

ARTICLE 6.

ADMINISTRATION

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SEC. 6.1. **AUTHORITY**

6.1.1. **Summary of Authority**

The following table summarizes the review and approval authority of various review bodies and officials that implement and administer this Zoning Ordinance. The table serves only as a guide and pertains exclusively to zoning matters. If there is a discrepancy between the text of the Zoning Ordinance and the table, the text of the Zoning Ordinance will be the final authority.

APPROVAL PROCESSES	REVIEW AND APPROVAL AUTHORITY						
	Zoning Administrator	Planning Director	CAR Secretary	Commission of Architectural Review	Board of Zoning Appeals	City Planning Commission	City Council
Master Plan							
Master Plan Amendment	Chapter 17		R			R-PH	D-PH
Zoning Ordinance							
Zoning Text Amendment	Sec. x.x.x.		R			R-PH	D-PH
Zoning Map Amendment (Rezoning)	Sec. x.x.x.		R			R-PH	D-PH
Overlay Districts							
Old and Historic District Creation / Amendment	Sec. 5.1.		R	R-PH		R-PH	D-PH
Major Certificate of Appropriateness	Sec. 5.1.		R	D-PH			A-PH
Minor Certificate of Appropriateness	Sec. 5.1.		D	A-PH			A-PH
Design Overlay District Creation / Amendment	Sec. 5.1.		R	R-PH		R-PH	D-PH
Design Overlay District Review	Sec. 5.2.		D	A-PH			A-PH
Review and Permits (Zoning-Related)							
Site Plan Review	Sec. x.x.x.	R	D		A-PH		
Conditional Use Permit	Sec. x.x.x.		R			R-PH	D-PH
Zoning Confirmation Letter	Sec. x.x.x.	D			A-PH		
Building Permit Compliance	Sec. x.x.x.	D			A-PH		
Certificate of Use and Occupancy	Sec. x.x.x.	D			A-PH		
Certificate of Zoning Compliance	Sec. x.x.x.	D			A-PH		
Sign Permit	Sec. x.x.x.	D			A-PH		
Relief							
Variance or Special Exception	Sec. x.x.x.	R			D-PH		
Administrative Variance	Sec. x.x.x.	D			A-PH		
Special Use Permit	Sec. x.x.x.		R			R-PH	D-PH

KEY: R = Review / Recommend D = Final Decision A = Appeal -PH = Public Hearing

6.1.2. City Council

A. General

The City Council is authorized in *Code of Virginia § 15.2-2200 et seq.* and the *Code of the City of Richmond, Chapter 4 - Council.*

B. Authority

1. Final Authority

The City Council is responsible for final action regarding:

- a. Amendments to the Master Plan;
- b. Text amendments to this Zoning Ordinance;
- c. Map amendments to this Zoning Ordinance (rezoning);
- d. Creation and amendment of Old and Historic Districts;
- e. Creation and amendment of Design Review Districts;
- f. Conditional use permits; and
- g. Special use permits.

2. Appeal Authority

The City Council is responsible for hearing appeals regarding:

- a. Old and Historic District Certificates of Appropriateness (major and minor); and
- b. Design overlay district review.

6.1.3. City Planning Commission

A. General

The City Planning Commission is established as authorized in *Code of Virginia § 15.2-2200 et seq.* and the *Code of the City of Richmond, Chapter 17 - Planning, Zoning and Subdivision Control*, and has the following powers and duties under this Zoning Ordinance.

B. Authority

1. Review or Recommendation Authority

The Planning Commission is responsible for review and recommendation regarding:

- a. Adopting amendments to a Master Plan (must be approved by City Council);
- b. Text amendments to this Zoning Ordinance;
- c. Map amendments to this Zoning Ordinance (rezoning);
- d. Old and Historic District creation and amendment;
- e. Design Overlay District creation and amendment;
- f. Conditional use permits; and
- g. Special use permits.

6.1.4. Board of Zoning Appeals

A. General

The Board of Zoning Appeals is established as authorized in *Code of Virginia § 15.2-2200 et seq.* and the *Code of the City of Richmond, Chapter 17 - Planning, Zoning and Subdivision Control*, and has the following powers and duties under this Zoning Ordinance.

B. Authority

1. Final Authority

The Board of Zoning Appeals is responsible for final action regarding:

- a. Variances and special exceptions.

2. Appeal Authority

The Board of Zoning Appeals is responsible for hearing appeals regarding:

- a. Site plan review;
- b. Zoning confirmation letters;
- c. Building permit compliance;
- d. Certificates of use and occupancy;
- e. Certificates of zoning compliance;
- f. Sign permits (subset of building permits and/or certificates of zoning compliance); and
- g. Administrative variances.

6.1.5. Commission of Architectural Review (CAR)

A. General

The Commission of Architectural Review is established as authorized in *Code of Virginia § 15.2-2306* and has the following powers and duties under this Zoning Ordinance.

B. Composition

1. The Commission of Architectural Review will consist of nine members, one of whom will be a resident of a City Old and Historic District.
2. The members will be appointed by the City Council for terms of office of three years from the date of appointment. The provisions of Section 2-767 will be applicable to all members of the commission. Appointments to the commission will be as follows:
 - a. One will be appointed from a list of at least three nominees submitted by the Richmond Chapter of the American Institute of Architects;
 - b. One will be appointed from a list of at least three nominees submitted by the Historic Richmond Foundation;
 - c. One will be appointed from a list of at least three nominees submitted by the Richmond Association of Realtors; and

- d. Six will be citizens of the City appointed at large.
3. Vacancies on the Commission will be filled in the same manner. One of the at-large members will serve a concurrent term on the Urban Design Committee of the Planning Commission. No officer or employee of any organization that may nominate candidates for appointment to the Commission will be appointed as a member of the Commission. For members appointed at large, any individual, preservation organization, professional organization, or civic group may nominate individuals to serve on the Commission. The members of the Commission will serve as such without compensation.
4. The Director of the Department of Planning & Development Review will appoint a Secretary for the Commission of Architectural Review, who will be a qualified employee of that Department. The Secretary will keep a record of all resolutions, proceedings and actions of the Commission.

C. Authority

1. Review or Recommendation Authority

The Commission of Architectural Review is responsible for review and recommendation regarding:

- a. Creation and amendment of Old and Historic Districts.

2. Final Authority

The Commission of Architectural Review is responsible for final action regarding:

- a. Hold regular meetings for consideration of certificates of appropriateness and other meetings as needed to carry out the responsibilities set forth in this section.
- b. Adopt guidelines for the delegation to the secretary of the review and approval of applications for certificates of appropriateness.

3. Appeal Authority

The Commission of Architectural Review is responsible for hearing appeals regarding:

- a. Old and Historic District Certificates of Appropriateness (minor); and
- b. Design Overlay District review.

4. Other Authority

The Commission of Architectural Review is also responsible for the following:

- a. Assist and advise the City Council, the Mayor, the Chief Administrative Officer, the Planning Commission, the Board of Zoning Appeals, property owners and individuals in matters involving historic resources relating to appropriate land use, zoning, and other issues;
- b. Maintain documentation on historic resources throughout the City;
- c. Undertake studies for the Planning Commission and the City Council on historic resources of the City for the master plan and other planning efforts; and

- d. Sponsor educational and informational activities, which publicize historic preservation efforts which include, but are not limited to, speaking engagements, publications, press releases, and audio and visual presentations.

D. Rules of Procedure

The Commission of Architectural Review is authorized to adopt rules of procedure for the transaction of its business and implementation of the purposes of this division. The rules of procedure must not conflict with this division.

6.1.6. Commission of Architectural Review (CAR) Secretary

A. General

The Commission of Architectural Review (CAR) Secretary has the following powers and duties under this Zoning Ordinance:

B. Authority

1. Review or Recommendation Authority

The CAR Secretary is responsible for review and recommendation regarding:

- a. Old and Historic District creation and amendment; and
- b. Old and Historic District Certificates of Appropriateness (major).

2. Final Authority

The CAR Secretary is responsible for final action regarding:

- a. Old and Historic District Certificates of Appropriateness (minor).

6.1.7. Planning Director

A. General

1. The Director of the Department of Planning and Development Review (the "Planning Director") may designate any other City official or staff member as their designee in any function assigned by this Zoning Ordinance. The Director remains responsible for any action taken by their designee.
2. The Planning Director has the following powers and duties under this Zoning Ordinance:

B. Authority

1. Review or Recommendation Authority

The Planning Director is responsible for review and recommendation regarding:

- a. Amendments to the Master Plan;
- b. Text amendments to this Zoning Ordinance;
- c. Map amendments to this Zoning Ordinance (rezoning);

- d. Design overlay district creation and amendment;
- e. Conditional use permits; and
- f. Special use permits.

2. Final Authority

The Planning Director is responsible for final action regarding:

- a. Design Overlay District review; and
- b. Site plan review.

6.1.8. Zoning Administrator

A. General

1. The Zoning Administrator is established as authorized in Code of Virginia § 15.2-2286 and may designate any other City official or staff member as their designee in any function assigned by this Zoning Ordinance. The Zoning Administrator remains responsible for any action taken by their designee.
2. The Zoning Administrator has the following powers and duties under this Zoning Ordinance:

B. Authority

1. Review or Recommendation Authority

The Zoning Administrator is responsible for review and recommendation regarding:

- a. Site plan review; and
- b. Variances and special exceptions.

2. Final Authority

The Zoning Administrator is responsible for final action regarding:

- a. Zoning confirmation letters;
- b. Building Permit compliance;
- c. Certificates of use and occupancy;
- d. Certificates of zoning compliance;
- e. Sign permits (subset of building permits and/or certificates of zoning compliance); and
- f. Administrative variances.

SEC. 6.2. APPROVAL PROCESSES

6.2.1. Common Review Procedures

A. Applicability

The following requirements are common to the procedures contained in this Zoning Ordinance and apply to applications submitted under this Article. Additional details may be included for each specific procedure.

B. Code of Virginia Compliance

This Article is intended to comply with the provisions of *Code of Virginia § 15.2-2280 et seq.*, pertaining to zoning decisions. Where any provision of this Article is in conflict with any provision of State law, the State law controls. Where this Article fails to fully incorporate a provision required by State law, the provision of State law must be fully complied with.

C. Application Requirements

1. Application Submittal

- a. All applications must be filed with Planning & Development Review and must be submitted on forms and in such numbers as required by the Zoning Administrator, who will route the materials to the appropriate review bodies.
- b. Application forms are found on the City's website.

2. Disclosure of Real Parties in Interest

An applicant for an amendment to this Zoning Ordinance (text or map), an old and historic district certificate of appropriateness (major or minor), a design review district certificate of appropriateness, building permit compliance, certificate of use and occupancy, certificate of use and occupancy, site plan review, conditional use permit, sign permit, variance or special exception, administrative variance or special use permit must make complete disclosure of the equitable ownership (the real parties in interest) of the real estate to be affected. The applicant must provide the names and addresses of all of the real parties in interest, including, without limitation:

- a. Each of the stockholders, officers and directors of a corporate entity (corporations, professional corporations, limited liability companies, professional limited liability companies, etc.). However, the requirement of listing names of stockholders will not apply to a corporation whose stock is traded on a national or local stock exchange and which corporation has more than 500 shareholders.
- b. All petitions initiated by property owners or the agents of property owners, will be sworn to under oath before a notary public, stating:
 - I. Whether or not any member of the Planning Commission, or their immediate household member, has any personal interest in the property or transaction that is the subject of the application; and

- II. Whether or not any member of the City Council, or their immediate household member, has any such interest.
- c. A personal interest arises when a financial benefit or liability may accrue to a member of the Planning Commission or City Council, or their immediate household member, as a result of an individual or business interest in the subject application. For the purposes of this section, the term "personal interest" will have the meaning set forth within the State and Local Government Conflicts of Interests Act, Code of Virginia, § 2.2-3101, and may refer to an interest accruing to a person individually, as a result of business or professional relationships, and "immediate household" will be interpreted consistent with the term "immediate family" in that Act.

