

ARTICLE 13

ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES

PART 1

13-100

ADMINISTRATION

13-101

Enforcement of Ordinance

1. Unless specifically qualified otherwise, the provisions of this Ordinance shall be enforced by the Zoning Administrator, under the direction of the Director, who shall serve at the pleasure of the Board.
2. In the administration and enforcement of the provisions of this Ordinance, the Director and Zoning Administrator shall be assisted by the following officers, departments, committees, agencies and boards:
 - A. The Building Inspection Department, specifically in matters relating to new construction, such as setbacks, height, etc.
 - B. The boards, commissions and committees as established in this Ordinance.
 - C. Such additional officers, departments, agencies, committees and Board of the County, State and Federal governments as shall be specified and referred to under the various Sections of this Ordinance.
3. The Director and the Zoning Administrator shall have all necessary authority on behalf of the Board to administer and enforce the provisions of this Ordinance. Such authority shall include the ability to order, in writing, the remedy of any condition found in violation of this Ordinance and the ability to bring legal action to ensure compliance with the provisions, including injunction, abatement or other appropriate action of proceeding.

13-102

Duties of the Director

In the administration of the provisions of this Ordinance, the Director shall have the following specific duties and responsibilities:

1. Overall responsibility for the effective administration and enforcement of this Ordinance.
2. Making periodic reports to the Board at intervals at not greater than six (6) months, summarizing for the period since the last report, all applications approved, and all complaints in violation and the action taken thereon. A copy of each such report shall be filed with the Commission and the BZA.

3. Making annual reports to the Commission on the status and effectiveness of the Zoning Ordinance to include a listing of suggested amendments thereto.
4. Providing such technical and consultative assistance as may be required by the BZA and the Commission.
5. Performing such other duties and functions as are required by the provisions of this Ordinance.
6. Making interpretations as to the applicability of submission requirements contained in this Ordinance. The Director may waive any such requirement which is clearly inapplicable or inappropriate.

13-103

Duties of the Zoning Administrator

In the administration of the provisions of this Ordinance, the Zoning Administrator shall have the following specific duties and responsibilities:

1. The receipt, official acceptance and maintenance of current and permanent files and records for all applications required by the Ordinance unless qualified by specific provisions, to include the following:
 - A. Proposed and adopted amendments to the Zoning Ordinance to include the Zoning Map.
 - B. Applications for special permits and temporary special permits.
 - C. Applications for special exceptions.
 - D. Appeals from a decision on interpretation.
 - E. Appeals for a variance.
 - F. Applications for Residential and Nonresidential Zoning Permits.
2. Conducting inspections of buildings, structures and uses of land to determine compliance with the provisions of this Ordinance.
3. Making a periodic report to the Board at intervals of not greater than six (6) months, summarizing for the period since the last previous report, all applications approved and all complaints of violation and the action taken thereon. A copy of each such report shall be filed with the Commission.
4. Ensuring that there is a supply of copies for public distribution of the zoning map(s), the compiled text of the Zoning Ordinance, and the rules of the BZA and the Commission.

5. Performing such other duties and functions as are required by the provisions of this Ordinance and/or as assigned by the Director.

13-104

Questions of Interpretation

The Zoning Administrator shall administer and interpret the Zoning Ordinance. Every question involving the interpretation of any provisions of this Ordinance shall 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 Part 3 of this Article.

13-105

Forms for Appeals and Applications

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

13-106

Filing of Applications

Every application required under the provisions of this Ordinance shall be filed with the Zoning Administrator. No application shall be officially on file with the County unless and until the application and all required accompanying submissions are submitted to the Zoning Administrator. If the application is complete, it shall be referred to the officer or body agency having jurisdiction to act on the same.

13-107

Application Fees

All appeals and applications as provided for in this Ordinance shall be accompanied by a filing fee in an amount to be determined by the fee schedule adopted separately by the Board. All fees shall be made payable to the Treasurer, who shall issue receipts in duplicate thereof, one (1) copy of which shall be maintained on file with the application.

13-108

Processing of Applications

All applications and appeals shall be heard and considered in the order in which they are filed.

13-109

Limitation of Refiling

With the exception of an application for an amendment to the Zoning Map, which is regulated by the provisions of Section 210 below an appellant or applicant whose appeal or application is denied may not institute a new appeal or application on substantially the same subject within a period less than twelve (12) months from the date of action by the approving body on the original appeal or application.

13-110

Conduct of Public Hearings

All public hearings as required by this Ordinance shall be conducted in accordance with the following provisions:

1. No public hearing shall be held unless the required notice for same has been satisfied in accordance with the provisions of Section 111 below.
2. All hearings shall be open to the public. Any person may appear and testify at such hearing, either in person or by an authorized agent or attorney.
3. The hearing body shall by general rule prescribe procedures for the conduct of hearings.
4. The chairman, upon a vote of the majority of members, may adjourn a hearing to a date certain within sixty (60) days without the necessity of formal notice as specified in Section 111 below.
If a hearing is adjourned to a date uncertain or to a date in excess of sixty (60) days, notice shall be given for such adjourned hearing in accordance with the provisions of Section 111 below.
If a hearing is concluded, but action is deferred until a future date, no formal notice as required in Section 111 below shall be required prior to action being taken. If a hearing on an amendment to the Zoning Map is continued written notice to adjacent property owners as required by Paragraph 4 of Section 111 shall be remailed.
5. Where deemed necessary, it shall be in order to conduct joint public hearings after public notice as set forth in Section 111 below. If such joint hearing is held, then public notice need be given by only one (1) hearing body, which shall 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, which motion must be made at the same or immediate subsequent regular meeting.
Action on a question pending reconsideration shall be taken only following notice not less than required by Section 111 below and at least equal to that given prior to the action being reconsidered, unless such action is taken at the same meeting as the original action.

