

ZONING ORDINANCE

CHAPTER 112

County of

FAIRFAX, VIRGINIA

Looseleaf Supplement

This Supplement contains the following amendments:

Amendment No. 08-413, Adopted October 20, 2008, Effective January 1, 2009 at 12:01 a.m.

Amendment No. 08-414, Adopted November 17, 2008, Effective November 18, 2008 at 12:01 a.m.

Amendment No. 09-415, Adopted February 23, 2009, Effective February 24, 2009 at 12:01 a.m.

Amendment No. 09-416, Adopted March 30, 2009, Effective March 31, 2009 at 12:01 a.m.

Amendment No. 09-417, Adopted April 27, 2009, Effective July 1, 2009 at 12:01 a.m.

Amendment No. 09-418, Adopted April 27, 2009, Effective July 1, 2009 at 12:01 a.m.

Amendment No. 09-418 Pt. 2, Adopted June 22, 2009, Effective July 1, 2009 at 12:01 a.m.

Amendment No. 09-419, Adopted September 14, 2009, Effective September 15, 2009 at 12:01 a.m.

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In determining the number of domestic fowl permitted, only fowl six (6) months or older in age shall be counted.

4. The keeping of honeybees in four (4) beehives or less shall be allowed as an accessory use on any lot. On any lot of 10,000 square feet in size or larger, more than four (4) beehives may be kept, provided there is an additional lot area of 2500 square feet for each hive. In all instances, there shall be one (1) adequate and accessible water source provided on site and located within fifty (50) feet of the beehive(s). In addition, if the landing platform of a hive faces and is within ten (10) feet of any lot line, there shall be a flight path barrier, consisting of a fence, structure or plantings not less than six (6) feet in height, located in front of the hive.
5. The keeping of racing, homing, or exhibition (fancy) pigeons shall be allowed as an accessory use on any lot 10,000 square feet or more in size.
6. All accessory structures associated with the keeping or housing of animals shall be located in accordance with the provisions of Part 1 of Article 10.
7. The BZA may approve a special permit to modify the provisions of Paragraphs 1 through 6 above, but only in accordance with Part 9 of Article 8; provided, however, that a kennel, animal shelter or riding or boarding stable shall be subject to the provisions of Part 6 of Article 8.
8. The keeping of wild, exotic, or vicious animals shall not be allowed except as may be permitted by Chapter 41.1 of The Code.

2-513 Churches, Chapels, Temples, Synagogues, and Other Places of Worship

The provisions of this Ordinance that relate to churches, chapels, temples, synagogues and other places of worship shall be deemed to refer to the use of the land, buildings and facilities with such uses. These provisions address land use matters only, and do not affect an individual's right to determine and exercise his or her religious beliefs. To this end, the uses of land, buildings and facilities associated with places of worship shall be protected as a matter of right, as the Ordinance read June 14, 1984, prior to the Zoning Administrator's Interpretation Number 52 except as is required for places of worship to be in compliance with Ordinance provisions regarding special permits or special exceptions and in compliance with provisions covering residential, commercial and industrial districts under this Ordinance. Such protected uses include those activities and functions sponsored and administered directly by the place of worship in furtherance of its religion, and other functions and activities as approved by the governing body of the place of worship, subject to the exceptions noted above.

2-514 Limitations on Mobile and Land Based Telecommunication Facilities

Mobile and land based telecommunication facilities shall be permitted on any lot in the following zoning districts when such use is in accordance with the following limitations and when such use is not specifically precluded or regulated by any applicable proffered condition, development condition, special permit or special exception condition which limits the number, type and location of antenna and/or related equipment structure. Further provided, however, such use shall be in substantial conformance with any proffered condition, development condition, special permit or special exception condition. In addition, such uses shall be subject to the requirements of Sect. 15.2-2232 of the Code of Virginia.

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1. Structure or rooftop mounted antennas, with related unmanned equipment cabinets and/or structures:
 - A. Shall be permitted:
 - (1) When located on a multiple family dwelling which is thirty-five (35) feet or greater in height.
 - (2) In all C districts, I-1, I-2, I-3, I-4, I-5, and I-6 Districts, and in the commercial areas of PDH, PDC, PRC and PRM Districts.
 - (3) On an existing transmission tower or monopole in any zoning district.
 - (4) In any zoning district on buildings and structures owned or controlled by a public use or Fairfax County governmental unit.
 - (5) In any residential district on nonresidential buildings and structures which are a Group 3 special permit use, except home child care facilities and group housekeeping units, Group 4 special permit use or Category 1, 2, 3, or 4 special exception use, and which are thirty-five (35) feet or greater in height.
 - (6) In any zoning district when the antennas and related equipment are totally enclosed within an existing nonresidential building or structure.
 - (7) In any zoning district when the antennas are totally enclosed within a new or replacement flagpole, bell tower, clock tower, steeple or similar structure designed to disguise antennas which is no more than twenty (20) feet taller than the rooftop or original structure on which it is placed.
 - B. Antennas allowed under Par. 1A(2) above, which do not exceed the maximum building height limitations, and Par. 1A(6) above shall be permitted in accordance with the applicable zoning district regulations and shall not be subject to the provisions listed below. Antennas allowed under Par. 1A(2) above, which exceed the maximum building height limitations, and Paragraphs 1A(1), 1A(3) through 1A(5) and 1A(7) shall be permitted subject to the provisions listed below.
 - C. Except for omnidirectional or whip antennas completely enclosed within a structure, omnidirectional or whip antennas shall not exceed twenty (20) feet in height or seven (7) inches in diameter and the antennas and their supporting mounts shall be of a material or color which closely matches and blends with the exterior of the building or structure.
 - D. Except for directional or panel antennas completely enclosed within a structure, directional or panel antennas shall not exceed eight and one-half (8 ½) feet in height or two (2) feet in width and the antennas and their supporting mounts shall be of a material or color which closely matches and blends with the exterior of the building or structure.

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- E. Except for dish antennas completely enclosed within a structure, dish antennas shall not exceed six (6) feet in diameter and when building or rooftop mounted shall be fully screened such that the dish antennas are enclosed on all sides by screening walls which are at least as tall as the dish antennas and the associated supporting mounts; provided, however, that dish antennas up to three (3) feet in diameter with supporting mounts that are of a material or color which closely matches and blends with the exterior of the building or structure shall not be required to be screened.
- F. Except for cylinder type antennas completely enclosed within a structure, cylinder type antennas shall not exceed six (6) feet in height or twelve (12) inches in diameter and shall be of a material or color which closely matches and blends with the exterior of the building or structure.
- G. Except for a flag mounted on a flagpole as permitted under the provisions of Par. 2 of Sect. 12-103, no commercial advertising shall be allowed on any antenna, antenna support structure, or related equipment cabinet or structure.
- H. No signals, lights or illumination shall be permitted on an antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the Zoning Administrator waives the red marker light requirement upon a determination by the Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.
- I. The related unmanned equipment cabinet or structure for each provider shall not exceed 14 feet in height or a total of 500 square feet of gross floor area when located on the roof of a building, or shall not exceed 12 feet in height or a total of 750 square feet of gross floor area when located on the ground. For multiple family dwellings which are less than sixty-five (65) feet in height, or nonresidential buildings and structures which are less than sixty-five (65) feet in height and which are a Group 3 special permit use, except home child care facilities and group housekeeping units, Group 4 special permit use or Category 1, 2, 3, or 4 special exception use, the related unmanned equipment cabinet or structure, if over seventy (70) cubic feet in volume or four (4) feet in height, shall be located on the ground and shall not be located on the roof of the structure.
- J. If the equipment cabinet or structure is located on the roof of a building, the area of the equipment cabinet or structure and other equipment and structures shall not occupy more than twenty-five (25) percent of the roof area in accordance with the provisions of Par. 1A of Sect. 506 above.
- K. Equipment cabinets or structures located on the ground shall meet the minimum yard requirements of the zoning district in which located, except that equipment cabinets or structures associated with antennas mounted on existing monopoles and transmission towers located in a utility transmission easement or street right-of-way shall be located a minimum of twenty (20) feet from the utility transmission easement or street right-of-way line.

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- L. Equipment cabinets or structures located on the ground, and notwithstanding the fence/wall height limitations of Sect. 10-104, shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of at least eight (8) feet and a planted height of at least forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination, except that equipment cabinets or structures associated with antennas mounted on existing monopoles or towers located outside of a utility transmission easement shall be subject to the transitional screening provisions of Article 13 for a light public utility use. If a new equipment cabinet or structure is added to an existing fenced or screened enclosure that contains telecommunications equipment structures, the screening requirement for the new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.
 - M. Associated equipment that is located within an existing principal or accessory structure shall not be subject to the above provisions.
 - N. If any additions, changes or modifications are to be made to monopoles or towers, the Director shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change, or modification conforms to structural wind load and all other requirements of the Virginia Uniform Statewide Building Code.
 - O. All antennas and related equipment cabinets or structures shall be removed within 120 days after such antennas or related equipment cabinets or structures are no longer in use.
2. Antennas mounted on existing or replacement utility distribution and transmission poles (poles) and light/camera standards (standards), with related unmanned equipment cabinets and/or structures, shall be permitted in accordance with the following and may exceed the maximum building height limitations, subject to the following paragraphs:
- A. Omnidirectional/whip antennas not exceeding eight and one-half (8 ½) feet in height or three (3) inches in diameter and panel antennas not exceeding five (5) feet in height or one (1) foot in width shall be permitted on a pole or standard located in any street right-of-way or any utility easement subject to the following and Paragraphs 2D through 2I below:
 - (1) There shall be a maximum of three (3) omnidirectional /whip antennas or four (4) panel antennas.
 - (2) Antennas shall be flush mounted so that the antenna with supporting mount does not extend more than eight and one-half (8 ½) feet above the pole or standard or one (1) foot from the pole or standard.
 - (3) An equipment cabinet or structure not exceeding twenty (20) cubic feet in volume or five (5) feet in height shall be located on or adjacent to the same pole or standard.

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- (4) The height of a replacement pole or standard, including antennas, shall not exceed sixty-four (64) feet in height. The diameter of a replacement pole or standard shall not exceed eighteen (18) inches.
- B. The following antenna types shall be permitted subject to Paragraphs 2C through 2I below:
- (1) Omnidirectional/whip antennas, not exceeding eight and one-half (8 ½) feet in height or three (3) inches in diameter.
 - (2) Directional or panel antennas, not exceeding six (6) feet in height or two (2) feet in width.
 - (3) Cylinder type antennas, not exceeding six (6) feet in height or twelve (12) inches in diameter.
 - (4) Dish antennas, not exceeding two (2) feet in diameter.
- C. The antennas listed in Par. 2B above shall be permitted as follows:
- (1) In districts that are zoned for single family detached or attached dwellings and are residentially developed, vacant or common open space, antennas shall be limited to poles or standards located in the right-of-way of a major thoroughfare or located no more than ten (10) feet from the lot line abutting the major thoroughfare, and the following:
 - (a) When the related equipment cabinet or structure is located on the ground in a front yard or street right-of-way, each provider shall be limited to a cabinet or structure which shall not exceed five (5) feet in height or a total of seventy (70) cubic feet in volume and the cabinet or structure shall be located a minimum of ten (10) feet from all lot lines when located outside of a street right-of-way. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted equipment cabinets or structures shall be screened by a solid fence, wall or berm five (5) feet in height, an evergreen hedge with an ultimate height of five (5) feet and a planted height of forty-eight (48) inches, or a five (5) foot tall fence, wall, berm and/or landscaping combination.

When located on a pole or standard in the front yard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

When the related equipment cabinet or structure is located on the ground in a side or rear yard, each provider shall be limited to a cabinet or structure which shall not exceed 12 feet in height or a total of 200 square feet in gross floor area and the cabinet or structure shall be located a minimum of 10 feet from all lot lines. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted related equipment cabinets or structures shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight

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(48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination.

If a new equipment cabinet or structure is added to an existing fenced or screened enclosure that contains ground-mounted telecommunications equipment structures, the screening requirement for the new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.

When located on a pole or standard in a side or rear yard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

Equipment located within an existing principal or accessory structure shall not be subject to the provisions of this paragraph.

- (b) The height of a replacement pole or standard, including antennas, shall not exceed eighty (80) feet. The diameter of a replacement pole or standard shall not exceed thirty (30) inches.
- (2) In districts that are zoned for multiple family dwellings and are residentially developed with buildings that are thirty-five (35) feet or less in height, vacant or common open space, to include street right-of-ways, the following shall apply:
- (a) When located on the ground, each provider shall be limited to a related equipment cabinet or structure which shall not exceed 12 feet in height or a total of 500 square feet in gross floor area. In addition, ground-mounted equipment cabinets shall be located a minimum of ten (10) feet from all lot lines when located outside of a street right-of-way. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted related equipment cabinets or structures shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination. If a new ground-mounted equipment cabinet or structure is added to an existing fenced or screened enclosure that contains telecommunications equipment structures, the screening requirement for the new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.

When located on a pole or standard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

Equipment located within an existing principal or accessory structure shall not be subject to the provisions of this paragraph.

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solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination.

- G. Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, monopoles shall have a galvanized finish or be painted silver, gray or brown, or have an exterior finish manufactured and designed to resemble a tree, flagpole, bell tower, clock tower, windmill or other similar structure designed to disguise antennas.
 - H. No signals, lights or illumination shall be permitted on an antenna unless required by the Federal Communications Commission, the Federal Aviation Administration or the County, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the Zoning Administrator waives the red marker light requirement upon a determination by the Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.
 - I. Except for a flag mounted on a flagpole as permitted under the provisions of Par. 2 of Sect. 12-103, no commercial advertising or signs shall be allowed on any monopole, antenna, antenna support structure, or related equipment cabinet or structure.
 - J. If any additions, changes or modifications are to be made to the monopole, the Director shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change, or modification conforms to structural wind load and all other requirements of the Virginia Uniform Statewide Building Code.
 - K. All monopoles and related equipment cabinets or structures shall be removed within 120 days after such monopoles or related equipment cabinets or structures are no longer in use.
4. Towers, with related unmanned equipment cabinets and/or structures, shall be permitted in the I-1, I-2, I-3, I-4, I-5 and I-6 Districts but only when in accordance with the following paragraphs:
- A. The Zoning Administrator and the Department of Information Technology determine that there is not an existing alternative structure which will reasonably meet the engineering and service needs of the telecommunications facility applicant.
 - B. The height of such tower shall not exceed 199 feet, including antennas, except that the height of the tower when located in a utility transmission easement of 90 feet or more in width, may exceed 199 feet, provided however, the height of the tower shall not exceed the height of the existing transmission towers by more than 30 feet in any circumstance.
 - C. Dish antennas attached to the towers shall not exceed six (6) feet in diameter.

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- D. Towers shall be subject to the minimum yard requirements, with the exception of the angle of bulk plane, of the zoning district in which located, except that towers located in a utility transmission easement shall be located a minimum of twenty (20) feet from the utility transmission easement line.
 - E. The related unmanned equipment cabinet or structure for each provider shall not exceed 12 feet in height and a total of 750 square feet of gross floor area. Such structure shall be located in accordance with the minimum yard requirements of the zoning district in which located, except that equipment cabinets or structures located in a utility transmission easement shall be located a minimum of twenty (20) feet from the utility transmission easement line.
 - F. Transitional screening shall be provided in accordance with provisions of Article 13 for a light public utility use, provided, however, and notwithstanding the fence/wall height limitations of Sect. 10-104, equipment cabinets or structures associated with towers located in a utility transmission easement shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination.
 - G. Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers shall have a galvanized finish or be painted silver, gray or brown.
 - H. No signals, lights or illumination shall be permitted on an antenna unless required by the Federal Communications Commission, the Federal Aviation Administration or the County, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the Zoning Administrator waives the red marker light requirement upon a determination by the Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.
 - I. No commercial advertising or signs shall be allowed on any tower, antenna, antenna support structure, or related equipment cabinet or structure.
 - J. If any additions, changes or modifications are to be made to the tower, the Director shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change or modification conforms to structural wind load and all other requirements of the Virginia Uniform Statewide Building Code.
 - K. All towers and related equipment cabinets or structures shall be removed within 120 days after such towers or related equipment cabinets or structures are no longer in use.
5. Mobile and land based telecommunication hub sites:
- A. Shall be permitted:

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- (1) In all C districts, I-1, 1-2, I-3, I-4, I-5 and I-6 Districts, and in the commercial areas of PDH, PDC, PRC and PRM Districts.
 - (2) In any zoning district on lots containing: Group 3 special permit uses, except home child care facilities and group housekeeping units, Group 4, 5 or 6 special permit uses, Category 1, 2, 3 or 4 special exception uses, or Category 5 special exception uses, except for bed and breakfasts.
 - (3) In any zoning district on property owned or controlled by a public use or Fairfax County governmental unit.
- B. The hub site shall not exceed 12 feet in height or 750 square feet of gross floor area.
 - C. The maximum permitted floor area ratio for the zoning district shall not be exceeded.
 - D. The hub site shall meet the minimum yard requirements of the district in which it is located, except that hub sites located in a utility transmission easement or street right-of-way shall be located a minimum of twenty (20) feet from the utility transmission easement or street right-of-way.
 - E. Notwithstanding the fence/wall height limitations of Sect. 10-104, hub sites shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of at least eight (8) feet and a planted height of at least forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and or landscaping combination, except that hub sites located outside of a utility transmission easement shall be subject to the transitional requirements of Article 13 for a light public utility use. If a hub site is added to an existing fenced or screened enclosure that contains telecommunication equipment structures, the screening requirement for the hub site may be satisfied with the existing screening, provided that the screening meets the requirements listed above.
 - F. A mobile and land based telecommunication facility hub site that is located within an existing principal or accessory structure shall not be subject to the Paragraphs 5B through 5E above.
6. For the purposes of this section, a Fairfax County governmental unit shall include, but not be limited to, the Fairfax County Water Authority and Redevelopment and Housing Authority.
 7. For the purposes of this section, the height of related equipment cabinets or structures and utility distribution and transmission poles (poles) and light/camera standards (standards) shall be measured as follows:
 - A. Ground-mounted equipment structure height shall be the vertical distance between the lowest point of finished ground level adjacent to the structure and the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the average height between the eaves and the ridge for gable, hip and gambrel roofs.

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- B. Rooftop-mounted equipment structure height shall be measured from the rooftop on which the structure is mounted to the highest point of the equipment cabinet or structure.
- C. Replacement poles and standards shall be measured as the vertical distance between the lowest point of finished ground level adjacent to the structure and the highest point of the structure, including antennas.

Mobile and land based telecommunication facilities other than as permitted above shall require the approval of a special exception in those districts where permitted.

2-515 Limitations in Major Underground Utility Easements

- 1. After June 27, 1995, no land area which is encumbered by any major underground utility easement and which is located outside of a public right-of-way shall 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 and/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 Par. 1A of Sect. 104 above.
 - 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 adopted 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 shall mechanical equipment of any type be permitted to be used in the installation or removal of such structures and further provided such facilities shall not adversely impact the structural integrity of transmission pipelines.

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- 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 (4) feet, provided that under no circumstances shall 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 which do not require approval of a Building Permit, provided that under no circumstances shall mechanical equipment of any type be permitted to be used in the installation or removal of such structures and further provided such structures shall not adversely impact the structural integrity of transmission pipelines.

In addition, any vegetation required by this Ordinance shall be planted and maintained in such a manner that will not obstruct, restrict or impede any major underground utility easement.

- 2. This Section shall not be 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.

2-516 Accessory Electrically-Powered Regional Rail Transit Facilities

Accessory electrically-powered regional rail transit facilities shall be permitted on any lot in any zoning district when such use is in accordance with the limitations listed below. Additionally, such use shall be subject to the requirements of Sect. 15.2-2232 of the Code of Virginia.

- 1. Such facilities shall be designed in a manner that minimizes adverse impacts on adjacent properties to the greatest extent practical through the use of landscaping, screening, design and architectural techniques.
- 2. All buildings containing mechanical or electrical equipment associated with any accessory electrically-powered regional rail transit facility shall be fully enclosed and shall have similar architectural treatment on all sides.

Freestanding traction power substations shall not exceed 8300 square feet of gross floor area and a maximum height of 30 feet. Freestanding tie breaker stations shall not exceed 850 square feet of gross floor area and a maximum height of 20 feet. Freestanding communication rooms shall not exceed 350 square feet of gross floor area and a maximum height of 20 feet. Freestanding train control rooms shall not exceed 700 square feet of gross floor area and a maximum height of 20 feet. The cumulative gross floor area of all equipment structures on a lot shall not exceed 9350 square feet. If such equipment facilities are co-located in a structure containing a traction power substation, the maximum height of the structure shall not exceed thirty (30) feet. If such facilities are co-located in a structure

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that does not contain a traction power substation, the maximum height of the structure shall not exceed twenty (20) feet.

There shall be no outside storage associated with any mechanical or electrical equipment structure. However, this provision shall not preclude the use of temporary generators for emergency purposes, or other equipment that by its nature requires an outside location.

3. Accessory electrically-powered regional rail transit facilities shall not have to comply with the lot size requirements, bulk regulations or open space requirements of the district in which located. In addition, such facilities shall not have to comply with the transitional screening provisions of Article 13.
4. Except for accessory electrically-powered regional rail transit facilities operated by WMATA, all accessory electrically-powered regional rail transit facilities shall be subject to the provisions of Article 17, Site Plans. Accessory electrically-powered regional rail transit facilities operated by WMATA shall be established in conformance with the provisions of the agreement between WMATA and the County.

Notwithstanding the above, accessory electrically-powered regional rail transit facilities located in the right-of-way of the Dulles International Airport Access Highway, the combined Dulles International Airport Access Highway and Dulles Toll Road or an interstate highway shall not be subject to Par. 2 above.

2-517 Electrically-Powered Regional Rail Transit Facilities

1. Electrically-powered regional rail transit facilities located in the right-of-way of the Dulles International Airport Access Highway, the combined Dulles International Airport Access Highway and Dulles Toll Road or an interstate highway shall be permitted in any zoning district. Except for electrically-powered regional rail transit facilities operated by WMATA, all electrically-powered regional rail transit facilities shall be subject to the provisions of Article 17, Site Plans. Electrically-powered regional rail transit facilities operated by WMATA shall be established in conformance with the provisions of the agreement between WMATA and the County.
2. Electrically-powered regional rail transit facilities not located in the right-of-way of the Dulles International Airport Access Highway, the combined Dulles International Airport Access Highway and Dulles Toll Road or an interstate highway shall be subject to Part 4 of Article 9.

2-518 Condominiums, Condominium and Cooperative Conversions

1. During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, and notwithstanding that the declarant is not the owner of the land, the declarant shall have the authority to execute, file, and process any site plan, parking tabulations, application for special permit, special exception, variance or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered conditions, with respect to the common elements or a plan/application affecting more than one (1) unit. However, if such plan or application creates an affirmative obligation on the unit owners' association, then the consent of such association shall be required.

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Once the declarant no longer has such authority, in accordance with subsection B of Sec. 55-79.80 of the Code of Virginia, and notwithstanding that the unit owners' association is not the owner of the land, the executive organ of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file and process any site plan, parking tabulation, application for special permit, special exception, variance or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered condition, with respect to the common elements or a plan/application affecting more than one unit. However, if such plan or application creates an affirmative obligation on the declarant, then the consent of the declarant shall be required. Such plan or application shall not adversely affect the rights of the declarant to develop additional land.

A site plan, application for special permit, special exception, variance or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered condition affecting only one (1) unit may be filed by the unit owner.

For purposes of obtaining Building, Residential and/or Non-Residential Use Permits and sign permits, the unit owner, including the declarant if the declarant is the unit owner, shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land. For the purposes of this Section, condominium, declarant, common elements, unit, unit owners' association and convertible land shall be as defined in the Code of Virginia, Title 55, Chapter 4.2, The Condominium Act.

2. Notwithstanding the specific minimum lot size requirements and minimum yard requirements specified for a given zoning district, a single family detached or attached dwelling condominium development may be permitted under the Code of Virginia, Title 55, Chapter 4.2, The Condominium Act, subject to the following provisions:
 - A. In single family attached dwelling development, the minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed.
 - B. Single family detached dwelling developments shall be subject to the following requirements:
 - (1) The minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed, and all dwelling units shall be subject to the same requirement to have access to a dedicated public street as single family dwelling units located on lots which result from a subdivision of land, except as provided for by the provisions of Part 3 of Article 11 and Chapter 101 of The Code, The Subdivision Ordinance.
 - C. The location of any community structure, such as a clubhouse or swimming pool, shall be governed by the minimum yard requirements presented for all other structures in the zoning district in which located.
 - D. Accessory structures shall be permitted in general accordance with the provisions of Part 1 of Article 10, as determined by the Zoning Administrator.

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- E. Such developments shall comply with the maximum density and other provisions of the zoning district in which located.
-
- 3. Any existing structure(s) and its related lot may be converted to a condominium or cooperative, provided the development conforms to the applicable Zoning Ordinance provisions, to include, if applicable, an approved site plan. Prior to conversions, proposed condominium and cooperative conversions which are nonconforming shall be subject to the approval of a special exception in accordance with the provisions of Sect. 9-614.

PLANNED DEVELOPMENT DISTRICT REGULATIONS

PART 2 6-200 PDC PLANNED DEVELOPMENT COMMERCIAL DISTRICT

6-201 Purpose and Intent

The PDC District is established to encourage the innovative and creative design of commercial development. The district regulations are designed to accommodate preferred high density land uses which could produce detrimental effects on neighboring properties if not strictly controlled as to location and design; to insure high standards in the lay-out, design and construction of commercial developments; and otherwise to implement the stated purpose and intent of this Ordinance.

To these ends, rezoning to and development under this district will be permitted only in accordance with a development plan prepared and approved in accordance with the provisions of Article 16.

6-202 Principal Uses Permitted

The following principal uses shall be permitted subject to the approval of a final development plan prepared in accordance with the provisions of Article 16, and subject to the use limitations set forth in Sect. 206 below.

1. Business service and supply service establishments.
2. Eating establishments.
3. Establishments for scientific research, development and training where assembly, integration and testing of products in a completely enclosed building is incidental to the principal use of scientific research, development and training.
4. Exposition halls and facilities to house cultural or civic events or conventions of political, industrial, fraternal or similar associations, with a minimum gross floor area of 100,000 square feet.
5. Financial institutions.
6. Garment cleaning establishments.
7. Hotels, motels.
8. Offices.
9. Personal service establishments.
10. Public uses.
11. Repair service establishments.
12. Retail sales establishments.
13. Theatres.

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6-203 Secondary Uses Permitted

The following secondary uses shall be permitted only in a PDC District which contains one or more principal uses; only when such uses are presented on an approved final development plan prepared in accordance with the provisions of Article 16; and subject to the use limitations set forth in Sect. 206 below.

1. Accessory uses, accessory service uses and home occupations as permitted by Article 10.
2. Affordable dwelling unit developments.
3. Automated teller machines, located within a multiple family dwelling.
4. Commercial and industrial uses of special impact (Category 5), limited to:
 - A. Amusement arcades
 - B. Automobile-oriented uses
 - C. Car washes
 - D. Drive-in financial institutions
 - E. Drive-through pharmacies
 - F. Fast food restaurants
 - G. Golf courses, country clubs
 - H. Golf driving ranges
 - I. Marinas, docks and boating facilities, commercial
 - J. Mini-warehousing establishments
 - K. Quick-service food stores
 - L. Retail sales establishments-large, limited by the provisions of Sect. 9-533
 - M. Service stations
 - N. Service station/mini-marts
 - O. Vehicle light service establishments
 - P. Vehicle sale, rental and ancillary service establishments, limited by the provisions of Sect. 9-518.
5. Commercial recreation uses (Group 5), limited to:
 - A. Billiard and pool halls

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- (2) The fast food restaurant shall be safely and conveniently accessible from surrounding uses via a clearly defined pedestrian circulation system which minimizes points of conflict between vehicular and pedestrian traffic. Pedestrian ways shall be prominently identified through design features such as, but not limited to, the use of special pavement treatments for walkways and crosswalks, and/or the use of consistent and distinctive landscaping. Vehicular access to the use shall be provided via the internal circulation system of the building complex, and no separate entrance to the use shall be permitted from any thoroughfare intended to carry through traffic.
11. Kennels and veterinary hospitals shall be located within a completely enclosed building which is adequately soundproofed and constructed so that there will be no emission of odor or noise detrimental to other property in the area. In addition, the Health Department shall approve the construction and operation of all veterinary hospitals prior to issuance of any Building Permit or Non-Residential Use Permit.
12. Drive-through pharmacies shall be permitted only on a lot which is designed to minimize the potential for turning movement conflicts and to facilitate safe and efficient on-site circulation and parking. Adequate parking and stacking spaces for the use shall be provided and located in such a manner as to facilitate safe and convenient vehicle and pedestrian access to all uses on the lot. In addition, signs shall be required to be posted in the vicinity of the stacking area stating the limitations on the use of the window service and/or drive-through lane. Such signs shall not exceed two (2) square feet in area or be located closer than five (5) feet to any lot line.
13. Vehicle transportation service establishments shall be permitted in accordance with the following:
 - A. The total number of company vehicles permitted on site at any given time shall not exceed five (5).
 - B. There shall be no maintenance or refueling of vehicles on site.
 - C. Notwithstanding the provisions of Par. 15 of the Transitional Screening and Barrier Matrix, the use shall be subject to the provisions of Par. 9 of the Matrix.
14. New vehicle storage shall be permitted by right in accordance with the following:
 - A. When located within a parking structure that is accessory to another use(s), and provided that the spaces devoted to new vehicle storage are in excess of the minimum number of off-street parking spaces required in accordance with Article 11 for the use(s) to which the structure is accessory. The owner shall submit a parking tabulation in accordance with Article 17 that demonstrates that such excess parking spaces are available for new vehicle storage.
 - B. The layout of the new vehicle storage shall not hinder the internal vehicle circulation within the parking structure, and there shall be no mechanical parking lift devices or fencing associated with the new vehicle storage.

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- C. There shall be no signs identifying the use and/or the associated vehicle, sale, rental and ancillary service establishment.
 - D. Notwithstanding the provisions of Article 13, transitional screening shall not be required.
15. A mini-warehousing establishment shall only be permitted when specifically identified on an approved development plan or in accordance with Sect. 205 above and only in accordance with the following:
- A. Loading and unloading areas shall be located, screened and/or fully enclosed as required to minimize the potential for adverse impacts on adjacent property. All other activities associated with the use shall be conducted completely indoors in a multiple story structure.
 - B. The design of the storage structure shall be office-like in appearance and harmonious in color and design with that of the surrounding development so to minimize any adverse visual impact.
 - C. No individual storage bay door or storage items shall be visible from the outside of the storage structure.
 - D. The site shall be designed to facilitate safe and efficient on-site circulation and parking.
 - E. Signage shall be in scale and harmony with the surrounding development so not to detract from the character of the area.
 - F. There shall be no incidental parking or storage of trucks, trailers, and/or moving vans except for purposes of loading and unloading. There shall be no truck, trailer, and/or van rentals conducted from the site.

6-207

Lot Size Requirements

1. Minimum district size: No land shall be classified in the PDC District unless the Board finds that the proposed development meets at least one (1) of the following conditions:
 - A. The proposed development will yield a minimum of 100,000 square feet of gross floor area.
 - B. The proposed development will be a logical extension of an existing P District, in which case it must yield a minimum of 40,000 square feet of gross floor area.
 - C. The proposed development is located within an area designated as a Community Business Center in the adopted comprehensive plan or is in a Commercial Revitalization District and a final development plan is submitted and approved concurrently with the conceptual development plan for the proposed development. The conceptual and final development plan shall specify the uses and gross floor area for the proposed development and shall provide site and building designs that will complement existing and planned development by incorporating high

PLANNED DEVELOPMENT DISTRICT REGULATIONS

standards of urban design, to include provision for any specific urban design plans for the area and for pedestrian movement and access.

2. Minimum lot area: No requirement for each use or building, provided that a privacy yard, having a minimum area of 200 square feet, shall be provided on each single family attached dwelling unit lot, unless waived by the Board in conjunction with the approval of a development plan.
3. Minimum lot width: No requirement for each use or building.