3. Fee Schedule

- a. At the time an application, petition, or other request for any permit or approval is submitted to the City, it must be accompanied by the required fees and charges as designated in the most recent fee schedule adopted by City Council.
- b. The current fee schedule is set forth in Appendix A to this Code.
- c. All filing fees must be paid in full for an application to be considered complete. Fees must be made payable to the City Treasurer.
- d. A fee is not required if the application is made by the City, State of Virginia, or any agency created and appointed by the City Council or Virginia State Legislature to perform governmental functions.
- e. Prior to acceptance of an application for any amendment to this Zoning Ordinance (text or map), an old and historic district certificate of appropriateness (major or minor), a design review district certificate of appropriateness, building permit compliance, certificate of use and occupancy, certificate of use and occupancy, site plan review, conditional use permit, variance or special exception, administrative variance or special use permit, or prior to the issuance of final approval, the City may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality have been paid.

4. Completeness Determination

- a. All applications must be complete before the City is required to review the application. Once an application is received, the Zoning Administrator has 10 days to review and determine the completeness of an application. An applicant will be notified of an incomplete application, and the application will not proceed for review or decision.
- b. An application is considered complete when it contains all of the information necessary to decide whether or not the application will comply with all of the applicable requirements of this Zoning Ordinance.
- c. The presumption is that all of the information required by the City's application forms is necessary to satisfy the requirements of this Article. However, it is recognized that each application is unique, and more or less information may be required according to the specifics of a particular project. The applicant may rely on the Zoning Administrator to determine

whether more or less information must be submitted for the application to be considered complete and ready for review.

5. Application Deadline

Complete applications must be submitted in accordance with the City's published schedule. Schedules indicating submittal dates are developed each year and made available on the City's website and kept on file at the Planning & Development Review offices.

6. Revised Application Materials

- a. All revised application materials must be submitted to Planning & Development Review, who will route the materials to the appropriate review bodies. No plans may be sent directly to the Planning Commission, Board of Zoning Appeals, Commission of Architectural Review, Mayor, or City Council.
- b. Revised application materials must be submitted to Planning & Development Review at least 30 days prior to a scheduled public meeting or hearing. Materials submitted within 30 days of a scheduled meeting or hearing may be accepted at the discretion of the Zoning Administrator.
- c. Revised application materials can be submitted up to 3 times before a new application fee will be required for further application review. The Zoning Administrator may allow for additional revisions to be submitted without requiring a new application fee in circumstances that are beyond the control of the applicant.

7. Withdrawal of an Application

- a. Any application may be withdrawn at any time at the discretion of the applicant by providing written notice to the Zoning Administrator.
- b. No portion of a required application fee will be refunded on any withdrawn application.
- c. For applications requiring a public meeting or hearing, when a meeting or hearing has been advertised, the withdrawn application will be announced at the meeting or hearing.

D. General Public Notice and Hearing Requirements

Public notice must be provided for certain processes as required by the *Code of Virginia § 15.2-2204*.

E. Meetings Open to the Public

All meetings of any City boards and commissions referenced in this Chapter, and of any committee, subcommittee or other entity created to perform delegated functions thereof, are open to the public as required by the Virginia Freedom of Information Act, except as otherwise specifically provided in *Code of Virginia, § 2.2-3711*.

6.2.2. Site Plan Review

A. Intent

The purpose of this section is to establish rules about the content, submittal, review, and validity of site plans for proposed development and ensure development complies with the requirements of this chapter and other applicable laws, regulations, and policies before building permits or certificates of occupancy are issued. The compliance review detailed in this section is not intended to be a substitute or alternative for any other compliance review required by this Code.

B. Definitions

1. The following words, terms, and phrases, when used in this division are defined in this section, except where the context clearly indicates a different meaning:
 - a. Days means calendar days. When the last day for any required act to occur falls on a Saturday, Sunday, or legal holiday recognized by the City of Richmond, the act may be completed on the next calendar day the City is open for business.
 - b. Development means a tract of land developed or to be developed as a unit under single ownership or unified control which is used or will be used for any business or industrial purpose or contains or will contain three or more residential dwelling units, but excluding any tract of land which will be principally devoted to agricultural production.
 - c. Director means the Director of Planning & Development Review.
 - d. Officially submitted site plan means a site plan that has been submitted as part of a complete site plan application.
 - e. Site plan means a proposal for a development of real property to assure compliance with the requirements of Chapters 25 and 30 of this Code, and other duly adopted statutes, ordinances, regulations, and policies that may apply to the development as shown in the proposal, by description of the use, location, and bulk of buildings; density of development; common open space; any public facilities; any covenants, grants, easements, and other conditions required by law; and any other information as required by this division. When "site plan" is not preceded by the words preliminary or final, then references apply to both.

C. General Provisions

1. Director as Designated Agent

- a. The Director is the agent responsible for site plan review and has the following related powers and duties:
 - I. To receive, process, and act on every site plan submittal, including rejecting site plans that haven't been officially submitted, and the approval or denial of each officially submitted site plan;
 - II. To interpret applicable, duly adopted laws, regulations, and policies as part of the review described in subsection (E)(4) of this section.

- III. To establish, publish, and update from time to time, guidance and procedural materials consistent with this division that discuss required site plan content and streamline the administration of this division; and
- IV. To delegate the powers and duties described in this subsection to qualified City employees.

2. Scope of Review

- a. The Director must review every officially submitted site plan for compliance with the following:
 - I. Chapter 25 (Subdivision of Land) and Chapter 30 (Zoning) of this Code; and
 - II. Any other duly adopted law, regulation, or policy that governs an element of a development, to the extent such element is shown on a site plan, including the following chapters of this Code:
 - a). Chapter 13 - Fire Prevention and Protection;
 - b). Chapter 14 - Floodplain Management, Erosion and Sediment Control, and Drainage;
 - c). Chapter 23 - Solid Waste;
 - d). Chapter 24 - Streets, Sidewalks, and Public Ways; and
 - e). Chapter 28 - Utilities.
 - III. Compliance review of a site plan in accordance with this division is subject to the limitations set forth in subsection (5) of this section.

3. Eligible Applicant

Only the owner of land that is the subject of a site plan, the owner's lawfully authorized representative, or a proprietor of the land with owner's consent, may submit an application for site plan review. If there are multiple owners of the land, all owners, or their authorized representatives, must authorize submittal of an application for site plan review.

4. References

Whenever reference is made to a regulation, policy, or procedure, it means the most recent, published, and publicly available version of such regulation, policy, or procedure, unless otherwise specifically stated.

5. Limitations.

The following limitations will apply to this division:

- a. Site plan approval does not fulfill any other approval requirement imposed on a proposed development by this Code or other applicable law, regulation, or policy, or serve as the basis for any such approval.
- b. No advisory letter may operate as approval or disapproval of a site plan or as evidence of compliance with this division or any other law, regulation, or policy.

- c. The Director is not responsible for assessing compliance of a site plan with the terms of any private easement, covenant, agreement, or restriction.

D. Applicability

1. Preliminary Site Plan

Submittal of a preliminary site plan for tentative approval is permitted for any development.

2. Final Site Plan

Before zoning administrator review of an application for building permit or certificate of occupancy, a development on a lot within 50 feet of the James River floodwall, a development for which site plan review is required by this Chapter, or a development that involves 1 or more of the following, final site plan approval is required:

- a. Clearing, grading, excavating, filling, or otherwise disturbing a land area of
 - I. 4,000 square feet or greater, or
 - II. 2,500 square feet or greater if within a designated Chesapeake Bay Preservation Act Area;
- b. Installation, relocation, extension, upgrading, upsizing, or increase in the capacity of any public right-of-way or public utility, including the addition or alteration of any vehicular access to a lot;
- c. An increase of 10% or greater in the number of vehicular parking spaces, or where a proposed development includes new installation of any of the following: vehicular drive-ups, drive-throughs, fuel pumps, or charging stations intended for public use; or
- d. Increase in the usable space of any building or structure by 2,500 or more square feet, as measured by applicable building codes.

E. Procedures

1. Pre-Submittal Conference

- a. Before submitting a site plan application, an applicant may request, in writing, that the Director hold a pre-submittal conference to discuss the scope, features, and impacts of a proposed development and applicable regulations, policies, and procedures. As part of this request, an applicant must submit a complete pre-application package, to include all drawings, data, and related materials described in procedures published by the Director for one of the following types of review, as specified by the applicant:
 - I. Conceptual review. Review of the general feasibility of the proposed development based on the physical characteristics of the land, its designated future land use in the master plan, its existing or proposed zoning designation, and the availability and capacity of transportation networks and utility infrastructure; or
 - II. Preliminary review. Preliminary compliance review of proposed development, as shown by an accurate site plan, in consideration of applicable, duly adopted laws, regulations, and policies.

- b. The Director will have 10 days from receipt of a complete pre-application request to schedule the pre-application conference, which will happen as soon as reasonably possible given the complexity of the proposed development. Required pre-application conference attendees include the Director and the applicant, or the applicant's authorized representative.
- c. The Director will promptly distribute a submitted and complete pre-application request to the directors of all affected city departments, who will assign qualified staff to examine the request and provide comments to the Director at least 3 days prior to the date of the pre-application conference.
- d. Within 10 days following the date of a pre-application conference, the Director will provide the applicant an advisory letter that discusses, but makes no formal determination about, one or more of the following:
 - I. Potential or likely deficiencies among the pre-application package materials, or markings of such deficiencies on those materials, and the laws, regulations or policies with which the deficiencies do not comply;
 - II. Discretionary modifications or corrections to the development described in the pre-application package that, though not required, would in the opinion of the Director promote health, safety, morals, comfort, prosperity, and general welfare in accordance with the spirit and intent of identified sections of City Code; and
 - III. Other permits and approvals the applicant may need to secure before, or in conjunction with, construction of the development described in the pre-application package materials.

2. Submittal

- a. An applicant must submit a site plan application for review and approval in accordance with procedures published by the Director.
- b. Within 10 days from receipt of a site plan application, the Director must notify the applicant whether the site plan application is complete. A complete site plan application is one for which both of the following apply:
 - I. The site plan application is submitted in accordance with this subsection, including the payment of all applicable fees; and
 - II. The site plan application includes all drawings and data needed for evaluation of the site plan according to the scope of review.
- c. If the Director determines a site plan application is complete, the Director will notify the applicant that the site plan has been officially submitted for approval, effective as of the date applicant submitted the complete application.

3. State Review

- a. Within 10 days from the time a site plan is officially submitted, the Director must determine whether any feature of the site plan requires approval from any state agency or public authority authorized by state law.

- b. If any feature of an officially submitted site plan requires approval from any state agency or public authority authorized by state law, the Director will notify the applicant of such requirement and forward such site plan to each applicable state agency and public authority for review. The Director may proceed with city review, but may not complete such review before all approvals from all applicable state agencies and public authorities have been received.
- c. If no feature of an officially submitted site plan requires approval from any state agency or public authority authorized by state law, the Director may proceed with city review.

4. City Review

- a. The Director will distribute an officially submitted site plan to the directors of all affected city departments, as determined by the Director. The Director and the directors of all other affected city departments will assign one or more qualified staff to thoroughly review the site plan in accordance with the scope of review and in good faith identify all site plan deficiencies, if any.
- b. Within~~30~~ days following receipt of an officially submitted site plan from the Director, the director of each affected city department will provide the following to the Director:
 - I. A written list of specific deficiencies of a site plan, or markings of specific deficiencies on the site plan itself;
 - II. The laws, regulations or policies with which the deficiencies do not comply; and
 - III. Modifications or corrections needed for compliance.
- c. Within~~30~~ days from receipt of a site plan from the Director, the director of each affected city department may provide the Director, in writing, a separate list of discretionary modifications or corrections to a site plan that, while not required, would promote health, safety, morals, comfort, prosperity, and general welfare in the opinion of the Director.
- d. The Director will develop their own written list and consolidate lists with those received from the directors of all other affected City departments into a single document of site plan comments, that will distinguish site plan modifications and corrections necessary for site plan approval from discretionary site plan modifications and corrections.

