

# FAIRFAX COUNTY



## ZONING ORDINANCE MODERNIZATION PROJECT

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### DRAFT

#### SUMMARY OF PROPOSED CHANGES

#### GENERAL PROVISIONS & ADMINISTRATION, PROCEDURES, AND ENFORCEMENT

MARCH 10, 2020

### Introduction

This document summarizes the proposed changes to the Fairfax County Zoning Ordinance included in the attached draft of Article 1, General Provisions, and Article 8, Administration, Procedures, and Enforcement. The significant proposed changes are identified below, and more detailed descriptions of the changes can be found in footnotes in the attached draft. This draft was developed over several months through the combined work of Clarion Associates and Fairfax County staff.

### Background

Since early 2018, Clarion Associates has been assisting Fairfax County with the zMOD project. The goals of this project are to modernize the County's Zoning Ordinance, to make the regulations easier for the public, stakeholders, and property owners to understand, and to remove inconsistencies, gaps, and ambiguities that have found their way into the Ordinance over the years. Public outreach meetings have been conducted by Clarion Associates and County staff throughout the process and will continue. Between January and May of 2018, a new structure for the Zoning Ordinance regulations was established, and from September 2018 through May of 2019, updated use regulations in the new format were released in five installments. A [Consolidated Draft of the Fairfax County Use Regulations](#) (new Article 4), dated July 1, 2019, reflects the use changes recommended as a result of this effort, as well as from extensive public and stakeholder review. Beginning in July 2019, work began on the remaining articles of the Zoning Ordinance, with the [Districts](#) draft (new Articles 2 and 3) being posted on August 9, 2019, and the [Development Standards, Parking, and Signs](#) draft (new Articles 5, 6, and 7) being posted on October 11, 2019. The attached draft represents the final individual installment. Later this spring, a consolidated draft of the entire Zoning Ordinance will be released that includes all installments, with additional revisions based on comments that have been received.

### Proposed Changes

As noted above, this draft includes Article 1, General Provisions, and Article 8, Administration, Procedures, and Enforcement. As with the previous drafts, the related definitions are presented in a partial draft of Article 9. In addition, a placeholder for an appendix on grandfathering is created that will be released with

the consolidated draft. These new articles represent a reorganization of content that is currently found in Zoning Ordinance Articles 1, 2, 8, 9, 17, 18, 19, and 20. Most of the current Zoning Ordinance provisions have been carried forward without substantive change. The text has been partially edited for clarity, but the editing process will continue in order to further simplify any overly technical regulatory language.

The new **Article 1, General Provisions**, includes the following sections:

- Title
- Enabling Legislation
- Official Document
- Ordinance Structure
- Purpose
- Minimum Requirements and Conflicting Ordinances
- Effective Date
- Duties of the Zoning Administrator
- Severability
- Transition from Prior Regulations

Within Article 1, the section containing the purpose of the Zoning Ordinance is revised to reference Title 15.2 of the Code of Virginia and to not repeat the provisions contained in the state code. The remaining statements have been reorganized and edited, with new references to facilitating an equitable community and placemaking added.

The new **Article 8, Administration, Procedures, and Enforcement**, includes the following sections:

- Review Procedures
- Submission Requirements
- Fee Schedule (placeholder – to be included with the consolidated draft)
- Review and Decision-Making Bodies
- Nonconformities
- Condominiums, and Condominium and Cooperative Conversions
- Enforcement, Violations, and Penalties

The standards have been substantially reorganized from the current Ordinance in order to bring together related provisions and reduce repetition where possible. The organization of this article is still under review and it may be further reorganized in the consolidated draft. The procedures section includes a subsection that outlines the review procedures applicable to all applications and appeals followed by subsections for each type of application (i.e., rezonings, special exceptions, special permits, variances, site plans, building permits, residential and non-residential use permits) and ends with a subsection on appeals. A separate section has been created that consolidates all submission requirements by application type. In order to reduce repetition, since many of the submission requirements are the same for all application types, some of the submission items reference a general requirements subsection or similar requirements for other application types and then identify any differences. For instance, the requirements for a conceptual development plan reference the submission requirements for a generalized development

plan and then specify the differences, such as a topography contour interval of five feet instead of two feet. Reducing repetition will minimize the chances of inadvertent inconsistencies. It is anticipated that for ease of application submission, separate user-friendly charts will be developed and posted to the web that clearly list the submission requirements for each application type.

The more notable changes included in the new Article 8 are summarized below:

- ❖ **Accessory Dwelling Unit Submission Requirements.** Under current provisions, when applying for an accessory dwelling unit, documentation must be provided to certify that someone occupying the property meets the age or disability requirement. If the person has a disability and does not have a certification from the Social Security Administration, Veterans Administration, or Railroad Retirement Board, they must submit a written declaration from two doctors (one of who must base their statement on a physical examination) certifying that they are “permanently and totally disabled.” This is defined in this section as “unable to engage in any substantial gainful activity by reasons of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of the person’s life.” In the proposed draft, this language has been relaxed to require either certification from one of the previously mentioned groups or from one doctor certifying that a person meets the definition of a “person with a disability” in the Fair Housing Amendments Act of 1988. This is consistent with current Zoning Ordinance provisions for requesting an accommodation for an accessibility improvement related to setback requirements. If the Board adopts revised standards for accessory dwelling units that do not contain an age or disability requirement, these submission requirements will be deleted.
- ❖ **BZA Term Expiration.** Currently, the Clerk to the BZA must notify the Circuit Court at least 30 days prior to the expiration of a BZA member’s term. The standard has been expanded to also notify the Board within this timeframe.
- ❖ **Easements.** Generalized development plan, final development plan, PRC plan, special exception, special permit, and variance applications are currently required to include the location of all existing public utility easements having a width of 25 feet or more and major underground utility (i.e., transmission pipeline) easements regardless of width. These requirements have been revised to require all utility easements to be shown regardless of width. This is a substantive change that may require completion of a title search earlier in the development process; however, this information has been requested during public hearings and could facilitate a more careful review of the proposed development layout, as well as prevent issues later in the development process where utilities may conflict with elements proposed on the plan.
- ❖ **Electronic Copies.** Recognizing the ongoing development of ePlans submissions and the new land development computer system known as PLUS, a general standard has been added that applies to all submission requirements. While most of the specified numbers of copies have not been changed, the new standard allows the submission of only one copy if an application is submitted electronically, unless otherwise determined by the Zoning Administrator or Director of LDS. Staff would be able to request additional paper copies during the review process.
- ❖ **Geotechnical Review Board and Tree Commission.** As the Zoning Ordinance does not contain provisions relating to the substance of their duties, the sections within current Article 19 relating

to the Geotechnical Review Board (GRB) and the Tree Commission have not been carried forward. The GRB provisions will be relocated to Chapter 107 of the County Code and the Tree Commission duties will be relocated to Chapter 122.

- ❖ **Minor Modifications.** Based on current practice, the minor modifications provisions have been revised to clarify that they apply to a PRC plan. Minor modifications allow for administrative approval of minor changes that are in substantial conformance with the approved plan, proffers, and conditions. The request must conform to the standards in the Zoning Ordinance and is reviewed in the context of the approved case and in consultation with the district Supervisor. Approved minor modifications must obtain all required site plan and building permit approvals.
- ❖ **Modification of Submission Requirements.** The Zoning Ordinance currently includes different provisions for the modification of submission requirements based on application type. These have been replaced with a single standard that allows (except for the application form, legal description, affidavit, and application fee, if applicable) any other submission requirement to be modified or waived by the Zoning Administrator or Director of LDS when it has been determined that it is not necessary for review of the application.
- ❖ **Reasonable Accommodation.** In various provisions, the Zoning Ordinance currently refers to the allowance of an accessibility improvement. These references have been revised to add “or other reasonable accommodation.” This is intended to reflect the requirements of the Fair Housing Act and other Federal nondiscrimination laws.
- ❖ **Repair of Nonconforming Structures.** The Zoning Ordinance does not currently allow for the repair of a nonconforming structure whose physical condition is unsafe or unlawful. This has been revised based on the definition of an unsafe structure in the Virginia Maintenance Code to prohibit the repair of a structure that is “so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely” or has occurred. This standard meets the intent of limiting the restoration of nonconforming structures while allowing more minor repairs such as window replacement that could be prohibited with the current Ordinance.
- ❖ **Solar Power Facility Decommissioning.** In response to a State Code amendment, language has been added to the Ordinance requiring any solar power facility subject to “2232 review” as a public utility to submit a bonded agreement for decommissioning of the facilities, equipment, or devices.
- ❖ **Timeframes.** The Zoning Ordinance currently allows for submission of a proposed development plan within 60 days after the initial application. Based on current practice and in order to provide for efficient review and processing of applications and their associated development plans, this allowance has not been carried forward. Similarly, the current text which allows an application to retain its hearing date when the application is amended prior to 40 days before the public hearing has not been carried forward, as the decision whether to reschedule a public hearing depends on the substance of the amendment.
- ❖ **TOD Distance.** For a rezoning to the PTC District, a statement is required to identify any development that is located within certain distances from the Metro station entrance. A one-third mile distance has been added, consistent with Comprehensive Plan provisions relating to density within this area.

- ❖ **Variance Plat Submission Requirements.** While many submission requirements for special exception and special permit applications are identical, certain requirements in the current Ordinance are slightly different or not required for variance applications. This draft proposes to align the variance requirements with those of special exceptions and special permits by adding the following submission requirements which are typically needed for an appropriate review of the application:

1. A statement confirming the ownership of the property.
2. Photographs to be labeled and a preference for digital photography.
3. Identification of construction dates, if known, and indication of whether a structure will be retained or demolished.
4. Existing right-of-way centerline delineation and dimensions to the edge of pavement.
5. A statement from the Health Department that available water and sewer facilities are adequate, if applicable.

## Next Steps

- Work will continue through spring 2020 to develop a complete draft of the reorganized Zoning Ordinance, with continued outreach along the way.
- Clarion Associates will return May 12 - 15, 2020 for another round of public meetings to present the consolidated draft and answer questions.
- Fairfax County staff members are available to answer questions, receive feedback, and meet with community groups on all released documents ([DPDzMODComments@fairfaxcounty.gov](mailto:DPDzMODComments@fairfaxcounty.gov)).

## Questions?

If you have questions or comments about any aspect of the zMOD project, please e-mail zMOD staff at [DPDzMODComments@fairfaxcounty.gov](mailto:DPDzMODComments@fairfaxcounty.gov) or visit the project website at <https://www.fairfaxcounty.gov/planning-development/zmod>.

If you would like to receive e-mail updates about the project, please visit that website and click “Add Me to the zMOD E-Mail List.” You may also follow us at <https://www.facebook.com/fairfaxcountyzoning/>



## **General Provisions, Administration, Procedures, and Enforcement – Public DRAFT**

**March 2020**

# **CLARION**

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# Article 1: General Provisions

## 1100. Title<sup>1</sup>

The regulations in this and the following Articles constitute Chapter 112 of the Code of the County of Fairfax, Virginia, which is designated 'The Zoning Ordinance of Fairfax County, Virginia' ("the Ordinance").

## 1101. Enabling Legislation<sup>2</sup>

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 that enables Fairfax County to legislate zoning. The Code of Virginia is available by accessing the State's website at <https://law.lis.virginia.gov/vacode/>.

## 1102. Official Document<sup>3</sup>

A certified copy of the Zoning Ordinance, as may be amended from time to time, is filed in the Office of the Zoning Administrator of Fairfax County. The Ordinance may be kept in hardcopy or digital form.

## 1103. Ordinance Structure<sup>4</sup>

1. The Zoning Ordinance as presented in this document represents Chapter 112 of The Code of the County of Fairfax, Virginia.
2. For purposes of organization, Chapter 112, The Zoning Ordinance, is divided into nine Articles.
3. Each Article within the Zoning Ordinance is subdivided into sections. The first digit of a section number represents the Article number. For example, Section 8106 is within Article 8.
4. For purposes of further organization, each section may be subdivided into subsections which are represented by such numbers as 1, 2, 3; which may be further subdivided as A, B, C...(1), (2), (3)... (a), (b), (c)...and (i), (ii), (iii), etc.
5. Each Article contains its own separate page numbering system. The page numbers are prefixed by the respective Article number. As an example, page 10 of Article 8 is designated page 8-10.<sup>5</sup>
6. Example references are provided below:
  - ... as required in Article 8.
  - ... as required in section 8101.

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<sup>1</sup> From Sect. 1-100, revised for clarity and did not carry forward date of "1976" as applied to the County Code.

<sup>2</sup> Relocated from Appendix 3 – *Enabling Legislation*. Revised the URL to a simplified version that the previous version redirected the user to.

<sup>3</sup> From Sect. 1-700, except deleted requirement for the Ordinance to be kept in the Clerk's office.

<sup>4</sup> Carried forward from Part 1, 20-100. Revised to represent the new structure.

<sup>5</sup> Carried forward from 20-106. Page numbering in this draft is consecutive and is still under discussion for the consolidated draft.

... as required in subsection 8101.1.B(1)(a).

## 1104. Purpose and Intent<sup>6</sup>

The Zoning Ordinance is intended to promote the health, safety, and general welfare of the public and to implement the adopted Comprehensive Plan for the orderly and controlled development of the County. Where applicable, the Ordinance is intended to:

1. Create and maintain conditions under which people and their environment can coexist<sup>7</sup> while fulfilling the social, economic, and other requirements of present and future generations;
2. Facilitate the creation of an equitable and healthy community;<sup>8</sup>
3. Recognize the needs of agriculture, housing, industry, and business in the County's future growth;
4. To improve the quality of the community by helping to develop and provide low-cost affordable housing in safe neighborhoods, to include rental units and home ownership<sup>9</sup>;
5. Ensure land uses will be developed with adequate access to infrastructure<sup>10</sup>, utilities, and health, education, and recreational facilities;
6. Promote the conservation of natural resources and encourage the preservation of stream valleys, steep slopes, lands of natural beauty, forests, scenic vistas, and other similar areas;
7. Protect against noise, air, and water pollution<sup>11</sup>;
8. Encourage innovative and desirable design of development;
9. Promote the distinctive urban and suburban contexts as well as the overall sense of community within the County through placemaking<sup>12</sup>;
10. Accomplish all other objectives and exercise all other powers set forth in Va. Code Sect. 15.2-2303.

## 1105. Minimum Requirements and Conflicting Ordinances<sup>13</sup>

1. In interpreting and applying the provisions of this Ordinance, the provisions are deemed to be the minimum requirements for the promotion of the public safety, health, and general welfare.<sup>14</sup>

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<sup>6</sup> From Sect. 1-200, revised as noted. Any standard that is already covered by Va. Code Sect. 15.2-2283 was deleted. Simplified the intro text and revised each purpose statement to begin with an active verb. Consolidated the list of intended outcomes substantially.

<sup>7</sup> Did not carry forward "in a productive and enjoyable harmony." Harmonious development addressed in purpose statement number 2.

<sup>8</sup> Merged "healthy surroundings" from current Par. 6 of Sect. 1-200. Added "equitable."

<sup>9</sup> New.

<sup>10</sup> Replaced "highway" with "infrastructure."

<sup>11</sup> Removed "undue intensity of."

<sup>12</sup> Removed "exurban" and added "placemaking."

<sup>13</sup> From Sect. 1-400 and Sect. 1-500.

<sup>14</sup> Removed "convenience, comfort, prosperity" for consistency with the introduction to the Purpose.

2. It is not the intent of this Ordinance to interfere with, limit, or invalidate any easements, covenants, or other agreements between parties. While other agreements may establish more restrictive provisions, where this Ordinance imposes a greater restriction on the use and dimensions of buildings or premises, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this Ordinance govern.
3. Whenever any provision of this Ordinance imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Ordinance governs. Whenever any provision of any State or Federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by this Ordinance, the provision of such State or Federal statute or other County ordinance or regulation governs. In the event a specific provision of this Ordinance precludes the provision of an accessibility improvement or other reasonable accommodation, the accessibility improvement or other reasonable accommodation is allowed regardless of the specific provision of this Ordinance that would otherwise preclude it.<sup>15</sup>
4. The text of this Ordinance applies to any parcel covered by a previous zoning approval with proffered conditions pursuant to Va. Code Sect. 15.2 2303, except that when the imposition of the requirements of this Ordinance differ from a specific proffered condition, that proffered condition supersedes the requirements of this Ordinance to the extent of the difference. However, when a specific proffered condition precludes the provision of an accessibility improvement or other reasonable accommodation, such improvement will be allowed regardless of the specific proffered condition that would otherwise preclude it.

## 1106. Effective Date<sup>16</sup>

This Ordinance becomes effective on XX/XX/XXXX.

## 1107. Duties of the Zoning Administrator<sup>17</sup>

1. In the administration of the provisions of this Ordinance, the Zoning Administrator serves at the will of the Board and has the following duties and responsibilities:
  - A. The receipt, review for completeness and substantial compliance, official acceptance, and maintenance of current and permanent files and records for the following:
    - (1) Proposed and adopted amendments to the Zoning Ordinance, to include the Zoning Map.
    - (2) Applications for special exceptions.
    - (3) Applications for special permits.
    - (4) Applications for administrative permits.
    - (5) Appeals of a decision or interpretation.
    - (6) Applications for a variance.

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<sup>15</sup> Added references to “other reasonable accommodation” throughout.

<sup>16</sup> New – replaces current Sect. 1-600.

<sup>17</sup> From 18-102.

- (7) Generalized development plans, conceptual development plans, final development plans, plans for PRC districts, and amendments of such plans.<sup>18</sup>
- (8) Applications for Building Permits, Residential, and Non-Residential Use Permits.
- (9) All other applications required by this Ordinance unless otherwise qualified by specific provisions.
- B.** Conduct inspections of buildings, structures, and uses of land to determine compliance with the provisions of this Ordinance.
- C.** Make an annual report to the Planning Commission on the status of the Zoning Ordinance, to include a listing of suggested amendments.<sup>19</sup>
- D.** Prepare and have available:<sup>20</sup>
  - (1) The compiled text of the Zoning Ordinance and all amendments adopted through the preceding year; and
  - (2) A zoning map or maps, showing the zoning districts, divisions, and classifications in effect during the preceding year.
- E.** Make a determination in the case of an alleged conflict between the requirements of this Ordinance and the specifics of a proffered condition accepted by the Board pursuant to Va. Code Sect. 15.2-2303 prior to the effective date of this Ordinance. If the Zoning Administrator determines that a conflict exists, the specifics of the proffered condition governs; if there is no conflict, the requirements of this Ordinance governs. Any such determination is appealable as provided for in subsection [*reference to relocated 18-204, Par. 10*].
- F.** In the administration of this Ordinance, the Zoning Administrator may delegate authority to a designated agent and may be assisted by the following officers, departments, committees, agencies, and boards:<sup>21</sup>
  - (1) Department of Planning and Development<sup>22</sup>;
  - (2) Land Development Services and the Department of Code Compliance;
  - (3) The boards, commissions, and committees as established in subsection [*reference to relocated Article 19*] or others as may be created by the Board; and
  - (4) Such additional officers, departments, agencies, committees, and boards of the County, State, and Federal governments as specified and referred to under the various Sections of this Ordinance.
- G.** The Zoning Administrator has authority to administer, interpret, and enforce this Ordinance. Such authority includes the ability to do the following:
  - (1) Make findings of fact and conclusions of law with the concurrence of the Office of the County Attorney in connection with determination of rights regarding nonconforming uses;
  - (2) Issue determinations;

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<sup>18</sup> Added PRC plans.

<sup>19</sup> Deleted "effectiveness."

<sup>20</sup> Updated to delete the references to supply of copies and book, pamphlet, or map form. Deleted references to the rules of the Planning Commission and BZA which are kept with the respective Clerk's offices.

<sup>21</sup> Carried forward from Sect. 18-101.

<sup>22</sup> Added based on current practice.

- (3) Order, in writing, the remedy of any condition found in violation of this Ordinance; and
- (4) Bring legal action to ensure compliance with the provisions, including injunction, abatement, or other appropriate action or proceeding.<sup>23</sup>

H. Perform such other duties and functions as are required by the provisions of this Ordinance.

I. Questions of Interpretation:<sup>24</sup>

The Zoning Administrator administers and interprets the Zoning Ordinance. Every question involving the interpretation of any provision of this Ordinance must be presented to the Zoning Administrator for decision. An appeal of any decision of the Zoning Administrator may be taken to the BZA as provided for in subsection [reference to relocated Part 3 of Article 18], except an appeal of a decision which relates to a proffered condition must be taken to the Board as provided for in subsection [reference to relocated Par. 10 of Sect. 18-204].

## 1108. Severability<sup>25</sup>

Should any provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision does not affect the validity of the Ordinance as a whole, or any part of the Ordinance other than the part held to be unconstitutional or invalid.

## 1109. Transition from Prior Regulations<sup>26</sup>

This Ordinance supersedes prior versions of the Zoning Ordinances or amendments to the Zoning Ordinance enacted prior to the effective date of this Ordinance.<sup>27</sup>

[Placeholder for additional information that may be included to address prior approvals, pending applications, and prior violations.]

# Article 2: Zoning Districts

Earlier module

# Article 3: Overlay and Commercial Revitalization Districts

Earlier module

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<sup>23</sup> Carried forward from Par. 3 of Sect. 18-101. Added “interpret” to the introduction and added “issue determinations.”

<sup>24</sup> From 18-103.

<sup>25</sup> From Sect. 1-300.

<sup>26</sup> New section.

<sup>27</sup> Updated and revised from Sect. 1-600.

## Article 4: Use Regulations

Earlier module

## Article 5: Development Standards

Earlier module

## Article 6: Parking and Loading

Earlier module

## Article 7: Signs

Earlier module

# Article 8: Administration, Procedures, and Enforcement

## 8100. Review Procedures<sup>28</sup>

### 1. General Requirements for All Applications<sup>29</sup>

This section describes the standard procedures and rules applicable to development applications unless otherwise stated in the Ordinance.

#### A. Application Processing

##### (1) Filing of Applications and Appeals<sup>30</sup>

- (a) Applications and appeals required under this Ordinance must be filed with the Zoning Administrator or designated agent.
- (b) The County will not accept an application or appeal unless it is in accordance with the applicable provisions of this Ordinance. An application or appeal may not be officially on file with the County until the appeal or application and all required accompanying submissions are submitted to and accepted by the Zoning Administrator. Application submission requirements are specified in Section 8101. All applications and appeals as provided for in this Ordinance must be submitted on forms prescribed by the responsible official, body, or committee.<sup>31</sup>
- (c) Applications, appeals, and requests for zoning compliance letters must be accompanied by the applicable filing fee in the amount to be determined by Section [reference to fee schedule] unless otherwise waived by the Board for good cause shown; except that no fee is 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.<sup>32</sup>
- (d) Upon acceptance, an application or appeal will be transmitted to the officer, body, or agency having jurisdiction to act on the application.<sup>33</sup>

<sup>28</sup> This section consolidates procedures for all application types. Submission requirements are referenced to section 8101 below. Procedures and submission requirements for Historic Overlay Districts will be included in Article 3.

<sup>29</sup> Did not carry forward Part 5, 18-500, Environmental Assessment and Impact Statements since they are not required.

<sup>30</sup> Carried forward from Sections 18-104, 18-105, 18-106. Deleted the reference to the approval of forms by the County Executive. Also, the reference to a delayed submission of a development, CDP, or GDP is not carried forward.

<sup>31</sup> Carried forward from 18-104, except the requirement to submit “in writing” has been removed to allow for electronic submission.

<sup>32</sup> Carried forward from 18-106. Did not carry forward specifics on payees and associated receipts.

<sup>33</sup> The requirement to promptly notify the Zoning Administrator of the action taken on the application has been deleted.

**(2) Scheduling of Applications<sup>34</sup>**

All applications and appeals are typically scheduled and considered in the order in which they are accepted. The clerks of the respective hearing bodies will keep a calendar of cases to be heard.

**(3) Amendment of Applications<sup>35</sup>**

A request to amend an application must be made in writing to the Zoning Administrator. Based on the nature and extent of the amendment, this request may be due cause to reschedule any required public hearing.

**(4) Withdrawal of Application<sup>36</sup>**

- (a)** An application may be withdrawn at any time by the applicant or his agent by giving written notice to the Zoning Administrator. No fee or partial fee will be refunded for an accepted application withdrawn by the applicant.
- (b)** An application may be administratively withdrawn by the Zoning Administrator if it is determined that the application was accepted in error. In such cases, there will be a full refund of the fee paid for filing the application.
- (c)** If an application is withdrawn, there may be a limitation on rehearing pursuant to subsection [reference to relocated 18-108].

**(5) Dismissal of Accepted Applications<sup>37</sup>**

- (a)** If an applicant refuses or neglects to pursue an accepted application, the Zoning Administrator may declare an application dismissed at least 15 days after providing notice of intention to do so. This notice must be sent by certified mail, return receipt requested, to the applicant at the last known address.
- (b)** If an accepted application is dismissed, there will be no refund of the filing fee.<sup>38</sup>
- (c)** If an application is dismissed, there may be a limitation on rehearing pursuant to subsection [reference to relocated 18-108].

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**B. Scheduling and Notice of Public Hearings<sup>39</sup>**

**(1) Required Notice for Public Hearings**

- (a)** Public hearings required by the provisions of this Ordinance may be held only when documented evidence can be presented that the notice requirements in this subsection have been satisfied. All required notices must meet the standards

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<sup>34</sup> Carried forward from 18-107. Application requirements related to zoning map amendments were relocated to the zoning amendment submission requirements section. The requirement that applications “must, in general” be scheduled and considered in the order in which they are accepted has been revised to “are typically” scheduled to reflect current practice.

<sup>35</sup> Revised from 18-111 to no longer allow an application to retain its hearing date if amended prior to 40 days before the hearing.

<sup>36</sup> Carried forward from Sections 18-112 and 18-208. The reference to withdrawal prior to submission of a development plan is not carried forward, as the option for acceptance of an application prior to submission of a development plan is deleted. Clarified that no refund of fees applies to accepted applications.

<sup>37</sup> Carried forward from 18-113 and 18-108.

<sup>38</sup> A section regarding the returning of filing fees prior to acceptance will be considered as a part of the consolidated draft.

<sup>39</sup> Carried forward from 18-110.



outlined in Chapter 22 of Title 15.2 of the Virginia Code, and, when applicable, Va. Code Sect. 15.2-107.

- (b) The subject of the public hearing is not required to be advertised in full but may be advertised by reference. Every advertisement must contain a descriptive summary of the proposed action and must include the place or places within the County where copies of the subject of the public hearing may be examined.

#### **Published Notice**

- (c) Public notice of any hearing held must be published once a week for two successive weeks in a local newspaper having general circulation in the County. This notice must be published at least six days prior, but no more than 21 days before the date of the hearing, and there must be at least six days between the first and second publication.
- (d) The notice must specify the time and place of the hearing and the nature of the matter before the hearing body. In addition, any amendment which imposes or increases levies or fees must provide the information as may be required by Va. Code Sect. 15.2-107. The public notice is the responsibility of the hearing body.

#### **Written Notice to Applicant or Appellant**

- (e) For an application for amendment to the Zoning Map, PRC plan, final development plan, special exception, special permit, variance, or appeal, the hearing body must send written notice of the public hearing to the applicant or appellant. Such written notice must be sent by either first class or certified mail postmarked a minimum of 20 days before the date of the hearing.

#### **Posted Notice**

- (f) At least 15 days before the date of the first hearing, the Zoning Administrator must post on the land involved in any application or appeal as provided for in this Zoning Ordinance. This notice must be removed within seven days after the last hearing and within seven weeks from the original posting date.<sup>40</sup>
- (g) Notice must be posted at reasonable intervals along every street abutting the subject property, or, if there is no abutting street, then along the exterior boundary lines of the subject property and within 300 feet along every street providing access to the subject property.
- (h) The notice may be placed on private property if necessary to provide adequate posting.
- (i) The notice must contain the date, location, and time of the public hearing, the nature of the proposed request, the property affected, other information as may be necessary to provide adequate identification of the application, and where further information on the application may be obtained.<sup>41</sup>
- (j) Posted notice is not required when:
  - 1. The hearing involves an application for 26 or more parcels of land for the following:

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<sup>40</sup> Deleted "building" because that would also be located on the land.

<sup>41</sup> The requirement for the notices to be posted in specific colors has not been carried forward.

- a.** Amendment to the Zoning Map initiated by resolution of intention by the Planning Commission or Board
  - b.** Special exception
  - c.** Special permit
  - d.** Variance
  - e.** Appeal
- 2.** The hearing involves an appeal concerning no specific property; or
- 3.** The hearing body specifically waives or modifies such requirement.

**Written Notice to Property Owners, Adjacent Jurisdictions, Military Installations, and Airports**

- (k)** The following written notice requirements must be sent to property owners and adjacent property owners and apply to an application for a Zoning Map amendment involving a change in zoning classification, PRC plan, final development plan, special exception, special permit, variance, or appeal:
- 1.** The applicant must send written notice to the property owner(s) of each parcel involved in the application; and
  - 2.** The applicant must send written notice to all owners of property abutting and immediately across the street from the subject property, including those which lie in an adjoining city or county.
  - 3.** For special permits, variances, and appeals, if the notice does not result in the notification of ten different property owners, then additional notices must be sent to other property owners in the immediate vicinity so that notices are sent to different owners of at least ten properties.
  - 4.** For all other applications, if the notice does not result in the notification of 25 different property owners, then additional notices must be sent to other property owners in the immediate vicinity so that notices are sent to different owners of at least 25 properties.
  - 5.** If the application property is an individual condominium or cooperative unit within a condominium or cooperative building, written notice must be provided to:
    - a.** The condominium unit owners' association or proprietary lessees' association; and
    - b.** Unit owners immediately abutting the application property or on the same floor of the building as the application unit and those unit owners immediately above and below the application unit.
  - 6.** When the application property is abutting or immediately across the street from a condominium or cooperative property, written notice must be provided as follows:
    - a.** When the application property abuts or is immediately across the street from open space or common ground of a condominium or cooperative,

the condominium unit owners' association or proprietary lessees' association must be notified; and

- b.** Where individual condominium or cooperative units or lots abut or are immediately across the street from the application property, written notice must be sent to the owner of each unit.
- 7.** For all Zoning Map amendments, PRC plans, final development plans, and for special exception and special permit applications that propose a change in use or an increase greater than 50 percent of the bulk or height of an existing or proposed building, if the application property or a portion of it is located within one-half mile of a boundary of an adjoining county or municipality of the Commonwealth, written notice must also be given by the hearing body or its representative at least 15 days before the hearing to the chief administrative officer or designee of such adjoining county or municipality. This does not apply to renewals of a previously approved special exception or special permit.
- 8.** For an amendment application to a previously approved rezoning, PRC plan, final development plan, special exception, or special permit affecting a portion of a property, written notice must be provided to all owners of property subject to the approval unless the Zoning Administrator determines that additional notice is not necessary, as the proposed change is to a component or lot that does not affect the rest of the development. This written notice must comply with the same requirements regarding content and timeliness.
- 9.** For a Zoning Map amendment, any development plan, PRC plan, special exception, and special permit applications, if the application property or a portion of it is located within 3,000 feet of a boundary of a military installation, military airport (excluding armories operated by the Virginia National Guard), or licensed public use airport, written notice must also be given by the hearing body or its representative at least ten days before the hearing to the commander of the military installation, military airport, or owner of such public use airport. The notice must advise of the opportunity to submit comments or recommendations. For the purposes of this provision, military installations include, but are not limited to military camps, forts, or bases. In addition, public use airports include those licensed airports contained on the list of public use airports that is maintained by the Virginia Department of Aviation.
- 10.** For Minor Modifications:
  - a.** Anyone requesting a minor modification for a building addition must send notice of the request to the owners of all property abutting and across the street from the site, or portion thereof, at the last known address, as shown in the real estate assessment files of the Department of Tax Administration.
  - b.** The notice must be delivered by hand or sent by certified mail, return receipt requested and include the letter of request submitted to the

Zoning Administrator with all attachments, a statement that the request has been submitted, and where to call for additional information.

- c.** An affidavit from the requester must be sent to the Zoning Administrator 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. The Zoning Administrator will not consider any request for an addition that omits this affidavit.

**11.** Content and Mailing of Written Notice

- a.** All required written notice must state the date, time, place, and subject matter of the hearing, and the name of the applicant.
- b.** The notice must be sent to the last known address of the owner(s) as shown in the current County real estate assessment files and, except as qualified below, must be sent by certified mail, return receipt requested, and postmarked at least 15 days prior to the hearing.
- c.** Notices sent by a staff agent of the hearing body may be sent by first class mail, provided that the staff agent affirms that the mailing has been made by providing an affidavit as part of the application.

**12.** Waiver of Challenge to Validity of Proceedings

The right to challenge the validity of the proceedings due to the failure to receive the required written notice is waived if a party has actual notice of, or actually participates in the proceedings. In addition, any person may waive their right to the notice in writing to the Zoning Administrator.

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**C. Conduct of Public Hearings<sup>42</sup>**

All public hearings required by this Ordinance, whether they are conducted by an authorized committee, the Board, the BZA, or the Planning Commission, must be conducted in accordance with the following:

- (1)** No public hearing may be held unless the required notice has been satisfied in accordance with subsection [*reference to relocated Sect. 18-110*].
- (2)** All hearings are open to the public. Any person may appear and testify to the advertised proceedings at a hearing, either in person or by an authorized agent or attorney.<sup>43</sup>
- (3)** The hearing body by general rule prescribes procedures for the conduct of hearings.
- (4)** Upon a vote of the majority of members, the hearing may be continued or deferred as follows:
  - (a)** If a hearing has been opened, public testimony has been received, and there is cause for continuation of the hearing, no formal notice is required if the hearing is continued to a date certain.

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<sup>42</sup> Carried forward from 18-109.

<sup>43</sup> Added "to the advertised proceedings."

- (b) If a hearing is concluded, but action is deferred until a future date, no formal notice is required prior to action being taken.
  - (c) If a hearing has not been opened, and there is cause for deferral of the hearing, written notice to adjacent property owners as required by subsection [reference to relocated Sect. 18-110] must be remailed, except the notice must be mailed at least five days in advance of the public hearing. If the notice is sent by the hearing body, it may be sent by first class mail, provided that a representative of the hearing body affirms that the mailing has been made by providing an affidavit and files the affidavit with the application.
- (5) Where deemed necessary, joint public hearings may be conducted after public notice required by subsection 8100.1.B. If a joint hearing is held, then public notice is required to be given by only one hearing body, which will be the Board in those instances where it is one of the hearing bodies.
- (6) An action may be reconsidered only upon motion of a member voting with the prevailing side on the original vote. A motion to reconsider must be made at the same or immediately subsequent regular meeting, and may be seconded by any member, except that the BZA may not entertain a motion for reconsideration.