6-208 Bulk Regulations

1. Maximum building height: Controlled by the standards set forth in Part 1 of Article 16.
2. Minimum yard requirements: Controlled by the standards set forth in Part 1 of Article 16.
3. Maximum floor area ratio: 1.5, which may be increased by the Board, in its sole discretion, up to a maximum of 2.5 in accordance with and when the conceptual and final development plans include one or more of the following:
 - A. More open space than the minimum required by Sect. 209 below - Not more than 2% for each additional 1% of the gross area provided in open space.
 - B. Unique design features and amenities within the planned development which require unusually high development costs and which achieve an especially attractive and desirable development, such as, but not limited to, terraces, sculpture, reflecting pools and fountains - As determined by the Board in each instance, but not to exceed 35%.
 - C. Below-surface off-street parking facilities - Not more than 5% for each 20% of the required number of parking spaces to be provided.
 - D. Above-surface off-street parking facilities within an enclosed building or structure - Not more than 3% for each 20% of the required number of parking spaces to be provided.

The maximum floor area ratio permitted by this Part shall exclude the floor area for affordable and bonus market rate dwelling units provided in accordance with Part 8 of Article 2 and the floor area for proffered bonus market rate units and/or bonus floor area, any of which is associated with the provision of workforce dwelling units, as applicable.

6-209 Open Space

1. 15% of the gross area shall be open space.
2. In a PDC development where dwelling units are proposed as a secondary use, as part of the open space to be provided in accordance with the provisions of Par. 1 above, there shall be a requirement to provide recreational facilities for the enjoyment of the residents of the dwelling units. The provision of such facilities shall be subject to the provisions of

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Sect. 16-404 and such requirement shall be based on a minimum expenditure of \$1500 per dwelling unit for such facilities and either:

- A. The facilities shall be provided on-site by the developer in substantial conformance with the approved final development plan. In the administration of this provision, credit shall be considered where there is a plan to provide common recreational facilities for the residents of the dwelling units and the occupants of the principal uses, and/or
- B. The Board may approve the provision of the facilities located on property which is not part of the subject PDC District.

Notwithstanding the above, in affordable dwelling unit developments, the requirement for a per dwelling unit expenditure shall not apply to affordable dwelling units.

6-210 Additional Regulations

- 1. Refer to Article 16 for standards and development plan requirements for all planned developments.
- 2. Refer to Article 2, General Regulations, for provisions which may qualify or supplement the regulations presented above, including the shape factor limitations contained in Sect. 2-401.

SPECIAL PERMITS

- 8-805 Standards and Time Limits for Construction Material Yards
- 8-806 Standards and Time Limits for Contractors' Offices and Equipment Sheds
- 8-807 Standards and Time Limits for Promotional Activities of Retail Merchants
- 8-808 Standards and Time Limits for Subdivision and Apartment Sales and Rental Offices
- 8-809 Standards and Time Limits for Temporary Dwellings or Mobile Homes
- 8-810 Standards and Time Limits for Temporary Farmers' Markets
- 8-811 Additional Standards for a Temporary Mobile and Land Based Telecommunication Testing Facility
- 8-812 Standards and Time Limits for Temporary Portable Storage Containers

PART 9

SECTION

- 8-901 Group 9 Special Permit Uses
- 8-902 Districts in Which Group 9 Uses May be Located
- 8-903 Standards for all Group 9 Uses
- 8-904 Additional Standards for Adult Book Stores and Adult Mini Motion Pictures Theatres
- 8-905 Additional Standards for Barbershops or Beauty Parlors as a Home Occupation
- 8-906 Additional Standards for Commercial Nudity Establishments
- 8-907 Additional Standards for Home Professional Offices
- 8-908 (Deleted by Amendment #00-324, Adopted February 7, 2000, Effective March 8, 2000 at 12:01 AM)
- 8-909 Additional Standards for Open-Air Produce Stands
- 8-910 Additional Standards for Sawmilling of Timber
- 8-911 Additional Standards for Veterinary Hospitals
- 8-912 Provisions for Approving Additional Sign Height or Sign Area in Shopping Centers
- 8-913 Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots
- 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location
- 8-915 (Deleted by Amendment #93-253, Adopted July 10, 2006, Effective November 23, 1993 at 12:01 AM)
- 8-916 (Deleted by Amendment #06-382, Adopted November 22, 1993, Effective July 11, 2006 at 12:01 AM)
- 8-917 Provisions for Modifications to the Limitations on the Keeping of Animals
- 8-918 Additional Standards for Accessory Dwelling Units
- 8-919 Noise Barriers
- 8-920 Additional Standards for Containment Structures Associated with Outdoor Recreation/Sports Facility Playing Fields/Courts and Golf Courses
- 8-921 Provisions for Modification of Minimum Yard Requirements for Certain Existing Structures and Uses
- 8-922 Provisions for Reduction of Certain Yard Requirements
- 8-923 Provisions for Increase in Fence and/or Wall Height in Any Front Yard
- 8-924 Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line
- 8-925 Provisions for Modification of Grade for Single Family Detached Dwellings

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SPECIAL PERMITS

PART 9 8-900 GROUP 9 USES REQUIRING SPECIAL REGULATION

8-901 Group 9 Special Permit Uses

1. Adult book stores and adult mini motion pictures theatres.
2. Auction establishments.
3. Automated teller machines.
4. Barbershops or beauty parlors as a home occupation.
5. Commercial nudity establishments.
6. Home professional offices.
7. (Deleted by Amendment #00-324, Adopted February 7, 2000, Effective March 8, 2000 at 12:01 AM)
8. Open-air produce stands.
9. Sawmilling of timber.
10. Veterinary hospitals.
11. Provisions for approving additional sign height or sign area in shopping centers.
12. Approval of modification to minimum yard requirements for certain R-C lots.
13. Approval of reduction to minimum yard requirements based on error in building location.
14. (Deleted by Amendment #93-253, Adopted November 22, 1993)
15. (Deleted by Amendment #06-382, Adopted July 10, 2006, Effective July 11, 2006)
16. Modification to the limitations on the keeping of animals.
17. Accessory dwelling units.
18. Noise barriers.
19. Containment structures associated with outdoor recreation/sports facility playing fields/courts and golf courses.
20. Modification of minimum yard requirements for certain existing structures and uses.
21. Reduction of certain yard requirements.
22. Increase in fence and/or wall height in any front yard.

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23. Certain additions to an existing single family detached dwelling when the existing dwelling extends into a minimum required yard by more than fifty (50) percent and/or is closer than five (5) feet to a lot line.
24. Modification of grade for single family detached dwellings.

8-902 Districts in Which Group 9 Uses May be Located

1. Group 9 uses may be allowed by right in the following districts:

PDH, PDC Districts: Limited to uses 3 and 10
PRC District: Limited to uses 3 and 10
PRM District: Limited to use 3

C-2, C-3, C-4 Districts: Limited to use 3
C-5 District: Limited to uses 3, 8 and 10
C-6, C-7, C-8, C-9 Districts: Limited to uses 3, 8 and 10

I-2 District: Limited to use 3
I-3, I-4, I-5, I-6 Districts: Limited to uses 3 and 10

2. Group 9 uses may be allowed by special permit in the following districts:

R-A District: Limited to uses 8, 9, 10 and 17
R-P District: Limited to uses 6, 8, 10 and 17
R-C District: Limited to uses 6, 8, 10, 12 and 17
R-E, R-1 Districts: Limited to uses 4, 6, 8, 9, 10 and 17
R-2 District: Limited to uses 4, 6, 8 and 17
R-3, R-4, R-5, R-8 Districts: Limited to uses 6, 8 and 17
R-12 through R-MHP Districts: Limited to uses 3 and 8

PDH, PRC Districts: Limited to uses 6, 8 and 17
PDC District: Limited to use 17

C-7 District: Limited to uses 1 and 5
C-8 District: Limited to use 2

I-I, I-1, I-2 Districts: Limited to use 8
I-3, I-4, I-5, I-6 Districts: Limited to use 8

8-903 Standards for all Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
2. All uses shall comply with the performance standards specified for the zoning district in which located.

SPECIAL PERMITS

5. The BZA shall determine that the proposed addition 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.
6. The BZA shall determine that the proposed addition 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.
7. No special permit shall be granted if the property is in violation of any provision of this Ordinance, including but not limited to the limit on the number of dwelling units per lot and/or the limits on the occupancy of any dwelling unit.
8. The BZA shall determine that the proposed addition shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion and stormwater runoff.
9. The BZA may impose such conditions as it deems necessary, to include landscaping and screening, to minimize the impact of the addition on adjacent properties.
10. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. The location, dimension and height of any existing building or structure and of the proposed addition. In addition, for decks, the height of the finished floor above finished ground level.
 - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing and the proposed addition to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. If applicable, the location of a well and/or septic field.

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- H. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - I. The location, type and height of any existing and proposed landscaping and screening.
 - J. Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
 - K. Seal and signature of professional person certifying the plat.
11. Architectural depictions of the proposed addition as viewed from all lot lines and street lines to include building materials, roof type, window treatment and any associated landscaping and/or screening shall be provided.

8-925 Provisions for Modification of Grade for Single Family Detached Dwellings

The BZA may approve a special permit for the modification of grade as it applies to the height measurement of a single family dwelling that is located within or in proximity to a floodplain and when such structure must be elevated to meet all applicable floodplain regulations. In such cases the BZA may approve a special permit to allow a grade elevation to be established that permits a dwelling to be constructed in compliance with all applicable floodplain regulations. Any applicant seeking grade modification approval shall demonstrate that the requested increase in grade is the minimum amount required to meet the floodplain regulations.

SPECIAL EXCEPTIONS

15. Marinas, docks and boating facilities, commercial.
16. Mini-warehousing establishments.
17. Offices.
18. Parking, commercial off-street, as a principal use.
19. Plant nurseries.
20. Quick-service food stores.
21. Service stations.
22. Theatres.
23. Vehicle light service establishments.
24. Vehicle major service establishments.
25. Vehicle sale, rental and ancillary service establishments.
26. Wholesale trade establishments.
27. Commercial off-street parking in Metro Station areas as a temporary use.
28. Food and beverage manufacturing, production and processing establishments.
29. Industrial/flex.
30. Pawnshops.
31. Mixed waste reclamation facilities.
32. Retail sales establishments.
33. Service station/mini-marts.
34. Truck rental establishments.
35. Bed and breakfasts.
36. Drive-through pharmacies.
37. Baseball hitting and archery ranges, outdoor.
38. Golf courses, country clubs.
39. Golf driving ranges.

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- 40. Kennels, animal shelters.
- 41. Miniature golf courses ancillary to golf driving ranges.
- 42. Veterinary hospitals, but only ancillary to kennels.
- 43. Retail sales establishments-large.

9-502 Districts in Which Category 5 Uses May be Located

- 1. Category 5 uses may be permitted by right or as an accessory service use in the following districts:

PDH District: Limited to uses 2, 6, 9, 15, 17, 20, 21, 23, 32, 33, 36, 38, 39 and kennels (indoor) when represented on an approved development plan

PDC District: Limited to uses 1, 2, 3, 6, 9, 10, 11, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 32, 33, 36, 38, 39, kennels (indoor) and 43 when represented on an approved development plan

PRC District: Limited to uses 1, 2, 3, 6, 9, 11, 12, 14, 15, 17, 18, 20, 21, 22, 23, 25, 32, 33, 36, 37, 38, 39, kennels (indoor), 42 and 43 when represented on an approved development plan

PRM District: Limited to uses 9, 11, 14, 17, 20, 22, 25 and 32 when represented on an approved development plan

C-1, C-2 Districts: Limited to use 17

C-3 District: Limited to uses 9, 12 and 17

C-4 District: Limited to uses 9, 12, 17 and 18

C-5 District: Limited to uses 6, 9, 11, 12, 17, 18, 20, 32, 36 and kennels (indoor)

C-6 District: Limited to uses 6, 9, 11, 12, 17, 18, 20, 22, 23, 32, 36, kennels (indoor) and 43

C-7 District: Limited to uses 1, 6, 9, 11, 12, 14, 17, 18, 20, 22, 23, 32, 36, kennels (indoor) and 43

C-8 District: Limited to uses 2, 6, 9, 11, 12, 14, 17, 18, 20, 22, 23, 26, 32, 36, kennels (indoor) and 43

C-9 District: Limited to uses 1, 6, 9, 11, 14, 17, 20, 22, 23, 32, 36, kennels (indoor) and 43

I-I District: Limited to uses 9, 10 and 17

I-1, I-2 Districts: Limited to uses 10, 12 and 17

I-3 District: Limited to uses 10, 12, 17 and kennels (indoor)

I-4 District: Limited to uses 10, 12, 16, 17, 26 and kennels (indoor)

I-5, I-6 Districts: Limited to uses 10, 12, 16, 17, 23, 24, 26, 28, 34 and kennels (indoor)

- 2. Category 5 uses may be allowed by special exception in the following districts:

R-A District: Limited to uses 19 and 40

R-P District: Limited to uses 15, 17, 19, 35, 38, 40 and 42

R-C District: Limited to uses 15, 17, 19, 35, 38, 39, 40 and 42

R-E, R-1 Districts: Limited to uses 10, 12, 15, 17, 19, 27, 35, 37, 38, 39, 40, 41 and 42

R-2 District: Limited to uses 5, 12, 15, 17, 19, 27, 35 and 38

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R-3, R-4 Districts: Limited to uses 5, 12, 15, 17, 19, 27 and 38

R-5, R-8 Districts: Limited to uses 5, 12, 15, 17, 27 and 38

R-12, R-16, R-20 Districts: Limited to uses 12, 15, 27 and 38

R-30 District: Limited to uses 12, 15, 17, 27 and 38

R-MHP District: Limited to uses 12, 15, 27 and 38

PDH District: Limited to uses 11, 27 and 35

PDC District: Limited to uses 11, 16 and 27

PRC District: Limited to uses 27 and 35

C-1 District: Limited to uses 10, 27 and 38

C-2 District: Limited to uses 6, 9, 10, 27 and 38

C-3 District: Limited to uses 6, 9, 10, 14, 18, 21, 22, 25, 27 and 38

C-4 District: Limited to uses 6, 9, 10, 14, 21, 22, 25, 27 and 38

C-5 District: Limited to uses 2, 3, 6, 11, 15, 17, 20, 21, 23, 27, 33, 34, 36, 37, 38, 39 and 41

C-6 District: Limited to uses 2, 3, 4, 6, 11, 14, 15, 17, 20, 21, 23, 25, 27, 30, 33, 34, 36, 37, 38, 39 and 43

C-7 District: Limited to uses 2, 3, 4, 6, 7, 8, 10, 11, 15, 17, 20, 21, 23, 25, 26, 27, 30, 33, 34, 36, 37, 38, 39 and 43

C-8 District: Limited to uses 2, 3, 4, 6, 7, 10, 11, 15, 16, 17, 20, 21, 23, 24, 25, 27, 30, 33, 34, 36, 37, 38, 39 and 43

C-9 District: Limited to uses 2, 3, 4, 6, 10, 11, 17, 18, 20, 21, 23, 25, 26, 27, 33, 36, 37 and 43

I-I District: Limited to use 27

I-1 District: Limited to uses 27 and 38

I-2 District: Limited to uses 9, 14, 15, 18, 22, 27 and 38

I-3 District: Limited to uses 3, 6, 9, 14, 15, 16, 18, 21, 22, 25, 26, 27, 29, 37, 38, 39 and kennels (outdoor)

I-4 District: Limited to uses 3, 6, 9, 14, 15, 18, 19, 21, 22, 25, 27, 28, 32, 37, 38, 39 and kennels (outdoor)

I-5 District: Limited to uses 3, 6, 7, 9, 11, 14, 18, 19, 20, 21, 23, 25, 27, 32, 33, 37, 38, 39 and kennels (outdoor)

I-6 District: Limited to uses 3, 6, 7, 11, 13, 18, 19, 20, 21, 23, 27, 31, 33, 37, 38, 39 and kennels (outdoor)

9-503 Standards for all Category 5 Uses

In addition to the general standards set forth in Sect. 006 above, all Category 5 special exception uses shall satisfy the following standards:

1. Except as qualified in the following Sections, all uses shall comply with the lot size and bulk regulations of the zoning district in which located.
2. All uses shall comply with the performance standards specified for the zoning district in which located, including the submission of a sports illumination plan or photometric plan as may be required by Part 9 of Article 14.

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3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans.

9-504 Additional Standards for Amusement Arcades

1. Such a use shall not be located closer than 1000 feet to any school. In addition, except when located under the roof of a shopping center, such a use shall not be located within 100 feet of any adjoining property which is in an R district.
2. Such use shall be established only after approval by the Board of a plan setting forth acceptable rules for the operation of the establishment. Such plan shall specify (a) procedures to preclude gambling and loitering; (b) regulations regarding the use of the establishment by school age children; and (c) procedures for the enforcement of the rules.
3. In addition, the Board shall impose such conditions and restrictions as it may deem necessary to assure that the use will be compatible with and will not adversely impact the adjacent area. Such conditions and restrictions may include, but need not be limited to, the following:
 - A. Hours of operation.
 - B. Number of adult attendants required to be on the premises at all times.
 - C. Size of the establishment and the number of amusement machines.

9-505 Additional Standards for Automobile-Oriented Uses, Car Washes, Drive-In Financial Institutions, Drive-Through Pharmacies, Fast Food Restaurants, Quick-Service Food Stores, Service Stations and Service Stations/Mini-Marts

1. In all districts where permitted by special exception:
 - A. Such a use shall have on all sides the same architectural features or shall be architecturally compatible with the building group or neighborhood with which it is associated.
 - B. Such a use shall be designed so that pedestrian and vehicular circulation is coordinated with that on adjacent properties.
 - C. The site shall be designed to minimize the potential for turning movement conflicts and to facilitate safe and efficient on-site circulation. Parking and stacking spaces shall be provided and located in such a manner as to facilitate safe and convenient vehicle and pedestrian access to all uses on the site.
 - D. In reviewing such a use or combination of uses, it shall be determined that the lot is of sufficient area and width to accommodate the use and that any such use will not adversely affect any nearby existing or planned residential areas as a result of the hours of operation, noise generation, parking, glare or other operational factors.

SPECIAL EXCEPTIONS

**PART 6 9-600 CATEGORY 6 MISCELLANEOUS PROVISIONS REQUIRING
BOARD OF SUPERVISORS' APPROVAL**

9-601 Category 6 Special Exception Uses

Category 6 special exceptions consist of those miscellaneous provisions set forth in various Articles of this Ordinance, which require special approval or authorization from the Board.

1. (Deleted by Amendment #95-283, Adopted October 30, 1995, Effective October 31, 1995 at 12:01 AM)
2. Uses in a floodplain.
3. Increase in building heights.
4. Enlargement of certain nonconforming uses.
5. Parking in R districts.
6. Waiver of minimum lot size requirements.
7. Approval of drive-in financial institutions, fast food restaurants, quick-service food stores, service stations and service station/mini-marts in a Highway Corridor Overlay District.
8. Approval of the enlargement, extension, relocation or increase in intensity of existing drive-in financial institutions, fast food restaurants, quick-service food stores and service stations in a Highway Corridor Overlay District.
9. Waiver of open space requirements.
10. Waiver of minimum yard and privacy yard requirements for single family attached dwelling units.
11. Approval of nonconforming condominium and cooperative conversions.
12. Cluster subdivisions.
13. Driveways for uses in a C or I district.
14. Density credit for major utility easements.
15. Increase in FAR.
16. Minor modifications to a nonconformity.
17. Waiver of certain sign regulations.
18. Outdoor storage in association with warehousing establishments in the Sully Historic Overlay District.

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19. Modifications/waivers/increases and uses in a Commercial Revitalization District.
20. Reduction of yard requirements for the reconstruction of certain single family detached dwellings that are destroyed by casualty.
21. Containment structures associated with outdoor recreation/sports facility playing fields/courts and golf courses.
22. Modification of minimum yard requirements for certain existing structures and uses.
23. Provisions for modifying shape factor limitations.
24. Modification of grade for single family detached dwelling.

9-602 Additional Submission Requirements

In addition to the submission requirements set forth in Sect. 011 above, all applications for a Category 6 special exception shall be accompanied by such submission items as may be required by the provisions of this Ordinance or as may be required by the Board for a particular special exception.

9-603 (Deleted by Amendment #95-283, Adopted October 30, 1995, Effective October 31, 1995 at 12:01 AM)

9-604 (Deleted by Amendment #82-64, adopted August 2, 1982)

9-605 (Deleted by Amendment #82-64, adopted August 2, 1982)

9-606 Provisions for Uses in a Floodplain

The Board may approve a special exception for the establishment of a use in a floodplain in accordance with the provisions of Part 9 of Article 2.

9-607 Provisions for Approving an Increase in Building Heights

As set forth in the C-3, C-4, C-6, C-7, C-8, C-9, I-1, I-2, I-3, I-4, I-5, I-6 and Sully Historic Overlay Districts, and as applicable to all Group 3, Institutional Uses and Category 3, Quasi-Public Uses, the Board may approve a special exception for an increase in height above the maximum building height regulations specified for the zoning district or a given use, but only in accordance with the following provisions:

1. An increase in height may be approved only where such will be in harmony with the policies embodied in the adopted comprehensive plan.
2. An increase in height may be approved only in those locations where the resultant height will not be detrimental to the character and development of adjacent lands.
3. An increase in height may be approved in only those instances where the remaining regulations for the zoning district can be satisfied.

SPECIAL EXCEPTIONS

- (8) Public right(s)-of-way, indicating names, route numbers and width, any required and/or proposed improvements to the public right(s)-of-way and delineation of the existing centerline of all streets abutting the property, including dimensions from the existing centerline to the edge of the pavement and to the edge of the right-of-way.
- (9) Proposed means of ingress and egress to the property from a public street(s).
- (10) Location of all existing and/or proposed parking spaces, indicating minimum distance from the nearest property line(s), and a schedule showing the number of parking spaces provided and the number required by the provisions of the Commercial Revitalization District. If parking spaces are to be located off-site, the location, number and access to such spaces.
- (11) Location of well and/or septic field, or indication that the property is served by public water and/or sewer. Where applicable, a statement from the Health Department that available facilities are adequate for the proposed use.
- (12) Approximate location, estimated size of footprint in acres and type of all proposed stormwater management facilities, including the full extent of side slopes, embankments, spillways, dams, and approximate water surface elevation for design storms, if applicable. In addition, a preliminary stormwater management plan that includes information about the adequacy of downstream drainage, including the sufficiency of capacity of any storm drainage pipes and other conveyances into which stormwater runoff will be conveyed. When there is 2500 square feet or more of land disturbing activity on the entire application property, in addition to the above, the preliminary stormwater management plan shall include:
 - (a) A graphic depicting:
 - (i) The approximate footprint of the stormwater management facility and, where applicable, the height of the dam embankment and the location of the emergency spillway outlet for each stormwater management facility.
 - (ii) The approximate on-site and off-site areas to be served by each stormwater management facility, along with the acreage draining to each facility.
 - (iii) A preliminary layout of all on-site drainage channels, outfalls and pipes, including inlet and outlet pipes within the stormwater management facility.
 - (iv) The approximate location or alternative locations, if any, of any maintenance access road or other means of access to the stormwater management facility, and the identification of the types of surfaces to be used for any such road.

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- (v) Proposed landscaping and tree preservation areas in and near the stormwater management facility.
 - (vi) The approximate limits of clearing and grading on-site and off-site for the stormwater management facility, storm drainage pipes, spillways, access roads and outfalls, including energy dissipation, storm drain outlet protection and/or stream bank stabilization measures.
- (b) A preliminary stormwater management narrative setting forth the following:
- (i) Description of how the detention and best management practice requirements will be met.
 - (ii) The estimated area and volume of storage of the stormwater management facility to meet stormwater detention and best management practice requirements.
 - (iii) For each watercourse into which drainage from the property is discharged, a description of the existing outfall conditions, including any existing ponds or structures in the outfall area. The outfall area shall include all land located between the point of discharge from the property that is located farthest upstream, down to the point where the drainage area of the receiving watercourse exceeds 100 times the area of that portion of the property that drains to it or to a floodplain that drains an area of at least 1 square mile, whichever comes first.
 - (iv) Description of how the adequate outfall requirements of the Public Facilities Manual will be satisfied.
- (13) A statement setting forth the maximum gross floor area and FAR proposed for all uses other than residential, and the maximum density of dwelling units, if applicable.
- (14) Existing topography with a maximum contour interval of two (2) feet and a statement indicating whether it is air survey or field run.
- (15) A plan showing the open space areas and how the development meets any applicable streetscape/urban design guidelines set forth in the adopted comprehensive plan, with a statement of the percent of open space required and percent of open space provided. The plan shall also include the limits of clearing, existing vegetation, and when there is 2500 square feet or more of land disturbing activity, an existing vegetation map; proposed landscaping in accordance with the Commercial Revitalization District regulations to include interior and peripheral parking lot landscaping and screening and barrier measures.

SPECIAL EXCEPTIONS

- (16) Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
- (17) Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
- (18) Location of all walkways on the site and to adjacent sites and trails required by the adopted comprehensive plan.
- (19) Approximate delineation of any grave, object or structure marking a place of burial if known, and a statement indicating how the proposed development will impact the burial site.
- (20) Where applicable, seating capacity, useable outdoor recreation area, emergency access, bicycle parking, fencing, outside lighting, and loudspeakers.
- (21) Seal and signature of professional person certifying the plat.

In addition, an application shall include a statement and any supporting materials detailing any requested modification/waiver/increase and the justification for same.

3. The approval of a requested modification/waiver/increase or use shall be in accordance with and shall further the implementation of the adopted comprehensive plan for the commercial revitalization area.

9-623 Reduction of Yard Requirements for the Reconstruction of Certain Single Family Detached Dwellings that are Destroyed by Casualty

The Board may approve a special exception to allow a reduction of the yard requirements for the reconstruction of certain single family detached dwellings that are subject to Par. 1 of Sect. 15-101 and destroyed by casualty, but only in accordance with the following:

1. The application shall be filed within two (2) years of the date of the casualty if the casualty takes place after November 16, 2004. If the casualty occurred less than two (2) years prior to November 16, 2004, the application shall be filed within two (2) years of November 16, 2004. If the casualty occurred two (2) or more years prior to November 16, 2004, no such special exception shall be filed or approved; and
2. The single family detached dwelling must have been in a habitable condition immediately prior to the casualty; and

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3. The casualty cannot have been intentionally caused by the owner or owner's agent; and
4. The resulting gross floor area of the reconstructed dwelling shall not be more than 125 percent of the gross floor area of the dwelling that existed immediately prior to the casualty; and
5. When a structure that existed prior to the casualty encroaches into a current minimum required yard, the resulting yard after reconstruction shall equate to no more than a twenty-five (25) percent reduction of the yard existing at the time of the casualty, but in no event shall any resulting yard be less than five (5) feet; and/or
6. The Board may allow the enlargement or relocation of the reconstructed dwelling such that it encroaches into a current minimum required yard. Any such enlargement or relocation shall not result in a reduction of any minimum required yard by more than twenty-five (25) percent, but in no event shall the resulting yard be less than five (5) feet.

The Board may allow extensions into the yards beyond that permitted by Paragraphs 5 and 6 above for stairs, stoops and ramps when such features are uncovered and are necessary for access and/or the safety of the occupants. Such features shall not be allowed any closer than three (3) feet from any property line; provided, however, that an accessibility improvement, as defined by Article 20, may be located in any yard.

9-624 Additional Standards for Containment Structures Associated with Outdoor Recreation/Sports Facility Playing Fields/Courts and Golf Courses

The Board may approve, in conjunction with the approval of a proffered rezoning or special exception for an outdoor sports facility, an increase in height and/or modification to the corresponding location regulations as set forth in Sect. 10-104 for containment structures associated with outdoor recreation/sports facility playing fields/courts or golf courses when such structure is designed to preclude the flight of any ball or other sports equipment onto adjacent property or right-of-way, but only in accordance with the following:

1. Detailed information relating to the anticipated trajectory of balls and other sports equipment and the need for a containment structure to keep such equipment on the property shall be submitted with the application. In the event the containment structure is associated with a new playing field/court or golf course, the playing field/court or golf course shall be oriented and designed in such a manner as to minimize the height needed for such containment structure.
2. The height, location, color and materials of the proposed containment structure, including the size of mesh for any netting, shall be identified in the application.
3. The material for the containment structure shall be limited to support structures, netting that is at least seventy-five (75) percent open in an evenly distributed pattern, and/or guy wires.
4. Wherever practical, the containment structure shall be designed in such a manner that, in the event of collapse, the structure will not fall onto adjacent property or right-of-way.
5. Signs shall not be permitted on any containment structures.

SPECIAL EXCEPTIONS

6. Wherever practical, the containment netting shall be removed when the outdoor sports facility is not in use due to seasonal changes or other factors.
7. A containment structure may be located on an adjacent lot to an outdoor recreation/sports facility playing field/court or golf course, whether or not such lot contains a principal structure or use.
8. Such containment structure shall not be allowed in association with a privately used playing field/court on a lot containing a single family dwelling.

9-625 Provisions for Modification of Minimum Yard Requirements for Certain Existing Structures and Uses

The Board may approve, only in conjunction with the approval of a rezoning or special exception for another use, a modification of any yard requirement for an existing structure or use, including but not limited to principal and accessory structures and off-street parking spaces, but only in accordance with the following:

1. It shall be demonstrated that the existing structure or use complied with the minimum required yards in effect when the use was established and that the yards have not been reduced to less than the yards required by this Ordinance since the effective date of this Ordinance, except by condemnation or by acquisition for public purposes by any governmental agency.
2. The Board may impose such conditions as it deems necessary, to include landscaping and screening, to minimize the impact of the existing structure or use on adjacent properties.

9-626 Provisions for Modifying Shape Factor Limitations

The Board may approve a lot with a shape factor greater than thirty-five (35) but less than fifty (50) in the R-E, R-1, R-2, R-3, R-4, R-5 and R-8 Districts if it determines that a portion of the property is required for the establishment of a wastewater and/or stormwater management facility or a stream valley trail as an outlot within the proposed subdivision, provided that there is no alternative location on the property being subdivided for the proposed facility or trail. Any subdivider seeking approval of an increase in shape factor between thirty-five (35) and fifty (50) shall provide sufficient justification for any such increase in order to establish compliance with the above requirements.

9-627 Provisions for Modification of Grade for Single Family Detached Dwellings

The Board may approve, only in conjunction with the approval of a rezoning or special exception for another use, a special exception for the modification of grade as it applies to the height measurement of a single family detached dwelling that is located within or in proximity to a floodplain and when such structure must be elevated to meet all applicable floodplain regulations. In such cases the Board may approve a special exception that allows a grade elevation to be established that permits a dwelling to be constructed in compliance with all applicable floodplain regulations. Any applicant seeking grade modification approval shall demonstrate that the requested increase in grade is the minimum amount required to meet the

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floodplain regulations.

ACCESSORY USES, ACCESSORY SERVICE USES AND HOME OCCUPATIONS

PART 3 10-300 HOME OCCUPATIONS

10-301 Authorization

Home occupations are permitted in any dwelling unit subject to the approval by the Zoning Administrator and the provisions listed below. An application for a home occupation shall be filed with the Zoning Administrator on forms furnished by the County. The application for a home occupation shall be accompanied by a filing fee of fifty dollars (\$50) made payable to the County of Fairfax.

10-302 Permitted Home Occupations

Home occupations include, but are not necessarily limited to, the following:

1. Artists and sculptors.
2. Authors and composers.
3. Dressmakers, seamstresses and tailors.
4. Home crafts, such as model making, rug weaving, lapidary work, and ceramics.
5. Office facilities, other than home professional offices as defined in Article 20.
6. Schools of special education whose class size does not exceed more than four (4) pupils at any given time and not more than eight (8) pupils in any one day.
7. The letting for hire of not more than two (2) rooms for rooming or boarding use for not more than two (2) persons, neither of whom is a transient.

10-303 Home Occupations Not Permitted

Permitted home occupations shall not in any event be deemed to include the following:

1. Antique shops.
2. Barbershops or beauty parlors.
3. Eating establishments.
4. Gift shops.
5. Repair service or personal service establishments, except as may be permitted by Sect. 302 above.
6. Riding or boarding stables or kennels.
7. Veterinary hospitals.