5. Decision

- a. The Director will render a decision to approve or disapprove an officially submitted site plan in the form of a written notice to the applicant within one of the following timeframes:
 - I. 60 days from the date an original site plan was first officially submitted; or
 - II. 45 days from the date a modified and corrected site plan that was previously disapproved was officially resubmitted; or
 - III. 35 days from the date all applicable state agencies and public authorities authorized by state law have provided the Director their written responses for a site plan that requires such responses.
- b. The Director will approve a site plan if the Director concludes both of the following apply:

- I. The site plan complies with the duly adopted statutes, ordinances, regulations, and policies described in subsection (C)(2) of this section, as confirmed by the director of each affected city department; and
- II. The site plan has received all needed state agency and public authority approvals.

c. Except for the above, the Director may, approve an officially submitted site plan that does not strictly comply with Chapter 25 of this Code with a provision for variation or exception from the general regulations in the event either of the following apply:

- I. The Director reasonably concludes from evidence presented by applicant that strict application of the regulations of Chapter 25 of this Code actually prohibit or unreasonably restrict the use of the property due to exceptional topographic conditions or other extraordinary or exceptional circumstances or conditions;
- II. The Director is satisfied, based on evidence by from applicant, that strict adherence to one or more regulations of Chapter 25 of this Code would result in substantial injustice or hardship.

d. The Director will deny a site plan if either of the following apply:

- I. The site plan fails to comply with all applicable duly adopted statutes, ordinances, regulations, and policies described in this section; and
- II. The site plan has not received all needed state agency and public authority approvals.

e. In the event of denial, the Director will provide the applicant with the following in addition to the written notice of denial:

- I. A written list of specific deficiencies of a site plan or markings of specific deficiencies on the site plan itself;
- II. The laws, regulations, or policies with which the deficiencies do not comply; and
- III. To the greatest extent practicable, modifications or corrections that would permit site plan approval.

f. Regardless of the approval or deemed approval of any submitted or resubmitted site plan, any deficiency in any proposed site plan that if left uncorrected would violate local, state or federal law, regulations, mandatory Virginia Department of Transportation engineering and safety requirements, and other mandatory engineering and safety requirements, will not be considered, treated or deemed as having been approved by the Director.

6. Review of Resubmittals

- a. For a site plan that does not solely involve commercial or residential real estate, the Director will act on any proposed site plan the Director has previously denied within 45 days after such site plan has been modified, corrected, and resubmitted for approval.
- b. For a site plan that solely involves commercial or residential real estate, the Director will act on any proposed site plan the Director has previously denied within 45 days after such site plan has been modified, corrected, and resubmitted for approval, and the following will apply to Director review of such resubmittal:

- I. For purposes of this subsection, the term "commercial" means all real property used for commercial or industrial uses, and the term "residential" means all real property used for single-family or multifamily use.
- II. The Director will only consider the following:
 - a. Deficiencies the Director identified in review of the initial site plan submittal that remain uncorrected; and
 - b. Deficiencies that result from corrections made to address deficiencies identified in the initially submitted, previously disapproved site plan.
- III. The Director will provide the following to the applicant:
 - a. A written list of specific deficiencies of a site plan or markings of specific deficiencies on the site plan itself;
 - b. The laws, regulations, or policies with which the deficiencies do not comply; and
 - c. To the greatest extent practicable, modifications or corrections that would permit site plan approval.
- IV. The Director may provide the applicant a written list of specific deficiencies not identified in the review of the initial site plan or the resubmittal of a site plan that are considered a risk to health or safety.
- V. In the event the Director denies not only an initially submitted site plan but also a resubmittal of the same site plan, Director review of a second resubmittal of the site plan will be limited solely to the previously identified deficiencies that caused its disapproval.
- VI. Excluding the above, if any resubmitted a site plan includes a material revision of either infrastructure or physical improvements from an earlier submittal, or if a material revision in a resubmitted site plan creates a new required review by the Virginia Department of Transportation or by a state agency or public authority authorized by state law, then the Director's resubmittal review may consider not only deficiencies previously identified in the prior submittals but also deficiencies initially appearing in the resubmittal because of such material revision.
- VII. Failure of the Director to approve or deny a resubmitted site plan within the time period required will cause such resubmitted site plan to be deemed approved.

7. Withdrawal

- a. An applicant may request, in writing, to withdraw a site plan from the review process at any time.
- b. If an applicant fails to submit modifications or corrections to remedy an incomplete site plan application or to correct identified deficiencies of an officially submitted, disapproved site plan application within 180 days after the date of an incomplete or disapproved application notice from the Director, the Director will notify the applicant that the application will be withdrawn from consideration within 30 days from the date of notice. The Director

may extend the period by the applicant's request as they deem reasonable under the circumstances.

- c. The Director will not refund fees to the applicant for a site plan that has been officially submitted for 30 or more days.

F. Modifications

After the approval of any site plan, or previously-approved plan of development, and within its period of validity per subsection (H), the Director, upon written request by the applicant, will consider minor modifications to a site plan for review and approval in accordance with subsection (G).

G. Eligibility

1. Minor Modification

- a. The Director will consider and approve or disapprove a proposed minor modification to a site plan that is submitted in accordance with this subsection.
- b. For purposes of this subsection "minor modification" means a modification to a site plan that satisfies the following criteria:
 - I. Does not involve a change of more than 10% of any element of the development, including without limitation any of the following: height, density, open space, parking area, impervious area, the size of any yard, fenestration, signage;
 - II. Does not involve a change in use of the development or portion of development of;
 - III. Does not propose a new development feature;
 - IV. Does not adjust the location or nature of either vehicular, pedestrian, or other access ways; or the intersection of any such way with public right-of-way;
 - V. Does not require additional review by any state agency or public authority authorized by state law;
 - VI. Will not increase demand for or require additional public facilities or services; and
 - VII. Otherwise allows the development to remain substantially the same as that shown on the originally approved site plan.

2. Major Modification

Any proposed modification to an approved site plan that is not a minor modification is a major modification, which major modification the Director may only approve following submittal of a new, complete site plan application.

3. Submittal

- a. An applicant may submit a site plan modification application for review and approval in accordance with procedures published by the Director.
- b. Within 10 days from receipt of a site plan modification application, the Director will determine whether,

- I. The requested modification is a minor modification; and
- II. The application is complete and officially submitted for approval.
- III. A complete site plan modification application is one that is submitted in accordance with this section, including without limitation the payment of all applicable fees, and includes, per procedures published by the Director or as the Director otherwise requests, all drawings and data needed for evaluation of the proposed site plan modification in accordance with the scope of review described.
- c. If the Director determines a site plan modification application is complete, the Director will notify the applicant that the site plan modification is officially submitted for approval as of the date applicant submitted such complete application.

4. Decision

- a. The Director will thoroughly examine an officially submitted site plan modification for compliance with the laws, regulations, and will render a decision to approve or deny in the form of a written notice to the applicant within 30 days from the date the site plan modification was officially submitted.
- b. The Director will approve an officially submitted site plan modification if the Director concludes it complies with the laws, regulations, and policies described.
- c. The Director will deny an officially submitted site plan modification if the Director concludes it does not comply with the laws, regulations, and policies described and will provide the applicant with the following in addition to the written notice of disapproval:
 - I. A written list of specific deficiencies of the site plan modification, or markings of specific deficiencies on the site plan itself;
 - II. The laws, regulations, or policies with which the deficiencies do not comply; and
 - III. To the greatest extent practicable, modifications or corrections that would permit site plan approval.

H. Validity

1. Preliminary Site Plan

- a. Once a preliminary site plan is granted tentative approval, it is valid for 5 years, provided the applicant submits a final site plan for all or for a portion of the property within 1 year of the approval and then, diligently pursues approval of the final site plan. In this subsection, the term "diligent pursuit of approval" means the applicant has incurred extensive obligations or substantial expenses relating to the submitted final site plan or modifications of the final site plan.
- b. 3 years after preliminary site plan approval, and with 90 days written noticed by certified mail to the applicant, the Director may revoke their approval based on findings that the applicant has not diligently pursued approval of the final site plan.
- c. A preliminary site plan will remain valid for 5 years from the date of the most recently approved final site plan for the property or any portion of the property.

2. Final Site Plan

- a. An approved final site plan is valid for 5 years, expiring on the fifth anniversary of the initial approval date.
- b. The Director, with a written request from an applicant, may grant an approved final site plan a validity period from 5 to 10 years, based on reasonable consideration of the size and phasing of the proposed development at the time of final site plan approval.

3. Extension of Final Site Plan

- a. An applicant may request an extension of the validity period of an approved final site plan by written request to the Director at least 90 days prior to the validity period expiration date.
- b. The Director must respond, in writing, within 30 days from receipt of the extension request.
- c. In response to an extension request, the Director may approve a longer period of validity for a final site plan as the Director deems reasonable. This period may not exceed 5 years from the date the final site plan would have expired, based on consideration of the size, scope, and phasing of the proposed development and the effective laws, ordinances, and regulations at the time of the request for extension.
- d. The Director will deny, in writing, a request for extension of any final site plan validity period upon finding that the final site plan no longer complies with current laws, ordinances, or regulations.

I. Appeals

An applicant may bring an action at Richmond Circuit Court in the event of any of the following and in accordance with general law, or as otherwise permitted by general law:

1. The Director fails to approve an officially submitted site plan within 60 days after it has been officially submitted for approval, or, if applicable, within 35 days of receipt by the Director of any agency or authority response or within 45 days after a site plan has been officially resubmitted after a previous disapproval, and applicant gives the Director 10 days' written notice prior to filing its action;
2. The Director issues a written disapproval of an officially submitted site plan, applicant contends that the disapproval was not properly based on the applicable ordinance, or was arbitrary or capricious, and applicant files its action within 60 days from such disapproval; or
3. The Director issues a written denial of a request by applicant for extension of the validity period of an approved site plan, and applicant files its action within 60 days.

6.2.3. Conditional Use Permits

A. Intent

Pursuant to Code of Virginia, §§ 15.2-2286, 15.2-2303, conditional use provisions are intended as a means for the City Council, after review and recommendation by the Planning Commission, to authorize certain uses which, although generally appropriate in the district in which they are

permitted, have specific conditions that must be met and maintained for such uses to be approved. Approval of a conditional use permit for a particular use at a specific location within a district is subject to evaluation by the City Council and a determination in each case based on the standards and conditions set forth in this article.

B. Relation to Other Permits

Building permits, certificates of use and occupancy and certificates of zoning compliance and related reviews and approvals required by this chapter are required for conditional uses in the same manner as for other uses. No building permit, certificate of use and occupancy or certificate of zoning compliance for a conditional use or for a building devoted to a conditional use may be issued unless a conditional use permit has been approved.

C. Existing Uses

A use lawfully existing at the effective date of the ordinance which is specified as a conditional use in the district in which it is located and for which no conditional use permit has been approved may not be considered a nonconforming use because of its classification as a conditional use, nor will the lack of a conditional use permit be considered a nonconforming feature of such use, provided that:

1. No building permit, certificate of use and occupancy or certificate of zoning compliance involving expansion of such use or major reconstruction, enlargement or moving a building devoted to such use will be issued, nor will any material change in the program or operating characteristics of such use take place that would increase the intensity of the use, unless a conditional use permit is approved in accordance with this article;
2. Except as provided in (C)(3), whenever such use is discontinued for a period of two years or longer, whether or not equipment or fixtures are removed, the use will not be reestablished unless a conditional use permit is approved in accordance with this division; and
3. When a building devoted to such use is damaged by fire, explosion, act of God or the public enemy to any extent, such building may be restored, repaired, reconstructed and used as before such damage without approval of a conditional use permit, provided that the floor area devoted to the use will not be increased, and provided further that application for a building permit for the restoration, repair or reconstruction will be submitted within two years of the date of damage.

D. Procedure for Issuance

1. Review by Staff

Staff of the Department of Planning & Development Review will review each application for a conditional use permit and forward it to the Planning Commission along with a report indicating the manner in which the proposed conditional use complies or does not comply with this chapter and its recommendations regarding approval, disapproval or conditions to be attached.

