

applicable, shall be required and provided for a site development plan:

(1) All street and highway construction standards shall be in accordance with those specified in the subdivision ordinance in article III of this chapter.

(2) The minimum utility easement width shall be 20 feet. The nearest edge of any easement shall be a minimum of five feet from any building.

(g) *Procedures.* Procedures for review and approval of the site plan are as follows:

(1) Fifteen copies of the plan shall be submitted to the administrator. The administrator shall circulate the plan to the relevant departments, boards, and planning commission for written comments and shall notify the applicant of the action taken by the planning commission, which may be approval, approval subject to conditions, or disapproval. Copies shall be submitted to the town council for uses needing a special permit.

(2) Site plans for the planning commission shall be submitted to the administrator at least seven days prior to the next regularly or specially scheduled planning commission meeting. The site plan shall be considered approved unless the planning commission acts within 30 days from the date of submission of the final site plan. For uses requiring a special permit, the town council shall have 60 days in which to act after submission of the final site plan. If no action is taken within this period, the plan shall be deemed approved.

(h) *Termination or extension.* An approved site plan shall expire and become null and void if no building permit has been obtained for the site within 12 months after the approval, or for such additional time period as may be required by the Code of Virginia, as amended.

(i) *Amendments to approved plan.* If it becomes necessary for an approved site plan to be changed, the administrator shall, at the applicant's request, either administratively approve an amendment to the site plan or, if the change is major, require that a new site plan be drawn and submitted for review and action in accordance with this section.

(j) *Prerequisite to issuance of permits.* No zoning or building permit shall be issued to construct, erect, or alter any building or structure or any permit or authorization granted to improve or develop land subject to this section, unless a site plan has been submitted and approved.

(Ord. of 6-11-1996, § 23-26)

**Cross References:** Buildings and building regulations, ch. 14.

**Sec. 50-112. Home occupations.**

(a) Home occupations must take place within a dwelling unit and be clearly incidental to the residential use of that unit.

(b) Home occupations must be carried on only by a member of the family residing on the premises.

(c) No person not a resident on the premises may be employed in connection with the home occupation.

(d) No stock may be kept nor goods sold.

(e) No advertising sign can be displayed other than a nameplate not exceeding two square feet in area on each face of such plate.

(f) No exterior evidence that the building is being used for any purpose other than a dwelling is allowed.

(g) No more than two motor vehicles may be regularly operated from the premises that carry advertising.

(Ord. of 6-11-1996, § 23-27; Ord. of 7-27-1999)

**Cross References:** Businesses, ch. 18.

**Sec. 50-113. Commercial motor vehicle parking lots.**

(a) Commercial motor vehicle parking lots, as defined in this article, include lots or portions thereof used for the storage or parking of six or more motor vehicles for a consideration.

(b) Service or repair facilities are not permitted.

(c) Such parking lot shall not be considered an accessory use.

(d) No commercial motor vehicle parking lot shall be used for the storage of dismantled or wrecked motor vehicles, parts thereof, or junk.

(Ord. of 6-11-1996, § 23-28)

**Cross References:** Vehicles for hire, ch. 78.

**Sec. 50-114. Motor vehicle sales lots.**

(a) Motor vehicle sales lots are arranged, designed, or used for the storage and display for sale of any new or used motor vehicle capable of independent operation, including recreation vehicles.

(b) No recreation vehicle shall be occupied.

(c) Any repair work shall be done wholly enclosed within a building.

(d) All vehicles to be sold must be operable except for vehicles awaiting immediate repair.

(Ord. of 6-11-1996, § 23-29)

**Sec. 50-115. Manufactured homes.**

Any manufactured home placed in the town after the date of the enactment or amendment of the ordinance from which this article is derived shall meet the following supplemental requirements:

(1) A manufactured home shall be as described in the definition of the term "manufactured home" in section 50-33.

(2) Every manufactured home shall display a seal of approval issued by the United States Department of Housing and Urban Development.