13-111

Required Notice for Public Hearings

No public hearing as required by the provisions of this Ordinance shall be held unless documented evidence can be presented that the following notice requirements have been satisfied. The subject of the public hearing need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a reference to the place or places within the County where copies of the subject public hearing may be examined.

1. **Publication:** Public notice of any hearing shall be in accordance with Section 15.2-2204, Code of Virginia.
2. **Written Notice to Appellant/Applicant:**
 - A. With respect to an appeal from an order, requirement, decision or interpretation made by an administrative officer, the Zoning Administrator shall submit written notice to the appellant by certified mail, return receipt requested, such to be postmarked at least twenty (20) days before the date of the hearing. A copy of such notice shall be sent to the County Attorney.
 - B. With respect to an appeal for a variance, the hearing body shall submit written notice to the appellant and the owner(s) of the subject property, if different from the appellant, by first class mail, such to be postmarked at least fifteen (15) days before the date of the hearing.
 - C. With respect to an application for amendment to the Zoning Map, written notice to the owner/applicant shall be in accordance with Section 15.2-2204, Code of Virginia.
 - D. With respect to an application for a special permit or a special exception, the hearing body shall submit written notice to the applicant and owner(s) of the subject property, if different from the applicant, by first class mail such to be postmarked at least fifteen (15) days before the day of the hearing.
3. Posting:
 - A. The Applicant shall, at least fifteen (15) days before the date of the hearing, post a notice of the Board of Supervisors, Board of Zoning Appeals and Planning Commission public hearing on the land or building involved in any rezoning, special exception, special permit application or appeal. The Applicant shall complete an affidavit that posting in accordance with these provisions was done, and shall file such affidavit with the Department of Community Development within three days after posting of the property.
 - B. Said notice shall 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 a distance of 300 feet along every street providing access thereto. Such signs shall be posted so as to assure the greatest public visibility practical.
 - C. Said notice shall contain the date, location and time of the public hearing, the nature of the proposed change, the property affected, such other information as may be necessary to provide

adequate identification of the application, and where further information on the application may be obtained. The applicable posting sign and the latter information shall be prepared by the Department of Community Development and provided to the Applicant.

- D. Said notice may be placed on private property if such action is necessary to provide adequate posting, and all posted notices shall be removed by the applicant no later than seven (7) days after the conclusion of the hearing to which they pertain.
- E. For the purpose of distinguishing between hearing bodies, said notice shall be printed on signs of differing colors in accordance with the following schedule:

<u>Color of Background</u>	<u>Lettering</u>	<u>Hearing Body</u>
White	Red	Board of Supervisors
Green	Black	Planning Commission
Blue	Black	Board of Zoning Appeals

- F. Said notice shall be placed on all parcels of land involved in an application or appeal, unless the hearing involves an application for a comprehensive amendment to the Zoning Map initiated by resolution of intention by the Planning Commission or the Board, or unless the hearing body may specifically waive or modify such a requirement.
 - G. The Applicant shall be responsible for maintaining the signs in good condition until the public hearing, and shall replace damaged signs as soon as practical. Replacement signs will be made available through the Department of Community Development upon Applicant request. It shall be a violation of this section to damage or remove a public notice sign erected under these provisions, and each sign shall carry a warning to this effect.
4. **Written Notice to Adjacent Property Owners:** The Zoning Administrator shall, in accordance with the provisions of Section 15.2-2204, Code of Virginia, and in accordance with the rules of the hearing body, submit notification of the public hearing to the owner, his agent or the occupant of all abutting property and property immediately across the street from the subject property, to include such abutting or adjacent properties which lie in an adjoining county or city, at least fifteen (15) days in advance of such public hearing. Such written notice shall be sent to the last known address of such owner(s) as shown on the current real estate tax assessment books. Proof of such notification shall be presented to the hearing body.

In the case of a condominium or a cooperative, the written

notice may be mailed to the unit owners' association or proprietary lessee's association respectively, in lieu of each owner.

5. **Additional Notice:** The hearing body may by resolution prescribe additional means and forms of notice in connection with any matter falling within its jurisdiction.

PART 2

13-200 AMENDMENTS

13-201

Statement of Legislative Findings

The Board finds that a portion of the police power of the Commonwealth has been delegated to each County, to be exercised reasonably in determining the manner of its development. The state legislature has left much discretion to the County in making such determination, relying on the local governing body's knowledge of local conditions and the needs of its individual communities. Public necessity, health, safety, convenience, general welfare, good zoning practice and the aesthetic values and priorities of the local citizenry provide guiding factors for the Board in its quest to exercise its legislative mandate in formulating a reasonable policy of County planning for the general good and welfare.