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#### D. Limitation on Rehearing<sup>44</sup>

(1) **Denied or Dismissed Applications**

For all applications and appeals except for an amendment to the Zoning Map, if an application or appeal is denied or dismissed by the approving body, no new application concerning any or all of the same property for the same general use as appealed or applied for originally may be heard by the approving body within 12 months of the date of action by the approving body on the original appeal or application unless otherwise waived by the approving body. For a Zoning Map amendment, except for one initiated by the Board, if the application is denied or dismissed by the Board, no further application concerning any or all of the same property for substantially the same application in accordance with Va. Code Sect. 15.1-2286 may be heard for a period of 12 months from the date of action by the Board on the original application, unless otherwise waived by the Board.

(2) **Special Exceptions and Special Permits<sup>45</sup>**

Where a use is allowed by either special permit or special exception at the discretion of the applicant, if a special permit is withdrawn by the applicant after commencement of the public hearing before the BZA, or has been denied, dismissed, or approved by the BZA, an application may not be heard by the Board as a special exception for any or all of the same property for the same general use within 12 months of the date of withdrawal, denial, dismissal, or approval, unless otherwise waived by the Board. Further, a special exception application for such use that has been withdrawn by the applicant after commencement of the public hearing before the Planning Commission,

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<sup>44</sup> Carried forward from Sections 18-108 and 18-211, except replaced the General Zoning Classification section with a reference to the State Code for substantially the same application.

<sup>45</sup> This has been broadened from a place of worship with a child care center to apply to other newly created applications that have discretion to apply as an SE or SP. This section will be further revised to capture other similar situations such as SPs that can also be processed as FDPAs.

or that has been denied, dismissed, or approved by the Board may not be heard by the BZA as a special permit for any or all of the same property for the same general use within 12 months of the date of withdrawal, denial, dismissal, or approval, unless otherwise waived by the Board.

**(3) Withdrawn Applications**

If an application is withdrawn prior to commencement of the public hearing before the BZA or Planning Commission, there is no limitation on a rehearing. If an application is withdrawn after commencement of the public hearing before the BZA or Planning Commission, the limitations on rehearing will apply.

## **2. Ordinance Text and Zoning Map (Rezoning) Amendments<sup>46</sup>**

### **A. Application Processing<sup>47</sup>**

**(1) Initiation of Amendments**

The text of this Ordinance and any zoning district boundary shown on the Zoning Map may be amended by the Board, provided the amendment is initiated in the following manner:

- (a)** Planning Commission adoption of a resolution of intention to propose an amendment;
- (b)** Board adoption of a resolution of intention to amend, which adopted resolution is referred to the Planning Commission; or
- (c)** Filing with the Zoning Administrator an application submitted by the owners, contract purchasers, or a condominium, or their agents, of the land proposed to be rezoned, which application must be sworn to under oath or affirmation and acknowledged before a notary public.

**(2) Amendment of Applications<sup>48</sup>**

- (a)** Any application for an amendment to the Zoning Map may be amended by filing a written request for amendment and required fee with the Zoning Administrator.
- (b)** If an amendment involves a change in the zoning district requested, a change in the land area, or other substantial revision, the amendment may cause the rescheduling of the hearing and decision on the application. In no event will the hearing and decision by the Board be later than 12 months from the date of the filing of an amendment unless an extended period is mutually agreed to by the applicant and the Board or unless an applicant refuses or neglects to pursue an application in accordance with the provisions of this Ordinance.

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<sup>46</sup> From Part 2, 18-200, Amendments.

<sup>47</sup> Carried forward from 18-201.

<sup>48</sup> Carried forward from 18-207.

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## B. Scheduling and Notice of Public Hearings<sup>49</sup>

- (1) All applications or resolutions to amend the Zoning Ordinance or the Zoning Map are subject to a public hearing before the Planning Commission and Board in accordance with the provisions of Va. Code Sections 15.2-107, 15.2-2204 and 15.2-2285.<sup>50</sup>
- (2) For zoning map amendments, such notice must also include the information required by Va. Code Sect. 15.2-2285.
- (3) Applications must be heard, and a decision made within 12 months from the date of acceptance of the application, unless:<sup>51</sup>
  - (a) The application is an amendment subject to subsection A(2) [*reference to relocated 18-207*];
  - (b) An extended period is requested by the applicant; or<sup>52</sup>
  - (c) The applicant refuses or neglects to prosecute an application in accordance with this Ordinance.

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## C. Review and Decision

- (1) **Recommendation by Planning Commission<sup>53</sup>**
  - (a) After the conclusion of the Planning Commission public hearing and deliberations, the Planning Commission must provide its recommendation to the Board.<sup>54</sup>
  - (b) The Planning Commission is not required to confine its recommendation to the proposed amendment as set forth in the application or resolution.
  - (c) If the proposed amendment consists of a change in the text of the Ordinance, it may recommend a revision to the proposal.
  - (d) If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it recommends be rezoned or it may recommend that the land be rezoned to a different zoning district classification than that requested if the Commission is of the opinion that such revision is in accordance with sound zoning practice and furthers the purposes of this Ordinance. Before recommending a larger extent of land or a rezoning to a less restrictive classification than was set forth in the application, the Commission must hold a further hearing on the matter after notification has been made in accordance with subsection 8100.1.B [*reference to relocated Sect. 18-110*].
- (2) **Decision by Board<sup>55</sup>**

The following decisions will be made after public hearing(s) and deliberations:

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<sup>49</sup> Carried forward from 18-107.

<sup>50</sup> Carried forward from 18-205.

<sup>51</sup> Carried forward from Par. 2 of Sect. 18-107, except the provision that says applications “must, in general, be scheduled and considered in the order...” has been revised and relocated to the procedures for all applications. The provision to submit a development plan within 60 days after acceptance is not carried forward.

<sup>52</sup> Revised to reference request by the applicant in accordance with current practice.

<sup>53</sup> Carried forward from 18-206.

<sup>54</sup> Deleted reference to explanatory material.

<sup>55</sup> New, added to clarify that the Board is the final decision-making body following public hearings.



- (a) For a zoning ordinance amendment, the Board may adopt or reject the amendment. The Board may adopt grandfathering provisions as part of their decision.<sup>56</sup>
  - (b) For a zoning map amendment, the Board may approve, approve with conditions or modifications, or deny the map amendment.
- (3) **Effective Date of Amendment<sup>57</sup>**  
An amendment to the Zoning Ordinance or the Zoning Map becomes effective on the date of Board approval, unless otherwise specified by the Board.

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## D. Proffered Condition Regulations<sup>58</sup>

### (1) Generally

Proffered conditions may include any statement, plan, and other materials that are submitted with a rezoning application and referenced in a written statement signed by the applicant, the owner, and any contract purchaser(s), and accepted by the Board in conjunction with the approval of a rezoning. For condominiums, the written statement of proffers must be signed in accordance with subsection *[reference to relocated 2-518]*. Proffered conditions are subject to the following:

- (a) Once the public hearing has begun, no change or addition to any proffer is allowed without a second public hearing before the Board and, at the option of the Board, a second public hearing before the Planning Commission.
- (b) If an amendment to the Zoning Map is adopted subject to proffered conditions, the property must be annotated as such on the Zoning Map.
- (c) Proffered conditions become a part of the zoning regulations applicable to the rezoned property, unless changed by a subsequent amendment approved by the Board. These proffered conditions are in addition to the specific regulations set forth in the Ordinance for the zoning district in question. Once an application with proffered conditions is approved, any site plan, subdivision plat, or development plan submitted for the development of the property must be in substantial conformance with all proffered conditions, and no County official may approve any development without such substantial conformance, except as may be permitted below.

### (2) Modifications of Conditions Requiring Amendment

- (a) A request that cannot be accomplished as a minor modification or minor variation requires approval of a proffered condition amendment after a public hearing before the Board in accordance with subsection *[reference to relocated 18-205]*.
- (b) An application for such an amendment may cover all or a portion of the property subject to proffered conditions, or it may request to add proffered conditions on a parcel not currently the subject of any proffered condition. In its review of a request that does not cover the property subject to proffered conditions, the

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<sup>56</sup> New provision clarifying that the Board may also adopt grandfathering provisions that would be maintained outside the ZO.

<sup>57</sup> Carried forward from 18-210.

<sup>58</sup> Carried forward from 18-204.



Board should consider whether the request would have an adverse impact on the remainder of the property in terms of:

1. The approved use;
  2. Fulfillment of proffered conditions;
  3. Vehicular and pedestrian circulation, connectivity, landscaping, and streetscape; and
  4. The approved density or intensity.
- (c) After approval of an amendment, all other previously approved proffered conditions remain in full force and effect.
- (d) Any modification to a proffered condition to provide an accessibility improvement or other reasonable accommodation as determined by the Zoning Administrator will be permitted and will not require approval of a proffered condition amendment.

**(3) Enforcement of Proffered Conditions**

- (a) The Zoning Administrator is vested with all necessary authority to administer and enforce proffered conditions. This authority includes the ability to remedy, by written order, any noncompliance with a proffered condition and the ability to bring legal action to ensure compliance, as provided for in subsection *[reference to relocated 18-900]*.
- (b) The Zoning Administrator or designated agent may require a guarantee, satisfactory to the Board, in an amount sufficient to cover the construction cost of any physical improvements required by the proffered conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount, which may be reduced or released by the Board or agent of the Board, upon the submission of satisfactory evidence that the construction of the improvements has been completed in whole or in part.
- (c) Failure to meet or comply with any proffered condition is sufficient cause to deny the approval of a subdivision plan or site plan, and the issuance of any permits, including Building Permits and Residential and Non-Residential Use Permits, as the Zoning Administrator may deem appropriate.
- (d) Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal that decision to the Board. The appeal must be filed within 30 days from the date of the decision being appealed by filing with the Clerk to the Board and the Zoning Administrator a notice of appeal specifying the grounds on which aggrieved. The notice of appeal filed with the Zoning Administrator must include a filing fee as provided in section *[reference to fee schedule]*.

## E. Planned Districts, Except PRC District

### (1) Conceptual Development Plan Approval<sup>59</sup>

- (a) The applicant must submit materials in accordance with section 8101.<sup>60</sup>
- (b) Upon determination by the Zoning Administrator that the content of the conceptual development plan is complete, the plan and the application will be submitted for comment and review to appropriate County agencies. Upon completion of the administrative review, the plan and application must be submitted to the Planning Commission.
- (c) The Planning Commission must promptly hold a public hearing and consider the conceptual development plan and the rezoning application in accordance with the applicable zoning district regulations.
- (d) Subsequent to the public hearing, the Planning Commission must transmit the conceptual development plan and application to the Board, together with its recommendations as to approval or denial.
- (e) The Board must consider the conceptual development plan and application for rezoning in accordance with the applicable zoning district regulations and must hold a public hearing. The Board must approve, approve with modifications, or deny the conceptual development plan.
- (f) In approving a conceptual development plan, the Board may establish such conditions and may require such modifications to assure compliance with the standards and regulations of the subject district; and further, the Board may waive or modify subdivision or site plan requirements otherwise applicable to the development when such waiver or modification would be in conformance with such standards and regulations.
- (g) In approving a conceptual development plan, the Board may approve a modification of the strict application of specific zoning district regulations whenever:
  - 1. Such strict application would hinder<sup>61</sup> the purpose of the zoning district; and
  - 2. Such modification would promote and comply with the standards set forth above.

In no case, however, may the maximum density provisions under the PDH District and the maximum floor area ratio provisions under the PDC, PRM, PTC, and PCC Districts be modified.
- (h) If the Board disapproves the rezoning application, the conceptual development plan is denied.
- (i) If the Board approves the rezoning application, the Board also must approve or approve with modifications or conditions the conceptual development plan.

<sup>59</sup> Carried forward from 16-401.

<sup>60</sup> The provision to submit a conceptual development plan within 60 days after acceptance is not carried forward. In addition, the requirement for a submission of any supplementary data deemed necessary by the Zoning Administrator is not carried forward.

<sup>61</sup> Changed from "inhibit or frustrate."

- (j) Once a conceptual development plan has been approved, all subsequent approvals, uses, and structures must be in substantial conformance with the approved conceptual development plan and any development conditions associated with such approval. Should there be cause for amendment of the conceptual development plan or any portion, such amendment will be processed as a new submission. A conceptual development plan amendment application may cover all or a portion of the property subject to an approved conceptual development plan. In its review of a request that does not cover all of the property subject to an approved conceptual development plan, the Board should consider whether the request would have an adverse impact on the remainder of the property in terms of:
1. The approved use;
  2. Fulfillment of conditions;
  3. Vehicular and pedestrian circulation, connectivity, landscaping and streetscape; and
  4. The approved density or intensity.

The portion of the conceptual development plan and previously approved conditions that are not subject to the amendment request remain in full force and effect.

- (k) Any development plan approved in conjunction with a PDH or PDC rezoning action prior to May 19, 1975 are deemed to be both an approved conceptual and final development plan.

## (2) Final Development Plan Approval<sup>62</sup>

- (a) The granting of a rezoning application to a P district and the approval of its accompanying conceptual development plan by the Board authorizes the applicant to prepare a final development plan; however, a final development plan may be filed with and included in the processing of the rezoning application and conceptual development plan. All final development plans must be prepared in accordance with the approved conceptual development plan and any conditions as may have been adopted by the Board.
- (b) A final development plan may be prepared and submitted for the entire planned development at one time or for sections of the planned development, and each plan must be submitted to the Zoning Administrator.
- (c) Upon determination by the Zoning Administrator that the content of the final development plan is complete, the plan must be submitted for comment and review to appropriate County agencies. Upon completion of such administrative review, the plan must be submitted to the Planning Commission.
- (d) The Planning Commission must hold a public hearing on a stand-alone final development plan application within six months of the date the Zoning Administrator determined that such plan was complete. The Commission must consider the final development plan in accordance with the approved conceptual

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<sup>62</sup> Carried forward from 16-402. Deleted Par. 8 about submitting a revised plan if denied, as it is unnecessary to state.

development plan and must determine if the final development plan complies with the applicable zoning district regulations. Upon the determination that the final development plan is in accordance and does comply, the Planning Commission must approve, or approve with modifications, the final development plan. Such approval is deemed to be the final approval, subject only to appeal to the Board as provided in subsection (i) below.

- (e) In approving a final development plan, the Planning Commission may establish such conditions and may require such modifications as will assure compliance with the standards and regulations of the subject district, and with the approved conceptual development plan. Further, the Planning Commission may recommend to the Board the waiver of any zoning and subdivision requirements otherwise applicable to the development where it is found that such waiver would be in conformance with such standards and regulations.
- (f) In the event that the Planning Commission finds that the final development plan is not in accordance with the approved conceptual development plan, or does not comply with the applicable zoning district regulations, it must recommend the denial of the final development plan and forward such recommendation to the Board. Board must hold a public hearing on the final development plan and approve, approve with modifications, or deny the final development plan. In approving the final development plan, the Board may establish such conditions and require such modifications as will assure compliance with the standards and regulations of the subject district, and with the approved conceptual development plan. Zoning and subdivision requirements otherwise applicable to the development may be waived by the Board where it finds that the waiver would be in conformance with the standards and regulations.
- (g) If an aggrieved party wishes to appeal a Planning Commission decision for approval or approval with modifications of a final development plan, such appeal must be filed with the Board within ten days after the decision of the Commission. The appeal must be by written petition to the Board setting forth the reasons for the appeal. The basis for an appeal must be that the final development plan is or is not in substantial conformity with the approved conceptual development plan.
- (h) Once a final development plan has been approved, all subsequent approvals, uses, and structures must be in substantial conformance with the approved final development plan and any development conditions associated with such approval. Should there be cause for amendment of the final development plan, such amendment must be processed as follows:
  - 1. Upon a determination by the Zoning Administrator that the amendment will result in a final development plan that is still in accordance with the approved conceptual development plan, then such amendment must be processed in accordance with these provisions.
  - 2. Upon a determination by the Zoning Administrator that the amendment will cause the final development plan to be not in accordance with the approved conceptual development plan, then an amendment to the conceptual development plan must be required in accordance with the provisions of subsection [reference to relocated Par. 11 of 16-401] above. The amendment

to the final development plan is also subject to review by the Planning Commission in accordance with these provisions.

3. A final development plan amendment application may be filed on a portion of the property subject to an approved final development plan, upon a determination by the Zoning Administrator that the amendment:
  - a. Would not adversely affect the use of the property subject to the final development plan and conditions but not incorporated into the amendment application;
  - b. Would not inhibit, adversely affect, or preclude in any manner the fulfillment of the final development plan and conditions applicable to the area not incorporated into the amendment application;
  - c. Would not adversely affect the vehicular and pedestrian circulation, connectivity, landscaping, and streetscape applicable to the area not incorporated into the amendment application; and
  - d. Would not increase the overall approved density or intensity for the development.

The portion of the final development plan and previously approved conditions that are not subject to the amendment request remain in full force and effect.

- (i) Any development plan approved in conjunction with a PDH or PDC rezoning action prior to May 19, 1975 is deemed to be both an approved conceptual and final development plan.

**(3) Site Plan and Subdivision Plat Preparation, Building Permit, Residential Use Permit and Non-Residential Use Permit<sup>63</sup>**

Approval of a final development plan is a prerequisite and authorizes the applicant to prepare a site plan or a subdivision plat. Approval of site plans or subdivision plats and the issuance of Building Permits, Residential and Non-Residential Use Permits must be in substantial conformance with the final development plan, in accordance with the provisions of this Ordinance and Chapter 101 of The Code, The Subdivision Ordinance, and the following:

- (a) Separate site plans or subdivision plats must be submitted for each section of the planned development in accordance with the approved final development plan. For development within the PTC District subject to a phasing plan, each site plan or subdivision plat must provide content as required by section 8101.
- (b) Except in the PTC District, when a planned development is to be constructed in sections, the total area of open space provided at any stage of development must have substantially the same relationship to the total open space to be provided in the entire planned development as the sections completed or under development have to the entire planned development.

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<sup>63</sup> Carried forward from Sect. 16-403, except Par. 7 has been relocated to Article 5 with setbacks.

- (c) Minor deviations from the provisions of this Ordinance and Chapter 101 of The Code (the Subdivision Ordinance), may be permitted, but only where the deviations are indicated on the approved final development plan.
  - (d) Minor modifications to a final development plan are allowed when the Zoning Administrator determines that they substantially conform to the approved final development plan and do not materially alter the character of the development pursuant to subsection 8100.5.
  - (e) When the Board approves a minor variation to a proffered condition, the variation is deemed to apply to any approved final development plan or final development plan condition and not require approval of a separate amendment to that plan.
  - (f) Any modification to an approved final development plan to provide an accessibility improvement or other reasonable accommodation may be permitted and not require approval of an amendment to the final development plan.
- (4) Required Recreational Facilities in PDH, PDC, PRM, and PTC Districts<sup>64</sup>**
- Required recreational facilities must include either active recreation facilities such as tennis courts, swimming pools, children playgrounds, tot lots, or ballfields, or passive recreation and site amenities such as gazebos, picnic areas, trails, and nature walks, but not including landscape plantings, trails identified on the adopted Comprehensive Plan, or sidewalks required by the Public Facilities Manual.
- (a) For recreational facilities to be constructed on-site by the developer, the facilities must be shown on the site plan, subdivision plan, or construction plan, as applicable, in substantial conformance with the approved final development plan. The following also apply, unless otherwise modified by the Board at the time of zoning approval:
    - 1. For single section developments, or multiple section developments where required recreational facilities are to be provided in the first section of the development, facilities must have an executed security package prior to:
      - a. Final subdivision plat approval for single family dwelling developments; or
      - b. Issuance of construction permits for multiple family dwelling developments, single family attached dwelling developments not subject to subdivision approval, or combination single family attached dwellings subject to subdivision approval and multiple family dwelling developments.
    - 2. For multiple section developments where the required recreational facilities are not to be constructed in the first section of the development and the estimated cost of the approved recreational facilities exceeds \$50,000, prior to issuance of Building Permits for more than 50 percent of the total number of dwelling units, there must either be:
      - a. An executed security package for the recreational facilities; or
      - b. A future construction escrow posted in the amount equivalent to the pro rata share (of the facilities shown on the approved final development

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<sup>64</sup> Carried forward from Sect. 16-404.

plan) for the total number of units for which Building Permits have been issued and are being sought. Upon execution of the security package for the recreational facilities, the construction escrow with interest must be paid to the developer.

Approved recreational facilities of \$50,000 or less must be constructed or have an executed security package prior to site plan or final subdivision plat approval of the final section.

- (b)** At the time of zoning approval, the Board may authorize the provision of recreational facilities off-site on land in proximity to the proposed development, which is titled to or is to be dedicated to the County or the Fairfax County Park Authority, or on land under the control of an adjacent homeowners' association. The applicant must submit a written justification for such off-site location and evidence that the future residents of the development have the right to use the recreational facilities. The Board may approve such a request upon a determination that it would be infeasible or impractical to provide the required recreational facilities on-site or that the off-site location would better serve the residents of the development.

At the designated off-site location, the applicant, upon Board approval, may either design and construct the recreational facilities or make a cash contribution to the property owner, which must be in accordance with the approved per dwelling unit expenditure. Additionally, the following apply:

- 1.** If the requirement for the proposed development is to be satisfied off-site on land owned by an adjacent homeowners' association, then a document, subject to County Attorney review and approval, which grants the right of future residents of the proposed development to use such off-site facilities must be recorded among the Fairfax County land records prior to final subdivision plat approval or site plan approval, as applicable.
- 2.** If the recreational facilities are to be constructed off-site, the applicant must submit documentation, subject to County Attorney review and approval, that there will be the right to construct the facilities at the selected off-site location and that the future residents of the proposed development have the right to use such facilities. The timing of such off-site construction must be proposed by the applicant and approved by the Board at the time of zoning approval.
- 3.** If a cash contribution is to be made, it must be in accordance with the following:
  - a.** The cash contribution equivalent to the approved per dwelling unit expenditure must be made to either the County, the Fairfax County Park Authority, or to an adjacent homeowners' association, as applicable, for the expressed purpose of providing additional recreational facilities, or renovating or increasing the user capacity of existing facilities. At the time of zoning, the applicant must have established that the County, the Fairfax County Park Authority, or homeowners' association, as applicable, has agreed to and has the right to receive such a cash contribution and, if the cash contribution is to be made to an adjacent



homeowners' association, the proposed use of the cash contribution must be specified.

- b.** The cash contribution equivalent to the approved per dwelling unit expenditure must be made prior to the issuance of a Residential Use Permit for each dwelling unit in the proposed development<sup>65</sup>.

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## **F. PRC District<sup>66</sup>**

### **(1) Comprehensive Plan Approval<sup>67</sup>**

#### **(a) General Requirements**

- 1.** A PRC District may only be established in an area designated as a planned residential community on the adopted Comprehensive Plan. Therefore, before the initial establishment of a PRC District, the applicant must propose an amendment to the adopted Comprehensive Plan to permit a planned residential community, which must contain at least 750 contiguous acres owned or controlled by a single individual or entity.
- 2.** Such Comprehensive Plan amendment must be presented in at least the same level of detail as the adopted Comprehensive Plan for the area under consideration.
- 3.** In conjunction with the submission of a proposed Comprehensive Plan amendment, the applicant must submit a general development schedule showing the approximate time frame of the development.
- 4.** Ten copies of the proposed Comprehensive Plan and development schedule must be submitted to the Director of the Department of Planning and Development (DPD) along with a written request for the consideration of an amendment to the adopted Comprehensive Plan.

#### **(b) Director Review and Analysis**

- 1.** Upon receipt, the Director of DPD, in accordance with adopted procedures for consideration of Comprehensive Plan amendments, will ensure a thorough review of the proposed amendment by all appropriate agencies. Upon a finding that additional information may be needed to complete the review, the Director of DPD may request same of the applicant.
- 2.** As part of the review, the Director of DPD will conduct a complete analysis of the proposed development schedule and the impact of the development on all public facilities and utilities.

#### **(c) Review and Approval by the Planning Commission and Board**

- 1.** Upon completion of the review, the plan amendment will be submitted to the Planning Commission.

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<sup>65</sup> Revised from building permit to RUP in accordance with State Code.

<sup>66</sup> Carried forward from Part 2, 16-200.

<sup>67</sup> Carried forward from 16-201.



2. The Planning Commission must hold a public hearing to consider the Comprehensive Plan amendment and must forward its recommendation for approval, approval with modifications, or denial to the Board.
3. The Board must hold a public hearing and must approve, approve with modifications, or deny the proposed amendment.
4. If approved by the Board, the Comprehensive Plan for a planned residential community constitutes a part of the adopted Comprehensive Plan and is subject to review and revision from time to time. Any revision to the adopted Comprehensive Plan initiated by an applicant, other than the Planning Commission or the Board, is subject to the same procedures as the original amendment.
5. Additional adjacent land may be added to a planned residential community if it represents a logical extension of the planned residential community under the adopted Comprehensive Plan. An addition of adjacent land is subject to the same requirements and procedures as the original amendment except that the minimum of 750 acres owned or controlled by a single individual or entity is not required.

## **(2) Rezoning to a PRC District<sup>68</sup>**

### **(a) General Requirements**

1. Following Board approval of the Comprehensive Plan for a planned residential community, the Board may approve an application for rezoning to a PRC District subject to these provisions and provisions for a rezoning. The initial rezoning to establish a PRC District must contain a minimum land area of 750 contiguous acres owned or controlled by a single individual or entity.
2. The applicant must submit materials in accordance with section 8101. Such rezoning application and development plan must be in accordance with the adopted Comprehensive Plan, the standards set forth above and the PRC District regulations and objectives.
3. The rezoning application and development plan must be filed with the Zoning Administrator.<sup>69</sup>

### **(b) Staff Review and Recommendation**

Upon a determination by the Zoning Administrator that the rezoning application and the development plan are complete, the application and plan will be submitted for comment and review to appropriate County agencies. Upon completion of such administrative review, the application and plan must be submitted to the Planning Commission.

### **(c) Review and Approval by the Planning Commission and Board**

1. The Planning Commission must consider the rezoning application and development plan in accordance with the adopted Comprehensive Plan, the standards set forth above and the PRC District regulations and objectives and

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<sup>68</sup> Carried forward from 16-202.

<sup>69</sup> The provision to submit a development plan within 60 days after acceptance is not carried forward.

must hold a public hearing. Subsequent to the public hearing, the Commission must transmit the rezoning application and development plan to the Board with its recommendation to approve, approve with modifications, or deny.

- 2.** The Board must hold a public hearing to consider the rezoning application and development plan in accordance with the adopted Comprehensive Plan, the standards set forth above, the PRC District regulations, and objectives.
- 3.** If the Board approves the rezoning application, the Board must also approve or approve with modifications or conditions the development plan. Such conditions or modifications may be established by the Board to assure compliance with the standards above and the district regulations. Further, the Board may waive or modify subdivision and site plan requirements otherwise applicable to the development when such waiver or modification would be in conformance with such standards and regulations.
- 4.** If the Board disapproves the rezoning application, the development plan is deemed to also be denied.

**(d) Following Approval**

- 1.** Once a development plan has been approved, all subsequent approvals, uses, and structures must be in substantial conformance with the approved development plan and any development conditions associated with such approval. Should there be cause for amendment of the development plan or any portion, such amendment will be processed as a new submission. A development plan amendment may cover all or a portion of the property subject to an approved development plan. In its review of a request that does not cover all of the property subject to an approved development plan, the Board should consider whether the request would have an adverse impact on the remainder of the property in terms of:
  - a.** The approved use;
  - b.** Fulfillment of conditions;
  - c.** Vehicular and pedestrian circulation, connectivity, landscaping, and streetscape; and
  - d.** The approved density or intensity.

The portion of the development plan and previously approved conditions that are not subject to the amendment request will remain in full force and effect.

- 2.** Additional adjacent land may be added to a PRC District by a rezoning application if such land is included within the area of the adopted Comprehensive Plan and if it represents a logical extension of the area zoned PRC. Any addition of adjacent land to the PRC District is subject to the same requirements and procedures as the original application except for the minimum of 750 acres owned or controlled by a single individual or entity is not required.

**(3) PRC Plan Approval<sup>70</sup>**

- (a)** Subsequent to the approval of a rezoning application, a PRC plan is required for those uses as set forth in subsection (c) below. The Board may approve a PRC plan subject to these and other applicable standards. A PRC plan may not be approved by the Board until after the rezoning application and development plan have been approved. However, a PRC plan may be filed concurrent with and included in the processing of the rezoning application and development plan.
- (b)** All PRC plans must be in accordance with the approved rezoning and development plan, any conditions or modifications that may have been approved by the Board, the submission and design standards for a PRC above, and the applicable objectives and regulations of the PRC District.
- (c)** A PRC plan is required for all uses, except the following:
  - 1.** Single family detached dwellings, provided the general street and lot layout are shown on the approved development plan.
  - 2.** Additions to existing single family attached or detached dwellings or accessory structures related to existing single family dwellings.
  - 3.** Additions to existing buildings or uses other than single family dwellings when the additions do not exceed 2,000 square feet or ten percent of the gross floor area of the existing building or use, whichever is less.
  - 4.** Additions or changes to non-structural site elements such as transitional screening and parking and loading when the area of the addition or change does not exceed ten percent of the existing area occupied by such site element. Parking redesignation plans and parking tabulation revisions are also exempt from the requirement for a PRC plan regardless of the area of such change.
  - 5.** Minor accessory structures in open space areas such as benches, gazebos, playground equipment, and bus shelters.
  - 6.** Those special exception and special permit uses that do not require a site plan.
  - 7.** Any permitted use on a temporary basis for a period not to exceed one year.
  - 8.** Additions and alterations to provide an accessibility improvement or other reasonable accommodation.
- (d)** A PRC plan may be prepared and submitted for the entire planned development at one time or for the segments.
- (e)** Upon determination by the Zoning Administrator that the content of the PRC plan is complete, the plan will be accepted and submitted for comment and review to appropriate County agencies. Upon completion of such administrative review, the plan will be submitted to the Planning Commission.<sup>71</sup>
- (f)** The Planning Commission will consider the PRC plan in accordance with the standards set forth above and will hold a public hearing. In the event the PRC plan

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<sup>70</sup> Carried forward from 16-203.

<sup>71</sup> Clarified for consistency reference to County agencies.

is not filed with and included in the processing of the rezoning application, the Planning Commission will hold a public hearing no later than six months from the date the plan has been accepted. Subsequent to the public hearing, the Commission will transmit the PRC plan to the Board with its recommendation to approve, approve with modifications, or deny.

- (g) The Board will hold a public hearing to consider the PRC plan in accordance with the standards set forth above. The Board may approve, approve with modifications, or deny the PRC plan.
- (h) Once the PRC plan has been approved, all subsequent approvals, uses, and structures must be in substantial conformance with the approved PRC plan and any development conditions associated with such approval.
- (i) Minor modifications to an approved rezoning and development plan may be permitted in a PRC plan when it is determined by the Zoning Administrator that they substantially conform to the approved rezoning and development plan and do not materially alter the character of the development in accordance with subsection 8100.5.
- (j) When the Board approves a minor variation to a proffered condition, the variation is deemed to apply to any approved development plan or PRC plan and does not require approval of a separate amendment.
- (k) Any modification to provide an accessibility improvement or other reasonable accommodation is permitted without requiring approval of a development plan amendment.
- (l) Once a PRC plan has been approved, any proposed amendment is subject to Board approval in accordance with these provisions.
- (m) Preliminary site plans approved prior to December 6, 1994 and preliminary site plans approved pursuant to the grandfather provisions for Zoning Ordinance Amendment #94-263 are deemed to be approved PRC plans. Additionally, PRC plans processed and approved prior to March 27, 2007 are deemed to be approved PRC plans and are valid for three years from the date of approval. However, if a site plan for all or a portion of the area is approved during that period, the approved PRC plan for the corresponding area will remain valid for the life of the site plan.

**(4) Site Plan and Subdivision Plat Preparation<sup>72</sup>**

- (a) Site plan or subdivision plat approval is required subsequent to the approval of the rezoning and development plan and a PRC plan, if required above. Submission and approval of such site plans or subdivision plats, the issuance of Building Permits, Residential or Non-Residential Use Permits must be in substantial conformance with the approved rezoning and development plan and the PRC plan, if applicable, and in accordance with the design standards above, the applicable objectives and regulations of the PRC District, and the provisions of this Ordinance and Chapter 101 of The Code (the Subdivision Ordinance).
- (b) Minor modifications to the approved development plan or approved PRC plan may be permitted in a site plan or subdivision plat in accordance with subsection

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<sup>72</sup> Carried forward from 16-204.

8100.5. If it is determined by the Zoning Administrator that a modification is not in substantial conformance with the approved development plan or approved PRC plan, such modification requires the resubmission and amendment of the development plan or PRC plan.

### 3. Special Exceptions<sup>73</sup>

#### A. Types of Special Exceptions<sup>74</sup>

In addition to the special exceptions identified in the Use Tables in [reference to section 4101], the following table summarizes the types of non-use related special exceptions allowed under this Ordinance and the location of the related provisions.

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<sup>73</sup> Carried forward from Part 0, 9-000, revised as noted.

<sup>74</sup> This is a new subsection intended to reference the various types of special exceptions that are not included in the Article 4 Use Table allowed by this Ordinance.

**TABLE 8100.1: Summary of Special Exceptions**

Special Exception Type	Location within Ordinance <sup>75</sup>
Approval of Nonconforming Condominium and Cooperative Conversions	
Cluster Subdivisions	
Density Credit for Major Utility Easements	
Driveways for Uses in a C or I District	
Enlargement of Certain Nonconforming Uses	
Increase in Building Height	
Increase in FAR	
Increase in FAR in the PTC District	
Increase in Height for Containment Structures	
Increase in Parking in the PTC District	
Minor Modifications to a Nonconformity	
Modification of Grade for Single Family Detached Dwellings	
Modification of Minimum Setback Requirements for Certain Existing Structures and Uses	
Modification of Shape Factor	
Modifications, Waivers, Increases and Uses in a Commercial Revitalization District	
Outdoor Storage in Association with Warehousing Establishments in the Sully Historic Overlay District	
Parking in R Districts	
Reduction of Setback Requirements for the Reconstruction of Certain Single Family Detached Dwellings that are Destroyed by Casualty	
Uses in a Floodplain	
Waiver of Certain Sign Regulations	
Waiver of Minimum Lot Size Requirements	
Waiver of Open Space Requirements	
Waiving Minimum Lot Width, Minimum Setbacks, and Privacy Yard Requirements for Single Family Attached Dwelling Units	

## B. Authority<sup>76</sup>

- (1) The Board may approve the establishment of those special exception uses that are expressly listed in a zoning district in the Use Tables in [reference to section 4101] and those special exceptions listed in the table above.
- (2) The Board does not have authority to waive any of the regulations or standards prescribed for any use or purpose for which a special exception is required; however, the Board may modify the additional standards for a special exception use where deemed necessary as long as the resultant development will not adversely affect the use or development of adjacent properties.<sup>77</sup>
- (3) No use existing prior to the effective date of this Ordinance which is allowed within a particular zoning district only by special exception by the provisions of this Ordinance, may be replaced or enlarged except in accordance with the provisions of subsection [reference to relocated Sect. 15-101].<sup>78</sup>

<sup>75</sup> This column will be populated with the consolidated draft.