(3) Every manufactured home must be attached to a permanent foundation and connected to the required utilities. Any axles, wheels, and/or tow bar hitch must be removed.

(4) The roof must be constructed of shingles or other materials customarily and normally used for conventional dwelling roofing. Siding must be of any material commonly used in conventional homes. Front, rear and all other steps and landings must be constructed in accordance with all legal requirements.

- (5) All other requirements of this article must be met.

(Ord. of 6-11-1996, § 23-30)

**Cross References:** Trailers and trailer parks, ch. 70.

**Sec. 50-116. Bed and breakfast.**

The regulations in this section are established to allow bed and breakfast homes in all residential zones, under special use permit, while at the same time preserving the historical and residential character of the neighborhoods in which the dwellings are located. Bed and breakfast homes shall be permitted only in single-family detached dwellings, excluding any existing or future auxiliary buildings on the property. Approval for a bed and breakfast home shall be subject to the following:

- (1) Guest registration shall not exceed a period of seven consecutive calendar days.



(2) A bed and breakfast home shall have no more than three guestrooms and no more than six guests at any one time. Children 12 years old and under in the same room shall not be included in the total number of guests.

(3) At least one off-street parking space shall be provided for each guestroom and shall be reserved for use by the occupants of guestrooms. Parking spaces and driveways shall be constructed of gravel, compacted stone, concrete, asphalt, brick or paving stones.

(4) An identification sign may be allowed on the property, not exceeding four square feet on either side.

(5) The bed and breakfast home must be occupied and managed by the owner of the property. No persons other than members of the immediate family residing on the premises shall be involved in the rental of guestrooms.

(6) The only meal that may be provided is breakfast, and it shall only be served to

guests renting bedrooms in the dwelling. Breakfast shall be furnished only by a member of the immediate family residing on the premises.

(7) A town business license shall be acquired in connection with a special use permit for a bed and breakfast inn. Applicable provisions of the Uniform Statewide Building Code and all other applicable laws, regulations, inspections, licenses and permits shall be met.

(8) Transient occupancy tax and meals tax must be collected and remitted to the town.

(9) The application for a bed and breakfast home shall include a floor plan showing the location of each bedroom to be rented, including its dimensions and floor area, the location of exits and the location of smoke detectors. A site plan shall also be submitted showing the location of the parking to be provided.

(10) It shall be a violation of this section to advertise for rent to guests any bedroom exceeding the number of bedrooms authorized in this section.

(Ord. of 7-27-1999)

**Cross References:** Businesses, ch. 18.

**Sec. 50-117. Motorsports facilities.**

(a) Motorsports facilities as defined in section 50-33 shall be subject to the following application and design requirements. These requirements shall supplement the applicable general zoning district regulations found in this chapter and the standards and procedures for special use permits found in section 50-183 this chapter.

(b) All special use permit applications for motorsports facilities shall contain the following information at the time of submission. The administrator may request any additional information deemed necessary for the commission's review of the application:

(1) A conceptual site plan of the property that shows the approximate location, scale and character of all proposed site features and facilities, including, but not limited to, all areas devoted to racing, maintenance, spectator seating, parking, vehicle and pedestrian access and circulation, camping, and concessions. Proposals for site landscaping, buffering and lighting shall be included on the plan. The conceptual plan shall also show the relationship of all proposed features and facilities to surrounding uses and properties.

(2) A preliminary grading plan that shows the existing and proposed topography of the site, including the elevations of all proposed facilities and features, and their relationship to the elevation of surrounding properties and uses.

(3) A detailed written narrative describing:

a. All proposed uses of the property, including the frequency of each use proposed and the anticipated hours of operation for each use.

b. The types of motorsports events proposed and the types of vehicles involved in each event.

c. Plans for providing safety and security on the property during all proposed events.

