ZONING ORDINANCE

CITY OF FAIRFAX, VIRGINIA

ADOPTED 7/12/2016
EFFECTIVE 10/1/2016
AMENDED THROUGH 6/23/2020

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How to Use this Ordinance

IF YOU OWN PROPERTY AND WANT TO KNOW WHAT RULES APPLY:

STEP 1: Find your zoning district and any overlay districts by looking at the zoning map (available in the office of the zoning administrator).

STEP 2: Go to §3.2.1.A, Residential districts purpose statements, or §3.2.1.B, Nonresidential districts purpose statements, to review the purpose of the district applied to your property.

STEP 3: Go to §3.3, Allowed uses, for details on uses permitted on your property. Find the row that lists the specific use you've identified. Match this row to your district (across the top of the table) to determine if the use you want to establish is permitted. If the use you've identified is not listed, go to §3.4.1, Use interpretation.

STEP 4: If your use is permitted, before building the structure or establishing the use, you must get the appropriate permits and approvals (see Article 6). For details on maximum density, minimum lot size, required yards (setbacks) and similar dimensional standards see:

§3.6.1, Residential districts

§3.6.2, Nonresidential districts

For specific use standards applicable to specific uses, see §3.5. The use may also be subject to the site development standards in Article 4.

STEP 5: Don't forget that the overlay districts established in §3.2 may apply to your property. These requirements are intended to help you and the city ensure that your project is legally established and that it matches the development vision that Fairfax, as a community, desires.

IF YOU WANT TO BUILD OR ESTABLISH A PARTICULAR USE:

Follow Steps 1 through 5 above, to identify your zoning district and the permitted uses. You can find the specific details for the uses allowed in your zoning district in §3.3. You can also find the various site development standards that apply to your property in Article 4.

IF YOU WANT TO CHANGE YOUR ZONING DISTRICT:

Only the city council may rezone property – following public notice and hearings. See §6.4, Map amendments (rezoning), for details on the procedure.

Article 1. Introductory Provisions

§1.1. LEGAL PROVISIONS

§1.1.1. Title

This chapter and the official zoning map shall be officially known and cited as the "City of Fairfax Zoning Ordinance," the "zoning ordinance" or "this chapter."

§1.1.2. Authority

This chapter is adopted pursuant to the authority conferred by 15.2-2280 et seq., Code of Virginia.

§1.1.3. Jurisdiction

This chapter shall be applicable throughout the city of Fairfax. No building shall be erected or structurally altered nor shall any land use or development activity take place, unless it conforms to the provisions of this chapter.

§1.1.4. Purpose

This chapter is adopted in order to protect the health, safety and welfare of the residents of the city of Fairfax; to advance the objectives of Sections 15.2-2200, -2283 and -2284, Code of Virginia; and to implement the City of Fairfax Comprehensive Plan (comprehensive plan).

§1.1.5. Delegation of authority

Whenever a provision appears requiring the zoning administrator, the director of public works or the director of community development and planning to perform an act or duty, that provision shall be construed as authorizing the city manager, or the director of community development and planning, the director of public works, the VSMP administrator, or the zoning administrator to delegate that responsibility to other city employees.

§1.1.6. Graphics and illustrations

Where graphics or illustrations included in this chapter conflict with the text of the regulations, the text shall control. Otherwise, compliance with graphics and illustrations is required.

§1.1.7. Headings, illustrations and text

In case of any difference of meaning or implication between the text of this chapter and any heading, drawing, table, figure or illustration, the text shall control.

§1.1.8. Lists and examples

Unless otherwise specifically indicated, lists of items or examples that use terms such as "including," "such as" or similar language are intended to provide examples; not intended to be exhaustive lists of all possibilities.

§1.1.9. Severability

This chapter and various sections, subsections, and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, section, subsection, or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this chapter shall not be affected thereby.

§1.2. ADOPTION DATE AND EFFECTIVE DATE

This chapter was adopted on July 12, 2016 becoming effective on October 1, 2016.

§1.3. WORD USAGE AND CONSTRUCTION OF LANGUAGE

§1.3.1. Meanings and intent

All provisions, terms, phrases and expressions contained in this chapter shall be construed according to the purposes of §1.1.4. (See also §6.20, Written interpretations)

§1.3.2. Computation of time

A. References to "days" are to calendar days unless otherwise expressly stated.

B. The time in which an act is to be completed is computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or holiday observed by the city, that day is excluded and the time frame shall move forward to the next business day.

C. A day concludes at the close of business local time (5:00pm), and any materials received after that time is considered to be received the following day.

§1.3.3. References to other regulations, publications and documents

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, that reference shall be construed as referring to the most recent edition of such resolution, ordinance, statute, regulation, or document or to the relevant successor document, unless otherwise expressly stated.

§1.3.4. Technical and non-technical terms

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning as specified in Article 9, Definitions.

§1.3.5. Public officials and agencies

All public officials, bodies and agencies to which references are made are those of the city of Fairfax, unless otherwise expressly provided.

§1.3.6. Mandatory and discretionary terms

The words "shall," "will" and "must" are mandatory. The words "may" and "should" are advisory and discretionary terms.

§1.3.7. Conjunctions

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

"And" indicates that all connected items, conditions, provisions or events apply; and

"Or" indicates that one or more of the connected items, conditions, provisions or events may apply.

§1.3.8. Tenses and plurals

Words used in one tense (past, present or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.

§1.4. INTERPRETATION OF REGULATIONS

§1.4.1. Minimum requirements

Regulations set forth by this chapter shall be interpreted as providing minimum regulations necessary to promote and protect the public health, safety and welfare. If the requirements set forth in this chapter are at variance with the requirements of any other lawfully adopted uses, regulations, or ordinances, the more restrictive or higher standard shall govern. The more restrictive provision is the one that imposes more stringent controls.

§1.4.2. Conflicting provisions

A. Conflict with state or federal regulations

If the provisions of this chapter are inconsistent with those of the state or federal government, the more restrictive provision will control, to the extent permitted by law.

B. Conflict with other city regulations

If the provisions of this chapter are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances, regulations of the city, any proffers or conditions of approval, the more restrictive provision will control unless otherwise expressly stated.

C. Conflict with private agreements and covenants

This chapter is not intended to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. The city does not enforce private covenants. City regulations must be complied with, regardless of any easement, covenant, deed restriction or other agreement between private parties. If the provisions of this chapter impose a greater restriction than imposed by a private agreement or covenant, the provisions of this chapter control.

§1.5. MEASUREMENTS AND EXCEPTIONS

§1.5.1. General

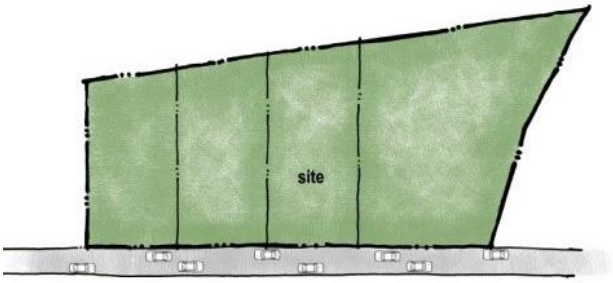
No lot shall be reduced in size so that the lot area, lot area per dwelling unit, lot width, required yard (setback), or other requirements of this chapter are not maintained. This prohibition, however, does not prevent the purchase or condemnation of land for public utilities and facilities, right-of-way, stream protection, and other public purposes.

§1.5.2. Area

A. Lot

1. A single lot of record.
2. Lot area shall be that area contained within the property lines of a single, piece of land.
3. If a lot falls within multiple zoning districts, the minimum lot area requirements for the more restrictive, underlying district shall be met. See §3.2.1 for district hierarchy.

B. Site



1. A continuous quantity of land to be developed as a single project. A site may include more than one lot(s), which may be separated by a street.
2. Site or site area shall be the total land area contained within the project area boundaries of a development site.

C. Lot area per unit

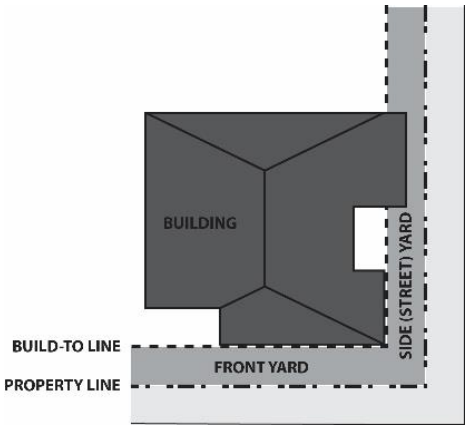
Lot area per unit refers to the amount of lot area required for each dwelling unit on the subject lot.

§1.5.3. Buildable area

Buildable area is the area of a lot within which a structure can be placed and remaining after the minimum yard requirements of this chapter have been met, less any area needed to meet the minimum requirements for streets, sidewalks or other similar public improvements.

§1.5.4. Build-to line

Build-to lines are either the front and side (street) property lines or lines parallel to the front and side (street) property lines as specified to provide the maximum yard allowed to which a minimum percentage of the building façade along the front yard and side (street) yard, if any, must be built.



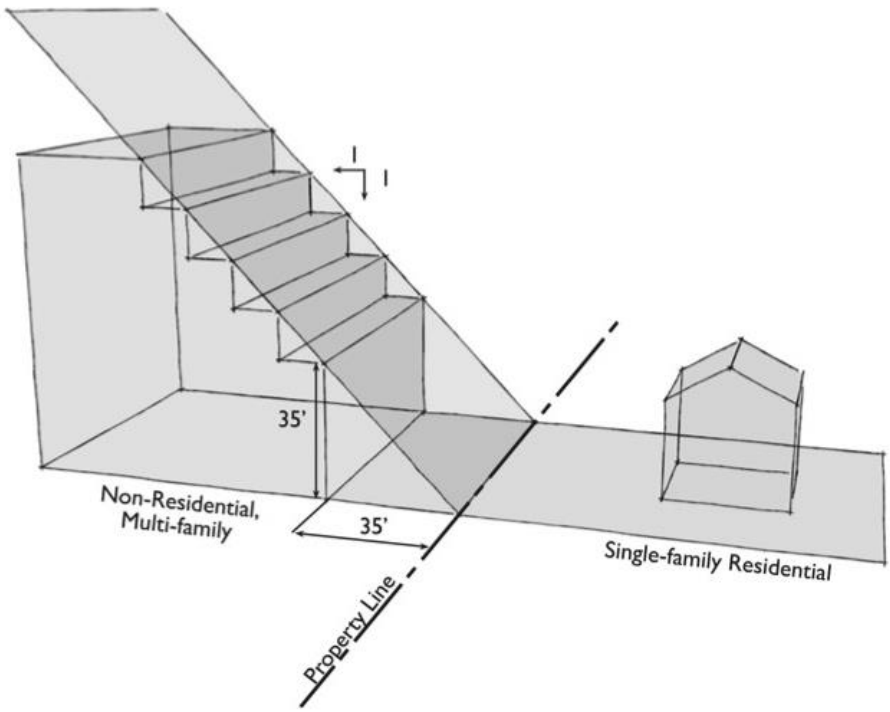
§1.5.5. Building separation

The required separation between any two buildings located on the same lot.

§1.5.6. Bulk plane

A. Measurement

Bulk plane refers to a theoretical plane beginning at a specified line, which shall be the lot line (property line) unless otherwise specified, and rising over a specified slope determined by an acute angle measured down from the vertical, which, together with other dimensional standards, delineates the maximum bulk of any improvement, which may be constructed on the lot.



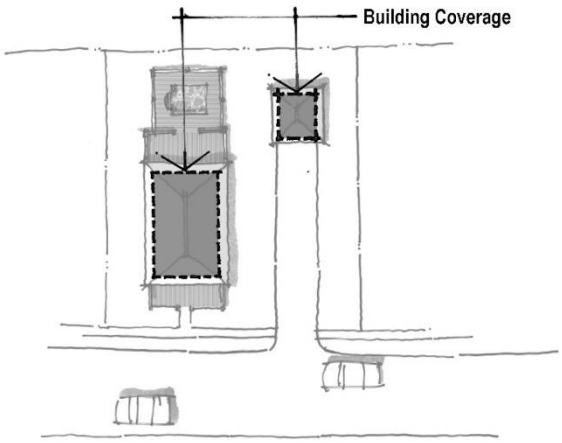
B. Exception

On a street that has a right-of-way of less than 50 feet, the angle of bulk plane shall be measured from a parallel line 25 feet from the established centerline of the road.

§1.5.7. Coverage

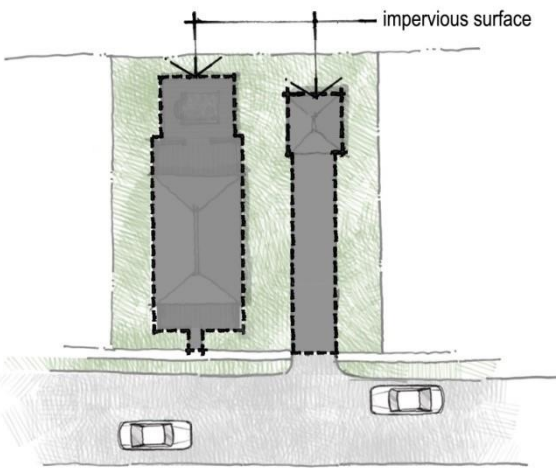
A. Building coverage (footprint)

1. Building coverage is the percentage of lot area that is permitted to be covered by buildings, including both principal structures and accessory buildings.
2. Building coverage does not include paved areas such as driveways, uncovered porches or patios, decks, swimming pools, or roof overhangs of less than three feet.



B. Lot coverage (impervious)

Lot coverage is the percentage of lot area that may be covered by buildings, including both principal and accessory structures, impervious surfaces such as driveways, uncovered porches or patios, swimming pools, or roof overhangs of more than three feet.



§1.5.8. Density

A. Density is calculated as the number of dwelling units per gross acre located within the development site.

B. If the development site is located in more than one zoning district, the maximum number of dwelling units allowed must be determined separately for that portion of the site lying within each respective zoning district.

§1.5.9. Floor area

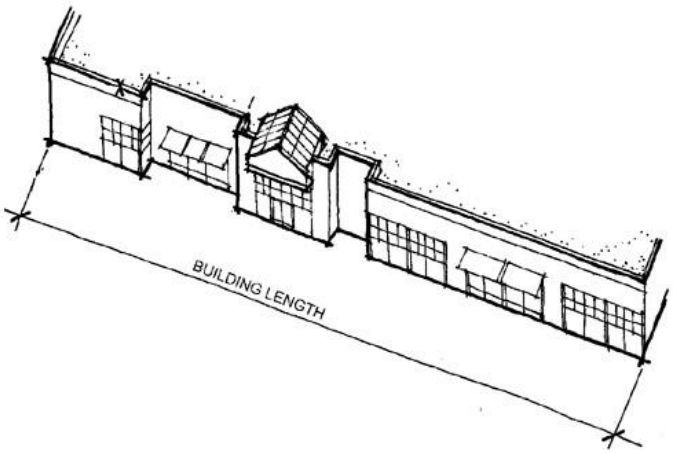
A. Floor area means the gross floor area within the building under consideration measured from the outer wall including hallways, stairs, closets, and thickness of walls, columns or other similar features.

B. Parking structures below or above grade and rooftop mechanical structures are excluded from floor area.

§1.5.10. Frontage

A. Building frontage

1. Building frontage shall mean the horizontal length of a building (building length) on the sides facing a street or required parking (§4.2).



2. Building frontage is measured in a straight line from one end of the wall most nearly parallel to and adjacent to the street, to required parking (§4.2) or recreation and open space (§3.8.7) to the other end of the same wall facing the street, required parking or recreation and open space. Neither articulations nor offsets in the wall shall increase the length of the building frontage.

B. Street frontage

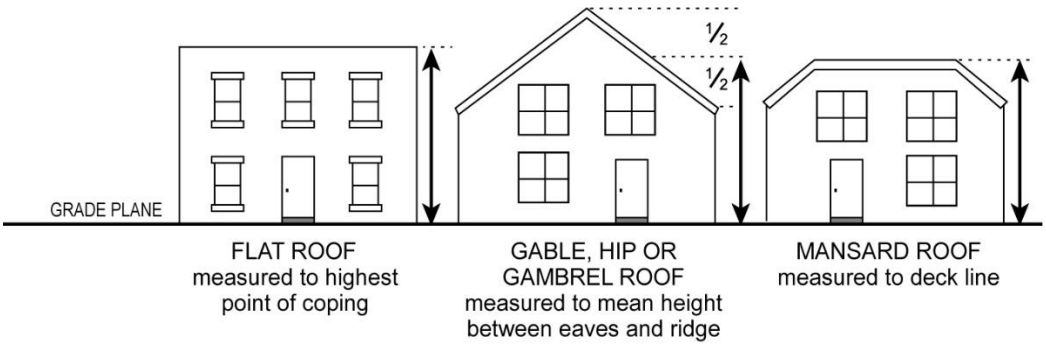
Street frontage shall be measured by the length of the front lot line. (See §1.5.12)

§1.5.11. Height

A. Buildings and structures

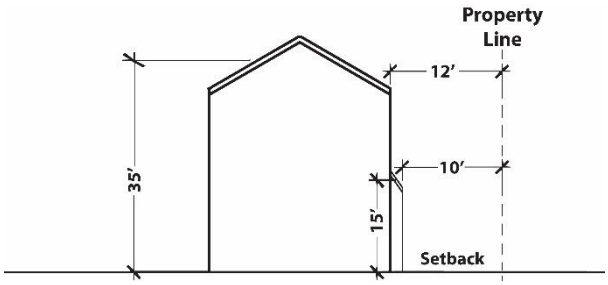
1. Measurement

Height is the vertical distance from grade plane, as defined in §9.3.1, to the highest point of the roof line of a flat roof, to the deck line of mansard roof, and to the mean height level (midpoint) between eaves and highest ridge point for gable, hip or gambrel roof; as specified in the Virginia Uniform Statewide Building Code (USBC).



2. Exceptions

(a) Maximum height shall be reduced to 15 feet on RM and RH district lots between 10 and 12 feet of side (interior) lot lines adjacent to the RL, RM and RH districts, in accordance with the applicable required, side (interior) yards as specified in §3.6.1.



(b) Church spires and similar integral towers may extend above maximum height specified in the respective district by up to 20 feet.

(c) Parapet walls may extend above the maximum height specified in the respective district by up to five feet.

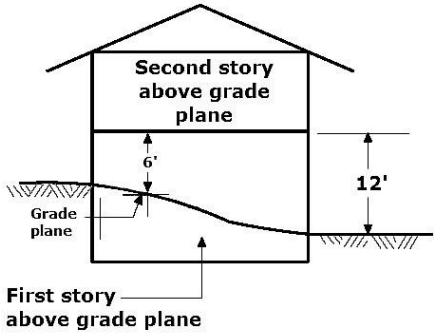
(d) Freestanding telecommunications towers may exceed the maximum height specified in the respective district.

(e) Chimneys attached to residential dwellings may extend above the maximum height specified in the respective district only to the extent required to meet the Virginia Uniform Statewide Building Code.

B. Stories

1. A story is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

2. A story having its finished floor surface entirely above grade plane, or in which the finished surface of the floor above is: 1) more than six feet above grade plane; or, 2) more than 12 feet above the finished ground level at any point shall be considered a story above grade plane.



3. Berming will not result in the creation of additional stories not otherwise allowed.

4. A half story, as defined in §9.3.1, shall not be counted as a story in relation to the maximum stories provisions in §3.6 and §3.7.

C. Telecommunications towers or structures

Telecommunications tower or structure height is measured from ground level to the highest point on the telecommunications tower or structure, even if said highest point is an antenna.

D. Amateur radio and receive-only antennas

Antenna height is measured from ground level to the highest point on the antenna.

E. Fences or walls

1. Measurement

(a) Fence or wall height is measured as the vertical distance between finished grade on the highest side of the fence or wall to the top of the fence or wall, rather than to the top of the fence or wall post or columns.

(b) When a fence or wall is installed at or near the top of a retaining wall, the fence or wall height measurement shall include only the fence or wall in cases where the fence or wall is installed into the ground behind the top of the retaining wall.

(c) Where the fence or wall is mounted directly on the retaining wall, both the retaining wall and the fence or wall shall be included in the height measurement.

2. Exception

(a) Fence posts, lighting, finials, or other vertical supports or decorative features as defined by the zoning administrator may exceed the maximum height of any fence or wall by not more than 12 inches, provided that such features are spaced at least four feet apart, except for such posts or other features surrounding gates or other entryways.

(b) Fence or wall height shall include hand rails and similar safety barriers.

(c) These measurement requirements shall not be interpreted to apply to pergolas, arbors, or similar decorative entranceway or landscaping features.

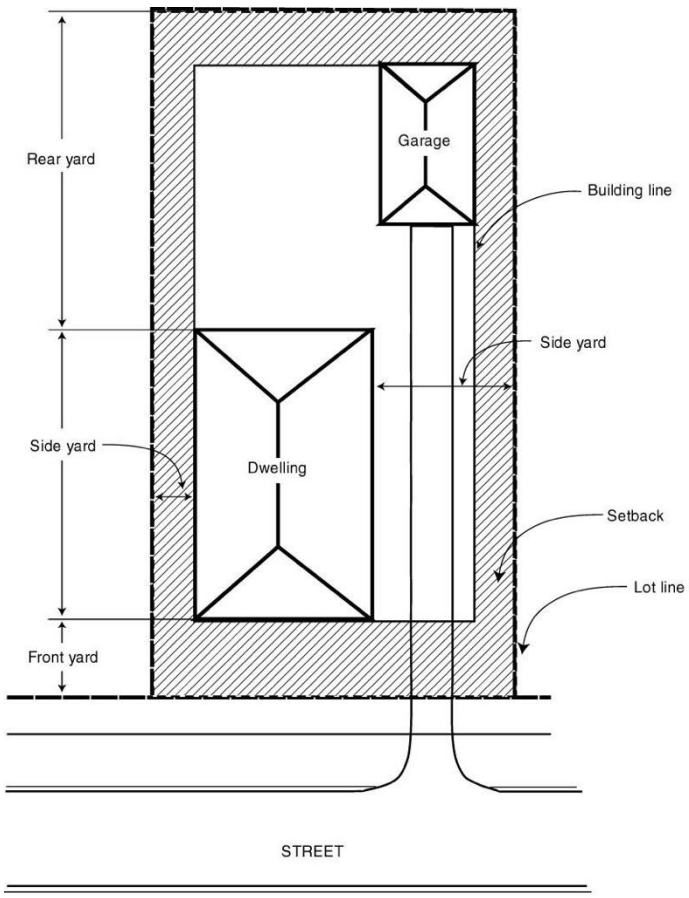
§1.5.12. Required yards (setbacks)

A. General

1. There are four types of required yards – front, side (street), side (interior), and rear yards.

2. Every part of every required yard shall be open and unobstructed above the general ground level of the graded lot upward to the sky except as expressly allowed in this chapter.

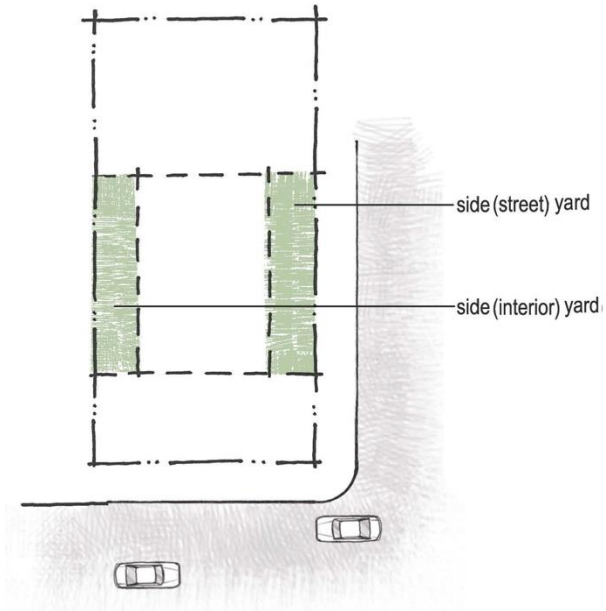
3. No part of a required yard shall be included as a part of a yard similarly required for another structure or use.



B. Front yards

1. Measurement

Depth of a required front yard shall be measured at right angles from the edge of the right-of-way to the closest point of the building or structure in such a manner that the yard established is a strip of the minimum depth required by district regulations with its inner edge parallel to the front lot line, and extending along the full length of the street frontage.



2. Corner lots

On corner lots, the front lot line is the lot line with the shortest street frontage.

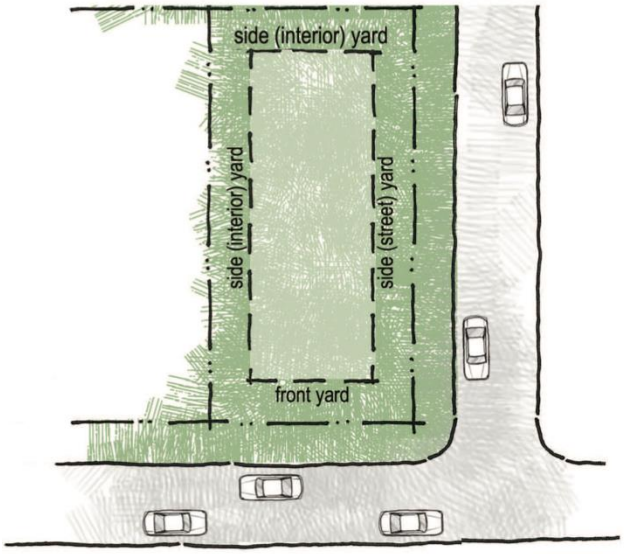
3. Through lots

On through lots, the front lot line shall be the lot line abutting the street from which access is taken. The lot line (opposing) that is parallel to the front lot line will be considered a rear lot line.

C. Side yards

1. Measurement

Width of a required side (street) yard and side (interior) yard shall be measured from the side lot lines in such a manner that the yards established are strips of the minimum width required by district regulations with its inner edge parallel to the side (street) yard and side (interior) yard, as appropriate.



2. Corner lots

On corner lots,

(a) All lot lines not adjacent to a street shall be considered side (interior) lot lines; and

(b) The side (street) lot line shall be the lot line with the longest street frontage.

D. Rear yards

1. Measurement

Depth of a required rear yard shall be measured from the rear lot line in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

2. Corner lots

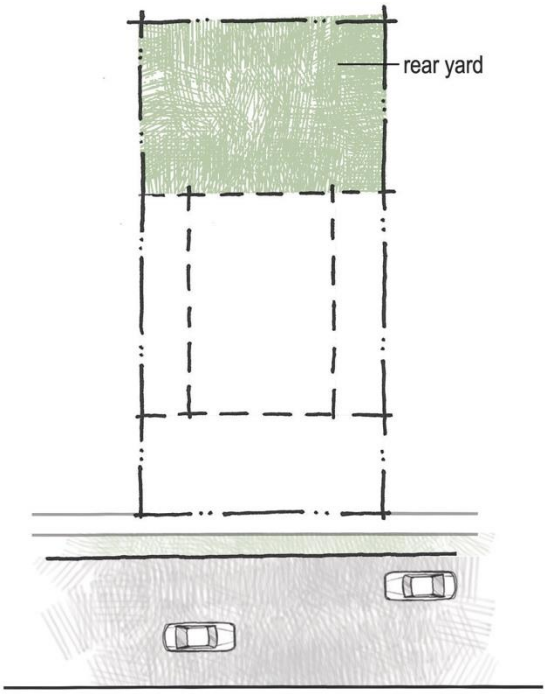
On corner lots, no rear yard shall be required.

3. Exceptions

(a) On through lots, the lot line that is parallel to the front lot line will be considered a rear lot line.

(b) For the purpose of establishing the required minimum rear yard on lots with a rear lot line less than ten feet in length, or if the lot comes to a point at the rear, the rear lot line will be considered to be a line ten feet in length lying wholly within the lot and parallel to the front lot line.

(c) When an existing nonconforming structure encroaches into the otherwise required rear yard, additions to that nonconforming structure may also encroach, but no further and no higher than the nonconforming structure.



E. Permitted encroachments

PERMITTED REQUIRED YARD ENCROACHMENTS				
OBSTRUCTION/PROJECTION INTO REQUIRED YARD (SETBACKS)	FRONT	SIDE (STREET)	SIDE (INTERIOR)	REAR
Accessory structures and buildings up to 12 feet in height, provided such structure or building shall be behind the front and side (street) building line and at least 5 feet from any side (interior) or rear lot line			■	■
Basement egress windows	■	■	■	■
Bay windows, eaves, chimneys, porches, stoops, covered entryways, awnings, canopies, balconies, decks raised above ground level, and similar features of a principal dwelling may not project more than 3 feet into any required yard	■	■	■	■
Carports may not project more than 3 feet into any required side (interior) or rear yard			■	■
Driveways may encroach into required yards, provided that to the extent practicable, they extend across rather than along the required yard(s)	■	■	■	■
Driveways for RL, RM and RH district uses may be located within side (interior) yard provided a minimum setback of 5 feet is maintained to the extent practicable			■	
Fences and walls in accordance with §4.7	■	■	■	■
Landscaping in accordance with §4.5	■	■	■	■
Mechanical equipment, such as HVAC units, provided it remains at least 2 feet from the lot line and as long as the equipment is in compliance with the noise requirements of §4.14.4			■	■

PERMITTED REQUIRED YARD ENCROACHMENTS				
OBSTRUCTION/PROJECTION INTO REQUIRED YARD (SETBACKS)	FRONT	SIDE (STREET)	SIDE (INTERIOR)	REAR
Patio, terrace, or deck, unroofed and completely unenclosed, with its floor no higher than that of the ground floor entry of the principal dwelling other than multifamily may extend into any required side or rear yard, but not nearer than 5 feet to any side or rear lot line		■	■	■
Sidewalks and steps used to ascend and descend a porch, stoop, entryway, balcony or deck provided that to the extent practicable, they extend along rather than across the required side (interior) yard	■	■	■	■
Signs in accordance with §4.6	■	■		
Sills, cornices and similar ornamental features may project not exceeding 18 inches beyond any required setback or building line, except as otherwise provided herein	■	■		■
Sheds and similar one-story storage structures accessory to residential uses other than multifamily and not exceeding 80 square feet in area, and not exceeding 8 feet 6 inches in height, and with foundation, if any, not exceeding four inches thick may be located in any part of any side (interior) or rear yard behind the rear wall of the principal dwelling			■	■
Statues, basketball standards or flagpoles accessory to residential uses other than multifamily	■	■	■	■
Porches, covered accessory to residential uses other than multifamily may extend a distance of not more than 10 feet into the required front yard	■			
Terraces, uncovered porches and ornamental features accessory to residential uses other than multifamily, provided, these projections shall be at least 5 feet from any lot line		■	■	■
ADA facilities constructed for access to existing buildings may extend a distance as needed into any required yard	■	■	■	■

F. Exceptions

1. Front and side (street), required

(a) General

Where the street right-of-way is less than 50 feet wide, the building line shall be measured from the established centerline of the adjacent right-of-way as follows:

	MINIMUM DISTANCE OF BUILDING LINE FROM ESTABLISHED RIGHT-OF-WAY CENTERLINE	
DISTRICT	FRONT	SIDE (STREET)
RL	65	55
RM	50	45
RH	45	40
CL	45	45
CO	45	45
CR	45	45

(b) IL and IH district

The front and side (street) yard shall be measured from the established centerline of the street right-of-way, plus 25 feet.

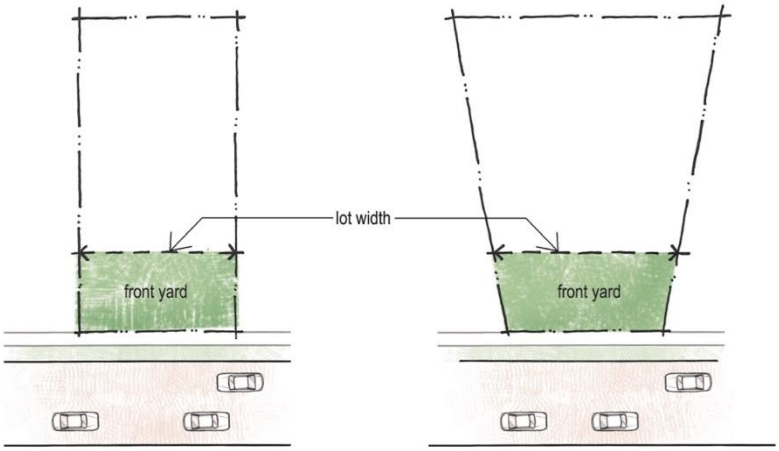
(c) Pipestem lots

Pipestem lots are prohibited by the city's subdivision regulations. The pipestem portion of any existing pipestem lot shall not be included in the required front yard.

§1.5.13. Lot width

A. Measurement

Lot width shall be measured by the distance between the side lot lines (generally running perpendicular to a street), measured at the rear edge of the required front yard along the building line parallel to the front of the property line



§1.5.14. Signs measurements

A. Sign area: See §4.6.5.A.

B. Sign height: See §4.6.5.B.

§1.6. TRANSITIONAL PROVISIONS

The following transitional provisions shall apply to various activities, actions and other matters pending or occurring on the effective date of this chapter.

§1.6.1. Completion of development

A. Development review applications that were submitted in complete form and are pending approval on the effective date of this chapter [October 1, 2016] shall be reviewed wholly under the terms of the zoning ordinance in effect immediately before the effective date specified in §1.2. Building permits for construction and development approved under such zoning approvals may be issued, subject to the terms of such approval.

B. Any building, use, development or sign for which a permit was lawfully approved before the effective date of this chapter [October 1, 2016] may be completed in conformance with any approved permit or other approval, subject to the terms of such permit or approval. If the building, development or sign is not completed within the time allowed under the original permit or approval, then the building, development or sign may be constructed, completed or occupied only in strict compliance with this chapter.

C. A proposed development with an application that is complete and pending approval and has not been scheduled for public hearing on the effective date of this chapter may be reviewed under the terms of this chapter provided the applicant withdraws the pending application and submits a new application in accordance with the provisions of this chapter.

§1.6.2. Conforming uses and structures

A. Special uses

1. Any use or structure existing prior to the effective date of this chapter that would be permitted by this chapter by special use permit in the district in which it is located, may be continued as if a special use permit had been approved, provided that any use, structural or other changes shall comply with the provisions of this chapter.
2. Any expansion or change of such use beyond conditions placed on the approval shall require a new special use approval in compliance with the procedures of §6.7.
3. Any use or structure existing prior to the effective date of this chapter that is subject to time limitations or expiration requirements shall continue to be subject to such time limitations or expiration requirements.

B. Planned developments (PD)

1. Any PD development plan, including "general development plans" and "planned development plans," lawfully approved prior to the effective date of this chapter shall continue to be valid after the effective date. Development shall be permitted in accordance with an approved development plan, including any associated proffers and/or conditions of approval. Such plans shall comply with the requirements of this chapter, provided that in the event of any inconsistency between an approved development plan and the requirements of this chapter, development in accordance with the approved development plan shall be permitted.
2. Any changes to a previously approved development plan (referred to as a "master development plan" in this chapter) shall be subject to the planned development review requirements of §6.6; provided however, that any proffers included as part of a planned development the application for which was filed prior to July 1, 2016 shall remain in full force and effect except to the extent a proffer condition amendment requested by the applicant may be approved by city council.

C. Variances and special exceptions

Any variance or special exception lawfully approved prior to the effective date of this chapter [October 1, 2016] shall continue to be valid after the effective date. Development in accordance with an approved variance or special exception shall comply with the requirements of this chapter, provided that in the event of any inconsistency between an approved variance or special exception and the requirements of this chapter, development in accordance with the approved variance or special exception shall be permitted.

D. Proffers

Any use or structure approved prior to the effective date of this chapter that is subject to a proffer(s) shall continue to be subject to such proffer(s) and any use or structure in a planned development district the application for which was filed prior to July 1, 2016 that is subject to a proffer(s) shall remain subject to any such proffer(s) except to the extent a proffered condition amendment requested by an applicant may be approved by the city council.

§1.6.3. Violations continue

Any violation of the previous zoning ordinance shall continue to be a violation under this chapter and shall be subject to penalties and enforcement under Article 8, unless the use, development, construction or other activity expressly complies with the current terms of this chapter.

§1.6.4. Nonconformities

Any legal nonconformity under the previous zoning ordinance shall be considered a nonconformity under this chapter, provided the situation that resulted in the nonconforming status under the previous regulations continues to exist. Such nonconformity may continue in accordance with the provisions of Article 7, Nonconformities. If, however, a nonconformity under the previous ordinance becomes conforming as a result of the adoption of this chapter or any subsequent amendment to this chapter, then such situation shall no longer be considered a nonconformity.

§1.6.5. Use permits

All use permits issued prior to the effective date of this chapter [October 1, 2016] and remaining valid on that date shall be considered to fulfill the requirement for a zoning permit pursuant to §6.21.

§1.6.6. District conversion

The zoning district names in effect prior to the effective date of this chapter are amended as shown below.

Previous Designation		New Designation	
RESIDENTIAL DISTRICTS			
R-1	Residential	RL	Residential Low
R-2	Residential	RM	Residential Medium
R-3	Residential	RH	Residential High
R-T6 or RT6	Townhouse	RT-6	Residential Townhouse
R-T	Townhouse	RT	Residential Townhouse
RM	Multifamily	RMF	Multifamily
NONRESIDENTIAL DISTRICTS			
C-1L	Limited Office	CL	Commercial Limited
C-1	Office Commercial	CO	Commercial Office
C-2	Retail Commercial	CR	Commercial Retail
--	-NEW-	CU	Commercial Urban
C-3	General Commercial	CG	Commercial General
I-1	Industrial	IL	Industrial Light
I-2	Industrial	IH	Industrial Heavy
OVERLAY DISTRICTS			
--	Old Town Fairfax Redevelopment Option	--	-DELETED-
--	Architectural Control Overlay	--	Architectural Control Overlay
--	Highway Corridor Overlay	--	-DELETED-
--	Old Town Fairfax Historic Overlay	--	Old Town Fairfax Historic Overlay
--	Fairfax Public School Historic Overlay	--	Fairfax Public School Historic Overlay
--	Blenheim Historic Overlay	--	Blenheim Historic Overlay
--	Old Town Fairfax Transition Overlay	--	Old Town Fairfax Transition Overlay
PLANNED DEVELOPMENT DISTRICTS			
RPD	Residential Planned Development	PD-R	Planned Development Residential
P-D	Planned Development	PD-M	Planned Development Mixed Use
CPD	Commercial Planned Development	PD-C	Planned Development Commercial
--	-NEW-	PD-I	Planned Development Industrial

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Article 2. Zoning Map

§2.1. ADOPTION OF MAPS

The boundaries of the zoning districts established by this zoning ordinance are depicted on and maintained as part of the city's geographic information system (GIS), under the direction of the director of community development and planning. This "zoning" geographic coverage layer constitutes the City of Fairfax Zoning Map, or simply as "the zoning map". The zoning map—together with all notations, references, data and other information shown on the map—is hereby adopted and incorporated into this zoning ordinance as if actually depicted within its pages.

§2.2. INTERPRETATION OF DISTRICT BOUNDARIES

§2.2.1. General

Where uncertainty exists with respect to the boundaries of any of the districts as shown on the zoning maps, the zoning administrator, after review of prior ordinances changing zoning districts, shall determine the precise location of the district boundaries, using the following rules:

A. Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.

B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

C. Boundaries indicated as approximately following city limits shall be construed as following such city limits.

D. Boundaries indicated as approximately following the centerlines of streams, rivers, lakes or other bodies of water shall be construed to follow such centerlines. In the event that a stream centerline changes or is changed in the future, the boundaries shall remain as indicated on the zoning map.

E. Boundaries indicated as parallel to or extensions of features indicated in §2.2.1.A through §2.2.1.D, above, shall be so construed.

F. Where a district boundary divides a lot or where distances are not specifically indicated on the zoning map, the boundary shall be determined by measurement, using the scale of the zoning map.

§2.2.2. Split-zoned lots

A. The zoning map may not be amended to classify a single lot of land into two or more general zoning districts. This provision does not apply to overlay zoning districts.

B. Lots may not be divided to create a split-zoned lot of land (into more than one general zoning district classification). This provision does not apply to overlay zoning districts.

C. If an existing lot is (currently) split into two or more zoning districts, each such portion of the split-zoned parcel may be used only for purposes allowed within the respective zoning district. No principal or accessory use of land, building or structure, and no use or building or structure authorized by special use permit or special exception is allowed unless the use, building or structure is expressly authorized or permitted within the subject district.

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Article 3. Zoning Districts and Regulations

§3.1. GENERAL PROVISIONS

After the effective date of this chapter, no structure shall be erected, no existing structure shall be moved, altered, or enlarged, nor shall any land or structure be used for any purpose not specifically permitted by this chapter in the district in which the structure or land is located.

§3.2. DISTRICTS ESTABLISHED/PURPOSE STATEMENTS

There are hereby established the following districts in the city for the general purposes indicated below:

§3.2.1. General districts

The general districts established and described below are arranged in a hierarchy from the most restrictive to the least restrictive.

GENERAL DISTRICT HIERARCHY

(MOST RESTRICTIVE TO LEAST RESTRICTIVE)

A. Residential districts

1. RL, Residential Low

The RL, Residential Low District is established to provide areas for single-family detached residences with a minimum lot area of 20,000 square feet.

2. RM, Residential Medium

The RM, Residential Medium District is established to provide areas for single-family detached residences with a minimum lot area of 7,500 square feet.

3. RH, Residential High

The RH, Residential High District is established to provide areas for single-family detached residences with a minimum lot area of 6,000 square feet.

4. RT-6, Residential Townhouse

The RT-6, Residential Townhouse district is intended to maintain the character of low-density residential areas by providing for the development of townhouses with adequate open space to serve the needs of its residents.

5. RT, Residential Townhouse

The RT, Residential Townhouse District is established to provide areas for townhouse residences.

6. RMF, Multifamily District

The RMF, Multifamily District is established to provide areas for multifamily residences.

B. Nonresidential districts

1. Commercial districts

(a) CL, Commercial Limited

The CL, Commercial Limited District is established to provide limited, low intensity office development as a transitional use between residential and commercial

areas. Office buildings in the district should have height and character that are compatible with residential development and which will not adversely affect nearby residential communities.

(b) CO, Commercial Office

The CO, Commercial Office District is established to provide areas for offices for business, governmental and professional uses, and uses accessory or complementary thereto.

(c) CR, Commercial Retail

The CR, Commercial Retail District is established to provide areas for office and general business and retail establishments, and uses accessory or complementary thereto.

(d) CU, Commercial Urban

The CU, Commercial Urban District is established to provide an urban, mixed use development option for appropriate parts of the downtown area and sites in the general vicinity of the three key Fairfax Boulevard intersections: Main Street, Chain Bridge Road, and Old Lee Highway, or as may be more precisely specified by a current or future adopted plan.

(e) CG, Commercial General

The CG, Commercial General District is established to provide areas for office, general retail, automobile-related uses, and uses accessory or complementary thereto.

2. Industrial districts

(a) IL, Industrial Light

The IL, Industrial Light District is established to provide areas for light industrial use.

(b) IH, Industrial Heavy

The IH, Industrial Heavy District is established to provide areas for general industrial uses.

§3.2.2. Overlay districts

A. Historic overlay districts

Historic overlay districts are established to promote the general welfare, education and recreational pleasure of the public through the establishment, preservation and protection of the character of individual structures and properties of historical, architectural and cultural significance within these districts. Regulations applicable to structures and properties within historic overlay districts are intended to protect against the destruction of or encroachment upon such areas, structures and premises; to encourage uses which will lead to their continuance, conservation and improvement in a manner appropriate to the preservation of the cultural, social, economic, political and architectural heritage of the city; to prevent creation of environmental influences adverse to such purposes; and to ensure that new structures and uses within such districts will be consistent with the character to be preserved and enhanced.

1. Old Town Fairfax Historic Overlay District

The Old Town Fairfax Overlay District is established to encourage a compatible mixture of residential, retail and office uses within the district.

2. Fairfax Public School Historic Overlay District

There is hereby created a historic overlay district to be known as the Fairfax Public School Historic Overlay District, the boundaries of which are set forth on the city's official zoning map.

3. Blenheim Historic Overlay District

There is hereby created a historic overlay district to be known as the Blenheim Historic Overlay District, the boundaries of which are set forth on the city's official zoning map.

B. Other overlay districts

1. Old Town Fairfax Transition Overlay District

The Old Town Fairfax Transition Overlay District is established to encourage a compatible mixture of residential, retail and office uses within the designated transition area in a manner which complements the scale, siting and design of the Old Town Fairfax Historic Overlay District.

2. Architectural Control Overlay District

The Architectural Control Overlay District is established to encourage the construction of attractive buildings, to protect and promote the general welfare and to prevent deterioration of the appearance of the city, to make the city more attractive for the development of business and industry, and to protect land values.

§3.2.3. Planned development districts

A. PD-R, Planned Development Residential

The PD-R, Planned Development Residential District, is provided to encourage more flexibility for housing options within a planned development, and allowing an increased density in return for the provision of a higher quality development than may be otherwise provided; i.e., more affordable housing, recreation and open space, or other improvements addressing community needs or values.

B. PD-M, Planned Development Mixed Use

The PD-M, Planned Development Mixed Use District, is intended to provide for coordinated mixed use developments which may include general residential and nonresidential uses within a planned development. The variety of land uses available in this district allows greater flexibility to respond to market demands and the needs of tenants, thereby providing for a variety of physically and functionally integrated land uses.

C. PD-C, Planned Development Commercial

The PD-C, Planned Development Commercial District, is provided to enhance the design of commercial development and any ancillary residential uses included within a planned development by allowing for greater flexibility not available in general nonresidential districts.

D. PD-I, Planned Development Industrial

The PD-I, Planned Development Industrial District, is provided to encourage unified industrial complexes of high quality by allowing for greater flexibility not available in general nonresidential districts.

§3.3. ALLOWED USES

§3.3.1. Principal use table

The principal use table is subject to the explanation as set forth below.

A. Key to types of use

1. Permitted

A ”P” indicates that a use is permitted in the respective district subject to the specific use standards in §3.5, and the zoning permit requirements of §6.21. Such uses are also subject to all other applicable requirements of this chapter.

2. Special use review

An “S” Indicates that a use that may be permitted in the respective general use district only where approved by the city council in accordance with §6.7, and the zoning permit requirements of §6.21. Special uses are subject to all other applicable requirements of this chapter, including the specific use standards contained in §3.5.

3. Specific use standards

The “Specific Use Standard” column on the table is a cross-reference to any specific use standard listed in §3.5. Where no cross-reference is shown, no additional use standard shall apply.

4. Use types/use groups

The “Use Types/Use Groups” column on the table lists specific uses and use groups allowed in the respective districts. Use groups are identified by the asterisk (*) following a use type. See §3.4.1 for more information regarding use groups.

5. Uses not permitted

A blank cell in the principal use table indicates that a use is not allowed in the respective district.

B. Principal uses

The following table lists the principal uses permitted by this chapter for general use districts. For overlay districts, see §3.7; for planned development districts, see §3.8; for accessory uses, see §3.5.5; for temporary uses, see §3.5.6; and for large format retail, see §4.9.

Use Types/Use Groups*	Residential						Nonresidential							Specific Use Standards
	RL	RM	RH	RT-6	RT	RMF	CL	CO	CR	CU	CG	IL	IH	
P = Permitted / S = Special Use (§6.7) / * = Group of Uses (§3.4.1)														
Residential														
Single-family detached	P	P	P		P	P								§3.5.1.A
Single-family attached					P	P								§3.5.1.B
Duplexes					P	P								
Townhouses				P	P	P				S				§3.5.1.C
Multifamily						P			S	S				
Upper story residential/mixed uses							S	S	S	S	S			§3.5.1.D
Public, Civic and Institutional Uses														
Adult day care	S	S	S	S	S	S	S	P	P	P	P			
Assisted living facilities	S	S	S	S	S	P		P	P	S	P			
Auditoriums or arenas						S			S	S	S			
Cemeteries	S	S	S	S	S									
Colleges and universities	S	S	S	S	S	S		S	S	S	S			
Community services*	S	S	S					P	P	S	P			
Congregate living facilities	S	S	S	S	S	P			S	S				§3.5.2.A
Day care centers	S	S	S	S	S	S	S	P	P	P	P			§3.5.2.B
Detention facilities or jails											S	S	S	
Government uses (other than those listed)	S	S	S	S	S	S	S	P	P	P	P	P	P	
Group homes/statutory	P	P	P		P	P								§3.5.2.C
Hospitals								S	S		S	S	S	§3.5.2.D
Medical care facilities*								S	S		P	P	P	§3.5.2.E
Nursery schools	S	S	S	S	S	S	P	P	P	P	P			§3.5.2.F
Nursing homes	S	S	S	S	S	P		P	P	S	P			
Parks and open areas*	S	S	S	S	S	S			P	P	P			
Religious institutions*	S	S	S	S	S	S		S	S	S	S			§3.5.2.G
Schools, elementary, middle, high	S	S	S	S	S	S		S	S		S			§3.5.2.H
Social service delivery								S	S		P	P	P	§3.5.2.I
Utilities, minor*	P	P	P	P	P	P		P	P	P	P	P	P	
Utilities, major*	S	S	S	S		S		S	S	S	S	S	S	
Telecommunications facilities	S	S	S	S	S	S	S	S	S	S	S	S	S	§3.5.2.J
Telecommunications antenna and small cell facilities on existing structures and towers and administrative review-eligible projects	P	P	P	P	P	P	P	P	P	P	P	P	P	§3.5.2.J
Commercial Uses														
Adult uses											S			§3.5.3.A
Amusement centers									S	S			S	
Animal care facilities								S	S		P	P	P	§3.5.3.B
Auction houses													S	§3.5.3.C
Art galleries or studios			S		S	S	P	P	P	P	P			
Bed and breakfasts	S	S	S		S	S	S	S						§3.5.3.D
Brewpubs							P	P	P	P	P	P	P	

Use Types/Use Groups*	Residential						Nonresidential							Specific Use Standards
	RL	RM	RH	RT-6	RT	RMF	CL	CO	CR	CU	CG	IL	IH	
P = Permitted / S = Special Use (§6.7) / * = Group of Uses (§3.4.1)														
Building supplies and lumber sales									P	S	P	P	P	
Catering and delivery									P		P	P	P	
Convenience stores								S	P	P	P	P	P	
Fuel stations									S		P	P	P	
Funeral homes								P	P		P	P		
Furniture, appliance or carpet/flooring stores									P	P	P	P		
Grocery stores									P	S	P	S		
Hotels, extended-stay									S	P	S			§3.5.3.E
Hotels/motels									S	P	S			
Offices, general*							P	P	P	P	P	P	P	
Offices, medical*							P	P	P	P	P	P	P	
Parking, commercial									S	S	S			
Parking, municipal								P	P	P	P			
Plant nurseries and greenhouses	S	S	S									P	P	
Private clubs	S	S	S					S	S	S				
Recreation, indoor*								S	S	S	S	S	S	
Recreation, outdoor*								S	S	S	S	S	S	
Restaurants or food services							P	P	P	P	P	P	P	§3.5.3.F
Retail, general*									P	P	P	P	P	
Schools, technical, trade, business							P	P	P	P	P	P	P	§3.5.3.G
Services, general*									P	P	P	P	P	
Services, personal*							P	P	P	P	P	P	P	
Theaters									S	S	S			
Tobacco and smoke shops							P	P	P	P	P	P	P	§3.5.3.H
Vehicle repair*											P	P	P	§3.5.3.J
Vehicle sales and leasing*									S		S	S		§3.5.3.I
Vehicle service*									S		P	P	P	§3.5.3.J
Industrial Uses														
Crematoriums												S	S	
Fuel sales, residential												P	P	§3.5.4.A
Manufacturing, general*													S	§3.5.4.B
Manufacturing, heavy*													S	§3.5.4.C
Manufacturing, limited*												P	P	§3.5.4.D
Petroleum storage and distribution													S	
Research and development*									S		S	P	P	
Self-service storage facilities												S	P	
Vehicle storage and towing												P	P	§3.5.4.E
Warehouse and freight movement*													P	
Waste service*												S	S	§3.5.4.F

§3.4. USE REGULATIONS

§3.4.1. Use Interpretation

A. Grouping of uses

As set forth in the principal use table (see §3.3.1) certain uses are grouped together based on common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers, how goods or services are sold or delivered, likely impact on surrounding properties, and site conditions. Grouping of uses provides a systematic basis for assigning uses to appropriate general use districts. Any use not specifically set forth in this chapter is expressly prohibited, unless determined otherwise as set forth in §3.4.1.B, below.

B. Similar use interpretation

1. Any use not specifically listed in this chapter is expressly prohibited, unless the zoning administrator determines in accordance with written interpretations provisions of §6.20, that the use is similar to a permitted individual use or permitted group of uses as listed in this chapter. Where such similar permitted individual use or permitted group of uses is subject to a use standard contained in this article or special use review, the proposed use shall also be subject to such standard or approval. The zoning administrator shall not amend this chapter by adding to or eliminating any use standard for the proposed use.

2. Where a use not listed is found by the zoning administrator not to be similar to any other permitted individual use or permitted group of uses, the use shall be permitted only following a text amendment in accordance with §6.3.

3. When considering the appropriate districts for a use not listed in the principal use table (See §3.3.1), the district purpose statements (see §3.2) shall be taken into consideration.

4. Determination of an appropriate group of uses for a proposed use not currently listed shall be made by applying the following criteria.

(a) The actual or projected characteristics of the use in relationship to the stated characteristics of each use category.

(b) The relative amount of site area or floor area and equipment devoted to the use.

(c) Relative amounts of sales from each use.

(d) The customer type for each use.

(e) The relative number of employees in each use.

(f) Hours of operation.

(g) Building and site arrangement.

(h) Types of vehicles used and their parking requirements.

(i) The relative number of vehicle trips generated.

(j) Signs.

(k) How the use is advertised.

(l) The likely impact on surrounding properties.

(m) Whether the use is likely to be found independent of the other activities on the site.

C. Developments with multiple principal uses

1. Except as set forth in §3.4.2, Complexes, no more than one principal building or use may be erected on a single lot of record.

2. When all principal uses of a development fall within one use group, the entire development shall be assigned to that use group.

3. When the principal uses of a development fall within different groups of uses or no group of uses, each principal use shall be classified in the applicable group of uses or treated as an individual use and each use shall be subject to all applicable regulations for that group of uses or individual use.

4. A development comprised of uses regulated by separate rows on the principal use table (§3.3.1) shall be reviewed using the most restrictive process from among the proposed uses.

D. Uses not grouped

As set forth in the principal use table (§3.3.1), due to their specific nature and characteristics, certain uses have not been grouped. Individual uses may be defined in Article 9.

E. Public, civic and institutional use groups

1. Community services

Uses of a public, nonprofit, or charitable nature providing local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community services or facilities that have membership provisions are open to the general public to join at any time (for instance, any senior citizen could join a senior center). The use may provide special counseling, education, or training of a public, nonprofit or charitable nature. Examples include, libraries, museums, neighborhood or community centers, senior centers, and youth club facilities. Community service does not include private clubs.

2. Medical care facilities

Facilities providing medical care or surgery to patients, which may or may not offer overnight care, such as urgent care facilities, or surgical centers. Surgical centers are outpatient facilities that offer surgery using general anesthesia or deep sedation. Medical care facilities does not include hospitals or medical offices, except accessory to other permitted uses.

3. Parks and open areas

Uses focusing on natural areas consisting mostly of open vegetation, passive or active outdoor recreation areas, or community gardens, and having few structures. Parks and open areas shall include the following: golf courses; clubhouses and grounds; swimming pools, public and community; tot lots and playgrounds; mini-parks; plazas; squares; greens; neighborhood parks; botanical gardens; nature preserves and recreation trails; or any similar use.

4. Religious institutions

Places of assembly that provide meeting areas for religious practice. Religious institutions shall include the following: churches, mosques, synagogues, temples, or any similar use.

5. Utilities, major

Large-scale utility facilities, such as water or wastewater treatment plants, water tanks, electrical generation plants and substations, telephone exchanges, transmission facilities or any similar use.

6. Utilities, minor

All utility facilities not considered major, including, but not limited to neighborhood-serving facilities such as pump stations, lift stations, stormwater detention facilities, or any similar use.

F. Commercial use groups

1. Animal care facilities

A place where animals are cared for. Animal care facilities shall include the following: kennel, veterinary clinic, animal hospital or any similar use.

2. Offices, general

An office generally focusing on business, government, professional or financial services. General office uses shall include the following: advertising office; banks; business management; consulting; data processing; financial business such as lender, investment or brokerage house; collection agency; real estate or insurance agency; professional service such as lawyer, accountant, bookkeeper, engineer, or architect; sales office, travel agency or any similar use; and television and radio stations (without towers) and recording studios. General office does not include hospitals, medical offices or medical care facilities.

3. Offices, medical

An office in which at least one doctor, dentist, psychiatrist, physician's assistant, nurse practitioner or similar medical provider treats or provides patients with counseling services. Medical office does not include medical care facilities. Medical office may not exclude a use based solely on the type of outpatient treatment or outpatient procedures provided there, except for those uses listed as medical care facilities. Medical office does not include speech therapy, tutoring, or marriage counseling.

4. Recreation, indoor

Amusement or recreational activities carried on wholly within a building, including bowling alleys, day spas, gymnastic centers, ice or roller skating, health clubs, lazer tag, tennis, and indoor activities of a similar nature. Indoor recreation does not include an adult uses or amusement centers.

5. Recreation, outdoor

Any recreational facility where activity takes place primarily outdoors, including amusement parks, batting cages, driving ranges, tennis courts, miniature golf courses, or similar outdoor facilities.

6. Restaurants or food services

An establishment engaged in the preparation and retail sale of food and/or beverages for on or off-premise consumption to persons not residing on the premise and where the design or principal method of operation consists of one or more of the following:

(a) Restaurant, fast food: an establishment where the principal business is the sale of food and non-alcoholic beverages to the customer in a ready-to-consume state and where the design or principal method of operation is that of a fast-food or drive-in restaurant offering quick food service, where orders are generally not taken at the customer's table, where food is generally served in disposable wrapping or containers, and where food and beverages may be served directly to the customer in a motor vehicle.

(b) Restaurant, general: an establishment where the principal business is the sale of food and beverages in a ready-to-consume state and where the design or principal method of operation consists of one or more of the following:

(1) A sit-down restaurant where customers, normally provided with an individual menu, are generally served food and beverages in non-disposable containers by a restaurant employee at the same table or counter at which said items are consumed; or

(2) A cafeteria or cafeteria-type operation where food and beverages generally are served in non-disposable containers and consumed within the restaurant; or

(3) A restaurant, which may have characteristics of a fast food restaurant, having floor area exclusively within a shopping or office center, sharing common parking facilities with other businesses within the center, and having access to a common interior pedestrian corridor.

This use may include the on-premise sale and consumption of alcoholic beverages as an accessory and secondary use, but excludes any service to a customer in a motor vehicle.

(c) Restaurant, specialty: an establishment primarily engaged in the retail sale of a limited variety of baked goods, candy, coffee, ice cream or other specialty food items, which may be prepared for on-premises sale and which may be consumed on the site, but excluding any service to a customer in an motor vehicle. Typical uses include retail bakeries, coffee shops, doughnut shops, and ice cream shops.

(d) Delicatessen: an establishment which sells prepared or cooked meats, smoked fish, cheeses, salads, relishes, etc., primarily in bulk form as distinguished from individual servings.

7. Retail, general

A primarily indoor facility involved in the wholesale or retail sale, lease, or rental of new or used products. General retail includes the selling, leasing or renting of the following goods: antiques; art supplies; bicycles; cameras; cash for gold shops; crafts; clothing; computers; dry goods; drug stores; electronic equipment; fabric; garden supplies; hardware; household products; jewelry; medical supplies; musical instruments; music; pawn shops; pets; pet supplies; pharmaceuticals; printed

materials; sporting goods; vehicle parts; or any similar use. General retail does not include any adult use.

8. Services, general

A facility involved in providing general or repair services. General services shall include the following: animal grooming; photocopy; sign-making; security service; taxidermy; or any similar use. General services shall also include the following repair services: bicycles; canvas products; clocks; computers; musical instruments; office equipment; radios; televisions; furniture or any similar use. General services shall also include an upholsterer or locksmith. General services does not include any adult use.

9. Services, personal

Establishments primarily engaged in the repair, care, maintenance or customizing of one's person or personal property that is worn or carried about the person, or relates to a physical component of the person; including barbershops, beauty shops, jewelry and watch repair, shoe repair, clothing rental, dry cleaning and laundry pick-up and drop-off, tailor, milliner, fitness training, massage therapy, marriage counseling, music lessons, physical therapy, psychic or medium, speech therapy, tattoo parlors, tutoring, yoga, photography or dance studios, and similar places of business.

10. Vehicle sales and leasing

A facility involved in providing direct sales, renting or leasing of motor vehicles, including light and medium trucks, tractor trailers, recreational vehicles, earthmoving equipment; construction equipment; farming equipment; and other motor vehicles such as motorcycles and boats, or any similar use.

11. Vehicle service

A facility involved in providing limited service to passenger vehicles and other small vehicles. Such minor services are primarily provided while customers wait for their vehicles. Vehicle service shall include the following: alignment shop; oil change facilities; brake service, battery sales and installation; car washes; auto detailing and tire sales and mounting; or any similar use.

12. Vehicle repair

A facility involved in providing repair services to passenger vehicles, light and medium trucks, tractor trailers, recreational vehicles,; construction equipment; farming equipment; and other motor vehicles such as motorcycles and boats, or any similar use.

13. Warehouse and freight movement

A facility involved in the storage or movement of goods for themselves or other firms. Goods are delivered to other firms or the final consumer with little on-site sales activity to customers. Warehouse and freight movement shall include the following: bulk storage, including nonflammable liquids, feed and grain storage; cold storage plants, including frozen food lockers; household moving and general freight storage; separate warehouse used by retail store such as furniture or appliance store; bus barn; parcel services, mail order facility; stockpiling of sand, gravel, or other aggregate materials; transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred; or any similar use.

G. Industrial use groups

1. Manufacturing, general

A facility conducting manufacturing, which might or might not include some operations conducted outside. General manufacturing shall include the following: clothing or textile manufacturing; manufacture or assembly of equipment, instruments (including musical instruments), appliances, precision items, and electrical items; repair of scientific or professional instruments and electric motors; sheet metal; welding or machine shop; woodworking, including cabinet makers and furniture manufacturing; or any similar use.

2. Manufacturing, heavy

A facility conducting assembly or heavy manufacturing with operations conducted indoors and outdoors. Heavy manufacturing shall include the following: heavy factory production; industrial yards; any use that is potentially dangerous, noxious or offensive to neighboring uses or those who pass on public ways by reason of smoke, odor, noise, glare, fumes, gas, vibration, threat of fire or explosion, emission of particulate matter, interference with radio, television reception, radiation or any other likely cause; animal processing, packing, treating, and storage; livestock or poultry slaughtering; citrus concentrate plant; processing of food and related products; production of chemical, rubber, leather, clay, bone, paper, pulp, plastic, stone, or glass materials or products, production or fabrication of metals or metal products including enameling and galvanizing, sawmill; bulk storage of flammable liquids; commercial feed lot; concrete batching and asphalt processing and manufacture; wrecking, junk or salvage yard; bottling plant; or any similar use.

3. Manufacturing, limited

A facility conducting light industrial and manufacturing operations within a fully enclosed building, generally serviced by trucks no longer than 24 feet in length. Limited manufacturing shall include the following: building contractors; building maintenance service; bulk mailing service; clothing or textile manufacturing; exterminator; laundry or dry cleaning plant; medical or dental laboratory; photo-finishing laboratory; printing, publishing, and lithography; production of artwork and toys; sign fabrication; lawn mower repair; movie production facility; photo-finishing laboratory; welding, machine, tool repair shop or studio; or any similar use.

4. Research and development

A facility focused primarily on the research and development of new products. Research and development shall include: laboratories, offices, and other facilities used for research and development by or for any individual, organization, or concern, whether public or private; prototype production facilities that manufacture a limited amount of a product in order to fully investigate the merits of such a product; pilot plants used to test manufacturing processes planned for use in production elsewhere; production facilities and operations with a high degree of scientific input; facilities and operations in which the input of science, technology, research, and other forms of concepts or ideas constitute a major element of the value added by manufacture per unit of product.

5. Waste service

A facility that generally receives solid or liquid wastes from others for transfer to another location, collects sanitary waste, or manufactures a product from the composting of organic material. Waste-related service shall include the following: animal waste processing; landfill, incinerator; manufacture and production of goods from composting organic material; recycling processing center; storage of recyclable material, including construction material; transfer station; or any similar use.

H. Accessory use groups

1. Retail, convenience

Accessory uses (accessory to otherwise allowed uses) associated and on the same site or attached to modern, convenience stores and fuel stations. Convenience retail shall include, restaurants or food service, dry cleaning pick-up and drop-off, car wash services and any similar use.

2. Services, convenience

Accessory uses (accessory to otherwise allowed) office buildings and uses involved in providing limited retail and personal services to office workers and businesses and residents from within the same nonresidential or upper story residential/mixed use building and not visible outside such use or building. Convenience service shall include personal services such as barbershops; beauty shops; tanning salons; massage therapy; delicatessen; dry cleaning and laundry pickup and drop-off; pack and ship facility; florists; gift shops; display and sales of scientific, electronic or medical equipment of a type not customarily retailed to the general public; pharmacies or medical supply services; optical stores and services; newsstands; photographic and photocopy services; restaurants or food service; refreshment areas; health clubs and any similar use.

§3.4.2. Complexes

Nonresidential, mixed use, multifamily, townhouse, and duplex building complexes may be established on a single, unified site, provided that the following requirements are met.

A. Defined

A group of two or more office, commercial, industrial, duplexes, townhouses, multifamily, and mixed use buildings on site, operating under one name or presenting other elements of a unified image of identity to the public.

B. General

Complexes shall comply with all applicable development standards as set forth in Article 4, Site development standards, and all other provisions in this chapter.

C. Uses

Uses within complexes shall be limited to those permitted within the zoning district in which the complex is located (See §3.3.1, Permitted uses).

D. Intensity

The overall intensity of the land use shall be no higher, and the standard of development no lower, than that permitted in the district in which the complex is located.

E. Required yards (setbacks)

The distance of every building from every property line shall comply with the relative required yard (setbacks) requirements of the district in which the development is located as specified in §3.6 (the rear of a building must meet rear yard requirements, the front of the building must meet front yard requirements, the side of the building must meet side yard requirements). In no case, however, shall any portion of a building be located closer to a street than the required minimum front and side (street) yard setback of the zoning district.

F. Building separation

Minimum spacing between buildings in a complex shall be as specified by the fire code or building code.

§3.5. SPECIFIC USE STANDARDS

§3.5.1. Residential use standards

A. Single-family detached

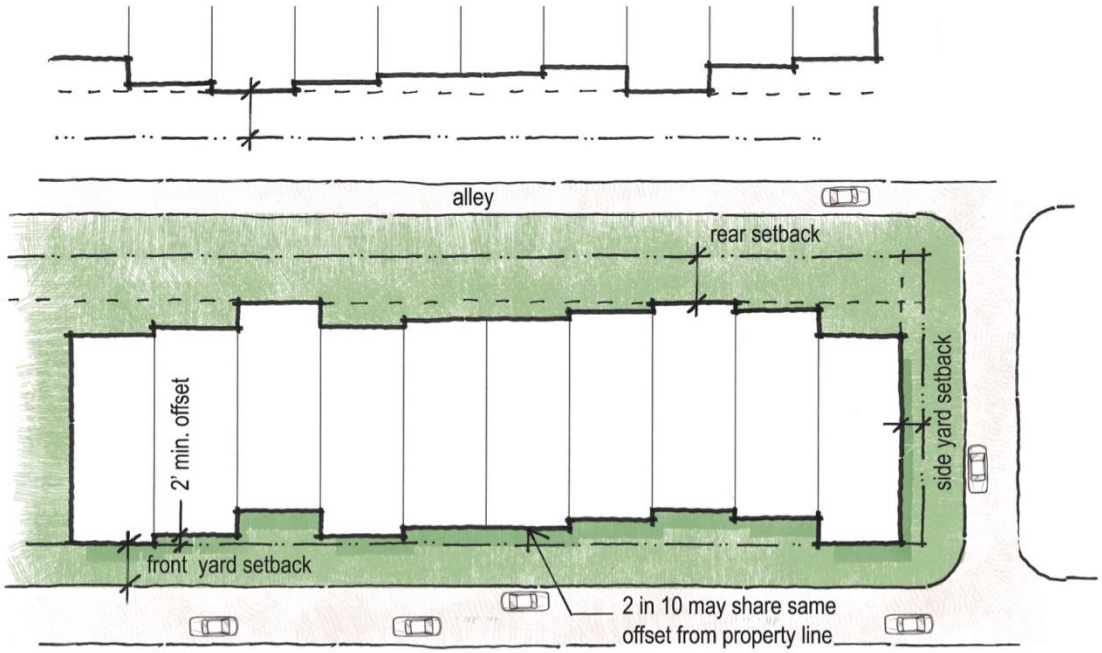
All conditioned space in the dwelling unit shall be continuous and connected and fully accessible from all space by all occupants.

B. Single-family attached

All conditioned space in the dwelling unit shall be continuous and connected and fully accessible from all space by all occupants.

C. Townhouses

1. The maximum number of units allowed in a single building is ten.
2. No more than two of any 10 or one of any three to five abutting dwelling units having the same front yard setback. Varied front yard setbacks shall not be less than two feet offset from adjoining units as measured at the principal foundation line of each unit and no setback distance shall be less than the required minimum.
3. Interior (side) yards are not required for interior townhouses, but front and rear yards shall be provided for all townhouses, and building separation requirements shall be maintained for all townhouse structures. (See also §3.4.2, Complexes)
4. No townhouse shall be constructed so as to provide direct vehicular ingress or egress to a public street.



D. Upper story residential/mixed uses

1. Use

(a) Upper story residential units are allowed above the ground floor of an upper story residential/mixed use building as set forth in principal use table (see §3.3.1).

(b) At least 75 percent of the ground floor (floor area) of upper story residential/mixed use buildings shall be used solely for nonresidential uses. The remaining 25 percent of the first floor may be used for residential uses and/or residential accessory uses, such as entry lobbies and amenities.

(c) Lobby and similar areas on the first floor, which serve upper story residential uses, shall be considered residential accessory uses.

2. Dimensional standards

Upper story residential/mixed use buildings shall adhere to all dimensional standards of the nonresidential use specified in §3.6.2. (See also §3.4.2, Complexes).

