

**ARTICLE 6**  
**DEVELOPMENT PROCESS AND ADMINISTRATION**

**Division A: Boards and Commissions**

**Section 6-100            Planning Commission.**

**6-101            Purpose.** The Planning Commission shall advise the Board of Supervisors on all matters relating to the orderly growth and development of Loudoun County.

**6-102            Establishment.** The Planning Commission heretofore established pursuant to the provisions of the Code of Virginia shall continue as the Planning Commission for the purpose of this Ordinance.

**6-103            Membership.**

(A)    The Planning Commission shall consist of not fewer than five (5) nor more than fifteen (15) members, appointed by the Board of Supervisors, all of whom shall be residents of the County, qualified by knowledge and experience to make decisions on questions of community growth and development; provided that at least one-half (½) of the members so appointed shall be freeholders.

(B)    Members shall be appointed for four (4) years and terms of appointment shall run concurrently with those of the Board of Supervisors. Members of the Commission may receive such compensation as may be authorized by the Board of Supervisors.

(C)    Any vacancy in the membership shall be filled by appointment by the Board and shall be for an unexpired term only.

(D)    Members may be removed by the Board of Supervisors for malfeasance in office.

**6-104            Meetings.**

(A)    Regular meetings of the Planning Commission shall be held at least once every two (2) months or as otherwise set by the Commission as its work may require, at a time and place to be designated by the Commission.

(B)    Special meetings of the Commission may be called by the Chairman or by two (2) members upon written request to the Secretary.

(1)    The Secretary shall cause to be mailed or delivered to all members, in writing at least five (5) days in advance of a special meeting, a written notice fixing the time and place and purpose of the meeting.

- (2) Notice of a special meeting shall not be required if the time of the special meeting has been fixed at a previous regular meeting or if all members are present at the special meeting or if they file a written waiver of the required notice.
- (C) A majority of the membership of the Commission shall constitute a quorum.
- (D) No action of the Commission shall be valid unless a quorum is present and the action is authorized by a majority vote of those present and voting.
- (E) The Planning Commission may, by resolution adopted at a regular meeting, fix the day or days to which any meeting shall be continued if the chairman, or the vice chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting shall be conducted at the continued meeting and, notwithstanding any other provision of this Ordinance, no further advertisement is required.

**6-105**      **Records.** The Planning Commission shall keep minutes of all its proceedings, showing evidence presented, the names and addresses of all persons giving testimony, findings of fact by the Commission, and the vote of each member upon each question, or if absent or failing to vote, such fact.

**6-106**      **Duties.** The Planning Commission shall have the duty and authority to do the following:

- (A) Prepare and recommend a comprehensive plan for the physical development of the County, and review said plan at least once every five (5) years.
- (B) Prepare and recommend amendments to the Zoning Ordinance.
- (C) Prepare and recommend amendments to the Land Subdivision and Development Ordinance.
- (D) Prepare and recommend amendments to the Capital Improvement Program.
- (E) Review and make recommendations on all proposals for amendments to the Zoning Ordinance including, but not limited to; map amendments, text amendments, and proposals for rezoning specific properties.
- (F) Review and make recommendations on applications for special exceptions.

- (G) Approve or disapprove applications for commission permits.
- (H) Elect officers from its own membership.
- (I) Exercise general supervision of and make regulations for the administration of its own affairs.
- (J) Adopt rules, bylaws and procedures, consistent with the ordinances of the County and the general laws of the State, for the administration of its affairs.
- (K) Supervise its fiscal affairs and responsibilities, under rules and regulations as prescribed by the Board.
- (L) Conduct public hearings on specific items.
- (M) Hear and decide all matters referred to and upon which it is required to pass by the ordinances of the County and the Code of Virginia.
- (N) Prepare, publish and distribute reports, ordinances, and other material relating to its activities.
- (O) Prepare and present to the Board of Supervisors an annual report concerning the operation of the Commission and the status of planning within the County.
- (P) Establish advisory committees when deemed advisable to perform specific functions.

## **Section 6-200**

### **Board of Zoning Appeals.**

**6-201 Purpose.** The Board of Zoning Appeals is established to perform those duties as set forth in Subtitle II, Chapter 22, Title 15.2 of the Code of Virginia.

**6-202 Authority and Establishment.** The Board of Zoning Appeals heretofore established shall continue as the Board of Zoning Appeals for the purpose of this Ordinance. Such body shall be known by the abbreviation "BZA".

### **6-203 Membership.**

(A) The BZA shall consist of five (5) residents of the County, appointed by the Circuit Court of Loudoun County, Virginia.

(B) The term of office of the membership shall be for five (5) years, with the term of one (1) member expiring each year.

(C) The Secretary of the BZA shall notify the court at least thirty (30) days in advance of the expiration of any term of office and shall also notify the court promptly of any vacancy. Appointments to fill such vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves.

(D) A member whose term expires shall continue to serve until his successor is appointed and qualifies.

(E) Members of the BZA shall hold no other public office in the County, except that one (1) member may be a member of the Planning Commission.

(F) Any BZA member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause by the court which appointed him, after a hearing held on at least fifteen (15) days notice to the member sought to be removed.

(G) Any member of the BZA shall be disqualified to act upon a matter before the BZA with respect to their own property, pursuant to Section 2.1-636.11 of the Code of Virginia.

### **6-204 Officers.**

(A) The BZA shall elect, from its own membership, a Chairman who shall serve an annual term and who may succeed himself.

(B) The Secretary to the BZA shall prepare minutes of meetings, keep all records and conduct official correspondence. A court stenographer may be employed to record such proceedings as the Board of Zoning Appeals may direct.

**Meetings and Hearings.**

- (A) Meetings or hearings of the BZA shall be held at the call of the chairman, or acting chairman, or at the request of any two (2) members, provided that notice thereof has been mailed or delivered to each member of the BZA at least seven (7) days before the time set, or that a waiver or notice is obtained from each member.
- (B) For the conduct of a hearing, the taking of any action, or the transaction of any official business, a quorum shall be necessary. No less than a majority of all members of the BZA shall constitute a quorum.
- (C) The Zoning Administrator may not vote on matters before the BZA.
- (D) The presiding chairman may administer oaths, for the benefit of the BZA, and compel the attendance of witnesses.
- (E) Every person before the rostrum shall abide by the order and direction of the chairman or acting chairman. Discourteous or disorderly or contemptuous conduct shall be regarded as a breach of the privileges extended by the BZA and shall be dealt with as the chairman deems proper.
- (F) All hearings of the BZA shall be open to the public.
- (G) A request for a rehearing of a BZA decision shall be in writing, shall be delivered to the Zoning Administrator within fifteen (15) days after the date of the relevant decision, and shall recite the reasons for the rehearing. A rehearing may then be granted by the chairman or upon the affirmative vote of any two (2) members. If granted, the rehearing shall stay the finality of the decision until a decision is rendered on rehearing.
- (H) All witnesses and speakers presenting facts and evidence before the BZA, including the Zoning Administrator when a party, shall give oath or affirmation regarding the truth of their statements.
- (I) The BZA may, by resolution adopted at a regular meeting, fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting shall be conducted at the continued meeting and, notwithstanding any other provision of this Ordinance, no further advertisement is required.

**6-206**

**Powers and Duties.** The BZA shall have the following powers and duties:

- (A) To hear and decide appeals as provided in Section 6-1700 of this Ordinance.
- (B) To authorize upon application in specific cases variances from the terms of this Ordinance as provided in Section 6-1600 of this Ordinance.
- (C) To hear and decide appeals from decisions of the Zoning Administrator regarding interpretation of the official Zoning Map where there is uncertainty as to the location of a zoning district boundary. After notice to the owners of the property affected by any such interpretation, and after a public hearing thereon, the BZA shall interpret the map in such a way as to carry out the purpose and intent of this Ordinance for the particular district in question and shall be guided by the provisions of Section 1-300 of this Ordinance. The BZA shall not have the power, however, to rezone property or to change the location of zoning district boundaries as established by this Ordinance.
- (D) To hear and approve special exceptions for errors in building location in accordance with Section 6-1612 of this Ordinance, including, but not limited to, structures erroneously erected within required yards, setbacks and open space.
- (E) To hear and decide all other matters referred to and upon which it is required to pass by this Ordinance.
- (F) To make, alter and rescind rules and forms for its procedures, consistent with the ordinances of the County and the general laws of the State.
- (G) To prescribe procedures for the conduct of public hearings that it is required to hold.
- (H) To hear and approve special exceptions for Errors in structure location within Very Steep Slope Areas, pursuant to Section 6-1613, where the total area of land-disturbing activity within the Very Steep Slope Area does not exceed 2,000 square feet, and where the encroaching structure is a structure or use listed in Section 5-101(A) and is attached to a principal residential structure, and no portion of the principal structure is located within the Very Steep Slope Area, as defined in Section 5-1508(C)(1)(a).

**6-207**

**Records.** The BZA shall keep written records and minutes of all its proceedings, showing evidence presented, findings of fact by the BZA, and the vote of each member upon each question, or if absent or failing to vote, such fact. All such records shall be filed in the office of the Zoning Administrator.

- 6-208**      **Periodic Report.** The BZA shall report to the Board of Supervisors periodically, at intervals of not greater than twelve (12) months, summarizing all appeals and applications made to it since its last previous report and summarizing its decisions on such appeals and applications. At the same time that each such report is filed with the Board, copies thereof shall also be filed with the Zoning Administrator, the Planning Commission, the County Attorney, and the Planning Director.
- 6-209**      **Limitations.** All provisions of this Ordinance relating to the BZA shall be strictly construed. The BZA, as a body of limited jurisdiction, shall act in full conformity with all provisions and definitions in this Ordinance and in strict compliance with all limitations contained therein.
- 6-210**      **Decisions Subject to Judicial Review.** All decisions and findings of the BZA shall be final decisions, and shall, in all instances, be subject to judicial review in the following manner:
- (A) Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the County, may present to the Circuit Court of Loudoun County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the BZA.
  - (B) Upon the presentation of such petition, the court shall allow a Writ of Certiorari to review the decision of the BZA and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the BZA and on due cause shown, grant a restraining order.
  - (C) The BZA shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
  - (D) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

- (E) Costs shall not be allowed against the BZA, unless it shall appear to the court that the BZA acted in bad faith or with malice in making the decision appealed from. In the event the decision of the BZA is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the Writ of Certiorari.



## **Section 6-300**

### **Historic District Review Committee.**

**6-301 Purpose.** The purpose of the Historic District Review Committee (HDRC) shall be to administer the provisions of this ordinance relating to Historic Districts and to advise the Board of Supervisors in its efforts to preserve and protect historic places and areas in the County.

**6-302 Authority and Establishment.** The Historic District Review Committee (HDRC) established heretofore pursuant to Section 15.2-2306 of the Virginia Code shall continue as the Historic District Review Committee for the purposes of this Ordinance. Such body shall also be known by the abbreviation "HDRC."

### **6-303 Membership.**

- (A) The HDRC shall be composed of a minimum of five (5) voting members who shall be residents, at least three (3) of whom shall be freeholders, of the County with a demonstrated knowledge of and interest in the preservation of historical and architectural landmarks.
- (B) Members shall be appointed by the Board of Supervisors and should include, if possible, an architect with experience dealing with historic structures, an architectural historian, an owner of property listed on either the state or national register of historic landmarks, or owners of property within an historic district established pursuant to Section 6-1800 of this Ordinance.
- (C) Members shall be appointed to serve a term of three (3) years or until their successor has been appointed. Terms shall be staggered such that two (2) members shall be appointed every year. An appointment to fill a vacancy shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves.
- (D) Members shall exempt themselves from voting on any action in which their financial interests or those of their immediate family are directly involved.

**6-304 Officers.** A chairman, secretary and any other officers of the HDRC shall be elected by majority vote of the entire membership.

### **6-305 Meetings.**

- (A) Meetings of the HDRC shall be held on a regular basis as the work of the HDRC may require and shall be held at a time and place to be designated by the Chairman.
- (B) The presence of a quorum of the members of the HDRC is required for consideration of any matter, and any action taken shall require the affirmative vote of a majority of the members present and voting.

**6-306**        **Records.** The HDRC shall keep records of all its proceedings, and such records shall be made available upon request for public inspection.

**6-307**        **Powers and Duties.** The HDRC shall have the following powers:

- (A)    To hear and decide applications for Certificates of Appropriateness, and appeals, pursuant to Section 6-1900 et seq. of this Zoning Ordinance.
- (B)    To adopt Historic District Guidelines for any Historic District in regard to the design criteria to be employed in assessing applications for Certificates of Appropriateness.
- (C)    To review and make recommendations on all applications for rezoning, special exception, variance, and any site plan or subdivision plat in any Historic District.
- (D)    To review and make recommendations on the establishment of new Historic Districts, or any addition to, or removal from, any existing Historic District.
- (E)    To assist and advise the Board of Supervisors, the Planning Commission, and other County departments and agencies in matters involving historically significant sites, buildings, and areas, such as land usage, parking facilities, and signage.
- (F)    To advise owners of historic landmarks, buildings, or structures on issues of preservation.
- (G)    To make recommendations concerning the establishment of a system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.
- (H)    To cooperate with and enlist assistance from the local historical societies, the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties, both public and private, in its efforts to preserve, restore, and conserve historic landmarks, buildings, sites, or areas of the County.
- (I)    To make annual reports to the Board of Supervisors reviewing the activities of the previous year, and upon request, to disseminate these reports to other agencies within the State and nearby states which are responsible for historical preservation activities. At the same time that each such report is filed with the Board, copies thereof shall also be filed with the Zoning Administrator, the Planning Commission, the County Attorney, and the Director of Planning.