- d. Plans for the provision of public water and sewer to the property, or if public facilities are not proposed, methods by which potable water shall be provided and sewage shall be disposed.
  - e. Plans for the abatement of noise generated by the use and operation of the property, with information on methods to be employed.
  - f. Plans for the mitigation of lighting impacts on surrounding and nearby properties.
  - g. Plans for the adequate management of traffic generated by the proposed use, including an analysis of existing traffic patterns in the area, and any plans or proposals for off-site traffic improvements.
- (c) All proposals for motorsports facilities shall meet the following minimum standards; however, stricter standards may be established as a condition of the issuance of special use permit:

(1) A minimum lot size of 50 acres shall be provided.

(2) All proposed structures and other developed or activity areas shall be located at least 25 feet from any adjoining property line.

(3) All exterior lighting on the property shall be designed, located and arranged so as not to direct glare on adjoining streets or properties. Lighting intensity at adjoining property lines shall not exceed 0.5 footcandles.

(4) No recurrent or sustained noise generated from the operation of the motorsports facility shall exceed 90dB(A), when measured 3/4 mile from the racetrack.

(Ord. of 3-8-2005)

**Secs. 50-118--50-145. Reserved.**

**DIVISION 4.**

**NONCONFORMING USES\***

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\* **Cross References:** Buildings and building regulations, ch. 14.

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**Sec. 50-146. Continuation.**

(a) If, at the time of enactment of the ordinance from which this article is derived, any legal activity which is being pursued or any lot or structure legally utilized in a manner or for

a purpose which does not conform to this article, such manner of use or purpose may be continued as provided in this division.

(b) If any change in title of possession or renewal of a lease of any such lot or structure occurs, the existing use may be continued.

(c) If any nonconforming use (structure or activity) is discontinued for a period exceeding two years after the effective date of the ordinance from which this article is derived, it shall be deemed abandoned, and any subsequent use shall conform to the requirements of this article.

(Ord. of 6-11-1996, § 23-40)

#### **Sec. 50-147. Permits.**

The construction or use of a nonconforming building or land area for which a permit was issued legally prior to the effective date of the ordinance from which this article is derived may proceed, provided such building is completed within one year or such use of land is established within 30 days after the effective date of the ordinance from which this article is derived.



(Ord. of 6-11-1996, § 23-41)

**Sec. 50-148. Repairs and maintenance.**

Nonconforming uses and structures may be repaired and maintained, and unsafe structures may be made safe.

(Ord. of 6-11-1996, § 23-42)

**Sec. 50-149. Changes in district boundaries.**

Whenever the boundaries of a zoning district are changed, any uses of land or buildings which become nonconforming as a result of such change shall become subject to this division.

(Ord. of 6-11-1996, § 23-43)

**Sec. 50-150. Nonconforming lots of record.**

In any zoning district, permitted structures may be erected and/or enlarged on any lot of record at the effective date of the ordinance from which this article is derived or amendment of this article, even though such lot fails to meet the requirements for area or width or both that are generally applicable in the district, provided that all setback requirements can be met. Variance of setback or other requirements shall be obtained only through action of the board of zoning appeals as provided by law.

(Ord. of 6-11-1996, § 23-44)

**Sec. 50-151. Nonconforming uses of land.**

Lawful uses of land which, at the effective date of the ordinance from which this article is derived or as a result of subsequent amendments thereto, become nonconforming may be continued by the present or any subsequent owner so long as it remains otherwise lawful, subject to the following:

(1) *Extension.* No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than was used at the effective date of the ordinance from which this article is derived.

(2) *Changes of use.* Such nonconforming use, if changed to a conforming use, shall not thereafter be changed back to any nonconforming use.

(3) *Additional structures or buildings.* No additional structures or buildings not conforming to the requirements of this article shall be erected in connection with such nonconforming use of land.

(Ord. of 6-11-1996, § 23-45)

**Sec. 50-152. Nonconforming structures or buildings.**

Structures or buildings which, at the effective date of the ordinance from which this article is

derived or subsequent amendments thereto, become nonconforming by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the building or structure may be continued to be used so long as such structure or building remains otherwise lawful, subject to the following:

(1) *Enlargement.* No such nonconforming structure or building may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Enlargement may occur if no new nonconformity is created.