3. Floor height

(a) Ground floor

(1) The ground floor shall have at least 12 feet of clear interior height (floor to ceiling) contiguous to the required building line frontage, if any, for a minimum depth of at least 25 feet.

(b) Upper story residential/mixed use

At least 80 percent of each upper story shall have an interior clear height (floor to ceiling of at least nine feet.

§3.5.2. Public, civic and institutional use standards

A. Congregate living facilities

A congregate living facility may be located on the same site or in the same complex as an assisted living facility or nursing home.

B. Day care centers

1. Licenses and codes

(a) All day care centers shall be State-licensed and obtain a zoning permit pursuant to the requirements of §6.21.

(b) Such uses shall be subject to the applicable provisions of City Code, chapter 14, article II, division 2, and Code of Virginia, title 63.2, chapter 17.

2. Dimensional standards

All day care centers shall be located on lots complying with the minimum lot size requirements of the zoning district in which it is located.

3. Access management

All such uses shall be located with access to an existing or planned public street of sufficient right-of-way and cross-section width to accommodate pedestrian and vehicular traffic to and from the use as determined by the zoning administrator. Such uses shall be located so as to permit the on-site pickup and delivery of persons on the site.

4. Signs

Notwithstanding other provisions to the contrary, day care centers may have a monument sign of up to 32 square feet in area, six feet high; and a wall sign of up to 24 square feet; both of which may be illuminated by external white light. Day care centers may also have directional signs as permitted by §4.6.11.C.

C. Group homes/statutory

1. Occupancy shall be limited to no more than eight aged, infirm, disabled, mentally ill or developmentally disabled persons, with one or more resident counselors or other staff persons. For the purposes of this subsection D, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Code of Virginia § 54.1-3401.

2. Such facilities housing aged, infirm, or disabled persons shall be licensed by the Virginia Department of Social Services.

3. Such facilities housing mentally ill or developmentally disabled persons shall be licensed by the Virginia Department of Behavioral Health and Developmental Services.

D. Hospitals

Hospitals may be permitted subject to approval of applicable State Board of Health or other required state licenses. This does not include medical offices or medical care facilities.

E. Medical care facilities

Medical care facilities may be permitted subject to approval of applicable State Board of Health or other required state licenses. This does not include hospitals or medical offices.

F. Nursery schools

1. Purpose

These standards are intended to protect health and safety, to protect neighboring uses from nuisances occasioned by traffic, number of children present, noise, or type of physical activity, and to provide for adequate off-street parking.

2. Screening requirements

Privacy screening at least six feet tall shall be provided along play areas or parking lots abutting a residential lot. Such screening may be vegetative if it meets the height requirement. Play area may be required to be fenced or walled for the safety of the children attending. These requirements shall not be construed to permit fences or walls, which may be prohibited by other sections of this chapter.

3. Play areas

(a) Design capacity of nursery schools shall be determined by the available outdoor or indoor play area, whichever is more restrictive. At least 75 square feet of available outdoor play area, and at least 25 square feet of available indoor play area shall be required per child registered per session.

(b) The available outdoor play area shall exclusive of area covered by buildings, driveways, and parking and loading space. The outdoor play area shall be completely enclosed with a fence or wall at least four feet high.

(c) The available indoor play area shall consist of the total floor area of rooms used for classes or playing, exclusive of halls, closets, bathrooms, coat and storage rooms, kitchen, office, sick child isolation room and living quarters of any staff who live on the premises.

4. Additional provisions for RT-6, RT, RMF, PD-R, and PD-C districts

(a) In the RT-6, RT, RMF, PD-R, and PD-C districts, a nursery school may not be located in one or more of the units designed and built to rent or sell as dwelling units.

(b) A nursery school shall not be located directly above any dwelling unit, and shall not share a party wall with any dwelling unit.

(c) A nursery school shall have direct access to the out-of-doors, which access shall not be through any hall, foyer, or vestibule serving as entrance or exit for any purpose other than the nursery school entrance and exit. More than one exit may be required for emergency use.

(d) Play areas shall be completely fenced or walled.

G. Religious institutions

Notwithstanding other provisions to the contrary, religious institutions may have a monument sign of up to 32 square feet in area, six feet high; and a wall sign of up to 24 square feet; both of which may be illuminated by external white light. Religious institutions may also have directional signs as permitted by §4.6.11.C.

H. Schools, elementary, middle or high

1. Purpose

These standards are intended to protect health and safety, to protect neighboring uses from nuisances occasioned by traffic, number of children present, noise, or type of physical activity, and to provide for adequate off-street parking. No provision of §3.5.2.H shall be construed to conflict with any state school requirements.

2. Screening requirements

Privacy screening at least six feet tall may be required along play areas or parking lots abutting a residential lot. Such screening may be vegetative if it meets the height requirement. Play area may be required to be fenced or walled for the safety of the children attending. These requirements shall not be construed to permit fences or walls, which may be prohibited by other sections of this chapter.

3. Additional provisions for schools in RT-6, RT and RMF districts

(a) In the RT-6, RT and RMF districts, a school may not be located in one or more of the units designed and built to rent or sell as dwelling units.

(b) A school shall not be located directly above or below any dwelling unit, and shall not share a party wall with any dwelling unit.

(c) A school shall have direct access to the out-of-doors, which access shall not be through any hall, foyer, or vestibule serving as entrance or exit for any purpose other than the school entrance and exit. More than one exit may be required for emergency use.

(d) Play areas shall be completely fenced or walled.

4. Signs

Notwithstanding other provisions to the contrary, schools may have a monument sign of up to 32 square feet in area, six feet high; and a wall sign of up to 24 square feet; both of which may be illuminated by external white light. Schools may also have directional signs as permitted by §4.6.11.C.

I. Social service delivery

1. General

(a) Overnight accommodations shall not be permitted.

(b) Hours of operation shall be limited to the hours between 6:00am and 10:00pm, unless further restricted by the city council.

(c) Facilities providing meals for consumption on the premises must provide specified areas for consuming such meals within buildings.

2. Location

(a) Social service delivery shall not be located within 1,000 feet of any use that sells alcoholic beverages, unless waived by the city council, and the distribution or consumption of alcoholic beverages on the premises shall not be permitted. For the purposes of this provision, distances shall be measured on a straight line from the structure containing such use to the nearest point of subject property.

(b) Social service delivery shall be located within reasonable proximity to public transportation.

3. Outdoor space

Social service delivery establishments shall provide a reasonable amount of usable outdoor space in enclosed courtyards, patios or similar areas for the clients of the social service delivery use. The city council may require screening of any such outdoor space.

4. Signs

Notwithstanding other provisions to the contrary, social service delivery may have a monument sign of up to 32 square feet in area, six feet high; and a wall sign of up to 24 square feet; both of which may be illuminated by external white light. Social service delivery may also have directional signs as permitted by §4.6.11.C.

5. Neighborhood impact mitigation

Social service delivery establishments shall be responsible for the mitigation of adverse impacts on the surrounding neighborhood and uses by:

(a) Preventing loitering on the site during non-operational hours; and

(b) Maintaining the site free of litter.

J. Telecommunications facilities

1. Purpose and intent

(a) General

The intent of these regulations is to minimize the negative impact of telecommunications facilities, establish a fair and efficient process for review of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the city.

(b) Collocation

The city will seek to minimize the impact of telecommunication facilities by requiring, where possible, that providers of telecommunication services:

(1) Locate necessary antennas and equipment on existing structures;

(2) Share facility locations on the same property with other service providers;

(3) Share items such as structural attachments, cable shrouds, equipment shelters, and equipment cabinet pads with other service providers;

(4) Coordinate with other service providers in the fulfillment of any screening, landscaping, access and utility requirements; and

(5) Coordinate with other service providers in the digging of trenches or underground conduits for the placement of any cables or other equipment under or through any street or right-of-way.

(c) Compatibility with nearby land uses

The city will attempt to ensure compatibility of telecommunications facilities with nearby land uses by assuring, when possible, that providers of telecommunications services:

(1) Locate telecommunications facilities in the following areas in descending order of preference:

(i) On property that is already developed with a public utility structure that is at least 90 percent of the height of the proposed telecommunications facility;

(ii) On property that is already developed with any structure that is at least 90 percent of the height of the proposed telecommunications facility;

(iii) In industrial districts;

(iv) In low visibility areas of commercial districts;

(v) In properly buffered and screened residential districts where a clear need for such facility has been established and no industrial or commercial land is available nearby that is technically suitable to support the facility;

(2) Locate each antenna that is to be attached to an existing building or to an existing public utility structure in such a manner as to provide the least visual impact of the facilities on the surrounding public and residential areas;

(3) Locate each antenna that is to be attached to a new freestanding structure (including a monopole) or to an existing or reconstructed tower to minimize its height and visibility. Provide a setback for the entire structure from all lot lines and on-site buildings, customer parking lots, and other areas designated for active use. The setback should be a horizontal distance equal to the height of the top of the antenna above average elevation of the ground around the structure;

(4) Locate all transmitting, receiving, switching, power and other supporting equipment entirely within existing buildings, where possible;

(5) Meet the setback requirements of the zone for any new buildings that are found necessary to house supporting telecommunications equipment;

(6) Establish a community liaison with all adjacent civic associations prior to the construction of the facility and to continue throughout the period of use of the facility;

(7) Comply with FCC regulations relating to radio frequency emissions and FAA regulations on lighting; and

(8) Provide for access, removal of all defunct equipment within six months of discontinuance of use, and bonding of construction and removal.

(d) Siting and design

The city will attempt to mitigate the negative impacts of telecommunications facilities by requiring, when possible, that providers of telecommunications services:

(1) Choose locations for proposed new telecommunication facilities for least impact on surrounding neighborhoods while providing adequate service for the area to be served by the proposed facilities;

(2) Provide detailed plans and cross-sections of the proposed facilities adequate for determining their impact on nearby neighborhoods;

(3) Design all facilities to be aesthetically and architecturally compatible with the surrounding environment to the maximum extent possible;

(4) Design all facilities to assure that the telecommunications facilities are not the most prominent visual feature of the site;

(5) Use construction materials and color schemes appropriate to the zoning district and to any existing nearby developed properties;

(6) Design any necessary utility buildings to be compatible with the character of the surrounding neighborhood;

(7) Minimize the number of buildings and equipment cabinets necessary for each location;

(8) Screen any ground-level equipment or structure bases using a transitional yard TY4 (§4.5.5);

(9) Construct antenna facilities no higher above adjacent ground elevation than is reasonably necessary to achieve desired coverage and to permit collocation;

(10) Do not illuminate structures or antenna facilities unless required by the Federal Aviation Administration or FCC. If illumination is required, it should be effectively shielded from neighboring residential properties to the extent possible;

(11) Demonstrate that the proposed facility will be safe and structurally sound;

(12) Provide to the city a letter of intent committing the provider and all successors in interest to allow shared use of the facility subject to reasonable terms and conditions for collocation; and

(13) Comply with FCC regulations relating to radio frequency emissions.

2. Applicability

(a) General

(1) These regulations govern the siting of telecommunications towers and facilities, except for those identified in §3.5.2.J.2(b), which are not subject to the provisions of §3.5.2.J.4 through §3.5.2.J.8, and §3.5.2.J.2(c), which are not subject to the provisions of §3.5.2.J.4 through §3.5.2.J.10.

(2) Routine maintenance or the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller shall not require approval by the zoning administrator.

(b) Existing structures and towers

The placement of a telecommunication antenna or wireless facility on existing structures and towers, such as existing roofs, walls, water tanks, steeples and towers, may be approved administratively by the zoning administrator provided the antenna or wireless facility:

(1) Does not add more than 10 feet in height to the existing structure; and

(2) Meets all applicable standards of the Virginia Uniform Statewide Building Code (USBC) and this chapter.

(c) Administrative review-eligible projects and small cell facilities

(1) The installation of a new structure for an administrative review-eligible project as defined in the Code of Virginia, §15.2-2316.3, may be approved administratively by the zoning administrator provided that:

(i) A new structure with attached wireless facilities is no more than 50 feet in height as measured in accordance with §1.5.11.C;

(ii) A new structure with attached wireless facilities is located within an existing line of utility poles and is not more than 10 feet above the tallest existing utility pole in that line located within 500 feet of the new structure;

(iii) A new structure with attached wireless facilities is designed to support small cell facilities;

(iv) A new structure with attached wireless facilities shall not be located on a site currently or previously subject to the utility undergrounding provisions of §4.11 of this chapter;

(v) The number of new structures with attached wireless facilities on a site shall not exceed the number of existing utility poles on the site within the existing line of utility poles to which the new structures would be added; and

(vi) The new structure with attached wireless facilities is not located within the boundaries of a historic overlay district (§3.7.2), or a state or federal historic district.

(2) The placement of a small cell facility as defined in the Code of Virginia, §15.2-2316.3, on an existing structure may be approved administratively by the zoning administrator provided that:

(i) No more than one small cell facility shall be placed on an existing structure; and

(ii) The small cell facility is not located within the boundaries of a historic overlay district (§3.7.2).

3. Review by the board of architectural review

All telecommunications towers and facilities are subject to the board of architectural review and recommendation prior to approval.

4. Location and construction

The requirements for the location and construction of all new telecommunications facilities regulated by this chapter shall include the following:

(a) New telecommunications facility site shall not be permitted unless the applicant demonstrates to the reasonable satisfaction of the city that existing telecommunications facilities or alternative telecommunications structures cannot accommodate the applicant's proposed antenna.

(b) Telecommunications towers shall either maintain a galvanized steel finish or subject to any applicable standards of the Federal Aviation Administration (FAA), with no logos.

(c) The design of buildings and related structures used in conjunction with telecommunications facilities shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the telecommunications facilities with the natural setting and the built environment.

(d) A telecommunications facility or telecommunications tower shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the city may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

(e) No advertising of any type may be placed on the telecommunications facility, or other structures associated with the telecommunications facility, except that a sign shall be required displaying the name, registration number and emergency contact number of the tower owner. The sign shall not exceed four square feet in size and shall be located on the security fence or other approved location.

5. Required yards (setbacks) and separation

Notwithstanding other provisions of this chapter, the following setbacks and separation requirements shall apply to all telecommunications facilities except alternative telecommunications structures:

(a) Telecommunications towers shall be setback a minimum of 110 percent of the height of the telecommunications tower from any off-site structures used for human habitation, provided this provision shall not apply to monopole towers certified by a structural engineer. Such monopole towers shall comply with the setbacks of the underlying zoning district for principal structures.

(b) Security fencing, equipment and accessory facilities must comply with setback requirements applicable to primary structures.

6. Height

Maximum freestanding telecommunications tower height shall be as approved by city council.

7. Security

Telecommunications towers and facilities shall be enclosed by security fencing not less than six feet or more than eight feet in height unless otherwise approved by the zoning administrator.

8. Perimeter buffer

A transitional yard TY4 shall be provided around the perimeter of telecommunications towers and facilities (§4.5.5), unless otherwise approved by the zoning administrator.

9. Co-location

(a) Approval for a new telecommunications tower within a radius of 10,000 feet of an existing tower or other suitable structure shall not be granted unless the applicant certifies that the existing towers or structures do not meet applicant's structural specifications or technical design requirements, or that a co-location agreement could not be obtained at a reasonable market rate and in a timely manner.

(b) The following order of preference in siting telecommunications antennas and towers shall apply:

(1) Co-location of antennas on, or replacement of, existing towers and, in the process, adding additional co-locaters to the tower;

(2) On existing structures such as buildings, communications towers, water towers, smokestacks, and athletic, street or traffic light standards;

(3) Using stealth designs involving mounting antennas within existing buildings or structures in the form of bell towers, clock towers, or other architectural modification of buildings, or by mounting antennas on artificial trees; and

(4) In locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

10. Local government access

Owners of towers shall provide the city with co-location opportunities as a community benefit to improve radio communication for city departments and emergency services provided it does not conflict with the co-location requirements of this chapter.

11. Federal requirements

All telecommunications towers and antennas must comply with or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of telecommunications towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards as required. Failure to bring telecommunications towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the telecommunications towers and antennas at the owner's expense.

12. Removal of defective or abandoned telecommunications facilities

(a) Any antenna, telecommunications tower or facility that is not operated for a continuous period of 24 months shall be considered abandoned. Where removal of a telecommunications antenna, tower or facility is required, the owner shall remove such telecommunications antenna, tower or facility within 90 days of receipt of notice from the city notifying the owner of such removal requirement. Removal includes the removal of the antennas, telecommunications towers, and telecommunications facilities, fence footers, underground cables and support

buildings. The buildings and foundation may remain (with land owner's approval). Where there are two or more users of a single telecommunications facility or telecommunications tower, this provision shall not become effective until all users cease using the antennas and telecommunications tower.

(b) If the antenna, telecommunications tower and telecommunications facility are not removed as herein required, the city may either seek court enforcement of such removal or the city may, at its discretion, remove the antenna, telecommunications tower and facility at the expense of the owner.

13. Additional guidelines for use of city property

The following additional guidelines will apply to the use of city-owned property:

(a) Any use of city-owned property for telecommunication facilities will require execution by the applicant of a lease agreement with the city acceptable to the city council.

(b) Lease and license agreements for telecommunications facilities will address issues including, but not limited to, access for maintenance, removal on cessation of use, bonding, availability and charges for shared use, compensation to the city for the use of public property, and reimbursement of cost incurred by the city; and

(c) The city may require compensation from telecommunications service providers for the use of city-owned property and facilities.

14. Performance bond

Prior to approval of any permit for a telecommunications tower or wireless support structure, the applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the city attorney, to ensure that measures could be taken by the city of Fairfax at the applicant's expense should he fail to remove an abandoned telecommunications tower or wireless support structure or comply with other permit conditions. If the city of Fairfax takes such action upon such failure by the applicant, the city may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

15. Removal of abandoned wireless facilities

Wireless facilities no longer in use in an active communications network shall be deemed abandoned and must be removed by the provider or property owner.

§3.5.3. Commercial use standards

A. Adult uses

1. Policy

(a) Within the city, it is acknowledged that there are some uses, often referred to as adult uses, which because of their nature can have a negative impact on nearby property, particularly when several of them are concentrated under certain circumstances or located in direct proximity to a residential neighborhood,

thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods. These special regulations are itemized in this §3.5.3.A. The primary control or regulation is for the purpose of preventing the concentration or location of adult uses in a manner that would create such adverse effects. The definition of adult uses is found in §9.3.1.

(b) Prior to the approval of any adult use and in accordance with the requirements of chapter 14 of the City Code, review by the Police Chief shall be required.

2. Definitions

For the purposes of this §3.5.3.A, certain words and phrases shall have the meanings assigned to them in Article 9, except in those situations where the context clearly indicates a different meaning.

3. Required findings

A special use permit for an adult use may be issued by the city council after finding that the location, size, design, and operating characteristics of the proposed adult use will be compatible with and will not adversely affect or be materially detrimental to the neighboring uses.

4. Locational requirements

The following restrictions apply to the location and extent of adult uses:

(a) No adult use shall be within 500 feet of any residential district or planned development district boundary; assisted living center; congregate living facility; day care center; dwelling; church or other religious institution; hotel; motel public park; public or private elementary, middle, or high school; public library; or nursing home.

(b) Off-street parking spaces serving adult uses shall be located at least 300 feet from the nearest residential district boundary; assisted living center; congregate living facility; day care center; dwelling; church or other religious institution; hotel; motel public park; public or private elementary, middle, or high school; public library; or nursing home.

(c) No two such adult uses shall be located within 1,000 feet of each other.

(d) City council may modify or waive the locational provisions of §3.5.3.A.4, subject to the following findings:

(1) That the proposed use will not be contrary to the public interest or be injurious to nearby properties, and that the spirit and intent of §3.5.3.A will be observed;

(2) That the establishment of an additional adult use in the area will not conflict with any council adopted objectives, plans, or programs for the area;

(3) That the establishment of an additional adult use will not be contrary or detrimental to any program of neighborhood conservation or renewal in adjacent residential areas; and

(4) That all applicable regulations of the ordinance and special conditions attached to the special use permit will be observed.

(e) For the purposes of §3.5.3.C, distances shall be measured on a straight line

(1) From the structure containing the adult use to the nearest point of subject property, and

(2) Between the structure containing the adult use and to the nearest point of the property containing any other adult use.

5. Signs

Signs or attention-getting devices for the business shall not contain any words or graphics depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in Article 9. The signage shall otherwise comply with the provisions set forth §4.6.

6. Hours of operation

Adult uses shall not begin service to the public or any outside activity before 6:00am. Hours of operation for any adult movie theater, adult entertainment establishment, shall not extend after 2:00am. Hours of operation for any adult bookstore shall not extend after 12:00 midnight.

7. Location of adult merchandise within the adult use

Adult merchandise shall be located in a separate room or other area inaccessible to persons under 18 years of age.

8. Laws and ordinances governing obscenity applicable

Nothing in this article shall be construed to permit uses in violation of the laws governing obscenity and public nudity found in article VI, chapter 54, of the city Code; Code of Virginia, §§ 18.2-372—18.2-391; and title 18, part I, chapter 71 of the United States Code.

B. Animal care facilities

Animal care facilities shall comply with the following standards:

1. The site plan shall show fencing, berms, and building material soundproofing designed to mitigate the noise impact of the proposed use on the surrounding properties.

2. Waste handling and ventilation shall be designed to substantially control odors discernable off-site.

3. Outdoor exercise areas shall be located at least 300 feet from the nearest residential district and off-site residential use, and they shall comply with the transitional yard TY2 requirements of §4.5.5.

4. Outdoor exercise areas, runs, or yards, when provided for training or exercising, shall be restricted to use during daylight hours.

C. Auction houses

Sales items that are stored in an exterior location must meet zoning requirements for setbacks, parking, screening and other pertinent features.

D. Bed and breakfasts

Bed and breakfasts shall comply with the following standards:

1. General

Overnight accommodations shall be limited to eight or less rooms within the principal structure and rented for periods not to exceed 14 consecutive days per guest.

2. Locational criteria

The use shall be permitted in an owner-occupied, single-family dwelling only on arterial or collector streets.

3. Use criteria

(a) No restaurant or food service shall be permitted except for breakfast and light fare for room guests and their immediate family and visitors only.

(b) The bed and breakfast shall be owner occupied and managed.

(c) A log recording the arrival and departure times of all guests shall be maintained by the owner for inspection by the city upon request.

4. Off-street parking

(a) The guest parking lot shall not be located within the minimum required yards.

(b) The parking lot shall be screened from residential properties adjacent to the parcel or parcels upon which the bed and breakfast is located by an opaque wooden, stone, brick or vegetative screen that meets or exceeds the requirements of §4.5.5 for a transitional yard TY1 and approved by the zoning administrator.

(c) The parking lot shall be surfaced and maintained with a dust-free, porous material. A pre-existing paved surface shall be permitted if approved by the zoning administrator as being in good condition.

5. Signs

Bed and breakfasts may be allowed one four square foot monument, projecting or hanging sign per street frontage, subject to the following requirements:

(a) Ground-mounted signs shall be a maximum of six feet high.

(b) Projecting or hanging signs shall be a maximum of 10 feet high.

(c) Sign illumination shall be by external light only.

E. Hotels, extended-stay

Extended-stay hotels shall have the following features:

1. Each guest room shall be accessed through an interior hallway and shall not provide direct egress to the exterior of the building.

2. Staff or management shall be on duty 24 hours a day in a lobby or public gathering area containing a minimum of 1,000 square feet.

3. Each guest room shall have a minimum of 400 square feet.

4. Each guest room that contains a kitchen or kitchenette shall have a separate, self-contained kitchen area with all of the following: a sink, built-in counter-top range with at least two burners, minimum 14-cubic-foot refrigerator/freezer combination, microwave, dishes, and flatware. At least fifty percent of the rooms in an extended-stay hotel shall have kitchens or kitchenettes.
5. A fitness or recreational center, which is available to guests, with a minimum of 400 square feet, shall be provided.
6. At a minimum, a single, enclosed meeting or conference space of 500 square feet or greater or a business center shall be provided.
7. An enclosed heated and air conditioned laundry space with a minimum of three washers and three dryers shall be available exclusively for guest use.
8. A swimming pool shall be available on site exclusively for guest use.
9. No more than 50 percent of the guest rooms shall be continuously occupied by the same tenant or tenants for 30 days or more. The owner of any extended-stay hotel shall ensure that in each room a printed sign is posted by the owner or management that sets forth these occupancy rules.
10. Accessory uses including additional recreational facilities and restaurants or food services may be associated with the facility.
11. No services commonly associated with transitional housing or short term residential studio units, including but not limited to provision of free meals, case management, or counseling, may be provided to hotel clients on-site.
12. An extended-stay hotel shall only be used for occupancy by transients and shall not be used as a residence. An occupant of a room who does not have a place of permanent residence other than the hotel, shall be deemed to be using the hotel as a place of residence.
13. Occupants using a room because of the loss or damage to their residence by fire or other casualty or because of the remodeling of their residence, shall not be deemed to be using the hotel as a residence.
14. Occupants using a room because they are relocating to the area due to employment transfers or new employment, shall not be deemed to be using the hotel as a residence for the period of time necessary to locate and move into a residence.

F. Restaurants or food services

1. Exterior speakers used in conjunction with any such establishment shall not be audible beyond the boundaries of the subject lot.
2. See drive-through windows/facilities provisions of §3.5.5.D.9.
3. See outdoor dining and service area provisions of §3.5.5.D.17.

G. Schools, technical, trade and business

Technical, trade and business schools may be allowed provided the practice of any particular trade being taught is otherwise an allowed use in the subject district.

H. Tobacco and smoke shops

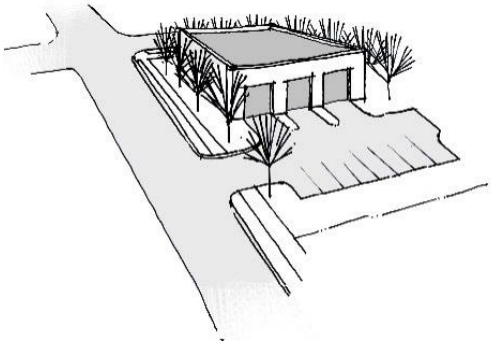
1. Tobacco and smoke shops may set aside up to 30 percent of the floor area for on-site consumption of tobacco and similar products.
2. Ventilation shall be properly maintained.
3. All on-site smoking shall be indoor.

I. Vehicle sales and leasing

1. Each vehicle displayed for sales, lease or rent shall be parked within an enclosed structure or upon a parking space that complies with the requirements contained in §4.2.
2. The sales, rental or leasing office for such establishment shall be a permanent structure.
3. Each parking space for customers and employees shall be so designated with pavement marking or other appropriate signage.
4. Where a vehicle display area is adjacent to commercially zoned property, the perimeter of such area shall be landscaped with a continuous hedge or landscaped berm at least 30 inches in height.
5. Each vehicle awaiting repair or maintenance shall be parked within a parking space that complies with the requirements contained in §4.2 within an enclosed structure or within an area screened on all sides by a solid fence or wall at least six feet in height. Such fence or wall shall be located no closer than 10 feet from any property line adjacent to a C or I district. Where adjacent to any residential district, a TY2 transitional yard shall be provided in accordance with §4.5.5.
6. Each vehicle on such lot not parked upon a parking space meeting the requirements of §4.2, or within a structure, shall be screened in accordance with §3.5.3.I.5, above.
7. Exterior speakers used in conjunction with any such facility shall not be audible beyond the property boundaries of such establishment.
8. Unless waived or modified by the city council, there shall be no less than 500 feet measured between the nearest property lines between each vehicle sales and leasing establishment, and any other such establishment.

J. Vehicle service and vehicle repair

Vehicle service and vehicle repair uses and shall comply with the following requirements:



1. A transitional yard TY3 in accordance with §4.5.5 shall be established along any side of the property adjacent to a residential use;
2. Service bay doors shall not be oriented toward the right-of-way or a residential use, or the service bays shall be screened from view from the right-of-way or adjacent property using landscaping;

3. All repair or service operations, including washing, shall be conducted entirely within a fully-enclosed building;
4. The storage of merchandise and supplies shall be within a fully-enclosed building;
5. Operable vehicles may be parked on-site during business hours. All vehicle parking shall be accomplished on the site, and in no case shall a parked vehicle encroach into the right-of-way;
6. The outdoor overnight storage of vehicles may be allowed subject to §4.10;
7. There shall be no dismantling of vehicles for salvage; and
8. The storage of impounded vehicles shall not be permitted.

§3.5.4. Industrial use standards

A. Fuel sales, residential

Residential fuel sales facilities shall have on-site storage capacity of no greater than 49,000 gallons.

B. Manufacturing, general

All outdoor activities and storage associated with general manufacturing shall be screened from view off site in accordance with the requirements of §4.5.8 and §4.10.

C. Manufacturing, heavy

All outdoor activities and storage associated with heavy manufacturing uses shall be screened from view off site in accordance with the requirements of §4.5.8 and §4.10.

D. Manufacturing, limited

All outdoor storage associated with limited manufacturing uses shall be screened from view off site in accordance with the requirements of §4.5.8 and §4.10.

E. Vehicle storage and towing

1. Outdoor storage areas shall be screened in accordance with the requirements of §4.5.8.
2. A transitional yard TY4 in accordance with §4.5.5 shall be established along any side of the property adjacent to a residential use.
3. Outdoor storage areas may be surfaced with gravel or other material approved by the zoning administrator.

F. Waste service

1. A transitional yard TY4 in accordance with §4.5.5 shall be established along any side of the property adjacent to a residential use.
2. All waste service uses shall be screened from view off-site in accordance with the requirements of §4.5.8.

§3.5.5. Accessory use standards

A. General

Normal and customary accessory structures and uses, including but not limited to garages, sheds, and recreational facilities, shall be allowed in accordance with the provisions of §3.5.5

and comply with all standards in the district for the principal use, except as expressly set forth below.

1. Accessory structures and uses shall be accessory and clearly incidental and subordinate to a permitted principal uses. An accessory use shall only be allowed when a principal use exists for permitted accessory uses associated with a principal use.
2. Accessory structures and uses shall be located on the same lot as the permitted use or building.
3. Accessory structures shall comply with the dimensional standards for principal buildings, except as otherwise specified.
4. Accessory structures and uses shall not involve operations or buildings not in keeping with the character of the primary use or principal building served.
5. Accessory structures and uses shall not be of a nature likely to attract visitors in larger numbers than would normally be expected in association with the principal use, where applicable.
6. An accessory use shall contribute to the comfort, convenience or necessity of occupants of the primary use served.
7. An accessory use shall be located within the same district as the principal use.

B. Accessory structures in RL, RM and RH districts

1. Applicability

Accessory structures shall be permitted in the RL, RM and RH districts, except as qualified below, but only in connection with, incidental to and on the same lot with, a single-family dwelling.

(a) Allowed accessory structures

Accessory structures include, but are not limited to, the following structures:

(1) Play structures not to exceed 100 square feet in area, measured around the perimeter of such structure. For the purposes of this chapter, swing sets and tree houses shall not be subject to setback/minimum yard requirements.

(2) Detached (private) garages and carports may be allowed provided the footprint area of such structure shall not exceed 50 percent of the footprint area of the principal dwelling. For the purposes of §3.5.5.B, footprint is the physical space, measured on a horizontal plane at mean ground level, occupied by an accessory structure or principal dwelling (excluding uncovered porches, terraces, and steps).

(3) Gazebos and similar structures.

(4) Storage structures, provided that no such structure shall exceed 250 square feet in gross floor area.

(5) Swimming pool, bathhouse, tennis, basketball or volleyball court, and other similar private outdoor recreation uses.

(b) Prohibited accessory structures

The following accessory structures are not permitted: Quonset huts, steel arch buildings, inflatable garages, portable or temporary garages, portable or temporary carports, portable containers, and converted shipping or semi-tractor containers, except as may be authorized in conjunction with a permitted temporary use in accordance §3.5.6.

(c) Use limitations of accessory structures

(1) No accessory structure shall be used unless the principal structure is occupied or used.

(2) All accessory uses and structures shall comply with the use limitations applicable to the zoning district in which they are located.

(3) The total lot coverage of all structures accessory to a single-family detached or duplex dwelling shall not exceed 30 percent of the combined area of the minimum required rear and side yards.

(4) All accessory structures shall comply with the maximum height regulations applicable to the zoning district in which they are located, except as otherwise provided in §1.5.12.E.

C. Accessory use table

The accessory use table is subject to the explanation as set forth below.

1. Key to types of use

(a) Permitted

A ”P” indicates that a use is permitted in the respective district subject to the specific use standards in §3.5. Such uses are also subject to all other applicable requirements of this chapter.

(b) Special use review

An “S” indicates that a use that may be permitted in the respective general use district only where approved by the city council in accordance with §6.7. Special uses are subject to all other applicable requirements of this chapter, including the specific use standards contained in §3.5, except where such specific use standards are expressly modified by the city council as part of the special use approval.

(c) Specific use standards

The “Specific Use Standards” column on the table is a cross-reference to any specific use standard listed in §3.5. Where no cross-reference is shown, no additional use standard shall apply.

(d) Use types/use groups

The “Use Types/Use Groups” column on the table lists specific uses and use groups allowed in the respective districts. Use groups are identified by the asterisk (*) following a use type. See §3.4.1 for more information regarding use groups.

(e) Uses not permitted

A blank cell in the accessory use table indicates that a use is not allowed in the respective district.

Use Types/Use Groups	Residential Districts						Nonresidential Districts							Specific Use Standards
	RL	RM	RH	RT-6	RT	RMF	CL	CO	CR	CU	CG	IL	IH	
Accessory dwelling units	P	P	P											§3.5.5.D.1
Amateur radio and receive-only antennas	P	P	P	P	P	P	P	P	P	P	P	P	P	§3.5.5.D.2
Amusement machines								P	P	P	P			§3.5.5.D.3
Automated teller machines (ATMs)							P	P	P	P	P	S		§3.5.5.D.4
Caretaker apartments												P	P	§3.5.5.D.5
Dancing and entertainment areas									S	S	S			§3.5.5.D.6
Day camps	S	S	S	S	S	S	S	P	P	P	P			§3.5.5.D.7
Day care homes, family (less than 5)	P	P	P	P	P	P								§3.5.5.D.8
Day care homes, family (5 to 12)	S	S	S	S	S	S								§3.5.5.D.8
Catering or delivery services							P	P	P	P	P	P		§3.5.5.D.9
Drive-through windows/facilities							S	S	S	S	S	S		§3.5.5.D.9
Electric vehicle charging station	P	P	P	P	P	P	P	P	P	P	P	P	P	
Food trucks									P	P	P	P	P	§3.5.5.D.11
Garages or carports	P	P	P	P	P	P	P							
Garage sales	P	P	P	P	P	P								
Home occupations, major	S	S	S	S	S	S								§3.5.5.D.12
Home occupations, minor	P	P	P	P	P	P								§3.5.5.D.12
Keeping of honey bees	P	P	P									P	P	§3.5.5.D.13
Keeping of chickens	P	S	S											§3.5.5.D.14
Keeping of dogs	P	P	P	P	P	P						P	P	§3.5.5.D.15
Keeping of rabbits	P	P	P									P	P	§3.5.5.D.16
Outdoor dining and service areas							P	P	P	P	P	P	P	§3.5.5.D.17
Parking structures								P	P	P	P	P		§3.5.5.D.18
Recreational facilities, private	P	P	P	P	P	P								
Religious institutions accessory uses	S	S	S	S	S	S		S	S	S	S			§3.5.5.D.19
Retail, convenience*								S	P	P	P	P	P	§3.5.5.D.20
Services, convenience*						S		S	P	P	P	P	P	§3.5.5.D.21

D. Accessory use standards

1. Accessory dwelling units

Accessory dwelling units, as is defined in §9.3.1, shall comply with the following standards:

(a) No more than one accessory dwelling unit shall be allowed per single-family dwelling unit.

(b) Accessory dwelling units shall be located within the structure of a single-family dwelling unit; and any added external entrances for the accessory dwelling unit shall be located on the side or rear of the structure.

(c) The gross floor area of an accessory dwelling unit shall not exceed 35 percent of the total gross floor area of the principal dwelling.

(d) No accessory dwelling unit shall contain more than two bedrooms.

(e) Occupancy of an accessory dwelling unit and the principal dwelling shall be as follows:

(1) One of the dwellings (principal or accessory dwelling unit) shall be owner-occupied;

(2) At least one of the dwelling units shall be occupied by:

(i) Any person 55 years of age or over; and/or

(ii) Any person with a handicap as defined in the 1988 amendments to the federal Fair Housing Act, to include a person with a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

(iii) The combined occupancy of the single-family dwelling unit and the accessory dwelling unit shall consist of one family only, which is defined as one person or a group of persons related by blood or marriage, plus not exceeding three additional unrelated persons.

(f) Any accessory dwelling unit established for occupancy by a disabled person shall provide for reasonable access and mobility as required for the disabled person. The measures for reasonable access and mobility shall be specified in the application for a special use permit. Generally, reasonable access and mobility for physically handicapped persons shall include:

(1) Uninterrupted access to one entrance; and

(2) Accessibility and usability of one bathroom.

(g) No more than two vehicles utilized by residents of the accessory dwelling unit shall be allowed.

(h) In no instance shall approval of an accessory dwelling unit be deemed a subdivision of the principal unit.

(i) Any accessory dwelling unit shall meet the applicable regulations for zoning, building, safety, health, and sanitation.

(j) The owner shall make provisions to allow inspections of the property by city personnel during reasonable hours upon prior notice. An initial inspection of a new accessory dwelling unit will be conducted by a zoning administrator, in addition to any renewal of the accessory dwelling unit use or transfer of ownership of the subject property.

(k) The zoning administrator may inspect the property if there is a complaint registered with the city or if the official has other reason to believe that the owner or occupants of the property are in violation of the accessory dwelling unit approval.

(l) Upon transfer of ownership of the subject property, the new owner shall be required to certify in writing to the zoning administrator that either:

(1) Continued use of the accessory dwelling unit will comply with the conditions of the previous approval for the accessory dwelling unit use; or

(2) Use of the accessory dwelling unit will not be continued, and the use of the space as a separate dwelling unit will cease in accordance with §3.5.5.D.1(m), below.

(m) If there is a change in occupancy of the accessory dwelling unit that does not comply with the conditions under which the accessory dwelling unit was approved, use of the space as a separate dwelling unit shall cease, the physical arrangement of the space that created an independent housekeeping unit shall be integrated into the primary dwelling unit, and the space shall not be independently leased as a separate dwelling unit.

2. Amateur radio and receive-only antennas

(a) Antenna structures may exceed height limits as specified in §3.6.

(b) Satellite dish antennas shall comply with all applicable dimensional standards specified within the district regulations.

3. Amusement machines

A maximum of two machines shall be permitted per use or location.

4. Automated teller machines (ATMs)

Automated Teller Machines (ATMs) may be permitted accessory to any nonresidential uses provided they are located indoors. Where ATMs are not completely enclosed within a building, ATMs must be located, developed, and operated in compliance with the following standards:

(a) Setbacks

A minimum setback of two feet from the sidewalk must be provided where unenclosed ATMs are located on the exterior of a building fronting a street.

(b) Weather protection

Unenclosed ATMs must provide weather protection for users in the form of an awning or shallow recess.

(c) Security

ATM facilities must be adequately marked and lighted for security purposes, but may not result in excessive glare for nearby residential uses or passing motorists.

(d) Litter control

One trash receptacle must be installed for every ATM.

5. Caretaker apartments

Caretaker apartments may be permitted accessory to nonresidential principal uses as specified in §3.3.1, provided that they are used exclusively by the owner, manager or operator of the use.

6. Dancing and entertainment

(a) Dancing area may be allowed accessory to restaurants or food service, provided:

(1) The dancing area, together with any entertainment area, does not exceed 25 percent of the gross floor area of the restaurant;

(2) The lot on which the restaurant or food service is located is no closer than 200 feet from residentially zoned property measured from nearest property lines, unless waived by the city council; and

(3) Dancing shall be restricted to a dancing area which shall be clearly demarcated and of a size proportionate to the seating capacity of the restaurant and food service.

(b) Entertainment area within restaurants or food service, provided that:

(1) The entertainment area, together with any dancing area, does not exceed 25 percent of the gross floor area of the restaurant or food service; and

(2) The lot on which the entertainment area is located is no closer than 200 feet from residentially zoned property measured from nearest property lines, unless waived by the city council.

7. Day camps

Permitted only as an accessory use to personal services; community services; day care centers; indoor and outdoor recreational uses; governmental uses; religious institutions; and elementary, middle and high schools.

8. Day care homes, family (up to 12)

A family day care home may provide care for up to 12 children, subject to the following requirements:

(a) Family day care homes shall obtain a state license, if required. (State licenses are required for such homes providing care for five to 12 children.)

(b) When calculating the total number of children cared for, resident children shall be excluded.

(c) The facility shall be the principal residence of the operator(s) of the family day care home.

(d) The facility shall comply with any and all requirements of the city and state codes, including City Code, Ch. 14, and Title 63.2, Ch. 17, Code of Virginia.

9. Catering or delivery services

Catering or delivery services shall comply with the following standards:

(a) Hours of delivery service shall be limited to between 7am and 12am, Sunday through Thursday; and 7am through 1am, Friday and Saturday;

(b) Maximum number of delivery vehicles in service during any shift shall be four;

(c) Delivery vehicles shall only be parked in parking spaces, and not in drive aisles and fire lanes; and

(d) For purposes of this section and where the delivery operation has vehicular access to multiple streets, all deliveries shall be made using the primary street access, rather than neighborhood side streets.

10. Drive-through windows/facilities

(a) No drive-through windows/facilities shall be permitted on the side of a building adjacent to or facing any residential district;

(b) Stacking spaces shall be provided in accordance with the requirements of §4.2;

(1) The location of each drive-through stacking spaces and the direction of flow shall be clearly demarcated with pavement marking;

(2) Where a stacking lane abuts a parking aisle, the area required for the stacking lane shall be in addition to that required for the aisle;

(3) No drive-through stacking lane shall be located between parking spaces and any public entrance to such establishment; and

(c) Screening shall be provided in accordance with the requirements of §4.5.

11. Food trucks

Food trucks shall comply with all of the following regulations:

(a) Food trucks may only be located on a lot or site containing a principal building or use, or on an active construction site.

(b) A food truck may occupy any given location between 7am to 10pm Sunday to Thursday and 7am to 11pm Friday and Saturday.

(c) The number of food trucks allowed per site is limited as follows:

(1) A maximum of one food truck is allowed on sites with less than 20,000 square feet of land area.

(2) On sites with land area of 20,000 square feet or more, one food truck is allowed per 20,000 square feet of land area or fraction thereof.

(3) For purposes of this provision, a site may consist of one lot or a combination of contiguous lots.

(d) Food trucks must be located at least 100 feet from the main entrance of any outdoor dining and service area associated with a restaurant or food service.

(e) Food trucks may not obstruct pedestrian, bicycle or vehicle circulation routes, and must be set back at least five feet from the edge of any driveway or public sidewalk.

(f) Food trucks may not occupy parking spaces provided to meet the parking ratio requirements of the principal use or required landscape strips or landscaping areas, unless the principal use's hours of operation do not coincide with those of the food truck business. Food trucks may not occupy any parking spaces reserved for persons with disabilities.

(g) No freestanding signs or audio amplification are allowed as part of the food truck's operation.

(h) Food trucks and associated outdoor seating must be removed from all permitted locations when not in operation.

(i) Operators are responsible for ensuring that all waste is disposed of in accordance with city regulations.

12. Home occupations

(a) Prohibited home occupations

The following uses are not permitted as home occupations:

(1) Vehicle service;

(2) Vehicle repair;

(3) Plant nurseries and greenhouses;

(4) Manufacturing, heavy, which relates to the handling, processing, packing, or serving of food directly or indirectly to the public;

(5) Medical or dental laboratory;

(6) Restaurant or food services;

(7) Bulk storage of flammable liquids;

(8) Funeral homes; and

(9) Animal care facilities.

(b) General

All home occupations shall comply with the following requirements:

(1) The use of the dwelling unit for a home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and shall under no circumstances change the residential character of the structure;

(2) Any part of a dwelling may be utilized for a home occupation, provided that the total floor area utilized in the conduct of a home occupation shall not exceed 20 percent of the first floor area of the dwelling; accessory structures shall not be used for home occupation purposes;

(3) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of a home occupation;

(4) No business, storage or warehousing of material, supplies or equipment shall be permitted outside of the primary dwelling unit;

(5) No equipment or vehicles shall be used or regularly parked other than that normally used for domestic, hobby, and household or small office purposes in a single-family detached dwelling;

(6) No equipment or process shall be used that creates excessive noise, vibration, glare, fumes, odors, or electrical interference;

(7) The storage of hazardous materials shall be prohibited;

(8) The receipt or delivery of merchandise, goods or supplies for use in a home occupation shall be limited to the United States mail, similar parcel delivery service, or private vehicles with a gross vehicle weight rating of 40,000 pounds or less;

(9) No display of products shall be visible from the street; and

(10) No person shall conduct a home occupation without obtaining the appropriate business, service or occupational license required by law. All home occupations shall comply with applicable state, federal, and local regulations. Home occupations shall be subject to all applicable licenses and business taxes.

(c) Minor home occupations

Minor home occupation means the use of an area located within a dwelling unit for business or commercial purposes. Such uses shall comply with the following additional requirements:

(1) No person other than a member of the family residing within the dwelling shall be engaged in the home occupation;

(2) Student instruction, where allowed, shall be limited as follows:

(i) Such instruction shall be limited to a total of eight students per day, with no more than 40 total per week or six students present at any one time, between the hours of 8:00am and 9:00pm

(ii) Gatherings of students and families for exhibitions and group activities may take place within the dwelling no more than four times per year. Such gatherings shall be consistent with the residential character of the neighborhood and shall conform to all applicable regulations regarding noise and parking.

(3) No signage shall be permitted.

(4) The minor home occupation shall generate no greater volume of traffic than would normally be expected from a single-family residence, subject to the additional operational standards for home businesses and student instruction and consistent with the residential character of the neighborhood;

(5) The street address of a home occupation business shall not be advertised to the general public in newspaper, radio, television, worldwide web, or other advertisements. This provision shall not be construed to prohibit address listing in telephone directories, on business cards, or in communication with customers, suppliers or professional colleagues, nor shall it prohibit referrals to individual consultants from corporate Internet sites by customer inquiry.

(d) Major home occupations

Major home occupation means the use of an area located within a single-family residence as business office or professional office. Such uses shall be subject to the following additional restrictions:

(1) It is carried on by a person residing within the dwelling and employs no more than two employees not living within the dwelling;

(2) No more than two vehicles are used in the conduct of the home occupation, and such vehicles are parked off the street.

(3) No merchandise or commodity is sold within the dwelling.

(4) No mechanical equipment is installed or used except such that is normally used for domestic or professional purposes.

(5) No expansion shall be permitted outside the principal structure that houses the home occupation, except that which is necessary to house vehicles used in the conduct of home occupation.

(6) Advertising signs shall be limited to one unlighted wall sign no larger than three square feet in area, attached to the structure housing the home occupation, or one yard sign of the same size not to exceed three feet in height.

(7) There shall be no display of goods, tools, equipment, or commercial vehicles.

13. Keeping of honey bees

(a) Colony density

(1) The minimum lot size required for beekeeping shall be 5,000 square feet.

(2) The maximum number of hives allowed shall be determined based on lot sizes as follows:

(i) Larger than 5000 square feet but smaller than 0.25 acre: 2 beehives

(ii) Larger than 0.25 acre: 4 beehives

(b) Best practices

Keeping of up to four beehives on an occupied residential lot shall be allowed provided:

(1) Beehives will not be located any closer than 10 feet from any side or rear lot line.

(2) All honey bee colonies shall be kept within types of hives with removable combs to facilitate inspection, and maintained in sound and usable condition.

(3) A constant supply of fresh water shall be provided on the lot within 20 feet of all hives. The water source shall be maintained so as not to become stagnant.

(4) A flyway barrier at least six feet in height but no greater than seven feet in height shall be erected parallel to the property line between the hive opening and any property line located 10 feet or less therefrom. The flyway barrier shall consist of a wall, solid fence, dense vegetation, or a combination thereof extending five feet beyond the hive in each direction. A flyway barrier of dense vegetation shall not be limited to seven feet in height provided that the initial planting is four feet in height and the vegetation normally reaches six feet in height or higher. Barriers shall be maintained in good condition so that all bees are forced to fly at an elevation of at least six feet above ground level.

(5) Where a colony exhibits aggressive or swarming behavior, the beekeeper shall ensure that the colony is re-queened or removed. Aggressive behavior

is any instance in which unusual aggressive characteristics such as stinging or attacking without provocation occurs.

(c) Permit and administration

The zoning administrator shall be authorized to establish use specific permit and administrative procedural requirements as necessary to ensure compliance with the applicable requirements of this chapter, the city code and Virginia law.

14. Keeping of chickens

(a) Applicability

In addition to RL district lots, keeping of chickens shall be a permitted use on other single-family residential lots with a minimum of 20,000 square feet. The keeping of chickens on single-family residential lots with a minimum of 10,000 square feet in the RM and RH districts shall be subject to a special use review pursuant to §6.7.

(b) General provisions

Keeping of up to four chickens on an occupied single-family residential lot shall be allowed, provided that:

(1) No person shall keep any rooster.

(2) The chickens shall be used only for non-commercial household egg production. Selling eggs and slaughtering chickens shall be prohibited.

(3) The chickens shall be provided with a clean, covered, well-ventilated enclosure that is secure from predators.

(4) The chickens must be kept in the covered enclosure or within a fenced or walled area at all times.

(5) No enclosure shall be located closer than 25 feet to an occupied, off-site residential dwelling.

(c) Best practices

Any person who keeps chickens under this section shall comply with all city and Virginia laws, ordinances, and regulations regarding care, shelter, sanitation, health, noise, cruelty, neglect, reasonable control, and any other requirements pertaining to the adequate care and control of animals in the city.

(d) Permit and administration

The zoning administrator shall be authorized to establish use specific permit and administrative procedural requirements as necessary to ensure compliance with the applicable requirements of this chapter, the city code and Virginia law.

15. Keeping of dogs

(a) Animal density

(1) The keeping of dogs more than four months of age on lots used for residential purposes shall be based on lot size, as follows:

Minimum Lot Size (sq. ft.)	Maximum Number of Dogs Allowed More Than 4 Months of Age
Less than 7,500	2
7,500	3
12,500	4

(2) In no case shall more than four dogs more than four months of age be kept on any residential lot in the city.

(b) Best practices

Houses, runs, pens and other similar structures for the housing of dogs shall be located in accordance with §3.5.5.A; provided that in no instance shall a structure, run or pen for three or more dogs be located closer than 20 feet to any lot line.

16. Keeping of rabbits

Hutches, pens, cages, coops and other similar structures for the housing of rabbits shall be located in accordance with the provisions set forth in §3.5.5.A; provided that in no instance shall a hutch or coop, pen or cage for three or more rabbits be located closer than 20 feet to any lot line.

17. Outdoor dining and service areas

Outdoor dining and service areas may be allowed as an accessory use to otherwise allowed restaurant or food services, subject to the following requirements:

(a) Outdoor dining and service areas shall be located on private property, unless otherwise approved.

(b) Outdoor dining and service areas shall be permitted within the required setback.

(c) Hours of operation shall not extend past the normal operating hours of the principal restaurant or food service use.

(d) Outdoor dining and service areas located in side or rear yards adjacent to or across a street from residential districts shall not operate before 9:00am or after 11:00pm.

(e) No sound or audio or video entertainment from outdoor dining and service areas shall be visible or audible before 7:00am or after 11:00pm on Fridays and Saturdays, and before 7:00am or after 10:00pm Sunday through Thursday.

18. Parking structures

Parking structures above finished grade shall comply with applicable building setback requirements.

19. Religious institutions accessory uses

Day care centers, nursery schools, and schools, elementary, middle, high shall be allowed as accessory uses to religious institutions subject to the applicable provisions of §3.5.2.B, §3.5.2.F, §3.5.2.H, respectively..

20. Retail, convenience

Convenience retail shall be allowed as an accessory use to fuel stations and convenience stores. (See also §3.4.1.H.1)

21. Services, convenience

Convenience service shall be allowed as an accessory use to office buildings. (See also §3.4.1.H.2)

§3.5.6. Temporary Use Standards

A. Purpose and intent

There are certain uses that may be permissible on a temporary basis subject to the controls, limitations and regulations of §3.5.6. The following sections provide the procedures and criteria used by the zoning administrator in reviewing temporary uses.

B. Permitted temporary uses

Unless otherwise specified, no temporary use shall be established, except as provided for in §3.5.6.C, unless a temporary use permit is approved pursuant to the provisions of §6.15. In addition to complying with the approval criteria of §6.15.4, the following uses shall comply with the applicable specific use requirements:

1. Pick-up and drop-off containers and facilities, subject to §3.5.6.E;
2. Construction offices, temporary, subject to §3.5.6.F;
3. Family health care structure, temporary, subject to §3.5.6.G;
4. Residential sales offices and model homes, temporary, subject to §3.5.6.H;
5. Residences, temporary, subject to §3.5.6.I;
6. Special events, temporary, subject to §3.5.6.J;
7. Storage pods, temporary, subject to §3.5.6.K;
8. Vehicle storage, temporary, subject to §3.5.6.L;
9. Other uses similar in nature to the ones listed above, with corresponding controls, limitations and regulations, in accordance with the general standards of §3.5.6.D.

C. Temporary uses allowed without a permit

1. Unless otherwise specified, permits are not required for the following types of special events provided that such uses are required to meet all applicable general standards in §3.5.6.D:

   (a) Minor events

   Minor events including, but not limited to privately-sponsored gatherings, walk-a-thons, charity fundraisers, and similar events.

(1) Duration of less than 12 hours per event;

(2) Daylight hours only; No activity after dark or 9pm whichever comes first;

(3) No loud, disturbing and unnecessary noise as specified in City Code Chapter 38;

(4) No dancing and entertainment activities, as defined;

(5) Adequate provisions must be made for on-site parking, available street parking or other arrangements, and safe ingress and egress must be provided;

(6) Signs for minor events shall comply with §4.6.12.G; and

(7) No more than four events per year.

(b) Retail sales events and promotions, outdoor

Retail sales events and promotions, outdoor are allowed only in conjunction with an established retail business and on the same lot as said business.

(1) Limited to normal hours of operation for the established retail business;

(2) Any display must be brought indoors prior to close of business each day;

(3) No loud, disturbing and unnecessary noise as specified in City Code Chapter 38;

(4) Signs for retail sales events and promotions shall comply with §4.6.12.B provided such sign is only displayed during the event; and

(5) No more than three consecutive days, no more than four times per year.

(c) Seasonal sales, temporary

Seasonal sales, such as Christmas tree, fireworks and pumpkin sales lots, may be allowed in nonresidential districts and on sites occupied by schools and/or religious institutions.

(1) No more than 45 consecutive days;

(2) Signs for seasonal sales, temporary shall comply with §4.6.12.F.

2. A permit for Special events, temporary shall be required for any event not meeting the provisions of §3.5.6.C.1(a) or §3.5.6.C.1(b).

D. General standards

1. No temporary use shall be permitted unless the applicant demonstrates compliance with these standards to the satisfaction of the zoning administrator. The zoning administrator may impose reasonable conditions on the use to ensure compliance with these standards or other applicable provisions of law.

2. Temporary uses and temporary use permits may be approved for up to one year, unless otherwise specified.

3. Adjacent uses shall be suitably protected from any adverse effects of the use, including noise and glare.

4. The use shall not create hazardous conditions for vehicular or pedestrian traffic, or result in traffic in excess of the capacity of streets serving the use.

5. Adequate refuse management, security, emergency services and similar necessary facilities and services shall be available for the temporary use, and all sanitary facilities shall be approved by the appropriate health agency.

6. The site shall be suitable for the proposed use, considering flood hazard, drainage, soils and other conditions that may constitute a danger to life, health or safety.

7. The use shall not have a substantial adverse impact on the natural environment, including trees, ground cover and vegetation.

8. The use shall be maintained in an orderly manner.

E. Pick-up and drop-off containers and facilities

1. Applicability

Temporary use permits for pick-up and drop-off containers and facilities may be approved for up to three years, and the permit may be renewed, in the following locations and circumstances:

(a) In CL, CO, CR, CU, and CG districts on lots containing not less than 40,000 square feet;

(b) In commercial areas of planned districts, when ancillary to the principal use, and only when shown on an approved master development plan;

(c) In residential districts where the principal use of the development is not residential, and only when such containers and facilities are shown on an approved site plan; and

(d) When such container and facilities is specifically identified on approved master development plans.

2. Maximum size and number

A maximum of two donation drop-off boxes shall be permitted on any one lot and shall be located within a contiguous area of not more than 120 square feet, with no individual drop-off box exceeding the dimensions of seven feet in height, six feet in width or six feet in length.

3. Location

(a) Pick-up and drop-off containers and facilities shall be permitted in any yard except the minimum required front or side (street) yard.

(b) Such containers and facilities shall not be located in any required recreation and open space, transitional yard, required landscaped area, on any private street, sidewalk or trail, in any required parking space, or in any location that blocks or interferes with vehicular and/or pedestrian circulation. Donation drop-off boxes shall be located in accordance with all applicable building and fire code regulations for the purpose of ensuring safe ingress and egress, access to utility shut-off valves, and for fire protection. Such containers shall also be subject to the visual clearance provisions of §4.3.4.

4. Design, management and maintenance

(a) Donation drop-off boxes shall be weather-proof, constructed of painted metal, plastic, or other similarly noncombustible material, properly maintained in good repair and in a manner that complies with all applicable building code and fire code regulations, and secured from unauthorized access.

(b) All donated items shall be collected and stored in the donation drop-off box which shall be emptied as needed or within 48 hours of a request by the property owner or authorized agent.

(c) Items and materials including trash shall not be located outside or in proximity to a donation drop-off box for more than 24 hours and shall be removed by the property owner, operator of the donation drop-off box or their authorized agent.

5. Screening

Pick-up and drop-off containers and facilities shall be screened in accordance with the requirements of §4.5.8.E.

6. Signage and information

Donation drop-off boxes shall display the following information in a permanent and legible format that is clearly visible from the front of the container:

(a) Specific items and materials requested;

(b) Name of the operator or owner of the container;

(c) Entity responsible for the maintenance of the container and the removal of donated items, including any abandoned materials and trash located outside the donation drop-off box;

(d) Phone number where the owner, operator or agent of the owner or operator may be reached at any time; and

(e) Notice stating that no items or materials shall be left outside of the donation drop-off box and the statement, “Not for refuse disposal. Liquids are prohibited.”

F. Construction offices, temporary

An industrialized building may be used as a temporary office, security shelter, or shelter for materials or tools necessary for construction on or development of the premises upon which the temporary construction office is located. Such use shall be strictly limited to the time construction or development is actively underway.

G. Family health care structure, temporary

A temporary family health care structure shall be allowed in accordance with the requirements of Code of Virginia, § 15.2-2292.1.

H. Residential sales offices and model homes, temporary

1. Temporary residential sales offices and model homes may be located within a residential district as part of an ongoing residential development. Such offices and homes shall be removed or converted to a use permitted within the district when use as a sales office or model home has ceased.

2. Model homes for new subdivisions shall only be occupied for residential habitation after all business activities have ceased. Upon sale the home shall comply with applicable residential parking standards.

I. Residence, temporary

No recreational vehicle, trailer, tent, garage, barn or other similar vehicle or building erected on any lot shall be used as a residence for more than 10 days within a six month period, provided that the City Council may approve longer time frames in cases of significant calamity or natural disaster.

J. Special events, temporary

Temporary events, including but not limited to car shows, carnivals, circuses, dog shows, festivals, fairs, fireworks shows, horse shows, tent revivals and similar events, regardless of whether or not admission is charged, may be permitted subject to the following standards:

1. Temporary use permit for such activities shall be issued for not more than 10 days, in any six-month period.
2. No such activity shall be located closer than 300 feet to a residential use, without the approval of city council. This provision shall not apply to public, civic and institutional use-sponsored events, and indoor events.
3. Adequate provisions must be made for parking, and safe ingress and egress must be provided.
4. Night operations shall be permitted only if there is a lighting plan that provides for safe lighting without excessive glare into streets or residential areas.
5. Signs for temporary special events shall comply with §4.6.12.G.

K. Storage pods, temporary

Storage pods, crates and similar storage units may be allowed subject to compliance with the following requirements.

1. Storage pods for off-site storage of household or other goods located in a yard are permitted for:
   - **(a)** A maximum of 30 days within a six-month period on a single-family lot; seven consecutive days within a six-month period on other residential sites; and
   - **(b)** On active construction sites, provided they are removed within 30 days of completion of construction.
2. Storage pods used for the purpose of storing excess inventory to be sold in connection with an established retail business on the same lot.
3. The proposed storage pod location shall not impede pedestrian traffic, or be located within required landscaped areas.
4. Stacking of storage pods is prohibited.

L. Vehicle storage, temporary

Temporary vehicle storage may be allowed in nonresidential districts, subject to special use review pursuant to §6.7.

§3.6. DIMENSIONAL STANDARDS

The dimensional standards of §3.6 apply to all general district development. Methods of measurement and exceptions are found in §1.5.

§3.6.1. Residential districts

A. General provisions

Residential Districts Dimensional Standards	RL	RM	RH	RT-6	RT	RMF
Density (units/acre), Maximum	--	--	--	6	12	20
Site Area (acres), Minimum	--	--	--	3	0.4	0.5
Lot Area/ Unit, Minimum (sq. ft.)	20,000	7,500	6,000	1,600 [3]	1,500	1,800
Required Yards, Minimum (ft.) [1]						
Front	40	25	20	10	10	25
Side (street)	30	20	15	20	20	25
Side (interior)	15	12-10[2]	12-10[2]	0	0	25
Rear	25	25	25	20	20	35
Lot Width, Minimum (ft.)						
Interior lots	100	75	60	18	18	--
Corner lots	125	95	80	18	18	--
Height, Maximum (stories/feet) [2]						
Adjacent to RL, RM or RH district	3/35	3/15-35[2]	3/15-35[2]	3/35	3/35	3/35
Not adjacent to RL, RM or RH district	3/35	3/35	3/35	3/35	4/45	4/45
Building Coverage, Maximum (%)		25	35	60	60	60
Lot Coverage, Maximum (%)		40	50	80	80	80

NOTES:
[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.
[2] Some exceptions apply. See §1.5.11.A.2(a).
[3] Or, an average of 1,800 square feet.

B. Affordable dwelling unit development regulations

Residential Districts Dimensional Standards	RL	RM	RH	RT-6	RT	RMF
Density (units/acre), Maximum	--	--	--	7.2	14.4	24
Site Area (acres), Minimum	--	--	--	3	0.4	0.5
Lot Area/ Unit, Minimum (sq. ft.)	16,000	6,000	4,800	1,280 [3]	1,200	1,440
Required Yards, Minimum (ft.) [1]						
Front	32	20	20	8	8	25
Side (street)	24	18	12	16	16	25
Side (interior)	12	10-8[2]	10-8[2]	0	0	25
Rear	20	20	20	15	15	35
Lot Width, Minimum (ft.)						
Interior lots	80	60	48	16	16	--
Corner lots	100	76	64	16	16	--
Height, Maximum (stories/feet) [2]						
Adjacent to RL, RM or RH district	3/35	3/15-35[2]	3/15-35[2]	3/35	3/35	4/48
Not adjacent to RL, RM or RH district	3/35	3/35	3/35	3/35	4/45	5/60
Building Coverage, Maximum (%)		30	42	70	70	70
Lot Coverage, Maximum (%)		48	60	90	90	90

NOTES:
[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.
[2] Some exceptions apply. See §1.5.11.A.2(a).
[3] Or, an average of 1,440 square feet.

§3.6.2. Nonresidential districts

NONRESIDENTIAL DISTRICTS DIMENSIONAL STANDARDS	CL	CO	CR	CU	CG	IL	IH
DENSITY (UNITS/ACRE), MAXIMUM	20 (General) / 24 (Affordable Dwelling Unit)					--	--
LOT AREA, MIN. (SQ. FT.)	--	20,000	20,000	30,000	22,000	--	--
REQUIRED YARDS (FT.)							
Front and side (street)							
Maximum	--	--	93[1]	15	--	--	--
Minimum	20[1]	20[1]	20[1]	0	20	20	25
Side (interior), min. adjacent to a residential district	25	25	25	25	25	50	50
Side (interior), min. not adjacent to a residential district	12	0/10[2]	0/10[2]	0/10[2]	25	0	0
Rear, min. adjacent to a residential district	25	25	25	25	25	50	50
Rear, min. not adjacent to a residential district	0	0	0	0	25	0	0
BUILD-TO LINE, MANDATORY (PERCENT)	--	--	--	50	--	--	--
LOT WIDTH, MINIMUM (FT.)	--	--	--	--	150	--	--
BULK PLANE REQUIREMENTS (DEGREES)							
Front	--	--	--	--	--	--	--
Side (interior), adjacent to a residential district	--	45	45	45	45	45	45
Side (interior), not adjacent to a residential district	--	--	--	--	--	30	30
Rear, adjacent to a residential district	--	45	45	45	45	45	45
Rear, not adjacent to a residential district	--	--	--	--	--	30	30
HEIGHT, MAXIMUM (STORIES/FEET)	3/35	5/60	5/60	5/60	5/60	3/35	6/60
BUILDING COVERAGE, MAXIMUM (%)	25	50	60	80	--	50	50
LOT COVERAGE, MAXIMUM	50	85	85	100	90	90	90
FLOOR AREA, MAXIMUM (SQ. FT.)	17,500	--	--	--	--	--	--

NOTES:
[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.1(a).
[2] No side (interior) yard is required, but if a building is not built to the lot line, a minimum 10 foot side (interior) yard shall be required.

§3.7. OVERLAY DISTRICTS

§3.7.1. General

Overlay districts are "overlaid" upon other districts and they modify something about the underlying district; e.g. building design, dimensional standards, site development standards. Land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use also complies within the regulations contained herein.

§3.7.2. Historic overlay district

A. General

1. Any structure, group of structures, site or area may be designated a historic district, provided such property is found to:

(a) Have significant historic character, interest or value as part of the city's heritage;

(b) Be the site of a historic event with a significant effect upon society;

(c) Exemplify the cultural, political, economic, social or historic heritage of the community;

(d) Portray an era of history characterized by a distinctive architectural style;

(e) Be part of or related to a distinctive area which should be developed or preserved according to an historic, cultural or architectural motif;

(f) Represent an established and familiar visual feature of the community; or

(g) Be likely to yield information important to history or prehistory.

2. All structures and improvements erected, enlarged, or reconstructed in historic overlay districts shall be designed and constructed in a manner that will complement the unique character of the district with respect to building size, scale, placement, design and the use of materials.

3. Improvements within this district shall be subject to the approval of a certificate of appropriateness in accordance with the provisions of §6.5.

B. Old Town Fairfax Historic Overlay District

1. Applicability

Development in the Old Town Fairfax Historic Overlay District shall comply with the requirements of this §3.7.2.B; except for single-family detached dwellings existing prior to the effective date of this chapter, additions to which shall be exempt from the required build-to line and front and side (street) yard maximum of §3.7.2.B.4(d)(1) and §3.7.2.B.4(d)(2), respectively.

2. Additional uses

In addition to those uses permitted in the underlying zoning district, the following uses shall be allowed as specified below.

(a) Permitted uses

(1) Services, personal

(2) Restaurants or food services, subject to §3.5.3.F

(3) Retail, general (See §3.4.1.F.7)

3. Prohibited uses

(a) Drive-through windows/facilities

(b) Vehicle sales and leasing

4. Dimensional standards

(a) Lot area, minimum

None

(b) Lot width, minimum

None

(c) Height, maximum

36 feet, three stories, provided that, decorative architectural elements not used for human habitation, such as towers and spires, may extend an additional five feet above the maximum height specified above.

(d) Required yards (setbacks)

(1) Build-to line, mandatory (percent): 50 percent

(2) Front and side (street) yard, maximum

(i) 10 feet

(ii) Areas contiguous with the structure and used for outdoor dining and service, public plazas, gazebos, landscaped areas, recreation and open space, or courtyards shall be exempt from the maximum yard requirement.

(iii) The yard area shall not be used for parking, except bicycle parking.

(3) Front and side (street) yard, minimum

(i) Where necessary to accommodate a ten-foot wide sidewalk: 10 feet

(ii) Where not necessary to accommodate a ten-foot wide sidewalk: None

(4) Side (interior) yard

(i) Adjacent to residential district property outside the district overlay boundaries: 25 feet, and a transitional yard TY2 shall be provided in accordance with the provisions of §4.5.5.

(ii) Not adjacent to residential district property outside the district overlay boundaries: None

(5) Rear yard

(i) Adjacent to residential district property outside the district overlay boundaries: 25 feet, and a transitional yard TY2 shall be provided in accordance with the provisions of §4.5.5.

(ii) Not adjacent to residential district property outside the district overlay boundaries: None

(e) Bulk plane

(1) Adjacent to residential district property outside the district overlay boundaries: 45 degrees

(2) Not adjacent to residential district property outside the district overlay boundaries: None

(3) The bulk plane requirements above shall not be interpreted as applying on the front or side (street) of a lot.

(4) Lot coverage (maximum): 100 percent

(5) Building coverage (maximum): 90 percent

5. Off-street parking

The minimum required parking of §4.2.3.E shall be reduced as follows:

(a) Parking District A: 100 percent

(b) Parking District A shall consist of the area bounded on the west by Chain Bridge Road, on the east by East Street, on the north by North Street and on the south by Sager Avenue containing four blocks, together with the area bounded on the north and west by North Street, on the east by Chain Bridge Road, and on the south by Main Street containing one block.

(c) All other parts of the Old Town Fairfax Historic Overlay District: 50 percent for all uses.

6. Safe sight triangle requirements

The safe sight triangle requirements of §4.3.4 shall not apply in the Old Town Fairfax Historic Overlay District.

7. Street trees

The street tree requirements of §4.5.6.B shall not apply in the Old Town Fairfax Historic Overlay District.

8. Signs

(a) Applicability

All signs otherwise allowed in the underlying general use district (§4.6.8) shall be subject to the approval of a certificate of appropriateness in accordance with the provisions of §6.5; provided, however, changes to text only, temporary signs, or signs allowed without a permit (§4.6.3), excluding §4.6.3.D and §4.6.3.G, shall not be subject to such approval. Changes to the font color and size are subject to approval of a certificate of appropriateness.

(b) General

(1) Signs on buildings shall be designed and constructed as an integral part of the building facade in terms of design and placement.