13-202

Amendments

1. Generally
 - A. Whenever public necessity, general welfare or good zoning practice requires, the Board may by general ordinance amend, supplement or change the regulations, restrictions, district boundaries or classification of property established by majority vote; provided, that no such action may be taken until after public hearings have been held in accordance with the provisions of Section 15.2-2204 and 2205, Code of Virginia. At such public hearings, parties in interest and citizens shall have an opportunity to be heard.

B. Initiation of Amendments

The text of this Ordinance, or text amendment to the Comprehensive Plan, and any zoning district boundary shown on the Zoning Map, or any designation shown within the Comprehensive Plan, may be amended by the Board provided that the process for any amendment shall be initiated only in the following manner:

- (1) By the adoption by the Planning Commission of a motion of intention to propose an amendment; or
- (2) By the adoption by the Board of a resolution of intention to amend, which resolution, upon adoption, shall be referred to the Planning Commission; or

(3) By the filing with the Zoning Administrator of an application by the owners, contract purchasers, or their agents of the land proposed to be modified, which application shall be sworn to under oath or affirmation and acknowledged before a notary public.

2. Zoning Map Amendments

A. Rezoning requests, petitioned by property owners, may be submitted at any time provided such request includes no residential component. Rezoning requests that include a residential component may only be filed on December 1st and June 1st and, additionally, when the Rezoning request also requires a Comprehensive Plan Amendment, the Rezoning request may not be filed until the Comprehensive Plan Amendment is approved by the County.

B. Processing of Application

(1) Applications for zoning map amendments shall not be officially accepted and considered filed until all submission requirements listed in Section 13-202.2C below have been met. Once officially filed an application shall be advertised for a regularly scheduled Planning Commission public hearing to be held no later than ninety (90) days from the filing date, unless a longer period of time is required to allow for VDOT review of such applications, pursuant to 24 VAC 30-155-40 and §15.2-2222.1.

C. Submission Requirements

- (1) All applications to the Zoning Map, initiated in the manner prescribed by 13-202-1-B(c) above, shall be filed with the Zoning Administrator and shall include the following information:
- a. Fifteen (15) copies of an application on forms provided by the County, completed and signed by the applicant or by his agent.
 - b. Fifteen (15) copies of a certified plat of the subject property. The certified plat shall show:
 - (a) Metes and bounds of all property lines, and bearings and distances of each zoning district.
 - (b) Total area of the property presented in square feet or acres.
 - (c) Scale and north arrow.
 - (d) Location of all existing buildings and structures.

- (e) Names and route numbers of all boundary roads or streets, and the width of the existing right(s)-of-way.
 - (f) Existing topography with a five foot contour. Other contour interval(s) may be accepted as needed by the Director or his designated agent.
 - (g) General vicinity map at a scale of 1 inch = 2000 feet.
 - (h) Seal and signature of person preparing the plat.
- c. Fifteen (15) copies of a Concept Development Plan for the subject property. The Concept Development Plan shall show:
- (a) Proposed land uses and their locations.
 - (b) Proposed road network.
 - (c) General drainage pattern.
 - (d) Location of open space.
 - (e) Architectural renderings when required by a proffered condition. This requirement may be waived by the Director or his designated agent.
- d. A filing fee to be determined in accordance with a fee schedule separately adopted by the Board.
- e. A conflict of interest statement as set forth in Section 13-203.
- f. Fifteen (15) copies of a written statement of justification, dated and signed by the applicant or his agent. This statement will address the compatibility of the request with the adopted Comprehensive Plan, its goals and objectives.
- g. A Traffic Impact Analysis (TIA) or a traffic assessment as per Section 301B of the Design Standards Manual.
- h. For any proposal with a residential component, detailed analysis addressing how proposed proffers are directly attributable to mitigating the impacts of the proposed project.

D. Proffered Condition Regulations

Where an application contains conditions to be proffered in accordance with Section 15.2-2298, Code of Virginia the

submission shall include a written statement to that effect signed by the applicant and the owner, to include contract purchaser as well as written statements, development plans, profiles, elevations and/or other demonstrative materials proffered. Proffered conditions shall be subject to the following procedures and regulations.

- (1) Once conditions to be proffered are signed and made available, and the public hearing before the Board has commenced, no change or modification to any condition shall be proffered at that public hearing. If modified or additional conditions are proposed, a second public hearing before the Board shall be held before the application and the modified or additional conditions can be approved. Such application may also be the subject to a second public hearing before the Planning Commission.
- (2) If the amendment to the Zoning Map is adopted subject to the conditions proffered by the applicant as set forth above, then the property in question shall be appropriately annotated on the Zoning Map and all other land records referencing the conditions as adopted.
- (3) Such proffered conditions shall become a part of the zoning regulations applicable to the property in question, unless subsequently changed by an amendment to the Zoning Map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.
- (4) Upon approval of the proffered map amendment, any site plan, submission plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformance with all proffered conditions and no development shall be approved by any County official in the absence of such substantial conformance.
- (5) For the purpose of this Section, substantial conformance shall mean that conformance which leaves a reasonable margin for adjustment due to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented by the applicant.
- (6) Once conditions have been approved, and there is cause for an amendment which would not be in substantial conformance with the proffered conditions, or there is a request to proffer conditions on a parcel not currently the subject of a proffered condition, then an application shall be filed for an amendment. Such amendment shall be the

subject of public hearing in with the provisions of Section 205 below.