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10-304 Use Limitations

In addition to the use limitations applicable in the zoning district in which located, all home occupations shall be subject to the following use limitations:

1. A home occupation must be conducted by the home occupation permit applicant within the dwelling which is the primary residence of the applicant or in an accessory building thereto which is normally associated with a residential use and shall be clearly subordinate to the principal use of the lot as a dwelling.
2. Except for articles produced on the premises, no stock in trade shall be stored, displayed or sold on the premises.
3. There shall be no exterior evidence that the property is used in any way other than for a dwelling.
4. No mechanical or electrical equipment shall be employed other than machinery or equipment customarily found in the home, associated with a hobby or avocation not conducted for gain or profit, or customary for a small office.
5. No outside display or storage of goods, equipment or materials used in connection with the home occupation shall be permitted.
6. The home occupation permit applicant and other persons who use the dwelling as their primary residence may be involved in the home occupation use. In addition, one (1) nonresident person, whether paid or not for their services, may be involved in the home occupation use on the property provided that there is only one (1) such person on the property and the hours of such attendance shall be limited to 8:00 AM to 5:00 PM, Monday through Friday.
7. Only one commercial vehicle shall be permitted per dwelling unit, subject to the provisions of Sect. 102 above.
8. The dwelling in which the home occupation is being conducted shall be open for inspection to County personnel during reasonable hours.
9. A permit for a home occupation is valid for only the original applicant and is not transferable to any resident, address or any other occupation. Upon termination of the applicant's residency, the home occupation permit shall become null and void.
10. No sign shall be permitted.
11. There shall be no customers or clients.

10-305 Revocation of a Home Occupation Permit

A permit for a home occupation shall be revocable by the Zoning Administrator because of the failure of the owner or operator of the use covered by the permit to observe all requirements of the permit and the Zoning Ordinance.

SIGNS

PART 3 12-300 ADMINISTRATION

12-301 Permit Requirements

1. Except as otherwise provided herein, no sign shall be erected, altered, refaced or relocated unless a sign permit has been approved by the Zoning Administrator.
2. Any sign erected under permit shall indicate in the lower right hand corner of the sign the number of the permit. The permit number shall be so affixed that it is legible from the ground.

12-302 Permit Application

The application for a sign permit shall be filed with the Zoning Administrator on forms furnished by the County. The application shall contain the identification and address of the property on which the sign is to be erected; the name and address of the sign owner and of the sign erector; drawings showing the design, dimensions and location on the building/site of the sign; and such other pertinent information as the Zoning Administrator may require to ensure compliance with the provisions of this Ordinance and other applicable ordinances of the County.

The application for a permit shall be accompanied by a filing fee made payable to the County of Fairfax in the amount of ninety dollars (\$90).

12-303 Expiration of a Sign Permit

1. A sign permit shall expire and become null and void if the sign is not erected within a period of twelve (12) months from the date of the permit.
2. In the event the sign is not erected within the twelve (12) month period, an application for extension of an additional six (6) month period may be made to the Zoning Administrator. Such an extension may be granted if the proposed sign is in accordance with current applicable regulations. If the proposed sign is not in accordance, the application for an extension shall be denied.

12-304 Special Permits

1. The BZA may grant a special permit to allow an increase in the height of a freestanding sign in a neighborhood or community shopping center where, in its opinion, the provisions of this Article would cause a hardship by virtue of topography. No such permit shall be granted that would permit a freestanding sign to extend to a height of more than twenty-six (26) feet above the center line elevation of the nearest street.
2. The BZA may grant a special permit to allow additional sign area, additional sign height, or a different arrangement of sign area distribution for a regional or super-regional shopping center where, in its opinion, the provisions of this Article would cause a hardship by virtue of topography or location of the regional or super-regional shopping center. No such permit shall be granted that would permit the total combined sign area for the regional or super-regional shopping center to exceed 125 percent of the sign area otherwise permitted by the provisions of this Article.

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3. In cases where an individual or grouping of enterprises are so located within a shopping center as not to have frontage 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. No such permit shall be granted that would permit the total combined sign area for the shopping center to exceed 125 percent of the sign area otherwise permitted by the provisions of this Article.

12-305 Special Exceptions

In the C and I 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 Sect. 9-620.

ARTICLE 13
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LANDSCAPING AND SCREENING

ARTICLE 13

LANDSCAPING AND SCREENING

PART 1 13-100 GENERAL PROVISIONS

13-101 Purpose and Intent

The purpose and intent of this Article is to preserve and promote the health, safety and general welfare of the public; to facilitate the creation of a convenient, attractive and harmonious community; to conserve natural resources including adequate air and water; to conserve properties and their values; to preserve the character of an area by preventing harmful effects of potentially dissimilar uses; and to encourage the appropriate use of land. More specifically this Article is intended to minimize the impact of dissimilar uses on adjoining or nearby uses by requiring a screen or buffer between the uses in order to lessen the impact of noise, dust and other debris, motor vehicle headlight glare or other artificial light intrusion, and other objectionable activities or impacts conducted on or created by an adjoining or nearby use. Additionally, this Article is intended to require the landscaping of certain parking lots in order to reduce the harmful effects of wind and air turbulence, heat and noise, and the glare of motor vehicle lights; to preserve underground water resources and to permit the return of precipitation to the ground water strata; to act as a natural drainage system and ameliorate storm water drainage problems; to reduce the level of carbon dioxide and return pure oxygen to the atmosphere; to prevent soil erosion; to provide shade; and to enhance the appearance of parking lots.

13-102 Applicability

The provisions of this Article shall apply to all development subject to the provisions of Article 17, except the following:

1. Site plans filed pursuant to a special permit, special exception or variance approved prior to December 10, 1977, or
2. Site plans filed pursuant to proffered conditions or a development plan approved by the Board of Supervisors prior to December 10, 1977.

13-103 Administration

The Director shall be responsible for the administration of this Article.

13-104 Standards

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

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

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2. All trees required by the provisions of this Article shall be a minimum of five (5) feet in overall height at the time of planting.
3. Generally, planting required by this Ordinance should be in an irregular line and spaced at random.
4. Existing vegetation which is suitable for use in compliance with the requirements of this Article, and which is protected according to the provisions of the Public Facilities Manual, when supplemented so as to provide planting and screening in accordance with the purpose and intent of this Article, may and should be used as required planting. Existing vegetation in a Resource Protection Area may be used to meet the requirements of this Article upon the approval of the Director. Any addition or removal of vegetation in a Resource Protection Area shall be subject to the provisions of Chapter 118 of The Code. The addition of vegetation in a Resource Protection Area shall be indigenous or adaptable to the site without extraordinary measures and shall be approved by the Director.

13-105 Landscaping Plan and Planting Requirements

1. A landscaping plan shall be submitted as required by the provisions of Article 17 and may be required for a minor site plan as determined by the Director.
2. Such landscaping plans shall 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 Article.
3. The landscaping measures required by this Article shall be shown on such plan, and shall be completed according to specifications prior to approval of any Residential or Non-Residential Use Permit in accordance with the provisions of Sect. 18-704.

13-106 Maintenance

1. The owner, or his agent, shall be responsible for the maintenance, repair and replacement of all landscaping materials and barriers as may be required by the provisions of this Article.
2. All plant material shall 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.
3. Fences and walls shall be maintained in good repair. Openings within the barriers may be required by the Director for accessibility to an area for necessary maintenance.
4. When tree conservation required by Sect. 401 below is provided on individual lots in residential districts, the homeowner, subsequent to Residential Use Permit issuance, shall not be precluded from adding, removing or relocating such landscaping
5. All landscaping shall be installed and maintained to be in substantial conformance with any proffered conditions or with any approved conceptual/final development plan,

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general development plan, development plan, PRC plan, special exception, special permit or variance as determined by the Zoning Administrator. Any removal or replacement of such required landscaping shall require approval by the Director after coordination with the Zoning Administrator.

6. The removal or replacement of any landscaping depicted on an approved site plan that is not subject to any of the approvals listed in Par. 5 above shall require Director approval.
7. Any landscaping required by Paragraphs 5 and 6 above that is removed or replaced without the written permission of the Director shall be replaced at the owner's expense with new landscaping of the appropriate species that is equal to or larger in caliper, height, or canopy proportions to the required landscaping that was removed. If the required landscaping that is removed has been planted for more than ten (10) years, the replacement plantings shall be in accordance with the Public Facilities Manual and shall provide a ten (10) year canopy at the time of planting, as determined by the Director.

13-107 (Deleted by Amendment #92-232, Adopted December 14, 1992, Effective December 14, 1992)

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LANDSCAPING AND SCREENING

PART 2 13-200 PARKING LOT LANDSCAPING

13-201 Purpose and Intent

The purpose and intent of this Part is to contribute toward compliance with the Federal Clean Air Act by helping to ameliorate 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. Additionally, this Part is intended to minimize parking lot noise, glare from headlights and water and air pollution; provide adequate planting areas for healthy development of parking lot trees; provide pervious areas within parking lots that will permit the return of precipitation to the ground water strata; contribute toward natural and efficient storm drainage; and promote high quality site design.

13-202 Interior Parking Lot Landscaping

1. Any parking lot of twenty (20) or more spaces shall be provided with interior landscaping covering not less than five (5) percent of the total area of the parking lot. Such landscaping shall be in addition to any planting or landscaping within six (6) feet of a building, any planting or landscaping required as peripheral planting by Sect. 203 below, and any transitional screening as may be required by Sections 302 and 303 below.
2. The primary landscaping materials used in parking lots shall be trees which provide shade or are capable of providing shade at maturity. Shrubs and other live planting material may be used to complement the tree landscaping, but shall not be the sole contribution to the landscaping.
3. The landscaping areas shall be reasonably dispersed throughout the parking lot.
4. The interior dimensions of any planting area shall be sufficient to protect all landscaping materials planted therein in conformance with the Public Facilities Manual.
5. The Director may waive or modify the requirements of this Section for any use in an I district wherein vehicles are parked or stored, provided the use is screened from view of all adjacent property and all public streets.
6. The Board, in conjunction with the approval of a rezoning or special exception, may approve a waiver or modification of the requirements of this Section. Such waiver or modification may be approved:
 - A. For an interim use of a specified duration, and/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 deleterious effect on the existing or planned development of adjacent properties.
7. In a Commercial Revitalization District, interior parking lot landscaping shall be provided in accordance with the provisions of that district.

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13-203 Peripheral Parking Lot Landscaping

If any parking lot contains twenty (20) or more spaces and transitional screening is not required by Sections 302 and 303 below, then peripheral parking lot landscaping shall be required as follows:

1. When the property line abuts land not in the right-of-way of a street:
 - A. A landscaping strip four (4) feet in width shall be located between the parking lot and the abutting property lines, except where driveways or other openings may necessitate other treatment.
 - B. At least one (1) tree for each fifty (50) feet shall be planted in the landscaping strip; however, this shall not be construed as requiring the planting of trees on fifty (50) foot centers.
2. Where the property line abuts the right-of-way of a street:
 - A. A landscaping strip ten (10) feet in width, which shall not include a sidewalk or trail, shall be located between the parking lot and the property line.
 - B. At least one (1) tree for each forty (40) feet shall be planted in the landscaping strip; however, this shall not be construed as requiring the planting of trees on forty (40) foot centers.
 - C. Where peripheral landscaping required by this Section conflicts with street planting regulations of the Virginia Department of Transportation, the regulations of the latter shall govern.
3. 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 Section and the requirement to provide a ten (10) foot minimum distance between a front lot line and an off-street parking space set forth in Par. 8 of Sect. 11-102. Such waiver or modification may be approved:
 - A. For an interim use of a specified duration, and/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 deleterious effect on the existing or planned development of adjacent properties.
4. In a Commercial Revitalization District, peripheral parking lot landscaping shall be provided in accordance with the provisions of that district.

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PART 3 13-300 TRANSITIONAL SCREENING AND BARRIERS

13-301 Purpose and Intent

The purpose and intent of this Part is to promote the development of a harmonious community; to protect the neighborhood character by preserving existing vegetation and requiring the planting and maintenance of vegetative screening and other barriers to lessen the visual and noise impact of a more intensive use on nearby properties. The required vegetative buffer contributes toward attractive and enhanced development design and enhances air and water quality.

13-302 Transitional Screening and Barriers, General Provisions

1. Transitional screening and barriers shall be provided in accordance with the matrix presented at the end of this Article and in accordance with the provisions of this Section and Sections 303 and 304 below.
2. Transitional screening and barriers shall be provided within the zoning district and on the lot of the use indicated in the left column of the matrix where it is contiguous or across the street from land used or zoned for uses indicated across the top of the matrix.
3. Where the structure is to contain more than one use or category of uses as presented in the matrix, the more stringent requirements of the matrix shall apply; provided, however, that the Director may allow the lesser requirements of the matrix upon a finding that the need for the more stringent requirements has been eliminated by the arrangement of the uses.
4. The uses in the matrix are listed in abbreviated form. Other similar uses, as may be included in a listing presented in the district regulations, shall be subject to the same regulations as are presented for a use listed on the matrix.
5. In those instances where a proposed use and/or an existing use on the abutting property is not listed in the matrix, the Director, using the matrix as a guide, shall determine whether or not and to what extent transitional screening and barriers shall be provided.
6. In addition to the standards set forth in Articles 8 and 9 for a particular use, all uses allowed by special permit or special exception in a given district shall be required to provide transitional screening and barriers as determined by the BZA or Board, as the case may be, using the matrix as a guide.
7. In affordable dwelling unit developments which contain a mixture of different dwelling unit types, transitional screening and barriers shall not be required between different dwelling unit types within the affordable dwelling unit development.
8. In a Commercial Revitalization District, transitional screening and barriers shall be provided in accordance with the provisions of that district.

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13-303 Transitional Screening Requirements

1. Barriers shall be generally located between the required transitional screening and the use or activity in connection with which they are required where they will most adequately screen such activities from the existing or proposed first floor level of adjoining development as determined by the Director. Any bracing, supports or posts shall be on the side of the barrier facing the use which must provide the barrier.
2. Where options are presented on the matrix for a type of barrier, such option shall be available to the developer unless otherwise qualified.
3. There shall be three (3) different transitional screening requirements as identified on the matrix, which shall be provided pursuant to Chapter 12 of the Public Facilities Manual and as follows:
 - A. Transitional Screening 1 shall consist of an unbroken strip of open space a minimum of twenty-five (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 (10) year tree canopy of seventy-five (75) percent or greater;
 - (2) A mixture of trees consisting of at least seventy (70) percent evergreen trees, and consisting of no more than thirty-five (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 (3) shrubs for every ten (10) linear feet for the length of the transition yard area. The shrubs shall generally be located away from the barrier and staggered along the outer boundary of the transition yard.
 - B. Transitional Screening 2 shall consist of an unbroken strip of open space a minimum of thirty-five (35) feet wide and planted with all of the following:
 - (1) A mixture of large and medium evergreen trees that achieves a minimum ten (10) year tree canopy of seventy-five (75) percent or greater;
 - (2) A mixture of trees consisting of at least seventy (70) percent evergreen trees, and consisting of no more than thirty-five (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 (3) shrubs for every ten (10) linear feet for the length of the transition yard area. The shrubs shall generally be located away from the barrier and staggered along the outer boundary of the transition yard.
 - C. Transitional Screening 3 shall consist of an unbroken strip of open space a minimum of fifty (50) feet wide planted with all of the following:
 - (1) A mixture of large and medium evergreen trees and large deciduous trees that

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achieves a minimum ten (10) year tree canopy of seventy-five (75) percent or greater;

- (2) A mixture of trees consisting of at least seventy (70) percent evergreen trees, and consisting of no more than thirty-five (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 (3) shrubs for every ten (10) linear feet for the length of the transition yard area. The shrubs shall generally be located away from the barrier and staggered along the outer boundary of the transition yard.

13-304 Barrier Requirements

1. Barriers shall be generally located between the required transitional screening and the use or activity in connection with which they are required where they will most adequately screen such activities from the existing or proposed first floor level of adjoining development as determined by the Director. Any bracing, supports or posts shall be on the side of the barrier facing the use which must provide the barrier.
2. Where options are presented on the matrix for a type of barrier, such option shall be available to the developer unless otherwise qualified.
3. In certain unusual circumstances of topography, or to alleviate certain specific problems, i.e., the blocking of glare, muting of noise, etc., the Director may require the use of an earth berm or more specialized fence material in lieu of, or in combination with, any of the barrier types set forth below.
4. There shall be different barrier requirements as identified on the matrix, which shall be provided as follows:
 - A. Barrier A shall consist of a 42-48 inch wall, brick or architectural block faced on the side facing the existing use and may be required to be so faced on both sides as determined by the Director.
 - B. Barrier B shall consist of a 42-48 inch solid wood or otherwise architecturally solid fence.
 - C. Barrier C shall consist of an evergreen hedge with an ultimate height of at least 42-48 inches, planted size of 36 inches and planted 36 inches on center.
 - D. Barrier D shall consist of a 42-48 inch chain link fence and may be required by the Director to have inserts in the fence fabric, to be coated, or to be supplemented by trees and/or shrubs.
 - E. Barrier E shall consist of a 6 foot wall, brick or architectural block faced on the side facing the existing use and may be required to be so faced on both sides as determined by the Director.

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- F. Barrier F shall consist of a 6 foot high solid wood or otherwise architecturally solid fence.
- G. Barrier G shall consist of a 6 foot chain link fence and may be required by the Director to have inserts in the fence fabric or to be coated.
- H. Barrier H shall consist of one row of 6 foot trees averaging 50 feet on centers, such trees being a variety of types. This requirement may be omitted in cases where the building is 6 feet or less from the property line.

13-305 Transitional Screening and Barrier Waivers and Modifications

Transitional screening and barriers may be waived or modified by the Director in any of the following circumstances. The Director may attach conditions to any waiver or modification which would assure that the results of the waiver or modification would be in accordance with the purpose and intent of this Part.

1. Transitional screening and barriers may be waived or modified between uses that are to be 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.
2. Where the strict provisions of this Part would reduce the usable area of a lot due to lot configuration or size to a point which would preclude a reasonable use of the lot, transitional screening and/or barriers may be waived or modified by the Director where the side of a building, a barrier and/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.
3. Transitional screening may be modified where the building, a barrier and/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.
4. The transitional screening yard width and planting requirements may be reduced as much as two-thirds (2/3) where the developer chooses to construct a seven (7) foot brick or architectural block wall instead of the lesser barrier indicated by the matrix. This wall may be reduced to a height of six (6) feet where the Director deems such a height will satisfy the purpose and intent of this Part.
5. Transitional screening and barriers may be waived or modified where the adjoining land is designated in the adopted comprehensive plan for a use which would not require the provision of transitional screening between the land under site plan and the adjoining property.
6. Transitional screening and barriers may be waived or modified where the adjacent property is zoned to allow a use similar to that of the parcel under site plan.

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7. Transitional screening and barriers may be waived or modified where the adjoining property is used for any public purpose other than a school or hospital.
8. Transitional screening and barriers may be waived or modified when the adjoining land is used for a sawmilling operation or for a wayside stand.
9. Transitional screening and barriers may be waived or modified where adjacent residential property is used for any use permitted by the Board of Zoning Appeals or the Board of Supervisors as a special permit or special exception use except nursery schools, day care centers, schools of general and special education.
10. Transitional screening may be waived or modified when the adjoining land is an R district and is used for off-street parking as permitted by the provisions of Sect. 9-609.
11. Transitional screening and barriers may be waived or modified where the subject property abuts a railroad or interstate highway right-of-way, except the right-of-way of the Dulles International Airport Access Highway or the combined Dulles International Airport Access Highway and Dulles Toll Road.
12. The Director may waive or modify the barrier requirements where the topography of the lot providing the transitional screening and the lot being protected is such that a barrier would not be effective.
13. The Director may waive or modify the barrier requirements for single family attached dwelling units where a six (6) foot fence has been 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.
14. Transitional screening and barriers may be waived or modified for any public use when such use has been specifically designed to minimize adverse impact on adjacent properties.
15. In affordable dwelling unit developments, where the strict application of the provisions of this Article would preclude compliance with the provisions of Part 8 of Article 2, transitional screening and/or barriers may be waived or modified.

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PART 4 13-400 TREE CONSERVATION

13-401 Tree Conservation

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

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ARTICLE 15
NONCONFORMITIES

PART 1 15-100 NONCONFORMING USES

15-101 Qualification of Nonconforming Uses

1. Notwithstanding the definition of nonconforming building or use presented in Article 20, a building or use shall not be deemed a nonconforming use if such was a conforming building or use prior to the effective date of this Ordinance, and such building or use would otherwise be a conforming use prior to the effective date of this Ordinance, and such building or use would otherwise be a conforming use under the provisions of this Ordinance except that it does not meet the minimum district, lot size, minimum yard, shape factor, or building height requirements of the zoning district in which located.

Such a use may be continued and may be enlarged, provided that any such enlargement complies with all of the regulations of the zoning district in which located except the lot size or shape factor requirements. In addition, if a single family detached dwelling is destroyed or damaged by any casualty that is not intentionally caused by the owner or owner's agents, it may be reconstructed provided that:

- A. The reconstructed dwelling is constructed pursuant to a Building Permit that has been approved within two (2) years after the damage or destruction; and
- B. No additional stories from that which existed prior to the casualty shall be permitted for any portion of a reconstructed dwelling within any portion of the building footprint that did not comply with the current minimum yard requirements of the district in which located at the time of the casualty; and
- C. A dwelling reconstructed under this Section shall not result in any yard that is less than the yard in existence immediately prior to the casualty or the current minimum required yard, whichever is applicable.

However, in accordance with Sect. 9-623, the Board may approve a special exception to allow a reduction of the yard requirements for certain single family detached dwellings that are destroyed by casualty.

2. Any use which was existing prior to the effective date of this Ordinance, which is allowed within a particular zoning district as a special permit or a special exception use by the provisions of this Ordinance, may continue and shall not be deemed to be a nonconforming use in such district. However, except as qualified below, any subsequent replacement or enlargement of such use or of any building in which the same is conducted or the construction of any additional building for such use beyond the extent which existed prior to the effective date of this Ordinance, shall be subject to a special permit or special exception obtained in accordance with the provisions of this Ordinance.

Such special permit or special exception shall be approved only if the resulting use complies with the standards set forth in Articles 8 or 9 for the particular use in question.

Minor modifications to include additions or expansions may be permitted without the requirement for approval of a special permit or special exception for churches, chapels, temples, synagogues or other such places of worship (hereinafter places of

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worship) and places of worship with a child care center, nursery school or private school of general or special education when:

- A. It is determined by the Zoning Administrator that such modifications shall not:
- (1) Permit an increase in the number of seats, parking spaces or students, if applicable, which exceeds more than ten (10) percent of the existing amount; or
 - (2) Reduce the effectiveness of existing transitional screening, buffering, landscaping or open space; or
 - (3) Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development or part thereof to adjacent property; or
 - (4) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use, and minor additions to buildings may be permitted, provided that:
 - (a) the sum total of all such structures or additions shall not exceed the greater of 500 square feet gross floor area, or five (5) percent of the existing gross floor area up to a maximum of 2500 square feet of gross floor area; and
 - (b) the maximum permitted FAR for the zoning district shall not be exceeded.
- B. Any request for an addition to a place of worship shall require the provision of written notice by the requester in accordance with the following:
- (1) the notice shall include the letter of request with all attachments as submitted to the Zoning Administrator, a statement that the request has been submitted, and where to call for additional information; and
 - (2) the notice shall be sent to the last known address of the owners, as shown in the real estate assessment files of the Department of Tax Administration, of all property abutting and across the street from the site, or portion thereof, which is the subject of the request, and shall be delivered by hand or sent by certified mail, return receipt requested.

The request for an addition submitted to the Zoning Administrator shall include: an affidavit from the requester affirming that the required notice has been provided in accordance with the above; the date that the notice was delivered or sent; the names and addresses of all persons notified; and the Tax Map references for all parcels notified. No request for an addition shall be considered by the Zoning Administrator unless the affidavit has been provided in accordance with this paragraph.

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- (c) A preliminary layout of all on-site drainage channels, outfalls and pipes, including inlet and outlet pipes within the stormwater management facility.
 - (d) The approximate location or alternative locations, if any, of any maintenance access road or other means of access to the stormwater management facility, and the identification of the types of surfaces to be used for any such road.
 - (e) Proposed landscaping and tree preservation areas in and near the stormwater management facility.
 - (f) The approximate limits of clearing and grading on-site and off-site for the stormwater management facility, storm drainage pipes, spillways, access roads and outfalls, including energy dissipation, storm drain outlet protection and/or stream bank stabilization measures.
- (2) A preliminary stormwater management narrative setting forth the following:
- (a) Description of how the detention and best management practice requirements will be met.
 - (b) The estimated area and volume of storage of the stormwater management facility to meet stormwater detention and best management practice requirements.
 - (c) For each watercourse into which drainage from the property is discharged, a description of the existing outfall conditions, including any existing ponds or structures in the outfall area. The outfall area shall include all land located between the point of discharge from the property that is located farthest upstream, down to the point where the drainage area of the receiving watercourse exceeds 100 times the area of that portion of the property that drains to it or to a floodplain that drains an area of at least 1 square mile, whichever comes first.
 - (d) Description of how the adequate outfall requirements of the Public Facilities Manual will be satisfied.
- P. The location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
- Q. Approximate delineation of any grave, object or structure marking a burial site if known, and a statement indicating how the proposed development will impact the burial site.
2. A statement in tabular form which sets forth the following data, when such data is applicable to a given PRC plan:

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- A. Total number of dwelling units by type to include the corresponding population totals and density type based on the computation factors set forth in Sect. 6-308 and the maximum density provisions of Sect. 2-308.
 - B. Approximate total gross floor area and FAR for all uses other than dwellings.
 - C. Approximate total area in open space.
 - D. A schedule showing the total number of parking and loading spaces provided and the number required by the provisions of Article 11.
- 3. A map identifying classification of soil types at a scale of not less than one inch equals five hundred feet (1" = 500'), based upon information available on the County of Fairfax Soils Identification Maps.
 - 4. A statement of the architectural concepts and typical bulk of the proposed structures, and if available, schematic architectural sketches.
 - 5. A statement indicating the landscaping concepts, proposed screening measures and compliance with the tree conservation provisions of the Public Facilities Manual.
 - 6. When the development is to be constructed in sections, a proposed sequence of development schedule showing the order of construction of such sections, and an approximate completion date for the construction of each section.
 - 7. Identification of the necessity for floodplain studies, drainage studies, soil reports and for easements and/or letters of permission for off-site construction.
 - 8. Where applicable, any other information as may be required by the provisions of Article 7.

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area ratio; the number, size and type of dwelling units; and the amount of required and provided open space.

13. Location, type, size and height of any fencing and retaining walls.
14. All off-street parking, related driveways, loading spaces and walkways, indicating type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces required by the provisions of Article 11 for each use and the total number of spaces provided.
15. Horizontal location of all proposed trails and vertical location of any trail which is proposed to exceed an eight (8) percent grade.
16. Location of solid waste and recycling storage containers in accordance with Chapter 109.1 of The Code and the Public Facilities Manual. In addition, a solid waste and recycling system plan statement shall be included on the cover sheet of all site plans.
17. The angle of bulk plane for each building and the angle required by the provisions of the zoning district in which located.
18. Sufficient information to show how the physical improvements associated with the proposed development interrelate with existing or proposed development of record on adjacent properties.
19. Proposed street light pole locations, including distances from face of pole to face of curb, bracket length and luminaire size (in lumens), in accordance with the Public Facilities Manual.
20. Location and height of all light poles, including parking lot and walkway light poles, illustrations of each style of freestanding lighting fixture that demonstrate that such fixture is either a full cut-off or directionally shielded lighting fixture, as required by Part 9 of Article 14 and a statement by the owner/developer certifying that all outdoor lighting provisions of Part 9 of Article 14 shall be met.

For outdoor recreation/sports facility playing fields/courts, a sports illumination plan shall be submitted as required by Part 9 of Article 14, and for service stations, service station/mini-marts and vehicle sale, rental and ancillary service establishments, a photometric plan shall be submitted as required by Part 9 of Article 14. For those facilities that had a sports illumination plan or photometric plan approved by the BZA in conjunction with the approval of a special permit or by the Board in conjunction with the approval of a special exception, development plan or proffered rezoning, the approved plan shall be included in the site plan.
21. Any plan incorporating private streets shall contain the statement “privately owned, privately maintained” to advise that the streets will not be maintained by either the State or the County. If the private streets are to be constructed to Virginia Department of Transportation standards, the plan shall contain the following statement: “The private streets in this development are not intended for inclusion in the system of state highways and will not be maintained by the Virginia Department of Transportation or Fairfax County and are not eligible for rural addition funds or any other funds appropriated by the General Assembly and allocated by the Commonwealth Transportation Board.” Any and all streets that are not constructed to meet the standards necessary for inclusion in the system of state highways shall be privately maintained and shall not be eligible for acceptance into the system of state highways unless improved to current Virginia Department of Transportation standards with funds other than those appropriated by the General Assembly of Virginia and allocated by the Commonwealth Transportation

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Board. If the private streets are not to be constructed to Virginia Department of Transportation standards, the plan shall contain the following statement: "The private streets in this development do not meet the standards necessary for inclusion in the system of state highways and will not be maintained by the Virginia Department of Transportation or Fairfax County, and are not eligible for rural addition funds or any other funds appropriated by the General Assembly of Virginia and allocated by the Commonwealth Transportation Board."

22. Identification of any grave, object, or structure marking a place of burial on the site and if none, a statement to that effect shall be included on the site plan.
23. Provisions for elements required to provide an accessibility improvement.
24. Land within an adopted Pro Rata Road Reimbursement District shall be so designated, with the pro rata road reimbursement payment calculations for each proposed use and the sum total of payments to be reimbursed.
25. For all sites, a statement by the owner/developer certifying that all wetlands permits required by law shall be obtained prior to commencing land disturbing activities in any areas requiring such permits.
26. The plan shall include all proffered conditions and all development conditions of an approved rezoning, special permit, special exception, or variance and a narrative indicating how these conditions are addressed by the plan.
27. A tree conservation plan that addresses the tree conservation and vegetation preservation requirements of Chapters 104 and 122 of The Code and the policies and requirements of the Public Facilities Manual.
28. A landscape plan as specified in the Public Facilities Manual, drawn to scale, showing existing vegetation to be preserved and any of the following proposed landscape materials required to be installed:
 - A. Parking lot landscaping, transitional screening and tree conservation as required by the provisions of Article 13, to include the location, type and height of barriers.
 - B. Replacement vegetation in accordance with the policies and requirements of the Public Facilities Manual.
 - C. Plantings required by a proffered condition or development condition of an approved rezoning, special permit, special exception or variance.
29. All existing and proposed water and sanitary sewer facilities, indicating all pipe sizes, types and grades and where connection is to be made to the County or to another utility system.
30. Provisions for the adequate disposition of natural and storm water in accordance with Chapter 118 of The Code and the Public Facilities Manual, indicating the location, size, type and grade of ditches, catch basins and pipes and connections to existing drainage systems, existing and proposed storm drainage easements, and on-site storm water

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- B. Location and adequacy of parking areas.
 - C. Design of traffic circulation and control within the site and with adjoining properties.
 - D. Compliance with all of the applicable requirements of this Ordinance, proffered conditions or development conditions of an approved rezoning, special permit, special exception, or variance.
 - E. Adequacy of drainage, water supply, fire protection and sanitary sewer facilities.
 - F. Compliance with applicable established design criteria, construction standards and specifications for all improvements as set forth in the Public Facilities Manual.
 - G. Provision of adequate erosion and sedimentation control measures of both a temporary and permanent nature.
 - H. Compliance with Chapter 118 of The Code. Appeals of decisions made pursuant to Chapter 118 of The Code which are appealable shall be processed in accordance with Article 8 of Chapter 118.
 - I. Adequate analysis and measures to address problem soils where required by Chapter 107 of The Code or the Public Facilities Manual. Review and approval of plans, specifications, and reports by the County, with or without recommendations of the Geotechnical Review Board, shall in no way relieve the developer of the responsibility for the design, construction, and performance of the structures, pavement, and slopes on the project and damage to surrounding properties.
4. If a site plan is disapproved, the reasons for such disapproval shall be shown on the plan or in a separate document. The reasons for disapproval shall identify all deficiencies in the plan which cause the disapproval by reference to specific ordinances, regulations, or policies, and shall generally identify such modifications or corrections as will permit approval of the plan.
 5. Any approved site plan may be revised, prior to bond or security release, in the same manner as originally approved and in accordance with the Public Facilities Manual. Approval of such revision shall not be deemed to alter the expiration date of the site plan, as established in Sections 110 and 111 below. Following release of the owner's or developer's agreement package provided in accordance with Sect. 112 below, any proposed change shall be subject to the provisions of this Article.
 6. Once a site plan is approved, any Building Permit, Residential or Non-Residential Use Permit or other permits shall only be issued in accordance with such approved plan. Once the uses or structures approved by such site plan are established, the uses and structures shall continue to be subject to the provisions of approval and any modifications or alterations to the site or any additional uses and structures shall only be permitted in accordance with the provisions of this Article.