<sup>76</sup> Carried forward from 9-002 and 9-003.

<sup>77</sup> This language will be revised in the Consolidated Draft following future discussions on waivers.

<sup>78</sup> Carried forward from 2-304, Par. 2.

- (4) If there is an existing valid special exception for a use located on a lot zoned to more than one zoning district (split-zoned) and there is an amendment to this Ordinance which allows the use as a permitted use in one of the zoning districts while the requirement for a special exception continues in the other zoning district(s), the special exception will remain in full force and effect for the entire property, unless the Board approves an amendment application to remove the land area from the special exception approval.<sup>79</sup>

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### C. Application Processing<sup>80</sup>

- (1) The applicant must submit materials in accordance with Section 8101.
- (2) An application for a special exception may be made by any property owner, owner of an easement, possessor of the right of entry under the power of eminent domain, lessee, contract purchaser, official, department, board or bureau of any government or their agent, or condominium in accordance with the provisions of subsection [reference to relocated Sect. 2-518].

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### D. Review and Decision

- (1) **Review and Approval by Planning Commission and Board<sup>81</sup>**

The Zoning Administrator will transmit a copy of every special exception application to the Planning Commission. The Planning Commission will hold a public hearing and make recommendations including any conditions or restrictions for consideration by the Board at their public hearing.<sup>82</sup>
- (2) **Conditions and Restrictions<sup>83</sup>**

The Board may impose conditions and restrictions it deems necessary in the public interest to ensure compliance with the provisions of this Ordinance and to implement the adopted Comprehensive Plan. The conditions or restrictions may include but are not limited to a time limitation on the length of the special exception in accordance with the provisions below<sup>84</sup>.
- (3) **Time Limitations, Extensions, Renewals<sup>85</sup>**

The Board may require, as a condition of the approval of any special exception, that it be approved for a specified period of time; that it may be subsequently extended for a designated period by the Zoning Administrator; or that it may be periodically renewed by the Board. The procedure of granting an extension or renewal is as presented below. Unless otherwise stipulated by the Board, a specified time period commences on the date of approval of a special exception.

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<sup>79</sup> Carried forward from 2-304, Par. 3, but added the term “split-zoned” to help clarify.

<sup>80</sup> Carried forward from 9-009.

<sup>81</sup> Carried forward from second half of 9-009, except the requirement to forward a copy of the application to any other review body has been deleted, as it is already included as a submission requirement.

<sup>82</sup> Added reference to the Board public hearing.

<sup>83</sup> Carried forward from 9-007.

<sup>84</sup> Deleted “and may require the posting of a guarantee or bond in a reasonable amount by the applicant.”

<sup>85</sup> Carried forward from 9-008.

**(4) Status of Special Exception Uses<sup>86</sup>**

- (a)** A special exception use may only be established in accordance with the special exception approval. Any site plan, subdivision plat, Building Permit, Residential or Non-Residential Use Permit submitted for the development or use of the property must be in substantial conformance with the approved special exception, and no development or use may be approved in the absence of conformance.
- (b)** Once established, the use must be conducted in substantial conformance with the special exception, any conditions or restrictions imposed by the Board, and all other requirements of this Ordinance. Except as may be permitted below, no use may be enlarged, expanded, increased in intensity, or relocated. No condition of the special exception may be amended unless an application for an amendment or a new special exception is approved.
- (c)** Any modification to an approved and currently valid special exception to provide an accessibility improvement or other reasonable accommodation may be permitted and does not require approval of an amendment or a new special exception.
- (d)** Minor modifications to special exceptions are allowed when the Zoning Administrator determines that they substantially conform to the approved special exception and do not materially alter the character of the development pursuant to subsection 8100.5.

**(5) Extension of a Special Exception<sup>87</sup>**

- (a)** A request for an extension of a special exception must be filed in writing with the Zoning Administrator a minimum of 30 days before the expiration date of the special exception unless a lesser time is approved by the Zoning Administrator for good cause shown. The special exception remains valid until the request for extension is acted upon by the Zoning Administrator. Failure to request the extension in a timely manner will cause the special exception to expire without notice on the expiration date.
- (b)** The Zoning Administrator must review the applicant's record of compliance with those conditions and restrictions previously imposed by the Board and make a determination on whether the special exception use still satisfies the provisions of this Ordinance. They may<sup>88</sup> also inspect the special exception use.
- (c)** Upon a favorable finding, the Zoning Administrator may approve an extension of the special exception for the period of time that may be specified for a particular use or that may have been specified by the Board.
- (d)** If it is determined that the use is not in compliance with all conditions and restrictions previously imposed by the Board, the Zoning Administrator must either deny the request for extension or require the remedy of any violation within a specified time, depending on the nature of the noncompliance. If the request for extension is denied or the applicant fails to correct the violation within the time specified, the special exception expires. The approval of a new special exception is required prior to any subsequent reinstatement of the use.

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<sup>86</sup> Carried forward from 9-004.

<sup>87</sup> Carried forward from 9-012.

<sup>88</sup> "Must" has been replaced with "may."



- (e) If it is determined that the use is no longer allowed as a special exception use in the zoning district in which located, the Zoning Administrator must deny the request, and the special exception expires.
- (f) If the use is not in compliance with any other applicable provisions of this Ordinance, the Zoning Administrator must deny the request and notify the applicant by certified mail, return receipt requested. Within 30 days of receipt, in order to continue the use, the applicant must file an amendment application for renewal. Failure to file an application in a timely manner will cause the special exception to expire.

**(6) Amendment of a Special Exception<sup>89</sup>**

- (a) Except as provided for above, an amendment is a request for any enlargement, expansion, increase in intensity, relocation, reduction in land area, modification of any condition of a previously approved and currently valid special exception use, or renewal of a currently valid special exception for a new period of time.
- (b) An amendment application may be filed on a portion of the property subject to a currently valid special exception, upon a determination by the Zoning Administrator that the amendment:
  - 1. Would not adversely affect the use of the property subject to the special exception but not incorporated into the amendment application;
  - 2. Would not inhibit, adversely affect, or preclude in any manner the fulfillment of the special exception conditions applicable to the area not incorporated into the amendment application; and
  - 3. Would not increase the overall approved density or intensity for the development.

Previously approved special exception conditions that are not subject to the amendment request remain in full force and effect.

- (c) Except as qualified below, the procedure for an amendment of a special exception is the same as specified for the approval of the original special exception, to include the imposition of conditions and restrictions.
- (d) An application to renew a special exception use to allow a new period of time for the operation of the use must be filed prior to the expiration date of the special exception and the special exception remains valid until the application is acted upon by the Board. However, the Board may not approve a renewal application for a use that is no longer allowed as a special exception use in the zoning district in which located. Failure to apply for renewal in a timely manner causes the special exception to expire without notice on the expiration date.
- (e) In reviewing a renewal application, the Board must review the applicant's record of compliance with those conditions and restrictions previously imposed and determine if the use still satisfies the provisions of this Ordinance. Upon a favorable finding, the Board may approve the application. If it is determined that the use is not in accordance with all applicable provisions of this Ordinance, the Board may, depending on the nature of the noncompliance, deny the application.

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<sup>89</sup> Carried forward from 9-014.

For an application solely requesting a new period of time, the Board may impose conditions and restrictions to ensure that the use will be consistent with and will not adversely affect the use or development of neighboring properties. No alteration of a structure may be required if the structure was in conformance with the provisions of this Ordinance, the Building Code, and other applicable regulations at the time the special exception was first approved, unless the Board finds the alteration necessary to protect the public health, safety, or welfare.

- (f) For an existing and currently valid special exception use which use is no longer allowed by special exception in the zoning district in which located, the Board, upon receipt of an application, may review and approve an amendment to the special exception, provided such amendment does not permit the use to be enlarged, expanded, increased in intensity, relocated, or continued beyond any time limitation specified in the existing exception.

**(7) Expiration of a Special Exception<sup>90</sup>**

- (a) Except for waivers requiring Board approval included in the table below, whenever a special exception is approved by the Board, the approved use must be established or any construction approved must be commenced and diligently pursued within such time as the Board may have specified, or, if no such time has been specified, then within 30 months from the approval date of such special exception, unless additional time is approved by the Board.

**TABLE 8100.2: Waivers Requiring Board Approval**

Minimum Lot Size Requirements
Open Space Requirements
Minimum Yard and Privacy Yard Requirements for Single Family Attached Dwelling Units
Certain Sign Regulations
Modifications/Waivers/Increases and Uses in a CRD

- (b) The Board may approve a request for additional time to establish the use or commence construction, but only in accordance with all of the following:
1. A request is filed in writing with the Zoning Administrator prior to the expiration date. Such request must specify the basis for and the amount of additional time requested and must include an explanation of why the use has not been established or construction commenced and diligently pursued in accordance with the time specified in the approval of the special exception. Such explanation may include the occurrence of conditions unforeseen at the time of special exception approval.
  2. It is determined by the Board that the use is in accordance with all applicable provisions of the Zoning Ordinance, unless the Board has specifically provided that an amendment adopted subsequent to the approval of the special exception is not applicable to the request for additional time, and that approval of additional time is consistent with the public interest.

<sup>90</sup> Carried forward from Sect. 9-015. Specified the waivers requiring Board approval.

- (c) If a request is timely filed, the special exception remains valid until the request for additional time is acted upon by the Board; however, during this period, the use may not be established, nor may construction commence.
- (d) If the use or construction has not commenced in accordance with the above provisions, the special exception automatically expires without notice.

**(8) Termination or Revocation of a Special Exception<sup>91</sup>**

- (a) Unless a time limit is specified for a special exception, the special exception is valid for an indefinite period of time, except that if the use or activity should cease for any reason for a continuous period of two years or more, the special exception automatically terminates without notice. The approval of a new special exception is required prior to any subsequent reinstatement of the use.
- (b) A special exception is revocable by the Board at any time because of the failure of the owner or operator of the use covered by the special exception to comply with the terms or conditions of the special exception.
- (c) Before revoking any special exception, the Board must conduct a public hearing and provide notice in accordance with subsection *[reference to relocated 18-110]*. The Board or its agent must give the holder of the special exception at least 20 days advance written notice of the hearing date either by certified mail, return receipt requested, or by hand delivery, and the notice must contain:
  - 1. The grounds for the proposed revocation of the special exception; and
  - 2. The date, time, and place of the public hearing.
- (d) The above provisions remain applicable to a use covered by a special exception which use has, subsequent to the approval of the special exception, been reclassified to a special permit use, until a special permit is approved for the use due to an enlargement, expansion, increase in intensity, relocation, or modification of a special exception condition and then the revocation provisions for special permits in subsection *[reference to relocated Sect. 8-016]* apply.
- (e) The above provisions do not preclude the use of any other remedy prescribed by law or by this Ordinance with respect to violations of the provisions of this Ordinance.

## 4. Special Permits

### A. Types of Special Permits<sup>92</sup>

In addition to the special permits identified in the Use Tables in *[reference to section 4101]*, the following table summarizes the types of non-use related special permits allowed under this Ordinance and the location of the related provisions.

<sup>91</sup> Carried forward from 9-016.

<sup>92</sup> This is a new subsection intended to reference the various types of special permits that are not included in the Article 4 Use Table allowed by this Ordinance.

**TABLE 8100.3: Summary of Special Permits**

<b>Special Permit Type<sup>93</sup></b>	<b>Location within Ordinance<sup>94</sup></b>
Certain Additions to an Existing Single Family Detached Dwelling	
Increase in Fence or Wall Height in Front Yard	
Increase in Height for Containment Structure	
Increase in Height for Noise Barrier	
Increase in Sign Area or Height	
Increase in the Height of a Freestanding Accessory Structure	
Increase in the Percentage of Rear Setback Coverage	
Modification of Grade Within or in Proximity to Floodplain	
Modification of Minimum Setback Requirements for Certain Existing Structures and Uses	
Reduction of Required Setbacks	
Reduction of Setback Requirements - Error in Building Location	
Standards for Modification of Grade for Single Family Detached Dwellings	

## **B. Authority**

### **(1) General Authority<sup>95</sup>**

- (a)** In consideration of an application filed with the Zoning Administrator, the BZA may approve the establishment of those uses that are expressly listed in a zoning district in the Use Tables in *[reference to section 4101]* and those special permits listed in the table above.
- (b)** Any special permit use located within a floodplain must also be approved by the Board as a special exception in accordance with the provisions of subsection *[reference to relocated 9-606]*.
- (c)** No use existing prior to the effective date of this Ordinance which is allowed within a particular zoning district only by special permit by the provisions of this Ordinance, may be replaced or enlarged except in accordance with the provisions of subsection *[reference to 15-101]*.<sup>96</sup>
- (d)** If there is an existing valid special permit for a use located on a split-zoned lot and there is an amendment to this Ordinance which allows the use as a permitted use in one of the zoning districts while the requirement for a special permit continues in the other zoning district(s), the special permit will remain in full force and effect for the entire property, unless the BZA approves an amendment application to remove the land area from the special permit approval.<sup>97</sup>

<sup>93</sup> Sect. 8-913, Modifications to the Minimum Yard Requirements for Certain R-C Lots, is not carried forward as a special permit, but will be addressed at the time of building permit approval. The modification standards will be added to the R-C District.

<sup>94</sup> This column will be populated with the consolidated draft.

<sup>95</sup> Carried forward from 8-002.

<sup>96</sup> Carried forward from 2-303, Par. 2.

<sup>97</sup> Carried forward from 2-303, Par. 3, except added the word “split-zoned” for clarity.

**(2) Limits on Authority<sup>98</sup>**

- (a)** The BZA does not have the authority to vary, modify, or waive any of the standards for any use for which a special permit is required.
- (b)** The jurisdiction of the BZA with respect to any use or purpose for which the BZA is authorized to approve special permits is limited to a determination of conformity to the provisions of this Ordinance. Upon a determination of conformity, the BZA may approve the special permit subject to whatever conditions and restrictions it deems necessary.
- (c)** The above provisions do not preclude any concurrent but separate application made for a variance.

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**C. Application Processing<sup>99</sup>**

- (1)** The applicant must submit materials in accordance with Section 8101.
- (2)** An application for a special permit may be made by any property owner, lessee, contract purchaser, official, department, board or bureau of any government or their agent, or condominium.
- (3)** The Zoning Administrator will forward the application to the BZA. Upon receipt, the Clerk of the BZA will refer a copy of the application to the Planning Commission in accordance with the provisions of subsection [*reference to relocated 19-206*].

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**D. Review and Decision**

**(1) Review and Approval by BZA**

The concurring vote of four members of the BZA is required to approve a special permit. The BZA will make a decision within 90 days after acceptance of the application, unless an extended period is mutually agreed to by the applicant and the BZA, or unless an applicant refuses or neglects to prosecute an application in accordance with this Ordinance.

**(2) Conditions and Restrictions<sup>100</sup>**

The BZA may impose conditions upon the proposed use as it may deem necessary to secure compliance with this Ordinance and to implement the adopted Comprehensive Plan. These conditions may include:

- (a)** A time limitation on the length of the special permit in accordance with the provisions below. In addition to the time limits set forth, the BZA may require, as a condition to the approval of any special permit, that the permit is approved for a specified time period.
- (b)** That the permit may be subsequently extended for a designated period by the Zoning Administrator; or that the permit may be periodically renewed by the BZA.
- (c)** Unless otherwise stipulated by the BZA, a specified time period will commence on the date of approval of a special permit.<sup>101</sup>

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<sup>98</sup> Carried forward from 8-003.

<sup>99</sup> Carried forward from 8-009.

<sup>100</sup> Carried forward from 8-007, except deleted “in the public interest” and the reference to posting of a bond.

<sup>101</sup> Carried forward from 8-008.

**(3) Status of Special Permit Uses<sup>102</sup>**

- (a)** A special permit use may only be established in accordance with the special permit approval. Any site plan, subdivision plat, Building Permit, Residential or Non-Residential Use Permit submitted for the development or use of the property in accordance with the special permit must be in substantial conformance with the approved special permit, and no development or use may be approved in the absence of such conformance.
- (b)** Once established, the use must be conducted in substantial conformance with the special permit, any conditions or restrictions imposed by the BZA and all other requirements of this Ordinance. Except as may be permitted below, no use may be enlarged, expanded, increased in intensity, or relocated and no condition of the special permit may be amended unless an application is made and approved for an amendment to the special permit or a new special permit is approved.
- (c)** Any modification to an approved and currently valid special permit to provide an accessibility improvement or other reasonable accommodation may be permitted and does not require approval of an amendment to the special permit or a new special permit.
- (d)** Minor modifications to special permits are allowed when the Zoning Administrator determines that they substantially conform to the approved special permit and do not materially alter the character of the development pursuant to subsection 8100.5.

**(4) Extension of a Special Permit<sup>103</sup>**

- (a)** A request for an extension of a special permit must be filed in writing with the Zoning Administrator a minimum of 30 days before the expiration date of the permit unless a lesser time is approved by the Zoning Administrator for good cause shown. The permit will remain valid until the request for extension is acted upon by the Zoning Administrator. Failure to request the extension in a timely manner as specified causes the special permit to expire without notice on the expiration date.
- (b)** The Zoning Administrator must review the applicant's record of compliance with those conditions and restrictions previously imposed by the BZA and make a determination on whether the special permit use still satisfies this Ordinance. They may<sup>104</sup>also inspect the special permit use.
- (c)** Upon a favorable finding, the Zoning Administrator must approve an extension of the special permit for the period of time that may be specified for a particular use or that may have been specified by the BZA.
- (d)** If it is determined that the use is not in compliance with all conditions and restrictions previously imposed by the BZA, the Zoning Administrator must, depending on the nature of the noncompliance, either deny the request for extension or require the remedy of any violation within a specified time. If the request for extension is denied or the applicant fails to correct the violation within

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<sup>102</sup> Carried forward from 8-004.

<sup>103</sup> Carried forward from 8-012.

<sup>104</sup> "Must" has been changed to "may."

the time specified, the special permit expires. The approval of a new special permit is required prior to any subsequent reinstatement of the use.

- (e) If it is determined that the use is no longer allowed as a special permit use in the zoning district in which located, the Zoning Administrator must deny the request and the special permit expires.
- (f) If the use is not in compliance with any other applicable provisions of this Ordinance, the Zoning Administrator must deny the request and notify the applicant by certified mail, return receipt requested. Within 30 days of receipt, the applicant must file an amendment application for renewal pursuant to subsection [reference to relocated 8-014] to continue the use. Failure to file an application in a timely manner causes the special permit to expire.

**(5) Amendment of a Special Permit<sup>105</sup>**

- (a) Except as provided for in subsection [reference to relocated Par. 3 and 4 of Sect. 8-004,], an amendment is a request for any enlargement, expansion, increase in intensity, relocation, reduction in land area, modification of any condition of a previously approved and currently valid special permit use, or renewal of a currently valid special permit for a new period of time.
- (b) An amendment application may be filed on a portion of the property subject to a currently valid special permit, upon a determination by the Zoning Administrator that the amendment:
  - 1. Would not adversely affect the use of the property subject to the special permit but not incorporated into the amendment application;
  - 2. Would not inhibit, adversely affect, or preclude in any manner the fulfillment of the special permit conditions applicable to the area not incorporated into the amendment application; and
  - 3. Would not increase the overall approved density or intensity for the development.

Previously approved special permit conditions that are not subject to the amendment request remain in full force and effect.

- (c) Except as qualified below, the procedure for an amendment of a special permit is the same as the procedures for approval of the original permit, including the imposition of conditions and restrictions.
- (d) An application to renew a special permit use to allow a new period of time for the operation of the use must be filed prior to the expiration date of the permit and the permit remains valid until the application is acted upon by the BZA. However, the BZA may not approve a renewal application for a use which is no longer allowed as a special permit use in the zoning district in which located. Failure to apply for renewal in a timely manner causes the special permit to expire without notice on the expiration date.
- (e) In reviewing a renewal application, the BZA will review the applicant's record of compliance with those conditions and restrictions previously imposed and determine if the use still satisfies the provisions of this Ordinance. Upon a

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<sup>105</sup> Carried forward from 8-014.



favorable finding, the BZA may approve the application. If it is determined that the use is not in accordance with all applicable provisions of this Ordinance, the BZA may, depending on the nature of the noncompliance, deny the application or for an application solely requesting a new period of time, may impose such conditions and restrictions to ensure that the use will be consistent with and will not adversely affect the use or development of neighboring properties. No alteration of a structure is required if such structure was in conformance with the provisions of this Ordinance, the Building Code and other applicable regulations at the time the special permit was first approved, unless the BZA finds the alteration necessary to protect the public health, safety, or welfare.

- (f) For an existing and currently valid special permit use which use is no longer allowed by special permit in the zoning district in which located, the BZA, upon receipt of an application, may review and approve an amendment to the special permit, provided such amendment does not permit the use to be enlarged, expanded, increased in intensity, relocated, or continued beyond any time limitation specified in the existing permit.

**(6) Expiration of a Special Permit<sup>106</sup>**

- (a) Whenever a special permit is approved by the BZA, the use approved by the permit must be established or any construction approved must be commenced and diligently pursued within such time as the BZA may have specified, or, if no such time has been specified, then within 30 months from the approval date of such permit, unless additional time is approved by the BZA to establish the use and commence construction.
- (b) The BZA may approve a request for additional time, but only in accordance with the following:
  - 1. A request is filed in writing with the Zoning Administrator prior to the expiration date. Such request must specify the basis for and amount of additional time requested and must include an explanation of why the use has not been established or construction commenced and diligently pursued in accordance with the time specified in the approval of the special permit. Such explanation may include the occurrence of conditions unforeseen at the time of special permit approval.
  - 2. It is determined by the BZA that the use is in accordance with all applicable provisions of the Zoning Ordinance, unless the Board has specifically provided that an amendment adopted subsequent to the approval of the special permit is not applicable to the request for additional time, and that approval of additional time is consistent with the public interest.
- (c) If a request is timely filed, the permit remains valid until the request for additional time is acted upon by the BZA; however, during this period, the use may not be established, nor may construction commence.
- (d) If the use or construction has not commenced in accordance with the above provisions, then the special permit automatically expires without notice.

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<sup>106</sup> Carried forward from 8-015.



**(7) Termination or Revocation of a Special Permit<sup>107</sup>**

- (a)** Unless a time limit is specified for a special permit, the permit is valid for an indefinite period of time, except that if the use or activity should cease for any reason for a continuous period of two years or more, the special permit is automatically terminated without notice. The approval of a new special permit is required prior to any subsequent reinstatement of the use.
- (b)** A special permit is revocable by the BZA at any time because of the failure of the owner or operator of the use covered by the special permit to comply with the terms or conditions of the special permit.
- (c)** Before revoking any special permit, the BZA must conduct a public hearing and provide notice in accordance with subsection [reference to relocated Sect. 18-110]. The BZA or its agent must give the permittee at least 20 days advance written notice of the hearing date either by certified mail, return receipt requested, or by hand delivery, and the notice must contain:
  - 1.** The grounds for the proposed revocation of the special permit; and
  - 2.** The date, time and place of the public hearing.
- (d)** The above provisions remain applicable to a use covered by a special permit, which use has, subsequent to the approval of the special permit, been reclassified to a special exception use, until a special exception is approved for the use due to an enlargement, expansion, increase in intensity, relocation, or modification of a special permit condition and then the revocation provisions of subsection [reference to relocated Sect. 9-016] apply.
- (e)** The provisions in this subsection do not preclude the use of any other remedy prescribed by law or by this Ordinance with respect to violations of the provisions of this Ordinance.

## 5. Minor Modifications and Variations<sup>108</sup>

### A. Minor Modification or Variation to Existing Approval<sup>109</sup>

**(1) Minor Modifications Approved by the Zoning Administrator**

- (a)** Minor modifications to proffered conditions, final development plans, PRC plans<sup>110</sup>, special exceptions, and special permits are allowed when the Zoning Administrator determines that they substantially conform to the approved application and do not materially alter the character of the development. In making this determination, the Zoning Administrator may consider factors such as topography, engineering, and design. Minor modifications may not:
  - 1.** Remove any land from or add any land to the area subject to the application;
  - 2.** Create, intensify, or expand any nonconformity with maximum or minimum requirements of the zoning district;

<sup>107</sup> Carried forward from Sect. 8-016.

<sup>108</sup> Carried forward from Sections 16-203, 16-403, and 18-204.

<sup>109</sup> Consolidation of minor modification requirements for proffered conditions, final development plans, PRC plans, special exceptions, and special permits. Those individual procedures now cross-reference this section.

<sup>110</sup> Clarifies that the minor modification provisions apply to PRC plans, based on current practice.

3. Result in an increased parking requirement, except for any additional parking required for building additions or modifications permitted under subsections 4 and 11 below;
4. Permit a more intensive use than that approved, except that religious assembly or religious assembly with private school, specialized instruction center, or child care center, may increase the number of seats, parking spaces, or students up to ten percent of the approved amount, if not expressly prohibited by the conditions;
5. Permit uses other than those approved, except that accessory uses may be permitted;
6. Reduce the effectiveness of approved transitional screening, buffering, landscaping, or open space;
7. Permit changes to bulk, mass, orientation, or location that adversely impact the relationship of the development to adjacent property, except that:
  - a. Modifications that reduce yards up to ten percent may be considered, provided they do not adversely impact adjacent property; and
  - b. Increases in building height up to ten feet and increases in percentages of rooftop coverage may be permitted to exempt solar collection systems and other energy and environmental innovative technologies.
8. Increase the amount of clearing or grading for a stormwater management facility, including any clearing or grading associated with spillways, inlets, outfall pipes, or maintenance roads that reduces non-stormwater management open space, tree save area, or landscaping area on the lot;
9. Expand hours of operation;
10. Expand the area or type of signage approved, although changes to color and typeface may be considered;
11. Include the addition of or to any building, except that accessory structures clearly subordinate to the principal use and minor building additions, including those for cellar space, may be permitted, provided that the total of all such structures or additions cannot exceed the following:
  - a. 500 square feet or five percent of the approved gross floor area up to 2,500 square feet, whichever is greater, when the total gross floor area approved does not exceed 250,000 square feet.
  - b. One percent of the approved gross floor area when the total gross floor area approved exceeds 250,000 square feet.
  - c. 250 square feet of the gross floor area of freestanding accessory structures when the total gross floor area approved is 10,000 square feet or less.<sup>111</sup>

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<sup>111</sup> “Accessory storage structure” has been updated to “freestanding accessory structure.”

- d.** The maximum allowable density or FAR in the zoning district, however, any increase in gross floor area resulting from replacing the materials of an existing building façade is not included in the calculation of FAR.
- (b)** Anyone requesting a minor modification for a building addition must send written notice in accordance with subsection 1.B(1)(k).
- (c)** When it is determined by the Zoning Administrator that a modification is not in substantial conformance with the approved application, the modification requires the approval of an amendment to the application or a new application.

## **(2) Minor Variations Approved by the Board without a Public Hearing**

The Board may approve certain requests for minor variations to proffered conditions and the associated PRC development plan, generalized development plan, conceptual development plan, and final development plan, including any approved conditions of such plans, without a public hearing in accordance with the following:

- (a)** Requests cannot materially affect proffered conditions of use, density, or intensity, and are permissible only in one or more of the following circumstances:
- 1.** To add or modify a use, provided that the proffered conditions do not specifically preclude the use, and the applicant demonstrates that the new use would have no materially greater land use impacts than the approved uses would, based on factors such as parking, trip generation, vehicular circulation, or hours of operation.
  - 2.** To increase permitted building height provided that the resultant height increase does not:
    - a.** Exceed 15 feet or 15 percent of the approved building height, whichever is less;
    - b.** Cause the building to exceed the maximum height of the zoning district; and
    - c.** Have a materially adverse impact on adjacent properties.
  - 3.** To modify minimum setback dimensions, building setbacks, or distances from peripheral lot lines shown on an approved development plan, but only if the modified dimensions would not have a materially adverse impact on adjacent properties or other proffered conditions.
  - 4.** To add, modify, or delete active or passive recreation uses at the request of the property owner or the owners' association, if the request:
    - a.** Is consistent with the objectives of the original zoning approval;
    - b.** Does not reduce the recreational uses or open space below the minimum required for the zoning district or otherwise required by the Zoning Ordinance; and
    - c.** Does not delete an approved but unbuilt facility.
  - 5.** To modify proffer commitments related to technologies (such as computer business centers) or services (such as transportation shuttles) that are

underutilized or have become ineffective or obsolete as circumstances have changed.

6. To modify architectural design, character, color, features, or materials for buildings and signs provided such modifications are of equivalent quality and do not have a materially adverse impact on adjacent properties.

- (b) When the Board approves a minor variation that affects an approved development plan, the variation is deemed to apply to the development plan and not require a separate development plan amendment.
- (c) Anyone making such a request to the Board must send written notice in accordance with the Zoning Map amendment requirements of subsection **Error! Reference source not found.** and Va. Code Sect. 15.2-2204(B).
- (d) The Board at its discretion may elect not to waive a public hearing under this section, in which case the application may be processed under **Error! Reference source not found.** below.

## 6. Variances

### A. Application Processing

- (1) The applicant must submit materials in accordance with Section 8101.
- (2) A property owner, tenant, government official, department, board, bureau, or condominium may apply to the BZA for a variance of the strict application of the terms of this Ordinance.<sup>112</sup>

### B. Review and Decision

#### (1) Approval of a Variance<sup>113</sup>

- (a) In accordance with the standards below, the BZA may grant in specific cases a variance from the strict application of a provision of this Ordinance except as qualified in subsection (4) below. This authorization does not grant the BZA the power to rezone property.
- (b) Prior to granting a variance, a public hearing must be held in accordance with the provisions of subsection [reference to relocated 18-109] above.
- (c) The concurring vote of four members of the BZA is required to grant a variance.
- (d) The BZA will make a decision within 90 days after acceptance of the application, unless an extended period is mutually agreed to by the applicant and the BZA, or unless an applicant refuses or neglects to prosecute an application in accordance with the provisions of this Ordinance.

#### (2) Required Standards for Variances<sup>114</sup>

In furtherance of the requirements of Va. Code Sect. 15.2-2309, to grant a variance, the BZA must make specific findings based on the evidence before it that the application satisfies the following requirements:

<sup>112</sup> Carried forward from 18-401.

<sup>113</sup> Carried forward from 18-402.

<sup>114</sup> Carried forward from 18-404.

- (a) That the property was acquired in good faith, and the applicant did not create any hardship for which relief is sought.
- (b) That the condition or situation of the property or the intended use of the 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 as an amendment to the Zoning Ordinance.
- (c) That the strict application of this Ordinance would unreasonably restrict the utilization of the subject property, or granting the variance would alleviate a hardship due to a physical condition relating to the subject property or improvements thereon at the time of the effective date of the Ordinance, or granting of the variance would alleviate a hardship by granting a reasonable modification to a property or improvements thereon for a person with a disability. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance.<sup>115</sup>
- (d) That such unreasonable restriction or hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (e) That the granting of the variance will not be of substantial detriment to adjacent property.
- (f) That the variance will be in conformance with the purposes of this Ordinance and will not be contrary to the public interest.

**(3) Conditions<sup>116</sup>**

Upon a determination by the BZA that the applicant has satisfied the requirements for a variance as set forth above, the BZA must then determine the minimum variance that would afford relief. In granting a variance, the BZA 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 insure that the conditions imposed are being and will continue to be met.

**(4) Unauthorized Variances<sup>117</sup>**

No variance may be granted that would:

- (a) Modify any definition set forth in Article 9: *Definitions and Ordinance Interpretation*.
- (b) Permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
- (c) Result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
- (d) Relate to nonconforming land uses.
- (e) Reduce the amount of off-street parking space required by Article 6 [*reference to relocated Article 11*].

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<sup>115</sup> Added reference to reasonable modification and the ability for the variance to expire per State Code.

<sup>116</sup> Carried forward from 18-405.

<sup>117</sup> Carried forward from 18-406.

- (f) Relate to signs.
- (g) Result in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel that has an area or width less than required by the provisions of this Ordinance at the time of the purchase or which portion has unusual physical characteristics (that are set forth as the basis for the application for a variance), which would not exist if the portion had not been detached by the purchase from the larger parcel.
- (h) Permit the establishment of any use not otherwise permitted in a floodplain.
- (i) Modify the minimum district size, lot area, lot width, or open space requirements of a cluster subdivision in the R-2 District and a cluster subdivision in a R-3 or R-4 District which has a minimum district size of three and one-half acres or greater.
- (j) Result in a relief or remedy that is available through a special exception or special permit process.<sup>118</sup>

**(5) Expiration of a Variance<sup>119</sup>**

- (a) Whenever a variance is granted by the BZA, the activity approved by the variance must be established or any construction approved must be commenced and diligently pursued within such time as the BZA may have specified, or, if no such time has been specified, then within 30 months from the granting date of the variance, unless additional time is approved by the BZA in accordance with the provisions below.
- (b) The BZA may approve a request for additional time, but only in accordance with the following:
  - 1. A request is filed in writing with the Zoning Administrator prior to the expiration date. The request must specify the basis for and the amount of additional time requested and must include an explanation of why the activity approved has not been established or construction commenced and diligently pursued in accordance with the time specified in the approval of the variance. The explanation may include the occurrence of conditions unforeseen at the time of variance approval.
  - 2. It is determined by the BZA that the variance is in accordance with the required standards for variances, and that approval of additional time is consistent with the public interest.
- (c) If a request is timely filed, the variance remains valid until the request for additional time is acted upon by the BZA; however, during this period the activity approved may not be established nor may construction commence.
- (d) If the activity or construction has not commenced in accordance with the above provisions, then the variance automatically expires without notice.

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<sup>118</sup> Added to clarify that a variance is not allowed where there is an SE option, in accordance with Va. Code 15.2-2309.2

<sup>119</sup> Carried forward from 18-407.

