation Facility	Standard A
Office	Standard C
Personal Service	Standard B
Private School	Standard F
Production or Processing	Standard A
Restaurant, Restaurant with Drive-Through, Carryout Restaurant	Standard D
Retail Sales	Standard B
Specialized Equipment and Heavy Vehicle Sale, Rental, or Service	Standard A
Vehicle Repair and Maintenance, Light	Standard B
Vehicle Repair and Maintenance, Heavy	Standard A
Vehicle Sales, Service, and Rental	Standard A
Warehouse	Standard A
Wholesale Facility	Standard E

6102. PTC District – Off-Street Parking and Loading ²²⁸

- A.** The number of off-street parking and loading spaces provided for the development in the PTC District must be established with the approval of a parking plan that is accompanied by an application for rezoning to the PTC District.
- B.** At a minimum, the parking plan must identify:
 - (1)** The appropriate parking rates as set forth below;
 - (2)** Include the number and general location of all off-street parking, loading, and stacking spaces;
 - (3)** The general location of all ingress and egress points to all parking facilities;

²²⁷ Previously specified “hospital,” and “nursing, convalescent, assisted living” and now applies to all medical care facilities

²²⁸ Relocated from PTC regulations, Sect. 6-509.

- (4) A statement regarding how the proposed number of loading spaces is adequate to serve the proposed uses within the development;
 - (5) A justification of shared parking arrangements among uses when a reduction from the minimum parking requirements, if applicable, for such uses is proposed;
 - (6) A description of any planned valet parking, tandem parking, or shuttle arrangements that will be implemented for the proposed use(s) and how such spaces or shuttles will be managed; and
 - (7) A statement regarding how the proposed number of parking spaces addresses the goals of the Tysons Corner Urban Center, particularly with regard to achievement of the transportation demand management (TDM) goals set forth in the comprehensive plan.
- C.** Where parking is to be provided in phases in accordance with a phased development proposal, the parking plan must provide the information set forth above for each proposed phase.
- D.** A parking plan must be developed in accordance with the following; however, the Board may reduce the minimum off-street parking requirements when it is demonstrated by the applicant and determined by the Board that such reduction furthers the goals of the Tysons Corner Urban Center:
- (1) The amount of off-street parking for single family attached, multifamily, hotel, motel, and office uses are based on the minimum and maximum spaces per unit or spaces per 1,000 square feet of gross floor area as follows:

TABLE 6102.1: Minimum and Maximum Required Off-Street Vehicle Parking Spaces									
Use	Per unit or 1,000 square feet of gross floor area	Less than 1/8 mile to Metro Station Entrance* (TOD District)		1/8 to 1/4 mile to Metro Station Entrance* (TOD District)		More than 1/4 to 1/2 mile to Metro Station Entrance* (TOD District)		Non-TOD Districts	
		Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
Single Family Attached	Space(s) per unit	1.75	2.2	1.75	2.2	2.0	2.5	2.0	2.7
Stacked Townhouse ²²⁹		1.5	1.9	1.5	1.9	1.7	2.1	1.7	2.3
Multifamily									
0-1 bedroom		1.0	1.3	1.0	1.3	1.1	1.4	1.1	1.4
2 bedrooms		1.0	1.6	1.0	1.6	1.35	1.7	1.35	1.7
3+ bedrooms		1.0	1.9	1.0	1.9	1.6	2.0	1.6	2.0
Hotel/Motel	Spaces per 1,000 square feet of gross floor area	none	1.0	none	1.0	none	1.05	0.85	1.08
Office		none	1.6	none	2.0	none	2.2	2.0	2.4

* As set forth in the comprehensive plan

- (2) For uses not specifically listed above, the minimum parking space requirement set forth in Subsection 6100.4 apply as follows:
 - (a) In the TOD Districts, no minimum number of parking spaces are required, and the rates established serve as the maximum number of parking spaces permitted. In a multiple story structure, the first 5,000 square feet of gross floor area located on the ground or

²²⁹ Added new stacked townhouse use.

street level for the following uses are not included in the calculation of required parking: retail, personal service, business service, convenience store, restaurant, carryout restaurant, or restaurant with drive-through.

- (b) In the Non-TOD Districts, the minimum number of parking spaces required are based on 75 percent of the specified rates established and the maximum number of parking spaces permitted are based on 110 percent of such specified parking rates.
- (3) The applicant must demonstrate to the Board’s satisfaction that the number of off-street parking spaces is not in excess of the TDM goals identified in the comprehensive plan and must satisfy such TDM goals in a manner acceptable to the Department of Transportation.
- (4) In a phased development proposal, the Board may approve the provision of parking for later phases of the development in an earlier phase when it is demonstrated that such additional parking in the early phase(s) is necessary due to construction requirements or in furtherance of the objectives of the comprehensive plan. Additionally, when an existing use is proposed to be retained as an interim use, the parking accessory to such interim uses must generally conform to the rates set forth above. In all cases set forth above, parking at the build-out phase of the development must conform to the total number of spaces approved for the entire development.
- E. It is intended that a substantial portion of the provided parking and loading spaces should be provided in above or below grade parking structures.
- F. In determining the number of loading spaces provided, the provisions of Subsection 6101.3, may be used as a guide.
- G. Subsequent to an approved parking plan, no additional parking is required for a change in use, provided the mix of uses is in substantial conformance with the approved final development plan.
- H. Parking approved by the Board pursuant to such parking plan may be provided on the lot that contains the use for which the parking is accessory or on a different lot from such use. When provided on a different lot that is not under the same ownership as the lot that contains the use for which the parking is accessory, the applicant must submit evidence that the right to use or develop such parking has been granted by such owner(s) to ensure the permanent availability of such spaces. Additionally, tandem, valet and shuttle parking may be permitted as part of an approved parking plan, pursuant to this section.

Article 7: Signs

7100. General Provisions²³⁰

1. Purpose²³¹

The purpose of this Article is to regulate all signs placed for viewing by the public to:²³²

- A.** Improve, promote, and protect the public health, safety, convenience, and general welfare;
- B.** Protect against danger in travel and transportation by reducing distractions and hazards to pedestrian and automobile traffic;
- C.** Ensure that the First Amendment right to free speech is protected;
- D.** Protect property values;
- E.** Facilitate travel by identifying locations;
- F.** Protect and enhance the aesthetic character of the various communities in the County; and
- G.** Further the stated purpose and intent of this Ordinance.

2. Applicability²³³

- A.** This Article applies to all signs located in Fairfax County and are in addition to any applicable provisions of Chapter 61 of the County Code (Buildings), and Title 33.2, Chapter 7, of the Virginia Code. These regulations do not apply to property owned by, or those signs required or sponsored by the United States or the Commonwealth of Virginia. Furthermore, subsection 7100.4, *Minor Signs*, does not apply to property owned by Fairfax County, the Fairfax County Park Authority, or Fairfax County Public Schools.
- B.** These regulations do not regulate or restrict signs by content. However, some signs, such as off-premise signs and warning signs, have a targeted function that makes their regulation impossible without referring to the function. In these limited instances, the governmental interest is compelling enough to warrant their description and regulation, and whenever a sign is described in a manner that refers to function, this Article is intended to be neutral with respect to the content of the speech appearing on it.
- C.** A non-commercial message may be substituted, in whole or in part, for any other message displayed on any sign that conforms to this Article without consideration of message content.²³⁴
- D.** All signs are deemed to be accessory uses as defined in Article 9: *Definitions*, and must be associated with a principal use and, unless otherwise stated, located on the same lot as its principal use.
- E.** Nothing in this Article excuses any person from compliance with all other applicable regulations, statutes or ordinances.

²³⁰ Carried forward from Part 1, 12-100.

²³¹ Carried forward from 12-101.

²³² Did not carry forward “promote traffic safety” because it is already covered by item B in this list.

²³³ Carried forward from 12-103.

²³⁴ Currently located at the end of the applicability section. Moved this paragraph to immediately follow the other content-based provision.

- F.** This Article does not apply to any sign placed in a public right-of-way and does not authorize or prohibit placement of any sign there.

3. Administrative Provisions²³⁵

A. Sign Permit Required

- (1)** Except where otherwise noted in this Article, no sign may be constructed, erected, altered, refaced, relocated, or expanded without a sign permit.
- (2)** The application for a sign permit must be filed with the Zoning Administrator on a County form, must include all pertinent information required by the Zoning Administrator to ensure compliance with this Ordinance, and must be accompanied by the filing fee set forth in [*reference to relocated Section 18-106*].
- (3)** All signs must comply with this Article, the structural requirements specified in the Virginia Uniform Statewide Building Code, Chapter 61 of the County Code, and all other applicable standards in this Ordinance.²³⁶
- (4)** A sign permit expires if the sign is not erected and all necessary final inspection(s) are not approved within 12 months from the date of issuance.

B. Sign Permit Not Required

- (1)** The following are not deemed to be a sign:
 - (a)** The changing of the message on an allowed sign that is specifically designed for the use of replaceable copy, to include changeable copy signs and electronic display signs in accordance with 7101.1.A below.
 - (b)** Painting, cleaning, and other routine maintenance and repair of a sign or sign structure.
 - (c)** Flags, up to a maximum of three per lot.
 - (d)** The display of address numbers as required by the County Code, and entrance numbers not exceeding a total of two square feet in area. When displayed on a residential building, any numbering must be mounted flush against the building.
 - (e)** Temporary, seasonal decorations.
- (2)** The following are deemed to be a sign but are not counted toward maximum allowed sign area:
 - (a)** Signs not exceeding a total of four square feet in area warning the public against hunting, fishing, swimming, trespassing, dangerous animals, the location of utilities, or other similar risks, or a warning of prohibited activity such as no parking or loading in a specified area.
 - (b)** Signs located on the outer surfaces of a temporary portable storage container.
 - (c)** Vehicle signs, when the vehicle is operable and is parked at its associated place of business within a designated parking space.

²³⁵ Carried forward from 12-104.

²³⁶ Added “all other applicable standards in this ordinance” to capture other development standards, including outdoor lighting which was separated from the performance standards in this draft.

- (d) Lettering or numbers permanently attached to or painted on the façade of a building of any school, college, or university; such displays are limited to no more than ten percent of the area of the façade on which they are placed and cannot be illuminated.
- (e) Signs, erected by a public agency or appropriate organization in partnership with the Board, located within or in proximity to the Commercial Revitalization District boundaries or activity centers as shown on the comprehensive plan. Such signs are subject to approval by the Board and all applicable outdoor advertising provisions of the Code of Virginia.