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17-109 Fees

Applicable fees, at such times and amounts as stated below, shall be paid to the County for the examination and approval of site plans, minor site plans, and other required studies and reports, the inspection of all required improvements shown on such plans, and the processing of site plan or minor site plan agreements. The applicable fees for those site plans, studies and reports submitted in English measurements shall be based on a conversion from English units to metric as defined in the Metric Conversion Table contained in the Public Facilities Manual.

1. DPWES Fees for Site Plans:

- A. The base fee for the submission of a site plan shall be as follows, plus all applicable additional fees as set forth below.

Site plans: \$9,210 plus \$4,230 per disturbed hectare (2.5 acres) or any fraction thereof greater than one hectare (2.5 acres), with a maximum base fee of \$46,040

Site plans with public improvements only, including sanitary sewer, trail, sidewalk, storm sewer, channel improvements, water line, and/or road construction pursuant to Chapter 2 of The Code: \$3,320 plus \$3.75 per meter (3.3 feet), or fraction thereof, of each improvement

- B. Additional plan review as a result of an approved zoning action to include rezoning, special exception, special permit and/or variance application associated with proposed construction, with a maximum cumulative fee of \$3,270:

Sites subject to rezoning: \$1,920

Sites subject to special exception: \$1,350

Sites subject to special permit: \$1,350

Sites subject to variance: \$1,000

- C. Review resulting from site conditions and proposed improvements:

Problem soils (area with soil types A or B per the official map adopted by the Board or as deemed by the Director): \$1,000

Floodplain: \$674 (existing and proposed)

Natural drainageway (non-floodplain watersheds): \$674

Stormwater management facility: \$830 for each facility serving the site (on-site or off-site)

Best management practices facility (BMP): \$2,210 for each facility serving the site (on-site or off-site)

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- D. Second submission of a site plan: A fee in accordance with Paragraphs 1A, 1B and 1C above shall be paid for a second submission of a site plan for changes in disturbed area, zoning actions, site conditions and/or proposed improvements from that indicated on the first submission
 - E. Resubmissions of a site plan after second submission: \$4,410 per submission
 - F. Resubmissions of a site plan with public improvements only as defined in Paragraph 1A after second submission: A fee equal to fifty (50) percent of fees charged in accordance with Paragraphs 1A, 1B and 1C shall be paid upon each subsequent submission of a site plan with public improvements only
 - G. Sheet substitution (insert) in submissions after the first submission (to be paid prior to site plan approval): \$85 per sheet
 - H. Site plan revisions: \$1,000 per revision submission and resubmission plus additional fees for changes in disturbed area, zoning action and/or site changes and/or newly proposed improvements in accordance with Paragraphs 1A, 1B and 1C above
 - I. Site plan extensions: \$1,350 per request
 - J. Sanitary sewer as-built: \$500 per submission
 - K. Site plan as-built: \$340 per submission
2. Fire Prevention Division (Fire Official) Fees for Site Plans shall be charged for the following plans and studies:
- Site plans
 - Site plan revisions
 - Site plan extensions
 - Rough grading plans
 - As-built site plans
- A. Plan Review fees: Fees for all plan reviews are based on an hourly rate of \$128 or \$32 per one-fourth (1/4) hour or part thereof, per reviewer. The Fire Official review fee is due upon completion of the plan review process and shall be paid prior to site plan approval or within 120 days of site plan submission, whichever comes first.
 - B. Inspection Fees: Fees are based on an hourly rate of \$128 per hour or \$32 per one-fourth (1/4) hour or part thereof, per inspector. The Fire Official inspection fee is due upon completion of the inspection.
3. Minor Site Plans, Modifications and Waivers:
- Minor site plans: \$2,690 per submission

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Except as provided for in Paragraphs 4 and 5 below, a fee of \$690 shall be paid with the submission of any request for a modification or waiver of County ordinances, including but not limited to the Zoning Ordinance and the Public Facilities Manual; provided, however, the cumulative fee for any modification(s) or waiver(s) requested for the portion of a development in which affordable dwelling units are located and which relate to typical street sections, sidewalks and/or curb and gutter shall not exceed \$690

Combined stormwater detention and Best Management Practices waiver submitted simultaneously: \$810

In no instance shall the total fee for all modifications and waivers associated with a site plan or minor site plan exceed \$2,760

4. Water Quality Fees:

The fees listed below shall be paid upon each submission of each study to the County.

- A. Water Quality Impact Assessments: \$1,300
- B. Resource Protection Area and Resource Management Area Boundary Delineations:

For projects with 50 meters (165 feet) or less of baseline: \$340

For projects with greater than 50 meters (165 feet) of baseline: \$340 plus \$2.50 per meter (3.3 feet) of baseline in excess of 50 meters (165 feet)

- C. Chesapeake Bay Preservation Ordinance Exceptions and Waivers:

A fee of \$690 shall be paid with the submission of a request for an exception or waiver under Chapter 118 of The Code; provided however, that no fee shall be required for a waiver request filed pursuant to Section 118-5-1 Par. (b) and an additional fee of \$345 shall be paid with the submission of any exception request when a public hearing is required under Article 6 of Chapter 118 of The Code.

In the event that a Resource Protection Area and Resource Management Area Boundary Delineation and a Water Quality Impact Assessment are submitted simultaneously, only one fee shall be required and such fee shall be the higher of the fees required for the individual studies

5. Processing of Other Studies, Reports or Plans:

Applicable fees, as stated below, shall be paid upon each submission to the County of any study, report or plan.

- A. Floodplain Studies:

A fee of \$7.20 per meter (3.3 feet) of base line plus \$480 per road crossing and per dam, not to exceed a total fee of \$8,830

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B. Drainage Studies (for non-floodplain watersheds): \$1,540

C. Soil Reports:

A fee of \$2,690 shall be paid upon the initial submission of a soil report for review. A fee of \$880 shall be paid upon each subsequent submission and revision of a soil report

D. Rough Grading Plans:

A fee of \$770 per division of land or disturbed 0.5 hectare (1.25 acre), whichever is greater, not to exceed \$11,500, shall be paid upon the submission of a rough grading plan for review. A fee equal to twenty-five (25) percent of the original rough grading plan fee shall be paid upon each subsequent submission or revision to a rough grading plan

E. Parking redesignation plan or parking tabulation for a change in use and administrative parking reduction for churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education: \$770

F. Parking Reduction:

The following fees shall be paid upon each submission for review of a request for a reduction in the number of parking spaces required pursuant to Article 11 when such required spaces are:

- under 125 spaces: \$2,210
- 125 to 250 spaces: \$3,840
- 251 to 499 spaces: \$6,140
- 500 spaces or more: \$12,860

G. Recycling Study:

When a plan or study is submitted to the County for the sole purpose of placing recycling containers on a commercial or industrial site, as required by the Fairfax County Business Implementation Recycling Plan, there shall be no fee for review and processing of such a plan or study

H. Easement plats:

A fee of \$340 will be paid upon each submission of such plats to the County

I. Sheet substitution (insert) fee:

A fee of \$85 per sheet shall be paid upon submission of any insert to a study, report, or plan submitted pursuant to this paragraph

J. Photometric Plan or Sports Illumination Plan:

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A fee of \$695 shall be paid upon the initial submission of a photometric plan or sports illumination plan, as required by Part 8 of Article 14, when such plan is not submitted as part of a required site plan submission

K. Environmental Site Assessment Plan:

A fee of \$2,500 shall be paid upon the initial submission of an environmental site assessment plan, a fee of \$880 shall be paid upon each subsequent submission and revision to an environmental assessment plan

6. Inspection Fees: The following fees, except for those requiring an inspection following a stop work order, shall be paid at the time of bonding or prior to issuance of a construction permit for land disturbing activity, whichever occurs first:

A. Base fee: \$90 per disturbed hectare (2.5 acres) per agreement month, with a minimum of \$1,265 and a maximum of \$22,770

B. Public utility fee(s):

Storm drainage: \$1,460 for the first 30 meters (100 feet), plus \$10.40 for each additional meter (3.3 feet) or fraction thereof

Stormwater management facilities:

Detention ponds with an embankment less than or equal to 1.8 meters (6 feet) high: \$1,460

Detention ponds with an embankment greater than 1.8 meters high (6 feet): \$2,910

Dedicated streets: \$2,030 for the first 30 meters (100 feet) plus \$28 for each additional meter (3.3 feet) or fraction thereof

Private streets: \$1,650 for the first 30 meters (100 feet) plus \$22.40 for each additional meter (3.3 feet) or fraction thereof

Other paved area: \$1.80 per square meter (10 square feet) or fraction thereof

Driveway entrances: \$153 for each entrance

Pedestrian walkways/trails: \$348 for the first 30 meters (100 meters) plus \$5.70 for each additional meter (3.3 feet) or fraction thereof

Sanitary sewer systems: \$2,030 for the first 30 meters (100 feet) of main plus \$21.60 for each additional meter (3.3 feet) or fraction thereof

C. Other bonded and proffered work:

Based on a percentage of the bonded amount as follows:

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Cast in place culverts: 14.50% of the bonded amount up to \$50,000 plus 7.15% of the bonded amount greater than \$50,000 but less than or equal to \$200,000 plus 2.99% of the bonded amount greater than \$200,000

All other work: 14.50% of the bonded amount up to \$50,000 plus 2.99% of the bonded amount greater than \$50,000

- D. Construction plan inspection extension: \$90 per disturbed hectare (2.5 acres) per agreement month
 - E. Inspection following a stop work order: \$584 each, payable at next bonding action
 - F. Inspection following a violation: \$292 each, payable at next bonding action
7. Processing of Site Plan and Minor Site Plan Agreements:
- A. Agreement package processing fees:

A processing fee of \$1,935 per agreement package shall be paid upon submission to the County of any agreement package with a security value exceeding \$10,000. A processing fee of \$265 per agreement package will be paid upon submission of any agreement package with a security value of \$10,000 or less
 - B. Agreement extensions:

A fee of \$775 shall be paid upon submission of any request for an agreement extension

In the event that an agreement extension and an agreement security reduction are submitted simultaneously, only one fee shall be required and such fee shall be the fee for the agreement security reduction.
 - C. Replacement agreement:

A fee of \$1,380 shall be paid upon submission of any request for a replacement agreement. There shall be no replacement agreement fee if the rating for the corporate surety has fallen to a "B" level according to the A.M. Best Key Rating Guide and the replacement request is submitted to and approved by the Director prior to the expiration date of the agreement.
 - D. Agreement security reductions:

A fee of \$1,315 shall be paid upon submission of any request for a reduction in security in support of an agreement

In the event that, prior to plan approval for review fees or prior to bond release for inspection fees, the payor disputes the fee charged, a case review of costs incurred by the County may be requested in writing to the Director. In the case where the review reveals that the fees paid exceed 100 percent of costs, then

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a refund of the difference shall be made. If the case review reveals that 100 percent of the costs incurred by the County exceed the fees paid, then the payor shall pay the difference to the County prior to plan approval for review fees, or prior to bond release for inspection fees.

17-110 Site Plan and Minor Site Plan Approval

1. In accordance with Sect. 15.2-2261 of the Code of Virginia, approved site plans valid as of January 1, 1992 or site plans and minor site plans approved thereafter shall be valid for a period of five (5) years from the date of approval or for such longer period as the Director may, at the time of approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development. A site plan shall be deemed approved when the only requirement remaining to be satisfied in order to obtain a Building Permit is the execution of any agreements and posting of any securities and escrows. A minor site plan shall be deemed to be approved on the date of such approval by the Director. Thereafter, when a Building Permit has been obtained for construction in accordance with an approved site plan or minor site plan, such plan approval, or part thereof for which a Building Permit has been obtained, shall be extended beyond the period of five (5) years or such longer period as the Director may have approved for the life of the Building Permit.

While the site plan or minor site plan remains valid in accordance with this paragraph, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy or plan adopted subsequent to the date of approval of such plan shall adversely affect the right of the developer or successor in interest to commence and complete the approved development in accordance with the lawful terms of the plan, unless the change or amendment is required to comply with state law or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety or welfare. Nothing contained in this paragraph shall be construed to affect the application to individual parcels of land subject to final site plans or minor site plans, to the greatest extent possible, of the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act, the federal Clean Water Act, Sect. 402 (p.) of the Stormwater Program and regulations promulgated thereunder by the Environmental Protection Agency.

2. Residential site plans approved prior to 12:01 AM, June 18, 1991, for which a Building Permit for a residential structure shown on the approved site plan has been issued and such structure is built pursuant to such Building Permit, shall remain valid until completion of all structures shown on such site plan, provided that:
 - A. Such site plan is also an approved construction plan under the Subdivision Ordinance and such construction plan included the required information for a site plan, as set forth in Sect. 106 above, to include location of all structures and minimum yards;
 - B. Bonded improvements shown on the approved construction plan either have been built or are subject to a valid improvement bond;
 - C. The approval of the construction plan is followed by the recordation of a final subdivision plat within the specified time frames set forth in the Subdivision Ordinance; and

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- D. Completion of construction of the recorded subdivision is diligently pursued.
3. The provisions of Par. 1 above shall not apply to approved minor site plans for those temporary uses as permitted by Par. 1B of Sect. 105 above.

17-111 Site Plan and Minor Site Plan Extensions

The approval of a site plan or a minor site plan, except for temporary uses as set forth in Par. 1B of Sect. 105 above, approved pursuant to Par. 1 of Sect. 110 above may be extended by the Director for one or more periods, as the Director may at the time the extension is granted determine to be reasonable, taking into consideration the size and phasing of the proposed development and the provisions of this Section.

A request for an extension shall be filed in writing with the Director within forty-five (45) days prior to the expiration date of the approved site plan or minor site plan. Failure to apply for an extension prior to the expiration date shall cause the site plan or minor site plan approval to expire without notice on the expiration date. If the request is timely filed, the plan shall remain valid until the request for an extension is acted upon by the Director; provided, however, that after the initial plan or extension expiration date, no Building Permit shall be approved until the request for an extension of plan approval is acted upon by the Director.

The Director may approve an extension request upon a determination that:

1. The bonded improvements shown on the approved plan either have been built or are subject to a current agreement or extension thereto; and
2. The approved plan complies with all current provisions of the Zoning Ordinance, Public Facilities Manual, Subdivision Ordinance or other applicable ordinances; unless the Board specifically provided that an amendment adopted subsequent to the approval of the site plan or minor site plan is not applicable to site plan or minor site plan extensions.

17-112 Agreements and Security

1. Except as provided below, prior to the issuance of a construction permit for clearing and grading or for the installation of the physical improvements and facilities shown on an approved site plan or minor site plan, there shall be executed by the owner or developer and submitted with the application for a construction permit an agreement to construct such physical improvements as are shown on such approved plan. Such agreement shall be accompanied by a fee in accordance with Sect. 109 above and a security package acceptable to the County in the amount of the estimated cost of those physical improvements which (a) are located within public rights-of-way or easements and the construction of which is not otherwise secured in its entirety with the Virginia Department of Transportation or (b) are for vehicular ingress and egress, for public access streets, for structures necessary to ensure stability of critical slopes and for storm water management facilities or (c) are required by a proffered condition in accordance with the provisions of Par. 8 of Sect. 18-204 or required to be bonded by a development condition of an approved special permit, special exception or variance in accordance with the provisions of Sections 8-007, 9-007 and 18-405, respectively. The submission of agreements and security packages for such plans for which approvals are conditions of record plat approvals shall be required pursuant to Chapter 101 of The Code, The Subdivision Ordinance.

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2. The aforesaid agreement and security package shall be provided for guaranteeing completion of all work covered thereby within the time to be approved by the Director, which time may be extended by the Board upon payment of the extension fee and written application by the owner or developer, signed by all parties, including the sureties, to the original agreement.
3. The adequacy, conditions and acceptability of any security package hereunder shall be determined by the Board or any official of the County as may be designated by resolution of the Board.
4. In any case where any such official has rejected an agreement or security package, the owner or developer shall have the right to appeal such determination to the Board, provided the owner or developer has paid to the County the required fee for the examination and approval of the site plan or minor site plan and inspection of all required improvements shown on such plans.
5. Periodic partial and final release of any security shall be in accordance with the provisions of Part 8 of Article 2 and the Public Facilities Manual.
6. For the purposes of this Section, an owner of a condominium shall include, a declarant, unit owners ' association or unit owner, as provided for in Sect. 2-518.

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PART 2 17-200 REQUIRED IMPROVEMENTS

17-201 Improvements To Be Provided

In furtherance of the purposes of this Ordinance and to assure the public safety and general welfare and except as provided for in the Commercial Revitalization District provisions, no site plan or minor site plan shall be approved unless the Director is assured that the following improvements either exist or will be made or the Director has established that the requirement for the improvements may be modified or waived, based on information provided by the applicant, and a determination by the Director that such improvements are unnecessary, and such modification or waiver will not adversely affect other required improvements and compliance with all other applicable requirements. The Director may attach conditions to any such modification or waiver to assure that the results of the modification or waiver will be in accordance with the purpose and intent of this Part:

1. Construction of pedestrian walkways so that occupants/patrons may walk on the same from building to building or store to store within the site and to adjacent sites. Wherever possible, connection shall be made to walkways in adjacent developments.
2. Construction of trails or walkways in accordance with the general location shown on the adopted comprehensive plan together with such other connecting trails or walkways within the limits of the site plan. When such trails or walkways are to be constructed, fee title or easements shall be conveyed to the Board, Fairfax County Park Authority or Northern Virginia Regional Park Authority. The final location and design of trails or walkways are to be determined by the Director after review by the Fairfax County Department of Planning and Zoning and/or the Fairfax County Park Authority and/or the Northern Virginia Regional Park Authority.
3. Construction of vehicular travel lanes, service drives, driveways or other access connections, which will permit vehicular travel on the site and to and from adjacent properties in accordance with the following:
 - A. Adjacent to any primary highway, and generally parallel thereto, a service drive shall be constructed, and wherever possible, it shall connect with a service drive on adjacent properties. Such service drive shall be designed to be dedicated to the Virginia Department of Transportation, shall be dedicated for public use as a public road and the underlying land shall be conveyed to the Board of Supervisors.
 - B. Adjacent to any minor arterial or collector street, a travel lane not less than 6.60 meters, or the English equivalent, in width shall be constructed to afford access to adjoining properties.
 - C. Notwithstanding Paragraphs A and B above, service drives shall not be required adjacent to any street designated as a Virginia by-way by the Commonwealth of Virginia Transportation Board or adjacent to the Dulles Toll Road (Route 267). In addition, the service drive requirement may be waived by the Board in conjunction with proffered condition, development plan or special exception approval when it can be demonstrated that the provisions of Paragraphs D(1) and

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D(2) or Paragraphs D(1) and D(3) below can be satisfied.

- D. The Director may waive the requirement for constructing a travel lane as is set forth in Par. B above when:
- (1) There is no existing or proposed vehicular travel lane abutting the subject property on either side, and
 - (2) The adjoining property(s) is used or zoned for single family detached dwellings, or
 - (3) The adjoining property(s) is occupied by a given use, which by its nature would suggest that there will be a limited desire for travel between such use and the one proposed.
4. Dedication and construction of widening for existing roads, existing roads on new alignments, and proposed roads, all as indicated on the adopted comprehensive plan or as may be required by the Director for a specified purpose; however, proposed roads shown on the adopted comprehensive plan as freeways or expressways need not be constructed. In addition, dedication and construction of sufficient vehicular and pedestrian access shall be required to provide for safe and convenient ingress and egress.
 5. Construction of curb and gutter around all medians that separate travel lanes and service drives from existing streets and which separate off-street parking areas from streets, service drives, and travel lanes; however, the Director may waive the construction of an inside curb and gutter on a travel lane where it would be in keeping with the existing/proposed design of the travel lane or parking aisle on adjacent properties so that adequate and safe traffic circulation between sites can be obtained without such curb and gutter.
 6. Dedication of easements or rights-of-way for all facilities to be publicly maintained. Such easement or right-of-way shall be clearly defined for the purposes intended.
 7. Installation of adequate 'No Parking' signs along travel lanes or service drives to prohibit parking on same. Such signs shall be located on each curbed side, no more than fifteen (15) meters, or the English equivalent, apart.
 8. Installation of an adequate drainage system for the disposition of storm and natural water in accordance with the provisions of Chapter 118 of The Code and the Public Facilities Manual. Appeals of decisions made pursuant to Chapter 118 of The Code which are appealable shall be processed in accordance with Article 8 of Chapter 118.
 9. Installation of adequate temporary and permanent erosion and sedimentation control measures in accordance with the provisions of Chapter 104 of The Code and the Public Facilities Manual.
 10. All utilities provided by the developer shall be installed underground in accordance with adopted County standards and Chapter 63 of The Code. All other utilities shall be installed underground in accordance with standards of utility practice for underground construction, which such standards and any amendments thereto shall be furnished to the

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County by the utility company, and in accordance with standards furnished to and regulations issued by the applicable regulatory authority; provided, however, that:

- A. Equipment such as the electric distribution transformers, switchgear, meter pedestals and telephone pedestals, which are normally installed above ground, may continue to be so installed, in accordance with accepted utility practices for underground distribution;
 - B. Meters, service connections and similar equipment normally attached to the outside wall of the premises they serve may be so installed;
 - C. Temporary overhead facilities required for construction purposes shall be permitted;
 - D. It shall not be required that utilities to be installed by someone other than the developer or his contractor be shown on plats, plans or profiles, as a prerequisite to the approval of such plats, plans or profiles.
11. Vegetation removal and replacement in conformance with the requirements of Par. 9 above and the policies and requirements of the Public Facilities Manual.
 12. All other improvements required by the provisions of this Ordinance and proffered conditions to include but not to be limited to off-street parking and loading facilities, driveways and private streets as required by Article 11, and landscaping and screening as required by Article 13.
 13. All other improvements as are required by the provisions of other ordinances of the County or as may be required by the Virginia Department of Transportation.
 14. Installation of street lights in accordance with the provisions of the Public Facilities Manual.

17-202 Construction Standards, Inspection, and Supervision

1. Unless otherwise specifically provided in this Ordinance, the construction standards for all on-site and off-site improvements required by this Part shall conform to the provisions of the Public Facilities Manual. The Director shall approve the plans and specifications for all required improvements and shall inspect the construction of such improvements to assure conformity thereto.
2. Inspections during the installation of the required on-site and off-site improvements shall be made by the Director as required to certify compliance with the approved site plan and applicable County standards.
3. The owner shall notify the Director in writing three (3) days prior to the beginning of all street or storm sewer work shown to be constructed on the site plan. The submission of cut-sheets shall serve to accomplish the purpose of this requirement.
4. The owner shall provide adequate supervision on the site during the installation of all required improvements and have a responsible superintendent or foreman together with

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one set of approved plans, profiles and specifications available at the site at all times when work is being performed.

5. The installation of improvements as required in this Part shall in no case serve to bind the County to accept such improvements for the maintenance, repair or operation thereof but such acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement.

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PART 3 17-300 AS-BUILT SITE PLANS

17-301 General Provisions

1. Upon satisfactory completion, inspection and approval of the installation of all required improvements as shown on the approved site plan or a section thereof, seven (7) copies of an as-built site plan and the corresponding filing fee as provided for in Sect. 109 above, shall be submitted to the Director for review and approval for conformance with the approved site plan. Such plan shall be prepared in accordance with the sheet size and scale set forth in the Public Facilities Manual, and shall be prepared by a licensed land surveyor or licensed professional engineer registered in the State of Virginia. Such submission shall contain the following information:
 - A. Boundary of the site as shown on the approved site plan. The as-built plan shall show any geodetic reference points located on the site.
 - B. Area of the site as shown on the approved site plan and subsequent to any fee simple dedications to Fairfax County, State of Virginia or the Virginia Department of Transportation, and the land area of such dedications.
 - C. Location of all buildings showing the yard dimensions and all official building numbers (addresses) posted.
 - D. The location of all storm sewers, sanitary sewers, fire hydrants, and associated easements including all waterline easements. For storm and sanitary sewers, the pipe sizes, lengths, top and invert elevations and percent grade of pipe as computed shall also be shown.
 - E. Ponds, including detention, retention and Best Management Practice (BMP) ponds, showing elevation of top of embankments, toes of embankments, weirs, spillways, drainage structures, access easements and capacities of such ponds. Capacities shall be shown both volumetrically and topographically with sufficient elevations to calculate the capacities.
 - F. Horizontal locations of all designed trails included on the approved site plan. Vertical location of any trail which exceeds an eight (8) percent grade (whether designed or not as an eight (8) percent grade) and shown on the approved site plan. Elevations may be used in lieu of an as-built profile.
 - G. Deed book and page number(s) of the recordation in the land records of Fairfax County of dedications and easements reflected on the approved plan.
 - H. A statement of certification by a licensed professional engineer or land surveyor certifying that the as-built site plan conforms with the criteria listed above and represents actual conditions on the site for those items only, and bearing the engineer's or surveyor's seal, signature and Virginia registration number.
2. As-built site plans may be submitted and approved for any appropriately completed part of the total area of an approved site plan, with such part to be known as a section.

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ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES

18-104 Forms for Appeals and Applications

All appeals and applications as provided for in this Ordinance shall be submitted in writing on forms prescribed by the responsible official, body or committee and approved by the County Executive. Each appeal or application shall contain that specific information as may be required by the various provisions of this Ordinance.

18-105 Filing of Applications

Every application required under the provisions of this Ordinance shall be filed with the Zoning Administrator. No application shall be accepted unless it is in accordance with the applicable provisions of this Ordinance and no application shall be officially on file with the County unless and until the application and all required accompanying submissions, with the exception of a development plan, conceptual development plan or generalized development plan, as otherwise provided for in this Ordinance, are submitted to and accepted by the Zoning Administrator. Upon acceptance, an application shall be transmitted to the officer, body or agency having jurisdiction to act on the same, and such official shall promptly notify the Zoning Administrator of the action taken on the application.

18-106 Application and Zoning Compliance Letter Fees

All appeals and applications as provided for in this Ordinance and requests for zoning compliance letters shall be accompanied by a filing fee in the amount to be determined by the following paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be required where the applicant is the County of Fairfax or any agency, authority, commission or other body specifically created by the County, State or Federal Government. All fees shall be made payable to the County of Fairfax. Receipts therefore shall be issued in duplicate, one (1) copy of which receipt shall be maintained on file with the Department of Planning and Zoning.

1. Application for a variance, appeal, special permit or special exception:

Application for a variance

- Residential minimum yard variance; maximum fence height variance in residential districts; modification of location regulations or use limitations for residential accessory structures or uses; modification of grade or increase in building height for single family detached dwellings \$885
- All other variances \$7935

Appeal under Sections 18-204 and 18-301 \$2455

Application for a:

Group 1 special permit \$15885

Group 2 special permit \$15885

Group 3 special permit

- Churches, chapels, temples, synagogues and other such places of \$10695

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worship with a child care center, nursery school or private school which has an enrollment of 100 or more students daily

• All other uses	\$1065
Group 4 special permit	\$3960
Group 5 special permit	\$15885
Group 6 special permit	\$15885
Group 7 special permit	\$15885
Group 8 special permit	
• Temporary portable storage containers approved by the Zoning Administrator	\$0
• All other uses approved by the Zoning Administrator	\$200
• Temporary portable storage containers approved by the BZA	\$0
• All other uses approved by the BZA	\$15885
Group 9 special permit	
• Open air produce stand	\$1755
• Accessory dwelling unit	\$420
• Modification to minimum yard requirements for R-C lots	\$180
• Modification to the limitations on the keeping of animals; error in building location; reduction of certain yard requirements on a single family dwelling lot; modification of minimum yard requirements for certain existing structures and uses; certain additions to an existing single family detached dwelling when the existing dwelling extends into a minimum required yard by more than fifty (50) percent and/or is closer than five (5) feet to a lot line; noise barriers on a single residential lot; increase in fence and/or wall height in any front yard on a single family dwelling lot; modification of grade for single family detached dwellings	\$885
• Reduction of certain yard requirements on all other uses, increase in fence and/or wall height in any front yard on all other uses	\$7935
• All other uses	\$15885
Application for a:	
Category 1 special exception	\$15885
Category 2 special exception	\$15885
Category 3 special exception	
• Child care centers, nursery schools and private schools which have an enrollment of less than 100 students daily, churches,	\$1065

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chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school which has an enrollment of less than 100 students daily	
• Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school which has an enrollment of 100 or more students daily	\$10695
• All other uses	\$15885
Category 4 special exception	\$15885
Category 5 special exception	\$15885
Category 6 special exception	
• Reduction of yard requirements for the reconsideration of certain single family detached dwellings that are destroyed by casualty	\$0
• Modification of minimum yard requirements for certain existing structures and uses; modification of grade for single family detached dwellings	\$885
• Modification of shape factor limitations	\$7935
• Waiver of minimum lot width requirements in a residential district	\$7935
• All other uses	\$15885
Amendment to a pending application for a special permit, variance or special exception	10 percent of the prevailing application fee
Application for an extension of a special permit or special exception	1/8 prevailing fee
Application to amend a previously approved and current valid variance	Prevailing fee for a new application
Application to amend a previously approved and currently valid special permit or special exception with no new construction	1/2 prevailing fee
Application to amend a previously approved and currently valid special permit or special exception with new construction	Prevailing fee for new application
Amendment to a previously approved and currently valid special permit or special exception for a reduction of certain yard requirements or an increase in fence and/or wall height in any front yard on a single family	\$885

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dwelling lot

Amendment to a previously approved and currently valid special permit or special exception for a reduction of certain yard requirements or an increase in fence and/or wall height in any front yard on all other uses \$7935

All other amendments to a previously approved and currently valid special permit or special exception

- With no new construction ½ prevailing fee
- With new construction Prevailing fee for new application

Note: Additional fees may be required for certain special permit and special exception uses to pay for the cost of regular inspections to determine compliance with performance standards. Such fees shall be established at the time the special permit or special exception application is approved.

When one application is filed by one applicant for two (2) or more special permit uses on the same lot, only one filing fee shall be required. Such fee shall be the highest of the fee required for the individual uses. This shall also apply to an application for two (2) or more special exceptions or two (2) or more variances filed by one applicant on the same lot.

The fee for an amendment to a pending application for a special permit, variance, or special exception is only applicable when the amendment request results in a change in land area, change in use or other substantial revision.

2. Application for an amendment to the Zoning Map:

District Requested	Filing Fee
All R Districts	\$26460 plus \$555 per acre
All C, I and Overlay Districts	\$26460 plus \$885 per acre
PRC District	\$26460 plus \$885 per acre
• Application with concurrent filing of a PRC plan	\$26460 plus \$1305 per acre
• PRC plan	\$13230 plus \$420 per acre
PDH, PDC and PRM Districts	
• Application with conceptual development plan	\$26460 plus \$885 per acre
• Application with concurrent filing of conceptual and final development plans	\$26460 plus \$1305 per acre
• Final development plan	\$13230 plus \$420 per acre

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Amendment to a pending application fo an amendment to the Zoning Map in all Districts	\$4410 plus applicable per acre fee for acreage affected by the amendment
Amendment to a pending application for a final development plan or development plan amendment or PRC plan	\$4005
Amendment to a previously approved proffered condition, development plan, final development plan, conceptual development plan, PRC plan or concurrent conceptual/final development plan for a reduction of certain yard requirements on a single family dwelling lot or an increase in fence and/or wall height on a single family dwelling lot	\$885
Amendment to a previously approved proffered condition, development plan, final development plan, conceptual development plan, PRC plan or concurrent conceptual/final development plan for a reduction of certain yard requirements on all other uses or an increase in fence and/or wall height on all other uses	\$7935
All other amendments to a previously approved development plan, proffered condition, conceptual development plan, final development plan, PRC plan or concurrent conceptual/final development plan	
<ul style="list-style-type: none"> • With new construction • With no new construction 	<p>\$13230 plus applicable per acre fee for acreage affected by the amendment</p> <p>\$13230</p>

Note: For purpose of computing acreage fees, any portion of an acre shall be counted as an acre.

The fee for an amendment to a pending application is only applicable when the amendment request results in a change in land area, change in use or other substantial revision.

3. Comprehensive sign plan: \$8010

Amendment to a comprehensive sign plan: \$4005

4. Refund of fees for withdrawal of applications shall be in accordance with the provisions of Sections 112, 208 and 308. There shall be no refund of fees for applications that have been dismissed in accordance with the provisions of Sections 113 and 209.

5. Fees for home occupations, sign permits and site plans shall be as specified in Article 12 and Article 17, respectively.