- (7) The Zoning Administrator shall be vested with all necessary authority on behalf of the Board to administer and enforce proffered conditions. Such authority shall include the ability to order, in writing, the remedy of any non-compliance with a proffered condition and the ability to bring legal action to insure compliance including injunction, abatement or other appropriate action or proceedings, as provided for in Part 6 of this Article.
- (8) The Zoning Administrator, or his agent, may require a guarantee, satisfactory to the Board, in an amount sufficient for and conditioned upon the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee may be reduced or released by the Board or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part.
- (9) Failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any permits as may be deemed appropriate by the Zoning Administrator.
- (10) Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Board. Such appeal shall be filed within thirty (30) days from the date of the decision appealed by filing a notice of appeal with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the basis for the appeal.
- (11) Deleted
- (12) The County shall not accept any proffer for a residential rezoning unless accompanied by a sworn affidavit that the proffer is entirely voluntary and reasonable, that it was not suggested, requested or demanded by the County, and that it directly addresses an impact that is specifically attributable to the new residential development or use proposed.
- (13) Prior to the Board's action on any residential rezoning, the applicant shall be required within the sworn affidavit required in paragraph (D)(12) to either:
 - (a) acknowledge and affirm that no suggestions, requests, demands of any proffers were made at any time; or
 - (b) if the applicant/owner asserts that the County suggested, requested or demanded a proffer, then the

applicant shall include in the sworn affidavit the exact proffer suggested, whether it was reasonable or unreasonable, and shall affirm that it was provided a copy of the County's resolution stating that any such suggestion was not authorized by the County and was an *ultra vires* action of the person making the suggestion.

3. Zoning Ordinance Text Amendments

A. Zoning Ordinance text amendment request will be processed semi-annually beginning with June 1, 1990, and proceeding semi-annually thereafter with June 1, and December 1 of each successive year being the filing deadlines. Text amendments initiated by resolution of the Board of Supervisors or by motion of the Planning Commission are exempt from this provision.

B. Submission Requirements

(a) Submission of text amendment in letter form addressed to the Chairman of the Board with reasons for such an amendment contained in the letter, as well as suggested wording change proposed for amendment with corresponding section numbers from the Ordinance.

4. Comprehensive Plan Amendments

A. Comprehensive Plan amendments will be processed twice a year with January 1 and July 1 being the filing deadline. Comprehensive Plan amendments shall be submitted to the Department of Community Development Planning Office.

(a) In general Comprehensive Plan amendment is required if:

(1) For Commercial and Industrial Uses

1-a When the request is for a zoning district other than that which is shown on the Comprehensive Plan; and/or

1-b When the request includes more than five (5) acres which are not within the Comprehensive Plan boundary. Such acreage shall be cumulative per parcel, and shall apply to the applicable Comprehensive Plan five (5) year review period; and/or

1-c When any portion of the request extends a Comprehensive Plan boundary which is indicated as a definite location in the Plan such as a road, ridge line, or drainage divide; and/or

(2) For Residential Uses

2-a When the request is for property which is more than 10 acres or for an increase of more than fifty (50) dwelling units which is not within the Comprehensive Plan boundary; and/or

2-b When the density of requested exceeds the density as depicted in the Comprehensive Plan, with Planned Unit Overlay District bonus provisions being exempted; and/or

2-c When any portion of the request extends a Comprehensive Plan boundary that is shown as a definite location such as a road, ridge line, or drainage divide.

(3) For Public Facility or Utility Uses

3-a When facilities and utilities such as schools, sewage treatment plants, community facilities, etc. are addressed in the Plan and are to be eliminated and/or located elsewhere, or when they are to be added to a subject property.

(b) Limits for Processing of Comprehensive Plans

(1) Comprehensive Plan amendments for essentially the same request on the same property will be processed no more than once every two years from the date of final determination of the application.

(c) Submission Requirements for Comprehensive Plan Amendments

The following information shall accompany any Comprehensive Plan Amendment request:

(1) An application on forms provided by the Planning Office.

(2) A statement of justification in which the applicant shall address the following as applicable:

a. Creative Concepts - presentation of innovative approaches to land use not currently contemplated in the Comprehensive Plan.

b. Oversights - the subject property was omitted or misinterpreted in the original plan review process.

c. Change in Circumstances - there has been a significant change in surrounding land use since the original Plan review process.

- d. Goals - the goals of the Plan would be better met with the proposed modification, or better implemented if such amendments are adopted.
 - e. Hardship - an applicant has a unique hardship on the subject property not identified in the original Plan review process. Such "hardship" shall be similar in definition to that as defined in this Ordinance.
3. Information on the subject property as follows:
- A. Size, location, and historical features.
 - B. Environmental features and impacts.
 - C. Transportation conditions and impacts.
 - D. Public facilities and utilities, and their availability to the site, as well as an analysis of the facility and utility needs which will be generated as a result of the proposed amendment.
 - E. Existing zoning and Comprehensive Plan information for the subject property.
 - F. Fiscal impact analysis of the proposed amendment.
 - G. Any other information the Planning Commission or Board of Supervisors deems as necessary in order to adequately review the request.
 - H. For Comprehensive Plans or Comprehensive Plan Amendments, a Comprehensive Plan Package in accordance with the Traffic Impact Analysis (24VAC30-155) of VDOT regulations needs to be submitted.
4. Fifteen (15) copies of a map of the subject property or location containing the following information:
- A. Scale, north arrow, and date of plat.
 - B. Magisterial district.
 - C. Location of all roads and/or access easements, their names and/or route numbers.
 - D. Total acreage.
 - E. Current zoning and land use.