**Division B: Administration and Enforcement of  
Ordinance and Notice of Public Hearings**

**Section 6-400**

**Administration.**

**6-401**

**Zoning Administrator.** It shall be the responsibility of the Zoning Administrator to administer, interpret and enforce the provisions of this Ordinance. The Zoning Administrator shall be guided in all of his actions pursuant to this Ordinance by the terms, purposes, intent and spirit of this Ordinance. The Zoning Administrator may be assisted in the enforcement of this Ordinance by the Health Officer, Sheriff and all other officials of Loudoun County, Virginia, pursuant to their respective fields. Specifically, his duties and powers shall include:

- (A) To receive and/or review:
  - (1) Applications for variances.
  - (2) Notices of appeal to the BZA.
  - (3) Applications for certificates of occupancy.
  - (4) Applications for zoning permits.
  - (5) All other applications, certifications, or materials required by this Ordinance to be submitted to the Zoning Administrator.
- (B) To issue zoning permits where the requirements of this Ordinance have been met.
- (C) To issue interpretations of this Ordinance upon proper application. Such interpretations shall be binding as to the applicant and as to the specific facts presented in the application for interpretation after the completion of the thirty (30) day appeal period. In administering this Ordinance and rendering determinations as to the uses permitted or allowed by special exception in the various zoning districts, the Zoning Administrator shall have the power and authority to render decisions as to whether a specific proposed use, although not listed as permitted or allowed by special exception, is so substantially similar in substance and effect to a permitted use or a use allowed by special exception, that it should be allowed as if expressly permitted or allowed by special exception. Such interpretations shall include notification of appeal procedures and timelines.
- (D) To conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this Ordinance.

- (E) To maintain accurate records of proffered conditions as required by Section 6-1209 of this Ordinance.
- (F) To enforce the provisions of this ordinance, the decisions of the BZA and conditions and proffers subject to which approvals of the BZA, Planning Commission and Board of Supervisors were made.
- (G) To perform such other duties and functions as may be required by this Ordinance and the Board of Supervisors.
- (H) To maintain the inventory of buildings and structures within an Historic Site or Historic and Cultural Conservation district as required by Section 6-1808.
- (I) To maintain and make available for public inspection and copying the official Zoning Map, the Zoning Ordinance, and the minimum submission requirements adopted by Board of Supervisors resolution.
- (J) To maintain a compilation of the interpretations and opinions of the Zoning Administrator for public review.

**6-402**

**Fees.** The County Administrator shall recommend and the Board of Supervisors shall adopt a schedule of fees to be paid upon the filing of each application specified in this Ordinance. Application fees are hereby waived for the following:

- (A) Applications for a requested amendment from any district to an Historic Overlay district.
- (B) Applications for requested amendment from any district to an AR-2 district.
- (C) Applications for amendment, special exception, or commission permit sought by the following governmental agencies:
  - (1) Loudoun County School Board.
  - (2) Loudoun County Sanitation Authority.
  - (3) Fire and rescue companies serving Loudoun County.
  - (4) Any agency, board or division acting in the name of the Board of Supervisors of Loudoun County.

**6-403**

**Submission Requirements.**

- (A) **Submission Requirements.** The Board of Supervisors shall adopt by resolution regulations enumerating those materials required to be

included with each application provided for in this Ordinance, which materials shall constitute the minimum submission requirements for such application and be consistent with the requirements of this Ordinance. Such submission requirements shall include but not be limited to:

- (1) A letter signed by the applicant and by the owner of the property granting the right of entry upon the property to the Zoning Administrator, law enforcement agents, and County inspectors for the purpose of inspecting, and bringing law enforcement to the property, during the term of any permit which may be issued.
- (2) In the case of an application for Zoning Map Amendment, Zoning Concept Plan Amendment, Zoning Ordinance Modification, Special Exception or Variance, a statement signed by the property owner and the applicant consenting to the application being “Dismissed Deemed Withdrawn” if so determined pursuant to section 6-405.
- (3) In the case of an application for Zoning Map Amendment, Zoning Concept Plan Amendment, Zoning Ordinance Modification, Special Exception or Variance, a completed Disclosure of Real Parties In Interest Form disclosing the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.

(B) **Revisions to Submission Requirements.** Revisions to the list of those materials required that are necessitated by an amendment to this Ordinance shall be attached to such amendment for concurrent consideration and adoption by resolution of the Board of Supervisors.

**6-404 Speakers at Public Hearings.** All witnesses and speakers presenting facts and evidence at any public hearing shall provide their name and address and affiliation, if any, for the record. At the discretion of the person presiding over the hearing, witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements.

**6-405 Inactive Applications.**

- (A) Any Zoning Map Amendment application, Zoning Modification application, or Concept Plan Amendment application officially accepted by the County for processing prior to September 2, 2013 but which has had processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of twelve (12) months or any Special Exception or Minor Special Exception application officially accepted by the County for processing prior to September 2, 2013 but which has had such processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of six (6) months may be placed on inactive status if approved by the Planning Commission, which approval shall establish the period of time of such inactive status not to exceed three (3) years. Unless the Planning Commission approves inactive status, such application shall be processed to final decision, or withdrawn by the applicant, in accordance with the requirements of Article 6.

An application that has been approved for such inactive status may remain inactive for no longer than the period of time approved by the Planning Commission, at the end of which period it will be returned to active status without notice and processed to a final decision in accordance with the requirements of Article 6.

An applicant may reactivate an inactive application prior to the end of said period by notifying the Director of Planning in writing of its intent to proceed with said application and granting the County an appropriate timeline extension, and paying a reactivation fee as established by the Board of Supervisors. Once returned to active status or reactivated, the application shall not be eligible to become inactive and shall be processed to final decision in accordance with the requirements of Article 6.

- (B) If an applicant for a Zoning Map Amendment application, Zoning Modification application, or Zoning Concept Plan Amendment application officially accepted by the County for processing after September 2, 2013 refuses or neglects to diligently pursue such application either by request of the applicant or by the applicant initiating no contact with County staff and engaging in no activity in regards to the application for a period of thirty-six (36) months; or if an application for a Special Exception, Minor Special Exception, Sign Development Plan application, or Variance application officially accepted by the County for processing after September 2, 2013 refuses or neglects to diligently pursue such application either by request of the applicant or by the applicant initiating no contact with County staff and engaging in no activity in regards to the application for a period of twelve (12) months, then the Board of Supervisors may, declare such application "Dismissed Deemed Withdrawn". The Board of

Supervisors shall hold a public hearing prior to declaring such an application “Dismissed Deemed Withdrawn”. Notwithstanding any other provision in this Ordinance, the only notice required for such public hearing shall be (i) newspaper notice pursuant to Section 6-601(C) and (ii) written notice sent by certified mail with return receipt requested to the address or addresses, stated on the original application of the persons listed as “applicant” and “owner” or at such address of the owner and/or applicant as provided to the Director in writing.

- (C) For the purposes of this Section 6-405, “activity” shall mean submitting to County staff any response to County staff comments or Planning Commission or Board of Supervisors requests, submitting any reports or other materials in support of the application, or submitting or posting required materials or notices for public hearings.
- (D) Notwithstanding the foregoing provisions, the Planning Commission or Board of Supervisors may at any time, take appropriate actions to have any application processed to final decision in accordance with the requirements of Article 6.

**6-406**

**Full Disclosure of Development Plans.** Prior to the execution of an offer to buy a new home, sellers of new homes, or their agents, shall provide to home buyers access to current copies of the following:

- (A) Approved or proposed subdivision record plat;
- (B) All development plans approved for the property as part of a Zoning Map Amendment, Zoning Concept Plan Amendment, Zoning Ordinance Modification, or Special Exception;
- (C) All proffered conditions accepted by the Board of Supervisors as part of the zoning approval for the development; and
- (D) The applicable Comprehensive Plan for the area of the County including a copy of the portion of the adopted Countywide Transportation Plan (CTP) map showing future road improvements planned in the vicinity of the new home.

Such documents shall be located on the site of the property encompassed by the subdivision, plat, or development in which the property for sale is located. The sellers of the new home, or their agents, shall notify the prospective home buyers of the location of these documents and provide a reasonable opportunity for such prospective buyers to inspect these documents. Prospective home buyers shall sign a statement stating that they have reviewed or have been offered the opportunity to review these documents. Said statements shall be kept on file with the builder for a period of three years.

**6-407**

**Map Interpretations and Boundary Determination.**

- (A) The environmental overlay districts and steep slope maps are intended to show the location of environmental resources in the County, including the following:
- (1) Mountainside Development Overlay District (MDOD) Map, described in Section 4-1600;
  - (2) Floodplain Overlay District; described in Section 4-1500; and
  - (3) Loudoun County Steep Slopes Map, described in Section 5-1508.
  - (4) Limestone Overlay District; described in Section 4-1900.

The Zoning Administrator, in consultation with the Department of Building and Development, is charged with making necessary cartographic interpretations of those maps at the request of the applicant or on his/her own initiative. The Zoning Administrator is authorized to interpret the exact location of the boundaries if there appears to be a conflict between mapped resource boundary, elevations, and actual physical conditions. The Zoning Administrator may require information from the applicant, including, but not limited to a topographic survey and/or engineering studies in conformance with the provisions of the Facilities Standards Manual.

In the case of the Limestone Overlay District the applicant shall be required to submit a report based upon geologic logs from borings completed to a minimum depth of 45 feet and such borings shall be sufficient in number and lateral spacing to accurately define the geologic characteristics of the area sought for exclusion from the LOD requirements. Borings shall include, at a minimum, at least three borings, with one boring required for each geologic formation, as identified on United States Geologic Survey Maps, and one boring required for each land form. All borings must be properly abandoned with either bentonite or neat cement. Geophysical testing may be used to supplement the boring data. The report shall include a map (1" = 200' minimum scale) showing the area requested for exclusion, locations of test borings and geophysical survey lines (if used), and the extent of the area, if any, where carbonate rocks or calcereous material is found to be absent. The report shall be prepared and sealed by a Virginia Certified Professional Geologist and state that, based on their professional experience of karst geology and their observations of site characteristics and field data, the area proposed for



exclusion from the LOD requirements is not underlain by carbonate rocks or calcereous material to the tested depth.

- (B) The applicant may appeal interpretations to the Board of Zoning Appeals in accordance with the provisions of Section 6-1700, “Appeals,” of the Zoning Ordinance.

**Section 6-500**

**Enforcement and Penalties.**

**6-501**

**Zoning Administrator.** The Zoning Administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this Ordinance.

**6-502**

**General Provisions.**

- (A) Any building or structure erected contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or the provisions of any approval granted by the County under this Ordinance shall be a violation of this Ordinance and the same is hereby declared to be unlawful.
- (B) Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this ordinance, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this Ordinance or the provisions of any approval granted by the County under this ordinance shall be subject to the enforcement provisions of this Section.
- (C) In addition to the remedies provided in this Section, the Zoning Administrator may initiate injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation or attempted violation of this Ordinance. At any time after the filing of an injunction or other appropriate proceeding to restrain, correct, or abate a zoning ordinance violation and where the owner of the real property is a party to such proceeding, the Zoning Administrator or governing body may record a memorandum of lis pendens pursuant to Section 8.01-268 of the Code of Virginia. Any memorandum of lis pendens admitted to record in an action to enforce the zoning ordinance shall expire after 180 days. If an enforcement proceeding is initiated against the owner of the real property and such owner subsequently transfers the ownership of the real property to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement proceeding shall continue to be enforced against the owner
- (D) Upon his becoming aware of any violation, the Zoning Administrator shall serve notice of such violation on the person committing or permitting the same, and the land owner, and if such violation has not ceased within such reasonable time as the Zoning Administrator has specified in such notice, he shall institute such action as may be necessary to terminate the violation.

- (E) If the person responsible for the alleged violation denies that a violation exists, he may appeal the decision of the Zoning Administrator pursuant to the provisions of Section 6-1700 of this Ordinance.
- (F) Whenever a violation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record such complaint, investigate, and take action thereon as provided by this Ordinance.
- (G) The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and, if such testimony establishes probable cause that a zoning ordinance violation has occurred with respect to the use or occupancy of a dwelling, may request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purposes of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant.

## **6-503**

### **Criminal Violations.**

- (A) Any violation of the provisions of this Ordinance that results in physical harm or injury to any person shall be deemed a criminal misdemeanor and, upon conviction thereof, punishable by fines as provided in Section 15.2-2286 of the Code of Virginia, as amended. Each day during which the violation is found to have existed shall constitute a separate misdemeanor offense. If the violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by fines as provided in Section 15.2-2286 of the Code of Virginia, as amended.
- (B) Owners and tenants of affordable dwelling units pursuant to Article 7 of this Ordinance who shall falsely swear or who shall execute an affidavit or certification required by Article 7 of this Ordinance knowing the statements contained therein to be false shall be guilty of a Class II misdemeanor and shall be subject to a fine up to \$1,000.00.
  - (1) Fines levied against owners pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest, as provided in the Codified Ordinance.

- (C) The designation of a particular violation of this Ordinance as a civil violation shall preclude criminal prosecution or sanctions; provided, however, that after civil penalties for violations rising from the same set of operative facts total \$5,000.00: (i), the violation may be prosecuted as a criminal misdemeanor punishable by fines as provided in Section 15.2-2286 of the Code of Virginia, as amended; (ii) each day during which the violation is found to have existed shall constitute a separate misdemeanor offense; (iii) if the violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in compliance with this Ordinance, within a time period established by the court; and (iv) failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by fines as provided in Section 15.2-2286 of the Code of Virginia, as amended.