(2) *Damage or destruction.* A nonconforming structure or building which is destroyed or partially destroyed by any means to an extent of 50 percent or more of the market value thereof immediately prior to such damage or destruction shall not be repaired or restored to a nonconforming status, but shall be reconstructed and used only in conformity with this article.

(3) *Moving of structure or building.* No nonconforming structure or building shall be for any reason moved for any distance unless it shall thereafter conform to the zoning regulations for the district in which it is located after it is moved.

(Ord. of 6-11-1996, § 23-46)

**Sec. 50-153. Nonconforming uses of structures or buildings.**

Lawful uses of structures or buildings which, at the effective date of the ordinance from which this article is derived or as a result of subsequent amendments thereto, become nonconforming may be continued by the present or any subsequent owner so long as such use remains otherwise lawful, subject to the following:

(1) *Extension.* A nonconforming use of a structure or building shall not be extended or expanded to occupy a greater area of the structure or building than was used for such uses at the time of adoption of the ordinance from which this article is derived.

(2) *Change of use.* Such nonconforming use, if changed to a conforming use, shall not thereafter be changed back to any nonconforming use.

(3) *Destruction.* Removal or destruction of the structure or building in which a nonconforming use is located shall eliminate the use which the structure or building was used for (a nonconforming use). Destruction for the purpose for this subsection is defined as damage to an extent of 50 percent or more of the market value of the structure or building immediately prior to such damage or destruction.

(Ord. of 6-11-1996, § 23-47)

**Sec. 50-154. Uses under special use permit.**

Any use which is permitted as a special use permit in a zoning district under the terms of this article shall not be deemed a nonconforming use in such zoning district, but shall without further action be considered a conforming use.

(Ord. of 6-11-1996, § 23-48)

**Sec. 50-155. Percent damage.**

The cost of land or any factors other than the cost of the structure are excluded in the determination of fair market value for the purpose of calculating the percent of damage under this division.

(Ord. of 6-11-1996, § 23-49)

**Secs. 50-156--50-180. Reserved.**

## **DIVISION 5.**

### **ADMINISTRATION AND ENFORCEMENT\***

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\* **Cross References:** Administration, ch. 2.

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**Sec. 50-181. Zoning permits.**

(a) No building or structure shall be started, repaired, reconstructed, enlarged or altered or use begun until after a zoning permit has been obtained from the administrator.

(b) Each application for a zoning permit shall be accompanied by a site plan. If the administrator grants a waiver under section 50-111(c), the application shall be accompanied by three copies of an adequately dimensioned drawing and such additional information as specified or thereafter requested by the administrator. The drawing shall show the following:

(1) The size and shape of the parcel of land on which the proposed building is to be constructed;

(2) The nature of the proposed use of the building or land;

(3) The location and arrangement of off-street parking;



(4) The location of such building or use with respect to the property line of the parcel of land and to the right-of-way of any street or highway adjoining the parcel of land;

(5) The developer's drainage plan for properly distributing surface water; and

(6) Additional information as required by this article.

(c) If the proposed building or use is in conformity with this article and the lot complies with the requirements of the subdivision ordinance in article III of this chapter, a permit shall be issued to the applicant by the administrator. One copy of the drawing shall be returned to the applicant with the permit.

(Ord. of 6-11-1996, § 23-50)

**Sec. 50-182. Certificate of occupancy.**

Land may be used or occupied and buildings which have been structurally altered or erected may be used or changed in use only after a certificate of occupancy has been issued by the building official. Such a permit shall state that the building or the proposed use or the use of the land complies with this article. A similar certificate shall be issued for the purpose of maintaining, renewing, changing, or extending a nonconforming use. A certificate of occupancy either for the whole or a part of a building shall be applied for simultaneously with the application for a zoning permit. The permit shall be issued within ten days after the erection or structural alteration of such building or part has conformed with this article, the Uniform Statewide Building Code, and other pertinent state regulations.