C. Sign Condition, Safety, and Abandonment

- (1) All signs and their components must be maintained in good repair and in safe condition.
- (2) The Building Official or designated agent may require or cause the immediate removal or repair, without written notice, of any sign determined to be unsafe or that otherwise poses an immediate threat to the safety of the public. If action by the County is necessary to render a sign safe, the cost of removal or repair will be at the expense of the property owner or lessee as provided in Chapter 61 of the County Code.
- (3) Except as provided in subsections 7100.4 and 7100.6 below, if a property becomes vacant and is unoccupied for a continuous period of two years, any sign on that property is deemed abandoned and must be removed. If the owner fails to remove the sign, the Zoning Administrator may give the owner 15 days written notice to remove it, after which the Zoning Administrator may initiate action to gain compliance.

4. Minor Signs²³⁷

The following minor signs are allowed but may not be illuminated, and, unless otherwise stated, do not require a sign permit:

- A. Signs posted by or under the direction of any public or court officer in the performance of official duties, or by trustees under deeds of trust, deeds of assignment, or other similar instruments. These signs must be removed no later than ten days after the last day of the period for which they are displayed.
- B. Signs that are displayed on a lot or property that is actively marketed for sale, rent, or lease, as follows:
 - (1) A single building-mounted or freestanding sign is allowed, except that two signs are permitted on a corner lot when each sign faces a different street frontage. Such sign(s) must be removed within seven days of the settlement, rental, or lease of the property.
 - (2) Sign(s) located on a property developed with, or planned for development of, a single family detached or attached dwelling unit. Such signs may not exceed six square feet in area or a height of six feet.
 - (3) Sign(s) located on a property developed with, or planned for development of, a multiple family dwelling unit. Such signs may not exceed 12 square feet in area or a height of eight feet.
 - (4) Sign(s) located on a property developed with, or planned for development of, any nonresidential use, or on a residential property containing a minimum of 20 acres. Such signs may not exceed 32 square feet in area or a height of eight feet.

²³⁷ Carried forward from 12-105.

- C.** Signs during active construction or alterations to residential, commercial, and industrial buildings are permitted, as follows:
- (1)** For a new nonresidential development, or for a new residential development containing a minimum of three dwelling units, one sign is allowed, not to exceed 60 square feet in area and a height of ten feet.²³⁸ For such new developments located on multiple road frontages, one additional sign per street frontage is allowed, limited to 32 square feet in area and a height of eight feet. No sign may be located closer than five feet to any lot line. All signs must be removed within 14 days following completion of the construction of the development, as determined by the Zoning Administrator, and no sign may be displayed for more than two years from the date of the issuance of the first building permit for the development. If construction has not been completed within this timeframe and building permits are active for the development, a sign permit is required to allow the continued display of any sign.
 - (2)** For an individual single family dwelling unit undergoing construction, improvement, or renovation, one sign, not to exceed four square feet in area or a height of four feet is allowed. No sign can be displayed before commencement of the improvement or renovation work, and the sign must be removed within seven days after the improvement or renovation is completed with all necessary inspections approved, or within six months, whichever is less.
- D.** Yard signs on any lot developed with a residential use cannot exceed 12 square feet in total area, with no single sign exceeding four square feet in area or a height of four feet.
- E.** For nonresidential uses, minor signs are permitted as follows:
- (1)** For nonresidential uses located on a lot with frontage on a major thoroughfare, building-mounted and freestanding minor signs are allowed, not to exceed 32 square feet in total sign area per lot. If freestanding, no more than two such signs are allowed per lot with a maximum height of four feet.
 - (2)** For all other nonresidential uses, building-mounted and freestanding minor signs are allowed, not to exceed 24 square feet in total area per lot. If freestanding, no more than two such signs are allowed per lot with a maximum height of four feet.
- F.** Window signs for any nonresidential use are allowed if such signs do not cover more than 30 percent of the total area of the window in which the signs are located.
- G.** For nonresidential uses, a single A-frame sign is allowed provided such sign does not exceed 16 square feet in area or a height of four feet. Such sign must be located within 25 feet of a building or designated site entrance that provides access to the use and may not impede pedestrian or vehicular traffic.

5. Prohibited Signs²³⁹

The following signs are prohibited in all zoning districts and areas of the County.

A. General Prohibitions

- (1)** Any sign not expressly permitted in this Article.
- (2)** Any sign that violates any provision of any county, state, or federal law or regulation.

²³⁸ This is a clarification to apply current policy.

²³⁹ Carried forward from 12-106.

- (3) Any sign that violates any provision of Chapter 61 of the County Code and the Virginia Uniform Statewide Building Code.

B. Prohibitions Based on Materials or Design

- (1) Any sign that does not meet the performance standards for outdoor lighting set forth in Section 5109.
- (2) A moving or windblown sign, not including changeable copy or electronic display sign, the hands of a clock, or a weather vane.
- (3) Any sign displaying flashing or intermittent lights, or lights of changing degrees of intensity of color, or that is not in accordance with subsection 7101.1.

C. Prohibitions Based on Location

- (1) Any off-premise commercial sign when displayed 12:01 PM Monday through 11:59 AM Friday. At all other times, an off-premise commercial sign is only allowed for display when it conforms to the provisions of [*reference to relocated Par. 4 of Section 12-105*] above.
- (2) Roof signs, except for signs located on a penthouse or screening wall, as provided for in 7101.3.B below.
- (3) Any sign that obstructs a window, door, fire escape, stairway, ladder, opening, or access intended for light, air, ingress to, or egress from, a building.
- (4) Any sign located on a corner lot that is in violation of 5100.2.D(4).
- (5) Any sign that is found to be in violation of the Virginia Uniform Statewide Building Code with respect to minimum clearance.
- (6) Any sign that, due to its location, size, shape, or color, may obstruct, impair, interfere with the view of, or be confused with, any traffic control sign, signal, or device erected by a public authority or where it may interfere with, mislead, or confuse traffic. Such signs are subject to immediate removal and disposal by an authorized County official as a nuisance.

6. Nonconforming Signs²⁴⁰

A. Nonconforming Sign Status Determination

- (1) Signs lawfully existing on the effective date of this Ordinance or prior ordinances, that do not conform to this Ordinance, and signs that are accessory to a nonconforming use, are deemed to be nonconforming signs and may remain except as qualified below.²⁴¹
- (2) The property owner bears the burden of establishing the nonconforming status of a sign and of the existing physical characteristics and location of a sign. Upon notice from the Zoning Administrator, a property owner must submit verification that a sign was lawfully existing at the time of erection. Failure to provide verification is cause to remove the sign or bring it into compliance with this Article.
- (3) The ownership of the sign or the property on which the sign is located does not affect the nonconforming status of the sign.

²⁴⁰ Carried forward from 12-107.

²⁴¹ Second half of this paragraph was moved to subsection B(1), modification of nonconforming signs.

B. Modification of Nonconforming Signs, Generally

- (1) Except as provided for in a Commercial Revitalization District, nonconforming signs cannot be enlarged, extended, or structurally reconstructed or modified in any manner; except that a sign face may be changed if the new face is equal to or reduced in height or sign area from the existing sign.²⁴²
- (2) Nothing in this subsection prevents keeping a nonconforming sign that is in good repair; however, no nonconforming sign may be repaired, rebuilt, or restored if the Building Official has declared it unsafe, as provided for in 7100.3 above unless the repair, rebuilding, or restoration results in a sign that conforms to this Article.

C. Relocation or Reconstruction of Nonconforming Sign

- (1) Nonconforming signs may not be moved on the same lot, or to any other lot, unless the change in location results in a sign that conforms to this Article.
- (2) When a nonconforming sign is removed, any sign erected later must conform to this Article, except as provided for in a Commercial Revitalization District.
- (3) A nonconforming sign that is destroyed or damaged by any casualty to an extent of 50 percent or less of its appraised value, may be restored within two years after the destruction or damage, but may not be enlarged in any manner. If a sign is destroyed or damaged to an extent more than 50 percent of its appraised value, it cannot be reconstructed unless it results in a sign that conforms to this Article.
- (4) A nonconforming sign must be removed if the structure to which it is accessory to is demolished or destroyed by more than 50 percent of its appraised value. A nonconforming sign subject to removal under this provision must be removed within 30 days following written notice by the Zoning Administrator to the owner of the property. If the owner fails to comply with this notice the Zoning Administrator may initiate action to gain compliance with this Article.

D. Replacing Nonconforming Sign with Conforming Sign

A nonconforming sign that is changed to or replaced by a conforming sign will no longer be deemed nonconforming, and any new sign must conform to this Article.

E. Abandoned Sign

(1) Determination of Abandonment and Removal

If a nonconforming sign is located on property that becomes vacant and is unoccupied for a period of at least two years, the sign is deemed abandoned and the owner of the property must remove it.

(2) County-Initiated Removal

If the owner fails to remove an abandoned sign, the Zoning Administrator may give the owner 30 days' written notice to remove it, except as otherwise provided in 7100.3 above. If the owner fails to comply with the notice, the Zoning Administrator may enter onto the property and remove the sign. Such removal may be accomplished with the assistance of

²⁴² Relocated from second half of 12-107.1.

any agent designated by the Zoning Administrator or hired by the County for such purpose, and, the Zoning Administrator may charge the cost of removal to the property owner.

(3) Other Remedies

The Zoning Administrator may initiate legal action in court for an injunction or other appropriate remedy requiring the owner to remove an abandoned nonconforming sign.

7. Sign Measurement²⁴³

A. Calculation of Sign Area²⁴⁴

(1) When Based on Building Frontage

- (a) Building frontage is the linear width of the wall taken at a height no greater than ten feet above grade.
- (b) On buildings with a single tenant or with multiple tenants that access the building through a common outside entrance, building frontage is the face or wall that is architecturally designed as the front of the building and that contains the main public entrance, as determined by the Zoning Administrator.
- (c) On buildings with more than a single tenant where each tenant has its own outside entrance, building frontage for each tenant is the wall that contains that tenant's main public entrance, as determined by the Zoning Administrator.