**6-504 Civil Violations.**

- (A) Any violation of Article 1 through Article 8 of this Ordinance other than those set forth in Sections 6-503(A) and 6-503(B) shall be deemed a civil violation and, upon an admission of liability or finding of liability, shall be punishable in accordance with the following schedule of civil penalties:
  - (1) Owners of affordable dwelling units who shall fail to submit executed affidavits or certifications, as required by Article 7 of this Ordinance, shall be assessed a civil penalty in the amount of \$100.00 per day per ADU unit, until such affidavit or certificate is filed, but only after written notice to the ADU owner at the ADU address and a ten (10) day compliance period is provided. Civil penalties levied pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest, as provided in the Codified Ordinance.
  - (2) All other violations of Article 1 through Article 8 of this Ordinance, other than those set forth in Sections 6-503(A), 6-503(B), and 6-504 (A)(1), shall be subject to a civil penalty in the amount of \$200.00 for the first charge and \$500.00 for each additional charge. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten (10) day period, and in no event shall a series of specified civil violations rising from the same operative set of facts result in civil penalties which exceed a total of \$5,000.00. After such civil penalties total \$5,000.00, violations rising from the same operative set of facts may be prosecuted as a criminal

misdemeanor under Section 6-503. Nothing in this subsection shall be construed as to prohibit the Zoning Administrator from initiating civil injunction procedures in cases of repeat or continuing offenses.

- (B) After the Zoning Administrator, or their designee, has issued a notice of violation on any person committing or permitting a violation of the Zoning Ordinance provisions of Section 6-504(A) and if such violation has not ceased within such reasonable time as is specified in such notice, the Zoning Administrator or his Deputy shall issue a summons and/or ticket to be issued personally upon such person or posted in a conspicuous location at the site of the violation. If a person complies in writing to a notice of violation, and agrees to cease said violation, no further fines shall be levied after the date of such agreement, provided such agreement is complied with.
- (C) The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the County Treasurer's office at least 72 hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court, however, an admission shall not be deemed a criminal conviction for any purpose.
- (D) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

**Section 6-600**

**Notice Required For Public Hearings.**

**6-601**

**Required Notice.** Each public hearing involving planning and zoning matters before the Planning Commission, the Board of Supervisors and the Board of Zoning Appeals, requires notice as follows:

- (A) **Statutory Notice:** Notice shall conform in all respects with the applicable requirements of Chapter 22, Planning, Subdivision of Land and Zoning, of Title 15.2 Counties, Cities and Towns of the Code of Virginia, as amended.
  - (1) Changes to the zoning map classification of any parcel, or any change to the applicable Zoning Ordinance text regulations that decreases the allowed dwelling unit density of any parcel, have specific written notice requirements under Sections 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.
- (B) **Placard Notice:** Each application for a zoning map amendment, special exception, appeal or variance which is initiated at the request of a landowner shall be posted by the applicant, or, at the discretion of the Director of Planning and Zoning, by the County, using a form of placard approved by the Director of Planning and Zoning, at least twenty-one (21) calendar days prior to each public hearing. Certification of posting shall be provided to the Director of Planning and Zoning, except that such certification shall be provided to the Zoning Administrator for public hearings before the Board of Zoning Appeals.
  - (1) **Location of Placards.** Placards shall be affixed to a pole, post, fence or other structure to be clearly visible from each public road abutting the property. If no public roads abut the property, then the placard shall be posted so as to be clearly visible from at least two (2) abutting properties and at the access points to said property. Placards shall be weatherproof.
  - (2) **Maintenance and Removal of Placards.** The applicant, or, at the discretion of the Director of Planning and Zoning, the County, shall maintain all placards up to the time of the hearing and shall remove all posted placards no later than fifteen (15) calendar days after the public hearing has been closed.
  - (3) **Penalties.** It shall be unlawful for any person to destroy, deface or remove such placard notice. Any person taking such action shall be subject to the penalties set forth in Section 6-504 of this Ordinance.
- (C) **Additional Requirements**

- (1) **Landowner Initiated Cases.** In any case involving a zoning map amendment, special exception, appeal or variance which is initiated at the request of a landowner, such landowner shall be responsible for sending any written notice required by this Section.
- (2) **Notice by County.** Notwithstanding any other provisions of this section, whenever any written notice required under this Section is sent on behalf of an agency, department or division of the County, such written notice shall be sent by the Director of Planning and Zoning and may be sent by first class mail; however, the Director of Planning and Zoning shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.
- (3) **Certification.** At least five (5) days prior to the public hearing, an affidavit, prepared by the person or persons, or their representative providing notice, shall be filed with the Director of Planning and Zoning certifying that all required notice has been provided and such affidavit shall include a list of names of those to whom written notice was sent. A counterpart of such affidavit shall be presented at the beginning of the public hearing on the application for which such notice was provided.
- (4) **Failure to Receive Notice.** Failure to receive any notice of a hearing required by this Section, in and of itself, shall not invalidate any action taken at or subsequent to the hearing.
- (5) **Condominium Ownership.** In the case of a condominium or a cooperative, written notice may be mailed to the unit owner's association or proprietary lessee's association, respectively, in lieu of each individual unit owner.
- (6) **Cost of Notice.** The cost of all notice required by this Section shall be paid by the applicant.
- (7) **Deferral.** If an item is not heard at the time for which it was noticed but is deferred at that time to another date, all notice required by this Section shall be given of the deferred public hearing.
- (8) **Recessed Public Hearings.** If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the date(s) for completion of the public hearing agenda is announced at the hearing which has been recessed.

## Division C: Required Development Approvals

### Section 6-700

#### Site Plan Review.

#### 6-701

**Site Plan Required.** Site plan approval is required prior to the development of any land when the development or land falls within the following categories:

- (A) All uses in the commercial districts.
- (B) All uses in the industrial districts.
- (C) All nonresidential uses in the AR-1 and AR-2 Districts, but excluding permitted uses within the “agriculture support and services related to agriculture, horticulture, and animal husbandry” use category that do not involve access by the public as a part of such use.
- (D) All permitted uses in the residential districts, except for agricultural structures and single family attached and detached dwellings, and accessory uses and structures allowed under Section 5-101.
- (E) Those special exception uses and structures which require a site plan.
- (F) Any development in which any required off-street parking space is to be used by more than one establishment.
- (G) When an alteration or amendment is proposed to the site improvements or design of a previously approved site plan.
- (H) When an existing residential use is proposed for a change to a commercial, industrial, or multi-family residential use.
- (I) All public buildings and institutions.
- (J) All other uses involving a building required to be reviewed by the Planning Commission under Section 15.2-2232 of the Code of Virginia, as amended.
- (K) Above-ground structures associated with a public utility, utility substation, water or sewer pumping station, water or sewer treatment facility or commercial communication tower.
- (L) Temporary or permanent parking uses and parking structures.
- (M) Agricultural, horticulture, and animal husbandry permitted uses or those uses requiring a Sketch Plan as identified in Section 6-703 do not require a site plan.

#### 6-702

**Site Plan Requirements.** The requirements for submission, review and approval of all types of site plans shall be pursuant to the Land Subdivision and Development Ordinance and the Facilities Standards Manual.

#### 6-703

#### Sketch Plan.



- (A) A Sketch Plan is required as part of a zoning permit application for the following permitted uses: Animal Care Business; Bed and Breakfast Homestay and Bed and Breakfast Inn (with less than 5,000 sq. ft. of disturbance); Child Care Home; Farm Market (but not including the use Farm Market (off-site production), which shall require a site plan); Stable (Private or Livery); Temporary Fire and/or Rescue Station; and Wayside Stand.
- (B) A Sketch Plan shall include a drawing of all aspects of the business operations including the location, size and dimensions of buildings, the size and dimensions of areas within existing structures to be used for the business; size, dimensions, and location of any accessory structures, outdoor storage yards, and screening buffering; quantity and dimensions of parking spaces; location of proposed signs, if any; location of wells and septic systems; and the approximate location of any on-site floodplain as determined from the County map. The Sketch Plan shall include information necessary to illustrate conformance with the Additional Regulations for Specific Uses of Section 5-600. In addition, the Sketch Plan shall include the location and width of entrances and adjacent right-of-way, adjoining properties, and easements.
- (C) The Sketch Plan need not be drawn to scale, nor does it have to be prepared by a licensed professional. However, distances from structures to adjacent lot lines must be accurately depicted.

**Section 6-800**

**Subdivision Approval.** Subdivision approval is required in the circumstances specified in the Land Subdivision and Development Ordinance.

Section 6-900

**Additional County, State and Federal Approvals Required For Development.** Approvals obtained pursuant to this Ordinance shall not relieve any person from the requirement to obtain any other necessary approvals under Federal, State or local law.

**Section 6-1000**

**Zoning Permits.** No building permit or certificate of occupancy shall be issued, building or structure shall be erected or occupied, no use (except for agricultural uses as provided in the definition of Agriculture), or change in use or non-residential tenancy commenced, and no excavation or grading commenced relating thereto unless a zoning permit therefore has been issued by the Zoning Administrator and is still valid; except that a conditional grading permit may be obtained prior to construction plans and profiles or site plan approval in accord with the Facilities Standards Manual (FSM). In accordance with Section 4-1508(C), a zoning permit also shall be required for all development, as such term is defined in Section 4-1503, located within the FOD – Floodplain Overlay District (Major Floodplain). In addition, zoning permits shall be required prior to erection or occupation of an accessory structure or use listed below.

- (A) Residential accessory uses and structures including above ground deck; porch, gazebo; private garage, carport; private greenhouse; private swimming pool; storage shed for personal, non-commercial, use; studios and workshops without outdoor display for personal use; bus shelter/bus stand.
- (B) Commercial and industrial accessory uses and structures including emergency power generators; parking structures; recycling facilities pursuant to Section 5-607(B); storage sheds not exceeding 200 square feet; bus shelter/bus stand.

**6-1001**

**Application for Zoning Permit.** An application for a zoning permit, signed by the property owner, or authorized agent or representative upon the presentation of an Affidavit from the property owner permitting the agent or representative to sign on their behalf, shall be filed with the Zoning Administrator and shall be accompanied by as much of the following information as the Zoning Administrator deems pertinent and such additional information as the Zoning Administrator may require to determine whether the proposed use or structure will be in compliance with the provisions of this Ordinance.

- (A) Certificate from the Health Official that the proposed location complies with Chapters 1066 and 1040 of the Codified Ordinances and/or applicable state laws regarding sewage disposal and/or water supply or, where a public water and/or sewerage system approved by a health official is involved, a statement from the system permittee that all applicable regulations and requirements have been complied with.
- (B) A grading permit, if required by State law or County ordinance; to be issued by the Director of Building and Development.
- (C) The intended use.

- (D) If a dwelling, the number of families.
- (E) An approved site plan or a plot plan signed by the applicant drawn to scale showing dimensions of any structures and their location with respect to property lines and public roads.
- (F) A locational clearance for property located in the River and Stream Corridor Overlay or Mountainside Overlay Districts.
- (G) Number, size, location and lighting of signs, if any.
- (H) Number, size, and location of off-street parking lots or spaces.

**6-1002**      **Standards for Issuance.** No zoning permit shall be issued where the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable County law, ordinance or regulation. In addition, no permit shall be issued if the proposed use violates the terms of approval of a rezoning, subdivision, special exception, proffer, variance, or other approval. The issuance of such zoning permit, however, shall not afford protection to any owner who is found to be violating this or any other applicable law, ordinance or regulation.

**6-1003**      **Duration of Valid Zoning Permit.** Any zoning permit issued shall become invalid if the authorized work is not commenced within one (1) year of the date of issuance, or is suspended or abandoned for a continuous period of one (1) year. The Zoning Administrator may, upon good cause shown, extend a permit with or without charge for an additional period not exceeding one (1) year.

**6-1004**      **Zoning Permit Fees.** Fees established by the Board of Supervisors shall be paid at the time of application and are non-refundable.

**Section 6-1100**

**Commission Permit.**

**6-1101**

**Permit Required.**

- (A) No street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the Planning Commission as being substantially in accord with the adopted Comprehensive Plan.
- (B) Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless involving a change in location or extent of a street or public area.
- (C) Any public area, facility or use which requires a permit under (A) above which is identified within, but is not the entire subject of, an application for approval of subdivision or site plan or both may be deemed to be a feature already shown on the Comprehensive Plan if the County has defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to Section 6-1209. In such case, application for a commission permit is not necessary.
- (D) Application for a commission permit is not necessary in such instances where the public area, facility or use is a feature already shown on or deemed to be a feature already shown on the Comprehensive Plan.

**6-1102**

**Application.** An application for a commission permit shall be filed with the Planning Commission through the Department of Planning and shall meet the minimum submission requirements prescribed pursuant to Section 6-403.

**6-1103**

**Planning Commission Action.**

- (A) The Planning Commission shall review the application to determine if the feature for which approval is sought is substantially in accord with the adopted Comprehensive Plan.
- (B) The Planning Commission shall hold a public hearing on the matter, with notice provided in accordance with Section 6-600.

- (C) The Planning Commission shall communicate its findings to the Board, indicating its approval or disapproval with written reasons therefore.
- (D) Failure of the Planning Commission to act within sixty (60) days of acceptance of an application, except as provided in (E) below, shall be deemed approval, unless such time shall be extended by the Board of Supervisors.
- (E) On application for a telecommunications facility, failure of the Planning Commission to act on such application within ninety (90) days of such submission shall be deemed approval of the application by the Planning Commission unless the Board of Supervisors has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The Board of Supervisors may extend the time required for action by the Planning Commission by no more than sixty additional days. If the Planning Commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the Planning Commission.

**6-1104 Board of Supervisors.** Within sixty (60) days after the Planning Commission has acted or failed to act, the Board of Supervisors may overrule the action of the Planning Commission by a vote of a majority of the membership thereof.

**6-1105 Appeal.** Within ten (10) days of the decision of the Planning Commission, the owner or owners or their agents may appeal the Commission's decision to the Board of Supervisors by filing a written petition with the Planning Commission through the Department of Planning setting forth the reasons for the appeal. The appeal shall be heard by the Board of Supervisors and determined within sixty (60) days from its filing.

## Division D: Special Development Approvals

### Section 6-1200 Zoning Amendment.

**6-1201 Authority.** The Board of Supervisors may, by ordinance, amend, supplement, change or repeal the provisions of this Ordinance or the boundaries of zoning classifications established in the official Zoning Map.