(2) Signs shall be compatible with and relate to the design elements of a building including proportion, scale, materials, color and details. Signs shall not obscure, depreciate, or compete with a building's significant architectural features.

(c) Lettering size

Lettering on signs shall not exceed 12 inches in height, unless otherwise approved by the board of architectural review, at which time the maximum height considered would be 14 inches.

(d) Illumination

Illumination of signs shall be external only. This provision shall not be applied to “open“ signs otherwise allowed by §4.6.3.C.

(e) Moving signs

Notwithstanding other provisions to the contrary, barber pole signs may include the traditional spinning, red/white/blue, internal element.

(f) Cumulative sign area

(1) Total cumulative sign area may not exceed one square foot for each linear foot of building frontage and 0.50 square feet for each linear foot of

building face not defined as building frontage; provided, however, that each detached building shall be permitted at least 15 square feet of building-mounted sign area.

(2) Parking structures may be counted toward total cumulative sign area.

(3) Awning or canopy signs located on the first floor of a building indicating only the name of a building or tenant shall not be counted toward the maximum permitted sign area.

(g) Allowed sign types and regulations

The following sign types shall be allowed, subject to regulations as specified below.

OLD TOWN FAIRFAX HISTORIC OVERLAY DISTRICT SIGN TYPES AND REGULATIONS				
SIGN TYPE	AREA	SETBACK	MAXIMUM HEIGHT	OTHER
Wall	1.00 sq. ft./linear ft. building frontage; 0.50 sq. ft./linear ft. of building face which is not defined as a building frontage	N/A		
Projecting	8 sq. ft.	May project 4 ft. or 1/3 width of sidewalk, whichever is less	No higher than windowsill of second story unless such sign is adjacent to a second story exterior entrance; 8 ft. min. ground clearance required	
Window	25 percent of the gross, transparent glass area on the ground floor façade of a building	N/A	N/A	
Freestanding, Hanging [1]	8 sq. ft.	Minimum building setback	12 ft.	
Hardship	1.00 sq. ft./linear ft. building frontage; 0.50 sq. ft./lineal ft. of building face which is not defined as a building frontage	N/A		
Monument	8 sq. ft.	Minimum building setback	6 ft.	
Sandwich Board	6 sq. ft.	N/A	N/A	-A maximum of one such sign allowed per business or use -Must be located on private property and must not impede pedestrian flow
Awning or Canopy	N/A	N/A	N/A	May only indicate the name of the building or tenant
Flags	24 sq. ft. each building; counted as part of building-mounted signage for purpose of calculating permitted area	The anchoring device shall not project more than 5 ft. from the surface of the wall	No part of the flag shall extend above the roof line or 20 ft. above grade, whichever is less. Each flag shall maintain an 8 ft. minimum clearance above grade	Each supporting pole shall be located in such a manner as not to impede the free flow of pedestrian traffic

Notes:
[1] All other types of freestanding (or pylon) signs are prohibited.

C. Fairfax Public School Historic Overlay District

1. Applicability

Development in the Fairfax Public School Historic Overlay District shall comply with the requirements of this §3.7.2.C.

2. Additional uses

In addition to those uses permitted in the underlying zoning district, the following uses shall be allowed as specified below.

(a) Permitted uses

Uses permitted shall include:

(1) Museums

(2) Visitors' centers

(b) Accessory uses

Where the aggregate of all such uses is less than 20 percent of the gross floor area of the existing structure, accessory uses may include:

(1) Refreshment areas

(2) Gift shops

D. Blenheim Historic Overlay District

1. Applicability

Development in the Blenheim Historic Overlay District shall comply with the requirements of this §3.7.2.D.

2. Additional uses

In addition to those uses permitted in the underlying zoning district, the following uses shall be allowed as specified below.

(a) Permitted uses

Uses permitted shall include:

(1) Museums

(2) Interpretive centers

(b) Prohibited uses

(1) Electric transformers and substations

(2) Telephone repeater stations

3. District regulations

Notwithstanding any conflicting provisions, the historic Blenheim house shall not be razed or demolished.

4. Special submission requirements

Applications for development of the property in the Blenheim Historic Overlay District shall require submission of archaeological and/or architectural assessments and plans detailed as follows:

(a) Archaeological study and plan

(1) Archaeological studies and archaeological resource conservation plans shall be prepared by a qualified archaeologist or historian in conformity with professionally recognized standards for cultural resource management.

(2) The applicant shall confer with the zoning administrator prior to preparing any submission to define and agree upon guidelines for such study and plan.

(3) Such archaeological study shall include a detailed evaluation of the significance of the study area, including, but not limited to, reasonable measures for historic research, archaeological surveys, and test excavations.

(4) Such archaeological resource conservation plans shall include reasonable measures for the study and preservation of archaeological resources found within the proposed development area, including, but not limited to, test and full-scale excavations, site construction monitoring, field recording, photography, laboratory analysis, conservation of organic and metal artifacts, curation of the collection, and preparation of studies.

(5) Such archaeological resource conservation plans may also provide reasonable measures for further archaeological study, restoration, reconstruction, or disposition of recovered artifacts to an appropriate public or private collection museum, and in situ preservation of archaeological resources found within the site plan area.

(6) Such archaeological studies and resource conservation plans shall be reviewed and approved, disapproved, or approved with modifications or conditions as part of the development review process.

(b) Architectural assessment and plan

(1) Architectural assessments and restoration plans shall be prepared by a qualified architect or engineer in conformity with professionally recognized standards for architectural documentation.

(2) The applicant shall confer with the director of the department of community development and planning prior to preparing any submission to define and agree upon guidelines for such assessment and plan.

(3) Such architectural assessments shall be based on physical examination and documentary research to determine:

(i) Architectural significance of the property when evaluated within the historic context of the site;

(ii) Design and construction features that make the property important; and

(iii) Integrity of the site with regard to the design, setting, workmanship, and materials used for construction.

(4) Restoration plans shall include reasonable measures for the study and preservation of architectural resources found within the application area.

(5) Assessments and plans shall be reviewed and approved, disapproved, or approved with modifications or conditions as part of the development review process.

§3.7.3. Old Town Fairfax Transition Overlay District

A. Applicability

1. No structure or improvement in the Old Town Fairfax Transition Overlay District, including signs and significant landscape features associated with such structure or improvement, located on land within the district shall be erected, reconstructed, substantially altered or restored until the plans for architectural features, and landscaping have been approved in accordance with the provisions of this article and §6.5.

2. The provisions of §3.7.3 shall not apply to regular maintenance of a structure, improvement or site; however, changes to the exterior color of a structure, or substantial portion thereof, shall be deemed an alteration and not regular maintenance. Further, single-family detached residences shall not be subject to the issuance of a certificate of appropriateness in accordance with the provisions of §6.5 nor shall single-family attached, duplex or townhouse residences after such residences have been initially erected.

B. Additional uses

In addition to those uses permitted in the underlying zoning district, the following uses shall be allowed as specified below.

1. Permitted uses

(a) Where the underlying zoning is the CL, CO, CR or CG district, uses permitted include upper story residential/mixed use:

(b) **Prohibited uses**

Vehicle sales and leasing

C. Dimensional standards

1. Lot area, minimum

(a) Lot area: None

(b) Lot width: None

2. Height, maximum: 48 feet

Decorative architectural elements not used for human habitation, such as towers and spires, may extend an additional eight feet above the maximum height specified above.

3. Required yards (setbacks)

(a) **Build-to line, mandatory (percent): 50 percent**

(b) **Front and side (street) yard, maximum**

(1) 10 feet

(2) Areas contiguous with the structure and used for outdoor dining and service, public plazas, gazebos, landscaped areas, recreation and open

space, courtyards, pedestrian plazas and accessways, including sidewalks, or to accommodate the minimum landscape strip for required street trees shall be exempt from the maximum yard requirement.

(3) The yard shall not be used for parking, except bicycle parking.

(c) Side (interior) yard

(1) Adjacent to residential district property outside the district overlay boundaries: 25 feet, and a transitional yard TY2 shall be provided in accordance with the provisions of §4.5.5.

(2) Not adjacent to residential district property outside the district overlay boundaries: None

(d) Rear yard

(1) Adjacent to residential district property outside the district overlay boundaries: 25 feet, and a transitional yard TY2 shall be provided in accordance with the provisions of §4.5.5.

(2) Not adjacent to residential district property outside the district overlay boundaries: None

4. Lot coverage (maximum): 90 percent

5. Building coverage (maximum): 80 percent

6. Bulk plane

(a) Adjacent to residential district property outside the district overlay boundaries: 45 degrees

(b) Not adjacent to residential district property outside the district overlay boundaries: None

(c) The bulk plane requirements above shall not apply to the front or side (street) of a lot.

D. Sidewalk

Where there is not a 10-foot sidewalk along the front and side (street) property line of a proposed building site, a 10-foot sidewalk or portion thereof as needed to total 10 feet shall be provided.

E. Street trees

The minimum landscape strip requirement for street trees in §4.5.6.B shall not apply in the Old Town Fairfax Transition Overlay District.

F. Off-street parking

The minimum required parking of §4.2.3.E shall be reduced by 50 percent for all uses, provided that each dwelling unit shall have no less than 1.50 spaces, unless otherwise specified in §4.2.3.E.

G. Signs

1. General

All signs otherwise allowed in the underlying general use district (§4.6.8) shall be subject to the approval of a certificate of appropriateness in accordance with the provisions of §6.5; provided, however, changes to text only, sandwich board signs, temporary signs or signs allowed without a permit (§4.6.3), excluding §4.6.3.D and §4.6.3.G, shall not be subject to such approval. Changes to the font color and size are subject to approval of a certificate of appropriateness.

2. Hardship signs

In addition to other allowable signs, hardship signs may be approved, subject to findings specified in §4.6.11.F.1, as follows:

(a) Area

The area of a hardship signs shall be no more than 2.0 square feet in per linear foot of building frontage.

(b) Number

No more than one hardship sign shall be allowed per address.

(c) Height

No portion of a hardship sign may extend above the roof line of the building containing the principal use.

(d) Location

(1) Hardship signs may be attached to an accessory building or structure, other than a pylon.

(2) Hardship signs shall not extend beyond the perimeter of any building edge.

(3) Hardship signs may be located on a parapet that extends no more than five feet above the lowest eave of the roof.

§3.7.4. Architectural control overlay district

A. Applicability

Except as specified in §3.7.4.C, below, the architectural control overlay district shall apply city-wide to all development, including significant landscape features associated with such improvements to be erected, reconstructed, substantially altered or restored, outside the historic overlay districts of §3.7.2 and the Old Town Fairfax Transition Overlay District (§3.7.3).

B. Certificate of appropriateness required

Except as specified in §3.7.4.C, below, all development in the architectural control overlay district shall be subject to the approval of a certificate of appropriateness in accordance with the provisions of §6.5.

C. Exceptions

Unless otherwise specified, the architectural control overlay district shall not apply to the following:

1. Signs;

2. Demolition;
3. Single-family detached;
4. Single-family attached, after initial approval and construction;
5. Duplex dwellings, after initial approval and construction; and
6. Townhouses, after initial approval and construction.

D. Design guidelines and standards

1. All development regulated by the Architectural Control Overlay District shall be in accordance with the comprehensive plan, the City of Fairfax Design Guidelines and any other adopted design guidelines.
2. Each structure or improvement erected, enlarged, or reconstructed in the Architectural Control Overlay District shall be designed and constructed in a manner that will complement the unique character and atmosphere of the district with respect to building size, scale, placement, design and the use of materials.

§3.8. PLANNED DEVELOPMENT DISTRICTS

§3.8.1. General purposes

The planned development districts of this article are intended to allow the city, at the request of an applicant, to set aside rigid zoning rules in order to allow applicants to create special and unique developments by mixing and clustering, where appropriate, land uses and/or dwelling types and providing more usable recreation and open space in a master development plan proposed by the applicant and approved by the city council. Planned developments should create a more livable, affordable and sustainable community. Starting from the baseline, which is current zoning, applicants may be given increased development rights, such as increased density and height, as well as increased flexibility, in return for providing benefits that make the project "superior" and the community better in accordance with the goals and objectives of the city, including, but not limited to, those set forth in the comprehensive plan.

§3.8.2. General provisions

A. Review process

All planned developments shall be reviewed and approved in accordance with the procedures of §6.6. A planned development can only be applied for by an applicant; the city cannot and will not unilaterally rezone any property to a planned development district without the submission of an application by an applicant, including the applicant's proposed master development plan. No proffers will be allowed in a planned development, as the master development plan and the applicable provisions of the zoning ordinance will control what may be created in an approved planned development.

B. Minimum requirements

1. In approving a rezoning for a planned development, the city council shall find the proposed district designation and master development plan comply with the general provisions for all planned development in §3.8.2 and the specific standards for the planned development listed in §3.8.3 through §3.8.6, below, respectively.

2. Planned development district rezonings may be approved only when the applicant demonstrates to the satisfaction of the city council that a proposed planned development project would result in a greater benefit to the city than would a development under general zoning district regulations.

C. Master development plan

The development proposed in the master development plan shall be in substantial conformance with the comprehensive plan. A master development plan shall be filed by the applicant and approved by the city council as part of the approval of each planned development rezoning. After a master development plan has been submitted by an applicant and approved by the city council, development of the property that is the subject of that plan shall be in substantial conformance with the approved master development plan. In the event the owner of a property that has been approved for a planned development wishes to make any changes to the master development plan for that property, said owner may request that the city council approve an amendment to the master development plan. In the event the owner of a property that has been approved for a planned development wishes to abandon that planned development, said owner may apply for a rezoning to the same or a different zoning district. At a minimum, such required plan shall set forth the following:

1. A narrative addressing the proposed development that includes, but is not limited to, the following:

(a) A statement of how the proposed development is in substantial conformance with the comprehensive plan;

(b) A description of how the proposed development provides greater benefits to the city than would a development carried out in accordance with general zoning district regulations;

(c) An identification of site planning features designed to ensure compatibility between on-site residential and nonresidential uses, and with the surrounding neighborhood and land uses; and

(d) An explanation of the relationship of the proposed development to existing development in the area.

2. A plan depicting the proposed development that includes, but is not limited to, the following:

(a) An existing conditions plan, proposed layout plan with applicable dimensions, grading plan, conceptual utilities plan, tree survey, landscaping plan with tree coverage and impervious coverage, architectural elevations showing exterior building materials, site sections showing building heights, and recreation and open space plan;

(b) A tabulation of land uses by acreage, total number and square footage of dwelling units by housing type, residential density and/or square footage of nonresidential uses per acre, and recreation and open space acreage; and

(c) General zoning district uses and standards to be applicable within the planned development, including requests for modifications under §3.8.2.D, §3.8.2.E, and/or §3.8.2.F.

3. Other relevant information as may be deemed necessary by the city council to demonstrate conformance with the goals and policies of the city, including the comprehensive plan.

D. Specific use standards

At the request of an applicant requesting approval of a planned development, the specific use standards of §3.5 may be modified by city council in the approval of a master development plan. Any such modifications of the specific use standards of §3.5 requested by the applicant shall be clearly noted on the master development plan. Unless specifically modified by the city council as requested by an applicant in the approval of a master development plan, all specific use standards specified in §3.5 shall apply.

E. Site development standards

1. Planned developments should result in greater benefit to the city, not less, in accordance with the considerations of §6.6.8.
2. Planned developments shall not be approved primarily for the purpose of increasing density, reducing site development requirements or avoiding some other applicable requirement.
3. At the request of an applicant requesting approval of a planned development, the site development standards of Article 4 and the streets, pedestrian facilities, and lots and blocks design and improvement standards (See Subdivision Ordinance, Sections 2.2, 2.3 and 2.4) may be modified by the city council in the approval of a master development plan. Any such modifications requested by the applicant shall be clearly stated on the master development plan. Unless specifically modified by the city council in the approval of a master development plan, all site development standards specified in Article 4 shall apply.

F. Design guidelines and dimensional standards

1. Each planned development shall provide a comprehensive set of design guidelines as part of the master development plan that demonstrate the project will be in substantial conformance with the comprehensive plan. All dimensional standards shall be established in the master development plan when it is approved by the city council.
2. All master development plans shall include design guidelines and all modifications to the dimensional standards of §3.6 requested by the applicant. Once a master development plan is approved by the city council, all design guidelines and all modifications stated in the master development plan will be binding on the applicant.

G. Recreation and open space

The master development plan shall provide recreation and open space in accordance with the requirements of §3.8.7. At least 20 percent of each planned development site shall be designated and provided as recreation and open space.

H. Phasing

If development is proposed to occur in phases, the master development plan shall include a phasing plan for the development, and if appropriate, shall include specific build-out dates. Guarantees shall be provided by the applicant in the master development plan that project improvements and amenities that are necessary and desirable for residents and occupants of the project or that are of benefit to the city, shall be constructed and provided as part of the

first phase of the project, or, if this is not possible, specific deadlines as early in the project as may be feasible shall be provided by the applicant.

I. Development schedule

No zoning permit shall be issued for a mixed use development to authorize the occupancy of more than 66 percent of the approved residential dwelling units as part of a PD-C or PD-M district development prior to the issuance of a zoning permit to authorize the occupancy of 100 percent of the approved nonresidential floor area for that development. The foregoing shall be binding on the applicant unless the applicant proposes a modification to this requirement in the master development plan and the city council approves such modification when it approves the master development plan.

§3.8.3. PD-R, Planned Development Residential District

The purpose of the district shall be consistent with the provisions set forth in §3.2.3.A and §3.8.1.

A. Minimum Requirements

The PD-R district is permissible only on sites of at least two contiguous acres unless the city council waives this requirement in the approval of a master development plan.

B. Permitted uses

All uses permitted or listed as special uses in the R districts may be permitted in a PD-R district (see §3.3.1), subject to approval by the city council when it approves a master development plan.

C. Signs

Signs allowed in the PD-R district shall be the same as signs allowed in the general residential districts in accordance with §4.6.8.

§3.8.4. PD-M, Planned Development Mixed Use District

The purpose of the district shall be consistent with the provisions set forth in §3.2.3.B and §3.8.1.

A. Minimum Requirements

The PD-M district is permissible only on sites of at least two contiguous acres unless the city council waives this requirement in the approval of a master development plan.

B. Permitted Uses

All uses permitted or listed as special uses in those permitted in the R districts and in the C districts may be permitted in a PD-M district (see §3.3.1), subject to approval by the city council when it approves a master development plan.

C. Signs

Signs allowed in the PD-M district shall be the same as signs allowed in the general residential and nonresidential districts, respectively, in accordance with §4.6.8.

§3.8.5. PD-C, Planned Development Commercial District

The purpose of the district shall be consistent with the provisions set forth in §3.2.3.C and §3.8.1.

A. Minimum Requirements

The PD-C district is permissible only on sites of at least two contiguous acres unless the city council waives this requirement in the approval of a master development plan.

B. Permitted uses

All uses permitted or listed as special uses in the C districts may be permitted in a PD-C district (see §3.3.1), subject to approval by the city council when it approves a master development plan.

C. Signs

Signs allowed in the PD-C district shall be the same as signs allowed in the general nonresidential districts, provided that signs allowed for any single-family detached or townhouse uses shall be the same as signs allowed in the least intensive otherwise applicable general residential districts, in accordance with §4.6.8.

§3.8.6. PD-I, Planned Development Industrial District

The purpose of the district shall be consistent with the provisions set forth in §3.2.3.D and §3.8.1.

A. Minimum requirements

The PD-I district is permissible only on sites of at least five contiguous acres unless the city council waives this requirement in the approval of a master development plan.

B. Permitted uses

All uses permitted or listed as special uses in the CG, IL and IH districts may be permitted in a PD-I district (see §3.3.1), subject to approval by the city council when it approves a master development plan.

C. Signs

Signs allowed in the PD-I district shall be the same as signs allowed in the CG, IL and IH districts in accordance with §4.6.8.

§3.8.7. Recreation and Open Space

A. General

1. Recreation and open space is an integral part of planned developments (residential, commercial, industrial and mixed use).
2. Where recreation and open space is included in a planned development in addition to the individual lots, such lands must be in one or more parcels dedicated to or otherwise protected as permanent (active or passive) recreation and open space.
3. Any city-accepted parks, schools and other public land dedication made as part of a planned development will be counted towards complying with the requirements of §3.8.7.

B. Configuration and use

1. The location, size, character and shape of required recreation and open space in a planned development district must be appropriate for its intended use. Recreation and open space land must be useable for recreational purposes.
2. No more than 50 percent of any area otherwise containing development challenges, such as the presence of the 100-year floodplain, open water, jurisdictional wetlands, a slope greater than or equal to 25 percent grade or geological hazards, may be considered to comply with the recreation and open space requirement.

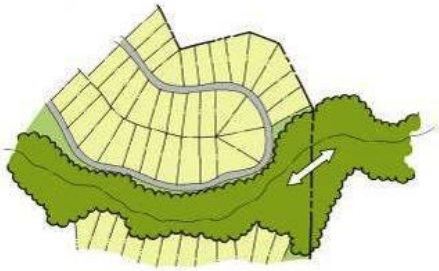
3. The minimum width for any required recreation and open space shall be 50 feet. The zoning administrator may grant exceptions for items such as trail easements and mid-block crossings, when their purpose meets the intent of §3.8.7.

4. At least 60 percent of the required recreation and open space shall be contiguous. For the purposes of §3.8.7, the term contiguous shall include any recreation and open space bisected by a local street, provided that:

(a) A pedestrian crosswalk or underpass is constructed to provide safe and adequate access to the recreation and open space from both sides of the street;

(b) The right-of-way area is not included in the minimum recreation and open space calculation;

(c) The recreation and open space shall adjoin any neighboring recreation and open spaces, protected lands, and non-protected natural lands that would be candidates for inclusion as part of future recreation and open spaces or protected lands;



(d) Adopted city plans shall be taken into consideration when evaluating land use and development applications;

(e) Where appropriate, the required recreation and open space shall be directly accessible to the largest practicable number of lots within the planned development. Non-adjoining lots shall be provided with safe, convenient access to the recreation and open space (i.e. mid-block connections in logical locations);

(f) Access to the recreation and open space shall be provided either by an abutting street or easement. Any such easement shall be at least 30 feet wide for its entire length;

(g) Trails may be developed in recreation and open space; and

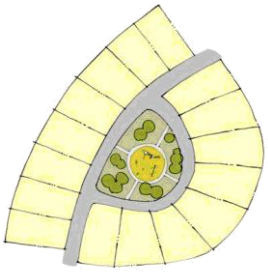
(h) At least 20 percent of the recreation and open space shall be improved in accordance with the options set forth below. The shape, topography and subsoil shall be appropriate to the improvements proposed.

RECREATION AND OPEN SPACE OPTIONS

TOT LOT & PLAYGROUNDS (PRIVATE ONLY)

Playgrounds provide play areas for children as well as open shelter and benches. Playgrounds may be built within squares, greens, mini-parks and neighborhood parks or may stand alone within a residential block.

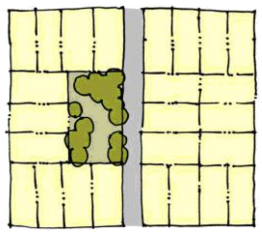
Playgrounds shall be designed with commercial grade play equipment and may include picnic units and shelters. Minimum requirements include two park benches and one trash receptacle and one trash recycling receptacle. Must have a shock-absorbing surface with a maximum two percent slope. Playgrounds must meet all federal, state and local regulations and be compliant with the Americans with Disabilities Act.



MINI-PARK (PRIVATE ONLY)

Mini-Parks provide active recreational facilities for use by the residents of the immediate neighborhood within the development.

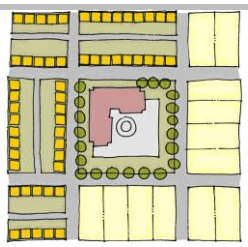
Size is from 2,500 sq. ft. to one acre. May include: tennis courts, basketball courts, playgrounds and seating accommodations. Each mini-park shall be centrally located and easily accessible so that it can be conveniently and safely reached and used by those persons in the surrounding neighborhood it is designed to serve. Rear facing lots are allowed. Mini-parks shall be attractively landscaped and be provided with sufficient natural or man-made screening or transitional yard areas to minimize any negative impacts upon adjacent residences.



PLAZA

Plazas are for passive recreation use adjacent to a civic or commercial building. Plazas are paved in brick or another type of impervious surface.

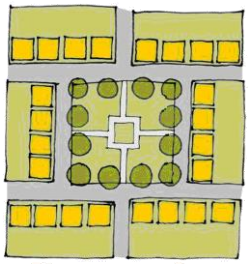
Plazas shall be level, stepped or gently sloping. At no time shall a plaza's horizontal length or width be greater than three times the height of surrounding buildings. Size may range from 2,000 to 30,000 sq. ft.



SQUARES

Squares are formal areas for passive recreation use bounded by roads or front facing lots.

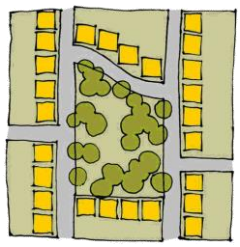
Squares shall be bounded by roads on a minimum of three sides or 75 percent of their perimeter and may be bounded by front facing lots on one side or 25 percent of their perimeter. No rear facing lots allowed adjacent to a square. Trees plantings are encouraged parallel to the street. Geometrical tree planting layouts for internal plantings are encouraged. Size may range from 500 sq. ft. to one acre.



GREEN

Greens are informal areas for passive use bounded by roads or front facing lots.

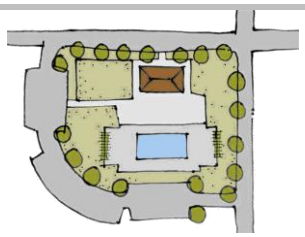
A green shall be bounded by roads on a minimum of three sides or 75 percent of their perimeter and may be bounded by front facing lots on one side or 25 percent of their perimeter. No rear facing lots are allowed adjacent to a Green. Tree plantings can be informal and the topography irregular. Greens may be used to preserve specimen trees. Size may range from 500 sq. ft. to one acre.



CLUBHOUSE/POOL AMENITY AREA

Clubhouse/pool areas can be found in a neighborhood park, mini-park or alone as an amenity area for the residents of a developed community. Clubhouse/pool areas can include: swimming pools, group activity room, gazebos, outdoor dining and service areas, and exercise stations.

Pools should be a minimum size of 1,000 sq. ft. Clubhouses and swimming pools must meet all applicable building and health codes for the city and the Commonwealth of Virginia.



RECREATION AND OPEN SPACE OPTIONS	
NEIGHBORHOOD PARK Neighborhood parks are designed for active or passive recreation use. Size may range from one to five acres, however park size can exceed five acres if the neighborhood park creates an open space that services an entire neighborhood or a group of neighborhoods; or incorporates physical features that are an asset to the community. Neighborhood parks shall be accessible via residential streets. Front facing lots are encouraged around the perimeter. Neighborhood parks shall include benches and walking paths. Neighborhood Parks may include but are not limited to: tennis courts, racquetball courts, basketball courts, volleyball courts, ball fields, swings, slides, playgrounds, dog parks, community gardens, restrooms, picnic units, shelters and parking lots	
GREENWAY Greenways typically follow natural or constructed features such as streams or roads and are designed to incorporate natural settings such as creeks and significant stands of trees within neighborhoods, and are used for transportation, recreation, and environmental protection. Greenways differ from parks; plazas and squares in that their detailing is natural (i.e. informally planted) except along rights-of-way, and may contain irregular topography. Design of the greenway should incorporate conservation of existing mature tree canopy and landscape, protection of existing natural drainage ways and creeks. Improvements shall include paved walks/trails and benches, and trash and trash recycling receptacles.	

C. Permitted uses of recreation and open space

Uses of recreation and open space may include the following:

1. Conservation areas for natural, archeological or historical resources;
2. Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
3. Pedestrian or multipurpose trails;
4. Passive recreation areas;
5. Active recreation areas, provided that impervious surfaces are limited to no more than 50 percent of the total recreation and open space;
6. Above-ground utility rights-of-way, provided the area does not exceed 50 percent of the required recreation and open space;
7. Agriculture uses, provided that all applicable best management practices are used to minimize environmental impacts;
8. Landscaped stormwater management facilities;
9. Easements for drainage, access, and underground utility lines; and
10. Other conservation-oriented uses compatible with the purposes of this chapter.

D. Prohibited uses of recreation and open space

Recreation and open space shall not include roads (except for road crossings as expressly provided above) and parking lots.

E. Ownership and management of recreation and open space

1. Ownership

Recreation and open space shall be accepted and owned by one of the following entities:

(a) City of Fairfax

For those areas that will be owned by the city and available for use by the public, the responsibility for maintaining the recreation and open space, and any facilities in those areas shall be borne by the city, subject to city council approval.

(b) Land conservancy or land trust

For those areas subject to a land conservancy or land trust, the responsibility for maintaining the recreation and open space and any facilities in those areas shall be borne by a land conservancy or land trust recognized by the laws of the Commonwealth of Virginia.

(c) Common interest community association or similar entity

For those areas that will be covered by the covenants of a common interest community association or similar entity, the responsibility for maintaining the recreation and open space, and any facilities in those areas shall be borne by a common interest community association or similar entity in accordance with the requirements of §4.13.

(d) Landowner

For those areas not covered by any of the entities described in paragraphs (a), (b), or (c), the responsibility for maintaining the recreation and open space and any facilities in those areas shall be borne by the landowner.

2. Management

Applicants shall submit as part of the proposed master development plan and record, upon approval of that master development plan, a plan for the management of recreation and open space and other common facilities that:

(a) Allocates responsibility and guidelines for the maintenance and operation of the recreation and open space, and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;

(b) Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the recreation and open space and outlines the means by which such funding will be obtained or provided;

(c) Provides that any changes to the plan for the management of recreation and open space and other common facilities be approved by the city council as an amendment to the master development plan; and

(d) Provides for enforcement of the plan for the management of recreation and open space and other common facilities.

3. Maintenance

(a) Passive recreation and open space maintenance is limited to removal of litter, removal of dead tree and plant materials and brush, weeding, and mowing.

(b) No specific maintenance is required for agricultural uses.

(c) Active recreation and open space areas shall be accessible to all residents of the development. Maintenance is limited to ensuring that there exist no hazards, nuisances or unhealthy conditions.

F. Legal instrument for permanent protection

1. All recreation and open space in planned development districts shall be protected in perpetuity by a binding legal instrument that is made a part of the master development plan and is recorded among the land records of Fairfax County. The instrument shall be one of the following:

(a) A permanent conservation easement in favor of:

(1) A land trust or similar conservation-oriented nonprofit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for re-transfer in the event the organization becomes unable to carry out its functions;

(2) A governmental entity with an interest in pursuing goals compatible with the purposes of this chapter. If the entity accepting the easement is not the city, then a third party right of enforcement favoring the city shall be included in the master development plan and in the easement; or

(3) Another person or entity that meets with the approval of the city council.

(b) A permanent restrictive covenant for conservation purposes in favor of a governmental entity.

(c) An equivalent legal tool that provides permanent protection, if approved by the city attorney.

2. The instrument for permanent protection shall include clear restrictions on the use of the recreation and open space. These restrictions shall include all restrictions contained in this chapter, as well as any further restrictions the applicant chooses to place on the use of the recreation and open space as may be approved by the city council when it approves the master development plan.

G. Alternative compliance

Upon the request of the applicant in the master development plan, the city council may approve alternatives to the recreation and open space requirements of §3.8 based upon exceptional design or recreational amenities.

§3.9. AFFORDABLE DWELLING UNITS

§3.9.1. Purpose and intent

Provisions of the city of Fairfax Zoning Ordinance regarding affordable dwelling units are hereby established to assist in the provision of affordable housing in the city. These provisions are designed to provide affordable housing in the city by: (a) promoting the development of a full range of housing choices; (b) encouraging the construction and continued existence of dwelling units that are affordable for purchase by households whose collective income is 70% or less of the area median income ("AMI") of households in the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area ("WMSA"); and (c) encouraging the construction and continued existence of dwelling units that are affordable for rental by households whose collective income is 60% or less of AMI. For purposes of determining whether a household's income qualifies for participation in the city's Program, the income of a household shall include the income of all household members 18 years or older who are not full-time students. The city's Program gives

priority for affordable housing to households that have members who live and/or work in the city. The effective date of the City's ADU Program shall be specified by the City Council upon the adoption of these provisions.

§3.9.2. General provisions

A. Administration

The administration of the city's Program shall be undertaken in accordance with any rules, regulations and procedures that may be adopted and/or approved by the city council for the purpose of supporting and administering the provision of affordable dwelling units in the city. The city may appoint an agent for the purpose of administering the city's Program and, if the city appoints an agent for such purposes, any reference herein to "the city" shall mean, if applicable, "the city or its agent."

B. Applicability

1. The provisions of this Chapter requiring the provision of affordable dwelling units shall apply to any site, or any portion thereof, at one location which is the subject of a complete Land Use Application submitted after the effective date of the city's Program, whenever such an application includes, upon approval, a total of 30 or more dwelling units. Any Affordable Dwelling Unit Development is allowed to apply the Affordable Dwelling Unit Development Regulations to that development as set forth in §3.9.3 of this Ordinance.

2. The provisions of the city's Program shall apply to any Land Use Application approved by or on behalf of the city council before the effective date of the city's Program in which the owner and/or Zoning Applicant agreed to provide affordable dwelling units or otherwise support the provision of affordable housing in the city as a consequence of the approval of such application. Notwithstanding the foregoing, an owner and/or Zoning Applicant's obligation to provide affordable dwelling units or otherwise support the provision of affordable housing in the city with respect to any such application is limited to whatever the owner and/or Zoning Applicant agreed to and the city council approved.

3. An owner and/or Zoning Applicant may voluntarily provide affordable dwelling units in a development, including those with fewer than thirty (30) dwelling units, to which the Affordable Dwelling Unit Development Regulations would not otherwise apply in accordance with §3.9.3 of this Ordinance .

4. An owner and/or Zoning Applicant may provide Affordable Dwelling Units in accordance with §3.9.7 of this Ordinance.

C. Piecemeal land use applications

An owner and/or Zoning Applicant shall not avoid the requirements of this Article by submitting separate Land Use Applications for less than thirty (30) dwelling units at any one time. However, an owner and/or Zoning Applicant may submit a site plan or subdivision plat for less than thirty (30) dwelling units if the owner and/or Zoning Applicant agrees in writing that the next land use application or submission for the site or portion thereof shall meet the requirements of the city's Program when the total number of dwelling units in such development has reached thirty (30). The owner and/or Zoning Applicant for an application shall affirm, under oath, that they neither have nor have had any financial interest and/or participation in any prior application for land adjacent to the subject property. Prior to the

approval of a site plan or subdivision, the owner and/or Zoning Applicant shall cause this written statement to be recorded among the land records of Fairfax County and indexed in the names of all owners of the site or portion thereof, as such terms are defined herein.

D. Affidavit

1. As part of the filing of a Land Use Application to which the city's Program applies, the owner and/or Zoning Applicant(s) shall submit an affidavit that includes:

(a) The names of the owners of each parcel or portions thereof that comprise the site described in §3.9.2.E.1.

(b) The city of Fairfax tax map number, parcel size, and zoning district classification for each parcel or part thereof that is included as part of the site in such application or submission.

E. Economic interests

1. For purposes of the city's Program, "site, or any portion thereof, at one location" shall include all adjacent land of the owner and/or Zoning Applicant, under common ownership and/or control of the owner and/or Zoning Applicant, including, but not limited to, land owned and/or controlled by separate partnerships, land trusts, corporations, or similar business entities in which the owner and/or Zoning Applicant (including members of the immediate family of the owner and/or Zoning Applicant) is a partner, beneficiary, or owns 1% or more of the stock of such forms of business entities.

2. Immediate family members shall include the owner's and/or Zoning Applicant's spouse, children, parents and siblings.

3. When a financial institution has acquired, or acquires, an equity interest in property solely by virtue of its agreement to provide financing, such equity interest shall not be considered by the city in making a determination of applicability of the city's Program to that property. However, the acquisition of a fee interest by such lending institution due to foreclosure or project participation shall be considered an ownership interest by the city in making a determination of applicability of the city's Program to that property.

F. Exemptions

Unless otherwise specified, the requirements of the city’s Program shall not apply to the following:

1. Any Land Use Application approved before the effective date of the city's Program for a specific development that does not itself provide for Affordable Dwelling Units or any monetary contribution made to support the provision of Affordable Dwelling Units in the city.

2. Any Land Use Application filed in accordance with a rezoning approved before the effective date of the city's Program wherein the city council accepted a proffer in which the owner and/or Zoning Applicant agreed to provide Affordable Dwelling Units or other specific and express contributions to affordable housing, such as money dedicated to the city of Fairfax housing trust fund. Notwithstanding the fact that terms and conditions of the approval of any such application may differ from the provisions

of the city's Program, any such development shall comply with the terms and conditions of the approval of such application.

3. To the extent it may differ from the provisions of the city's Program, any Land Use Application approved before the effective date of the city's Program in which the owner and/or Zoning Applicant agreed in a manner other than through the submission of a rezoning proffer to provide Affordable Dwelling Units or other specific and express contributions to affordable housing, such as money dedicated to the city of Fairfax 's housing trust fund. Notwithstanding the fact that terms and conditions of the approval of any such application may differ from the provisions of the city's Program, any such development shall comply with the terms and conditions of the approval of such application and all other applicable provisions of the city's Program.

4. Any Land Use Application that does not seek to either change the dwelling unit type of any residential units existing on or approved for the site or increase the number of residential dwelling units permitted on the site that is the subject of that application.

§3.9.3. Development regulations

A. Dimensional standards

All Affordable Dwelling Unit Developments shall comply, if applicable, with the minimum requirements and the maximum density requirements of §3.6.1.B, which allows for modifications of certain dimensional standards for Affordable Dwelling Unit Developments.

B. Use types

For purposes of the city’s Program, single-family detached homes, single-family attached homes, townhouses, and duplexes shall be deemed single-family uses. With respect to upper story residential/mixed use homes, those uses shall be deemed single-family uses when they are consistent with the definition of single-family uses listed above. When upper story residential/mixed use homes bear the characteristics of and are more similar to multifamily homes such as apartments, then those uses shall be deemed multifamily uses under the terms of the city’s Program.

C. Single-family

1. Any additional single-family dwelling units an owner and/or Zoning Applicant is authorized to construct under the Affordable Dwelling Unit Development Regulations shall be deemed optional density under the terms of the city's Program. Regardless of whether any optional density increase is requested for a particular site, the provision of Affordable Dwelling Units shall be required in all single-family developments to which the city's Program applies.

2. All single-family residential developments, whether detached, attached, townhouse, duplex, or upper story residential/mixed use homes, to which the city's Program applies shall provide no less than 10 percent of the total single-family units in that development as Affordable Dwelling Units or a modification approved by city council shall be necessary in order to reduce the number of required single-family Affordable Dwelling Units, except where modified under §6.19.

D. Multifamily

1. Any additional multifamily dwelling units an owner and/or Zoning Applicant is authorized to construct under the Affordable Dwelling Unit Development Regulations

shall be deemed optional density under the terms of the city's Program. Regardless of whether any optional density increase is requested for a particular site, the provision of Affordable Dwelling Units shall be required in all multifamily developments to which the city's Program applies.

2. All multifamily residential developments to which the city's Program applies shall be required to provide no less than 6 percent of the total units in that multifamily development as Affordable Dwelling Units or a modification approved by city council shall be necessary in order to reduce the number of required multifamily Affordable Dwelling Units.

3. Different unit types (e.g., studio/efficiency, one-bedroom, two-bedroom, and three-bedroom) shall be provided throughout all multifamily developments to which the city's Program applies in approximate proportion to the ratio of units provided throughout the entire development to market-rate tenants. Compliance with the foregoing requirement shall be determined through the exercise of reasonable discretion by the zoning administrator.

E. Mixed unit types

In the event an Affordable Dwelling Unit Development includes both single-family residential units and multifamily residential units, no less than 10 percent of the single-family units shall be Affordable Dwelling Units and no less than 6 percent of the multifamily units shall be Affordable Dwelling Units or a modification approved by city council shall be necessary in order to reduce the number of required single-family or multifamily Affordable Dwelling Units.

F. Fractional units

When the percentage requirements set forth in the city's Program yield a fractional unit, any such fraction shall be rounded down from .49 and below so that no additional Affordable Dwelling Unit shall be required and any such fraction shall be rounded up from .50 and above so that one additional Affordable Dwelling Unit shall be required.

G. Voluntary affordable dwelling units

For a development to which the City's Program does not apply, an owner and/or Zoning Applicant may, at his or her discretion, voluntarily agree to provide the number of Affordable Dwelling Units that would be required for that development if the city's Program applied thereto. In the event an owner and/or Zoning Applicant agrees to voluntarily provide such Affordable Dwelling Units in accordance with the city's Program, the development in which such Affordable Dwelling Units are provided may utilize the Affordable Dwelling Unit Development Regulations.

H. Limits on permits in developments containing affordable dwelling units

At any time after the issuance of a building permit for an Affordable Dwelling Unit (or permits for groups of Affordable Dwelling Units) but before the issuance of the first zoning permit for use and occupancy of an Affordable Dwelling Unit, the owner and/or Zoning Applicant must send a notice of availability to the city advising that a particular Affordable Dwelling Unit (or group of Affordable Dwelling Units) is now or will be completed and ready for sale or rental. The city's Affordable Dwelling Unit Administrative Regulations (see § 2(D)) regarding the notice of availability shall specify its form and the office to which it must be submitted.

1. No zoning permit for use and occupancy may be issued until the declaration of covenants referenced in §3.9.3.I is recorded.
2. No zoning permit for use and occupancy may be issued until the rents or sales prices for the Affordable Dwelling Units are approved by the city.

I. Developer's covenants

Affordable dwelling unit covenants, which are applicable to Affordable Dwelling Units and which run in favor of and are in the form prescribed by the city, shall be recorded simultaneously with the recordation of the final subdivision plat or, in the case of a condominium, recorded simultaneously with the condominium declaration. The covenants must be recorded and delivered to the city before the Control Period may begin and shall meet the requirements as set forth by the city's Program. (See, e.g., §3.9.8). Prior to the approval of a site plan or subdivision, the owner and/or Zoning Applicant shall cause the affordable dwelling unit covenants to be recorded among the land records of Fairfax County and indexed in the names of all owners of the site or portion thereof, as such terms are defined herein. In the event neither a site plan nor a subdivision plat is required by a particular situation, the affordable dwelling unit covenants shall be recorded before the approval of a zoning permit for use and occupancy.

§3.9.4. Procedures for Affordable Dwelling Units offered for sale

A. Sales of Affordable Dwelling Units regulated by the city

The sale of affordable dwelling units shall be regulated by the city. The city may adopt reasonable rules and regulations to assist in the regulation and monitoring of the sale and resale of affordable dwelling units, which may include, among other things, giving a priority to persons who live or work in the city.

B. Exclusive right of city to purchase Affordable Dwelling Units

The city or its designee shall have the exclusive right to purchase up to one-third of the for-sale Affordable Dwelling Units in a development within ninety (90) days after a dwelling unit is completed and ready for purchase. The remaining two-thirds of such units shall be offered for sale exclusively for a ninety-day period to persons who qualify to purchase such units under the city's Program. The sales of Affordable Dwelling Units shall be administered in accordance with the provisions of the city's Affordable Dwelling Unit Development Regulations.

C. Affordable Dwelling Unit cost factors

A schedule of city-wide cost factors and the cost calculation formula used to determine sales prices shall be established initially and may be amended periodically by the city, based upon a determination of all ordinary, necessary and reasonable costs required to construct the various affordable dwelling unit prototype dwellings by private industry in the city, after consideration by the city of written comments from the public and other information which may be available, such as the area's current general market and economic conditions.

D. Sales price review

The city may conduct a review of affordable dwelling unit sales prices on an annual basis to determine if the price needs an adjustment.

E. No economic loss

The sales prices for Affordable Dwelling Units within a development shall be established such that the owner and/or Zoning Applicant shall not suffer economic loss as a result of providing the required Affordable Dwelling Units. "Economic loss" shall mean that result that would occur if the owner and/or Zoning Applicant of a development were to fail to recoup the cost of construction and certain allowances as may be determined by the city manager for the Affordable Dwelling Units, exclusive of the land acquisition cost and costs voluntarily incurred, but not authorized, under the city's Program, upon sale of an Affordable Dwelling Unit.

F. Timeline for who can purchase an Affordable Dwelling Unit

The timeline for who can purchase an Affordable Dwelling Unit under the city's Program and when such purchases can be made is set forth in the city's Affordable Dwelling Unit Administrative Regulations (see 3(B–F).

G. Requirements for certificate of qualification

In order to secure the approval of a certificate of qualification, an individual or household must establish satisfaction of the applicable requirements, which are set forth in the city's Affordable Dwelling Unit Administrative Regulations (see 3(A), including, but not limited to, the requirement that the individual or household must be a first-time homebuyer in accordance with the definition of that term as set forth in the city's Affordable Dwelling Unit Administrative Regulations.

H. Sales price limits for Affordable Dwelling Units

No Affordable Dwelling Unit in the city may be sold without the city first determining a reasonable and affordable maximum price at which each such unit may be sold.

I. Request for approval of proposed maximum sales price

On or before the date of issuance of a zoning permit for use and occupancy of an Affordable Dwelling Unit offered for sale, the owner of the Affordable Dwelling Unit shall submit to the city a request for the approval of a proposed maximum sales price for that unit in accordance with Section 3(B) of the city's Affordable Dwelling Unit Administrative Regulations.

J. City may request additional information

After the owner of a for-sale Affordable Dwelling Unit submits a justification and documentation to the city regarding the proposed maximum sales price, the city may, in its sole discretion, request additional information or documentation from said owner.

K. City may establish reasonable criteria

The city may establish reasonable criteria and guidelines to apply in its determination of a reasonable and affordable proposed maximum sales price for any Affordable Dwelling Unit under the provisions of the city's Program.

L. City acts within 60 days

Upon submission to the city of all requested information related to an owner's proposed maximum sales price, the city shall, within 60 days:

1. Determine a reasonable and affordable maximum sales price for the Affordable Dwelling Unit; and
2. Inform the owner in writing of the city's determination.

M. Order of priority for buyers of Affordable Dwelling Units

The order of priority for prospective buyers of units under the city's Program shall be the number of priority points each household has on the date of the city's determination of a reasonable and affordable maximum sales price in accordance with the priority point system set forth in the city's Affordable Dwelling Unit Administrative Regulations.

N. Notification to city of proposal to sell Affordable Dwelling Units to a qualified buyer

Once the city has determined a reasonable and affordable maximum sales price for an Affordable Dwelling Unit, the owner of that Affordable Dwelling Unit must, within 60 days of the date of said determination, inform the city in writing whether it wishes to sell the unit to an applicant to purchase an Affordable Dwelling Unit who has qualified for participation in the city's Program in accordance with the following:

1. If the owner of an Affordable Dwelling Unit decides to sell such Affordable Dwelling Unit and informs the city in writing, then the city or its designee shall have the right of first refusal to purchase such unit at an all cash closing within sixty (60) days;
2. The city may assign its right to purchase such unit to either its agent and/or a nonprofit selected by the city for such purposes;
3. In the event the city, its agent or a designated nonprofit does not exercise its right of first refusal within the 60-day period set forth above, the owner shall offer the unit to only applicants that possess a certificate of qualification at no more than the maximum sales price set by the city; and
4. In the event the city, its agent or a designated nonprofit does not exercise its right of first refusal within the 60-day period set forth above, the owner may, at any time before the owner has sold said unit to an applicant who has qualified to participate in the city's Program, sell the unit to the city, its agent or a designated nonprofit at a lower price that may be mutually agreed upon by the owner and the city, its agent or a designated nonprofit.

O. Unit must be used as an Affordable Dwelling Unit

Any Affordable Dwelling Unit sold under the terms and conditions of the city's Program shall be used by the owner of that unit as an Affordable Dwelling Unit in accordance with the terms and conditions of the city's Program until such time as the applicable 30-year control period has expired in accordance with §3.9.8.B. Once an Affordable Dwelling Unit has been established in accordance with the city's Affordable Dwelling Unit Ordinance, no interest in such unit may be transferred by the owner by deed, gift, or in any other manner without the approval of the city.

P. Sale document must be approved by the city

Any and all documents related to the sale of any Affordable Dwelling Unit under the terms and conditions of the city's Program shall be approved by the city prior to the consummation of any such sale in order to ensure that the transaction is being carried out in accordance

with the city's Affordable Dwelling Unit and that any such Affordable Dwelling Unit remains as an Affordable Dwelling Unit.

Q. City must verify prospective owner's income, employment and any additional qualification

The city shall be responsible with respect to any for-sale Affordable Dwelling Unit for verifying the gross household income, employment of any applicant seeking to purchase an Affordable Dwelling Unit. The city shall also be responsible for verifying any qualification that applies to any priority that such applicant has received under the terms of the city's Program.

R. Unit resales during Control Period

Units offered for resale during any Control Period shall be offered in accordance with the city's Program.

S. Initial sale of Affordable Dwelling Unit after the Control Period

The initial sale of an Affordable Dwelling Unit after the expiration of any Control Period shall be transacted in accordance with the city's Program.

T. City entitled to half of sales price

In all instances, whether or not the city, its agent or a designated nonprofit elects to purchase such unit, the seller shall pay the housing trust fund equity share, as defined in the city's Affordable Dwelling Unit Regulations (see § 3(K)(4)(C), to promote affordable housing in the city of Fairfax.

U. Eligible lenders for Affordable Dwelling Units offered for sale

Eligible lenders for Affordable Dwelling Units offered for sale shall be defined and regulated by the city's Affordable Dwelling Unit Administrative Regulations (see 3(L).

§3.9.5. Procedures for Affordable Dwelling Units offered for rent

The rental rates of any Affordable Dwelling Unit provided pursuant to the city's Program shall be determined and controlled by the city consistent with the provisions of the city's Affordable Dwelling Unit Ordinance in accordance with the following:

A. Maximum rental rate calculations

The city will determine maximum rental rate calculations in accordance with the city's Affordable Dwelling Unit Administrative Regulations with the limitation that the maximum rental rate for Affordable Dwelling Units shall be established such that the owner and/or Zoning Applicant shall not suffer economic loss as a result of providing rental Affordable Dwelling Units.

B. Annual review

The city shall review Affordable Dwelling Unit rental prices annually in order to assure that such rental prices approved by the city are fair and reasonable. In conducting this review of Affordable Dwelling Unit rental prices, the city shall take into account changes in various cost elements as indicated by the U. S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices that may be selected by the city. The city may also take into account, when reasonable and appropriate, any changes in rental prices approved by public agencies in nearby localities when the city deems the applicable circumstances to be reasonably comparable to those found in the city.

C. Quarterly statements

The landlord/owner of any Affordable Dwelling Unit rental unit(s) shall provide quarterly statements to the city in accordance with the city's Affordable Dwelling Unit Administrative Regulations.

D. Verifications

The landlord/owner of any Affordable Dwelling Unit rental unit shall be responsible for providing verifications to the city regarding an Affordable Dwelling Unit tenant household's income, employment, and possession of a certificate of qualification.

E. Affordable Dwelling Units must be used as Affordable Dwelling Units

Any Affordable Dwelling Unit leased under the terms and conditions of the city's Affordable Dwelling Unit Ordinance shall be used as an Affordable Dwelling Unit in accordance with the terms and conditions of the city's Program until such time as the applicable 30-year Control Period expires.

F. Approval of documents by the city

Any and all documents related to the lease of any Affordable Dwelling Unit under the terms and conditions of the city's Program shall be approved by the city prior to the execution of any such lease agreement in order to ensure that the transaction is being carried out in accordance with the city's Affordable Dwelling Unit Program and that any such Affordable Dwelling Unit remains as an Affordable Dwelling Unit.

G. Subletting not allowed

No affordable dwelling unit leased under the terms and conditions of the city's Program shall be sublet for any purpose.

H. City must approve all Affordable Dwelling Unit leases

Any lease agreement for an Affordable Dwelling Unit shall be approved in advance by the city.

I. Designation by applicant households of purchase and/or rental units

Each applicant household seeking to participate in the city's Program shall signify on its application for such participation whether it wishes to be considered for rental and/or ownership of an Affordable Dwelling Unit under the city's Program. If such an applicant household indicates on the application that it wishes to be considered solely for rental of an Affordable Dwelling Unit, then such applicant household shall be evaluated only with respect to Affordable Dwelling Units that become available for rental under the terms of the city's Program. If such an applicant household indicates on the application that it wishes to be considered solely for ownership of an Affordable Dwelling Unit, then such applicant household shall be evaluated only with respect to Affordable Dwelling Units that become available for ownership under the terms of the city's Program. If such an applicant household indicates on the application that it wishes to be considered for both rental and ownership of an Affordable Dwelling Unit, then such applicant household shall be evaluated with respect to Affordable Dwelling Units that become available for both types of Affordable Dwelling Units and for which such applicant qualifies under the terms of the city's Program.

J. Proof of qualification of applicants

All applicant households seeking to rent an Affordable Dwelling Unit through the city's Program, including existing Affordable Dwelling Unit tenants, shall be required to apply each

year for such participation by filing the applicable application for a certificate of qualification with the city. The landlord/owner shall verify the income of all households seeking to participate in the city's Program and shall be responsible for determining whether any such applicant household meets the criteria for such participation.

K. Eligible lenders for rental Affordable Dwelling Units

Eligible lenders for Affordable Dwelling Units offered for rent shall be defined and regulated by the city's Affordable Dwelling Unit Administrative Regulations.

L. Exclusive right of city to lease Affordable Dwelling Units

The city or its designee shall have the exclusive right to lease up to one-third of the for-lease Affordable Dwelling Units in a development within ninety (90) days of a dwelling unit being completed and ready for lease. The remaining two-thirds of such units shall be offered for lease exclusively for a ninety-day period to persons who qualify to lease such units under the city's Program. The lease of Affordable Dwelling Units shall be administered in accordance with the provisions of the city's Affordable Dwelling Unit Administrative Regulations (see 4(C)(1).

§3.9.6. Designation of Affordable Dwelling Units on plats, plans, land use applications, or other applicable zoning permits

A. For-sale units

All site plans, subdivision plats, land use applications, or other applicable zoning permits for developments that include for-sale Affordable Dwelling Units under the provisions of the city's Program shall identify:

1. The specific number of for-sale units that are to be provided as Affordable Dwelling Units under the provisions of the city's Program;
2. The specific lots or units that will be for-sale Affordable Dwelling Units under the city's Program;
3. The mixture of Affordable Dwelling Unit and market-rate units based on the number of bedrooms; and
4. The number of bedrooms and the dimensions of the living spaces, including bedrooms, bathrooms, kitchens, living rooms, dining rooms, and any other rooms, and the total square footage of all units that will be for-sale units, whether affordable or market-rate units.

B. Rental units

All site plans, subdivision plats, land use applications, or other applicable zoning permits for developments that include rental Affordable Dwelling Units under the provisions of the city's Program shall identify:

1. The specific number of units that are to be provided as rental Affordable Dwelling Units under the provisions of the city's Program;
2. The number of bedrooms and the dimensions of the living spaces, including bedrooms, bathrooms, kitchens, living rooms, dining rooms, and any other rooms, and the total

square footage of all units that will be rental units, whether affordable or market-rate units;

3. The specific lots or units which are rental Affordable Dwelling Units on approved plans, provided, however, that, upon the request of the landlord/owner of an Affordable Dwelling Unit, a unit designated as an Affordable Dwelling Unit on a site plan, subdivision plat, or other Land Use Application may be undesignated as an Affordable Dwelling Unit so long as another Affordable Dwelling Unit that is substantially equivalent is designated in lieu thereof, and further provided, however, that the specific locations of affordable dwelling units in a development may change from those locations shown on a site plan, as long as the approved ratios of affordable dwelling units to market-rate units and conditions relating to those affordable dwelling units stay the same; and

4. For all multifamily developments, the number of Affordable Dwelling Units by bedroom count and the number of market-rate units by bedroom count, which notation shall be a condition of approval of the approved site plan or building plan.

C. Multiple Section developments

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

D. Qualifications for bedrooms

The number of bedrooms provided in an Affordable Dwelling Unit shall be determined by the city's zoning administrator after reviewing, among other things, the plans submitted to the city for the particular development, the size and functionality of the living space in such units, and the existence of windows, closets, and doors providing privacy from other areas in the Affordable Dwelling Units.

E. Specifications for prototype Affordable Dwelling Units

The city may, at its discretion, administratively establish specifications for prototypical Affordable Dwelling Units based on the numbers of bedrooms in various dwelling unit types. In the event the city establishes such specifications, every Affordable Dwelling Unit provided under the city's Program shall satisfy all specified requirements for the applicable dwelling unit type. In addition, all Affordable Dwelling Unit developments shall satisfy the Affordable Dwelling Unit Development Regulations set forth in §3.6.1 and §3.6.2 of this Ordinance.

F. Comparability of units

Any Affordable Dwelling Units provided under the provisions of the city's Program shall be comparable with respect to the number of bedrooms for the unit when compared to equivalent market rate units in the same development. In general, dwelling dimensions of a multifamily ADU shall be comparable to equivalent market rate units in the same development.

G. Similarity and compatibility of units

Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types and architectural styles of market-rate units provided in the same development, provided,

however, that the requirement of similarity and compatibility of Affordable Dwelling Units with market rate units may be achieved, if permitted in the underlying zoning district, by the provision of single-family attached, duplex, or townhouse Affordable Dwelling Unit in a development comprised of homes whose size would otherwise make that determination of similarity and compatibility infeasible. If permitted by the Zoning Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling Unit, which would provide homes for no more than three Affordable Dwelling Unit households, may, in comparison to one market-rate unit household, serve to provide the compatibility required by this section.

H. Interspersing of units

Affordable Dwelling Units shall be interspersed among market-rate units in the same development in order to assure that the Affordable Dwelling Units are reasonably spread throughout the development and throughout each section of any multiple-section development and are not concentrated in the same building, area, or on the same floor of any building in that development.

I. Zoning permits for use and occupancy of Affordable Dwelling Unit Developments

In Affordable Dwelling Unit Developments that are required by the city's Program, zoning permits for use and occupancy for no more than 60% of the market-rate dwelling units in that development shall be issued prior to the issuance of zoning permits for use and occupancy for at least 50% of the Affordable Dwelling Units in that development. Zoning permits for use and occupancy for no more than 85% of the market-rate dwelling units in such developments shall be issued until after zoning permits for use and occupancy have been issued for 100% of the Affordable Dwelling Units in that development.

§3.9.7. State and federal affordable housing programs

A. Full satisfaction of city's Program requirements with equivalent units

A development that provides the same number or more equivalent Affordable Dwelling Units under a local, state or federal housing program as the number and type of Affordable Dwelling Units required under the terms of the city's Affordable Dwelling Unit shall be deemed to satisfy the requirements of the city's Affordable Dwelling Unit Program so long as that development complies with all of the terms and conditions of said local, state or federal housing program.

B. Partial satisfaction of city's Program if fewer units provided

In the event a development provides fewer equivalent Affordable Dwelling Units under a state or federal housing program than the number of Affordable Dwelling Units required under the terms of the city's Program, then said development must provide additional Affordable Dwelling Units in compliance with all of the terms and conditions of the city's Program to make up the shortage.

C. Rent and sales prices

The rents and sales prices for Affordable Dwelling Units provided pursuant to federal, state or local programs shall be in accordance with the rules and regulations governing such programs and these units shall be marketed in accordance with such rules and regulations provided that rents and sale prices shall not exceed those set pursuant to the terms of the city's Program.

D. Designation of Affordable Dwelling Units on plats, plans, land use applications, or other applicable zoning permits

Any development that relies, in whole or in part, on the provisions of this Section to satisfy the requirements of the city's Program shall be required to comply with the provisions of §3.9.6 with respect to all Affordable Dwelling Units provided in that development.

§3.9.8. Miscellaneous provisions

A. Control Periods for Affordable Dwelling Units

Any Affordable Dwelling Unit created under the city's Program shall have a Control Period of thirty (30) years. For rental Affordable Dwelling Units, the Control Period for an Affordable Dwelling Unit shall commence on the date on which a zoning permit for use and occupancy is approved by the city for that particular unit. As to for-sale Affordable Dwelling Units, the Control Period shall commence on the date of the deed conveying the Affordable Dwelling Unit to the owner.

B. Affordable Dwelling Units converted to market-rate units

In the event the city approves a request to convert an Affordable Dwelling Unit to a market-rate unit, a different market-rate unit that is substantially similar to the former Affordable Dwelling Unit in the same development must be converted to an Affordable Dwelling Unit. The thirty (30) year Affordable Dwelling Unit term will not start to run again for the newly created Affordable Dwelling Unit until that unit is occupied as an Affordable Dwelling Unit. With respect to the thirty (30) year term, if such a conversion is approved by the city, the city will credit the newly created Affordable Dwelling Unit for any time it was previously occupied as an Affordable Dwelling Unit.

C. Relocation assistance

1. At the conclusion of the thirty (30) year period described above, the landlord/owner of an Affordable Dwelling Unit shall provide relocation assistance to the tenants of any rental Affordable Dwelling Unit at the time of the expiration of the affordability restrictions. The landlord/owner of any such Affordable Dwelling Unit shall, no later than one year prior to the expiration of the affordability restrictions required by the city's Program, submit a relocation assistance plan ("RAP") to the city for approval. The RAP shall, at a minimum, include a contribution of 50% of the reasonable market costs that will be incurred by the tenant of each such Affordable Dwelling Unit in moving the tenant's physical property from the subject property. The landlord/owner submitting the RAP to the city shall provide the tenant of such Affordable Dwelling Unit with a copy of the proposed RAP in order to enable the tenant to provide comments to the city regarding the proposed RAP.

2. The city shall act on the landlord's/owner's proposed RAP within sixty (60) days of the filing of such plan.

3. If the landlord/owner of an Affordable Dwelling Unit fails to submit a RAP to the city no later than one year prior to the expiration of the thirty (30) year affordability period, or fails to secure the approval of such RAP by the city manager no later than six (6) months prior to the expiration of the thirty (30) year affordability period, the period of required affordability under the city's Program shall be extended one (1) day for every

day the landlord/owner has been late in submitting or securing the approval of such RAP as set forth above.

4. Upon approval of a RAP for an Affordable Dwelling Unit, the approved RAP shall be presented by the landlord/owner to the tenant of such unit no less than six (6) months prior to the conclusion of the thirty (30) year affordability period.

D. No proffers allowed for Affordable Dwelling Units, Affordable Dwelling Unit-related contributions of land or other property interests, or monetary contributions to the city of Fairfax housing trust fund

No Affordable Dwelling Unit, Affordable Dwelling Unit-related contribution involving the dedication of land or other property interests, or monetary contribution to the city of Fairfax housing trust fund will be accepted by the city council as part of a proffered condition in conjunction with any rezoning application acted upon by the city council after the effective date of the city's Program. Any such Affordable Dwelling Unit, Affordable Dwelling Unit-related contribution involving the dedication of land or other property interests, or monetary contribution to the city's housing trust fund shall be provided either as part of an owner and/or Zoning Applicant's compliance with the requirements of the city's Program or through a request for modifications under §6.19.

E. Condominium conversions

In the event the owner of an Affordable Dwelling Unit wishes to convert such unit to condominium ownership, such conversion may take place only after the owner has submitted and the city has approved a plan to ensure the continued provision of Affordable Dwelling Units on the site. Any such plan must ensure the provision of affordable rental or for-sale units under the terms of the Affordable Dwelling Unit Program for the balance of the thirty (30) year affordability period or provide a cash-in-lieu contribution that meets the approval of the city council under §6.19.

1. The owner of an Affordable Dwelling Unit may elect to sell any Affordable Dwelling Unit that are converted to condominiums under the regulations of §3.9.4. Any plan for the sale of Affordable Dwelling Units after being converted to condominiums must provide the tenants of any such Affordable Dwelling Units the right to purchase any such condominium unit before such unit may be sold to any other person who qualifies to purchase such Affordable Dwelling Unit under the terms of the city's Program.

2. The owner of Affordable Dwelling Units may elect to rent those Affordable Dwelling Units that are converted to condominiums under the regulations of §3.9.5. Any plan for the rental of Affordable Dwelling Units after being converted to condominiums must provide that all Affordable Dwelling Units in the development will be transferred to the owner of the Affordable Dwelling Units before the conversion and that all covenants applicable to the Affordable Dwelling Units remain in full force and effect after the conversion.

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Article 4. Site Development Standards

§4.1. CONSTRUCTION STANDARDS

The Virginia Uniform Statewide Building Code (USBC or building code) and the City of Fairfax Public Facilities Manual (public facilities manual), and as hereafter amended from time to time, are adopted and incorporated herein by reference and referred to in this chapter as the "construction standards".

§4.2. OFF-STREET PARKING AND LOADING

§4.2.1. Purpose

The regulations of §4.2 are in rough proportion to the generalized parking and transportation demands of different land uses. The provisions of §4.2 are also intended to help protect the public health, safety, and general welfare by:

A. Ensure provision of adequate parking;

B. Helping avoid and mitigate traffic congestion;

C. Encouraging multi-modal transportation options and enhanced pedestrian safety;

D. Providing methods to reduce the amount of impervious surfaces in parking lots and adequate drainage structures in order to reduce the environmental impacts of stormwater runoff; and

E. Providing flexible methods for responding to the transportation and access demands of various land uses in different areas of the city.

§4.2.2. Applicability

A. General

Unless otherwise expressly stated, the parking and loading requirements of §4.2 apply to all districts and all uses within the city of Fairfax.

B. New development

Unless otherwise expressly stated, off-street parking and loading requirements shall apply to all new uses established and all new structures constructed.

C. Enlargements and expansions

Unless otherwise expressly stated,

1. The off-street parking and loading standards of §4.2 apply when an existing building or use is:

(a) Enlarged or expanded to include additional dwelling units; or

(b) Enlarged by 10 percent or 2,500 square feet, whichever is less.

2. In the case of enlargements or expansions triggering requirements for additional parking, additional parking spaces are required only to serve the enlarged or expanded area, not the entire building or use.

D. Change of use

When the use of property changes, additional parking and loading facilities must be provided to serve the new use only when the number of parking and loading spaces required for the

new use exceeds the number of spaces required for the lawful use that most recently occupied the building, based on the standards of §4.2.

§4.2.3. Parking requirements

A. Minimum requirements

Except as otherwise expressly stated, off-street motor vehicle parking spaces must be provided in accordance with the parking ratio requirements of §4.2.3.E.

B. Maximum requirements

1. Commercial and industrial uses requiring 50 or more parking spaces may not provide more than 110 percent of the minimum number of spaces required under the parking ratio requirements of §4.2.3.E, below, unless such additional parking has a pervious surface or is in a parking structure.

2. These maximum parking requirements shall not apply to change of use situations where parking requirements are reduced. In the event of a decrease in intensity, parking does not have to be reduced. A use, lot or site will not be considered nonconforming solely because it has more parking that it is required or allowed.

C. Calculations

The following rules apply when calculating the minimum required number of parking spaces:

1. Multiple uses

Unless otherwise expressly stated, lots containing more than one nonresidential use must provide parking in an amount equal to one of the following alternatives:

(a) The total of the requirements for all uses;

(b) One space per 200 sq. ft. floor area for all shopping centers; or

(c) Where exact future tenants are unknown, the zoning administrator may establish overall parking requirements pursuant to §4.2.10.

2. Fractions

When measurements of the number of required spaces result in a fractional number, any fraction of less than 0.5 is rounded down to the next lower whole number, and any fraction of 0.5 or more is rounded up to the next higher whole number.

3. Area measurements

Unless otherwise expressly stated, all area-based (square footage) parking standards must be computed on the basis of floor area (See §1.5.9).

4. Unlisted uses

For a use not specifically listed in §4.2.3.E. , the zoning administrator is authorized to apply the parking ratio specified for the listed use that is deemed most similar to the proposed use or establish a different parking ratio requirement on the basis of parking data provided by the applicant and the department.

D. Exceptions

1. The minimum required parking of §4.2.3.E shall be reduced by the following (maximum) percentages:

(a) Within the Old Town Fairfax Historic Overlay District: See §3.7.2.B.5.

(b) Within the Old Town Fairfax Transition Overlay District: See §3.7.3.F.

(c) Within the CU, Commercial Urban District, where structured parking is provided: 10 percent.

E. Parking ratio requirements

Off-street parking spaces shall be provided for all uses listed below in at least the minimum amounts specified.