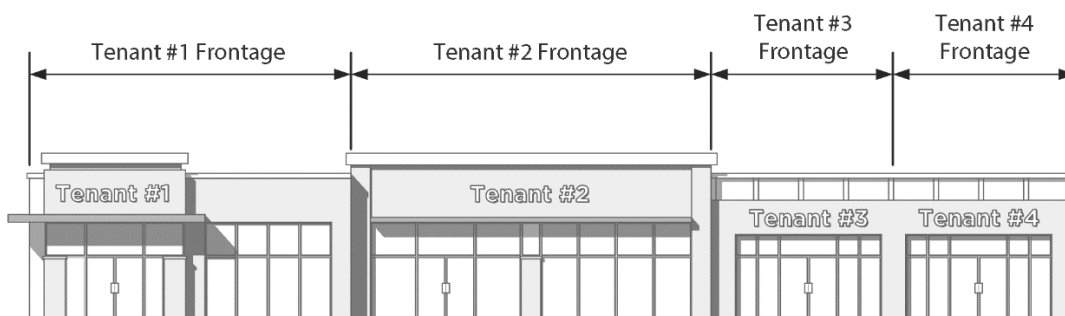


Figure 7100.1: Multi-Tenant Sign Frontages

(2) Building-Mounted Sign Area

- (a) Building-mounted sign area is that area within a single continuous rectilinear perimeter of not more than eight straight lines intersecting at right angles, that encloses the outer limits of all words, representations, symbols, and pictorial elements, together with all material, color, and lighting forming an integral part of the display or used to

²⁴³ New subsection heading.

²⁴⁴ Carried forward from 12-201.

differentiate the sign from the background against which it is placed.



Figure 7100.2: Measuring Building-Mounted Sign Area

- (b) The area of building-mounted signs composed of individual letters or symbols is calculated by using one of the following methods:
1. If the space between the proposed individual letters or symbols is less in dimension than the width of the largest letter or symbol, sign area is calculated in accordance with (2)(a) above.
 2. If the space between the proposed individual letters or symbols is greater than the width of the largest letter or symbol, sign area is calculated as the total combined area of rectangular enclosures surrounding each individual letter or symbol.

(3) Freestanding Sign Area

(a) Generally

The supports, uprights, or structure on which any freestanding sign is supported are not included in calculating sign area unless they form an integral background of the display, as determined by the Zoning Administrator; however, when a sign is placed on a fence, wall, or other similar structure that is designed to serve a separate purpose other than to support the sign, the area of such structure is not included in the sign area. In such cases, the sign area is calculated in accordance with (2)(a) above.

(b) Multi-Faced Signs

The area of a freestanding sign designed with more than one sign face is calculated as follows:

1. If the sign faces are separated by an interior angle of 45 degrees or more, all sign faces are calculated in the sign area.
2. If the sign faces are separated by an interior angle that is less than 45 degrees, sign area is calculated based on the area of the largest single face.

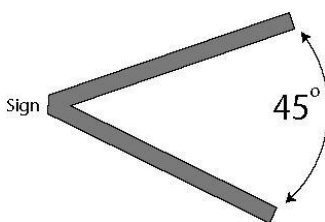


Figure 7100.3: Measuring Multi-faced Sign Angle

3. If the sign faces are parallel to one another, the following applies:
 - a. The area of the largest single face is used when the interior distance between the faces is 18 inches or less.
 - b. The area of the largest single face and the area of the side or interval between faces is used when the interior distance between the faces is greater than 18 inches.

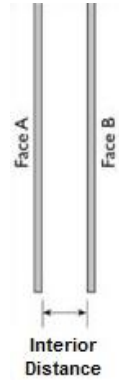


Figure 7100.4: Measuring Parallel Sign Face Area

B. Calculation of Sign Height for Freestanding Signs

The height of a freestanding sign is calculated as the maximum vertical distance from the uppermost extremity of a sign and its support, to the lowest point of the adjacent grade.

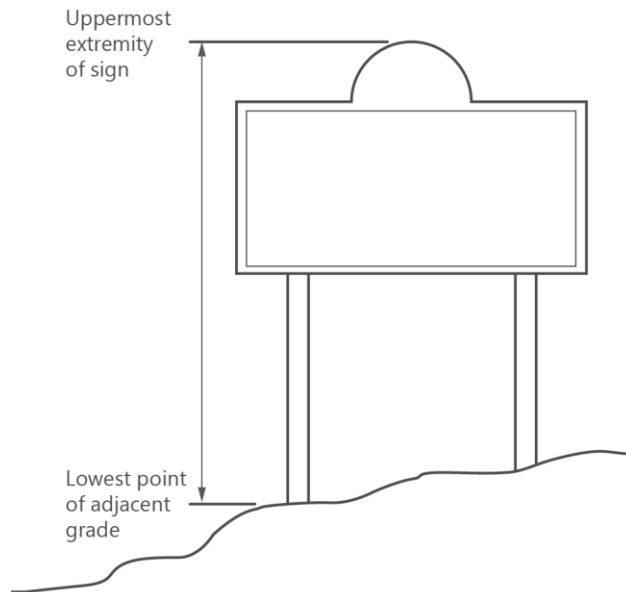


Figure 7100.5: Measuring Height of Freestanding Signs

7101. Sign Regulations by Use and District²⁴⁵

1. Standards Applicable to Signs in All Districts²⁴⁶

A. Changeable Copy and Electronic Display Signs

Changeable copy and electronic display signs are allowed as part of any freestanding sign, in accordance with the following:

- (1) Only one changeable copy or electronic display sign is allowed per lot. The area of the changeable copy or electronic display may not exceed more than 50 percent of the maximum allowable area of that freestanding sign.
- (2) The message or copy of an electronic display sign may not move or change more frequently than once every eight seconds. The change of message or copy must be instantaneous without rolling, fading, or otherwise giving the illusion of movement, nor flash or vary in brightness.
- (3) The background of the sign face of an electronic display sign may not be white, off-white, gray or yellow in color.²⁴⁷
- (4) Electronic display signs must include a photocell to control brightness and automatically dim at sunset to a nighttime level of 40-100 nits.

B. Sign Illumination

Illumination of signs must conform to the performance standards for outdoor lighting as set forth in section 5109.

C. Associated Service Uses²⁴⁸

Each associated service use permitted pursuant to 4102.7²⁴⁹ of this Ordinance is allowed a single building-mounted sign not to exceed 15 square feet in area, which is calculated as part of the total allowable building-mounted sign area for the building.

2. Signs in Residential Districts²⁵⁰

A. Types of Signs and Size Allowed in Residential Districts

The following signs are allowed with approval of a sign permit in a residential district.²⁵¹

- (1) In a single family residential subdivision or a multifamily development, a freestanding sign is allowed at each major entrance, not to exceed 30 square feet in area or eight feet in height. More than one sign may be placed at each major entrance but the total of all signs at a single entrance cannot exceed 30 square feet in area.

²⁴⁵ Carried forward from Part 2, 12-200.

²⁴⁶ These standards were relocated from performance standards in the residential districts (12-203) and the commercial and industrial districts (12-205) since the standards are the same for both.

²⁴⁷ Added "gray" to assist with enforcement of the various shades of white and off-white.

²⁴⁸ Relocated from 12-206. Fueling station standards were relocated to the commercial and industrial section.

²⁴⁹ Needs hyperlink reference once zMOD drafts are consolidated.

²⁵⁰ Carried forward from 12-202.

²⁵¹ Did not carry forward " , as accessory to residential or nonresidential land uses."

- (2) A rental office for a multifamily development is allowed one building-mounted or freestanding sign not to exceed four square feet in area or a height of four feet.
- (3) Agricultural uses on a lot at least 20 acres in size are allowed a total of 60 square feet of sign area. No single sign can exceed 30 square feet in area or a height of eight feet.
- (4) Hospitals, as follows:
 - (a) A single building-mounted sign for each building entrance, not to exceed 50 square feet in area.
 - (b) A single freestanding sign at each entrance, not to exceed 80 square feet in area or 12 feet in height.
- (5) All other nonresidential uses, including public uses as defined in Article 9: *Definitions*, are allowed building-mounted and freestanding signs in accordance with the following:
 - (a) Building-mounted signs may not exceed 50 square feet in total area.
 - (b) A single freestanding sign may not exceed 40 square feet in area or eight feet in height.
- (6) The Board, in approving a rezoning or special exception, or the BZA, in approving a special permit, may further limit any sign for any land use in furtherance of [*reference to relocated Sections 8-007 and 9-007*] of the Ordinance.

B. Performance Standards for Signs in Residential Districts²⁵²

(1) Building-Mounted Signs

Building-mounted signs must be installed flush against the wall and may not extend above or beyond the perimeter of the wall or roof of the building to which they are attached.

(2) Freestanding Signs

Freestanding signs may not be located closer than five feet to any property line.

3. Signs in Commercial and Industrial Districts²⁵³

A. Types of Signs and Size Allowed in Commercial and Industrial Districts

The following signs are allowed with approval of a sign permit within a commercial district, including the commercial area of a P district or nonresidential²⁵⁴ uses located in a mixed-use building or development; or within an industrial district:

(1) Building-Mounted Signs

- (a) For buildings with a single tenant or with multiple tenants that access the building by one or more common outside entrances, signs are limited to one and one-half square feet of sign area per linear foot of building frontage for each of the first 100 linear feet of building frontage, plus one square foot of sign area for each additional linear foot of building frontage. No single sign may exceed 200 square feet in area.
- (b) For buildings with more than a single tenant where each tenant has its own outside entrance, signs are limited to one and one-half square feet of sign area for each linear foot of building frontage occupied by each tenant, except as provided for in 7102.1 below. The maximum sign area for any single tenant may not exceed 200 square feet.

²⁵² Carried forward from 12-203.

²⁵³ Carried forward from 12-204.

²⁵⁴ Current ordinance says “commercial.”

- (c) A single tenant with building frontage that results in an allowable sign area greater than 200 square feet and that occupies an area with more than one perimeter wall containing a main public entrance, may place up to a maximum of 200 square feet of total sign area on each such perimeter wall, provided the combined sign area on any such wall does not exceed one and one-half times the length of the wall.
- (d) In addition to sign area allowed in accordance with (a),(b), and (c) above, hospitals are allowed a single building-mounted sign for each building entrance. No such sign may exceed 50 square feet in area.

(2) Freestanding Signs

Freestanding signs are allowed as follows, unless limited by subsection (3) below:

- (a) In a commercial district, a use may have one freestanding sign up to 80 square feet in area and 20 feet in height provided the use is located on a lot that has frontage on a primary highway or on a major thoroughfare and is not located on the same lot as a shopping center.
- (b) In an industrial district, a single freestanding sign not to exceed 80 square feet in area and 20 feet in height may be erected for each building that has frontage on a major thoroughfare. If one tenant occupies a group of separate buildings with frontage on a major thoroughfare, then that tenant is allowed only one freestanding sign.
- (c) A hospital is allowed one freestanding sign at each entrance, provided no such sign exceeds 80 square feet in area or 12 feet in height.
- (d) Shopping centers are allowed one freestanding sign, not to exceed 80 square feet in area or 20 feet in height. If a shopping center has frontage on two or more major thoroughfares, then such shopping center may have up to two freestanding signs total.
- (e) For office and industrial parks:
 1. One freestanding sign is allowed at each major entrance to the office or industrial park, not to exceed 40 square feet in area or a height of 20 feet.
 2. One freestanding sign is allowed for each detached building that houses a principal use within an office or industrial park, not to exceed 30 square feet or a height of eight feet.