## 7. Site Plans and Minor Site Plans<sup>120</sup>

This section is intended to assist County agencies in the review of certain uses, which uses may also require applications for Building Permits, and to assure compliance with all applicable requirements of this Ordinance, other Chapters of The Code, and the Public Facilities Manual.<sup>121</sup>

### A. Administration of Site Plans and Minor Site Plans

- (1) The Director is responsible for the administration of Site Plans and may be assisted by the Zoning Administrator and other County officials.<sup>122</sup>
- (2) A site plan may be submitted by the property owner, a designated agent, or by a condominium in accordance with subsection [reference to relocated Sect. 2-518]. A minor site plan may be submitted by the property owner or by an agent of the property owner.<sup>123</sup>
- (3) The submission of a site plan or minor site plan does not relieve the applicant from any other applicable requirements of other County agencies, such as the Fire Marshal and the Water Authority.<sup>124</sup>
- (4) Once a site plan or minor site plan is approved, any Building Permit, Residential or Non-Residential Use Permit, or other permits may only be issued in accordance with the approved plan. Once the uses or structures approved by a minor site plan are established, the uses and structures continue to be subject to the provisions of approval and any modifications or alterations to the site. Any additional uses and structures may only be permitted in accordance with this Article.<sup>125</sup>

### B. Uses Requiring a Site Plan or a Minor Site Plan<sup>126</sup>

Prior to construction or establishment, the following uses, including modifications or alterations to existing uses, require site plan or minor site plan approval unless exempt under subsection D below:

- (1) All permitted uses in the R, C, I, and P districts.
- (2) Special exception and special permit uses that are subject to a site plan.

However, the Director may approve a partial Building Permit prior to site plan or minor site plan approval in accordance with the provisions of the Virginia Uniform Statewide Building Code. Any such approval does not guarantee the approval of a site plan or subsequent Building Permits.

<sup>120</sup> From Article 17, with revisions as noted.

<sup>121</sup> Carried forward from 17-101. Did not carry forward “further the intent of this ordinance.”

<sup>122</sup> Carried forward from 17-102.

<sup>123</sup> Carried forward from the first sentence of Par. 1 of Sect. 17-105 and the first sentence of Par. 1 of Sect. 17-108.

<sup>124</sup> Carried forward from Par. 3 of Sect. 17-105, except added “site plan.”

<sup>125</sup> Carried forward from Par. 8 of Sect. 17-105 and Par. 6 of Sect. 17-108.

<sup>126</sup> Carried forward from 17-103.



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## C. Uses and Activities Eligible for Minor Site Plans<sup>127</sup>

A minor site plan may be submitted in lieu of a site plan for the uses below when the Director determines that the use will not require the improvements set forth in subsection *[reference to relocated Par. 2 of Sect. 17-105]*, that the improvements already exist, or that the improvements may be made without a formal site plan or that the improvements are not required in accordance with the Commercial Revitalization District provisions:

- (1) Additions to existing buildings or uses when the addition does not exceed 2,000 square feet or one-third of the gross floor area of existing buildings, whichever is greater.
- (2) Any permitted use on a temporary basis for a period not to exceed two years from the date of approval; provided the Director may extend the approval for one additional two-year period.
- (3) Additions and alterations to provide an accessibility improvement or other reasonable accommodation not otherwise exempt under subsection D.
- (4) Uses that do not involve construction of gross floor area, such as tennis courts or storage yards, or modifications to existing uses that do not involve construction of gross floor area such as changes to walkways, parking lots, or landscape plans.
- (5) Any additions or alterations to existing uses that increase the number of required off-street parking spaces require the submission of a parking tabulation, and any changes to the parking layout require the submission of a parking redesignation plan in accordance with subsection 7.D below.<sup>128</sup>
- (6) The Director may approve the submission of a minor site plan for uses or modifications that are not in accordance with those uses and activities listed above, upon a determination that the approval will not adversely affect compliance with all other applicable requirements or the provision of any required improvements.<sup>129</sup>

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## D. Uses Exempt from a Site Plan or a Minor Site Plan<sup>130</sup>

Unless otherwise required by proffered conditions or development conditions of an approved rezoning, special exception, special permit, or variance, the following uses are not subject to the requirement for a site plan or a minor site plan. Such uses, however, are still subject to all other applicable provisions of this Ordinance, the Public Facilities Manual, and The Code.

- (1) Single family detached dwellings and their related accessory uses and structures.
- (2) Additions to single family attached dwellings and mobile homes, and related accessory uses and structures.
- (3) Installation of new mobile homes on existing pads within an existing mobile home park.
- (4) Agriculture.

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<sup>127</sup> Carried forward from 17-105, paragraphs 1 and 7.

<sup>128</sup> Carried forward from Sect. 17-104.

<sup>129</sup> Revised to allow the Director of LDS in lieu of the County Executive to authorize the submission of a minor site plan. This codifies the existing delegation of authority in order to facilitate efficient processing.

<sup>130</sup> Carried forward from 17-104.



- (5) Accessory uses and structures such as statues, flagpoles, fences, and walls; additions of ornamental features such as bay windows, chimneys, awnings, canopies, or other facade improvements; and accessory structures for recycling or waste disposal.
- (6) In existing open space areas or public parkland, recreational amenities that do not exceed a total of 2,500 square feet of disturbed area, such as gazebos, benches, and playground equipment; provided however, that this does not include features such as swimming pools, paved tennis, or play courts.
- (7) Associated service uses, except in accordance with (9) below.<sup>131</sup>
- (8) Changes in use to a use that has the same or lesser parking requirement than the previous use.
- (9) Changes in use to a use with a greater parking requirement than the previous use require submission and approval of a parking tabulation to demonstrate that the number of existing parking spaces on site meets the minimum off-street parking requirements for all uses. Parking tabulations must be submitted on forms provided by the Director, certified by an engineer or land surveyor authorized by the State, and must include the written consent of the property owner. For condominiums, written consent must be provided in accordance with the provisions of subsection [reference to relocated Sect. 2-518].
- (10) Parking redesignation plans prepared in accordance with Article 6 [reference to relocated Article 11].
- (11) Signs.
- (12) Home-based business uses in accordance with subsection [reference to 4102.7.J].
- (13) Bus shelters.
- (14) Public commuter park-and-ride lots that use existing off-street parking spaces accessory to another use.
- (15) Temporary public uses not to exceed 875 square feet of gross floor area for a maximum time period of two continuous years, and quasi-public park, playground, or athletic fields in the C-1 through C-8 and I-2 through I-6 Districts as an interim use.
- (16) Temporary uses and structures such as stands for retail sales of seasonal items and tents for temporary events in accordance with the standards for business promotional activities in subsection [reference to 4102.8.B] or special events in accordance with subsection [reference to 4102.8.I]
- (17) Antennas and satellite earth stations; accessory outdoor storage and display; and additions and alterations to existing uses and site modifications which may include, but are not limited to, changes or additions to decks, patios, concrete slabs, vestibules, loading docks, mechanical equipment, storage structures, generators, walkways, landscaping, paving, electric vehicle charging stations, and light poles or lighting fixtures. All such uses or activities must not:<sup>132</sup>
  - (a) Exceed 500 square feet of gross floor area or 2,500 square feet of disturbed land area as defined in Chapter 104 of The Code;

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<sup>131</sup> Updated Par. 7 and 8 of Sect. 17-104, based on revisions in new Article 4 for associated service uses.

<sup>132</sup> Added reference to EVC stations.

- (b) Exceed 750 square feet of gross floor area or 2,500 square feet of disturbed land area as defined in Chapter 104 of The Code for additions and alterations to provide an accessibility improvement or other reasonable accommodation;
- (c) Exceed the maximum floor area ratio of the district in which located or the maximum floor area ratio permitted by any proffered or development conditions;
- (d) Reduce required landscaping, open space, parking, travel aisles, or driveways, and transitional screening or barriers; and
- (e) Necessitate the installation or relocation of storm sewer, public water, or public sewer.

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## E. Required Improvements<sup>133</sup>

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 may 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 the improvements are unnecessary, and the modification or waiver will not adversely affect other required improvements and compliance with all other applicable requirements. The Director may attach conditions to the modification or waiver to assure that the results of the modification or waiver will be in accordance with the purpose and intent of this subsection.

- (1) Construction of pedestrian walkways so that occupants and patrons may walk from building-to-building or store-to-store within the site and to adjacent sites. Wherever possible, connection must 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 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 must 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 Development or the Fairfax County Park Authority 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 and generally parallel with any primary highway, a service drive must be constructed, and wherever possible, it must connect with a service drive on adjacent properties. Such service drive must be designed to be dedicated to the Virginia Department of Transportation, must be dedicated for public use as a public road, and the underlying land must be conveyed to the Board.
  - (b) Adjacent to any minor arterial or collector street, a travel lane not less than 22 feet in width must be constructed to afford access to adjoining properties.
  - (c) Service drives are not required adjacent to any street designated as a Virginia byway by the Commonwealth of Virginia Transportation Board or adjacent to the

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<sup>133</sup> Carried forward from 17-201.

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 in subsections (d)1 and (d)2, or (d)1 and (d)3 below can be satisfied.

- (d)** The Director may waive the requirement for constructing a travel lane as set forth 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 do not need be constructed. In addition, dedication and construction of sufficient vehicular and pedestrian access is 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 or 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. The easement or right-of-way must be clearly defined for the purposes intended.
- (7)** Installation of adequate signs along travel lanes or service drives to prohibit. Signs must be located on each curbed side, no more than 50 feet apart.
- (8)** Installation of an adequate drainage system for the disposition of storm and natural water in accordance with the provisions of Chapter 124 of The Code and the Public Facilities Manual. Appeals of decisions made pursuant to Chapter 124 of The Code which are appealable must be processed in accordance with Article 7 of Chapter 124.
- (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 must be installed underground in accordance with adopted County standards and Chapter 63 of The Code. All other utilities must be installed underground in accordance with standards of utility practice for underground construction, which such standards and any amendments must be furnished to the County by the utility company, and in accordance with standards furnished to and regulations issued by the applicable regulatory authority; except 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 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 are permitted;
  - (d) Utilities to be installed by someone other than the developer or his contractor are not required to 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 subsection [reference to relocated Par. 9 of Sect. 17-201,] 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 6 [reference to relocated Article 11], and landscaping and screening as required by section 5108 [reference to relocated 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 streetlights in accordance with the Public Facilities Manual.

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## F. Staff Review and Action

### (1) Minor Site Plan Review and Approval<sup>134</sup>

- (a) The Director will check the minor site plan for completeness and compliance with administrative requirements. The Director will ensure that all administrative reviews are completed on time and that action is taken by the approving authority on the minor site plan within 60 days from receipt of a complete submission, except under abnormal circumstances. The Director will, as part of a preliminary plan review, or as part of a plan review if no preliminary plan review has been conducted: (a) review the dam break inundation zone map on file with the county for the affected impounding structure; (b) notify the dam owner; and (c) within 10 days forward a request to the Department of Conservation and Recreation (DCR) to make a determination of the potential impacts of the proposed development on the spillway design flood standards required of the dam. DCR must notify the dam owner and the county of its determination within 45 days of the receipt of the request. Upon receipt of the determination from DCR, the county will complete review of the plan. If the Director has not received a determination within 45 days of DCR's receipt of the request, DCR will be deemed to have no comments, and the county will complete its review.
- (b) The provisions of subsection [reference to relocated Par. 3 of Sect. 17-108] applies to minor site plans. In addition to other conditions that the Director may impose as necessary to ensure the public interest and the purpose and intent of this

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<sup>134</sup> Carried forward from 17-105, paragraphs 4, 5, 6 and 8.

Ordinance, the Director may require, as a condition of any approval of a minor site plan, such dedication or construction of improvements, or agreement to dedicate or construct in accordance with subsection [reference to relocated Sect. 17-112], as may be necessary to adequately provide for such improvements.

- (c) If a minor site plan is disapproved, the reasons for such disapproval must be shown on the plan or in a separate document. The reasons for disapproval must identify all deficiencies in the plan related to the disapproval by reference to specific ordinances, regulations, or policies, and must identify modifications or corrections that would result in approval of the plan.

## (2) Site Plan Review and Approval<sup>135</sup>

- (a) The Director will check the site plan for completeness and compliance with such administrative requirements as are established. The Director will ensure that all administrative reviews are completed on time and that action is taken by the approving authority on the site plan within 60 days from receipt of a complete submission, except under abnormal circumstances. Site plans proposing the development or construction of affordable dwelling units in accordance with subsection [reference to relocated Part 8 of Article 2] must be processed within 280 days from the receipt of the complete application, provided such plan substantially complies with all ordinance requirements when submitted. The calculation of the review period only includes the time the site plan is in for County review and does not include such time as may be required for revisions or modifications to comply with the Ordinance. The Director will, as part of a preliminary plan review, or as part of a plan review if no preliminary plan review has been conducted: (a) review the dam break inundation zone map on file with the county for the affected impounding structure; (b) notify the dam owner; and (c) within 10 days forward a request to the Department of Conservation and Recreation (DCR) to make a determination of the potential impacts of the proposed development on the spillway design flood standards required of the dam. DCR must notify the dam owner and the county of its determination within 45 days of the receipt of the request. Upon receipt of the determination from DCR, the county will complete review of the plan. If the Director has not received a determination within 45 days of DCR's receipt of the request, DCR will be deemed to have no comments, and the county will complete its review.
- (b) All site plans that are appropriately submitted and conform to standards must be approved by the Director after having been reviewed and recommended for approval by the appropriate departments of the County relative to items such as:
  1. Location and design of vehicular and pedestrian access points and proposed road improvements, to include concurrence from the Virginia Department of Transportation.
  2. Location and adequacy of parking areas.
  3. Design of traffic circulation and control within the site and with adjoining properties.

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<sup>135</sup> Carried forward from 17-108.

4. Compliance with applicable requirements of this Ordinance, proffered conditions, or development conditions of an approved rezoning, special exception, special permit, or variance.
5. Adequacy of drainage, water supply, fire protection, and sanitary sewer facilities.
6. Compliance with applicable established design criteria, construction standards, and specifications for all improvements as set forth in the Public Facilities Manual.
7. Provision of adequate erosion and sedimentation control measures of both a temporary and permanent nature.
8. Compliance with Chapter 118 of The Code. Appeals of decisions made pursuant to Chapter 118 of The Code that are appealable must be processed in accordance with Article 8 of Chapter 118.
9. 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, 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.
10. When a mapped dam break inundation zone of a state-regulated impounding structure on file with the county is present on the site, the following requirements must be met:<sup>136</sup>
  - a. If DCR determines that the spillway design flood of an existing impounding structure would change based on the proposed development, the developer must revise the plan of development so it does not alter the spillway design flood standard of the impounding structure or make a payment towards the necessary upgrades to the affected impounding structure. The developer must pay one-half of the estimated construction costs of the upgrade plus administrative fees not to exceed one percent of the total amount of payment required or \$1,000, whichever is less. Payment will be made to the Dam Safety, Flood Prevention and Protection Assistance Fund pursuant to Va. Code Sect. 10.1-603.19:1.
  - b. If the developer does not revise the plan of development, he must submit an engineering study in conformance with the Virginia Dam Safety Act (§ 10.1-604 et seq.) and the Virginia Impounding Structure Regulations (4VAC 50-20) to DCR and the Director to determine the necessary upgrades to the affected impounding structure. The study must include a contract-ready cost estimate for upgrading the impounding structure. The cost estimate does not include maintenance, repairs or upgrades to the impounding structure not made necessary by

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<sup>136</sup> Included from AO-19-483.



the proposed subdivision. DCR must verify that the study conforms to state requirements. Following receipt of a study, DCR has 15 days to determine whether the study is complete. DCR must notify the developer of any specific deficiencies that cause the study to be determined to be incomplete. Following a determination that a submission is complete, DCR must notify the developer of its approval or denial within 45 days. Any decision must be communicated in writing and state the reasons for the disapproval.

- c. Following completion of the development, the developer must provide the dam owner and the Director with the information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone.
  - d. The above requirements do not apply to any development proposed downstream of a dam for which a dam break inundation zone map is not on file with the county as of the time of submission of the plan.
- ite plan is disapproved, the reasons for the disapproval must be shown on the or in a separate document. The reasons for disapproval must identify all iencies in the plan which cause the disapproval by reference to specific nances, regulations, or policies, and must identify modifications or needed for oval of the plan.
- approved site plan may be revised, prior to bond or security release, in the e manner as originally approved and in accordance with the Public Facilities ual. Approval of such revision does not alter the expiration date of the site as established in subsections [reference to relocated Sections 17-110 and 17- Following release of the owner's or developer's agreement package ided in accordance with subsection [reference to relocated Sect. 17-112] w, any proposed change is subject to these standards.

### (3) **Validity of Approved Site Plans and Minor Site Plans**<sup>137</sup>

- (a) In accordance with Va. Code Sect. 15.2-2261, approved site plans valid as of January 1, 1992 or site plans and minor site plans approved thereafter are valid for a period of five 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 is deemed approved when the only requirement remaining to be satisfied to obtain a Building Permit is the execution of any agreements and posting of any securities and escrows. A minor site plan is deemed to be approved on the date of such approval by the Director. When a Building Permit has been obtained for construction in accordance with an approved site plan or minor site plan, such plan approval for which a Building Permit has been obtained, is extended beyond the period of five years or such longer period as the Director may have approved for the life of the Building Permit.
- (b) While the site plan or minor site plan remains valid, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy, or plan adopted

<sup>137</sup> Carried forward from 17-110.

subsequent to the date of approval of such plan may 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 is 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 associated regulations promulgated by the Environmental Protection Agency.

- (c) 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, remains valid until completion of all structures shown on such site plan, provided:
  - 1. 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, to include location of all structures and minimum setbacks and yards;
  - 2. Bonded improvements shown on the approved construction plan either have been built or are subject to a valid improvement bond;
  - 3. 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
  - 4. Completion of construction of the recorded subdivision is diligently pursued.
- (d) The provisions of (a) and (b) above do not apply to approved minor site plans for those temporary uses permitted by subsection [reference to relocated Par. 1B of Sect. 17-105] above.

**(4) Site Plan and Minor Site Plan Extensions<sup>138</sup>**

- (a) The approval of a site plan or a minor site plan, except for temporary uses as set forth in subsection [reference to relocated Par. 1B of Sect. 17-105] 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 subsection.
- (b) A request for an extension must be filed in writing with the Director within 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 causes the site plan or minor site plan approval to expire without notice on the expiration date. If the request is timely filed, the plan remains valid until the request for an extension is acted upon by the Director. After the initial plan or extension expiration date, no

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<sup>138</sup> Carried forward from 17-111.



Building Permit may be approved until the request for an extension of plan approval is acted upon by the Director.

- (c) 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; and
  - 2. The approved plan complies with all current provisions of this Ordinance, Public Facilities Manual, Subdivision Ordinance, and 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.

**(5) Agreements and Security<sup>139</sup>**

- (a) 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 or for the decommissioning of solar power facilities and associated equipment or devices subject to Va. Code Sect. 15.2232 shown on an approved site plan or minor site plan, the owner or developer must execute an agreement to construct or demolish the physical improvements shown on the plan and submit an agreement with the application for a construction permit. This agreement must be accompanied by a fee in accordance with section [reference to fee schedule] and a security package acceptable to the County in the amount of the estimated cost of construction or removal of those physical improvements which are:
  - 1. 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;
  - 2. For vehicular ingress and egress, for public access streets, for structures necessary to ensure stability of critical slopes and for storm water management facilities;
  - 3. Required by a proffered condition or required to be bonded by a development condition of an approved special exception, special permit, or variance. The submittal of agreements and security packages for such plans for which approvals are conditions of record plat approvals are required pursuant to Chapter 101 of The Code, The Subdivision Ordinance; or
  - 4. Solar power facilities and associated equipment or devices subject to Va. Code Sect. 15.2232 to be decommissioned and required to be bonded under Va. Code Sect. 15.2-2241.2.
- (b) The agreement and security package must be provided for guaranteeing completion of all work covered 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.

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<sup>139</sup> Carried forward from 17-112, except added language per State Code amendment to include solar power facility decommissioning.

- (c) The adequacy, conditions, and acceptability of any security package will be determined by the Board or any official of the County as may be designated by resolution of the Board.
- (d) In any case where any such official has rejected an agreement or security package, the owner or developer has 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.
- (e) Periodic partial and final release of any security must be in accordance with the provisions of subsection [reference to relocated Part 8 of Article 2] and the Public Facilities Manual.
- (f) An owner of a condominium must include a declarant, unit owners' association, or unit owner, as provided for in subsection [reference to relocated Sect. 2-518].

**(6) Construction Standards, Inspection, and Supervision<sup>140</sup>**

- (a) Unless otherwise specifically provided in this Ordinance, the construction standards for all on-site and off-site improvements required must conform to the Public Facilities Manual. The Director must approve the plans and specifications for all required improvements.<sup>141</sup>
- (b) Inspections during the installation of the required on-site and off-site improvements must be made by the Director as required to certify compliance with the approved site plan and applicable County standards.
- (c) The owner must notify the Director in writing three 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 will serve to accomplish this requirement.
- (d) The owner must provide adequate supervision on the site during the installation of all required improvements and have a responsible superintendent or foreman together with one set of approved plans, profiles, and specifications available at the site at all times when work is being performed.
- (e) The installation of improvements as required do not bind the County to accept such improvements for the maintenance, repair, or operation, but such acceptance is subject to the existing regulations concerning the acceptance of each type of improvement.

**(7) As-Built Site Plans<sup>142</sup>**

- (a) Upon satisfactory completion, four copies of an as-built site plan and the corresponding filing fee must be submitted to the Director for review and approval for conformance with the approved site plan. Such plan must be prepared in accordance with the Public Facilities Manual.
- (b) 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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<sup>140</sup> Carried forward from 17-202.

<sup>141</sup> Did not carry forward "and must inspect the construction of such improvements to assure conformity" since that is covered immediately below.

<sup>142</sup> Carried forward from 17-301.

## G. Notice Requirements<sup>143</sup>

- (1)** Except as qualified below, any person who submits a site plan or site plan revision must submit written proof of notification to all owners of property wholly or partially within 500 feet of the subject property and at least one homeowners' or civic association within the immediate vicinity, as approved by the Director. Such notice must include notice to owners of properties wholly or partially within 500 feet of the subject property which lie in an adjoining county or municipality. If there are fewer than 25 different owners of property wholly or partially within 500 feet of the subject property, then additional notices must be sent to other property owners in the immediate vicinity so that notices are sent to not less than 25 different property owners.
- (2)** Notice must be sent to the last known address of the owner(s) as shown in the current real estate assessment files and must be sent by certified mail, return receipt requested. Notice to homeowners' or civic associations must be sent to the address kept on file by the County Office of Public Affairs, or if none is on file, to the registered address kept on file with the State Corporation Commission. All written notice required must include the following:

  - (a)** Tax map reference number and street address.
  - (b)** Plan name.
  - (c)** Site plan number.
  - (d)** Address and telephone number of the County office where the site plan may be reviewed or to which questions may be directed.
  - (e)** Description of the proposed development including the type of use, number of dwelling units, gross floor area, and floor area ratio for non-residential uses, area in acres, density for residential uses and the amount of open space provided.
  - (f)** Description of the location of the proposed development including the name of the nearest road, the side of the road on which the project is located, identification of the nearest existing road intersection, and the estimated distance from that intersection.
  - (g)** A statement that the proposed construction may alter storm drainage from the site.
  - (h)** Name, address, and telephone number of a representative of the applicant.
  - (i)** A reduction of the plan or plat showing the proposed development at a scale of 1" = 500', or larger on 8 ½" x 11" sheet(s).
- (3)** Such notices must state that:

  - (a)** Changes and corrections to the site plan may occur prior to approval;
  - (b)** Any person wishing to comment on the plan should submit comments to the County office identified in the notice;
  - (c)** Any person wishing to be notified of the approval of the plan should submit a written request to that effect to the County office identified in the notice; and
  - (d)** The site plan is subject to approval 30 days after the postmark date of the notice, unless releases are executed by all property owners required to be notified, in

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<sup>143</sup> Carried forward from 17-107.

which case the plan may be approved sooner than 30 days after the postmark date.

- (4) A copy of such notice must also be sent by the Director to the Board Member in whose district the subject property is located at the time of the plan submission.
- (5) No site plan may be approved within 30 days following the postmark date on the white receipts for the certified mailings, unless releases are executed by all property owners required to be notified, in which case the plan may be approved sooner than 30 days after the postmark date on the white receipts for the certified mailings. The original executed releases must be submitted to the Director on standard forms available from the Director.
- (6) Any person who submits a minor site plan, site plan, or site plan revision that proposes land disturbing activities within an off-site utility easement must send a written notice to the owner of the property containing the easement. Such notice must contain the information required by subsections G(1) through (5) above and subsection (9) below [*reference to relocated Par. 1 and 5 of Sect. 17-107*], and must also state the nature of the land disturbing activity proposed within the easement. No minor site plan, site plan, or site plan revision may be approved within 30 days of the postmark date on the white receipt for the certified mailing unless a release is executed by the property owners required to receive notice by this paragraph, in which case the plan may be approved sooner than 30 days after the postmark date. The original executed releases must be submitted to the Director on standard forms available from the Director.
- (7) In addition to the above, any person who submits a minor site plan, site plan, or site plan revision that proposes land disturbing activities within 50 feet of or within a major underground utility easement located on the property must send a written notice and a copy of the plan to the owner of the major underground utility easement. Such plan and notice must be sent by certified mail, return receipt requested, postmarked no later than five days after the initial submission of the plan to the Director, to the owner's current registered agent on file with the State Corporation Commission. The notice must contain the information required by subsections G(1) through (5) above, and subsection (9) below [*reference to relocated Par. 1 and 5 of Sect. 17-107*], except that the notice must state that the plan is subject to approval 45 days (in lieu of 30 days) after the postmark date of the notice, unless releases are executed by all major underground utility easement owners required to be notified, in which case the plan may be approved sooner than 45 days after the postmark date. A copy of the notice and plan with the corresponding postmarked white receipt must be submitted to the Director. No plan subject to this paragraph may be approved within 45 days following the postmark date on the white receipt for the certified mailing, unless releases are executed by all major underground utility easement owners required to be notified, in which case the plan may be approved sooner than 45 days after the postmark date. The original executed releases must be submitted to the Director on standard forms available from the Director.
- (8) For site plan revisions, the written notice requirements do not need to be met when the Director determines that the revision:
  - (a) Is a minor correction or adjustment to a feature shown on the previously approved plan;

- (b) Does not reduce the effectiveness of approved transitional screening, landscaping, or open space; and
  - (c) Does not permit changes to the bulk, mass, orientation, or location that adversely impacts the relationship of the development to adjacent properties.
- (9) Notice must be posted on the site by the Director within 44 days from receipt of a site plan, and no site plan may be approved within 14 days of such posting. The notification must present the following information:
- (a) Notice that a site plan has been submitted for approval.
  - (b) Address and telephone number of the County office where a copy of the site plan may be reviewed.
  - (c) Site plan number.
  - (d) Type of use.
  - (e) Tax map reference number; street address or location of property.
  - (f) Date submitted.
  - (g) Date posted.
  - (h) Date site plan is subject to approval.

## 8. Building Permits<sup>144</sup>

### A. Zoning Review of Building Permits <sup>145</sup>

The Zoning Administrator must give zoning approval before a Building Permit can be issued. Without that approval, no building or structure may be constructed, modified, added to, or demolished if Chapter 61 of The Code requires a Building Permit.

### B. Limitations on Approval of Building Permits<sup>146</sup>

- (1) A Building Permit will not be issued for any building, structure, addition, or modification on that lot if there is an existing violation or if the issuance of a building permit would cause a violation of any of the provisions of Chapter 101, Chapter 116, or Chapter 118 of The Code, this Ordinance, all other applicable laws and ordinances, any proffered conditions, or any development conditions of any approved rezoning, special exception, special permit, or variance. Appeals of decisions made pursuant to Chapter 118 of The Code must be processed in accordance with Article 8 of Chapter 118.
- (2) If required by Chapter 104 of The Code, a Building Permit will not be issued for any structure until a conservation plan has been approved by the Director in accordance with the provisions of Chapter 104 and the Public Facilities Manual.
- (3) A Building Permit will not be issued for any building or structure subject to site plan approval as required by subsection [reference to relocated Article 17] except in strict conformance with such approved site plan and approval of any required agreements under subsection [reference to relocated Sect. 17-112]. However, buildings or structures

<sup>144</sup> Carried forward from Part 6, 18-600, revised as noted. Sect. 18-604 will be relocated to Article 5, with earthborn vibration and outdoor lighting standards.

<sup>145</sup> Carried forward from 18-601, except the reference to the requirements of Ch. 61 is deleted, and from the first sentence of Sect. 18-602.

<sup>146</sup> Carried forward from 18-603.

exempt from site plan approval must be approved in accordance with the subsection [*reference to relocated Sect. 17-104*] above, and partial Building Permits must be approved in accordance with the Virginia Uniform Statewide Building Code. No partial Building Permit approval guarantees the approval of a site plan or subsequent Building Permits, Residential Use Permits, or Non-Residential Use Permits.

- (4) Approval of any Building Permit does not approve construction within any recorded easement to which the Board or the County of Fairfax is a party.
- (5) A Building Permit will not be issued for any building or structure within any major underground utility easement except in conformance with subsection [*reference to relocated Sect. 2-515*].

## 9. Residential and Non-Residential Use Permits<sup>147</sup>

### A. Permit Required for Occupancy or Use<sup>148</sup>

- (1) Occupancy, use of a structure or premises, or a change in use may not be permitted until a Residential or Non-Residential Use Permit has been approved in accordance with this section. A Residential or Non-Residential Use Permit is required to approve both the initial and continued occupancy and use of the structure or land to which it applies.
- (2) For the purpose of this Ordinance, and in the furtherance of the provisions of Chapter 61 of The Code, Buildings, a Residential or Non-Residential Use Permit, whichever is applicable, must be obtained from the Zoning Administrator before any person may:
  - (a) Occupy or use, or permit or cause to be occupied or used, any building, except for accessory structures as permitted by subsection [*reference to relocated Article 10*] and additions to existing structures that do not require site plan approval.
  - (b) Change the use, or permit or cause a change in the use, of any existing building.
  - (c) Occupy or use any vacant land except for an agricultural use.
  - (d) Make any change in the use of a nonconforming use.
  - (e) Enlarge any use with respect to the unit of measurement specified in this Ordinance as the basis for determining the amount of required off-street parking space, such as floor area, dwelling units, seats, or any other element of size of use.
  - (f) Continue any use after a change in the proprietorship of such use, except residential dwellings or an agricultural use.<sup>149</sup>
- (3) Written application for a Residential or Non-Residential Use Permit for any building must be made after the completion of the work covered by the Building Permit and prior to occupancy.<sup>150</sup> If the proposed use is in conformance with this Ordinance, all other applicable laws and ordinances, proffered conditions, and conditions of special

<sup>147</sup> Carried forward from Part 7, 18-700. Deleted Sect. 18-705 for the issuance of a RUP or Non-RUP certifying conformance with the Ordinance when regulations change.

<sup>148</sup> Carried forward from Sections 18-701, 18-702, and 18-703, except Par. 4 of Sect. 18-703 is included with submission requirements, and Par. 3 is addressed with the overlay districts.

<sup>149</sup> This standard has been changed from “single family dwellings” to “residential dwellings” to reflect the current application of the Ordinance.

<sup>150</sup> Replaced the requirement for the application to be made at the same time as the application of a building permit with the requirement that it be made prior to occupancy to reflect current process.



exceptions, special permits, or variances and meets the requirements of subsection 8.B below [*reference to relocated Sect. 18-704*], the applicable permit will be issued.

- (4) Written application for a Residential or Non-Residential Use Permit for the use of vacant land or for a change in the use of land or a building, for a change of a nonconforming use, for the enlargement of a use or for the continuation of a use, must be made to the Zoning Administrator. If the proposed use is in conformance with this Ordinance, all other applicable laws and ordinances, proffered conditions, and conditions of special exceptions, special permits, or variances as certified to the Zoning Administrator by the officers, bodies, or agencies responsible for the administration of such laws and ordinances, the applicable permit will be issued.

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## B. Minimum Requirements<sup>151</sup>

The following minimum requirements must be met prior to the issuance of a Residential or Non-Residential Use Permit:

- (1) The structure must have passed all applicable final inspections such as building, electrical, plumbing, mechanical, Fire Marshal, and Health Department inspections.
- (2) The lot must be final graded, and sodded or seeded. An exception may be granted by the Director in the winter when seeding, sodding, or final grading is not possible, or when extraordinarily sustained inclement weather conditions have occurred, and then the lot must be rough graded and completely mulched where disturbed.
- (3) When exceptions for final grading, sodding, or seeding are granted during the winter, the lot must be brought into full conformance no later than the first day of the succeeding month of May, or as determined by the Director.<sup>152</sup>
- (4) The landscaping and screening requirements of section 5108 [*reference to relocated Article 13*] or of any approved proffered condition, special exception, special permit, or variance must be completed; however, that completion of the requirements may be delayed when justification satisfactory to the Director is provided. Justification must include an agreement and bond with surety satisfactory to the Director for completion in accordance with a firm schedule for timely completion.
- (5) Fire hydrants serving the structure must be operative.
- (6) All walks adjacent to the street and between the driveway or parking lot and the structure must be complete. In cases of inclement weather, a substitute, impervious, or all-weather surface sidewalk may be provided; however, all such sidewalks must be brought into full conformance no later than the first day of the succeeding month of May. For the purpose of this provision, an all-weather surface is defined as four inches of crushed stone, properly compacted and maintained.
- (7) All streets and driveways necessary to provide access for the structure to a public street, and all parking areas in residential developments, must be complete except for a final surface. Streets must have a minimum of a two shot bituminous surface treatment, as required in applicable specifications. When bituminous concrete is required as pavement, the base asphalt courses must be placed. The surface layer may be applied after a Residential Use Permit is issued.

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<sup>151</sup> Carried forward from Sect. 18-704, except Par. 13 is located with submission requirements.

<sup>152</sup> Added "or as determined by the Director."

