

Ordinance #98-8

AN ORDINANCE to amend various sections of Chapter 21, Zoning of the Code of the **Town of Ashland, Virginia** to modify the Town's Zoning Ordinance to comply with changes related to the recodification of Chapter 15.1 to 15.2 of the Code of Virginia and to amend other issues relating to definitions and the administration of the Zoning Ordinance.

NOW THEREFORE BE IT ORDAINED by the Council of the Town of Ashland, Virginia that:

- 1) The following sections of Chapter 21, Zoning of the Code of the Town of Ashland be modified as set forth below and reenacted by the action of the Town Council:

Sec. 21-1. Purpose of chapter.

Pursuant to the provisions of Section 15.2-2280 of the Code of Virginia, 1950, as amended, and in order to classify the territory of the town into zoning districts for the general purposes of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of the Town Charter and the Code of Virginia, this chapter is adopted as the zoning ordinance of the Town of Ashland. In accordance with the provisions of Section 15.2-2283 of the Code of Virginia, 1950, as amended, this chapter is designed to give reasonable consideration to each of the following purposes, where applicable:

- (a) To provide for adequate light, air, convenience of access and safety from fire, flood, crime and other dangers;
- (b) To reduce or prevent congestion in the public streets;
- (c) To facilitate the creation of a convenient, attractive and harmonious community;
- (d) To facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;
- (e) To protect against destruction of or encroachment upon historic areas;
- (f) To protect against one or more of the following: Overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health or property from fire, flood, panic or other dangers;
- (g) To encourage economic development activities that provide desirable employment and enlarge the tax base;
- (h) To provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment;
- (i) To protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities;

- (j) To promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the Town as well as a reasonable proportion of the current and future needs of the planning district; and
- (k) To protect surface water and ground water as defined in Section 62.1-255 of the Code of Virginia, 1950, as amended.

Sec. 21-1.1. Matters considered in applying zoning.

Pursuant to the requirements of Section 15.2-2284 of the Code of Virginia, 1950, as amended, the regulations contained in this chapter and the districts established by this chapter have been drawn and applied with consideration for: the existing use and character of property; the comprehensive plan of the town; the suitability of property for various uses; the trends of growth or change in the town; current and future requirements of the town as to land for various purposes as determined by population and economic studies and other studies; the transportation requirements of the town; the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services; the conservation of natural resources; the preservation of flood plains; the preservation of agricultural and forestal land; the conservation of properties and their values; and the encouragement of the most appropriate use of land throughout the town.

Sec. 21-2. Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity or general welfare. It is not intended by this chapter to interfere with, or abrogate or annul any easements, covenants or other agreement between parties; provided however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon height of buildings, or requires larger open space than are imposed or required by other resolutions, ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this chapter shall govern. If because of error or omission in the zoning district map, any property in the jurisdiction of this ordinance is not shown as being in a zoning district, the classification of such property shall be classified rural residential RR-1, until changed by amendment.

Sec. 21-3. Definitions.

(a) *Applicability of section.* For the purposes of this chapter, and unless specifically prescribed to the contrary elsewhere in this chapter, certain words and terms shall be interpreted as set forth in this section. Words and terms not defined here or elsewhere in this chapter shall be interpreted in accordance with such normal dictionary meaning or customary usage as is appropriate to the context.

(b) *General rules.* The following general rules of interpretation shall apply throughout this chapter as they are appropriate to the context.

- (1) Words used in the present tense include the future tense, words used in the singular number include the plural number and words in the plural number include the singular number, unless the obvious construction of the wording indicates otherwise.
- (2) The word "shall" is mandatory; "may" is permissive.
- (3) Unless otherwise specified, all "distances"—shall be measured horizontally and shall be the shortest distance between the points for which the distance specified.
- (4) The word "building" includes the word "structure" and includes any part thereof; the word "lot" included the words "plots" and "parcel;" and the word "land" includes the words "water" and "marsh."
- (5) The terms "main" and "principal" are synonymous.
- (6) The word "used" shall be deemed also to include "intended, designed or arranged to be used." "occupied." "erected," "reconstructed," "altered," "placed" or "moved."
- (7) The terms "land use" and "use of land" shall be deemed also to include "building use" and "use of building."
- (8) The word "commonwealth" means the Commonwealth of Virginia.
- (9) The word "town" means the Town of Ashland, Virginia.
- (10) The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

(c) *Certain words and terms defined.* The following words and terms shall be interpreted as having such meaning as described herein, unless a □□ specific meaning to the contrary is indicated elsewhere in this chapter.

(1) *Accessory apartment.* A separate and complete dwelling unit that is incidental to and contained within the same structure—of as a single-family detached dwelling unit or within an accessory building on the same lot, and which meets all of the conditions and limitations for such use set forth in this chapter.

(2) *Accessory building or accessory structure.* A building or structure separate from the main building on a lot and used for purposes customarily incidental and clearly subordinate to the principal use of the lot on which it is located. Where such building or structure is attached by walls or roof to a main building, it shall be considered to be a part of the main building.

Accessory use. A use of land or a use of a building or structure for purposes customarily incidental and clearly subordinate to the principal use of the lot on which

it is located.

Adult day care center. A facility which provides supplementary care and protection during part of the day to four (4) or more aged, infirm or disabled adults who reside elsewhere, except a facility or portion of a facility licensed by the State Board of Health or Department of Mental Health, Mental Retardation and Substance Abuse Services.

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(4) Agriculture, limited. The use of a tract of land of not less than ve (5) acres for: (a) the tilling of the soil; (b) the growing of crops or plant growth of any kind in the open, including forestry; (c) pasturage; (d) horticulture; (e) dairying; (f) floriculture; or (g) raising of poultry and livestock, where the ratio of livestock on a parcel does not exceed one animal per acre. The term "limited agriculture" shall not include the following: (a) the maintenance and operation of commercial greenhouses and hydroponic farms; (b) the feeding of garbage to animals; (c) the raising of fur-bearing animals as a principal use; (d) the operation or maintenance of a commercial stockyard; (e) the keeping of livestock, fowl and animals of a wild nature, except the keeping of rabbits, hamsters, mice, guinea pigs and other similar such animals, or birds or fowl for personal use or enjoyment, when such are not kept for sale or other commercial purpose and when such animals, birds or fowl are confined to the interior

of the dwelling or other permitted accessory building not designed for the primary purpose of keeping such animals, birds or fowl.

- (5) *Alley.* A right-of-way which provides secondary service access for vehicles to the side or rear of abutting property.
- (6) *Alterations, structural.* Any change, removal, replacement, reinforcement or addition of beams, ceiling and floor joists, reinforced concrete floor slabs, (except those on fill), load bearing partitions, columns, exterior walls, stairways, roofs, corridors or other structural materials used in a building that support the said beams, ceiling and floor joists, load bearing partitions, columns, exterior walls, stairways, roofs or structural materials used in the building or structure.
- (7) *Amusement center.* A building, portion of a building or area outside of a building, where five (5) or more video game machines, pinball machines, pool or billiard tables or other similar player-operated amusement devices or any combination of five (5) or more such devices are maintained for use by the public. A public billiard parlor or poolroom shall be considered an "amusement center."
- (8) *Antenna.* An usually metallic device for radiating or receiving radio waves.
- (9) *Apartment.* A dwelling unit occupying a part of a building in which other such dwelling units and/or other uses are also located.
- (10) *Assisted care facility.* An establishment that provides shelter and other services, which may include meals, housekeeping and personal care assistance for elderly residents who are typically functionally impaired and socially isolated, but otherwise in good health and able to maintain a semi-independent lifestyle, not requiring the more intensive care of a nursing home.
- (10) *Automobile graveyard.* See "junkyard."
- (11) *Automobile service or service station.* Any place of business with or without pumps and underground storage tanks for vehicle fuels, and having as its purpose the servicing, at retail, of motor vehicles, and which may include a general repair shop, paint or body shop, machine shop, vulcanizing shop or any operation requiring the removal or installation of radiator, engine, cylinder head, crankcase, transmission, differential, fenders, doors, bumpers, grills, glass, or other body parts or any body repairing or painting.
- (12) *Bed and breakfast.* A use which is subordinate to the principal use of dwelling unit as a single-family unit occupied by the owner; such use shall include providing lodging on a nightly basis for periods of less than two (2) weeks and where not more than one meal daily is provided in connection with the provision of sleeping

accommodations. No use shall be so defined which offers food or beverage for compensation to any persons other than transient guests being accommodated therein.

- (13) *Block*. That property fronting on one side of a street and lying between two (2) intersecting streets or otherwise limited by a railroad right-of-way, a stream, unsubdivided tract or other physical barrier of such nature as to interrupt the continuity of development.
- (14) *Billboard*. See "sign, billboard."
- (15) *Board*. The board of zoning appeals for the town.
- (16) *Boarding house*. A "rooming house."
- (17) *Buildable area*. The area of that part of the lot not included within the yards or open spaces herein required.
- (18) *Building*. Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any persons, animals, chattels, equipment, goods, materials or activities of any kind.
- (19) *Building, completely enclosed*. Any building having no outside openings other than ordinary doors, windows and ventilators.
- (20) *Building, height of*. The vertical distance measured from the average of the highest and lowest finished grades immediately adjacent to a building or a structure to the highest point of a flat roof, mansard roof or parapet, or to the midpoint of a gable, hip or shed roof, or to the highest point of a structure having no roof.
- (21) *Building inspector*. An appointed official who is responsible for enforcing the provisions of the Uniform Statewide Building Code within the jurisdiction of the town. Also the "building official."
- (22) *Building, main*. A building in which is conducted the principal use of the lot on which it is situated. In any residential zone, any dwelling shall be deemed to be a main building on the lot on which the same is located if the lot is used primarily for residential purposes.
- (23) *Caliper*. The diameter of a tree at the specified distance above ground level. Unless otherwise noted, the caliper shall be measured four and one-half (4 1/2) feet above ground level for existing trees and six (6) inches above ground level for newly planted trees.
- (24) *Canopy*. A detachable, roof like cover, supported from the ground, or deck, floor or walls of a building, for protection from sun and weather.