**6-1202 Initiation of Amendment.** Either a zoning map or text amendment may be proposed by resolution of the Board of Supervisors or Planning Commission. In the case of a zoning map amendment, an application may be filed by a person who owns or has a legal interest in or is a duly authorized representative of the owner. In the case of an application by a person who has a legal interest in the property or is a duly authorized representative of the owner, the application must exhibit the consent of those with a legal ownership interest in the property under consideration. In the case of a zoning text amendment, a landowner may file a petition for a resolution of intent to amend the ordinance text to be acted upon by the Board of Supervisors. The Board shall either adopt such resolution, initiating the text amendment requested, or deny such petition.

**6-1203 Review of Application.** An application for a zoning map amendment shall be filed pursuant to, shall contain such material as required by, and be processed pursuant to the following:

(A) **Pre-Application Conference.** Prior to filing an application, an applicant shall meet with the Director of Planning and Zoning and appropriate staff to discuss the applicant's intentions with regard to a given application and questions regarding the procedures or substantive requirements of this Ordinance. The Director of Planning and Zoning may waive the pre-application conference requirement in cases where the Director finds that such waiver is not anticipated to affect the submission or review of the proposed application.

A request for a pre-application conference, or to waive the pre-application conference, shall be made in writing to the Director of Planning and Zoning and shall be accompanied by a sketch map(s) of the site illustrating the location of proposed uses, a description of the proposed project or use, and a list of the issues to be discussed at the conference or justification for the waiver. No matters discussed at said meeting shall be binding on either the applicant or the County. The Director of Planning and Zoning shall respond to each written request for a pre-application conference or waiver within (5) business days.

(B) **Acceptance of Complete Application (Checklist review).** Only a complete application shall be accepted for review pursuant to Section 6-1203(B)(1). A complete application is one which the Director of Planning and Zoning has determined includes all minimum submission



materials, studies and documents as may be established pursuant to Section 6-403, except that an application may be deemed complete if it contains documentation from the Department of Planning and Zoning that a waiver of the submittal requirement has been granted with respect to any required item that has not been submitted. The County shall maintain a current log of all pending applications.

- (1) Within fifteen (15) calendar days of receipt of an application, the Director of Planning and Zoning shall complete checklist review and either:
  - (a) Accept the application, if it is complete, and send notice to the applicant of acceptance; or
  - (b) Notify the applicant that the application is incomplete, specifying the submission materials, studies, corrections or documents required in order for the application to be complete. The applicant may resubmit the same application, which shall include all documents with the deficiencies corrected, in which event the application will be reviewed in the same schedule as the original submittal.
- (2) If neither a notice of acceptance nor incompleteness is sent within fifteen (15) calendar days, the application shall be deemed accepted for the purposes of beginning the time limits of this Ordinance.

**6-1204 Staff Review of Application.**

- (A) **Referrals.** Upon acceptance of the application for zoning amendment, the Director of Planning and Zoning shall forward a copy of the application to any town and any county or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application. The agency reviews and referral reports shall be completed in accord with the schedules in 6-1204(C), Table 1.
  - (1) **Initial Referral Responsibilities.** Each county reviewing agency shall prepare and each town and State agency will be requested to prepare, a referral report which sets out in writing its comments regarding the application and shall forward such referral report to the Director of Planning and Zoning.
  - (2) **First Referral Report to Applicant.** Referral comments from county agencies received by the Director of Planning and Zoning shall be forwarded to the applicant.

- (3) **Applicant Requested Meeting.** Staff may, if requested by the applicant, meet to discuss the First Referral Report. The running of the decision deadline time period for the application will be suspended from the date of the applicant's request for the meeting until the date of the meeting,
- (4) **Second Referral Responsibilities.** A second round of referral reports may be requested from the reviewing agencies based upon the applicant's response to the first referral report. The second referral reports shall be completed and a report from such reviewing agencies forwarded to the Director of Planning and Zoning.
- (5) **Second Report to Applicant.** The Director of Planning and Zoning shall forward the referral reports to the applicant. Following the transmittal of the second referral reports, a meeting will be scheduled with the applicant, if requested by the applicant.
- (6) **Decision Deadline.** The running of the decision deadline time period for the application will be suspended from date of the applicant's request for the meeting referenced in 6-1204(A)(5) above, until the date of receipt by the Director of Planning and Zoning of either the applicant's response to all of the issues identified in the second referral report and the meeting, or a written request from the applicant to proceed to public hearing without further response.

(B) **Applicant Response.**

- (1) The applicant shall respond in writing to all of the issues identified in the referral reports. Such response shall be subject to the provisions of Section 6-1205.
- (2) The applicant's written responses to referral reports shall be completed in accord with the schedules in 6-1204(C), Table 1. Failure on the part of the applicant to respond within the timeframe specified in Table 1, Review Schedule, shall result in the suspension of the running of all time deadlines for any action on such application until the date of receipt of the applicant's response to all of the issues identified in the referral reports or the applicant's request to proceed to public hearing without further response.
- (3) Should the applicant's response to issues in the referral reports result in any additional application(s) (for example, a new special exception or modification), a materially revised traffic statement or an increase in the ultimate proposed build out of land uses, the

application shall be sent to agencies for review in accordance with the provisions of Sections 6-1204(A) through (C).

- (C) **Rezoning Review Schedule.** The staff reviews outlined in Sections 6-1204(A) and (B) shall be completed in accord with the schedule in Table 1, Rezoning Review Schedule.

<b>Table 1. Rezoning Review Schedule</b>	
<b>Action</b>	<b>Schedule</b>
<b>Initial referral review</b>	Application acceptance plus 45 calendar days
<b>Referral reports to applicant</b>	Referral due date plus 10 calendar days
<b>Applicant Response to initial referral reports</b>	Referral reports transmittal date plus 30 calendar days (see Note 1)
<b>Second referral review (if needed)</b>	Date of receipt of applicant response plus 30 calendar days
<b>Second referral reports to applicant</b>	Second referral due date plus 10 calendar days
<b>Applicant response to second referral reports</b>	All time deadlines for any action on the application is suspended until receipt of the applicant's response
<b>Staff-applicant issues meeting (if requested)</b>	Second referral due date plus 20 calendar days

**Note 1:** Should the applicant choose not to respond within the timeframe specified for applicant responses in **Table 1, Rezoning Review Schedule**, the running of all time deadlines for any action on such application shall be suspended until the date of receipt of the applicant's response to all of the issues identified in the referral reports or the applicant's request to proceed to public hearing without further response.

- (D) **Public Hearing Scheduled.** Upon receipt of the applicant's final response to all of the issues identified in the referral report(s), or the applicant's request to proceed to public hearing, the Director of Planning and Zoning shall proceed to prepare the report as specified in Section 6-1204(F), and shall schedule the application for a duly noticed public hearing with the Planning Commission.
- (E) **Required Action By Other Board.** In the event this Ordinance requires that an application not be granted until acted upon by some

government board or agency other than the Planning Commission or Board of Supervisors, then the Director of Planning and Zoning shall forward the application for amendment to such board or agency for appropriate action prior to the notification to an applicant that an application is ready to be presented to the Board of Supervisors or Planning Commission. If they deem it appropriate, the Planning Commission may recommend, and the Board of Supervisors may approve, an application contingent on required action by the other board.

- (F) **Report and Notice to Applicant.** The Director of Planning and Zoning shall compile the referral reports and applicant responses and any other necessary information, prepare a written staff report with proposed findings and a recommendation, and notify the applicant that the report is complete and the application is ready to be presented to the Board of Supervisors or Planning Commission, as appropriate, for hearing.

#### **6-1205 Amendment to Application.**

- (A) **Changes to Application Prior to Public Hearing.** If an applicant submits additional, unsolicited information or proposes changes to an application after it has been accepted, such as, without limitation, a significant change to the traffic analysis, additional environmental studies including but not limited to lighting and noise studies, the addition of new uses or roads, or the addition of a new application, the Director of Planning and Zoning shall review such additional information or proposed changes within five (5) business days of receipt and determine whether such additional information or proposed change is a substantial change to the application. If such information or proposed change is determined to be substantial, the application will be considered to be an amended application and the applicant will be deemed by the submission of such additional information or proposed change to have requested and consented to an extension of the decision deadline required by law. If the application is determined to be an amended application, then within five (5) business days following such determination, the Director of Planning and Zoning will send a written notice to the applicant that the additional information or proposed changes will result in an automatic extension of the application decision deadline prescribed by law and such notice shall specify the date of such decision deadline. The applicant will then have five (5) business days to provide the Director with a written request to withdraw the additional information or proposed changes which necessitated the extension. If the applicant chooses to withdraw the additional information or proposed change, then the application will proceed based on its original timeline.

(B) **Changes to application After Public Hearing.** Any unsolicited, new information submitted by the applicant after the Planning Commission has completed its review or after the Board of Supervisors public hearing shall be subject to the provision of Section 6-1205(A) above. In addition, the Board may refer an application back to the Planning Commission and direct that such unsolicited information or any other previously un-submitted information be reviewed by the Commission. Any unsolicited information submitted by the applicant after the Planning Commission review is complete or after the Board of Supervisors public hearing shall result in a fifteen (15) calendar day automatic extension of the application decision deadline, unless such extension is reduced by the Director of Planning and Zoning.

**6-1206** **Withdrawal of Application.** An application may be withdrawn upon written request by the applicant any time prior to the beginning of the Board of Supervisors public hearing on the application; provided, that if the request for withdrawal is made after such deadline, such withdrawal shall be permitted only with the consent of the Board of Supervisors. No new application concerning any or all of the same property which is substantially the same as the one withdrawn shall be filed within twelve (12) months of the date of withdrawal, unless the Board of Supervisors specifies at the time it consents to withdrawal that said time limitation shall not apply.

**6-1207** **Limitation on Application After Denial.** After the official denial of an application, no new application concerning any or all of the same property, which is substantially the same as the one denied shall be filed within twelve (12) months of the date of denial.

**6-1208** **Conditional Zoning.** As part of an amendment to the zoning map by legislative action, the County may adopt reasonable conditions governing the use of such property, as provided by the Virginia Code Section 15.2-2303, when proffered by the landowner in conformance with Section 6-1209, such conditions being in addition to, or modification of, the regulations provided for a particular zoning district by this Ordinance. However, for applications for rezoning or amendment to a zoning map subject to the provisions of Virginia Code Section 15.2-2303.4, the County shall accept only such reasonable conditions as are defined by and in accordance with Virginia Code Section 15.2-2297 that may not be deemed unreasonable as defined in Section 15.2-2303.4.

**6-1209** **Proffered Conditions.** Proffered conditions in accordance with Section 6-1208 may include written statements, development plans, profiles, elevations, or other demonstrative materials and shall be subject to the procedures set out in, or established by resolution pursuant to Section 6-1203 and the following:

(A) **Contents and Timing of Proffers.** Proffered conditions shall be signed by all persons having an ownership interest in the property and

shall be notarized and submitted to the Director of Planning and Zoning prior to a public hearing before the Board of Supervisors. The Board of Supervisors may also accept amended proffers after the public hearing has begun if the amended proffers impose a more restrictive standard and do not materially affect the overall proposal. Proffered conditions shall contain a statement that the owners voluntarily enter into the conditions contained therein.

- (B) **Filing and Notice Of Accepted Proffers.** If the amendment to the Zoning Map is adopted subject to proffered conditions, then the property in question shall be appropriately annotated on the Zoning Map and the proffers shall be placed in the Zoning Administrator's official proffer file.
- (C) **Proffers Govern Development.** Proffered conditions shall become a part of the zoning regulations applicable to the property unless subsequently changed by an amendment to the Zoning Map, which amendment is not part of a comprehensive implementation of a new or substantially revised zoning ordinance, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.
- (D) **Substantial Conformance Required.** Upon approval of a rezoning with proffers, any site plan, subdivision plat, development plan or other application for development thereafter submitted shall be in substantial conformance with all proffered conditions. No development shall be approved by any County official in the absence of said substantial conformance.
- (E) **Substantial Conformance Defined.** For the purpose of this Section, substantial conformance shall be determined by the Zoning Administrator and shall mean that conformance which leaves a reasonable margin for adjustment due to final design or engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials proffered by the applicant.
- (F) **Enforcement of Proffers.** The Zoning Administrator shall be vested with all necessary authority on behalf of the Board of Supervisors to administer and enforce proffered conditions. Such authority shall include the ability to order, in writing, the remedy of any noncompliance with a proffered condition and the ability to bring legal action to ensure compliance including injunction, abatement, or other appropriate action or proceedings, as provided for in Section 6-500 of this Ordinance. Any person, group, company, or organization aggrieved by an interpretation of the Zoning Administrator may appeal

such interpretation in accordance with Section 6-1209(I) of this Ordinance.