- (8) With respect to Residential Use Permits during the period November 1 through April 30, when applicable specifications preclude the use of bituminous concrete or asphalt, an all-weather surface is acceptable. All-weather surface is defined as six inches of crushed stone, properly compacted and maintained. Manholes will be graded so as not to be a hazard to private vehicles and emergency equipment, and to preclude infiltration of surface water. The use of an all-weather surface is considered temporary in nature and should be brought to a properly paved condition as required above as soon as applicable specifications may be met.
- (9) During May 1 through October 31, a properly paved surface is required prior to issuance of a Residential Use Permit. In instances where the builder cannot meet the requirements for a properly paved street for reasons beyond their control, the Director may waive this requirement for a period not to exceed 45 days.
- (10) All storm and sanitary sewers serving the lots for which a Residential Use Permit is requested must be completed and approved.
- (11) Curb and gutter in front of the structure must be complete and in place.
- (12) All trails and walkways required by the provisions of subsection [reference to relocated Sect. 17-201] must be clearly delineated by stakes, and the minimum of a gravel surface must be in place.
- (13) Street name signs must be installed and official building numbers (street addresses) posted.
- (14) The performance standards must be satisfied pursuant to subsections [reference to relocated subsections for earthborn vibration and outdoor lighting] before a Non-Residential Use Permit may be issued.
- (15) If subject to a Pro Rata Road Reimbursement District established pursuant to Article 3, Chapter 101 of The Code, the reimbursement payment requirements of Section 101-3-11 must be satisfied.
- (16) If in a floodplain, the provisions of subsection [reference to relocated Par. 12 of Sect. 2-905] must be satisfied.

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### C. Permit Does Not Validate Any Violation<sup>153</sup>

A Residential or Non-Residential Use Permit does not validate any violation of any provision of any law or ordinance.

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### D. Revocation of Permit<sup>154</sup>

The Zoning Administrator may revoke an approved Residential or Non-Residential Use Permit when it is determined that the approval was based on a false statement or misrepresentation of fact by the applicant, or as provided for in subsection [reference to relocated Sect. 18-900, violations, infractions, and penalties].

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<sup>153</sup> Carried forward from 18-706.

<sup>154</sup> Carried forward from 18-707.



## 10. Administrative Permits<sup>155</sup>

- A.** The Zoning Administrator may revoke an administrative permit at any time if the owner or operator of the use fails to observe all requirements of the law with respect to maintenance and conduct of the use and all conditions in connection with the permit that were designated by the Zoning Administrator.
- B.** Notice of revocation will be made by letter from the Zoning Administrator to the owner or operator, hand-delivered or mailed, return receipt requested, setting forth the grounds upon which the permit was revoked, the date and time the revocation is effective, and informing of the appeals procedure. Upon receipt of the notice, operation of the activity must cease.
- C.** These provisions do not preclude the use of any other remedy prescribed by law or by this Ordinance with respect to violations of the provisions of this Ordinance.
- D.** Other procedural requirements applicable to specific administrative permits are located within [reference to new Article 4].

## 11. Appeals

### A. Application Processing

#### (1) Initiation<sup>156</sup>

- (a)** The applicant must submit materials in accordance with Section 8101.
- (b)** 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 the decision to the BZA, except an appeal which relates to a proffered condition must be taken to the Board as provided for in subsection [reference to relocated Par. 10 of Sect. 204].

#### (2) Time Limit on Filing<sup>157</sup>

- (a)** Except as set forth below, all appeals must be filed within 30 days from the date of the decision appealed by filing an appeal application with the Zoning Administrator and the BZA.
- (b)** Appeals for notices of violation involving the following violations must be filed within ten days from the date of the notice with the Zoning Administrator and the BZA:
  - 1.** Occupancy of a dwelling unit in violation of subsection [reference to relocated Sect. 2-502].
  - 2.** Parking of inoperative motor vehicles, as defined in Chapter 110 of The Code, in violation of subsection [reference to relocated Par. 13 of Sect. 10-102].
  - 3.** Parking a commercial vehicle in an R district in violation of subsection [reference to relocated Par. 16 of Sect. 10-102].

<sup>155</sup> This section from 8-803 is made applicable to all administrative permits.

<sup>156</sup> Carried forward from 18-301.

<sup>157</sup> Carried forward from 18-303.

4. 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 subsection [reference to relocated Par. 8 of Sect. 11-102].
5. Installation of prohibited signs on private property in violation of subsection [reference to relocated Par. 2 and Paragraphs 3A through 3E of Sect. 12-106].
6. Installation, alteration, refacing, or relocation of a sign on private property in violation of subsection [reference to relocated Par. 1 of Sect. 12-104].
7. Other short-term, recurring violations similar to those listed above.

(c) All appeal applications must specify the grounds for such appeal.

**(3) Stay of Proceedings<sup>158</sup>**

An appeal will stay all proceedings related to the action appealed 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 their opinion, cause imminent peril to life or property. In that case, the proceedings will not be stayed except 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.

**(4) Withdrawal of Application for Appeal<sup>159</sup>**

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 partial fee will be refunded for a withdrawn application.

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## B. Review and Decision

**(1) Authorization<sup>160</sup>**

The BZA hears and decides all cases of appeal by persons as set forth in this section. The BZA also hears and decides applications for interpretation of any district boundary if uncertainty remains after application by the Zoning Administrator of the rules specified in subsection [reference to relocated Sect. 2-204].

**(2) Processing<sup>161</sup>**

- (a) Prior to the date of the public hearing, the Zoning Administrator will forward to the BZA the records upon which the decision being appealed was based.
- (b) The BZA will process all applications for appeal in accordance with the provisions of subsection [reference to relocated Part 2 of Article 19].

**(3) Decision on Appeals<sup>162</sup>**

- (a) The BZA may affirm or reverse, wholly or partly, or may modify the order, requirement, decision, or determination appealed from.

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<sup>158</sup> Carried forward from 18-307.

<sup>159</sup> Carried forward from 18-308.

<sup>160</sup> Carried forward from 18-302. Reference to the Zoning Administrator is captured in Article 1 with their duties.

<sup>161</sup> Carried forward from 18-305. Updated this subsection and A(3) to reflect current practice for transmission to BZA.

<sup>162</sup> Carried forward from 18-306.

- (b) The concurring vote of four members of the BZA is required to reverse any order, requirement, decision, or determination of the Zoning Administrator or any other administrative officer under this Ordinance.
- (c) The BZA will make a decision within 90 days after acceptance of the application, unless an extended period is mutually agreed to by the appellant and the BZA.

## 8101. Submission Requirements<sup>163</sup>

### 1. General Requirements for All Applications

- A. Submission requirements for appeals and applications in section 8100 are included in this section. Submission requirements are generally divided into three categories – administrative and property documentation; plan or plat requirements; and supporting reports and studies.
- B. Regardless of the number of copies specified below, if the application is submitted electronically, only one copy of each submission requirement is needed, unless otherwise determined by the Zoning Administrator or Director. Staff may request one or more paper copies of any of the materials at any point in the process.<sup>164</sup>
- C. All applications, except for Minor Site Plans and Site Plans, must include a complete application signed by the applicant on forms provided by the County.
- D. All applications must include the applicable fee in accordance with section 8102 or Appendix Q of the County Code.
- E. Submission requirements, except for the application form, legal description, affidavit, and application fee, if applicable, may be modified or waived by the Zoning Administrator or Director when it has been determined that the requirement is not necessary for review of the application.<sup>165</sup>
- F. All statements, plans, profiles, elevations, and other materials submitted become part of the record of the hearing on an application.<sup>166</sup>
- G. Stormwater Management Plan:<sup>167</sup>

For all generalized development plans, final development plans, PRC development plans, PRC plans, and, except where noted, for special exception and special permit plats, the following stormwater management information must be included on the plan or plat:

  - (1) The approximate location, size of the footprint in acres, and type of all proposed stormwater management facilities, including the full extent of side slopes,

<sup>163</sup> The submission requirements for individual procedures were relocated to this new standalone section and were modified to consolidate similar materials where possible and clarify current county practice. Additional notes on specific changes are provided throughout this section. It is anticipated that companion charts will be created by application type.

<sup>164</sup> New standard to allow for electronic submissions of any type of application or plan.

<sup>165</sup> New standard that builds on other provisions for modification of submission requirements.

<sup>166</sup> Carried forward from Par. 17 of Sect. 18-202 and applied generally to all applications.

<sup>167</sup> Carried forward from Par. 2J of Sect. 8-011, Par. 2J of Sect. 9-011, Par. 1N of Sect. 9-615, Par. 2A of Sect. 9-622, Par. 4L of Sect. 16-302, Par. 1O of Sect. 16-303, Par. 2K of Sect. 16-501, Par. 1A and 2A of Sect. 16-502, and Par. 3F of Sect. 18-203.

embankments, spillways, dams, and approximate water surface elevation for design storms, if applicable.

- (2) A preliminary stormwater management plan with information about the adequacy of downstream drainage, including the capacity of any storm drainage pipes and other conveyances where the stormwater runoff from the site will be conveyed.

- (3) In addition to the above, when there is 2,500 square feet or more of land disturbing activity on the entire application property, the preliminary stormwater management plan must contain the following:

**(a) A graphic depicting:**

1. 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.
2. The approximate on-site and off-site areas to be served by each stormwater management facility, along with the acreage draining to each facility.
3. A preliminary layout of all on-site drainage channels, outfalls and pipes, including inlet and outlet pipes within the stormwater management facility.
4. 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.
5. Proposed landscaping and tree preservation areas in and near the stormwater management facility.
6. 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 or stream bank stabilization measures.

**(b) A preliminary stormwater management narrative setting forth the following:**

1. Descriptions of how the water quantity, water quality, and adequate outfall requirements of the Stormwater Management Ordinance and Public Facilities Manual will be met.<sup>168</sup>
2. The estimated area and volume of storage of the stormwater management facilities proposed to meet water quantity, water quality, and adequate outfall requirements.
3. 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 must 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 one square mile, whichever comes first.

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<sup>168</sup> Revised to reference the Stormwater Management Ordinance and PFM.

## 2. Zoning Map Amendments (Rezoning)

### A. Administrative and Property Documentation<sup>169</sup>

The following information is required for any rezoning application submitted by the owners, contract purchasers, or a condominium, or their agents. In addition, the affidavit is required for all applications as noted below:

- (1) Four copies of a certified plat of the subject property with the following information:
  - (a) Boundaries of the property, with bearings and distances of the perimeter property lines, and of each existing and proposed zoning district;
  - (b) Total area of the property and each existing and proposed 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;
  - (d) Location of all existing building and structures;
  - (e) Names and route number of all boundary roads or streets, and width of existing rights-of-way; and
  - (f) Seal and signature of person preparing the plat.
- (2) Four copies of a legal description of the property, including metes and bounds of each zoning district proposed.
- (3) One copy of the portion of the current Fairfax County Zoning Map showing the boundaries of the subject site clearly outlined, covering the area generally within a 500-foot radius of the proposed use.<sup>170</sup>
- (4) If the application is filed by an agent, contract purchaser, or lessee, it must include a notarized statement, signed by the property owner, indicating endorsement of the application. For a condominium, a notarized written statement by the property owner must be provided in accordance with subsection [reference to relocated Sect. 2-518].
- (5) An affidavit is required for all applications for map amendments and when a final development plan<sup>171</sup> is not submitted in conjunction with a conceptual development plan, except: a) an application constituting a comprehensive zoning plan; b) an ordinance applicable throughout the County; or c) an application initiated by the Board that involves more than ten parcels that are owned by different individuals, trusts, corporations, or other entities. The affidavit must:
  - (a) Be completed on the affidavit form approved by the Board and provided by the County;
  - (b) Be signed by the applicant or authorized agent and notarized;
  - (c) Include a statement whether a member of the Board 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, or through an interest in a partnership;

<sup>169</sup> Carried forward from Sect. 18-202.

<sup>170</sup> Updated language because section sheets are no longer needed.

<sup>171</sup> Carried forward from Paragraphs 1G and 2I of Sect. 16-502.

- (d) Include a certified statement showing the agent's authorization to act in such capacity if the applicant's agent completes the application or affidavit;
  - (e) Be reaffirmed prior to each public hearing on the application in accordance with the reaffirmation procedure outlined on the affidavit form.
  - (f) For an affordable dwelling unit development, include for each parcel of the site or portions thereof at one location, as defined in subsection [reference to relocated Par. 1 of Sect. 2-802]: a) the names of the owners; and b) the Fairfax County Property Identification Map Number, parcel size, and zoning district classification.
- (6) For a PRC Plan, a boundary survey of the property must be provided, with an error of closure within the limit of one in 20,000 related to true meridian and showing the location and type of boundary evidence. The survey may be related to the U.S.C. & G.S., State grid north, if the coordinates of two adjacent corners are shown. Such information may be obtained from recorded plats in the case of lots and subdivisions recorded subsequent to September 1, 1947.

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## B. Plan Requirements for Residential, Commercial, and Industrial Districts<sup>172</sup>

23 copies of a Generalized Development Plan (GDP) must be submitted. The GDP, any resubmissions and supporting graphics, must be certified by a professional engineer, architect, landscape architect, or land surveyor authorized to practice as such by the State. The GDP must be on a maximum sheet size of 24" x 36", and if presented on more than one sheet, match lines must indicate where the several sheets join. In addition, one 8.5" x 11" reduction of the plan, and resubmissions and supporting graphics must be submitted. The GDP must include the following:

- (1) Scale of not less than 1" = 100';
- (2) North arrow, with north, to the extent feasible, oriented to the top of the plan;
- (3) Except for single family detached dwellings, the approximate location and dimensions of all proposed structures and uses, to include the maximum height in feet of all structures and penthouses;<sup>173</sup>
- (4) The proposed traffic circulation plan, including major streets and pedestrian, bike or bridle paths, and the location of all trails required by the comprehensive plan;
- (5) Proposed major open space areas and community and public facilities;
- (6) Proposed plan for major sanitary sewer improvements;
- (7) A stormwater management plan in accordance with subsection 8101.1;
- (8) Location of all existing utility easements<sup>174</sup>
- (9) The number of required and provided parking spaces;
- (10) Existing topography with a maximum contour interval of two feet and a statement indicating whether it is air survey or field run;
- (11) A delineation of scenic areas or natural features deserving of protection or preservation, and a statement of how it will be accomplished;

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<sup>172</sup> Carried forward from 18-203. The provision to submit a development plan within 60 days after acceptance is not carried forward.

<sup>173</sup> All references to angle of bulk plane are deleted throughout.

<sup>174</sup> Revised to require all easements to be shown, not only those over 25' in width.

- (12) A statement or visual presentation of how adjacent and neighboring properties will be protected from adverse effects from the proposed development, to include vehicular access plans and dimensions of all peripheral yards;
- (13) A delineation of all existing structures, their date of construction, if known, and whether they will be retained or demolished;
- (14) The proposed maximum gross floor area and FAR for all uses other than residential;
- (15) The proposed maximum number of dwelling units, and the density and open space calculations in accordance with subsection [reference to relocated Sections 2-308 and 2-309];
- (16) A statement of the proposed special amenities;
- (17) A statement of the public improvements, both on and off-site, that are proposed for dedication or construction, and an estimate of the timing for the improvements;
- (18) The approximate development schedule;
- (19) Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County; delineation of any Resource Protection Area and Resource Management Area; the approximate delineation of any environmental quality corridor as defined in the 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;
- (20) Any 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.
- (21) A plan showing existing vegetation, including the limits of clearing and vegetation to be preserved, and proposed landscaping and screening in accordance with the provisions of section 5108 [reference to relocated Article 13], and an existing vegetation map when there is 2,500 square feet or more of land disturbing activity;
- (22) Approximate delineation of any grave, object, or structure marking a place of known burials, and a statement indicating how the proposed development will impact the burial site.
- (23) A statement that confirms the ownership of the subject property, and the nature of the applicant's interest; and
- (24) A delineation of any existing dam break inundation zone and, when a state regulated impoundment is proposed to be constructed or altered, an approximate delineation of the future dam break inundation zone.

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### C. Plan Requirements for Planned Districts Except the PRC District

- (1) 23 copies of a **Conceptual Development Plan** (CDP) must be submitted. A CDP is subject to the same requirements as a Generalized Development Plan above, except as modified below:<sup>175</sup>

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<sup>175</sup> Carried forward from 16-501, except the standards for submitting a concurrent FDP have been deleted, as the FDP requirements are already covered below.



**For a rezoning to the PDH, PDC, PRM, or PCC District:**

- (a) A vicinity map at a scale of not less than 1" = 2,000' must be included;
- (b) A statement or visual presentation must be included of how adjacent and neighboring properties will be protected from any adverse effects prompted by the proposed development, to include vehicular access plans, proposed measures of screening, and dimensions of all peripheral yards;
- (c) The proposed plan for major sanitary sewer improvements in subsection (2)(f) does not need to be included;
- (d) Instead of the stormwater management plan in subsection (2)(g), the CDP must indicate the approximate location and estimated size of all proposed stormwater management facilities, and a statement as to the type of facility proposed;
- (e) The existing topography as required by subsection (2)(j) may have a maximum contour interval of five feet instead of two feet;
- (f) The density calculations in subsection (2)(o) must also specify those units obtained by the bonus provisions, and a breakdown of the approximate number of units by type and the range of approximate lot sizes for single family detached dwellings;
- (g) The distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor in subsection (2)(s) does not need to be included; and
- (h) In subsection (2)(u), the proposed landscaping and screening in accordance with the provisions of section 5108 [*reference to relocated Article 13*] do not need to be included.

**For a rezoning to the PTC District:**

- (i) A vicinity map at a scale of not less than 1" = 2,000' must be included;
- (j) Existing topography must be shown with a maximum contour interval of two feet, and a statement indicating whether it is air survey or field run, except where existing ground is on a slope of less than two percent, then either one foot contours or spot elevations must be provided where necessary, but not more than 50 feet apart in both directions;
- (k) The proposed plan for major sanitary sewer improvements does not need to be included;
- (l) The approximate location and arrangement of all proposed structures and uses, including the proposed build-to lines, the distances of all structures from the development boundaries and streets, the streetscape and landscape treatments to be provided, and the maximum height in feet of all structures and penthouses;
- (m) The on-site vehicular and pedestrian circulation system, including the location and width of all streets, driveways, entrances to parking areas, parking structures and loading areas, walkways, bicycle paths, and all trails required by the adopted Comprehensive Plan. Connections with off-site streets and trails that are existing or are required by the adopted Comprehensive Plan, including the grid of streets and streetscape;



- (n) The limits of clearing and the proposed landscaping and screening in accordance with the provisions of section 5108 [*reference to relocated Article 13*] do not need to be included;
  - (o) Instead of the stormwater management plan, the CDP must indicate the approximate location and estimated size of all proposed stormwater management facilities, and a statement as to the type of facility proposed;
  - (p) A statement setting forth the maximum gross floor area and FAR proposed for all uses, including the amount of density or floor area applied for under the bonus provisions, and the calculations supporting the specific development provisions giving rise to such bonus application must be included;
  - (q) The density calculations must also specify those units obtained by the bonus provisions, and a breakdown of the approximate number of units by type and the range of approximate lot sizes for single family detached dwellings; and
  - (r) The open space calculations must also include off-site open space and the area in developed recreational open space in accordance with the adopted Comprehensive Plan and generally based on the provisions of subsection [*reference to relocated Sect. 2-309*].
- (2) 23 copies of a **Final Development Plan** (FDP) must be submitted. The FDP, any resubmissions and supporting graphics, must be certified by a professional engineer, architect, landscape architect, or land surveyor authorized to practice as such by the State. The FDP must be on a maximum sheet size of 24" x 36", and if presented on more than one sheet, match lines must indicate where the several sheets join. In addition, one 8.5" x 11" reduction of the plan, and resubmissions and supporting graphics must be submitted. The FDP must include the following:<sup>176</sup>
- (a) Scale of not less than 1" = 100';
  - (b) North arrow, with north, to the extent feasible, oriented to the top of the plan;
  - (c) A vicinity map at a scale of not less than 1" = 2,000';
  - (d) Bearings and distances of the perimeter property lines;
  - (e) Total area of the property in square feet or acres;
  - (f) Names and route numbers of boundary streets and the width of existing right(s)-of-way. Any 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;
  - (g) Existing topography and a statement indicating whether it is air survey or field run, with a maximum contour interval of two feet; except where existing ground is on a slope of less than two percent, then either one-foot contours or spot elevations must be provided where necessary, but not more than 50 feet apart in both directions;
  - (h) The location and arrangement of all proposed uses and structures, including a preliminary subdivision layout, if subdivision is proposed;<sup>177</sup>

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<sup>176</sup> Carried forward from Sect. 16-502.

<sup>177</sup> Edited for consistency among P districts.

- (i) Except for single family dwellings, the maximum height in feet, to include penthouses, of all buildings, and the number of floors both above and below or partially below finished grade;
  - (j) The distances of all structures from the development boundaries and streets.
  - (k) The vehicular and pedestrian circulation system, including the location and width of all streets, driveways, entrances to parking areas, parking structures and loading areas, walkways, bicycle and bridle paths, and all trails required by the adopted Comprehensive Plan;
  - (l) Off-street parking and loading areas and structures;
  - (m) Open space areas, specifying their proposed treatment or improvement and delineating the areas proposed for specific types of recreational facilities;
  - (n) A plan showing existing vegetation, including the limits of clearing and vegetation to be preserved, and proposed landscaping and screening in accordance with the provisions of section 5108 [*reference to relocated Article 13*], and an existing vegetation map when there is 2,500 square feet or more of land disturbing activity;<sup>178</sup>
  - (o) Approximate delineation of any grave, object, or structure marking a place of known burials, and a statement indicating how the proposed development will impact the burial site;
  - (p) A plan or statement showing how public utilities are, or will be, provided;
  - (q) A stormwater management plan in accordance with subsection 8101.1;
  - (r) Location and width of all existing and proposed public utility easements;<sup>179</sup>
  - (s) Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County; delineation of any Resource Protection Area and Resource Management Area; the approximate delineation of any environmental quality corridor as defined in the 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;
  - (t) When the development is to be constructed in sections, a final sequence of development schedule showing the order and an approximate completion date for each section; and
  - (u) The extent of any dam break inundation zone of a state-regulated impounding structure must be identified and labeled with the name of the impoundment and the date of the study that established the inundation zone. This requirement does not apply to any development proposed downstream of a dam for which a dam break inundation zone map is not on file with the county as of the time of submission of the plan. When a state-regulated impounding structure is proposed to be constructed or altered, an approximate delineation of the future dam break inundation zone must be provided.
- (3) An FDP in the PTC District is subject to the same requirements as an FDP above, except as modified below:

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<sup>178</sup> Edited to reference relocated Article 13 for consistency with SE plat requirements.

<sup>179</sup> Revised to require all easements to be shown, not only those over 25' in width.

- (a) In addition to the circulation system in subsection (b)11, connections with off-site streets and trails that are existing or are required by the adopted Comprehensive Plan, including the grid of streets and streetscape must be included;
- (b) The open space areas in subsection (b)13 also includes any off-site open space;
- (c) Detailed building design plans must be provided to include architectural sketches or elevations of structures; information on the type, location and height of all rooftop structures and features and the percent of roof area covered by such structures; information on building materials and signs.
- (d) A statement and graphic depiction must be provided of the types, sizes and locations of the urban design amenities proposed within the PTC District including pedestrian linkages, plazas, courtyards, bicycle trails, outdoor recreation facilities, ponds, fountains, public parks and any seating, lighting, or special paving.

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#### D. Plan Requirements for the PRC District:

(1) Comprehensive Plan Amendment:<sup>180</sup>

The submission of a proposed amendment to the adopted Comprehensive Plan of the County to permit a planned residential community (PRC District) must include the items listed below. Once the PRC District is established, any amendment to the comprehensive plan initiated by an applicant, other than the Planning Commission or Board, will require submission of those items deemed necessary for the review by the Director of DPD.

- (a) A list of the tax map reference numbers.
- (b) A statement explaining the relationship of the proposed PRC District to the adopted comprehensive plan.
- (c) The proposed densities of population and the proposed number of dwelling units in low-density, medium-density, and high-density residential areas.
- (d) The general location and intensity of proposed neighborhood convenience centers, village centers, town centers, and convention and conference centers.
- (e) The general location of proposed major open space and recreation areas, including the nature of proposed recreational facilities and parks.
- (f) The general location of public or community uses including schools and religious assembly.
- (g) The general location and character of the proposed major roads, public transportation, trails, public utility, and storm drainage systems.
- (h) The proposed general development schedule.
- (i) A statement of the public facilities, roadway improvements, and public utilities that will be required to serve the PRC District.
- (j) Any additional information as deemed necessary by the Director of DPD.

(2) 23 copies of a **PRC Development Plan** must be submitted. A PRC Development Plan is subject to the same requirements as a Generalized Development Plan in subsection (2) above, except as modified below:<sup>181</sup>

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<sup>180</sup> Carried forward from 16-301.

<sup>181</sup> Carried forward from 16-302.

- (a) A vicinity map at a scale of not less than 1" = 2,000' must be included;
  - (b) The maximum building height must be shown, except for a development plan for the initial establishment of a PRC District, building height is optional.
  - (c) A delineation of any Resource Protection Area and Resource Management Area must be included;
  - (d) Instead of subsection (2)(c), the following must be shown: the general location of all proposed land uses, including neighborhood convenience, village, convention, and conference and town centers;
  - (e) The traffic circulation plan required in subsection (2)(d) may be modified for a development plan for the initial establishment of a PRC District to show the approximate location of the required features;
  - (f) For subsection (2)(i), the parking schedule is optional for a development plan for the initial establishment of a PRC District;
  - (g) The maximum gross floor area and FAR for all uses other than residential as required by subsection (2)(n) may be modified for a development plan for the initial establishment of a PRC District to indicate the approximate gross floor area and FAR;
  - (h) Instead of subsection (2)(o), the following must be included: a tabular statement with the maximum number of dwelling units proposed by type, the corresponding population totals based on the computation factors of subsection [reference to relocated Sect. 6-308], the maximum density calculation based on subsection [reference to relocated Sect. 2-308], and the range of approximate lot sizes for single family detached dwellings. However, for a development plan for the initial establishment of a PRC District, the applicant may choose to include only the approximate number, type, and density of dwelling units in the residential areas;
  - (i) For subsection (2)(u), only an existing vegetation map when there is 2,500 square feet or more of land disturbing activity must be included;
  - (j) The following subsections are not required: (2)(f), (l), (m), (q), (s), and (t).
- (3) 23 copies of a **PRC Plan** must be submitted. The PRC Plan, any resubmissions and supporting graphics, must be certified by a professional engineer, architect, landscape architect, or land surveyor authorized to practice as such by the State. The plan must be on a maximum sheet size of 24" x 36", and if presented on more than one sheet, match lines must indicate where the several sheets join. In addition, one 8.5" x 11" reduction of the plan, and resubmissions and supporting graphics must be submitted. The PRC Plan must include the following:<sup>182</sup>
- (a) Scale of not less than 1" = 100';
  - (b) North arrow, with north, to the extent feasible, oriented to the top of the plan;
  - (c) A vicinity map at a scale of not less than 1" = 2,000';
  - (d) Total area of the property in square feet or acres;
  - (e) Existing topography and a statement indicating whether it is air survey or field run, with a maximum contour interval of two feet;

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<sup>182</sup> Carried forward from 16-303.

- (f) The general location and arrangement of all existing and proposed uses and structures, and, if known, on adjacent properties;
- (g) Except for single family dwellings, the approximate height in feet, to include penthouses, and the number of floors both above and below or partially below finished grade of all buildings on the site and, if known, on adjacent properties;<sup>183</sup>
- (h) The distances of all structures from the development boundaries and streets.
- (i) The vehicular and pedestrian circulation system, including the location and width of all existing, platted, and proposed streets and easements, including names and route numbers, the approximate width and typical cross sections, including acceleration, deceleration, and turn lanes, service drives, entrances to parking areas and parking structures, the location and width of walkways, bicycle and bridle paths, and all trails required by the adopted Comprehensive Plan;
- (j) Off-street parking and loading areas and structures with typical space and aisle dimensions;
- (k) Open space areas, specifying their proposed treatment or improvement and delineating the areas proposed for specific types of recreational facilities;
- (l) Approximate delineation of any grave, object, or structure marking a place of known burials, and a statement indicating how the proposed development will impact the burial site;
- (m) A plan or statement showing how public utilities are, or will be, provided. In addition, the approximate location of existing and proposed storm and sanitary sewer lines;
- (n) A stormwater management plan in accordance with subsection 8101.1;
- (o) Location and width of all existing and proposed public utility easements;<sup>184</sup>
- (p) Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County; delineation of any Resource Protection Area and Resource Management Area; the approximate delineation of any environmental quality corridor as defined in the 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;<sup>185</sup>
- (q) When the development is to be constructed in sections, a proposed sequence of development schedule showing the order and an approximate completion date for each section; and
- (r) The extent of any dam break inundation zone of a state-regulated impounding structure must be identified and labeled with the name of the impoundment and the date of the study that established the inundation zone. This requirement does not apply to any development proposed downstream of a dam for which a dam break inundation zone map is not on file with the county as of the time of submission of the plan. When a state-regulated impounding structure is proposed

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<sup>183</sup> Added references to penthouses and above and below grade for consistency with FDP requirements.

<sup>184</sup> Revised to require all easements to be shown, not only those over 25' in width.

<sup>185</sup> Revised and expanded for consistency with FDP requirements.

to be constructed or altered, an approximate delineation of the future dam break inundation zone must be provided.

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## E. Supporting Reports and Studies

- (1) A map identifying the classification of soil types at a scale not less than 1" = 500', based upon the County of Fairfax Soils Identification Maps.<sup>186</sup>
- (2) A statement of justification, dated and signed.<sup>187</sup>
- (3) A statement explaining the compliance of the development with the criteria of the comprehensive plan.
- (4) A statement that the proposed development conforms to all applicable ordinances, regulations, and adopted standards. Any waiver, exception, or variance must be noted with the justification for the modification.
- (5) If the proposal includes a request for a waiver of the setbacks abutting certain principal arterial highways and railroad tracks, it must include a study showing the projected noise impacts, proposed mitigation measures, and their effectiveness.
- (6) A listing, if known, of all hazardous or toxic substances as set forth in Title 40, Code of Federal Regulations Parts 116.4, 302.4 and 355; all hazardous waste as set forth in Virginia Department of Environmental Quality Hazardous Waste Management Regulations; and/or petroleum products as defined in Title 40, Code of Federal Regulations Part 280; to be generated, used, stored, treated, or disposed of on site and the size and contents of any existing or proposed storage tanks or containers.
- (7) An Archaeological Survey Data Form and a Phase I Archaeological Survey to the Fairfax County Park Authority for applications resulting in 2,500 square feet or more of land disturbing activity located wholly or partially within or contiguous to a Historic Overlay District, as required by subsection [*reference to relocated Sect. 7-210*].
- (8) Any additional information that the applicant may desire to proffer in the consideration of the application.
- (9) The following additional information is required for a final development application in the PDH, PDC, PRM, and PCC Districts:<sup>188</sup>
  - (a) A table with the following data, when applicable to a given development plan:
    1. Total number of dwelling units by type.
    2. Residential density in units per acre.
    3. Total floor area and floor area ratio for each type of use, except residential uses.
    4. Total area in open space.
    5. Total area in developed recreational open space.

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<sup>186</sup> This requirement has been changed from five copies to one copy. Revised for consistency to be required for all application types in this section, not just residential for certain types.

<sup>187</sup> This requirement has been changed from four copies to one copy.

<sup>188</sup> Carried forward from Paragraphs 1B and 1D of Sect. 16-502.

6. Total number of off-street parking and loading spaces provided and the number required by Article 6 [*reference to relocated Article 11*].
  7. Amount of density or floor area applied for under the bonus provisions, and the calculations supporting the specific development provisions giving rise to such bonus application.
- (b) Architectural sketches, if available, of typical proposed structures, including lighting fixtures and signs.
- (10) The following additional information is required for a PRC Plan:<sup>189</sup>
- (a) A table with the following data, when applicable to a given PRC Plan:
    1. Total number of dwelling units by type to include the corresponding population totals and density type based on the computation factors in subsection [*reference to relocated Sect. 6-308*] and the maximum density provisions of subsection [*reference to relocated Sect. 2-308*].
    2. Total floor area and floor area ratio for each type of use, except residential uses.
    3. Total area in open space.
    4. Total number of off-street parking and loading spaces provided and the number required by Article 6 [*reference to relocated Article 11*].
    5. Amount of density or floor area applied for under the bonus provisions, and the calculations supporting the specific development provisions giving rise to such bonus application.
  - (b) A statement of the architectural concepts and typical bulk of the proposed structures, and if available, schematic architectural sketches.
  - (c) A statement indicating the landscaping concepts, proposed screening measures and compliance with the tree conservation provisions of the Public Facilities Manual.
  - (d) Identification of the need for floodplain studies, drainage studies, soil reports, and for easements or letters of permission for off-site construction.
- (11) The following additional information is required for a rezoning to the PTC District:
- (a) A statement as to whether any of the development is located within the TOD and/or Non-TOD Districts, and if within the TOD Districts, the delineation of the one-eighth (1/8), one-quarter (1/4), one-third (1/3) and one-half (1/2) mile distance from the Metro Station entrance, as applicable, as set forth in the adopted Comprehensive Plan.<sup>190</sup>
  - (b) The phasing plan, if applicable, that identifies each phase.<sup>191</sup> Such plan must at a minimum specify for each phase of the development the location and the mix of uses, including interim uses; the streetscape and landscape treatments to be

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<sup>189</sup> Carried forward from Par. 2 of Sect. 16-303.

<sup>190</sup> The requirement to show the 1/3 mile distance has been added, as this is also called out in the Comprehensive Plan.

<sup>191</sup> The “anticipated order of the proposed development” requirement has been deleted, as this is typically unknown and is not required for review.



provided; the amount and location of all parking, stacking and loading spaces; the anticipated phasing for construction and a statement as to how each phase of development will provide the necessary infrastructure and on and off-site public improvements, such as parking, grid of streets and public facilities, necessary to achieve the redevelopment option set forth in the adopted Comprehensive Plan.

- (c) A parking plan as set forth in subsection [reference to relocated Sect. 6-509].
  - (d) A shadow analysis demonstrating how projected shadows from the proposed development will affect adjacent buildings and properties in terms of the loss of received sunlight.
  - (e) Graphics or photo simulations that depict the proposed structures as viewed from adjacent sidewalks, streets, properties and other sensitive viewing areas.
- (12)** The following additional information is required for a final development application in the PTC District:
- (a) A final statement in tabular form which sets forth the following data, when such data is applicable to a given development plan:
    - 1. Total number of dwelling units by type.
    - 2. Total floor area and floor area ratio for each type of use.
    - 3. Total area in open space, including off-site open space.
    - 4. Total area in developed recreational open space.
    - 5. Total number of off-street parking and loading spaces provided and the number required by subsection [reference to relocated Sect. 6-509].
    - 6. Amount of density or floor area applied for under the bonus provisions, and the calculations supporting the specific development provisions giving rise to such bonus application.
    - 7. Amount of gross floor area, FAR, or number of dwelling units approved for the land area subject to the rezoning to the PTC District and the amount of gross floor area, FAR, or number of dwelling units constructed as of the date of the submission of the FDP application.
  - (b) Detailed building design plans, including: a) architectural sketches or elevations of structures; b) information on the type, location, and height of all rooftop structures and features and the percent of roof area covered by the structures; and c) information on building materials and signs.
  - (c) A statement and graphic depiction of the types, sizes, and location of the urban design amenities to be provided, including pedestrian linkages, plazas, courtyards, bicycle trails, outdoor recreation facilities, ponds, fountains, public parks, and any seating, lighting, or special paving.
  - (d) Detailed streetscape and landscape plans in accordance with the urban design guidelines of the comprehensive plan.