- (25) *Carport.* Any space outside a building or contiguous thereto, wholly or partly covered by a roof, and used for the shelter of motor vehicles. An unenclosed carport is a carport with no side enclosure that is more than eighteen (18) inches in height, exclusive of screens (other than the side of the building to which the carport is contiguous).
- (26) *Circuit court.* The circuit court for Hanover County.
- (27) *Church or place of religious worship.* An institution that people regularly attend to participate in or hold religious services. The term "church" shall not carry a secular connotation and shall include buildings in which the religious services of any denomination are held.
- (28) *Clinic.* An establishment where human patients who are not lodged overnight are admitted for examination or treatment by physicians, dentists or other professionals licensed by the state board of medicine.
- (29) *Club, private.* Those associations and organizations of a fraternal or social character not operated or maintained for profit, but the terms shall not include night clubs or institutions operated as a business.
- (30) *Commercial.* Any wholesale, retail or service business activity established to carry on trade for a profit.
- (31) *Commission.* The planning commission of the town.
- (32) *Community center.* A building, which may include related outdoor areas, used for recreation, social, educational, and/or cultural activities, owned or operated by a governmental agency, civic association or other not-for-profit entity, when such use serves residents of an adjacent residential community and is not operated for commercial purposes.
- (33) *Comprehensive plan.* The comprehensive plan for the town as adopted and as amended.
- (34) *Concrete works.* A structure or area used for the manufacture of concrete or concrete products.
- (35) *Conditional use.* A use listed as such in this chapter and which may be permitted in a specified district under certain conditions, such conditions to be determined in each case by the terms of this chapter and by the town council, after public hearing and report by the planning commission in accordance with the procedures specified by this chapter.

- (36) *Convalescent, nursing homes.* An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.
- (37) *Convenience stores.* A small retail establishment primarily selling groceries and providing a limited variety of goods or merchandise to the general public for personal or household use.
- (38) *Corporate flag.* A flag flown on a flag pole to display only a business name and/or logo with no other advertising thereon.
- (39) *Dairy.* A commercial establishment for the manufacture, processing or sale of dairy products.
- (40) *Day care center or day nurseries.* A facility complying with applicable state licensing requirements and operated for the purpose of providing care, protection and guidance to a group of more than five (5) children separated from their parents or guardians during a portion of the day, not including children of a family residing on the premises.
- (41) *Development.* Any manmade change to improved or unimproved real estate including, but not limited to, buildings or other structures, the placement of mobile homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging or drilling operations.
- (42) *Development, minor.* Any development involving three (3) or fewer lots and involving a land area of less than two (2) acres and not requiring the extension of any new streets, water and/or sewer lines.
- (43) *Development, major.* Any development that is not a minor development.
- (44) *District.* A portion of the territory of the town in which certain uniform regulations and requirements of various combinations thereto apply under the provisions of the adopted zoning ordinance.
- (45) *Duplex.* A two-family dwelling.
- (46) *Dwelling.* Any structure which is designed for residential purposes except hotels, boarding houses, lodging houses, tourist cabins, motels, manufactured homes and campers.
- (47) *Dwelling unit.* One or more rooms in a dwelling designed for living or sleeping purposes, and having only one kitchen.

- (48) *Dwelling, multifamily.* A structure arranged or designed to be occupied by three (3) or more families, the structure having three (3) or more dwelling units.
- (49) *Dwelling, two-family.* A structure arranged or designed to be occupied by two (2) families, the structure having only two (2) dwelling units.
- (50) *Dwelling, single-family, attached.* A single-family dwelling attached to one other one-family dwelling by a common vertical wall.
- (51) *Dwelling, single-family, detached.* A structure arranged or designed to be occupied by one family, the structure having only one dwelling unit and which is not attached to any other dwelling by any means.
- (52) *Family.* One or more persons related by blood, marriage or adoption, including foster children and household employees, or not more than three (3) unrelated persons occupying a single-family dwelling, living together as a single nonprofit housekeeping unit.

For purposes of this definition, not more than eight (8) unrelated mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors or other staff persons, occupying a residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services of the Commonwealth of Virginia is the licensing authority pursuant to the Code of Virginia, shall be considered residential occupancy by a single family. Mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Sec. 54.1-3401 of the Code of Virginia, 1950, as amended.

The term "family" shall also include not more than eight (8) handicapped persons, as defined by the Federal Fair Housing Act, occupying a single dwelling unit, together with one or more resident counselors or other staff persons.

A family day home as defined in Sec. 63.1-195 of the Code of Virginia, 1950, as amended, and serving not more than five (5) children, exclusive of the provider's own children and any children who reside in the home, shall be considered as residential occupancy by a single family.

The term "family" shall not be construed to include a fraternity, sorority, club or a group of persons occupying a hotel, motel, tourist home, lodging□□ house or institution of any kind, except as specifically included by this definition.

- (53) *Flag.* Emblem or insignia of a nation or other governmental unit, political subdivisions of the United States or of bona fide civic, charitable, fraternal or welfare organizations.

(54) *Flag pole.* A ground- or wall-mounted fixed pole to raise a flag on, this does not include an antennae on a stationary car, truck, or vehicle.

(55) *Floodplain.* Continuous sections of land, adjacent to bodies of water, which are subject to periodic flooding and inundation.

(56) *Floor area.* The sum of the gross horizontal areas of the several floors of the building or buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings.

(57) *Fraternity/sorority house:* A social or academic association of the students or alumni or alumnae of a college or university usually having a name consisting of Greek letters, recognized by a nationally chartered society and recognized by an accredited institution of higher learning, in Ashland, and recognized by the State Council of Higher Education for Virginia.

Frontage. The portion of a lot abutting a street and being the situated between the lot lines intersecting the street: also referred to as "lot frontage," or "street frontage." "Frontage" is also the minimum width of a lot measured from inside lot line to the other along a straight line on which no point shall be farther away from the street upon which the lot fronts than the minimum required setback as defined and required herein: see also, "lot, width of."

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Frontage. The portion of a lot abutting a street and being the situated between the lot lines intersecting the street: also referred to as "lot frontage," or "street frontage." "Frontage" is also the minimum width of a lot measured from outside lot line to the other along a straight line on which no point shall be farther away from the street upon which the lot fronts than the minimum required setback as defined and required herein: see also, "lot, width of."

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(59) *Garage, private.* Accessory building designed or used for storage of private automobiles owned and used by the occupants of the building to which it is accessory.

(60) *Garage, public parking.* A building or portion thereof, other than a private garage designed or used for storing of motor vehicles.

(61) *Garden apartment.* A multistory building of three (3) stories or less than one or more separate and individual apartments found in each story.

(62) *Golf course.* A tract of land, publicly or privately owned, on which the game of golf is played, including accessory uses and building customary thereto, but excluding golf driving ranges.

(63) *Governing body.* The town council of the town.

(64) *Grade.* Grade elevation shall be determined by averaging the elevations of the finished ground at the highest and lowest elevations immediately adjacent to the perimeter wall of the building.

- (65) *Guest house.* Living quarters within a detached accessory building for use by temporary guests of the occupants of the premises, such quarters having no separate utility meters, and not rented or otherwise used as a separate dwelling.
- (66) *Health official.* The legally designated health authority of the state department of health for the town, or his authorized representative.
- (67) *Home occupation (major and minor).* Any occupational activity which is clearly incidental and secondary to the use of the premises as a dwelling. No more than ten (10) percent of the entire floor area of the dwelling shall be used for said occupation or office. The activity must be carried on wholly within the main building by a member of the business entity who must reside on the premises and use same as his actual residence. Within this definition, there are "major home occupations" and "minor home occupations." A "major home occupation" must not generate substantial volumes of vehicular or pedestrian traffic or parking demand. Only one person outside the resident family is to be employed and no equipment is to be used which creates offensive noise, vibration, smoke, dust, odor, heat or glare. When within the above requirements, a major home occupation includes, but is not limited to, the following: (a) art studio; (b) dressmaking; (c) mail order business; (d) professional office of a physician, dentist, lawyer, engineer, architect, salesman, real estate agent, insurance agent, or similar occupation; and (e) teaching, with musical instruction limited to one or two (2) pupils at a time. A "major home occupation" shall not be interpreted to include barbershops, beauty parlors, retail sales, tourist homes, animal hospitals, child care centers, tea rooms, restaurants and contracting construction offices. A "minor home occupation" is subject to the same restrictions as a major home occupation and, in addition, no person outside the resident family is to be employed and all business is conducted over the phone and/or through the mail, upon issuance of a business license. The receiving of clients and customers is not permitted, nor goods, chattels, materials, supplies or items of any kind either to or from the premises except in a passenger automobile owned by the resident. There shall no demonstration of the physical aspects of the carrying on of a business. When within the above requirements, a "minor home occupation" includes, but is not limited to the following: (a) contractor's office; (b) bookkeeping, accounting, auditing, tax service; (c) repair service, personal service, home improvements service; and (d) property management office.
- (68) *Hospital.* A building or group of buildings, having room facilities for overnight patients, used for providing services for the inpatient medical or surgical care of sick or injured humans, and which may include related facilities, central service facilities and staff offices; provided, however, that such related facility must be incidental and subordinate to the main use and must be an integral part of the hospital operation.
- (69) *Hotel, motel, motor court, tourist court or motor lodge.* A building or buildings in which lodging or boarding and lodging are provided for individuals primarily transient and offered to the public for compensation and in which room assignments

are made through a lobby or office supervised by a person in charge at all hours. As such, it is open to the public in contradistinction to a boarding, rooming or lodging house, or multifamily dwelling which are herein separately defined. A hotel or motel may include restaurants, taverns or club rooms, public banquet halls, ballrooms and meeting rooms.

- (70) *Junkyard or automobile graveyard.* The use of any area of land lying within three hundred (300) feet of a state highway or the use of more than fifty (50) square feet of land area in any location for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials. The term "junkyard" shall include the term "automobile graveyard" as defined in Chapter 304, Acts of 1939, Code of Virginia as any lot or place which is exposed to the weather upon which more than five (5) motor vehicles of any kind, incapable of being operated, are placed.
- (71) *Kennel.* Any place, so designed that dogs cannot escape, where five (5) or more dogs more than four (4) months of age are kept or maintained; or any place, so designed that dogs cannot escape, where any number of dogs over four (4) months in age are kept for the sole purpose of sale, rental, boarding or breeding for which any fee is charged. A kennel shall not be interpreted to include pet shop, the housing of dogs for purposes of biological research, or an animal shelter.
- (72) *Laundromat.* A building or part thereof where clothes or other household articles are washed in self-service machines with a capacity for washing not exceeding twenty (20) pounds dry weight and where such washed clothes and articles may also be dried or ironed and no delivery service is provided in connection therewith.
- (73) *Laundry.* A building, or part thereof, other than a laundromat, where clothes and other articles are washed, dried and ironed.
- (74) *Limited industry.* Includes warehousing and light manufacturing uses which produce some noise, traffic congestion or danger, but which are of such limited scale or character that they present no serious hazard to neighboring properties from fire, smoke, noise or odors. Examples are lumber yards, warehouses, laboratories, seafood preparation or processing, auto repair shops, bakeries, bottling plants, electronic plants, storage of farm implements, contractors' storage yards, steel or metal fabrication.
- (75) *Livestock.* Animals, other than dogs, cats and other household pets, which are kept or raised for use, profit or enjoyment, including cattle, horses, sheep, goats, swine, fowl, rabbits and similar animals.
- (76) *Livestock market.* A commercial establishment wherein livestock is collected for sale and auctioned.