2. Action by Planning Commission

The Planning Commission will review each conditional use permit application for compliance with this chapter and will provide a recommendation to the City Council in accordance with the following:

- a. The Commission will hold a public hearing on the conditional use permit application. Notice of the time and place of the public hearing will be given in accordance with general law. The names and addresses of all property owners within the City to whom notices are to be sent will be furnished by the City Assessor and will be as shown on the current tax records of the City.
- b. After holding a public hearing, the Commission may recommend approval or disapproval of the conditional use permit or that additional conditions be imposed. In making its recommendation, the Commission will consider at least the standards indicated in (E).
- c. Action by the Commission will be in the form of a motion, giving the reasons for its action.
- d. When the Commission is unable to adopt a motion to recommend approval or disapproval, it will forward a written report to the City Council stating this and summarizing its discussions on the matter.
- e. Failure of the Commission to provide a recommendation or report to City Council within 100 days after the first meeting of the Commission at which the conditional use permit application appears on its agenda will be treated as a recommendation of approval, unless the application has been withdrawn by the applicant prior to the expiration of such time period.

3. Action by City Council

The City Council will take action on each conditional use permit application in accordance with the following:

- a. After receiving the recommendation of the Planning Commission, the Council will hold a public hearing on the conditional use permit application. Notice of the time and place of such public hearing will be given in accordance with general law. The names and addresses of all property owners within the City to whom notices are to be sent will be provided by the City Assessor and will be as shown on the current tax records of the City.
- b. The City Council may, by ordinance, approve or disapprove the conditional use permit application and may impose additional conditions as authorized by this division.

E. Standards for Approval

A conditional use permit will be approved by the City Council only if it finds, after consideration of the recommendation of the Planning Commission, that the proposed use and related plans are appropriate at the location proposed based upon its consideration of the following standards and the specific conditions, where applicable, for the particular use in the district in which it is proposed to be located. No conditional use permit will be approved by the City Council unless it finds the proposed use and development:

1. Will not be contrary to the general purposes of this chapter as stated in Section 1.1;
2. Will not be in conflict with the objectives and policies of the master plan for the City;
3. Will conform with all applicable sections of this article and other applicable requirements of the district in which it is proposed to be located;

4. Will not substantially diminish or impair the established property values in the neighborhood in which it is proposed to be located;
5. Will not have an undue adverse effect on the public health, safety or general welfare;
6. Will not adversely affect the character of the surrounding area or the continued use and development of surrounding property in a manner consistent with applicable zoning regulations or master plan objectives;
7. Will not cause undue traffic congestion on public streets or significantly increase traffic volumes on minor residential streets;
8. Will be adequately served by essential public services and facilities and will not cause an undue burden on such services and facilities;
9. Will not cause the destruction, loss or damage of significant natural, scenic or historic features to any greater degree than development of the property for uses permitted by right in the district;
10. Will ensure compatibility with surrounding property through existing and proposed landscaping, screening and buffering and the location, arrangement and character of existing and proposed buildings, structures, open spaces, parking areas, vehicular circulation, driveways, signage and lighting; and
11. Will not cause or result in any significant increase in negative cumulative impact when considered in conjunction with other conditional uses in the neighborhood in which it is proposed to be located.

F. Specific Conditions Applicable to Particular Uses

The conditions set forth in this section will be applicable to all the following uses as indicated when authorized by conditional use permit. City Council may also impose additional or more stringent conditions as deemed necessary to ensure the use will comply with the standards set forth in this article and elsewhere in this chapter:

1. Commercial Uses in the RD and RA Districts

The following conditions will be applicable to commercial uses in the RD and RA districts:

- a. Before approving a conditional use permit for any such use, the City Council will make a finding that the location of the property, the type of use and the scale and operational characteristics of the use are such that, if approved, the use can reasonably be expected to primarily serve the adjacent neighborhood and be sustainable as a neighborhood convenience use, and will avoid traffic, parking congestion, noise and other impacts that more typically result from uses that draw patrons from outside a neighborhood.
- b. For any commercial use operating with an ABC license, such use will not be operated between the hours of 10:00 p.m. and 6:00 a.m.
- c. Alterations to the exterior of the building, including facade treatment, fenestration, signage and lighting will be designed to maximize compatibility with the residential character of the surrounding area. Elevation drawings of the building will be submitted as part of the conditional use permit application.

- d. No music or public address system will be operated in such a manner that sound produced therefrom is audible beyond the portion of the building devoted to the use.
- e. An operations plan, addressing not less than the following elements and providing such information as necessary to enable the city council to make the finding described in paragraph "a" of this subsection, will be submitted as part of the conditional use permit application:
 - I. Operational characteristics and features of the use, including: staffing levels; hours of operation; type of ABC license and related restrictions, if applicable; floor plan showing general arrangement of the use and seating capacity of tables and other facilities for patrons, if applicable; description of intended use of the upper floor(s) of the building, including floor plans and plans for ingress and egress; provisions for containing trash and refuse generated by the use, including screening of containers, and means of preventing trash from blowing onto adjacent properties or streets; and provisions for off-street parking, if applicable.
 - II. Provisions for security, including procedures, features, arrangements and staffing levels for such for both the interior and exterior of the premises, and a plan and procedures for mitigating potential adverse impacts on nearby dwelling uses. The Planning Commission may recommend and the City Council may include as conditions, such elements of the operations plan as it deems necessary to satisfy the standards set forth in this section.

2. Retail Sales of Liquor

The following conditions will be applicable to retail sales of liquor:

- a. Except as provided in subdivision (b) of this subsection, such use will be located within a retail establishment having a total floor area greater than 5,000 square feet, and in which not greater than 50 percent of the total floor area is devoted to the sale and storage of alcoholic beverages as defined by the Code of Virginia;
- b. In the case of a retail establishment existing on the effective date of this subsection and having on such date a total floor area of 5,000 square feet or less and greater than 50 percent of the total floor area devoted to the sale and storage of alcoholic beverages as defined by the Code of Virginia, the City Council may waive the conditions of subdivision (a) of this subsection when the City Council is satisfied that the other applicable provisions of this subsection are met, and provided that in no case will the existing total floor area of the establishment and the existing percentage of floor devoted to the sale and storage of alcoholic beverages be increased;
- c. Such use will not take place at any time between the hours of 10:00 p.m. and 10:00 a.m.;
- d. Drive-up facilities will not be permitted in conjunction with such use, and retail sales of liquor will take place only within the interior of the building;
- e. The exterior features, including façade treatment, fenestration, signage and lighting, of the building in which such use is located will be designed to maximize compatibility with the predominant character of surrounding commercial and residential areas, and elevation drawings of the buildings showing such features will be submitted as part of the conditional

use permit application, except that such drawings will not be required in a case where no changes are to be made to the exterior of an existing building; and

- f. The conditional use permit will be approved by the City Council only if the applicant satisfies the Council that the size and location of the user are reasonably related to the trade area that such use is intended to serve, and will not result in a disproportionate concentration of such uses within any particular area of neighborhood of the city or have a detrimental impact on the surrounding area due to close proximity to residential area or public, religious or child care facilities.

3. Alcohol Service Between 11pm and 7am

A management program will be submitted as part of the conditional use permit application. The Planning Commission may recommend and the City Council may include as conditions such elements of the management program as it deems necessary to satisfy the standards set forth in this section. If a particular element listed is not applicable to a specific use because of the characteristics of that use, the management program will include a statement of why the element is not applicable. The minimum required elements of the management program are as follows:

- a. Operational characteristics and features of the use, including the following:
 - I. Staffing levels;
 - II. Hours of operation, and days of the week on which the use will be operated;
 - III. Type of Virginia Alcoholic Beverage Control license and related restrictions;
 - IV. Floor plan showing the general arrangement and seating capacity of tables and bar facilities, dance floor and standing room areas and capacity, which floor plan will be posted on the premises in a prominent location viewable by the patrons;
 - V. Total occupant load; and,
 - VI. General type, frequency and hours of entertainment to be provided;
- b. Provisions for off-street parking; and
- c. Provisions for security and crowd management, including the following:
 - I. Provisions for a level of security and crowd management sufficient to comply with the requirements of chapter 6, article V of this code, whether or not the use is required to obtain a public dance hall permit;
 - II. Procedures, features, arrangements and staffing levels for security and crowd management for both the interior and exterior of the premises; and
 - III. A plan and the procedures for mitigating potential adverse impacts on nearby dwelling and business uses.

4. Parking Areas in the MX Districts

The following conditions will be applicable for parking areas in the MX districts:

- a. The access, landscaping, screening, and arrangement of the parking area will be reviewed by the Urban Design Committee prior to the review of the application for the conditional use permit by the Planning Commission. The Urban Design Committee may recommend to the Planning Commission that the Planning Commission recommend that the City Council approve the conditional use permit or may recommend that the Planning Commission recommend that the City Council impose additional conditions. In making its recommendation, the Urban Design Committee will consider at least the standards set forth in Section 4.3 of Article 4 of this Zoning Ordinance.

5. Retail Sales of Tobacco and Hemp

The following conditions will be applicable to retail sales of tobacco and hemp:

- a. Any lot containing such use
 - I. Will be located no less than 1,000 feet from any lot in a RD or RA zoning district; and
 - II. Will be located no less than 1,000 feet from any lot containing a child day center; public or private pre-, elementary, middle, or high school; park; public library; or church or other place of worship; and
 - III. Will be located no less than 1,000 feet from any other lot containing such use; and
- b. Drive-up facilities will not be permitted in conjunction with such use; and
- c. Any sale, offering, or distribution of electronic smoking devices or retail tobacco products as such terms are defined in § 18.2-371.2 Code of Virginia, or of hemp products or hemp products intended for smoking as such terms are defined in § 3.2-4112 Code of Virginia, will only take place within the interior of a building or structure; and
- d. Such use will not take place at any time between the hours of 9:00 p.m. and 9:00 a.m.

G. Additional Conditions

The Planning Commission may recommend and the City Council may impose such additional conditions and limitations on any conditional use, including its scale, intensity, site development, operation or general character, as deemed necessary or appropriate. Such conditions or limitations may be to prevent, minimize or mitigate potential adverse impacts on the surrounding area or on the City as a whole or to ensure compliance with any of the standards and conditions applicable to conditional uses and set forth in this article. Any such conditions or limitations will be expressly set forth in the ordinance approving the conditional use.

H. Amendments After Approval

An approved conditional use permit may be amended only in accordance with the procedures and subject to the standards set forth in this article for review and approval of a new conditional use permit.

I. Expiration

An approved conditional use permit will become null and void if no application for a building permit to construct the authorized improvements has been submitted within two years of the date of

approval by the City Council. A conditional use permit for which no building permit is required will become null and void if the use is not established within two years of the date of approval by the City Council as evidenced by the issuance of a certificate of use and occupancy or a certificate of zoning compliance. The City Council may, for good cause, specify a longer period in its approval of a conditional use permit.

J. Discontinuance

A conditional use permit will run with the land, provided that any use established pursuant to an approved conditional use permit will not be reestablished if replaced by a different use or if discontinued for a period of two years or longer.

K. Appeals

Appeals from any decision of the City Council regarding a conditional use permit may be taken to the Circuit Court by any aggrieved party in accordance with applicable sections of State law.

L. Posting of Notice on Property

In the case of each application for a conditional use permit or amendment to a conditional use permit, it will be the responsibility of the Department of Planning & Development Review to post on the property that is the subject of the conditional use permit, a sign or signs notifying interested parties of the application and pending public hearings thereon. Such sign(s):

1. Will be posted at least 15 days prior to the scheduled Planning Commission public hearing on the application;
2. Will remain on the property until final disposition of the application by the City Council; and
3. Will comply with any applicable standards established by the Department of Planning and Development Review and approved by resolution of the Planning Commission.

M. Violation of Conditions

1. Upon noting that a condition of a conditional use permit has been violated, the Zoning Administrator will issue a written notice of violation to the property owner. The notice will inform the property owner which condition has been violated, the nature of the violation, and that the Planning Commission will hold a public hearing at which it will review the violation and the conditional use permit pursuant to this division if:
 - a. The property owner does not abate the violation within 30 days of the issuance of the notice; or
 - b. Three notices of violation are issued to the property owner within any 12-month period.
2. A notice of violation will run with the permit upon which the notice is issued if the permit is transferred. If property subject to a conditional use permit has been legally divided into more than one parcel prior to the issuance of a notice of violation, the notice of violation accrued by one parcel will not count against the other parcels.