- F. Vicinity map.
 - G. All property boundaries.
5. Language of any proposed text amendment or graphics for any proposed map changes or additions with corresponding references to page numbers in the adopted Comprehensive Plan.
 6. A fee which shall be the same as that for a rezoning request.

13-203

Conflicts of Interest

When a zoning application is filed by a property owner, such petition shall be sworn to under oath before a notary public, stating whether any member of the Board or the Commission has interest in such property, whether individually, by ownership of stock in a corporation owning such land or by partnership, or whether a member of the immediate household of any member of the Board or the Commission has any such interest. For the purpose of this section, "own" or "have any interest in" shall mean ownership by members of his immediate household, or ownership by way of partnership or as a holder of ten (10) percent or more of the outstanding shares of stock in or serving as a director or officer of any corporation owning such land, directly or indirectly, by members of his immediate household.

13-204

Notice of Hearings

The Commission shall not recommend, nor the Board adopt, any plan, ordinance or amendment, change in district boundaries or classification of property, until the notice and public hearing(s) requirement as contained herein have been accomplished.

13-205

Referral to Planning Commission, Action by Planning Commission

In accordance with Title 15.2, Code of Virginia, proposed amendments to this Ordinance, change in district boundaries or classification of property shall be referred by the Board, or its administrative representative, to the Planning Commission for its recommendation. The Commission shall hold a public hearing on such application or resolution, as provided by Section 13-204. After conclusion of the public hearing, unless the proceedings are terminated as provided herein, the Commission shall consider the proposed amendment or resolution and send to the Board its recommendation and appropriate explanatory materials. Where the amendment has been initiated by the Board, failure of the Commission to report to the Board within sixty-five (65) days after the first meeting of the Commission, following the date the proposed amendment has been referred to the Commission, shall be deemed approval by the Commission. Where the amendment is initiated by petition of the owner, contract purchaser with the owner's written consent or the owner's agent, the failure of the Commission to report to the Board within ninety (90)

days after the date of the last public hearing or within one hundred eighty (180) days of filing shall be deemed approval by the Commission.

13-206

Board of Supervisors Approval

Following the report to the Board by the Commission concerning any proposed amendment to this Ordinance, change in district boundaries or classification of property, and before approving and adopting any ordinance or amendment thereof, the Board shall hold at least one public hearing thereon pursuant to public notice as required under Section 13-204, after which the Board may make appropriate changes or corrections in the Ordinance or proposed amendment; provided, that no additional land may be zoned to a different classification than was contained in the public notice, without an additional public hearing as provided under Section 13-204. The Board shall render a decision on the applicant's request not later than one (1) year after the date the application for amendment was filed and accepted by the Zoning Administrator.

13-207

Refiling of Petition Following Denial

Upon denial of any petition to change a zoning district, no further petition concerning any or all of the same property for amendment to the same zoning district as applied for in the petition denied shall be filed within one (1) year of such denial.

13-208

Withdrawal of Petition

An application for an amendment may be withdrawn at any time; provided, that if the request for withdrawal is made after publication of the notice of public hearing, no application for the reclassification of all or any part of the same property shall be filed within six (6) months of the withdrawal date. There shall be no refund of fees in the case of withdrawal.

13-209

Deferral of Application on Request of Petitioner

Deferral of consideration of any petition filed pursuant to Section 13-202 may be requested by the petitioner; provided, that if the request for deferral is made after publication of the notice of hearing, such deferral shall be only with the consent of either the Commission or the Board, whichever body advertised the hearing. Applications deferred by the Commission at the request of the petitioner should not be deemed as being referred to the Commission until such time as the matter has been rescheduled on the Commission's agenda.

13-210

Matters to be Considered in Reviewing Proposed Amendments

Proposed amendments shall be considered with reasonable consideration of the existing use and character of the area, the suitability of the property for various uses, the trends of growth or change, the current and future requirements of the County as to land for various purposes as determined by population and economic studies and other studies, the transportation

requirements of the community and the County and the requirements for schools, parks, playgrounds, recreation areas and other public services; for the conservation of natural resources and preservation of floodplains; and for the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the County. These considerations shall include, but not be limited to, Comprehensive Plans or parts thereof, capital improvements programs, relation of development to roads or road construction programs, proximity of the development to utilities and public facilities, the existence of an Agricultural and Forestal District created pursuant to Chapter 36 of the Code of Virginia, and any applicable standards contained in Article 5.

13-211

Contesting a Decision

Every action contesting a decision of the Board adopting or failing to adopt a proposed zoning ordinance or amendment thereto shall be filed within thirty (30) days of such decision with the Circuit Court having jurisdiction of the land affected by the decision. However, nothing in this subsection shall be construed to create any new right to contest the action of the local governing body.