### 3. Special Exceptions, Special Permits, and Variances

#### A. Administrative and Property Documentation

The following information is required to be submitted for all special exceptions, special permits, and variances:

- (1) One copy of the portion of the current Fairfax County Zoning Map showing the boundaries of the subject site clearly outlined, covering the area generally within a 500-foot radius of the proposed use.<sup>192</sup>
- (2) A statement that confirms the ownership of the subject property<sup>193</sup>. If the applicant is not the owner of the property, evidence must be submitted that the applicant has the right to use the property as proposed.
- (3) An affidavit is required and must:
  - (a) Be completed on the affidavit form approved by the Board and provided by the County;
  - (b) Be signed by the applicant or authorized agent and notarized;
  - (c) Include a statement whether a member of the Board, Planning Commission, BZA, 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, or through an interest in a partnership;
  - (d) Include a certified statement showing the agent's authorization to act in such capacity if the applicant's agent completes the application or affidavit;
  - (e) Be reaffirmed prior to each public hearing on the application in accordance with the reaffirmation procedure outlined on the affidavit form.
  - (f) For an affordable dwelling unit development, include for each parcel of the site or portions thereof at one location, as defined in subsection [*reference to relocated Par. 1 of Sect. 2-802*]: a) the names of the owners; and b) the Fairfax County Property Identification Map Number, parcel size, and zoning district classification.
- (4) Photographs of the property and abutting properties showing existing structures, terrain, and vegetation as viewed from all lot lines and street lines of the application property. All photographs must be clearly dated and labeled with the location and direction from which they were taken. Digital photography is preferred, in which case digital photographs<sup>194</sup> must also be provided.<sup>195</sup>

<sup>192</sup> Updated language because section sheets are no longer needed.

<sup>193</sup> The first sentence of this regulation has been expanded to apply to variance applications to match the requirement of a special exception and special permit.

<sup>194</sup> Did not carry forward requirement for a disk containing the digital photos, since the technology will continue to evolve. Language updated to be consistent with other application types.

<sup>195</sup> Requirements for photographs provided for a variance have been expanded to include labels and the digital photography preference to match those requirements of a special exception and special permit.

## B. Plat Requirements

23 copies of a special exception plat, and 10<sup>196</sup> copies of a special permit or variance plat, including any resubmissions of the plat and supporting graphics, must be submitted and be:

- (1) Drawn to a designated scale of not less than 1" = 50'; if the proposal cannot be accommodated at a scale of 1" = 50', a scale of not less than 1" = 100' may be used;
- (2) Signed, sealed, and certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia;
- (3) On a maximum sheet size of 24" x 36." One 8 ½" x 11" reduction must also be provided; and
- (4) If presented on more than one sheet, match lines must clearly indicate where the several sheets join.

**Unless modified below by specific application requirements, the plat must contain the following information:**

- (5) Boundaries of the entire property, with bearings and distances of the perimeter property lines and of each zoning district;
- (6) Total area of the property and of each zoning district in square feet or acres;
- (7) Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat on all supporting graphics;
- (8) Location, dimensions, and maximum height in feet of all existing and proposed structures, including penthouses, and if known, the construction date(s) of all existing structures and an indication whether they will be retained or demolished;<sup>197</sup>
- (9) All required minimum setbacks to include front, side, and rear; distances from all existing and proposed structures to lot lines; and if applicable, transitional yards;
- (10) Public right-of-way, indicating name, route numbers, width, any required or proposed improvements to public right-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;<sup>198</sup>
- (11) Proposed means of ingress and egress to the property from a public street;
- (12) Location of existing and proposed parking spaces, indicating the minimum distance from the nearest property line(s), and the number of required and provided parking spaces;
- (13) Location of well and septic, or indication that the property is served by public water and sewer. Where applicable, a statement from the Health Department that available facilities are adequate for the proposed use;<sup>199</sup>
- (14) Location and width of all existing and proposed public utility easements;<sup>200</sup>

<sup>196</sup> Certain application types require 15 or 23 copies, but this standard has been revised to apply the 10-copy requirement to all special permit and variance application types.

<sup>197</sup> Deleted the reference to the location, dimensions, and lighting of signs. Expanded the requirement to provide construction dates, if known, and an indication of whether a structure will be retained or demolished to a variance application.

<sup>198</sup> Expanded the requirement to delineate the ROW centerline and include dimensions to a variance application.

<sup>199</sup> Expanded this requirement to variance applications.

<sup>200</sup> Revised to require all easements to be shown, not only those over 25' in width.

- (15) Approximate delineation of any grave, object, or structure marking a place of known burials, and a statement indicating how the proposed development will impact the burial site.

**The following additional plat requirements apply to special exception and special permit applications:**

- (16) A stormwater management plan in accordance with subsection 8101.1;
- (17) 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;
- (18) Existing topography with a maximum contour interval of two feet, and a statement indicating whether it is an air survey or field run;
- (19) A plan showing existing vegetation, including the limits of clearing and vegetation to be preserved, and proposed landscaping and screening in accordance with the provisions of section 5108 *[reference to relocated Article 13]*, and an existing vegetation map when there is 2,500 square feet or more of land disturbing activity;
- (20) Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County; delineation of any Resource Protection Area and Resource Management Area; the approximate delineation of any environmental quality corridor as defined in the 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;
- (21) Where applicable, seating capacity, usable outdoor recreation area, emergency access, bicycle parking, fencing, outdoor lighting, and loudspeakers;
- (22) Location of all trails required by the Comprehensive Plan; and
- (23) The extent of any dam break inundation zone of a state-regulated impounding structure must be identified and labeled with the name of the impoundment and the date of the study that established the inundation zone. This requirement does not apply to any development proposed downstream of a dam for which a dam break inundation zone map is not on file with the county as of the time of submission of the plan. When a state-regulated impounding structure is proposed to be constructed or altered, an approximate delineation of the future dam break inundation zone must be provided.

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## C. Supporting Reports and Studies

- (1) For all special exception applications proposing residential development, a map identifying classification of soil types at a scale not less than 1" = 500', based upon the County of Fairfax Soils Identification Maps.<sup>201</sup>
- (2) For all special exception and special permit applications, a written statement provided by the applicant describing the proposed use, giving all pertinent information, specifically including:
  - (a) Type of operation
  - (b) Hours of operation
  - (c) Estimated number of patrons/clients/patients/pupils/etc.

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<sup>201</sup> This requirement has been changed from five copies to one copy.

- (d) Proposed number of employees/attendants/teachers/etc.
  - (e) Estimate of traffic impact of the proposed use, including the maximum expected trip generation and the distribution of these trips by mode and time of day
  - (f) Vicinity or general area to be served by the use
  - (g) Description of building façade and architecture of any proposed new building or additions
  - (h) A listing, if known, of all hazardous or toxic substances as set forth in Title 40, Code of Federal Regulations, Parts 116.4, 302.4, and 355; all hazardous waste as set forth in Virginia Department of Environmental Quality Hazardous Waste Management Regulations; and petroleum products as defined in Title 40, Code of Federal Regulations Part 280; to be generated, utilized, stored, treated, or disposed of on site and the size and contents of any existing or proposed storage containers
  - (i) A statement that the proposed use conforms to the provisions of all applicable ordinances, regulations, adopted standards, and any applicable conditions. If any waiver, exception, or variance is sought by the applicant from these ordinances, regulations, standards, and conditions, it must be specifically noted with the justification for any modification.
- (3) For all variance applications, a written statement provided by the applicant including:
- (a) The specific provision from which a variance is sought and the nature and extent of the variance sought.
  - (b) How the application complies with the required standards in [*reference to relocated Sect. 18-404*].
- (4) For any special exception or special permit applications, an Archaeological Survey Date Form and a Phase I Archaeological Survey to the Fairfax County Park Authority for applications resulting in 2,500 square feet or more of land disturbing activity located wholly or partially within or contiguous to a Historic Overlay District, as required by subsection [*reference to relocated Sect. 7-210*].

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#### **D. Additional or Modified Submission Requirements for Specific Special Exception Applications**

- (1) **Light Utility Facilities, Heavy Utility Facilities, and Wireless Facilities**<sup>202</sup>
- (a) Four copies of a map showing the utility system of which the proposed use will be an integral part, together with a written statement outlining the functional relationship of the proposed use to the utility system.
  - (b) A statement, prepared by a certified engineer, giving the exact technical reasons for selecting the site as the location for the proposed facility and certifying that the proposed use will meet the performance standards of the district in which located.<sup>203</sup>

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<sup>202</sup> Carried forward from 9-103 and 9-203.

<sup>203</sup> This requirement has been revised from four copies to one copy.

- (c) In complying with subsections 1 and 2 above, the applicant is not required to provide any proprietary, confidential, or other business information to justify the need for the project.<sup>204</sup>
- (d) An application for a landfill must also include a list of the types of debris and materials proposed to be deposited on the site.

**(2) Farm Winery, Limited Brewery, or Limited Distillery<sup>205</sup>**

- (a) A copy of the license issued or pending issuance by the Virginia Alcoholic Beverage Control Board.
- (b) For any new or expanded buildings or structures that will be accessed by the public, a copy of plans certified by a structural engineer. The structural integrity of the building must be certified by the structural engineer once construction is complete. These plans must be made available for review upon request.

**(3) Child Care Centers, Private Schools, and Specialized Instruction Centers<sup>206</sup>**

- (a) In addition to the plat requirements required by subsection *[reference to 8101.C(2)]*, any outdoor recreation area must be delineated on the plat.
- (b) An estimate of the maximum expected trip generation, the distribution of these trips by mode and time of day, and the expected service area of the center.

**(4) Adult Day Care Center<sup>207</sup>**

- (a) An estimate of the maximum expected trip generation, the distribution of these trips by mode and time of day, and the expected service area of the center.
- (b) Identification of a safe, appropriately sized, and conveniently located outdoor area used by persons receiving adult day care services.

**(5) Residence Hall<sup>208</sup>**

In addition to the special exception requirements for a statement of justification, the applicant must also include information on the following:

- (a) Parking and loading;
- (b) Trash removal and clean-up;
- (c) Exterior lighting and sound;
- (d) Meetings and social functions;
- (e) Number of occupants;
- (f) Number of students and non-student employees to serve as counselors or advisors; and
- (g) Any other use or activity that may impact the surrounding properties and the neighborhood.

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<sup>204</sup> Standard 3 is new.

<sup>205</sup> Carried forward from 9-630.

<sup>206</sup> Carried forward from 9-309.

<sup>207</sup> Carried forward from Sect. 9-315.

<sup>208</sup> Carried forward from 9-312.

**(6) Alternate Use of Public Facilities<sup>209</sup>**

- (a)** A certified copy of the law, ordinance, resolution or other official act adopted by the governmental entity proposing the use, authorizing the establishment of the proposed use at the proposed location.
- (b)** A statement by an official or officer of the governmental body must be presented giving the exact reasons for selecting the site as the location for the proposed facility.

**(7) Airports, Helipads, and Transit Facilities<sup>210</sup>**

- (a)** All such uses proposed by a public authority must include a certified copy of the law, ordinance, resolution, or other official act adopted by the governmental entity proposing the use, authorizing the establishment of the proposed use at the proposed location.
- (b)** All applications must include evidence that the proposed facility will meet the standards and requirements imposed by such agencies as the Federal Aviation Administration and all other federal, State, or local statutes, ordinances, rules or applicable regulations.
- (c)** A statement must be provided detailing all noise abatement procedures, methods, and devices that will be employed in the operation of the facility, and sufficient analysis must be presented to indicate what adjoining lands will be affected by the anticipated noise.
- (d)** In the case of airports, a map must be presented showing the landing and take-off corridors as projected, such map to cover an area within at least a 5,000-foot radius of the boundaries of the proposed facility.

**(8) Heavy Production or Processing<sup>211</sup>**

An evaluation of the use by a qualified person or firm, indicating how the use can comply with the outdoor lighting and earthborn vibration standards of subsections [reference to relocated Article 14], if applicable.

**(9) Cluster Subdivision<sup>212</sup>**

In addition to the special exception plat requirements required by subsection [reference to 8101.C(2)], the plat must contain the following information:

- (a)** Area of open space in square feet or acres and percent of total area that is open space.
- (b)** Type of open space, whether common open space or dedicated open space, and the proposed uses.
- (c)** Maximum number of dwelling units proposed, and the density and open space calculations based on subsection [reference to relocated Sections 2-308 and 2-309].
- (d)** Proposed layout of lots, streets, and open space.

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<sup>209</sup> Carried forward from 9-303.

<sup>210</sup> Carried forward from 9-403.

<sup>211</sup> Carried forward from 9-511. Outdoor lighting and earthborn vibration are specified because the other performance standards are replaced with references to state and federal regulations.

<sup>212</sup> From current 9-615.

- (e) Location, where applicable, of recreation areas, parks, schools, and other public or community uses.
- (f) Indication that the property is served by public water and sewer or private water and septic field.
- (g) Designation of minimum lot areas and yards that will be provided on lots adjacent to major thoroughfares and adjacent to the peripheral lot lines of the subdivision.

**(10) Interim Off-Street Parking in Metro Station Area<sup>213</sup>**

In addition to the special exception plat requirements required by subsection *[reference to 8101.C(2)]*, the plat must include grading plans and plans for drainage facilities.

**(11) Modifications, Waivers, Increases, and Uses in a Commercial Revitalization District<sup>214</sup>**

In addition to the special exception plat requirements required by subsection *[reference to 8101.C(2)]*, the plat must contain the following information:

- (a) A statement of the architectural concepts, building materials, and color of any proposed structures, and schematic architectural sketches, if available.
- (b) The location, dimensions, style, and lighting of all signs.
- (c) The distances of all existing structures that are proposed to remain and all proposed structures from the lot boundaries and abutting streets.<sup>215</sup>
- (d) Location of all existing and 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.
- (e) A plan showing the open space areas and how the development meets any applicable streetscape and 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 must also include the limits of clearing, existing vegetation, and when there is 2,500 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.
- (f) Where applicable, seating capacity, useable outdoor recreation area, emergency access, bicycle parking, fencing, outside lighting, and loudspeakers.
- (g) In addition, an application must include a statement and any supporting materials detailing any requested modification, waiver, increase and the justification for same.

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<sup>213</sup> Carried forward from Par. 3 of Sect. 9-520.

<sup>214</sup> Carried forward from 9-622.

<sup>215</sup> Did not carry forward reference to bulk plane requirement.



**(12) Containment Structures<sup>216</sup>**

- (a)** Detailed information relating to the anticipated trajectory of balls or other sports equipment and the need for a containment structure to keep this equipment on the property.
- (b)** The height, location, color, and materials of the proposed containment structure, including the size of mesh for any netting.

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**E. Additional or Modified Submission Requirements for Specific Special Permit Applications**

**(1) Extraction Activities<sup>217</sup>**

- (a)** Instead of the plat information required by subsection *[reference to 8101.C(2)]*, the following information is required on a plat prepared by an engineer or surveyor licensed by the State at a scale of 1" = 100':
  - 1.** The boundary of the entire tract with bearings and distances
  - 2.** Limits and current field topography, including locations of water courses, the part of the tract that is proposed to be used for the operations, and the contiguous area within 250 feet of the limits. A greater distance may be specified by the Director.
  - 3.** Average thickness of overburden within the limits
  - 4.** Means of vehicular access, indicating the proposed type of surface treatment.
- (b)** One aerial photograph<sup>218</sup>, certified as flown within six months of the application submission, including:
  - 1.** All land included in the application
  - 2.** All contiguous land which is or has been used by the applicant for this use or a related use
  - 3.** All public roads providing access
  - 4.** All residentially zoned land within 500 feet of the area.
- (c)** A report that describes the use and includes the following:
  - 1.** A detailed list of the type and quantity of equipment to be used, including bulldozers, cranes, washers, crushing equipment, trucks, and all other mechanical equipment
  - 2.** An estimate of the number of trucks proposed to enter and leave the property per day
  - 3.** The proposed hours of operation each day, and the proposed days of operation during the week

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<sup>216</sup> Carried forward from 9-624.

<sup>217</sup> Carried forward from Sect. 8-103.

<sup>218</sup> The requirements of a 1" = 500' scale from the original photography flown at a negative scale no smaller than 1" = 1000' has been removed.

4. The proposed period of time necessary to complete the use proposed, and the time schedule for a restoration program. This must include the time when the applicant believes that all uses under the application should be completed and all restoration complete.
- (d) A plan for operation of the extraction activity, prepared by an engineer or surveyor licensed by the State, covering the same area as the vertical aerial photograph above. All of the following applicable items must be delineated, including the location, limits, and title of each of the items, and the area in square feet of each provided on a one-page supplemental report:<sup>219</sup>
1. Area of any previous, currently active, and proposed excavation.
  2. Area of active settling ponds and washing facilities.
  3. Areas of existing and proposed crushing or treatment facilities.
  4. Areas of existing and proposed storage of extracted material.
  5. Areas of existing and proposed production facilities or resource related uses.
  6. Location and type of any existing and proposed erosion control facilities.
- (e) A plan for the restoration of the site, prepared by an engineer or surveyor licensed by the State, covering the same area as the vertical aerial photograph above. All of the following applicable items must be delineated, including the location, limits, and title of each of the items, and the area in square feet of each provided on a one-page supplemental report:<sup>220</sup>
1. The area proposed to be restored
  2. The area of any current restoration now in progress
  3. The area of any previous restoration
  4. The area currently used for topsoil and overburden storage
- (f) A final grading plan for the site, prepared by an engineer or surveyor licensed by the State, covering the same area as the vertical aerial photograph above. All of the following applicable items must be delineated:
1. Final proposed topography of the site after completion of all proposed restoration
  2. Proposed depth of topsoil and location of any planting restoration, including type of plant material
  3. The direction of all drainage, shown by arrows, after restoration
  4. Any roadways and driveways which are not proposed to be removed during restoration, and their surfacing material
- (g) A letter signed by the applicant and by the owner of the property granting the right of entry upon the property to the Director, law enforcement agents, and

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<sup>219</sup> The requirement for this plan to be a transparent overlay has been deleted.

<sup>220</sup> The requirement for this plan to be a transparent overlay has been deleted.

County inspectors for the purpose of inspecting, and bringing law enforcement to the property, during the term of any permit which may be issued.

- (h) A soils analysis of the property, including test borings as required by the Director, and a written report setting forth the effects, if any, of the proposed operation upon the stability of soils, the water table, wells and septic fields within the area, and other soil factors which may have an effect upon nearby properties.

**(2) Home Day Care Facility<sup>221</sup>**

- (a) The plat information required by subsection [reference to 8101.C(2) (a) through (f), (h), (i)], and the dimensions, size, and location of all outdoor recreation space in relation to all lot lines.
- (b) A dimensioned floor plan identifying all rooms or facilities to be used by the home day care, including gross floor area and points of ingress and egress from the dwelling.
- (c) Digital photographs of the rooms and facilities used by the home day care, which are clearly dated and labeled.

**(3) Caretaker Quarters<sup>222</sup>**

Documentation verifying the occupants of the caretaker quarters, their work responsibilities, and the hours worked and a copy of the recorded covenant.

**(4) Campground<sup>223</sup>**

Evidence that the proposed development meets all requirements of the Health Department.

**(5) Home-Based Business<sup>224</sup>**

- (a) A dimensioned floor plan depicting the internal layout of the residence, including identification and gross floor area of all rooms or facilities to be used by the home-based business, as well as ingress and egress from the dwelling.
- (b) Digital photographs of the rooms and facilities used by the home-based business, which are clearly dated and labeled.

**(6) Reduction of Setbacks for an Error in Building Location<sup>225</sup>**

- (a) The plat information required by 8101.3 B(1) through B(9), B(11), B(13), B(14), B(17), and the following:
  - 1. For nonresidential uses, the location of parking spaces, indicating the minimum distance from the nearest property line; and
  - 2. A calculation on the plat showing the percentage of the minimum required rear yard that is covered with any accessory use and structure in accordance with subsection [reference to relocated Par. 3 of Sect. 10-103].
- (b) A statement of justification explaining how the error in building location occurred and any supportive material, such as aerial photographs, Building Permit

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<sup>221</sup> Carried forward from Sect. 8-305.

<sup>222</sup> These standards have been codified from existing longstanding interpretation.

<sup>223</sup> Carried forward from 8-605.

<sup>224</sup> Carried forward from Sect. 8-907.

<sup>225</sup> Carried forward from Sect. 8-914.

applications, County assessment records, a copy of the contract to build the structure that is in error, or a statement from a previous owner indicating how the error in building location occurred.

**(7) Keeping of Animals<sup>226</sup>**

Instead of the plat information required by subsection 8101.3, the following information is required on a plat that may be prepared by the applicant:

- (a)** The dimensions and boundary lines of the lot or parcel, and the area of land;
- (b)** The dimensions, height, and distance to all lot lines of any existing or proposed building, structure, or addition where animals are to be kept;
- (c)** The delineation of any Resource Protection Area and Resource Management Area; and
- (d)** The signature and certification number, if applicable, or the person preparing the plat.

**(8) Accessory Dwelling Unit<sup>227</sup>**

- (a)** The plat information required by subsections 8101.3 B(1) through B(9), B(11), B(13) and B(14).
- (b)** A dimensioned floor plan depicting the internal layout and gross floor area of both the principal and accessory dwelling unit, with the use of each room and points of egress to the dwelling clearly labeled.
- (c)** Digital photographs of the rooms and area used by the accessory dwelling unit, which are clearly dated and labeled.
- (d)** If one of the residents is 55 years in age or older, proof of identity certifying the persons date of birth must be provided.<sup>228</sup>
- (e)** If one of the residents is a person with a disability, documentation from the Social Security Administration, the Veterans Administration, or similar agency, or a certification from a licensed medical doctor that confirms the resident meets the definition of a person with a disability as defined in the Fair Housing Amendments Act of 1988, as amended, must be provided.<sup>229</sup>

**(9) Noise Barrier<sup>230</sup>**

A noise impact study that demonstrates the need for the barrier and the level of mitigation to be achieved. The study must include the barrier height, proposed location on the property, acoustical design and structure features, and type of building materials used in construction. The study must also include the proposed measures to mitigate any visual impacts of the barrier on adjacent properties, including the location and design of the barrier, and the use of berming and landscaping.

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<sup>226</sup> Carried forward from Sect. 8-917.

<sup>227</sup> Carried forward from Sect. 8-918.

<sup>228</sup> New submission requirement for proof of age. This requirement and the following one will be deleted if the requirement for occupancy by someone who is 55 years of age or older or disabled is removed.

<sup>229</sup> Revised to reference the new definition for a person with a disability and revised documentation requirement.

<sup>230</sup> Carried forward from Sect. 8-919.

**(10) Containment Structures<sup>231</sup>**

- (a)** Detailed information relating to the anticipated trajectory of balls or other sports equipment and the need for a containment structure to keep this equipment on the property.
- (b)** The height, location, color, and materials of the proposed containment structure, including the size of mesh for any netting.

**(11) Reduction of Setback Requirements<sup>232</sup>**

- (a)** The plat information required by subsections 8101.3 B(1) through B(9), B(11), B(13), B(14), B(17), B(20), and the following:
  - 1.** For nonresidential uses, the location of parking spaces, indicating the minimum distance from the nearest property line;
  - 2.** The location, type, and height of any existing and proposed landscaping and screening; and
  - 3.** A calculation on the plat showing the percentage of the minimum required rear yard that is covered with any accessory use and structure in accordance with subsection [reference to relocated Par. 3 of Sect. 10-103].
- (b)** Architectural depictions of the proposed structure as viewed from all lot lines and street lines that includes building materials, roof type, window treatment, and any associated landscaping and screening.

**(12) Increase in Fence Height<sup>233</sup>**

- (a)** The plat information required by subsections 8101.3 B(1) through B(9), B(11), B(13), B(14), B(17), B(20), and the following:
  - 1.** For nonresidential uses, the location of parking spaces, indicating the minimum distance from the nearest property line; and
  - 2.** The location, type, and height of any existing and proposed landscaping and screening.
- (b)** Architectural depictions of the proposed fence or wall to include height, building materials, and any associated landscaping.

**(13) Certain Additions to an Existing Single Family Detached Dwelling<sup>234</sup>**

The plat information required by 8101.3 B(1) through B(9), B(11), B(13), B(14), B(17), B(20), and the location, type, and height of any existing and proposed landscaping and screening.

**(14) Increase in Minimum Rear Setback Coverage<sup>235</sup>**

The plat information required by subsections 8101.3 B(1) through B(9), B(11), B(13), B(14), B(17), B(20), and the following:

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<sup>231</sup> Carried forward from Sect. 8-920.

<sup>232</sup> Carried forward from Sect. 8-922.

<sup>233</sup> Carried forward from Sect. 8-923.

<sup>234</sup> Carried forward from Sect. 8-924.

<sup>235</sup> Carried forward from Sect. 8-926.

- (a) Location, type, and height of any existing and proposed landscaping and screening; and
- (b) A calculation on the plat showing the percentage of the minimum required rear yard that is covered with any accessory use and structure in accordance with subsection [reference to relocated Par. 3 of Sect. 10-103].

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## F. Additional Submission Requirements for Specific Variance Applications<sup>236</sup>

### (1) Minimum Yards for Dwellings

The plat information required by subsections 8101.3 B(1) through B(9), B(11), B(13) and B(14).

### (2) Minimum Lot Width

The plat information required by subsections 8101.3 B(1) through B(15) and the following:

- (a) Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County; delineation of any Resource Protection Area and Resource Management Area; the approximate delineation of any environmental quality corridor as defined in the 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; and
- (b) An existing vegetation map when there is 2,500 square feet or more of land disturbing activity.

## 4. Site Plans and Minor Site Plans

Site plans and minor site plans must be prepared in accordance with the provisions of the Public Facilities Manual and must be submitted in English measurements, unless otherwise approved by the Director.<sup>237</sup>

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### A. Minor Site Plans<sup>238</sup>

Minor site plans must include the following:

- (1) Existing and proposed uses and improvements.
- (2) Name of applicant/firm and address; relationship of applicant to property owner.
- (3) Name of current and previous property owner; existing and previous use of the property.
- (4) All proffered conditions and all development conditions of an approved rezoning, special exception, special permit, or variance.
- (5) Sufficient information to verify compliance with applicable provisions of this Ordinance and Public Facilities Manual, such as the zoning district of the property, the existing and

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<sup>236</sup> Carried forward from 18-403.

<sup>237</sup> Carried forward from Sect. 17-106 (site plans) and extended to minor site plans.

<sup>238</sup> Carried forward from Paragraphs 2 – 5 of Sect. 17-105. Applicability of Minor Site Plans was relocated to an earlier section.

proposed floor area ratio of the proposed development, and any existing, proposed, and required parking and transitional screening.

- (6) Type, number, date of approval, date of expiration, and conditions of any requested and approved modifications or waivers of required improvements on the property.
- (7) Location of any street lights, trails, walkways, service drives, or travel lanes on or adjacent to the property.
- (8) Delineation of any Resource Protection Area and Resource Management Area, buildable areas on each lot, description of existing or proposed outfall system and how stormwater quality, quantity, and detention will be accommodated in accordance with the Public Facilities Manual, Chapter 118 and Chapter 124 of The Code.
- (9) The location of any water, storm, and sanitary sewer easements and all conveyances and easements dedicated or to be dedicated to Fairfax County, the State of Virginia and the Virginia Department of Transportation.
- (10) Any other information as may be required by the Director to evaluate the plan.

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## B. Site Plans<sup>239</sup>

Site plans must include the following:

- (1) A cover sheet as prescribed by the Director.
- (2) Site plans or any portion of such plan involving engineering, architecture, landscape architecture, or land surveying must be respectively certified by an engineer, architect, landscape architect, or land surveyor authorized by the State to practice as such. Site plans or any portion of a site plan submitted under the County's Plans Examiner Program pursuant to Chapter 117 of The Code, Expedited Land Development Review, must include a statement that certifies that the plan or portion of the plan has been reviewed and recommended for submittal by a Designated Plans Examiner.
- (3) Site plans must be prepared to a scale of 1" = 50' or larger and all lettering must be at least 1/10" in height. The sheet(s) must be 24" by 36" and, if prepared on more than one sheet, match lines must clearly indicate where the sheets adjoin.
- (4) Location of the site shown on a vicinity map at a scale of not less than 1" = 2,000' and such information as the names and numbers of adjoining streets, streams and bodies of water, railroads, subdivisions, and towns or other landmarks sufficient to clearly identify the location of the property.
- (5) Every site plan must show the name and address of the owner and developer, the Magisterial District, County, State, north point, date and scale of drawing, number of sheets, and tax map reference. In addition, a blank space three inches wide and five inches high, must be reserved for use of the approving authority.
- (6) A boundary survey of the site, with a maximum permissible error of closure within the limit of one in 20,000, related to the Virginia Coordinate System of 1983 (VCS 83 (with appropriate reference frames and necessary velocities)) North Zones. Two adjacent corners or two points on every plan sheet must be referenced to the VCS 83 with coordinate values shown in feet. If a conversion from meters to feet is necessary, the

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<sup>239</sup> Carried forward from 17-106. Did not carry forward paragraph 17 related to bulk plane requirements. The provision for modification of requirements is addressed generally for all application types.



foot definition used for conversion is the U.S. Survey Foot of one ft. = 1200/3937 E+00 meters. Plans may be related to true north or meridian of record for properties located more than 1.24 miles (2.0 kilometers) from one or both of the nearest VCS 83 monuments, with distance measured along a straight line from each monument to the closest point on the property boundary.

**(a)** Plans referenced to VCS 83 must be annotated as follows:

“The site shown hereon is referenced to the Virginia Coordinate System of 1983 as computed from a field run boundary, and horizontal and vertical control survey that ties this boundary to the Fairfax County Survey Monument (insert number and name of monument and show the combined scale (grid factor multiplied by the elevation factor) or NOAA/NGS Survey Monument (insert Parcel Identification Number and designation) with the combined scale factor (grid factor multiplied by the elevation factor).”

**(b)** If using a GPS Static, Virtual, or Continuously Operating Reference System for deriving horizontal and/or vertical control, coordinates must be stated in VCS 83 (with appropriate reference frames and necessary velocities), North Zone, U.S. Survey Foot units, with NGVD 1929 vertical datum and so stated in above format.

- (7)** Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the site and the place of record of the last instrument in the chain of title.
- (8)** A map identifying classification of soil types at a scale of not less than 1" = 500', based on the County of Fairfax Soils Identification Maps or, if not mapped, based on soils identified by a professional authorized by the State to provide such information.
- (9)** Horizontal dimensions shown on the site plan must be shown in feet and decimal fractions of a foot accurate to the closet one-hundredth of a foot (.00). All bearings in degrees, minutes, and seconds must be shown to a minimum accuracy of ten seconds.
- (10)** Existing topography with a maximum contour interval of two feet, except that where existing ground is on a slope of less than two percent, either one-foot contour or spot elevations must be provided where necessary, but no more than 50 feet apart in both directions.
- (11)** Proposed finished grading by contours, supplemented by spot elevations where necessary, including at those locations along lot lines where building height is measured.<sup>240</sup>
- (12)** All existing and proposed streets and easements, their names, widths, and street route numbers; existing and proposed utilities; watercourses and their names; owners, zoning and present use of all adjoining properties.
- (13)** The proposed location, general use, number of floors, and the net and gross floor area for each building, to include outside display and storage areas; the proposed floor area ratio; the number, size, and type of dwelling units; and the amount of required and provided open space.
- (14)** The height of each building and the ground elevations required by the provisions of the Zoning District in which located

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<sup>240</sup> Did not carry forward the reference to angle of bulk plane since bulk plane was not carried forward in the development standards module.

- (15) Location, type, size, and height of any fencing and retaining walls.
- (16) 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 Article 6 [*reference to relocated Article 11*] for each use and the total number of spaces provided.
- (17) Horizontal location of all proposed trails and vertical location of any trail that is proposed to exceed an eight percent grade.
- (18) 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 must be included on the cover sheet of all site plans.
- (19) Sufficient information to show how the physical improvements associated with the proposed development interrelate with existing or proposed development of record on adjacent properties.
- (20) Proposed street light pole locations, including distances from face of pole to face of curb, bracket length and luminaire size, in accordance with the Public Facilities Manual.<sup>241</sup>
- (21) 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 section 5109 [*reference to relocated Part 9 of Article 14*] and a statement by the owner or developer certifying that all outdoor lighting provisions of section 5109 [*reference to relocated Part 9 of Article 14*] will be met.

For outdoor recreation, sports facility, and playing fields and courts, a sports illumination plan must be submitted as required by section 5109 [*reference to relocated Part 9 of Article 14*], and for vehicle fueling stations and vehicle sales, service, and rental establishments, a photometric plan must be submitted as required by section 5109 [*reference to relocated 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 must be included in the site plan.

- (22) Any plan incorporating private streets must 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 must 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 must be privately maintained and are not eligible for acceptance into the system of state highways unless improved to current

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<sup>241</sup> Deleted reference to lumens, consistent with the current PFM.

Virginia Department of Transportation standards with funds other than those appropriated by the General Assembly of Virginia and allocated by the Commonwealth Transportation Board. If the private streets are not to be constructed to Virginia Department of Transportation standards, the plan must 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.”

- (23)** Identification of any grave, object, or structure marking a place of burial on the site and if none, a statement to that effect.
- (24)** Provisions for elements required to provide an accessibility improvement or other reasonable accommodation.
- (25)** Land within an adopted Pro Rata Road Reimbursement District must be designated, with the pro rata road reimbursement payment calculations for each proposed use and the sum total of payments to be reimbursed.
- (26)** A statement by the owner or developer certifying that all wetlands permits required by law will be obtained prior to commencing land disturbing activities in any areas requiring such permits.
- (27)** The plan must include all proffered conditions and all development conditions of an approved rezoning, special exception, special permit, or variance and a narrative indicating how these conditions are addressed by the plan.
- (28)** 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.
- (29)** 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 section 5108 [*reference to relocated 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 exception, special permit, or variance.
- (30)** 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.
- (31)** Provisions for the adequate disposition of natural and stormwater in accordance with Chapter 124 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 stormwater

detention and water quality control facilities where deemed appropriate and necessary by the Director.