- (77) *Loading space.* A space within a building or on the premises providing for the standing, loading, or unloading of vehicles.
- (78) *Lodge, private.* Those associations and organizations of a fraternal or social character not operated or maintained for profit, but the terms shall not include night clubs or other institutions operated as a business.
- (79) *Lot.* A parcel of land occupied or to be occupied by a main structure or group of main structures and accessory structures, together with such yard, open space, lot width and lot areas as are required by this chapter, either shown on a plat of record or considered as a unit of property and described by metes and bounds.
- (80) *Lot, corner.* A lot abutting on two (2) or more streets at their intersection. Of the two (2) sides of a corner lot, the front shall be deemed to be the shorter of the two (2) sides fronting on streets.
- (81) *Lot, depth of.* The average horizontal distance between the front and rear lot lines.
- (82) *Lot, double frontage.* An interior lot having frontage on two (2) streets.
- (83) *Lot, interior.* Any lot other than a corner lot.
- (84) *Lot, width of.* The minimum width of a lot measured from one side lot line to the other along a straight line on which no point shall be farther away from the street upon which the lot fronts than the minimum required setback as defined and required herein: see "frontage."
- (85) *Lot of record.* A lot, a plat or description of which has been recorded in the clerk's office of the circuit court.
- (86) *Lot line, front.* The line separating the lot from a street on which it fronts. On a corner lot, the front shall be deemed to be along the shorter dimension of the lot; and where the dimensions are equal, the front shall be on that street on which predominance of the other lots in the block front.
- (87) *Lot line, rear.* The lot line opposite and most distant from the front lot line.
- (88) *Lot line, side.* Any lot line other than a front or rear lot line.
- (89) *Major thoroughfare.* A street or highway so designated on the major thoroughfare plan of the town.
- (90) *Manufacture or manufacturing.* The processing or converting of raw unfinished materials, or products, or either of them, into articles or substances of different character, or for use for a different purpose.

- (91) *Manufactured home.* Any structure complying with the Federal Manufactured Housing Construction and Safety Standards, which is transportable in one or more sections; is eight (8) body feet or more in width and forty 40 body feet or more in length in the traveling mode, or is three hundred twenty (320) or more square feet when erected on a site; is built on a permanent chassis; is designed to be used for dwelling purposes by one family, with or without a permanent foundation, when connected to the required utilities; and which includes the plumbing, heating, air-conditioning, and electrical systems to be utilized in the structure. The term "manufactured home" includes the term "mobile home."
- (92) *Manufactured home lot.* Any lot, area or tract of land used or designed to accommodate one manufactured home.
- (93) *Marquee.* A roof like structure or awning projecting over an entrance, as to a theater.
- (94) *Mini-storage facility.* A building or group of buildings in which wares or goods are stored, usually in separate, enclosed areas rented to individuals. Operation of any business using storage in such a facility is prohibited.
- (95) *Mini-warehouse facility.* A building or group of buildings in which wares or goods are stored, usually in separate, enclosed areas rented to individuals or businesses.
- (96) *Nonconforming building.* A building or structure having one or more nonconforming features.
- (97) *Nonconforming feature.* A feature of a use, as distinguished from the use itself, or a feature of a building, which feature was lawfully existing at the effective date of this chapter or subsequent amendment thereto, and does not conform with the requirements established by this chapter or an amendment thereto. Features of uses or buildings shall be construed to include density, lot area, lot dimensions, yards, setbacks, open spaces, height, bulk, number of occupants, screening, landscaping, lighting, off-street parking, and similar requirements. A building having any such nonconforming feature may be referred to as a nonconforming building.
- (98) *Nonconforming lot.* A lot of record which was lawfully existing at the effective date of this chapter or subsequent amendment thereto and which lot does not meet the lot area, lot width or other dimensional requirement of this chapter or an amendment thereto
- (99) *Nonconforming use.* A principal or accessory use of land or of a building or structure, which use was lawfully existing at the effective date of this chapter or subsequent amendment thereto and is not a permitted use under the provisions of this chapter or an amendment thereto.

- (100) *Nursing home, convalescent home, rest home.* A place devoted primarily to the maintenance and operation of facilities for the treatment and care of any person suffering from illnesses, diseases, deformities or injuries, not requiring extensive or intensive care that is normally provided in a general hospital or other specialized hospital.
- (101) *Open space.* Any parcel or area of land or water essentially unimproved and set aside, dedicated, designed or reserved for public or private use or enjoyment, or for the use and enjoyment of owner and occupants of land adjoining or neighboring such open space. This area of land is to be unoccupied by habitable buildings, streets or parking lots.
- (102) *Open space, required.* Any space required in any front, side or rear yard.
- (103) *Open space, common.* Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development and may include such complementary structures and improvements as are necessary and appropriate.
- (104) *Parking lot.* An open, unoccupied space used or required for use for parking of automobiles or other private vehicles exclusively and in which no gas or automobile accessories are sold or no other business is conducted and no fees are charged.
- (105) *Parking space, off-street.* An all-weather surfaced area not within a public street or alley right-of-way and having not less than specified by this chapter, exclusive of driveways, and permanently reserved for the temporary parking of one vehicle, and connected with a street or alley by a surfaced driveway which affords ingress and egress for vehicle without requiring another vehicle to be moved.
- (106) *Party wall.* A separating barrier common of two (2) or more adjacent dwellings consisting of a masonry wall. Projection above the roofline may be eliminated.
- (107) *Personal services establishments.* A business primarily engaged in providing services involving the care of a person or his or her apparel including, but not limited to, laundry, diaper service, beauty shops, barber shops, shoe repair, funeral services, etc.
- (108) *Philanthropic.* Such institutions that dispense or receive aid from funds set aside for humanitarian purposes. (Red Cross, Christian Aid.)
- (109) *Porch.* The term "porch" shall include any porch, veranda, gallery, terrace or similar projection for a main wall of a building and covered by a roof, other than a carport as defined in this section. An "unenclosed porch" is a porch with no side enclosure (other than the side of the building to which the porch is attached) that is more than eighteen (18) inches in height, exclusive of screens.

- (110) *Premises.* A lot, together with all buildings and structures thereon.
- (111) *Public access easement.* Any area through which ingress and egress is not restricted or limited to an individual occupant of the development or guest.
- (112) *Public building.* A building, or part thereof, owned or leased and occupied and used by an agency or political subdivision of the United States of America, the commonwealth, the county or the town.
- (113) *Public water and sewer systems.* The water or sewer system owned and operated by the town or other unit of government authorized by state law.)
- (114) *Recreational equipment, major.* Travel trailers, pickup campers, motorized trailers, motor homes, recreational vehicles, houseboats, boats, other water craft, boat and water craft trailers and the like, and cases or boxes used for transporting such recreational equipment, whether occupied by such equipment or not.
- (115) *Regulations.* The whole body of regulations, text, charts, tables, diagrams, maps, notations, references and symbols, contained or referred to in this chapter.
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(116)

Residential district. An RR-1, R-1, R-2, R-3, R-4 or R-5 District established by this chapter.

(117) *Restaurant.* Any building in which, for compensation, food or beverages are dispensed for consumption on or off the premises.

(118) *Restaurant, drive-in.* Any structure or establishment merchandising or dispensing food, beverage, or refreshments at which the customer is served either: (a) while sitting in a motor vehicle in a parking space; or (b) at an interior or exterior sales wiow, counter or service area, and at which the food, beverage or refreshments are sold for consumption either inside the said structure or in motor vehicles on the premises.

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(118) *Restaurant, drive-in.* Any structure or establishment merchandising or dispensing food, beverage, or refreshments at which the customer is served either: (a) while sitting in a motor vehicle in a parking space; or (b) at an interior or exterior sales window, counter or service area, and at which the food, beverage or refreshments are sold for consumption either inside the said structure or in motor vehicles on the premises.

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(119) *Restaurant, fastfood.* Any structure or establishment merchandising or dispensing food, beverage, or refreshments at which the customer is served at an interior or exterior sales window, counter or service area and at which the food, beverage or refreshments are sold for consumption either inside the said structure or in motor vehicles on the premises.

(120) *Rest home, convalescent home, nursing home.* Any place containing beds for two (2) or more patients, established to render domiciliary care for chronic or convalescent patients, but not including child care homes or facilities for the care of feeble-minded, mental, epileptic, alcoholic patients or drug addicts.

(121) *Retail stores and shops.* Buildings for display and sale of merchandise at retail or for the rendering of personal services (but specifically exclusive of coal, wood and lumber yards).

(122) *Rooming house.* A dwelling in which, for compensation, lodging is furnished four (4) or more, but not more than fourteen (14) persons. A "boarding house."

(123) *Satellite television antenna.* An apparatus capable of receiving communications from a transmitter or a transmitter relay located in planetary orbit.

(124) *Sawmill.* A sawmill located on public or private property for the process of timber.

(125) *Setback.* The minimum distance by which any building, or structure or designated activity or use must be separated from the front lot line. Also referred to as "front yard."

- (126) *Servants' quarters.* Living quarters within a portion of a main building or in an accessory building located on the same lot within the main building used for servants employed on the premises and not rented or otherwise used as a separate dwelling.
- (127) *Shopping center.* A group of three (3) or more retail stores, shops and other commercial establishments with a single overall architectural style which is planned, constructed and managed as a total entity with shared access, parking and other common areas.
- (128) *Sign.* A presentation of letters, numbers, figures, pictures, emblems, insignia, lines or colors, or any combination thereof displayed for the purpose of information, direction; or to advertise or promote a business, service, activity, interest or product, or any otherwise lawful noncommercial message that does not direct attention to a business operated for profit or to a commodity or service for sale.
- (129) *Site plan.* A drawing illustrating a proposed development and prepared in accordance with the specifications of article XVII.
- (130) *Special exception.* A use or feature listed as such in this chapter and which may be permitted in a specified district, or in any district if so specified, under certain conditions, such conditions to be determined in each case by the terms of this chapter and by the board of zoning appeals after public hearing in accordance with the procedures specified by article XXI of this chapter and applicable state law.
- (131) *Stable, private.* An accessory building, not related to the ordinary operation of a farm, for the housing of horses or mules owned by a person or persons living on the premises and which horses, donkeys, ponies or mules are not for hire or sale.
- (132) *Story.* That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between such floor and the ceiling next above it.
- (133) *Story, half.* A space under a sloping roof, which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds of the floor area is finished for use.
- (134) *Street or road.* A public thoroughfare.
- (135) *Street, centerline.* The centerline of a street shall mean the centerline thereof as shown in any of the official records of the county or any municipality therein, or as established by the state department of highways and transportation. If no such centerline has been established, the centerline of a street shall be a line lying midway between the sidelines of the right-of-way.