PART 3

13-300

APPEALS

13-301

Initiation

Any person aggrieved or any officer, department, board, commission or authority of the County affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance may appeal such decision to the BZA, except as provided below:

- A. A decision of the Zoning Administrator made pursuant to the provisions of Code Section 15.2-2299. Any zoning applicant or any other person who is aggrieved by a decision of the Zoning Administrator made pursuant to the provisions of Section 15.2-2299 may petition the governing body for the review of the decision of the Zoning Administrator. All such petitions for review shall be filed within thirty (30) days from the date of the decision for which review is sought, and such petitions shall specify the grounds upon which the petitioner is aggrieved.
- B. A decision of the Zoning Administrator to extend or not to extend the termination date of a special permit or special exception issued by the Board of Supervisors. Any zoning applicant or any other person who is aggrieved by a decision of the Zoning Administrator to extend or not to extend the termination date of such a special permit or special exception may petition the governing body for the review of the decision of the Zoning Administrator. All such petitions for review shall be filed within thirty (30) days from the date of the

decision for which review is sought, and such petitions shall specify the grounds upon which the petitioner is aggrieved.

13-302

Authorization

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

13-303

Time Limits on Filing

Unless specified elsewhere in this Ordinance, notices of appeal shall be filed with the Zoning Administrator within thirty (30) days of the date of the decision appealed. Such notice shall specify in detail the grounds for such appeal including identifying the specific reasons for disagreement with the Zoning Administrator's reading of the Zoning Ordinance. An appeal notice shall be considered filed only if it is filed on the application forms provided by the County, is accompanied by the required fee, and is filed in accordance with the provisions of Sections 105 and 110 above.

13-304

Decision on Appeals

1. The BZA may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from. The BZA may make such order, requirement, decision or determination as ought to be made and, to that end, shall have all the powers of the Zoning Administrator and may issue or direct the issuance of a permit.
2. The concurring vote of three (3) members of the BZA shall be required to reverse any order, decision or determination of the Zoning Administrator under this Ordinance.
3. The BZA shall render a decision on the appeal within ninety (90) days after receipt of same, unless the appellant and the BZA mutually agree to an extended period of time. In the event said decision shall not be rendered within said time period, the appeal shall be deemed to be denied.

13-305

Stay of Proceedings

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

PART 4

13-400

VARIANCES

13-401

Initiation

A property owner, an owner acting jointly with a lessee of the property involved, or any person under bona fide contract to purchase same, may appeal to the BZA for a variance of the strict application of the terms of this Ordinance when the Zoning Administrator shall have refused to approve a proposed use or proposed construction on the grounds that such use or construction does not comply with such terms.

13-402

Authorization

1. Upon initiation as provided for in Section 401 above, the BZA shall grant a variance if the applicant proves, by a preponderance of the evidence that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance. For properties located within the Floodplain District, the additional factors and limitations contained in Section 4-411 of this Ordinance shall also apply.
2. No variance shall be considered until a public hearing has been held on same in accordance with the provisions of Section 110 above.
3. The concurring vote of three (3) members of the BZA shall be required to authorize a variance.
4. The BZA shall render a decision on an appeal for a variance within ninety (90) days after receipt of same, unless the appellant and the BZA mutually agree to an extended period of time. In the event said decision shall not be rendered within said time period, the appeal shall be deemed to be denied.

13-403

Application

1. An application to appeal for a variance shall be filed in accordance with and shall be subject to all the provisions of Part 1 above.
2. The application shall contain the following information:
 - A. The specific provision or provisions of the Ordinance from which a variance is sought.
 - B. The nature and extent of the variance sought.
 - C. The special conditions of the property or the nature of use and/or development of immediately adjacent property which would make such variance necessary.

Standards for Variances

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 ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local Ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the Ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required. No variance in the strict application of any provision of this Ordinance shall be authorized by the BZA except upon the following findings:

1. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
2. The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area.
3. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance.
4. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.
5. The relief or remedy sought by the variance application is not available through a special exception or special permit process that is authorized in the Ordinance or the process for modification to the Zoning Ordinance at the time of the filing of the variance application.

Unauthorized Variances

1. No variance shall be authorized that would purport to modify any definition set forth in Article 15.
2. No variance shall be authorized that would propose to permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.

3. No variance shall be authorized that would result in an increase in density from that permitted by the applicable zoning district regulations.
4. No variance shall be authorized that would relate to nonconforming uses.
5. No variance shall be authorized that would reduce the amount of off-street parking spaces required by Article 7.
6. No variance shall be authorized that would relate to signs, except as specifically qualified by the provisions of Article 8.
7. No variance shall be authorized in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel which portion has an area or width less than required by the provisions of this Ordinance at the time of such 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 such portion had not been detached by such purchase from the larger parcel of which it was a part.