- (32)** Provisions for the adequate control of erosion and sedimentation, indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading, and construction as required by the Public Facilities Manual.
- (33)** A soils report in accordance with Chapter 107 of The Code and the Public Facilities Manual.
- (34)** Delineation of Resource Protection Areas and Resource Management Areas, buildable areas on each lot, site specific determination of water bodies with perennial flow, and a Water Quality Impact Assessment and required measures in accordance with Chapter 118 of The Code and the Public Facilities Manual.
- (35)** The location of any stream valleys and floodplains.
- (36)** The location of all existing transmission pipelines and their respective easements in accordance with the Public Facilities Manual.
- (37)** Provisions for common or shared utility easements in accordance with Va. Code Sect. 15.2-2241(6) and the Public Facilities Manual. In addition, a note must be included on all plans stating that any future easement or authorization for electric, cable, telephone, or gas services to be furnished to the property must comply with the provisions of Va. Code Sect. 15.2-2241(6).
- (38)** Such additional information as required by other County agencies, such as the Fire Marshal and the Water Authority.
- (39)** The extent of any dam break inundation zone of a state-regulated impounding structure must be identified and labeled with the name of the impoundment and the date of the study that established the inundation zone. This requirement does not apply to any development proposed downstream of a dam for which a dam break inundation zone map is not on file with the county as of the time of submission of the plan.
- (40)** Identification that the development is subject to the Affordable Dwelling Unit Program provisions of subsection [reference to relocated Part 8 of Article 2], with the specific lots or dwelling units that are affordable dwelling units designated on the site plan, provided, however, in the case of a multiple family development which is under single ownership and is a rental project, the affordable dwelling units need not be specifically identified, but the number of affordable dwelling units by bedroom count and the number of market rate dwelling units by bedroom count must be noted on the site plan. For multiple section developments where not all the required affordable dwellings units are to be provided in the first section of the development, the site plan for the first section and all subsequent sections must contain a notation identifying in which section(s) the affordable dwelling units will be or have been provided and a total of all affordable dwelling units for which such site plan(s) have been approved. Additionally, at the time of site plan submission, the owner or applicant must submit an affidavit that includes:
  - (a)** The names of the owners of each parcel of the sites or portions of sites, as defined in subsection [reference to relocated Par. 1 of Sect. 2-802]; and
  - (b)** The Fairfax County Property Identification Map Number, parcel size, and zoning district classification for each parcel that is part of the site or portion thereof.

- (41) Any other information as may be required by this Ordinance, the County Code, or the PFM.

## 5. Building Permits<sup>242</sup>

### A. Plan Requirements

- (1) An approved site plan, when the building or structure is required to be shown on a site plan that has been approved under the provisions of subsection 8100.7, and an approved agreement and security package required pursuant to subsection 8100.7.F(5) to ensure completion of the physical improvements as shown on the approved site plan, including any revisions, or such plans and agreements as may be required by the Director for the approval of a partial Building Permit pursuant to the Virginia Uniform Statewide Building Code; or
- (2) When the building or structure does not require site plan approval but will require approval of a site-related plan (e.g., grading plan or conservation plan) in accordance with subsection 5104.1.A or B [*reference to general limitations on the removal and addition of soil*], a plan, certified by a land surveyor, engineer, landscape architect, or architect authorized by the State to practice as such, must be submitted that includes siltation and erosion control measures in conformance with Chapter 104 of the Code, and contains the information listed in subsection (3) below. The required number of copies of the form and plan will be determined by the Director; or<sup>243</sup>
- (3) When the building or structure does not require site plan approval, and does not require approval of a site-related plan, two copies of a plat certified by a land surveyor, engineer, landscape architect, or architect authorized by the State to practice as such, except that plats submitted for additions to an existing single family dwelling or related accessory structures may be hand drawn or otherwise added to an existing plat that meets the certification requirements.<sup>244</sup> Each plat must indicate the following:
  - (a) The dimensions of the lot or parcel, the lot lines, and the area of land contained on the subject site.
  - (b) Delineation of any major underground utility easements and the location of any water, storm, and sanitary sewer easements and all conveyances and easements dedicated or to be dedicated to Fairfax County, the State of Virginia, and the Virginia Department of Transportation.
  - (c) The location, dimensions, and height of any building, structure, or addition, whether existing or proposed. In addition, for decks, the height of the finished floor above finished ground level and for accessory structures, the height of the highest point of the structure from finished ground level.
  - (d) The distance from all property lines and any floodplain to the proposed building, structure or addition, including any extensions from the vertical plane of the proposed building, structure, or addition, shown to the nearest one-tenth of a foot. For features that extend into the minimum required setbacks in accordance with subsection 5100.2.D(5), in addition to showing the distance of the feature to

<sup>242</sup> Carried forward from Sect. 18-602, except Par. 3 is addressed with the overlay districts.

<sup>243</sup> New paragraph to provide clarification.

<sup>244</sup> This standard has been changed from requiring four copies to two copies.

all lot lines, the plat must also include the specific dimensions that qualify the feature for the permitted extension.

- (e) The proposed elevation of the first-floor level and of the lowest floor level of any proposed new building. Such elevations are not required for additions unless the proposed elevation of the lowest floor level of such addition is below the lowest floor elevation of the structure to which it is added or is required to demonstrate compliance with the floodplain regulations set forth in subsection [*reference to relocated Part 9 of Article 2*].
- (f) The existing and intended use of each building or structure or part of a building or structure, including the number of dwelling units within a dwelling.
- (g) The location and configuration of any existing or proposed off-street parking space(s), the number of spaces proposed to be provided, and the proposed surfacing of such areas.
- (h) The signature and certification number, if applicable, of the person preparing the plat.
- (i) Delineation of any Resource Protection Area and Resource Management Area.
- (j) Delineation of any mapped floodplain and floodplain easement.
- (k) Delineation of any access easement to contiguous properties.
- (l) Delineation of any conservation, restrictive planting, or vegetative buffer easement.
- (m) Other information, which may include photographs of the lot, existing and proposed buildings, existing and proposed uses on the site, and any other information regarding contiguous lots as necessary for proper review of the application.
- (n) When the Building Permit application is for a new single family detached dwelling, a statement, where applicable, that the lot is subject to the affordable dwelling unit development zoning district regulations.

## 6. Residential Use Permits

### A. Plan Requirements

For single family detached dwelling units, five copies of an as-built house location survey plat must be submitted to the Zoning Administrator for review and approval within 30 days of the issuance of the Residential Use Permit. Such plat must be presented on a sheet drawn to a designated scale of not less than 1" = 50' or larger, unless a smaller scale is required to accommodate the development, with the scale clearly indicated. Such plat, regardless of the area of the lot, must be prepared in accordance with the Virginia Administration Code, 18VAC10-20-380, and must also show the following:

- (1) The distance from all structures including any extensions from the vertical plane of the building, structure, or addition shown to the nearest one-tenth of a foot to all lot lines and any floodplain. For features that extend into the minimum required setbacks pursuant to subsection [*reference to relocated Sect. 2-412*], in addition to showing the distance of the feature to all lot lines, the plat must also include the specific dimensions which qualify the feature for the permitted extension.

- (2) For pipestem lots and lots abutting a pipestem driveway, the location of the pipestem driveway.
- (3) The deed book and page number(s) for the easements and conveyances shown on the plat.
- (4) Delineation of any mapped floodplain.
- (5) Delineation of any Resource Protection Area and Resource Management Area.
- (6) Delineation of any access easement to contiguous properties.
- (7) Delineation of any conservation, restrictive planting or vegetative buffer easement.
- (8) Delineation of any major underground utility easements and the location of any water, storm and sanitary sewer easements, and all conveyances and easements dedicated to Fairfax County, the State of Virginia and the Virginia Department of Transportation.

## 7. Administrative Permits<sup>245</sup>

Any information found to be necessary by the Zoning Administrator for the review and administration of the standards in Article 4.

## 8. Appeals<sup>246</sup>

### A. Supporting Reports and Studies

- (1) A statement signed by the appellant with the following information:
  - (a) The order, requirement, decision, or determination that is the subject of the appeal;
  - (b) The date when the decision was made; and
  - (c) The appellant's grounds for the appeal and the reasons for the appeal. If the appellant is a County officer, department, board, or bureau, the statement must specify how the appellant is affected; otherwise, the statement must specify how the appellant is an aggrieved person.
- (2) Any other supportive data as the appellant may desire in the record, including plats, plans, drawings, charts, or related material.
- (3) One copy of the submission requirements must also be simultaneously submitted to the BZA.

## 8102. Fee Schedule

*Placeholder for updated application fee schedule – will be included with consolidated draft.*

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<sup>245</sup> From 8-803

<sup>246</sup> Carried forward from 18-304.



## 8103. Review and Decision-Making Bodies<sup>247</sup>

### 1. Board of Supervisors<sup>248</sup>

The Board of Supervisors (the 'Board') is the legislative body for the County. It has the powers and duties under this Ordinance and other actions the Board deems desirable and necessary to implement the provisions of this Ordinance and Virginia Law.

### 2. Planning Commission<sup>249</sup>

#### A. Purpose<sup>250</sup>

The Planning Commission will advise the Board on all matters related to the orderly growth and development of Fairfax County. More specifically, the Planning Commission, with the advice and assistance of the County staff, will:

- (1) Review and recommend a Comprehensive Plan for the physical development of the County and review the plan at least once every five years.
- (2) Review and recommend amendments to the Zoning Ordinance.
- (3) Review and recommend amendments to the Subdivision Ordinance.
- (4) Review and recommend amendments to a Capital Improvement Program.
- (5) Review and make recommendations on all amendments to the Zoning Map.
- (6) Review and make recommendations on applications for special exceptions filed with the Board, and when deemed necessary on appeals and applications for special permits filed with the BZA.
- (7) Approve final development plans in accordance with the provisions of subsection 8100.2.E(2).
- (8) Approve or disapprove the general or approximate location, character, and extent of all public facilities in the County, including streets, parks, or other public areas, public buildings, public structures, public utilities, or public service corporations other than railroads, whether publicly or privately owned.

#### B. Authority and Establishment<sup>251</sup>

- (1) The Fairfax County Planning Commission (referred to as the Planning Commission) was established in conformance with a resolution adopted by the Board on July 6, 1938 pursuant to the provisions of Va. Code Sect. 15.2-2303.

<sup>247</sup> Carried forward from Article 19, with revisions as noted. Section 19-500, Tree Commission, is not carried forward in the Zoning Ordinance and will be relocated to Chapter 122 of the County Code. Section 19-600, Geotechnical Review Board, is not carried forward in the Zoning Ordinance and will be relocated to Chapter 107 of the County Code.

<sup>249</sup> Carried forward from 19-100.

<sup>249</sup> Carried forward from 19-100.

<sup>250</sup> Carried forward from 19-101, except the reference to an Official Map has been deleted, as Fairfax County does not have one.

<sup>251</sup> Carried forward from 19-102.

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## C. Powers and Duties<sup>252</sup>

The Planning Commission has the following powers and duties:

- (1) The election of officers from its own membership.
- (2) The general supervision of, and the making of regulations for, the administration of its affairs.
- (3) The adoption of its own bylaws and procedures, consistent with the ordinances of the County and the general laws of the State.
- (4) The employment or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services within the limits of funds appropriated by the Board.
- (5) The supervision of its fiscal affairs and responsibilities, under rules and regulations as prescribed by the Board.
- (6) The preparation and submittal of an annual budget in the manner prescribed by the Board.
- (7) The conduct of public hearings on specific items.
- (8) The hearing and decision on all matters referred to and upon which it is required to pass by this Ordinance and the Code of Virginia.
- (9) The performance of those activities established in subsection 8103.2.A above.
- (10) The preparation, publication and distribution of reports, ordinances, and other material relating to its activities.
- (11) The preparation and presentation to the Board of an annual report concerning the operation of the Commission and the status of planning within the County.
- (12) The preparation and presentation to the Board of a report, at intervals of not greater than five years, on whether a general revision of this Ordinance should be undertaken. If the Commission should recommend such a revision, it must describe the conditions necessitating such revisions, outlining in general the areas in which the Ordinance can be improved. Further, it must indicate the scope of the revisions that it believes to be necessary.
- (13) The establishment of advisory committees when deemed advisable.

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## D. Membership<sup>253</sup>

- (1) The Planning Commission will consist of not less than five nor more than 15 members, appointed by the Board, all of whom are residents of the County, qualified by knowledge and experience to make decisions on questions of community growth and development. At least one-half of the appointed members must be Fairfax County landowners, and there must be one member from each District.
- (2) Members will be appointed for four years and terms of appointment will be staggered. Members of the Commission may receive compensation as may be approved by the Board.

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<sup>252</sup> Carried forward from 19-107. Added “powers” to heading for consistency with other boards and commissions.

<sup>253</sup> Carried forward from 19-103.

- (3) Any vacancy in membership must be filled by appointment by the Board. It must be for an unexpired term only.
- (4) Any appointed member may be removed by the Board for malfeasance in office.

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## E. Officers<sup>254</sup>

- (1) The officers of the Planning Commission consist of a Chairman, a Vice-Chairman, a Secretary, and a Parliamentarian.
- (2) The officers of the Planning Commission must be elected from the members for a one-year term by the Commission at the third meeting of the calendar year. If an appointment to the membership by the Board is pending, the election will be held at the first meeting following the appointment.<sup>255</sup>
- (3) A candidate receiving a majority vote of the entire membership of the Commission will be declared elected. The officer will take office immediately and serve for one year or until a successor takes office.
- (4) Vacancies in office must be filled immediately by regular election procedures.

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## F. Meetings<sup>256</sup>

- (1) Regular meetings of the Planning Commission are held weekly, or as the work of the Commission may require, at a time and place to be designated by the Commission.<sup>257</sup>
- (2) All regular meetings and adjourned meetings are open to the public except as provided for in the Virginia Freedom of Information Act.
- (3) Special meetings of the Commission may be called by the Chairman or by two members upon written request to the Secretary.
  - (a) The Secretary will cause to be mailed to all members, at least five days in advance of a special meeting, a written notice fixing the time and place and purpose of the meeting.
  - (b) Written notice of a special meeting is not required if the time of the special meeting has been fixed at a previous regular meeting or if all members are present at the special meeting, or if they filed a written waiver of the required notice.
  - (c) Special meetings may be either open to the public or may be closed, but no official action on any matter may be taken by the Commission at any closed meeting.
- (4) All public hearings conducted by the Planning Commission must be in accordance with the provisions of subsection 8100.1.C.
- (5) A majority of the membership of the Commission constitutes a quorum.
- (6) No action of the Commission is valid unless approved by a majority vote of those present and voting.

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<sup>254</sup> Carried forward from 19-104.

<sup>255</sup> Revised to reflect current practice and bylaws of the Planning Commission.

<sup>256</sup> Carried forward from 19-105.

<sup>257</sup> Revised to reflect current practice of the Planning Commission.

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## **G. Records<sup>258</sup>**

The Planning Commission must keep minutes of all its proceedings, showing information presented, the names and addresses of all witnesses giving testimony, findings of fact by the Commission, and the vote of each member upon each question, or if absent or failing to vote, such fact. These minutes are part of the public record.

## **3. Board of Zoning Appeals<sup>259</sup>**

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### **A. Purpose<sup>260</sup>**

In recognition that many of the provisions of this Ordinance are of a nonspecific and general nature, and that they may require interpretation<sup>261</sup>, the Board of Zoning Appeals (the 'BZA') is established to vary specific terms of the Ordinance in order to achieve the intent of the provisions, but only in a manner that the spirit of the Ordinance is maintained and upheld. In addition, the BZA is established to perform those duties as set forth in Va. Code Sect. 15.2-2303 and those duties as set forth in this Ordinance.

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### **B. Authority and Establishment<sup>262</sup>**

The Fairfax County Board of Zoning Appeals (referred to as the BZA) was established pursuant to the provisions of Va. Code Sect. 15.2-2303.

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### **C. Powers and Duties<sup>263</sup>**

The BZA has the following powers and duties:

- (1)** To hear and decide appeals from any order, requirement, decision, interpretation or determination made by the Zoning Administrator or any other administrative officer in the administration or enforcement of this Ordinance.
- (2)** To approve upon application in specific cases a variance as defined in Va. Code Sect. 15.2-2201 from the terms of this Ordinance as will not be contrary to the public interest, when due to special conditions, a literal enforcement of the provisions will unreasonably restrict the utilization of the subject property; provided that the purpose of the Ordinance will be observed.
- (3)** To hear and decide applications for such special permits as authorized under this Ordinance.
- (4)** To hear and decide applications for interpretation of the Zoning Map where there is uncertainty as to the location of a zoning district boundary. After notice to the owners of the property affected by any such interpretation, and after a public hearing, the BZA will interpret the Map in such a way as to carry out the purpose and intent of this Ordinance for the particular district in question. The BZA does not have the power,

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<sup>258</sup> Carried forward from 19-106. Replaced "evidence" with "information."

<sup>259</sup> From Sect. 19-200.

<sup>260</sup> Carried forward from 19-201.

<sup>261</sup> Did not carry forward the statement that the ordinance "may not be perfect."

<sup>262</sup> Carried forward from 19-202.

<sup>263</sup> Carried forward from 19-209. Did not carry forward the reference to other matters required by this Ordinance as this is redundant.

however, to rezone property or to change substantially the location of zoning district boundaries as established by this Ordinance.

- (5) To make, alter, and rescind rules and forms for its procedures, consistent with the ordinances of the County and the general laws of the State.
- (6) To prescribe procedures for the conduct of public hearings that it is required to hold.
- (7) To perform those additional activities set forth in this subsection 8103.3.
- (8) To employ or contract for, within the limits of funds appropriated by the Board, legal counsel, consultants, and other technical and clerical services.<sup>264</sup>

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#### **D. Membership<sup>265</sup>**

- (1) The BZA consists of seven members appointed by the Circuit Court of Fairfax County, Virginia, and the members may receive compensation as may be approved by the Board. All members must be residents of the County.
- (2) The term of the membership must be for five years, except that the original appointment of the first five members must be made so that the term of one member expires each year. The original appointment of the additional two members must be for terms of one member for two years and one member for three years.
- (3) The Clerk of the BZA must notify the Circuit Court and the Board at least 30 days in advance of the expiration of any term of office and must also notify the Court and Board promptly of any vacancy. Appointments to fill such vacancies may be only for the unexpired portion of the term. Members may be reappointed to succeed themselves.<sup>266</sup>
- (4) A member whose term expires will continue to serve until his successor is appointed and qualifies.
- (5) Members of the BZA may not hold any other public office in the County, except that one member may be a member of the Planning Commission.
- (6) Any BZA member may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause by the Court which appointed the member, after a hearing is held with at least 15 days prior notice to the member sought to be removed.

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#### **E. Officers<sup>267</sup>**

At its first meeting in January of each year, the BZA must elect a Chairman and a Vice-Chairman by a majority vote of the entire membership, and must appoint a Clerk, whose compensation will be fixed by the Board.

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<sup>264</sup> Deleted secretaries and clerks as these are employed by the Department of Planning and Development.

<sup>265</sup> Carried forward from 19-203.

<sup>266</sup> Added that the Board must be notified.

<sup>267</sup> Carried forward from 19-204.

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## F. Meetings<sup>268</sup>

- (1) Prior to the start of each year, the BZA must adopt a meeting schedule by resolution, identifying the time and place of all meetings for the following year.
- (2) Four members of the BZA constitutes a quorum but a lesser number may meet and adjourn.
- (3) Special meetings may be called by the Chairperson provided at least five days' notice of such hearing is given to each member in writing.
- (4) The BZA may adjourn a regular meeting if all applications or appeals cannot be disposed of in the day set and no further public notice is necessary for such a meeting. Such adjournment is mandatory ten hours after the start of a meeting.
- (5) All public hearings conducted by the BZA must be in accordance with the provisions of subsection 8100.1.C. All hearings are open to the public, and any person may appear and testify at such hearing, either in person or by an authorized agent or attorney.

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## G. Referral to Planning Commission<sup>269</sup>

- (1) The Clerk of the BZA will transmit to the Planning Commission a copy of every appeal or application made to the BZA and must also notify the Commission of the date of the hearing for such appeal or application.
- (2) If, prior to the time of the hearing, the Planning Commission submits to the BZA a recommendation that an application for a special permit be denied, that specified conditions be prescribed in connection with a particular special permit, or that specified conditions be prescribed in connection with a particular variance, the BZA may not act contrary to such recommendation except by a majority vote of all the members of the BZA.

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## H. Records<sup>270</sup>

- (1) The BZA must keep records of all its proceedings, showing evidence presented, findings of fact by the BZA, and the vote of each member upon each question, or if absent or failing to vote, such fact.
- (2) Every decision of the BZA must be made by resolution which sets forth the circumstances of the application and the findings on which the decision is based and which is adopted by a majority of all of the members present, except as otherwise specifically provided in this Ordinance.

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<sup>268</sup> Carried forward from 19-205, except (i) based on current practice, updated requirement for the BZA to hold at least one meeting each month with the requirement for the BZA to adopt a meeting schedule of all meetings for the following year, and (ii) deleted the requirement that all appeals and applications be heard/considered in the order in which they are filed, as the requirement states that applications *should* be scheduled in the order in which they are filed.

<sup>269</sup> Carried forward from 19-206.

<sup>270</sup> Carried forward from 19-207. Updated to reflect current practice. Standard forms are no longer used. Reference to filing protocols not carried forward. The requirement that records must be "written" has been removed.

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### **I. Periodic Report<sup>271</sup>**

The BZA must report to the Board once a year, summarizing all appeals, applications, and decisions made since its previous report. Copies of the report must be filed at the same time with the County Executive, Planning Commission, County Attorney, and Director.

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### **J. Limitations<sup>272</sup>**

All provisions of this Ordinance relating to the BZA are strictly construed. The BZA, as a body of limited jurisdiction, must act in full conformity with this Ordinance. Any action taken by the BZA beyond the authority specifically conferred by this Ordinance are deemed to be of no force and effect.

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### **K. Decisions Subject to Judicial Review<sup>273</sup>**

All decisions and findings of the BZA that resolve the merits of an appeal or application before the BZA, or dismiss such a filing with prejudice on a procedural basis, are final decisions, and are, in all instances, subject only to judicial review in the manner provided by Va. Code Sect. 15.2-2303.

## **4. Architectural Review Board<sup>274</sup>**

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### **A. Purpose<sup>275</sup>**

The purpose of the Architectural Review Board is to administer the provisions of [*reference to Section 3101, Historic Overlay Districts*] and to advise and assist the Board in its efforts to preserve and protect historic, cultural, architectural, and archaeological resources in the County.

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### **B. Authority and Establishment<sup>276</sup>**

The Fairfax County Architectural Review Board (referred to as the ARB) is established in accordance with this section.

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### **C. Powers and Duties<sup>277</sup>**

The ARB has the following powers and duties:

- (1)** In a Historic Overlay District, to hear and decide applications for Building Permits and sign permits.

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<sup>271</sup> Carried forward from 19-208, except revised from “once every six months” to “once a year” to be consistent with state code requirements. The requirement for the County Attorney to submit a summary of observations is not carried forward.

<sup>272</sup> Carried forward from 19-210.

<sup>273</sup> Carried forward from 19-211.

<sup>274</sup> From 19-300.

<sup>275</sup> Carried forward from 19-301.

<sup>276</sup> Carried forward from 19-302.

<sup>277</sup> Carried forward from 19-307.



- (2) To review and make recommendations on all applications for rezoning, special exception, special permit, and variance, and any site plan, subdivision plat, grading plan, and sports illumination plan in Historic Overlay Districts.
- (3) To propose, as deemed appropriate, the establishment of additional Historic Overlay Districts and revisions to existing Historic Overlay Districts.
- (4) To assist and advise the Board, the Planning Commission, and other County departments and agencies in matters involving historically, architecturally, culturally, or archaeologically significant sites and buildings such as appropriate land usage, parking facilities, and signs.
- (5) To assist the Zoning Administrator in the review of applications for new utility distribution or transmission poles 50-feet or lower in height proposed to be constructed within the right-of-way of a Virginia Byway, or on property that is both adjacent to a Virginia Byway and listed on the County Inventory of Historic Sites. To assist the Zoning Administrator, the ARB may provide application specific recommendations or formulate general recommended criteria or design guidelines for the installation of such poles in these areas.
- (6) To advise owners of historic buildings or structures on problems of preservation.
- (7) To formulate recommendations concerning the establishment of an appropriate system of markers for Historic Overlay Districts and selected historic sites and buildings, including proposals for the installation and care of such markers.
- (8) To advise the Board of Supervisors in the preservation, restoration, and conservation of historic, cultural, or archaeological buildings, sites, or areas in the County by cooperating with and enlisting assistance from the Fairfax County History Commission, the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties, both public and private.
- (9) To make available to the Fairfax County Library, on request, copies of reports, maps, drawings, and other documents bearing on the historical significance and architectural history of landmarks considered by or brought to the attention of the ARB, and permit copies to be made for permanent keeping in the library's historical collection.
- (10) To employ secretarial assistance and pay salaries, wages, and other incurred necessary expenses, pursuant to appropriations by the Board.

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#### **D. Membership<sup>278</sup>**

- (1) The ARB is composed of 11 voting members who must be residents of the County. The members appointed by the Board must include:
  - (a) Two licensed architects, at least one of whom must meet the Secretary of the Interior's Professional Qualification Standards for Historic Architecture as published in 36 CFR Part 61.
  - (b) One licensed landscape architect.
  - (c) One lawyer who is an active member in good standing with the Virginia State Bar.
  - (d) One archaeologist who meets the Secretary of the Interior's Professional Qualification Standards for Archaeology as published in 36 CFR Part 61.

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<sup>278</sup> Carried forward from 19-303.

- (e) One historian who meets the Secretary of the Interior's Professional Qualification Standards for History as published in 36 CFR Part 61 or one architectural historian who meets the Secretary of the Interior's Professional Qualification Standards for Architectural History as published in 36 CFR Part 61.
  - (f) One member must be an ex-officio member from the Fairfax County History Commission, who will be drawn from the ranks of related professional groups or who meets the Secretary of the Interior's Professional Qualification Standards for one of the disciplines cited above in (a), (d), or (e).
  - (g) The other members appointed by the Board will be drawn from the ranks of related professional groups such as historians, architectural historians, architects, landscape architects, archaeologists, engineers, land-use planners, lawyers, and real estate brokers.
- (2) Members other than the member from the History Commission, who is chosen by the History Commission, must be appointed to serve for a term of three years or until their successor has been appointed. Terms will be staggered with three members appointed every year except that four members will be appointed every third year. An appointment to fill a vacancy may only be for the unexpired portion of the term. Members may be reappointed to succeed themselves.
  - (3) Members must exempt themselves from voting on any action in which their financial interests or those of their immediate family or employer are directly involved.
  - (4) Members must possess a demonstrated interest, competence, and knowledge of historic preservation.

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## E. Officers<sup>279</sup>

The officers of the ARB must be established by majority vote of the entire membership.

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## F. Meetings<sup>280</sup>

- (1) Meetings of the ARB will be scheduled as needed. Meetings must be held at a time and place to be designated by the Chairperson, and all members will be notified of such at least five days in advance of the meeting.
- (2) A quorum of six members present is required for consideration of any matter, and any action taken requires the affirmative vote of a majority of the voting membership present.

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## G. Records<sup>281</sup>

The ARB must keep records of all its proceedings, and such records will be made available upon request for public inspection.

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<sup>279</sup> Carried forward from 19-304.

<sup>280</sup> Carried forward from 19-305.

<sup>281</sup> Carried forward from 19-306.

## 5. Health Care Advisory Board<sup>282</sup>

### A. Purpose<sup>283</sup>

The Health Care Advisory Board was created to be a citizen group to develop expertise in all phases of health care and use that expertise to advise and otherwise assist the Board in the development and implementation of a Comprehensive Plan of health programs and facilities.

### B. Authority and Establishment<sup>284</sup>

The Health Care Advisory Board was established in conformance with a resolution adopted by the Board on July 11, 1973.

### C. Powers and Duties<sup>285</sup>

The powers and duties of the Health Care Advisory Board include, but are not limited to, the following. Such functions apply only to the extent that they do not contradict with specifically outlined duties of the Fairfax-Falls Church Community Services Board.

- (1) Participation in the periodic review of a comprehensive health plan for the County, to include recommendations for the provision of health care facilities, as well as an evaluation of current health resources and an assessment of future program needs.
- (2) Initiation of an on-going health care information process in coordination with local, regional, state, and federal agencies.
- (3) Annual review of the County Executive's budget priorities for physical health-related County and contributory agencies.
- (4) Review of proposed medical care facilities, continuing care facilities, and adult day care centers in accordance with other provisions of this Ordinance.
- (5) Evaluation of the specifications and methodology of proposed County third party contracts for health service studies and programs.
- (6) Review of materials provided the County by the Inova Health System pertaining to certain provisions of the Fairfax County and Inova Health System Agreement and requiring the review or approval of the Board.<sup>286</sup>
- (7) The undertaking of other activities as appropriate related to the evolving character of health care delivery.

### D. Membership<sup>287</sup>

The Health Care Advisory Board must consist of eleven members serving four-year terms with at least two physicians or other health care provider appointed at large by the Chairman of the Board of Supervisors and the other nine members appointed one from each District.<sup>288</sup>

<sup>282</sup> Carried forward from 19-400.

<sup>283</sup> Carried forward from 19-401.

<sup>284</sup> Carried forward from 19-402.

<sup>285</sup> Carried forward from 19-407.

<sup>286</sup> Updated Fairfax Hospital Association to Inova Health System.

<sup>287</sup> Carried forward from 19-403.

<sup>288</sup> Corrected number of HCAB members

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### E. Officers<sup>289</sup>

The Health Care Advisory Board will establish rules of procedure as it sees fit and elect such officers as it deems necessary to the fulfillment of its duties.

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### F. Meetings<sup>290</sup>

The Health Care Advisory Board will hold such meetings as it deems necessary to the fulfillment of its duties.

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### G. Records<sup>291</sup>

The Health Care Advisory Board is directly responsible to the Board. Records of its actions are maintained by the Health Department.<sup>292</sup>

## 8104. Nonconformities<sup>293</sup>

This section establishes the regulations for development, redevelopment, and continued existence of uses or structures, lawfully existing on the effective date of this Ordinance or prior ordinances, but that do not conform to the requirements of this Ordinance.

### 1. Regulations Controlling Nonconformities, Generally<sup>294</sup>

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#### A. General Standards

- (1) Any nonconforming use, other than those specified in subsection 8104.2 below, or any nonconforming structure may be continued but may not be enlarged, intensified, extended, or structurally altered, except for as may be permitted by the following:
  - (a) The Board in accordance with subsection [*reference to relocated Sect. 9-619*]; or
  - (b) Where the modification is to provide an accessibility improvement or other reasonable accommodation as determined by the Zoning Administrator.
- (2) Any nonconforming use may be extended to occupy any part of a building that was lawfully and clearly arranged or designed for the use at the time of the effective date of this Ordinance, but may not be extended to occupy any land or building area greater than was occupied by the use prior to the effective date of this Ordinance, except as provided in subsection 8104.2 below.
- (3) The rights that apply to a nonconforming use or building do so without regard to the ownership of the land or building or the nature of the occupancy of the building where such nonconforming use is conducted.
- (4) Provisions relating to nonconforming uses and buildings apply to all nonconforming uses and buildings existing on the effective date of this Ordinance and to all uses and

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<sup>289</sup> Carried forward from 19-404.

<sup>290</sup> Carried forward from 19-405.

<sup>291</sup> Carried forward from 19-406.

<sup>292</sup> Revised to indicate records are kept with Health Department, not the County Executive, based on current practice.

<sup>293</sup> From Article 15, *Nonconformities*.

<sup>294</sup> From Sect. 15-103. Revised to apply more broadly to all nonconformities, rather than just uses.

buildings that become nonconforming by reason of any amendment to this Ordinance. The provisions do not apply to any use established or building erected in violation of law, regardless of when the use was established or building erected.

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## **B. Repair and Maintenance of Nonconforming Use or Structure**

Nothing in this section prevents keeping in good repair a nonconforming building or a building in which a nonconforming use is conducted. However, no nonconforming building may be restored, repaired, or rebuilt that is declared by any authorized County official to be so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely or has occurred.<sup>295</sup>

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## **C. Removing or Relocating a Nonconforming Use or Structure**

- (1)** If a building in which a nonconforming use is conducted is moved or relocated for any reason, then any future use of such building must conform with this Ordinance for the zoning district in which the subject building is located.
- (2)** If a building in which a nonconforming use is conducted is removed or demolished, the subsequent use of land or of any building subsequently located on such land must conform with this Ordinance for the zoning district in which such land is located.

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## **D. Destroyed or Damaged Nonconformities**

- (1)** Pursuant to Va. Code Sect. 15.2-2307, a nonconforming building that is destroyed or damaged by natural disaster may be repaired, rebuilt, or replaced to its original nonconformity or to a reduced nonconforming condition within two years of the date of the natural disaster. However, if the nonconforming building is located 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 declaration, then the building may be restored to its original nonconforming condition or to a reduced nonconforming condition within four years of such disaster. A natural disaster includes a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, or fire caused by lightning or wildfire. Owners of property damaged by a fire have the same rights to rebuild such property as if it were damaged by a natural disaster, except if the owner commits arson.<sup>296</sup>
- (2)** A nonconforming building that is destroyed or damaged by any casualty other than a natural disaster as defined above or a building in which a nonconforming use is conducted that is destroyed or damaged by any casualty to an extent not exceeding 50 percent of its current assessed value according to the records of the Department of Tax Administration, exclusive of foundations, may be restored within two years after such destruction or damage but may not be enlarged except as provided in subsection 8104.2 below. If any such building is destroyed or damaged to an extent exceeding 50 percent of its value, it may not be reconstructed except:
  - (a)** To contain a conforming use;

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<sup>295</sup> Revised “unsafe or unlawful” to tie to definition of unsafe structure in the Virginia Maintenance Code.

<sup>296</sup> Edited to delete the phrase “act of God.” Removed the reference to “accidental” fire to allow for other classifications of fire and added the exception of arson from Va. Code 15.2-2307.E.