USE TYPES/ USE GROUPS*	GENERAL REQUIREMENTS
RESIDENTIAL	
Single-family detached	2 spaces per unit
Single-family attached	2 spaces per unit
Duplexes	2 spaces per unit
Multifamily	1.5 spaces per one or less bedroom unit; 2 spaces per 2 or more bedroom unit
Townhouses	2 spaces per unit
Upper story residential/mixed use buildings	1.25 spaces per efficiency unit; 1.5 spaces per 1 bedroom unit; 2 spaces per 2 or more bedroom units; other uses as required herein
PUBLIC, CIVIC AND INSTITUTIONAL USES (SEE §3.4.1.E)	
Adult day care	5 spaces per 1,000 sq. ft. of floor area
Assisted living facility	1 space per 4 beds
Auditorium or arena	1 space per 4 seats
Day care centers	5 spaces per 1,000 sq. ft. of floor area
Day care home, family (less than 5)	No spaces in addition to spaces otherwise required
Day care home, family (5 to 12)	In addition to spaces otherwise required, 1 space for such home providing care for 5 to 7 children, and 2 spaces for such home providing care for 8 to 12 children
Detention facilities	Determined by zoning administrator per §4.2.10
Colleges and universities	10 spaces per classroom
Community services*	1 space per 300 sq. ft. of floor area
Congregate living facility	1.5 spaces per unit
Group homes/statutory	2 space per dwelling
Hospitals	1 space per 2 beds, but not less than 1 space per 200 sq. ft. of floor area
Medical care facilities*	1 space per 2 beds, but not less than 1 space per 200 sq. ft. of floor area
Nursery schools	5 spaces per 1,000 sq. ft. of floor area
Nursing homes	1 space per 5 beds
Parks and open areas*	Determined by zoning administrator per §4.2.10
Religious institutions	1 space per 4 seats in main assembly area
Schools, elementary and middle	2 spaces per classroom
Schools, high	5 spaces per classroom
Social service delivery	Determined by zoning administrator per §4.2.10
Utilities, minor*	None
Utilities, major*	1 space per 1,000 sq. ft. of floor area
Telecommunications towers/facilities	Determined by zoning administrator per §4.2.10
COMMERCIAL USES (SEE §3.4.1.F)	
Adult uses	1 space per 100 sq. ft. of floor area
Amusement centers	1 space per 250 sq. ft. of floor area
Animal care facilities	1 space per 250 sq. ft. of floor area
Art gallery or studio	1 space per 400 sq. ft. of floor area
Auction houses	5 spaces per 100 sq. ft. of floor area
Bed and Breakfasts	1 space per guest room, plus otherwise required parking

USE TYPES/ USE GROUPS*	GENERAL REQUIREMENTS
Brew pubs	1 space per 300 sq. ft. of floor area
Building supplies and lumber sales	1 space per 300 sq. ft. of floor area
Catering or delivery services	1 space per 200 sq. ft. of floor area
Cemeteries	Determined by zoning administrator per §4.2.10
Convenience stores	1 space per 200 sq. ft. of floor area
Fuel stations	1 space per 200 sq. ft. of floor area
Funeral homes	1 space per 50 square feet of floor space in funeral service rooms
Furniture, appliance or carpet/flooring stores	1 space per 400 sq. ft. of floor area
Grocery stores	1 space per 200 sq. ft. of floor area
Hotels; hotels, extended-stay; motels	1 space per guest room, plus 1 space per 200 sq. ft. of conference, banquet, restaurants or food services floor area
Manufacturing, limited*	1 space per 1,000 sq. ft. of floor area
Office, general*	1 space per 300 sq. ft. of floor area
Office, medical*	1 space per 200 sq. ft. of floor area
Parking, commercial or municipal	Determined by zoning administrator per §4.2.10
Plant nurseries and greenhouses	1 space per 200 sq. ft. of floor area
Private clubs	1 space per 200 sq. ft. of floor area
Recreation, indoor*	1 space per 250 sq. ft. of floor area
Recreation, outdoor*	Determined by zoning administrator per §4.2.10
Restaurants or food service	1 space per 200 sq. ft. of floor area; 1 space per 100 sq. ft. of floor area with dancing and entertainment; none for outdoor dining and service areas
Retail, general*	1 space per 200 sq. ft. of floor area
Retail, large format	1 space per 200 sq. ft. of floor area
Schools, technical, trade, business	6 per classroom, plus 1 per 300 sq. ft. of office floor area
Service, general*	1 space per 200 sq. ft. of floor area
Services, personal*	1 space per 200 sq. ft. of floor area
Shopping centers	1 space per 200 sq. ft. of floor area
Theater	1 space per 4 seats
Tobacco and smoke shops	1 space per 200 sq. ft. of floor area
Vehicle repair*	2 spaces per bay
Vehicle sales and leasing*	1 per 500 sq. ft. of floor area
Vehicle service*	2 spaces per bay
INDUSTRIAL USES (SEE §3.4.1.G)	
Crematorium	Determined by zoning administrator per §4.2.10
Fuel sales, residential	1 space per 1,000 sq. ft. of floor area
Manufacturing, general*	1 space per 1,000 sq. ft. of floor area
Manufacturing, heavy*	1 space per 1,000 sq. ft. of floor area
Manufacturing, limited*	1 space per 1,000 sq. ft. of floor area
Petroleum storage and distribution	Determined by zoning administrator per §4.2.10
Research and development*	1 space per 1,000 sq. ft. of floor area
Self-service storage facility	5 spaces, plus 1 space per 100 storage units
Vehicle storage and towing	One space per 300 sq. ft. of floor area
Warehouse/freight movement*	1 space per 1000 sq. ft. of floor area
Waste service*	1 per 300 sq. ft. of floor area + 1 per 1,000 sq. ft. of outside storage area

§4.2.4. Location of parking

Except as specified herein, required parking spaces must be located off-street, on the same lot as the building or use they are required to serve, and not be within any minimum required front or side yard area as specified in §1.5.12, unless otherwise specified below.

A. General

1. All or a portion of required parking may be provided off-site, in accordance with the provisions of §4.2.4.
2. Any off-site parking space must be located within reasonable walking distance. For the sake of this provision, reasonable walking distance shall be within 300 feet of the shared parking lot, measured in a straight line between the entrance of the use to be served and the outer perimeter of the furthest parking space within the shared parking lot. (See also §4.2.5).
3. Sites utilized for required parking spaces for commercial or industrial uses shall be in nonresidential districts.
4. Parking space location must be owned or under legal control of the same property where building or use requiring parking spaces is located. Off-site parking lots may be under separate ownership only if an agreement is provided guaranteeing the long-term availability of the parking, commensurate with the use served by the parking. Off-site parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. If an off-site parking agreement lapses or is no longer valid, then parking must be provided as otherwise required by §4.2.

B. Residential uses

1. Tandem parking and parking in required setbacks shall be allowed for single-family detached, single-family attached, duplex, and townhouse dwellings and for group homes, provided there is space for such parking without blocking the sidewalk. No more than two parking spaces shall be permitted in required setbacks, except in the RL zoning district in which four parking spaces shall be permitted in the required setbacks provided side-by-side and tandem parking spaces shall not exceed two.
2. Garage parking may be counted toward required parking.

C. Nonresidential uses

Parking shall not be permitted within any required setback.

§4.2.5. Shared parking

A. Purpose

Shared parking is encouraged as a means of conserving scarce land resources, reducing stormwater runoff, reducing the heat island effect caused by large paved areas and improving community appearance.

B. General

The zoning administrator may approve shared parking facilities, subject to the following standards:

1. Eligible uses

Shared parking is allowed among different use groups or among uses with different hours of operation, but not both.

2. Ineligible uses

Accessible parking spaces (for persons with disabilities) may not be shared and must be located on-site.

3. Location

Shared parking spaces shall be located within 300 feet of the primary entrance of all uses served, unless shuttle bus service is provided to the parking lot.

4. Zoning classification

Shared parking lots serving uses located in nonresidential districts shall be located in nonresidential districts. Shared parking lots serving uses located in residential districts may be located in residential or nonresidential districts. Shared parking lots shall require the same or a more intensive zoning classification than that required for the most intensive of the uses served by the shared parking lot.

5. Temporary uses

Up to 10 percent of required parking spaces for any use may be used jointly by a temporary commercial use.

6. Shared parking study

Applicants wishing to use shared parking as a means of satisfying parking requirements shall submit a shared parking analysis to the zoning administrator that clearly demonstrates the feasibility of shared parking. The study shall be provided in a form established by the zoning administrator. It shall address, at minimum, the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover and the anticipated peak parking and traffic loads for all uses that will be sharing parking spaces.

7. Agreement

Applicants must provide a shared parking agreement executed by the parties establishing the shared parking spaces. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. Should the agreement cease to be in force, parking must be provided as otherwise required by §4.2.

C. Shared parking for different uses

A use may share parking with a different use according to only one of the following:

1. Office use and retail sales-oriented use

If an office use and a retail sales-oriented use share parking, the parking requirement for the retail sales-related use may be reduced by up to 20 percent, provided that the reduction does not exceed the parking ratio requirement for the office use.

2. Residential use and retail sales-oriented use

If a residential use and a retail sales-related use share parking (expressly excluding lodging uses, restaurants or food services, and indoor recreation uses), the parking requirement for the residential use may be reduced by up to 30 percent, provided that the reduction does not exceed the parking ratio requirement for the retail sales-related use.

3. Residential use and office uses

If a residential use and an office use share parking, the parking requirement for the residential use may be reduced by up to 50 percent, provided that the reduction does not exceed the parking ratio requirement for the office use.

4. Shared parking for uses with different hours of operation

(a) For the purposes of §4.2.5, the following uses are considered daytime uses:

(1) Customer service and administrative offices;

(2) Retail sales uses (expressly excluding restaurants or food services, lodging uses, and indoor recreation uses;

(3) Warehousing and freight movement uses;

(4) Manufacturing, general, heavy or limited uses; and

(5) Other similar primarily daytime uses, as determined by the zoning administrator.

(b) For the purposes of §4.2.5, the following uses are considered nighttime or Sunday uses:

(1) Auditoriums and arenas accessory to public or private schools;

(2) Religious institutions;

(3) Indoor recreation; and

(4) Other similar primarily nighttime or weekend uses, as determined by the zoning administrator.

(c) Up to 90 percent of the parking required by §4.2.5 for a daytime use may be supplied by the parking provided for a nighttime or Sunday use and vice-versa, when authorized by the zoning administrator.

(d) The applicant must show that there is no substantial conflict in the principal operating hours of the uses for which shared parking is proposed.

§4.2.6. Parking lot design

All parking and loading spaces shall be provided with safe and convenient access to a public or private street and be subject to the site plan review procedures of §6.8.

A. Curb cuts and entranceways

Parking lot curb cuts and entranceways shall be as specified in §4.3.2.

B. Dimensions and access

1. Each parking space shall be striped.

2. Each parking space and the maneuvering area thereto shall be located entirely within the boundaries of the site.

3. All parking spaces and aisles shall comply with the following minimum requirements:

PARKING LOT DESIGN					
ANGLE (DEGREES)	WIDTH OF SPACE (FEET)	DEPTH OF SPACE 90 DEGREES TO AISLE (FEET)	WIDTH OF AISLE (FEET)		WIDTH OF SPACE PARALLEL TO AISLE (FEET)
			ONE-WAY	TWO-WAY	
45	9 feet	19 feet	12 feet	18 feet	12.7 feet
60	9 feet	20 feet	16 feet	20 feet	10.4 feet
90	9 feet	18 feet	23 feet	23 feet	9 feet
90	10 feet	19 feet	22 feet	22 feet	10 feet

PARKING LOT DESIGN					
ANGLE (DEGREES)	WIDTH OF SPACE (FEET)	DEPTH OF SPACE 90 DEGREES TO AISLE (FEET)	WIDTH OF AISLE (FEET)		WIDTH OF SPACE PARALLEL TO AISLE (FEET)
			ONE-WAY	TWO-WAY	
Parallel	8 feet	8 feet (width)	13 feet	22 feet	22 feet

(a) Parking spaces (90 degrees only) that abut a landscape island may be reduced in length to 16 feet provided that the island is a minimum of four feet in depth and protected by wheel stops or curb. Plant material shall be a minimum of two feet from wheel stops or curb.

(b) Parking spaces (90 degrees only) that abut a sidewalk adjacent to a building may be reduced in length to 16 feet provided that the sidewalk is a minimum of six feet in width.

(c) In no event shall pavement be located within six feet of a right-of-way, unless the pavement is part of an entrance driveway.

C. Paved or pervious surfacing

1. Where off-street facilities are provided for parking, they shall be surfaced with asphalt bituminous, concrete or pervious material approved by the zoning administrator. Gravel may be used for vehicle parking or vehicle storage areas associated with single-family dwellings or for vehicle storage and towing.

2. Lot areas that are unsurfaced in accordance with the above requirements shall not be used for parking.

D. Vehicle parking lot landscaping

See §4.5.7.

E. Use of required parking lots and spaces

1. Required parking lots may be used solely for the temporary parking of licensed motor vehicles in operating condition.

2. Required parking spaces may not be used for the display of goods for sale or lease or for storage of building materials.

3. Required parking spaces are intended to serve residents, tenants, patrons, employees, or guests of the principal use. Parking spaces that are required by this chapter must be maintained for the life of the principal use.

F. Accessible spaces (for the disabled)

Accessible spaces shall be provided in accordance with the Americans with Disabilities Act Accessibility Guidelines.

§4.2.7. Stacking spaces

The following vehicle stacking standards shall apply unless otherwise expressly approved by the zoning administrator. The zoning administrator may require additional stacking spaces where trip generation rates suggest that additional spaces will be needed.

A. Minimum number of spaces

Off-street stacking spaces shall be provided as follows:

STACKING SPACE REQUIREMENTS		
FACILITY OR USE	MINIMUM SPACES	MEASURED FROM
Automated teller machine	3	Machine
Bank teller lane	4	Teller or window
Car wash stall, automated	4	Entrance to wash bay
Car wash stall, hand-operated	3	Entrance to wash bay
Day care drop off	3	Passenger loading area
Drive-through windows/facilities	6	Order box, if any
Drive-through windows/facilities	4	Order box to service window
Gasoline pump island	2	Pump island
Parking lot, key box controlled entrance	4	Key code box
Parking lot, key fob controlled entrance	1	Entrance to parking lot
Valet parking	3	Valet stand
School drop-off (public and private)	Determined by zoning administrator per §4.2.10	
Other	Determined by zoning administrator per §4.2.10	

B. Design and layout

Required stacking spaces are subject to the following design and layout standards:

1. Dimensions

Stacking spaces shall be a minimum of eight feet by 20 feet in size.

2. Location

Stacking spaces shall not impede on- or off-site traffic movements, or movements into or out of parking spaces.

3. Design

Stacking spaces shall be separated from other internal driveways by raised medians if deemed necessary by the zoning administrator for traffic movement and safety.

§4.2.8. Bicycle parking

A. Applicability

Bicycle parking and storage facilities shall be required for all multifamily and nonresidential uses in accordance with the requirements of this section. These requirements apply regardless of any motor vehicle parking exemptions or reductions.

B. Spaces required

Bicycle parking requirements are based on the parking ratio requirements of §4.2.3.E. The minimum number of bicycle spaces to be provided shall be determined from the following table:

BICYCLE PARKING REQUIREMENTS	
PARKING SPACES	SPACES REQUIRED
1-40	2
41-60	3
61-80	4
81-100	5
Over 100	6 plus 1 for each 20 parking spaces over 100, provided that the maximum number of required bicycle spaces shall not exceed 20.

C. Location

Bicycle parking shall be located in a visible, well-illuminated area that does not conflict with automobile or pedestrian traffic.

§4.2.9. Off-street loading requirements

A. General

1. All required off-street loading areas shall be located on the same lot as the use served.
2. Loading areas shall be designed and constructed in a manner so as to facilitate efficient traffic flow and not impede the circulation of vehicles or pedestrians in any off-street parking, or on-street or driving area.
3. All off-street loading areas shall be designed and constructed to accommodate the largest vehicles likely to service the use on a frequent and regular basis, but in no case shall loading spaces be less than 12 feet in width and 25 feet in length.

B. Required loading spaces

Off-street loading spaces must be provided in accordance with the following schedule:

USE TYPE	MINIMUM LOADING SPACES REQUIRED
PUBLIC, CIVIC AND INSTITUTIONAL, AND COMMERCIAL AND INDUSTRIAL USES	
Under 10,000 square feet	None
10,000–49,999 square feet	1
50,000+	2
MULTIFAMILY AND UPPER STORY RESIDENTIAL/MIXED USE BUILDINGS (4+ STORIES)	
Under 50 units	None
50+ units	1

§4.2.10. Alternative compliance

The parking and loading requirements of §4.2 shall apply, unless an alternative is approved by the zoning administrator in accordance with the requirements below:

A. Alternative parking ratios up to 20 percent less than required and may be approved where an applicant submits a parking or loading study, prepared and sealed by a registered professional engineer in the Commonwealth of Virginia. Such study must illustrate that the required parking ratios of §4.2.3.A or loading requirements of §4.2.9.B do not accurately apply to a specific development proposal.

B. The data submitted must include, at a minimum, the size and type of the proposed development, the mix of uses, the anticipated rate of parking turnover and the anticipated peak parking and traffic loads of all uses.

C. The data must be obtained either from relevant studies published in professional publications; or from primary studies of no fewer than three comparable developments within the regional, Washington Metropolitan Statistical Area.

§4.3. ACCESS (VEHICULAR) MANAGEMENT

§4.3.1. Access required

A. Except as otherwise stated, no principal building, structure or use may be erected or established on any lot which does not abut an existing public street or a new street

constructed in accordance with the standards in the public facilities manual and dedicated as a public street to the city or the state (See also City Code, Chapter 86, Subdivision Regulations), or as a private street and maintained by a common interest community (See §4.13).

B. All street frontages adjacent to building sites shall be improved in accordance with the standards in the public facilities manual to city standards, provided that residential lots lawfully existing as of the effective date of this chapter may be developed without providing frontage improvements.

§4.3.2. Curb cuts

See public facilities manual.

§4.3.3. Cross-access

A. Description and purpose

Cross-access refers to providing vehicular access between two or more contiguous sites so that motorists do not need to re-enter the public street system to gain access to abutting nonresidential sites. Cross-access between abutting properties reduces vehicular conflicts between motorists on the street and motorists entering and leaving driveways. Reduced traffic conflicts result in fewer accidents and improved traffic flow on the public street network, promoting the public health, safety and welfare.

B. Requirements

Vehicular access shall be required between abutting nonresidential lots fronting on arterial and collector streets prior to the erection or establishment of a principal building on one of the lots in order to facilitate traffic flow between lots, except where topography or other physical conditions make such access unreasonable. The zoning administrator shall determine the location and dimensions of such easement based on public safety and convenience, not owner preference.

§4.3.4. Visual clearance (safe sight triangle)

On any corner lot, a safe sight triangle shall be maintained in accordance with the standards in the public facilities manual, except as otherwise required by the zoning administrator.

§4.4. PEDESTRIAN FACILITIES

§4.4.1. Applicability

A. All new developments and subdivisions shall provide pedestrian facilities and access in accordance with the requirements of §4.4.

B. Nonresidential buildings and structures lawfully existing as of the effective date of this chapter may be redeveloped, renovated or repaired without providing pedestrian facilities in conformance with §4.4., provided there is no increase in gross floor area in such building or structure, no more than 10 percent increase in impervious surface on the site, or as otherwise provided for in this chapter.

C. Residential buildings and structures lawfully existing as of the effective date of this chapter may be enlarged, renovated or repaired without providing pedestrian facilities in conformance with §4.4.

§4.4.2. Layout

Pedestrian facilities shall be configured, to the extent practicable, to conform to the natural topography, to minimize the disturbance of critical slopes and natural drainage areas, and to provide site-related pedestrian interconnections and improvements within the subdivision or development and to existing or future development on adjoining lands.

§4.4.3. Types of pedestrian facilities

All pedestrian facilities shall comply with ADA requirements and the following:

A. Sidewalks

Sidewalks are strips or sections of hard surface material that provide an appropriate surface a minimum of five feet in width, typically located adjacent and parallel to vehicle roadways, intended for use as a walkway for pedestrians. Sidewalks are located within a dedicated right-of-way or public easement.

B. Pedestrian paths

Pedestrian paths are strips or sections of hard surface material that provide an appropriate surface a minimum of six feet in width, not typically located adjacent to vehicle roadways, which provide pedestrian and non-motorized access to a property. Pedestrian paths are located within a dedicated public easement not less than 12 feet in width or on private property.

C. Multi-use trails

Multi-use trails are strips or sections of hard surface material that provide an appropriate surface a minimum of 10 feet in width, not typically located adjacent to vehicle roadways, which provide pedestrian and non-motorized access to and through a property. Multi-use trails are located within a dedicated public easement not less than 12 feet in width or on private property.

§4.4.4. Sidewalks

Sidewalks shall be placed within the right-of-way or public easement as specified below.

A. Where required

1. Unless otherwise specified below, sidewalks shall be required on both sides of all arterial, collector and local streets.
2. Where a lot being developed or redeveloped with a single-family detached dwelling, fronts on an existing street and there is no existing sidewalk on the same block face, no sidewalk shall be required.
3. The zoning administrator may review each site plan and subdivision on its own merits to determine whether additional sidewalks will be required based on anticipated pedestrian demand in the area.

B. Placement

1. Where sidewalks are required, sidewalks shall be provided according to one of the following placement alternatives as determined by the zoning administrator:
   - **(a)** Sidewalks shall be placed against the back of curb (urban street frontage); or
   - **(b)** Sidewalks shall be placed such that a minimum strip of green space (3 to 5 feet wide) is maintained between the back of curb and the inside edge of the sidewalk

and have a minimum paved width of five feet for this placement (sub-urban street frontage); a minimum of three feet of green space shall be maintained adjacent to all tree pits.

2. Site-specific placement, including where a variation from the placement methods described in §4.4.4.B.1, above, is necessary or desired; or where an obstruction is located within the paved area, the following criteria must be satisfied:

(a) All placement and transition sections must be approved by the zoning administrator;

(b) All radii in transition sections must be a minimum of 10 feet; and

(c) In order to provide safe and adequate access on sidewalks, all sidewalks shall comply with minimum clear width requirements around all obstructions, natural or manmade.

§4.4.5. Pedestrian paths

Pedestrian paths shall be provided:

A. Within all multi-building developments to link buildings with destinations including, but not limited to: parking, adjoining streets and sidewalks, mailboxes, trash disposal areas, recreation and open space areas, and other on-site amenities;

B. In blocks over 600 feet in length to provide mid-block connections to abutting streets; and

C. At the end of cul-de-sacs that abut existing or future schools, recreation and open spaces, parks, trails and streets.

§4.4.6. Multi-use trails

Multi-use trails shall be provided in accordance with adopted plans.

§4.4.7. Crosswalks

See public facilities manual.

§4.4.8. Street furniture, trash receptacles

See public facilities manual.

§4.5. LANDSCAPING

§4.5.1. Purpose

The purposes of §4.5 are to encourage the planting and proper care of vegetation and trees throughout the city, to replenish tree stock, and to provide for appropriate screening. These actions are intended to contribute to the health, safety and welfare of the city by enhancing pedestrian facilities, decreasing flooding, soil erosion, air pollution and noise, and improving aesthetics in accordance with the comprehensive plan and the requirements of the public facilities manual. The transitional yard requirements and the screening requirements are intended to improve compatibility of uses by providing privacy and enhancing the aesthetic transition between uses.

§4.5.2. Applicability

A. The landscaping regulations of §4.5 apply as set forth in the individual sections of these regulations.

B. Unless specifically exempt, all existing and proposed development for which site plan approval is required (see §6.8) shall meet the provisions of §4.5.

§4.5.3. Exemptions

A. Unless otherwise expressly stated, the landscaping regulations of §4.5 do not apply to the expansion of individual single-family detached, single-family attached or duplexes dwellings.

B. Driving lanes may traverse required landscaping in a perpendicular alignment to provide the necessary ingress and egress to the parking lots.

§4.5.4. General

A. What is to be landscaped

All areas that are not impervious (see §1.5.7) shall be landscaped in accordance with the requirements of §4.5.

B. Landscape plan required

A landscape plan shall be submitted in conjunction with required site plans (see §6.8) in accordance with the requirements of §4.5. A landscape architect or other qualified professional shall prepare all landscape plans.

§4.5.5. Transitional yards

A. Applicability

The transitional yard regulations of §4.5.5 apply along interior property lines in those instances identified in this chapter and only to the following activities:

1. The construction or installation of any new principal building or use; and

2. The expansion of any existing principal building or principal use that results in an increase in gross floor area or site area improvements by more than five percent or 1,000 square feet, whichever is greater. In the case of expansions that trigger compliance with transitional yard requirements, transitional yard landscaping is required only in proportion to the degree of expansion. The zoning administrator is authorized to allow the transitional yard to be established adjacent to the area of expansion or to disperse transition yard landscaping along the entire site transition area.

B. Transitional yard defined

A transitional yard is a specified land area, located parallel to and within the outer perimeter of a lot or project and extending to the lot line, together with fencing or walls on the lot line, and planting and landscaping required on the land. A transitional yard is not intended to be commensurate with the term "yard" or “setback.”

C. Transitional yard types

There are three types of required transitional yards that may occur on any given parcel (for the specific width and plant material for each transitional yard classification see §4.5.5.D).

1. District boundary transitional yards

The following table shall be used to determine the required transitional yard classification between adjacent districts.

PROPOSED DEVELOPMENT DISTRICT ▼	RL	RM	RH	RT-6	RT	RMF	CL	CO	CR	CU	CG	IL	IH
RL	--	--	--	--	--	--	--	--	--	--	--	--	--
RM	--	--	--	--	--	--	--	--	--	--	--	--	--
RH	--	--	--	--	--	--	--	--	--	--	--	--	--
RT-6	TY1	TY1	TY1	--	--	--	--	--	--	--	--	--	--
RT	TY1	TY1	TY1	--	--	--	--	--	--	--	--	--	--
RMF	TY2	TY2	TY2	TY2	TY2	--	--	--	--	--	--	--	--
CL	TY2	TY2	TY2	TY2	TY2	TY1	--	--	--	--	--	--	--
CO	TY2	TY2	TY2	TY2	TY2	TY1	--	--	--	--	--	--	--
CR	TY2	TY2	TY2	TY2	TY2	TY2	TY1	--	--	--	--	--	--
CU	TY3	TY3	TY3	TY3	TY3	TY2	TY2	TY1	--	--	--	--	
CG	TY3	TY3	TY3	TY3	TY3	TY3	TY3	TY2	--	--	--	--	--
IL	TY4	TY4	TY4	TY4	TY4	TY4	TY3	TY3	TY2	TY2	TY1	--	--
IH	TY4	TY4	TY4	TY4	TY4	TY4	TY4	TY3	TY3	TY3	TY3	TY2	--

2. Project boundary transitional yards

Project boundary transitional yard requirements are established to mitigate the effect of planned developments on adjacent properties. The following shall be used to determine project boundary transitional yard requirements.

(a) No transitional yard is required where the width of the project's perimeter single-family detached residential lots is equal to or greater than the minimum lot width of the adjoining single-family detached development or the minimum lot width required by the respective single-family detached zoning district that applies to any adjoining undeveloped parcel.

(b) Except as provided in paragraph (a) above or unless modified by the city council in the approval of a master development plan, the following boundary transitional yards shall be provided along project boundaries in accordance with §4.5.5.D:

(1) PD-R: TY2 transitional yards

(2) PD-M: TY3 transitional yards

(3) PD-C: TY3 transitional yards

(4) PD-I: TY4 transitional yards

3. Use boundary transitional yards

(a) Where townhouse developments occur adjacent to single-family detached or duplex dwellings, TY1 transitional yards shall be provided in accordance with §4.5.5.D, below.

(b) Where multifamily developments occur adjacent to single-family detached, duplex or townhouse dwellings, TY2 transitional yards shall be provided in accordance with §4.5.5.D, below.

(c) Where commercial developments occur adjacent to single-family attached, single-family detached, duplex, townhouse, or multifamily dwellings, TY3 transitional yards shall be provided in accordance with §4.5.5.D, below.

(d) Where industrial developments occur adjacent to single-family attached, single-family detached, duplex, townhouse, or multifamily dwellings, TY4 transitional yards shall be provided in accordance with §4.5.5.D, below.

D. Transitional yard classifications

Four transitional yard classifications are established in recognition of the different contexts that may exist. They are as follows:

SPECIFICATIONS	TY1	TY2	TY3	TY4
Minimum Transitional Yard Width [1] (feet)	7.5	10	15	30
Minimum Fence or Wall Height (feet) on Lot Line [2]	6	6	6	6
Minimum Trees (per 100 feet)				
Canopy	Not required	3	4	4
Understory	4	3	4	5
Minimum Shrubs (per 100 feet)	Not required	Not required	4	5

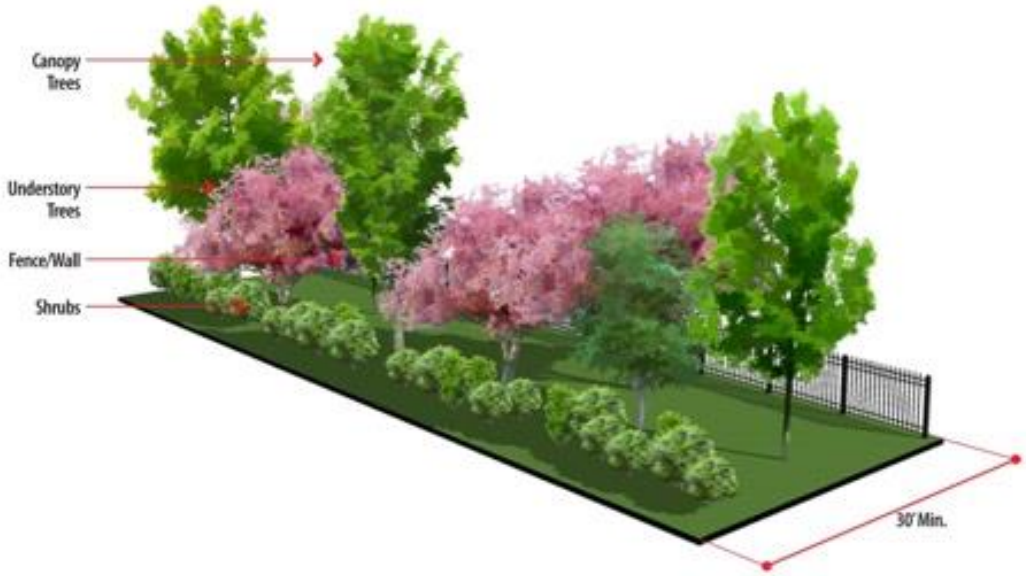
[1] Yard widths calculated on the basis of average per 100 feet, provided that the yard width at any point may not be less than 50 percent of the minimums stated in the table. Required zoning district setbacks may be counted toward satisfying transitional yard widths.
[2] On or adjacent to the lot line. Additional understory trees or shrubs may be substituted for required fence or wall via alternative compliance (§4.5.10).

Transitional Yard TY1

Transitional Yard TY2

Transitional Yard TY3

Transitional Yard TY4



E. Location of transitional yards

Transitional yards shall be located within the outer perimeter of a lot or parcel, parallel to and extending to the lot or parcel boundary line. Transitional yards shall not be located on any portion of an existing, dedicated or reserved public or private street or right-of-way.

F. Ownership of transitional yards

Transitional yards may remain in the ownership of the original applicant; they may be subjected to deed restrictions and subsequently be freely conveyed; or they may be transferred to any consenting grantees, such as the city, a land conservancy or land trust, or common interest community association (see §4.13). Any such conveyance shall guarantee the protection and maintenance of the transitional yard in accordance with the provisions of §4.5.

G. Landscape materials and design

Landscape materials used to satisfy the transitional yard requirements of §4.5.5 are subject to the regulations of §4.5.9.

§4.5.6. Tree requirements

A. Tree canopy

The following 10-year minimum tree canopy requirements shall apply in the respective districts:

Zoning Districts		Tree Canopy (Percent)
Residential Districts		
RL	Residential Low	25
RM	Residential Medium	20
RH	Residential High	20
RT-6	Residential townhouse	15
RT	Residential townhouse	15
RMF	Multifamily	10
Nonresidential Districts		
CL	Commercial Limited	10
CO	Commercial Office	10
CR	Commercial Retail	10
CG	Commercial General	10
IL	Industrial Light	10
IH	Heavy Industrial	10
Planned Development Districts		
PD-R	Planned Development Residential	20
PD-M	Planned Development Mixed Use	10
PD-C	Planned Development Commercial	10
PD-I	Planned Development Industrial	10

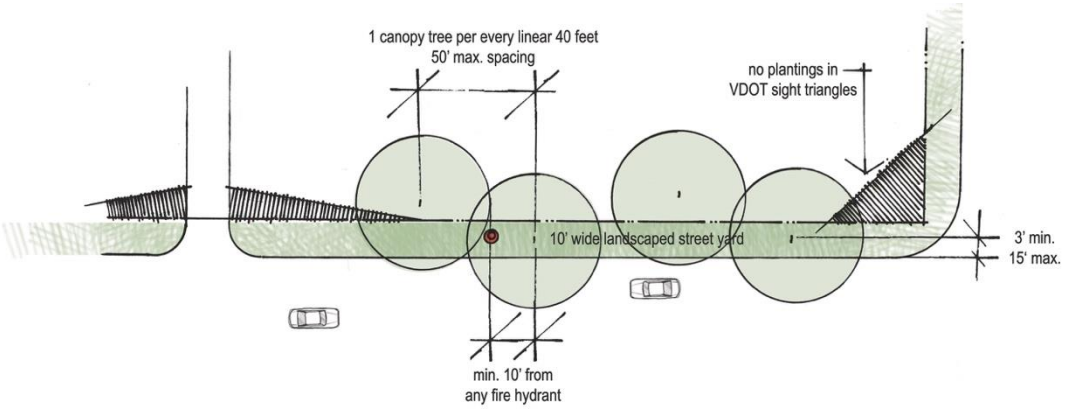
B. Street trees

In all general districts except the RL, RM, RH and CU districts, a minimum ten foot wide landscaped strip shall be provided along all streets. Street trees shall be required along all

streets at the rate of one canopy tree for every 40 linear feet and spaced a maximum of 50 feet part.

1. All street trees shall be planted no less than three feet or more than 15 feet from the back of the curb or edge of pavement.

2. No tree shall be planted within a safe sight triangle (§4.3.4) or closer than 10 feet from any fire hydrant.



C. Landscape materials and design

Landscape material used to satisfy the tree requirements of §4.5.6 are subject to the regulations of §4.5.9.

§4.5.7. Parking lot landscaping

A. Applicability

1. §4.5.7 applies to:

(a) New on-site surface parking lots with more than 10 spaces; and

(b) The expansion of any existing surface parking lot if the expansion results in 10 or more new parking spaces, in which case the requirements of §4.5.7 apply only to the expanded area.

2. For purposes of §4.5.7, multiple platted lots contained on a single site plan and any separate parking lots connected with drive aisles are considered a single parking lot.

B. Low impact development (LID)

Low impact development (LID) techniques that capitalize on and are consistent with natural resources and processes will be incorporated in parking lot landscaping whenever practicable, including but not limited to:

1. Rain catchment and harvesting for on-site irrigation purposes; and

2. Rain gardens (shallow depressions or swales) that slow storm runoff and reduce the impact of what is found in stormwater as it enters storm drainage control systems.

C. Perimeter

1. The perimeter of all parking lots with frontage on any portion of a public right-of way shall be screened by a continuous landscaped hedge, a wall, or fence supported by masonry piers. Perimeter screening shall be at least 30 inches in height at the time of

installation, and any planted screening shall reach a minimum height of 36 inches within two years of planting.

2. The perimeter of all parking lots adjacent to residentially zoned property shall provide a transitional yard TY3 (See §4.5.5).

D. Interior

1. Interior islands

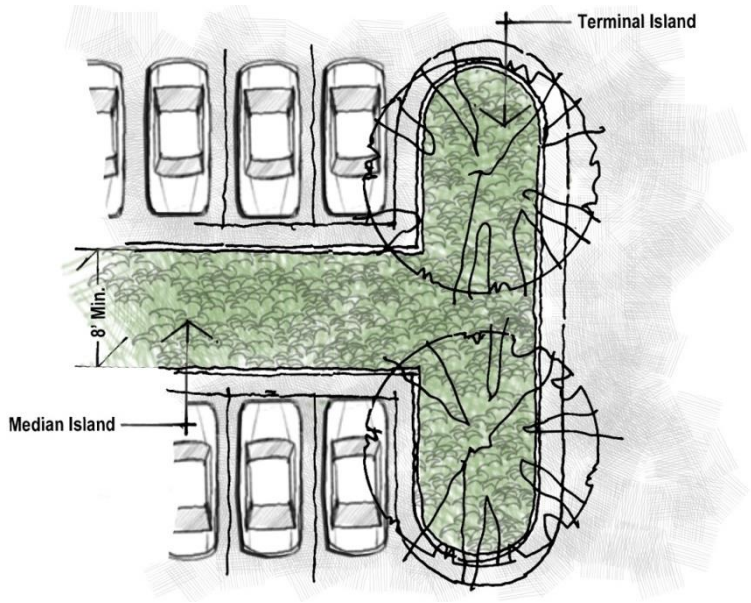
An interior landscaped island shall be provided for every ten spaces. Each island shall contain a minimum of 200 square feet with a minimum width of eight feet inside the curb and include a minimum of one canopy tree; provided that, where an island includes a sidewalk, such islands shall contain a minimum of 400 square feet with a minimum of 15 feet inside the curb. Planting islands shall be evenly distributed throughout the parking lot; with no parking space located more than 50 feet from a planting island. Interior islands may be consolidated or intervals may be expanded in order to preserve existing trees, where approved by the zoning administrator.

2. Terminal islands

All rows of spaces shall terminate in a curbed landscaped island. Each island shall conform to the specifications described in §4.5.7.D.1, above.

3. Median islands

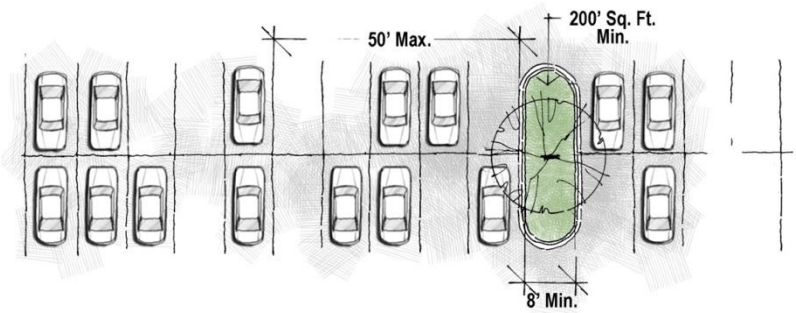
A median island with a minimum width of eight feet inside the curb shall be sited between every six single parking rows. Median intervals may be expanded in order to preserve existing trees, where approved by the zoning administrator.



E. Parking structures

1. General

Parking lot interior landscaping requirements shall not apply to parking structures.

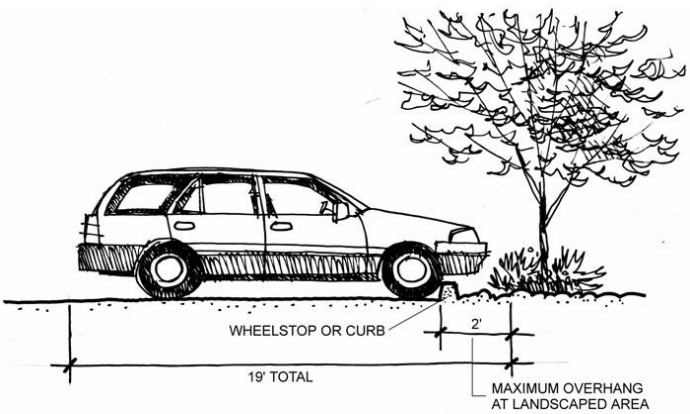


2. Perimeter landscaping

Structured parking above finished grade shall comply with building setback requirements. Landscaping for parking structures shall be provided in all yards pursuant to perimeter landscaping requirements for surface parking. However, where the location of such structure with respect to property boundary and adjacent structures will substantially inhibit the growth of the required trees, such trees may be located along another perimeter of the site in a manner approved by the zoning administrator.

F. Curbs and vehicle barriers

Landscaped areas in or abutting parking lots must be protected by concrete curbing, anchored wheel stops, or other durable barriers approved by the zoning administrator. Curbs protecting landscaped areas may be perforated, have gaps, or otherwise be designed to allow stormwater runoff to pass through them.



G. Landscape materials and design

Landscape material used to satisfy the parking lot landscaping requirements of §4.5.7 are subject to the regulations of §4.5.9.

§4.5.8. Screening

A. Features to be screened

The following features must be screened from view of public rights-of-way, public open spaces and from lots used or zoned for residential purposes, as specified in §4.5.8.

1. Drive-through windows/facilities, subject to §4.5.8.B;
2. Ground-mounted mechanical equipment, subject to §4.5.8.C;
3. Outdoor storage of materials, supplies, vehicles and equipment, subject to §4.5.8.D;
4. Pick-up and drop-off containers and facilities, subject to §4.5.8.E;
5. Roof-mounted mechanical equipment, subject to §4.5.8.F; and
6. Trash receptacles and service areas, subject to §4.5.8.G.

B. Drive-through windows/facilities

Drive-through windows/facilities and lanes shall be subject to the following screening requirements:

1. Drive-through windows/facilities and lanes placed between the right-of-way and the associated building shall require landscape plantings installed and maintained along the entire length of the drive-through lane, located between the drive-through lane and the adjacent right-of-way.

2. Such screening shall be a compact evergreen hedge or other type of dense foliage. At the time of installation, such screening shall be at least 36 inches in height and shall reach a height of 48 inches within two years of planting.

C. Ground-mounted mechanical equipment

All ground-mounted mechanical equipment over 30 inches in height must be screened from view by a solid fence, solid wall, dense hedge, or combination of such features. The hedge, fence or wall must be tall enough to screen the equipment.

D. Outdoor storage of materials, supplies, vehicles and equipment

1. On nonresidential lots, all stored materials, supplies, merchandise, vehicles, commercial vehicles, boats (or similar), trailers, recreational vehicles, equipment, or other similar materials that are not on display for direct sale, rental or lease to the ultimate consumer or user must be screened by landscaping or solid fencing or wall, with a minimum height of six feet at the time of installation. (See also §4.10)

2. On residential lots, all stored materials, supplies, equipment, or other similar materials, including any vehicles, trailers, commercial vehicles, boats (or similar), recreational vehicles, or similar vehicles kept on an unsurfaced area, shall be located in the side or rear yard, screened from the view from the street and first story of any neighboring dwelling to the extent possible by landscaping or solid fencing or wall, and the total area for such outdoor storage shall not occupy more than 25 percent of the side and rear yards combined.

3. On residential lots, one commercial vehicle of a weight less than 9,000 pounds, one commercial trailer, or one noncommercial vehicle of a weight more than 9,000 pounds but less than 15,000 pounds may be kept in accordance with the provisions of City Code, Section 98-147(c). Screening shall not be required provided the vehicle or trailer is kept on a surfaced area.

4. On residential lots, boats (or similar) on trailers and noncommercial trailers may be kept without screening, provided the trailer is kept on a surfaced area.

5. On residential lots, screening shall not be required for firewood, outdoor furniture, portable grills, or similar items accessory to the residential use or for storage of materials and equipment related to a construction project for which a valid building permit is in effect and where the materials and equipment are maintained in an orderly condition and do not constitute a hazard.

E. Pick-up and drop-off containers and facilities

Pick-up and drop-off containers and facilities shall be screened from the first story window(s) of any neighboring dwellings by a solid fence, solid wall, dense hedge, or combination of such features. The hedge, fence or wall must be tall enough to screen the equipment.

F. Roof-mounted mechanical equipment

1. Roof-mounted mechanical equipment (e.g., air conditioning, heating, cooling, ventilation, exhaust and similar equipment, but not elevator shafts, solar panels, wind energy or similar renewable energy devices) over 30 inches in height must be screened from ground-level view at the property line in one of the following ways:

   (a) A parapet wall;

(b) A solid screen, which shall be an integral part of the building's architectural design; or

(c) An equipment setback from roof edges that is at least three feet in depth for each one foot of equipment height.

2. Fire safety access shall be provided.

G. Trash receptacles and service areas

1. Trash receptacles and service areas (e.g., recycling containers, grease barrels, medical waste bins) must be screened from view of streets and all abutting lots with a solid wall or opaque fence, with doors or gates, at least six feet in height.

2. Trash receptacles and service areas may be located in parking lot but shall not reduce applicable parking requirements.

3. Trash receptacles and service areas may not be located in the required front or side (street) yard.

H. Landscape materials and design

Landscape material used to satisfy the screening requirements of §4.5.8 are subject to the regulations of §4.5.9.

§4.5.9. Landscape material and design

A. Landscaping within required landscaped areas

Required landscaped areas must be covered with biodegradable mulch and/or ground cover plants.

B. Plant types

There are three plant types referred to in this section, and all shall require the use of locally-adapted plants. They include canopy trees, understory trees and shrubs, defined as follows:

1. Canopy trees

Large deciduous shade trees with a mature height of 30 feet or greater and a mature spread of 30 feet or greater.

2. Understory trees

(a) Small deciduous trees or large deciduous shrubs with a mature height of 10 to 30 feet, except under overhead utilities, where lower heights at maturity may be required; or

(b) Trees or large shrubs at least 10 feet tall at maturity that usually have green foliage throughout all seasons of the year.

3. Shrubs

Prostrate or upright woody plants, either evergreen or deciduous, with a mature height usually less than 10 feet. Evergreen shrubs usually have green foliage throughout all seasons of the year.

C. Required fencing and walls

Fencing and walls used for required screening and in transitional yards shall:

1. Be constructed of high quality materials, such as decorative blocks, brick, stone, treated wood, or composite wood-like material complementary to the principal structure; Chain-link fences and barbed wire or concertina wire shall not be utilized for screening purposes;
2. Breaks in the fence or wall may be provided for pedestrian connections to adjacent properties; and
3. The maximum length of a continuous, unbroken and uninterrupted fence or wall plane shall be 100 feet; visual relief shall be provided at intervals not exceeding 100 feet through the use of masonry columns at reasonable intervals.

D. Existing trees and vegetation

Existing non-invasive trees and shrubs count toward satisfying the landscaping regulations of §4.5 if they are located within the subject area and they comply with the plant height and size requirements of §4.5.9.

1. Tree management plan

A tree management plan shall be required prior to the removal or destruction of existing trees that are at least five inches in diameter measured at breast height (DBH), including the following information, except as deemed necessary by the zoning administrator:

(a) The location, size, condition and species of all trees which are at least five inches in diameter to be preserved or removed;

(b) The location, size and species of all trees to be preserved or removed;

(c) Specifications for the removal of trees and protection of trees during construction;

(d) Proposed grade changes or other potentially injurious work adjacent to trees designated for preservation with specifications for maintaining ground drainage and aeration around such trees;

(e) The location, size and species of all trees to be planted; and

(f) Such other information that the zoning administrator deems essential.

2. Tree protection during construction

(a) Existing trees specified on the landscape plan to remain on the site shall be protected from vehicular movement and material storage over their root spaces during construction. An undisturbed area with a porous surface shall be reserved around a tree, based on the drip line or as specified by an arborist or landscape architect.

(b) A temporary tree protection fence shall be installed along the drip line.

3. Tree removal

(a) Diseased trees or trees weakened by age, storm, fire or other injury may be removed in accordance with this §4.5.9.D.3. Trees that are damaging or can be reasonably expected to damage buildings, streets, sidewalks or other infrastructure may be removed, subject to verification of site conditions by the

zoning administrator. All other tree removal should be based on a consideration of the following:

(1) The effect of the proposed tree removal upon the stabilization of soil, lakes, ponds, streams and rivers;

(2) The intended use of the property and feasible alternatives which would preserve existing trees;

(3) The existing topography, proposed changes in the topography and proposed landscaping;

(4) The hardship imposed or the reasonable use denied to the applicant as a result of permit denial;

(5) Historical value of the trees;

(6) Good horticultural and forestry practices;

(7) The effect of the proposed tree removal on the deadening and absorption of sound;

(8) The likelihood that the proposed action will adversely affect the control of flooding or soil erosion;

(9) The impact of such action on surrounding property or persons; and

(10) The consistency of the proposed action with the purpose of §4.5.1.

(b) Trees that are approved by the zoning administrator for removal shall be replaced with new trees or large shrubs on the same property and in the same general location.

§4.5.10. Alternative compliance

In order to encourage creativity in landscape and screening design and to allow for flexibility in addressing atypical, site-specific development/redevelopment challenges, the zoning administrator is authorized to approve alternative compliance landscape plans subject to the following findings:

A. The approved administrative alternate meets the intent of the landscaping regulations;

B. The approved administrative alternate complies with the comprehensive plan and adopted city plans; and

C. The approved administrative alternate is considered equal to or better than the standard.

§4.6. SIGNS

§4.6.1. Purpose

A. Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height and condition of all signs placed on private property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and harmonious community, protection against destruction of or encroachment upon historic areas, and the safety and welfare of pedestrians and wheeled traffic, while providing

convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, size and purpose of all signs. This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article which can be given effect without the invalid provision.

B. Signs not expressly permitted as being allowed by right or by special exception under this article, by specific requirements in another portion of this chapter, or otherwise expressly allowed are forbidden.

C. A sign placed on land or on a building for the purpose of identification, protection or directing persons to a use conducted therein shall be deemed to be an integral but accessory and subordinate part of the principal use of land or building. Therefore, the intent of this article is to establish limitations on signs in order to ensure they are appropriate to the land, building or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests identified in §4.6.1.A.

D. These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

E. These regulations distinguish between portions of the city designed for primarily vehicular access and portions of the city designed for primarily pedestrian access.

F. These regulations do not regulate every form and instance of visual speech that may be displayed anywhere within the jurisdictional limits of the city. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.

G. These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

§4.6.2. Permit required

Except as otherwise expressly provided in §4.6.3 all persons erecting, changing, installing or otherwise placing signs must first obtain a sign permit in accordance with the procedures of §6.9. The zoning administrator shall refuse to issue sign permit(s) to any applicant who refuses to pay costs assessed for the removal of existing signs not in compliance with the requirements of §4.6.

§4.6.3. Signs allowed without a permit

Unless otherwise specified, permits are not required for the following types of signs, but such signs are required to meet all other applicable requirements of this §4.6 and chapter:

A. Indoor signs, other than window signs;

B. Street address signs, a maximum of one such sign without commercial information or logo per street address; notwithstanding other provisions to the contrary, such signs need not comply with setback requirements; and provided further that in residential districts, such signs shall be maximum of two square feet in area;

C. "Open" signs, including externally or internally illuminated signs, or neon signs (a type of window sign) up to two square feet in area, one per entrance, in all nonresidential districts subject to other applicable requirements;

D. Product dispensers and point-of-purchase displays;

E. Religious symbols displayed for noncommercial purposes;

F. Seasonal displays and decoration not advertising a product, service or entertainment; displayed for a period not exceeding 45 consecutive days; however, any nonresidential district display containing inflatable items shall be considered a moving sign and is therefore prohibited (see §4.6.4.B.1);

G. Signs and notices posted by or under the direction of an official of the government of the United States, the state or the city in the performance of his official duties;

H. Traffic control signs;

I. Window shades, provided no words or graphics are on the shade; and

J. Changes to the text only of a previously approved sign, provided the change does not violate or result in a violation of other provisions of this chapter.

§4.6.4. Prohibited signs

A. General

Signs with the following general characteristics are prohibited in the city of Fairfax:

1. Signs located in a manner that would constitute a hazard to the public health, safety and welfare;

2. Signs imitating or closely resembling official traffic or government signs or signals, except for traffic control signs on private streets;

3. Signs displaying flashing or intermittent lights or lights of changing degrees of intensity, including signs utilizing electronic technology;

4. Portable spotlights or beacons used as advertising to draw attention to any use;

5. Signs painted on or attached to bike racks, bollards, hydrants, parking meters, public benches, refuse containers, sidewalks or walkways, street light poles, trees, utility poles and similar facilities;

6. Signs which display "obscene, indecent, or immoral matter"; and

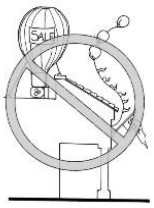
7. Any commercial display of vehicles with open hoods, trunks, or doors; or located on a building, ramp or other elevated structure.

B. Prohibited sign types

The following sign types are specifically prohibited.

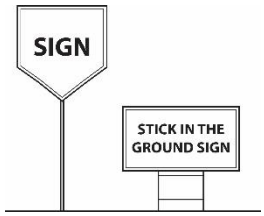
1. Moving signs and devices intended to attract attention

Moving signs or devices intended to attract attention, all or any part of which is intended to move, including but not limited to pennants, balloons, propellers, discs, flutter and feather flags, inflatables, wavy man advertising, and handhelds; provided, traditional barber pole signs may include the traditional spinning, red/white, internal element.



2. Billboards and other off-site signs

A sign that describes or calls attention to products, activities, or services that are not customarily engaged in, produced, or sold on the premises upon which the sign is located.

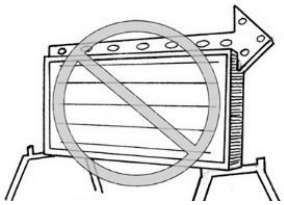


3. Pole (or pylon) and stick in the ground signs

A sign erected on a vertical framework of one or more uprights, supported by the ground, except as permitted by §4.6.12.

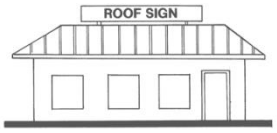
4. Portable signs

Any sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels, except for sandwich board signs as permitted by §4.6.11.



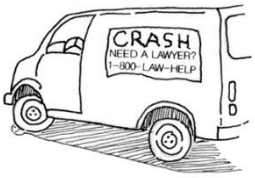
5. Roof signs

A sign or signs erected, constructed, or maintained above or on any part of the roof of the building, except as specifically allowed for wall signs.



6. Signs on vehicles and trailers

Signs attached to, painted on, or displayed on vehicles and trailers conspicuously parked in places visible from public rights-of-way. This prohibition does not apply to commercial vehicles parked at the business establishment for which the primary use of the vehicle is delivery, service, or passenger transport.

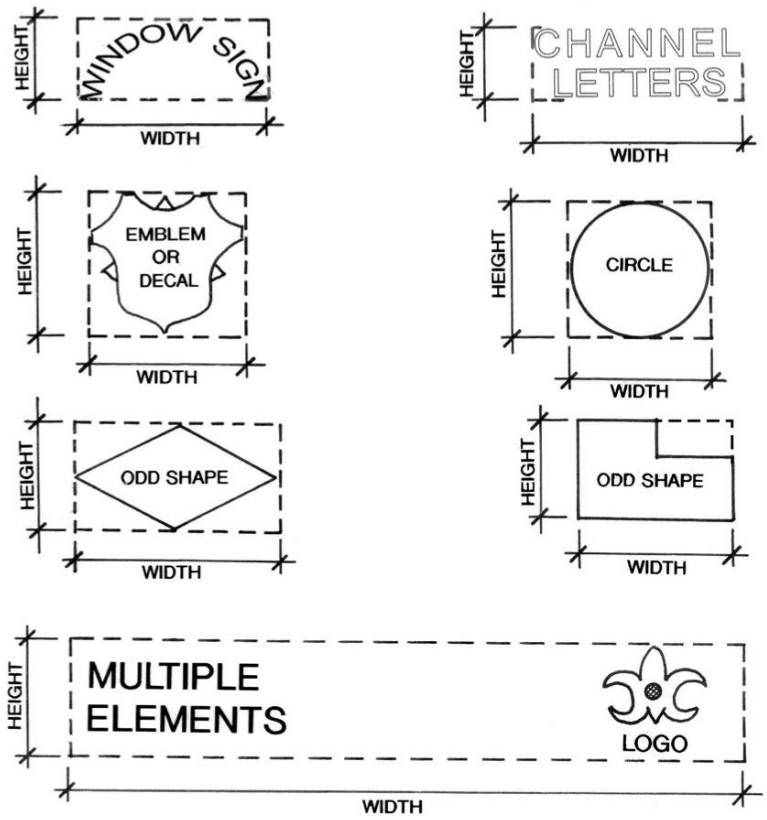


§4.6.5. General sign regulations

A. Computation of sign area

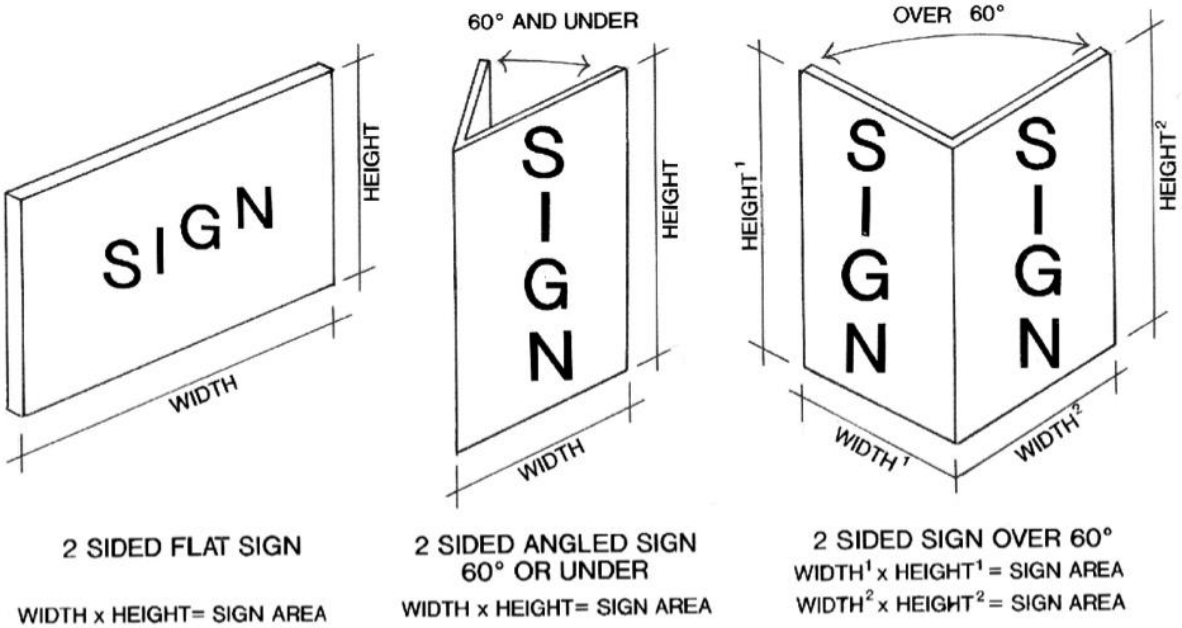
1. Individual signs

The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest, horizontal rectangle, as shown below, that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, base, bracing or fence or wall when such fence or wall otherwise meets the regulations of this chapter and is clearly incidental to the display itself. Unless the zoning administrator determines that it is not a single sign, all pieces of information or other graphic representations on that wall shall be measured as though part of one sign, encompassed within one such rectangle, which may not exceed the maximum permitted sign area.



2. Multi-faced signs

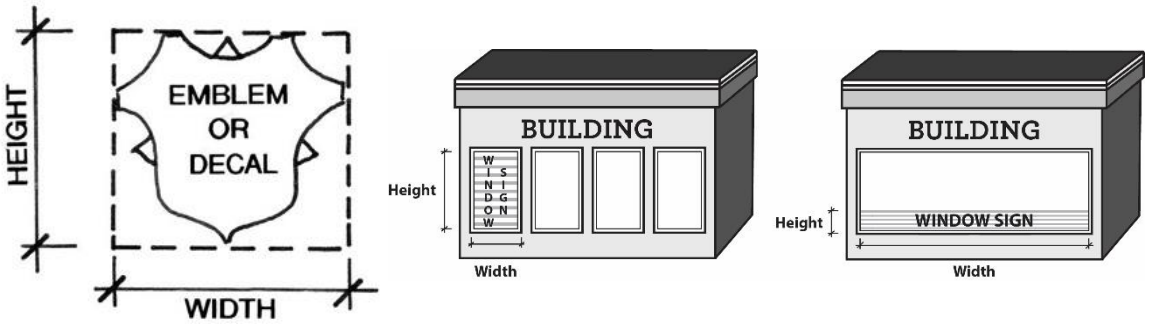
(a) Where the sign faces of a double-faced sign are parallel or the interior angle formed by the faces is 60 degrees or under, only one display face shall be measured in computing sign area. If the two faces of a double-faced sign are of unequal area, the area of the sign shall be the area of the larger face. In all other cases, the areas of all faces of a multi-faced sign shall be added together to compute the area of the sign.



(b) Sign area of multi-faced signs is calculated based on the principle that all sign elements that can be seen at one time or from one vantage point should be considered in measuring that side of the sign.

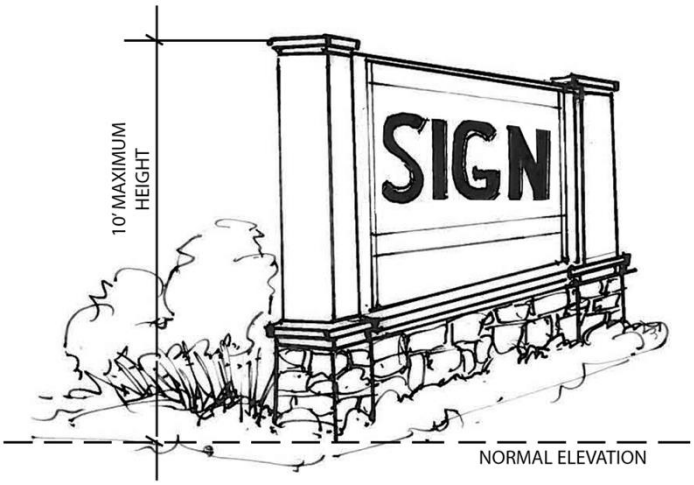
3. Other signs

The area of any other sign is measured by finding the area of the minimum imaginary or actual rectangle or square that fully encloses all extremities of one side of the sign, exclusive of its supports.



B. Measurement of sign height

The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of: existing grade prior to construction; or newly established grade after construction, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating the sign. In cases where the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the site, whichever is lower.



C. Illumination

Unless otherwise specified in §4.6, signs may be illuminated from within or from an external source, as follows:

1. Monument signs in residential districts or within 100 feet of and visible from a residential district shall be illuminated by external white light only. All other signs within 100 feet of a residential district shall not be illuminated.
2. No sign greater than ten feet in height that is located within 200 feet of and visible from any residential district shall be internally illuminated between the hours of 10:00pm and 6:00am.
3. Sign illumination shall not cause glare onto any building or land, or interfere with pedestrian, vehicular or bicycle traffic safety.
4. Except as specified for seasonal displays (§4.6.3.F) and "open" signs (§4.6.3.C), all external and internal lighting, including illuminated tubing, exposed bulbs, strings of lights and other lights sources, shall be directed toward a sign face and shielded from direct view.
5. Signs shall not be illuminated by a string of lights placed around the sign.

D. Design, construction and maintenance

1. All signs shall be constructed and mounted in compliance with the building code.
2. Signs shall be constructed of permanent materials and permanently affixed to the ground or building, or fence or wall; provided that this provision shall not apply to temporary signs (§4.6.12).

3. All signs and components thereof shall be maintained in good repair and in a safe, neat and clean condition.

4. The building official may cause to have removed or repaired immediately without written notice any sign which, in his opinion, has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such emergency removal or repair shall be at the expense of the owner or lessee.

5. The owner of any advertising sign located on commercial property where the use or business has ceased operating shall, within 60 days of the cessation of use or business operation, replace the sign face with a blank face until such time as a use or business has resumed operating on the property.

E. Sign condition, safety hazard and nuisance abatement

1. Any sign which becomes a safety hazard or which is not kept in a reasonably good state of repair shall be put in a safe and good state of repair within 30 days of a written notice to the owner and permit holder.

2. Any sign which constitutes a nuisance may be abated by the city under the requirements of Virginia Code §§ 15.2-900, 15.2-906, and/or 15.2-1115.

F. Nonconforming signs

See §7.5.3.

§4.6.6. Maximum aggregate sign area (building-mounted signs)

A. Maximum allowable aggregate sign area for building-mounted signs (awning or canopy signs, hanging signs; projecting signs; and wall signs) or a combination of building-mounted signs per building facade shall be 2.0 square feet per linear foot of building frontage; provided all allowable building-mounted signage related to or attributed to any given facade shall be used only on said facade. See also §1.5.10.A.

B. This provision shall not apply in the historic overlay districts of §3.7.2.

C. Individual tenants within such building(s) shall be allocated building-mounted signage as determined by the property owner.

§4.6.8. Signs allowed by district

Sign types shall be allowed as specified in the table below.

A. Overlay districts

Signs in overlay districts shall be allowed based on the underlying general use district, except as modified by the specific regulations of the applicable overlay district (§3.7).

B. Planned districts

Signs in planned districts shall be allowed as specified in the respective planned district (§3.8).

C. General use districts

Signs in general use districts shall be allowed by district in accordance with the table below.

KEY:

A = signs or other devices allowed without a sign permit

P = signs permitted only after issuance of a sign permit (See §6.9 for more information)

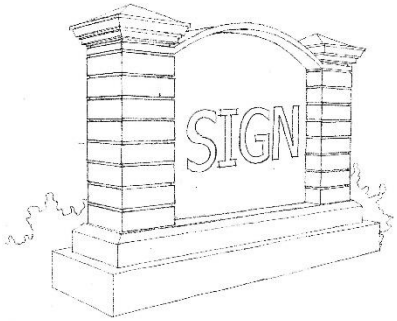
blank box = sign type prohibited in the respective district

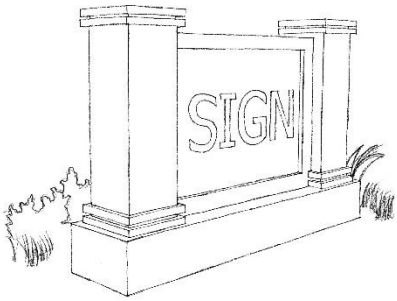
Sign Types	Residential Districts						Nonresidential Districts							Standards
	RL	RM	RH	RT-6	RT	RMF	CL	CO	CR	CU	CG	IL	IH	
Ground-mounted Signs														
Monument	P	P	P	P	P	P	P	P	P	P	P	P	P	§4.6.9
Building-mounted														
Awning or canopy							P	P	P	P	P	P	P	§4.6.10.A
Hanging							P	P	P	P	P	P	P	§4.6.10.B
Projecting							P	P	P	P	P	P	P	§4.6.10.C
Wall						P	P	P	P	P	P	P	P	§4.6.10.D
Special Signs														
Changeable copy							P	P	P	P	P	P	P	§4.6.11.A
Crown							P	P	P	P	P	P	P	§4.6.11.B
Directional							P	P	P	P	P	P	P	§4.6.11.C
Directory							P	P	P	P	P	P	P	§4.6.11.D
Flags	A	A	A	A	A	A	A	A	A	A	A	A	A	§4.6.11.E
Hardship							P	P	P	P	P	P	P	§4.6.11.F
Historic marker	A	A	A	A	A	A	A	A	A	A	A	A	A	§4.6.11.G
Marquee									P	P	P			§4.6.11.H
Window							P	P	P	P	P	P	P	§4.6.11.I
Sandwich board							P	P	P	P	P	P	P	§4.6.11.J
Temporary Signs														
Announcement or promotional							P	P	P	P	P	P	P	§4.6.12.B
Construction	P	P	P	P	P	P	P	P	P	P	P	P	P	§4.6.12.C
Political and	P	P	P	P	P	P	P	P	P	P	P	P	P	§4.6.12.D
Real estate	P	P	P	P	P	P	P	P	P	P	P	P	P	§4.6.12.E
Seasonal product sales	A	A	A	A	A	A	A	A	A	A	A	A	A	§4.6.12.F
Special event	P	P	P	P	P	P	P	P	P	P	P	P	P	§4.6.12.G

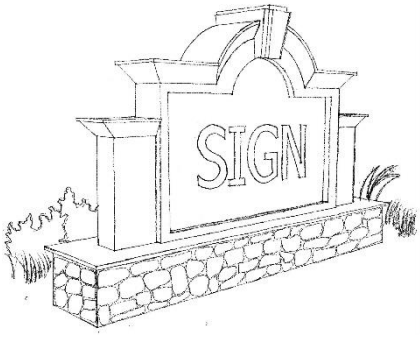
§4.6.9. Monument signs

A. Description

A on-premises ground-mounted sign used to identify nonresidential uses and subdivisions in residential districts, or nonresidential uses or developments in nonresidential districts, that is anchored and mounted on a dressed base or platform, which encloses the structural members that support the sign with brick, masonry, or painted metal with the bottom of the sign face at the base, at grade and not exceeding the specified overall height. Monument signs are the only ground-mounted signs allowed in the city of Fairfax.







B. Area

1. Monument signs shall be no more than:

(a) Commercial districts: 1.8 square feet for each linear foot of street frontage (as defined in Article 9), or a maximum of 120 square feet, whichever is less.

(b) Industrial districts: 1.2 square feet for each linear foot of street frontage, or a maximum of 100 square feet, whichever is less.

(c) Residential districts: 0.5 square foot for each linear foot of street frontage or a maximum of 50 square feet.

2. Any portion of a sign base or platform that is designed or intended to inform, persuade, advertise or visually attract attention shall be considered part of the sign.

C. Height

Height of monument signs, including the platform and base, shall not exceed 10 feet.

D. Number

One per street frontage.

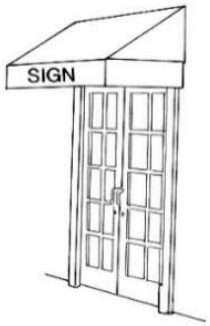
E. Location

1. Monument signs shall be permitted only on sites with at least 100 feet of street frontage.

2. Such signs shall be setback at least 10 feet from all property lines.

§4.6.10. Building-mounted signs

A. Awning or canopy signs



1. Description

An on-premises sign attached flat to an awning or canopy.

2. Area

Awning or canopy signs shall be no more than 15 square feet.

3. Illumination

Signs may be illuminated.

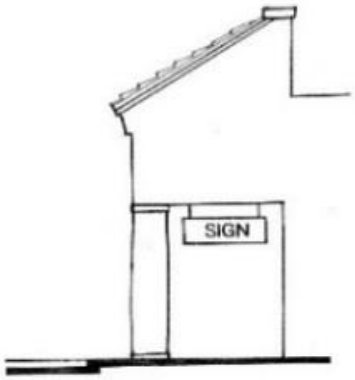
4. Miscellaneous

Signs shall not extend outside the overall length or width of an awning or canopy, or extend above the height of the building wall to which the awning or canopy is attached.

B. Hanging signs

1. Description

An on-premises sign that is suspended from the underside of a horizontal plane surface and is supported by such surface.



2. Area

Hanging signs shall be no more than eight square feet.

3. Illumination

Hanging signs may be illuminated only with external lighting.

4. Location

Comply with building setback requirements for the underlying district.

5. Number

(a) No more than one hanging sign per entrance.

(b) The sign may have copy on both sides.

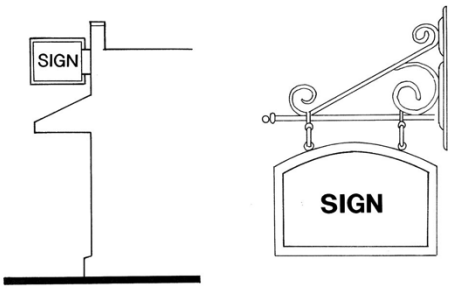
6. Height

Hanging signs shall maintain a vertical clearance over a sidewalk of at least seven feet, six inches, and shall be no higher than 12 feet over the sidewalk.

C. Projecting signs

1. Description

An on-premises sign attached directly to a supporting building wall, and intersecting the building wall at a right angle. A projecting sign typically extends more than 12 inches from the building wall, and may be two or three-dimensional.



2. Area

Projecting signs shall be no more than 40 square feet.

3. Height

(a) Projecting signs shall maintain a vertical clearance over a sidewalk of at least seven feet, six inches.

(b) Such signs shall be no higher than the roof line of a building.

4. Illumination

Projecting signs may be illuminated only with external lighting.

5. Location

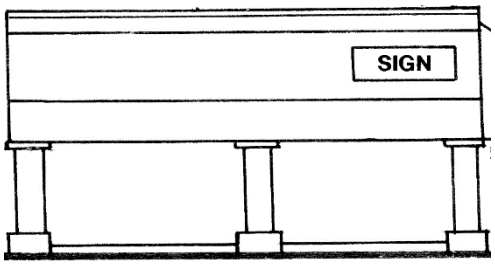
(a) Projecting signs shall not project more than four feet or one-third the width of the sidewalk, whichever is less, from the building face to which they are attached.