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6. Zoning compliance letter:

Single family: \$110 for each lot requested
All other uses: \$310 for each lot requested
7. Modification to the requirements of the Affordable Dwelling Unit Program: \$2670
8. Non-Residential Use Permit: \$65
9. Interpretation of approved zoning applications: \$500
10. Public hearing deferrals after public notice has been given under Sect. 110 above and which are related solely to affidavit errors:

Planning Commission: \$250 plus cost of actual advertising, not to exceed \$1000
Board of Supervisors: \$250 plus cost of actual advertising, not to exceed \$1000

18-107 Processing of Applications

1. Except as qualified by Par. 2 below, all applications and appeals shall, in general, be scheduled and considered in the order in which they are accepted, except that the public hearing date for an application or appeal may be changed by an order of the respective hearing body for a good cause shown. The clerks of the respective hearing bodies shall keep a calendar of cases to be heard in their proper priority.
2. All applications for an amendment to the Zoning Map shall, in general, be scheduled and considered in the order in which the required development plan is submitted. All applications shall be heard and a decision made within twelve (12) months from the date of acceptance of the application, unless:
 - A. The application is the subject of an amendment involving a change in the zoning district requested, a change in the land area or other substantial revision, in which case the application shall be subject to the provisions of Sect. 207 below;
 - B. The required development plan is not submitted within sixty (60) days of the acceptance of the application, in which case, there shall be a revised acceptance date for the application. The revised acceptance date shall be the date of the initial acceptance of the application plus the number of days that the development plan was submitted subsequent to the sixty (60) day deadline, and hearing and decision on the application shall be within twelve (12) months from that revised acceptance date;
 - C. An extended period is mutually agreed to by the applicant and the Board; or
 - D. The applicant refuses or neglects to prosecute an application in accordance with the provisions of this Ordinance.

18-108 Limitation on Rehearing

ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES

PART 3 18-300 APPEALS

18-301 Initiation

Any person aggrieved or any officer, department, board, commission or authority of the County affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance may appeal such decision to the BZA, except an appeal which relates to a proffered condition shall be taken to the Board as provided for in Par. 10 of Sect. 204 above.

18-302 Authorization

The Zoning Administrator shall administer and interpret the Zoning Ordinance. The BZA shall hear and decide all cases of appeal by persons as set forth in Sect. 301 above. The BZA shall also hear and decide applications for interpretation of any district boundary if uncertainty remains after application by the Zoning Administrator of the rules specified in Sect. 2-204.

18-303 Time Limit on Filing

1. Except as set forth below, all appeals shall be filed within thirty (30) days from the date of the decision appealed by filing a notice of appeal with the Zoning Administrator and the BZA.
2. Appeals for notices of violation involving the following violations shall be filed within ten (10) days from the date of the notice with the Zoning Administrator and the BZA:
 - A. Occupancy of a dwelling unit in violation of Sect. 2-502.
 - B. Parking of inoperative motor vehicles, as defined in Chapter 110 of The Code, in violation of Par. 13 of Sect. 10-102.
 - C. Parking a commercial vehicle in an R district in violation of Par. 16 of Sect. 10-102.
 - D. Parking of vehicles on an unsurfaced area in the front yard of a single family detached dwelling in the R-1, R-2, R-3 or R-4 Districts in violation of Par. 8 of Sect. 11-102.
 - E. Erection of prohibited signs on private property in violation of Paragraphs 1, 4, 5, 6, 7, 11, 12, 13 or 14 of Sect. 12-104.
 - F. Erection, alteration, refacing or relocation of a sign on private property in violation of Sect. 12-301.
 - G. Other short-term, recurring violations similar to those listed in Paragraphs 2A through 2F above.
3. A notice of appeal filed pursuant to Paragraphs 1 and 2 above shall specify the grounds for such appeal, and shall be filed in accordance with the provisions of Sect. 304 below.

18-304 Submission Requirements

Every application to appeal shall contain all of the following information:

1. Four (4) copies of an application on forms provided by the County, completed and signed by the appellant. Such application shall not require the execution of an affidavit.

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2. Four (4) copies of a statement signed by the appellant setting forth the following information:
 - A. The order, requirement, decision or determination which is the subject of the appeal.
 - B. The date upon which the decision was made.
 - C. The appellant's grounds for the appeal and the reasons therefor. If the appellant is a County officer, department, board or bureau, the statement shall specify how the appellant is affected; otherwise, the statement shall specify how the appellant is an aggrieved person.
3. Such other supportive data as the appellant may desire in the record, including plats, plans, drawings, charts or related material.
4. An application fee as provided for in Sect. 106 above.

18-305 Processing

1. Upon receipt of an appeal, the Zoning Administrator shall immediately transmit a copy to the BZA.
2. Prior to the public hearing, the Zoning Administrator shall forward to the BZA copies of the application for appeal and all of the papers constituting the records upon which the decision being appealed was based.
3. The BZA shall process all applications for appeal in accordance with the provisions of Part 2 of Article 19.

18-306 Decision on Appeals

1. The BZA may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from.
2. The concurring vote of four (4) members of the BZA shall be required to reverse any order, requirement, decision or determination of the Zoning Administrator or any other administrative officer under this Ordinance.
3. The BZA shall render a decision on all applications for appeal within ninety (90) days from the date of acceptance of the application, unless an extended period is mutually agreed to by the appellant and the BZA.

18-307 Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the BZA, after the notice of appeal has been filed, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the BZA or a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

18-308 Withdrawal of Application for Appeal

An application for appeal may be withdrawn at any time by the appellant or his agent by giving written notice to the Zoning Administrator. No fee or part thereof will be refunded for a withdrawn application.

ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES

- (2) Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan; and
 - (3) When there is 2500 square feet or more of land disturbing activity, an existing vegetation map.
- M. Seal and signature of professional person certifying the plat.
3. One (1) copy of the current Fairfax County Zoning Section Sheet(s) at a scale of one inch equals five hundred feet (1" = 500'), covering the area within at least a 500 foot radius of the property which is the subject of the application, showing the existing zoning classification for all land appearing on the map. If more than one (1) Zoning Section Sheet is required to cover the area, such sheets shall be attached so as to create an intelligible map. The boundaries of the subject site shall be outlined in red thereon.
4. Photographs of the property showing existing structures, terrain and vegetation.
5. A written statement detailing the specific provision or provisions of the Ordinance from which a variance is sought and the nature and extent of the variance sought. If the proposal includes the request for a variance of the yard regulations for yards abutting certain principal arterial highways and railroad tracks pursuant to Sect. 2-414, a study showing projected noise impacts, proposed mitigation measures and the effectiveness of such measures shall be submitted.
6. A written statement of justification which specifically addresses how the application complies with the required standards set forth in Sect. 404 below.
7. An affidavit, as presented on an affidavit form approved by the Board of Supervisors and provided by the County, completed, signed by the applicant or the applicant's authorized agent and notarized, including a statement indicating whether or not a member of the BZA or Planning Commission or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership in stock in a corporation owning such land, or through an interest in a partnership owning such land. If the applicant's agent completes the application or affidavit on the applicant's behalf, a certified statement from the applicant must be submitted showing the agent's authorization to act in such capacity.

Prior to each public hearing on the application, the applicant shall reaffirm the affidavit required by this Paragraph in accordance with the reaffirmation procedure outlined on the affidavit form approved by the Board of Supervisors and provided by the County.
8. If the applicant is not the owner of the property involved in the application, evidence must be submitted showing that the applicant will have the right to use the property as proposed. For a condominium, the provisions of Sect. 2-518 shall be applicable.

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9. An application fee as provided for in Sect. 106 above.
10. An Archaeological Survey Data Form and a Phase I Archaeological Survey as may be required pursuant to Sect. 7-210 for applications resulting in land disturbing activity of 2500 square feet or more and where the application property is located wholly or partially within or contiguous to a Historic Overlay District.

18-404 Required Standards for Variances

To grant a variance the BZA shall make specific findings based on the evidence before it that the application satisfies all of the following enumerated requirements:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property; or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.

ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES

PART 9 18-900 VIOLATIONS, INFRACTIONS, AND PENALTIES

18-901 General Provisions

1. Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or contrary to any detailed statement or plan approved under the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.
2. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Ordinance, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or uses any building or land in violation of the provisions of this Ordinance shall be subject to the enforcement provisions of this Part.
3. Upon becoming aware of any violation of any provisions of this Ordinance, the Zoning Administrator shall serve a notice of such violation on the person committing or permitting the same, which notice shall require such violation to cease within such reasonable time as is specified in such notice. After such notice is sent and such violation is not ceased within such reasonable time as is specified in the notice, then the Zoning Administrator may proceed to remedy the violation as provided in Sections 902, 903 or 904 below. The Zoning Administrator may also revoke a Residential or Non-Residential Use Permit to terminate the violation.

Any written notice of a zoning violation or a written order of the Zoning Administrator dated on or after July 1, 1993 shall include a statement informing the recipient that a right to appeal the notice of a zoning violation or a written order within thirty (30) days may exist in accordance with Sect. 15.2-2311 of the Code of Virginia and Part 3 of Article 18 of the Ordinance, except that a written notice of violation or a written order of the Zoning Administrator involving the violations set forth in Par. 2 of Sect. 18-303 above shall include a statement informing the recipient that a right to appeal the notice of violation or written order within ten (10) days may exist. The decision shall be final and unappealable if not appealed within the specified time frames set forth in the notice or written order. The appeal period shall not commence until such statement is given.

4. In addition to the remedies provided in Par. 3 above, the Zoning Administrator may initiate injunction, mandamus, or any other appropriate action to prevent, enjoin, abate or remove such erection or use in violation of any provision of this Ordinance. Such action may also be instituted by any citizen who may be aggrieved or particularly damaged by any violation of any provisions of this Ordinance.

18-902 Criminal Violations and Penalties

1. Any violation of the provisions of this Ordinance, other than those set forth in Sect. 903 below, shall be deemed a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than \$10 and not more than \$1000. Failure to remove or abate a zoning violation within the time period established by the Court shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1000, and any such failure during any succeeding ten day period shall constitute a separate misdemeanor offense for each ten day period punishable by a fine of not less than \$100 nor more than \$1500.

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2. The remedy provided for in this Section shall be in addition to any other remedies provided by law; however, the designation of a particular violation of this Ordinance as an infraction pursuant to Par. 1 of Sect. 903 below shall preclude criminal prosecution or sanctions, except for any infraction also resulting in injury to any person or persons and/or civil penalties that total \$5000 or more.

18-903 **Infractions and Civil Penalties**

1. A violation of the following provisions of this Ordinance shall be deemed an infraction and shall be punishable by a civil penalty of \$200 for the first violation; and subsequent violations arising from the same set of operative facts shall be punishable by a civil penalty of \$500 for each separate offense:
 - A. Conduct of a use, accessory use, and/or home occupation in violation of Paragraphs 5, 6, or 8 of Sect. 2-302.
 - B. Occupancy of a dwelling unit in violation of Sect. 2-502.
 - C. Obstruction of sight distance on corner lots in violation of Sect. 2-505.
 - D. Keeping of animals in violation of Sect. 2-512.
 - E. Conducting an accessory use in violation of Paragraphs 9 or 24 of Sect. 10-102.
 - F. Parking a commercial vehicle in an R district in violation of Par. 16 of Sect. 10-102.
 - G. Location of basketball standard in a front yard in violation of Par. 12C of Sect. 10-104.
 - H. Erection of prohibited signs on private property in violation of Paragraphs 1, 4, 5, 6, 7, 11, 12, 13 or 14 of Sect. 12-104.
 - I. Erection, alteration, refacing or relocation of a sign on private property in violation of Sect. 12-301.
 - J. Occupancy or use of structure without approval of a Residential or Non-Residential Use Permit in violation of Sect. 18-701.
2. Each day during which any violation of the provisions enumerated in Par. 1 above is found to have existed shall constitute a separate offense. However, in no event shall any such violation arising from the same set of operative facts be charged more frequently than once in any ten (10) day period, nor shall a series of such violations arising from the same set of operative facts result in civil penalties which exceed a total of \$5000.
3. The designation of a particular violation of this Ordinance as an infraction pursuant to Par. 1 above shall be in lieu of criminal sanctions, and such designation shall preclude the prosecution of a violation as a criminal misdemeanor unless such violation results in injury to any person or persons or the civil penalties under Par. 1 above total \$5000 or more for such violation. If the civil penalties for a violation under Par. 1 above total \$5000 or more, the violation may be prosecuted as a criminal misdemeanor.

ORDINANCE STRUCTURE, INTERPRETATIONS AND DEFINITIONS

GASOLINE STATION: See SERVICE STATION.

GLARE, DISABILITY: The effect of stray light in the eye whereby visibility and visual performance are reduced.

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 shall be 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 thereto shall 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.

GRADE PLANE: See definition of GRADE.

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.

GROUP RESIDENTIAL FACILITY: A group home or other residential facility, with one or more resident counselors or other staff persons, in which no more than: (a) eight (8) mentally ill, mentally retarded or developmentally disabled persons reside and such home is licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services; or (b) eight (8) mentally retarded persons reside and such home is licensed by the Virginia Department of Social Services; or (c) eight (8) handicapped persons reside, with handicapped defined in accordance with the Federal Fair Housing Amendments Act of 1988. The terms handicapped, mental illness and developmental disability shall not include current illegal use or addiction to a controlled substance as defined in Sect. 54.1-3401 of the Code of Virginia or as defined in Sect. 102 of the Controlled Substance Act (21 U.S.C. 802).

For the purpose of this Ordinance, a group residential facility shall not be deemed a group housekeeping unit, or ASSISTED LIVING FACILITY and a dwelling unit or facility for more than four (4) persons who do not meet the criteria set forth above or for more than eight (8) handicapped, mentally ill, mentally retarded or developmentally disabled persons shall be deemed a CONGREGATE LIVING FACILITY.

HEALTH CLUB: An establishment, which may include saunas and steambaths, offering or providing facilities for, and instruction in, general health, physical fitness and controlled exercises such as weight lifting, calisthenics and aerobic/slimnastic dancing. Such use may include a massage establishment in accordance with Chapter 28.1 of The Code. This term shall not be deemed to include a SCHOOL OF SPECIAL EDUCATION.

HEAVY EQUIPMENT AND SPECIALIZED VEHICLE SALE, RENTAL AND SERVICE ESTABLISHMENT: Buildings and premises for the sale, rental and servicing of trucks of the following vehicle types:

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1. Trucks, other than those allowed as a TRUCK RENTAL ESTABLISHMENT or VEHICLE SALE, RENTAL AND ANCILLARY SERVICE ESTABLISHMENT;
2. Farm and construction machinery or equipment;
3. Buses, and vans designed primarily for the transportation of ten (10) or more passengers;
4. Motor homes, recreational vehicles, trailers and boats of any size;
5. Mobile homes.

For the purpose of this Ordinance, heavy equipment and specialized vehicle sale, rental and service establishments shall not be deemed to include VEHICLE SALE, RENTAL AND ANCILLARY SERVICE ESTABLISHMENTS or VEHICLE TRANSPORTATION SERVICE ESTABLISHMENTS.

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 (10) feet distant from the front lot line, or from the GRADE in all other cases. (Reference Illustration 2 in Appendix 2)

HEIGHT, EFFECTIVE BUILDING: The vertical distance from that elevation on a lot line where the angle of bulk plane is established to the highest point on any building. (Reference Illustration 1 in Appendix 2)

HELIPORT: An area designed to accommodate all phases of operation of helicopters with suitable space and facilities for a terminal, loading, unloading, service and storage of such aircraft, to include facilities for such accessory uses as are commonly associated with an airport terminal.

HELISTOP: An area designed to accommodate touch-down and lift-off of helicopters, for the purpose of picking up and discharging passengers or cargo. Such an area shall contain no operation facilities other than one (1) tie down space and such additional facilities as are required by law, ordinance or regulation.

HISTORIC PROPERTY: A property that has been determined through the establishment of a Historic Overlay District to be key or pivotal to the historic, architectural or archaeological significance of a Historic Overlay District.

HOME CHILD CARE FACILITY: A dwelling or mobile home where ten (10) or fewer children receive care, protection and supervision during only part of a twenty-four (24) hour day unattended by parent or legal guardian. Such use shall be permitted in accordance with the provisions of Part 1 of Article 10 or Part 3 of Article 8. For purposes of this Ordinance, when such a use is located in a structure other than a dwelling, it shall be deemed a CHILD CARE CENTER.

HOME PROFESSIONAL OFFICE: The offices, studios or occupational rooms which are located within the single family detached residence of a duly licensed or certified physician practicing human medicine, chiropractor, osteopath, physical therapist or massage therapist, duly licensed practitioner of behavioral sciences, attorney, civil or professional engineer, accountant, architect, real estate appraiser or broker, insurance agent, or similar professional person.

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HORSE SHOW: Any aggregation of horses where there occurs the exhibiting, judging, showing or racing of horses.

HOSPITAL: Any institution receiving in-patients and rendering medical, surgical or obstetrical care, to include general hospitals and specialized institutions in which care is oriented to cardiac, eye, ear, nose, throat, pediatric, orthopedic, skin and cancer and obstetric cases.

HOTEL, MOTEL: A building or portion thereof or a group of buildings which provide sleeping accommodations in six (6) or more separate units or rooms for transients on a daily, weekly or similar short-term basis, whether such establishment is designated as a hotel, inn, automobile court, motel, motor inn, motor lodge, tourist cabin, tourist court, tourist home or otherwise. A hotel or motel shall be deemed to include any establishment which provides residential living accommodations for transients on a short-term basis, such as an apartment hotel. A hotel or motel may contain one or more eating establishments as a subordinate use, provided that such establishment is located within the principal hotel/motel structure, and meeting rooms and/or conference facilities.

HOUSING UNIT, MODERATELY-PRICED: See MODERATELY-PRICED HOUSING UNIT.

IMPACT: See definitions under VIBRATION.

INDEPENDENT LIVING FACILITY: A residential development that is limited to occupancy by elderly persons and/or by persons with handicaps, as defined in the Federal Fair Housing Amendments Act of 1988. Such a facility shall provide: (a) dwelling units with complete kitchen facilities, (b) supportive services, such as meals, personal emergency response systems, recreation and transportation services, and (c) design features, such as wider doorways and hallways, accessible-ready bathrooms and lower light switches.

INDUSTRIAL/FLEX: Any structure occupied by two (2) or more of the following uses: contractor's offices and shops; establishments for production, processing, assembly, manufacturing, compounding, preparation, cleaning, servicing, testing, or repair of materials, goods or products; warehousing establishments; wholesale trade establishments; and offices; provided however that the combined area of all office, both as a principal use and as an accessory use, shall not exceed thirty-five (35) percent of the total gross floor area of the structure. For the purpose of this Ordinance, when any of the above uses are permitted by right in the applicable zoning district, such uses may be combined within a single structure in accordance with the provisions of that district, and shall not be deemed INDUSTRIAL/FLEX.

INDUSTRIAL PARK: A planned coordinated development of a tract of land with two (2) 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 (5) 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.

INFRACTION: Any violation of this Ordinance which has been declared an infraction pursuant to Par. 1 of Sect. 18-903. For purposes of this Ordinance, an 'infraction' is a civil offense, and an admission of guilt or a finding of guilt thereof is not a criminal conviction for any purpose, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

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INSTITUTION OF HIGHER LEARNING: For the purpose of this Ordinance, an institution of higher learning shall be deemed to include a proprietary school that is approved, licensed, and bonded by the Proprietary School Service Office of the State Department of Education.

INTERPRETATION OF APPROVED ZONING APPLICATIONS: A determination made by the Zoning Administrator or agent that a proposed minor modification to a zoning application approved by the Board of Supervisors, the Planning Commission or the Board of Zoning Appeals is in substantial conformance with the approved zoning. Such determinations are typically made in the form of a letter and may include interpretations of proffers, development conditions, development plans, and plats.

JUNK YARD: The use of any space, whether inside or outside a building, for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof; provided that this definition shall not apply to outside storage as permitted as an accessory use under the provisions of Sect. 10-102. A junk yard shall also be inclusive of an AUTOMOBILE GRAVEYARD as defined herein.

KENNEL: Any place or establishment in which dogs are kept in numbers greater than ten (10) per 40,000 square feet; or any place or establishment in which dogs are kept, trained, boarded or handled for a fee.

LANDFILL: A land depository, excavation, or area operated in a controlled manner by a person for the dumping of debris or inert material; or a disposal site operated by means of compacting and covering solid waste at least once each day with an approved material. This term is intended to include both debris landfills and sanitary landfills as defined in Chapters 104 and 109.1 of The Code.

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

LANDSCAPED OPEN SPACE: See OPEN SPACE, LANDSCAPED.

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

LAND SURVEYOR: An individual who is registered with the State Department of Professional and Occupational Registration as a land surveyor.

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/or photo control.

- **LIGHTING FIXTURE, FULL CUT-OFF:** A lighting fixture from which no light output is emitted at or above a horizontal plan drawn through the bottom of the lighting fixture. Lighting fixtures located within those portions of open-sided parking structures

ORDINANCE STRUCTURE, INTERPRETATIONS AND DEFINITIONS

MIXED WASTE RECLAMATION FACILITY: A facility for the removal and/or reclamation of recyclable materials from solid waste. A mixed waste reclamation facility shall not be deemed to include a RECYCLING CENTER.

MOBILE AND LAND BASED TELECOMMUNICATION FACILITY: Omnidirectional and directional antennas such as whip antennas, panel antennas, cylinder antennas, microwave dishes, and receive-only satellite dishes and related equipment for wireless transmission with low wattage transmitters not to exceed 500 watts, from a sender to one or more receivers, such as for mobile cellular telephones and mobile radio system facilities. For the purposes of this Ordinance, a mobile and land based telecommunication facility shall include a mobile and land based telecommunication hub site.

MOBILE AND LAND BASED TELECOMMUNICATION HUB SITE: An equipment cabinet or structure that serves a mobile and land based telecommunication system when there are no antennas located on the same lot as the equipment cabinet or structure.

MOBILE HOME: See DWELLING, MOBILE HOME.

MOBILE HOME PARK: Any area of fifteen (15) acres or more, however designated, that is occupied or designed for occupancy by one (1) or more mobile homes. The term 'mobile home park' shall not include sales lots on which unoccupied mobile homes, whether new or used, are parked for the purposes of inspection and sale.

MODERATE INCOME FAMILY: For the purpose of this Ordinance, as defined by the Fairfax County Redevelopment and Housing Authority pursuant to applicable federal, State or local laws and regulations.

MODERATELY-PRICED HOUSING UNIT: For the purpose of this Ordinance, as defined by the Fairfax County Redevelopment and Housing Authority, pursuant to applicable federal, State or local laws and regulations.

MODULAR UNIT: See DWELLING, MODULAR UNIT.

MONOPOLE: A single, ground-mounted, self-supporting pole-type structure, tapering from base to top and supporting a fixture designed to hold one or more antennas. For the purpose of this Ordinance, any treepole, flagpole, bell tower, clock tower, windmill or other similar ground-mounted, self-supporting structure that is designed to disguise antennas and their support structures shall also be deemed to be a monopole, however a monopole shall not be deemed to be a transmission tower.

MOTEL: See HOTEL.

MOTOR FREIGHT TERMINAL: A building or area in which freight brought by truck is assembled and/or stored for routing and reshipment, or in which semitrailers, including tractor and/or trailer units, and other trucks are parked or stored.

MOTOR VEHICLE STORAGE AND IMPOUNDMENT YARD: An area designed for the temporary storage of wrecked and/or inoperable and/or abandoned motor vehicles, but not to include the dismantling, wrecking or sale of said vehicles or parts thereof.

MULTIPLE FAMILY DWELLING: See DWELLING, MULTIPLE FAMILY.

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MUSEUM: An institution for the acquisition, preservation, study and exhibition of works of artistic, historical or scientific value.

NATURAL RESOURCES: Any material naturally occurring beneath the surface of the land which may be removed for the purpose of sale. Natural resources shall include but not be limited to soapstone, granite, sandstone, asbestos, oil, copper, gold, iron, sand and gravel.

NEW VEHICLE STORAGE: An area where new vehicles are parked or stored off-site from the associated vehicle sale, rental and ancillary service establishment. New vehicle storage shall be limited to new automobiles; motorcycles; sport utility vehicles; pick-up trucks; and vans, but not including any vehicle designed primarily for the transportation of ten (10) or more passengers. New vehicle storage shall not include specialized vehicles such as trucks other than allowed at a vehicle sale, rental and ancillary service establishment; farm and construction machinery or equipment; buses; motor homes, recreational vehicles, trailers and boats of any size; and mobile homes. Such a use shall only be for the parking or storage of vehicles and there shall be no customers or clients to the site, and no sale of vehicles from the site. In addition, there shall be no vehicle preparation on site and no signs shall be displayed on the new vehicles except invoices required by federal or state law.

For purposes of this Ordinance, new vehicle storage shall not be deemed COMMERCIAL OFF-STREET PARKING or a STORAGE YARD.

NOISE BARRIER: A solid freestanding fence or wall of metal, masonry, composition or wood or any combination thereof located flush to the ground and which is designed and engineered for noise attenuation purposes.

NOISE SENSITIVE USE: Uses whereby noise-induced interruptions to speech and activity must be minimized in order to reduce annoyance and to facilitate the performance of the task associated with the use. Examples of noise sensitive uses shall include but not be limited to sleeping areas, offices, auditoriums and lecture halls.

NONCONFORMING BUILDING OR USE: A building or use, lawfully existing on the effective date of this Ordinance or prior ordinances, which does not conform with the regulations of the zoning district in which it is located, except as may be qualified by Sect. 15-101 of this Ordinance.

NURSERY SCHOOL: Any place operated primarily for the educational instruction for six (6) or more children from two (2) to five (5) years of age at which children two (2) to four (4) years of age do not attend in excess of four (4) hours per day and children five (5) years of age do not attend in excess of six and one-half (6 ½) hours per day.

NURSING FACILITY: Also known as extended care home, rest home or convalescent home. A nursing facility is any place containing beds for two (2) or more patients, established to render domiciliary and/or nursing care for chronic or convalescent patients and which is properly licensed by the State, but not including child care homes or facilities for the care of drug addicts, alcoholics, mentally ill or developmentally disabled patients.

OCCUPANCY LOAD: The number of individuals normally occupying a building or part thereof, or for which the exitway facilities have been designed.

OFF-SITE: Any area outside the boundary of a lot.

OFF-STREET LOADING SPACE: See LOADING SPACE.

ORDINANCE STRUCTURE, INTERPRETATIONS AND DEFINITIONS

- 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.

STRUCTURE: That which is built or constructed. The term 'structure' shall be construed as though followed by the word 'or parts thereof'.

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.

SUBDIVIDER: Any person who subdivides land pursuant to Chapter 101 of The Code, The Subdivision Ordinance.

SUBDIVISION: The land subdivided as defined in Chapter 101 of The 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 through 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 Sections 2-421 and 9-615 as applicable.

- SUBDIVISION, CONVENTIONAL: The subdivision of a lot in the R-E through R-4 Districts in accordance with the lot size requirements and bulk regulations specified in the district regulations.

SUBSTANTIAL CONFORMANCE: Substantial conformance shall be as determined by the Zoning Administrator upon consideration of the record and shall mean that conformance which leaves a reasonable margin for minor modification provided that:

- 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;

- such modification is consistent with any proffered or imposed conditions that govern development of the site; and,

- such modification is in accordance with the requirements of this Ordinance.

SUPER-REGIONAL SHOPPING CENTER: Notwithstanding the provisions of Part 9 of Article 4, a super-regional shopping center is a group of commercial enterprises offering a range

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of retail commercial goods and services in an aggregate of 1,400,000 square feet or more of gross floor area which (a) are designed as a single commercial group, whether or not located on the same lot; (b) are under one common ownership or management, or having one common arrangement for the maintenance of the grounds; (c) are connected by party walls, partitions, covered canopies or other structural members to form one continuous structure; (d) share a common parking area; and (e) otherwise present the appearance of one continuous commercial area.

SURVEYOR: See LAND SURVEYOR.

TELECOMMUNICATION: A process that permits the passage of information from a sender to one or more receivers in a usable form, such as printed copy, fixed or moving pictures, and visible or audible signals, by means of any electromagnetic system, such as electrical transmission by wire or radio. This includes such uses as telegraphy and telephone.

TELECOMMUNICATION CENTRAL OFFICE: A switching center for interconnecting the lines which terminate therein. Also called a telephone or telegraph exchange or a telephone dial center.

TEMPORARY PORTABLE STORAGE CONTAINER: A purpose-built, fully enclosed, box-like container with signage on one or more of its outer surfaces that is designed for temporary storage of household goods and/or equipment. Such containers are uniquely designed for ease of loading to and from a transport vehicle.

THEATRE: A building or structure designed for the enactment of dramatic performances and/or showing of motion pictures. For the purpose of this Ordinance, a dinner theatre shall be deemed an EATING ESTABLISHMENT, and a drive-in motion picture theatre and an adult mini motion picture theatre shall be deemed separate and distinct uses.

TRANSMISSION PIPELINE: A transmission line that transports gas as defined in the Code of Federal Regulations, Title 49, Sect. 192.3 and/or pipelines used for transportation of hazardous liquids as defined in Code of Federal Regulations, Title 49, Sect. 195.2.

TRANSMISSION TOWER: A lattice-type structure, guyed or self-supporting, used to support antennas or other utility equipment. Also called a communications tower, radio tower or utility tower.

TRAVEL LANE: See STREET, TRAVEL LANE.

TRAVEL TRAILER: A vehicular, portable structure built on a chassis and designed to be used for temporary occupancy for travel, recreational or vacation use; with the manufacturer's permanent identification 'Travel Trailer' thereon; and when factory equipped for the road, being of any length provided its gross weight does not exceed 4500 pounds, or being of any weight provided its overall length does not exceed twenty-nine (29) feet. For the purpose of this Ordinance, a travel trailer shall not be deemed a MOBILE HOME.

TREE: Any self-supporting woody plant which visually produces one main trunk, and a more or less distinct and elevated head with many branches that typically reach at least fifteen (15) feet in maturity.

ORDINANCE STRUCTURE, INTERPRETATIONS AND DEFINITIONS

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

TRUCK RENTAL ESTABLISHMENT: Building and premises for the rental and ancillary minor servicing of truck, utility trailers and related items generally used by persons to move their personal and household belongings. Such trucks and trailers shall be limited to those vehicles which have only two (2) axles, which have a maximum box length of seventeen (17) feet, are no more than twelve (12) feet in height and which do not require a commercial driver's license to operate.

USABLE OPEN SPACE: See OPEN SPACE, USABLE.

USE: Any purpose for which a structure or a tract of land may be designed, arranged, intended, maintained, or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in or on a structure or on a tract of land.

USE, ACCESSORY: See ACCESSORY USE.

USE, PUBLIC: See PUBLIC USE.

UTILITY DISTRIBUTION OR TRANSMISSION POLE: A utility distribution or transmission pole is a ground-mounted self-supporting vertical structure made of fabricated metal, treated wood or concrete used to elevate electrical and communication distribution lines and antennas to a suitable height, whose primary function is the support of wires, conductors and associated apparatus used for the distribution of electrical energy and/or land line communication signals.

UTILITY TRANSMISSION EASEMENT: A utility easement or right-of-way which contains utility distribution or transmission poles, and/or transmission towers used for utility transmission as approved by the State Corporation Commission pursuant to Sect. 56-46.1 of the Code of Virginia, as amended.

VEHICLE LIGHT SERVICE ESTABLISHMENT: Buildings and premises wherein the primary use is the sale, servicing, repair and/or installation of motor vehicle accessories, such as the following: spark plugs, batteries, distributors and distributor parts, tires, brakes, brake fluid, mufflers, tail pipes, water hoses, fan belts, light bulbs, fuses, floor mats, windshield wipers, wiperblades, grease retainers, wheel bearings, and mirrors. Vehicle light service establishments may also include greasing, lubrication and radiator flushing, minor servicing and repair of carburetors, fuel pumps, oil pumps, water pumps and lines, electrical systems, and minor motor adjustments not involving removal of the head or crankcase or racing the motor. Uses permissible at a vehicle light service establishment shall not include major mechanical and body work, the repair of transmissions or differentials, straightening of body parts, painting, welding, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in service stations.

VEHICLE MAJOR SERVICE ESTABLISHMENT: Buildings and premises wherein major mechanical and body work, repair of transmissions and differentials, straightening of body parts, painting, welding or other similar work is performed on vehicles. Vehicle light service

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establishments may be permitted as an ancillary use, however, vehicle major service establishments shall not be deemed to include HEAVY EQUIPMENT AND SPECIALIZED VEHICLE SALE, RENTAL AND SERVICE ESTABLISHMENTS.