N. Review Procedure on Appeal

1. The Zoning Administrator will issue to the property owner a notice advising that the Planning Commission will hold a public hearing at which it will review the violation and the conditional use permit pursuant to this division if:
 - a. The property owner has not abated a violation within 30 days of the issuance of a notice of violation; or
 - b. Three notices of violation have been issued to the property owner within any 12-month period.
2. This notice will also inform the property owner that the City Council will make the final determination as to whether it will revoke the conditional use permit, allow the conditional use permit to remain in effect, or amend the conditional use permit.

O. Notice and Public Hearings

1. Notice of the time, place, and subject of all public hearings before the Planning Commission and the City Council regarding the violation of one or more conditional use permit conditions will be given in accordance with the Charter and applicable State law.
2. The Planning Commission will hold a public hearing at which it will review the violation and the conditional use permit. After the public hearing, the Planning Commission will issue to the City Council a recommendation regarding whether the City Council should revoke the conditional use permit, allow the conditional use permit to remain in effect, or amend the conditional use permit and suggesting appropriate conditions if recommending an amendment of the permit.

P. City Council Action

1. Upon issuance of the recommendation of the Planning Commission regarding a conditional use permit, the Secretary of the Planning Commission will cause appropriate ordinances to be prepared so that the City Council may act on the Planning Commission's recommendations.
2. Following a public hearing on the review of the conditional use permit, the City Council may:
 - a. Revoke the conditional use permit;
 - b. Allow the conditional use permit to remain in effect; or
 - c. Amend the conditional use permit.
3. Notwithstanding any section of this division to the contrary, no action taken pursuant to this division will in any way limit the City's right to pursue any other remedy at law or in equity against the property owner.

Q. Applicability of Sections N Through Q

Sections (N) through (Q) will apply only to all conditional use permits adopted after the effective date of the ordinance from which such sections are derived.

6.2.4. Zoning Text Amendment

A. General

1. Authority of Council

Subject to the requirements of the Charter and this article, the Council may, from time to time, after receiving the recommendation of the Planning Commission, amend, supplement or repeal the regulations and restrictions of the districts established by this chapter.

2. Initiation

Amendment, supplementation or repeal of the regulations of the districts established by this chapter may be initiated by the Council or any member thereof, by motion of the Planning Commission, by request of the Mayor, the Chief Administrative Officer or any City agency.

3. Notice and Public Hearing by Planning Commission

The Planning Commission will hold a public hearing on any ordinance to amend, supplement or repeal the sections of this chapter or the districts established by this chapter. Notice of the time and place of such public hearing will be given in accordance with general law.

4. Notice and Public Hearing by Council

The City Council will hold a public hearing on the ordinance to amend, supplement or repeal the sections of this chapter of the districts established by this chapter. Notice of the time and place of such public hearing will be given in accordance with general law.

6.2.5. Zoning Map Amendment (Rezoning)

A. General

1. Authority of Council

Subject to the requirements of the Charter and this article, the Council may, from time to time, after receiving the recommendation of the Planning Commission, amend the boundaries of the districts established by this chapter.

2. Initiation

Amendment of the boundaries of the districts established by this chapter may be initiated by the Council or any member thereof, by motion of the Planning Commission, by request of the Mayor, the Chief Administrative Officer or any City agency or by petition of any individual. Such petition, addressed to the Council, will be reviewed by the Director of Planning & Development Review and will be filed with the City Clerk.

3. Notice and Public Hearing by Planning Commission

The Planning Commission will hold a public hearing on any ordinance to amend the boundaries of the districts established by this chapter. Notice of the time and place of such public hearing will be given in accordance with general law. The names and addresses of all property owners

within the City to whom notices are to be sent will be furnished by the City Assessor and will be as shown on the current tax records of the City.

4. Notice and Public Hearing by Council

The City Council will hold a public hearing on the ordinance to amend the boundaries of the districts established by this chapter. Notice of the time and place of such public hearing will be given in accordance with general law. The names and addresses of all property owners within the City to whom notices are to be sent will be furnished by the City Assessor and will be as shown on the current tax records of the City.

5. Posting of Notice on Property

In the case of each application for a change in the boundaries of a zoning district, it will be the responsibility of the Department of Planning & Development Review to post on the property that is the subject of such change, a sign or signs notifying interested parties of the application and pending public hearings. Such sign(s):

- a. Will be posted at least 15 days prior to the scheduled Planning Commission public hearing on the application;
- b. Will remain on the property until final disposition of the application by the City Council; and
- c. Will comply with any applicable standards established by the Department of Planning & Development Review and approved by resolution of the Planning Commission.

6. Effect of Protest by Property Owners

If a protest is filed with the City Clerk against an amendment of the boundaries of the districts established by this chapter, signed and acknowledged before a person authorized to administer oaths, by the owners of 20 percent or more of the total area of the lots included in such proposed change or of the total area of the lots outside of the proposed change, any point in which is within 150 feet of the boundary of such area, the Council will not adopt the amendment unless supported by seven or more affirmative votes.

B. Conditional Rezoning

1. Purpose

- a. Pursuant to applicable provisions of Code of Virginia, §§ 15.2-2296 and 15.2-2298, the purpose of conditional zoning is to recognize that frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time to recognize effects of change.
- b. It is, therefore, the purpose of this division to provide a more flexible and adaptable zoning method to cope with such situations through conditional zoning, whereby a change in the zoning classification of property may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. It is the intent of the City Council that this division will not be used for the purpose of discrimination in housing.

2. Procedures

a. Proffered Conditions

In conjunction with an application for rezoning of property and as a part of a proposed amendment to the zoning map as described in Division 1 of this article, the owner of such property may voluntarily proffer in writing reasonable conditions in addition to the regulations specified for the zoning district by this chapter, provided such conditions meet the criteria set forth in this division.

b. Submission of Conditions

The owner may submit such conditions at the time of application for rezoning or at any other time prior to introduction of an ordinance to rezone the subject property. The Planning Commission and the City Council are not obligated to accept any of the proffered conditions.

c. Additions, Deletions or Modifications to Conditions

If additions, deletions or other modifications to conditions are desired by the owner of the property that is the subject of the rezoning request, they will be made in writing to the Planning Commission before the Commission makes its recommendation to the City Council. The City Council may consider additional conditions, deletions or modifications to conditions after the Planning Commission makes its recommendation, provided that such are voluntarily proffered in writing prior to the public hearing at which the City Council is to consider the application for rezoning. When additions, deletions or modifications to conditions are proposed after the Planning Commission makes its recommendation, the City Council may refer the rezoning application back to the Commission for further review and action, provided that, where such additions, deletions or modifications to conditions are less restrictive than the conditions considered by the Planning Commission, the City Council will refer the rezoning application back to the Commission.

3. Proffered Conditions

a. Criteria

All conditions proffered pursuant to this division must meet the following criteria:

- i. The rezoning itself must give rise to the need for the conditions.
- ii. The conditions must have a reasonable relation to the rezoning.
- iii. The conditions must be in conformity with the master plan for the City.
- iv. The conditions must not impose upon the applicant the requirement to create a property owners' association under the Property Owner's Association Act, Code of Virginia, § 55-508 et seq., which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in Code of Virginia, § 15.2-2241; however, such facilities will not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the City.

- v. The conditions must not be less restrictive than the sections of this chapter and must not require or permit a standard that is less than required by any applicable law.
- vi. The conditions must be drafted in such manner as to be clearly understandable and enforceable.

b. Conditions Involving Dedication of Real Property or Payment of Cash

If proffered conditions include the dedication of real property or the payment of cash, the property will not transfer and the payment of cash will not be made until the facilities for which the property is dedicated or cash is tendered are included in the capital improvement program, provided the City Council may accept proffered conditions which are not normally included in the capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions will provide for the disposition of the property or cash payment if the property or cash payment is not used for the purpose for which proffered.

c. Reasonable Conditions Designated

Reasonable conditions may include the payment of cash for any off-site road improvement or any off-site transportation improvement that is adopted as an amendment to the required comprehensive plan and incorporated into the capital improvements program, provided that nothing herein will prevent the City from accepting proffered conditions which are not normally included in a capital improvement program. For purposes of this section, the term "road improvement" includes construction of new roads or improvement or expansion of existing roads as required by applicable construction standards of the Virginia Department of Transportation to meet increased demand attributable to new development. For purposes of this section, the term "transportation improvement" means any real or personal property acquired, constructed, improved, or used for constructing, improving, or operating any public mass transit system or highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this title. Such improvements will include, without limitation, public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

4. Subsequent Amendment to Zoning Map

Once proffered and accepted as part of an amendment to the zoning map, the conditions will continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions, provided that the conditions will continue in effect if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

5. Future Amendments for Certain Proffers

If conditions proffered pursuant to this division include a requirement for the dedication of real property of substantial value or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, no amendment to the zoning map for the property subject to such conditions nor the conditions themselves nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the City Council, which eliminate or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such

property, will be effective with respect to the property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

6. Enforcement and Guarantees

a. Authority of Zoning Administrator

The Zoning Administrator will be vested with all necessary authority on behalf of the City Council to administer and enforce conditions attached to a rezoning or amendment to the zoning map, including the following:

- I. The ordering in writing of the remedy of any noncompliance with conditions;
- II. The bringing of legal action to ensure compliance with conditions, including injunction, abatement or other appropriate action or proceeding; and
- III. Requiring a guarantee satisfactory to the City 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 will be reduced or released by the City Council or its agent upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part.

b. Denial of Permits and Approvals

Failure to meet all conditions attached to an amendment to the zoning map will constitute cause to deny approval or issuance of any required site plan, certificate of zoning compliance, building permit, or certificate of use and occupancy, as may be appropriate.

7. Records and Index

The zoning map will show, by an appropriate symbol on the map, the existence of conditions attached to the zoning. The Zoning Administrator will keep in the Administrator's Office and make available for public inspection a conditional zoning index. The index will provide ready access to each ordinance creating conditions, in addition to the regulations provided for in a particular zoning district.

8. Review of Zoning Administrator's Decision

- a. Any rezoning applicant or any other person who is aggrieved by a decision of the Zoning Administrator made pursuant to subsection (B)(6) may petition the City Council for review of such decision by filing a petition with the Zoning Administrator and with the City Clerk within 30 days of the decision. Such petition will specify the grounds upon which the petitioner is aggrieved.
- b. The City Council will review the appealed decision using the same process as the Zoning Administrator, but will not be bound by the Zoning Administrator's conclusions or findings. However, the City Council will not modify or delete any condition attached to a zoning map amendment except by a formal amendment made pursuant to the provisions of this article.
- c. An aggrieved party may petition the circuit court for review of the decision of the City Council on an appeal taken pursuant to this section.

9. Amendments and Variations of Conditions

Amendments and variations of conditions attached to a zoning map amendment will be made only after public notice and hearing in the same manner as an original zoning map amendment and in accordance with this article and applicable sections of State law.

6.2.6. Building Permit Compliance

A. Determination of Compliance

1. The Zoning Administrator is responsible for determining whether applications for permits meet the requirements of this chapter. No permits may be issued by the Commissioner of Buildings until the Zoning Administrator has confirmed that the proposed construction and use of the premises meet all applicable standards of this chapter. Approval of a building permit or land-disturbing permit may not be granted by the Commissioner of Buildings until satisfactory evidence has been presented to the Zoning Administrator that any delinquent real estate taxes on the subject property have been paid, provided that this requirement may be waived based on the following criteria:
 - a. A licensed medical doctor certifies in writing to the Zoning Administrator that an owner of a single-family dwelling has a disability that requires approval of a building permit for that dwelling to accommodate the disability;
 - b. A licensed medical doctor certifies in writing to the Zoning Administrator that the specific building modification for which the building permit is sought is required to accommodate the disability; and
 - c. The Director of Finance certifies in writing to the Zoning Administrator that a payment schedule has been established for repayment of any delinquent real estate taxes on the subject property.

B. Plans to Accompany Applications

All applications for permits to erect, construct, enlarge, structurally alter, convert, or relocate any building or structure must be accompanied by building plans, specifications, and site plans as required by the Virginia Uniform Statewide Building Code, plus any additional information deemed necessary by the Zoning Administrator to enforce this chapter.