(Ord. of 6-11-1996, § 23-51)

**Sec. 50-183. Special use permit.**

(a) *Required.* Where uses are permitted by special use permit, in addition to the zoning permit and certificate of occupancy, a special use permit is required to be obtained.

(b) *Application.* The applicant shall make application for the special use permit to the administrator on the form provided for the purpose, giving all information required by such form, including such other information which the administrator may deem necessary for

consideration of the project for which a permit is desired.

(c) *Investigation and report.* Applications for special use permits shall be referred by the town council to the planning commission for its investigation and report as to the manner in which the proposed location and character of the use will affect the comprehensive plan or the intention of this article when, in the discretion of the town council, additional information and guidance is necessary. The planning commission shall have 30 days from and after the submission to it of an application within which to make its recommendations to the town council. If the commission fails to submit a report within the 30-day period, it shall be deemed to have approved the proposed special use.

(d) *Conditions.* The applicant for a special use permit may offer particular conditions related to the proposed use which can be adopted by the town council to accompany the application. The town council may also impose conditions consistent with the intent and purposes of this article and in conformity with the standards set forth for the appropriate district and with any standards within the district.

(e) *Violation of conditions.* The administrator may revoke the special use permit upon failure of the owner or operator of the use to observe any requirements of law, any regulations or conditions imposed or approved by the town council, or when the use is not constructed or implemented in accordance with the approved special use permit. Prior to the revocation of a permit, the administrator shall give the holder thereof written notice of violation. This subsection shall not be construed as the exclusive remedy to enforce violations of any conditions of a special use permit, and the administrator and the town may also use any other remedy provided by this article, by this Code, or by the laws of the commonwealth.

(f) *Termination of use.* An approved special use permit which has been put into use in accordance with this section shall become void if the use ceases activity for more than two years, unless approval of the permit specifically provides otherwise.

(Ord. of 6-11-1996, § 23-52)

**Sec. 50-184. Schedule of fees, charges, and expenses.**

(a) The town council shall establish, by resolution, a schedule of fees, charges, and expenses and collection procedures for zoning permits, certificates of use and occupancy, special permits, variances, appeals, amendments, and other matters pertaining to this article.

(b) The schedule of fees shall be available for inspection in the office of the administrator and may be altered or amended by the town council by resolution.

(c) Until all application fees, charges, and expenses have been paid in full, no

action shall be taken on any application or appeal.

(Ord. of 6-11-1996, § 23-53)

**Sec. 50-185. Appeals; board of zoning appeals.**

(a) *Establishment, composition and organization of board of zoning appeals.*

Procedures for establishment, composition and organization of the board of zoning appeals are as follows:

(1) A board consisting of five town residents shall be appointed by the circuit court of the county. The board shall serve without pay other than for traveling expenses, and members shall be removable for malfeasance, misfeasance, or nonfeasance in office or for other just cause by the court that appointed them, after a hearing held after at least 15 days' notice. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

(2) The term of office shall be for five years. One of the five appointed members may be an active member of the planning commission.

(3) Members may be removed for cause by the appointing authority upon written charges and after a public hearing.

(4) Any member of the board shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.

(5) The board shall choose annually from its own membership its own chairman, vice-chairman who shall act in the absence of the chairman, and secretary.

(b) *Powers and duties of board of zoning appeals.* Powers and duties of the board of zoning appeals are to:

(1) Hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of Code of Virginia, § 15.2-2280 et seq. or of this article. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider

the purpose and intent of any applicable ordinances, laws and regulations in making its decision.

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

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

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

1. The strict application of this article would produce undue hardship;

2. The hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

3. The authorization of the variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

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

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



e. In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

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

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

(5) No subsection of this section shall be construed as granting the board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the town council.

**State Law References:** Similar provisions, Code of Virginia, § 15.2-2309.

(c) *Rules and regulations.* Rules and regulations of the board of zoning appeals are as follows:

(1) The board may make, alter and rescind rules and forms for its procedures, consistent with town ordinances and general laws of the state.