- (136) *Street line.* The dividing line between a street or road right-of-way and the contiguous property.
- (137) *Structure.* Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, except utility poles.
- (138) *Swimming pool.* Any portable pool or permanent structure containing a body of water eighteen (18) inches or more in depth and two hundred fifty (250) square feet or more of water surface area, intended for recreational purposes, including a wading pool, but not including an ornamental reflecting pool or fish pond or other type of pool, located and designed so as not to create a hazard to be used for swimming or wading.
- (139) *Tourist home.* A dwelling where only lodging is provided for compensation for up to fourteen (14) persons (in contrast to hotels and boarding houses) and open to transients.
- (140) *Tower.* A structure higher than its diameter, that may be fully walled in or of skeleton framework and is high relative to its surroundings.
- (141) *Townhouse.* A single-family dwelling unit being one of a group of not less than three (3) or more than ten (10) units, with such units attached to the adjacent dwelling or dwellings by party walls with lots, utilities and other improvements being designed to permit individual and separate ownership of such lots and dwelling units.
- (142) *Travel trailer.* A vehicular, portable structure designed in accordance with the U.S.A. Standards for Travel Trailers (A119.2) currently in use, or as may be amended by the U.S.A. Committee on Mobile Homes and Travel Trailers. Its primary function shall be the provision of temporary dwelling or sleeping quarters during travel, recreation or vacation uses. Its design and type shall be clearly identified by the manufacturer, by a visible identifiable seal or plate of permanent nature, as a travel trailer. Its specification for transporting over the streets and highways shall be in accordance with the Code of Virginia, title 46.1. No travel trailer shall be used for other temporary dwelling or sleeping quarters to exceed thirty (30) days.
- (143) *Tree.* A woody perennial plant having a single, usually elongate, main stem generally with few or no branches on its lower part.
- (144) *Truckstop.* An area, usually on or near a major thoroughfare, which has been designed for and is being used for the fueling, servicing or parking of tractor-trailers or other trucks. These areas may be equipped with facilities to supply maintenance for these trucks, and may include motels and restaurants. For the purpose of this chapter, any area having more than two (2) pumps for diesel fuel shall be deemed to be a truckstop.

- (145) *Truck terminal.* A building or area on which semitrailers, including tractors or trailer units or other trucks, are parked or serviced, and where freight brought in by truck is assembled or stored for routing and reshipment.
- (146) *Usable satellite signals.* Satellite signals, from the major communications satellites that, when viewed on a conventional television set, are at least equal in picture quality to those received from local commercial television stations or by way of cable television.
- (147) *Variance.* A variance is a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship. As used in this chapter, a variance is authorized only for height, area and size of structure or size of yards and open spaces; establishment of expansion of use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or adjoining zoning district.
- (148) *Veterinary clinic.* A facility rendering surgical and medical treatment to animals but having overnight accommodations for no more than four (4) small animals. For the purpose of this chapter, small animals shall be deemed to be ordinary household pets, excluding horses, donkeys or other such animals not normally housed or cared for entirely within the confines of a residence.
- (149) *Veterinary hospital.* A facility rendering surgical and medical treatment to animals and having no limitation on overnight accommodations for such animals. Crematory facilities shall not be allowed in a veterinary hospital. For the purpose of this chapter, where a veterinary hospital is permitted, a veterinary clinic shall also be permitted.
- (150) *Waterway.* Any body of water, including any creek, canal, river, lake or any other body of water, natural or artificial, except a swimming pool or ornamental pool located on a single lot.
- (151) *Waterway line.* A line marking the normal division between land and a waterway as established by the administrator or this Code.
- (152) *Wholesale business.* Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.
- (153) *Yards.* An open space on a lot, other than a court, unoccupied and unobstructed from the ground upward by structures except as otherwise provided herein.

- (154) *Yard, front.* An open space on the same lot as a building between the front line of the building (excluding steps) and the front lot or street line, and extending across the full width of the lot.
- (155) *Yard, rear.* An open, unoccupied space on the same lot as a building between the rear line of the building (excluding steps) and the rear line of the lot and extending the full width of the lot.
- (156) *Yard, side.* An open, unoccupied space on the same lot as a building between the side line of the building (excluding the steps) and the side line of the lot and extending from the front yard to the rear yard line.
- (157) *Zoning administrator; or administrator.* The person designated to administer and enforce the provisions

Sec. 21-4. Amendments to chapter.

Whenever the public necessity, convenience, general welfare, or good zoning practice require, and subject to the requirements set forth in Sections 15.2-2285 and 15.2-2286 of the Code of Virginia, 1950, as amended, the town council may by ordinance amend, supplement, change or repeal the regulations, district boundaries, or classifications of property established by this chapter. All such ordinances shall be enacted in the same manner as all other ordinances.

Sec. 21-4.1. Initiation of amendments.

Amendments to this chapter may be initiated by any of the following methods:

- (a) *Resolution of the town council.* The town council may, by its own resolution, initiate an ordinance to amend any of the provisions of this chapter, including the official zoning map. Every such resolution shall state the public purpose for the amendment.
- (b) *Motion of the planning commission.* The planning commission may, by adoption of a motion, initiate an amendment to any of the provisions of this chapter, including the official zoning map. Every such motion shall state the public purpose for the amendment. The motion shall be forwarded to the town council, which shall cause an ordinance to be prepared for its consideration.
- (c) *Petition of a property owner.* A petition to change the zoning classification of property by amendment to the official zoning map may be filed by the owner of such property or, with the written consent of the owner, the contract purchaser of the property or an agent of the owner.

Sec. 21-4.2. Application for rezoning.

(a) A petition on behalf of a property owner to change the zoning classification of property shall be in the form of an application for rezoning addressed to the town council and filed with the zoning administrator. The application shall be accompanied by the required fee and a certified plat of the

property proposed to be rezoned. The application shall indicate the current and proposed zoning classifications of the property and a statement of the applicant's reasons for requesting rezoning.

(b) The zoning administrator shall review the application for compliance with the requirements of this chapter. When the zoning administrator is satisfied that submission requirements are met, the application shall be forwarded to the town council, with a copy to the planning commission. The town council shall cause an ordinance to be prepared for its consideration of the rezoning application.

Sec. 21-4.3. Amendments - action by planning commission.

No amendment to this chapter shall be acted upon by the town council unless it has been referred by the council to the planning commission for its review and recommendation in accordance with this section.

- (a) *Public notice and hearing.* Before taking action on any amendment, the planning commission shall give public notice and hold at least one (1) public hearing on the proposed amendment as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended. A joint public hearing may be held with the town council.
- (b) *Report of zoning administrator.* The zoning administrator shall submit a written report and recommendation to the planning commission prior to its action.
- (c) *Recommendation of commission.* The planning commission may recommend that the town council adopt or reject the amendment or may recommend changes in the amendment. In making its recommendation, the commission shall consider the matters listed in section 21-1.1 of this chapter.

Failure of the commission to consider the amendment and report to the council within one-hundred (100) days after the first meeting of the commission after the proposed amendment was referred to it by the council, shall be considered a recommendation of approval, unless the proposed amendment has been withdrawn by the applicant prior to the expiration of such time period.

- (d) *Form of action by commission.* All actions by the commission shall be in the form of a motion, giving the reasons for the action and the vote of each member. All actions shall be recorded in the commission's records. Each recommendation to the council shall include a statement of the relationship of the proposed rezoning to the comprehensive plan of the town.

In any case where the commission is unable to adopt a motion to recommend approval or disapproval, it shall forward a written report to the council stating such fact and summarizing its deliberations on the matter.

Sec. 21-4.4. Amendments - action by town council.

Final action shall be taken by town council on all proposed amendments in accordance with the following provisions.

- (a) *Public notice and hearing.* Before taking action on any ordinance to amend the provisions of this chapter, the town council shall give public notice as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended, and shall hold at least one (1) public hearing on the proposed amendment. A joint public hearing may be held with the planning commission.

In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the comprehensive plan for the property involved.

- (b) *Final action.* After receiving a report from the planning commission and after giving public notice and holding a public hearing, the town council may adopt or reject the proposed amendment, or may make appropriate changes to the amendment, provided that no land may be zoned to a more intensive use classification nor shall a greater area of land be rezoned than was described in the public notice without referral to the planning commission and an additional public hearing after public notice as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended.
- (c) *Continuance or withdrawal.* Final action on any proposed amendment may be continued by the town council for good cause, provided that all resolutions, motions or petitions for amendments shall be acted upon by the council within one (1) year of the date of the resolution, motion or petition. This provision shall not apply if the petitioner requests or consents in writing to action beyond such period or if a petition is withdrawn by providing written notice to the council.

Sec. 21-4.5. Reconsideration of rezoning applications.

Whenever a rezoning application is denied, substantially the same application shall not be reconsidered by the town council for one (1) year from the date of denial, except:

- (a) When a new application, although involving all or a portion of the same property, is for a different zoning classification than the original application; or
- (b) When a new application is submitted after a finding by the town council that conditions or circumstances that provided the basis for denial of the original application have changed to an extent sufficient to justify reconsideration.

Sec. 21- 4.6. Conditional zoning.

(a) *Purpose of conditional zoning.* The purpose of conditional zoning is to provide a method for permitting the reasonable and orderly development and use of land in those situations in which peculiar circumstances indicate that the existing zoning ordinance district regulations are not adequate. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible zoning methods and procedures are needed to permit differing land uses, and at the same time to recognize effects of change. In these instances, reasonable conditions voluntarily proffered by the zoning applicant may be allowed for the protection of the community that are not generally applicable to land similarly zoned. Except as specifically provided in this section, conditional zoning shall be subject to the same provisions as all other zoning map amendments.

(b) *Approval of conditions as part of a rezoning amendment to zoning map.* The applicant shall, if he or she elects to obtain conditional zoning, voluntarily proffer in writing such conditions as he or she deems appropriate at the time of filing an application to rezone the property, or by such later date as the commission shall establish in its rules and regulations; but, in any event, before the commission makes its recommendations to the town council.

In the event that additions thereto or modifications thereof are desired by the applicant, the same shall be made in writing not less than fourteen (14) days prior to the time at which the commission makes its recommendation to the town council, unless the commission:

- (1) Specifically waives such time period, or
- (2) Specifically establishes such greater or lesser time period as it deems reasonable.

The town council may consider additional proffers, deletions and/or amendments to all such conditions provided same have been voluntarily proffered in writing by the applicant for the property which is the subject of the rezoning request prior to the public hearing at which the town council renders its decision.