(3) Within a Sign Control Overlay District

The following regulations apply to uses located on commercially and industrially zoned land located within a Sign Control Overlay District; where applicable, these regulations supersede subsection (2) above:

- (a) A single tenant or building on a lot may have one freestanding sign if the lot has frontage on a primary highway or major thoroughfare and the single tenant or building is not located on the same lot as a shopping center. Such sign may not exceed 40 square feet in area or a height of 20 feet.
- (b) A shopping center is allowed one freestanding sign not to exceed 40 square feet in area or a height of 20 feet.

(4) Signs Related to Vehicle Fueling Stations²⁵⁵

The following are permitted in addition to the signs allowed in this subsection A:

- (a) Vehicle fueling stations²⁵⁶ are permitted one additional square foot of sign area to be displayed on fuel pump.
- (b) Motor vehicle fuel price signs required by Article 4 of Chapter 10 of The Virginia Code.

B. Performance Standards for Signs in Commercial and Industrial Districts²⁵⁷**(1) Building-Mounted Signs**

- (a) Building-mounted signs may be located anywhere on the surface of a wall but no part of the sign may extend above or beyond the perimeter of a wall, except when the sign is erected at a right angle to the wall, does not extend into the minimum required yard, and is not located closer than two feet to any street line.
- (b) A building-mounted sign may be located on the wall of a penthouse or rooftop screening wall, as follows:
 1. The sign must be mounted flat against the wall, and no part of the sign can extend above or beyond the perimeter of the wall.
 2. The sign cannot be located more than 12 feet above the building roof supporting the penthouse or screening wall.

(2) Freestanding Signs

Freestanding signs may not project beyond any property line or be located within five feet of the curb of a service drive, travel lane, or adjoining street. When located on a corner lot, a freestanding sign is subject to 5100.2.D(4) of this Ordinance.

7102. Administration of Sign Approvals²⁵⁸

These sign approval standards are in addition to the General Provisions in Section 7100.

1. Administrative Comprehensive Sign Plan²⁵⁹

As an alternative to calculating building frontage in accordance with 7100.7.A(1)(b), the Zoning Administrator may authorize a different allotment of sign area to the various tenants of a building or buildings by approval of an administrative comprehensive sign plan, as follows:

- A.** A request for an administrative comprehensive sign plan must include written authorization from the owner of the building(s), or an authorized agent, accompanying graphics showing the proposed size, height, and location of all signs, and the required filing fee as established in [reference to relocated Section 18-106].

²⁵⁵ Relocated from 12-206, *Other Permitted Signs*.

²⁵⁶ Renamed from service stations/service stations with mini-mart to match proposed use regulations updated with earlier zMOD drafts.

²⁵⁷ Carried forward from 12-205.

²⁵⁸ Carried forward from Part 3, 12-300. Renamed from “special approvals.”

²⁵⁹ Carried forward from 12-301.

- B.** Unless allowed under C below, the total area for all signs may not exceed the maximum allowable sign area for the building as determined in accordance with 7100.7.A(1)(b). The maximum sign area for any single tenant may not exceed 200 square feet.
- C.** A single tenant with building frontage that results in an allowable sign area greater than 200 square feet where such tenant occupies an area with more than one perimeter wall containing a main public entrance, may place up to a maximum of 200 square feet of total sign area on each such perimeter wall, provided the combined sign area on any such wall does not exceed one and one-half times the length of the wall.

2. Special Exceptions²⁶⁰

- A.** In conjunction with the approval of a special exception for a hospital, the Board may approve additional signs for the use in accordance with [*reference to relocated Sect. 9-308*].
- B.** In commercial and industrial districts, the Board may approve, either in conjunction with the approval of a rezoning or as a Category 6 special exception, a modification or waiver of the sign regulations in accordance with [*reference to relocated Sect. 9-620*].

3. Special Permits²⁶¹

- A.** The BZA may grant a special permit to increase the height of a freestanding sign in a neighborhood or community shopping center when it determines that the application of this Article would cause a hardship due to issues of topography. However, such freestanding sign may not extend to a height greater than 26 feet above the elevation of the center line of the nearest street.
- B.** The BZA may grant a special permit to allow additional sign area or height, or a different arrangement of sign area distribution for a regional shopping center, when it determines that the application of this Article would cause a hardship due to issues of topography or location of the regional shopping center. However, the total combined sign area for the regional shopping center may not exceed 125 percent of the sign area otherwise allowed by this Article.
- C.** In cases where an individual or grouping of enterprises within a shopping center are located so that the building frontage is not visible from a street, the BZA may grant a special permit to allow building-mounted sign(s) for such enterprises to be erected at the entrances, arcades, or interior malls. However, the total combined sign area for the shopping center may not exceed 125 percent of the sign area otherwise allowed by this Article.

4. Uses in Planned Districts²⁶²

The provisions of this Article apply to signs within Planned (P) districts. However, in keeping with the intent to allow flexibility in the design of planned developments, the following apply to signs in P districts:

- A.** Signs may be permitted in a P district in accordance with a comprehensive sign plan subject to approval by the Planning Commission following a public hearing conducted in accordance with [*reference to relocated Sect. 18-109*]. The comprehensive sign plan will show the location, size, height, and extent of all proposed signs within the specified area of the P district.

²⁶⁰ Carried forward from 12-303.

²⁶¹ Carried forward from 12-302.

²⁶² Carried forward from 12-304.

- B.** An application for a comprehensive sign plan may be submitted by any property owner, owner of an easement, lessee, contract purchaser, or their agent. The application must be accompanied by a statement establishing the names of the record owners of the properties upon which such signs are proposed to be located, and a fee as established in [*reference to relocated Sect. 18-106*].
- C.** Any comprehensive sign plan must be in accordance with the standards for all planned developments as established in [*reference to new Section 2105*]. All proposed signs must be consistent with the scale and design²⁶³ of the development and so located and sized to ensure convenience to users of the development, while not adding to street clutter or otherwise detracting from architectural and urban design elements of the development.

Article 8: Administration and Procedures

[PART OF FUTURE zMOD INSTALLMENT]

²⁶³ Revised slightly to replace “harmonious” with “consistent” and “design.”

Article 9: Definitions²⁶⁴

9101. Uses

[insert with consolidated draft]

9102. Floodplain Definitions

The following definitions are only to be used in the interpretation and administration of the floodplain regulations in subsection 5105.

Base Flood

A flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation

The Federal Emergency Management Agency designated water surface elevation of a flood having a one percent chance of being equaled or exceeded in any given year shown on the Flood Insurance Rate Map (FIRM).

Basement

Any area of the building having its floor below grade (below ground level) on all sides.

Development

Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Flood or Flooding

1. A general or temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters; or
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudflows which are proximately caused by flooding as defined in 1.b. above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in 1.a. above.

²⁶⁴ From Article 20. This includes the definitions applicable to this draft. All definitions will be included in the complete draft.

Flood Insurance Rate Map (FIRM)

An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been produced and made available digitally is also commonly called a Digital Flood Insurance Rate Map (DFIRM). The official FIRM for Fairfax County is the FIRM/DFIRM prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 17, 2010, as amended.

Flood Insurance Study (FIS)

An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow or flood-related erosion hazards. The official FIS for Fairfax County is the FIS prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 17, 2010, as amended.

Flood Proofing

Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodplain

See “floodplain” in Section 9105.

Historic Structure

Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the Virginia Landmarks Register; or
4. Listed on the Fairfax County Inventory of Historic Sites.

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for building access in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR §60.3.

Manufactured Home

A structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes a manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. A manufactured home does not include a recreational vehicle.

New Construction

For the purposes of determining insurance rates, new construction includes structures for which the start of construction commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction includes structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Recreational Vehicle

A vehicle that:

1. Is built on a single chassis;
2. Contains 400 square feet or less when measured at the largest horizontal projection;
3. Is designed to be self-propelled or permanently towable by a light duty truck; and
4. Is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

Special Flood Hazard Area

The land in the floodplain subject to a one percent or greater chance of being flooded in any given year as designated on the official Flood Insurance Rate Map for Fairfax County.

Start of Construction

For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. – 97-348), start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether that alteration affects the external dimensions of the building.

Structure

For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home or other structure as defined in this Article. structure for insurance coverage purposes, means:

1. A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
2. A manufactured home; or
3. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For insurance coverage purposes, structure includes a recreational vehicle, a park trailer or other similar vehicle, except as described in paragraph 3 of this definition, or a gas or liquid storage tank.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. substantial improvement includes structures that have incurred substantial damage regardless of the actual repair work performed. substantial improvement does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

Violation

See [reference to relocated Par. 1 of Sect. 18-901]. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3(b)(5), (c)(4), or (c)(10) is presumed to be in violation until such time as that documentation is provided.

9103. Sign Definitions²⁶⁵

A-Frame Sign

A minor freestanding sign constructed to form a two-faced sign with supports that are connected at the top and separated at the base, forming an "A" shape.



Figure 9103.1: A-Frame Sign

Building-Mounted Sign

Any sign attached to and supported by a building, awning, canopy, marquee, or similar architectural feature, or permanently attached, etched, or painted onto a window or door. For purposes of the sign regulations, temporary window signs are not considered building-mounted signs.

²⁶⁵ Carried forward from 12-102.



Figure 9103.2: Building-Mounted Sign

Changeable Copy Sign

A sign designed to accommodate manual changes in messages.

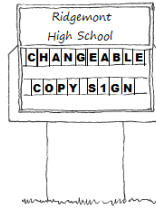


Figure 9103.3: Changeable Copy Sign

Electronic Display Sign

Any sign that contains light emitting diodes (LEDs), fiber optics, light bulbs, plasma display screens, or other illumination methods, that are electronically controlled and that contain a fixed or changeable copy or a change to the intensity of light or colors displayed.

Flag

A single piece of cloth or similar material shaped like a pennant, rectangle, or square, attachable by one straight edge to a pole or attached at the top of a pole and draped. For purposes of this Ordinance, a minor sign is not a flag.

Freestanding Sign

Any sign other than a building-mounted sign, that is permanently supported by a fence, retaining wall, entrance feature, or by upright structural members or braces on or in the ground, such as a pole, pylon, or monument style structure.