C. Conformance with Approved Plans

It is illegal for any person to erect, construct, enlarge, extend, structurally alter, or use any building, structure, or premises unless they comply with plans approved by the Zoning Administrator as required by this article.

D. Pending Applications

As of the effective date of this ordinance, this chapter and any amendment to this chapter applies to all pending and not yet finally approved building permit applications.

6.2.7. Certificate of Use and Occupancy

A. Responsibility of Zoning Administrator

The Zoning Administrator is responsible for determining whether applications for certificates of use and occupancy, as defined in the Virginia Uniform Statewide Building Code, are in accord with the requirements of this chapter.

B. Plans to Accompany Applications

All applications for certificates of use and occupancy must be accompanied by building plans, specifications and site plans, if required by the Virginia Uniform Statewide Building Code, and by such additional information deemed necessary by the Zoning Administrator to enforce this chapter.

C. Issuance

No certificate of zoning compliance may be issued by the Zoning Administrator unless they are satisfied that all applicable sections of this chapter are met based on inspection of the building, structure, or premises involved. Within two working days after the filing of an application for a certificate of zoning compliance or a letter of zoning confirmation, the Zoning Administrator will publish the application on the City's website. Within two working days after the Zoning Administrator issues a certificate of zoning compliance or a letter of zoning confirmation, the Zoning Administrator will publish the certificate of zoning compliance or letter of zoning confirmation on the City's website.

D. Temporary Certificate

1. The Zoning Administrator may not approve any temporary certificate of use and occupancy where the applicable sections of this chapter are not met, except when lack of compliance is of a temporary nature and involves signage or site-related improvements, such as landscaping, vegetative screening and paving. In these instances, the Zoning Administrator will be satisfied that the premises involved is physically suitable for use and occupancy in terms of access, parking, and other site-related improvements before approving such temporary certificate of use and occupancy.
2. Temporary certificates of use and occupancy approved by the Zoning Administrator must state the nature of the incomplete work and the time period within which the work must be completed, which may not exceed 120 calendar days. Before approving any temporary certificate of use and occupancy, the Zoning Administrator requires that the owner of the property or the owner's agent submit a letter acknowledging the nature of incomplete work and the time period within which the work must be completed, which cannot exceed the time period specified in this section.
3. In the case of a temporary certificate of use and occupancy involving a Chesapeake Bay Preservation Area, no such certificate may be issued without approval of the Chesapeake Bay Administrator.

E. Transferability

A certificate of zoning compliance is not transferable to any person. Any new tenant or new owner of any building, structure or premises must apply for a new certificate of zoning compliance.

New occupants of single-family dwellings or single dwelling or lodging units are exempt from the requirements of this division.

6.2.8. Certificate of Zoning Compliance

A. Required

1. It is illegal for any person to use or to permit the use of any building, structure or premises or portion thereof, other than an existing single-family dwelling, unless a certificate of zoning compliance has been approved by the Zoning Administrator as required by this article.
2. It is also illegal for any person to construct or erect any building or structure which is exempt from application for a building permit under the provisions of the Virginia Uniform Statewide Building Code and which is three feet or greater in height, unless a certificate of zoning compliance for such building or structure has been approved by the Zoning Administrator.
3. A certificate of zoning compliance is not be required for fences, walls, poles, posts and other customary yard ornaments and accessories that are exempt from application for a building permit and that are permitted by the provisions of this chapter.
4. The certificate of zoning compliance will certify that the building, structure or premises and the use thereof comply with the applicable sections of this chapter.
5. No certificate of zoning compliance will be issued for any development within a Chesapeake Bay Preservation Area until all requirements of Chapter 14, Article IV and the approved Chesapeake Bay Site Plan have been met.

B. Plans to Accompany Application

All applications for certificates of zoning compliance must be accompanied by such plans, specifications, site plans, and such additional information as required by the Zoning Administrator in order to determine compliance with this chapter.

C. Transferability

A certificate of zoning compliance is not transferable. Any new tenant or owner of a building, structure or premises must make application for a new certificate of zoning compliance. New occupants of single-family dwellings are exempt from the requirements of this division.

D. Issuance

No certificate of zoning compliance will be issued unless the Zoning Administrator is satisfied, after inspection of the building, structure or premises involved, that all applicable sections of this chapter are met. Within two working days after the filing of an application for a certificate of zoning compliance or a letter of zoning confirmation, the Zoning Administrator will publish the application on the City's website. Within two working days after a certificate of zoning compliance or a letter of zoning confirmation is issued, the Zoning Administrator will publish it on the City's website.

6.2.9. Variances or Special Exceptions

A. Appeals

Pursuant to Section 17.20 of the Charter and according to the rules and procedures established by the Board of Zoning Appeals, appeals may be taken to the Board by any person aggrieved or by any officer, department, board, commission or agency of the City affected by any decision of the Zoning Administrative designated to enforce and administer this chapter.

B. Appeal Period

1. All appeals must take place within 30 days after the decision appealed. An appeal must be filed with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof, provided that appeals will be taken within 10 days after the decision appealed by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof regarding appeals involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term recurring violations of applicable requirements of this chapter which will include the following:
 - a. Occupancy of recreational vehicles or parking or storing of recreational vehicles, manufactured homes or semitrailers.
 - b. Placement, erection or maintenance of temporary signs, temporary sales and display areas, play equipment, vending machines or similar uses.
 - c. Placement of portable storage units in required yards.
 - d. Parking of vehicles in front yards or street side yards or on unimproved surfaces.
 - e. Operation or maintenance of flea markets.

C. Variances and Exceptions Granted by the Board of Zoning Appeals

1. Under the conditions and circumstances set forth in Section 17.20 of the Charter and according to the rules and procedures established by the Board of Zoning Appeals, variances from and exceptions to the provisions of this chapter may be granted by the Board.
2. A permit implementing the granting of a variance or exception will not be approved until satisfactory evidence has been presented to the Zoning Administrator that any delinquent real estate taxes on the subject property have been paid.

D. Additional Exceptions Granted by the Board of Zoning Appeals

1. Pursuant to Code of Virginia, § 15.2-2309, the following exceptions to the district regulations or other restrictions set out in this chapter may be granted by the Board of Zoning Appeals, provided such exceptions will by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property, will not unreasonably impair an adequate supply of light and air to adjacent property, will not increase congestion in streets, and will not increase public danger from fire or otherwise unreasonably affect public safety, and will not diminish or impair the established property values in surrounding areas. In granting an exception, the Board may be satisfied that it is consistent with the intent

statement and the conditions as set forth in the particular exception, and the Board may attach any specific conditions and limitations as it deems necessary to satisfy the general conditions of this paragraph and the intent of the exception.

a. Construction of or Additions to Dwellings or Accessory Structures

- I. Intent statement: Many existing lots in the City are characterized by such small size, irregular configuration or other condition that current yard and/or lot coverage requirements severely inhibit their development for permitted dwelling use consistent with modern day dwelling needs. Also, a large number of dwellings in the City were constructed many years ago and do not meet contemporary needs of owners or occupants with regard to size, number, function or amenities of rooms and other living spaces. Many dwellings were constructed on relatively small lots and/or were constructed in a manner that current yard or lot coverage requirements do not enable additions to or construction of accessory structures for dwellings that are desired by owners or occupants to modernize or improve the functionality and livability of their properties. It is often desirable to permit construction of new dwellings, additions or accessory structures to encourage improvement of property, increase opportunities for home ownership, retain residents in the City and promote neighborhood improvement.
- II. Construction of or additions to single-family detached, single-family attached, two-family or multifamily dwellings or accessory structures on lots occupied by such dwellings when these dwellings, additions or accessory structures cannot meet applicable yard and/or lot coverage requirements. Such dwellings, additions or accessory structures may be permitted, provided the Board is satisfied that:
 - a). The intended purpose and use of the dwelling, addition or accessory structure is consistent with the use regulations applicable in the district in which the property is situated;
 - b). The departure from the applicable yard and/or lot coverage requirements is the minimum necessary to accommodate the intended purpose of the dwelling, addition or accessory structure, and that the dwelling, addition or accessory structure or a similar dwelling, addition or accessory structure serving the same purpose and function cannot reasonably be located elsewhere on the lot in compliance with applicable requirements; and
 - c). Any addition to an existing dwelling or construction of or addition to an accessory structure will be in keeping with the architectural character of the existing dwelling on the property, and any newly constructed dwelling or accessory structure will be in keeping with the development pattern of the neighborhood.

b. Lot Division to Create Buildable Lots

- I. Intent statement. In many older areas of the City, properties were originally subdivided into relatively small lots for purposes of single-family detached, single-family attached, two-family or multifamily development. In some cases, such these lots were subsequently combined for purposes of creating an unusually large building lot or to simplify deeds or other transactions, and were developed with a single-family, two-family or multifamily dwelling or left undeveloped. In most instances, such lots cannot be divided

in compliance with current lot area, lot width, side yard, usable open space or lot coverage requirements, although such division would result in lots that are consistent with the predominant established lot sizes and development pattern in the immediate vicinity of the property. It is often desirable to permit the division of these lots to increase opportunities for infill housing development that is compatible with the surrounding neighborhood.

- II. Division of a lot which is undeveloped or a lot which is developed with single-family detached, single-family attached, two-family or multifamily dwellings, with or without accessory structures, when such lot or such lot and dwellings are existing on the effective date of the ordinance from which this subsection is derived, into two or more lots for purposes of single-family detached, single-family attached, two-family or multifamily dwelling use, when the lots created by such division cannot meet applicable lot area, lot width, usable open space, lot coverage or side yard requirements. The division of such lot may be permitted, provided that:
 - a). The lot has previously consisted of legal lots of record that were subsequently combined by deed or other action, and the number of lots to be created does not exceed the number of previously existing lots of record. The configuration of the lots to be created by the division does not need to be the same configuration as the previously existing lots of record.
 - b). The use of all lots created by the division is consistent with the use regulations applicable in the district in which the property is situated.
 - c). All new lots comply with Section 30-610.1 regarding public street frontage and access to lots.
 - d). Except where buildings are attached, each lot created by the division must have a side yard or and street side yard, where applicable, adjacent to each side lot line of at least 10% of the width of the lot, but not less than three feet, except in the case of an existing dwelling having an existing side yard of less width.
 - e). The division must comply with the applicable requirements of Chapter 25 regarding the subdivision of land.
 - f). The Board may be satisfied that the areas and widths of the lots created by the division are consistent with the predominant lot areas and lot widths in the immediate vicinity of the property, and that dwellings to be constructed on the lots will be compatible with dwellings existing or to be constructed in the immediate vicinity of the property.

c. Accessory Lodging Units Within a Single-Family Dwelling

- I. Intent statement. Many single-family detached dwellings in the City are so large or contain so many rooms that the dwelling exceeds the needs of the owner-occupant family or results in an excessive physical or economic burden on the owner to provide adequate maintenance and upkeep. In some instances it is desirable to convert a room or group of rooms within a dwelling to one or two accessory lodging units with limited occupancy in order to enable more reasonable physical utilization or greater economic use of the dwelling and to enhance the potential for adequate maintenance and upkeep, continued owner-occupancy and avoidance of pressures for conversion to additional dwelling

units or to non-dwelling use, provided that the single-family character of the property is preserved and there are no adverse impacts on the surrounding neighborhood.