(c) *Permitted conditions as part of rezoning or amendment to zoning map.* The town council may approve reasonable conditions to rezoning provided that the following criteria are met:

- (1) The rezoning itself must give rise to the need for the conditions.
- (2) All conditions shall have a reasonable relation to the rezoning.
- (3) All conditions shall be in conformity with the town's comprehensive plan.
- (4) The provisions of this section shall not be used for the purpose of discrimination in housing.
- (5) In the event proffered conditions include the dedication of real property or the payment of cash in accordance with Section 15.2-2298 of the Code of Virginia, (1950, as amended the capital improvements program, provided that the town may accept proffered conditions which are not normally included in the capital improvements program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the of the property or cash payment in the event the property or the cash payment is not used for the purpose for which proffered

(d) *Records of conditional zoning.*

- (1) The zoning map shall show by an appropriate symbol the existence of conditions attached to the zoning on the map.
- (2) The zoning administrator shall maintain a conditional zoning index which shall be available for public inspection during regular office hours. The index shall provide ready access to the ordinance creating the conditions, a list of all conditions applicable in each case, and to the regulations applicable in the particular zoning district.

(e) *Enforcement and guarantees.* In order to ensure the intent and purpose of conditional zoning approved in accordance with this section, the zoning administrator shall be vested with all necessary authority on behalf of the town council to administer and enforce conditions attached to a rezoning or amendment of a zoning map, including:

- (1) Ordering in writing, the remedy of any noncompliance with conditions.
- (2) Bringing of appropriate legal action or proceeding to ensure compliance with the conditions.
- (3) Requiring a guarantee satisfactory to the town council in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the town council, or its agent, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part.
- (4) Denial of zoning approval or other certification with regard to the issuance of any required use, occupancy or building permit.

(f) *Review of zoning administrator's decision.* Any person who is aggrieved by the administrator's decision or actions under subsection (e) of this section regarding enforcement and guarantees, may petition the town council for review of such decision(s). Such petition shall be filed with the administrator and with the clerk of the town council within thirty (30) days from the date of the decision for which review is sought, and shall specify the grounds upon which the petitioner is aggrieved.

(g) *Amendments and variations of conditions.* All amendments and ~~or~~ variations of adopted conditions shall be made only after notice and public hearing and in the same manner as an original conditional zoning action in accordance with all applicable provisions this article.

Sec. 21-4.7. Fees.

A filing fee in such amount as established by general rule by the town council shall be submitted with each application for rezoning of property.

Sec. 21-7. Violations: penalties.

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

(b) The zoning administrator is granted all necessary authority on behalf of the town council to administer and enforce this chapter, including ordering in writing the remedying of any condition found

in violation of this chapter, insuring compliance with this chapter, bringing legal action, including injunction, abatement, or other appropriate action or proceeding, and in specific cases, making findings of fact and, with concurrence of the town attorney, conclusions of law regarding determination of rights accruing under the provisions of article XVIII of this chapter pertaining to nonconforming uses.

(c) Any person whether as principal, agent, employee or otherwise, violating or causing or permitting the violation of any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, may be fined not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).- Upon conviction, failure to remove or abate a violation within the time specified by the court shall constitute a separate offense punishable as prescribed by applicable state law.

(d) The town attorney shall, upon the request of the zoning administrator, assist in bringing legal action necessary to enforce the provisions of this chapter.

(e) Civil penalties.

(1) Any violation of the following provisions of this chapter shall be deemed an infraction and shall be punishable by civil penalty of one hundred dollars (\$100.00) for the initial summons, and one hundred fifty dollars (\$150.00) for each additional summons:

- a. Article II, section 21-12. Certificates of occupancy.
- b. Article II, section 21-13. Conditional use permits.
- c. Article XX, section 21-214 (e). Portable signs.
- d. Article XX, section 21-214 (f). Pennants banners, etc.

(2) Each day during which any violation of the provisions enumerated in paragraph (1) above is found to have existed shall constitute a separate offense. However, in no event shall any such violation arising from the same set of operative fact be charged more frequently than once in any ten- (10) day period, nor shall a series of such violations arising from the same set of operative facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00).

(3) The designation of a particular violation of this chapter as an infraction pursuant to paragraph (1) above shall be in lieu of criminal sanctions, and except for any violations resulting in injury to any person or persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor.

(4) The zoning administrator shall issue a civil summons as provided herein. After having served a notice of violation on any person committing or permitting a violation of the provisions of this chapter enumerated in paragraph (1) above and, if such violation has not ceased within such reasonable time as is specified in such notice, then, after conferring with the town attorney, the zoning administrator shall cause two (2) copies of a summons to be sent to such person.

Sec. 21-8. Enumeration of districts.

For the purpose of this chapter, the incorporated areas of the town are hereby divided into the following districts:

Rural Residential RR-1

Residential, Restricted R-1

Residential, Limited R-2

Residential, Medium R-3

Residential, Medium R-4

Residential, Multifamily R-5

Residential, Professional Office RO-1

Central Business District B-1

Highway Commercial B-2

Neighborhood Commercial B-4

Limited Industrial M-1

Higher Education HE

Fraternity and Sorority House District FSH

Planned Unit Development PUD

Planned Mobile Home PMH

Planned Shopping Center PSC

Planned Office-Business POB

Sec. 21-9. Classification of annexed territory.

All territory which may hereafter be annexed to the town shall be considered as being in the Rural Residential District RR-1 until such time as it may be changed by amendment to this chapter.

Sec. 21-11. Zoning approval.

(a) No building or other structure shall be constructed, reconstructed, erected, enlarged, structurally altered, moved, or converted to accommodate a different use, nor shall any use of a building, structure or

land be established or changed until zoning approval has been granted by the zoning administrator. Zoning approval shall not be required for any fence, wall, deck or patio for which a building permit is not required under the provisions of the uniform statewide building code, nor shall zoning approval be required for any change in tenant or occupant where no change in use of the premises is involved, except as may be specifically required elsewhere in this chapter.

(b) Each request for zoning approval shall be accompanied by a scaled drawing. The drawing shall show the size and shape of the parcel of land on which the proposed building is to be constructed, the nature of the proposed use of the building or land, and the location of such building or use with respect to the property lines of said parcel of land and to the right-of-way of any street or highway adjoining said parcel of land. Any other information which the administrator may deem necessary for consideration of zoning approval may be required. The zoning administrator may waive any of the drawing requirements in any case where they are not pertinent to the particular zoning approval. If the proposed building or use is in conformity with the provisions of this chapter, zoning approval shall be granted by the administrator.

(c) No building permit, certificate of use and occupancy or land disturbing permit shall be issued by the building official or other responsible official until zoning approval as required by this article has been granted by the zoning administrator, and the building official or other responsible official has been provided with verification thereof. Such verification may be by means of notation on the permit or certificate. In any case where zoning approval is required by this section, and no building permit, certificate of use and occupancy or other permit or approval is required, zoning approval shall be evidenced in writing by means of a standard form provided for such purpose by the zoning administrator.

(d) Zoning approval shall be valid for a period of one (1) year from the date of action by the zoning administrator, and shall become null and void if, within such period, no building permit or certificate of use and occupancy pursuant thereto has been issued. In a case where no building permit is required, zoning approval shall become null and void if, within one (1) year from the date of approval, the feature authorized by the zoning approval has not been established. In any case where zoning approval has expired, application may be made for new zoning approval in accordance with the provisions of this article.

Sec. 21-12. Chesapeake Bay Preservation Areas.

Development or redevelopment of properties identified on the adopted Chesapeake Bay Preservation Area Map, or otherwise identified as lying within Chesapeake Bay Preservation Areas, shall comply with the requirements of this Chapter and those set forth in Article III, Chesapeake Bay Preservation Area of Chapter 4.1, Environmental Protection.

Sec. 21-13. Conditional use permits.

(a) *Generally.* A conditional use permits granted by the town council shall be required for any uses for which a conditional use permit is specified by the use regulations or other provisions of this chapter. A conditional use permit shall not be issued unless the town council shall find that the use for which the conditional use permit is sought and the operation thereof: will not affect adversely the health, safety or welfare of persons residing or working in the neighborhood of the proposed use; will not be detrimental to public welfare or injurious to the property or improvements in the neighborhood; and will

be in accord with the purpose of the comprehensive plan. Every use permitted by conditional use permit shall conform with all applicable regulations and restrictions of this chapter, including the requirements of the district in which the use is located. In granting any such use permit, the town council may impose such conditions in connection therewith as will assure that it will conform with the foregoing requirements and will continue to do so, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be met .

(b) *Procedure and accompanying plans.* The procedure governing the application for and the granting of conditional use permits when required by this chapter shall be as follows:

(1) The applicant shall make application for the use permit to the zoning administrator on the form provided for the purpose, giving all information required by such form, including such other information which the zoning administrator may deem necessary for an intelligent consideration of the project for whh a permit is desired.

(b) *Procedure and accompanying plans.* The procedure governing the application for and the granting of conditional use permits when required by this chapter shall be as follows:

(1) The applicant shall make application for the use permit to the zoning administrator on the form provided for the purpose, giving all information required by such form, including such other information which the zoning administrator may deem necessary for an intelligent consideration of the project for whh a permit is desired.

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(1) The applicant shall make application for the use permit to the zoning administrator on the form provided for the purpose, giving all information required by such form, including such other information which the zoning administrator may deem necessary for an intelligent consideration of the project for whh a permit is desired.

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The application shall be accompanied by plans, with such number of copies as determined by policy of the zoning administrator. Conditional use plans shall be drawn to scale, and shall show the following:

- a. Area, shape and dimensions of the property involved and existing and proposed street lines, easements, water courses, drainage ways and floodplains;
- b. Existing and proposed uses of land, buildings and structures, and the number and types of dwelling units on the property, where applicable;
- c. Dimensions and heights of proposed buildings, structures or additions and existing buildings and structures to remain, and the dimensions of yards and setbacks with respect to property lines and existing and proposed street lines;
- d. Elevation drawings of proposed buildings and structures and additions or modifications to the exterior of existing buildings and structures;
- e. Existing and proposed driveways providing access to the site and the arrangement, dimensions and improvement of off-street parking and vehicular circulation areas;
- f. Buffers, screening, fencing, major landscaping, pedestrian walkways and similar features, existing wooded areas, significant trees and other vegetated areas to be retained, location and improvement of trash receptacle areas and location, type, height and intensity of outdoor lighting, if provided; and
- g. Existing permanent signs to remain and proposed permanent signs, including location, lettering, dimensions, lighting, and means of attachment or support.

The zoning administrator may waive plan elements that are unnecessary to determine compliance with this chapter or to provide a record of the case, and may require such additional information as necessary to determine compliance or to assist the planning commission and town council in evaluating potential impacts of a proposed use.

- (2) The zoning administrator shall thereupon submit the application and copies of the plans to the town council and to the planning commission. The zoning administrator shall also submit a recommendation to the planning commission prior to its action.
- (3) The planning commission, after giving notice and holding a public hearing as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended, shall consider the proposed conditional use permit and send a recommendation to the council, and may appear as a party at the hearing before the council.

Failure of the commission to report to the town council within one hundred (100) days after the first meeting of the commission after the proposed conditional use permit has been referred to the commission shall be deemed a recommendation of approval, unless the application has been withdrawn by the applicant.