(b) Such signs shall comply with applicable building setback requirements.

D. Wall signs

1. Description

An on-premises sign that is painted on or attached directly to the surface of a wall of a multifamily building or a nonresidential use. For purposes of these regulations, fuel station canopy signs shall be considered wall signs.



2. Area

Wall signs shall be no more than 2.0 square feet in area per linear foot of building frontage.

3. Height

(a) No portion of a wall sign may extend above the roof line of a building, including that of gas station canopy.

(b) No portion of a wall sign may extend above top of a building.

(c) No wall sign may extend above the lower eave line of a building with a flat, pitched or a gambrel roof.

4. Location

(a) Wall signs shall not extend more than 12 inches from the building face to which they are attached.

(b) Wall signs shall not extend beyond the perimeter of any building edge.

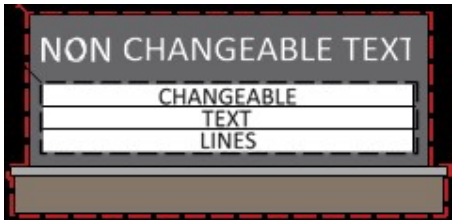
(c) Wall signs may be located on a parapet that extends no more than five feet above the lowest eave of the roof.

§4.6.11. Special signs

A. Changeable copy signs

1. Description

Any on-premises sign that allows the copy to change. These signs may be lighted or unlighted, with detachable or fixed-in-place, letters and figures. Other than sandwich board signs, only signs that are permanently affixed to the ground or a building may be changeable copy signs.



2. Location

Changeable copy signs may be included as a part of an otherwise permitted monument sign in any nonresidential district or as permitted subject to the provisions of §3.5.2.B.4, §3.5.2.G, §3.5.2.H.4, or §3.5.2.I.4, provided the sign otherwise complies with all requirements for monument signs. (See also §4.6.9)

3. Text

(a) Up to 60 percent of a changeable copy sign's sign area may be changeable copy.

(b) No changeable copy sign may contain more than three horizontal rows of information.

4. Electronic technology

Signs utilizing electronic technology shall be prohibited.

B. Crown signs

1. Description

An on-premises type of wall sign located adjacent to and below the roof line on a building at least 50 feet or five floors in height.

2. Applicability

In addition to otherwise permitted wall signs, buildings at least 50 feet in height may contain a crown sign.

3. Area

Crown signs shall be no more than 200 square feet, or five square feet per building side for each foot of building height over 50 feet tall, whichever is less.

4. Location

The sign shall be located on a building wall adjacent to and below the roof line and shall not extend below the top window line of the upper floor of the building.

5. Number

Only one crown sign shall be located on any one side of a building.

6. Illumination

All sign illumination shall be internal. (See also §4.6.5.C)

7. Changeable copy

Changeable copy shall be prohibited.

C. Directional signs

1. Description

On-premises building-mounted or ground-mounted informational signs used for the convenience and necessity of the public, including providing directions and without commercial information or logos.

2. Number

Up to two directional signs per street frontage shall be permitted within the required setback. Up to 32 square feet of additional directional signage shall be permitted on the remainder of the site.

3. Area

Directional signs shall not exceed four square feet in area and no more than six feet height for building-mounted signs, or three square feet in area and three feet in height for ground-mounted signs.

4. Location

Located on the subject land, building or premises at least 10 feet from all property lines, or on a fence or wall.

D. Directory signs

1. Description

An on-premises map and/or sign at a multi-tenant building or project that identifies uses or activities conducted on-site, or a sign located on the wall of a building near an entrance to the building for the purpose of identifying the names and locations of uses within the building.

2. Number

All attached multitenant office or industrial buildings shall be permitted one wall-mounted directory sign not to exceed four square feet in area for the purpose of identifying the names and locations of uses within the building.

3. Area

Directory signs shall not exceed 20 square feet in area for the purpose of identifying the names and locations of uses or activities within the building.

4. Location

All attached multi-tenant office or industrial buildings shall be permitted one wall directory sign not to exceed four square feet in area.

E. Flags

1. Description

On-premises flags of the United States, other governmental entities, religious institutions, groups, civic organizations, service clubs, or any commercial and noncommercial entities.

2. Number

There shall be a maximum of three flags per site.

3. Area

Flags shall be no more than 40 square feet each.

4. Location

(a) The flag may be on a freestanding pole or anchored to the side of a building; anchoring devices shall not project more than five feet from the surface of the wall.

(b) Each flag and pole shall conform to the required yard (setback) restrictions of the district in which they are located.

5. Height

Each flag and pole shall conform to the height restrictions of the district in which they are located.

6. Illumination

Flags may be illuminated. (See also §4.6.5.C)

F. Hardship signs

1. Description

An on-premises special sign type as determined by the zoning administrator that may only be allowed in unique, hardship circumstances, where the only public entrance is on a building face not readily visible to the public right-of-way and the zoning administrator makes a positive finding with respect of each of the following:

(a) That the strict application of this chapter would produce undue hardship;

(b) That such hardship is not self-imposed;

(c) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

(d) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and

(e) That the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably

practicable the formulation of a general regulation to be adopted as an amendment to this chapter.

2. Area

The area of a hardship signs shall be no more than 2.0 square feet in per linear foot of building frontage.

3. Number

No more than one hardship sign shall be allowed per address.

4. Height

No portion of a hardship sign may extend above the roof line of the building containing the principal use.

5. Location

(a) Hardship signs may be attached to an accessory building or structure, other than a pylon.

(b) Hardship signs shall not extend beyond the perimeter of any building edge.

(c) Hardship signs may be located on a parapet that extends no more than five feet above the lowest eave of the roof.

G. Historic marker signs

1. Description

Historic markers approved by the Virginia Department of Historic Resources or the zoning administrator.

2. Area

Historic marker signs shall not be more than 32 square feet, provided that signs are attached to buildings shall be no more than 10 square feet.

3. Materials

Such signs or markers shall be made of cast metal, cut masonry, painted wood or metal.

4. Illumination

Historic markers shall be externally illuminated only. (See also §4.6.5.C)

H. Marquee

1. Description

On-premises signs or message areas on a permanent roof-like structure over an entrance of a theater (marquee) or vertically-oriented and projecting from the wall of a theater.

2. Area

Marque signs shall be no more than 300 square feet, and may extend the full length of the marquee.

3. Number

Only one marquee sign shall be allowed per building.

4. Height

(a) The marquee shall have a vertical clearance over a sidewalk of at least seven feet, six inches.

(b) The sign may extend above the top of the marquee, provided the vertical dimension of any marquee structure over an entrance, including both marquee and sign, shall not exceed five feet.

5. Changeable copy

Marque signs may have changeable copy on each face.

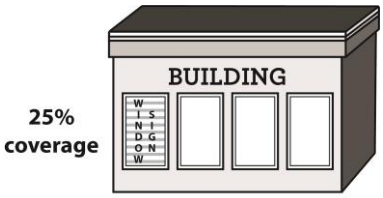
6. Illumination

If such signs are illuminated, the illumination shall be by internal lighting only. Exposed light sources shall not be used.

I. Window signs

1. Description

Any on-premises sign, picture, symbol, or combination thereof, designed to communicate information about an activity, business, commodity or service placed inside a window or upon the windowpanes or glass and is intended to be visible from the exterior of the window.



2. Number

There shall be no maximum number of permanent signs per window, provided the 25 percent coverage requirement, below, is maintained.

3. Area

Window signs may cover no more than 25 percent of the gross, transparent glass area on the ground floor façade of a building. For purposes of this provision, each building façade shall be considered separately.

4. Location

Window signs shall be located on ground floor windows only.

J. Sandwich board signs

1. Description

On-premises movable sign constructed of durable materials, which has two flat faces, with or without changeable copy.

2. Area

Not to exceed six square feet per face.

3. Number

One per business or use.

4. Location

Located adjacent to a principal building wall and extending to a distance no greater than 10 feet from the wall. Such display shall not be permitted to: block entrances or exits, impair the ability of pedestrians to use sidewalks, or be located within landscape areas or parking areas.

5. Duration

Must be removed when the store is closed.

§4.6.12. Temporary signs

A. General description

On-premises signs constructed of cloth, fabric, or other lightweight temporary material with or without a structural frame intended for a limited period of display.

B. Announcement or promotional signs

1. Description

Signs making any commercial or noncommercial announcements or promoting something, including but not limited to, advertising the opening of commercial or noncommercial establishments, coming soon, going out-of-business, store closing, special sales events or products, and similar signs, including banners.

2. Area

Not to exceed 32 square feet.

3. Duration

Permitted for a maximum of 30 days per event, and up to 90 days per year.

4. Location

Such signs shall be located where permanent building-mounted or window signs may be located or on the subject land at least 10 feet from all property lines where no building exists.

C. Construction signs

On premises signs identifying architects, engineers, contractors and other individuals or firms involved with construction on the premises, the name of the building or project, the intended purpose of the building, and/or the expected completion date.

1. Area

Not to exceed 10 square feet in residential districts, 32 square feet in nonresidential districts.

2. Number

(a) A maximum total of two such signs per development.

(b) No individual residential unit may have more than one such sign.

3. Height

Not to exceed five feet in height.

4. Location

Located on the subject land or premises advertised at least 10 feet from all property lines, or on a fence (permanent or temporary) or wall.

5. Duration

Must be removed prior to the issuance of a final zoning permit.

D. Political and noncommercial message signs

1. Description

On-premises signs expressing support for a candidate for public office or other position regarding a public figure or any noncommercial message.

2. Area

Not to exceed 10 square feet in residential districts, 32 square feet in nonresidential districts.

3. Number

Limited to a maximum of one sign per street frontage.

4. Height

Not to exceed five feet in height.

5. Location

Located on the subject land, building or premises advertised at least 10 feet from all property lines, or on a fence (permanent or temporary) or wall.

6. Duration

Placed for a maximum of 90 days.

E. Real estate signs

1. Description

On-premises signs advertising the premises for sale, rent or lease.

2. Area

Not to exceed 10 square feet in residential districts, 32 square feet in nonresidential districts.

3. Number

Limited to a maximum of one sign per street frontage.

4. Height

Not to exceed five feet in height.

5. Location

Located on the subject land, building or premises advertised at least 10 feet from all property lines, or on a fence (permanent or temporary) or wall.

6. Duration

Must be removed upon settlement or closing of sale, or leasing of 75 percent of leasable floor area.

F. Seasonal product sales signs

1. Description

On-premises signs displayed in conjunction with a seasonal stand or vendor location for seasonal sales, of produce, fireworks, Christmas trees and similar products.

2. Area

Not to exceed 32 square feet.

3. Location

Located must not impede pedestrian flow.

4. Height

Not to exceed five feet in height.

5. Duration

Such signs shall have the same duration as the associated temporary use.

G. Special event signs

1. Description

On-premises signs advertising special events sponsored or co-sponsored by the city, community group or any other nonprofit organization, or other entities allowed to conduct events under §3.5.6.C.1(a) and §3.5.6.J, including banners.

2. Area

Not to exceed 32 square feet.

3. **Location**

   Such signs shall be located where permanent building-mounted or window signs may be located or on the subject land at least 10 feet from all property lines where no building exists.

4. **Duration**

   Permitted for a maximum of 30 days per event, and up to 90 days per year.

§4.7. FENCES AND WALLS

§4.7.1. Materials and design

All fences and walls in nonresidential districts and all required fencing and walls in residential districts shall comply with the material and design requirements of §4.5.9.

§4.7.2. Nonresidential districts

A. IL and IH district

Except as otherwise specified, a fence or wall on any property in the nonresidential districts may be located as follows:

1. In any required front yard, a fence or wall not exceeding six feet in height is permitted.
2. In any side (street) yard, a fence or wall located between a front property line and the nearest wall of the principal structure shall not exceed six feet in height.
3. In any side (interior) or rear yard, a fence or wall not exceeding eight feet in height is permitted.

B. All other districts

Except as otherwise specified, a fence or wall on any property in the nonresidential districts may be located as follows:

1. In any required front yard, a fence or wall not exceeding four feet in height is permitted.
2. In any side (street) yard, a fence or wall located between a right-of-way line and the nearest wall of the principal structure shall not exceed four feet in height.
3. In any side (interior) or rear yard, a fence or wall not exceeding seven feet in height is permitted.

§4.7.3. Residential districts

In residential districts, the following standards shall apply:

A. Location

Except as otherwise specified, a fence or wall on any property in the residential districts may be located as follows:

1. In any front yard, a fence or wall not exceeding four feet in height is permitted.
2. In any side or rear yard, a fence or wall not exceeding seven feet in height is permitted, except that in any side yard, a fence or wall located between a front property line and the nearest wall of the principal structure shall not exceed four feet in height.

3. On any corner lot, a fence or wall located between a right-of-way line and the nearest wall of the principal structure shall not exceed four feet in height, as measured parallel to the appurtenant property line.

4. The following regulations apply only to lots where the rear of the primary structure faces a right-of-way:

(a) For the purposes of §4.7, a lot where the rear of the primary structure faces a right-of-way is defined as a single-family residential lot in the RL, RM or RH district that has a primary structure, the rear wall of which parallels or nearly parallels a right-of-way. Such lots are deemed to contain primary front yards and secondary front yards for the purpose of defining areas for permitted fence or walls. These terms refer to the following:

(1) The primary front yard shall be the front yard of a lot meeting the definition of §4.7.3.A.4(a), above, that faces the primary structure's main entrance. On lots on which the primary front yard cannot be determined by the location of the primary structure's main entrance, the primary front yard shall be the yard that contains the main driveway serving the lot. A lot shall contain only one primary front yard.

(2) A secondary front yard shall be any front yard other than that meeting the criteria described above in §4.7.3.A.4(a)(1), above. A lot may contain one or more secondary front yards.

(b) A fence or wall not exceeding four feet in height is permitted in any yard, including any primary front yard or secondary front yard.

(c) A fence or wall not exceeding seven feet in height is permitted in any side or rear yard so long as the fence or wall is no closer to the primary front yard property line than the front wall of the principal structure.

(d) A fence or wall not exceeding seven feet in height is permitted in any secondary front yard.

(e) Illustrations of areas of maximum fence or wall height for interior lots, corner lots and lots where the rear of the primary structure faces a right-of-way are provided below:

Figure 1. Interior Lot Fencing Areas

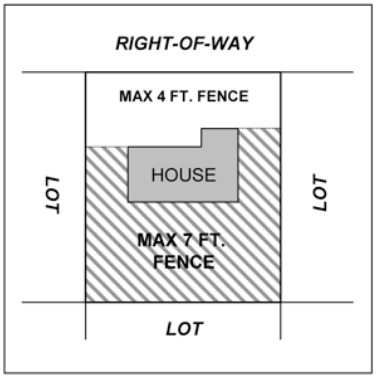


Figure 2. Corner Lot Fencing Areas

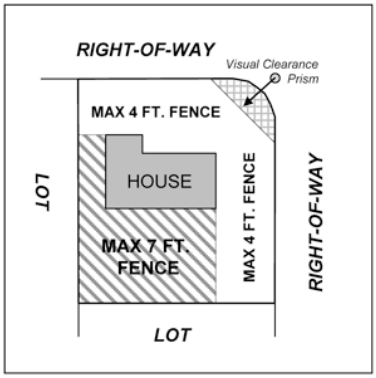


Figure 3. Diagonal House Fencing Areas

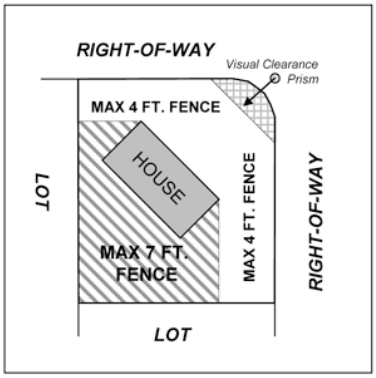


Figure 4. Triangle Lot Fencing Areas

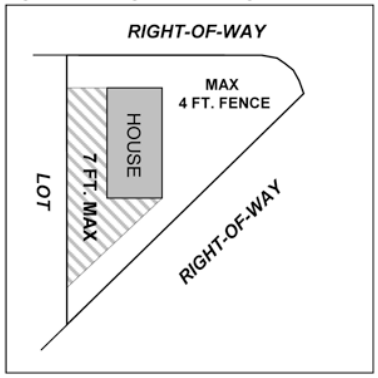
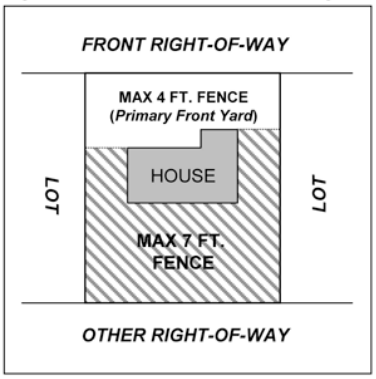


Figure 5. Lot with Rear of House Facing Street



5. For all fences or walls in the residential districts, the following standards shall apply:

(a) Where a fence or wall parallels or nearly parallels a street or right-of-way, the finished side of the fence or wall shall face outwards, towards the street or right-of-way.

(b) No barbed wire, electrical security elements (other than underground electrical security elements), or other hazardous materials shall be used as part of a fence or wall.

(c) For purposes of §4.7.3, all yards on corner lots located between a right-of-way line and the nearest wall of the principal structure shall be considered front yards.

§4.7.4. Measurement

Fence or wall height shall be measured as stated in §1.5.11.E.

§4.7.5. Administration

A. The zoning administrator may approve a fence or wall that exceeds the maximum height requirement where a constructed or partially completed fence or wall does not comply with the provisions contained in §4.7, provided that the height increase does not exceed ten percent of the maximum permitted height, and further provided that such height increase shall not be detrimental to the use and enjoyment of other properties in the immediate vicinity.

B. Upon the issuance of written approval for an increase in the maximum height of a fence or wall in accordance with the provisions of §4.7, the same shall be deemed to be a lawful fence or wall.

C. Any fence or wall used in conjunction with a governmental use or required by local, state or federal law may exceed the height restrictions set forth in §4.7.

§4.7.6. Visual clearance

All fences and walls must comply with the visual clearance requirements set forth in §4.3.4.

§4.7.7. Special exceptions

The board of zoning appeals may modify the fence or wall height requirements, including alternative locations and designs, pursuant to §4.7 in accordance with the relevant provisions in §6.17.

A. Maximum height

In making a decision to modify maximum height provisions, the board shall consider the following:

1. Unusual site topography, and the relation of the proposed fence or wall to that topography;
2. Unusual lot configuration (e.g., placement of the house on the lot, heavy traffic volume, existence of a vacant lot);
3. The presence of neighboring properties that contain uses other than single-family residences; and
4. Fence or wall design (e.g., opacity, materials), and variations of fence or wall materials.

B. Limitations

1. The requirements of §4.7 shall not be deemed to prohibit any necessary retaining wall, terrace wall, or similar feature, nor to prohibit any safety railing installed adjacent to a retaining wall.
2. The requirements of §4.7 shall not be deemed to prohibit any fence or wall as required in City Code chapter 10, article IX, section 10-621, regarding required protective fencing surrounding swimming and wading pools. Further, the requirements of §4.7 shall not be deemed to prohibit any fence or wall immediately surrounding a tennis court.
3. The requirements of §4.7 shall not be deemed to prohibit any fence or wall as otherwise required fence or wall.
4. The requirements of §4.7 shall not apply to temporary security fences or walls erected on or around construction sites during such time a valid building permit is in effect.

§4.8. OUTDOOR LIGHTING

§4.8.1. Applicability

A. Unless specifically exempt, all existing and proposed development for which site plan approval is required (see §6.8) shall meet the provisions of §4.8.

B. Buildings and structures lawfully existing as of the effective date of this chapter, may be redeveloped, renovated or repaired without modifying outdoor lighting in conformance with §4.8, provided there is no increase in gross floor area in such building or structure or lot coverage on the site.

C. Where a building or structure existed as of the effective date of this chapter, and such building is enlarged in gross floor area or lot coverage on the site by 10 percent or 2,500 square feet, whichever is less, outdoor lighting as specified in §4.8 shall be provided.

§4.8.2. Prohibited lighting

A. The following are expressly prohibited:

1. Lasers;

2. Low-pressure sodium and mercury vapor light sources;

3. Searchlights and other high-intensity narrow-beam fixtures;

4. Light sources that exceed 200,000 lumens or intensity in any direction of 2,000,000 candelas or more; and

5. Strobe lights and blinking lights, excluding temporary holiday lighting as provided for in §4.8.3.

B. These provisions shall not be interpreted to prohibit equivalent Compact Fluorescent (CFL) lighting.

§4.8.3. Exempt lighting

The following luminaires and lighting systems are exempt from the regulations of this article:

A. Period luminaries and lighting;

B. Underwater lighting used for the illumination of swimming pools and fountains;

C. Temporary holiday lighting displayed for a period not exceeding 45 consecutive days;

D. Lighting required and regulated by the Federal Aviation Administration, or other authorized federal, state or local government agency;

E. Emergency lighting used by police, fire, or medical personnel, or at their direction;

F. All outdoor lighting fixtures producing light directly from the combustion of fossil fuels, such gas lighting;

G. Security lighting controlled and activated by a motion sensor device for a duration of 10 minutes or less; and

H. Luminaires with 1,000 or less initial lumen output.

§4.8.4. Design requirements

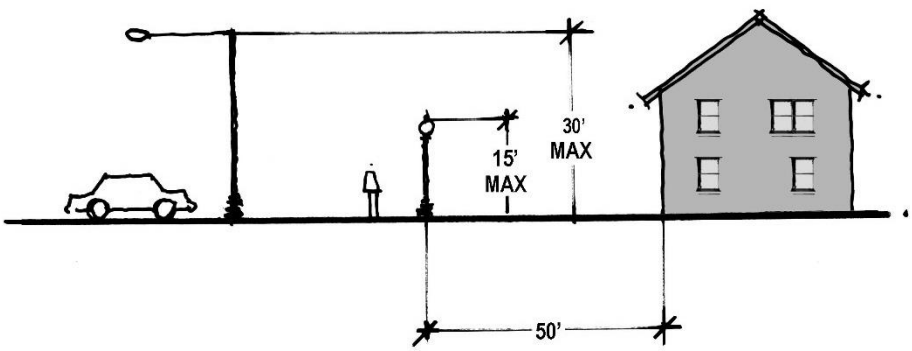
Outdoor lighting shall primarily be used to provide safety while secondarily accenting key architectural elements and to emphasize landscape features. Lighting fixtures shall be designed as integral design elements that complement the design of the project. This may be accomplished through style, material or color. All lighting fixtures designed or placed so as to illuminate any portion of a site shall meet the following requirements:

A. Fixtures (luminaires)

The light source shall be concealed and shall not be visible from any right-of-way or adjacent properties. In order to direct light downward and minimize the amount of light spillage into the night sky and onto adjacent properties, all lighting fixtures shall be full cutoff fixtures.

B. Fixture height

1. Lighting fixtures shall be a maximum of 30 feet in height within parking lots and shall be a maximum of 15 feet in height within residential districts and non-vehicular pedestrian areas.
2. All lighting fixtures located within 50 feet of any residential use or residential property boundary shall not exceed 15 feet in height.



C. Light source (lamp)

Only incandescent, LED, fluorescent, metal halide, or color corrected high-pressure sodium lighting sources may be used. The same light source type shall be used for the same or similar types of lighting on any one site throughout any development.

D. Mounting

Fixtures shall be mounted in such a manner that the cone of light is contained on-site and does not cross any property line. (See also §4.8.4.A, above)

E. Limit lighting to periods of activity

The use of sensor technologies, timers or other means to activate lighting during times when it will be needed may be required by the zoning administrator to conserve energy, provide safety and promote compatibility between different land uses.

§4.8.5. Specific lighting standards

A. Security lighting

1. Building-mounted security lighting fixtures such as wall packs shall not project above the fascia or roof line of the building and shall be shielded.
2. Security fixtures shall not be substituted for parking lot or walkway lighting and shall be restricted to loading, storage, service and similar locations.

B. Accent lighting

Only lighting used to accent architectural features, landscaping or art may be directed upward, provided that the fixture shall be located, aimed or shielded to minimize light spill into the night sky.

C. Canopy area lighting

All development that incorporates a canopy area over fuel stations, automated teller machines or similar installations shall use a recessed lens cover flush with the bottom surface of the canopy that provides a cutoff or shielded light distribution.

D. Entrances and exits in nonresidential, multifamily and mixed use buildings

All entrances and exits to buildings used for nonresidential purposes and open to the general public, along with all entrances and exits in nonresidential, multifamily, and mixed use buildings, shall be adequately lighted to ensure the safety of persons and the security of the building.

E. Parking lot lighting

All parking lots serving nonresidential and multifamily uses shall be required to provide lighting during nighttime hours of operation in accordance with the requirements of §4.8.

F. Illumination

1. Outdoor lighting fixtures must be located, aimed or shielded to minimize glare and stray light trespassing across lot lines and into the public right-of-way.
2. Maximum luminance levels shall not exceed 0.5 foot candles at the property boundary except as may be required herein.

§4.9. LARGE FORMAT RETAIL

§4.9.1. Purpose

The purpose of this section is to facilitate the creation of a convenient, attractive and harmonious community compatible with existing development through the careful integration of large format retail buildings.

§4.9.2. Applicability

This section shall apply to the construction or redevelopment of large format retail buildings with aggregate floor area of more than 30,000 square feet.

§4.9.3. Review procedure

Large format retail development shall be subject to a special use permit pursuant to the provisions of §6.7.

§4.10. OUTDOOR STORAGE AND DISPLAY

§4.10.1. Applicability

Regulations governing outdoor storage and display shall apply in all nonresidential districts. Any merchandise, material or equipment situated outdoors shall be subject to the requirements of §4.10. For the purpose of §4.10, outdoor storage and display shall be broken into three categories: outdoor display, limited outdoor storage and general outdoor storage.

§4.10.2. Outdoor display

A. Outdoor display is the display of products actively available for sale. Outdoor displays are only permitted in conjunction with an established business on the same lot and must be brought indoors when the associated business is closed.

B. Outdoor display shall be allowed adjacent to a principal building wall and extending to a distance no greater than 10 feet from the wall. Such display shall not be permitted to block windows, entrances or exits, and shall not impair the ability of pedestrians to use sidewalks.

C. Seasonal displays and decoration not advertising a product, service or entertainment; displayed for a period not exceeding 45 consecutive days shall be exempt from the provisions of §4.10.2.

§4.10.3. Outdoor storage

A. General

1. Outdoor storage is more intensive than outdoor display. Materials stored in outdoor storage are not normally brought indoors overnight.

2. Areas used for outdoor storage may be allowed following review and approval of a site plan illustrating the extent of the area proposed for outdoor storage.

B. Limited outdoor storage

1. Limited outdoor storage includes garden supplies, building supplies, plants, play equipment and other similar uses.

2. Limited outdoor storage shall comply with the following standards:

(a) No outdoor storage shall be allowed in required front or side yards or within 15 feet of any public right-of-way, whichever is greater.

(b) Outdoor storage may be located to the side of a building, provided it is not located within the required side yard (setback).

(c) No outdoor storage shall be permitted within required parking lots or spaces.

(d) Any rear yard may be used for outdoor storage purposes.

C. General outdoor storage

1. General outdoor storage includes material stored in boxes, crates, storage pods or other shipping containers; lumber yards; pipe; wrecking, junk or salvage yards; and other similar uses.

2. In addition to the requirements of §4.10.3.B, above, areas used for general outdoor storage shall be screened from view from the public right-of-way, public vehicular use areas, or adjacent residential development (if any) pursuant to §4.5.8.D.

§4.11. UNDERGROUND UTILITIES

A. Unless specifically exempt, all existing and proposed development for which site plan approval is required (see §6.8) shall meet the provisions of §4.11.

B. All on-site utilities shall be installed underground at the applicant's expense in accordance with city and applicable utility company standards; provided that temporary overhead facilities required for construction purposes shall be permitted.

C. When the proposed development will result in moving or relocating existing overhead utilities located in adjoining rights-of-way, the applicant shall be responsible for placing such utilities underground and dedicating any additional right-of-way or easement that is necessary. Equipment such as electric distribution transformers, switch gear, meter pedestals and telephone pedestals which is normally installed above ground in accordance with generally accepted utility practice for underground distribution may be so installed.

D. Special exceptions to the above requirement shall only be granted by the city council pursuant to the procedures and limitations of §6.17.

§4.12. REFUSE DISPOSAL

If dumpsters are used for refuse disposal, then each dumpster shall be located on a concrete pad with minimum dimensions of 20 feet by 12 feet and screened in accordance with the requirements contained in §4.5. Refuse disposal areas shall be located so that they are accessible by a disposal truck without impeding traffic or encroaching upon required parking spaces;

§4.13. COMMON INTEREST COMMUNITY ASSOCIATIONS

§4.13.1. Establishment

A. If any common interest community association, including condominium unit owners' association, residential or nonresidential property owners' association, real estate cooperative association, or similar legal entity (owners' association) is to be responsible for the maintenance and control of any recreation and open area, private streets, stormwater facilities, or other facilities (common area and facilities) associated with a development, it must be established so that it has clear legal responsibility and authority to maintain and exercise control over the common area and facilities, including the obligation to maintain such common area and facilities and the power to compel contributions from property owners to cover their proportionate share of the costs associated with the maintenance of the common area and facilities.

B. Such association must be established before any dwelling unit or lot in the subdivision or development is sold or any building in the development is occupied.

C. Authority and control over the association must be transferred from the developer to the association at such time as more than 60 percent, or as provided by law, of the dwelling units or lots in the development have been sold, or as otherwise approved by the city council.

§4.13.2. Documentation

A. Membership in the association shall be mandatory and automatic for all owners of the development and their successors.

B. Documents providing for the establishment of an association or similar legal entity in accordance with §4.13 must be submitted to, and approved by, the zoning administrator and the city attorney before any plat for the development is recorded.

1. The zoning administrator's review is limited to ensuring that the association or similar legal entity is established so that it has clear legal authority to maintain and exercise control over the common area and facilities, including the power to compel contributions from property owners to cover their proportionate share of the costs associated with the maintenance of the common area and facilities.
2. The purpose of the city attorney's review is to ensure that the city has all necessary authority to remedy a default in the maintenance obligations of the association and to recover the costs of such remedy from the association or its members.

§4.14. OPERATIONAL PERFORMANCE STANDARDS

§4.14.1. Purpose

The operational performance standards of §4.14 are intended to protect the health, safety and welfare of the city by regulating nuisances associated with land uses.

§4.14.2. Applicability

The operational performance standards of §4.14 shall apply to all uses, buildings and structures within the city unless otherwise specifically indicated.

§4.14.3. Exemptions

The following are exempt from the operational performance standards of §4.14:

A. Temporary construction, excavation and grading associated with development for which applicable permits have been issued and with the installation of streets or utilities; and

B. Demolition activities that are necessary and incidental to permitted development.

§4.14.4. Noise

A. Declaration of policy

It shall be the public policy of the city to provide reasonable restrictions on noise for the purpose of promoting the health, safety and welfare of its citizens. Such noise control policy shall be conducted, to the extent possible, in cooperation and coordination with similar programs in other local jurisdictions and in concert with state and federal governments and other regional agencies.

B. Noise measurement procedure

Any noise measurement made pursuant to this article shall be accomplished either utilizing the combination of a sound pressure meter and an octave band analyzer or utilizing an A-weighted sound pressure meter. The sound pressure meter shall be manufactured to meet ANSI S1.4-1971 type 2 standard and to read in decibels, A-weighted. Measurement of noise shall be taken at any property line, or within any other property affected by the noise, at a point likely to receive the highest sound pressure level. Measurement shall be taken directing the instrument's microphone toward the noise generator and toward any surface likely to reflect the noise from the noise generator.

C. Maximum permissible noise levels

1. No person shall operate, and no property owner or business owner shall permit to be operated, any noise source in such a manner as to create a sound pressure level that exceeds the limits set forth in the table following, titled "Maximum Sound Pressure

Levels." The noise limits for each parcel of land shall depend upon the zoning district within which the parcel is located. All activities on parcels in residential, commercial or industrial districts shall operate within the residential, commercial or industrial limits set forth in the table. All mixed use zones shall meet the most restrictive standard among those set forth in the table for the uses for which certificates of occupancy apply on the parcel at the time of measurement.

MAXIMUM PERMISSIBLE NOISE LEVELS			
ZONING DISTRICTS	MAXIMUM DBA	OCTAVE BAND LIMIT CENTER FREQUENCY HERTZ—(HZ)	DB
Residential	55	31.5	70
		63	69
		125	64
		250	59
		500	53
		1,000	47
		2,000	42
		4,000	38
		8,000	35
Commercial	60	31.5	75
		63	74
		125	69
		250	64
		500	58
		1,000	52
		2,000	47
		4,000	43
		8,000	40
Industrial	72	31.5	85
		63	84
		125	79
		250	74
		500	68
		1,000	62
		2,000	57
		4,000	53
		8,000	50

2. The city council may upon finding the necessity to further restrict noise in the interest of public health, safety and welfare, designate a defined geographic area within the city as a "quiet zone." The designation of each such area shall include a description of the subject area, the reasons for its designation, and a prescribed limit of sound pressure to apply within the zone.

D. Exemptions

1. Any person responsible for any noise source may apply to the city manager for an exemption or partial exemption from the provisions of §4.14. The application shall be accompanied by such information and data as the city manager shall require. The city manager may grant such exemption or partial exemption if he finds that:

(a) The detriment to the community due to the noise is outweighed by the benefit to the public interest during the period of the exemption or partial exemption; and

(b) Strict compliance with the provisions of §4.14 would produce serious hardship. Any such exemption or partial exemption shall be revocable at the discretion of

the city manager. A copy of any exemption or partial exemption granted shall be conspicuously posted at the source of the noise.

2. The following uses and activities shall be exempt from the provisions of §4.14:

(a) Emergency generators for periods of power outage;

(b) Noises from any emergency vehicle, when responding to an emergency, or any alarm, siren, bell or whistle related to, used for, or connected with any emergency machinery, vehicle, work or alarm, provided the sounding of any alarm, siren, bell or whistle on or near any building or motor vehicle shall terminate immediately upon the ending of any such emergency;

(c) Work necessary to repair or restore services provided by public service companies or the city, including but not limited to water, gas, sewer, telephone and electric companies;

(d) Any activity to the extent regulation thereof has been preempted by state or federal law.

(e) Noncommercial public speaking and public assembly activities conducted on any public space;

(f) Outdoor gatherings, shows and sporting and other entertainment events between the hours of 7:00am and 10:00pm provided that these events are conducted in strict compliance with a permit issued by the city or are part of a school sponsored entertainment or sporting event;

(g) Any noise conducted in connection with a special use permit issued by the city and displayed at the place of noise generation, provided that such noise does not exceed the limits established therein;

(h) Any noise arising from lawn mowing or use of any electrical, hand or gas-powered garden equipment associated with gardening or grounds maintenance activities, provided that no such equipment shall be utilized except between the hours of 8:00am and 8:00pm; and

(i) Any city-sponsored or -partnered festival or event.

§4.14.5. Vibration

All uses shall be operated so that ground vibration is not perceptible outside the lot lines of the site on which the use is located.

§4.14.6. Radioactivity

There shall be no radioactive emission that would be dangerous to health.

§4.14.7. Electrical interference

There shall be no electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.

§4.14.8. Liquid or solid wastes

There shall be no discharge of any liquid or solid wastes into any stream, except as authorized by a public agency.

§4.14.9. Glare and heat

There shall be no direct or reflected glare, whether from floodlights or from high-temperature processes (for example, combustion or welding) so as to be visible from within any residential district. There shall be no discharge of heat or heated air from any source so as to be detectable beyond the lot line.

§4.15. FLOODPLAIN REGULATIONS

§4.15.1. Authority

These regulations are adopted pursuant to the authority granted to localities by Code of Virginia, §15.2 - 2280.

§4.15.2. Purpose

The purpose of these provisions is to prevent: the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;

C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or floodproofed against flooding and flood damage; and

D. Protecting individuals from buying land and structures that are unsuited for intended purposes because of flood hazards.

§4.15.3. General Provisions

A. Applicability

These regulations shall apply to all privately and publicly owned lands within the city and identified as areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the city by the Federal Emergency Management Agency (FEMA)

B. Compliance and liability

1. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of these regulations and any other applicable ordinances and regulations, which apply to uses within the city.

2. The degree of flood protection sought by the provisions of these regulations is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. These regulations do not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.

3. These regulations shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

C. Records

Records of actions associated with administering these regulations shall be kept on file and maintained by the floodplain administrator.

D. Abrogation and greater restrictions

These regulations supersede any regulations currently in effect in flood-prone districts. Any existing regulation, however, shall remain in full force and effect to the extent that its provisions are more restrictive than the provisions of these regulations.

§4.15.4. Administration

A. Designation of the floodplain administrator

The zoning administrator shall serve as the floodplain administrator and is hereby appointed to administer and implement the regulations of this section and is referred to herein as the floodplain administrator. The floodplain administrator may:

1. Administer and implement floodplain regulations himself or delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
2. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the city of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program (NFIP) as set forth in the Code of Federal Regulations at 44 CFR 59.22.

B. Duties and responsibilities of the floodplain administrator

The duties and responsibilities of the floodplain administrator shall include but are not limited to:

1. Review applications for floodplain permits to determine whether proposed activities will be located in the special flood hazard area.
2. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
3. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
4. Review applications to determine whether all necessary permits have been obtained from the federal, state or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing nontidal waters of the state.

5. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (DCR) Division of Dam Safety and Floodplain Management, and other appropriate agencies (Virginia Department of Environmental Quality [VADEQ], United States Army Corps of Engineers [USACE]) and have submitted copies of such notifications to FEMA.

6. Approve applications and issue floodplain permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.

7. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.

8. Review elevation certificates and require incomplete or deficient certificates to be corrected.

9. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the city, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.

10. Maintain and permanently keep records that are necessary for the administration of these regulations, including:

    (a) Flood insurance studies, FIRMs (including historic studies and maps and current effective studies and maps) and letters of map change; and

    (b) Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, other required design certifications, special exceptions and special use permits, and records of enforcement actions taken to correct violations of these regulation

11. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.

12. Advise the board of zoning appeals, or the city council, as appropriate, regarding the intent of these regulations and, for each application for special exceptions and special use permits, prepare a staff report and recommendation.

13. Administer the requirements related to proposed work on existing buildings:

    (a) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.

    (b) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.

14. Undertake other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related

to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.

15. Notify FEMA when the corporate boundaries of the city have been modified and:

(a) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

(b) If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the city council for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to DCR Division of Dam Safety and Floodplain Management and FEMA.

16. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the special flood hazard area, number of permits issued for development in the special flood hazard area, and number of special exceptions and special use permits issued for development in the special flood hazard area.

17. Take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the city, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

C. Use and interpretation of FIRMs

The floodplain administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

1. Where field surveyed topography indicates that adjacent ground elevations:

(a) Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;

(b) Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.

2. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified special flood hazard areas, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.

3. Base flood elevations and designated floodway boundaries on FIRMs and in flood insurance studies shall take precedence over base flood elevations and floodway

boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.

4. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodways than are shown on FIRMs and in flood insurance studies.

5. If a Preliminary FIRM and/or a Preliminary Flood Insurance Study has been provided by FEMA:

(a) Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.

(b) Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to §4.15.6.C regarding A Zones, and used where no base flood elevations and/or floodways are provided on the effective FIRM.

(c) Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodways exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

D. Jurisdictional boundary changes

1. The city floodplain regulations then in effect on the date of annexation or agreed upon boundary line adjustment shall remain in effect and shall be enforced by the city for all annexed areas until the city adopts and enforces an ordinance which meets the requirements for participation in the NFIP. It is a requirement that municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, the city shall prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the city council for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to the DCR Division of Dam Safety and Floodplain Management and FEMA.

2. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Emergency Management Agency and optionally the State Coordinating Office (Virginia Department of Conservation and Recreation – Division of Dam Safety and Floodplain Management) in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

3. In order that all FIRMs accurately represent the city's boundaries, a copy of a map of the city suitable for reproduction, clearly delineating the new corporate limits or new

area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

E. District boundary changes

The city council may modify the boundaries of the floodplain in accordance with the procedures established for zoning map amendments contained in §6.4. Any such modification shall be based upon hydrologic and hydraulic analyses performed by an engineer who shall certify that the technical methods used correctly reflect accepted engineering design methods. Prior to any such modification, approval shall be obtained from FEMA.

F. Interpretation of district boundaries

The zoning administrator shall be responsible for the interpretation of floodplain boundaries and may approve minor refinements after consulting with the city engineer to more accurately determine the true location of such boundaries. Such approval shall be based on hydrologic and hydraulic analyses performed by an engineer, who shall certify that the technical methods used correctly reflect accepted engineering design methods. The determination of the floodplain boundary by the zoning administrator may be appealed by an aggrieved party to the board of zoning appeals pursuant to §6.22.

G. Submitting technical data

The city's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the city shall notify FEMA of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

H. Letters of map revision

When development in the floodplain causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a conditional letter of map revision prior to construction, and a letter of map revision after construction. For example:

1. Any development that causes a rise in the base flood elevations within the floodway.
2. Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.

§4.15.5. Alteration or relocation of a stream

Alteration or relocation of a stream, including but not limited to installing culverts and bridges. [44 CFR 65.3 and 65.6(a)(12)]

§4.15.6. Establishment of special flood hazard districts

A. Description of special flood hazard districts

The various special flood hazard districts shall include the special flood hazard areas. The basis for the delineation of these districts shall be the flood insurance study and the FIRM for the city prepared by FEMA, dated June 2, 2006, and any subsequent revisions or amendments thereto. The city may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a local flood hazard

map using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies. The boundaries of the special flood hazard areas are established as shown on the FIRM which is declared to be a part of these regulations and which shall be kept on file at the city.

1. The floodway district is in an AE Zone and is delineated, for purposes of these regulations, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one foot at any point. The following provisions shall apply within the floodway district of an AE Zone [44 CFR 60.3(d)]:

(a) Within any floodway, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.

(b) Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the city's endorsement – for a conditional letter of map revision (CLOMR), and receives the approval of FEMA.

(c) If §4.15.6.A.1(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §4.15.7, §4.15.8, §4.15.9, §4.15.10, and §4.15.11.

B. The AE, or AH Zones on the FIRM accompanying the Flood Insurance Study shall be those areas for which one-percent annual chance flood elevations have been provided and the floodway has not been delineated. The following provisions shall apply within an AE or AH Zone [44 CFR 60.3(c)]:

1. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE or AH on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the city.

2. Development activities in Zones Al-30 and AE or AH, on the city FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies – with the city's endorsement – for a conditional letter of map revision, and receives the approval of FEMA

C. The A Zone on the FIRM accompanying the Flood Insurance Study shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual

chance floodplain boundary has been approximated. For these areas, the following provisions shall apply [44 CFR 60.3(b)]:

1. The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the Flood Insurance Study. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the USACE Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted non-detailed technical concepts, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.

2. The floodplain administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated at least 18 inches above the base flood level.

3. During the permitting process, the floodplain administrator shall obtain:

(a) The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,

(b) If the structure has been floodproofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been floodproofed.

4. The AO Zone on the FIRM accompanying the Flood Insurance Study shall be those areas of shallow flooding identified as AO on the FIRM. For these areas, the following provisions shall apply [44 CFR 60.3(c).

(a) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM plus 18 inches. If no flood depth number is specified, the lowest floor, including basement, shall be elevated no less than three and one-half feet above the highest adjacent grade.

(b) All new construction and substantial improvements of nonresidential structures shall:

(1) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM plus 18 inches. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least three and one-half feet above the highest adjacent grade; or,

(2) Together with attendant utility and sanitary facilities be completely floodproofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(c) Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

D. Overlay Concept

The floodplain districts described above shall be overlays to the existing underlying districts as shown on the city's zoning map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

1. If there is any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

2. In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

§4.15.7. Permit and application requirements

A. Permit requirement

All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of these regulations and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (USBC) and the city's subdivision ordinance and regulations appertaining thereto. Prior to the issuance of any such permit, the floodplain administrator shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system. A floodplain permit shall be issued by the zoning administrator after an application has been submitted along with any documentation required by the zoning administrator and a fee in accordance with §6.2.4.

B. Site plans and permit applications

All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

1. The elevation of the base flood at the site.

2. The elevation of the lowest floor (including basement).

3. For structures to be floodproofed (nonresidential only), the elevation to which the structure will be floodproofed.

4. Topographic information showing existing and proposed ground elevations.

C. Allowed uses

The following uses shall be permitted within the floodplain by right or with a special use permit, as specified; provided, that such uses are permitted in the zoning district within which they are located, the review criteria contained in §4.15.7 are met, and a floodplain permit is obtained as specified in §4.15.4.C.

1. Permitted uses

(a) Utilities and public facilities and improvements such as streets, channel improvements, bridges, utility pipes, utility transmission lines and stormwater management facilities shall be permitted.

(b) The following uses and improvements shall be permitted, provided that the development or use is otherwise permitted in this chapter and that the area of impervious surface shall not exceed 2,500 square feet and such uses or improvements shall not contain areas of fill in excess of 12 inches in depth:

(1) Agricultural uses such as farming, gardening, grazing and similar uses.

(2) Outdoor recreational uses such as parks, trails, picnic grounds, athletic fields, play grounds, golf courses, tennis courts and archery ranges.

2. Special uses

The following uses and improvements shall be permitted with a special use permit issued by the city council in accordance with the provisions of §6.7, provided that such use is permitted in the zoning district in which the proposed use or improvement is located:

(a) Area specified

The uses permitted and specified in §4.15.7.C.1 where the area of impervious surface will exceed 2,500 square feet or such uses or improvements will contain areas of fill in excess of 12 inches in depth.

(b) Redevelopment of property

(1) For the purposes of §4.15, redevelopment shall be any reconstruction, conversion, structural alteration, relocation or enlargement of any structure or any extension of the use of the land. No redevelopment shall be permitted in any floodplain until the developer submits to the zoning administrator a study performed by an engineer, which addresses the review criteria contained in §4.15.8.

(2) Redevelopment shall only be permitted if construction techniques are employed which floodproof each structure located within the floodplain in accordance with the NFIP, USBC floodproofing standards and all other applicable requirements. Within Zone AO the underside of the lowest floor (including basement) of any structure shall be a minimum of three and one-half feet above the highest adjacent grade. In addition, the underside of the lowest floor (including basement) of any structure shall be a minimum of 18 inches above the floodplain elevation.

§4.15.8. Approval criteria

A. Permitted uses, activities or developments (including redevelopments) within the floodplain shall be permitted only when all available alternative locations not within the floodplain have been properly considered and it is not possible to accommodate reasonable development outside the floodplain boundaries. Each application for a floodplain permit, together with required supporting documentation, shall clearly demonstrate that the proposed use, activity or development:

1. Shall minimize grading to the maximum possible extent.

2. Shall minimize the amount of impervious surface to the maximum possible extent through site design, the use of porous construction materials, grid or modular pavement, and other reasonable methods.

3. Shall minimize the loss of natural vegetation and natural stormwater characteristics.

4. Shall minimize the susceptibility of structures and their contents to flood damage.

5. Shall not negatively affect water quality.

6. Shall not increase the intensity or extent of flooding of lands above or below the property or jeopardize property or human life.

7. Shall not adversely affect the capacity of the floodplain channel or increase erosion within or adjacent to the floodplain. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within the city all applicable permits shall be obtained from the USACE, the VADEQ, and the Virginia Marine Resources Commission. Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the DCR, and the Federal Insurance Administration.

8. Shall minimize negative impacts upon wildlife habitat.

9. Shall have its design incorporate base (100-year) flood elevation data for any proposed new activity or development greater than 50 lots or five acres, whichever is the lesser, if located within Zone A. In addition, the best available floodway information from federal, state, or other sources acceptable to the zoning administrator shall be used.

10. Shall not result in more than a one-foot increase in the base (100-year) flood elevation. This shall include the cumulative effect of the proposed use, activity, or development when combined with all other existing and anticipated uses, activities, or development.

11. Shall not negatively affect drainage.

§4.15.9. General standards

A. New construction and substantial improvements shall be according to the Virginia USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.

B. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

C. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

D. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

E. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

G. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

§4.15.10. Elevation and construction standards

In all identified flood hazard areas where base flood elevations have been provided in the Flood Insurance Study or generated by a certified professional in accordance with §4.15.6.C, the following provisions shall apply:

A. Residential Construction

New construction or substantial improvement of any residential structure in Zones A1-30, AE, AH and A with detailed base flood elevations shall have the lowest floor, including basement, elevated at least 18 inches above the base flood level.

B. Non-Residential Construction

New construction or substantial improvement of any commercial, industrial, or nonresidential building shall have the lowest floor, including basement, elevated at least 18 inches above the base flood level. Buildings located in all A1-30, AE, and AH Zones may be floodproofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this §4.15.10 are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the zoning administrator).

C. Space Below the Lowest Floor

In Zones A, AE, AH, AO, and A1-A30, fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

1. Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).

2. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

3. Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings

must either be certified by a professional engineer or architect or meet the following minimum design criteria:

(a) Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

(b) The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding.

(c) If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

(d) The bottom of all required openings shall be no higher than one foot above the adjacent grade.

(e) Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

(f) Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

D. Manufactured homes

All manufactured homes shall be prohibited within the city. No special exceptions or variances will be granted.

E. Recreational vehicles

All recreational vehicles shall be prohibited within any special flood hazard area. No special exceptions or variances will be granted.

§4.15.11. Subdivision standards

A. All subdivisions shall minimize flood damage;

B. All subdivisions proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

C. All subdivisions shall have adequate drainage provided to reduce exposure to flood hazards; and

D. Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a Flood Insurance Study for subdivision proposals and other proposed development proposals (including subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

§4.15.12. Existing structures in floodplain areas

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

A. Existing structures in the floodway shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with

standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.

B. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain areas to an extent or amount of less than 50 percent of its market value shall conform to the Virginia USBC and the appropriate provisions of these regulations.

C. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with these regulations and shall require the entire structure to conform to the Virginia USBC.

§4.15.13. Special exceptions

A. The board of zoning appeals may, by special exception, permit within the floodplain additional uses where such uses are not permitted uses specified in §4.15.7, provided that:

1. Such additional use is permitted in the underlying zoning district;

2. Special exceptions shall be granted only in accordance with the procedures and limitations established for special use permits in §6.7; and

3. The special exception granted represents the minimum variation necessary to afford relief.

B. In reviewing a special exception request, the board of zoning appeals shall consider the following additional factors:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments. No special exception shall be granted for any proposed use, development, or activity within any floodway that would cause any increase in the 100-year flood elevation.

2. The compatibility of the proposed use with existing development and nearby development anticipated in the foreseeable future.

3. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

4. For historic structures, a determination that the exception is the minimum necessary to preserve the historic character and design of the structure and would not preclude the structures continued designation as a historic structure.

5. The danger that materials may be swept on to other lands or downstream to the injury of others.

6. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

7. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

8. The importance of the services provided by the proposed facility to the community.

9. The requirements of the facility for a waterfront location.

10. The availability of alternative locations not subject to flooding for the proposed use.
11. The safety of access by ordinary and emergency vehicles to the property in time of flood.
12. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.

C. A special exception shall be granted only after the board of zoning appeals has determined that the granting of such would not (i) result in unacceptable or prohibited increases in flood heights, (ii) pose additional threats to public safety, (iii) require extraordinary public expense, (iv) create any nuisances, (v) cause fraud or victimization of the public, and (vi) conflict with local laws or ordinances. Special exceptions shall be granted only after the board of zoning appeals has determined that a special exception would be the minimum required to provide relief from any hardship to the applicant.

D. The board of zoning appeals shall notify, in writing, the applicant for a special exception request that the issuance of a special exception to construct a structure below the 100-year flood elevation (i) increases the risks to life and property and (ii) may result in increased premium rates for flood insurance.

E. A record shall be maintained of the above notification as well as all special exception actions, including justification for the issuance of the special exceptions. The annual or biennial report submitted to the FEMA shall note any special exceptions, which are issued during the period covered by the report.

F. A special exception shall meet the elevation and construction standards established in §4.15.10.

§4.15.14. Variances

A. Applications for a variance, pursuant to the requirements of §6.18, will be subject to the same considerations as a special exception, as set forth in §4.15.13.

B. The board of zoning appeals shall notify, in writing, the applicant for a variance request that the issuance of a variance to construct a structure below the 100-year flood elevation (i) increases the risks to life and property and (ii) may result in increased premium rates for flood insurance.

§4.15.15. Definitions

For the purposes of 4.15, the following words and phrases shall have the meanings respectively ascribed to them by 4.15 unless the context clearly indicates otherwise:

100-YEAR FLOODPLAIN: The Federal Emergency Management Agency designated one percent annual chance water surface elevation. For the purposes of this ordinance, the 100-year flood is the base flood.

A, A1-30, AND AE ZONES: Areas subject to inundation by the 1-percent-annual-chance flood event determined by detailed methods. Base flood elevations are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

AH ZONE: Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base flood elevations derived

from detailed hydraulic analyses are shown in this zone. Mandatory flood insurance purchase requirements and floodplain management standards apply.

AO ZONE: Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown in this zone. Mandatory flood insurance purchase requirements and floodplain management standards apply. Some AO Zones have been designated in areas with high flood velocities such as alluvial fans and washes. Communities are encouraged to adopt more restrictive requirements for these areas.

APPROXIMATED FLOODPLAIN DISTRICT: The floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated.

BASE FLOOD: The flood having a one percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE): The FEMA designated one percent annual chance water surface elevation and the elevation determined per §4.15.10. The water surface elevation of the base flood in relation to the datum specified on the city's FIRM. For the purposes of these regulations, the base flood is the 100-year flood or 1 percent annual chance flood.

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

CONDITIONAL LETTER OF MAP REVISION (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

DCR: Virginia Department of Conservation and Recreation.

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

ELEVATION CERTIFICATE: An administrative tool of the National Flood Insurance Program which is to be used to provide elevation information necessary to ensure compliance with to community floodplain management ordinances, to determine the proper insurance premium rate, or support a request for a Letter of Map Amendment.

ENCROACHMENT: The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA): The federal agency under which the NFIP is administered. In March 2003, FEMA became part of the newly created U.S. Department of Homeland Security.

FLOOD OR FLOODING: A general or temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source. Mudflows which are proximately caused by such accumulation or runoff of surface waters and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a

natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in the overflow of inland or tidal waters. .

FLOOD INSURANCE RATE MAP (FIRM): an official map of a community, on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

FLOOD INSURANCE STUDY (FIS): A report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

FLOODPLAIN AREA: Any land area susceptible to being inundated by water from any source.

FLOODPLAIN DISTRICT: District designated as a special flood hazard area.

FLOODPLAIN ADMINISTRATOR: the individual appointed to administer and implement these regulations. The zoning administrator has been appointed as the floodplain administrator.

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

FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

FLOODWAY DISTRICT: The area within an AE Zone that is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one foot at any point. See §4.15.6.A.

HIGHEST ADJACENT GRADE: the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE: Any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or, (c) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either; (d) by an approved state program as determined by the Secretary of the Interior; or (e) directly by the Secretary of the Interior in states without approved programs.

LETTER OF FINAL DETERMINATION (LFD): A letter FEMA sends to the chief executive officer of a community stating that a new or updated FIRM or DFIRM will become effective in six months.

LETTER OF MAP CHANGE (LOMC): A letter of map change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of map change include:

LETTER OF MAP AMENDMENT (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that land as defined by meets and bounds or structure is not located in a special flood hazard area.

LETTER OF MAP REVISION (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A letter of map revision based on fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

LOCAL FLOOD HAZARD MAP – A map created by the city of Fairfax to identify and regulate local flood hazard or ponding areas that are not delineated on the Flood Insurance Rate Map.

LOWEST ADJACENT GRADE: the lowest natural elevation of the ground surface next to the walls of it structure.

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

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

NEW CONSTRUCTION: For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after December 23, 1971, or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

POST-FIRM STRUCTURES: A structure for which construction or substantial improvement occurred after December 31, 1974 or on or after December 23, 1971, whichever is later.

PRE-FIRM STRUCTURES: A structure for which construction or substantial improvement occurred on or before December 31, 1974 or before December 23, 1971.

RECREATIONAL VEHICLE: A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

REGULATORY FLOOD PROTECTION ELEVATION: See "base flood elevation".

SHALLOW FLOODING AREA: A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

SPECIAL FLOOD HAZARD AREA: The land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in §4.15.6.

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

STRUCTURE: A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

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

SUBSTANTIAL IMPROVEMENT: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either: (a) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

USACE: United States Army Corps of Engineers.

USBC: Virginia Uniform Statewide Building Code.

VADEQ: Virginia Department of Environmental Quality.

VIOLATION: the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in these regulations is presumed to be in violation until such time as that documentation is provided.

WATERCOURSE: A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

§4.16. STORM DRAINAGE FACILITIES

§4.16.1. Purpose

A. The purpose of §4.16 to define those storm drainage facilities which must be provided by landowners to control rainfall runoff from and across their property in a manner not detrimental to other inhabitants of the city and to preserve, where possible, presently existing natural creek channels. It is the further purpose of §4.16 to minimize the adverse effects of stormwater runoff on downstream drainageways within the city.

B. Article 2.3 (§62.1-44.15:27) of Chapter 3.1 of Title 62.1 of the Code of Virginia establishes the requirement for localities to establish a stormwater management program. §4.16 is adopted pursuant to Chapter 3.1 of Title 62.1 of the Code of Virginia (§62.1-44.15:25 and §62.1-44.15:28 et seq.).

§4.16.2. Performance standards for facilities

Stormwater BMPs, on-site detention facilities, and on-site drainage facilities shall be designed and maintained in such a manner as to minimize economic and environmental costs to the city and its inhabitants in accordance with §4.16.7.

§4.16.3. Performance requirements

Performance requirements for stormwater BMPs, on-site detention facilities, and on-site drainage facilities shall be as specified in §4.16.8.

§4.16.4. Design, construction, inspection and maintenance requirements

Design, construction, inspection and maintenance requirements shall be as defined in the city storm drainage facility specifications as they may be hereafter promulgated by the city engineer and approved by the city council from time to time.

§4.16.5. Usage, improvement and preservation of creeks and channels

A. Natural creeks and drainage channels may be used where available to route stormwater runoff from the city.

B. Natural drainage systems will be improved where necessary in accordance with 9VAC25-870-66 of the Regulations. To the maximum degree possible, these improvements shall be made in such a manner as to preserve, enhance or restore the vegetation, including trees, along the creek line so that the aesthetic, environmental and ecological values of the vegetation are not lost to the community.

C. Land disturbances within resource protection areas or resource management areas may require a water quality impact assessment in accordance with §4.18.8.

§4.16.6. Landowner's duties and responsibilities

A. Stormwater permit requirement; exemptions

1. Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued in accordance with the provisions of §4.16.

2. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, a stormwater management plan, as outlined under §4.16.6.B, the technical criteria and administrative requirements for land-disturbing activities outlined in §4.16.7, and the requirements for long-term maintenance of control measures outlined under §4.16.8.K.

3. Notwithstanding any other provisions of §4.16, the following activities are exempt, unless otherwise required by federal law:

(a) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;

(b) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

(c) Single-family residences separately built and disturbing less than 2,500 square feet and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;

(d) Land disturbing activities that disturb less than 2,500 square feet of land area, or activities that are part of a larger common plan of development or sale that is 2,500 square feet or greater of disturbance;

(e) Discharges to a sanitary sewer or a combined sewer system;

(f) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

(g) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and re-establishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this; and

(h) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of §4.16.6.B.1(a) is required within 30 days of commencing the land-disturbing activity.

B. Stormwater management plan; contents of plan

1. The stormwater management plan, required in §4.16.7.D, must adhere to the performance standards and performance requirements set forth in §4.16.2 and §4.16.3, respectively, and apply the stormwater management technical criteria set forth in §4.16.8.C to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:

(a) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;

(b) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;

(c) A narrative that includes a description of current site conditions and final site conditions;

(d) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(e) Information on the proposed stormwater management facilities, including:

(1) The type of facilities;

(2) Location, including geographic coordinates;

(3) Acres treated;

(4) The surface waters or karst features, if present, into which the facility will discharge;

(5) Hydrologic and hydraulic computations, including runoff characteristics;

(6) Documentation and calculations verifying compliance with the water quality and quantity requirements of §4.16.8.C;

(7) A map or maps of the site that depicts the topography of the site and includes:

(i) All contributing drainage areas;

(ii) Existing drainage facilities and creeks and channels, including all streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

(iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

(iv) Current land use including existing structures, roads, and locations of known utilities and easements;

(v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

(vi) The limits of clearing and grading, and the proposed drainage patterns on the site;

(vii) Proposed buildings, roads, parking lots, utilities, and stormwater management facilities; and

(viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

2. If an operator intends to meet the water quality and/or quantity requirements set forth in §4.16.8.C through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35, Code of Virginia .

3. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the state pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, Code of Virginia.

4. A construction record drawing for permanent stormwater management facilities shall be submitted to the VSMP administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the state, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

C. Stormwater pollution prevention plan; contents of plan

1. The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit.

2. The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.

3. The SWPPP must be maintained by the operator at a central location on site. If an on site location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

D. Pollution prevention plan; contents of plan

1. A pollution prevention plan, as required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design,

installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(c) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

2. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

(a) Wastewater from washout of concrete, unless managed by an appropriate control;

(b) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(d) Soaps or solvents used in vehicle and equipment washing.

3. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

E. Maintenance of facilities

Maintenance provisions shall be set forth in an instrument recorded in the local land records and facilities shall be maintained by the landowner in accordance with §4.16.8.K.

§4.16.7. City responsibilities

A. City-owned drainage system

The city shall maintain and control natural drainage systems and other facilities constructed by or dedicated to the city. In no event will the city be financially responsible for maintenance of private systems.

B. City-owned drainage system development impacted

The city shall specify, design and construct off-site improvements to the storm drainage system when such improvements are made necessary by changes in land use and when additional runoff caused by such changed land use cannot be adequately accommodated by facilities designed in accordance with the technical criteria specified in §4.16.8.C. Inadequacy must be sufficiently demonstrated through a request for exception, as specified in 9VAC25-870-57 and in accordance with 9VAC25-870-122. Further, such off-site improvements are to be paid for by those landowners whose land alteration made the improvements necessary.

C. Stormwater management program established; submission and approval of plans; prohibitions

1. Pursuant to §62.1-44.15:27 of the Code of Virginia, The city of Fairfax hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes of §4.16.1. The city of Fairfax hereby designates the Department of Public Works as the VSMP administrator of the Virginia stormwater management program.

2. No VSMP authority permit shall be issued by the VSMP administrator until the following items have been submitted to and approved by the VSMP administrator as prescribed herein:

(a) A permit application that includes a general permit registration statement, except for the construction of a single-family detached residential structure within or outside a common plan of development or sale, where no registration statement is required;

(b) An erosion and sediment control plan approved in accordance with §4.17; and

(c) A stormwater management plan that meets the requirements of §4.16.6.B.

3. No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.

4. No VSMP authority permit shall be issued until the fees required to be paid pursuant to §4.16.7.G, are received, and a reasonable performance bond required pursuant to §4.16.7.H has been submitted.

5. No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.

6. No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the VSMP administrator.

D. Review of stormwater management plan

1. The VSMP administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

(a) The VSMP administrator shall determine the completeness of a plan in accordance with §4.16.6.B, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

(b) The VSMP administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection (a), above, then the plan shall be deemed complete and the VSMP administrator shall have 60 calendar days from the date of submission to review the plan.

(c) The VSMP administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.

(d) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of §4.16.

(e) If a plan meeting all requirements of §4.16 is submitted and no action is taken within the time provided above in §4.16.8 for review, the plan shall be deemed approved.

2. Approved stormwater plans may be modified as follows:

(a) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the VSMP administrator. The VSMP administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(b) The VSMP administrator may require that an approved stormwater management plan be amended, within a time prescribed by the VSMP administrator, to address any deficiencies noted during inspection.

(c) The VSMP administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The VSMP administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to §4.16.8.K.2.

E. Hearings

1. Any permit applicant or permittee, or person subject to requirements of §4.16 aggrieved by any action of the city of Fairfax taken without a formal hearing, or by inaction of the city of Fairfax, may demand in writing a formal hearing by the city council causing such grievance, provided a petition requesting such hearing is filed with the VSMP administrator within 30 days after notice of such action is given by the VSMP administrator.

2. The hearings held under §4.16 shall be conducted by the city council at a regular or special meeting of the city council.

3. A verbatim record of the proceedings of such hearings shall be taken and filed with the circuit court of the county. Depositions may be taken and read as in actions at law.

4. The circuit court of the county or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

F. Appeals

1. Final decisions of the VSMP administrator under §4.16 may be appealed to the city council, provided an appeal is filed within 30 days from the date of any written decision by the VSMP administrator which adversely affects the rights, duties or privileges of any permit applicant or permittee, or person subject to ordinance requirements.

2. Final decisions of the city council under §4.16 may be subject to review by the circuit court of the county, provided an appeal is filed within 30 days from the date of the final written decision which adversely affects the rights, duties or privileges of any permit applicant or permittee, or person subject to ordinance requirements.

G. Fees

1. Issuance of general permit coverage

Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with the VSMP Fee Schedule. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the VSMP Fee Schedule, as specified in §6.2.3.D.

2. Modifications or transfer of permit coverage

Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with the VSMP Fee Schedule, as specified in §6.2.3.D. If the general permit modifications result in changes to stormwater management plans that require additional review by the city of Fairfax, such reviews shall be subject to the fees established in the VSMP Fee Schedule, as specified in §6.2.3.D. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in the VSMP Fee Schedule, as provided within the permit application package.

3. Annual permit maintenance fee

The following annual permit maintenance fee shall be imposed in accordance with the VSMP Fee Schedule, as specified in §6.2.3.D, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. General permit coverage maintenance fees shall be paid annually to the city of Fairfax by April 1st of each year. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

4. The fees set forth in subsections 1 through 3, above, shall apply to:

(a) All persons seeking coverage under the general permit.

(b) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.

(c) Persons whose coverage under the general permit has been revoked shall apply to the department for an Individual Permit for Discharges of Stormwater from Construction Activities.

(d) Permit and permit coverage maintenance fees, as adopted by the city outlined under subsection 3, above, may apply to each general permit holder.

5. No general permit application fees will be for:

(a) Minor modifications to general permits as defined in §4.16.6.B. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the VSMP administrator shall not be exempt pursuant to §4.16.

(b) General permits modified or amended at the initiative of the department, excluding errors in the registration statement identified by the VSMP administrator or errors related to the acreage of the site.

6. Incomplete payments

All incomplete payments will be deemed as non-payments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10 percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The city of Fairfax shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

H. Performance bond

Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the city attorney, to ensure that measures could be taken by the city of Fairfax at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the city of Fairfax takes such action upon such failure by the applicant, the city may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

I. Illicit discharges

1. It shall be unlawful for any person to discharge to or allow the discharge to the city's municipal separate storm sewer system any substance not composed entirely of stormwater. Unlawful discharges shall include any unauthorized runoff or illicit storm sewer connections on any property in the city of Fairfax that causes or allows by storm or floodwater the pollution of any state waters.

2. The following activities shall be exempt from §4.16:

(a) Discharges authorized by a valid national pollutant discharge elimination system (NPDES) permit, waiver or discharge order, a Virginia pollutant discharge

elimination system (VPDES) permit, waiver or discharge order, or a Virginia pollution abatement (VPA) permit;

(b) Discharges from firefighting, other life-saving activities or training related to those activities;

(c) Discharges specified in writing by the city as necessary for public health and safety;

(d) Any activity by a governmental entity in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems;

(e) Any activity by the city, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system;

(f) Dye testing, provided verbal notification to the city prior to the time of test;

(g) Diverting stream flows or rising groundwater, or infiltration of uncontained groundwater;

(h) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;

(i) Water line flushing;

(j) Landscape irrigation; including watering of lawns;

(k) Air conditioning condensate;

(l) Individual car washing on residential properties;

(m) Swimming pool water provided that it has been de-chlorinated to the satisfaction of the VSMP administrator or designee; and

(n) Incidental water from street and parking lot sweeping operations.

3. Exempt activities listed in subsection I.2, above, that are found to be sources of pollution to state waters, shall be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters, as directed by city of Fairfax. Failure to comply with any such order shall be unlawful and in violation of §4.16.

4. The city of Fairfax shall have authority to carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance or noncompliance with the provisions of §4.16. The city shall notify any person in violation of §4.16 with a written warning notice specifying the particulars of the violation and requesting immediate investigation and resolution of the matter. Nothing in §4.16 shall limit the city from taking emergency action or other enforcement action without issuing a warning notice.

5. The city of Fairfax shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.

6. A willful violation of the provisions of §4.16 shall constitute a Class 1 misdemeanor. Each day that a continuing violation of §4.16 is maintained or permitted to remain shall constitute a separate offense.

7. Any person who commits any act prohibited by §4.16 shall be liable to the city for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.

8. Any person who commits any act prohibited by §4.16 shall be subject to a civil penalty in an amount not to exceed $1,000 for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.

9. The remedies set forth in §4.16 shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, which one or more of the remedies set forth herein has been sought or granted.

§4.16.8. Specifications

A. Purpose

§4.16.8 specifies design, construction, inspection and maintenance requirements for stormwater BMPs, on-site detention facilities, and on-site drainage facilities to be used within the city.

B. Applicability

The design, construction, inspection and maintenance of all stormwater BMPs, on-site detention facilities, and on-site drainage facilities, whether privately or municipally owned, are to be accomplished in accordance with applicable provisions of §4.16.8.

C. Design requirements

1. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the city of Fairfax hereby adopts the technical criteria for regulated land-disturbing activities set forth in 9VAC25-870-62, Part II B of the Regulations, as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [off site compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; 9VAC25-870-85 [stormwater management impoundment structures or facilities]; and 9VAC25-870-92 [comprehensive stormwater management plans], which shall apply to all land-disturbing activities regulated pursuant to §4.16, except as expressly set forth in §4.16.8.C.2.

2. Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria (9VAC25-870-93 through 9VAC25-870-99) of the VSMP Regulation provided:

   (a) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of the VSMP Regulation, and (iv) has not been subsequently modified or amended in a manner resulting in an

increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

(b) A state permit has not been issued prior to July 1, 2014; and

(c) Land disturbance did not commence prior to July 1, 2014.

3. Locality, state and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria (9VAC25-870-93 through 9VAC25-870-99) of the VSMP Regulation provided:

(a) There has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;

(b) A state permit has not been issued prior to July 1, 2014; and

(c) Land disturbance did not commence prior to July 1, 2014.