- II. Two accessory lodging units within an owner-occupied single-family detached dwelling may be located in any district, provided that:
 - a. The applicant can show to the satisfaction of the Board that the dwelling unit is of a size and arrangement that the lodging units can reasonably be accommodated, and that incorporating these lodging units within the dwelling will not create potential adverse impacts on adjoining and surrounding properties;
 - b. When one lodging unit is located within a dwelling, not more than two persons may occupy such lodging unit, and when two lodging units are located within in a dwelling, not more than one person will occupy each lodging unit. At the request of the Zoning Administrator, the premises will be made accessible to the Zoning Administrator by the owner of the property for purposes of verification of compliance with occupancy limitations;
 - c. There will be no addition or exterior modification to the dwelling to accommodate the lodging units, and there will be no signage or other evidence visible from the exterior of the dwelling to indicate that it contains lodging units.

d. Height of Fences and Walls in Side Yards, Rear Yards and Certain Front Yards

- I. Intent statement. In many neighborhoods in the City, corner properties are situated at intersections where the street along the side of the property carries volumes of traffic or generates traffic noise that is disruptive to and not conducive to dwelling use of the property or to the use and enjoyment of the rear yard area of the lot. In addition, such corner properties are sometimes in need of enhanced security measures for the property in general and the rear yard area in particular. Also, many properties are situated adjacent to alleys or constitute through lots, resulting in similar traffic or security issues, or are situated relative to adjacent properties whereby adequate security or privacy cannot be afforded under normal fence and wall height limitations. It is often desirable in such situations to permit greater height of fences and walls than normally permitted by the zoning regulations in order to provide a more effective buffer from the street, alley or adjacent property or to provide greater security and privacy for the property as means to promote dwelling use and enjoyment of the property.
- II. Fences and walls not exceeding eight feet in height when located within a required side yard, rear yard, street side yard on a corner lot, required front yard along the longer street frontage of a corner lot or a required front yard adjacent to the rear of a main building located on a through lot. For purposes of this subsection, the height of a fence or wall will be measured from the ground level at the base of the fence or wall, and will include the height of posts, columns, gates and ornamentation. Fences and walls of such height will be permitted, provided the Board will be satisfied that:
 - a). The property on which the fence or wall is to be constructed is devoted to a conforming dwelling use.

- b). The applicant has demonstrated that the proposed height of the fence or wall is reasonably necessary to provide security for the property and/or to provide a buffer from noise and activity on the adjacent street.
- c). The design and construction materials of the fence or wall will be compatible with the main building and other structures located on the lot and with the general character of development in the immediate surrounding area.
- d). The fence or wall will not unreasonably impair light and air to adjacent property, and will not impair necessary visibility for operators of motor vehicles at any intersection of the adjacent street with an alley, driveway or other street.
- e). The fence or wall will be constructed in compliance with applicable requirements of the Virginia Uniform Statewide Building Code.

e. Building Height

- I. Intent statement. In some cases, due to unusual conditions such as location, topography, other site conditions, lot orientation or the established or changing character of nearby development, the building height limit applicable in the district in which a property is located is not conducive to achieving the full development potential of the property consistent with the general intent of the district. Additional building height may also be appropriate where taller buildings are located nearby and to establish a transition from taller buildings to buildings of less height, or to enable the maximum permitted residential density or nonresidential intensity on a site while preserving open space at ground level where needed. In such cases, flexibility to enable additional building height is desirable as a means to adapt to unusual conditions, enhance the economic viability of the property and promote economic development for the benefit of the general public, so long as light and air, prominent views and the character of the surrounding area are adequately protected.
- II. The maximum permitted building height in any district except R-1 through R-8 districts, provided that:
 - a). The proposed use of the building will be consistent with the use regulations applicable in the district in which the property is located;
 - b). The applicant has demonstrated to the satisfaction of the Board that the additional height authorized by such exception will not unreasonably impair light and air to adjacent or nearby property and will not unreasonably impair prominent views of significant land, water or other features from public spaces or from adjacent or nearby property;
 - c). The Board will be satisfied that the design, construction materials and overall mass of the building will be compatible with the general character of development in the immediate surrounding area.

f. Freestanding Signs

- I. Intent statement. There are instances in the City where adequate identification of uses is not afforded by the height limitations or yard regulations, or both, applicable to permitted freestanding signs because of unusual physical characteristics of the property or the

adjacent area. In such instances, there is a need for flexibility in application of the height or yard regulations, or both, for freestanding signs to enable adequate identification for the convenience of the public and to promote the economic viability of the uses such signs are intended to identify, so long as public safety is safeguarded, visibility of other permitted signs in the area is not impaired and the character of the freestanding sign is appropriate for the property and the surrounding area.

- II. The height and yard provisions applicable to permitted freestanding signs, other than billboard signs, provided that:
 - a). The applicant has demonstrated to the satisfaction of the Board that, due to topography or configuration of the site, elevation of the site relative to the elevation of the adjacent street, curvature of the adjacent street, structural improvements or vegetation on the site or on adjoining properties, or similar physical constraints, the height and/or yard requirements applicable to a permitted freestanding sign on the site would prohibit or unreasonably impair visibility of such sign from the adjacent street;
 - b). The applicant has demonstrated to the satisfaction of the Board that the proposed height and location of the freestanding sign is the minimum departure from the regulations necessary to enable adequate identification of the use of the property, taking into consideration the nature of such use and character of the surrounding area, and is not for the purpose of affording a competitive advantage for the use of the property;
 - c). The applicant has demonstrated to the satisfaction of the Board that the proposed freestanding sign will not impair public safety, will not interfere with visibility of traffic on adjacent streets or driveways intersecting streets, and will not unreasonably impair visibility of traffic signs, directional signs or other permitted identification signs in the area;
 - d). The Board may attach such conditions and safeguards as it deems necessary to carry out the intent of this subsection, including, but not limited to, the size, location, configuration and illumination of the proposed freestanding sign and other signs on the property.

6.2.10. Administrative Variances

A. Issuance

1. Pursuant Code of Virginia, § 15.2-2286, and in accordance with the following criteria, the Zoning Administrator is authorized to grant such variances from the yard requirements of this chapter as set forth in subsection (b) of this section:
 - a. The Zoning Administrator finds in writing that:
 - I. The strict application of this chapter would produce undue hardship;
 - II. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

- III. The authorization of the variance will not be of substantial detriment to adjacent property; and
- IV. The character of the zoning district will not be changed by the granting of the variance.

- b. A variance granted by the Zoning Administrator will be the minimum necessary to relieve the hardship.
- c. Prior to the granting of a variance, the Zoning Administrator will give all adjoining property owners, as shown on the current real estate tax assessment records of the City, written notice of the request for the variance. Such owners will be given an opportunity to respond to the request within 21 days of the date of the notice. If any adjoining property owner objects to said request in writing within the time specified above, the request will be transferred to the Board of Zoning Appeals for decision in accordance with the rules of procedure of the Board.

2. The Zoning Administrator is authorized to grant a variance from:
 - a. The interior side yard and rear yard requirements set forth in this chapter for single-family and two-family detached and attached dwellings and their accessory structures;
 - b. **Section 30-810.1** to enable no more than a second story vertical expansion of an existing building devoted to a single-family detached dwelling which is nonconforming with regard to the front yard or street side yard requirement;
 - c. **Section 30-630.1(a)** with regard to the depth of the required front yard along the longer street frontage of the lot for construction of or an addition to a single-family detached dwelling located on a corner lot of record existing on April 25, 2005, and having a width of 35 feet or less, provided that no such variance will permit a front yard with a depth less than ten percent of the width of the lot, and in no case less than three feet;
 - d. **Section 30-630.1(a)** with regard to the depth of the required street side yard in the case of an addition to a single-family detached dwelling existing on April 25, 2005, provided that no such variance will permit a street side yard with a depth less than the street side yard provided for the existing building;
 - e. **Section 30-630.2(b)(2)** with regard to the depth of a required front yard on a corner lot in the case of an addition to a single-family detached dwelling existing on April 25, 2005, when such addition would have a front yard equal to or greater than the minimum required by the district regulations, provided that no such variance will permit a front yard with a depth less than the front yard provided for the existing building.

6.2.11. Special Use Permits

A. Issuance

Pursuant to Section 17.11 of the Charter and in accordance with the requirements set forth therein, the City Council may authorize the use of land, buildings and structures which do not conform to the regulations and restrictions prescribed for the district in which they are situated and may authorize the issuance of special use permits therefor to property owners and their successors, whenever the Council finds that the proposed use will not:

1. Be detrimental to the safety, health, morals and general welfare of the community involved.
2. Tend to create congestion in streets, roads, alleys and other public ways and places in the area involved.
3. Create hazards from fire, panic or other dangers.
4. Tend to overcrowding of land and cause an undue concentration of population.
5. Adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements.
6. Interfere with adequate light and air.

B. Applications

Applications for special use permits will be filed in the Office of the Department of Planning & Development Review are to be accompanied by such plans and other data as required by written policy established by the Director of the Department.

C. Notice and Public Hearing by Planning Commission

The Planning Commission will hold a public hearing on any ordinance to authorize the issuance of a special use permit. Notice of the time and place of such public hearing will be given in accordance with general law. The names and addresses of all property owners within the City to whom notices are to be sent will be prepared by the City Assessor, as shown on the current tax records of the City.

D. Notice and Public Hearing by City Council

The City Council will hold a public hearing on the ordinance to authorize the issuance of a special use permit. Notice of the time and place of such public hearing will be given in accordance with general law. The names and addresses of all property owners within the City to whom notices are to be sent will be furnished by the City Assessor and will be as shown on the then-current tax records of the City.

E. Posting of Notice on Property

In the case of each application for a special use permit or amendment to a special use permit, it will be the responsibility of the Department of Planning & Development Review to post on the property that is the subject of the special use permit, a sign or signs notifying interested parties of the application and pending public hearings.

Such sign(s) will:

1. Be posted at least 15 days prior to the scheduled Planning Commission public hearing on the application
2. Remain on the property until final disposition of the application by the City Council; and
3. Comply with any applicable standards established by the Department of Planning & Development Review and approved by resolution of the Planning Commission.

F. Violation of Conditions

1. Upon noting that a condition of a special use permit has been violated, the Zoning Administrator will issue a written notice of violation to the property owner. The notice will inform the property owner which condition has been violated, the nature of the violation, and that the Planning Commission will hold a public hearing at which it will review the violation and the special use permit, if:
 - a. The property owner has not ceased the violation within 30 days of the issuance of the notice; or
 - b. Three notices of violation are issued to the property owner within any 12-month period.
2. A notice of violation will run with the permit upon which the notice is issued if the permit is transferred. If property subject to a special use permit has been legally divided into more than one parcel prior to the issuance of a notice of violation, the notice of violation accrued by one parcel will not count against the other parcels.

G. Review Procedure on Appeal

The Zoning Administrator will issue to the property owner a notice advising that the Planning Commission will hold a public hearing at which it will review the violation and the special use permit, if:

1. The property owner has not abated a violation within 30 days of the issuance of a notice of violation under Section 30-1050.7; or
2. Three notices of violation have been issued to the property owner within any 12-month period.

This notice will also inform the property owner that City Council will make the final determination as to whether it will revoke the special use permit, allow the special use permit to remain in effect, or amend the special use permit.

H. Notice and Public Hearings

1. Notice of the time, place, and subject of all public hearings before the Planning Commission and the City Council regarding the violation of one or more special use permit conditions will be given in accordance with the Charter and applicable State law.
2. The Planning Commission will hold a public hearing at which it will review the violation and the special use permit. After the public hearing, the Planning Commission will issue to the City Council a recommendation regarding whether the City Council should revoke the special use permit, allow the special use permit to remain in effect, or amend the special use permit and suggesting appropriate conditions if recommending an amendment of the permit.

I. City Council Action

1. Upon issuance of the recommendation of the Planning Commission regarding a special use permit, the Secretary of the Planning Commission will cause appropriate ordinances to be prepared so that the City Council may act on the Planning Commission's recommendations. Following a public hearing on the review of the special use permit, the City Council may:

- a. Revoke the special use permit;
- b. Allow the special use permit to remain in effect; or
- c. Amend the special use permit.

2. No action taken pursuant to this division will in any way limit the City's right to pursue any other remedy at law or in equity against the property owner.

J. Applicability of Sections G to J

Sections G through J apply only to all special use permits adopted after the effective date of the Zoning Ordinance.

SEC. 6.3. **NONCONFORMITIES**

6.3.1. **Nonconforming Uses**

A. Continuation

Nonconforming uses as defined in **Section 30-1220** may be continued subject to the limitations set forth in this division so long as the then-existing or more restricted use continues.