- (G) **Guarantee for Construction of Improvements.** A guarantee, satisfactory to the Board, may be required by the Zoning Administrator in an amount sufficient for and conditioned upon the construction, installation, provision or performance of any public improvements, site improvements, facilities or obligations required by the proffered conditions. This guarantee may be reduced or released by the Board or agent thereof, upon satisfactory evidence that the construction, installation, provision or performance of such improvements, facilities or obligations has been completed in whole or in part. Said guarantee shall be required prior to the approval of the applicable site plan or subdivision.
- (H) **No Permits Shall Be Approved Not In Compliance With Proffers.** Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the approval of any site plan or subdivision, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the Zoning Administrator. In addition to the other penalties appropriate for violations of this Ordinance, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have been or will be complied with as agreed upon at the time of rezoning. The burden shall be on the applicant to verify that proposed development complies with any and all proffered conditions.
- (I) **Appeal of Proffer Decision.** Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Board of Supervisors. Such appeal shall be filed within thirty (30) calendar days from the date of the decision appealed by filing a notice of appeal with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the basis for the appeal and shall include the materials specified in Section 6-1209(J). Upon receipt of the appeal notice, the Board of Supervisors shall take such testimony as it deems appropriate and shall render its decision within ninety (90) calendar days after receipt of the appeal notice and following a public hearing. The Board of Supervisors may reverse or affirm wholly or partly or may modify the decision of the Zoning Administrator.
- (J) **Proffer Appeal Submission Materials.** Any appeal presented in accordance with the provisions of Section 6-1209(I) of this Ordinance

shall include the following materials within the thirty (30) calendar day filing time frame. The ninety (90) day timeline set forth in Section 6-1209(I) above shall not commence until all of the following are received by the Zoning Administrator and the Chairman of the Board of Supervisors:

- (1) Two copies of an application form, signed by the appellant or appellant's representative, accompanied by the following information:
  - (a) A copy of the decision or proffer determination which is the subject of the appeal.
  - (b) The date upon which the decision or determination being appealed was made.
  - (c) The grounds for the appeal.
  - (d) Specification as to how the appellant is an aggrieved person (for example, owner of property affected by the determination or adjacent owner affected by the determination, etc).
  - (e) Any additional supportive data such as plats, plans, drawings, charts or other related material desired to be included in the record.
- (2) An application fee in the amount set forth by resolution of the Board of Supervisors.

**(K) Proffer Amendment.**

- (1) Once accepted and incorporated into an approved amendment to the zoning map, there shall be no amendment or variation of any such proffered conditions, except as permitted under Section 6-1216(A), until after public hearings in accordance with the same process and procedures that applied to the review and approval of the original amendments to the zoning map. However, the Director of Planning and Zoning may modify the applicable schedule for agency comments (referrals) based on the complexity, scope or nature of the requested proffer amendment.
- (2) Notwithstanding subsection (K)(1), above, when an amendment to such proffered conditions is requested, the Board of Supervisors may waive the requirements for public hearing before the Planning Commission and Board provided that the requested amendment to the proffered conditions does not



affect conditions of use or density. In such cases, upon granting such waiver request, the requested amendment shall be referred to the Planning Commission for review. Staff and Planning Commission recommendations shall be provided to the Board of Supervisors within such period of time as specified by the Board of Supervisors at the time it grants the waiver. In granting the waiver, the Board shall require that written notice of such application be provided in the manner and to the persons as set forth in Virginia Code Sections 15.2-2204 and 15.2-2302 and Section 6-600 of this Ordinance; may establish a schedule for staff and Planning Commission review; and may approve a reduced fee reflecting the modified schedule.

**6-1210 Report by Planning Commission.**

- (A) **Hearing Before Planning Commission.** Unless waived as provided in Section 6-1209(K), the Planning Commission shall hold a duly noticed public hearing regarding an application for a zoning amendment and thereafter report its recommendations to the Board of Supervisors.
- (B) **Planning Commission Recommendation.** The Planning Commission need not confine its recommendation to the proposed amendment as set forth in the application. If the proposed amendment consists of a change in the text of this ordinance, it may recommend a revision to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it recommends be rezoned; or it may recommend that the land be rezoned to a different zoning district classification than that requested if, in either case, the Commission is of the opinion that such revision is in accordance with sound zoning practice and the adopted Comprehensive Plan, and is in furtherance of the purposes of this ordinance. Before recommending a larger extent of land or a rezoning to a more intensive classification than was set forth in the application, the Commission shall hold an additional duly noticed public hearing on the matter.
- (C) **Planning Commission Report.** In recommending the adoption of any proposed amendment to this Ordinance, the Planning Commission may state its reason for such recommendation, describing any changes in conditions, if any, that it believes make the proposed amendment advisable and specifically setting forth the manner in which, in its opinion, the proposed amendment would be in harmony with the adopted comprehensive plan and would be in furtherance of the purpose of this Ordinance.

(D) **Text Amendments.** If the request is for an amendment of the text of this Ordinance, the Planning Commission shall consider the following matters:

- (1) Whether the proposed text amendment is consistent with the Comprehensive Plan.
- (2) Whether the proposed text amendment is consistent with the intent and purpose of this Ordinance.

(E) **Zoning Map Amendments.** If the application is for a reclassification of property to a different zoning district classification on the Zoning Map, the applicant shall address all the following in its statement of justification or plat unless not applicable and the Planning Commission shall give reasonable consideration to the following matters:

- (1) Appropriateness of the proposed uses based on the Comprehensive Plan, trends in growth and development, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies and the encouragement of the most appropriate use of land throughout the locality.
- (2) The existing character and use of the subject property and suitability for various uses, compatibility with uses permitted and existing on other property in the immediate vicinity, and conservation of land values.
- (3) Adequacy of sewer and water, transportation, and other infrastructure to serve the uses that would be permitted on the property if it were reclassified to a different zoning district.
- (4) The requirements for airports, housing, schools, parks, playgrounds, recreational areas and other public services.
- (5) Potential impacts on the environment or natural features including but not limited to wildlife habitat, wetlands, vegetation, water quality (including groundwater), topographic features, air quality, scenic, archaeological, and historic features, and agricultural and forestal lands.
  - (a) For applications for rezoning or amendment to a zoning map subject to the provisions of Virginia Code Section 15.2-2303.4, any proposed on-site mitigation of those potential impacts.
  - (b) For applications for rezoning or amendment to a zoning map not subject to the provisions of Virginia Code

Section 15.2-2303.4, any proposed mitigation of those potential impacts.

(6) The protection of life and property from impounding structure failures.

(F) **Planning Commission Deadline.** Failure of the Planning Commission to report to the Board within one hundred (100) calendar days after the first meeting of the Commission following the date the proposed amendment has been referred to the Commission or such shorter period as the Board may direct shall be deemed a recommendation of approval by the Commission.

**6-1211 Hearing Before Board of Supervisors.** Except as provided in 6-1209(K), the Board of Supervisors shall hold a duly noticed public hearing regarding an application for a zoning amendment as soon as practicable following the Planning Commission's report of its recommendations.

**6-1212 Action by Board of Supervisors.** The Board of Supervisors need not confine its action to the proposed amendment as set forth in the application. If the proposed amendment consists of a change in the text of this ordinance, it may act on a revision to the application. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it rezones or it may rezone the land to a different zoning district classification than that requested if, in either case, it is of the opinion that such revision is in accordance with sound zoning practice and the adopted Comprehensive Plan and is in furtherance of the purposes of this Ordinance. Before rezoning a larger extent of land or rezoning the land to a more intensive use classification than was set forth in the public notice, the Board shall hold a further duly noticed public hearing on the matter.

**6-1213 Evidentiary Matters Before Board of Supervisors.** All information, testimony or other evidence presented by an applicant for zoning amendment shall be presented to the Planning Commission in conjunction with its review and hearing on the application. If the Board of Supervisors determines that an applicant is presenting evidence, including without limitation written statements, development plans, profiles, exhibits, studies, elevations, or other demonstrative materials, which is substantially or materially different from that presented to the Commission, the Board may refer the application back to the Commission for such additional consideration and action as the Board may deem appropriate.

**6-1214 Concept Development Plan.** An application for a zoning amendment shall include a Concept Development Plan and such additional information as the applicant may deem necessary to provide a detailed understanding of the proposed development. The Concept Development Plan shall be sufficiently detailed to be evaluated with respect to the criteria of 6-1210.

6-1215

**Contents of a Concept Development Plan.** The approved Concept Development Plan shall contain the following information, which shall apply to the project as a whole and to land bays within the project:

- (A) **Nonresidential Uses.** (a) the floor area ratio or ratios; (b) the maximum gross floor area for the project as a whole and for land bays within the project for each use type (retail, office, industrial, institutional); (c) a notation or depiction of the setbacks, height, and bulk restrictions for the project as a whole and for land bays within the project; (d) any applicable performance standards that are imposed and restrictions regarding the location and nature of nonresidential activities.
- (B) **Residential Uses.** (a) The maximum number of each dwelling unit type for the project, (b) a notation or depiction of applicable lot and building restrictions for the project as a whole and for land bays within the project; (c) maximum residential densities for the project and individual land bays within the project; and (d) any applicable performance standards that are imposed and restrictions regarding the location and nature of residential activities.
- (C) **Civic Uses.** (a) The floor area ratio or ratios; (b) the maximum gross floor area for the project as a whole and for land bays within the project and the location of civic facilities provided, if not otherwise provided in the proffers; provided, however, that for applications for rezoning or amendment to a zoning map subject to the provisions of Virginia Code Section 15.2-2303.4, neither civic uses nor any of the foregoing information in this subsection (C) shall be shown to the extent that the provision of such uses may be deemed unreasonable as defined in Section 15.2-2303.4.
- (D) **Public Uses.** (a) The floor area ratio or ratios; (b) the maximum gross area for the project as a whole and for land bays within the project; and (c) the location of public land and facilities provided, if not otherwise provided in the proffers; provided, however, that for applications for rezoning or amendment to a zoning map subject to the provisions of Virginia Code Section 15.2-2303.4, neither public uses nor any of the foregoing information in this subsection (D) shall be shown to the extent that the provision of such uses may be deemed unreasonable as defined in Section 15.2-2303.4.
- (E) **Transportation/Access.** The approved location and general design of transportation improvements and ingress and egress to the project, along with such access restrictions imposed to promote and ensure the integrity and function of the County's thoroughfare system, the safe and efficient circulation of vehicles and pedestrians within the district and consistency

with the Countywide Transportation Plan; provided, however, that for applications for rezoning or amendment to a zoning map subject to the provisions of Virginia Code Section 15.2-2303.4, neither transportation improvements nor any of the foregoing information in this subsection (E) shall be shown to the extent that the provision of such uses may be deemed unreasonable as defined in Section 15.2-2303.4.

- (F) **Open Space Areas.** The location and nature of environmentally or historically sensitive areas, active and/or passive recreation areas, perimeter landscape buffers and screening intended to mitigate impacts on adjacent properties and other areas that are to remain as open space; provided, however, that for applications for rezoning or amendment to a zoning map subject to the provisions of Virginia Code Section 15.2-2303.4, the provision of active and/or passive recreation areas and/or perimeter landscape buffers and/or screening shall not be shown to the extent that the provision of such areas, buffers and/or screening may be deemed unreasonable as defined in Section 15.2-2303.4.
- (G) **Modifications.** The location, text and a clear description of any approved modifications to any provisions of this Ordinance, the Land Subdivision and Development Ordinance, or any other applicable County ordinance, which would otherwise be applicable to the development.

#### **6-1216 Changes to Concept Development Plan After Approval.**

- (A) **Administrative Change.** Any of the following modification(s) to an approved Concept Development Plan shall be considered an administrative change and may be permitted if approved by the Zoning Administrator:
  - (1) Decreases by five percent (5%) or less the area approved for public and private open space.
  - (2) Relocates or modifies approved circulation elements as a result of more detailed engineering or changes requested by county staff or VDOT.
  - (3) Alters the orientation or relocates approved uses within the same land bay unless such modification would decrease the ability of such elements to function efficiently, adversely affect their relation to surrounding lands and uses, or is otherwise prohibited or limited elsewhere in the proffers.
- (B) **Minor Zoning Concept Plan Amendment Change.** The following change(s) to an approved Concept Development Plan may be made by Zoning Concept Plan Amendment, in accordance with the procedures for zoning amendments set forth in this Article VI Section 6-1200,

except that such application shall be processed pursuant to the special exception review schedule outlined in 6-1300:

- (1) Changes by five percent (5%) or less the total number of units or the floor area to be devoted to any specified residential or nonresidential use.
  - (2) Changes the arrangement of approved land uses, structures, or relocates approved uses between land bays, unless such modification would decrease the ability of such elements to function efficiently or adversely affect their relation to surrounding lands and uses, or unless such change is otherwise prohibited or limited elsewhere in the proffers.
  - (3) Changes the arrangement of land bays.
  - (4) Modifies the regulations applicable to the Concept Development Plan in accordance with Section 6-1217.
- (C) **Zoning Concept Plan Amendment Change.** Other than those changes authorized by Section 6-1216(A) or (B) any other changes to an approved Concept Development Plan shall be reviewed pursuant to the procedures established by this Section for its original approval unless waived pursuant to 6-1209(K)(2). The minimum submission requirements for such change(s) to an approved Concept Development Plan shall be the same for either a new or an amended plan. Such proposed change(s) may be shown only for those areas affected, and need not show the entire Concept Development Plan.

**6-1217 Modifications.**

- (A) The regulations of the Planned Development district sought shall apply after rezoning is approved unless the Board of Supervisors approves a modification to the zoning, subdivision or other requirements that would otherwise apply.
- (1) No such modifications shall be approved which affect uses, density, or floor area ratio of the district.
  - (2) No such modification shall be approved unless the Board of Supervisors finds that such modification to the regulations will achieve an innovative design, improve upon the existing regulations, or otherwise exceed the public purpose of the existing regulation.
  - (3) No such modification shall be approved for the primary purpose of achieving the maximum density on a site.

- (4) An application for such modification shall include materials demonstrating how the modification will be used in the design of the project.
- (B) The regulations for a Suburban Zoning District (Article 3) sought shall apply unless the Board of Supervisors, as part of a rezoning application, approves a modification to the zoning, subdivision, or other requirements that would otherwise apply.
- (1) No such modifications shall be approved, which affect uses, density, or floor area ratio of the district.
  - (2) No modifications to the Affordable Dwelling Unit Developments regulations of Article 7 shall be permitted except in accord with Section 7-108.
  - (3) Such modifications shall be set forth on a Concept Development Plan as set forth in Section 6-1215.
  - (4) No such modification shall be approved unless the Board of Supervisors finds that such modification to the regulations will achieve an innovative design, improve upon the existing regulations, or otherwise exceed the public purpose of the existing regulation.
  - (5) No such modification shall be approved for the primary purpose of achieving the maximum density on a site.
  - (6) No such modification shall be approved unless the Board of Supervisors finds that it is applicable to an entire development or to a defined portion of a development that is proposed to contain multiple lots.
  - (7) An application for such modification shall include materials demonstrating how the modification will be used in the design of the project.
- (C) In approving any such modifications under subsections (A) or (B) of this Section 6-1217, the Board of Supervisors may impose such conditions, safeguards and restrictions upon the premises benefited by such modification as may be necessary to avoid or minimize any potentially adverse or injurious effect of such modification upon other property in the neighborhood and to carry out the general purpose and intent of this Ordinance.
- (D) Modifications to an approved Concept Development Plan may be approved as set forth in Section 6-1216.