Figure 9103.4: Freestanding Sign

Frontage

A use is deemed to have frontage on a street if the use is clearly visible from the street and is located on a lot that is contiguous to and has a lot width of 50 feet at the public street right-of-way. The use is deemed to have frontage even if there is no direct access between the use and the street, or the principal entrance(s) to the building(s) associated with the use does not face the street.

Minor Sign

Any sign that is designed to be easily moved, typically not permanently attached to a structure or the ground and is not illuminated. Such signs include, but are not limited to, A-frame signs, banners, posters, window signs, yard signs, or other moveable signs. For purposes of the sign regulations, flags and vehicle signs are not considered minor signs.

Monument Sign

A freestanding sign, typically no more than eight feet in height, that is supported primarily by an internal structural framework or that is integrated into landscaping or solid structural features other than support poles.

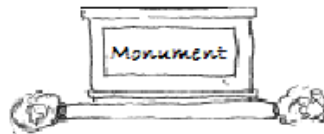


Figure 9103.5: Monument Sign

Moving or Windblown Sign

Any sign of which all or any part is in motion by natural or artificial means (including fluttering, rotating, undulating, swinging, oscillating) or by movement of the atmosphere. For purposes of the sign regulations, a flag is not a moving or windblown sign.

Off-Premise Sign

A sign that directs attention to a product, service, attraction, event, or the like that is being offered at a location that is not the premises on which the sign is located.

Roof Sign

Any sign or portion of a sign affixed to a building that extends above the lowest point of the roof level of the building, including signs painted onto a roof structure, or that is located on a chimney or other similar rooftop. For purposes of the sign regulations, a roof sign does not include a sign attached to the penthouse of a building.

Sign

Any device or structure, or part of such device or structure that is designed and used to attract attention to an institution, organization, business, product, service, event, or location by any means involving words, letters, figures, designs, symbols, fixtures, logos, colors, illumination, or projected images, that is visible from any public or private street. For nonresidential developments, this definition is not intended to include private streets or other privately maintained access ways that do not directly connect to a public street.

Sign Face

The part of a sign that is or can be used for visual representation or communication, including any background or surrounding material, panel, trim or ornamentation, color, and illumination that differentiates the sign from the building, structure, backdrop surface, or object upon or against which the sign is placed. The term does not include any portion of the support structure for the sign if no representation or message is placed or displayed on, or designed as part of, the support structure.

Tenant

An individual, entity, partnership, or corporation renting, leasing, or owning nonresidential space.

Vehicle Sign

Any sign that is painted, mounted, adhered, magnetically attached, or otherwise permanently affixed to or incorporated into a vehicle or trailer, except for any signs not exceeding a total of eight square feet for the entire vehicle or trailer and bumper stickers.



Figure 9103.6: Vehicle Sign

Window Sign

A minor sign that is attached to the glass area of a window or placed behind the glass of a window and is easily read from outside the building.

Yard Sign

A minor sign associated with a residential use, that is attached to a structure or placed upon or supported by the ground independently of any other structure.

9104. All Other Terms Defined**Abut or Abutting²⁶⁶**

Bordering or touching, such as sharing a common lot line.

Affordable Dwelling Unit²⁶⁷

An affordable dwelling unit is a rental or for-sale dwelling unit for which the rental or sales price is controlled pursuant to the provisions of this Ordinance.

Alley

A narrow strip of land intended for vehicular traffic which has a minimum width of 20 feet and is designed to give access to the side or rear of properties whose principal frontage is on another street.

Architect

A professional who is registered with the State Department of Professional and Occupational Registration as an architect.

Basement

A portion of a building partly underground but having less than one-half ($\frac{1}{2}$) its clear height below the grade plane. For purposes of administering the floodplain regulations contained in Section 5105, a basement is defined in Section 9102.

Building

Any structure used or intended for supporting or sheltering any use or occupancy.

Building, Principal

A building where the primary use of the lot is conducted.

²⁶⁶ New definition.

²⁶⁷ Relocated from current Sect. 2-801.

Cellar

The portion of a building partly underground, having one-half (½) or more than one-half (½) of its clear height below the grade plane. For purposes of administering the floodplain regulations contained in Section 5105, a basement will include a cellar.

Center Line

A line lying midway between the side lines of a street or alley right-of-way.

Comprehensive plan

The official document adopted by the Board intended to guide the physical development of the County or portions of it. This plan, including maps, plats, charts, policy statements, or descriptive material, must be adopted in accordance with Section 15.2-2226 of The Code of Virginia.

Condominium

Ownership of any real property that includes fee simple title to a residence or place of business and undivided ownership, in common with other purchasers, of the common elements in the structure(s), including the land and its appurtenances.

Curb line

The face of a curb along private streets, travelways, service drives, and parking bays and lots.

Deck²⁶⁸

Any balcony, terrace, porch, portico, or similar projection from an outer wall of a building, other than a carport. A deck includes any associated stairs. An at-grade patio or paved area is not considered a deck. An open deck is any deck that is unroofed, and a roofed deck is any deck that is either completely or partially roofed, even by open beams or lattice work.

Density

The number of dwelling units per acre, except in the PRC District where it means the number of persons per acre.

Development Plan

A required submission for a PRC District, prepared and approved in accordance with the provisions of [reference to relocated Sect. 16-202], which generally characterizes the planned development of the subject lot.

Development Plan, Final

A required submission following the approval of a conceptual development plan and rezoning application for a P District other than a PRC District, prepared and approved in accordance with the provisions of [reference to relocated Sect. 16-402], which further details the planned development of the subject lot. For the purpose of this Ordinance, a final development plan is not to be construed as a site plan as required by the provisions of [reference to relocated Article 17].

²⁶⁸ Carried forward from the definition for deck, with revisions. Patio has been deleted and added as a separate definition. The provision relating to the railing has been relocated to the standards for deck extensions. The standards prohibiting enclosures have not been carried forward and revised standards have also been added to the standards for deck extensions.

Development Plan, Generalized

A required submission at the time of filing for an amendment to the Zoning Map for all districts other than a P District, prepared and approved in accordance with the provisions of [reference to relocated Sect. 18-203], which generally characterizes the proposed development of the subject lot.

Driveway

That space or area of a lot that is specifically designated and reserved for the movement of motor vehicles within the lot or from the lot to a public street.

Easement

A grant by a property owner of the use of their land by another party for a specific purpose.

Engineer

A professional who is registered with the State Department of Professional and Occupational Registration as a professional engineer.

Fence

A freestanding structure of metal, masonry, composition, wood, or any combination of the same resting on or partially buried in the ground, rising above ground level, and used for confinement, screening, or partition purposes.

Floodplain

Those land areas in and adjacent to streams and watercourses subject to continuous or periodic inundation from flood events with a one percent chance of occurrence in any given year (i.e., the 100-year flood frequency event also known as the base flood) and having a drainage area greater than 70 acres. For the purpose of administering subsection 5104.3, Floodplain Regulations, minor floodplains are those floodplains which have a drainage area greater than 70 acres but less than 360 acres and major floodplains are those floodplains which have a drainage area equal to or greater than 360 acres.

Floodplains include all areas of the County that are designated as a floodplain by the Federal Emergency Management Agency (FEMA), by the United States Geological Survey, or by Fairfax County. The basis for the floodplains designated by FEMA are the Flood Insurance Study (FIS) and the Flood Insurance Rate Map (FIRM) for Fairfax County prepared by the FEMA, Federal Insurance Administration, dated September 17, 2010, as amended. Floodplains designated by FEMA on the FIRM are referred to as special flood hazard areas.

Floor Area Ratio

Determined by dividing the gross floor area of all buildings on a lot by the area of that lot.

Floor Area, Gross

The sum of the total horizontal areas of the several floors of all buildings on a lot, measured from the interior faces of exterior walls. Gross floor area includes basements; elevator shafts and stairwells at each story; floor space used for mechanical equipment with structural headroom of six feet, six inches or more; penthouses, except as qualified below; attic space, whether or not a floor has actually been laid, providing structural headroom of six feet, six inches or more; interior balconies; and mezzanines.

Gross floor area does not include cellars; outside balconies that do not exceed a projection of six feet beyond the exterior walls of the building; parking structures below or above grade; rooftop mechanical equipment; penthouses enclosing only mechanical equipment; or enclosed or structural walkways designed and used exclusively for pedestrian access between buildings or parking structures; and floor space created incidental to the replacement of an existing building façade.

Floor Area, Net

The sum of the total horizontal areas of the several floors of all buildings on a lot, measured from the interior faces of exterior walls and from the center line of walls separating two or more buildings. The term 'net floor area' will include outdoor display areas for the sale, rental and display of recreational vehicles, boats and boating equipment, trailers, horticultural items, farm or garden equipment and other similar products, but exclude areas designed for permanent uses such as toilets, utility closets, malls (whether or not they are enclosed), truck tunnels, enclosed parking areas, meters, rooftop mechanical structures, mechanical and equipment rooms, public and fire corridors, stairwells, elevators, escalators, and areas under a sloping ceiling where the headroom in 50 percent of that area is less than six feet, six inches. For purposes of determining off-street parking requirements, the term 'net floor area' will include cellars used exclusively for storage.

Footcandle

A measure of light falling on a surface. One footcandle is equal to the amount of light generated by one candle shining on one square foot surface located one foot away. Footcandle measurements must be made with a photometric light meter.

Glare

The sensation produced by a bright light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, which causes annoyance, discomfort, or loss in visual performance.

Grade

A reference plane representing the average ground level. For the purposes of this Ordinance, grade for the following structures is determined as follows:

1. Single family detached dwellings - Average ground level adjoining a building at all exterior walls. Building height measurements for single family detached dwellings and additions to such dwellings must use the lower average ground level of either the pre-existing or finished grade elevation that exists or is proposed at the time of Building Permit issuance for the dwelling.
2. All other principal structures - Average finished ground level adjoining a building at all exterior walls.
3. Accessory structures - The lowest point of finished ground level adjacent to the structure.

For purposes of administering the floodplain regulations, grade is determined based on the basement definition contained Section 9102.

Ground Truthing

The excavation of a small hole to determine the nature of the material detected through remote sensing and to determine whether it is a cultural resource.

Height, Building

The vertical distance to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs measured from the curb level if the building is not more than ten feet distant from the front lot line, or from the grade in all other cases.²⁶⁹

²⁶⁹ Image carried forward but will be updated prior to adoption.