B. Alterations to Buildings or Structures Devoted to Nonconforming Uses

No building or structure devoted to a nonconforming use will be enlarged, extended, reconstructed, moved or structurally altered unless such building or structure is thereafter devoted to a conforming use, provided that nothing in this division will be construed to prohibit normal repair, maintenance and nonstructural alterations to such building or structure nor the alteration, strengthening or restoration to a safe condition as may be required by law and provided, further, that the following will be permitted:

1. Hospitals and Institutional Uses

A building or structure devoted to a nonconforming hospital or a nonconforming institution of a religious, educational, eleemosynary or philanthropic nature located in any district may be structurally altered so long as the amount of floor area devoted to the use is not increased.

2. Dwellings in MX, IX and CG Districts

Any building containing a nonconforming single-family detached, single-family attached, two-family or multifamily dwelling in an MX, IX or CG district may be maintained, improved, enlarged, extended or structurally altered or may be reconstructed if damaged by fire, explosion, act of God or the public enemy, provided that in no case will the amount of floor area devoted to such dwelling at the time it became nonconforming be increased more than ten percent.

3. Uses in MX, IX and CG Districts

Any building devoted to a use which becomes nonconforming by reason of its inclusion in an MX, IX or CG district may, for purposes of accommodating such use, be maintained, improved, enlarged, extended or structurally altered or may be reconstructed if damaged by fire, explosion, act of God or the public enemy, provided that in no case will the amount of floor area devoted to such use at the time of its inclusion in the MX district be increased more than ten percent.

4. Alterations to Accommodate a Communications Facility

Any building or structure occupied by or accessory to a nonconforming use may be modified as necessary to accommodate such facilities and antennas, provided the applicable requirements of that section are met. The equipment related to the facility or antenna may be accommodated within the interior of the building by either the reduction of the space devoted to the nonconforming use, the conversion of previously unoccupied space within the building, or a combination thereof.

C. Extension or Expansion

1. Except as specifically permitted by this division, a nonconforming use may not be extended, expanded, enlarged or moved to occupy a different or greater area of land, buildings or structures than was occupied by such use at the time it became nonconforming, provided that a nonconforming use may be extended throughout any parts of a building which were specifically and lawfully designed and arranged for such use at the time it became nonconforming so long as such extension does not result in any increase in the number of dwelling or lodging units in the building. No material change in a nonconforming use or material change in the program or operating characteristics of a nonconforming use will take place that would increase the intensity of the use.
2. The area of a lot on which a nonconforming use is located may not be reduced unless authorized by the Board of Zoning Appeals.
3. Fences, walls, and building-mounted and freestanding solar energy systems will be permitted on properties devoted to nonconforming uses in the same manner and subject to the same requirements as properties devoted to conforming uses.

D. Changes

1. A nonconforming use may be changed to a use conforming to the regulations applicable in the district in which it is located or to a use, as determined by the Zoning Administrator, which meets all of the following criteria:
 - a. The use is first permitted in the same district or a more restricted district than the district in which the nonconforming use is first permitted, and such use is not a use permitted by conditional use permit in that district.
 - b. The use does not have a greater amount of vehicular trip generation than the nonconforming use, as determined by the Institute of Transportation Engineers Common Trip Generation Rates or a similar vehicular trip generation system.
 - c. The use does not have a greater number of employees or a greater amount of noise, smoke or odor than the nonconforming use.
 - d. The use does not otherwise constitute a greater deviation from the regulations pertaining to permitted principal or accessory uses applicable in the district in which it is located.
 - e. In addition to the other criteria set forth in this section, a nonconforming use which is permitted by conditional use permit in any district established by this chapter may be changed only to a use conforming to the use regulations applicable in the district in which it is located or to a dwelling use.
 - f. In addition to the other criteria set forth in this section, a nonconforming use which is listed as a permitted use only in the I district and for which an institutional master plan is required may be changed only to a use conforming to the use regulations applicable in the district in which it is located or to a dwelling use.
2. Whenever a nonconforming use is changed to a more restricted use or to a conforming use, the use will not thereafter be changed to a less restricted use, unless such use is permitted by this chapter.

3. When a change in a nonconforming use to a more restricted use as permitted by subsection (a) of this section or to a conforming use would result in imposition of a greater yard or open space requirement, such requirement will not be construed to prohibit the change in use, provided that no physical change is made to the building or lot that results in any greater departure from any applicable requirement of this chapter.
4. When a nonconforming use has been changed to an illegal use, such illegal use will cease, and any subsequent use of the property will conform to the regulations applicable in the district in which it is located or, if the nonconforming use has been discontinued for a period of less than two years, the illegal use may be changed to the last nonconforming use or to a use that is more restricted than such use.

E. Discontinuance in General

Whenever a nonconforming use of a building or structure is discontinued for a period of two years or longer, whether or not equipment or fixtures are removed, any subsequent use of the premises will conform to the regulations applicable in the district in which it is located.

F. Discontinuance of Uses of Land

A nonconforming use of land will be discontinued within two years from the effective date of the ordinance or amendment thereto causing it to become nonconforming.

G. Discontinuance of Certain Uses in Single-Family Districts

1. Business and Industrial Uses

The nonconforming use of a building in a single-family residential district for any purpose first permitted in a business or industrial district will be discontinued within 15 years from the effective date of the ordinance or amendment thereto causing it to become nonconforming, and such building will thereafter be devoted to conforming uses, provided that such nonconforming use of a building constructed less than 25 years prior to the effective date of the ordinance or amendment thereto causing it to become nonconforming will be discontinued within 40 years from the date of the construction thereof and will thereafter be devoted to conforming uses.

2. Lodging and Tourist Homes

The nonconforming use of a building in any single-family residential district for a lodging or tourist home will be discontinued within three years from the effective date of the ordinance or amendment thereto causing it to become nonconforming, and such building will thereafter be devoted to conforming uses.

H. Damage to Buildings Devoted to Nonconforming Uses

1. When a building devoted to a nonconforming use is damaged by fire, explosion, act of God or the public enemy to the extent of 60 percent or less of its replacement value, as determined by the Commissioner of Buildings utilizing the R S Means or a similar cost evaluation system for comparable construction, such building may be restored, repaired, reconstructed and used as before such damage, provided that the area devoted to the nonconforming use will not be increased, and provided further that application for a building permit for the restoration, repair or reconstruction will be submitted within two years of the date of damage.

2. When a building devoted to a nonconforming use is damaged by fire, explosion by fire, explosion, act of God or the public enemy to the extent of more than 60 percent of its replacement value, as determined by the Commissioner of Buildings utilizing the R S Means or a similar cost evaluation system for comparable construction, such building, if restored, will thereafter be devoted to conforming uses, except as otherwise permitted pursuant to the provisions of Section 17.20 of the Charter.

I. Seasonal Uses

Intermittent or temporary use of land, buildings or structures will not be construed to establish the existence of a nonconforming use for the purposes of this division, provided that a lawful seasonal use that was in operation for at least two consecutive seasons immediately prior to the adoption of the ordinance from which this chapter is derived or subsequent amendment thereto will be considered a nonconforming use for seasonal purposes only and will be subject to applicable sections of this division.

6.3.2. Nonconforming Features

A. Continuation

Nonconforming features of uses, buildings and structures may be continued subject to the limitations set forth in this division.

B. Alterations to Buildings or Structures Having Nonconforming Features

1. Any building or structure having a nonconforming feature may be maintained, enlarged, extended or structurally altered, provided that such enlargement, extension or structural alteration will not increase the degree or extent of the nonconforming feature and provided, further, that no building or structure having a nonconforming feature will be moved, reconstructed or substituted with another building or structure unless such nonconforming feature is thereby eliminated and the building or structure is made to conform with this chapter.
2. Vertical expansion of that part of a building which is nonconforming with regard to a yard or open space requirement will be considered an increase in the extent of the nonconforming feature and will not be permitted.
3. For the purpose of this section, the installation of wireless communications facilities, building-mounted solar energy systems, microwave relay facilities, or radio and television broadcast antennas, through use of alternative support structures, will not be deemed to increase the degree or extent of a nonconforming feature, provided the applicable requirements of that section are met.

C. Alterations to Communications Support Structures

1. Radio and television broadcast antenna support structures, microwave relay facility support structures and wireless communications support structures which have nonconforming features may be modified, strengthened, and/or rebuilt for the purpose of accommodating additional antennas, provided such modification, strengthening and/or rebuilding does not result in an

increase in the preexisting diameter or horizontal dimensions and the overall height is not increased by more than ten percent.

2. If the existing support structure is not of a monopole design and rebuilding is proposed, the replacement support structure will be of monopole design.

D. Damage to Buildings or Structures Having Nonconforming Features

1. When a building or structure having a nonconforming feature is damaged by fire, explosion, act of God or the public enemy to the extent of 60 percent or less of its replacement value, as determined by the Commissioner of Buildings utilizing the R S Means or a similar cost evaluation system for comparable construction, such building or structure may be restored, repaired or reconstructed as before the damage, provided that such restoration, repair or reconstruction will not increase the degree or extent of any nonconforming feature that existed before the damage, and provided further that application for a building permit for the restoration, repair or reconstruction will be submitted within two years of the date of damage.
2. When a building or structure having a nonconforming feature is damaged by fire, explosion, act of God or the public enemy to the extent of more than 60 percent of its replacement value, as determined by the Commissioner of Buildings utilizing the R S Means or a similar cost evaluation system for comparable construction, such building or structure may be reconstructed, provided that in the reconstruction thereof, the nonconforming feature will be eliminated and the building or structures will thereafter conform with the provisions of this chapter except as otherwise permitted pursuant to the provisions of Section 17.20 of the Charter.
3. When a main building is located in any district in which building height is limited by number of stories and when such main building is nonconforming with regard to number of stories or is nonconforming with regard to height of stories, and is damaged by fire, explosion, act of God or the public enemy to any extent, such building or structure may be restored, repaired or reconstructed to such number of stories or height of stories as existed before the damage, provided that such restoration, repair or reconstruction will not increase the degree or extent of any nonconforming feature that existed before the damage, and provided further that application for a building permit for the restoration, repair or reconstruction will be submitted within two years of the date of damage.

6.3.3. Violations

A. Unlawful Continuance

Nothing contained in this article should be construed to authorize or permit the continuance of any use or feature which was in violation of any chapter of this Code. Any such use or feature is considered illegal.

SEC. 6.4. **ENFORCEMENT**

6.4.1. **Violations and Penalties**

A. **Illegal Conduct and Penalties**

1. It is illegal for the owner of any land, building, structure or premises or the agent thereof having possession or control of such property or for any lessee, tenant, architect, engineer, builder, contractor or any other person to violate any section of this chapter or of any ordinance authorizing the issuance of a conditional use permit, a special use permit or community unit plan or the conditions attached thereto or to fail, refuse or neglect to perform any duty imposed by this chapter.
2. It is illegal for any such owner, agent, lessee, tenant, architect, engineer, builder, contractor or other person to take part in or to assist in any such violation, failure, refusal or neglect or to maintain any land, building or structure in connection with which such violation, failure, refusal or neglect exists. Any such violation will be a misdemeanor punishable by a fine of not more than \$1,000.00. If the violation is uncorrected at the time of the conviction, the court will order the violator to abate or remedy the violation in compliance with this chapter within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period will constitute a separate misdemeanor offense punishable by a fine of not more than \$1,000.00; any such failure during any succeeding ten-day period will constitute a separate misdemeanor offense for each ten-day period punishable by a fine of not less than \$100.00 nor more than \$1,500.00 and any such failure during any succeeding ten-day period will constitute a separate misdemeanor offense for each ten-day period punishable by a fine of not more than \$2,000.00.
3. In addition to or in lieu of any fine, any violation of this chapter will also be punishable by confinement to jail for a period not to exceed 12 months. However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family dwellings will be punishable by a fine of up to \$2,000.00.
4. Failure to abate the violation within the specified time period will be punishable by a fine of up to \$5,000.00, and any such failure during any succeeding ten-day period will constitute a separate misdemeanor offense for each ten-day period punishable by a fine of up to \$7,500.00. However, no such fine will accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with the Virginia Residential Landlord and Tenant Act, § 55.1-1200 et seq., as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings will not be punishable by a jail term. The City will also impose an administrative fee of \$100.00 on any violator to cover the costs arising out of an enforcement action.