4. Land disturbing activities grandfathered under subsections 2 and 3, above, shall remain subject to the Part II C technical criteria (9VAC25-870-93 through 9VAC25-870-99) of the VSMP Regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

5. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C (9VAC25-870-93 through 9VAC25-870-99).

6. The VSMP administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and §4.16 are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of §4.16.

(a) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the VSMP administrator, nor shall the VSMP administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the department.

(b) Exceptions to requirements for phosphorus reductions shall not be allowed unless off site options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

7. Nothing in §4.16 shall preclude an operator from constructing to a more stringent standard at their discretion.

D. On-site drainage facilities

1. On-site drainage

On-site drainage shall be adequate to prevent flooding or damage to any structure located on the site.

2. Gutters and inlets

Gutters and inlets shall be adequate to limit the spread of water in the street to half a travel lane plus its gutter, or eight feet.

3. Primary drainage facilities

(a) Where culverts, storm sewers or other enclosed conduits have been approved for use by the director of public works as storm drainage transport they shall, in addition to meeting other requirements, be adequate in the opinion of the director of public works to prevent flood damage to private or public property. Conduits used in conjunction with gutters and inlets shall be adequate to limit the system hydraulic grade line to no higher than one foot below the grade of the gutter.

(b) Where on-site drainage facilities are proposed, the applicant shall make provision or identify for:

(1) Safety factors;

(2) Materials; and

(3) Cleaning, maintenance, inspection.

4. Design storms shall be as specified:

Usage	Design storm
Streets, gutters and inlets	10-year storm
Culverts/storm sewers	100-year storm [1]

[1] In the absence of potentially damaged private or public property the 25-year design storm shall be used as a minimum

E. On-site detention facilities

The design of on-site detention facilities, as may be requested or approved by the VSMP administrator, shall be as set forth in Part II B of the Regulations, 9VAC25-870-66 [water quantity], as specified in §4.16.8.C.

F. Municipal creeks and channels

Where primary channels or other open conduits have been approved for use by the director of public works as storm drainage transports they shall, in addition to meeting other requirements, be adequate in the opinion of the director of public works to prevent flooding outside of any floodplain area designated in this chapter. The design storm for channels to be used for conveyance shall be the 100-year storm.

G. Municipal drainage facility

Design criteria shall be as set forth in §4.16.8.D where applicable.

H. Municipal detention facilities

Design criteria shall be as set forth in §4.16.8.E where applicable.

I. Construction requirements

All construction shall conform to the ASTM standards, the state department of transportation road and bridge specifications, as amended, and the Virginia Uniform Statewide Building Code, as amended.

J. Inspection requirements

Periodic inspections shall be performed by the city to ensure that the facilities are being built in accordance with the plans and specifications.

1. The VSMP administrator, or any duly authorized agent of the VSMP administrator, shall inspect the land-disturbing activity during construction for:

(a) Compliance with the approved erosion and sediment control plan;

(b) Compliance with the approved stormwater management plan;

(c) Development, updating, and implementation of a pollution prevention plan; and

(d) Development and implementation of any additional control measures necessary to address a TMDL.

2. The VSMP administrator, or any duly authorized agent of the VSMP administrator, may, at reasonable times and under reasonable circumstances, enter any establishment or any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of §4.16.

3. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the VSMP administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

4. Pursuant to § 62.1-44.15:40 of the Code of Virginia, the VSMP administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under §4.16, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of §4.16.

5. Post-construction inspections of stormwater management facilities required by the provisions of §4.16 shall be conducted by the VSMP administrator, or any duly authorized agent of the VSMP administrator, pursuant to the city's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five years except as may otherwise be provided for in §4.16.8.K.

K. Long-term maintenance of permanent stormwater facilities

1. Provisions for long-term responsibility and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff are required by the VSMP administrator provisions shall be set forth in an instrument

recorded in the local land records prior to general permit termination, or earlier, as may be required by the VSMP administrator and shall at a minimum:

(a) Be submitted to the VSMP administrator for review and approval prior to the approval of the stormwater management plan;

(b) Be stated to run with the land;

(c) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

(d) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the VSMP administrator; and

(e) Be enforceable by all appropriate governmental parties.

2. Natural drainage channels on private property

Where natural drainage channels pass through a landowner's property, it shall be the responsibility of the landowner to maintain the natural channel in a manner that will not be detrimental to other inhabitants of the city. No change shall be made in the contours of any land which affects the course, width or elevation of any floodplain or natural or other drainage channel in any manner which will obstruct, interfere with or change the drainage of such land without providing adequate drainage in connection therewith, as approved by the VSMP administrator. The bounds of the natural stream channel are to be considered as extending to the water level identified for the 100-year storm as defined in Article 9. All natural stream modifications and maintenance are to be accomplished in accordance with the city storm drainage facility specifications as they may be promulgated by the VSMP administrator and approved by the city council from time to time.

3. Maintenance of facilities

(a) The landowner and his successors in title to the facilities and the site served thereby shall be responsible for the repair, replacement and other maintenance of the facility.

(b) The landowner and his successors shall perform periodic maintenance on the facilities and such other repairs, replacements or maintenance thereon as may be required by the VSMP administrator.

(c) The VSMP administrator, his agent or representative, may inspect the facilities from time to time to determine the necessity of repair, replacement or other maintenance thereof.

(d) If the facilities are determined to be in need of repair, replacement or other maintenance, the VSMP administrator, his agent or representative, shall serve on the landowner a written notice describing the condition of the facilities and specifying the required repairs, replacements or other maintenance to be made to correct such deficiencies.

(e) Any landowner aggrieved by the determination of the VSMP administrator, his agent or representative, may appeal such determination to the city in accordance with §4.16.7.F.

(f) Upon refusal or neglect by the landowner or his successors to comply with the repairs, replacements or other maintenance required by the VSMP administrator, the city, through its agents or employees, may repair, replace or otherwise maintain such facilities.

(g) If the city, through its agents or employees, repairs, replaces or otherwise maintains any facility after complying with the notice requirements of §4.16, the costs or expenses thereof shall be charged to and paid by the landowner and/or his successors and may be collected by the city as taxes and levies are collected.

(h) Every charge authorized by §4.16 with which the landowner or his successors has been assessed and which remains unpaid shall constitute a lien against the property.

§4.16.9. Enforcement

A. If the VSMP administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

1. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with §4.16.8 or the permit may be revoked by the VSMP administrator.

2. If a permittee fails to comply with a notice issued in accordance with §4.16 within the time specified, the VSMP administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. Such orders shall be issued in accordance with §6.14. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the city, or by personal delivery by an agent of the VSMP administrator. However, if the VSMP administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the state or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the VSMP administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with §4.16.2).

B. In addition to any other remedy provided by §4.16, if the VSMP administrator determines that there is a failure to comply with the provisions of §4.16, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with §4.16.9.

C. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the VSMP administrator may be compelled in a proceeding instituted in circuit court of the county by the city to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

D. Any person who violates any provision of §4.16 or who fails, neglects, or refuses to comply with any order of the VSMP administrator, shall be subject to a civil penalty not to exceed $32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

1. Violations for which a penalty may be imposed under §4.16 shall include but not be limited to the following:

(a) No state permit registration;

(b) No SWPPP;

(c) Incomplete SWPPP;

(d) SWPPP not available for review;

(e) No approved erosion and sediment control plan;

(f) Failure to install stormwater BMPs or erosion and sediment controls;

(g) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;

(h) Operational deficiencies;

(i) Failure to conduct required inspections;

(j) Incomplete, improper, or missed inspections; and

(k) Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.

2. The VSMP administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

3. In imposing a civil penalty pursuant to §4.16, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

4. Any civil penalties assessed by a court as a result of a summons issued by the city shall be paid into the treasury of the city to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the city and abating environmental pollution therein in such manner as the court may, by order, direct.

E. Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of §4.16, any order of the VSMP administrator, any condition of a permit, or any order of a court shall, be guilty of a

misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than $2,500 nor more than $32,500, or both.

§4.16.10. Storm drainage facilities-related definitions

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in §4.16 have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

APPLICANT: Any person, including any authorized agent, submitting an application for a permit or requesting issuance of a permit under §4.16.

BEST MANAGEMENT PRACTICE OR BMP: Schedules of activities, prohibitions of practices, including both structural and non-structural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

CHESAPEAKE BAY PRESERVATION ACT LAND-DISTURBING ACTIVITY: A land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, §62.1-44.15:67, et seq.

COMMON PLAN OF DEVELOPMENT OR SALE: A contiguous area where separate and distinct construction activities may be taking place at different times on difference schedules.

CONTROL MEASURE: Any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

CLEAN WATER ACT OR CWA: The Federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

DEPARTMENT: The Virginia Department of Environmental Quality.

DESIGN STORM: All possible combinations of particular storm intensity-duration events occurring on the design storm curve.

DEVELOPMENT: All and disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silviculture purposes.

FACILITY: A stormwater BMP, on-site detention facility, or an on-site drainage facility.

GENERAL PERMIT: A state permit authorizing a category of discharges under the CWA and the Act within a geographical area.

ILLICIT DISCHARGE: Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), and discharges identified by and in compliance with 9VAC25-870-400 and in §4.16

LAND DISTURBANCE OR LAND-DISTURBING ACTIVITY: A man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in §4.16.6.A.

LAYOUT: A conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

MAXIMUM PEAK RUNOFF: The largest peak runoff permitted to occur from any of the particular storms on the design storm curve.

METERING: The controlled release of water into the primary drainage system.

MINOR MODIFICATION: An amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

MUNICIPAL DETENTION FACILITIES: City-owned facilities located along primary drainage facilities. Creeks or channels that serve the purpose of reducing peak flow by metered release and by storage of that input flow which exceeds the metered output.

MUNICIPAL SEPARATE STORM SEWER SYSTEM" OR "MS4": All separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-870-380.

ON-SITE DETENTION FACILITY: A facility located on a site which serves the purpose of collecting and detaining rainfall falling on the site for controlled release to the primary facilities as a result of land alteration.

OPERATOR: The owner or operator of any facility or activity subject to regulation under §4.16.

PEAK RUNOFF: The largest runoff intensity that will occur from a particular storm intensity-duration event on the design storm curve.

PERMIT OR VSMP AUTHORITY PERMIT: An approval to conduct a land-disturbing activity issued by the VSMP administrator for the initiation of a land-disturbing activity, in accordance with §4.16, and which may only be issued after evidence of general permit coverage has been provided by the Department.

PERMITTEE: The person to whom the VSMP Authority Permit is issued.

PERSON: Any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

POLLUTION: Such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety and welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner

which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

PRIMARY CREEKS AND CHANNELS: Natural creeks and open channels located on either private or public property which serve the purpose of collecting rainfall runoff from other sites and routing it from the city to the rivers. A creek or channel shall be considered a primary facility if it accommodates a runoff flow of at least 1.5 times that amount originating from the site on which it is located.

PRIMARY DRAINAGE FACILITIES: Culverts, gutters, enclosed channels, etc., which serve the purpose of collecting rainfall runoff from other sites and routing it to primary creeks and channels. Drainage Facilities shall be considered as primary if they accommodate a flow of at least 1.5 times that amount originating from the site on which they are located.

REGULATIONS: Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870, as amended.

SITE: The land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channel-ward of mean low water in tidal Virginia shall not be considered part of a site.

STATE: The Commonwealth of Virginia.

STATE BOARD: The State Water Control Board.

STATE PERMIT: An approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the State imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act, and the Regulations.

STATE WATER CONTROL LAW: Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

STATE WATERS: All water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction, including wetlands.

STORMWATER: Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snowmelt runoff, and surface runoff and drainage.

STORMWATER MANAGEMENT PLAN: A document(s) containing material describing methods for complying with the requirements of §4.16.

STORMWATER POLLUTION PREVENTION PLAN OR SWPPP: A document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this chapter. In addition, the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

SUBDIVISION: Division or re-division of a lot, tract or parcel of land into two or more lots or other division of land. This includes any changes in street or lot lines.

TOTAL MAXIMUM DAILY LOAD OR TMDL: The sum of the individual waste load allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

VIRGINIA STORMWATER MANAGEMENT ACT OR ACT: Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

VIRGINIA STORMWATER BMP CLEARINGHOUSE WEBSITE: The website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

VIRGINIA STORMWATER MANAGEMENT PROGRAM OR VSMP: A program approved by the State Board after September 13, 2011, that has been established by the city of Fairfax to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in §4.16, and evaluation consistent with the requirements of §4.16 and associated regulations.

VIRGINIA STORMWATER MANAGEMENT PROGRAM AUTHORITY OR VSMP AUTHORITY: The authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

VSMP Administrator: The VSMP authority including the city of Fairfax staff person, department, or assigned designee responsible for administering the VSMP on behalf of the city.

§4.17. EROSION AND SEDIMENT CONTROL

§4.17.1. Monitoring, reports and inspections

The plan-approving authority shall periodically in accordance with section 9VAC-840-60.B of the Virginia Erosion and Sediment Control Regulations inspect land-disturbing activities for compliance with the approved plan and permit. The owner, permittee, or person responsible for carrying out the plan shall be given notice of inspections.

A. Monitoring and reports may be required by the plan-approving authority of the owner, permittee, or person responsible for carrying out the plan to ensure compliance with the plan and that the measures required in the plan are effective in controlling erosion and sediment.

B. Upon determination of a failure to comply with the plan, the plan-approving authority shall serve notice by certified or registered mail to the address specified in the permit application or by hand delivery to the owner, permittee, or person responsible for carrying out the plan, specifying the measures needed for plan compliance and the time within which the measures must be completed. Failure to comply within the specified time may result in revocation of the permit at which time the notified individual shall be deemed to be in violation of §4.17.

C. Regardless of the requirement for notice in §4.17.1.B, above, if land disturbing activities begin without an approved plan, the plan-approving authority may issue an order requiring all land disturbing activities be stopped until an approved plan and required permits are

obtained. If the alleged violator has not obtained an approved plan and required permits within seven days from the service date of the order, the plan-approving authority shall issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and required permits are obtained. The order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the city land records. The order shall be lifted immediately upon completion of corrective action and obtaining plan approval and required permits. The owner may appeal the issuance of an order to the circuit court of the county. In addition, if the alleged activity is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the state, the plan-approving authority may issue an order requiring that all land disturbing activities be stopped regardless of the notice requirement of §4.17.1.A).

D. Unless the violation is causing or is in imminent danger of causing harmful land erosion or sediment deposition in waters within the watersheds of the state, or land disturbing activities occurred without an approved plan and required permit, an order to stop work shall only be issued after the alleged violator failed to comply with a notice to comply sent according to §4.17.1.A. The order may require that all or part of the land disturbing activities be stopped until the specified corrective measures have been taken. The order shall be served by certified mail or hand delivery and shall remain in effect for seven days from the date of service pending application by the city or alleged violator to the circuit court of the county for appropriate relief. The order shall be lifted immediately upon completion of corrective measures. Nothing in §4.17 shall prevent the plan-approving authority from taking any other action specified in §4.17.

§4.17.2. Penalties, injunctions and other legal actions

A. Violations of any requirement of §4.17 or any condition of a permit shall be subject to a civil penalty. The civil penalty for any one violation shall be $100, except that the civil penalty for commencement of land disturbing activities without an approved plan shall be $1,000.

B. In no event shall a series of violations arising from the same set of operative facts result in civil penalties, which exceed a total of $3,000, except that a series of violations ensuing from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties, which exceed $10,000.

C. The plan-approving authority may apply to the circuit court of the county to enjoin a violation or a threatened violation.

D. Any person violating, failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to Code of Virginia, § 62.1-44.15:56 shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. Any civil penalty so assessed shall be payable to the treasury of the city.

E. In accordance with §4.17.1, the plan-approving authority may revoke a permit for failing to comply to with an approved plan.

§4.18. CHESAPEAKE BAY PRESERVATION

§4.18.1. Purpose and intent

§4.18 is enacted to implement the requirements of Code of Virginia, § 62.1-44.15:75 et seq., the Chesapeake Bay Preservation Act. These regulations establish the criteria that the city shall use to

determine the extent of the Chesapeake Bay preservation areas. These regulations also establish criteria for use by the city in approving, disapproving or modifying requests to rezone, subdivide, use, develop and/or redevelop land in Chesapeake Bay preservation areas. The intent of the city council and the purpose of §4.18 is to:

A. Protect sensitive environmental lands within the city;

B. Safeguard the quality of state waters;

C. Prevent further increase in pollution of state waters;

D. Reduce existing pollution of state waters; and

E. Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the city.

§4.18.2. Applicability

A. §4.18 shall apply to all lands identified as Chesapeake Bay preservation areas as designated by the city council and as shown on the city Chesapeake Bay preservation area map. The Chesapeake Bay preservation area map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of §4.18. The map, entitled city of Fairfax Chesapeake Bay preservation area map, shall be identified by the signature of the zoning administrator, attested to by the city clerk, together with the date of adoption by the city council. The map shall show the general location of Chesapeake Bay preservation areas within the city and should be consulted by persons contemplating activities within the city prior to engaging in a regulated activity. The specific delineation of the Chesapeake Bay preservation area boundaries is the responsibility of the applicant in accordance with §4.18.6.

1. The resource protection area includes:

(a) Tidal wetlands;

(b) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;

(c) Tidal shores;

(d) Intermittent streams that remain largely in a natural condition and that have not been significantly impacted by adjacent development;

(e) Water bodies with perennial flow; and

(f) A 100-foot vegetated buffer area located adjacent to and landward of the components listed above, and expanded to include noncontiguous wetlands within the floodplain that are partially located within the buffer, along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the resource protection area notwithstanding the presence of permitted uses, encroachments or permitted vegetation clearing in compliance with the performance criteria of §4.18.6.

2. Designation of the components listed in §4.18.2.A.1 on the city's Chesapeake Bay preservation area map shall not be subject to modification unless based upon reliable site-specific information, in accordance with §4.18.6 and, if applicable, a water quality impact assessment required pursuant to §4.18.8.

3. The resource management area includes all lands in the city that are not designated as resource protection areas.

B. If the boundaries of a Chesapeake Bay preservation area include a portion of a lot, parcel, or development project, only that portion of the lot, parcel, or development project shall be subject to the requirements of this §4.18 except as provided for in §4.18.4.D. The division of property shall not constitute an exemption from this requirement.

§4.18.3. Development review procedures

Any land disturbance, development, or redevelopment with land disturbing activity exceeding 2,500 square feet shall comply with the development review procedures outlined in §6.13, where applicable, prior to any clearing, grading or construction on the site.

§4.18.4. Allowed uses

A. Development, land disturbances and uses authorized by underlying zoning classifications are allowed provided that they are carried out in accordance with the applicable general performance standards set forth in §4.18.7 or otherwise modified by the requirements set forth herein.

B. Development in resource protection areas (RPAs) shall be subject to review and approval by the city and may be permitted if it:

1. Constitutes redevelopment; or

2. Is a roadway or driveway not exempt under §4.18.10, provided that:

   (a) There are no reasonable alternatives to aligning the road or driveway in or across the RPA;

   (b) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality; and

   (c) The design and construction of the road or driveway satisfy all applicable criteria of §4.18, including the submission of a water quality impact assessment.

   (d) The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals.

3. Is a flood-control or stormwater-management facility that drains or treats water from multiple development projects or from a significant portion of a watershed, provided that:

   (a) The location of the facility within the RPA is the optimum location;

   (b) The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;

   (c) The facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay local assistance board as a phase I modification to this program;

   (d) All applicable permits for construction in state and federal waters are obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of

Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; and

(e) Approval from the city prior to construction.

4. Is a new use established pursuant to §4.18.7.D.2.

C. Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of §4.18 to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within an RPA.

D. All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in §4.18.7 as well as the development review procedures of §6.13.

E. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within a resource protection area or a resource management area. The zoning administrator may waive the requirement for a water quality impact assessment in a resource management area upon determination that the proposed land disturbance, development or redevelopment would not significantly impact water quality. If a water quality impact assessment is required, the assessment shall include the entire lot, parcel or development project as the area of impact and shall be conducted in accordance with §4.18.8.

§4.18.5. Lot size

The creation of new lots shall be subject to the requirements of the subdivision and zoning ordinances provided that any lot shall have sufficient area outside the resource protection area to accommodate an intended development in accordance with the general performance standards in §4.18.7

§4.18.6. Interpretation of RPA and CBPA boundaries

A. Delineation by applicant

For any property that is depicted on the city's Chesapeake Bay preservation area map as a resource protection area, the applicant shall determine the site-specific boundaries of the RPA components through the performance of a RPA site-specific study. The Chesapeake Bay preservation area map shall be used only as a guide to the general location of resource protection areas within the city.

B. Where conflict arises over delineation

Where the applicant has provided a site-specific delineation of the resource protection area, the zoning administrator shall review and verify the accuracy of the boundary delineation. In determining the site-specific resource protection area boundary, the zoning administrator may render adjustments to the applicant's boundary delineation based on the RPA site-specific study features required in §6.13.2.B.

§4.18.7. General performance standards

A. Purpose and intent

1. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

2. The performance standards are intended to prevent a net increase in nonpoint source pollution from new development and to achieve a 10 percent reduction in nonpoint source pollution from redevelopment.

B. Development and redevelopment in Chesapeake Bay preservation areas

1. Land disturbance shall be minimized and limited to the area necessary to provide for the desired use or development.

(a) In accordance with an approved subdivision or site plan, the extent of land disturbing activity, including clearing or grading, shall be limited to the specified construction footprint. The limits of disturbance shall be clearly shown on submitted plans and physically marked on the development site.

(b) Ingress and egress during construction shall be limited to one access point unless otherwise approved by the zoning administrator.

2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use and development proposed and in accordance with the "Virginia Erosion and Sediment Control Handbook."

(a) Existing trees shall be preserved outside the limits of disturbance, however, diseased trees or trees weakened by age, storm, fire or other injury may be removed.

(b) Clearing and grading shall be limited outside the defined limits of disturbance. Clearing shall be allowed only to provide public roads, necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the zoning administrator.

(c) Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected at the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be permitted within the area protected by the barrier.

3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.

4. Notwithstanding any other provisions of §4.18, or any exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet shall comply with the requirements of §4.16, Storm Drainage Facilities, and §4.17, Erosion and sediment control.

5. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years. However, owners of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out.

6. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system that operates under a permit issued by the state water control board until the structure is served by public sewer.

7. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with §4.16, Storm Drainage Facilities and 9VAC25-870-63 of the Virginia Stormwater Management Regulations.

8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator in accordance with the development review procedures of §6.13.

C. Performance criteria for resource protection areas

The following criteria shall apply specifically within resource protection areas and supplement the general performance criteria contained in §4.18:

1. All redevelopment activities shall conform to the regulations contained in §4.15, Floodplains; §4.16, Storm Drainage Facilities; and §4.17, Erosion and Sediment Control. Redevelopment shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover within the RPA and no further encroachment within the RPA.

2. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance with §4.18.8 and §4.18.4.D.

D. Buffer area requirements

To minimize the adverse effects of human activities on the core components of resource protection areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. The buffer area shall be maintained to meet the following additional performance standards:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval of the zoning administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices (including those that prevent upland erosion and concentrated flows of stormwater), as follows:

2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the zoning administrator may permit encroachments into the required buffer area pursuant to §4.18.11, Administrative waivers and special exceptions, and in accordance with the following provisions:

   (a) Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;

   (b) Where practicable, a vegetated area shall be established elsewhere on the lot or parcel in a manner that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area; and

   (c) In no case shall the encroachment extend into the seaward 50 feet of the buffer area.

3. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and November 25, 2003, the zoning administrator may permit encroachments into the required buffer area pursuant to §4.18.11, Administrative waivers and special exceptions, and in accordance with the following provisions:

   (a) The lot or parcel was created as a result of a legal process conducted in conformity with the city's subdivision regulations;

   (b) Conditions or mitigation measures imposed through a previously-approved exception shall be met;

   (c) If the use of a best management practice was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be re-established or repaired and maintained as required;

   (d) The criteria listed in §4.18.7.D.2 shall be satisfied.

§4.18.8. Water quality impact assessment

A. Purpose and intent

The purpose of the water quality impact assessment is to:

1. Identify the impacts of proposed development on water quality and lands within resource protection areas;

2. Ensure that, where redevelopment does take place within resource protection areas, it is located on those portions of a site and in a manner that is least disruptive to the natural functions of resource protection areas; and

3. Specify mitigation to address water quality protection.

B. Water quality impact assessment

A water quality impact assessment shall be submitted for:

1. Any proposed land disturbance, development or redevelopment within a resource protection area including any buffer area modification or reduction as provided for in §4.18.7; or

2. Any proposed development or redevelopment in the resource management area that may significantly impact water quality due to the unique characteristics of the site or intensity of the proposed use or development, as determined by the zoning administrator in accordance with §4.18 and §4.18.4.D. There shall be two levels of water quality impact assessment: a minor assessment and a major assessment.

C. Minor water quality impact assessment

A minor water quality impact assessment pertains only to development resulting in no more than 5,000 square feet of land disturbance, or development that encroaches onto the landward 50 feet of the 100-foot buffer area. The calculations of a minor assessment will demonstrate that the remaining buffer area and necessary best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post development stormwater runoff. A minor assessment shall include a site drawing to scale that shows the following:

1. Location of the components of any RPA, including the 100-foot buffer area;
2. Location and nature of the proposed improvements, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
3. Type and location of proposed best management practices to meet the required general performance standards specified in §4.18.7;
4. Location of existing vegetation on site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification; and
5. A revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

D. Major water quality impact assessment

1. A major water quality impact assessment shall be required for any development that exceeds 5,000 square feet land disturbance or that encroaches onto the seaward 50 feet of the 100-foot buffer area; or is located in the resource management area and is deemed necessary by the zoning administrator.
2. The information required in this subsection D shall be considered a minimum, unless the zoning administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.
3. The following elements shall be included in the preparation and submission of a major water quality impact assessment:
   - **(a)** All of the information required in a minor water quality impact assessment, as specified in subsection C, above;
   - **(b)** A hydrogeological element that describes existing topography, estimates of soils characteristics and potential for erosion, hydrology of the area, impacts on wetlands and streams, proposed mitigation measures, and a listing of requisite permits with permit or application status.
   - **(c)** A landscape element that fully describes existing trees required to be identified as part of a tree management plan in accordance with §4.5.9.D.1; limits of clearing

and grading; trees and indigenous vegetation that are to be preserved within the disturbed area; measures to be taken to protect vegetation, proposed plantings, and other vegetative measures used to enhance water quality; and a proposed construction schedule that includes all activities related to clearing, grading, and proposed plantings; and

(d) Such other measures as deemed necessary by the zoning administrator to ensure the impact to water quality can be accurately predicted.

E. Submission and review requirements

1. Copies of all site drawings and other applicable information as required by subsections C and D, above, shall be submitted to the zoning administrator for review and approval.

2. All information required in this subsection E shall be certified as complete and accurate by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the state.

3. RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.

4. Water quality impact assessments shall be prepared and submitted to the zoning administrator in conjunction with the development review procedures outlined in §6.13.

5. As part of any major water quality impact assessment submittal, the zoning administrator may require review and written comments by the Chesapeake Bay local assistance department (CBLAD). The zoning administrator should incorporate comments made by CBLAD into the final review of the major water quality impact assessment.

F. Evaluation procedure

1. Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed modification or reduction to the buffer area is consistent with the provisions of §4.18 and make a finding based upon the following criteria:

(a) The proposed encroachment is necessary and there is no other location on site to place improvements without disturbing the buffer area;

(b) The impervious surface is minimized;

(c) The proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;

(d) The development, as proposed, meets the purpose and intent of §4.18;

(e) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality; and

(f) Any other information deemed necessary by the zoning administrator.

2. Upon the completed review of a major water quality impact assessment, the zoning administrator shall determine if the proposed development is consistent with the purpose and intent of §4.16 and make a finding based upon the following criteria:

(a) The disturbance of any wetlands is minimized;

(b) The development will not result in significant disruption of the hydrology of the site;

(c) The development will not result in significant degradation to aquatic life;

(d) The development will not result in unnecessary destruction of plant materials on site;

(e) Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off site sedimentation;

(f) Proposed stormwater-management measures are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;

(g) Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;

(h) The design and location of any proposed drainfield will be in accordance with the general performance standards outlined in §4.18.7;

(i) The development, as proposed, is consistent with the purpose and intent of §4.16;

(j) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

3. The zoning administrator may require additional mitigation measures where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the zoning administrator based on the criteria listed above in subsections 1 and 2, above.

4. The zoning administrator shall find the proposal to be inconsistent with the purpose and intent of §4.16 when the impacts created by the proposal cannot be mitigated.

§4.18.9. Nonconforming uses and structures

A. The lawful use of a building or structure that existed on September 17, 1990, or that exists at the time of any amendment to §4.18, and that is not in conformity with the provisions of §4.18 may be continued in accordance with Article 7, Nonconforming uses.

B. The zoning administrator may grant an administrative waiver for remodeling or alteration to an existing nonconforming principal or accessory structure provided that:

1. There will be no increase in nonpoint source pollution load; and

2. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of §4.17.

C. The zoning administrator may grant an administrative waiver for expansion, restoration or replacement of an existing nonconforming principal structure provided that:

1. If a nonconforming structure is destroyed or damaged in any manner, it shall be restored only if such use complies with the requirements of §4.18. Any such repair or restoration shall be commenced within 12 months and completed within 18 months

from the date of destruction. If the repairs are not completed within 18 months of the date of destruction, the applicant shall file a request for an extension with the zoning administrator. Approval of the request will be subject to demonstration by the applicant that reconstruction by the applicant was pursued in good faith.

2. The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure determined to be nonconforming.

D. The zoning administrator may grant an administrative waiver only after making the required written findings outlined in §4.18.11.D.

E. Administrative waivers shall become null and void 12 months from the date issued if no substantial work has commenced.

§4.18.10. Exemptions

The following uses shall be exempt from the criteria contained in §4.18:

A. Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, telephone transmission lines, railroads, public roads, public trails, and their appurtenant structures; provided that said construction, installation, operation and maintenance is in accordance with the Erosion and Sediment Control Law (Code of Virginia, § 10.1-560 et seq.) and the Stormwater Management Act (Code of Virginia, § 10.1-603.1 et seq.). An erosion and sediment control plan and a stormwater management plan approved by the state department of conservation and recreation, or local water quality protection criteria at least as stringent as the above state requirements shall be deemed to constitute compliance with this provision. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize both encroachment into the RPA and adverse effects on water quality.

B. Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines [owned, permitted, or both, by the city or regional service authority], provided that:

1. Such utilities and facilities shall be located outside the RPA to the degree possible;

2. No more land shall be disturbed than is necessary to provide for the proposed utility installation;

3. All construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and

4. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements.

C. The following land disturbances within the RPA shall be exempted from §4.18: (i) water wells; (ii) passive recreation facilities, such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the zoning administrator that:

1. Any required permits, except those to which this exemption specifically applies, shall have been issued;

2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
3. The intended use does not conflict with nearby planned or approved uses; and
4. Any land disturbance exceeding an area of 2,500 square feet shall comply with all city erosion and sediment control requirements.

§4.18.11. Administrative waivers and special exceptions

A. Administrative waivers

The following administrative waivers may be granted by the zoning administrator:

1. Encroachments into the landward 50 feet of the buffer component of the RPA, provided that the requirements of §4.18.7.D.2 or §4.18.7.D.3 and §4.18.8.F are met;
2. Remodeling and alterations to existing nonconforming principal or accessory structures, provided that the requirements of §4.18.9.B.1 are met;
3. Restoration or replacement of existing nonconforming principal or accessory structures provided that the requirements of §4.18.9.B.2 are met; or
4. Modifications and additions to existing legal principal structures provided the findings of §4.18.11.D are made.

B. Special exceptions

Special exceptions to the general performance criteria for resource management and resource protection areas detailed in §4.18.7 may be granted by the city council provided the findings of §4.18.11.D are made.

C. Waivers and exceptions

Administrative waivers and special exceptions may not be granted for new accessory structures.

D. Required findings

In granting an administrative waiver or a special exception, the zoning administrator or the city council shall make a written finding that:

1. The request is the minimum necessary to afford relief;
2. Granting the request will not confer upon the applicant any special privileges that are denied by §4.18 to other property owners who are subject to its provisions and who are similarly situated;
3. The request is in harmony with the purpose and intent of this §4.18 and is not of substantial detriment to water quality;
4. The request is not based upon conditions or circumstances that are self-created or self-imposed; and
5. Reasonable and appropriate conditions shall be imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.

E. Administrative waiver process

1. The applicant shall submit an administrative waiver request to the zoning administrator. The request shall identify the potential impacts of the waiver on water

quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.

2. The zoning administrator shall review the administrative waiver request and the water quality impact assessment and may grant the waiver with such conditions and safeguards as deemed necessary to ensure and further the purpose and intent of §4.18.

3. If the zoning administrator cannot make the required findings or denies the administrative waiver request, the zoning administrator shall provide written findings and rationale for the decision to the applicant. Denial by the zoning administrator may be appealed to the board of zoning appeals pursuant to §6.22.

F. Special exception process

1. The applicant shall submit a special exception request to the zoning administrator. The request shall identify the potential impacts of the special exception request on water quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.

2. Each special exception request shall be reviewed by the zoning administrator and scheduled for public hearing before the city council following notification of the affected public of any such exception requests in accordance with Code of Virginia, § 15.2-2204, except that only one hearing shall be required.

3. Special exceptions shall be granted with such conditions and safeguards as deemed necessary, pursuant to §6.17, to ensure and further the purpose and intent of §4.18, provided the findings of §4.18.11.D are met.

§4.18.12. Violations and penalties

A. The decisions of all departments, officials and public employees of the city that are vested with the duty or authority to issue permits or licenses shall conform to the provisions of §4.18. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of §4.18. Any such permit, if issued in conflict with the provisions of §4.18, shall be null and void.

B. The zoning administrator is granted all necessary authority on behalf of the city council to administer and enforce §4.18, including the authority in righting or remedying any condition found in violation of §4.18, and the bringing of legal action to secure compliance with §4.18, including injunctive abatement, the imposition of civil penalties, or other appropriate action or proceeding.

§4.18.13. Appeals

Any order, determinations or decision made by the zoning administrator in administration and enforcement of the provisions of §4.18 may be appealed to the board of zoning appeals where it is alleged that an ER occurred. Such appeal shall be made within 30 days from the date of the order, determination or decision and shall further state with particularity the grounds of such appeal. Appeals shall further be made in accordance with §6.22 and Code of Virginia, § 15.1-2311.

§4.18.14. Definitions

For the purposes of §4.18, the following words and phrases shall have the meanings respectively ascribed to them by §4.18 unless the context clearly indicates otherwise:

EROSION IMPACT AREA: An area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

LAND DISTURBING ACTIVITY: Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include: (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work; (2) Individual service connections; (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced; (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system; (5) Surface or deep mining; (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas; (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B); (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company; (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check darns, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; (10) Disturbed land areas of less than 10,000 square feet in size; however, the governing body may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply; (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; (12)Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the state marine resources commission or the United States Army Corps of Engineers; and (13) Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

OWNER: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

PERMITTEE: The person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

PERSON: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the State, any interstate body, or any other legal entity.

PLAN-APPROVING AUTHORITY: The person responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit or units of lands and for approving plans.

RESPONSIBLE LAND DISTURBER: A person from the project team or development team who will be in charge of and responsible for carrying out the land-disturbing activity for the project, and who holds a responsible land disturber certificate as governed by the Virginia Department of Conservation and Recreation.

STATE WATERS: All waters on the surface and under the ground wholly or partially within or bordering the state or within its jurisdiction

THE ACT: The Chesapeake Bay Preservation Act (Code of Virginia, § 10.1-2100 et seq.)

Article 5. Decision-Making Bodies and Officials

§5.1. CITY COUNCIL

§5.1.1. Powers and duties

In execution of the provisions of this chapter, the city council shall have the following powers and duties, and those provided in the Code of Virginia. (See also the city charter and chapter 5 of the City Code.)

A. Appointments

The city council shall have the responsibility of appointing members of the planning commission and the board of architectural review, pursuant to the provisions of the City Code.

B. Final decisions

The city council shall be responsible for making final decisions on the following:

1. Text amendments (§6.3);
2. Zoning map amendments (rezoning) (§6.4);
3. Certificates of appropriateness, major (alternative)(§6.5);
4. Planned development reviews (§6.6);
5. Special use permits (§6.7);
6. Special exceptions (alternative) (§6.17); and
7. Variances (alternative) (§6.18).
8. Appeals to city council (§6.23); and
9. Other final decisions as may be specified in this chapter.

§5.2. PLANNING COMMISSION

§5.2.1. Establishment and composition

The planning commission is established and composed pursuant to the City Code, and the Code of Virginia. (See also Chapter 2 Article V Division 2 of the City Code.)

§5.2.2. Rules of operation

A. Bylaws

The planning commission shall adopt bylaws, which may be amended from time to time.

B. Meetings

The planning commission shall hold regularly scheduled meetings. All meetings and hearings of the commission shall be open to the public, except as otherwise provided by law. The chairman of the commission, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

C. Records and minutes

The planning commission shall keep minutes of its proceedings and other official actions, which shall be filed in the office of community development and planning and shall be public records.

§5.2.3. Powers and duties

In execution of the provisions of this chapter, the planning commission shall have the following power and duties.

A. General authority

The planning commission shall exercise additional powers as may be described elsewhere in this chapter and as permitted by the Code of Virginia.

B. Recommendations

1. The planning commission shall make recommendations regarding the following:
   - **(a)** Text amendments (§6.3);
   - **(b)** Zoning map amendments (rezoning) (§6.4); and
   - **(c)** Planned development reviews (§6.6).
2. In making a recommendation on any application, the planning commission shall be authorized to comment on any aspect of the application.

§5.3. BOARD OF ZONING APPEALS

§5.3.1. Establishment and composition

A board of zoning appeals is hereby established. The membership shall consist of five members appointed pursuant to Code of Virginia, § 15.2-2308.

§5.3.2. Rules of operation

A. Bylaws

The board of zoning appeals shall adopt bylaws, which may be amended from time to time, provided that the concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variance from this chapter.

B. Meetings

The board of zoning appeals shall hold regularly scheduled meetings. All meetings and hearings of the board shall be open to the public, except as otherwise provided by law. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

C. Records and minutes

The board of zoning appeals shall keep minutes of its proceedings and other official actions, which shall be filed in the office of the zoning administrator and shall be public records.

§5.3.3. Powers and duties

The board of zoning appeals shall have the following powers and duties:

A. General authority

The board of zoning appeals shall exercise additional powers as may be described elsewhere in this chapter and as permitted by the Code of Virginia.

B. Final decisions

Except as otherwise specified herein, the board of zoning appeals shall be responsible for final decisions regarding the following:

1. Special exceptions (§6.17);
2. Variances (§6.18); and
3. Administrative appeals (§6.22).

C. Notifications and records

1. Required notifications

The board of zoning appeals shall notify, in writing, the applicant for a variance request that the issuance of a variance to construct a structure below the 100-year flood elevation:

(a) Increases the risks to life and property; and

(b) May result in increased premium rates for flood insurance.

2. Official records

The board of zoning appeals shall maintain records of the above notifications as well as all variance actions, including justification for the issuance of the variances. The annual or biennial report submitted to the federal insurance administrator shall note any variances, which are issued during the period covered by the report.

§5.4. BOARD OF ARCHITECTURAL REVIEW

§5.4.1. Established

A. There is hereby established a board of architectural review, which shall be composed of seven members appointed by the city council. Such members shall be city residents, provided that if no city residents meeting the membership requirements apply to fill the vacancy, then the city council may appoint nonresidents in accordance with the limitations established in Section 3.6 of the City Charter. (See also Chapter 2, Section 2.8:1 of the City Charter)

B. Members shall be appointed for staggered terms of three years; provided, however, that the term of the planning commission member shall be further limited by that member's term on the commission. Any member of the board of architectural review may be removed from office for cause by a two-thirds vote of the city council. Any appointment to fill a vacancy created as a result of such a removal shall be only for the unexpired portion of the term.

§5.4.2. Membership requirements

Requirements for board of architectural review membership are established in §5.4. Standards for demonstrating interest, competence or knowledge in historic preservation and standards for determining professional qualifications shall be as established by the Department of Historic Resources for the certified local government program.

A. All appointees shall have a demonstrated interest, competence, or knowledge in historic preservation.

B. At least one appointee shall be an architect or architectural historian.

C. At least one additional appointee shall have professional training or equivalent experience in architecture, history, architectural history, archeology or planning.

D. One additional appointee shall be selected from among the membership of the planning commission.

E. One appointee shall be a businessperson in the city. In deliberating on this appointment, city council shall solicit a list of nominations from organized business associations; however, such appointee need not be a member of any such association.

§5.4.3. Officers

The board of architectural review shall elect a chairman and a vice-chairman from its appointed membership. The director shall serve as secretary to the board of architectural review, but shall not be a voting member.

§5.4.4. Bylaws

The board of architectural review shall adopt bylaws, which may be amended from time to time.

§5.4.5. Powers and duties

A. General

The board of architectural review shall have the following general powers and duties:

1. Make recommendations for the clarification and improvement of architectural guidelines and standards;

2. Review and make recommendations regarding city projects, i.e. where the city is the applicant; and

3. Render such other decisions and recommendations as may be provided elsewhere in this chapter.

B. Final decisions

The board of architectural review shall be responsible for final decisions regarding the following:

1. Certificates of appropriateness, major (§6.5)

§5.5. DIRECTOR OF COMMUNITY DEVELOPMENT AND PLANNING

§5.5.1. Designation

The director of community development and planning, as appointed by the city manager, shall administer and enforce these zoning regulations, except as otherwise specified. In the performance of his or her duties, the director may request the assistance of any appropriate officer or agency of the city.

§5.5.2. Powers and duties

A. General

The director shall have powers and duties as may be described elsewhere in this chapter.

B. Recommendations

The director shall be responsible for making recommendations regarding the following:

1. Text amendments (§6.3);
2. Map amendments (rezoning) (§6.4);
3. Certificates of appropriateness, major (§6.5);
4. Planned development reviews (§6.6);
5. Special use reviews (§6.7); and
6. Affordable dwelling unit modifications (§6.19).

C. Final decisions

The director shall be responsible for making final decisions regarding the following:

1. Certificates of appropriateness, minor (§6.5).

§5.6. ZONING ADMINISTRATOR

§5.6.1. Designation

The zoning administrator, as appointed by the director of community development and planning with the consent of the city manager, shall administer and enforce these zoning regulations, except as otherwise specified. In the performance of his or her duties, the zoning administrator may request the assistance of any appropriate officer or agency of the city.

§5.6.2. Powers and duties

A. General

The zoning administrator shall have powers and duties as may be described elsewhere in this chapter, including interpretation of all standards, procedures and regulations contained herein.

B. Recommendations

The zoning administrator shall be responsible for making recommendations regarding the following:

1. Special exceptions (§6.17); and
2. Variances (§6.18).

C. Final decisions

The zoning administrator shall be responsible for making final decisions regarding the following:

1. Site plan reviews (§6.8);
2. Sign permits (§6.9);
3. Tree removal permits (§6.10);
4. Floodplain permits (§6.11);
5. Erosion and sediment control permits (§6.12);

6. Chesapeake Bay preservation reviews (§6.13);
7. Temporary use permits (§6.15);
8. Administrative adjustments (§6.16);
9. Zoning permits (§6.21); and
10. Written interpretations (§6.20).

§5.7. DIRECTOR OF PUBLIC WORKS

§5.7.1. Designation

The director of public works, as appointed by the city manager, shall administer and enforce provisions of these zoning regulations as specified herein. In the performance of his or her duties, the director of public works may request the assistance of any appropriate officer or agency of the city.

§5.7.2. Powers and duties

A. General

The director of public works shall have powers and duties as may be described elsewhere in this chapter.

B. Recommendations

The director of public works shall be responsible for making technical recommendations regarding the following:

1. Site plan reviews (§6.8);
2. Floodplain permits (§6.11);
3. Erosion and sediment control permits (§6.12);
4. Chesapeake Bay preservation reviews (§6.13).

§5.8. VSMP AUTHORITY

§5.8.1. Designation

The VSMP Authority, properly trained by the state and working under the director of public works, shall administer and enforce provisions of these zoning regulations as specified herein. In the performance of his or her duties, the VSMP may request the assistance of any appropriate officer or agency of the city.

§5.8.2. Powers and duties

A. General

The VSMP authority shall have powers and duties as may be described elsewhere in this chapter.

B. Final decisions

The VSMP authority shall be responsible for making final decisions regarding the following:

1. Stormwater permit reviews (§6.14).

Article 6. Development Review

§6.1. SUMMARY OF REVIEW AUTHORITY

The following table summarizes review and approval authority under this chapter.

Procedure		Director of Community Develop-ment and Planning	Director of Public Works	Zoning Adm.	Planning Commission	City Council	Board of Architec-tural Review	Board of Zoning Appeals	Ref.
Text Amendments		Review			<Review>	<Decision>			§6.3
Map Amendments (Rezoning)		Review			<Review>	<Decision>			§6.4
Certificates of Appropriateness	Minor	Decision							§6.5
	Major	Review				Decision*	Decision		
Planned Development Reviews		Review			<Review>	<Decision>			§6.6
Special Use Reviews		Review				<Decision>			§6.7
Site Plan Reviews			Review	Decision					§6.8
Sign Permits				Decision					§6.9
Tree Removal Permits				Decision					§6.10
Floodplain Permits			Review	Decision					§6.11
Erosion/Sediment Control Permits			Review	Decision					§6.12
Chesapeake Bay Preservation Reviews			Review	Decision					§6.13
Stormwater Permit			(VSMP Authority) Decision						§6.14
Temporary Use Permits				Decision					§6.15
Administrative Adjustments				Decision					§6.16
Special Exceptions				Review		<Decision> *		<Decision>	§6.17
Variances				Review		<Decision> *		<Decision>	§6.18
Affordable Dwelling Unit Modifications		Review				<Decision>			§6.19
Written Interpretations				Decision					§6.20
Zoning Permits				Decision					§6.21
Administrative Appeals								<Decision>	§6.22
Appeals to City Council						<Decision>			§6.23
Appeals to Court									§6.24

<Public Hearing Required>

* Alternative City Council approval procedure available. The board of zoning appeal approves all special exceptions in the RL, RM and RH districts.

§6.2. COMMON REVIEW PROCEDURES

§6.2.1. Pre-application meeting

A. Before submitting an application required by this chapter, each applicant may hold a pre-application meeting with the zoning administrator, the director of community development and planning, or other applicable review official(s), or with decision-making bodies

(separately or jointly) to discuss the procedures, standards and regulations required for development approval in accordance with this chapter. There shall be no discussion of proffers at any pre-application meeting.

B. No official action shall be taken at such meeting and no commitments shall be made by the city or any agency thereof at such meeting.

C. A pre-application meeting shall be required for each of the following:

1. Map amendments (rezoning) (§6.4);

2. Planned development reviews (§6.6);

3. Special use reviews (§6.7);

4. Site plan reviews (§6.8);

5. Certificates of appropriateness (§6.5);

6. Special exceptions (§6.17); and

7. Affordable Dwelling Unit modifications (§6.19).

§6.2.2. Application processing cycles

The zoning administrator may promulgate processing cycles for:

A. Deadlines for receipt of complete applications;

B. Dates of regular meetings; and

C. The scheduling of staff reviews and staff reports on complete applications.

§6.2.3. Application requirements

A. Forms

Applications required under this chapter shall be submitted on application forms and in such numbers as required by the zoning administrator. (See also §6.1) The application form for each development review procedure shall establish the minimum information required for that procedure.

B. Proof of ownership

All applications required under this chapter shall include satisfactory proof of ownership in accordance with the Code of Virginia. Such proof may include identification of the property owner, along with the book and page where the deed records are recorded on the plat.

1. All applications shall include the name and signature of the current property owner(s) of all property within the boundaries; or

2. Where the owner is not the applicant, the review official shall require an applicant to present evidence that the applicant is an authorized agent of the owner. Contract purchasers of property shall submit a written power of attorney signed by the owner.

C. Content

1. An application shall be sufficient for processing when it contains all of the information necessary to decide whether or not the development as proposed will comply with the applicable requirements of this chapter.

2. The burden of demonstrating that an application complies with applicable review and approval criteria is on the applicant. The burden is not on the city or other parties to show that the standards or criteria have not been met.

3. Each application is unique and, therefore, more or less information may be required according to the needs of the particular case. Information needs tend to vary substantially from application to application and to change over time as result of code amendments and review procedure changes. Staff has the flexibility to specify submission requirements for each application and to waive requirements that are irrelevant to specific situations. The applicant shall rely on the review official as to whether more or less information should be submitted.

D. Fees

1. All applications shall be accompanied by the associated filing fee and shall be filed with the applicable review official or body.

2. Filing fees shall be established from time to time by resolution of the city council to cover all actual costs associated with the processing of applications. Such costs shall include but not be limited to all costs associated with application review and the provision of required public notices. (See § 15.2-2286(A)(6), Code of Virginia, for more information.)

3. Organizations exempt from taxation pursuant to section 501(c)(8) or section 501(c)(19) of the Internal Revenue Code shall be exempt from the payment of fees for temporary use permits for said organizations.

4. Filing fees are not refundable except where an application was accepted in error, the fee paid exceeded the amount due, or where an application is withdrawn by the applicant in writing prior to any significant expenditure of time reviewing the application and prior to publication of any notices.

E. Completeness review

1. Applications will be reviewed for completeness within five business days of submission. Applications not reviewed as required by this subsection E within five business days of submission shall be deemed submitted and the review process shall begin.

2. Other than situations covered by §6.2.3.E.1, above, an application shall be considered submitted only after the applicable review official certifies that it is complete, provided in the required form, includes all mandatory information as may be required by the review official, and is accompanied by the applicable fee.

3. If an application does not include all of the required information it will be deemed incomplete. If an application includes all of the required information it will be deemed complete. If an application is deemed to be incomplete, the review official shall contact the applicant and provide a written explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected.

4. If the deficiencies are not corrected by the applicant within 60 business days, the application shall be considered withdrawn. If an application is deemed withdrawn because of failure to correct application deficiencies, notice shall be sent to the applicant.

5. All applications must be certified complete at least 21 days prior to a public hearing, unless otherwise allowed by the review official.

§6.2.4. Application processing

A. Referrals

The zoning administrator shall forward complete applications submitted under this article to such other public officials and agencies as required by law or as deemed appropriate for further review.

B. Timely staff reports and final actions

1. Review officials and agencies shall submit written reports containing recommendations on each application to the zoning administrator within 30 days of receipt of a complete application.
2. Where final action is the responsibility of the zoning administrator, such final decision or determination shall be made within 90 days of such request unless the applicant has agreed to a longer period.

C. Concurrent applications

1. If approved by the applicable review officials, applications for development approvals may be submitted and reviewed concurrently, provided that:
   (a) Any application that also requires a variance or legislative approval [i.e., text amendments, map amendments (rezoning), planned development reviews] shall not be eligible for final approval until the variance and/or legislative approval has been granted; and
   (b) No site plan shall be approved before any necessary rezoning, including planned development rezoning, is approved.
2. Applications submitted concurrently are subject to approval of all other related applications; disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

D. Continuation of public hearings

1. A public hearing for which proper notice was given may be continued to a later date without providing additional notice as long as the continuance is set for specified date and time and that date and time is announced at the time of the continuance.
2. If a public hearing is tabled or deferred for an indefinite period of time or postponed more than three months from the date of the originally scheduled public hearing, new public notice shall be given, in accordance with the notice requirements of the respective procedure, before the rescheduled public hearing.

E. Burden of proof or persuasion

In all cases, the burden is on the applicant to show that an application complies with applicable approval criteria.

F. Conditions of approval

When the procedures of this article allow decision-making bodies or officials to recommend or to approve applications with conditions, the conditions shall relate to a situation created or aggravated by the proposed use or development. When conditions are imposed, a project will not be deemed approved until the applicant has complied with all of the conditions. Surety in a form acceptable to the city attorney may be required to ensure compliance with the conditions.

G. Decisions

Unless specifically provided elsewhere, all final decisions by decision-making bodies, including map amendments (rezoning), text amendments, planned development reviews, special use reviews, special exceptions, variances, affordable dwelling unit modifications, administrative appeals and appeals to city council, shall require an affirmative vote. Tie votes shall be considered denials of any requested change.

H. Notice of decision

1. Within five days after final decisions are made on applications submitted pursuant to this article, a written copy of the decisions shall be sent by first class mail or delivered to the applicant and filed with the director, where it shall be available for public inspection during regular office hours.

2. If an administrative application or request (i.e. nonlegislative) is denied, the review body or official shall provide the denial in writing and supported by substantial evidence contained in a written record.

I. Inactive files

For inactive files, the zoning administrator may notify the applicant and applicant's agent in writing that a file has been closed when the file has been inactive for a period of time equal to or exceeding 12 months. The period of inactivity shall be measured from the time staff issued comment or correspondence that requires revision to the application or some affirmative act in response by the applicant but no subsequent revisions or affirmative act toward approval of the application has been made. Requests for action after a file has been declared inactive and the applicant has been notified require resubmittal as a new application. Review fees and cost of publication are required to be paid as part of the resubmittal.

§6.2.5. Notice and public hearings

A. Summary of notice requirements

Notice shall be required for applications as shown below, except as otherwise specified. Unless otherwise stated, all notice requirements shall be the city's responsibility.

Development Review Type		Published	Mailed	Posted	Reference
Text amendments	Affecting more than 25 parcels	■			§6.3
	Decreasing density	■	■		
	Affecting 25 or fewer parcels	■	■		
Map amendments (rezoning)	Affecting more than 25 parcels	■	■		§6.4
	Decreasing density	■	■	■	
	Affecting 25 or fewer parcels	■	■	■	
Planned development reviews	Affecting more than 25 parcels	■			§6.6
	Affecting 25 or fewer parcels	■	■	■	

DEVELOPMENT REVIEW TYPE	PUBLISHED	MAILED	POSTED	REFERENCE
Special use reviews	■	■	■	§6.7
Special exceptions	■	■	■	§6.17
Variances	■	■	■	§6.18
Affordable Dwelling Unit Modifications	■	■	■	§6.19
Administrative appeals	■			§6.22
Appeals to city council	■			§6.23

B. Public notice requirements

1. Published notice

(a) Where published notice is required, notice of public hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation within the city. The advertised hearing shall be held not less than five or more than 21 days, after the second advertisement shall appear in such newspaper. The term "two successive weeks" as used above shall mean that such notice shall be published at least twice with not less than six days elapsing between the first and second publication.

(b) Notice of public hearing before the planning commission and the city council may be published concurrently. If a joint hearing is held, then published notice as set forth above need be given only by the city council.

2. Mailed notice

(a) Text and map amendments

(1) 25 or fewer parcels

(i) In addition to published notice, when a proposed amendment of this chapter involves a change in a zoning map classification of 25 or fewer parcels of land, written notice shall be given at least five days before the hearing to the owner(s), their agent or the occupant of each parcel involved; to the owners, their agents or the occupants, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie outside the city; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owners' associations within the planned unit development that have members owning property located within 2,000 feet of the affected property, as may be required by the commission or its agent.

(ii) Written notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement.

(2) More than 25 parcels or text amendments, decreasing allowed density

When a proposed amendment of this chapter involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed

dwelling unit density of any parcel of land, then, in addition to the advertising as above required, written notice shall be given, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such text amendments shall not have to be mailed to the owner, owners, or their agent of lots shown on an subdivision plat where such lots are less than 11,500 square feet.

(i) If any portion of the affected property is within a development governed by a property owners' association, such notice may be sent to the incorporated property owners' associations, where such association exists that has members owning property located within 2,000 feet of the affected property, as may be required.

(ii) One notice shall be sent to the last known address of such owner, as shown on the current real estate tax assessment books, by registered or certified mail, provided that first-class mail may be used if the staff mailing such notices makes an affidavit that such mailings have been made and files such affidavit with the papers in the case.

(b) Administrative adjustments

Prior to the granting of an administrative adjustment, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for adjustment, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for adjustment and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this subsection.

(c) All other

(1) Where mailed notice is required for applications other than text or map amendments, notice of public hearing or administrative action may be mailed by first-class mail (at the last addresses listed for such owners in the city tax records) to all property owners within and immediately abutting the subject property. Where the subject property immediately adjoins public or private right-of-way, landscape or riparian buffer, commonly-owned private area, public property, or owners' association property, then letters of notification shall be sent to adjoining property owners as if they directly abut the subject property. The staff mailing such notices shall certify to the city council that fact, and such certificate shall be deemed conclusive.

(2) The notice shall be mailed at least 5 days prior to the date of the public hearing.

3. Posted notice (sign)

(a) Size and type

The city will provide the sign to post on the subject property.

(b) Timing

When posted notice is required, the applicant shall post signage advertising the public hearing posted on the property in question at least 10 days prior to the hearing.

(c) Location

The sign shall be posted on the property or at a point visible from each adjacent public road. Failure to have the sign posted shall not affect the legitimacy of any action taken if other advertising requirements of this chapter and the Code of Virginia have been met.

(d) Verification

The applicant shall provide photographic or otherwise acceptable evidence to verify that the required posting occurred.

(e) Removal

The applicant shall maintain all posted sign(s) up to the time of the hearing and shall remove all posted sign(s) no later than 10 days after the hearing.

4. Contents

Where a plan, application, ordinance or amendment is lengthy, or involves numerous parcels, the plan, application, ordinance or amendment need not be advertised in full but may be advertised by reference. All notices for public hearings, unless noted otherwise, whether by mail (written notice), publication (newspaper) or posting (sign) shall include:

(a) Time and place of public hearing

Indicate the date, time and place of public hearing at which persons affected may appear and present their views. See also §6.2.4.D.

(b) Nature and scope

Provide a descriptive summary of the proposed action, including nature of the change in zoning and location of the area affected.

(c) Location where materials may be inspected

Identify the place or places within the city where the public may inspect the proposed plans, application, ordinance or amendment, staff report(s), recommendations and related materials. All notices shall state that information is available for public inspection during normal business hours.

5. Supplementary notice provisions

(a) When a proposed change in zoning map classification; or an application for a change in use or to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previous approvals, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the state, then, in addition to the notification as above required, written notice shall also be given by the commission, at least 10 days before the hearing to the chief administrative officer, or his/her designee, of such adjoining locality.

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

6. Joint hearings

Where a public hearing is required before both the city council and the planning commission or the board of architectural review, a joint public hearing may be held after public notice as set forth herein. When a joint public hearing is held, the required public notice need be given only by the city council.

7. Constructive notice

Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements.

§6.3. TEXT AMENDMENTS

§6.3.1. Applicability

Amendments to the text of this chapter shall be made in accordance with the provisions of §6.3.

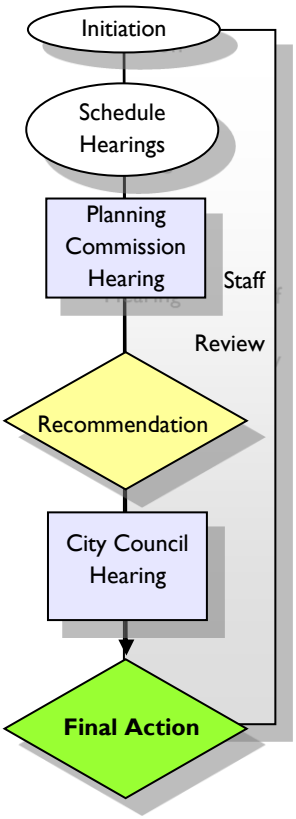
§6.3.2. Initiation

A text amendment may be initiated by affirmative vote of the city council or the planning commission.

§6.3.3. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.

§6.3.4. Action by director of community development and planning



A. The director of community development and planning shall draft the appropriate amendment and prepare a report and recommendation in accordance with the approval considerations of §6.3.7.

B. The director shall forward the completed request and any related materials to the planning commission for a recommendation.

§6.3.5. Action by planning commission

After receiving the director's report and recommendation, the planning commission shall review the proposed text amendment in accordance with the approval considerations of §6.3.7, and recommend that the city council approve, approve with modifications or conditions, table or defer, or disapprove the proposed text amendment.

§6.3.6. Action by city council

After receiving the planning commission's recommendation, the city council shall review the proposed text amendment in a public hearing and in accordance with the approval considerations of §6.3.7 and as otherwise required by law, and approve the text amendment, including any appropriate changes or correction to the amendment; disapprove the amendment; table or defer the amendment; or send the amendment back to the planning commission for further consideration.

§6.3.7. Approval considerations

In determining whether to approve, approve with modifications or conditions, or disapprove a proposed text amendment, the planning commission and the city council shall consider the following, at a minimum:

A. Public necessity, convenience, and general welfare to the extent such factors are pertinent to the subject matter of the proposed text amendment;

B. Whether the proposed text amendment is consistent with the comprehensive plan and the remainder of this chapter, including, specifically, the purpose statement of §1.1.4;

C. Whether the proposed text amendment represents a new idea not considered in the existing ordinance, or represents a revision necessitated by changing circumstances over time;

D. Whether or not the proposed text amendment corrects an error in this chapter; and

E. Whether or not the proposed text amendment revises this chapter to comply with state or federal statutes or case law.

§6.3.8. Appeals to court

Any final decision of the city council on a text amendment may be appealed within 30 days of the decision in accordance with §6.24.

§6.4. MAP AMENDMENTS (REZONING)

§6.4.1. Applicability

A. Amendments to the zoning map shall be made in accordance with the provisions of §6.4. The city council may consider amendments to the zoning map, as may be required or requested from time to time.

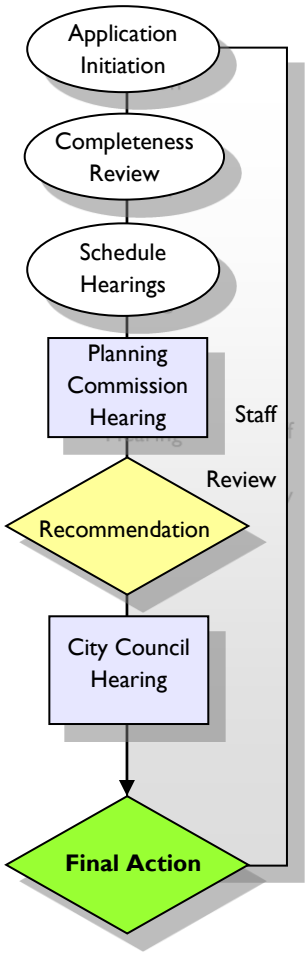
B. Rezoning requests shall correspond with the boundary lines of existing or proposed platted lots or parcels.

§6.4.2. Initiation

A rezoning may be initiated by:

A. The affirmative vote of the city council or the planning commission, provided, however, that neither the city council nor the planning commission shall have any authority to initiate an application requesting a rezoning to any planned development district; or

B. An owner of land within the city, or an authorized agent or representative (§6.2.3.B), may submit an application for rezoning, including an application requesting a rezoning to any planned development district.



§6.4.3. Pre-application meeting

Applicants submitting rezoning applications shall hold a pre-application meeting as described in §6.2.1.

§6.4.4. Application requirements

A. An application for a rezoning shall be submitted in accordance with §6.2.3.

B. If an applicant for rezoning wishes to submit proffers, such proffers may be submitted as part of the application. (See also §6.4.10) No proffers will be filed or accepted in conjunction with rezoning applications requesting a planned development district, as the master development plan submitted by the applicant for a proposed planned development shall itself constitute the applicant's proposal and binding commitment for that development.

§6.4.5. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.

§6.4.6. Action by director of community development and planning

The director of community development and planning shall review each proposed rezoning application, including any proffers, in accordance with the approval considerations of §6.4.9, and distribute the proposed plan to appropriate agencies and reviewers. Based on the results of those reviews, director will provide a report and recommendation to the planning commission and city council.

§6.4.7. Action by planning commission

After receiving the director's report, the planning commission shall review the proposed rezoning, including any proffers (§6.4.10), in a public hearing and in accordance with the approval considerations of §6.4.9, and recommend that the city council approve the application, recommend that the application be revised and recommend that the city council approve the application if so revised, table or defer the application, or recommend that the proposed rezoning be disapproved by the city council.

§6.4.8. Action by city council

After receiving the planning commission's recommendation, the city council shall review the proposed rezoning, including any proffers (§6.4.10), in a public hearing and in accordance with the approval considerations of §6.4.9 and as otherwise required by law, and approve, table, defer, or disapprove the proposed rezoning.

§6.4.9. Approval considerations

In determining whether to approve or disapprove a proposed rezoning to any district other than a rezoning requesting a planned development district, the planning commission and city council shall consider any proffers, and the following:

A. Substantial conformance with the comprehensive plan;

B. Any greater benefits the proposed rezoning provides to the city than would a development carried out in accordance with the current zoning district (§3.2), and otherwise applicable requirements of this chapter;

C. Suitability of the subject property for the development and uses permitted by the current versus the proposed district;

D. Adequacy of existing or proposed public facilities such as public transportation facilities, public safety facilities, public school facilities, and public parks;

E. Adequacy of existing and proposed public utility infrastructure;

F. Compatibility of the proposed development with adjacent and nearby communities; and

G. Consistency with the stated purpose of the proposed district.

§6.4.10. Proffers

A. Intent

The intent of §6.4.10 is to provide, pursuant to the authority granted to the city by § 15.2-2303, Code of Virginia, a more flexible and adaptable method to cope with situations found in such zones whereby a zoning reclassification may be allowed, subject to certain conditions proffered by the rezoning applicant, for the protection of the community.

B. General development plan

In granting applications for rezoning to districts other than planned development districts, the city council may accept, through proffering or otherwise as permitted by law, development of the subject property as shown on a general development plan.

C. Proffer of conditions

An owner may voluntarily proffer reasonable conditions including cash, real property, services, land use restrictions and other conditions, in addition to the regulations established elsewhere in this chapter, as part of an application requesting an amendment to the zoning

district regulations or the official zoning district map(s) or a change in zoning of individual parcel(s). No proffers will be submitted by the applicant or accepted by the city council in conjunction with applications requesting a rezoning to a planned development district. In addition, all conditions proffered shall comply with the requirements of §§15.2-2303 and 2303.4 of the Code of Virginia, and any other applicable provisions of the Code of Virginia.

D. Persons entitled to sign proffer statements

1. Whenever proffers are submitted to the city council by a rezoning applicant, the proffer statement must be signed by all owners of the subject property. Agents, contract purchasers and alike may not sign the proffer statement.

2. If the owner(s) is a corporation, limited liability company or other similar entity, written documentation must be provided that indicates to the satisfaction of the city attorney that the person(s) signing the proffer statement is(are) legally empowered to sign the statement on behalf of that legal entity.

E. Procedure

Proffered conditions shall be submitted only in connection with and as an integral part of an application for rezoning and as permitted by applicable law and shall be considered procedurally by the city council and planning commission concurrent with each body's consideration of the application.

1. If an applicant for a rezoning desires to proffer reasonable conditions as permitted in §6.4.10, then either the proffers or a statement of intent to submit proffers shall accompany the rezoning application. No proffers will be submitted by the applicant or accepted by the city council in conjunction with applications requesting a rezoning to a planned development district. Within 60 days from the date a statement of intent to submit proffers is filed, the applicant may request a conference with the director to discuss the proffers or any other matter relative to the application, which is deemed pertinent by the applicant or the director.

2. The applicant shall submit proffers in writing to the director not less than 21 calendar days prior to the first public hearing on such application before the planning commission. The director shall file such proffers with the zoning administrator, and the proffers shall be attached to, and made a part of the application for a rezoning. The applicant may amend the proffers or submit additional proffers provided that the changes shall be submitted in writing no less than seven calendar days prior to the public hearing before the planning commission, and shall be forwarded forthwith to the planning commission for its consideration. All proffers, and any subsequent changes including additions, shall be signed by the applicant and the property owner(s). No proffers will be submitted by the applicant or accepted by the city council in conjunction with applications requesting a rezoning to a planned development district.

3. At or before the first public hearing before the planning commission, the director shall submit recommendations for proffers and forward to the planning commission such recommendations with the proffers proposed by the applicant.

4. The planning commission may recommend to the city council any additional proffers, which the commission may deem appropriate or as submitted by the applicant.

5. Not less than 17 calendar days prior to the first public hearing before the city council on the subject application, the applicant may submit additional proffers in writing to the director; provided that such additional proffers are among those previously recommended by the director or the planning commission. The director shall file such additional proffers in the manner described in §6.4.10.E.2.

6. If the applicant submits additional proffers as provided for in §6.4.10.E.7 less than 17 calendar days prior to the first public hearing before the city council on the subject application, any scheduled public hearing before the city council shall be tabled or deferred and the costs of any additional advertising and expenses of remailing additional notice shall be borne by the applicant.

7. If the applicant desires to submit additional proffers or amend previously submitted proffers in a manner that will materially alter the application, the application shall be referred to the planning commission for an additional public hearing and recommendation, and thereafter the application shall be considered as provided in §6.4.10. Costs of additional advertising and expenses of remailing additional notice shall be borne by the applicant.

8. In the event that the city council adopts any such proffers as a part of the enactment of an amendment to the zoning map, the zoning administrator shall indicate the existence of such conditions when amending the zoning map by affixing the suffix "(p)" to the zoning district designated for the subject property in any such amendment to the zoning map (e.g., CO(p); RT(p)).

§6.4.11. Time lapse between similar applications

Except on its own initiative, the city council will not accept, hear or consider substantially the same application for a proposed rezoning within a period of 12 months from the date a similar application was denied, but nothing herein shall prevent the city council and planning commission from accepting, hearing or considering, or the city council from subsequently approving a rezoning application that is substantially the same at any time if it has been initiated the second or subsequent time by the council itself, rather than by the planning commission or a property owner. In no event will the city council have the authority to initiate a rezoning to a planned development district. However, for good cause shown, the city council may waive the foregoing 12 month requirement upon the applicant’s request with respect to applications requesting a rezoning to a planned development district or an amendment to a master development plan.

§6.4.12. Appeals to court

Any final decision of the city council on a rezoning may be appealed within 30 days of the decision in accordance with §6.24.

§6.5. CERTIFICATES OF APPROPRIATENESS

§6.5.1. Applicability

Certificates of appropriateness shall be reviewed in accordance with the provisions of §6.5.