VEHICLE SALE, RENTAL AND ANCILLARY SERVICE ESTABLISHMENT: Buildings and premises for the sale, rental and ancillary service of vehicles in operating condition such as:

1. Automobiles, motorcycles, and pick-up trucks;
2. Vans, but not including any vehicle designed primarily for the transportation of ten (10) or more passengers;
3. Boats such as outboard motor boats, canoes, Sunfishes and other similar-sized boats.

For the purpose of this Ordinance, vehicle sale, rental and ancillary service establishments shall not be deemed to include HEAVY EQUIPMENT AND SPECIALIZED VEHICLE SALE, RENTAL AND SERVICE ESTABLISHMENTS, TRUCK RENTAL ESTABLISHMENTS or VEHICLE TRANSPORTATION SERVICE ESTABLISHMENTS; however, specialized vehicles such as motor homes, campers and boat trailers with a length of no greater than seventeen (17) feet may be sold, rented and serviced as an ancillary use.

VEHICLE TRANSPORTATION SERVICE ESTABLISHMENT: Buildings and premises for “for hire” chauffeured transportation services involving the storage and dispatch of taxicabs, limousines, executive sedans, ambulances, passenger vans, or other similar vehicles, administrative offices and the ancillary servicing and maintenance of company vehicles. For the purpose of this Ordinance, vehicle transportation service establishments shall not be deemed to include HEAVY EQUIPMENT AND SPECIALIZED VEHICLE SALE, RENTAL AND SERVICE ESTABLISHMENTS, TRUCK RENTAL ESTABLISHMENTS, or VEHICLE SALE, RENTAL AND ANCILLARY SERVICE ESTABLISHMENTS.

VETERINARY HOSPITAL: A facility rendering surgical and medical treatment to animals. Crematory facilities shall not be allowed in a veterinary hospital.

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 Part 8 of Article 14:

- 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 ($\frac{1}{2}$) 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).

APPENDIX 3

ENABLING LEGISLATION

Zoning is a legislative power residing in the State, which has been delegated to cities, towns and counties. Article 7, Chapter 22, Title 15.2 of the Code of Virginia sets forth the legislation which enables Fairfax County to legislate zoning.

For the convenience of the reader, Article 7, Zoning, as well as other pertinent portions of Articles of Title 15.2, Chapter 22, entitled Planning, Subdivision of Land and Zoning, are presented herein. A portion of Chapter 1, Title 15.2 is also set out. The legislation presented is as amended through the 2009 Session of the General Assembly.

TITLE 15.2

CHAPTER 1

General Provisions

§ 15.2-107. Advertisement and enactment of certain fees and levies. — All levies and fees imposed or increased by a locality pursuant to the provisions of Chapters 21 (§ 15.2-2100 et seq.) or 22 (§ 15.2-2200 et seq.) shall be adopted by ordinance. The advertising requirements of subsection F of § 15.2-1427, or § 15.2-2204, as appropriate, shall apply, except as modified in this section.

The advertisement shall include the following:

1. The time, date, and place of the public hearing.
2. The actual dollar amount or percentage change, if any, of the proposed levy, fee or increase.
3. A specific reference to the Code of Virginia section or other legal authority granting the legal authority for enactment of such proposed levy, fee, or increase.
4. A designation of the place or places where the complete ordinance, and information concerning the documentation for the proposed fee, levy or increase are available for examination by the public no later than the time of the first publication.

§ 15.2-107.1. Advertisement of legal notices on web sites. — In addition to any requirements that a locality advertise legal notices in a newspaper having a general circulation in the locality, such notices may also be published on the locality's World Wide Web site.

CHAPTER 9

General Powers of Local Governments

§ 15.2-961.1. Conservation of trees during land development process in localities belonging to a nonattainment area for air quality standards.

A. For purposes of this section, "tree canopy" or "tree cover" includes all areas of canopy coverage by self-supporting and healthy woody plant material exceeding five feet in height, and the extent of planted tree canopy at 20-years maturity.

B. Any locality within Planning District 8 that meets the population density criteria of subsection A of § 15.2-961 and is classified as an eight-hour nonattainment area for ozone under the federal Clean Air Act and Amendments of 1990, in effect as of July 1, 2008, may adopt an ordinance providing for the conservation of trees during the land development process pursuant to the provisions of this section. In no event shall any local tree conservation ordinance adopted pursuant to this section also impose the tree replacement provisions of § 15.2-961.

C. The ordinance shall require that the site plan for any subdivision or development provide for the preservation or replacement of trees on the development site such that the minimum tree canopy or tree cover

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percentage 20 years after development is projected to be as follows:

1. Ten percent tree canopy for a site zoned business, commercial, or industrial;
2. Ten percent tree canopy for a residential site zoned 20 or more units per acre;
3. Fifteen percent tree canopy for a residential site zoned more than eight but less than 20 units per acre;
4. Twenty percent tree canopy for a residential site zoned more than four but not more than eight units per acre;
5. Twenty-five percent tree canopy for a residential site zoned more than two but not more than four units per acre; and
6. Thirty percent tree canopy for a residential site zoned two or fewer units per acre.

In meeting these percentages, (i) the ordinance shall first emphasize the preservation of existing tree canopy where that canopy meets local standards for health and structural condition, and where it is feasible to do so within the framework of design standards and densities allowed by the local zoning and other development ordinances; and (ii) second, where it is not feasible in whole or in part for any of the justifications listed in subsection E to preserve existing canopy in the required percentages listed above, the ordinance shall provide for the planting of new trees to meet the required percentages.

D. Except as provided in subsection E, the percentage of the site covered by tree canopy at the time of plan submission shall equate to the minimum portion of the requirements identified in subsection C that shall be provided through tree preservation. This portion of the canopy requirements shall be identified as the "tree preservation target" and shall be included in site plan calculations or narratives demonstrating how the overall requirements of subsection C have been met.

E. The ordinance shall provide deviations, in whole or in part, from the tree preservation target defined in subsection D under the following conditions:

1. Meeting the preservation target would prevent the development of uses and densities otherwise allowed by the locality's zoning or development ordinance.
2. The predevelopment condition of vegetation does not meet the locality's standards for health and structural condition.

3. Construction activities could be reasonably expected to impact existing trees to the extent that they would not likely survive in a healthy and structurally sound manner. This includes activities that would cause direct physical damage to the trees, including root systems, or cause environmental changes that could result in or predispose the trees to structural and health problems. If, in the opinion of the developer, the project cannot meet the tree preservation target due to the conditions described in subdivision 1, 2, or 3, the developer may request a deviation from the preservation requirement in subsection D. In the request for deviation, the developer shall provide a letter to the locality that provides justification for the deviation, describes how the deviation is the minimum necessary to afford relief, and describes how the requirements of subsection C will be met through tree planting or a tree canopy bank or fund established by the locality. Proposed deviations shall be reviewed by the locality's urban forester, arborist, or equivalent in consultation with the locality's land development or licensed professional civil engineering review staff. The locality may propose an alternative site design based upon adopted land development practices and sound vegetation management practices that take into account the relationship between the cost of conservation and the benefits of the trees to be preserved as described in ANSI A300 (Part 5) - 2005 Management: Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices, Management of Trees and Shrubs During Site Planning, Site Development, and Construction, Annex A, A-1.5, Cost Benefits Analysis (or the latest version of this standard). The developer shall consider the alternative and redesign the plan accordingly, or elect to satisfy the unmet portion of the preservation threshold through on-site tree planting or through the off-site planting mechanisms identified in subsection G, so long as the developer provides the locality with an explanation of why the alternative design recommendations were rejected. Letters of explanation from the developer shall be prepared and certified by a licensed professional engineer as defined in § 54.1-400. If arboricultural issues are part of explanation then the letter shall be signed by a Certified Arborist who has taken and passed the certification examination sponsored by the International Society of Arboriculture and who maintains a valid certification status or by a Registered Consulting Arborist as designated by the American Society of Consulting Arborists. If arboricultural issues are

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the sole subject of the letter of explanation then certification by a licensed professional engineer shall not be required.

F. The ordinance shall provide for deviations of the overall canopy requirements set forth in subsection C to allow for the preservation of wetlands, the development of farm land or other areas previously devoid of healthy and/or suitable tree canopy, or where the strict application of the requirements would result in unnecessary or unreasonable hardship to the developer.

G. The ordinance shall provide for the establishment of a tree canopy bank or fund whereby any portion of the tree canopy requirement that cannot be met on-site may be met through off-site tree preservation or tree planting efforts. Such provisions may be offered where it can be demonstrated that application of the requirements of subsection C would cause irresolvable conflicts with other local site development requirements, standards, or comprehensive planning goals, where sites or portions of sites lack sufficient space for future tree growth, where planting spaces will not provide adequate space for healthy root development, where trees will cause unavoidable conflicts with underground or overhead utilities, or where it can be demonstrated that trees are likely to cause damage to public infrastructure. The ordinance may utilize any of the following off-site canopy establishment mechanisms:

1. A tree canopy bank may be established in order for the locality to facilitate off-site tree preservation, tree planting, stream bank, and riparian restoration projects. Banking efforts shall provide tree canopy that is preserved in perpetuity through conservation easements, deed restrictions, or similar protective mechanisms acceptable to the locality. Projects used in off-site banking will meet the same ordinance standards established for on-site tree canopy; however, the locality may also require the submission of five-year management plans and funds to ensure the execution of maintenance and management obligations identified in those plans. Any such bank shall occur within the same nonattainment area in which the locality approving the tree banking is situated.

2. A tree canopy fund may be established to act as a fiscal mechanism to collect, manage, and disburse fees collected from developers that cannot provide full canopy requirements on-site. The locality may use this fund directly to plant trees on public property, or the locality may elect to disburse this fund to community-based organizations exempt from taxation under § 501 (c) (3) of the Internal Revenue Code with tree planting or community beautification missions for tree planting programs that benefit the community at large. For purposes of establishing consistent and predictable fees, the ordinance shall establish cost units that are based on average costs to establish 20-year canopy areas using two-inch caliper nursery stock trees. Any funds collected by localities for these purposes shall be spent within a five-year period established by the collection date, or the locality shall return such funds to the original contributor, or legal successor.

H. The following uses shall be exempt from the requirements of any ordinance promulgated under this section: bona fide silvicultural activity as defined by § 10.1-1181.1 and the areas of sites included in lakes, ponds, and the normal water elevation area of stormwater retention facilities. The ordinance shall modify the canopy requirements of dedicated school sites, playing fields, and other nonwooded active recreation areas by allowing these and other facilities and uses of a similar nature to provide 10 percent tree canopy 20 years after development.

I. 1. In recognition of the added benefits of tree preservation, the ordinance shall provide for an additional tree canopy credit of up to one and one-quarter times the canopy area at the time of plan submission for individual trees or the coalesced canopy of forested areas preserved from the predevelopment tree canopy.

2. The following additional credits may be provided in the ordinance in connection with tree preservation:

a. The ordinance may provide canopy credits of up to one and one-half times the actual canopy area for the preservation of forest communities that achieve environmental, ecological, and wildlife conservation objectives set by the locality. The ordinance may establish minimal area, dimensional and viability standards as prerequisites for the application of credits. Forest communities shall be identified using the nomenclature of either the federal National Vegetation Classification System (FGDC-STD-005, or latest version) or the Natural Communities of Virginia Classification of Ecological Community Groups, Second Approximation (Version 2.2, or latest version).

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b. The ordinance may provide canopy credits of up to three times the actual canopy area of trees that are officially designated for preservation in conjunction with local tree conservation ordinances based on the authority granted by § 10.1-1127.1.

J. The following additional credits shall be provided in the ordinance in connection with tree planting:

1. The ordinance shall provide canopy credits of one and one-half the area normally projected for trees planted to absorb or intercept air pollutants, tree species that produce lower levels of reactive volatile organic compounds, or trees that act to reduce air pollution or greenhouse gas emissions by conserving the energy used to cool and heat buildings.

2. The ordinance shall provide canopy credits of one and one-quarter the area normally projected for trees planted for water quality-related reforestation or afforestation projects, and for trees planted in low-impact development and bioretention water quality facilities. The low-impact development practices and designs shall conform to local standards in order for these supplemental credits to apply.

3. The ordinance shall provide canopy credits of one and one-half the area normally projected for native tree species planted to provide food, nesting, habitat, and migration opportunities for wildlife. These canopy credits may also apply to cultivars of native species if the locality determines that such a cultivar is capable of providing the same type and extent of wildlife benefit as the species it is derived from.

4. The ordinance shall provide canopy credits of one and one-half the area normally projected for use of native tree species that are propagated from seed or tissue collected within the mid-Atlantic region.

5. The ordinance shall provide canopy credits of one and one-quarter the area normally projected for the use of cultivars or varieties that develop desirable growth and structural patterns, resist decay organisms and the development of cavities, show high levels of resistance to disease or insect infestations, or exhibit high survival rates in harsh urban environments.

K. Tree preservation areas and individual trees may not receive more than one application of additional canopy credits provided in subsection I. Individual trees planted to meet these requirements may not receive more than two categories of additional canopy credits provided in subsection J. Canopy credits will only be given to trees with trunks that are fully located on the development site, or in the case of tree banking projects only to trees with trunks located fully within easements or other areas protected by deed restrictions listed in subsection G.

L. All trees planted for tree cover credits shall meet the specifications of the American Association of Nurserymen and shall be planted in accordance with the publication entitled "Tree and Shrub Planting Guidelines," published by the Virginia Cooperative Extension.

M. In order to provide higher levels of biodiversity and to minimize the spread of pests and diseases, or to limit the use of species that cause negative impacts to native plant communities, cause damage to nearby structures, or possess inherent physiological traits that prone trees to structural failure, the ordinance may designate species that cannot be used to meet tree canopy requirements or designate species that will only receive partial 20-year tree canopy credits.

N. The locality may allow the use of tree seedlings for meeting tree canopy requirements in large open spaces, low-density residential settings, or in low-impact development reforestation/afforestation projects. In these cases, the ordinance shall allow the ground surface area of seedling planting areas to equate to a 20-year canopy credit area. Tree seedling plantings will be comprised of native species and will be planted in densities that equate to 400 seedlings per acre, or in densities specified by low-impact development designs approved by the locality. The locality may set standards for seedling mortality rates and replacement procedures if unacceptable rates of mortality occur. The locality may elect to allow native woody shrubs or native woody seed mix to substitute for tree species as long as these treatments do not exceed 33 percent of the overall seedling planting area. The number of a single species may not exceed 10 percent of the overall number of trees or shrubs planted to meet the provisions of this subsection.

O. The following process shall be used to demonstrate achievement of the required percentage of tree canopy listed in subsection C:

1. The site plan shall graphically delineate the edges of predevelopment tree canopy, the proposed limits of disturbance on grading or erosion and sedimentation control plans, and the location of tree protective

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fencing or other tree protective devices allowed in the Virginia Erosion and Sediment Control Handbook.

2. Site plans proposing modification to tree canopy requirements or claiming supplemental tree canopy credits will require a text narrative.

3. The site plan shall include the 20-year tree canopy calculations on a worksheet provided by the locality.

4. Site plans requiring tree planting shall provide a planting schedule that provides botanical and common names of trees, the number of trees being planted, the total of tree canopy area given to each species, variety or cultivars planted, total of tree canopy area that will be provided by all trees, planting sizes, and associated planting specifications. The site plan will also provide a landscape plan that delineates where the trees shall be planted.

P. The ordinance shall provide a list of commercially available tree species, varieties, and cultivars that are capable of thriving in the locality's climate and ranges of planting environments. The ordinance will also provide a 20-year tree canopy area credit for each tree. The amount of tree canopy area credited to individual tree species, varieties, and cultivars 20 years after they are planted shall be based on references published or endorsed by Virginia academic institutions such as the Virginia Polytechnic Institute and State University and accepted by urban foresters, arborists, and horticulturalists as being accurate for the growing conditions and climate of the locality.

Q. The ordinance shall establish standards of health and structural condition of existing trees and associated plant communities to be preserved. The ordinance may also identify standards for removal of trees or portions of trees that are dead, dying, or hazardous due to construction impacts. Such removal standards may allow for the retention of trunk snags where the locality determines that these may provide habitat or other wildlife benefits and do not represent a hazardous condition. In the event that existing tree canopy proposed to be preserved for tree canopy credits dies or must be removed because it represents a hazard, the locality may require the developer to remove the tree, or a portion of the tree and to replace the missing canopy area by the planting of nursery stock trees, or if a viable alternative, by tree seedlings. Existing trees that have been granted credits will be replaced with canopy area determined using the same supplemental credit multipliers as originally granted for that canopy area.

R. Penalties for violation of ordinances adopted pursuant to this section shall be the same as those applicable to violations of zoning ordinances of the locality.

S. In no event shall any local tree conservation ordinance adopted pursuant to this section exceed the requirements set forth herein; however, any local ordinance adopted pursuant to the provisions of § 15.2-961 prior to July 1, 1990, may adopt the tree conservation provisions of this section based on 10-year minimum tree canopy requirements.

T. Nothing in this section shall invalidate any local ordinance adopted pursuant to § 15.2-961.

CHAPTER 22

Planning, Subdivision of Land and Zoning

ARTICLE 1

General Provisions

§ 15.2-2200. Declaration of legislative intent. — This chapter is intended to encourage localities to improve the public health, safety, convenience and welfare of its citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry and business be recognized in future growth; that residential areas be provided with healthy surroundings for family life; that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.

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§ 15.2-2201. Definitions. — As used in this chapter, unless the context requires a different meaning:

“*Affordable housing*” means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

“*Conditional zoning*” means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

“*Development*” means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term “development” shall not be construed to include any property which will be principally devoted to agricultural production.

“*Historic area*” means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

“*Incentive zoning*” means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy efficient building design, affordable housing creation and preservation, and historical preservation as part of the development.

“*Local planning commission*” means a municipal planning commission or a county planning commission.

“*Mixed use development*” means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

“*Official map*” means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

“*Planned unit development*” means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

“*Planning district commission*” means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

“*Plat*” or “*Plat of subdivision*” means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262 and 15.2-2264 and other applicable statutes.

“*Preliminary subdivision plat*” means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable statutes will be achieved.

“*Site plan*” means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

“*Special exception*” means a special use that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

“*Street*” means highway, street, avenue, boulevard, road, lane, alley, or any public way.

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“*Subdivision*,” unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

“*Variance*” means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

“*Zoning*” or “*to zone*” means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as “zones,” by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2204. Advertisement of plans, ordinances, etc.: joint public hearings; written notice of certain amendments.

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing body. The term "two successive weeks" as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as above required, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

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When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as above required, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) of this chapter where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the local commission to give written notice to the owner, owners or their agent of any parcel involved.

The governing body may provide that, in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.

Whenever the notices required hereby are sent by an agency, department or division of the local governing body, or their representative, such notices may be sent by first class mail; however, a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as above required, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.

D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning map classification, or (iii) an application for special exception for a change in use involves any parcel of land located within 3,000 feet of a boundary of a military base, military installation, military airport, excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in addition to the advertising and written notification as above required, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the commander of the military base, military installation, military airport, or owner of such public-use airport, and the notice shall advise the military commander or owner of such public-use airport of the opportunity to submit comments or recommendations.

E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure to advertise or give notice as may be required by this chapter shall be filed within 30 days of such decision with the circuit court having jurisdiction of the land affected by the decision. However, any litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

F. Notwithstanding any contrary provision of law, general or special, any city with a population between 200,000 and 210,000 which is required by this title or by its charter to publish a notice, may cause such notice to be published in any newspaper of general circulation in the city.

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G. When a proposed comprehensive plan or amendment of an existing plan designates or alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written notice shall also be given by the local planning commission, or its representatives, at least 10 days before the hearing to each electric utility with a certificated service territory that includes all or any part of such designated electric transmission corridors or routes.

§ 15.2-2205. Additional notice of planning or zoning matters. — Any locality may give, in addition to any specific notice required by law, notice by direct mail or any other means of any planning or zoning matter it deems appropriate.

§ 15.2-2206. When locality may require applicant to give notice; how given. — Any locality may by ordinance require that a person applying to the local governing body, local planning commission or board of zoning appeals pursuant to this chapter be responsible for all required notices. The locality shall require that notice be given as provided by § 15.2-2204.

The locality may provide that, in the case of a condominium or of a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessee's association, respectively, in lieu of each individual unit owner.

The applicant may rely upon records of the local real estate assessor's office to ascertain the names of persons entitled to notice.

A certification of notice and a listing of the persons to whom notice has been sent shall be supplied by the applicant as required by the local governing body at least five days prior to the first hearing.

The governing body shall allow any person entitled to notice to waive such right in writing.

Nothing herein shall be construed so as to affect the validity of any ordinance or amendment adopted prior to July 1, 1992.

§ 15.2-2208. Restraining violations of chapter. —

A. Any violation or attempted violation of this chapter, or of any regulation adopted hereunder may be restrained, corrected, or abated as the case may be by injunction or other appropriate proceeding.

B. At any time after the filing of an injunction or other appropriate proceeding to restrain, correct, or abate a zoning ordinance violation and where the owner of the real property is a party to such proceeding, the zoning administrator or governing body may record a memorandum of lis pendens pursuant to § 8.01-268. any memorandum of lis pendens admitted to record in an action to enforce a zoning ordinance shall expire after 180 days. If the local government has initiated an enforcement proceeding against the owner of the real property and such owner subsequently transfers the ownership of the real property to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement proceeding shall continue to be enforced against the owner.

§ 15.2-2209. Civil penalties for violations of zoning ordinance. — Notwithstanding provision 5 of § 15.2-2286, any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance. The schedule of offenses shall not include any zoning violation resulting in injury to any persons, and the existence of a civil penalty shall not preclude action by the zoning administrator under provision 4 of § 15.2-2286 or action by the governing body under § 15.2-2208.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$200 for the initial summons and not more than \$500 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000. Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in

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lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor, provided, however, that when such civil penalties total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

The zoning administrator or his deputy may issue a civil summons as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with the zoning ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than six months of the date of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

No provision herein shall be construed to allow the imposition of civil penalties (i) for activities related to land development or (ii) for violation of any provision of a local zoning ordinance relating to the posting of signs on public property or public rights-of-way.

TITLE 15.2

CHAPTER 22

Planning, Subdivision of Land and Zoning

ARTICLE 2

Local Planning Commissions

§ 15.2-2209.1. Extension of approvals to address housing crisis.

A. Notwithstanding the time limits for validity set out in § 15.2-2260 or 15.2-2261, or the provisions of subsection F of § 15.2-2260, any subdivision plat valid under § 15.2-2260 and outstanding as of January 1, 2009, and any recorded plat or final site plan valid under § 15.2-2261 and outstanding as of January 1, 2009, shall remain valid until July 1, 2014, or such later date provided for by the terms of the locality's approval, local ordinance, resolution or regulation, or for a longer period as agreed to by the locality. Any other plan or permit associated with such plat or site plan extended by this subsection shall likewise be extended for the same time period.

B. Notwithstanding any other provision of this chapter, for any valid special exception, special use permit, or conditional use permit outstanding as of January 1, 2009, and related to new residential or commercial development, any deadline in the exception permit, or in the local zoning ordinance that requires the landowner or developer to commence the project or to incur significant expenses related to improvements for the project within a certain time, shall be extended until July 1, 2014, or longer as agreed to by the locality. The provisions of this subsection shall not apply to any requirement that a use authorized pursuant to a special

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exception, special use permit, conditional use permit, or other agreement or zoning action be terminated or ended by a certain date or within a set number of years.

C. Notwithstanding any other provision of this chapter, for any rezoning action approved pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303, valid and outstanding as of January 1, 2009, and related to new residential or commercial development, any proffered condition that requires the landowner or developer to incur significant expenses upon an event related to a stage or level of development shall be extended until July 1, 2014, or longer as agreed to by the locality. However, the extensions in this subsection shall not apply (i) to land or right-of-way dedications pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303, (ii) when completion of the event related to the stage or level of development has occurred, or (iii) to events required to occur on a specified date certain or within a specified time period. Any proffered condition included in a special exception, special use permit, or conditional use permit shall only be extended if it satisfies the provisions of this subsection.

D. The extension of validity provided in subsection A and the extension of certain deadlines as provided in subsection B shall not be effective unless any performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the proposed development are continued in force.

§ 15.2-2210. Creation of local planning commissions; participation in planning district commissions or joint local commissions. — Every locality shall by resolution or ordinance create a local planning commission in order to promote the orderly development of the locality and its environs. In accomplishing the objectives of § 15.2-2200 the local planning commissions shall serve primarily in an advisory capacity to the governing bodies.

Any locality may participate in a planning district commission in accordance with Chapter 42 (§ 15.2-4200 et seq.) of this title or a joint local commission in accordance with § 15.2-2219.

§ 15.2-2211. Cooperation of local planning commissions and other agencies. — The planning commission of any locality may cooperate with local planning commissions or legislative and administrative bodies and officials of other localities so as to coordinate planning and development among the localities. Planning commissions may appoint committees and may adopt rules as needed to affect such cooperation. Planning commissions may also cooperate with state and federal officials, departments and agencies. Planning commissions may request from such departments and agencies, and such departments and agencies of the Commonwealth shall furnish, such reasonable information which may affect the planning and development of the locality.

§ 15.2-2212. Qualifications, appointment, removal, terms and compensation of members of local planning commissions. — A local planning commission shall consist of not less than five nor more than fifteen members, appointed by the governing body, all of whom shall be residents of the locality, qualified by knowledge and experience to make decisions on questions of community growth and development; provided, that at least one-half of the members so appointed shall be owners of real property. The local governing body may require each member of the commission to take an oath of office.

One member of the commission may be a member of the governing body of the locality, and one member may be a member of the administrative branch of government of the locality. The term of each of these two members shall be coextensive with the term of office to which he has been elected or appointed, unless the governing body, at the first regular meeting each year, appoints others to serve as their representatives. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years, three years, and four years, divided equally or as nearly equal as possible between the membership. Subsequent appointments shall be for terms of four years each. The local governing bodies may establish different terms of office for initial and subsequent appointments including terms of office that are concurrent

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with those of the appointing governing body. Vacancies shall be filled by appointment for the unexpired term only.

Members may be removed for malfeasance in office. Notwithstanding the foregoing provision, a member of a local planning commission may be removed from office by the local governing body without limitation in the event that the commission member is absent from any three consecutive meetings of the commission, or is absent from any four meetings of the commission within any 12-month period. In either such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

The local governing body may provide for compensation to commission members for their services, reimbursement for actual expenses incurred, or both.

§ 15.2-2213. Advisory members. — A member of a local planning commission may, with the consent of both governing bodies, serve as an advisory member of the local planning commission of a contiguous locality.

§ 15.2-2214. Meetings. — The local planning commission shall fix the time for holding regular meetings. The commission, by resolution adopted at a regular meeting, may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting shall be conducted at the continued meeting and no further advertisement is required. The commission shall cause a copy of such resolution to be inserted in a newspaper having general circulation in the locality at least seven days prior to the first meeting held pursuant to the adopted schedule.

Commissions shall meet at least every two months. However, in any locality with a population of not more than 7,500, the commission shall be required to meet at least once each year.

Special meetings of the commission may be called by the chairman or by two members upon written request to the secretary. The secretary shall mail to all members, at least five days in advance of a special meeting, a written notice fixing the time and place of the meeting and the purpose thereof.

Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a written waiver of notice.

§ 15.1-2215. Quorum majority vote. — A majority of the members shall constitute a quorum and no action of the local planning commission shall be valid unless authorized by a majority vote of those present and voting.

§ 15.2-2216. Facilities for holding of meetings and preservation of documents; appropriations for expenses. — The governing body may provide the local planning commission with facilities for the holding of meetings and the preservation of plans, maps, documents and accounts, and may appropriate funds needed to defray the expenses of the commission.

§ 15.2-2217. Officers, employees and consultants; expenditures; rules and records; special surveys. — The local planning commission shall elect from the appointed members a chairman and a vice-chairman, whose terms shall be for one year. If authorized by the governing body the commission may (i) create and fill such other offices as it deems necessary; (ii) appoint such employees and staff as it deems necessary for its work; and (iii) contract with consultants for such services as it requires. The expenditures of the commission, exclusive of gifts or grants, shall be within the amounts appropriated for such purpose by the governing body.

The commission shall adopt rules for the transaction of business and shall keep a record of its transactions which shall be a public record. Upon request of the commission, the governing body or other public officials may, from time to time, for the purpose of special surveys under the direction of the commission, assign or

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detail to it any members of the staffs of county or municipal administrative departments, or such governing body or other public official may direct any such department employee to make for the commission special surveys or studies requested by the local commission.

§ 15.2-2221. Duties of commissions. — To effectuate this chapter, the local planning commission shall:

1. Exercise general supervision of, and make regulations for, the administration of its affairs;
2. Prescribe rules pertaining to its investigations and hearings;
3. Supervise its fiscal affairs and responsibilities, under rules and regulations as prescribed by the governing body;
4. Keep a complete record of its proceedings; and be responsible for the custody and preservation of its papers and documents;
5. Make recommendations and an annual report to the governing body concerning the operation of the commission and the status of planning within its jurisdiction;
6. Prepare, publish and distribute reports, ordinances and other material relating to its activities;
7. Prepare and submit an annual budget in the manner prescribed by the governing body of the county or municipality; and
8. If deemed advisable, establish an advisory committee or committees.

§ 15.2-2222. Expenditures; gifts and donations. — The local planning commission may expend, under regular local procedure as provided by law, sums appropriated to it for its purposes and activities.

A locality may accept gifts and donations for commission purposes. Any moneys so accepted shall be deposited with the appropriate governing body in a special nonreverting commission fund to be available for expenditure by the commission for the purpose designated by the donor. The disbursing officer of the locality may issue warrants against such special fund only upon vouchers signed by the chairman and the secretary of the commission.

§ 15.2-2222.1 Coordination of state and local transportation planning.

A. Prior to adoption of any comprehensive plan pursuant to § 15.2-2223, any part of a comprehensive plan pursuant to § 15.2-2228, or any amendment to any comprehensive plan as described in § 15.2-2229, the locality shall submit such plan or amendment to the Department of Transportation for review and comment if the plan or amendment will substantially affect transportation on state controlled highways as defined by regulations promulgated by the Department. The Department's comments on the proposed plan or amendment shall relate to plans and capacities for construction of transportation facilities affected by the proposal. Within 30 days of receipt of such proposed plan or amendment, the Department may request, and the locality shall agree to, a meeting between the Department and the local planning commission or other agent to discuss the plan or amendment, which discussions shall continue as long as the participants may deem them useful. The Department shall make written comments within 90 days after receipt of the plan or amendment, or by such later deadline as may be agreed to by the parties in the discussions.

B. Upon submission to, or initiation by, a locality of a proposed rezoning under § 15.2-2286, 15.2-2297, 15.2-2298, or 15.2-2303, the locality shall submit the proposal to the Department of Transportation within 10 business days of receipt thereof if the proposal will substantially affect transportation on state-controlled highways. Such application shall include a traffic impact statement if required by local ordinance or pursuant to regulations promulgated by the Department. Within 45 days of its receipt of such traffic impact statement, the Department shall either (i) provide written comment on the proposed rezoning to the locality, or (ii) schedule a meeting, to be held within 60 days of its receipt of the proposal, with the local planning commission or other agent and the rezoning applicant to discuss potential modifications to the proposal to address any concerns or deficiencies. The Department's comments on the proposed rezoning shall be based upon the comprehensive plan, regulations and guidelines of the Department, engineering and design considerations, any adopted regional or statewide plans and short and long term traffic impacts on and off site. The Department

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shall complete its initial review of the rezoning proposal within 45 days, and its final review within 120 days, after it receives the rezoning proposal from the locality.

C. When a locality receives a subdivision plat pursuant to § 15.2-2258 or 15.2-2260, or a site plan or plan of development pursuant to subdivision A 8 of § 15.2-2286, the locality shall submit such plat or plan to the Department of Transportation in accordance with § 15.2-2260 within 10 business days if the plat or plan substantially affects transportation on state-controlled highways as defined by regulations promulgated by the Department. Such plat or plan shall include supplemental traffic analysis if required by local ordinance or resolution or pursuant to regulations promulgated by the Department. Within 30 days of its receipt of such plat or plan, the Department shall either (i) provide written comment on the plat or plan, or (ii) schedule a meeting, to be held within 60 days of the Department's receipt of the plat or plan, with members of the local planning commission or other agent of the locality to discuss potential modifications to the plat or plan to address any concerns or deficiencies. The Department's comments on the plat or plan shall be based upon the comprehensive plan, regulations or guidelines of the Department, engineering and design considerations, any adopted statewide or regional plans and short and long term traffic impacts on and off site. The Department shall complete its final review within 90 days after it receives such plat or plan from the locality. The submission of the application to the Department shall toll all times for local review set out in this chapter until the locality has received the Department's final comments.