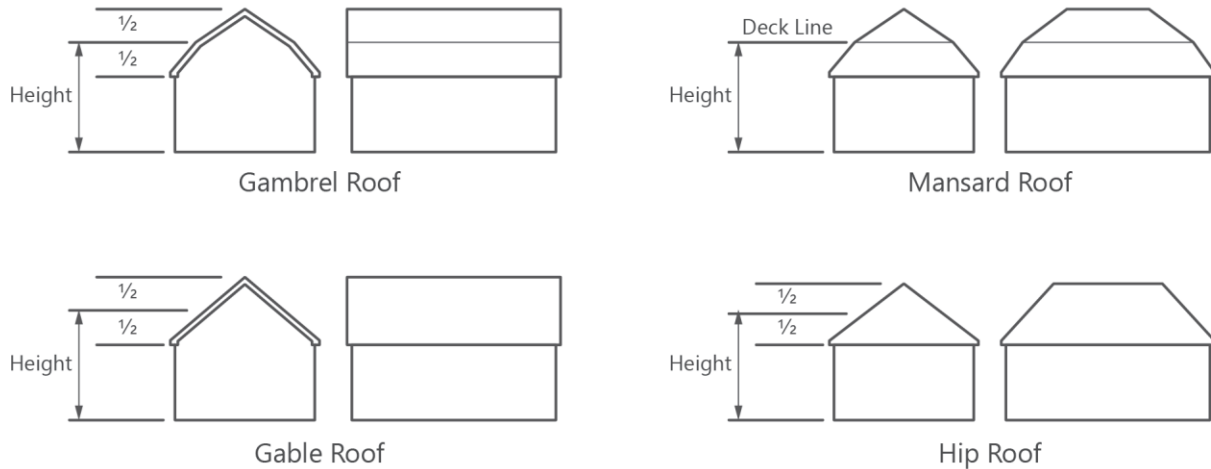


Figure 9104.1: Height Measurement by Roof Type

Industrial Park

A planned coordinated development of a tract of land with two or more separate industrial buildings that contain a combined total of at least 50,000 square feet of gross floor area and are occupied by not less than five different tenants. Such development is planned, designed, constructed, and managed on an integrated and coordinated basis with special attention given to on-site vehicular circulation, parking, utility needs, building design, and orientation and open space.

Landscape Architect

A professional who is registered with the State Department of Professional and Occupational Registration as a certified landscape architect.

Landscaping²⁷⁰

The improvement of a lot with grass, shrubs, trees, other vegetation, and ornamental objects. Landscaping may include pedestrian walks, flowerbeds, ornamental objects such as fountains, statues, trellises, and other similar natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

Light Pole

A freestanding vertical support used for the purpose of elevating a light source.

Lighting Fixture

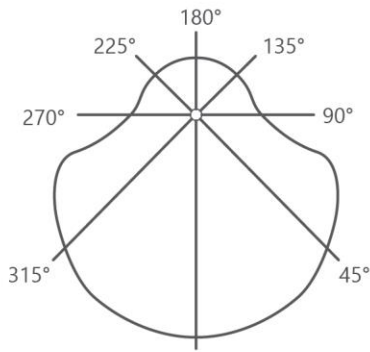
A complete lighting unit consisting of the lamp, lens, optical reflector, housing, and any electrical components necessary for ignition and control of the lamp, which may include a ballast, starter, and photo control.

Lighting Fixture, Directionally Shielded

A lighting fixture that contain visors, louvers, and other types of shields or lenses that are designed to direct light onto a targeted area and to minimize stray light.

²⁷⁰ "Trellises" have been added to the definition. Specific limitations will be added to Article 4 – Accessory Structures.

Examples of directionally shielded light fixtures



Plan view example of non-uniform light distribution pattern. This effect can be achieved by using optical lenses within a fixture (full cut off type, or other) or by fixture shielding devices.



Figure 9104.2: Directionally Shielded Light Fixtures

Lighting Fixture, Full Cut-Off

A lighting fixture from which no light output is emitted at or above a horizontal plane drawn through the bottom of the lighting fixture.²⁷¹

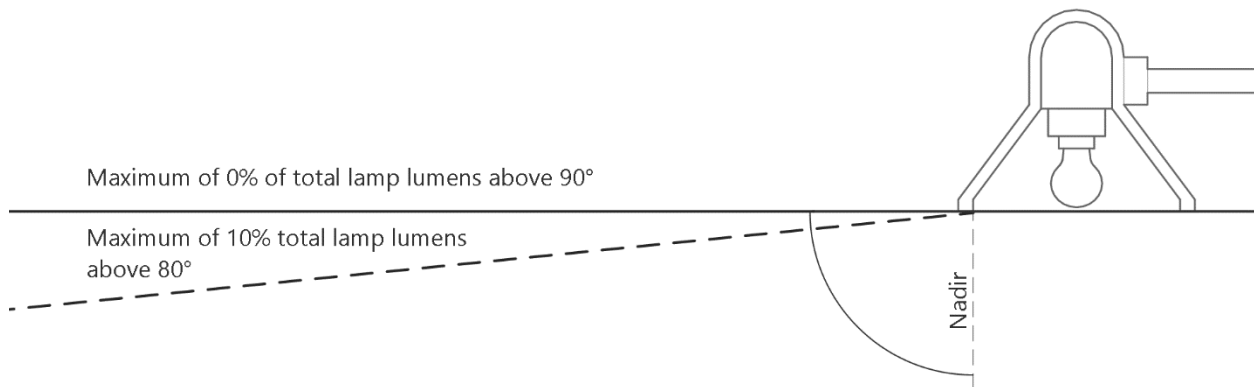


Figure 9104.3: Full Cut-Off Light Fixture²⁷²

Loading Space

Off-street space for the loading or unloading of goods designed in accordance with the provisions of Section 6101.

Lot

For the purpose of this Ordinance, a parcel of land that is designated at the time of application for a special exception, a special permit, building permit, residential use permit, or nonresidential use permit, as a tract to be used, developed, or built upon as a unit under single ownership. A parcel of land will be deemed to be a lot in accordance with this definition, regardless of whether the boundaries coincide with the boundaries of lots or parcels as shown on any map of record.

²⁷¹ The second sentence regarding parking structures is relocated to Section 5109.

²⁷² The illustration will be revised in a future draft to center the Nadir.

Lot Area

The total horizontal area included within the lot lines of a lot.

Lot Coverage

Determined by dividing that area of a lot that is occupied or covered by the total horizontal projected surface of all buildings, including covered porches and accessory buildings, by the gross area of that lot. However, the standards for rear yard coverage are included in 4102.7.A(12), and the standards for driveway surfacing in the front yard are included in section 6100.2.C(3)(d).

Lot Line²⁷³

Any boundary line of a lot as defined in this Article. Where applicable, a lot line must coincide with a Street Line. Where a lot line is curved, all dimensions related to said lot line will be based on the chord of the arc.

Lot Line, Front

A street line that forms the boundary of a lot; or, in the case where a lot does not abut a street other than by its driveway, or is a through lot, that lot line that faces the principal entrance of the main building.

On a corner lot, the shorter street line will be deemed to be the front lot line, regardless of the location of the principal entrance or approach to the main building.

Lot Line, Rear

That lot line that is most distant from, and is most nearly parallel with, the front lot line. If a rear lot line is less than ten feet in length, or if the lot comes to a point at the rear, the rear lot line is deemed to be a ten foot line parallel to the front lot line, lying wholly within the lot for the purpose of establishing the required minimum rear setback.

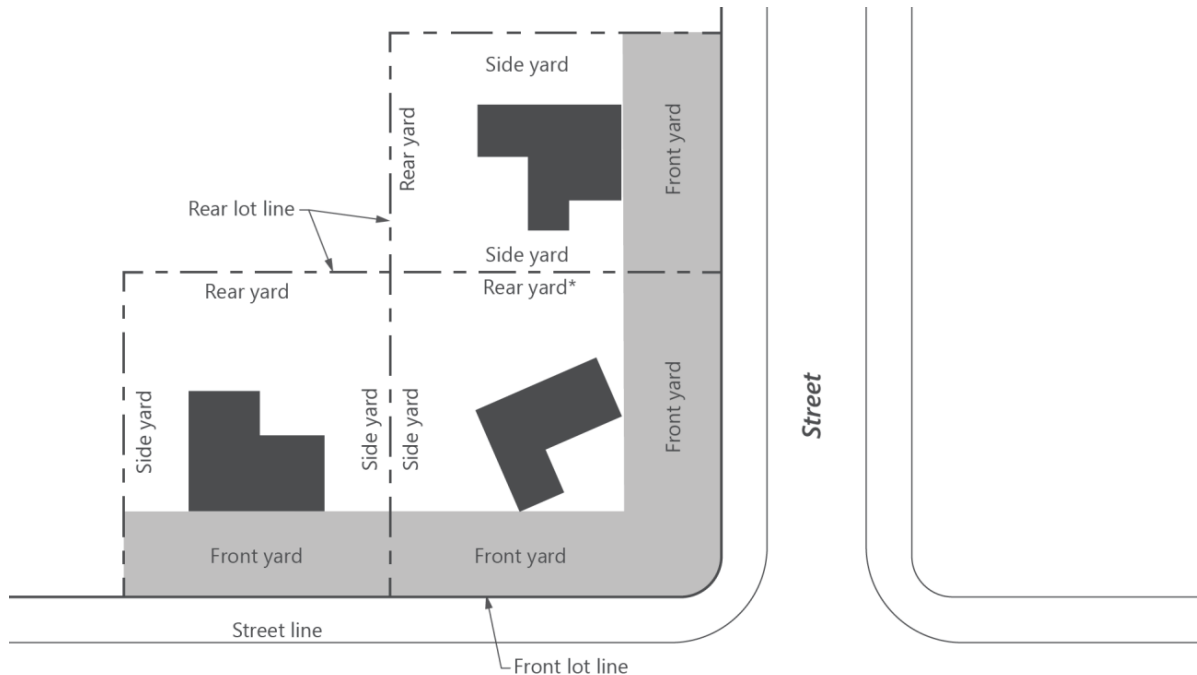


Figure 9104.4: Lot Lines and Yards

²⁷³ Revisions to this definition are being considered as part of a separate pending amendment.

Lot Line, Side

A lot line that is neither a front lot line nor a rear lot line as defined in this Article.

Lot Size Requirements

Restrictions on the dimensions of a lot, to include a specified zoning district size, lot area and lot width, all established to limit the minimum size and dimension of a lot in a given zoning district.

Lot Width²⁷⁴

The width of a lot along a line parallel to the front street line and lying at a distance from said street line equal to the required minimum front setback on said lot. In the case of a lot that has an area in excess of five acres, the width may be measured at any point where the minimum lot width is at least 200 feet, provided that the chosen point will also be where the front setback is established by location of the principal structure.

Lot, Corner

A lot at the junction of and abutting on two or more intersecting streets when the interior angle of intersection does not exceed 135 degrees; provided, however, that when one of the intersecting streets is an interstate highway, the resultant lot is not be deemed a corner lot.