- (4) The town council shall give notice and hold a public hearing on the conditional use permit application as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended.

After notice and hearing, the town council may grant or deny the application either in part or in full and may impose such modifications, conditions or restrictions, including a limitation of the time for which the conditional use permit shall be valid, which the council in its

discretion may determine necessary or requisite in order that the general objectives and purposes of this chapter shall be met.

- (5) Upon the granting of a use permit, one copy of the site plans, upon which has been indicated the modifications, conditions or restrictions, if any, required by the town council, shall be returned to the applicant, who may thereafter conduct the operation for which the permit has been granted only in such manner and for such a time as the permit and the certified drawing shall specify. A use permit shall be valid for only the specific use it covers in the specific location designated.
- (6) Each application for a conditional use permit shall be accompanied by a fee in the amount specified in the schedule of fees established by policy of the town council

(c) *Compliance and revocation.* Failure to comply with approved plans or conditions of a conditional use permit shall constitute a violation of this chapter. Upon determination by the zoning administrator of any violation, the conditional use permit may be subject to revocation by the town council if the violation is not corrected within ninety (90) days of written notice to the owner of the property by the zoning administrator. If the violation is not corrected within the specified time, and the zoning administrator is not satisfied that appropriate means are being taken to correct the violation, the town council shall have the authority to revoke the conditional use permit after notice and hearing as provided by Section 15.2-2204 of the Code of Virginia, 1950, as amended.

(d) *Existing uses.* A use lawfully existing on the effective date of this provision or other amendment to this chapter, for which a conditional use permit is required by this chapter and for which a conditional use permit has not been granted by the town council, shall not be considered a nonconforming use because of its classification as a conditional use. Expansion of such use or approval of any site plan required by this chapter for such use shall require that a conditional use permit be granted in accordance with the provisions of this article.

(e) *Modifications or amendments.* Minor modifications to approved plans or building details of an approved conditional use permit may be authorized by the zoning administrator when such modifications do not: significantly alter the boundaries of the property; conflict with specific requirements of this chapter or conditions of the approved conditional use permit; significantly decrease the width or depth of any yard, setback or buffer area; or significantly alter points of access to the property or the internal arrangement of site plan elements. Any other change shall require an amendment subject to the same procedures and requirements as a new application.

(f) *Expiration.* An approved conditional use permit shall become null and void if no application for a building permit to construct the authorized improvements has been submitted within one (1) year of the date of its approval. In the case of development for which no building permit is required, the conditional use permit shall become null and void if the use or improvement is not established within one (1) year of the date of approval. The town council may specify a longer period in its approval of a conditional use permit.

(g) *Discontinuance.* A conditional use permit shall run with the land, unless otherwise specified by condition imposed by the town council, provided that any use established pursuant to an approved conditional use permit shall not be reestablished if replaced by a different use or if discontinued for a period of two (2) years or longer.

(h) *Reconsideration.* Whenever a conditional use permit application is denied, substantially the same application shall not be considered again by the town council within one (1) year from the date of denial.

Sec. 21-14. Reserved.

Sec. 21-22.2. Recording amendments on the official zoning map.

Whenever any amendment is made to the official zoning map by action of the town council, such change shall be incorporated onto said map at such time and in such manner as town council may prescribe. Said changes shall be validated with reference to correct notation by the town manager, who shall affix his signature thereto, thereby certifying that approved amendments to the official zoning map have been correctly incorporated. The date of official action and nature of the change shall be entered on the map. Any such change shall have the effect of law at 12:01 a.m. on the day following its legal adoption or on its effective date, if such effective date is officially established as other than the day following its legal adoption whether or not it has been shown on the official zoning map. Any delay in or failure to record an amendment on the official zoning map, or any error in depicting the zoning boundary or other aspect of the amendment on the official zoning map, shall not affect the validity of the ordinance providing for the amendment.

Sec. 21-24. Use regulations.

DIVISION 2. AGRICULTURAL RESIDENTIAL CLUSTER (ARC) OPTION

Sec. 21-38.1. Special provisions for accessory apartments.

(a) An accessory apartment is a self-contained residential unit with a separate entrance. The private entrance may be either an exterior door leading directly outside or a door to a common vestibule shared with the main house. A self-contained unit must include a bathroom and kitchen facilities.

(b) An accessory apartment may be located either in the principal dwelling or in an accessory building, provided such accessory building shall conform with the requirements of this chapter. The minimum lot area required for the construction of a new accessory apartment building shall be thirty thousand (30,000) square feet.

(c) There shall be no more than one accessory apartment permitted per one-family building lot.

(d) The owner(s) of the principal residence shall occupy at least one of the dwelling units, except for bona fide temporary absences.

(e) The design and size of the accessory apartment shall conform to all applicable standards in the health, building and other codes.

(f) For accessory apartments located within a single-family house, the apartment shall be designed so that, to the degree reasonably feasible, the appearance of the building remains that of a one-family

residence. In general, any new entrances shall be located on the side or in the rear of the building, and any additions shall not increase the square footage of the original house by more than ten (10) percent.

(g) The accessory apartment shall be no more than twenty-five (25) percent gross floor area of the dwelling unit existing prior to establishing the accessory apartment.

(h) The owner(s) shall eliminate ~~a~~ any nuisance or noxious use of the property. A nuisance shall constitute three (3) legitimate notices from the Ashland Police which are caused by actions of the tenant or guest(s) of the tenant.

(i) A certificate of use and occupancy and zoning approval shall be obtained at the time of issuance of ~~a~~ any new lease agreement. A copy of the certificate of use and occupancy and confirmation of building code compliance shall be filed with the zoning administrator by the applicant.

(j) In the event that the property is sold, the conditional use permit for the accessory apartment shall be valid only for one year from the date of sale or until the date of review of the permit, for that amount of time which remains on the permit, whichever first occurs. If the new owner wishes to continue the accessory apartment use, a new permit application shall be filed for consideration by the town council.

(k) Any other appropriate or more stringent conditions deemed necessary to protect public health, safety and welfare, and the single-family character of the neighborhood may be imposed by the town council in conjunction with approval of the conditional use permit.

Sec. 21-141. Applications.

Planned development districts shall be established by amendment to the official zoning map, in accordance with the provisions of Section 15.2-2204 of the Code of Virginia, 1950, as amended. The application for rezoning to a Planned Unit Development, Planned Mobile Home, or Planned Shopping Center District shall be accompanied by fifteen (15) copies of a development plan.

Sec. 21-179.7. Setback and yard requirements.

(a) *Front yard.* A front yard of not less than fifty (50) feet shall be provided, except that when no parking or other area for circulation of vehicles is located between a building and the street line, a front yard of not less than thirty (30) feet may be provided. Front yards of seventy-five (75) feet shall be provided when the property is across the street from an RR-1 or residential district and shall be buffered from public view according to section 21-179.9, except that when no parking or other area for circulation of vehicles is located between a building and the street line, a front yard of not less than fifty (50) feet may be provided.

(b) *Side yards.* Side yards of not less than thirty (30) feet shall be provided, except that side yards of not less than one hundred (100) feet shall be provided abutting property in an RR-1 or residential district. Buffers shall be provided in accordance with section 21-179.9.

(c) *Rear yard.* A rear yard of not less than fifty (50) feet shall be provided, except that a rear yard of not less than one hundred (100) feet shall be provided abutting property in an RR-1 or residential district. Buffers shall be provided in accordance with section 21-179.9.

Sec. 21-179.8. Maximum height of buildings.

No building or structure in a POB District shall exceed a height of forty-five (45) feet, provided that a building shall be permitted to a height of seventy-five (75) feet when such building is located not less than fifty (50) feet from all streets, not less than one hundred fifty (150) feet from all property in an RR-1 or residential district and when the lot on which such building is located is provided with not less than forty (40) percent open space.

Sec. 21-179.9. Development standards.

Perimeter buffer adjacent to RR-1 and residential districts. Where a lot in a POB District is contiguous to or across the street from property in an RR-1 or residential district, a continuous buffer not less than fifty (50) feet in depth shall be provided. No building, structure, parking, loading or outside storage or service area shall be located within such buffer. Buffers shall contain visually opaque screening not less than six (6) feet in height consisting of continuous structural fences or walls or evergreen vegetative material, or combinations thereof. Earth berms may be used in conjunction with fences, walls or vegetative material to provide the required screening height. Structural or planted screening may be deleted where the buffer is maintained in a natural state, or supplemented with additional planting, and provides the required visual screening.

The town council may, at the time of approval of the development plan for a POB District, reduce this buffer requirement in a specific case if the contiguous property zoned RR-1 or residential is designated in the future land use plan for commercial, industrial or office-business use.

Sec. 21-180. Statement of intent.

The purpose of the site plan review and approval process is to ensure compliance with the regulations and standards contained within this chapter and to facilitate the use of the most advantageous techniques in the development of land in the town, and to promote high standards and innovation in the layout, design, landscaping and construction of developments.

Sec. 21-181. When required.

(a) A site plan is required and shall be submitted for all of the following, except as provided in paragraph (b) below:

- (1) All development in the R-4, R-5 and RO-1 Districts, except single-family dwelling units.
- (2) All development in the Business Districts B-1, B-2 and B-4, except single-family dwelling units.
- (3) All development in the Limited Industrial District M-1.

- (4) All development in the Higher Education District HE.
- (5) All development in the Planned Unit Development, Planned Mobile Home, Planned Shopping Center, and Planned Office-Business Districts, subject to the additional provisions of section 21-144 of this chapter
- (6) All development requiring a conditional use permit, and churches located within residential districts.
- (7) Any development in any district where paving or other impervious surface area intended for vehicles will be in excess of ten thousand (10,000) square feet, and where the zoning administrator determines that a site plan is needed to assure adequate review for drainage or access to or from public roadways.
- (8) Any other development or use for which a site plan is specifically required by any of the provisions of this chapter.

(b) A site plan shall not be required for any of the following, unless the zoning administrator determines that the proposed improvement or development will result in alteration or modification of site elements materially affecting ingress, egress, or vehicular circulation:

- (1) Internal building improvements or modifications.
- (2) Additions to existing buildings when such addition does not exceed ten (10) percent of the gross floor area of the original building or five hundred (500) square feet, whichever is less.
- (3) Accessory buildings containing not more than five hundred (500) square feet.
- (4) Minor changes in the physical improvements of a previously approved site plan, such as changes in utility service, location of sidewalks, or similar features, or any modification or addition to an existing parking or vehicle circulation area where not more than four (4) parking spaces are added.

Sec. 21-185. Specific information.