(2) The meetings of the board shall be held at the call of its chairman or at such time as a quorum of the board may determine.

(3) The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses.

(4) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(5) All meetings of the board shall be open to the public to the extent required by law.

(6) A quorum shall be at least three members.

(d) *Appeal to board of zoning appeals.* Procedures for an appeal to the board of zoning appeals are as follows:

(1) An appeal to the board may be taken by any person aggrieved or by any town officer, department, board or bureau affected by any decision of the administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of Code of Virginia, § 15.2-2280 et seq. or this article. Notwithstanding any Charter provision to the contrary, any written notice of a zoning violation or a written order of the administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this subsection, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence

until the statement is given. The appeal shall be taken within 30 days after the decision appealed from by filing with the administrator, and with the board, a notice of appeal specifying the grounds thereof. The administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

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

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

(e) *Appeal procedure.* Appeals shall be mailed to the board of zoning appeals care of the zoning administrator and a copy of the appeal mailed to the secretary of the planning commission. A third copy shall be mailed to the individual, official, department or agency concerned, if any.

(f) *Public hearing.* The board shall fix a reasonable time for the hearing of an application or appeal, shall give public notice thereof as well as due notice to the parties in interest, and shall decide the question within 60 days. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this article or to effect any variance from this article.

(g) *Certiorari to review decision of board.*

(1) Any person jointly or severally aggrieved by any decision of the board of zoning appeals or any aggrieved taxpayer or any town officer, department, board or bureau may file with the clerk of the circuit court for the county a petition specifying the grounds on which aggrieved within 30 days after the final decision of the board.

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

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

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

(5) Costs shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. If the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the board may request that the court hear the matter on the question of whether the appeal was frivolous.

(Ord. of 6-11-1996, § 23-54; Ord. of 3-3-2001)

**Sec. 50-186. Violation and penalty.**

(a) All departments, officials, and public employees of this jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to this article. They shall issue permits for uses, buildings, or purposes only when they are in harmony with this article. Any such permit, if issued in conflict with this article, shall be null and void.

(b) In addition to all other remedies provided by this article, this Code, and the laws of the commonwealth, any person, whether as principal, agent, employed or otherwise, violating, causing or permitting the violation of any of the sections of this article shall be guilty of a misdemeanor and, upon conviction thereof, may be fined in accordance with Code of Virginia, § 15.2-2286(A)(5), as amended, and any permits issued by the administrator or the town may be revoked. Such person shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this article is committed, continued, or permitted by such person and shall be punishable as provided.

(Ord. of 6-11-1996, § 23-55)

#### **Sec. 50-187. Amendments.**

(a) Use or any other regulations, restrictions and boundaries established in this article may, from time to time, be amended, supplemented, changed, modified, or repealed by a

favorable majority of votes of the town council, provided that a public hearing shall be held in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. Notices shall be given of the time and place of such hearings in accordance with Code of Virginia, § 15.2-2204, as amended.

(b) A person applying to the town council, planning commission, or board of zoning appeals pursuant to this article or Code of Virginia, § 15.2-2200 et seq., as amended, shall be responsible for the required notices, which notices shall be given as provided by Code of Virginia, §§ 15.2-2204 and 15.2-2206. Costs of required notices shall be borne by the applicant. The applicant shall be required to supply the names and certify that notice has been sent to those to whom notice has been required to be sent. The certification of notice and a listing of persons to whom notice has been sent shall be supplied by the applicant upon the forms adopted for the purpose by town council at least five days prior to the hearing. Any person entitled to notice may waive such right in writing.

(c) For a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner. Reliance by the applicant upon records of the county real estate assessor's office to ascertain the names of persons entitled to notice shall be deemed sufficient.

(d) When a proposed comprehensive plan or amendment thereto, a proposed change in zoning map classification, or an application for a special use permit to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special use permits, involves any parcel of land located within one-half mile of the town's boundary with the county, in addition to the advertising and written notification as required, written notice shall also be given by the administrator, at least ten days before the hearing, to the chief administrative officer or his designee of the county.