Lot, Interior

Any lot, including a through lot, other than a corner lot.

Lot, Outlot

Any lot, except as provided for under 5100.2.J, that does not comply with the current minimum lot width, lot area, or shape factor requirements of the district in which it is located; or does not comply with the frontage provisions of Chapter 101 of The County Code (Subdivision Ordinance).

Lot, Pipestem

A lot approved in accordance with the provisions of 5100.2.K that does not abut a public street other than by its driveway that affords access to the lot.

Lot, Reverse Frontage

A residential through or corner lot, intentionally designed so that the front lot line faces a local street rather than facing a parallel major thoroughfare.

Lot, Through

An interior lot, but not a corner lot, abutting on two or more public streets, but not including an alley. For the purpose of this Ordinance, a through lot will be subject to the regulations of an interior lot.

Lumen

A quantitative unit measuring the amount of light emitted from a light source.

Maintained Lighting Level

A level of illumination that results when the initial output of a lamp is reduced by certain light loss factors. Such light loss factors typically include lamp depreciation and dirt accumulation on lenses and other lighting fixture components. For the purposes of this Ordinance, the maintained lighting level represents an average footcandle value measured over a specified area and is determined by multiplying the initial raw lamp output specified by the manufacturer by a light loss factor of not less than 0.72 for for high intensity discharge (HID) lamps or 0.85 for light emitting diode (LED).²⁷⁵.

²⁷⁴ Revisions to this definition are being considered as part of a separate pending amendment.

²⁷⁵ Updated light loss factors.

Office Park

A planned, coordinated development of a tract of land with two or more separate office buildings that contain a combined total of at least 30,000 square feet of gross floor area and are occupied by not less than five different tenants. Such development is planned, designed, constructed, and managed on an integrated and coordinated basis with special attention given to on-site vehicular circulation, parking, utility needs, building design, and orientation and open space.

Open Space²⁷⁶

The area of a lot intended to provide light and air, and is designed for scenic or recreational purposes. Open space must, in general, be available and accessible by the residents or occupants of the development. Open space may include features such as lawns, decorative planting, walkways, active and passive recreation areas, children's playgrounds, fountains, swimming pools, undisturbed natural areas, community gardens, wooded areas, water bodies, and those areas where landscaping and screening are required by the provisions of Section 5108. Open space does not include driveways, parking lots, or other vehicular surfaces, any area occupied by a building, nor areas so located or so small as to have no substantial value for the purposes stated in this definition. Within a residential subdivision, open space is composed of only those areas not contained in individually owned lots. Open space includes and qualifies as landscaped open space, common open space, dedicated open space, and usable open space, all as defined in this Ordinance.

Open Space, Common

Open space that is designed and set aside for use and enjoyment by residents or occupants of the development or by the residents or occupants of a designated portion of the development. Common open space includes those areas not to be dedicated as public lands but are to remain in the ownership of a homeowners association or of a condominium in accordance with the provisions set forth in Section 5106.

Open Space, Dedicated

Open space that is to be dedicated or conveyed to the County or an appropriate public agency, board, or body for public use as open space.

Open Space, Landscaped

Open space that is designed to enhance the development by providing landscaping features, screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness. Landscaped open space may include lawns, decorative planting, flower beds, sidewalks/walkways, ornamental objects such as fountains, statues, and other similar natural or artificial objects, wooded areas, and water courses, any or all of which are designed and arranged to produce an aesthetically pleasing effect within the development. Landscaped open space may be either common open space or dedicated open space as defined in this Ordinance.

Open Space, Usable²⁷⁷

Open space that is designed for recreational purposes including such uses as ballfields, multi-purpose courts, swimming pools, tennis courts, golf courses, play lots and playgrounds, boating docks, walking, bicycle or bridle trails, and shuffleboard courts.

²⁷⁶ Carried forward from recently adopted ordinance ZO-19-481, revised for clarity.

²⁷⁷ We recommend revising the term to "active open space" since all open space is technically usable.

Owner

Any person who has legal title to the land in question, or the lessee of the land in question having a remaining term of not less than 30 years.

Parking Lot

An area not within a building where motor vehicles may be stored for the purpose of temporary, daily, or overnight off-street parking. For the purpose of Section 6100, a parking lot consists of the entire surface of the parking lot, vehicular access to the parking lot, loading spaces, drive-through spaces, and the exposed surfaces of parking decks; and includes vehicle display lots, vehicle storage lots, and commercial parking lots.

Parking, Commercial Off-Street

An area, other than accessory off-street parking areas as required by the provisions of this Ordinance, where, for a charge or permit, motor vehicles may be stored for the purpose of temporary, daily, or overnight off-street parking.

Parking, Off-Street

Any space, whether or not required by the provisions of this Ordinance, specifically allotted to the parking of motor vehicles as an accessory use. For the purpose of this Ordinance, such space may not be located in a dedicated right-of-way, a travel lane, a service drive, nor any easement for public ingress or egress.

Patio²⁷⁸

An at-grade paved outdoor area without any walls or roof that is accessory to a principal use or structure.

Phase I Archaeological Survey

An archaeological investigation conducted by a qualified archaeological consultant meeting the Professional Qualification Standards established by the Secretary of the Interior to locate and identify archaeological sites in a survey area; to estimate site size and boundaries of the archaeological site; to provide an explanation as to how the estimate was made; and to make recommendations for additional archaeological work or recommendations that no further work is required.

Photometric Diagram

A diagram depicting the location of all light poles and building mounted lighting fixtures in a specified area and a numerical grid of the maintained lighting levels that the fixtures will produce in that specified area.

Pipestem Driveway

A driveway or means of access to a lot or several lots that do not abut a street other than by the pipestem driveway that is a part of the lot(s).

Planned Development²⁷⁹

Any lot under one ownership to be developed as a single entity and classified as a Planned (P) District.

Remote Sensing

A group of techniques that permit the detection of underground phenomena unobserved by the human eye. Remote sensing employs devices that can obtain readings from materials buried beneath the

²⁷⁸ New definition. Currently a patio is defined as a deck.

²⁷⁹ Revised to specify "planned" versus simply "P."

ground. Examples of remote sensing devices include proton magnetometers, electronic resistivity meters, ground-penetrating radar, metal detectors and other radar based testing equipment. When remote sensing gives a positive reading that something is present beneath the soil, ground truthing is conducted.

Resource Protection Area (RPA):

As established in accordance with Chapter 118 of The Code, that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation of the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances from runoff entering the Bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

Setback²⁸⁰

The minimum distance by which the closest projection of a building or structure must be separated from the lot lines.

Shape Factor

A shape factor is designed to prevent the creation of irregularly shaped lots by providing a measurement by which the compactness and degree of regularity of the shape of a lot can be evaluated. Shape factor (SF) is calculated by the non-dimensional ratio of the lot perimeter (P) squared, divided by the lot area (A), where P and A are derived from the same unit measurement. Typically, the measurement will be provided in feet. The mathematical formula to determine the shape factor of a lot is $SF = (P^2/A)$.

Shrub

A woody plant that usually remains low and produces shoots or trunks from the base; it is not usually tree-like nor single-stemmed.

Soil

The surface, or surface covering of the land, not including the minerals beneath it or the vegetation upon it.

Street

A strip of land intended primarily for vehicular traffic and providing the principal means of access to property, including but not limited to road, lane, drive, avenue, highway, boulevard, or any other thoroughfare.

Street Line

The dividing line between a street and a lot; same as a right-of-way line of a public street, or the curb line of a parking bay, travel lane, or private street.

²⁸⁰ New.

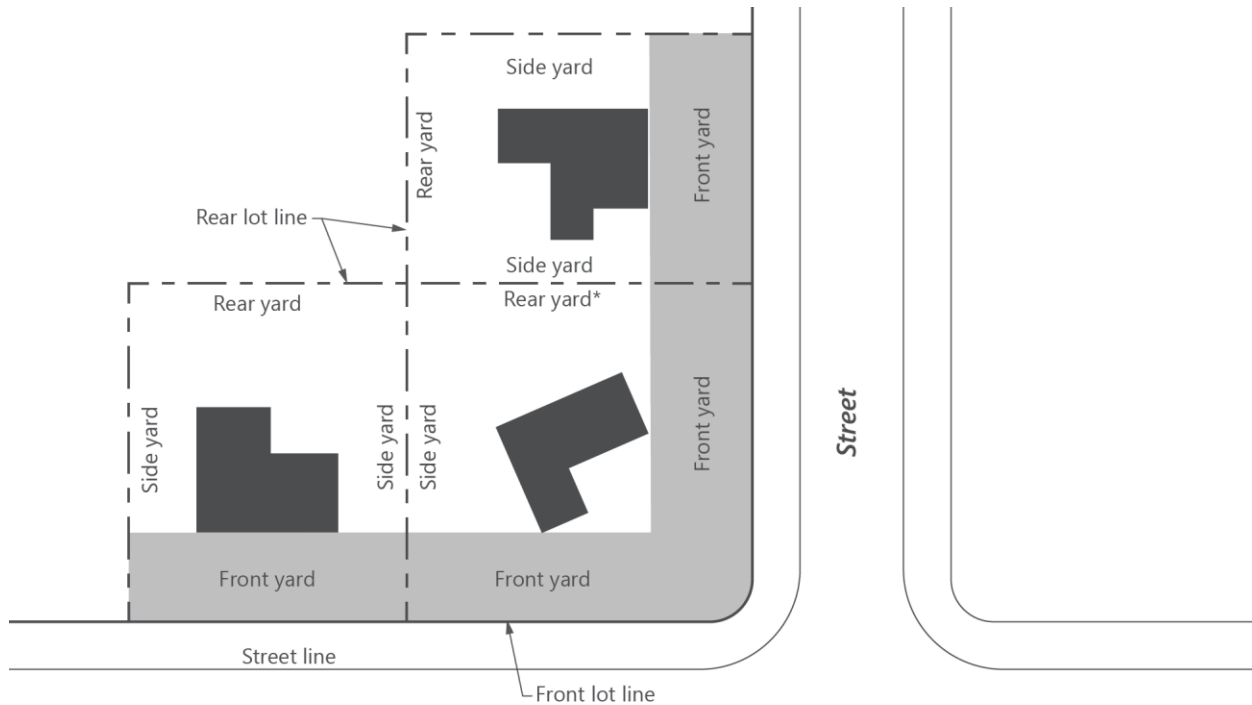


Figure 9104.5: Lot Lines and Yards²⁸¹

Street Line

The dividing line between a street and a lot; same as a right-of-way line of a public street, or the curb line of a parking bay, travel lane or private street.