In addition to the information required by sections 21-183 and 21-184, a final site plan shall contain the following specific information relative to on-site and off-site features:

- (1) Existing and proposed streets and easements, their names, numbers and widths; and the location, type and size of all means of ingress to and egress from the site.
- (2) Existing wooded areas on the property, significant trees, groups of trees, and other significant vegetation and other natural features, including indication of areas and features to be retained and preserved and means of protecting such areas during construction and development.

- (3) Location, type, design and character, size and height of all fencing, screening and retaining walls, and all signs, whether freestanding or attached to buildings or other structures, and the location, type, intensity and means of shielding all on-site exterior lighting.
- (4) All off-street parking and vehicle circulation areas, parking bays, loading spaces and walkways, indicating type of surfacing, wheel stops and bumpers, size and angle of stalls, width of aisles and a specific schedule showing the number of parking spaces.
- (5) Number of floors, floor area, height and location of each building, proposed general use for each building, typical elevation drawings showing the general character of buildings, and the number, size and type of dwelling units where applicable.

Sec. 21-187. Procedures for processing the site plan.

(a) The required number of copies of the site plan shall be filed with the zoning administrator accompanied by payment of a filing fee in the amount set forth in the schedule of fees established by policy of the town council. The filing of the plan by the applicant or the applicant's agent shall constitute an application for approval.

(b) The nature and extend of pre- and post-application conferences and the details required on preliminary plans shall be discretionary with the zoning administrator.

(c) Prior to the approval of any final site plan, the applicant or owner shall execute a agreement to construct such required improvements as are located within public rights-of-way or easements connected to any public facility, together with a performance bond with surety acceptable to the town manager. The bond shall be in the amount of the estimated cost of the required physical improvements as determined by the town and shall provide for completion of the work within a specific time.

(d) The zoning administrator shall approve, modify, approve or disapprove a site plan within sixty (60) days of filing the required documents unless abnormal circumstances exist, in which case the time may be extended.

(e) An approved site plan shall become null and void if no complete and valid application for a building permit has been submitted for the improvements authorized by such site plan within twelve (12) months after final approval. The zoning administrator may grant an extension for up to twelve (12) months upon written request by the applicant or agent.

(f) Minor adjustments of approved site plans may be approved by the zoning administrator.

(g) A major revision of an approved site plan shall be filed and processed in the same manner as the original site plan.

(h) Any of the site plan contents requirements of this article may be waived by the zoning administrator when the administrator is satisfied that the information is not necessary for determining compliance with the requirements of this chapter or maintaining a record of the particular case.

(i) An applicant may appeal the decision of the zoning administrator in regard to a submitted site plan within thirty (30) days in writing to the board of zoning appeals in accordance with article XXI.

(j) The applicant shall be required to furnish a maintenance bond with the zoning administrator in the amount of ten (10) percent of the estimated cost of improvements to be maintained by the town. Such bond shall be in a form satisfactory to the town and be for a period of one year after the date of the acceptance of such improvements by the director of public works.

(k) If the real estate affected by the proposed site plan is located in an area defined as a wetlands pursuant to section 404 of the United States Clean Water Act or is affected by such other federal or state, rule or regulation and when in the opinion of the zoning administrator, such federal or state regulatory body compliance with the rules and regulations of such federal or state statute, rule or regulation is necessary, the applicant shall prior to the approval of the site plan seek the review and/or approval of the appropriate federal or state regulatory agency for the improvements to the real estate that is subject to the site plan review process.

ARTICLE XVIII. NONCONFORMING USES AND FEATURES

Sec. 21-197.1. Nonconforming uses and features may continue.

Subject to the limitations set forth in this article, nonconforming uses, nonconforming features and nonconforming buildings may continue. The terms "nonconforming use", "nonconforming feature", "nonconforming building" and "nonconforming lot" shall have such meaning as specified in article I of this chapter.

Sec. 21-197.2. Extension of nonconforming uses.

No nonconforming use shall be extended, enlarged or moved so as to occupy a different or greater area of land or buildings than was occupied by and actively devoted to such use at the time it became nonconforming, provided that a nonconforming use may be extended throughout such portion of land or such part of a building which was lawfully arranged, designed, equipped and intended for such use at the time it became nonconforming.

Sec. 21-197.3. Alterations to buildings devoted to nonconforming uses.

(a) *Nonconforming uses in general.* Except as otherwise provided in this article, no building or portion of a building devoted to a nonconforming use shall be enlarged, extended, structurally altered, reconstructed or moved, unless such building or portion of a building is thereafter devoted to a use which conforms with the use regulations of this chapter. Nothing in this article shall be construed to prohibit normal repair, maintenance or incidental alteration of a building or the alteration, strengthening or restoring of a building to safe condition as may be required by law.

(b) *Nonconforming single-family dwellings.* A single-family dwelling which is a nonconforming use in any district may be structurally altered and may be enlarged or extended, and a building or structure accessory thereto may be altered, enlarged or constructed, provided that in no case shall the total amount of floor area, including all enclosed and unenclosed space and garage or carport space, be increased more than five hundred (500) square feet. No existing lot area, lot width or yard shall be reduced to less than required for single-family dwelling use in the Residential District R-3.

Sec. 21-197.4. Change of nonconforming use.

(a) *Change to conforming or more restricted use.* A nonconforming use of land or a nonconforming use of a building may be changed to a use which conforms with the use regulations of the district in which it is located or to a use, other than a multi-family dwelling, which is first permitted by right in a more restricted zoning district. Whenever a nonconforming use has been changed to a conforming use or to a more restricted use, such use shall not thereafter be changed back to the original nonconforming use or to any less restricted use.

(b) *Meaning of terms.* For purposes of this article, a more restricted zoning district shall be construed to be a district in which the permitted uses and/or intensity of use are more limited. The term "use" shall be construed to be a type of activity as listed in the use regulations of a zoning district, and a change in occupancy, ownership or management shall not in itself constitute a change in use.

Sec. 21-197.5. Discontinuance of nonconforming uses.

(a) *Discontinuance in general.* Whenever a nonconforming use of land or a nonconforming use of a building is discontinued for a continuous period of more than two (2) years, whether or not equipment or fixtures intended for such use are removed, any subsequent use shall conform with the use regulations of the district in which the property is located.

(b) *Remedy in case of change to illegal use.* In case of determination by the zoning administrator that a nonconforming use has been changed to an illegal use, such illegal use shall cease and any subsequent use of the premises shall be in conformity with the use regulations of this chapter, or the illegal use may be changed to the last lawful nonconforming use to occupy the premises if such change occurs within two (2) years of the date the lawful nonconforming use last occupied the premises.

Sec. 21-197.6. Use and alteration of buildings with nonconforming features.

(a) *Change in use.* A building which is nonconforming with respect to the bulk regulations or other feature required by this chapter may nonetheless be converted to and occupied by a use permitted in the district in which the building is located, provided that off-street parking and other requirements applicable to the new use are satisfied.

(b) *Enlargement or alteration of building.* A building which is devoted to a conforming use and is nonconforming with respect to the bulk regulations or other feature required by this chapter may be enlarged, extended or structurally altered, provided that the degree or extent of any nonconforming feature is not increased.

(c) *Increase in building height.* An increase in the height of any portion of a building which is nonconforming with respect to a yard or open space requirement shall be deemed to be an increase in the extent of the nonconforming feature of the building.

Sec. 21-197.7. Damage to nonconforming buildings and uses: restoration.

(a) *Damage not exceeding fifty (50) percent of value.* A building having a nonconforming feature or a building devoted to a nonconforming use which is damaged by fire, explosion, act of God or the public enemy to an extent not exceeding fifty (50) percent of its most recent assessed taxable value may be restored, repaired, reconstructed and used as before the damage, provided that the degree or extent of any nonconforming feature that existed prior to the damage shall not be increased, and the area devoted to any nonconforming use prior to the damage shall not be increased. Such restoration, repair, reconstruction or reuse shall be completed within two (2) years of the date of damage.

(b) *Damage greater than fifty (50) percent of value.* Whenever a building having a nonconforming feature or a building devoted to a nonconforming use is damaged by any cause whatsoever to an extent greater than fifty (50) percent of its most recent assessed taxable value, such building shall not be restored, repaired, reconstructed or used except in conformance with all of the applicable provisions of this chapter, except as may be authorized by the board of zoning appeals pursuant to this article.

(c) *Special exception for nonconforming buildings and uses.* The board of zoning appeals shall have the authority to grant a special exception as provided in article XXI of this chapter for restoration, repair, reconstruction or reuse of a building having a nonconforming feature or a building devoted to a nonconforming use which is damaged by fire, explosion, act of God or the public enemy to an extent greater than fifty (50) percent of its most recent assessed taxable value, provided that:

- (1) Before granting any such special exception, the board shall be satisfied from the evidence presented that the proposed restoration, repair, reconstruction or reuse would result in the minimum deviation from the provisions of this chapter necessary to enable reasonable use of the property with consideration for its use prior to the damage. Whenever possible, the board shall require reduction in the degree or extent of nonconforming features and uses;
- (2) In no case shall the board authorize restoration, repair, reconstruction or reuse to any extent that constitutes a greater deviation from the provisions of this chapter than existed prior to the damage; and
- (3) Before granting any special exception, the board shall receive testimony and make a finding that restoration, repair or reconstruction of the building will not unreasonably impair light and air to adjoining property, will not impair established property values in the immediate area and will not otherwise be detrimental to the health, safety and general welfare of the public. Before granting any special exception to re-establish a nonconforming use, the board shall also receive testimony and find that the continued operation of the nonconforming use is in the public interest and contributes to public convenience or general welfare.

Sec. 21-197.8. Intermittent, temporary or illegal use.

Intermittent, temporary or illegal use of land or buildings shall not be construed to establish the existence of a nonconforming use for the purposes of this article, provided that a lawful seasonal use that was in operation for at least two (2) consecutive seasons immediately prior to the adoption of this chapter or subsequent amendment thereto shall be considered a nonconforming use for seasonal purposes only, with no increase in the extent or length of period of operation of the use. Such use shall be subject to all other provisions of this article.

Sec. 21-197.9. Nonconforming lots.

A lot which is nonconforming due to lot area, width or other dimensional requirement of this chapter may be used or developed if all other applicable provisions of this chapter are met.

Sec. 21-208. Signs permitted in the RR-1, R-1, R-2, and PMH districts.

Church bulletin boards, directional signs, traffic control signs with a gross sign area not exceeding twelve (12) square feet and temporary signs are permitted in RR-1, R-1, R-2, and PMH districts. One of each such sign is permitted per lot, unless otherwise specified in this chapter, except that two (2) traffic control signs are permitted per lot.

Sec. 21-213.3. Erection, maintenance and removal of certain signs.

(a) It is recognized that in a limited number of cases a reasonable argument might be made for erecting a noncommercial identification, attached or projecting sign in the RR-1, R-1, R-2, R-3, R-4, R-5 and PUD districts. Such a sign is necessary to adequately identify property usage and appropriate in character to the area in which it is located. Such signs are limited to one per property, regardless of property size or location.