## Section 6-1300

### Special Exception.

- 6-1301 Purpose.** The special exception procedure is designed to provide the Board of Supervisors with an opportunity for discretionary review of requests to establish or construct uses or structures which have the potential for a deleterious impact upon the health, safety, and welfare of the public; and, in the event such uses or structures are approved, the authority to impose conditions that are designed to avoid, minimize or mitigate potentially adverse effects upon the community or other properties in the vicinity of the proposed use or structure. Any special exception or minor special exception approval granted by the Board of Supervisors shall be implemented in strict accordance with the conditions of approval of the special exception.
- 6-1302 Authorized Special Exception Uses.** Only those special exceptions or minor special exceptions that are expressly authorized as such in a particular zoning district, or elsewhere in this Ordinance may be approved. Further, no existing use shall hereafter be changed to another use that is designated as a special exception use in such district, and no approved special exception use shall be enlarged or expanded unless approval of a new special exception has been granted by the Board of Supervisors.
- 6-1303 Authorized Temporary Special Events.** An applicant for a special exception use or minor special exception use may include in the application a request for authorization of temporary special events that the applicant expects to regularly occur during the life of the special exception use. The applicant shall be specific about the expected types of special events, the expected number of events per calendar year, the expected duration of such special events, and the expected number of attendees per event. In addition, the applicant shall include all pertinent information necessary to show compliance with the standards and criteria set forth in Section 5-500(C) (Temporary Special Events) of this Ordinance. Review of the requested temporary special events shall occur concurrently with the review of the special exception or minor special exception use according to the procedures set forth in this Section 6-1300. All requested temporary special events that are submitted as part of a special exception or minor special exception use application shall be reviewed for compliance with the standards and criteria set forth in both this Section 6-1300 and Section 5-500(C). Temporary special events approved as part of a special exception use or minor special exception application are exempt from the procedural requirements for a temporary zoning permit stated in Section 5-500(C), but shall be subject to all other applicable standards in Section 5-500(C) including without limitation the minimum standards and criteria in Section 5-500(C)(6), limits on the duration of special events, and the maximum number of special events allowed in one calendar year.
- 6-1304 Review of Application.** The Board of Supervisors may permit a special exception or minor special exception as part of a zoning map amendment or by special exception procedures at any time after a zoning map amendment.



An application for a special exception shall be filed; contain such material as may be required; and be processed pursuant to the following:

- (A) **Pre-Application Conference.** Prior to filing an application, an applicant shall meet with the Director of Planning and discuss the applicant's intentions with regard to a given application and questions regarding the procedures or substantive requirements of this Ordinance. The Director of Planning may waive the pre-application conference requirement in cases where the Director finds that such waiver is not anticipated to affect the submission or review of the proposed application.
- (B) **Request to Waive Pre-Application Conference.** A request for a pre-application conference, or to waive the pre-application conference, shall be made in writing to the Director of Planning and shall be accompanied by a sketch map(s) of the site illustrating the location of proposed uses, a description of the proposed project or use, and a list of the issues to be discussed at the conference, or justification for the waiver. No matters discussed at said meeting shall be binding on either the applicant or the County. The Director of Planning shall respond to each written request for a pre-application conference or to waive the pre-application conference within five (5) business days.
- (C) **Acceptance of Complete Application (Checklist Review).** Only a complete application shall be accepted for review. A complete application is one which the Director of Planning has determined includes all minimum submission materials, studies and documents as may be established pursuant to Section 6-403 except that an application may be deemed complete if it contains documentation from the Director of Planning that a waiver of the submittal requirements has been granted with respect to any required item that has not been submitted. The County shall maintain a current log of all pending applications.
- (D) **Notice to Applicant.** Within fifteen (15) calendar days of receipt of an application for a minor special exception or special exception, the Director of Planning shall complete checklist review and either:
  - (1) Accept the application if it is complete and send notice to the applicant of acceptance; or,
  - (2) Notify the applicant that the application is incomplete or deficient, and send notice to the applicant and owner specifying the submission materials, studies or documents required in order for the application to be complete. The applicant may resubmit the same application, which shall include all documents with deficiencies corrected, in which event the

application will be reviewed in the same schedule as the original submittal.

- (3) If neither a notice of acceptance nor rejection is sent within fifteen (15) calendar days of submittal, the application shall be deemed accepted for the purposes of beginning the time limits of this Ordinance.

**6-1305 Staff Review of Application.**

- (A) **Referral.** Upon acceptance of the application for special exception or minor special exception, the Director of Planning shall forward a copy of the application to any town, any county, or any state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application.
- (B) **Referral Responsibilities.** Each county reviewing agency shall prepare and each town or state agency shall be asked to prepare a referral report which sets out in writing its comments and recommendations regarding the application and forward such referral report to the Director of Planning.
- (C) **Report to the Applicant.**
  - (1) Referral reports received by the Director of Planning shall be forwarded to the applicant
  - (2) If new information is received as part of the applicant's response to the initial referral reports, a second round of referrals may be requested by the Director of Planning from the reviewing agencies based on the applicant's response to the first referral reports. The referrals shall be forwarded to the Director of Planning.
  - (3) The running of the decision deadline time period for the application will be suspended from the date of transmittal of the second referral reports until the date of receipt by the Director of Planning of the applicant's response to all of the issues identified in the second referral reports or a written request from the applicant to proceed to public hearing without further response.
- (D) **Applicant Response and Subsequent Review.** The applicant shall respond in writing to all of the issues identified in the referral reports.
- (E) **Review Schedule.** The staff reviews outlined in Sections 6-1305(A) through (D) shall be completed in accord with the schedules in Table

2, Special Exception Review Schedule and Table 3, Minor Special Exception Review Schedule.

<b>Table 2. Special Exception Review Schedule</b>	
<b>Initial referral review</b>	Application acceptance plus 30 calendar days
<b>Referral reports to applicant</b>	Referral due date plus 10 calendar days
<b>Applicant Response to initial referral reports</b>	Referral reports transmittal date plus 15 calendar days (see Note 1)
<b>Second referral review (if needed)</b>	Date of receipt of applicant response plus 30 calendar days
<b>Second referral reports to applicant</b>	Second referral due date plus 5 calendar days
<b>Applicant response to second referral reports</b>	All time deadlines for any action on the application are suspended until receipt of the applicant's response

**Note 1:** Failure on the part of the applicant to respond within the fifteen (15) calendar day timeframe specified above shall result in the suspension of the running of all time deadlines for action on such application until the date of receipt of the applicant's response to all of the issues identified in the referral reports or a written request to proceed to public hearing without further response.

<b>Table 3. Minor Special Exception Review Schedule</b>	
<b>Initial referral review</b>	Application acceptance plus 15 calendar days
<b>Referral reports to applicant</b>	Referral due date plus 5 calendar days
<b>Applicant Response to initial referral reports</b>	Referral reports transmittal date plus 15 calendar days (see Note 1)
<b>Second referral review (if needed)</b>	Date of receipt of applicant response plus 15 calendar days
<b>Second referral reports to applicant</b>	Second referral due date plus 5 calendar days
<b>Applicant response to second referral reports</b>	All time deadlines for any action on the application are suspended until receipt of the applicant's response

**Note 1:** Failure on the part of the applicant to respond within the fifteen (15) calendar day timeframe specified above shall result in the suspension of the running of all time deadlines for action on such application until the date of receipt of the applicant's response to all of the issues identified in the referral reports or a written request to proceed to public hearing without further response.

- (F) **Applicant Response.** Upon receipt of the applicant's response to all of the issues identified in the second referral reports, the Director of Planning shall proceed to prepare the report as specified in Section 6-1305(H), and shall schedule the application for a duly noticed public hearing with the Planning Commission or Board of Supervisors, whichever is appropriate.
- (G) **Required Action by Other Board.** In the event this Ordinance requires that an application not be approved until acted upon by some government board or agency other than the Planning Commission or Board of Supervisors, then the Director of Planning shall forward the application to such board or agency for appropriate action prior to the notification to an applicant that an application is ready to be presented to the Board of Supervisors or Planning Commission.
- (H) **Staff Report and Notice to Applicant.** The Director of Planning shall compile the referrals and any other necessary information, prepare a written staff report with proposed findings and a recommendation, and notify the applicant that the report is complete and the application is ready to be presented to the Board of Supervisors or Planning Commission, as appropriate, for hearing.

**6-1306** **Withdrawal of Application.** An application may be withdrawn upon written request by the applicant at any time prior to the beginning of the Board of Supervisors public hearing on the application provided that if the request for withdrawal is made after such deadline, such withdrawal shall be only with the consent of the Board of Supervisors. No new application, concerning any or all of the same property, which is substantially the same as the one withdrawn shall be filed within twelve (12) months of the date of withdrawal, unless the Board of Supervisors specifies at the time it consents to withdrawal that said time limitation shall not apply.

**6-1307** **Limitation on Application After Denial.** After the official denial of an application, no new application concerning any or all of the same property, which is substantially the same as the one denied, shall be filed within twelve (12) months of the date of denial.

**6-1308** **Hearings.** Applications for minor special exception or special exception shall be reviewed, considered, and approved, approved with conditions, or disapproved following public hearing as follows:

(A) **Minor Special Exception.** A duly noticed public hearing on an application for a minor special exception shall be held by the Board of Supervisors and a decision made by it within ninety (90) calendar days of the date on which the application was accepted. The County will use its best efforts to achieve an expedited review and decision time of less than (90) days for minor special exception applications, provided the applicant adheres to the minimum time frames described in this Section 6-1300.

(B) **Special Exception.**

(1) The Planning Commission shall hold a duly noticed public hearing regarding an application for special exception and thereafter report its recommendation to the Board of Supervisors.

(2) The Board of Supervisors shall hold a duly noticed public hearing regarding an application for a special exception as soon as practicable following the Planning Commission public hearing and not later than one hundred and twenty (120) calendar days of the date on which the application was accepted.

**6-1309**

**Issues for Consideration.** In considering a minor special exception or special exception application, the following factors shall be given reasonable consideration. The applicant shall address all the following in its statement of justification and plat unless not applicable, in addition to any other standards imposed by this Ordinance:

(1) Whether the proposed minor special exception or special exception is consistent with the Comprehensive Plan.

(2) Whether the level and impact of any noise, light, glare, odor or other emissions generated by the proposed use will negatively impact surrounding uses.

(3) Whether the proposed use is compatible with other existing or proposed uses in the neighborhood, and on adjacent parcels.

(4) Whether the proposed special exception or minor special exception adequately protects and mitigates impacts on the environmental or natural features including, but not limited to, wildlife habitat, vegetation, wetlands, water quality including groundwater), air quality, topographic, scenic, archaeological or historic features, and agricultural and forestal lands.

- (5) Whether the proposed special exception at the specified location will contribute to or promote the welfare or convenience of the public.
- (6) Whether the proposed special exception can be served adequately by public utilities and services, roads, pedestrian connections and other transportation services and, in rural areas, by adequate on-site utilities.

**6-1310 Conditions and Restrictions.** In approving a special exception or minor special exception, including any requested temporary special events, the Board of Supervisors may impose such conditions, safeguards and restrictions upon the premises benefited by the special exception or minor special exception as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special exception or minor special exception upon other property in the neighborhood, to address the issues for consideration listed in 6-1309, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional setbacks from property lines, location and arrangement of lighting, setting of reasonable time limitations, size, height and location of signs, and other reasonable requirements deemed necessary to safeguard the interest of the general public. The Board may require a guarantee or bond to ensure that conditions imposed will be complied with. All conditions of approval shall be set out in the documentation approving the special exception or minor special exception permit.

**6-1311 Effect of Approval of a Special Exception or Minor Special Exception.** The approval of a special exception or minor special exception shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the County, including, but not limited to, a zoning permit, building permit, certificate of occupancy, and site plan and/or subdivision approval. Temporary special events approved as part of a special exception or minor special exception application are exempt from the requirements for a temporary use permit stated in Section 5-500(C).

**6-1312 Period of Validity.**

- (A) **Period of Validity.** Unless a longer period of validity is specifically approved as a part of such application, no special exception or minor special exception permit shall be valid for a period longer than five (5) years from the date on which the special exception was granted, unless within such five (5) year period: (1) a building permit is obtained and the erection or alteration of a structure is started and diligently pursued,

and (2) an occupancy permit is obtained and a use commenced. Such period of validity may be extended for good cause shown, provided that an application for such extension is submitted to the Board of Supervisors a minimum of thirty (30) calendar days before the expiration date. The special exception or minor special exception approval shall remain valid while such extension is being processed. Notice or hearing may but shall not be required for such Board action. Failure to request the extension in a timely manner shall cause the special exception or minor special exception to expire, without notice, on the expiration date. After expiration, the applicant may submit the application for the same special exception or minor special exception use as had been previously approved provided that such subsequent application shall comply with and be subject to the current application submittal requirements for a special exception or minor special exception, as applicable.