13-406

Variance of Minimum Yard Requirements Based on Error in Location of Buildings

1. Notwithstanding the other provisions of this Part, the Zoning Administrator shall have the authority, as qualified below, to grant a variance to the minimum yard requirements in the case of any building existing or partially constructed which did not comply with such requirements applicable at the time such building was erected.
2. Such a variance may only be granted by the Zoning Administrator if the error does not exceed ten (10) percent of the measurement that is involved.
3. Such a variance may be granted if and only if:
 - A. It is established that such noncompliance was through no fault of the applicant or was the result of an error in the location of the building subsequent to the issuance of the Building Permit, and
 - B. Such variance will not impair the purpose and intent of this Ordinance, and
 - C. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - D. It will not create an unsafe condition with respect to other property and/or public streets, and

- E. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
4. In granting such a variance under the provisions of this Section, the Zoning Administrator may prescribe such conditions as deemed advisable to assure compliance with the intent of this Part.
5. Upon the granting of a variance for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
6. The Zoning Administrator shall have no power to vary the application of any of the limitations specified in this Ordinance.

PART 5

13-500 ZONING PERMITS

13-501

Permit Required

Except for permitted agriculture, floodplain crossing as permitted in Section 4-405.1.a of this Ordinance, horticulture or forestry uses, no use permitted by right, by Special Permit or Special Exception shall be begun on a parcel prior to the issuance of a Zoning Permit by the Zoning Administrator. No excavation or grading of a parcel shall be begun before the issuance of a Zoning Permit therefore by the Zoning Administrator. No Building Permit shall be issued prior to the issuance of a Zoning Permit.

13-502

Structures Not Exceeding 256 Square Feet

Notwithstanding the foregoing, no zoning permit shall be required for any lawful one story, detached structure not exceeding 256 square feet in floor area or for any use specified in the Virginia Statewide Uniform Building Code, Section 108.2 Exemptions, except that all buildings and structures within PRD and MU developments governed by a Code of Development shall require a zoning permit regardless of size or type. All structures, regardless of whether they require a zoning permit shall meet all required bulk regulations for the zoning district in which located.

13-503

Structures in Violation

No zoning permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of such zoning permit, however, shall not afford protection of any other who is found to be violating this or any other applicable law, ordinance or regulation.

13-504

Forms and Information Required

An application for a zoning permit shall be made to the Zoning Administrator on forms to be provided by the Zoning Administrator who shall require and be furnished with all such plans and documents as may

be required to determine whether the proposed structure and facilities will be in compliance with the provisions of this Ordinance. Each such application for a zoning permit shall be accompanied by the following items or as much thereof as the Zoning Administrator deems pertinent and such additional information as the Zoning Administrator may require as being pertinent:

1. Certificate from the Health Officer that the proposed location meets the requirements of the Health Department from the standpoint of water supply and sewage disposal, or where a public water and/or sewerage system is involved a statement from the system(s) management that all applicable regulations and requirements have been complied with. No zoning permit shall be issued for a use to be served by central water or sewerage system which system is not complete, approved by proper authority and physically capable of providing service at the time of the issuance of the zoning permit. However, the requested permit may be issued if the Administrator determines that any necessary water and/or sewerage system construction and/or improvement will be complete, approved and operational by the time the proposed structure will be ready for occupancy. This determination will be based on the developer's construction schedule and/or statements of the management of the system(s) involved.
2. A grading permit if required.
3. The intended use.
4. If a dwelling, the number of families or housekeeping units.
5. A plot plan signed by the applicant drawn to scale showing dimensions of the structure with respect to property lines and public highways.
6. An entrance permit if required by VDOT regulations.
7. Within MU and PRD developments governed by a Code of Development, the following additional information shall be provided with each Zoning Permit:
 - a. A lot grading plan showing grading at minimum 2' intervals on the lot and basement floor and first floor elevations, where applicable.
 - b. Architectural drawings to scale showing all elevations demonstrating compliance with Architectural requirements of the Code of Development.

13-505

Fees

If it appears that the proposed structure and use of land or structure is in conformity with the provisions of this Ordinance, a zoning permit shall be issued to the applicant by the Zoning Administrator upon payment of the required fee therefore, including any supplemental architectural review fee for Zoning Permits established by the Board of Supervisors for development governed by an approved Code of Development.

1. **Certificate:** Whenever a zoning permit is issued the Zoning Administrator shall also furnish the applicant with a certificate indicating that said zoning permit has been issued and is valid for the period stipulated therein. The applicant shall thereupon deliver said certificate to the Building Inspector when a building permit is required. The certificate shall be posted as per directions on the certificate.
2. **Time Limits:** Any zoning permit issued shall become invalid if the authorized work is not commenced within six (6) months of the date of issuance, or is suspended or abandoned for a period of six (6) months; provided that the Zoning Administrator charges for an additional period not exceeding six (6) months.

PART 6

13-600

VIOLATIONS, INFRACTIONS AND PENALTIES

13-601

General Provisions

1. Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or contrary to any detailed statement of plan approved under the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.
2. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Ordinance, or permits any such violation, or fails to comply with any of the requirements thereof, or who erects any building or uses any building or uses any land in violation of any detailed statement or plan submitted by him and approved under the provisions of this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to punishment as provided by law. Each day that a violation continues shall be deemed a separate offense.
3. Upon becoming aware of any violation of any provisions of this Ordinance, the Zoning Administrator or any other employee of the Department of Community Development designated with such authority in writing by the Zoning Administrator, shall serve a notice of such violation on the person committing or permitting the same. The notice of violation shall require such violation to cease within

such reasonable time as specified therein. If such violation is not ceased within such reasonable time as is specified in the notice, then the Zoning Administrator may proceed to remedy the violation as provided in Section 602 or 603 below. Such notice of violation shall include a statement informing the recipient of the right to appeal, which shall be final if not appealed within the timeframe specified for doing so.