A. A certificate of appropriateness shall be required:

1. To any material change in the appearance of a building, structure, or site visible from public places (rights-of-way, plazas, squares, parks, government sites, and similar) and located in a historic overlay district (§3.7.2), the Old Town Fairfax Transition Overlay District (§3.7.3), or in the Architectural Control Overlay District (§3.7.4). For purposes of §6.5, "material change in appearance" shall include construction; reconstruction; exterior alteration, including changing the color of a structure or substantial portion thereof; demolition or relocation that affects the appearance of a building, structure or site in the historic overlay district (§3.7.2); and

2. To install, relocate or modify any sign not expressly exempt in a historic overlay district or in the Old Town Fairfax Transition Overlay District. (See also §4.6)

B. Nothing in §6.5 shall be construed to be in conflict with any provision of this chapter or the Virginia Uniform Statewide Building Code (USBC) that permits the razing of unsafe structures.

§6.5.2. Exemptions

The following development shall be exempted from the requirements of §6.5:

A. Repairs, maintenance, or alteration of any feature the building official certifies is required due to an unsafe or dangerous condition;

B. The normal repair and maintenance of any exterior architectural feature;

C. Ordinary yard maintenance in the historic districts to correct deterioration, decay or damage, or to sustain the existing form that does not involve a change in design, material, color or exterior appearance;

D. Repainting resulting in the same, previously approved color;

E. Replacing previously approved broken windowpanes, missing roof shingles, or missing features with matching in-kind materials;

F. Addition or deletion of television or radio antennas, skylights, or solar collectors in locations not visible from public places (rights-of-way, plazas, squares, parks, government sites, and similar);

G. Any changes to a structure or site that is not visible from a public place; and

H. Modification to the text only of a previously approved sign, where the sign otherwise conforms with all requirements of §4.6.

§6.5.3. Certificate of appropriateness types

There are two types of certificate of appropriateness with differing levels of approval required for each. The criteria for establishing which type of certificate of appropriateness and the corresponding level of approval for each are indicated below.

A. Minor certificate of appropriateness

1. Applicability

A minor certificate of appropriateness shall include proposed changes to:

(a) Awnings, doorways, ramps, walkways, shutters, porches, railings and similar features;

(b) Landscaping features, involving the planting of grass, trees or shrubs, minor grading, walks, low retaining walls, fencing, street furniture, outdoor seating areas, small fountains, and ponds;

(c) Screening for dumpsters or mechanical equipment, either on the ground or on the structure;

(d) Exterior lighting, including poles and fixtures;

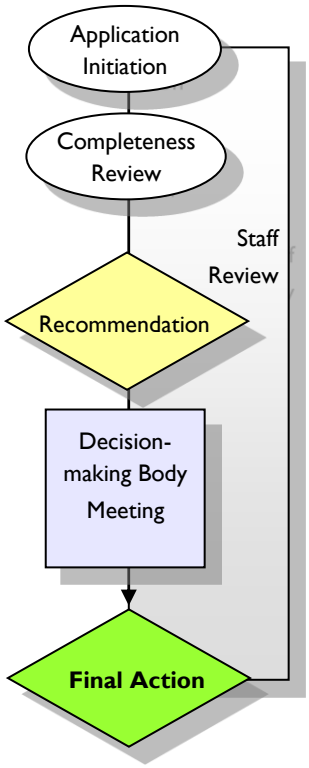
(e) Signs in the Old Town Fairfax Historic Overlay and the Old Town Fairfax Transition Overlay Districts as specified in §3.7.2.B.8 and §3.7.3.G, respectively;

(f) Antennas, satellite dishes or other communications devices, skylights or similar appurtenances; and

(g) Features and changes similar to those listed above.

2. Approval authority

The director shall have authority to approve all minor certificates of appropriateness.



B. Major certificate of appropriateness

1. Applicability

Any development requiring a certificate of appropriateness not listed in §6.5.3.A, above, as a minor certificate of appropriateness shall be considered a major certificate of appropriateness.

2. Approval authority

(a) General

Except as specified in §6.5.3.B.2(b), below, the board of architectural review shall have authority to approve major certificates of appropriateness.

(b) Alternative (in conjunction with other reviews)

Alternatively, and in conjunction with special use reviews, planned development reviews, special exceptions or map amendments (rezoning), the city council may approve major certificates of appropriateness.

§6.5.4. Application requirements

Applications for a certificate of appropriateness shall be submitted in accordance with §6.2.3.

§6.5.5. Action by director

The director shall review applications for certificates of appropriateness compliance with the approval criteria of §6.5.7. Based on the results of the review, the director shall take final action on minor certificates of appropriateness, and shall prepare a report and recommendation to the decision-making body on major certificates of appropriateness.

§6.5.6. Action by decision-making body

A. General (not involving other review by city council)

After receiving the director's report on proposed certificates of appropriateness, which do not involve other reviews described below, the board of architectural review (BAR) shall review the proposed certificates of appropriateness in accordance with the approval criteria of §6.5.7. The BAR may request modifications of applications in order that the proposal may better comply with the approval criteria. Following such review, the BAR may approve, approve with modifications or conditions, or disapprove the certificate of appropriateness application, or it may table or defer the application.

B. Other reviews

1. Prior to taking action on special use reviews, planned development reviews, special exceptions and map amendments (rezoning), the city council shall refer proposed certificates of appropriateness to the BAR for review in accordance with the approval criteria of §6.5.7.

2. In conjunction with special use reviews, planned development reviews, special exceptions and map amendments (rezoning), the city council may review the proposed certificate of appropriateness in accordance with the approval criteria of §6.5.7. The city council may request modifications of applications in order that the proposal may better comply with the approval criteria. Following such review, the city council may approve, approve with modifications or conditions, or disapprove the certificate of appropriateness application, or it may table or defer the application.

§6.5.7. Approval criteria

A. General

1. Certificate of appropriateness applications shall be reviewed for consistency with the applicable provisions of this chapter, the City of Fairfax Design Guidelines, and any other adopted design guidelines.

2. Approved certificates of appropriateness shall exhibit a combination of architectural elements including design, line, mass, dimension, color, material, texture, lighting, landscaping, roof line and height conform to accepted architectural principles and exhibit external characteristics of demonstrated architectural and aesthetic durability.

B. Demolition criteria for certificates in historic overlay districts

Any or all of the following criteria shall be considered in the review of applications for certificate of appropriateness to demolish a building or structure in the historic overlay districts of §3.7.2:

1. Whether or not the building or structure embodies distinctive characteristics of a type, period, style, method of construction, represents the work of a master, possesses high

artistic values or is associated with events that make a significant contribution to the broad local history or is associated with historically significant persons;

2. Whether or not the building or structure contributes visible architectural value to and provides historic continuity with properties within the same block, including both sides of the street, and the view shed;

3. Whether the building or structure is of such age, authenticity and unusual or uncommon design, setting, workmanship, and materials, and whether such design, quality and workmanship and traditional materials could be reproduced;

4. Specific plans for the site should the building or structure be demolished and the architectural compatibility of those plans and uses with properties within the same block, including both sides of the street and the view shed;

5. Whether it is economically and practically feasible in the opinion of a qualified structural engineer and/or building trades professional to preserve or restore the building or structure;

6. Whether the property owner can make alternate, economically viable uses of the property;

7. Whether relocation may be appropriate and feasible as an alternative to demolition;

8. Whether the existing structure is suited to or can be adapted to a proposed change in land use; and

9. Whether the structure or building is a contributing or noncontributing resource within the historic overlay districts of §3.7.2:

C. Relocation criteria for certificates in historic overlay districts

Any or all of the following criteria shall be considered in the review of applications for certificate of appropriateness to relocate a building or structure in the historic overlay districts of §3.7.2:

1. Whether or not the building or structure embodies distinctive characteristics of a type, period, style, method of construction, represents the work of a master, possesses high artistic values or is associated with events that make a significant contribution to the broad local history or is associated with historically significant persons;

2. Whether or not the building or structure contributes visible architectural value to and provides historic continuity with properties within the same block, including both sides of the street, and the view shed;

3. Specific plans for the site, should the building or structure be demolished; and the architectural compatibility of those plans and uses with properties within the same block, including both sides of the street, and the view shed;

4. Whether the structure or building can be moved without harm or damage to its physical integrity;

5. Whether the proposed relocation area is compatible with the building or structure's documented historic, scenic, cultural, aesthetic or architectural character in terms of architectural style and period of construction and furthers preservation of the building or structure and is located within the city;

6. Where appropriate, relocation should be encouraged by allowing improvements to be sold separate from the underlying property at an offering price not to exceed the fair market value as determined according to §6.5.8;

7. Whether the structure or building is a contributing or non-contributing resource within a historic overlay district; and

8. Whether the existing structure is suited to or can be adapted to a proposed change in land use.

§6.5.8. Relocate/demolish via bona fide sale procedure/criteria

A. Applicability

1. In accordance with §15.2-2306, Code of Virginia, the owner of any historic landmark, building or structure shall have the right to demolish or relocate such landmark, building or structure if:

   (a) An application to demolish or relocate via bona fide sale is submitted within one year of the board of architectural review's decision of denial of an application for a certificate of appropriateness to demolish a building or structure; and

   (b) The director certifies, upon the expiration of the bona fide offer to sell period established in §6.5.8.B.1 that no valid offer to purchase the building or structure has been made.

B. Approval criteria

1. Bona fide offer requirements

(a) Upon submission of a complete application, the director shall establish the bona fide offer to sell period for a time period, based on a fair market value, as prescribed below:

Offer Price	Time Period for Bonafied Offer to Sale at Fair Market Value (Month)
Less than $25,000	3
More than $25,000, but less than $40,000	4
More than $40,000, but less than $55,000	5
More than $55,000, but less than $75,000	6
More than $75,000, but less than $90,000	7
$90,000 or more	12

(b) If at any time the seller fails to follow or maintain the bona fide offer to sell, the time period for sale shall lapse.

(c) If the structure for sale is to be relocated, a reasonable assurance that the structure will be preserved shall be provided.

(d) If no bona fide contract to sell has been executed at the expiration of the bona fide offer to sell period, the owner shall provide the director an affidavit demonstrating his good faith efforts to sell that details any inquiries and attests to the fact that no viable purchase offer was made.

(e) The director shall certify that the owner has made a good faith effort to sell during the bona fide offer to sell period and that no viable purchase offer was made.

Upon this certification, the director shall notify the owner of his right to demolish the structure.

2. Fair market value

Fair market value shall be considered the median price based on three separate appraisals completed at the owner's expense and to the satisfactory to the city's real estate assessor. The three appraisals shall establish a median value, which shall be final and binding.

§6.5.9. Action following approval

A. Approval of any certificate of appropriateness shall be evidenced by issuance of a certificate of appropriateness, including any conditions, signed by the director or the chairman of the board of architectural review. The director shall keep a record of decisions rendered.

B. The applicant shall be issued the original of the certificate, and a copy shall be maintained on file in the director's office.

§6.5.10. Period of validity

A certificate of appropriateness shall become null and void if no significant improvement or alteration is made in accordance with the approved application within 18 months from the date of approval. On written request from an applicant, the director may grant a single extension for a period of up to six months if, based upon submissions from the applicant, the director finds that conditions on the site and in the area of the proposed project are essentially the same as when approval originally was granted.

§6.5.11. Time lapse between similar applications

A. The director will not accept, hear or consider substantially the same application for a proposed certificate of appropriateness within a period of 12 months from the date a similar application was denied, except as provided in §6.5.11.B, below.

B. Upon disapproval of an application, the director and/or board of architectural review may make recommendations pertaining to design, texture, material, color, line, mass, dimensions or lighting. The director and/or board of architectural review may again consider a disapproved application if within 90 days of the decision to disapprove the applicant has amended his application in substantial accordance with such recommendations.

§6.5.12. Transfer of certificates of appropriateness

Approved certificates of appropriateness, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.5.13. Appeals

A. Appeals to city council

Final decisions on certificates of appropriateness made may be appealed to city council within 30 days of the decision in accordance with §6.23.

B. Appeals to court

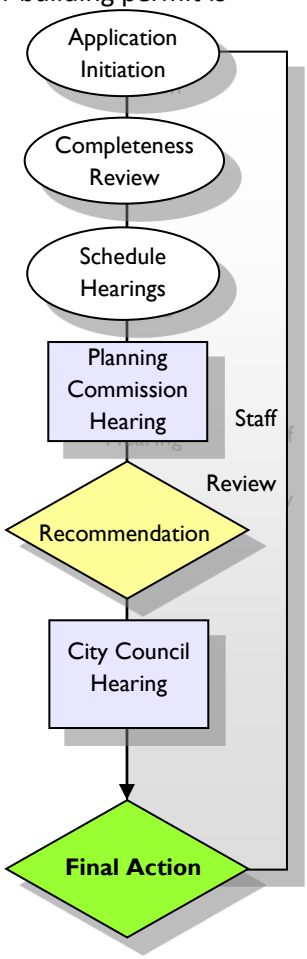
Final decisions of the city council on certificates of appropriateness may be appealed within 30 days of the decision in accordance with §6.24.

§6.6. PLANNED DEVELOPMENT REVIEWS

§6.6.1. Applicability

A. Applications for rezonings to planned development districts shall be in accordance with the provisions of §6.6 and shall be considered map amendments (rezoning). Upon approval, a planned development district, as governed by the master development plan, shall replace the underlying general zoning district as the zoning district category that applies to the subject property.

B. Approval of a master development plan, and recordation of that master development plan in the public records of the city, shall occur before any zoning permit or building permit is issued, and before any development takes place in a planned development district.



§6.6.2. Pre-application meeting

All applicants submitting planned development district applications shall hold a pre-application meeting in accordance with §6.2.1.

§6.6.3. Application requirements

Applications for planned development districts shall be submitted in accordance with §6.2.3. Concurrent with an application for a planned development, an applicant shall submit a master development plan that is in accordance with §3.8.2.C. Revisions to a master development plan shall not be accepted by the city less than 21 days prior to a public hearing. In the event an applicant seeks to make revisions to a master development plan less than 21 days prior to a public hearing, the public hearing will be continued or deferred.

A. Additional information

In addition to the information required above, the applicant shall submit a study of the anticipated revenues to the city, the cost to the city to maintain and serve the proposed development, and other applicable information pertaining to the economic feasibility of the proposed development. The applicant shall also submit an analysis of potential traffic generation. Such studies shall be consistent with the format provided by the director.

B. Community benefits

Each application for a rezoning to a planned development district must include a written statement from the applicant describing the community benefits of the proposed development and how the proposed development provides greater benefits to the city than would a development carried out in accordance with the purpose for the current zoning district (§3.2), and otherwise applicable requirements of this chapter. The provision of any such benefits shall be specifically set forth in the master development plan proposed by the applicant in support of such application.

C. Phasing schedule

If the applicant proposes to develop a planned development in phases, the application shall include a proposed phasing schedule as part of the master development plan.

D. Proffers prohibited

No proffers may be submitted by an applicant or accepted by the city council in the approval of a rezoning to a planned development district. The master development plan submitted by the applicant as part of a request for a rezoning to a planned development district is intended to present the particulars of the proposed planned development. If a master development plan is approved by the city council, that master development plan, as supplemented by the provisions of this ordinance, will control the development of the subject property that has been rezoned to a planned development district. Any proposal by the applicant to amend an approved master development plan must be approved by the city council.

§6.6.4. Notice and hearings

A. The city shall hold all required public hearings and give notice in accordance with §6.2.5.

B. The applicant for a planned development shall submit the proposed master development plan to the city no less than 21 days before the public hearing date for the proposed rezoning. In the event the applicant for a planned development wishes to make any revisions to the proposed master development plan after such submission but before the planning commission or city council acts on the proposed rezoning, then the revised master development plan shall be submitted to the city no less than 21 days before the date of the new or continued public hearing.

C. The applicant shall be responsible for any costs and expenses resulting from the need to advertise or otherwise provide public notice for any new or continued public hearing on a revised master development plan.

§6.6.5. Action by director of community development and planning

The director of community development and planning shall review each proposed rezoning to a planned development district, including the proposed master development plan, in accordance with the approval considerations of §6.6.8 and distribute the proposed master development plan to appropriate agencies and reviewers. Based on the results of those reviews, the director will provide a report and recommendation to the planning commission and city council.

§6.6.6. Action by planning commission

After receiving the director's recommendation and that of the board of architectural review, where applicable, the planning commission shall review the proposed planned development, including the proposed master development plan, in a public hearing and in accordance with the approval considerations of §6.6.8, and recommend that the city council approve the proposed planned development as submitted, recommend that the application be revised and recommend that the city council approve the application if so revised, table or defer the application, or recommend that the proposed planned development be disapproved by the city council.

§6.6.7. Action by city council

After receiving the planning commission's recommendation, the city council shall review the proposed planned development, including the proposed master development plan, in a public hearing and in accordance with the approval considerations of §6.6.8, and approve, table, defer, or disapprove the proposed planned development.

§6.6.8. Approval considerations

In determining whether to approve or disapprove a proposed planned development, the planning commission and city council shall consider the following:

A. Substantial conformance with the comprehensive plan;

B. Any greater benefits the proposed planned development provides to the city than would a development carried out in accordance with the general zoning district regulations;

C. Suitability of the subject property for the development and uses permitted by the general zoning district regulations versus the proposed district;

D. Adequacy of existing or proposed public facilities such as public transportation facilities, public safety facilities, public school facilities, and public parks;

E. Adequacy of existing and proposed public utility infrastructure;

F. Consistency with the applicable requirements of this chapter, including the general provisions of §3.8.2;

G. Compatibility of the proposed planned development with the adjacent community;

H. Consistency with the general purpose of the planned development districts in §3.8.1 and the stated purposes of §3.2.3;

I. Compatibility of each component of the overall development with all other components of the proposed planned development;

J. The quality of design intended for each component of the project and the ability of the overall master development plan to ensure a unified, cohesive environment at full build-out;

K. Self-sufficiency requirements for each phase of the overall project of §3.8.2.H;

L. The effectiveness with which the proposed planned development protects and preserves the ecologically sensitive areas within the development; and

M. The extent to which the residential component of the proposed planned development promotes the creation and preservation of affordable housing suitable for supporting the current and future needs of the city.

§6.6.9. Action after approval

A. General

1. Upon approval of a planned development rezoning by the city council the district shall be deemed established. The approved master development plan shall be recorded in the public records of the city and the zoning map amended. All documents submitted by an applicant in support of an application requesting a rezoning to a planned development district or an amendment to a master development plan, shall be considered an integral part of the approved proposal.

2. The approved planned development and associated master development plan shall run with the land and shall be binding on the original applicant as well as all successors, assigns and heirs. If the owner of property that is the subject of a master development plan wishes to develop that property in a manner that conflicts with or is inconsistent with the master development plan, then an amendment of the master development plan by the city council will be required. To the extent the owner of property that is the

subject of a master development plan may seek to make minor modifications to the development shown on the master development plan, the zoning administrator may approve minor modifications to the master development plan if those minor modifications do not materially alter and are in substantial conformance with the character of the master development plan and are consistent with the purposes and intent of this chapter.

B. Site plan review/subdivision

1. Approval of a planned development rezoning and master development plan does not constitute subdivision approval (if the property is to be further subdivided), except where the master development plan complies with the requirements for and is approved by the city council as a preliminary plat.
2. Property to be further subdivided shall obtain approval in accordance with the subdivision regulations of Chapter 86. Where a preliminary plat has been approved, the applicant may move forward to provide construction plans and a final plat.
3. Property not to be further subdivided shall obtain site plan approval as set forth in §6.8.

§6.6.10. Time lapse between similar applications

The city council will not accept, hear or consider substantially the same application for a proposed planned development within a period of 12 months from the date a similar application was denied. However, for good cause shown, the city council may waive the foregoing 12 month requirement upon the applicant's request with respect to applications requesting a rezoning to a planned development district or an amendment to a master development plan.

§6.6.11. Appeals to court

Final decisions of the city council on planned development may be appealed within 30 days of the decision in accordance with §6.24.

§6.7. SPECIAL USE REVIEWS

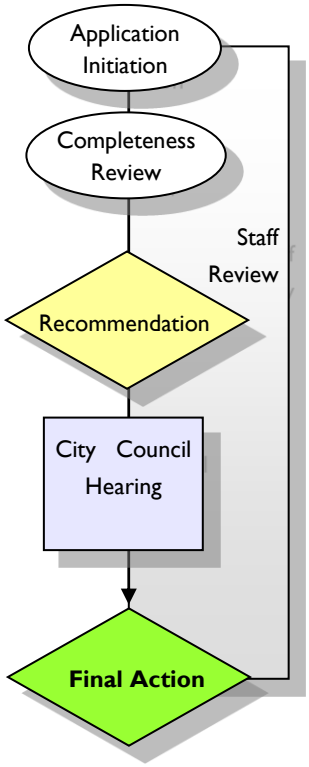
§6.7.1. Applicability

A. Special use review shall occur in accordance with the provisions of §6.7. Such approvals are, authorized by the Code of Virginia, § 15.2-2286, and shall be referred to as "special use permits."

B. Special uses within each general use district are uses that may or may not be appropriate in a particular district. Special use review provides the city council with the opportunity to exercise discretionary powers in considering the establishment of certain uses that, due to their nature, design or location, may have the potential for adverse impacts on adjacent land uses or the health, safety or welfare of the city.

C. A special use permit shall be required for all special uses as set forth in the principal use table (see §3.3.1). A project comprised of uses regulated by separate rows on the table shall be reviewed using the most restrictive process from among the proposed uses.

D. Where a use requiring an approval as a special use lies on a separate lot, only the building containing the use and its separate parcel shall be subject to special use review, not the entire project. However, where the separate lot is an outparcel, the application shall describe the relationship of the outparcel to the remaining site.



§6.7.2. Pre-application meeting

Applicants submitting special use applications shall hold a pre-application meeting in accordance with §6.2.1.

§6.7.3. Application requirements

Applications for a special use permits shall be submitted in accordance with §6.2.3.

§6.7.4. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.

§6.7.5. Action by director of community development and planning

The director of community development and planning shall review each proposed special use application in accordance with the approval considerations of §6.7.7, and distribute the proposed plan to appropriate agencies and reviewers. Based on the results of those reviews, director will provide a report and recommendation to the city council.

§6.7.6. Action by city council

After receiving the director's recommendation and that of the board of architectural review, where applicable, the city council shall review the proposed special use, in a public hearing and in accordance with the approval considerations of §6.7.7, and approve, approve with modifications or conditions, table or defer, or disapprove the proposed special use.

§6.7.7. Approval considerations

In determining whether to approve a special use permit, the city council shall consider the following:

A. Consistency with the comprehensive plan;

B. Compliance with all applicable requirements of this chapter;

C. The effect on the health or safety of persons residing or working in the neighborhood of the proposed use; and

D. The effect on public welfare, property and improvements in the neighborhood.

§6.7.8. Effect of decision

Unless otherwise specified in the permit or in this chapter, a special use permit shall be valid for an indefinite period of time, subject to the following:

A. If the special use is discontinued for any reason for a continuous period of 12 months, the special use permit shall expire automatically and without notice.

B. A special use permit issued may be revoked by the city council, after the required notice and hearing, if the city council determines that the owner or operator has failed to maintain and conduct the use in accordance with the requirements of law or has failed to observe any conditions imposed on the special use. The city council shall give the permit holder written notice of its intent to revoke the special use permit, and, if within 10 days of receipt of the notice the permit holder submits a request for a hearing to the city clerk, the city council shall schedule a hearing, give the permit holder at least 10 days written notice of the hearing date, and provide the permit holder with the opportunity to be heard prior to deciding whether to revoke the permit.

C. The provisions for revocation of special use permits shall not be deemed to preclude any other legal remedy with respect to violations of the provisions of this chapter or other laws.

§6.7.9. Period of validity

An approved special use permit shall expire 24 months from the date of approval unless the proposed development is pursued as set forth below:

A. A complete building permit application has been approved and remains valid;

B. Where more than one building is to be built, the applicant may submit a series of building permit applications. The first application shall be submitted and approved within two years from the date that special use approval is granted. Each subsequent application shall be submitted within 180 days from the date of issuance of a certificate of occupancy for the previous building.

§6.7.10. Appeals to court

Final decisions by the city council on special use permits may be appealed within 30 days of the decision in accordance with §6.24.

§6.8. SITE PLAN REVIEWS

§6.8.1. Applicability

A. Site plan review shall occur in accordance with the provisions of §6.8.

B. All proposed development not specifically exempted pursuant to §6.8.2, below, shall be subject to the site plan review process.

C. No zoning permit may be approved prior to the approval of a site plan.

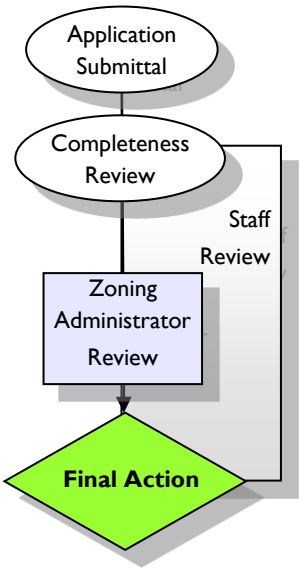
D. Temporary uses may require site plan review (See also §6.15).

§6.8.2. Exemptions

The following shall be specifically exempt from the site plan review requirements of §6.8, but may require the issuance of a zoning permit in accordance with §6.21.

A. Single-family detached dwellings and related accessory structures in the RL, RM and RH districts;

B. Expansion of existing conforming structures and development features by up to 10 percent or 2,500 square feet, whichever is less, in floor area, number of units or building coverage area; and does not increase lot coverage;



C. Nonresidential accessory uses and facilities involving structures less than 500 square feet;

D. Common amenity facilities, recreation and open space in approved subdivisions that have less than 2,500 square feet of associated land disturbance;

E. Addition of bicycle parking when such parking is the only new parking being added;

F. Public improvements made within a public right-of-way or easement by the city of Fairfax;

G. Restriping or reconfiguring of an existing parking lot, including loading areas;

H. Construction of trash enclosures and recycling enclosures, including installation of concrete pads over existing pavement;

I. Addition or modification of site lighting facilities;

J. Installation of wheel stops, landscape islands and curb and gutter, and similar features; and

K. Other changes that are similar to and carry no more impact than those listed above, as determined by the zoning administrator.

§6.8.3. Site plan types

There are two types of site plans with differing levels of approval required for each. The criteria for establishing the type of site plan required and the corresponding level of approval for each are indicated below.

A. Minor site plans

The following shall be reviewed as minor site plans, or plans of development, as specified below:

1. New or expanded paved areas and associated curb and gutter to support parking, loading, trash or recycling enclosures, or similar facilities, provided that the area of the expansion is less than 25 percent or 2,500 square feet (whichever is less) of the existing paved area;
2. Minor expansion of a building or buildings, not to exceed the lesser of 25 percent of the floor area or 5,000 square feet beyond that which is shown on the original approved site plan or beyond that which is shown on a subsequent site plan for an expansion that was approved without utilizing these minor expansion provisions;
3. Other changes that are similar to and carry no more impact than those listed above, as determined by the zoning administrator.
4. Plans of development described as follows:
   - **(a)** Modification of screening or landscaping materials or design;
   - **(b)** Other changes that are similar to and carry no more impact than subsection (a) above, as determined by the zoning administrator.

B. Major site plans

Major site plans shall include change of use and development not allowed by minor site plan.

§6.8.4. Pre-application meeting

Applicants submitting site plan applications shall hold a pre-application meeting in accordance with §6.2.1.

§6.8.5. Approval authority

The zoning administrator shall be responsible for approving all site plans.

§6.8.6. Application requirements

A. An application for site plan review shall be submitted in accordance with §6.2.3, Application requirements.

B. Each site plan shall include the delineation of:

1. Resource protection area and resource management area boundaries, if any, including notations of the following specific state requirements:
   - **(a)** To retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of 9VAC25-830-140;
   - **(b)** The permissibility of only water dependent facilities or redevelopment in resource protection areas, including the 100-foot wide buffer area;
   - **(c)** The delineation of the buildable areas that are allowed on each lot, based on the performance criteria specified in Part IV (9VAC25-830-120 et seq.); and
2. Front, side (interior) and side (street) yard requirements (setbacks); and any other relevant easements or limitations regarding lot and building coverage in accordance with the requirements of this chapter.

§6.8.7. Action by zoning administrator

After approval of a certificate of appropriateness, where applicable (§6.5), the zoning administrator shall review each site plan review application in accordance with the approval criteria of §6.8.8 and distribute the proposed plan to the director of public works and other appropriate agencies and reviewers. Based on the results of those reviews, zoning administrator will take one of the following actions: approve the site plan review application; identify those modifications that would allow approval of the site plan review application; approve the site plan review application with conditions; or disapprove the site plan review application.

§6.8.8. Approval criteria

In approving a site plan, the zoning administrator shall consider the following:

A. Minor site plans

Compliance shall be required with only those specific requirements of this chapter that are directly related to the subject of the application.

B. Major site plans

1. Consistency with the comprehensive plan;
2. Compliance with the approved master development plan, if applicable; and
3. Compliance with all applicable requirements of this chapter.

§6.8.9. Period of validity

Approved site plans shall expire five years from the date of approval unless the proposed development is pursued as set forth below:

A. A complete building permit application has been submitted and remains valid;

B. Where more than one building is to be built, the applicant may submit a series of building permit applications,

1. The first application shall be submitted within five years from the date that site plan approval is granted; and
2. Each subsequent application shall be submitted within 180 days from the date of issuance of a certificate of occupancy for the previous building; or

C. If no building permit is required, a certificate of occupancy has been issued.

§6.8.10. Dedication and improvements

A. In the development of any property for which a major site plan is required in §6.8, the applicant shall be required to dedicate or provide a public easement for any additional right-of-way within the subject site necessary to the width required by this city for streets adjoining the property, to install curbs and gutters and pave all streets adjoining the property, and to install sidewalks in accordance with the policies and requirements of this chapter, and the public facilities manual.

B. The applicant shall bear the costs of the installation of all on-site improvements as required by this chapter, including provision for surface drainage, pavement, landscaping, and utilities. Any applicant required to install or construct off-site improvements pursuant to §6.8 may, with the approval of the zoning administrator as a condition of site plan approval, and upon a determination by the zoning administrator that such improvements are not necessary or

desirable at the time, but will be needed in the future, make a payment in lieu of such improvements or part thereof. The amount of any such payment shall be an amount estimated by this city to be the actual and total installation and construction costs of such improvements. The amount paid for a given improvement shall be considered total and complete payment for the improvements considered, and will preclude any further assessment of the property in the event that the city elects to install such improvements at a later date. Full payment shall be made before any building permit or certificate of occupancy is issued for any use shown on the site plan.

§6.8.11. Guarantees of improvements

A. Prior to the approval of any site plan, the applicant shall submit a cost estimate and time schedule for installation of each phase of the required improvements, subject to review and approval by the zoning administrator.

B. The city shall require a bond guaranteeing all required improvements. This bond shall be in the amount determined by the zoning administrator. This bond shall be in cash, certified check, or be made by a bonding/insurance company authorized to do business in Virginia.

C. As each phase of improvements is installed and inspected by the city, the bond amount shall be reduced by the costs of the installed improvements.

D. In the event that the applicant wishes to occupy any building or any portion of any building prior to the completion of the required site improvements, the bond guaranteeing improvements shall be retained by the city until the remaining required improvements are completed.

§6.8.12. As-built site plans

Prior to final release of the guarantee of improvements, a certified as-built site plan shall be filed for the lot, phase or project. The as-built site plan may be a copy of the original approved site plan with an affidavit attached stating that all construction has been completed in compliance with the approved plan, or shall show all deviations from the approved plan with an affidavit attached stating that no deviations exist except those shown. As-built site plans shall be certified by an engineer, architect or land surveyor to the limits of his license.

§6.8.13. Inspections of required improvements

A. The construction standards for all required improvements shall conform to the requirements of §4.1. The zoning administrator shall approve the plans and specifications for all required improvements, and shall supervise inspection of the construction of such improvements to assure conformity.

B. The applicant shall notify the zoning administrator not less than 24 hours prior to undertaking construction of streets, storm sewer work and other facilities to be publicly maintained.

C. The applicant shall provide adequate supervision of all work related to the development of the site, and shall have a responsible superintendent or foreman, together with one set of approved plans, profiles and specifications, available at the site at all times while work is being performed.

D. Prior to release of the bond required in §6.8.11, above, the zoning administrator shall conduct an inspection to ensure compliance with the approved site plan.

§6.8.14. Transfer of site plan approvals

Approved site plans, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.8.15. Appeals

Final decisions of the zoning administrator on site plan reviews may be appealed to the board of zoning appeals in accordance with §6.22.

§6.9. SIGN PERMITS

§6.9.1. Applicability

A. Sign permits shall be reviewed in accordance with the provisions of §6.9.

B. No monument, building-mounted, special or temporary (as applicable) sign shall be erected or replaced, or changed or altered, including replacing any part of the support structure of a sign and change/ alteration to the background of a sign or sign box, until the zoning administrator has approved a permit, provided that signs permitted in conjunction with §3.5.6.C shall be allowed without a permit.

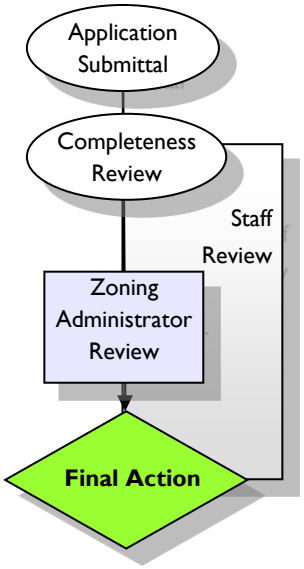
C. This shall not be interpreted as to require a new sign permit for changes to the text only of a previously permitted sign where the sign otherwise conforms with the requirements of §4.6.

§6.9.2. Application

Applications for a sign permits shall be submitted in accordance with §6.2.3.

§6.9.3. Action by zoning administrator

The zoning administrator shall review each proposed sign permit for compliance with the approval criteria of §6.9.5. Based on the results of the reviews, zoning administrator will take one of the following actions: approve the sign permit, identify those modifications that would allow approval of the sign permit, approve the sign permit with conditions, or disapprove the sign permit.



§6.9.4. Action following approval

A permit decal issued by the zoning administrator shall be affixed to the sign in a visible, conspicuous place.

§6.9.5. Approval criteria

Applications for sign permits shall be reviewed for compliance with the requirements of §4.6.

§6.9.6. Period of validity

The sign permit shall be null and void if sign installation is not completed within 12 months or the signs are not in conformance with the approved application.

§6.9.7. Temporary permits

A temporary sign permit shall be issued in accordance with §4.6, Signs, and the requirements of §6.9.

§6.9.8. Transfer of sign permits

Approved sign permits, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.9.9. Administrative appeals

Any final decision of the zoning administrator on a sign permit may be appealed to the board of zoning appeals in accordance with §6.22.

§6.10. TREE REMOVAL PERMITS

§6.10.1. Applicability

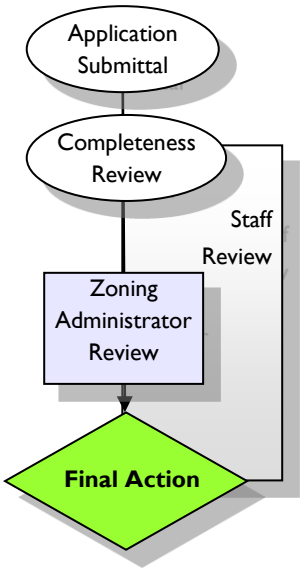
A. Tree removal permits shall be reviewed in accordance with the provisions of §6.10.

B. Tree removal permits shall be required to remove or destroy any tree which is five inches or greater measured at breast height (DBH) on any lot larger than one-half acre in the RL, RM and RH zoning districts, and in all other districts. Tree removal permits shall not be required to be obtained prior to removing a tree if the tree has been determined a public health and safety menace in accordance with the applicable provisions of City Code, Chapter 38, Article III.

C. A site plan review application submitted in accordance with §6.8 may satisfy the application requirements of §6.10.

§6.10.2. Application requirements

Applications for a tree removal permit shall include a tree management plan (§4.5.9.D) and be submitted in accordance with §6.2.3.



§6.10.3. Action by zoning administrator

A. The zoning administrator shall review each proposed tree removal permit application for compliance with the approval criteria of §6.10.4.

B. Based on the approval criteria and the above considerations, the zoning administrator shall approve the tree removal permit, identify those modifications that would allow approval of the tree removal permit, approve the tree removal permit with conditions, or disapprove the tree removal permit.

§6.10.4. Approval criteria

Applications for tree removal permits shall be reviewed for compliance with the requirements of §4.5.9.D.3.

§6.10.5. Transfer of tree removal permits

Approved tree removal permits, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.10.6. Administrative appeals

Any final decision of the zoning administrator on a tree removal permit may be appealed to the board of zoning appeals in accordance with §6.22.

§6.11. FLOODPLAIN PERMITS

§6.11.1. Applicability

A. Floodplain permits shall be reviewed in accordance with the provisions of §6.11.

B. No person shall develop or use any land within a floodplain or engage in development within a floodplain without first having secured a floodplain permit from the zoning administrator.

§6.11.2. Application requirements

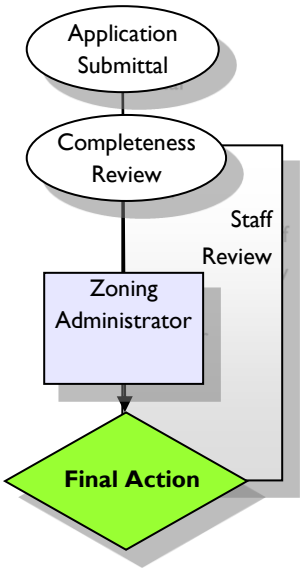
Applications for floodplain permits shall be submitted in accordance with §6.2.3, and shall specify the elevation of the lowest floor (including basement); and for structures to be floodproofed (nonresidential only), the elevation to which the structure will be floodproofed.

§6.11.3. Action by director of public works

The director of public works will review floodplain permit applications in accordance with the approval criteria of §6.11.5.

§6.11.4. Action by zoning administrator

Based on the results of the review by the director of public works, the zoning administrator shall take one of the following actions: approve the permit, identify those modifications that would allow approval of the permit; approve the permit with conditions; or disapprove the permit.



§6.11.5. Approval criteria

A. Approved floodplain permits shall be in compliance with §6.11.

B. Permitted uses, activities or developments (including redevelopments) within the floodplain shall be permitted only when all available alternative locations not within the floodplain have been properly considered and it is not possible to accommodate reasonable development outside the floodplain boundaries.

C. Each application for a floodplain permit, together with required supporting documentation, shall clearly demonstrate that the proposed use, activity or development:

1. Shall minimize grading to the maximum possible extent.

2. Shall minimize the amount of impervious surface to the maximum possible extent through site design, LIDs, the use of porous construction materials, grid or modular pavement, and other reasonable methods.

3. Shall minimize the loss of natural vegetation and natural stormwater characteristics.

4. Shall minimize the susceptibility of structures and their contents to flood damage.

5. Shall not negatively affect water quality.

6. Shall not increase the intensity or extent of flooding of lands above or below the property or jeopardize property or human life.

7. Shall not adversely affect the capacity of the floodplain channel or increase erosion within or adjacent to the floodplain. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within the city:

   (a) All applicable permits shall be obtained from the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; and

   (b) Notification (of the proposal) shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation, and to the Federal Insurance and Mitigation Administration.

8. Shall minimize negative impacts upon wildlife habitat.

9. Shall have its design incorporate base (100-year) flood elevation data for any proposed new activity or development greater than 50 lots or five acres, whichever is the lesser, if located within zone A. In addition, the best available floodway information from federal, state, or other sources acceptable to the zoning administrator shall be used.

10. Shall not result in more than a one-foot increase in the base (100-year) flood elevation. This shall include the cumulative effect of the proposed use, activity, or development when combined with all other existing and anticipated uses, activities, or development.

11. Shall not negatively affect drainage.

§6.11.6. Revocation of permits

A floodplain permit shall be revoked if the zoning administrator finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

§6.11.7. Transfer of floodplain permits

Approved floodplain permits, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.11.8. Administrative appeals

Final decisions on floodplain permits shall be made within 30 days of the final decision to the board of zoning appeals in accordance with §6.22.

§6.12. EROSION AND SEDIMENT CONTROL PERMITS

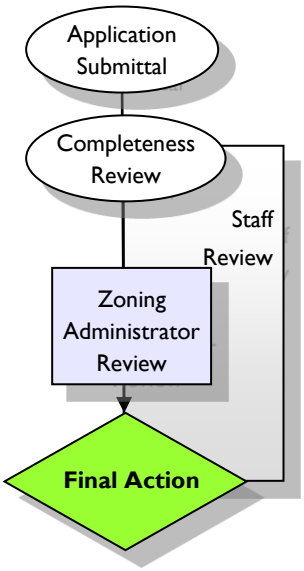
§6.12.1. Applicability

A. Erosion and sediment control permits shall be reviewed in accordance with the provisions of §6.12.

B. Except as specified in §6.12.2, below, it shall be unlawful for any person to engage in land disturbing activities as defined in §4.18.14 of 2,500 square feet or more for any purpose prior to approval of an erosion and sediment control permit. Approval of an erosion and sediment control permit shall be based on a soil erosion and sediment control plan for the land disturbing activity prepared and certified by an engineer or land surveyor. The plan may be contained on a separate sheet or included with the drainage or grading plan.

§6.12.2. Exemptions

The following uses and activities shall be exempt from the requirement for an erosion and sediment control permit, provided the use or activity is otherwise allowed in the zoning district in which it is located (§3.3.1):



A. Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

B. Individual service connections;

C. Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced street or sidewalk, provided such land disturbing activity is confined to the area of the street or sidewalk which is hard-surfaced;

D. Surface or deep mining;

E. Exploration or drilling for oil and gas including the well site, feeder lines, streets and off-site disposal areas;

F. Tilling, planting or harvesting of agricultural, horticultural or forest crops or products, livestock feed lot operations, or engineering operations such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater-retarding structures, channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded;

G. Installation or maintenance of fence and signposts or telephone and electric poles and other kinds of posts or poles;

H. Emergency work to protect life, limb or property, and emergency repairs. If the land disturbing activity would have required an approved erosion and sediment control plan in the absence of an emergency, then the disturbed land area shall be shaped and stabilized as required by the plan-approving authority; and

l. Any project undertaken by a state agency involving a land disturbing activity that has been approved by the state soil and water conservation board.

§6.12.3. Application requirements

Applications for erosion and sediment control permits shall be submitted in accordance with §6.2.3.

§6.12.4. Action by director of public works

The director of public works will review erosion and sediment control permit applications in accordance with the approval criteria of §6.12.6.

§6.12.5. Action by zoning administrator

Based on the results of the review by the director of public works, the zoning administrator will take one of the following actions: approve the permit, identify those modifications that would allow approval of the permit; approve the permit with conditions; or disapprove the permit.

§6.12.6. Approval criteria

Approved erosion and sediment control permits shall be in compliance with the requirements of §4.17.

§6.12.7. Revocation of permits

An erosion and sediment control permit shall be revoked if the zoning administrator finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

§6.12.8. Transfer of erosion and sediment control permits

Approved erosion and sediment control permits, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.12.9. Administrative appeals

Final decisions on erosion and sediment control permits shall be made within 30 days of the final decision to the board of zoning appeals in accordance with §6.22.

§6.13. CHESAPEAKE BAY REVIEWS

§6.13.1. Applicability

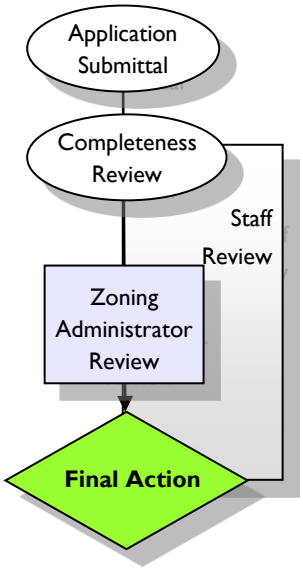
A. Chesapeake Bay preservation reviews (Chesapeake Bay review) shall be conducted in accordance with the provisions of §6.13.

B. All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in §4.18.7.

C. Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of §6.13 to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.

§6.13.2. Application requirements

Applications for Chesapeake Bay review shall be submitted in accordance with §6.2.3, and shall include the following:



A. General

1. If applicable, a subdivision or site plan submitted in accordance with the provisions of chapter 86, Subdivisions, and this chapter;

2. A RPA site-specific study as provided for in §6.13.2.B.2;

3. If applicable, a water quality impact assessment as required in §4.18.8;

4. A tree management plan consistent with the provisions of §4.5.9.D.1;

5. A stormwater management plan consistent with the design and performance standards of §4.16, Storm drainage facilities;

6. An erosion and sediment control plan consistent with the provisions of §4.17, Erosion and sediment control; and

7. Copies of all wetlands permits required by law. The required plans and studies shall include the delineation of the RPA boundary, the delineation of required buffer areas, and a maintenance agreement as deemed necessary by the zoning administrator to ensure proper maintenance of best management practices in order to continue their functions. Plans and studies may be coordinated or combined as deemed appropriate by the zoning administrator. However, the zoning administrator may also determine that any of the information required in §6.13 may be unnecessary due to the scope and nature of the proposed development.

B. RPA site-specific study

1. RPA Area

(a) The resource protection area shall include the following:

(1) Tidal wetlands;

(2) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;

(3) Tidal shores;

(4) Intermittent streams that remain largely in a natural condition and that have not been significantly impacted by adjacent development as depicted on the Chesapeake Bay preservation area map;

(5) Water bodies with perennial flow; and

(6) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subparagraphs (1) through (5), above, and expanded to include noncontiguous wetlands within the floodplain that are partially located within the buffer, along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the resource protection area notwithstanding the presence of permitted uses, encroachments or permitted vegetation clearing in compliance with the performance criteria of §4.18.7.

(b) Designation of the six components, above, shall not be subject to modification unless based on reliable, site-specific information in accordance with §6.13.2.B.2, below.

2. Study requirements

An RPA site-specific study shall be submitted as part of the development review procedures required by §6.13 and in conjunction with site plan or subdivision approval.

(a) The RPA site-specific study shall be drawn to scale and clearly delineate the resource protection area components outlined in §4.18.2.A.1.

(b) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987.

(c) The RPA site-specific study shall delineate the site-specific geographic extent of the resource protection area.

(d) The RPA site-specific study shall be drawn at the same scale as the site plan or subdivision plan and shall be certified by a certified engineer, land surveyor, landscape architect, soil scientist, or wetland delineator.

(e) RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.

C. Tree management plan

A tree management plan shall be submitted as part of the development review procedures required by §6.13. No clearing, grading, or construction on any lot or parcel shall be permitted without an approved tree management plan. In addition, the following supplemental information shall be provided for land disturbance, development, or redevelopment activity proposed within the resource protection area:

1. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by §4.18.7.D, shall be shown on the tree management plan.
2. Within the buffer area, trees to be removed for sight lines, vistas, access paths, and best management practices, as provided for in §4.18, shall be shown on the plan. Vegetation to replace any existing trees within the buffer area shall also be shown on the tree management plan.
3. Trees to be removed for stream bank stabilization projects and any replacement vegetation required by §4.18 shall be shown on the landscaping plan.

D. Stormwater management plan

A stormwater management plan shall be submitted as part of the development review procedures required by §6.13 and in conjunction with site plan or subdivision approval.

E. Contents

1. The stormwater management plan shall be developed in accordance with §4.16, Storm drainage facilities. For facilities, verification of structural soundness, including a professional engineer or class IIIB surveyor certification shall be provided.
2. All engineering calculations shall be performed in accordance with procedures outlined in the current edition of the "Virginia State Stormwater Management Handbook."
3. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance in accordance with §4.16, Storm drainage facilities.

F. Erosion and sediment control plan

An erosion and sediment control plan shall be submitted as part of the development review procedures required by §6.13 in conjunction with site plan or subdivision approval that satisfies the requirements of §4.17.

§6.13.3. Action by director of public works

The director of public works will review Chesapeake Bay review applications in accordance with the approval criteria of §6.13.5.

§6.13.4. Action by zoning administrator

Based on the results of the review by the director or public works, the zoning administrator shall take one of the following actions: approve the permit, identify those modifications that would allow approval of the permit; approve the permit with conditions; or disapprove the permit.

§6.13.5. Approval criteria

A. Chesapeake Bay review approvals shall be in compliance with the requirements of §4.18.

B. The VSPM administrator may require physical improvements required by §4.18 to be bonded in accordance with §6.8.11 and 110-107 of City Code.

§6.13.6. Revocation of approval

A Chesapeake Bay review approval shall be revoked if the zoning administrator finds that the terms of the approval have been violated or that there is a hazard to the public health, safety and welfare.

§6.13.7. Transfer of Chesapeake Bay review approvals

Chesapeake Bay review approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.13.8. Administrative appeals

Final decisions on Chesapeake Bay reviews shall be made within 30 days of the final decision to the board of zoning appeals in accordance with §6.22.

§6.14. STORMWATER PERMITS

§6.14.1. Applicability

A. Stormwater permit review shall be conducted in accordance with the provisions of §6.14.

B. All development or redevelopment exceeding 2,500 square feet of disturbed land area shall be subject to the requirements §4.16.

§6.14.2. Application requirements

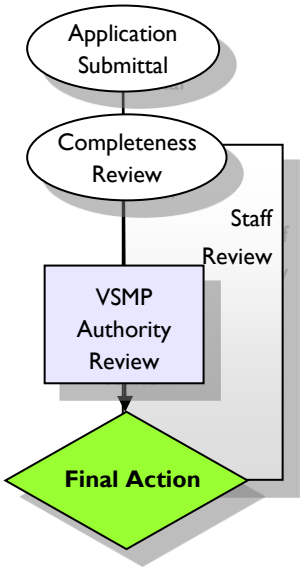
Applications for stormwater permits shall be submitted in accordance with §6.2.3.

§6.14.3. Action by VSMP Authority

Based on the results of the reviews, the VSMP Authority will take one of the following actions: approve the permit, identify those modifications that would allow approval of the permit; approve the permit with conditions; or disapprove the permit.

§6.14.4. Approval criteria

Stormwater permit approvals shall be in compliance with the requirements of §4.16.



§6.14.5. Revocation of approval

A stormwater permit approval shall be revoked if the VSMP Authority finds that the terms of the approval have been violated or that there is a hazard to the public health, safety and welfare.

§6.14.6. Transfer of stormwater permit approvals

Stormwater permit approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.14.7. Administrative appeals

Final decisions of the VSMO Authority on stormwater permit reviews shall be made within 30 days of the final decision to city council in accordance with §4.16.7.F.

§6.15. TEMPORARY USE PERMITS

§6.15.1. Applicability

A. Temporary use permits shall be reviewed in accordance with the provisions of §6.15.

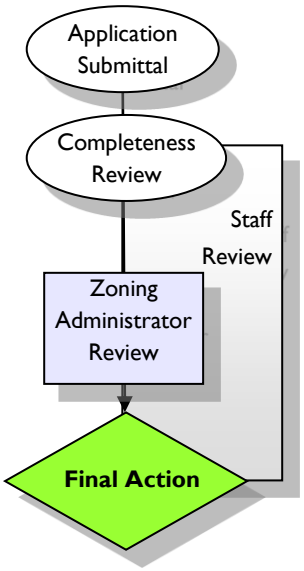
B. Temporary uses, including those operating for fewer than 30 days within a one-year time period, shall obtain a temporary use permit from the zoning administrator that outlines conditions of operations so as to protect the public, health, safety and welfare subject to the standards of §3.5.6, Temporary Use Standards.

C. This shall not be interpreted as to require a temporary use permit where the event, promotion, or sale otherwise conforms to the requirements of §3.5.6.C.

§6.15.2. Application requirements

A. Applications for temporary use permits shall be submitted in accordance with §6.2.3.

B. Concurrent with an application for a temporary use permit, the zoning administrator may require submission of a site plan for review and approval.



§6.15.3. Action by zoning administrator

The zoning administrator shall review each proposed temporary use permit for compliance with the approval criteria of §6.15.4. Based on the results of the review, the zoning administrator will take one of the following actions: approve the temporary use permit, identify those modifications that would allow approval of the temporary use permit; approve the temporary use permit with conditions; or disapprove the temporary use permit.

§6.15.4. Approval criteria

No temporary use permit shall be approved unless the following requirements are met:

A. Adjacent uses shall be suitably protected from any adverse effects of the use, including noise and glare.

B. The use shall not create hazardous conditions for vehicular or pedestrian traffic, or result in traffic in excess of the capacity of streets serving the use.

C. Adequate refuse management, security, emergency services, and similar necessary facilities and services shall be available for the temporary use, and all sanitary facilities shall be approved by the appropriate health agency.

D. The site is suitable for the proposed use, considering flood hazard, drainage, soils and other conditions, which may constitute a danger to life, health or property.

E. The use shall not have a substantial adverse impact on the natural environment, including trees, ground cover and vegetation.

§6.15.5. Revocation of permit

A temporary use permit shall be revoked if the zoning administrator finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

§6.15.6. Transfer of temporary use permit

A temporary use permit approval, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.15.7. Administrative appeals

Final decisions of the zoning administrator on temporary use permits shall be made to the board of zoning appeals within 30 days of the final decision in accordance with §6.22.

§6.16. ADMINISTRATIVE ADJUSTMENTS

§6.16.1. Applicability

A. Administrative adjustments shall be reviewed in accordance with the provisions of §6.16.

B. Unless otherwise specified, the zoning administrator may authorize adjustment of the numerical standards of this chapter by up to 20 percent of the applicable standard; provided, the provisions of §6.16 shall not apply to density, floodplain regulations, stormwater drainage facilities, erosion and sediment control, Chesapeake Bay preservation standards, or construction standards.

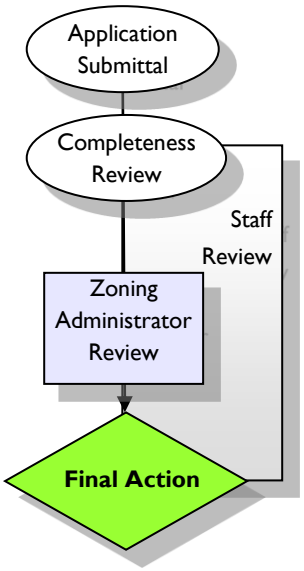
C. An administrative adjustment shall not be applied in addition to or in lieu of the nonconforming provisions of Article 7 of this chapter.

§6.16.2. Application requirements

Applications for an administrative adjustment shall be submitted in accordance with §6.2.3.

§6.16.3. Notice and hearings

The zoning administrator shall provide written notice in accordance with §6.2.5.B.2.



§6.16.4. Action by zoning administrator

The zoning administrator shall review each proposed administrative adjustment for compliance with the approval criteria of §6.16.5, and take one of the following actions: approve the administrative adjustment, identify those modifications that would allow approval of the administrative adjustment, approve the administrative adjustment with conditions, or disapprove the administrative adjustment.

§6.16.5. Approval criteria

A. In approving an administrative adjustment, the zoning administrator shall consider additional mitigation measures offered in support of the adjustment, if any, and the following criteria:

1. Granting the adjustment will ensure the same general level of land use compatibility as the otherwise applicable standards;

2. Granting the adjustment will not materially and adversely affect adjacent land uses and the physical character of uses in the immediate vicinity of the proposed development because of inadequate transitioning, screening, setbacks and other land use considerations;

3. Granting the adjustment will be generally consistent with the purposes and intent of this chapter; and

4. Granting the adjustment will be based on the physical constraints and land use specifics, rather than on economic hardship of the applicant.

B. In making the decision to approve or disapprove administrative adjustments, the zoning administrator may consider any special efforts by the applicant to promote compatibility with

neighboring properties, such as the installation of additional walls, fences, landscaping or screening, beyond that otherwise required, or other site design trade-offs.

§6.16.6. Transfer of administrative adjustment approvals

Administrative adjustment approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.16.7. Administrative appeals

The final decisions on an administrative adjustment may not be appealed by the applicant, but the applicant may file a special exception (§6.17) or variance (§6.18).

§6.17. SPECIAL EXCEPTIONS

§6.17.1. Applicability

A. Special exceptions shall be reviewed in accordance with the provisions of §6.17.

B. Special exceptions may be approved modifying:

1. The specific use standards authorized by the §3.5. This should not be interpreted as authorizing uses not otherwise allowed by §3.3;

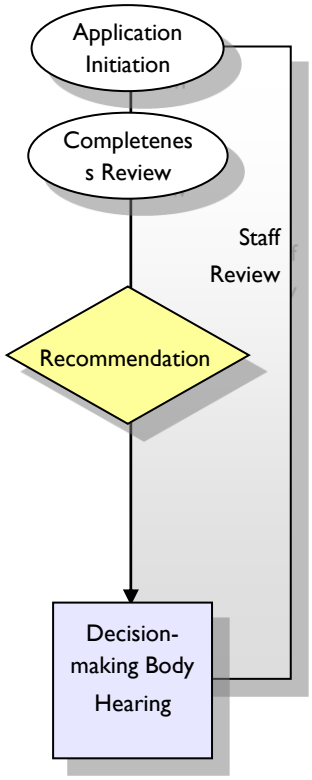
2. The dimensional standards (for residential and nonresidential uses) of §3.6;

3. All standards applicable to overlay districts (§3.7); and

4. The site development standards of Article 4.

C. Alternatively, and in conjunction with other development reviews or where two or more special exceptions are proposed as part of the same application on all district properties, except in the RL, RM and RH districts, the city council may serve as the board of zoning appeals and approve special exceptions.

D. The board of zoning appeal shall have authority to approve all special exceptions in the RL, RM and RH districts.



§6.17.2. Pre-application meeting

Applicants submitting special exception applications shall hold a pre-application meeting in accordance with §6.2.1.

§6.17.3. Application requirements

Applications for special exceptions shall be submitted in accordance with §6.2.3.

§6.17.4. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.

§6.17.5. Action by zoning administrator

A. The zoning administrator shall review each special exception application for compliance with the approval criteria of §6.17.7 and distribute the proposed plan to appropriate agencies and reviewers.

B. Applications on historic district and the transition overlay district properties requiring a certificate of appropriateness will be submitted to the board of architectural review for recommendation prior to action by the decision-making body.

C. The zoning administrator shall provide a report and recommendation to the decision-making body.

§6.17.6. Action by decision-making bodies

After receiving the zoning administrator's report and recommendation, the decision-making bodies shall review the proposed special exception in a public hearing and in accordance with the

approval criteria of §6.17.7, and take one of the following actions: approve, approve with modifications or conditions, table or defer, or disapprove the special exception application.

§6.17.7. Approval criteria

A. In approving a special exception, decision-making bodies shall consider additional mitigation measures offered in support of the application, if any, and whether granting the special exception will:

1. Ensure the same general level of land use compatibility as the otherwise applicable standards;

2. Not materially and adversely affect adjacent land uses and the physical character of uses in the immediate vicinity of the proposed development because of inadequate transitioning, screening, setbacks and other land use considerations;

3. Be generally consistent with the purposes and intent of this chapter and the comprehensive plan; and

4. Be based on the physical constraints and land use specifics, rather than on economic hardship of the applicant.

B. Decision-making bodies may consider any special efforts by the applicant to promote compatibility with neighboring properties, such as the installation of additional walls, fences, landscaping or screening, beyond that otherwise required, or other site design trade-offs.

§6.17.8. Transfer of special exception approvals

Special exception approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.17.9. Appeals to court

Final decisions of decision-making bodies on special exceptions may be appealed within 30 days of the final decision in accordance with §6.24.

§6.18. VARIANCES

§6.18.1. Applicability

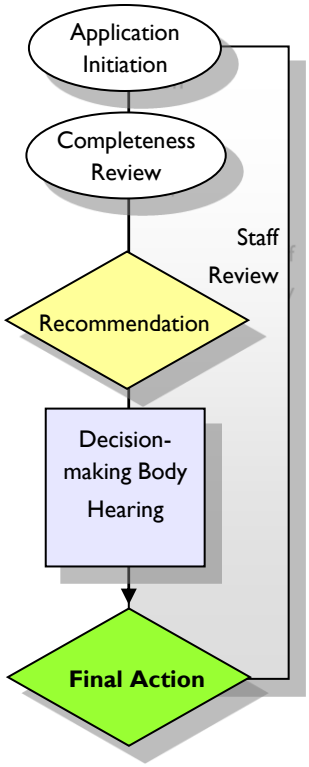
A. Variances shall be reviewed in accordance with the provisions of §6.18.

B. The board of zoning appeals may authorize, upon appeal or original application, such variance from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this chapter shall be observed and substantial justice done.

C. When a property owner can show that his property was acquired in good faith and where:

1. By reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter or the ordinance from which this chapter is derived; or

2. By reason of exceptional topographic conditions or other extraordinary situation or condition of the property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the chapter would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the chapter.



D. Alternatively, and in conjunction with other development reviews as part of the same application, the city council may serve as the board of zoning appeals and approve variances.

§6.18.2. Application requirements

Applications for variances shall be submitted in accordance with §6.2.3.

§6.18.3. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.

§6.18.4. Action by zoning administrator

The zoning administrator shall review each variance application for compliance with the approval criteria of §6.18.6 and distribute the application to appropriate agencies and reviewers. The zoning administrator shall provide a report and recommendation to the decision-making body.

§6.18.5. Action by decision-making body

After receiving the zoning administrator's report and recommendation, the decision-making bodies shall review the proposed variance in a public hearing and in accordance with the approval criteria of §6.18.6, and take one of the following actions: approve, approve with modifications or conditions, table or defer, or disapprove the variance application.

§6.18.6. Approval criteria; findings of fact

The decision-making body shall authorize a variance where the decision-making body makes a positive finding on each of the following:

A. That the strict application of this chapter would produce undue hardship;

B. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

C. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and

D. That the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.

§6.18.7. Supplemental floodplain variance regulations

A. Applicability

Variances may be issued by the decision-making body in conjunction with other land use application reviews, for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, only in conformance with the provisions of §6.18.7.

B. Optional referral

The zoning administrator or decision-making body may refer any variance application and accompanying documentation to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

C. Notifications and acknowledgments

1. Upon receipt of an application for any variance affecting floodplain lands or affecting any floodplain regulation of this chapter, the director of public works shall notify the applicant in writing that construction below the 100-year flood elevation:

(a) Will result in increased premium rates for flood insurance; and

(b) Increases risks to life and property.

2. The applicant shall be required to acknowledge in writing that he assumes all risks and liabilities connected with such activities. The zoning administrator shall maintain a copy of the notification and the applicant's acknowledgment.

3. Annual reporting of such notification is required by §5.3.3.C.

D. Criteria for approval

Floodplain variances may only be approved after the decision-making body has determined that all of the following criteria are met:

1. There is a showing of good and sufficient cause;

2. Failure to grant the variance would result in exceptional hardship to the applicant;

3. The granting of such variance will not result in:
   (a) Unacceptable or prohibited increases in flood heights;
   (b) Additional threats to public safety; or
   (c) Extraordinary public expense.
4. The granting of such variance will not:
   (a) Create nuisances;
   (b) Cause fraud or victimization of the public; or
   (c) Conflict with local laws or ordinances.
5. The variance will:
   (a) Be the minimum required to provide relief; and
   (b) Not cause any increase in the 100-year flood elevation;
   (c) For new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of §6.18.7.D are met;
   (d) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

E. Additional factors for consideration

The decision-making body shall consider the following additional factors with respect to floodplain property variances:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
2. The danger that materials may be swept on to other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
5. The importance of the services provided by the proposed facility to the community;
6. The requirements of the facility for a waterfront location;
7. The availability of alternative locations not subject to flooding for the proposed use;
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
9. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;
10. The safety of access by ordinary and emergency vehicles to the property in time of flood;

11. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site;

12. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure; and

13. Other relevant factors.

F. Supplemental findings of fact

In addition to any other findings of fact required for all variances (see also §6.18.6), in deciding on variances affecting floodplain property or any floodplain regulations, findings of fact shall be made by the decision-making bodies on each of the following matters based on the evidence presented.

1. That the granting of a variance would not result in increased flood heights, additional threats to public safety or extraordinary public expense, nor create nuisances, cause fraud or victimization of the public, nor conflict with existing local laws or ordinances and that all buildings will be protected by methods that minimize flood damage during the base flood event;

2. That the development activity cannot be located outside the floodplain;

3. That the development activity is not in a regulatory floodway; and

4. That the proposed development will not:

   (a) Cause any increase in the 100-year flood elevation.

   (b) Create a danger that materials may be swept on-to other lands or downstream to the injury of others.

   (c) Affect the water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

   (d) That the variance is the minimum necessary, considering the flood hazard, to afford relief.

§6.18.8. Effect of approval

Notwithstanding any other provision of this chapter, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes; 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 this chapter. 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.

§6.18.9. Transfer of approved variances

Approved variances, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.18.10. Appeals to court

Final decisions of a decision-making body on variances may be appealed within 30 days of the decision in accordance with §6.24.

§6.19. AFFORDABLE DWELLING UNIT MODIFICATIONS

§6.19.1. Applicability

A. For single-family and multifamily Affordable Dwelling Unit developments and any residential component of a mixed use Affordable Dwelling Unit Development, modifications to the requirements of the city's Program may be allowed by the city council with the approval of a separate application for such modifications under the provisions of the city's Program.

§6.19.2. Pre-application meeting

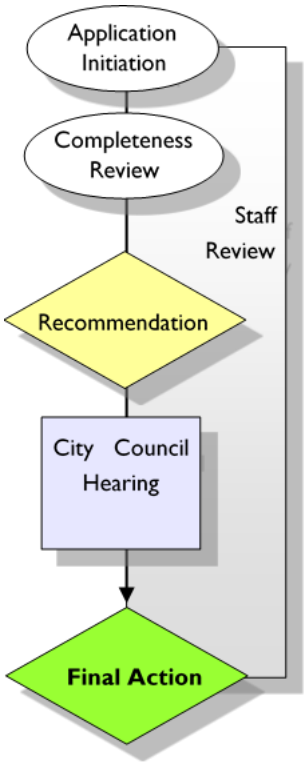
Zoning Applicants requesting modifications to the requirements of the city's Program shall hold a pre-application meeting in accordance with §6.2.1.

§6.19.3. Application requirements

Applications for modifications to the requirements of the city's Program shall be submitted in accordance with §6.2.3.

A. Support for city's goal to provide Affordable Dwelling Units

The Zoning Applicant shall provide the city with sufficient justification regarding how the proposed modification supports the city's goal of providing Affordable Dwelling Units throughout the city. The Zoning Applicant shall provide sufficient justification explaining why the proposed modification is necessary and preferable to the application of the requirements of the city's Program to the proposed development with no modification.



B. Cash contributions to the city's housing trust fund

Any request to modify the provisions of §3.9.3.C, §3.9.3.D, or §3.9.3.E shall include, but need not necessarily be limited to, a cash contribution to the city of Fairfax housing trust fund and/or the dedication of land or other property rights to the city to support the provision of affordable housing in the city. In the event a dedication of land or other property rights is proposed, the Zoning Applicant and the city must agree on the cash value of such dedication or rights in order for that type of modification to be allowed. If such modification based on the provision of a cash contribution or the dedication of land or other property rights is requested, any such contribution or dedication shall be the equivalent of the owner and/or Zoning Applicant's obligation to provide affordable dwelling units themselves and the following criteria shall apply to any such payment or contribution:

1. Any cash contributions made in lieu of the provision of affordable dwelling units in conjunction with a modification request shall be a per unit cash contribution of 100%

of the construction cost of a prototypical affordable dwelling unit based on the numbers of bedrooms in various dwelling unit types.

2. All cash contributions made in conjunction with a modification request shall be calculated in terms of current dollars, adjusted by the consumer price index, at the time the contribution is actually received by the city.

3. All cash contributions made in conjunction with a modification request shall be paid to the city before the first zoning permit for use and occupancy is issued for any part of the development.

§6.19.4. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.

§6.19.5. Action by the director of community development and planning

The director of community development and planning, in consultation with the city manager and the city's agent, if any, shall review each application for modifications to the requirements of the city's Program in accordance with the approval considerations of §6.19.7, and distribute the application to appropriate agencies and reviewers. Prior to the approval of any such modification by city council, the director of community development and planning, after consulting with the city manager and the city's agent, if any, shall provide a recommendation regarding the proposed modification.

§6.19.6. Action by city council

After receiving the recommendation from the director of community development and planning in consultation with the city manager, the city council shall review the proposed modification to the requirements of the city's Program, in a public hearing and in accordance with the approval considerations of §6.19.7, and approve, approve with modifications or conditions, table or defer, or disapprove the requested modification.

§6.19.7. Approval considerations

An application for such modifications may be approved upon a finding by the city council that the proposed alternative will positively impact the city's goal of providing a broad range of affordable housing opportunities throughout the city. In determining whether to approve a request for a modification to the requirements of the city's Program, the city council shall consider the following:

A. The number of Affordable Dwelling Units regulated by the provisions of the city's Program and other types of affordable housing that exist or are in the process of being provided in the city;

B. The extent to which existing Affordable Dwelling Units in the city have remained on the market unoccupied by persons who satisfied the provisions of this Article;

C. The extent to which public facilities and services are available or will be available within a reasonably foreseeable period of time to accommodate the densities in those developments in the city that include or will include Affordable Dwelling Units;

D. Existing unique or unusual site constraints that would result in potential adverse impacts on environmental resources on the subject property or nearby or adjacent parcels, including, but not limited to, difficult soil or drainage conditions;

E. Unusual costs associated with the development of the site; and

F. The extent to which the proposed modification would support a specific program or goal of the city in providing Affordable Dwelling Units.

§6.19.8. Limitation on reduction of Affordable Dwelling Units

The number of required Affordable Dwelling Units for any particular single-family or multifamily development, or any residential component of a mixed-use development, under the provisions of the city's Program shall not be reduced by more than 50%. However, multifamily Affordable Dwelling Unit developments that are specifically designed and intended primarily for college and/or university student residents and multifamily components of mixed–use Affordable Dwelling Unit developments that are specifically designed and intended primarily for college and/or university student residents, may request modifications of more than 50% of the number of required Affordable Dwelling Units.

§6.19.9. Transfer of Affordable Dwelling Unit modification approvals

Affordable dwelling unit modification approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.19.10. Appeals to court

Final decisions by the city council on modifications to the requirements of the city's Program may be appealed within 30 days of the decision in accordance with §6.24.

§6.20. WRITTEN INTERPRETATIONS

§6.20.1. Applicability

A. Written interpretations shall be reviewed in accordance with the provisions of §6.20.

B. When uncertainty exists concerning the text of this chapter, the zoning administrator shall be authorized to make all interpretations concerning the text of this chapter after consultation with other involved staff and the city attorney.

§6.20.2. Application requirements

An application for a written interpretation shall be submitted in accordance with §6.2.3.