Street, Collector

A street that provides for principal internal movements at moderate operating speeds within residential developments, neighborhoods, and Commercial or Industrial Districts. It also provides the primary means of circulation between adjacent neighborhoods and can serve as a local bus route. A collector street functions to distribute trips from arterials to local and other collector streets. Conversely, it collects traffic from local streets and channels it into the arterial system. The collector street provides for the dual purpose of land access and local traffic movement. In line with its dual function, there must be continuity in the pattern of these streets.

Street, Local

A street which primarily provides direct access to residential, commercial, industrial, or other abutting property. The local street system includes all facilities not classified as a principal arterial, minor arterial, or collector street. A local street offers the lowest level of mobility and usually does not serve a bus route. Overall operating speeds are low in order to permit frequent stops or turning movements to be made with maximum safety. Service to through traffic movement is deliberately discouraged.

Street, Major Thoroughfare

A public street including minor arterial, principal arterial, or primary highway, all as defined, or those roads, or portions thereof, as set forth in [reference to relocated Appendix 8] of this Ordinance.

²⁸¹ The illustration will be updated to remove the asterisk next to “rear yard” on the corner lot.

Street, Minor Arterial

The minor arterial street interconnects and augments the principal arterial street system and provides service to trips of moderate length at a somewhat lower level of travel mobility than a principal arterial. Such a street also serves intra-urban trips between smaller geographic areas than those associated with the higher system and may carry local bus routes providing intra-community continuity. It may also function as a principal arterial street when sufficient capacity is not provided on the principal arterial system. Ideally, a minor arterial street does not penetrate identifiable neighborhoods, and the facility is designed with greater emphasis on traffic movement or services than on providing access to abutting land.

Street, Primary Highway

Any street so classified by the Virginia Department of Transportation, bearing a route number less than 600. Primary highways do not include interstate highways.

Street, Principal Arterial

A street that carries the major portion of the trips entering and leaving an urban area, as well as the majority of through movements desiring to bypass a central city. Significant intra-area travel and important intra-urban and intercity bus services are served by this class of street. Because of the nature of travel served by a principal arterial street, almost all fully and partially controlled access streets are a part of this functional class, including freeways and expressways. On a principal arterial street, the concept of service to the abutting land is subordinate to the provision of travel service to major traffic movements.

Street, Private

A local or collector street, not a component of the State primary or secondary system, that is guaranteed to be maintained by a private corporation and is subject to the provisions of subsection 5107.

Street, Public

A platted street, dedicated for the use of the general public, graded and paved in order that every person has the right to pass and to use it at all times, for all purposes of travel, transportation or parking to which it is adapted and devoted.

Street, Secondary Highway

Any street so classified by the Virginia Department of Transportation, bearing a route number of 600 or greater.

Street, Service Drive

A public street paralleling and contiguous to a major thoroughfare, designed primarily to promote safety by providing free access to adjoining property and limited access to major thoroughfares. All points of ingress and egress are subject to approval by the appropriate County authorities and the Virginia Department of Transportation.

Street, Travel Lane

A right-of-way, commonly but not always located on the front of a lot, providing access from one lot to another, and serving the same function as a service drive, although not necessarily a public street.

Structural Alteration

A change or rearrangement in the structural parts or in the means of egress; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another.

Structure

That which is built or constructed. The term 'structure' is construed as though followed by the word 'or parts thereof'. For purposes of applying the floodplain regulations in subsection 5105, a structure is based on the definition contained in Section 9102.

Subdivision

The land subdivided as defined in Chapter 101 of The County Code, The Subdivision Ordinance, and when appropriate to the context, the process of subdividing or resubdividing.

Subdivision, Cluster

An alternate means of subdividing a lot in the R-C, R-E, R-1, R-2, R-3, and R-4 Districts premised on the concept of reducing lot size requirements for the provision of common open space within the development, all in accordance with the provisions of 5100.2.O.

Subdivision, Conventional

The subdivision of a lot in the R-E, R-1, R-2, R-3, and R-4 Districts in accordance with the lot size requirements and bulk regulations specified in the district regulations.

Substantial Conformance

Substantial conformance is as determined by the Zoning Administrator upon consideration of the record and means that conformance that leaves a reasonable margin for minor modification provided that:

1. Such modification is consistent with and does not materially alter the character of the approved development including the uses, layout and relationship to adjacent properties depicted on the approved special permit plat, special exception plat, conceptual development plan, final development plan, development plan, or proffered generalized development plan;
2. Such modification is consistent with any proffered or imposed conditions that govern development of the site; and,
3. Such modification is in accordance with the requirements of this Ordinance.

Tree

Any self-supporting woody plant that visually produces one main trunk, and a distinct and elevated head with many branches that typically reach at least 15 feet in maturity.

Tree Conservation

Tree conservation incorporates both tree preservation and tree planting efforts and as required by Chapter 122 of The County Code and the Public Facilities Manual.

Vibration

A reciprocating movement transmitted through the earth, both in horizontal and vertical planes. The following terms are defined as they relate to the provisions of section 5102:

Acceleration

The rate of change of particle velocity.

Amplitude

The maximum displacement of the earth from the normal rest position. Amplitude is usually reported as inches or mils.

Displacement

The amount of motion involved in earthborn vibration. It is referred to the normal rest position of the earth and is, therefore, one-half of the total excursion for a steady state vibration. Displacement is usually reported in inches or decimal fractions of an inch.

Frequency

The number of times that a displacement completely repeats itself in one second of time. Frequency is designated in hertz (Hz).

Impact

An earthborn vibration generally produced by two or more objects striking each other so as to cause separate and distinct pulses.

Particle Velocity

A characteristic of vibration that depends on both displacement and frequency. If not directly measured, it can be computed by multiplying the frequency by the amplitude times the factor of 6.28. The particle velocity will be inches per second, when the frequency is expressed in cycles per second and the amplitude in inches.

Seismograph

An instrument that measures vibration characteristics simultaneously in three mutually perpendicular planes. The seismograph may measure amplitude and frequency, particle, velocity, or acceleration.

Steady State

A vibration that is continuous, as from a fan, compressor, or motor.

Yard²⁸²

Any open space on the same lot with a building or building group lying between the building or building group and the nearest lot line, unobstructed from the ground upward and unoccupied except by specific uses and structures allowed in that open space by this Ordinance.

Yard, Front²⁸³

A yard extending across the full width of a lot and lying between the front lot line and the principal building.

Yard, Privacy

A small area contiguous to a building and enclosed on at least two sides with either a wall or fence of six feet minimum height.

²⁸² Did not carry forward second half of this definition: "On any lot which is occupied by an attached dwelling, no minimum required yard shall be occupied by any part of a vehicular travel way or parking space that is owned and maintained by a homeowner's association, condominium, or by the public. For the purpose of this Ordinance, there shall be a distinction between 'yard' and 'minimum yard required'. The minimum yard requirements set forth in this Ordinance represent that minimum distance which the principal building(s) shall be set back from the respective lot lines." This was combined with the new definitions for "setbacks."

²⁸³ New term, based on current definition for "yard, front."

Yard, Rear²⁸⁴

The yard extending across the full width of the lot and lying between the rear lot line of the lot and the principal building group. On a corner lot, the rear yard will be on the opposite side of the building from the front lot line, that extends from the front setback line on the one side to the opposite side lot line.

Yard, Side²⁸⁵

The yard between the side lot line of the lot and the principal building and extending from the front setback line to the rear setback line, or, in the absence of either a front or rear setback line, to the front or rear lot lines.

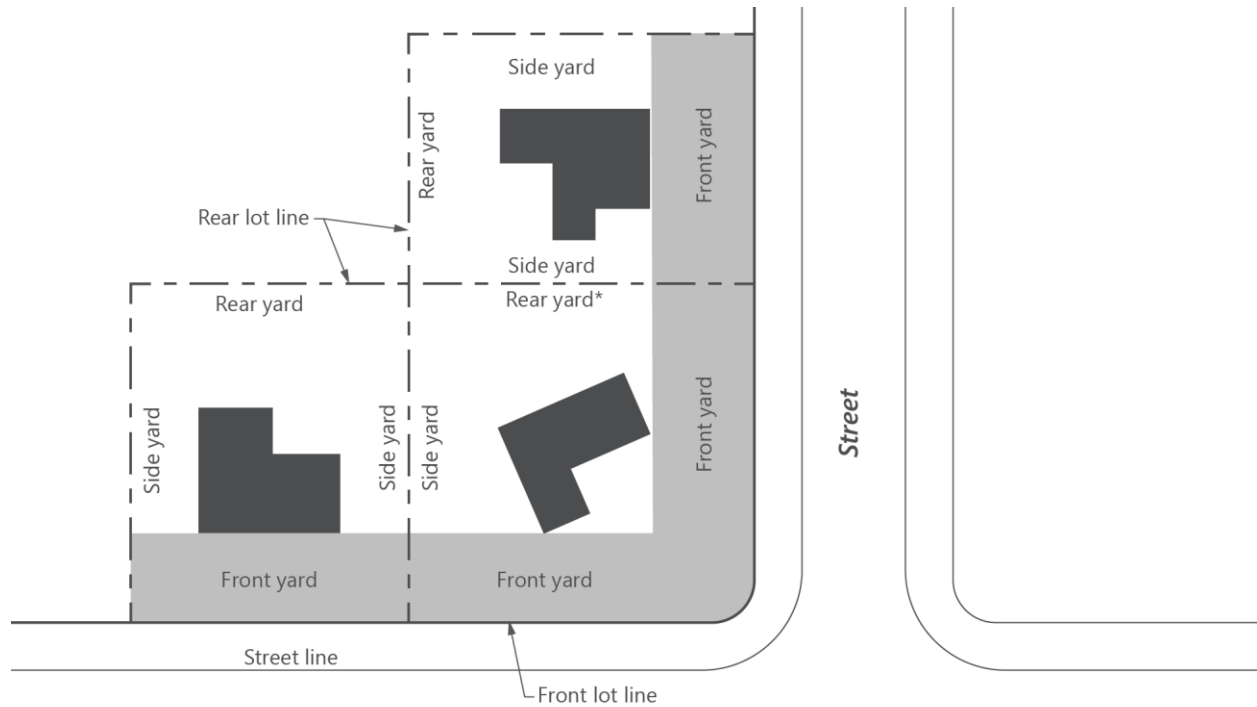


Figure 9104.6: Lot Lines and Yards

²⁸⁴ New term, based on current definition for “yard, rear.” Revised for clarity.

²⁸⁵ New term, based on current definition for “yard, side.” Revised for clarity.