(e) After enactment of any such plans, ordinance or amendment, further publication thereof shall not be required.

(f) Changes shall be made by the town council in this article or the zoning map only after such changes have been referred to the planning commission for its recommendation. Action shall be taken by the town council only after a report has been received from the planning commission, unless a period of 90 days has elapsed after date of referral to the commission, after which time it may be assumed the commission has approved the change or amendment. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice as required in this section.

(g) Individual property owners may petition the town council to have their property rezoned by submitting their request in writing to the town. The fee imposed shall be used to defray the cost of administration. After proper public hearing, the planning commission shall make its recommendation to the town council, who will then act upon the applicant's request. If the planning commission makes no recommendation within 90 days from the date of referral, the council may assume that the commission concurs with the applicant.

(h) No application for a proposed amendment or a special use permit shall be considered by the town council within one year from the date that an application for the same or substantially the same use was denied. This, however, shall not impair the right of the town council to propose a special use permit on its own motion.

(Ord. of 6-11-1996, § 23-56; Ord. of 3-3-2001)

**Sec. 50-188. Voluntary proffered conditions.**

(a) *Basis for proffers.* Prior to a public hearing before the town council, owners of land making application for a zoning reclassification of their land in the town may voluntarily proffer in writing, as part of the rezoning petition, reasonable conditions related to the future physical development and/or physical operation of the land to be rezoned, subject to the following:

(1) The rezoning itself must give rise for the need for the conditions;

(2) The conditions shall have a reasonable relation to the rezoning;

(3) The conditions shall not include a cash contribution to the town;

(4) The conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in Code of Virginia, § 15.2-2241;

(5) The conditions shall not include a requirement that the applicant create a property owners' association under Code of Virginia, § 55-508 et seq., which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments and other public facilities not otherwise provided for in Code of Virginia, § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the state department of transportation;

(6) The conditions shall not include payment for or construction of off-site improvements except those provided for in Code of Virginia, § 15.2-2241;

(7) No condition shall be proffered that is not related to the physical development or physical operation of the property; and

(8) All such conditions shall be in conformity with the comprehensive plan as defined in Code of Virginia, § 15.2-2223.

(b) *Effect of accepted conditions.* Once proffered and accepted as part of an amendment to this article, the conditions shall continue in full force and effect until a subsequent amendment changes the zoning on the property covered by the conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

(c) *Administration of conditional zoning.* The administrator shall administer and enforce the conditions attached to a rezoning or amendment to the zoning map, including:

(1) Ordering by written notice the remedy of any noncompliance with the conditions.

(2) Bringing legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding.

(3) Requiring a guaranty, satisfactory to the town council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guaranty, in like amount and so conditioned, which guaranty shall be reduced or released by the town council or agent thereof upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part.

(d) *Cause for denial of permits.* Failure to meet all of the conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.

(e) *Conditional zoning mapping and index.* The zoning map shall show by an appropriate symbol on the map the existence of conditions attached to zoning. The administrator shall keep in his office and make available for public inspection a conditional zoning index. The index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone.

(Ord. of 6-11-1996, § 23-57)

**Sec. 50-189. Administration.**

(a) This article shall be enforced by the administrator, who shall be appointed by the town council. The administrator shall serve at the pleasure of the town council. Compensation for such shall be fixed by resolution of the town council.

(b) Nothing contained in this article shall require any change in the plans or construction of any building or structure for which a permit was granted prior to the effective date of the ordinance from which this article is derived. However, such construction must commence within 30 days after this article becomes effective and be completed within a period of one year after construction is initiated. If construction is discontinued for a period of six months or more, further construction shall be in conformity with the sections of this article for the district in which the operation is located.

(Ord. of 6-11-1996, § 23-58)

**Sec. 50-190. Original adoption date.**

The zoning ordinance was originally adopted on December 12, 1978.

(Ord. of 6-11-1996, § 23-61)

**Secs. 50-191--50-240. Reserved.**