§6.20.3. Action by zoning administrator

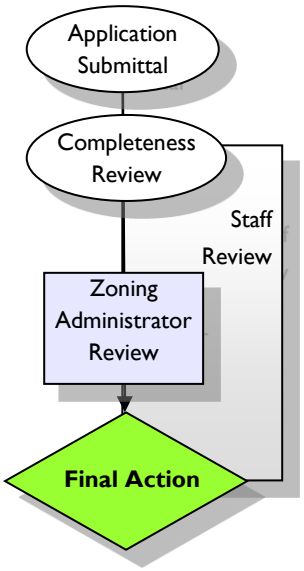
The zoning administrator shall review each request for written interpretation with respect to the text of this chapter, the zoning map, the comprehensive plan and any other relevant information and render an opinion. The interpretation shall be provided to the applicant in writing.

§6.20.4. Official record

The zoning administrator shall maintain an official record of all interpretations. The record of written interpretations shall be available for public inspection during normal business hours.

§6.20.5. Administrative appeal

An appeal from any written interpretation shall be made within 30 days of the final decision in accordance with §6.22.



§6.21. ZONING PERMITS

§6.21.1. Applicability

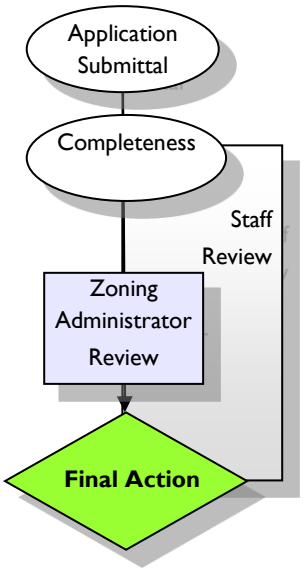
A. Zoning permits shall be reviewed in accordance with the provisions of §6.21.

B. No building permit shall be issued prior to the approval of a zoning permit. It shall be unlawful to move, construct, or alter, or to commence moving, constructing or altering, except for making ordinary repairs, any building or other structure on a site, including an accessory structure, until the zoning administrator has issued a zoning permit.

C. It shall be unlawful to use any land or building, or to change tenancy or ownership or any use, or to change the type of use of land, or to change the type of use or type of occupancy of any building; or to extend any use on any lot, until the zoning administrator has issued a zoning permit for such intended use.

D. It shall be unlawful to undertake any land-disturbing activity until the zoning administrator has issued a zoning permit for such work.

E. Zoning permits are not required for permitted temporary uses (See §3.5.6) or for tree removal (See §6.10).



§6.21.2. Application requirements

Applications for zoning permits shall be submitted in accordance with §6.2.3.

§6.21.3. Action by zoning administrator

The zoning administrator shall review each proposed zoning permit for compliance with the approval criteria of §6.21.4. Prior to the issuance of a zoning permit, the zoning administrator shall consult with other applicable officials and departments, as necessary. Based on the results of the reviews, the zoning administrator will take one of the following actions: approve the zoning permit, identify those modifications that would allow approval of the zoning permit, approve the zoning permit with conditions, or disapprove the zoning permit.

§6.21.4. Approval criteria

A. Zoning permits shall be approved where the applicant has demonstrated to the satisfaction of the zoning administrator that the intended use, in all respects, conforms to the provisions of this chapter; including, but not limited to, approved site plans, master development plans, and variances, and any proffers and/or conditions imposed by an appropriate official or decision-making body.

B. Temporary zoning permits may be approved due to landscaping and paving, which cannot reasonably be completed because of adverse climatic conditions, where the owner or developer has provided a construction bond for such improvements or, after completion of all improvements and discharge of the performance bond, has provided a two-year warranty bond with surety equal to ten percent of the original completion bond in a form satisfactory to the zoning administrator.

C. A temporary zoning permit shall be valid for a period of up to 90 days from issuance and may be renewed for up to an additional 90 days at a time upon written application, by the

applicant provided that all other work in progress conforms to the approved site plan and applicable requirements.

D. The zoning administrator may establish additional administrative requirements as deemed necessary to ensure compliance with the requirements of this chapter.

§6.21.5. Period of validity

Zoning permits shall become null and void if no significant improvement or alteration is made in accordance with the approved application within 12 months from the date of approval. On written request from an applicant submitted prior to the expiration of the original approval, the zoning administrator may grant a single extension for a period of up to 12 months if, based upon submissions from the applicant, the zoning administrator finds that conditions on the site and in the area of the proposed project are essentially the same as when approval originally was granted.

§6.21.6. Transfer of zoning permits

Zoning permits run with the tenant or owner of the subject land or use and are nontransferable. Upon transfer of nonresidential tenancy or ownership of any land or use that is the subject of a previously approved zoning permit, such certificate shall be null and void and the new tenant or owner of such land or uses shall be responsible for applying for a new zoning permit prior to using any land or building, changing the type of use of land, or changing the type of use or type of occupancy of any building, or to extend any use on any lot. Failure to obtain a new zoning permit shall constitute a violation of this chapter.

§6.21.7. Administrative appeals

Final decisions of the zoning administrator on zoning permits may be appealed to the board of zoning appeals in accordance with §6.22.

§6.22. ADMINISTRATIVE APPEALS

§6.22.1. Applicability

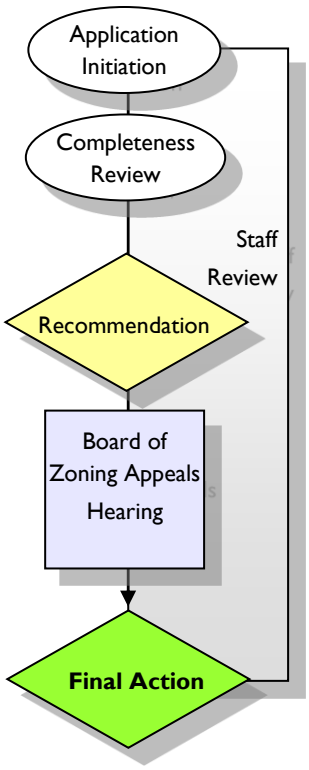
A. A notice of appeal shall be submitted within 30 days of the final decision, which is the subject of the appeal, and shall be reviewed in accordance with the provisions of §6.22.

B. An administrative appeal, in appropriate cases and subject to appropriate conditions and safeguards as described in §6.22, may be submitted:

1. Where it is alleged there is error in any order, requirement, decision or determination in the enforcement of this chapter; and

2. Where there is any uncertainty as to the location of a district boundary, and interpretation is needed to carry out the intent and purpose of this chapter for the particular section or district in question.

C. This administrative appeals procedure shall not be applicable where an application is appealable directly to the city council or where the city council choses to act as the board of zoning appeals. (See §6.23 for more information.)



§6.22.2. Initiation

The applicant or an authorized agent or representative (see §6.2.3.B), or any other aggrieved person, may submit a written notice of appeal to the secretary for the board of zoning appeals, who will distribute the notice of appeal to the board of zoning appeals and to the zoning administrator. The notice of appeal must show that the applicant has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest.

§6.22.3. Notice of appeal requirements

A notice of appeal shall be submitted in accordance with applicable requirements of §6.2.3, and shall specify the grounds for the appeal.

§6.22.4. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.

§6.22.5. Action by zoning administrator

The zoning administrator shall review the notice of appeal and provide a report and recommendation to the board of zoning appeals along with all the papers constituting the record upon which the action appealed from was taken.

§6.22.6. Action by board of zoning appeals

After receiving the notice of appeal from the secretary of the board of zoning appeals and the report and recommendation from the zoning administrator, the board of zoning appeals shall conduct a full and impartial public hearing on the matter and in accordance with the approval criteria of §6.22.7, the board of zoning appeals shall affirm, reverse or modify the decision that is the subject of the appeal, in whole or in part.

§6.22.7. Approval criteria; findings of fact

The board of zoning appeals may reverse an order, requirement, decision, or determination of an administrative official only when the board of zoning appeals finds substantial, factual evidence in the official record of the application that the administrative official erred. The decision of the board of zoning appeals shall be supported by written findings of fact prepared by the board of zoning appeals.

§6.22.8. Limitation on district boundary interpretations

A. No provision of this §6.22 shall be construed as granting the board of zoning appeals the power to rezone property or to base board of zoning appeals decisions on the merits of the purpose and intent of local ordinances duly adopted by the city council.

B. In making district boundary interpretations, the board of zoning appeals shall not have the power to change substantially the locations of district boundaries as established by ordinance.

§6.22.9. Effect of appeal

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

§6.22.10. Appeals to court

Final decisions of the board of zoning appeals may be appealed within 30 days of the decision in accordance with §6.24.

§6.23. APPEALS TO CITY COUNCIL

§6.23.1. Applicability

A. A notice of appeal shall be submitted within 30 days of the final decision, which is subject of the appeal, and reviewed in accordance with the provisions of §6.23.

§6.23.2. Initiation

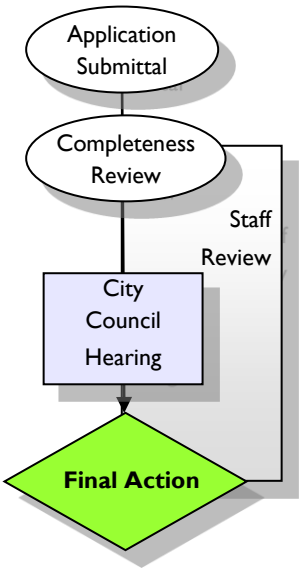
The applicant or an authorized agent or representative (see §6.2.3.B), or any other aggrieved person, may submit a written notice of appeal to the city clerk, who will distribute the notice of appeal to the city council and to the zoning administrator. The notice of appeal must show that the applicant has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest.

§6.23.3. Notice of appeal to city council requirements

A city council appeal shall be submitted in accordance with applicable requirements of §6.2.3, and shall specify the grounds for the appeal.

§6.23.4. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.



§6.23.5. Action by zoning administrator

The zoning administrator shall transmit to the city council all the papers constituting the record upon which the action appealed from was taken.

§6.23.6. Action by city council

After receiving a notice of appeal from the city clerk, the city council shall conduct a full and impartial public hearing on the matter and in accordance with the approval criteria of §6.23.7, below, the city council shall affirm, reverse or modify the decision, that is the subject of the appeal, in whole or in part.

§6.23.7. Approval criteria; findings of fact

The same approval criteria shall be applied by the city council as established for the board of architectural review for the decision, which is the subject of the appeal. The decision of the city council shall be supported by written findings of fact prepared by the city council.

§6.23.8. Actions after approval

The decision of the city council shall be final, subject to the provisions of §6.23.3.

§6.23.9. Effect of appeal

Upon the filing of a notice of appeal, the final decision, which is the subject of the appeal, shall be stayed pending the decision of the city council and the applicant shall be prohibited from taking any action for which approval is sought during the pendency of such appeal.

§6.23.10. Appeals to court

Final decisions of the city council on certificates of appropriateness may be appealed within 30 days of the decision in accordance with §6.24.

§6.24. APPEALS TO COURT

An appeal from any action, decision, ruling, judgment or order of the city council or board of zoning appeals made under this chapter may be taken by any person or persons, jointly or severally aggrieved, or any taxpayer or any officer, department, board or bureau of the city to the circuit court in accordance with applicable law.

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Article 7. Nonconformities

§7.1. GENERAL

§7.1.1. Scope

The regulations of this article govern nonconformities, which are lots, uses, site development standards and structures that were lawfully established but—because of the adoption of new or amended regulations—no longer comply with one or more requirements of this chapter.

§7.1.2. Intent

Occasionally, lots, uses, features and structures that were lawfully established (i.e., in compliance with all regulations in effect at the time of their establishment) are made nonconforming because of changes in the zoning regulations that apply to the subject property (e.g., through zoning map changes or zoning ordinance text amendments). The regulations of this article are intended to clarify the effect of this nonconforming status and avoid confusion with "illegal" buildings and uses (i.e., those established in violation of applicable zoning regulations). The regulations of this article are also intended to:

A. Recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established;

B. Promote maintenance, reuse and rehabilitation of existing buildings; and

C. Place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties.

§7.1.3. Authority to continue

Any nonconformity that existed on the effective date specified in §1.2 or any situation that becomes nonconforming upon adoption of any amendment to this chapter may be continued in accordance with the regulations of this article unless otherwise expressly stated.

§7.1.4. Determination of nonconformity status

A. The burden of proving a nonconformity was lawfully established rests entirely with the subject landowner.

B. A preponderance of evidence must be provided by the subject landowner and be sufficient to show that the nonconformity was lawfully established before adoption of the subject regulations. Evidence must also indicate that the nonconformity has been continuous and that the situation has not lost its nonconforming status. Examples of reliable evidence include, but are not limited to, approved business licenses; building permits; use permits or zoning permits; city/county billing records; utility billing records; aerial photographs; assessment, tax or rent records; and directory listings.

C. The zoning administrator is authorized to determine whether or not adequate proof of nonconforming status has been provided by the subject landowner.

D. Appeals of the zoning administrator's decision on nonconforming status determinations may be appealed in accordance with the appeal procedures of §6.22.

§7.1.5. Repairs and maintenance

A. Nonconformities must be maintained to be safe and in good repair.

B. Repairs and normal maintenance that do not increase the extent of nonconformity and that are necessary to keep a nonconformity in sound condition are permitted unless otherwise expressly prohibited by this zoning ordinance.

C. Nothing in this article is intended to prevent nonconformities from being structurally strengthened or restored to a safe condition in accordance with an order from a duly authorized city official.

§7.1.6. Change in tenancy or ownership

Nonconforming status runs with the land and is not affected by changes in tenancy, ownership or management.

§7.2. NONCONFORMING LOTS

§7.2.1. Description

A nonconforming lot is a lawfully created lot recorded among the land records of Fairfax County that does not comply with all applicable dimensional standards of the zoning district in which the lot is located (§3.6).

§7.2.2. Use of nonconforming lots

A. Any nonconforming lot in a residential district may be used as a building site for a single-family detached house.

B. In nonresidential districts, a nonconforming lot may be used as a building site and developed with a use allowed in the subject district.

§7.2.3. Lot and building regulations

A. Development on nonconforming lots must comply with the lot and building regulations of the applicable zoning district(s) unless otherwise expressly stated.

B. Nonconforming lots may not be adjusted in size or shape so as to increase the degree of nonconformity for lot area, lot width, setbacks or other applicable lot and building regulations. Lot area or shape adjustments that decrease the extent of nonconformity are allowed.

C. The provisions of §7.2.3.B shall not apply to involuntary changes as a result of condemnation actions or other litigation.

§7.3. NONCONFORMING STRUCTURES

§7.3.1. Description

A nonconforming structure is any building or structure, other than a sign, that was lawfully established but no longer complies with the lot and building regulations of the zoning district in which it is located.

§7.3.2. General

Nonconforming structures may remain, subject to the regulations of Article 7.

§7.3.3. Alterations and expansions

A. Residential districts

Alterations of nonconforming structures in residential districts, including enlargements and expansions, are permitted provided the proposed alteration or expansion does not increase the extent of nonconformity.

B. Nonresidential districts

Alterations of nonconforming structures in nonresidential districts, including enlargements and expansions, are permitted provided the proposed alteration or expansion does not increase the extent of nonconformity and the proposed alteration or expansion results in the enlargement or expansion of the nonconforming structure by no more than 25 percent or 5,000 square feet, whichever is less.

§7.3.4. Use

A nonconforming structure may be used for any use allowed in the zoning district in which the structure is located.

§7.3.5. Moving

A nonconforming structure may be moved in whole or in part to another location only if the movement or relocation eliminates or reduces the extent of nonconformity. A nonconforming structure may be moved to another lot only if the structure would comply with the zoning regulations that apply to that (relocation) lot. The provisions of §7.3.5 shall not apply to involuntary movements of uses as a result of condemnation actions or other litigation.

§7.3.6. Loss of nonconforming status

A. Intentional damage or destruction

When a nonconforming structure is intentionally destroyed, razed or dismantled by a deliberate act of the owner or the owner's agent, all nonconforming structure rights are lost and reconstruction of the nonconforming structure is prohibited.

B. Accidental damage or destruction

Unless a nonconforming structure loses its nonconforming structure rights pursuant to §7.3.6.A, above, the structure may be restored as authorized by §15.2-2307, Code of Virginia for natural disasters and acts of God.

§7.3.7. Chesapeake Bay regulations nonconformities

See §4.18.9.

§7.4. NONCONFORMING USES

§7.4.1. Description

A. General

A nonconforming use is a land use that was lawfully established in accordance with all zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the zoning district in which the use is now located. Lawfully established uses that do not comply with any applicable separation (or spacing) distance requirements (e.g., those that require one land use to be located a certain minimum distance from another land use) are also deemed nonconforming uses.

B. Duplex and single-family attached dwellings in RM and RH districts

Notwithstanding other provisions of this chapter to the contrary, a lawfully constructed duplex or single-family attached dwelling in the RM or RH district shall not be considered nonconforming solely because such use is not allowed in the applicable district.

§7.4.2. Change of use

A nonconforming use may be changed to any other use that is allowed in the subject district. Once changed to a conforming use, a nonconforming use may not be re-established.

§7.4.3. Expansion of use

Expansion of nonconforming uses is permitted if the proposed expansion results in the enlargement or expansion of the use by no more than 25 percent or 5,000 square feet, whichever is less.

§7.4.4. Remodeling and improvements

A building in which a nonconforming use is located may be remodeled or otherwise improved as long as the remodeling or improvements do not violate the other regulations of this chapter.

§7.4.5. Moving

A. A nonconforming use may be moved in whole or in part to another location on the same lot only if the movement or relocation eliminates or reduces the extent of nonconformity.

B. A nonconforming use may be moved to another lot only if the use is allowed under the zoning regulations that apply to that (relocation) lot.

§7.4.6. Loss of nonconforming status

A. Abandonment

1. Once a nonconforming use is abandoned, its nonconforming status is lost and any new, replacement use must comply with the regulations of the zoning district in which it is located.

2. A nonconforming use is presumed abandoned when the use is discontinued or ceases for a continuous period more than two years.

3. The presumption of abandonment may be rebutted upon showing, to the satisfaction of the zoning administrator, that during such period the owner of the land or structure has been:

(a) Maintaining the land and structure in accordance with all applicable City Code requirements and did not intend to discontinue the use; or

(b) Engaged in other activities that affirmatively prove there was not intent to abandon.

4. Any period of discontinued use caused by natural disasters and acts of God will not be counted in calculating the length of discontinuance.

B. Change to conforming use

If a nonconforming use is changed to a conforming use, no matter how short the period of time, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.

§7.4.7. CHESAPEAKE BAY REGULATION NONCONFORMITIES

See §4.18.9.

§7.5. NONCONFORMING SITE DEVELOPMENT FEATURES

§7.5.1. Description

A nonconforming site development feature is any aspect of a development—other than a nonconforming lot, nonconforming use, or nonconforming structure—that was lawfully established, in accordance with zoning regulations in effect at the time of its establishment but that no longer complies with one or more regulations of this chapter. Common examples of nonconforming development features are off-street parking or loading areas that contain fewer spaces than required by current regulations and sites that do not comply with current landscaping or screening requirements.

§7.5.2. General

Nonconforming site development features may remain except as otherwise expressly stated in this chapter, but the nature and extent of nonconforming site development features may not be increased except as otherwise expressly stated in this chapter.

§7.5.3. Nonconforming signs

A. Alteration or replacement

The zoning administrator may permit the alteration or replacement of nonconforming signage provided that replacement substantially reduces the degree of nonconformity of the existing sign (i.e., eliminates pylon or pole signage, reduces total area, provides greater setback, reduces height).

B. Abandonment

Nonconforming signage may be continued only so long as the use advertised continues and such use is not discontinued for more than two years. Where a use advertised by a nonconforming sign is discontinued for more than two years, the nonconforming sign shall be considered abandoned and the sign shall be removed at the owner's expense.

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Article 8. Enforcement and Penalties

§8.1. RESPONSIBILITY FOR ENFORCEMENT

The zoning administrator is responsible for the interpretation, administration and enforcement of the provisions of this chapter unless otherwise expressly stated.

§8.2. VIOLATIONS

§8.2.1. General

It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or use any land in the city, or cause any of these actions, contrary to or in violation of any of the provisions of this zoning ordinance. Any violation of a provision of this zoning ordinance—including but not limited to all of the following—may be subject to the remedies and penalties provided for in this chapter.

A. To use land or buildings in any way not consistent with the requirements of this chapter;

B. To erect a building or other structure in any way not consistent with the requirements of this chapter;

C. To engage in the use of a building or land or any other activity requiring one or more permits or approvals under this chapter without obtaining such required permits or approvals;

D. To engage in the use of a building or land or any other activity requiring one or more permits or approvals under this chapter in any way inconsistent with any such permit or approval or any condition imposed on the permit or approval;

E. To violate the terms of any permit or approval granted under this chapter or any condition imposed on the permit or approval;

F. To obscure, obstruct or destroy any notice required to be posted or otherwise given under this chapter;

G. To violate any lawful order issued by any person or entity under this chapter; or

H. To continue any violation after receipt of notice of a violation.

§8.2.2. Continuing Violations

Each day that a violation remains uncorrected after receiving notice of the violation from the city shall constitute a separate violation of this chapter.

§8.3. REMEDIES AND PENALTIES

The city has all remedies and enforcement powers allowed by law, including the following:

§8.3.1. Withhold permits

The zoning administrator may disapprove or withhold administrative permits, certificates or other forms of authorization on any land or structure or improvements upon which there is an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This enforcement

provision may be used regardless of whether the current owner or applicant is responsible for the violation in question.

§8.3.2. Permits approved with conditions

Instead of withholding or disapproving a permit or other authorization, the zoning administrator may grant such authorization subject to the condition that the violation be corrected.

§8.3.3. Revoke permits

A. Any administrative permit, certificate or other form of authorization required under this chapter may be revoked by the zoning administrator when the zoning administrator determines:

1. That there is departure from the plans, specifications, or conditions as required under terms of the permit;

2. That the permit, certificate or other form of authorization was procured by false representation or was issued by mistake; or

3. That any of the provisions of this chapter are being violated.

B. Written notice of revocation must be served upon the owner, the owner's agent or contractor, or upon any person for which such permit was issued. If no persons can reasonably be served with notice, the notice must be posted in a prominent location. After delivery or posting of notice, no construction or development may proceed.

§8.3.4. Injunctive relief

The city may seek an injunction or other equitable relief in court to stop any violation of this chapter or of a permit, certificate or other form of authorization granted under this chapter.

§8.3.5. Abatement

The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

§8.3.6. Civil penalties

A. Violation of the provisions of this chapter, whether by act or omission, shall be punishable by a civil penalty of $200 per day and each day that a violation remains uncorrected after receiving notice of the violation from the city shall constitute a separate offense of this chapter. In addition, repeat violations, meaning violations of the same section that are repeated after resolution of the initial violation, shall be subject to the following penalties:

1. $500 for the second violation,

2. $500 for the third violation and

3. $500 for each additional violation to a maximum $2,500.

B. The following provisions shall apply whenever any person violates any provision of the city's Program, participates in the violation of any provision of the city's Program, permits any violation of any provision of the city's Program, or fails to comply with any of the requirements of the city's Program:

1. Any landlord/owner of an Affordable Dwelling Unit who fails to submit executed and complete affidavits, certifications, or any other documentation required by or under the city's Program shall be fined from two hundred dollars ($200.00) per day per unit, up to a maximum of two thousand five hundred dollars ($2,500.00) per day per unit, until such time as the required affidavit, certification, or documentation is filed with the city, but any such fine will apply only after written notice and a ten-day compliance period is provided. Any fines levied under the provisions of this paragraph shall become liens against the real property and shall accumulate interest at the judgment rate of interest.
2. Tenants of Affordable Dwelling Units who fail to submit executed and complete affidavits, certifications, or other documentation required by or under the city's Program shall be subject to lease termination and/or eviction procedures.

C. The violation by any person of any other provision of the City's program, whether by act or omission, shall be punishable in accordance with the terms of §8.3.6.A.

D. The designation of a particular violation of this chapter as a civil penalty shall preclude criminal prosecution or sanctions, except for any infraction also resulting in injury or death to any person or persons.

§8.3.7. Criminal penalties

A. Any violation of the following provisions, or any provision of proffers accepted pursuant thereto shall be deemed a misdemeanor and, upon conviction, shall be fined not more than $1,000 for each offense:

1. §3.7.2, Historic overlay districts;
2. §3.9, Affordable dwelling units, for falsely swearing to an affidavit, as specified in §8.3.7.F;
3. §4.6, Signs, only as applied to signs placed in the right of way or on public property;
4. §4.15, Floodplains;
5. §4.16, Storm drainage facilities;
6. §4.18, Chesapeake Bay preservation; and
7. §6.8, Site plan review.

B. Failure to remove or abate a zoning violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not more than $1,000; and

C. Failure to remove or abate a zoning violation during a succeeding 10-day period shall constitute a separate misdemeanor offense punishable by of fine of not more than $1,500; and

D. Continued 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 $2,000.

E. The remedy provided for in this §8.3 shall be in addition to any other remedies provided by law; however, the designation of a particular violation of this chapter as a civil penalty shall

preclude criminal prosecution or sanctions, except for any infraction also resulting in injury or death to any person or persons.

F. Any landlord/owner or tenant of an Affordable Dwelling Unit who shall falsely swear to or who executes an affidavit or certification required by or under the city's Program, knowing the statements therein are false, shall be guilty of a misdemeanor.

1. Fines levied against landlords/owners of Affordable Dwelling Units under the provisions of this Section shall become liens against the real property and shall accumulate interest at the judgment rate of interest.

2. Tenants of Affordable Dwelling Units who shall falsely swear to or who execute an affidavit or certification required by the city's Program knowing the statements contained in that affidavit or certification to be false shall also be subject to lease termination and/or eviction procedures as provided under the terms of the city's Program (see ADU Administrative Regulations § 4(F)(2)(f).

3. Owners of individual Affordable Dwelling Units who falsely swear that they continue to occupy any such Affordable Dwelling Unit as their primary place of domicile shall forfeit any right they may have had to occupy such Affordable Dwelling Unit as their primary place of domicile, the city shall have an exclusive right to purchase any such Affordable Dwelling Unit and the owners shall be required to sell any such Affordable Dwelling Unit to the city at a cash closing as set forth herein within 60 days or as soon thereafter as possible after the city learns of any such false affirmation. In such event, the owner of such Affordable Dwelling Unit shall offer to sell the Affordable Dwelling Unit in question to the city for a price not to exceed the control price of the unit at that time as established herein. The control price shall be determined by the original selling price, plus any increase in the United States Department of Labor's Consumer Price-Urban Area Index, plus the lesser of the current fair market value or the actual original cost of certain improvements made after the owner's purchase of the Affordable Dwelling Unit and the date of resale.

§8.3.8. Other penalties, remedies and powers

In addition to all other actions and penalties authorized in this article, the city attorney is authorized to institute injunctive, abatement or any other appropriate judicial or administrative actions or proceedings to prevent, enjoin, abate, or remove any violations of this chapter. After due notice to the owner of the violation, the city may also issue a citation for violation of this chapter requiring the presence of the violator in municipal court. In the event a fine is levied against any such violator, any such fine(s) shall become a lien against the real property pursuant to this Section, and shall accumulate interest at the judgment rate of interest.

§8.3.9. Other violations of the city's Program

Any person who violates the city's Program in a manner not specified above in this Section may be fined from $100.00 per day per unit, up to a maximum of two thousand five-hundred dollars ($2,500.00) per incident, until such time as the situation is brought into conformance with the applicable requirements. In the event a fine is levied against a landlord/owner of an Affordable Dwelling Unit, any such fine(s) shall become a lien against the real property and shall accumulate interest at the judgment rate of interest.

§8.3.10. Continuation of previous enforcement actions

Nothing in this chapter prohibits the continuation of previous enforcement actions, undertaken by the city pursuant to previous valid ordinances and laws.

§8.3.11. Remedies cumulative

The remedies and penalties established in this chapter are cumulative, and the city may exercise them in any combination or order.

§8.3.12. Persons subject to penalties

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies and enforcement actions.

§8.4. ENFORCEMENT PROCEDURES

§8.4.1. General

Upon becoming aware of any violation of any provisions of this chapter, the zoning administrator may serve a notice of such violation on the person committing or permitting the same, which notice shall require such violation to cease within such reasonable time as is specified in such notice. After such notice is sent and such violation is not ceased within such reasonable time as is specified in the notice, then the zoning administrator may proceed to remedy the violation as provided below.

§8.4.2. Summons

If the zoning administrator determines that a violation of the provisions of this chapter enumerated in §8.3.7, has occurred, the zoning administrator shall cause a summons in the form prescribed by the General District Court for Fairfax County for such misdemeanors to be mailed by regular or certified mail or hand-delivered to the persons committing or permitting the violation.

§8.4.3. Tickets

A. If the zoning administrator determines that a violation of the provisions of this chapter other than those enumerated in §8.3.7, has occurred, the zoning administrator shall cause a ticket to be mailed by regular or certified mail or hand-delivered to the persons committing or permitting the violation.

B. Such ticket shall contain the following information:

1. The name and address of the person charged;
2. The nature of the violation and the provision being violated;
3. The location, date and time that the violation occurred or was observed;
4. The amount of the civil penalty assessed for the violation;
5. The manner, location and time in which the civil penalty may be paid to the city; and
6. The right of the recipient of the ticket to elect to stand trial for the violation.

C. The ticket shall provide that any person charged with a violation may make an appearance in person or in writing by mail to the office of treasurer and, at such time, may enter a waiver of trial, admit liability and pay the civil penalty established for the offense charged. Such ticket

shall provide that signature to an admission of liability shall have the same force and effect as a judgment of court; however, an admission shall not be deemed a criminal conviction for any purpose.

D. 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 general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

§8.4.4. Notice of right to appeal

Any written notice of a zoning violation or a written order of the zoning administrator, including a summons or ticket as described above, 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 chapter, and that the decision shall be final and may not be appealed if not appealed within 30 days. The appeal period shall not commence until such notice is given and mailed or posted as required under applicable law.

§8.5. STORM DRAINAGE REGULATIONS ENFORCEMENT

See §4.16.9.

Article 9. Definitions

§9.1. GENERAL

Any term not herein defined shall be as defined elsewhere in the City Code, or, if not defined elsewhere in the City Code, as defined in Webster's New International Dictionary, most recent edition.

§9.2. ABBREVIATIONS

ADA: Americans with Disabilities Act.

CC: City council of the city of Fairfax, Virginia

BAR: Board of architectural review of the city of Fairfax, Virginia.

BMP: Best management practices.

BZA: Board of zoning appeals of the city of Fairfax, Virginia.

dBA: Decibel

DBH: Diameter at breast height (generally 4.5 feet above ground)

FCC: Federal communications commission.

PC: Planning commission of the city of Fairfax, Virginia.

PD: Director of community development and planning of the city of Fairfax, Virginia.

PW: Director of public works of the city of Fairfax, Virginia.

VSFPC: Virginia Statewide Fire Prevention Code.

USBC: Virginia Uniform Statewide Building Code.

VSMP: Virginia stormwater management program.

ZA: Zoning administrator of the city of Fairfax, Virginia.

§9.3. DEFINED TERMS

Any term not herein defined shall be as defined elsewhere in the City Code, or, if not defined elsewhere in the City Code, as defined in Webster's New International Dictionary, most recent edition.

§9.3.1. General terms

A-WEIGHTED SOUND PRESSURE: The sound pressure level as measured on a sound level meter using the A-weighted network, reported as dBA.

ABUTTING: See “contiguous”.

ACCESSORY BUILDING, STRUCTURE, OR USE: A detached building, structure, or use on the same lot with, or of a nature customarily incidental or subordinate to, and of a character related to the principal use or structure.

ACCESSORY DWELLING UNIT: A dwelling, including separate kitchen, sleeping, and bathroom facilities, that is attached as part of a principal, single-family dwelling and is subordinate in size to the dwelling. (See also §3.5.5.D.1)

ADJACENT: Same as "abutting".

ADMINISTRATIVE ADJUSTMENT: See §6.16.

ADMINISTRATIVE ACTION OR DECISION: Nondiscretionary regulatory action taken by the planning commission or zoning administrator interpreting regulations, or reviewing subdivisions, permits or approvals under this chapter; an administrative action must satisfy the requirements prescribed under state law or this chapter, whichever is stricter.

ADMINISTRATIVE REVIEW-ELIGIBLE PROJECT: A structure and wireless facility as defined in the Code of Virginia, §15.2-2316.3.

ADULT BOOKSTORE: A bookstore that devotes more than 15 percent of the total floor area for the display and sale of the following: (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or; (2) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities. The term adult bookstore shall not include a bookstore that sells adult books or periodicals as an incidental or accessory part of its principal stock-in-trade and does not devote more than 15 percent of the total floor area of the establishment to the sale of such books or periodicals.

ADULT DAY CARE: A program operated in a structure other than a residential dwelling that provides group care and supervision on a less than 24-hour basis, and in a place other than their guest's usual place of abode, to four or more adults 18 years or older who may be physically or mentally disabled.

ADULT ENTERTAINMENT ESTABLISHMENT: (1) A restaurant or food service, nightclub, bar, cabaret, lounge, club or other establishment, whether private or open to the public, which features adult entertainment; and (2) Any commercial establishment, including but not limited to a restaurant or food service, nightclub, bar, cabaret, lounge, club or other establishment, which, as its primary business, offers for sale any book, publication or film which depicts nudity, or sexual conduct or which offers services such as bath houses, adult massage, adult wrestling parlors or similar activities.

ADULT ENTERTAINMENT: Live performances by topless and/or bottomless dancers, strippers or similar entertainers, characterized by the display or exposure of specified anatomical areas.

ADULT MASSAGE: Any place where, for any form of consideration or gratuity, a massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body occurs as a part of or in connection with specified sexual activities or where any person providing such treatment, manipulation, or service related thereto, exposes any of his or her specified anatomical areas.

ADULT MODEL STUDIO: Any establishment, where, for any form of consideration or gratuity, figure models who display specified anatomical areas exhibit themselves to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity. The following is excluded from this definition: any school of art, which is authorized under the laws of the state to issue and confer a diploma.

ADULT MOTION PICTURE THEATRE: A theater, concert hall, or similar commercial establishment, where, for consideration, any films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is

devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons. Movies rated G, PG, PG-13, R or N-C by the Motion Picture Association of America, or live theatrical performances with serious artistic, social or political value, that depict or describe specified anatomical areas, are expressly exempt from regulation under this chapter.

ADULT USE: Any business or establishment subject to the definitions and regulations of §3.5.3.A, including, adult bookstore, adult entertainment establishment, adult massage, adult model studio and adult motion picture theater.

AFFORDABLE DWELLING UNIT: The term "Affordable Dwelling Unit" shall mean an affordable dwelling unit for which the rental and/or sales price will be controlled in accordance with the provisions of the city's Program.

AFFORDABLE DWELLING UNIT DEVELOPMENT: The term "Affordable Dwelling Unit Development" shall mean any development resulting from a Land Use Application that includes a total of 30 or more dwelling units and, therefore, is required to provide affordable dwelling units or any development that voluntarily agrees to provide Affordable Dwelling Units.

AFFORDABLE DWELLING UNIT DEVELOPMENT REGULATIONS: The term "Affordable Dwelling Unit Development Regulations" shall mean those provisions in §3.6.1.B of this Ordinance pertaining to Affordable Dwelling Unit Developments.

ALTERATION: Any change, addition, or modification in construction or occupancy of an existing structure.

ALTERNATIVE TELECOMMUNICATIONS STRUCTURE: Buildings, clock towers, bell steeples, electric poles, utility poles, water storage tanks, and other similar alternative-design mounting structures that are used for the purpose of supporting and obscuring the presence of antennas.

AMATEUR RADIO AND RECEIVE-ONLY ANTENNAS: A structure on which an antenna is installed for the purpose of transmitting and receiving amateur radio signals erected and operated by an amateur radio operator licensed by the FCC.

AMUSEMENT CENTER: Any indoor place that contains three or more amusement machines of any description, including but not limited to pinball games, computer amusement (video games), and/or games of chance for the public amusement, patronage and recreation.

AMUSEMENT MACHINE: Any mechanical, electronic and/or coin operated game and/or device for the amusement of the general public. This definition shall not be construed to include coin-operated music players commonly referred to as jukeboxes or coin-operated vending machines that merely dispense cigarettes, candy, gum, toys or like products.

ANIMAL CARE FACILITY: See §3.4.1.F.1.

ANTENNA: A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the city's siting, building and permitting authority.

APPLICANT: Any person, including any authorized agent, submitting an application for a permit or requesting approval under this chapter.

APPROVAL AUTHORITY: The city council, board of zoning appeals, planning commission or other board or official designated by this chapter as being authorized to grant the specific zoning or land use permit or approval.

ARCHITECT: An individual who is certified by the state and who is licensed to practice architecture by the state board for architects, professional engineers, land surveyors, certified interior designers and landscape architects or its successor.

ART GALLERY OR STUDIO: Where objects of art are displayed for viewing, created (including the teaching of painting and sculpting, or similar activities), or displayed for sale.

AS-BUILT SITE PLAN: A certified site plan showing the location of buildings and all on-site and off-site improvements as actually constructed.

ASSISTED LIVING FACILITY: A residential care facility designed for limited care of ambulatory elderly persons, with spouses or companions when applicable, but not including any facility licensed as a health care facility by the state. A facility providing assisted living care but also licensed by the state as a nursing home or other health care facility shall be considered a "nursing home."

AUCTION HOUSE: A building, structure or lot used for the purpose of conducting public sales of items sold to the highest bidder.

AUDITORIUM OR ARENA: Any structure that draw large numbers of people to specific events or shows. Activities are generally of a spectator nature.

BANNER: A sign consisting of a light-weight, flexible material, which is supported and fixed by a frame, ropes, cables, wires or other anchoring device on a minimum of two sides, whose movement is constrained.

BASEMENT: A story that is not a story above grade plane (for areas subject to Floodplain Regulations, see definition in §4.15.15).

BED AND BREAKFAST: Transient accommodation with rooms or suites available to guests in an owner-occupied principal, single-family dwelling unit.

BEEHIVE OR HIVE: A dwelling place constructed for bees.

BEST MANAGEMENT PRACTICE (BMP): A practice, or combination of practices, that are determined by the state to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with state water quality goals.

BLOCK: A block is a rectangular space bounded on four sides by streets and occupied by or intended for buildings.

BLOCK FACE: The area between two intersecting streets along the same side of the street on which the subject parcel is located.

BUFFER AREA: An area of natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbances.

BREWPUB: A restaurant or food service and brewery that sells the majority of its beer on site. The beer is brewed primarily for sale in the restaurant or food service and associated bar, and the beer is often dispensed directly from the brewery's storage tanks. Off site sales are limited and not the primary use.

BUILDABLE AREA: See §1.5.3.

BUILDING: Any structure having a roof supported by columns or walls.

BUILDING CODE: The Virginia Uniform Statewide Building Code (USBC).

BUILDING FRONTAGE. See §1.5.10.A.

BUILDING LINE: A line parallel to an abutting street beyond which no structure or appurtenance shall extend or the required yard (setback) adjacent to a property line not fronting on a street.

BUILDING, PRINCIPAL: A building in which is conducted the principal use of the lot on which it is situated.

BUILDING SUPPLIES AND LUMBER SALES: An establishment engaged in the retail sale of building supplies and lumber.

BULK PLANE: See §1.5.6.

BULK WASTE: Discarded items such as appliances, furniture bedding material automobile parts mechanical equipment mechanical parts carpet or similar material.

CANOPY TREE: See §4.5.9.B.1.

CARPORT: A permanent structural addition, wholly or partly covered by a roof, unenclosed on three sides, and used for the shelter of motor vehicles. For purposes of this definition, unenclosed carport means having no side enclosure (other than the side of the building to which the carport is contiguous) that is more than 24 inches in height, exclusive of screens.

CAR WASH: A completely enclosed structure used, or designed to be used, for the washing, cleaning or waxing of vehicles, which may utilize a chain or other conveyor and blower or steam-cleaning device.

CARETAKER APARTMENT: A dwelling that is accessory to warehouses and storage buildings and facilities.

CATERING OR DELIVERY SERVICE: A catering or delivery operation where food is prepared and delivered to customers off-site.

CEMETERY: Land used or intended to be used for the burial of the dead, whether human or animal, including a mausoleum or columbarium.

CHESAPEAKE BAY PRESERVATION AREA OR CBPA: Any land designated by the city council pursuant to Code of Virginia, § 10.1-2107. A Chesapeake Bay preservation area shall consist of a resource protection area and a resource management area.

COLONY: An aggregate of bees consisting principally of workers but having when perfect one queen and at times drones brood combs and honey.

COLLEGE OR UNIVERSITY: An institution of higher learning that offer courses of general or specialized study leading to a degree.

COLUMBARIUM: A structure or vault lined with recesses for cinerary urns.

COMMERCIAL: A land-use classification that permits facilities for the buying and selling of commodities and services.

COMMERCIAL VEHICLE: See City Code, Section 98-147.

COMMERCIAL WASTE: All materials or substances from any commercial or industrial establishment.

COMMUNITY SERVICES: See §3.4.1.E.1.

CONDITIONED SPACE: Building area that is heated and/or air conditioned.

CONGREGATE LIVING FACILITY: A building or other complex containing multiple dwelling units that are separately occupied but that have one or more common kitchen and dining area for residents of the individual units. An apartment building or condominium complex shall not be considered "congregate living" where each unit includes complete kitchen facilities, regardless of the fact that such complex includes one or more common areas.

CONTIGUOUS OR ABUTTING: To physically touch or border upon; or to share a common property line or border. Unless otherwise expressly stated, this definition does not include lots or parcels on the opposite side of a street.

CONTROL PERIOD: The term "Control Period" shall mean the period during which an Affordable Dwelling Unit is subject to the terms and conditions of the City's Program.

CONVENIENCE STORE: Any establishment that contains less than 5,000 square feet of floor area and which is used for the retail sale of food, household supplies and convenience items.

CORNER LOT: See §1.5.

CREMATORIUM: A place where bodies are consumed by incineration and the ashes of the deceased are collected for permanent burial or storage in urns.

DANCING AREAS: Any area designed or intended for dancing.

DAY CAMP: A dwelling, building, lot, tract, or parcel of land operated as either a commercial or noncommercial enterprise operated or used for the entertainment, education, recreation, religious instruction or activities, physical education, or health of 12 or more persons under 18 years of age and not related to the operator of such place or establishment by blood or marriage for any portion of the day, more than two consecutive days per week.

DAY CARE CENTER: Any place, facility or institution where one or more children under 13 years of age receives care, guidance, or education on a regular basis for any period of more than one hour but less than 24 hours in any 24-hour period unattended by a parent, guardian, or person with legal custody.

DAY CARE HOME, FAMILY: Provision of regulated childcare in a facility defined by the state as a "family day home." (See also §3.5.5.D.8)

DETENTION FACILITY OR JAIL: A publicly operated use providing judicially required detention or incarceration of people.

DEVELOPMENT: All and any disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silviculture purposes.

DRIP LINE: The area defined by the outermost circumference of a tree canopy from where water drips onto the ground.

DRIVE-THROUGH FACILITIES: A window or other facility designed to enable a person to transact business while remaining in a motor vehicle.

DRUG STORE: An establishment engaged in the retail sale of prescription drugs, nonprescription medicines, cosmetics, and related supplies.

DRIVEWAY: A private roadway located on a parcel or lot used for vehicle access.

DUPLEX: A residential building with two attached dwelling units located on a single lot with a common or abutting wall or on individual lots with a common or abutting wall. Each dwelling unit has an external entrance.

DWELLING UNIT: A building, or portion thereof, providing complete and permanent living facilities for one household, for long-term residency of 30 days or more, and all conditioned space is continuous and connected and fully accessible from all space by all occupants. Dwelling unit includes the following.

Accessory dwelling units

Single-family attached

Single-family detached

Duplex

Multifamily

Townhouse

Upper story residential/mixed use building

ELECTRIC VEHICLE CHARGING STATION: A facility used or intended for the charging of electric vehicles.

ENGINEER: An individual who is certified by the state and who is licensed to practice engineering by the state board for architects, professional engineers, land surveyors, certified interior designers and landscape architects or its successor.

ENTERTAINMENT: A featured event, which use provides live, audio, video or other recorded shows, acts, or amusements for the participation and/or benefit of patrons. This term shall not include adult entertainment and uses, amusement machines, dancing areas, movie theaters, theaters other than movie theaters, or non-participatory background entertainment.

ENTERTAINMENT AREAS: Any area designed or intended for entertainment.

FENCE: Any artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

FINANCIAL SERVICE: An establishment primarily engaged in the provision of financial and banking services. Typical uses include banks, savings and loan institutions, credit unions, stock and bond brokers, loan and lending activities, and similar services.

FOOD TRUCK: Any readily movable mobile food service establishment, to include vehicles or trailers that are self-propelled, pushed or pulled to a specific location.

FUEL STATION: An establishment providing retail sales of vehicle fuels, which may also provide minor repairs and maintenance. This use does not include paint spraying or body repair.

FUNERAL HOME: An establishment engaged in undertaking services such as preparing the human dead for burial and arranging and managing funerals. Typical accessory uses include mortuaries.

FURNITURE, APPLIANCE OR CARPET/FLOORING STORE: An establishment engaged in the retail sale of furniture (including mattresses), appliances, or carpeting/floor coverings.

GARAGE: An accessory building or part of a principal building used primarily for the storage of vehicles as an accessory use and having no provision for repairing or servicing such vehicles for profit.

GARAGE SALE: The sale of personal property which is conducted on the same lot as a residential dwelling within a residential district.

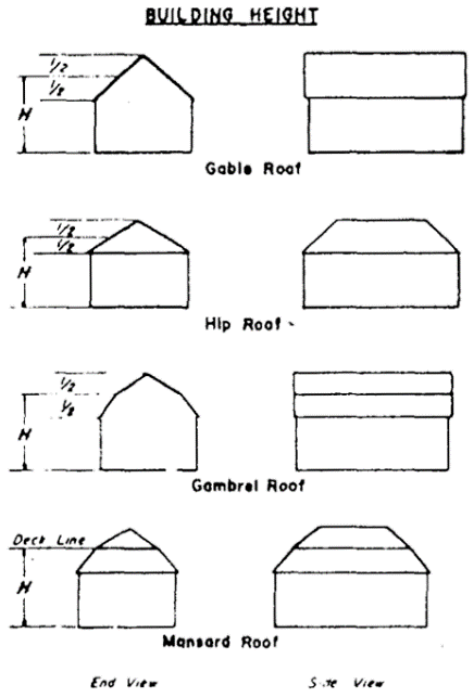
GOVERNMENTAL USE: The use of land and buildings maintained by any governmental agency for administrative, cultural, educational, health or welfare purposes, for water supply, sewerage, public safety or automobile parking purposes. The use of land and buildings maintained by any governmental agency for administrative, cultural, educational, health or welfare purposes, for water supply, sewerage, public safety or automobile parking purposes, but not including any materials or equipment yard.

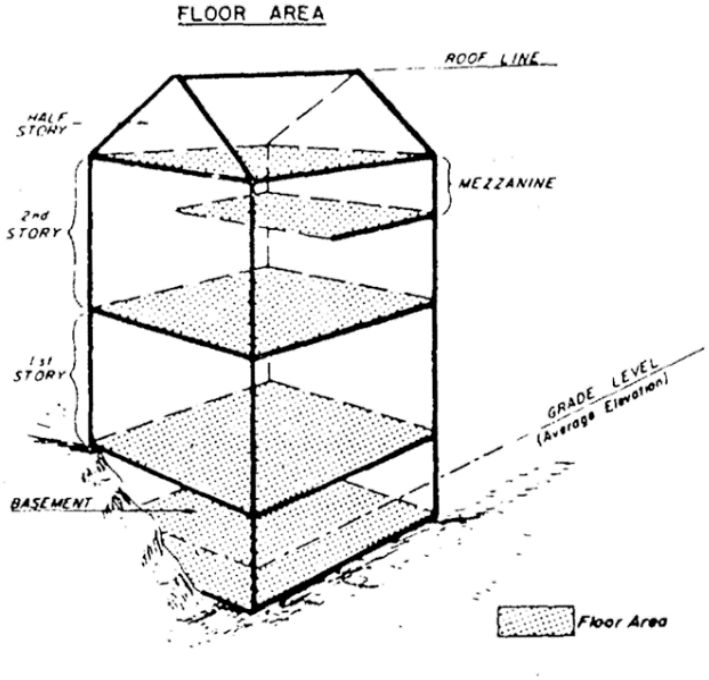
GRADE PLANE: A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet from the building, between the building and a point six feet from the building.

GROCERY STORE: A store with 5,000 square feet or more that sells food.

GROUP HOME/STATUTORY: A residential care facility in which persons with mental illness, intellectual disability, or developmental disability reside, with one or more resident or non-resident staff persons, as residential occupancy by a single-family detached dwelling, which is licensed by the Department of Behavioral Health and Developmental Services. For purposes of this definition and the use of the term within this chapter, "mental illness, intellectual disability and or developmental disability" shall not include current illegal use of or addiction to a controlled substance as defined in Va. Code § 54.1- 3401, all as provided in Va. Code §15.2-2291.A. (See also §3.5.2.C)

HALF STORY: A partial story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior sides are not more than two feet above the floor of such story; provided that any





such story used as a separate dwelling unit shall be counted as a full story.

HARDSHIP SIGN: See §4.6.11.F.

HAZARDOUS WASTE: Insecticides, poisons, corrosives, combustibles, caustics, acids, infectious materials, explosives, compressed gases, biological and chemical materials, radioactive materials, flammable materials, and petroleum products, or similar material Industrial waste. All materials or substances related to manufacturing processing or production.

HEIGHT: See §1.5.11.

HISTORIC MARKERS: SEE §4.6.11.G.

HOME OCCUPATION, MAJOR: See §3.5.5.D.12

HOME OCCUPATION, MINOR: See §3.5.5.D.12.

HONEY BEE: All stages of life of the common domestic certified European honey bee otherwise known by the species name Apis mellifera.

HOSPITAL: An institution providing human health services primarily for in-patient medical and surgical care for the physically or mentally sick and injured and including related support facilities such as laboratories, out-patient departments, staff offices, food services, and gift shop.

HOTEL/MOTEL: A building or group of buildings containing multiple guest rooms, for overnight guests, and containing registration facilities, on-site management, cleaning services and combined utilities.

HOTEL, EXTENDED-STAY: A building or group of buildings providing lodging for persons and that is intended, designed and used for the accommodation of transient lodgers in suites having one or more rooms including separate bathroom, kitchen and sleeping areas in each rental unit. The definition of extended-stay hotel shall not include dwelling units.

HOUSEHOLD. Any of the following: (a) an individual, or two or more persons related to one another by blood, marriage, or legal adoption, living together as a single housekeeping unit in a single dwelling unit; or (b) up to four unrelated persons living together as a single housekeeping unit in a single dwelling unit; or (c) up to eight mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors or other staff persons living together as a single housekeeping unit in a single dwelling unit, which is licensed by the Department of Behavioral Health and Development services.

IMPERVIOUS SURFACE: A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. (See also §1.5.7.B).

INTERMITTENT STREAM: A channel with flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is the primary source of water for stream flow.

JUNKYARD: The use of more than 600 square feet of any lot or parcel for outdoor storage and/or sale of waste paper, rags, scrap metal, or other junk, including the storage of automobiles or other vehicles, or dismantling of such vehicles or machinery or parts thereof.

KENNEL: An establishment for the keeping or breeding of dogs for profit, or more than four dogs or more on any premises, or any number of dogs that are kept for the purpose of sale or in connection with the boarding, care or day care, training, breeding, or selling, for which any fee is charged.

LAND SURVEYOR: An individual who is certified by the state and who is licensed to practice land surveying by the state board for architects, professional engineers, land surveyors, certified interior designers and landscape architects, or its successor.

LAND USE APPLICATION: The term "Land Use Application" shall mean any rezoning, special use permit, special exception, site plan, planned development, final subdivision plat, preliminary subdivision plat, or other applicable zoning permit.

LANDSCAPE ARCHITECT: An individual who is certified by the state as a certified landscape architect and who is licensed to practice landscape architecture by the state board for architects, professional engineers, land surveyors, certified interior designers and landscape architects, or its successor.

LANDSCAPING: Any live plant material such as trees, shrubs, ground cover, and grass used in spaces void of any impervious material or building structures, areas left in their natural state or areas where mulch is used as a ground cover.

LEARNING CENTER: Instruction of more than three students at one time.

LEGISLATIVE ACTION OR DECISION: Discretionary regulatory decision or approval by the planning commission or city council regarding text amendments, map amendments (rezoning) or special use review under this chapter; a reasonably debatable action that could result in a decision that promotes the general welfare of the city.

LIBRARY: A publicly-operated facility housing a collection of books, magazines, audio and video tapes, or other material for borrowing and use by the general public.

LITTER: Any can, bottle, box, carton, container, paper, wrapper, tobacco product, rag cloth, or newspaper.

LOADING AREA: A completely off-street space on the same lot for the loading or unloading of freight, merchandise or other items with ingress and egress to a street (see §4.2.9).

LOT COVERAGE: (See §1.5.7).

LOT LINE: A line of record bounding a lot which divides one lot from another lot or from a street or other public space.

LOT LINE, FRONT: See §1.5.12.B.

LOT LINE, SIDE (INTERIOR): See also §1.5.12.C

LOT LINE, SIDE (STREET): See also §1.5.12.C.

LOT LINE, REAR: The lot line that is most distant from, and is most nearly parallel with, the front lot line. See also §1.5.12.D.

LOT OF RECORD: A lot which is part of a subdivision recorded among the land records of Fairfax County, or a lawful lot existing on the effective date of the city's zoning regulations applicable to the district in which the lot is located and described by metes and bounds, the description of which has been so recorded.

LOT, CORNER: A lot bordering on two or more streets, which intersect at an angle not greater than 135 degrees.

LOT, INTERIOR: A lot other than a through lot or corner lot.

LOT, PIPESTEM (FLAG LOT): An irregularly shaped lot which has an appendage or extension which does not meet or exceed 75 percent of the lot width requirements of the applicable district.

LOT, THROUGH (DOUBLE FRONTAGE LOT): A lot that abuts two parallel streets or that abuts two streets that do not intersect at the boundaries of the lot. See also §1.5.

LOT: See "lot of record."

MANUFACTURING, GENERAL: See §3.4.1.G.1.

MANUFACTURING, HEAVY: See §3.4.1.G.2.

MANUFACTURING, LIMITED: See §3.4.1.G.3.

MEDICAL CARE FACILITIES: See §3.4.1.E.2.

MONOPOLE: A single, self-supporting pole-type structure, tapering from the base to the top and supporting a fixture designed to hold one or more telecommunications antennas.

Monument sign: The only type of ground-mounted sign allowed in the city. See §4.6.9

MOTEL: See "hotel/motel".

MULTIFAMILY: A residential building containing three or more dwelling units sharing common walls and/or floors. Such buildings often share a common entrance. More than one multifamily building may be located on a single lot, subject to compliance with the requirements for complexes (§3.4.2).

MUSEUM: An establishment for the display of art or historic or science objects.

NOISE: Any sound that may cause or tend to cause an adverse psychological or physiological effect on human beings.

NONCONFORMITY: See Article 7.

NONPOINT SOURCE POLLUTION: Pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and uses.

NONRESIDENTIAL BUILDING: A building constructed to accommodate nonresidential uses on all floors.

NONTIDAL WETLANDS: Areas other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to section 404 of the federal Clean Water Act, in 33 CFR 3238.3b.

NURSERY SCHOOL: Any place, home, facility, or institution, however designated, operated primarily for the purpose of providing educational instruction for six or more children, all of whom are under the age eligible for enrollment in the city of Fairfax or Fairfax County Public Schools. A nursery school shall not be deemed a major or minor home occupation.

NURSING HOME: A state-licensed facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A nursing home is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A nursing home provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general

hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

OCTAVE BAND ANALYZER: An instrument to measure the octave band composition of a sound by means of a bandpass filter. It shall meet the specifications of the American National Standards Institute publications S1.4-1961, S1.6-1967, and S1.11-1966, or their successor publications.

OFFICE BUILDING: A building designed for or used as the offices of professional, commercial, religious, public or semi-public organizations provided that no goods, wares, or merchandise shall be prepared or sold on the premises.

OFFICE, GENERAL: See §3.4.1.F.2.

OFFICE, MEDICAL: See §3.4.1.F.3.

OFF-SITE: Any area that does not fall within the boundary of the land to be developed.

OLD TOWN FAIRFAX: Old Town Fairfax Historic Overlay District and the Old Town Fairfax Transition Overlay District. (See §3.7.2.B and §3.7.3)

ON-SITE: That area which is within the boundary of any lot or site to be developed.

OUTDOOR DINING AND SERVICE AREAS: An area that contains portable seating and tables, intended solely for the consumption of food and beverages that are also included in the standard menu of the restaurant or food service, outside the exterior walls of a restaurant or food service. See also §3.5.5.D.17

OUTDOOR DISPLAY: See §4.10.

OUTDOOR STORAGE: See §4.10.

OUTPARCEL: A separate legal parcel on the same site.

OWNER: The owner of record according to the land records of Fairfax County.

PARAPET WALL: A barrier which is an extension of the wall at the edge of a roof, terrace, balcony, walkway or other structure.

PARCEL: A legally described piece of land.

PARKING LOT: An area not within a building, where motor vehicles may be stored for the purpose of temporary, daily, or overnight off-street parking (see §4.2).

PARKING, COMMERCIAL: An off-street garage (parking structure) or surface lot that provides parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as a commercial parking. Examples include short- and long-term fee parking facilities, park and ride facilities and mixed parking lots (partially accessory to a specific use, partly for rent to others). Commercial parking does not include the off site storage of new or used vehicles for sale.

PARKING, MUNICIPAL: An off-street garage (parking structure) or surface lot, other than a private parking lot, used for the parking of motor vehicles which is available for general public use.

PARKING SPACE. A designated off-street area designed to accommodate the parking of one vehicle.

PARKING STRUCTURE: A combination of materials utilizing walls or columns for support to form a construction to be used for the parking or loading of motor vehicles either above or below grade.

PARKS: See §3.4.1.E.3.

PERIMETER RESIDENTIAL LOTS: Residential lots in a planned development that are located along the outermost edge of a development site.

PERSON: Any individual, firm, partnership, corporation, company, association, or joint stock association.

PETROLEUM STORAGE AND DISTRIBUTION: A petroleum storage facility consisting of, but not limited to, containers, tanks, equipment, apparatus and all piping, fittings and appliances used or intended to be used for the storage, processing, handling, use or movement of flammable or combustible liquids. For the purpose of this definition, the terms "fuel sales, residential" and "fuel station" are not included.

PLANT NURSERIES AND GREENHOUSES: An establishment for the propagation, cultivation and growing of nursery stock for gardens, grounds, yards, and indoor use such as trees, plants, shrubs, sod, seeds and vines and the retail sales of such nursery stock such as soil, mulch, plant food/nutrients, fertilizers, herbicides and insecticides.

PORCH: A projection from an outside wall of a dwelling covered by a roof with no side walls more than two feet in height (other than the sides of the building to which the porch is attached).

PREMISES: The term “premises” is interchangeable with the term “site.”

PRINCIPAL DWELLING, BUILDING, STRUCTURE OR USE: The dwelling, building, structure or use that contains or constitutes the primary function or activity of a lot.

PRIVATE CLUB: An establishment providing meeting, recreational, or social facilities for a private or nonprofit association, primarily for use by members and guests. Typical uses include private social clubs and fraternal organizations. The definition of private clubs does not include adult uses or nightclubs.

PROJECT: A site under unified control for the purposes of development.

RECREATION AND OPEN SPACE: See §3.8.7.

RECREATION, INDOOR: See §3.4.1.F.4

RECREATION, OUTDOOR: See §3.4.1.F.5

RECREATIONAL FACILITIES, PRIVATE: Structures, facilities, equipment and sites on a lot designed and intended for the use and enjoyment of residents and occupants of the lot.

RECREATIONAL VEHICLE (RV): A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

REDEVELOPMENT: Any reconstruction, conversion, structural alteration, relocation or enlargement of any structure or any extension of the use of the land.

RELIGIOUS INSTITUTIONS: See §3.4.1.E.4.

RESEARCH AND DEVELOPMENT: A business that engages in research, or research and development, of innovative ideas in technology-intensive fields. Examples include research and development of computer software, information systems, communication systems, transportation, geographic information systems, multi-media and video technology. Development and construction of prototypes may be associated with this use.

RESOURCE MANAGEMENT AREA OR RMA: The component of the Chesapeake Bay preservation area that is not classified as the resource protection area and which is contiguous to the inland boundary of the RPA. Resource management areas include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area. All lands in the city that are not designated as resource protection areas are resource management areas.

RESTAURANT OR FOOD SERVICE: See §3.4.1.F.6.

RETAIL, CONVENIENCE: See §3.4.1.H.1.

RETAIL, GENERAL: See §3.4.1.F.7.

RETAIL, LARGE FORMAT: A building that occupies more than 30,000 square feet on one or on more than one level dedicated to one or more principal retail commercial land use(s), including, but not limited to grocery stores and shopping centers.

RIGHT-OF-WAY: An area or strip of land, either public or private, on which an irrevocable right-of-passage has been recorded for the use of vehicles or pedestrians or both.

ROOF LINE: The top edge of the roof, which forms the top line of the building silhouette, which includes the parapet, but not including equipment structures.

SCHOOL, TECHNICAL, TRADE OR BUSINESS: A use providing education or training in business, commerce, language, or other similar activity such as a learning center or occupational pursuit, and not otherwise defined as a home occupation, college, university, nursery school, or public or private educational facility.

SCHOOL, ELEMENTARY, MIDDLE AND HIGH: An institution that offers instructions in the several branches of learning and study required to be taught in the public schools by the state.

SELF-SERVICE STORAGE FACILITY: A facility that includes two or more individual units of 500 square feet or less, each of which is rented solely to store household goods and personal effects as defined in Virginia Code Section 58.1-3504, tangible personal property employed in a trade or business as defined in Virginia Code Section 58.1-3503.A.17, and inventory of stock on hand as that term is used in Virginia Code Section 58.1-3510.A.

SERVICE DRIVE: A travel lane on dedicated right-of-way.

SERVICES, CONVENIENCE: See §3.4.1.H.2.

SERVICES, GENERAL: See §3.4.1.F.8.

SERVICES, PERSONAL: See §3.4.1.F.9.

SHOPPING CENTER: A group of commercial establishments on a site, which may include one or more lots, planned, developed, and managed as a unit. (See also “Retail, Large Format”)

SHRUB: See §4.5.9.B.3.

SIGN AREA: See §1.5.

SIGN FACE: The area of a sign used for visual communication.

SIGN, INFORMATIONAL OR DIRECTIONAL: Signs giving information or direction for the convenience and necessity of the public; i.e. “entrance,” “exit,” “office,” “no admittance,” “no trespassing,” “telephone,” “parking,” “loading only,” “no hunting, fishing, or swimming,” “beware of dog,” “full-service,” “self-service,” and similar directives.

SIGN STRUCTURE: Anything built or constructed for the purpose of supporting a sign.

SIGN: Any temporary or permanent identification, description, animation, illustration, or device, illuminated or nonilluminated, which is visible from any right-of-way and which directs attention to any realty, product, service, place, activity, person, institution, performance, commodity, firm, business or solicitation, including any permanently installed or situated merchandise or any emblem, painting, banner, poster, bulletin board, pennant, placard or temporary sign designed to identify or convey information. A sign shall include all structural members. (See also §4.6).

SINGLE-FAMILY ATTACHED: A residential building constructed to accommodate two principal dwelling units located on two lots that share a common wall along the lot line. Each dwelling unit has an external entrance.

SINGLE-FAMILY DETACHED: A residential building containing one dwelling unit located on a single lot.

SINGLE-FAMILY LOT: A lot approved for or developed with a single-family detached dwelling.

SITE PLAN: Detailed drawings indicating all building locations and site improvements required by §6.8.

SITE: Site or site area. (See §1.5.2.B.)

SMALL CELL FACILITY: A wireless facility as defined in the Code of Virginia, §15.2-2316.3.

SOCIAL SERVICE DELIVERY: An establishment where the principal function of the establishment is providing on-site food distribution, free or reduced-cost meal service, free or reduced-cost clothing distribution, counseling, job training, or other related services primarily to persons with limited ability for self-care, those persons in need of employment, or those persons with emotional or behavioral disabilities. This term shall not include uses operated by governmental agencies or facilities primarily for the care or treatment of persons who are currently illegally using or are addicted to a controlled substance as defined in Code of Virginia, § 54.1-3401 An office where the principal function is the administration of a services delivery establishment and not principally intended for the delivery of a service directly to the client shall not be construed to be social service delivery.

SOLID WASTE: Litter, garbage, trash, industrial waste, bulk waste, yard waste, commercial waste, hazardous waste, structural waste, tires, or any other condition, substance, material, product, or thing which may be detrimental or potentially harmful to health safety comfort and general welfare of the public or the environment.

SOUND LEVEL METER: An instrument to measure sound pressure levels.

SPECIFIED ANATOMICAL AREAS: (1) less than completely and opaquely covered: human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES: Any activity featuring human genitals in a state of sexual stimulation or arousal or acts of masturbation, sexual intercourse, sodomy, fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

SPECIAL EXCEPTION: See §6.17.

STATE: The Commonwealth of Virginia.

STORAGE POD: A purpose-built, fully-enclosed, box-like container designed to permit ease of loading to and from a transport vehicle. The term does not include accessory structures or roll-off (dumpster) containers.

STREET FRONTAGE: See§1.5.10.B.

STREET, PUBLIC: A dedicated and accepted public right-of-way for vehicular traffic, including the following: arterial, collector, local, and alley.

STREET, PRIVATE: A local or collector street, not a component of the city street system that is owned and regulated, with maintenance guaranteed by a private entity.

STRUCTURE: Anything constructed or erected which requires a location on the ground, or is attached to something having a location on the ground, including but not limited to signs, fences, radio towers, gasoline pumps and swimming pools.

STRUCTURAL WASTE: All building materials resulting from erecting removing, repairing, remodeling, or razing buildings or other structures

STRUCTURE, MAIN: A structure that contains a primary or predominant use.

STRUCTURED PARKING: See "parking structure".

SUBDIVISION: Division or re-division of a lot, tract or parcel of land into two or more lots or other division of land. This includes any changes in street or lot lines.

TELECOMMUNICATIONS FACILITY: Any site that is designed and constructed primarily for the purpose of supporting and including one or more antennas or microwave dishes, and including, but not limited to, telecommunications towers.

TELECOMMUNICATIONS TOWER: Any structure that is designed and constructed primarily for the purpose of supporting and including one or more antennas or microwave dishes, and including but not limited to self-supporting lattice towers, guyed towers, man-made trees, monopole towers, telephone, radio and television transmission towers.

THE CITY'S AFFORDABLE DWELLING UNIT ADMINISTRATIVE REGULATIONS: The term "the city's Affordable Dwelling Unit Administrative Regulations" shall mean those administrative regulations adopted by the city council under which the provisions of the city's Zoning Ordinance pertaining to affordable dwelling units are regulated.

THE CITY'S PROGRAM: The term "the city's Program" shall mean the provisions of the city of Fairfax's Zoning Ordinance pertaining to affordable dwelling units, and all rules, regulations and other administrative provisions applicable thereto, including, but not limited to, the city's Affordable Dwelling Unit Administrative Regulations.

THEATER: Any building, structure or other indoor place, or any portion thereof, having fixed seating arranged in rows to allow spectators an unobstructed view and devoted to the performance arts for which an admission charge is made.

TIDAL WETLANDS: Vegetated and non-vegetated wetlands as defined in Code of Virginia, § 28.2-1300.

TOBACCO AND SMOKE SHOPS: A store that sells tobacco and smoking-related products, including but not limited to e-cigarettes and hookah.

TOWNHOUSE: A residential building with three or more attached dwelling units located on separately owned lots or on a single lot where the units are lined up in a row and share side walls. Each unit has its own external entrance.

TRAILER: Any vehicle used or maintained for use as a conveyance upon highways, whether motor power is required or not.

TREE CANOPY: The horizontal spread of a tree at maturity.

TREE, STREET: Any tree that grows in the right-of-way of a street or on private property adjacent to a street as authorized by the owner and placed or planted there by the city and designated by ordinance.

TREE: Any living, self-supporting woody plant that produces one main trunk and is 10 feet or greater in height, and 3.50 inches or greater in caliper measured six inches above ground level.

TUTORING: Personal instruction of up to three students at one time.

UNDERSTORY TREE: See §4.5.9.B.2.

UPPER STORY RESIDENTIAL/MIXED USE: A building constructed to accommodate nonresidential uses on the ground floor and upper story residential.

UTILITY POLE: A structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth of Virginia that is designed specifically to carry lines, cables, or wires for communications, cable television, or electricity.

UTILITY FACILITIES: Telephone, electric and cable television lines, poles, equipment and structures; water or gas pipes, mains, valves or structures; pumping stations; telephone exchanges and repeater stations; and other facilities, equipment and structures necessary for conducting a service by a government or utility.

UTILITIES, MAJOR: See §3.4.1.E.5.

UTILITIES, MINOR: See §3.4.1.E.6.

VARIANCE: See §6.18.

VEHICLE REPAIR: See §3.4.1.F.12.

VEHICLE SALES AND LEASING: See §3.5.3.I.

VEHICLE SERVICE: See §3.4.1.F.11.

VEHICLE STORAGE AND TOWING: Any land or building where two or more wrecked, abandoned, impounded or new vehicles of any kind are stored prior to repair, disposal, claim or sale, but does not include the repair, wrecking, dismantling or salvaging of said vehicles or their parts.

WAREHOUSE AND FREIGHT MOVEMENT: See §3.4.1.F.13.

WASTE SERVICE: See §3.4.1.G.5.

WINDOW: An opening in a wall or door that contains transparent glass.

WIRELESS FACILITY: Equipment as defined in the Code of Virginia, §15.2-2316.3.

WIRELESS SUPPORT STRUCTURE: A structure as defined in the Code of Virginia, §15.2-2316.3.

YARD WASTE: All materials derived from trees shrubbery leaves fallen branch s lawn trimmings and other woody waste

YARD, FRONT: See §1.5.12.

YARD, REAR: See §1.5.12.

YARD, SIDE (INTERIOR): See §1.5.12.

YARD, SIDE (STREET): See §1.5.12.

YARD: See §1.5.12.

ZONING APPLICANT: The term "Zoning Applicant" shall mean any applicant for a Land Use Application in the city.

§9.3.2. Floodplain-related terms

See §4.15.15.

§9.3.3. Storm drainage facilities-related terms

See §4.16.10.

§9.3.4. Chesapeake Bay Preservation-related terms

See §4.18.14

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