D. If a locality has not received written comments within the timeframes specified in subsections B or C, the locality may assume that the Department has no comments.

E. The review requirements set forth in this section shall be supplemental to, and shall not affect, any requirement for review by the Department of Transportation or the locality under any other provision of law. Nothing in this section shall be deemed to prohibit any additional consultations concerning land development or transportation facilities that may occur between the Department and localities as a result of existing or future administrative practice or procedure, or by mutual agreement.

F. The Department shall impose fees and charges for the review of applications, plans and plats pursuant to paragraphs A, B, and C, and such fees and charges shall not exceed \$1,000 for each review.

TITLE 15.2

CHAPTER 22

Planning, Subdivision of Land and Zoning

ARTICLE 3

The Comprehensive Plan

§ 15.2-2223. Comprehensive plan to be prepared and adopted; scope and purpose. — The local planning commission shall prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction and every governing body shall adopt a comprehensive plan for the territory under its jurisdiction.

In the preparation of a comprehensive plan, the commission shall make careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities.

The comprehensive plan shall be general in nature, in that it shall designate the general or approximate location, character, and extent of each feature, including any road improvement and any transportation

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improvement, shown on the plan and shall indicate where existing lands or facilities are proposed to be extended, widened, removed, relocated, vacated, narrowed, abandoned, or changed in use as the case may be.

As part of the comprehensive plan, each locality shall develop a transportation plan that designates a system of transportation infrastructure needs and recommendations that may include the designation of new and expanded transportation facilities and that support the planned development of the territory covered by the plan and shall include, as appropriate, but not be limited to, roadways, bicycle accommodations, pedestrian accommodations, railways, bridges, waterways, airports, ports, and public transportation facilities. The plan should recognize and differentiate among a hierarchy of roads such as expressways, arterials, and collectors. The Virginia Department of Transportation shall, upon request, provide localities with technical assistance in preparing such transportation plan.

The plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the locality's long-range recommendations for the general development of the territory covered by the plan. It may include, but need not be limited to:

1. The designation of areas for various types of public and private development and use, such as different kinds of residential, including age-restricted, housing; business; industrial; agricultural; mineral resources; conservation; active and passive recreation; public service; flood plain and drainage; and other areas;
2. The designation of a system of community service facilities such as parks, sports playing fields, forests, schools, playgrounds, public buildings and institutions, hospitals, nursing homes, assisted living facilities, community centers, waterworks, sewage disposal or waste disposal areas, and the like;
3. The designation of historical areas and areas for urban renewal or other treatment;
4. The designation of areas for the implementation of reasonable ground water protection measures;
5. A capital improvements program, a subdivision ordinance, a zoning ordinance and zoning district maps, mineral resource district maps and agricultural and forestal district maps, where applicable;
6. The location of existing or proposed recycling centers;
7. The location of military bases, military installations, and military airports and their adjacent safety areas; and
8. The designation of corridors or routes for electric transmission lines of 150 kilovolts or more.

The plan shall include: the designation of areas and implementation of measures for the construction, rehabilitation and maintenance of affordable housing, which is sufficient to meet the current and future needs of residents of all levels of income in the locality while considering the current and future needs of the planning district within which the locality is situated.

The plan shall include: a map that shall show road improvements and transportation improvements, including the cost estimates of such road and transportation improvements as available from the Virginia Department of Transportation, taking into account the current and future needs of residents in the locality while considering the current and future needs of the planning district within which the locality is situated.

§ 15.2-2229. Amendments. — After the adoption of a comprehensive plan, all amendments to it shall be recommended, and approved and adopted, respectively, as required by § 15.2-2204. If the governing body desires an amendment it may direct the local planning commission to prepare an amendment and submit it to public hearing within sixty days after formal written request by the governing body. In acting on any amendments to the plan, the governing body shall act within ninety days of the local planning commission's recommending resolution.

§ 15.2-2230. Plan to be reviewed at least once every five years. — At least once every five years the comprehensive plan shall be reviewed by the local planning commission to determine whether it is advisable to amend the plan.

§ 15.2-2232. Legal status of plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or

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approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. Following the adoption of the Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.1-23.03 and written notification to the affected local governments, each local government through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of corridors of statewide significance within its boundaries.

B. The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within sixty days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within ten days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within sixty days from its filing. A majority vote of the governing body shall overrule the commission.

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless such work involves a change in location or extent of a street or public area.

D. Any public area, facility or use as set forth in subsection A which is identified within, but not the entire subject of, a submission under either § 15.2-2258 for subdivision or subdivision A 8 of § 15.2-2286 for development or both may be deemed a feature already shown on the adopted master plan, and, therefore, excepted from the requirement for submittal to and approval by the commission or the governing body; provided, that the governing body has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to § 15.2-2303.

E. Approval and funding of a public telecommunications facility by the Virginia Public Broadcasting Board pursuant to Article 12 (§ 2.2-2426 et seq.) of Chapter 24 of Title 2.2 shall be deemed to satisfy the requirements of this section and local zoning ordinances with respect to such facility with the exception of television and radio towers and structures not necessary to house electronic apparatus. The exemption provided for in this subsection shall not apply to facilities existing or approved by the Virginia Public Telecommunications Board prior to July 1, 1990. The Virginia Public Broadcasting Board shall notify the governing body of the locality in advance of any meeting where approval of any such facility shall be acted upon.

F. On any application for a telecommunications facility, the commission's decision shall comply with the requirements of the Federal Telecommunications Act of 1996. Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within

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ninety days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than sixty additional days. If the commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission.

TITLE 15.2

CHAPTER 22

Planning, Subdivision of Land and Zoning

ARTICLE 7

Zoning

§ 15.2-2280. Zoning ordinances generally. — Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or
4. The excavation or mining of soil or other natural resources.

§ 15.2-2281. Jurisdiction of localities. — For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

§ 15.2-2282. Regulations to be uniform. — All zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district, but the regulations in one district may differ from those in other districts.

§ 15.2-2283. Purpose of zoning ordinances. — Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and

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transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated; and (xi) to provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

§ 15.2-2284. Matters to be considered in drawing and applying zoning ordinances and districts.

— Zoning ordinances and districts shall be drawn and applied with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services, the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agricultural and forestal land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality.

§ 15.2-2285. Preparation and adoption of zoning ordinance and map and amendments thereto; appeal.

A. The planning commission of each locality may, and at the direction of the governing body shall, prepare a proposed zoning ordinance including a map or maps showing the division of the territory into districts and a text setting forth the regulations applying in each district. The commission shall hold at least one public hearing on a proposed ordinance or any amendment of an ordinance, after notice as required by § 15.2-2204, and may make appropriate changes in the proposed ordinance or amendment as a result of the hearing. Upon the completion of its work, the commission shall present the proposed ordinance or amendment including the district maps to the governing body together with its recommendations and appropriate explanatory materials.

B. No zoning ordinance shall be amended or reenacted unless the governing body has referred the proposed amendment or reenactment to the local planning commission for its recommendations. Failure of the commission to report 100 days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, or such shorter period as may be prescribed by the governing body, shall be deemed approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period. In the event of and upon such withdrawal, processing of the proposed amendment or reenactment shall cease without further action as otherwise would be required by this subsection.

C. Before approving and adopting any zoning ordinance or amendment thereof, the governing body shall hold at least one public hearing thereon, pursuant to public notice as required by § 15.2-2204, after which the governing body may make appropriate changes or corrections in the ordinance or proposed amendment. In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the comprehensive plan. However, no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice required by § 15.2-2204. Zoning ordinances shall be enacted in the same manner as all other ordinances.

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D. Any county which has adopted an urban county executive form of government provided for under Chapter 8 (§ 15.2-800 et seq.) may provide by ordinance for use of plans, profiles, elevations, and other such demonstrative materials in the presentation of requests for amendments to the zoning ordinance.

E. The adoption or amendment prior to March 1, 1968, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise, give notice or conduct more than one public hearing as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to the adoption or amendment.

F. Every action contesting a decision of the local governing body adopting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision. However, nothing in this subsection shall be construed to create any new right to contest the action of a local governing body.

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.
2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.
3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases,

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making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by § 15.2-2314.

The zoning administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.

However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable

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by a fine of up to \$7,500. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the

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United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

14. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

B. Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been properly assessed against the subject property have been paid.

§ 15.2-2286.1 Provisions for clustering of single-family dwellings so as to preserve open space.

A. The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census. However, the requirements of this section shall not apply to any such county or city that has a population density of more than 2,000 people per square mile, according to the most recent report of the United States Bureau of the Census.

B. Any such locality shall provide in its zoning or subdivision ordinances, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions, and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances. The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different residential zoning classification within the locality. For purposes of this section, "unimproved land" shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.

If proposals for the clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions, and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special

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use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt (i) developments of two acres or less and (ii) property located in an Air Installation Compatible Use Zone from the provisions of this subdivision.

C. Additionally, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide, in its zoning or subdivision ordinances, standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions, and criteria, it shall be permitted by right and approved administratively by the locality's staff in the same manner provided in subsection A, or (ii) approve the increased density development upon approval of a special exception, special use permit, conditional use permit, or rezoning.

D. Notwithstanding any of the requirements of this section to the contrary, any local government land use ordinance in effect as of June 1, 2004, that provides for the clustering of single-family dwellings and preservation of open space development by right in at least one residential zoning classification without requiring either a special exception, special use permit, conditional use permit, or other discretionary approval may remain in effect at the option of the locality and will be deemed to be in compliance with this section. Any other locality may adopt provisions for the clustering of single-family dwellings, following the procedures set out in this section, in its discretion.

§ 15.2-2287. Localities may require oath regarding property interest of local officials. — A zoning ordinance may provide that petitions brought by property owners, contract purchasers or the agents thereof, shall be sworn to under oath before a notary public or other official before whom oaths may be taken, stating whether or not any member of the local planning commission or governing body has any interest in such property, either individually, by ownership of stock in a corporation owning such land, partnership, as the beneficiary of a trust, or the settlor of a revocable trust or whether a member of the immediate household of any member of the planning commission or governing body has any such interest.

§ 15.2-2288. Localities may not require a special use permit for certain agricultural activities. — A zoning ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, production agriculture and silviculture is the bona fide production or harvesting of agricultural or silviculture products but shall not include the processing of agricultural or silviculture products or the above ground application or storage of sewage sludge. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification.

§ 15.2-2288.01. Localities shall not require a special use permit for certain small-scale conversion of biomass to alternative fuel.

A. As used in this section, unless the context requires a different meaning:

"Biomass" means agricultural-related materials including vineyard, grain or crop residues; straws; aquatic plants; and crops and trees planted for energy production.

"Small-scale conversion of biomass" means the conversion of any renewable biomass into heat, power, or biofuels.

B. A zoning ordinance shall not require that a special exception or special use permit be obtained for the small-scale conversion of biomass if: (i) at least 50 percent of the feedstock is produced either on site or by the owner of the conversion equipment; (ii) any structure used for the processing of the feedstock into energy occupies less than 4,000 square feet, not including the space required for storage of feedstock; and (iii) the

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owner of the farm notifies the administrative head of the locality in which the processing occurs. Localities may adopt reasonable requirements for setback, minimum lot area, and restrictions on the hours of operation and maximum noise levels applicable to the small-scale conversion of biomass. No setback, lot area, hours of operation or noise requirements may be more restrictive than similar provisions for other agricultural structures or activities.

§ 15.2-2288.1. Localities may not require a special use permit for certain residential uses. — No local ordinance shall require as a condition of approval of a subdivision plat, site plan, or plan of development, or issuance of a building permit, that a special exception, special use, or conditional use permit be obtained for the development and construction of residential dwellings at the use, height and density permitted by right under the local zoning ordinance. Nothing herein shall restrict the use of the special exception, special use, or conditional use permit process on application of a property owner for (i) a cluster or town center as an optional form of residential development at a density greater than that permitted by right, or otherwise permitted by local ordinance; (ii) use in an area designated for steep slope mountain development; (iii) use as a utility facility to serve a residential development; or (iv) nonresidential uses including but not limited to home businesses, home occupations, day care centers, bed and breakfast inns, lodging houses, private boarding schools, and shelters established for the purpose of providing human services to the occupants thereof.

§ 15.2-2288.2. Localities may not require special use permit for certain temporary structures. — A zoning ordinance shall not require that a special exception or special use permit be obtained in order to erect a tent on private property (i) intended to serve as a temporary structure for a period of three days or less and (ii) that will be used primarily for private or family-related events including, but not limited to, weddings and estate sales.

§ 15.2-2288.3. Licensed farm wineries; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.

B, C. [Expired.]

D. No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

E. No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 5 of § 4.1-207:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine;
2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;

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3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the Alcoholic Beverage Control Board;
4. The sale and shipment of wine to the Alcoholic Beverage Control Board, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law;
5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; or
6. The sale of wine-related items that are incidental to the sale of wine.

§ 15.2-2288.4. Extension of expiration dates for special use permits.

Notwithstanding any other provision of law, any special use permit that was valid and outstanding as of January 1, 2009, is extended to July 1, 2011, regardless of whether such expiration or schedule exists by operation of statute, proffer, permit, local ordinance, or local custom. Nothing in this section shall impair the ability of any person to apply for additional extensions of time beyond the period specified in this section where permitted by other law.

§ 15.2-2289. Localities may provide by ordinance for disclosure of real parties in interest. — In addition to the powers granted by this chapter, localities may provide by ordinance that the local planning commission, governing body or zoning appeals board may require any applicant for a special exception, or a special use permit, amendment to the zoning ordinance or variance to make complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.

§ 15.2-2290. Uniform regulations for manufactured housing.

A. Localities adopting and enforcing zoning ordinances under the provisions of this article shall provide that, in all agricultural zoning districts or districts having similar classifications regardless of name or designation where agricultural, horticultural, or forest uses such as but not limited to those described in § 58.1-3230 are the dominant use, the placement of manufactured houses that are on a permanent foundation and on individual lots shall be permitted, subject to development standards that are equivalent to those applicable to site-built single family dwellings within the same or equivalent zoning district.

B. Localities adopting and enforcing zoning regulations under the provisions of this article may, to provide for the general purposes of zoning ordinances, adopt uniform standards, so long as they apply to all residential structures erected within the agricultural zoning district or other districts identified in subsection A of this section incorporating such standards. The standards shall not have the effect of excluding manufactured housing.

C. Local zoning ordinances adopting provisions consistent with this section shall not relieve lots or parcels from the obligations relating to manufactured housing units imposed by the terms of a restrictive covenant.

§ 15.2-2291. Group homes of eight or fewer single-family residence.

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more

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resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.

B. Zoning ordinances in the Counties of Arlington and York for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances in the Cities of Lynchburg and Suffolk for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

§ 15.2-2292. Zoning provisions for family day homes.

A. Zoning ordinances for all purposes shall consider a family day home as defined in § 63.2-100 serving one through five children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed upon such a home. Nothing in this section shall apply to any county or city which is subject to § 15.2-741 or § 15.2-914.

B. A local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home as defined in § 63.2-100 serving six through twelve children, exclusive of the provider's own children and any children who reside in the home. The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within thirty days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator may issue the permit sought. The ordinance shall provide a process whereby an applicant for a family day home that is denied a permit through the administrative process may request that its application be considered after a hearing following public notice as provided in § 15.2-2204. The provisions of this subsection shall not prohibit a local governing body from exercising its authority, if at all, under provision 3 of § 15.2-2286.

§ 15.2-2293. Airspace subject to zoning ordinances.

A. A zoning ordinance shall be applicable to the superjacent airspace of any nonpublic-owned land area.

B. Airspace superjacent or subjacent to any public highway, street, lane, alley or other way in this Commonwealth not required for the purpose of travel, or other public use, by the Commonwealth or other political jurisdiction owning it, shall be subject to the zoning ordinance of the locality in which the airspace is located.

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C. Airspace not provided for in subsection B herein that is superjacent to any land owned by the Commonwealth or other political jurisdiction and occupied by a nonpolitical entity or person shall be subject to the zoning ordinance that would be applicable if the land were owned by a private person.

§ 15.2-2293.1. Placement of amateur radio antennas. — Any ordinance involving the placement, screening or height of antennas shall reasonably accommodate amateur radio antennas and shall impose the minimum regulation necessary to accomplish the locality's legitimate purpose. In localities having a population density of 120 persons or less per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 200 feet above ground level as permitted by the Federal Communications Commission or (ii) restrict the number of support structures. In localities having a population density of more than 120 persons per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 75 feet above ground level or (ii) restrict the number of support structures. Reasonable and customary engineering practices shall be followed in the erection of amateur radio antennas. This section shall not preclude any locality, by ordinance, from regulating amateur radio antennas with regard to reasonable requirements relating to the use of screening, setback, placement, and health and safety requirements.

§ 15.2-2294. Airport safety zoning. — Every locality (i) in whose jurisdiction a licensed airport or United States government or military air facility is located or (ii) over whose jurisdiction the approach slopes and other safety zones of a licensed airport, including United States government or military air facility extend shall, by ordinance, provide for the regulation of the height of structures and natural growth for the purpose of protecting the safety of air navigation and the public investment in air navigation facilities. The ordinance may be adopted regardless of whether the local governing body has adopted a zoning ordinance applicable to other land uses in the locality. The ordinance may be designed and adopted by the locality as an overlay zone superimposed on any preexisting base zone.

The provisions of the airport safety zoning ordinance shall be in compliance with the rules of the Virginia Aviation Board.

§ 15.2-2295. Aircraft noise attenuation features in buildings and structures within airport noise zones. — Any locality in whose jurisdiction, or adjacent jurisdiction, is located a licensed airport or United States government or military air facility, may enforce building regulations relating to the provision or installation of acoustical treatment measures in residential buildings and structures, or portions thereof, other than farm structures, for which building permits are issued after January 1, 2003, in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. Any locality in whose jurisdiction a United States Master Jet Base is located or any adjacent locality may, in addition, adopt and enforce building regulations relating to the provision or installation of acoustical treatment measures applicable to buildings and structures, or portions thereof, in Assembly, Business, Educational, Institutional, and Mercantile groups, as defined in the International Building Code.

In establishing the regulations, the locality may adopt one or more noise overlay zones as an amendment to its zoning map and may establish different measures to be provided or installed within each zone, taking into account the severity of the impact of aircraft noise upon buildings and structures within each zone. Any such regulations or amendments to a zoning map shall provide a process for reasonable notice to affected property owners. Any regulations or amendments to a zoning map shall be adopted in accordance with this chapter. A statement shall be placed on all recorded surveys, subdivision plats and all final site plans approved after January 1, 2003, giving notice that a parcel of real property either partially or wholly lies within an airport noise overlay zone. No existing use of property which is affected by the adoption of such regulations or amendments to a zoning map shall be considered a nonconforming use solely because of the regulations or amendments. The provisions of this section shall not affect any local aircraft noise attenuation regulations or ordinances adopted prior to the effective date of this act, and such regulations and ordinances may be amended

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provided the amendments shall not alter building materials, construction methods, plan submission requirements or inspection practices specified in the Virginia Uniform Statewide Building Code.

§ 15.2-2295.1. Regulation of mountain ridge construction.

A. As used in this section, unless the context requires a different meaning:

“*Construction*” means the building, alteration, repair, or improvement of any building or structure.

“*Crest*” means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

“*Protected mountain ridge*” means a ridge with (i) an elevation of 2,000 feet or more and (ii) an elevation of 500 feet or more above the elevation of an adjacent valley floor.

“*Ridge*” means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

“*Tall buildings or structures*” means any building, structure or unit within a multi-unit building with a vertical height of more than forty feet measured from the top of the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the building, structure or unit. "Tall buildings or structures" do not include (i) water, radio, telecommunications or television towers or any equipment for the transmission of electricity, telephone or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark, building or structure by the United States or by the Board of Historic Resources.

B. Determinations by the governing body of heights and elevations under this section shall be conclusive.

C. Any locality in which a protected mountain ridge is located may, by ordinance, provide for the regulation of the height and location of tall buildings or structures on protected mountain ridges. The ordinance may be designed and adopted by the locality as an overlay zone superimposed on any preexisting base zone.

D. An ordinance adopted under this section may include criteria for the granting or denial of permits for the construction of tall buildings or structures on protected mountain ridges. Any such ordinance shall provide that permit applications shall be denied if a permit application fails to provide for (i) adequate sewerage, water, and drainage facilities, including, but not limited to, facilities for drinking water and the adequate supply of water for fire protection and (ii) compliance with the Erosion and Sediment Control Law (§ 10.1-560 et seq.).

E. Any locality that adopts an ordinance providing for the regulation of the height and location of tall buildings or structures on protected mountain ridges shall send a copy of the ordinance to the Secretary of Natural Resources.

F. Nothing in this section shall be construed to affect or impair a governing body's authority under this chapter to define and regulate uses in any existing zoning district or to adopt overlay districts regulating uses on mountainous areas as defined by the governing body.

§ 15.2-2296. Conditional zoning; declaration of legislative policy and findings; purpose. — It is the general policy of the Commonwealth in accordance with the provisions of § 15.2-2283 to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and the same time to recognize effects of change. It is the purpose of §§ 15.2-2296 through 15.2-2300 to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The exercise of authority granted pursuant to §§ 15.2-2296 through 15.2-2302 shall not be construed to limit or restrict powers otherwise granted to any locality, nor to affect the validity of any ordinance adopted by

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any such locality which would be valid without regard to this section. The provisions of this section and the following six sections shall not be used for the purpose of discrimination in housing.

§ 15.2-2297. Same; conditions as part of a rezoning or amendment to zoning map.

A. A zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map; provided that (i) the rezoning itself must give rise for the need for the conditions; (ii) the conditions shall have a reasonable relation to the rezoning; (iii) the conditions shall not include a cash contribution to the locality; (iv) the conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in § 15.2-2241; (v) the conditions shall not include a requirement that the applicant create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation; (vi) the conditions shall not include payment for or construction of off-site improvements except those provided for in § 15.2-2241; (vii) no condition shall be proffered that is not related to the physical development or physical operation of the property; and (viii) all such conditions shall be in conformity with the comprehensive plan as defined in § 15.2-2223. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendments to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property.

Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior

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to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or
2. Accept or impose valid conditions pursuant to provision 3 of § 15.2-2286 or other provision of law.

§ 15.2-2298. Same; additional conditions as a part of rezoning or zoning map amendment in certain high-growth localities.

A. Except for those localities to which § 15.2-2303 is applicable, this section shall apply to (i) any locality which has had population growth of 5% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census; (ii) any city adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county. However, any such locality may by ordinance choose to utilize the conditional zoning authority granted under § 15.2-2303 rather than this section.

In any such locality, notwithstanding any contrary provisions of § 15.2-2297, a zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan as defined in § 15.2-2223.

Reasonable conditions may include the payment of cash for any off-site road improvement or any off-site transportation improvement that is adopted as an amendment to the required comprehensive plan and incorporated into the capital improvements program, provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. For purposes of this section, "road improvement" includes construction of new roads or improvement or expansion of existing roads as required by applicable construction standards of the Virginia Department of Transportation to meet increased demand attributable to new development. For purposes of this section, "transportation improvement" means any real or personal property acquired, constructed, improved, or used for constructing, improving, or operating any (i) public mass transit system or (ii) highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this title. Such improvements shall include, without limitation, public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions; however, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

No proffer shall be accepted by a locality unless it has adopted a capital improvement program pursuant to § 15.2-2239 or local charter. In the event proffered conditions include the dedication of real property or payment of cash, the property shall not transfer and the payment of cash shall not be made until the facilities for which the property is dedicated or cash is tendered are included in the capital improvement program,

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provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of the property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to the property, shall be effective with respect to the property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or
2. Accept or impose valid conditions pursuant to provision 3 of § 15.2-2286 or other provision of law.

§ 15.2-2299. Same; enforcement and guarantees. — The zoning administrator is vested with all necessary authority on behalf of the governing body of the locality to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including (i) the ordering in writing of the remedy of any noncompliance with the conditions; (ii) the bringing of legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and (iii) requiring a guarantee, satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the governing body, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

§ 15.2-2300. Same; records. — The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The zoning administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or

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zone. The Index shall also provide ready access to all proffered cash payments and expenditures disclosure reports prepared by the local governing body pursuant to § 15.2-2303.2. The zoning administrator shall update the Index annually and no later than November 30 of each year.

§ 15.2-2301. Same; petition for review of decision. — Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of § 15.2-2299 may petition the governing body for review of the decision of the zoning administrator. All petitions for review shall be filed with the zoning administrator and with the clerk of the governing body within thirty days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved.

§ 15.2-2302. Same; amendments and variations of conditions. — There shall be no amendment or variation of conditions created pursuant to the provisions of § 15.2-2297 until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204. However, where an amendment to proffered conditions is requested by the profferrer, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of conditions created pursuant to § 15.2-2298 or 15.2-2303. Once so amended, the proffered conditions shall continue to be an amendment to the zoning ordinance and may be enforced by the zoning administrator pursuant to the applicable provisions of this Chapter (§ 15.2-2200 et seq.).

§15.2-2303. Conditional zoning in certain localities.

A. A zoning ordinance may include reasonable regulations and provisions for conditional zoning as defined in § 15.2-2201 and for the adoption, in counties, or towns therein which have planning commissions, wherein the urban county executive form of government is in effect, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, in advance of the public hearing before the governing body required by § 15.2-2285 by the owner of the property which is the subject of the proposed zoning map amendment. Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted

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in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

D. Subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

E. Nothing in this section shall be construed to affect or impair the authority of a governing body to (i) accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or (ii) accept or impose valid conditions pursuant to provision 3 of § 15.2-2286, provision 5 of § 15.2-2242, or other provision of law.

F. In any instance in which a locality has accepted proffered conditions that include pedestrian improvements, and the Virginia Department of Transportation has reviewed and not objected to the proposed pedestrian improvements during the processing of the rezoning, the Virginia Department of Transportation shall allow the proffered improvements to be constructed, except when such improvements will violate local, state, or federal laws, regulations, or mandated engineering and safety standards.

G. In addition to the powers granted by the preceding subsections, a zoning ordinance may include reasonable regulations to implement, in whole or in part, the provisions of §§ 15.2-2296 through 15.2-2302.

§ 15.2-2303.2. Disclosure of proffered cash payments and expenditures.

A. The governing body of any locality accepting cash payments voluntarily proffered on or after July 1, 2005, pursuant to § 15.2-2298, 15.2-2303 or 15.2-2303.1 shall, within seven years of receiving full payment of all cash proffered pursuant to an approved rezoning application, begin, or cause to begin (i) construction, (ii) site work, (iii) engineering, (iv) right-of-way acquisition, (v) surveying, or (vi) utility relocation on the improvements for which the cash payments were proffered. A locality that does not comply with the above requirement, or does not begin alternative improvements as provided for in subsection C, shall forward the amount of the proffered cash payments to the Commonwealth Transportation Board no later than December 31 following the fiscal year in which such forfeiture occurred for direct allocation to the secondary system construction program or the urban system construction program for the locality in which the proffered cash payments were collected. The funds to which any locality may be entitled under the provisions of Title 33.1 for construction, improvement, or maintenance of primary, secondary, or urban roads shall not be diminished by reason of any funds remitted pursuant to this subsection by such locality, regardless of whether such contributions are matched by state or federal funds.

B. The governing body of any locality eligible to accept any proffered cash payments pursuant to § 15.2-2298, 15.2-2303 or 15.2-2303.1 shall, for each fiscal year beginning with the fiscal year 2007, (i) include in its capital improvement program created pursuant to § 15.2-2239, or as an appendix thereto, the amount of all proffered cash payments received during the most recent fiscal year for which a report has been filed pursuant

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to subsection D, and (ii) include in its annual capital budget the amount of proffered cash payments projected to be used for expenditures or appropriated for capital improvements in the ensuing year.

C. Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by the governing body of a locality pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1, a locality may utilize any cash payments proffered for any road improvement or any transportation improvement that is incorporated into the capital improvements program as its matching contribution under § 33.1-23.05. For purposes of this section, "road improvement" includes construction of new roads or improvement or expansion of existing roads as required by applicable construction standards of the Virginia Department of Transportation to meet increased demand attributable to new development. For purposes of this section, "transportation improvement" means any real or personal property acquired, constructed, improved, or used for constructing, improving, or operating any (i) public mass transit system or (ii) highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this title. Such improvements shall include, without limitation, public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by the governing body of a locality pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1, a locality may utilize any cash payments proffered for capital improvements for alternative improvements of the same category within the locality in the vicinity of the improvements for which the cash payments were originally made. Prior to utilization of such cash payments for the alternative improvements, the governing body of the locality shall give at least 30 days' written notice of the proposed alternative improvements to the entity who paid such cash payment mailed to the last known address of such entity, or if proffer payment records no longer exist, then to the original zoning applicant, and conduct a public hearing on such proposal advertised as provided in subsection F of § 15.2-1427. The governing body of the locality prior to the use of such cash payments for alternative improvements shall, following such public hearing, find: (i) the improvements for which the cash payments were proffered cannot occur in a timely manner; (ii) the alternative improvements are within the vicinity of the proposed improvements for which the cash payments were proffered; and (iii) the alternative improvements are in the public interest. Notwithstanding the provisions of the Virginia Public Procurement Act, the governing body may negotiate and award a contract without competition to an entity that is constructing road improvements pursuant to a proffered zoning condition or special exception condition in order to expand the scope of the road improvements by utilizing cash proffers of others or other available locally generated funds. The local governing body shall adopt a resolution stating the basis for awarding the construction contract to extend the scope of the road improvements. All road improvements to be included in the state primary or secondary system of highways must conform to the adopted standards of the Virginia Department of Transportation.

D. The governing body of any locality with a population in excess of 3,500 persons accepting a cash payment voluntarily proffered pursuant to § 15.2-2298, 15.2-2303 or 15.2-2303.1 shall within three months of the close of each fiscal year, beginning in fiscal year 2002 and for each fiscal year thereafter, report to the Commission on Local Government the following information for the preceding fiscal year:

1. The aggregate dollar amount of proffered cash payments collected by the locality;
2. The estimated aggregate dollar amount of proffered cash payments that have been pledged to the locality and which pledges are not conditioned on any event other than time; and
3. The total dollar amount of proffered cash payments expended by the locality, and the aggregate dollar amount expended in each of the following categories:

Schools	\$ _____
Road and other Transportation Improvements	\$ _____

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Fire and Rescue/Public Safety	\$ _____
Libraries	\$ _____
Parks, Recreation, and Open Space	\$ _____
Water and Sewer Service Extension	\$ _____
Community Centers	\$ _____
Stormwater Management	\$ _____
Special Needs Housing	\$ _____
Affordable Housing	\$ _____
Miscellaneous	\$ _____
Total dollar amount expended	\$ _____

E. The governing body of any locality with a population in excess of 3,500 persons eligible to accept any proffered cash payments pursuant to § 15.2-2298, 15.2-2303 or 15.2-2303.1 but that did not accept any proffered cash payments during the preceding fiscal year shall within three months of the close of each fiscal year, beginning in 2001 and for each fiscal year thereafter, so notify the Commission on Local Government.

F. The Commission on Local Government shall by November 30, 2001, and by November 30 of each fiscal year thereafter, prepare and make available to the public and the chairmen of the Senate Local Government Committee and the House Counties, Cities and Towns Committee an annual report containing the information made available to it pursuant to subsections D and E.

§ 15.2-2303.3. Cash proffers requested or accepted by a locality.

A. No locality may require payment of a cash proffer prior to payment of any fees for the issuance of a building permit for construction on property that is the subject of a rezoning. However, a landowner petitioning for a zoning change may voluntarily agree to an earlier payment, pursuant to §§ 15.2-2298 and 15.2-2303. If the petitioner voluntarily agrees to an earlier payment, the proffered condition may be enforced as to the petitioner and any successor in interest according to its terms as part of an approved rezoning.

B. No locality shall either request or accept a cash proffer whose amount is scheduled to increase annually, from the time of proffer until tender of payment, by a percentage greater than the annual rate of inflation, as calculated by referring to the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics or the Marshall and Swift Building Cost Index.

§ 15.2-2304. Affordable dwelling unit ordinances in certain counties. — In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing bodies of any county where the urban county executive form of government or the county manager plan of government is in effect, the Counties of Albemarle and Loudoun, and the City of Alexandria may by amendment to the zoning ordinances of such localities provide for an affordable housing dwelling unit program. The program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing. Any project that is subject to an affordable housing dwelling unit program adopted

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pursuant to this section shall not be subject to an additional requirement outside of such program to contribute to a county or city housing fund.

Any local ordinance of any other locality providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect.