- (B) **Request For Extension of Period of Validity.** As a condition of approval, a special exception or minor special exception permit may be granted for a specific period of time less than five (5) years with expiration of the approval to occur at the termination of said period. In such case, an extension may be granted prior to expiration by the Board of Supervisors provided that an application for such extension is submitted to the Board of Supervisors a minimum of thirty (30) calendar days before the expiration date. Notice or hearing may but shall not be required for such Board action. The special exception or minor special exception approval shall remain valid while such extension is being processed. Failure to request the extension in a timely manner shall cause the special exception or minor special exception to expire, without notice, on the expiration date. After expiration, the applicant may submit the application for the same special exception or minor special exception use as had been previously approved provided that such subsequent application shall comply with and be subject to the current application submittal requirements for a special exception or minor special exception, as applicable.
- (C) **Compliance With All Conditions Required.** If upon considering such request for extension, it is determined that the use is not in compliance with all conditions and restrictions previously imposed by the Board of Supervisors, the request for an extension made pursuant to (A) or (B), above, shall be denied or the remedy of any violation shall be required within a specified time. If the request for extension is denied or the Zoning Administrator determines that the applicant has failed to correct the noncompliance within the time frame specified by the Board of Supervisors, the special exception or minor special exception shall expire and the approval of a new special exception or minor special exception, as applicable shall be required prior to any

subsequent reinstatement of the use. If it is determined that the use is no longer allowed as a special exception use in the zoning district in which located, the request shall be denied and the special exception or minor special exception shall expire.

**6-1313 Status of Special Exception Uses.** Once a special exception or minor special exception has been approved, any application for approval of a site plan, subdivision plat, building permit, or occupancy permit thereafter submitted for the development or use of the property in accordance with the special exception or minor special exception shall be in substantial conformance with the approved special exception or minor special exception, and no development or use shall be approved by any County official in the absence of such conformance. Once established, the use, including any approved temporary special events, shall be conducted in substantial conformance with any conditions or restrictions imposed by the Board and all other requirements of this Ordinance.

- (A) **New Special Exception Required.** Except as provided in Section 6-1314, no use shall be enlarged, expanded, increased in intensity or relocated and no condition of the special exception or minor special exception shall be modified unless an application is made and approved for a new special exception or minor special exception.
- (B) **Accessibility Improvements.** Notwithstanding the above, any modification to an approved and currently valid special exception or minor special exception necessary to provide an accessibility improvement, as required by the Americans with Disabilities Act or the Commonwealth of Virginia, shall be permitted and shall not require a new special exception or minor special exception provided that the Zoning Administrator finds the proposed modification is necessary to comply with said Act.

**6-1314 Modifications to Approved Special Exceptions.**

- (A) **Minor Modifications.** The Zoning Administrator may permit minor modifications to an approved special exception or minor special exception when it is determined by the Zoning Administrator that such minor modifications are reasonably necessary to address issues related to topography, drainage, underground utilities, structural safety, final engineering, vehicular circulation, or requirements of government agencies. Such modifications may also permit:
  - (1) The addition of accessory buildings clearly subordinate to the approved special exception or minor special exception use(s);
  - (2) Realignment of principal buildings and parking areas within an approved building envelope; or



- (3) Minor additions to principal buildings and corresponding additions to parking areas; provided that the cumulative total of all building additions shall not exceed five (5) percent of the existing gross floor area of the approved special exception or minor special exception use(s); and shall not exceed the maximum permitted FAR for the zoning district.

(B) **Notice Requirements.** Any request for a minor modification to an approved special exception or minor special exception other than pursuant to Section 6-1313(B) shall require that written notice:

- (1) Be sent to the last known address of the owners (as shown in the Loudoun County real estate assessment records), of all property abutting and across the street from the site, or portion thereof, which is the subject of the request. If the subject property is included within an incorporated owners' association, then such notice shall also be sent to such owners' association (at the address on file with the State Corporation Commission.) Such notice shall be delivered by hand or sent by certified mail;
- (2) Such notice shall include the letter of request with all attachments as submitted to the Zoning Administrator, a statement that the request has been submitted, and whom to call at the County for additional information; and
- (3) Prior to approval, of such minor modification an affidavit that the required notice as set forth in this subsection has been sent shall be filed with the Zoning Administrator.

**Section 6-1400**

**Cluster Developments in Suburban Residential Districts.**

**6-1401**

**Authority.** Where cluster development is listed as a permitted use in zoning districts, the approval for a cluster development proposal is pursuant to the provisions of this Section.

**6-1402**

**Purpose.** The purpose of cluster development is to promote flexibility of subdivision layout and design, with attendant cost savings and open space preservation.

**6-1403**

**Cluster Development Limitations.**

- (A) Cluster approval may be applied only to residential uses.
- (B) No deviation from the overall allowed density or height specified in the applicable zoning district is permitted.
- (C) Cluster developments shall consist of at least ten (10) dwelling units except that cluster developments that are found by the Planning Commission to be an extension of an existing or approved cluster development may contain fewer dwelling units.
- (D) Cluster developments shall not be permitted in the R-16, or R-24 Districts.
- (E) Only those modifications and variations of yard, lot size, lot width and lot coverage requirements will be permitted as are shown on the preliminary subdivision and record plat.
- (F) All dwellings and other habitable buildings shall be served with public sewer and water facilities.

**6-1404**

**Cluster Open Space Requirements.**

- (A) In each district in which cluster development is allowed, the lot requirements may be reduced to the extent provided in the applicable district. All land not included within lots or required for public or private streets shall be maintained as common open space.
- (B) Common open space shall generally be designed to constitute a contiguous and cohesive unit of land which may be used for active or passive recreation by residents and shall be reasonably accessible to all permitted uses and all residential units within the development.
- (C) All common open space shall be permanently reserved, managed, and maintained as open space by a means acceptable to the Board of Supervisors.

- (1) Open space or common areas within cluster residential developments may be offered for dedication to the public at the time of application. The Board of Supervisors or other appropriate public body acceptable to the Board of Supervisors may accept such dedication upon a finding that the size, location, type of development or cost of development or maintenance of such open space or common area or the availability of public open space would make public use desirable or necessary.
  - (2) Common open space not dedicated to public use shall be protected by legal arrangements satisfactory to the Board of Supervisors sufficient to assure its maintenance and preservation for its intended purpose. Covenants or other legal arrangements shall specify ownership of the common open space; method of maintenance, responsibility for maintenance, taxes and insurance, compulsory membership and compulsory assessment provisions, guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the Board of Supervisors, and any other specifications deemed necessary by the Board of Supervisors.
- (D) No land considered to be major floodplain shall be considered in calculating the amount of common open space provided in a cluster.

**6-1405**

**Considerations of Review.** In reviewing an application for cluster development, consideration shall be given to the following goals:

- (A) That individual lots, buildings, streets, and parking areas are designed and situated to maximize open space minimize alteration of natural site features, and reduce the construction of roads and other impervious surfaces.
- (B) That cluster open space shall include and retain, to the extent feasible, natural features located on the tract such as, stream beds, significant stands of trees, and individual trees of a significant size.
- (C) That cluster open space intended for a recreation or public use is accessible to pedestrians.
- (D) The relationship of the cluster and cluster open space to surrounding properties.

## Section 6-1500

### Rezoning to Planned Development (PD) Districts.

- 6-1501**     **Authority.** By ordinance duly enacted by the Board of Supervisors, the rezoning of land to Planned Development districts may be approved subject to the procedures and considerations in this Section for approval of a Concept Development Plan as they may supplement those of Section 6-1200.
- 6-1502**     **Purpose.** The provisions of this Section establish special procedures for approving Concept Development Plans for planned development districts. The procedures herein established are in recognition of the fact that traditional density, bulk, spacing and use regulations, which may be useful in protecting the character of substantially developed areas, may impose inappropriate and unduly rigid restrictions upon the development of parcels or areas which lend themselves to a unified, planned approach. A Planned Development should be designed to ensure that the following general goals will be achieved.
- (A)     The proposed development shall be of such design that it will promote achievement of the stated purposes of the Comprehensive Plan and is consistent with the Plan as well as other adopted plans and policies of the County.
  - (B)     The development will efficiently use available land and will protect and preserve, to the extent possible, natural features of the land such as trees, streams and topographic features.
  - (C)     The development will be located in an area in which transportation, police and fire protection, schools and other public facilities and public utilities, including water and sewerage, are or will be available and adequate for the uses proposed. The applicant may, where appropriate, make provision for such facilities or utilities which are not presently available.
- 6-1503**     **Application.** An application for rezoning to a planned development district shall be filed, contain such information, and be processed pursuant to the provisions of Section 6-1200 of this Ordinance, as that Section may be supplemented by this one.
- 6-1504**     **Optional Joint Approvals.** At the applicant's option, an application for site plan and/or preliminary subdivision plat approval may be submitted in conjunction with an application for a rezoning to a Planned Development district. In such case, the applications shall be reviewed together pursuant to their respective standards, the time limits for rezoning shall apply to the joint application, and no approval of a site plan or preliminary subdivision plat shall be effective unless and until the application for rezoning to planned development has been approved by the Board of Supervisors. The application for site plan and/or subdivision approval may be for the entire planned

development site or for a phase thereof which is consistent with the phasing plan ultimately adopted by the Board.

**6-1505**

**Building and Other Permits.** After approval of a Concept Development Plan and other required approvals, and upon application by the applicant, appropriate County officials may issue land development, building, zoning and other permits for development, construction and other work in the area encompassed by the Approved Concept Development Plan. No such permit shall be issued unless the County is satisfied that the requirements of all applicable codes or ordinances of the County have been satisfied.

## **Division E: Procedures Before Board of Zoning Appeals**

### **Section 6-1600**

#### **Variances.**

**6-1601**     **Jurisdiction and Authority.** Upon application, the Board of Zoning Appeals (BZA) shall exercise the jurisdiction and authority to grant a variance from the literal terms of this Ordinance in accordance with the procedures, standards, and limitations contained in this Section. This authorization shall not be construed to grant the BZA the power to rezone property.

**6-1602**     **Authorized Variances.** Variances, defined as reasonable deviations from the regulations and restrictions contained in this Ordinance, may be granted by the Board of Zoning Appeals only in the following instances and in no others:

- (A)     A variance from those provisions regulating the size or area of a lot or parcel of land.
- (B)     A variance from those provisions regulating the size, area, bulk, setback, open space, yards, or location of a building or structure.

**6-1603**     **Unauthorized Variance.** The BZA shall not be empowered to grant a variance from any of the provisions of this Ordinance relating to the use or density of land, buildings or structures. Nor shall the BZA grant a variance for any use or activity within the FOD - Floodplain Overlay District (Major Floodplain) if any increase in the base flood elevation, as such term is defined in Section 4-1503, would result.

**6-1604**     **Application for Variance.** Any person owning property, or having a possessory or contract interest in property and the consent of the owner, may file an application for variance in regard to such property with the Zoning Administrator for one or more of the variances authorized above. The application shall contain the following information and such additional information as the Board of Zoning Appeals may, by rule, require or as may be required by Section 6-403:

- (A)     The particular provisions or requirements of this Ordinance which prevent the proposed construction on, or use of, the property.
- (B)     The existing zoning of the property, including any previously approved modifications, conditions, or proffers.
- (C)     The special conditions, circumstances or characteristics of the land, building or structure that prevent the use of the land in compliance with the requirements of this Ordinance.
- (D)     The particular hardship which would result if the specified provisions or requirements of this Ordinance were to be applied to the subject property.

- (E) The extent to which it would be necessary to vary the requirements of this Ordinance in order to permit the proposed construction on, or use of, the property.
- (F) An explanation of how the requested variance conforms to each of the applicable standards set out in Section 6-1607.
- (G) A plat of the property that has been prepared by a licensed, certified land surveyor, or other licensed professional operating within the scope of his or her license. For properties containing one acre or more, the applicant may petition the Zoning Administrator to request that this requirement be reduced to a survey of the portion of the property for which the variance is sought.

**6-1605**

**Decision on Variance Application.** Upon receipt of a complete application for a variance, the Zoning Administrator shall notify the BZA which shall, within ninety (90) days, hold a duly noticed public hearing thereon. Such public hearing shall be advertised in the manner provided by Section 15.2-2204 of the Code of Virginia, and in addition, the property shall be posted in conformity with Section 6-601(B). The BZA shall, after such hearing, either approve, deny or approve with conditions the application for a variance. Its decision shall be supported by findings of fact and conclusions with respect to the standards of Section 6-1607. No such variance shall be granted by the BZA unless it makes all of the following required findings:

- (A) The strict application of this Ordinance would produce undue hardship to the property owner.
- (B) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (C) Such variance is not contrary to the public interest nor to the intended spirit and purpose of this Ordinance.
- (D) The granting of such variance will not be substantial detriment to adjacent property nor change the character of the zoning district in which the property is located.
- (E) Such variance would result in substantial justice being done.
- (F) The condition or situation of the property which gives rise to the need for such variance is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

**6-1606**

**Planning Commission Recommendation.** The Zoning Administrator may transmit a copy of the application to the Planning Commission which may send a recommendation to the BZA or appear as a party at the hearing.

- 6-1607 Standards for Variances.** The Board of Zoning Appeals shall base its required findings upon the particular evidence presented to it in each specific case where the property owner can show that:
- (A) The strict application of the terms of this Ordinance would effectively prohibit or unreasonably restrict the utilization of the property because of:
    - (1) The exceptional narrowness, shallowness, size, or shape of the property at the time of the effective date of this Ordinance, or
    - (2) The exceptional topographic conditions or other extraordinary situations or condition of the property, or
    - (3) The condition, situation, or development of property immediately adjacent thereto;
  - (B) The granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.
  - (C) The property was acquired in good faith.
  - (D) Satisfactory evidence exists to support all of the required findings of Section 6-1605.
- 6-1608 Burden of Applicant.** The applicant for a variance shall bear the burden of producing evidence to support the required findings of Section 6-1605 and to establish that the requested variance satisfies the Standards for a Variance of Section 6-1607.
- 6-1609 Conditions and Restrictions.** The BZA may impose such conditions and restrictions upon the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Failure to comply with any such conditions and restrictions shall constitute a violation of this Ordinance.
- 6-1610 Withdrawal of Application.** A variance may be withdrawn by the applicant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the application. After said deadline, an application may be withdrawn only with the permission of the BZA.
- 6-1611 Re-Application.** If a variance is denied by the BZA on the merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the BZA within twelve (12) months after the date of such denial.
- 6-1612 Special Exceptions for Errors in Building Location.** As provided in Section 6-206(D) of this Ordinance, the BZA may hear and approve special exceptions for errors in building location, to include encroachments into minimum yard



requirements, setbacks and other requirements herein regulating building location, in the case of any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected.