- (b) If the building is used for agricultural purposes and the floors and foundation walls are of concrete or other masonry;<sup>297</sup>
- (c) If the nonconforming location is necessary to meet any requirement or regulation of the Health Department;
- (d) If the nonconforming building is a single family detached dwelling, it may be reconstructed within two years from the date of destruction or damage to occupy all or a portion of the same space that it occupied prior to such destruction or damage;

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## E. Nonconformities Created by Zoning Ordinance Amendment #89-185

- (1) If a building or use was made nonconforming solely based on the condition that:
  - (a) The building is nonconforming based on floor area ratio; or
  - (b) The use is an office in a C-5, C-6, C-7, or C-8 District and fails to comply with the use standards for office uses in subsection 4102.5.M [*reference to office use standards*]; then,
- (2) Such building or use may be reconstructed provided that the construction is commenced and diligently pursued within four years after the destruction or damage. Such period may be extended by the Zoning Administrator if it is determined that the owner has made a good faith attempt to commence construction within four years after the destruction or damage. The building height and floor area ratio of the reconstructed use may not exceed that which existed at the time of destruction or damage.
- (3) The reconstruction as described in (2) above applies to the following:
  - (a) A building or use in the C-5, C-6, C-7, or C-8 District that was a conforming use immediately prior to December 12, 1989, the effective date of Zoning Ordinance Amendment #89-185; or
  - (b) A building or use that was constructed pursuant to an approved special exception or an approved special permit grandfathered from Zoning Ordinance Amendment #89-185.

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## F. Abandoned or Terminated Nonconforming Uses

- (1) If any nonconforming use ceases for any reason for a continuous period of two years or more, except for provisions of subsection 8104.1.D(2) above, or is changed to or replaced by a conforming use, the land and building devoted to such nonconforming use is subject to the regulations for the zoning district in which such land and building are located.
- (2) No use that is accessory to a principal nonconforming use may continue after such principal use ceases.

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<sup>297</sup> Deleted “and are not practical to move” from Par. 6B of Sect. 15-103.

## 2. Continuation and Expansion of Specific Nonconforming Uses or Structures<sup>298</sup>

- A.** The following nonconforming uses or structures may be continued, and upon obtaining a special exception from the Board in accordance with subsection 8100.3, such use may be enlarged subject to the conditions set forth in subsections B through D below:
- (1)** Single family detached dwelling in a C or I district or an R district where such a dwelling is not permitted by this Ordinance.
  - (2)** A commercial use, allowed as a permitted, special exception, or special permit use in a C district of one class under the provisions of this Ordinance, but located in a C district of another class where such use is not allowed.
- B.** Enlargement(s) in accordance with subsection A above may not exceed:
- (1)** A cumulative total of 25 percent of the land area occupied by such nonconforming use or structure;
  - (2)** A cumulative total of 25 percent of the gross floor area of the building in which such nonconforming use is conducted; and
  - (3)** The maximum floor area ratio for the zoning district in which located.
- C.** Structural alterations may be made in a building containing a nonconforming use set forth in subsection A above, but the value of those alterations may not exceed a total of 50 percent of the building's current assessed value according to the records of the Department of Tax Administration.
- D.** A single family detached dwelling that is remodeled or enlarged in accordance with the provisions of this subsection, may not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to such remodeling or enlargement.
- E.** Any modification to an existing nonconforming building or use to provide an accessibility improvement or other reasonable accommodation is permitted and does not require approval of a special exception.

## 3. Exceptions to Nonconforming Status<sup>299</sup>

### A. Generally

A structure or use is considered noncompliant rather than nonconforming if it was a conforming structure or use prior to the effective date of this Ordinance and would otherwise meet the provisions of this Ordinance, except that it does not meet the minimum district size, lot size, setback, shape factor, or building height requirements of the zoning district in which located. Additionally, if the minimum parking requirements are not met but were met at the time of development, it is considered noncompliant rather than nonconforming. A noncompliant structure or use may be continued. A noncompliant structure or use may be enlarged if the enlargement complies with the regulations of the zoning district except for the lot size or shape factor requirements and if the enlargement it meets the minimum parking requirements in Article 6.<sup>300</sup>

<sup>298</sup> From Sect. 15-102.

<sup>299</sup> From Sect. 15-101.

<sup>300</sup> Added a reference to noncompliant parking in accordance with long-standing interpretation.



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## B. Reconstruction of Damaged Single Family Detached Dwellings

If a noncompliant single family detached dwelling in accordance with subsection 3A is destroyed or damaged by any casualty that is not intentionally caused by the owner or owner's agents, it may be reconstructed if:

- (1) The dwelling is reconstructed pursuant to a Building Permit that is approved within two years after the damage or destruction; and
- (2) No additional stories may be permitted for any portion of the reconstructed dwelling that did not previously comply with the minimum setback requirements of the district in which located at the time of the casualty; and
- (3) A dwelling reconstructed under this section may not result in any setback that is less than the required setback in existence immediately prior to the casualty or that complies with the current minimum required setbacks, whichever is applicable. The Board may approve a special exception pursuant to subsection [reference to relocated Sect. 9-623] to allow a reduction of the setback requirements for single family detached dwellings that are destroyed by casualty.<sup>301</sup>

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## C. Special Exception and Special Permit Uses

### (1) Generally

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

### (2) Minor Modifications for Noncompliant Religious Assembly Uses

Minor modifications, including the expansion of an existing building or the addition of a new building or accessory structure, may be permitted without the requirement for approval of a special permit or special exception in subsection (1) above for a religious assembly use or a religious assembly with private school, specialized instruction center, or child care center when<sup>302</sup>:

- (a) It is determined by the Zoning Administrator that such modifications do not:
  1. Permit an increase in the number of seats, parking spaces, or students, if applicable, by more than ten percent of the existing amount;
  2. Reduce the effectiveness of existing transitional screening, buffering, landscaping, or open space;
  3. Permit changes to bulk, mass, orientation, or location of the buildings or uses in a way that would adversely impact adjacent property;<sup>303</sup>

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<sup>301</sup> This provision may be relocated to the setback reduction provisions in Article 5 with the consolidated draft.

<sup>302</sup> Revised to match new naming conventions for uses in the new draft use regulations, Article 4.

<sup>303</sup> Simplified for clarity.

4. Exceed a total of 500 square feet of gross floor area, or five percent of the existing gross floor area up to a maximum of 2,500 square feet of gross floor area; or
  5. Exceed the maximum permitted FAR for the zoning district.
- (b) A request for approval of a minor modification in accordance with this subsection (2) requires written notice by the requester in accordance with the following:
1. The notice must 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 must be sent to the last known address of the owners, as shown in the real estate assessment records of the Department of Tax Administration, of all property abutting and across the street from the site, or portion of the site subject to the request, and must be delivered by hand or sent by certified mail, return receipt requested.
- (c) The request submitted to the Zoning Administrator must include:
1. An affidavit from the requester affirming that the required notice has been provided in accordance with subsection (b) above;
  2. The date that the notice was delivered or sent;
  3. The names and addresses of all persons notified; and
  4. The Tax Map references for all parcels notified.
- (d) No request may be considered by the Zoning Administrator unless the affidavit has been provided in accordance with subsection (c) above.
- (e) When it is determined by the Zoning Administrator that a modification is not allowed under the above provisions, such modification requires the submission and approval of a special exception or special permit application.
- (f) Modifications to an existing structure or use to provide an accessibility improvement or other reasonable accommodation are permitted and do not require approval of a special exception or special permit.
- (3) **Single Family Dwellings in the PRC District<sup>304</sup>**  
Any single family dwelling or addition to such dwelling permitted in the PRC District, for which a Building Permit was approved prior to April 2, 1979 and that does not comply with the minimum setback requirements of subsection 2105.3.B(3)(b) [*reference to PRC District setbacks*] is not a nonconforming structure.
- (4) **Structures in the Airport Noise Impact Overlay District<sup>305</sup>**  
Any structure existing in the Airport Noise Impact Overlay District for which a Building Permit was issued prior to April 8, 1997 and that does not comply with the applicable interior noise level standards in [*reference to Table 3103.1*] is not deemed to be a nonconforming structure.

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<sup>304</sup> Will be relocated to the PRC standards in Article 2 with the consolidated draft.

<sup>305</sup> Will be relocated to the Airport noise standards in Article 5 with the consolidated draft.

## 4. Modifications to a Nonconformity<sup>306</sup>

- A.** The Board may approve a special exception to allow a structural alteration to any nonconforming building or to a building in which a nonconforming use is conducted subject to the following:
- (1)** It is determined that the alteration is necessary as a result of a condemnation or other acquisition by any government agency for a public improvement.
  - (2)** It is determined that the allowance of such alteration provides more of a public benefit than not allowing the alteration, even if the use may not be in harmony with the Comprehensive Plan or the standards of subsection 4102.1.F [*reference to relocated Sect. 9-006*].
  - (3)** A plan must be submitted depicting the proposed alteration and the overall impact or effect of the alteration to the structure. The alteration may not result in an increase in building square footage, an increase in the area of the building occupied by the nonconforming use, or in the relocation of the building on the site.
  - (4)** The special exception may permit the existing nonconformity and any additional nonconformity that may be created by the public improvement to continue as nonconformities.
- B.** Upon approving a special exception, the Board may impose such conditions as deemed necessary to address any impacts of the nonconformity or proposed modification.

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<sup>306</sup> From Sect. 9-619.

## 8105. Condominiums, and Condominium and Cooperative Conversions<sup>307</sup>

### 1. Authority

- A.** As long as the declarant has the right to create additional units or to complete the common elements, if the declarant is not the owner of the land, the declarant has the authority to execute, file, and process any site plan, parking tabulations, application for special exception, special permit, 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 or application affecting more than one unit. However, if such plan or application creates an affirmative obligation on the unit owners' association, then the consent of such association is required.
- B.** Once the declarant no longer has such authority, in accordance with Va. Code subsection B of Sec. 55-79.80, and if the unit owners' association is not the owner of the land, the executive organ of the unit owners' association if one exists, and if not, then a representative appointed by the unit owners' association, has the authority to execute, file, and process any site plan, parking tabulation, special exception, special permit, 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 or 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 is required. Such plan or application may not adversely affect the rights of the declarant to develop additional land.
- C.** A site plan, special exception, special permit, variance, or proffered condition amendment affecting only one unit may be filed by the unit owner.<sup>308</sup>
- D.** For purposes of obtaining Building, Residential or Non-Residential Use Permits, and sign permits, the unit owner, including the declarant if the declarant is the unit owner, must apply for permits for the unit, and the unit owners' association must apply for permits for the common elements, except that the declarant must apply for permits for convertible land. For the purposes of this Section, condominium, declarant, common elements, unit, unit owners' association, and convertible land are defined in the Va. Code, Title 55, Chapter 4.2, The Condominium Act.

### 2. Condominium or Cooperative Standards

- A.** In addition to the specific minimum lot size and setback requirements specified for a given zoning district, a single family detached or attached dwelling condominium development may be permitted under the Va. Code, Title 55, Chapter 4.2, The Condominium Act, subject to the following provisions:
  - (1)** Single family detached dwelling developments are subject to the following requirements:
    - (a)** The minimum lot size and setback requirements of the zoning district in which located must be met as if lot lines existed; and

<sup>307</sup> Carried forward from Sect. 2-518, revised for clarity.

<sup>308</sup> The reference to a rezoning of an individual unit has been deleted.

- (b) All dwelling units are subject to the same requirement to have access to a dedicated public street as single family dwelling units located on lots that result from a subdivision of land, except as provided for by the provisions of section 5107 [reference to relocated Part 3 of Article 11] and Chapter 101 of The Code, The Subdivision Ordinance.
  - (2) In a single family attached or stacked townhouse dwelling development, the minimum lot size and setback requirements of the zoning district in which located must be met as if lot lines existed.
  - (3) The location of any community structure, such as a clubhouse or swimming pool, is governed by the setback requirements for all other structures in the zoning district in which located.
  - (4) Accessory structures are permitted as determined by the Zoning Administrator.
  - (5) Such developments must comply with the maximum density and other provisions of the zoning district.
- B. Any existing structures 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 that are nonconforming are subject to the approval of a special exception in accordance with the provisions of subsection 8100.3.

## 8106. Enforcement, Violations, and Penalties<sup>309</sup>

### 1. Types of Violations<sup>310</sup>

The following are violations of this Ordinance, unlawful, and subject to enforcement and penalties as expressed in this Ordinance and the County Code:<sup>311</sup>

- A. Any building erected or improvements constructed contrary to any of the provisions of this Ordinance;
- B. 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; and
- C. When a Building Permit is required, demolishing, razing, or moving a building or structure located in a Historic Overlay District without the prior approval of the Architectural Review Board or the Board of Supervisors.<sup>312</sup>

### 2. Enforcement<sup>313</sup>

#### A. Enforcement of Ordinance<sup>314</sup>

- (1) Unless otherwise specifically qualified, this Ordinance will be enforced by the Zoning Administrator pursuant to Section 1107.

<sup>309</sup> From current Article 18, Part 9, 18-900, *Violations, Infractions, and Penalties*.

<sup>310</sup> From Sect. 18-901, renamed from “general provisions.”

<sup>311</sup> This introductory sentence is new.

<sup>312</sup> New to this section but carried forward from penalties section for this type of violation in subsection 8106.3.B.

<sup>313</sup> From Sect. 18-901, organized with subheadings for clarity.

<sup>314</sup> From Sect. 18-101.

- (2) No officer, board, agency, or employee of the County may issue, grant, or approve any permit, license, certificate, or other authorization for the construction of any building or for any use of any land or building that would not be in full compliance with this Ordinance. Any permit, license, certificate, or other authorization issued, granted, or approved in violation of this Ordinance is deemed null and void and of no effect without the necessity of any proceedings for revocation or nullification, and any work undertaken or use established pursuant to any permit, license, certificate, or authorization is deemed unlawful. No action may be taken by any officer, board, agency, or employee of the County, purporting to validate any such violation.<sup>315</sup>

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## B. Applicability

Any person, whether owner, lessee, principal, agent, employee, tenant, occupant, or otherwise, who violates any of the provisions of this Ordinance, permits any such violation, fails to comply with any of the requirements of this Ordinance, or who erects any building or uses any building or land in violation of the provisions of this Ordinance is subject to these enforcement provisions.

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## C. Enforcement Procedures<sup>316</sup>

### (1) Issuing Notice

Upon becoming aware of any violation of any provisions of this Ordinance, the Zoning Administrator may serve a notice of violation on the person committing or permitting the violation. This notice will require the violation to cease within a specified time. The notice of violation may also include a warning that any previously issued use permit will be revoked upon expiration of the appeal period, unless an appeal has been filed or the violation has ceased.

### (2) Failure to Comply with Notice

After such notice is sent, if the subject violation is not ceased within the specified timeframe, the Zoning Administrator may proceed to remedy the violation as provided in subsection 8106.3 below [*reference to relocated Sections 18-902, 18-903, 18-904*], unless an appeal has been timely filed. Except as provided in subsection [*reference to relocated Sect. 18-307*], if a permit revocation is timely appealed, it does not take effect until the appeal has been withdrawn by the appellant or decided by the BZA.

### (3) Right to Appeal

Any written notice of a zoning violation or a written order of the Zoning Administrator must include a statement informing the recipient of a right to appeal the notice of a zoning violation or written order within 30 days in accordance with Va. Code Sect. 15.2-2311 and subsection 8100.11 [*reference to relocated Part 3 of Article 18, Appeals*], except that a written notice of violation or a written order of the Zoning Administrator involving the violations set forth in subsection 8100.11.A(2)(b) [*reference to relocated Par. 2 of Sect. 18-303*] must include a statement informing the recipient that a right to appeal the notice of violation or written order within ten days may exist. The decision specified in the notice of violation or written order and the permit revocation, if applicable, will be final and unappealable if not appealed within the specified

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<sup>315</sup> Carried forward from 18-114.

<sup>316</sup> From Sect. 18-901

timeframes set forth in the notice or written order. The appeal period does not commence until such statement is given.

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## D. Other Enforcement Remedies

The Zoning Administrator or designated agent may seek the issuance of an inspection warrant, initiate injunction, mandamus, or any other appropriate action to prevent, enjoin, abate, or remove such structure 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. Nothing in this Ordinance may be construed to authorize an unconstitutional inspection or search. All searches or inspections authorized by this Ordinance require a warrant, court order, consent, or another exception to the warrant requirement.

# 3. Penalties

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## A. Infractions and Civil Penalties<sup>317</sup>

- (1) A violation of this Ordinance, except for the posting of signs on public property or public rights-of-way, is deemed an infraction and is punishable by a civil penalty of \$200 for the first violation. Subsequent violations arising from the same set of operative facts are punishable by a civil penalty of \$500 for each separate offense.
- (2) Each day during which any violation of the provisions in (1) above is found to have existed constitutes a separate offense. However, in no event will any such violation arising from the same set of operative facts be charged more frequently than once in any ten-day period, nor will a series of such violations arising from the same set of operative facts result in civil penalties that exceed a total of \$5,000.
- (3) The designation of a violation of this Ordinance as an infraction pursuant to (1) above is in lieu of criminal sanctions, and such designation precludes 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 (1) above total \$5,000 or more for such violation. If the civil penalties for a violation under (1) above total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.
- (4) After having served a notice of violation on any person committing or permitting a violation of the Ordinance provisions under (1) above and if such violation has not ceased within the timeframe specified in such notice, then, upon the approval of the County Attorney, the Zoning Administrator will cause two copies of a summons to be served upon such person.
- (5) Such summons must contain the following information:
  - (a) The name and address of the person charged.
  - (b) The nature of the infraction and the Ordinance provision(s) being violated.
  - (c) The location, date, and time that the infraction occurred or was observed.
  - (d) The amount of the civil penalty assessed for the infraction.
  - (e) The manner, location, and time in which the civil penalty may be paid to the County.

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<sup>317</sup> From Sect. 18-903.



- (f) The right of the recipient of the summons to elect to stand trial for the infraction and the date for such trial.
- (6) The summons must provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the Department of Finance at least 72 hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons must provide that a signature to an admission of liability has the same force and effect as a judgment of court, however, an admission is not deemed a criminal conviction for any purpose.
- (7) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation must be tried in the General District Court in the same manner and with the same right of appeal as provided by law. A finding of liability is not deemed a criminal conviction for any purpose.
- (8) The remedies provided for in this section are cumulative and not exclusive and are in addition to any other remedies provided by law.

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#### **B. Civil Penalty for Demolishing, Razing, or Moving Buildings in Historic Overlay Districts<sup>318</sup>**

- (1) When a Building Permit is required, demolishing, razing, or moving a building or structure located in a Historic Overlay District without the prior approval of the Architectural Review Board or the Board of Supervisors as provided in subsection *[reference to relocated Sect. 7-204]* is punishable by a civil penalty.
- (2) Such civil penalty may not exceed the market value of the property as determined by the assessed value of the property at the time of destruction or removal of the building or structure, and must include the value of any structure and the value of the real property upon which any such structure was located.
- (3) Enforcement under this section requires bringing an action in the name of the County in Circuit Court by the County Attorney, upon request of the Zoning Administrator, and such action must be brought against the party or parties deemed responsible for such violation. It is the burden of the County to show liability of the violator by a preponderance of the evidence.
- (4) The remedies provided for in this section are not exclusive and are in addition to any other remedies provided by law.

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#### **C. Criminal Violations and Penalties<sup>319</sup>**

- (1) Except as otherwise provided by law, any violation of this Ordinance is deemed a misdemeanor and, upon conviction of such violation, is punishable by a fine of not more than \$1,000.
- (2) Failure to remove or abate a zoning violation within the timeframe established by the Court constitutes a separate misdemeanor offense punishable by a fine of not more than \$1,000; any such failure during a succeeding ten-day period constitutes a separate misdemeanor offense punishable by a fine of not more than \$1,500; and any such

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<sup>318</sup> From Sect. 18-904.

<sup>319</sup> From Sect. 18-902.

failure during any succeeding ten-day period constitutes a separate misdemeanor offense for each ten-day period punishable by a fine of not more than \$2,000.

- (3)** The remedy provided for in this section is in addition to any other remedies provided by law; however, the designation of a particular violation of this Ordinance as an infraction pursuant to A(1) above will preclude criminal prosecution or sanctions, except for any infraction also resulting in injury to any person or persons or civil penalties that total \$5,000 or more.

# Article 9: Definitions and Ordinance Interpretation

## 9100. Interpretations<sup>320</sup>

For the purpose of this Ordinance, certain words and terms are to be interpreted as follows:

1. Words used in the present tense can include the future; words in the singular number can include the plural; and words in the plural can include the singular, unless the obvious construction of the wording indicates otherwise.
2. The words 'must' and 'shall' are mandatory.<sup>321</sup>
3. Unless otherwise specified, all distances must be measured horizontally and at right angles to the line in relation to which the distance is specified.
4. Unless otherwise specified, the term 'day' means a calendar day.
5. The word 'building' includes the word structure, and the word 'structure' includes the word building; the word 'lot' includes the word plot; the word 'used' is deemed also to include designed, intended, or arranged to be used.<sup>322</sup>
6. The terms 'land use' and 'use of land' also include building use and use of building.
7. The word 'adjacent' means nearby and not necessarily contiguous; the word 'contiguous' means touching and sharing a common point or line.
8. The word 'State' means the Commonwealth of Virginia. The word 'County' means the County of Fairfax, Commonwealth of Virginia; and the term 'County boundary' means any exterior boundary of the County or any boundary of unincorporated territory within the County.
9. The terms 'Board of Supervisors', 'Planning Commission', 'Board of Zoning Appeals', 'County Executive', 'Director of Land Development Services', 'Zoning Administrator', 'Health Officer' and other similar offices means the respective Boards, Commissions, and Officers of Fairfax County or their duly authorized agents. The use of the term 'Board' always means the Board of Supervisors; the use of the abbreviation 'BZA' always means the Board of Zoning Appeals; the use of the term 'Director' always means the Director of Land Development Services or duly authorized agent; and the use of the abbreviation 'WMATA' always means the Washington Metropolitan Area Transit Authority.
10. The term 'R district' means any residential district and where appropriate, the residential areas in a P district; the term 'C district' means any commercial district; the term 'I district' means any industrial district; and the term 'P district' means any planned development district.

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<sup>320</sup> Carried forward from Part 2, 20-200.

<sup>321</sup> Revised from "shall" since that was not carried forward in the zMOD process. "Shall" included for interpretation of previous proffers.

<sup>322</sup> Interpretation of the term "erected" not carried forward.

- 11.** The term 'The Code' means 'The Code of the County of Fairfax, Virginia'.
- 12.** The term 'rezoning' means an amendment to the zoning map.
- 13.** The terms architect, engineer, landscape architect, and land surveyor refer to those professionals who are registered with the Virginia Department of Professional and Occupational Regulation to practice as such.<sup>323</sup>

## **9101. List of Abbreviations<sup>324</sup>**

- 1.** ARB – Architectural Review Board
- 2.** BZA – Board of Zoning Appeals
- 3.** FAR – Floor Area Ratio
- 4.** PC – Planning Commission
- 5.** WMATA – Washington Metropolitan Area Transit Authority
- 6.** ZA – Zoning Administrator

## **9102. Defined Terms<sup>325</sup>**

### **Accessibility Improvement**

The provision of ramps and other facilities or equipment, such as elevator shafts and bathroom fixtures, or accessible parking spaces, related access aisles and accessible routes for persons with disabilities in accordance with the design specifications set forth in the Virginia Uniform Statewide Building Code (VUSBC) and the Public Facilities Manual whether such improvement is mandated by Federal or State law or is provided voluntarily.

### **Acre**

A measure of land that equals 43,560 square feet.

### **Condominium Conversion**

A subdivision of an existing building(s) and its related lot(s) to a condominium in accordance with the provisions of Va. Code Chapter 4.2, Condominium Act.

### **Construction Permit**

A permit that allows construction of bonded improvements.<sup>326</sup>

### **Contributing Property**

A property located within a Historic Overlay District that adds to or supports the historic, architectural, or archaeological significance of the district as determined through the establishment of a Historic Overlay District.

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<sup>323</sup> Replaced respective definitions with this interpretation.

<sup>324</sup> New section. A complete list of abbreviations used in the Ordinance will be developed with the consolidated draft.

<sup>325</sup> The terms in this section are only those related to the administration and procedures module and were not already included with earlier drafts. These terms and others will be consolidated with the other definitions provided in earlier drafts (uses, districts, and development standards) with the consolidated draft.

<sup>326</sup> Deleted reference to land disturbance because there is now a separate land disturbance permit.

### **Cooperative**

Real estate owned by an association, each of the members of which is entitled, by virtue of ownership interest in the association, to exclusive possession of a unit.

### **Developer**

The legal or beneficial owner or owners of the land proposed to be included in a development, or the authorized agent of such land. In addition, the holder of an option or contract to purchase, a lessee having a remaining term of not less than 30 years, or other persons having an enforceable proprietary interest in such land is deemed to be a developer for the purpose of this Ordinance.

### **Development Plan, PRC<sup>327</sup>**

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

### **Development Plan, Conceptual**

A required submission at the time of filing for an amendment to the Zoning Map for a P district other than the PRC District, prepared and approved in accordance with the provisions of subsection [*reference to relocated Sect. 16-401*], which generally characterizes the planned development of the subject lot.

### **Development Plan, Final**

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

### **Development Plan, Generalized**

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

### **Existing Vegetation Map**

A depiction of the location of the existing vegetation cover types, as defined in the Public Facilities Manual, with statements regarding amount of acreage, existing tree species, successional stage, health and condition, and a list of prominent non-native invasive species present in any cover type.<sup>328</sup>

### **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. For purposes of applying the floodplain regulations contained in subsection [*reference to relocated Part 9 of Article 2*], an 'Historic Property' must be based on the 'Historic Structure' definition contained in subsection [*reference to relocated Sect. 2-906*].

### **Infraction**

Any violation of this Ordinance that has been declared an infraction pursuant to subsection [*reference to relocated Par. 1 of Sect. 18-903*]. For purposes of this Ordinance, an 'infraction' is a civil offense, and an

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<sup>327</sup> Revised to eliminate rogue reference to food and beverage production requirements.

<sup>328</sup> Revised to be more general. The details are contained in the PFM.

admission of guilt or a finding of guilt is not a criminal conviction for any purpose, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

### **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, the Planning Commission, or the BZA 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.

### **Land Disturbance Permit**

A Permit that allows land disturbing activity in accordance with Chapter 104 of the Code.<sup>329</sup>

### **Natural Resources**

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

### **Noncompliant<sup>330</sup>**

A noncompliant structure or use is a structure or use that lawfully existed on the effective date of this Ordinance or prior ordinances, that does not conform with the regulations of the zoning district in which it is located in terms of lot size, setback, shape factor, building height, or parking. For the purposes of the nonconformities provisions in Section 8104, a noncompliant structure or use is not considered nonconforming.

### **Nonconforming Building or Use**

A building or use, lawfully existing on the effective date of this Ordinance or prior ordinances, that does not conform with the regulations of the zoning district in which it is located, except as may be qualified by Section 8104 of this Ordinance.

### **One Ownership**

Possession of land under single or unified control, whether by sole, joint, common, or other ownership, or by a lessee having a term of not less than 30 years.

### **On-Site**

That area which is within the boundary of a lot.

### **Person**

A public or private individual, group, company, firm, corporation, partnership, association, society, joint stock company, or any other combination of human beings whether legal or natural.

### **PRC Plan**

A required submission, following the approval of a development plan for a PRC District, prepared and approved in accordance with the provisions of subsection 8100.2.F(3), which further details the planned development of the subject lot. For the purpose of this Ordinance, a PRC plan is not to be construed as a site plan as required by the provisions of subsection 8100.2.F(4).

### **Pro Rata Share**

The payment by a subdivider or developer of land for their share of the cost of providing reasonable and necessary drainage facilities located outside the property limits of the land owned or controlled by the

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<sup>329</sup> New definition for a currently issued permit that is separate from a building or construction permit.

<sup>330</sup> New term and definition,

subdivider or developer of land and necessitated or required, at least in part, by the construction or improvement of their subdivision or development.

**Public Facility<sup>331</sup>**

Any use, facility, or other feature that is subject to Planning Commission review under Va. Code Sect. 15.2-2232.

**Resource Management Area (RMA)**

As established in accordance with Chapter 118 of The Code, that component of the Chesapeake Bay Preservation Area comprised of lands that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

**Significant Archaeological Resources**

Cultural resources which may be eligible for listing in the National Register of Historic Places or considered to have public significance as defined by the County's Heritage Resource Management Plan.

**Site Plan**

A required submission, prepared and approved in accordance with Article 8 which contains detailed engineering drawings of the proposed uses and improvements required in the development of a given lot. In this Ordinance, other than in subsections 8100.7 and 8101.4 [*reference to relocated Article 17*], where the term 'site plan' is used, it also includes the term 'minor site plan', unless otherwise specifically noted. A site plan is not to be construed as a development plan as required by this Ordinance. Parking tabulations and redesignations are considered types of site plan applications.<sup>332</sup>

**State-Regulated Impounding Structure (Dam)<sup>333</sup>**

A man-made structure, whether a dam across a watercourse or structure outside a watercourse, used or to be used to retain or store waters or other materials that is subject to the requirements of the Virginia Dam Safety Act (§ 10.1-604 et seq.) and the Virginia Dam Safety Regulations (4 VAC 50-20).

**State-Regulated Impoundment<sup>334</sup>**

A body of water or other materials retained or stored by a state-regulated impounding structure.

**Solid Waste**

Any material defined as 'solid waste' in Chapter 109.1 of the Code (Solid Waste Management).

**Subdivider**

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

**Zoning Compliance Letter**

A letter by the Zoning Administrator or agent that provides the applicable zoning of a lot, to include: any approved proffered conditions, development conditions, or other zoning approvals; whether any existing development on a lot is in accordance with the Zoning Ordinance; and whether there are any pending zoning applications or zoning violations on a lot. For purposes of this Ordinance, a request for a determination under subsection [*reference to relocated Sect. 2-405*] or for a Residential or Non-Residential Use Permit is not deemed a zoning compliance letter.

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<sup>331</sup> From Sect. 2-521

<sup>332</sup> The last sentence which considers tabulations and redesignations as site plan applications has been added.

<sup>333</sup> From ZO-19-483.

<sup>334</sup> From ZO-19-483.



# Appendix 1: Index of Amendments and Grandfathering Provisions

The following summary of amendments, including their adoption and effective dates and any approved grandfathering provisions, is not part of the adopted Zoning Ordinance, but is provided here as a convenience. Additional information for any amendment may be obtained by contacting the Zoning Administration Division, Department of Planning and Development.

*[placeholder for general grandfathering provisions]*

Grandfathering provisions that are carried forward from the previous Ordinance are either incorporated into the text of the Ordinance or are specified below.

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## A. Commercial and Industrial Districts (ZO-92-225)

Revised grandfathering provisions to ZOA 89-185 and ZOA 92-225 are as follows:

Properties subject to the provisions of Zoning Ordinance Amendment (ZOA) 89-185, adopted December 11, 1989, and Zoning Ordinance Amendment (ZOA) 92-225, adopted July 13, 1992, are subject to the following amended provisions regarding the grandfathering of those properties, to the extent that uses, and FAR of those properties permitted prior to that date, have not otherwise been restored by any other approval such as a special exception:

- (1) Uses for which building permits have been approved, provided the structure containing the use is constructed under the approved building permit.
- (2) Uses shown on a site plan approved prior to December 12, 1989, provided a building permit(s) for the structure(s) shown on the approved site plan is issued in accordance with subsection *[reference to relocated Par. 1 of Sect. 17-109]* of the Zoning Ordinance and provided further that the structure(s) containing the use is in fact constructed in accordance with such building permit(s).

Revisions to such approved site plans may be approved so long as such revision does not result in (a) an increase in FAR to include an increase in floor area for office beyond that permitted under ZOA 92-225, or (b) an increase in building height.

- (3) Uses shown on a site plan, which plan contains the required information as set forth in subsection *[reference to relocated Sect. 17-105]* and is filed on or before December 12, 1989, provided such site plan is approved within 24 months of the return of the initial submission to the applicant or agent, a building permit(s) for the structure(s) shown on the approved site plan is issued in accordance with subsection *[reference to relocated Par. 1 of Sect. 17-109]* of the Zoning Ordinance and provided further that the structure(s) containing the use is in fact constructed in accordance with such building permit(s).

Resubmissions of such filed site plans or revisions to such approved site plans may be approved so long as such resubmission/revision does not result in (a) an increase in FAR to include an increase in floor area for office beyond that permitted under ZOA 92-225, or (b) an increase in building height.

Where a site plan was filed between September 18, 1989, and December 12, 1989, where site plans were approved prior to December 12, 1989, where site plans were approved pursuant to this subsection (c) subsequent to December 12, 1989, or where site plans were approved as a result of the Circuit Court declaration that ZOA 89-185 was invalid; and, in each of the foregoing cases, where such site plans were not approved or are no longer valid, such site plans may be resubmitted within 120 days of the adoption of ZOA 92-225, and may be approved, provided such plans comply with all current applicable County ordinances and regulations, except ZOA 89-185 and ZOA 92-225. Revisions to such site plans may be approved so long as such revision does not result in (a) an increase in FAR to include an increase in floor area for office beyond that permitted under ZOA 92-225, or (b) an increase in building height. For the purpose of this paragraph, the term “site plan” is deemed to include parking tabulation revisions for a change in use.

- (4) Special exception and special permit uses approved prior to December 12, 1989, provided a site plan is approved, a building permit issued, and construction commenced while the special exception or special permit is still valid, and provided further that the use is in fact constructed in accordance with such building permit.

While the special exception or special permit is still valid, resubmissions of such site plans must be permitted and may be approved so long as such resubmission does not result in (a) an increase in FAR, (b) an increase in building height, (c) the addition of a use, or (d) an increase in floor area.

- (5) Neither ZOA 89-185 nor ZOA 92-225 are applicable to proffered rezonings approved prior to the effective date of ZOA 92-225 and subsection [reference to relocated Part 4 of Article 1] do not apply thereto as regards ZOA 89-185 or ZOA 92-225; provided, however, new uses added by ZOA 89-185 and ZOA 92-225 are permitted on properties subject to proffered rezonings adopted prior to the effective date of ZOA 92-225 to the same extent the new uses are permitted on similarly zoned properties without proffered conditions, so long as the new uses are not inconsistent with the proffered conditions. If the new uses are inconsistent with a proffered rezoning, a proffer condition amendment is required before the new uses are permitted. This grandfather provision continues to apply in the event of subsequent proffered condition amendments.

- (6) For the purpose of ZOA 89-185 and ZOA 92-225, the word “replacement” as used in subsection [reference to relocated Par. 2 of Sect. 15-101] is not deemed to include the reconstruction of a building or use which was destroyed by casualty, either completely or in part, so long as such reconstruction does not result in an increase in total FAR, percent of office FAR or building height if any such increase would result in development or uses beyond that permitted by ZOA 92-225.

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## **B. [placeholder for future amendments]**