§ 15.2-2305. Affordable dwelling unit ordinances.

A. In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing body of any locality, other than localities to which § 15.2-2304 applies, may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of housing affordable to low and moderate income citizens, determined in accordance with the locality's definition of affordable housing, by providing for increases in density to the applicant in exchange for the applicant providing such affordable housing. Any local ordinance providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect. Any local ordinance may authorize the governing body to (i) establish qualifying jurisdiction-wide affordable dwelling unit sales prices based on local market conditions, (ii) establish jurisdiction-wide affordable dwelling unit qualifying income guidelines, and (iii) offer incentives other than density increases, such as reductions or waiver of permit, development, and infrastructure fees, as the governing body deems appropriate to encourage the provision of affordable housing. Counties to which § 15.2-2304 applies shall be governed by the provisions of § 15.2-2304 for purposes of the adoption of an affordable dwelling unit ordinance.

B. Any zoning ordinance establishing an affordable housing dwelling unit program may include, among other things, reasonable regulations and provisions as to any or all of the following:

1. A definition of affordable housing and affordable dwelling units.
2. For application of the requirements of an affordable housing dwelling unit program to any site, as defined by the locality, or a portion thereof at one location which is the subject of an application for rezoning or special exception or, at the discretion of the local governing body, site plan or subdivision plat which yields, as submitted by the applicant, at an equivalent density greater than one unit per acre and which is located within an approved sewer area.
3. For an increase of up to 30 percent in the developable density of each site subject to the ordinance and for a provision requiring up to 17 percent of the total units approved, including the optional density increase, to be affordable dwelling units, as defined in the ordinance. In the event a 30 percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the same ratio of 30 percent to 17 percent.
4. For increases by up to 30 percent of the density or of the lower and upper end of the density range set forth in the comprehensive plan of such locality applicable to rezoning and special exception applications that request approval of single family detached dwelling units or single family attached dwelling units, when such applications are approved after the effective date of a local affordable housing zoning ordinance amendment.
5. For a requirement that not less than 17 percent of the total number of dwelling units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 4 of this section shall be affordable dwelling units, as defined by the local zoning ordinance unless reduced by the 30 to 17 percent ratio pursuant to subdivision B 3 of this section.
6. For establishment of a local housing fund as part of its affordable housing dwelling unit program to assist in achieving the affordable housing goals of the locality pursuant to this section. The local housing fund may be a dedicated fund within the other funds of the locality, but any funds received pursuant to this section shall be used for achieving the affordable housing goals of the locality.
7. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of the market rate units.
8. For standards of compliance with the provisions of an affordable housing dwelling unit program and for the authority of the local governing body or its designee to enforce compliance with such standards and

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impose reasonable penalties for noncompliance, provided that a local zoning ordinance provide for an appeal process for any party aggrieved by a decision of the local governing body.

C. For any building which is four stories or above and has an elevator, the applicant may request, and the locality shall consider, the unique ancillary costs associated with living in such a building in determining whether such housing will be affordable under the definition established by the locality in its ordinance adopted pursuant to this section. However, for localities under this section in Planning District Eight, nothing in this section shall apply to any elevator structure four stories or above.

D. Any ordinance adopted hereunder shall provide that the local governing body shall have no more than 280 days in which to process site or subdivision plans proposing the development or construction of affordable housing or affordable dwelling units under such ordinance. The calculation of such period of review shall include only the time that plans are in review by the local governing body and shall not include such time as may be required for revision or modification in order to comply with lawful requirements set forth in applicable ordinances and regulations.

E. A locality establishing an affordable housing dwelling unit program in any ordinance shall establish in its general ordinances, adopted in accordance with the requirements of § 15.2-1427 B, reasonable regulations and provisions as to any or all of the following:

1. For administration and regulation by a local housing authority or by the local governing body or its designee of the sale and rental of affordable units.

2. For a local housing authority or local governing body or its designee to have an exclusive right to purchase up to one-third of the for-sale affordable housing dwelling units within a development within ninety days of a dwelling unit being completed and ready for purchase, provided that the remaining two-thirds of such units be offered for sale exclusively for a ninety-day period to persons who meet the income criteria established by the local housing authority or local governing body or the latter's designee.

3. For a local housing authority or local governing body or its designee to have an exclusive right to lease up to a specified percentage of the rental affordable dwelling units within a development within a controlled period determined by the housing authority or local governing body or its designee, provided that the remaining for-rental affordable dwelling units within a development be offered to persons who meet the income criteria established by the local housing authority or local governing body or its designee.

4. For the establishment of jurisdiction-wide affordable dwelling unit sales prices by the local housing authority or local governing body or the latter's designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary and reasonable costs required to construct the affordable dwelling unit prototype dwellings by private industry after considering written comment by the public, local housing authority or advisory body to the local governing body, and other information such as the area's current general market and economic conditions, provided that sales prices not include the cost of land, on-site sales commissions and marketing expenses, but may include, among other costs, builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid expenses required at settlement.

5. For the establishment of jurisdiction-wide affordable dwelling unit rental prices by a local housing authority or local governing body or its designee, initially and adjusted semiannually, based on 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 considering written comment by the public, local housing authority, or advisory body to the local governing body, and other information such as the area's current general market and economic conditions.

6. For a requirement that the prices for resales and rerentals be controlled by the local housing authority or local governing body or designee for a period of not less than 15 years nor more than 50 after the initial sale or rental transaction for each affordable dwelling unit, provided that the ordinance further provide for reasonable rules and regulations to implement a price control provision.

7. For establishment of an affordable dwelling unit advisory board which shall, among other things, advise the jurisdiction on sales and rental prices of affordable dwelling units; advise the housing authority or local governing body or its designees on requests for modifications of the requirements of an affordable dwelling unit program; adopt regulations concerning its recommendations of sales and rental prices of

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affordable dwelling units; and adopt procedures concerning requests for modifications of an affordable housing dwelling unit program. Members of the board, to be ten in number and to be appointed by the governing body, shall be qualified as follows: two members shall be either civil engineers or architects, each of whom shall be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom shall have extensive experience in practice in the locality; one member shall be a real estate salesperson or broker, licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; one member shall be a representative of a lending institution which finances residential development in the locality; four members shall consist of a representative from a local housing authority or local governing body or its designee, a residential builder with extensive experience in producing single family detached and attached dwelling units, a residential builder with extensive experience in producing multiple-family dwelling units, and a representative from either the public works or planning department of the locality; one member may be a representative of a nonprofit housing organization which provides services in the locality; and one citizen of the locality. At least four members of the advisory board shall be employed in the locality.

F. A locality establishing an affordable housing dwelling unit program in any ordinance shall establish in its general ordinances, adopted in accordance with the requirements of subsection B of § 15.2-1427, reasonable regulations and provisions as to the following:

The sales and rental price for affordable dwelling units within a development shall be established such that the owner/applicant shall not suffer economic loss as a result of providing the required affordable dwelling units. "*Economic loss*" for sales units means that result when the owner or applicant of a development fails to recoup the cost of construction and certain allowances as may be determined by the designee of the governing body for the affordable dwelling units, exclusive of the costs of land acquisition and cost voluntarily incurred but not authorized by the ordinance, upon the sale of an affordable dwelling unit.

§ 15.2-2306. Preservation of historical sites and architectural areas.

A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by § 15.2-2201, and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or highways (as designated pursuant to Title 33.1, including § 33.1-41.1 of that title) found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts therein or in a contiguous locality. A governing body may provide in the ordinance that the applicant must submit documentation that any development in an area of the locality of known historical or archaeological significance will preserve or accommodate the historical or archaeological resources. An amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance with the provisions of Article 7 (§ 15.2-2280 et seq.) of this chapter. The governing body may provide for a review board to administer the ordinance and may provide compensation to the board. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.

2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.

3. The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify

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therein the parties entitled to appeal the decisions, which parties shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body. The filing of the petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the decision of the governing body if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the governing body.

In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows: three months when the offering price is less than \$25,000; four months when the offering price is \$25,000 or more but less than \$40,000; five months when the offering price is \$40,000 or more but less than \$55,000; six months when the offering price is \$55,000 or more but less than \$75,000; seven months when the offering price is \$75,000 or more but less than \$90,000; and twelve months when the offering price is \$90,000 or more.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no approval of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

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§ 15.2-2307. Vested rights not impaired; nonconforming uses. — Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever, with respect to the building or structure, the square footage of a building or structure is enlarged, or the building or structure is structurally altered as provided in the Uniform Statewide Building Code (§ 36-97 et seq.). Further, a zoning ordinance may provide that no nonconforming use may be expanded, or that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefor, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period in excess of 15 years, a zoning ordinance may provide that the building or structure is nonconforming, but shall not provide that such building or structure is illegal and shall be removed solely due to such nonconformity. Further, a zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code.

A zoning ordinance shall permit the owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in § 15.2-2310. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code (§ 36-98 et seq.) and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. Unless such building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance of the locality. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the

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declaration, then the zoning ordinance shall provide for an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided in this paragraph. For purposes of this section, "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under § 18.2-77 or 18.2-80, and obtain vested rights under this section.

Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to notify such property owner, from ordering the removal of a nonconforming sign that has been abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least two years. Any locality may, by ordinance, provide that following the expiration of the two-year period any abandoned nonconforming sign shall be removed by the owner of the property on which the sign is located, if notified by the locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify the property owner, the locality through its own agents or employees may enter the property upon which the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from applying to a court of competent jurisdiction for an order requiring the removal of such abandoned nonconforming sign by the owner by means of injunction or other appropriate remedy.

Nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

§ 15.2-2307.1. Protection of established commercial fishing operations. — Registered commercial fishermen and seafood buyers who operate their businesses from their waterfront residences shall not be prohibited by a locality from continuing their businesses, notwithstanding the provisions of any local zoning ordinance. This section shall only apply to businesses that have been in operation by the current owner, or a family member of the current owner, for at least 20 years at the location in question. The protection granted by this section shall continue so long as the property is owned by the current owner or a family member of the owner.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed

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and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board. No action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2309. Powers and duties of boards of zoning appeals. — Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.

2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

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When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

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5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2310. Applications for special exceptions and variances. — Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board or bureau. Applications shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. No special exceptions or variances shall be authorized except after notice and hearing as required by § 15.2-2204. The zoning administrator shall also transmit a copy of the application to the local planning commission which may send a recommendation to the board or appear as a party at the hearing. Any locality may provide by ordinance that substantially the same application will not be considered by the board within a specified period, not exceeding one year.

§ 15.2-2311. Appeals to board.

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed

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within 30 days. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.

§ 15.2-2312. Procedure on appeal. — The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and make its decision within ninety days of the filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to affect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

§ 15.2-2313. Proceedings to prevent construction of building in violation of zoning ordinance. — Where a building permit has been issued and the construction of the building for which the permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

§ 15.2-2314. Certiorari to review decision of board. — Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

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The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, or application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the board may request that the court hear the matter on the question of whether the appeal was frivolous.

§ 15.2-2315. Conflict with statutes, local ordinances or regulations. — Whenever the regulations made under authority of this article require a greater width or size of yards, courts or other open spaces, require a lower height of building or less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, require a lower height of building or a less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern.

§ 15.2-2316. Validation of zoning ordinances prior to 1971. — All proceedings had in the preparation, certification and adoption of zoning ordinances by every locality prior to January 1, 1971, which shall have been in substantial compliance with the provisions of this chapter are validated and confirmed, and all such zoning ordinances adopted or attempted to be adopted pursuant to the provisions of this chapter are declared to be validly adopted and enacted, notwithstanding any defects or irregularities in the adoption thereof.

§ 15.2-2316.1. Definitions. — As used in this article, the term:

"Development rights" means the permitted uses and density of development that are allowed on the sending property under any zoning ordinance of a locality on a date prescribed by the ordinance. "Development rights" includes "transferable development rights."

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"Receiving area" means one or more areas identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

"Receiving property" means a lot or parcel within a receiving area and within which development rights are increased pursuant to a transfer of development rights affixed to the property. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property. Development rights may be transferred between receiving properties, as otherwise permitted in the ordinance.

"Sending area" means one or more areas identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be severed and transferred to a receiving area.

"Sending property" means a lot or parcel within a sending area from which development rights are authorized to be severed.

"Severance of development rights" means the process by which development rights from a sending property are severed pursuant to this act.

"Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

"Transferable development rights" means all or that portion of development rights that are transferred or are transferable.

§ 15.2-2316.2. Localities may provide for transfer of development rights.

A. Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction. Any locality adopting or amending any such transfer of development rights ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body.

B. In order to implement the provisions of this act, a locality shall adopt an ordinance that shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property, to convey development rights to one or more parties, or to affix development rights to one or more receiving properties. These instruments shall be executed by the property owners of the development rights being transferred, and any lien holders of such property owners. The instruments shall identify the development rights being severed, and the sending properties or the receiving properties, as applicable;
2. Assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;
3. The severance of transferable development rights from the sending property;
4. The purchase, sale, exchange, or other conveyance of transferable development rights, after severance, and prior to the rights being affixed to a receiving property;
5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;
6. A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties;

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7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;
8. The permitted uses and the maximum increases in density in the receiving area;
9. The minimum acreage of a sending property and the minimum reduction in density of the sending property that may be conveyed in severance or transfer of development rights;
10. The development rights severed from the sending areas to be equal to the development rights permitted to be attached in the receiving areas;
11. An assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designated receiving area; and
12. The application to be deemed approved upon the determination of compliance with the ordinance by the agent of the planning commission, or other agent designated by the locality.

C. In order to implement the provisions of this act, a locality may provide in its ordinance for:

1. The purchase of all or part of such development rights, which shall retire the development rights so purchased;
2. The severance of development rights from existing zoned or subdivided properties as otherwise provided in subsection E;
3. The owner of such development rights to make application to the locality for a real estate tax abatement for a period up to 25 years, to compensate the owner of such development rights for the fair market value of all or part of the development rights, which shall retire the number of development rights equal to the amount of the tax abatement, and such abatement is transferable with the property;
4. The owner of a property to request designation by the locality of the owner's property as a "sending property" or a "receiving property";
5. The allowance for residential density to be converted to bonus density on the receiving property by (i) an increase in the residential density on the receiving property or (ii) an increase in the square feet of commercial, industrial, or other uses on the receiving property, which upon conversion shall retire the development rights so converted;
6. The receiving areas to include such urban development areas in the locality established pursuant to § 15.2-2223.1;
7. The sending properties, subsequent to severance of development rights, to generate one or more forms of renewable energy, as defined in § 56-576, subject to the provisions of the local zoning ordinance;
8. The sending properties, subsequent to severance of development rights, to produce agricultural products or forestal products, as defined in § 15.2-4302;
9. The review of an application by the planning commission to determine whether the application complies with the provisions of the ordinance;
10. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this act; and

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11. Approval of an application upon the determination of compliance with the ordinance by the agent of the planning commission.

D. The locality may, by ordinance, designate receiving areas or receiving properties, or add to, supplement, or amend its designations of receiving areas or receiving properties, so long as the development rights permitted to be attached in the receiving areas are equal to the development rights permitted to be severed in the sending areas.

E. Any proposed severance or transfer of development rights shall only be initiated upon application by the property owners of the sending properties, development rights, or receiving properties as otherwise provided herein.

F. A locality may not require property owners to sever or transfer development rights as a condition of the development of any property.

G. The owner of a property may sever development rights from the sending property, pursuant to the provisions of this act. An application to transfer development rights to one or more receiving properties, for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of such development rights and the owners of the receiving properties.

H. Development rights severed pursuant to this article shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. Once a deed for transferable development rights, created pursuant to this act, has been recorded in the land records of the office of the circuit court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise transferred by the owner of the sending property, the development rights shall vest in the grantee and may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to prevent the owner of the sending property from recording a deed covenant against the sending property severing the development rights on said property, with the owner of the sending property retaining ownership of the severed development rights. Any transfer of the development rights to a property in a receiving area shall be in accordance with the provisions of the ordinance adopted pursuant to this article.

I. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is severed from and recorded as a distinct interest in real property, or the transferable development right is used at a receiving property and becomes appurtenant thereto. Once a transferable development right is severed from the sending property, the assessment of the fee interest in the sending property shall reflect any change in the fair market value that results from the inability of the owner of the fee interest to use such property for such uses terminated by the severance of the transferable development right. Upon severance from the sending property and recordation as a distinct interest in real property, the transferable development right shall be assessed at its fair market value on a separate real estate tax bill sent to the owner of said development right as taxable real estate in accordance with Article 1 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58.1. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

J. The owner of a sending property from which development rights are severed shall provide a copy of the instrument, showing the deed book and page number, or instrument or GPIN, to the real estate tax assessor for the locality.

K. Localities, from time to time as the locality designates sending and receiving areas, shall incorporate the map identified in subdivision B 6 into the comprehensive plan.

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L. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or downzone the uses, or the density of uses permitted in the zoning district applicable to any property to which development rights have been transferred, shall be effective with respect to such property unless there has been mistake, fraud, or a material change in circumstances substantially affecting the public health, safety, or welfare.

M. A county adopting an ordinance pursuant to this article may designate eligible receiving areas in any incorporated town within such county, if the governing body of the town has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

N. Any county and an adjacent city may enter voluntarily into an agreement to permit the county to designate eligible receiving areas in the city if the governing body of the city has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The city council shall designate areas it deems suitable as receiving areas and shall designate the maximum increases in density in each such receiving area. However, if any such agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), or 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et seq.). The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

1. The terms and conditions of the density transfer agreement as provided in this subsection shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement, provided the governing body of each such locality first holds a public hearing, which shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.

2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision to either affirming or denying the agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The circuit court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.

§ 15.2-2317. Applicability of article. — This article shall apply to any locality that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and has a population growth rate of at least 5% or (ii) has population growth of 15% or more. For the purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census.

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when a property line abuts land not in the right-of-way of a street shall not apply.

- (2) For redevelopments or new developments, the provisions of Par. 1 of Sect. 13-202 shall be applicable. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than those required by Sect. 13-202, then the provisions of the adopted comprehensive plan shall apply.
- (3) For expansions or enlargements of existing developments, redevelopments and new developments, the peripheral parking lot landscaping requirements of Par. 2 of Sect. 13-202 concerning when the property line abuts the right-of-way of a street shall not apply and the following shall be required:
 - (a) A landscaping strip ten (10) feet in width, which shall not include any sidewalk, trail or parallel utility easement, shall be located on the lot where it abuts a street right-of-way line.
 - (b) If there are no existing or proposed overhead utility lines, there shall be at least one (1) large deciduous tree planted in the landscaping strip for each thirty (30) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every thirty (30) feet on center. If there are overhead utility lines, there shall be at least one (1) small to medium deciduous tree planted in the landscaping strip for every twenty-five (25) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every twenty-five (25) feet on center. Trees planted in a landscaping strip beneath overhead utility lines shall be of a shape and character so as not to interfere with the utility lines.
 - (c) All trees shall be two and one-half to three inches (2 ½ to 3") in caliper at the time of planting.

However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than set forth above, the provisions of the adopted comprehensive plan shall apply.

The above requirements may be modified or waived for expansions or enlargements of existing developments when it is determined that it is not feasible to meet these requirements on the lot.

- C. The transitional screening and barrier requirements of Part 3 of Article 13 shall apply as follows:
 - (1) For expansions or enlargements of existing developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or

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lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.

- (2) For redevelopments or new developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.
- (3) When the peripheral planting requirements of Par. 5B(3) above are required and provided in accordance with that paragraph, they shall be deemed to meet the transitional screening requirement for that portion of the lot.
- (4) In addition to the above and to the provisions of Sect. 13-304, transitional screening may be modified or waived when a barrier is provided and such barrier consists of a wrought iron fence, a decorative brick or block wall or a different treatment when it is determined that such would be more appropriate or reasonable due to compatibility with other alternative treatments prevalent in the District.

For all of the above, the requirements may be modified or waived by the Board in accordance with the provisions of Sect. 9-622.

6. Notwithstanding the provisions of Sect. 17-105, a minor site plan for the following shall not be subject to the required improvements of Par. 3A and Par. 4 of Sect. 17-201 which require the construction of service drives adjacent to any primary highway, and dedication and construction of widening for existing roads, existing roads on new alignments, and proposed roads, all as indicated on the adopted comprehensive plan.
 - A. Additions to existing buildings on a lot when such additions do not exceed a total of 5000 square feet of gross floor area and not more 100% of the gross floor area of the existing buildings.
 - B. Any permitted use on a temporary basis for a period not to exceed two (2) years from the date of approval; provided the Director may extend the approval for one additional two (2) year period.
 - C. Additions and alterations to provide an accessibility improvement not otherwise exempt under Sect. 17-104.

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when a property line abuts land not in the right-of-way of a street shall not apply.

- (2) For redevelopments or new developments, the provisions of Par. 1 of Sect. 13-202 shall be applicable. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than those required by Sect. 13-202, then the provisions of the adopted comprehensive plan shall apply.
- (3) For expansions or enlargements of existing developments, redevelopments and new developments, the peripheral parking lot landscaping requirements of Par. 2 of Sect. 13-202 concerning when the property line abuts the right-of-way of a street shall not apply and the following shall be required:
 - (a) A landscaping strip ten (10) feet in width, which shall not include any sidewalk, trail or parallel utility easement, shall be located on the lot where it abuts a street right-of-way line.
 - (b) If there are no existing or proposed overhead utility lines, there shall be at least one (1) large deciduous tree planted in the landscaping strip for each thirty (30) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every thirty (30) feet on center. If there are overhead utility lines, there shall be at least one (1) small to medium deciduous tree planted in the landscaping strip for every twenty-five (25) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every twenty-five (25) feet on center. Trees planted in a landscaping strip beneath overhead utility lines shall be of a shape and character so as not to interfere with the utility lines.
 - (c) All trees shall be two and one-half to three inches (2 ½ to 3") in caliper at the time of planting.

However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than set forth above, the provisions of the adopted comprehensive plan shall apply.

The above requirements may be modified or waived for expansions or enlargements of existing developments when it is determined that it is not feasible to meet these requirements on the lot.

- C. The transitional screening and barrier requirements of Part 3 of Article 13 shall apply as follows:
 - (1) For expansions or enlargements of existing developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which

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recommend a planting strip or other streetscape treatment with the same or lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.

- (2) For redevelopments or new developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.
- (3) When the peripheral planting requirements of Par. 5B(3) above are required and provided in accordance with that paragraph, they shall be deemed to meet the transitional screening requirement for that portion of the lot.
- (4) In addition to the above and to the provisions of Sect. 13-304, transitional screening may be modified or waived when a barrier is provided and such barrier consists of a wrought iron fence, a decorative brick or block wall or a different treatment when it is determined that such would be more appropriate or reasonable due to compatibility with other alternative treatments prevalent in the District.

For all of the above, the requirements may be modified or waived by the Board in accordance with the provisions of Sect. 9-622.

6. Notwithstanding the provisions of Sect. 17-105, a minor site plan for the following shall not be subject to the required improvements of Par. 3A and Par. 4 of Sect. 17-201 which require the construction of service drives adjacent to any primary highway, and dedication and construction of widening for existing roads, existing roads on new alignments, and proposed roads, all as indicated on the adopted comprehensive plan.
 - A. Additions to existing buildings on a lot when such additions do not exceed a total of 5000 square feet of gross floor area and not more 100% of the gross floor area of the existing buildings.
 - B. Any permitted use on a temporary basis for a period not to exceed two (2) years from the date of approval; provided the Director may extend the approval for one additional two (2) year period.
 - C. Additions and alterations to provide an accessibility improvement not otherwise exempt under Sect. 17-104.

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when a property line abuts land not in the right-of-way of a street shall not apply.

- (2) For redevelopments or new developments, the provisions of Par. 1 of Sect. 13-202 shall be applicable. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than those required by Sect. 13-202, then the provisions of the adopted comprehensive plan shall apply.
- (3) For expansions or enlargements of existing developments, redevelopments and new developments, the peripheral parking lot landscaping requirements of Par. 2 of Sect. 13-202 concerning when the property line abuts the right-of-way of a street shall not apply and the following shall be required:
 - (a) A landscaping strip ten (10) feet in width, which shall not include any sidewalk, trail or parallel utility easement, shall be located on the lot where it abuts a street right-of-way line.
 - (b) If there are no existing or proposed overhead utility lines, there shall be at least one (1) large deciduous tree planted in the landscaping strip for each thirty (30) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every thirty (30) feet on center. If there are overhead utility lines, there shall be at least one (1) small to medium deciduous tree planted in the landscaping strip for every twenty-five (25) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every twenty-five (25) feet on center. Trees planted in a landscaping strip beneath overhead utility lines shall be of a shape and character so as not to interfere with the utility lines.
 - (c) All trees shall be two and one-half to three inches (2 ½ to 3") in caliper at the time of planting.

However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than set forth above, the provisions of the adopted comprehensive plan shall apply.

The above requirements may be modified or waived for expansions or enlargements of existing developments when it is determined that it is not feasible to meet these requirements on the lot.

- C. The transitional screening and barrier requirements of Part 3 of Article 13 shall apply as follows:
 - (1) For expansions or enlargements of existing developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or

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lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.

- (2) For redevelopments or new developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.
- (3) When the peripheral planting requirements of Par. 5B(3) above are required and provided in accordance with that paragraph, they shall be deemed to meet the transitional screening requirement for that portion of the lot.
- (4) In addition to the above and to the provisions of Sect. 13-304, transitional screening may be modified or waived when a barrier is provided and such barrier consists of a wrought iron fence, a decorative brick or block wall or a different treatment when it is determined that such would be more appropriate or reasonable due to compatibility with other alternative treatments prevalent in the District.

For all of the above, the requirements may be modified or waived by the Board in accordance with the provisions of Sect. 9-622.

6. Notwithstanding the provisions of Sect. 17-105, a minor site plan for the following shall not be subject to the required improvements of Par. 3A and Par. 4 of Sect. 17-201 which require the construction of service drives adjacent to any primary highway, and dedication and construction of widening for existing roads, existing roads on new alignments, and proposed roads, all as indicated on the adopted comprehensive plan.
 - A. Additions to existing buildings on a lot when such additions do not exceed a total of 5000 square feet of gross floor area and not more 100% of the gross floor area of the existing buildings.
 - B. Any permitted use on a temporary basis for a period not to exceed two (2) years from the date of approval; provided the Director may extend the approval for one additional two (2) year period.
 - C. Additions and alterations to provide an accessibility improvement not otherwise exempt under Sect. 17-104.

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strip or other streetscape treatment with the same or lesser width or different plant materials than those required by Sect. 13-202, then the provisions of the adopted comprehensive plan shall apply.

- (3) For expansions or enlargements of existing developments, redevelopments and new developments, the peripheral parking lot landscaping requirements of Par. 2 of Sect. 13-202 concerning when the property line abuts the right-of-way of a street shall not apply and the following shall be required:
 - (a) A landscaping strip ten (10) feet in width, which shall not include any sidewalk, trail or parallel utility easement, shall be located on the lot where it abuts a street right-of-way line.
 - (b) If there are no existing or proposed overhead utility lines, there shall be at least one (1) large deciduous tree planted in the landscaping strip for each thirty (30) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every thirty (30) feet on center. If there are overhead utility lines, there shall be at least one (1) small to medium deciduous tree planted in the landscaping strip for every twenty-five (25) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every twenty-five (25) feet on center. Trees planted in a landscaping strip beneath overhead utility lines shall be of a shape and character so as not to interfere with the utility lines.
 - (c) All trees shall be two and one-half to three inches (2 ½ to 3") in caliper at the time of planting.

However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than set forth above, the provisions of the adopted comprehensive plan shall apply.

The above requirements may be modified or waived for expansions or enlargements of existing developments when it is determined that it is not feasible to meet these requirements on the lot.

- C. The transitional screening and barrier requirements of Part 3 of Article 13 shall apply as follows:
 - (1) For expansions or enlargements of existing developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.
 - (2) For redevelopments or new developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or

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design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.

- (3) When the peripheral planting requirements of Par. 5B(3) above are required and provided in accordance with that paragraph, they shall be deemed to meet the transitional screening requirement for that portion of the lot.
- (4) In addition to the above and to the provisions of Sect. 13-304, transitional screening may be modified or waived when a barrier is provided and such barrier consists of a wrought iron fence, a decorative brick or block wall or a different treatment when it is determined that such would be more appropriate or reasonable due to compatibility with other alternative treatments prevalent in the District.

For all of the above, the requirements may be modified or waived by the Board in accordance with the provisions of Sect. 9-622.

6. Notwithstanding the provisions of Sect. 17-105, a minor site plan for the following shall not be subject to the required improvements of Par. 3A and Par. 4 of Sect. 17-201 which require the construction of service drives adjacent to any primary highway, and dedication and construction of widening for existing roads, existing roads on new alignments, and proposed roads, all as indicated on the adopted comprehensive plan.
 - A. Additions to existing buildings on a lot when such additions do not exceed a total of 5000 square feet of gross floor area and not more 100% of the gross floor area of the existing buildings.
 - B. Any permitted use on a temporary basis for a period not to exceed two (2) years from the date of approval; provided the Director may extend the approval for one additional two (2) year period.
 - C. Additions and alterations to provide an accessibility improvement not otherwise exempt under Sect. 17-104.
 - D. Uses which do not involve construction of gross floor area, such as tennis courts or storage yards, or modifications to existing uses which do not involve construction of gross floor area such as changes to walkways, parking lots or landscape plans.

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when a property line abuts land not in the right-of-way of a street shall not apply.

- (2) For redevelopments or new developments, the provisions of Par. 1 of Sect. 13-202 shall be applicable. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than those required by Sect. 13-202, then the provisions of the adopted comprehensive plan shall apply.
- (3) For expansions or enlargements of existing developments, redevelopments and new developments, the peripheral parking lot landscaping requirements of Par. 2 of Sect. 13-202 concerning when the property line abuts the right-of-way of a street shall not apply and the following shall be required:
 - (a) A landscaping strip ten (10) feet in width, which shall not include any sidewalk, trail or parallel utility easement, shall be located on the lot where it abuts a street right-of-way line.
 - (b) If there are no existing or proposed overhead utility lines, there shall be at least one (1) large deciduous tree planted in the landscaping strip for each thirty (30) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every thirty (30) feet on center. If there are overhead utility lines, there shall be at least one (1) small to medium deciduous tree planted in the landscaping strip for every twenty-five (25) feet of length; however, this shall not be construed as requiring the planting of such trees at a spacing of one (1) tree every twenty-five (25) feet on center. Trees planted in a landscaping strip beneath overhead utility lines shall be of a shape and character so as not to interfere with the utility lines.
 - (c) All trees shall be two and one-half to three inches (2 ½ to 3") in caliper at the time of planting.

However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width or different plant materials than set forth above, the provisions of the adopted comprehensive plan shall apply.

The above requirements may be modified or waived for expansions or enlargements of existing developments when it is determined that it is not feasible to meet these requirements on the lot.

- C. The transitional screening and barrier requirements of Part 3 of Article 13 shall apply as follows:
 - (1) For expansions or enlargements of existing developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which

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- (2) For redevelopments or new developments, the transitional screening and barrier requirements shall apply. However, where there are landscaping or design provisions in the adopted comprehensive plan which recommend a planting strip or other streetscape treatment with the same or lesser width and the same or lesser number of plantings than required by Part 3, then the provisions of the adopted comprehensive plan shall apply, including any provisions for different plant materials.
- (3) When the peripheral planting requirements of Par. 5B(3) above are required and provided in accordance with that paragraph, they shall be deemed to meet the transitional screening requirement for that portion of the lot.
- (4) In addition to the above and to the provisions of Sect. 13-304, transitional screening may be modified or waived when a barrier is provided and such barrier consists of a wrought iron fence, a decorative brick or block wall or a different treatment when it is determined that such would be more appropriate or reasonable due to compatibility with other alternative treatments prevalent in the District.

For all of the above, the requirements may be modified or waived by the Board in accordance with the provisions of Sect. 9-622.

6. Notwithstanding the provisions of Sect. 17-105, a minor site plan for the following shall not be subject to the required improvements of Par. 3A and Par. 4 of Sect. 17-201 which require the construction of service drives adjacent to any primary highway, and dedication and construction of widening for existing roads, existing roads on new alignments, and proposed roads, all as indicated on the adopted comprehensive plan.
 - A. Additions to existing buildings on a lot when such additions do not exceed a total of 5000 square feet of gross floor area and not more 100% of the gross floor area of the existing buildings.
 - B. Any permitted use on a temporary basis for a period not to exceed two (2) years from the date of approval; provided the Director may extend the approval for one additional two (2) year period.