Sec. 21-216. Reserved.

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Sec. 21-217. Duties of zoning administrator.

The zoning administrator shall have the following duties:

- (1) Upon finding that any of the provisions of this chapter are being violated, notify in writing the person responsible for such violation indicating the nature of the violation and ordering the action necessary to correct the violation.
- (2) Order discontinuance of illegal uses of land, buildings or structures.
- (3) Order removal of illegal buildings or structures or illegal additions, alterations or structural changes.
- (4) Order discontinuance of any illegal work being done.
- (5) Take any other action authorized by this chapter to administer, ensure compliance with or to prevent violations of this chapter. This may include the granting of zoning approvals and such other administrative duties as are permissible under the law.

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Sec. 21-218. Duties of planning commission.

For the purpose of this chapter, the planning commission shall have the following duties:

- (a) Review all proposed amendments to this chapter, including the district boundaries, and make recommendations to the town council.
- (b) Review all proposed conditional use permits and make recommendations to the town council.
- (c) Perform such studies as requested by town council.
- (d) Perform such other duties as are prescribed by this chapter.

Sec. 21-219. Board of zoning appeals established; appointment, number and terms of members; vacancies.

Pursuant to Section 15.2-2308 of the Code of Virginia, 1950, as amended, there shall be a board of zoning appeals which shall consist of five (5) members who shall be residents of the town and shall be appointed for five (5) year terms by the circuit court of Hanover County. Members may be reappointed to succeed themselves. The secretary of the board shall notify the court at least thirty (30) days in advance of the expiration of any term and shall also notify the court promptly if any vacancy occurs. The filling of vacancies and procedures for removal of members of the board shall be as set forth in Section 15.2-2308 of the Code of Virginia, 1950, as amended.

Sec. 21-220 Board of zoning appeals: officers, rules, records, and meetings.

(a) *Officers.* The board of zoning appeals shall elect from among its members a chairman and a vice-chairman who shall serve in the absence of the chairman. The chairman and vice-chairman shall serve annual terms and may succeed themselves. The board shall elect a secretary who may be the zoning administrator or other qualified person who is not a member of the board. The secretary shall be responsible for preparing notices of hearings and minutes of meetings, keeping records, conducting official correspondence and such other duties as assigned by the board. The secretary shall not be entitled to vote on matters before the board.

(b) *Support services.* With the approval of the town council and within limits of funds that may be appropriated for such purposes, the board of zoning appeals may employ or contract for such clerical, technical or legal services necessary for it to carry out its responsibilities.

(c) *Rules and forms.* The board of zoning appeals shall adopt such rules as it deems necessary for the conduct of its business consistent with the provisions of this article and Title 15.2 of the Code of Virginia, 1950, as amended. Copies of such rules shall be available to the public. The board shall see that standard forms are available for the filing of applications and appeals. Forms shall be provided to applicants by the zoning administrator.

(d) *Records.* The board of zoning appeals shall keep records of all its official actions, including minutes of its proceedings with the vote of each member on each question and the reasons of the board for each action taken. Minutes and records shall be public and shall be filed in the office of the board.

(e) *Annual report.* The board of zoning appeals shall submit an annual report of its activities to the town council with a copy to the planning commission.

(f) *Regular meetings.* The board of zoning appeals shall, in accordance with its rules, schedule regular monthly meetings which shall be open to the public. The board may cancel any regular meeting if, by the filing deadline for applications and appeals to be heard at such meeting, there is no business to be brought before the board. The board may hold such other meetings as may be called by its chairman or by a quorum of its members.

(g) *Public hearings.* The board of zoning appeals shall make no decision on any application or appeal until it has conducted a public hearing in accordance with this article, and after giving public notice as required by the provisions of Section 15.2-2304 of the Code of Virginia, 1950, as amended. Such notice provisions shall be incorporated in or attached to the board's rules. A quorum of not less than three (3) members of the board shall be required for the conduct of any hearing and the taking of any action.

Sec. 21-221. Powers and duties of the board of zoning appeals.

Pursuant to Section 15.2-2309 of the Code of Virginia, 1950, as amended, the board of zoning appeals shall have the following powers and duties.

- (a) *Appeals.* The board shall have the power to hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator or any other administrative officer in the administration or enforcement of this chapter.

- (b) *Variance.* The board shall have the power to authorize upon application in specific cases, such variance as defined in Section 15.2-2201 of the Code of Virginia, 1950, as amended, 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 of this chapter will result in unnecessary hardship, provided that the spirit of this chapter shall be observed and substantial justice done. All variances shall be in harmony with the intended spirit and purpose of this chapter. The board shall grant a variance only:
 - (1) When a property owner can show that his or her property was acquired in good faith; and
 - (2) Where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter or subsequent amendment thereto, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the utilization of the property; or
 - (3) Where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.
 - (4) When the board finds that:
 - (a) The strict application of this chapter would produce undue hardship;
 - (b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity as the subject property;
 - (c) The authorization of such variance will not be of substantial detriment to adjacent property, and the character of the district will not be changed by the granting of the variance; and
 - (d) The condition or situation of the property concerned is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted by the town council as an amendment to this chapter.

No variance granted by the board shall include a change in use. In authorizing a variance, the board may impose such conditions regarding the location, character and other features of the

proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be satisfied.

- (c) *Special exception.* The board shall have the power to hear and decide applications for such special exceptions as may be specifically authorized elsewhere in this chapter to be considered by it. In granting any such special exception, the board may impose such conditions relating to the use provided for as it may deem necessary in the public interest, including limiting the duration of the special exception, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be satisfied.

The board shall have the authority to revoke a special exception granted by it under the authority of this chapter if the board determines that there has not been compliance with the terms or conditions of the special exception. No special exception may be revoked except after notice and hearing as required by this article.

- (d) *Interpretation of official zoning map.* The board shall have the power to hear and decide applications for interpretation of the official zoning map where there is any uncertainty as to the location of a district boundary, and where the rules for interpretation of district boundaries set forth in this chapter do not satisfactorily resolve such uncertainty. After written notice to the owners of the property affected by any such question, and after public hearing with notice as required, the board may interpret the map in such way as to carry out the intent and purpose of this chapter for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries established by this chapter.
- (e) *Prohibition on rezoning of property.* No provision of this article shall be construed as granting the board the power to rezone property, which power shall be vested in the town council.

Sec. 21-221.1. Procedures of the board of zoning appeals.

(a) *Who may file appeal.* An appeal to the board of zoning appeals pursuant to section 21-221 (a) of this article may be taken by any person aggrieved or by any officer, department, board or bureau of the town affected by any decision of the zoning administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter.

(b) *Filing of appeal.* An appeal shall be taken within thirty (30) days after the decision appealed from by filing with the zoning administrator and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all papers and other materials constituting the record upon which the action appealed from was taken. A copy of the notice of appeal shall also be transmitted to any other individual, officer, department or agency involved in the appeal.

(c) *Stay of proceedings.* 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 or her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order granted by the board or by a court of record, on application and with notice to the zoning administrator, and for good cause shown.

(d) *Who may file application for variance or interpretation of map.* An application for a variance or interpretation of the official zoning map pursuant to section 21-221 (b) or (c) of this article, may be made by any property owner, tenant, government official, department, board or bureau, on forms provided for such purpose by the board and available from the zoning administrator.

(e) *Application procedure.* Applications for variance or interpretation of the official zoning map shall be submitted to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board, or if the zoning administrator serves as secretary of the board, he or she shall place the matter on the docket to be acted upon by the board. The zoning administrator shall transmit copies of all applications to the planning commission, which may send a recommendation to the board or appear as a party at the hearing.

(f) *Reconsideration of application.* Substantially the same application for a variance or interpretation of the official zoning map which has been decided by the board shall not be considered again by the board within one (1) year of the date of its decision, except that the board may, pursuant to its rules, reconsider an application if it finds that new or additional information is available which would have a direct bearing on the case and which could not reasonably have been presented at the initial hearing.

(g) *Public hearings and decisions.* No decision on any application or appeal shall be made by the board until it has conducted a public hearing after giving public notice, including newspaper advertisements and written notices to affected parties, as required by the provisions of Section 15.2-2204 of the Code of Virginia, 1950, as amended. The board shall fix a reasonable time for the hearing of an application or appeal, give the required public notice thereof, as well as due notice to the parties in interest, and decide the same within ninety (90) days of the filing of the application or appeal.

(h) *Action by the board.* In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision or determination appealed from. The concurring vote of not less than three (3) members 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 in any matter upon which it is required to pass under this chapter, or to effect any variance from the provisions of this chapter.

(i) *Oaths and witnesses.* The chairman of the board or, in his or her absence, the acting chairman may administer oaths and compel the attendance of witnesses.

(j) *Expiration of variance.* A variance granted by the board shall lapse and be of no effect if, after the expiration of one (1) year from the date of such action by the board, no construction or change in use pursuant to such variance has taken place, provided that the board may, for good cause shown, specify a longer period of time in conjunction with its action to grant a variance.

(k) *Amendment of variance.* The procedure for amendment of a variance granted by the board, including any changes in the conditions attached thereto, shall be the same as for a new application.

(l) *Enforcement of decisions.* Decisions of the board shall be administered and enforced by the zoning administrator. Noncompliance with any action taken by the board, including conditions imposed by the board, shall constitute a violation of the provisions of this chapter.

Sec. 21-222. Appeals from the decision of board of zoning appeals.

Appeals from decisions of the board of zoning appeals shall be presented to the circuit court in accordance with the procedures set forth in Section 15.2-2314 of the Code of Virginia, 1950, as amended. Any person or persons, jointly or severally, aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer, or any officer, department, board or bureau of the town, may present to a the circuit court of Hanover County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the board.

- 2) All sections of the Code of the Town of Ashland, Virginia, Ordinances, or parts of Ordinances inconsistent with and/or in conflict with this Ordinance are hereby repealed.

The provisions of this ordinance shall be in force immediately upon adoption-

It is hereby declared to be the intention of the Town Council of Ashland, Virginia that the clauses, phrases, sentences, paragraphs and sections of the Ordinance are severable, and, if any clause, phrase, sentence, paragraph, or section of this Ordinance hereby adopted shall be declared unconstitutional or otherwise invalid by a valid judgement of decree by a Court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining clauses, phrases, sentences, paragraphs and sections of this ordinance hereby adopted-

Introduced: March 18, 1998

Advertised:

Planning Commission: Herald Progress: March 30 and April 6, 1998
Town Council: Herald Progress: May 11 and May 18, 1998
Richmond Times Dispatch: May 20, 1998

Public Hearing:

Planning Commission: April 15, 1998
Town Council: May 26, 1998

Adopted: June 23,19

The provisions of this ordinance shall be in force immediately upon adoption-

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