4. In addition to the remedies provided in Par. 3 above, the Zoning Administrator may initiate injunction, mandamus or any other appropriate action to prevent, enjoin, abate or remove such erection or use in violation of any provision of this Ordinance. Such action may also be instituted by any citizen who may be aggrieved or particularly damaged by any violation of any provisions of this Ordinance.
5.
 - a. When the owners of property zoned for residential, commercial or agricultural purposes do not remove inoperable motor vehicles as provided in the Zoning Ordinance, the Zoning Administrator or the agent thereof may remove any such inoperable motor vehicles, trailers or semitrailers after giving reasonable notice of its intention to do so. After removing such vehicles and after additional reasonable notice, the County may dispose of such motor vehicles, trailers or semitrailers. The cost of any such removal and disposal shall be chargeable to the owner of the vehicle or premises and may be collected by the County as taxes are collected and every cost authorized by this section with which the owner of the premises has been assessed shall constitute a lien against the property from which the vehicle was removed, the lien to continue until actual payment of such costs has been made to the County.
 - b. When the owners of property fail to remove trash, garbage, refuse, or litter in excess of 100 square feet of storage area as provided in the Zoning Ordinance and, whenever such trash, garbage, refuse, litter and other like substances might endanger the health of other residents of the locality, after reasonable notice, the Zoning Administrator or the agents thereof may remove such trash, garbage, refuse, or litter and the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected.
6. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction, the Zoning Administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction; if such sworn testimony establishes probable cause that a Zoning Ordinance violation has occurred, the Zoning Administrator or his agent may request that the magistrate or court grant such inspection warrant to enable the Zoning Administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the Zoning Ordinance exist. The Zoning Administrator

or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

13-602

Criminal Violations and Penalties

1. It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this Ordinance. Any person who is convicted of a violation of any provisions of this Ordinance, shall be punished by a fine of not less than \$10.00 and not more than \$1,000.00. If the violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in compliance with the Zoning Ordinance within a time period established by the court. Failure to remove or abate such violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10.00 and not more than \$1,000.00 and any such failure during any succeeding 10 day period shall constitute a separate misdemeanor offense for each 10 day period punishable by a fine of not less than \$10.00 and not more than \$1,500.00.

However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in a single-family residential dwelling shall be punishable by a fine of up to \$2,000.00. Failure to abate the violation within the specified time period shall be punishable by a fine of not more than \$5,000.00 and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than \$7,500.00. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55 of the Code of Virginia, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in a single-family residential dwelling shall not be punishable by a jail term.

2. The remedy provided for in this Section shall be in addition to any other remedies provided by law; however, the designation of a particular violation of this Ordinance as an infraction pursuant to Section 603 below, shall preclude criminal prosecution of sanctions, except for any infraction also resulting in injury to any person or persons.
3. When civil penalties identified in Section 13-603 below total \$5,000.00 or more for any particular violation, the violation may be prosecuted as a criminal misdemeanor, as provided within §15.2-2209 of the Code of Virginia. Prosecution of a particular violation as a criminal offense shall not preclude the Zoning Administrator from pursuing injunctive action.

Infractions and Civil Penalties

1. All violations of the provisions of this Ordinance shall be deemed a civil infraction, except for the following:
 - A. Any sign posted on public property or in public rights-of-way in contravention of this Ordinance;
 - B. Any land development activity without applicable permit;
 - C. Any violation of the provisions of this Ordinance that results in physical harm or injury to any person.
2. Each infraction listed in Par. 1 above shall be punishable by a civil penalty of \$200.00. Additional penalties of \$500.00 may be charged for the violation no more frequently than once in any ten (10) day period, provided that no violation arising from the same set of operative facts shall be charged a total penalty exceeding \$5,000.00.
3. The designation of a particular violation of this Ordinance as an infraction pursuant to Par. 1 above shall be in lieu of criminal sanctions, except that when civil penalties for any such infraction total \$5,000.00 or more, the violation may be prosecuted as a criminal misdemeanor as provided within the Code of Virginia. Treatment as criminal penalties shall not preclude the Zoning Administrator from pursuing injunctive action.
4. The Zoning Administrator or any other employee of the Department of Community Development designated with such authority in writing by the Zoning Administrator, may issue a civil summons for any infraction as set forth in Par. 1 above.
5. Such summons shall 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.
 - 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 shall 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 Fauquier County Department of Community Development prior to the time and date fixed for trial, entering a waiver of trial, admitting liability and paying the civil penalty established for the offense charged at such time. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgement of court, however, an admission shall not be deemed a criminal conviction for any person.

7. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the Fauquier County General District Court. A finding of liability shall not be deemed a criminal conviction for any purpose.
8. In any trial for a violation subject to civil penalties as authorized by this section, it shall be the burden of the County to show the liability of the violator by a preponderance of the evidence. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with the Zoning Ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than six (6) months of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense.
9. The remedies provided for in this Section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.