- (A) The special exception may be approved if the BZA finds that:
  - (1) The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in location of the building subsequent to the issuance of a building permit, if such was required; and
  - (2) Such reduction will not impair the purpose and intent of this Ordinance; and
  - (3) It will not be detrimental to the use and enjoyment of the other property in the immediate vicinity; and
  - (4) It will not create an unsafe condition with respect to both other property and public streets, and
  - (5) To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner, and
  - (6) The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
- (B) In approving such a reduction under the provision of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and, as deemed advisable, may prescribe such conditions, to include landscaping and screening measures to assure compliance with the intent of this Ordinance.
- (C) Upon the approval of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
- (D) The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

**6-1613**

**Special Exceptions for Errors in Very Steep Slope Areas.** As provided in Section 6-206(H) of this Ordinance, the BZA may hear and approve special exceptions for Errors in structure location within Very Steep Slope Areas, when such error is an encroachment that does not exceed 2,000 square feet of land-disturbing activity within the Very Steep Slope Area, as defined in Section 5-1508(C)(1)(a), and is associated with a structure or use listed in Section 5-101(A) that is attached to a principal residential structure, and no portion of the principal structure is located within the Very Steep Slope Area.

- (A) The special exception may be approved if the BZA finds that:
- (1) Activities associated with the removal of the attached building, structure, or use would result in a net negative environmental impact, as demonstrated by applicable information and/or reports/studies requested by the Zoning Administrator, such as, but not limited to: 1) geotechnical study, 2) geophysical study, 3) preliminary soils review, 4) site plan, 5) grading plan, 6) structural analysis, 7) U.S. Army Corps of Engineers approved wetland delineation, 8) tree cover inventory, 9) Phase 1 archeological study, 10) rare, threatened, and endangered species survey, and 11) mitigation plan; and
  - (2) The noncompliance was done in good faith, or through no fault of the property owner, or was the result of a good faith error in location subsequent to the issuance of a building permit, if such was required; and
  - (3) The noncomplying structure was constructed in a manner that will protect life and property from hazards due to slope, unstable and erodible soils, earth movement, and other geologic and hydrologic hazards; and
  - (4) The noncomplying structure was constructed in a manner that does not increase the potential for increased erosion, sedimentation, and surface runoff, and the resulting adverse impacts on water quality; and
  - (5) The noncomplying structure was constructed in a manner that preserves the visual quality of steep slope areas; and
  - (6) The noncomplying structure will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
- (B) In approving such encroachment under the provision of this Section, the BZA may prescribe conditions to assure compliance with the intent of this Ordinance, such as, but not limited to: 1) reforestation, 2) stabilization treatment, 3) landscaping and screening measures, and 4) water quality measures.
- (C) Upon the approval of a special exception pursuant to this section for a particular structure or use attached to a principal residential structure in accordance with the provisions of this Section, the same shall be deemed to be lawful.
- (D) The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

## Section 6-1700

### Appeals.

- 6-1701 Appeals from Administrative Ruling.** The Board of Zoning Appeals is authorized to hear appeals from any order, requirement, decision or determination made by the Zoning Administrator in the administration or enforcement of this Ordinance. In this capacity the Board exercises appellate jurisdiction as a quasi-judicial body, and its task is to determine what the Ordinance means and how the Ordinance applies to a particular fact situation.
- 6-1702 When Appeals May Be Taken.** Appeals to the BZA may be taken by any person aggrieved or by any officer, department, board or agency of the County affected by any decision of the Zoning Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance. Appeals shall be taken within thirty (30) days after the decision has been rendered, with the exception that appeals shall be taken within ten (10) days after the issuance of a Notice of Violation for any violation of this Ordinance classified as a short term, recurring zoning violation. Appeals shall be taken by filing with the Zoning Administrator from whom the appeal is taken and with the chairman of the BZA a notice of appeal specifying the grounds of the appeal, to include the materials set forth in Section 6-1707 below. The Zoning Administrator shall forthwith forward to the chairman of the BZA all the papers constituting the record upon which the action appealed from was taken.
- 6-1703 When Appeals to Stay Proceedings.** A notice of appeal properly filed as herein provided shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the BZA that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order which may be granted by the BZA or by a proper court order on notice to the Zoning Administrator and for good cause shown.
- 6-1704 Decisions on Appeal.** Within ninety (90) days after the notice of appeal has been filed, the BZA shall hold a public hearing, give public notice thereof required by Section 15.2-2204 of the Code of Virginia as well as due notice to the parties in interest, decide the appeal, and file with the Zoning Administrator its findings of fact and conclusions with respect to the appeal. The Zoning Administrator shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing. In exercising its powers, the BZA may reverse or affirm, wholly or partly, or may modify the decision appealed from. The concurring vote of a majority of BZA members shall be necessary to reverse a decision.
- 6-1705 Withdrawal of Application.** An appeal may be withdrawn by the appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the application. After said deadline, an appeal may be withdrawn only with the permission of the BZA.

**6-1706**      **Proceedings to Prevent Construction of a Building.** Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the Zoning Administrator to the Board of Zoning Appeals.

**6-1707**      **Submission of Appeal.** Any appeal submitted in accordance with the provisions of Section 6-1702 of this Ordinance must include the following materials within the thirty (30) day filing time frame before the appeal is considered to be filed. The ninety (90) day timeline set forth in Section 6-1704 above shall not commence until all of the following are received by the Zoning Administrator and the Chairman of the Board of Zoning Appeals:

- (A) Two copies of a completed application form signed by the appellant or appellant's representative, accompanied by the following information:
  - (1) A copy of the order, requirement, decision, determination or notice of violation which is the subject of the appeal.
  - (2) The date upon which the decision being appealed was made.
  - (3) The grounds for the appeal.
  - (4) Specification as to how the appellant is an aggrieved person (for example, owner of property affected by the determination or adjacent owner affected by the determination, etc).
  - (5) Any additional supportive data such as plats, plans, drawings, charts or other related material desired to be included in the record.
- (B) An application fee in the amount set forth by resolution of the Board of Supervisors.

## **Division F: Historic District Procedures**

### **Section 6-1800**

#### **Historic Districts.**

##### **6-1801**

**Authority.** The Board of Supervisors may establish Historic Districts pursuant to Sections 15.2-2306 and 15.2-2283 of the Code of Virginia of 1950, as amended, and to this Section, and by amendment of the Zoning Ordinance as provided in Section 6-1200. The term “Historic District” shall include, without limitation, the following: Historic Site (HS) Districts; Historic and Cultural Conservation (HCC) Districts; Historic Roadway (HR) Districts; Historic Access Corridor (HAC) Districts; and such other Historic Districts as the Board of Supervisors has the power to and shall specifically establish. For the purposes of Section 6-1800 et seq. and Section 6-1900 et seq., the term “contributing” shall mean helping, assisting, or adding to the historical integrity, historic architectural qualities, or archaeological qualities of the subject Historic District and/or the said Historic District's historic associations; and the term “non-contributing” shall mean not helping, not assisting, nor adding to the historical integrity, historic architectural qualities, or archaeological qualities of the subject Historic District and/or the said Historic District's historic associations.

##### **6-1802**

**Intent.** Historic Districts may be established in furtherance of the following public purposes, which are hereby found to be in the interest of the health, safety, prosperity, and welfare of the County and its residents:

- (A) To effect and accomplish the protection, enhancement, perpetuation and use of improvements and areas of special character or special historic interest or value which represent or reflect elements of the County's cultural, social, economic, political, architectural, and archaeological history.
- (B) To foster civic pride and preserve an appreciation for the historic values on which the County and the Nation were founded.
- (C) To maintain and improve property values.
- (D) To protect and enhance the County's attraction to tourists and visitors.
- (E) To provide for the education and general welfare of the people of the County.
- (F) To protect against destruction of or encroachment upon historic areas.
- (G) To otherwise accomplish the general purposes of this Zoning Ordinance, the Comprehensive Plan, and the provisions of Chapter 22, Title 15.2, Code of Virginia of 1950, as amended.

**6-1803**

**Criteria for Establishment of Historic Districts.** Historic Districts shall be established as an overlay zoning district and, as such, shall be in addition to existing zoning designations and the regulations appropriate thereto.

(A) **Historic Site Districts.** The Board of Supervisors may establish Historic Site (HS) districts provided that such districts meet one or more of the following criteria, as well as one or more of the purposes set forth in Section 6-1802:

- (1) Such district contains a historic landmark, building, or structure listed in the National Register of Historic Places or the Virginia Landmark Register; or
- (2) Such district meets one or more of the following local determination criteria:
  - (a) Is closely associated with one or more persons, events, activities, or institutions that have made a significant contribution to local, regional, or national history; or
  - (b) Contains buildings, structures, or archaeological resources whose exterior design or features exemplify the distinctive characteristics of an historic type, period or method of construction, or which represent the work of an acknowledged master; or
  - (c) Have yielded, or are likely to yield, information important to local, regional, or national history or prehistory.

(B) **Historic and Cultural Conservation Districts.** The Board of Supervisors may establish HCC districts provided that such districts meet the definition of “historic area” in Section 15.2-2201, Code of Virginia of 1950, as amended; meet one or more of the purposes set forth in Section 6-1802; and meet one or more of the following criteria:

- (1) Is closely associated with one or more persons, events, activities, or institutions that have made a significant contribution to local, regional, or national history; or
- (2) Contains buildings or structures whose exterior design or features exemplify the distinctive characteristics of one or more historic types, periods, or methods of construction, or which represent the work of an acknowledged master or masters; or
- (3) Has yielded, or is likely to yield, information important to local, regional, or national history or prehistory; or

- (4) Possesses an identifiable character representative of the architectural, archaeological, and cultural heritage of Loudoun County.
- (C) **Historic Roadway Districts.** The Board of Supervisors may create HR districts provided that such districts meet the definition of “historic area” in Section 15.2-2201, Code of Virginia of 1950, as amended; meet one or more of the purposes set forth in Section 6-1802; and meet one or more of the following criteria:
- (1) Is closely associated with one or more persons, events, activities, or institutions that have made a significant contribution to local, regional, or national history; or
  - (2) Contains buildings or structures whose exterior design or features exemplify the distinctive characteristics of one or more historic types, periods, or methods of construction, or which represent the work of an acknowledged master or masters; or
  - (3) Has yielded, or is likely to yield, information important to local, regional, or national history or prehistory; or
  - (4) Possesses an identifiable character representative of the architectural, archaeological, and cultural heritage of Loudoun County.
- (D) **Historic Access Corridor Districts.** The Board of Supervisors may create HAC districts provided that such districts meet the standards of Section 15.2-2306, Code of Virginia of 1950, as amended; meet one or more of the purposes set forth in Section 6-1802; and meet one or more of the following criteria:
- (1) Encompasses parcels of land, or portions thereof, that are located adjacent to an arterial street or highway (as designated pursuant to Title 33.1, Code of Virginia of 1950, as amended) that is closely associated with one or more persons, events, activities, or institutions that have made a significant contribution to local, regional, or national history;
  - (2) Encompasses parcels of land, or portions thereof, contiguous to an arterial street or highway which together possess an identifiable historic character representative of the architectural, archaeological, and cultural heritage of Loudoun County; or
  - (3) Encompasses parcels of land or portions thereof adjacent to an arterial street or highway which is a significant historic route of tourist access of the County or municipality.

**6-1804 Boundaries of Historic Districts.**

- (A) **Historic Site Districts.** The boundaries of HS districts shall be drawn to include those lands which are adjacent to the landmarks, buildings, or structures for which the HS district was established and which are reasonably related to the essential historic character of said district.
- (B) **Historic and Cultural Conservation Districts.** The boundaries of HCC districts shall be drawn to include all such land therein that is necessary to achieve the purposes and criteria of Sections 6-1802 and 6-1803.
- (C) **Historic Roadway and Historic Access Corridor Districts.** The boundaries of HR and HAC districts shall be drawn to include the roadway or access corridor which is the focus of the district, and to run roughly parallel to each side of said roadway or access corridor for such distance, and to such depth, that is necessary to achieve the purposes and criteria of Section 6-1802 and Section 6-1803.

**6-1805 Minimum Yard and Setback Modifications in Historic Districts.** The Zoning Administrator shall grant modifications of minimum yard and setback standards for buildings and structures located within Historic Districts upon a finding by the Historic District Review Committee (HDRC) that the proposed yard and/or setback modification is consistent with the existing streetscape and adopted Historic District Guidelines for said Historic District, unless such modification of yard and/or setback standards violates sight distance regulations of Section 5-300 and of the Virginia Department of Transportation.

**6-1806 Procedures for Establishment of New Historic Districts and Additions to Existing Historic Districts.**

- (A) The establishment of a new Historic District, or the addition of a parcel (or parcels) to an existing Historic District, shall be treated as an amendment to the Zoning Map, and shall be initiated in accordance with Section 6-1200 et seq., and subject to recommendation by the HDRC. No fee shall be required.
- (B) **Application.** In addition to the submission requirements of Section 6-403, the following information shall be submitted with an application for the establishment of a new Historic District, or an addition to an existing Historic District, and shall be considered by the Planning Commission, HDRC, and Board of Supervisors.
  - (1) An inventory which lists each historic landmark, site, building, or structure located within the proposed new Historic District, or proposed addition to an existing Historic District, which itself has historic merit or which contributes to the overall historic character of said Historic District.



- (2) A graphic representation of the boundaries of the proposed new Historic District, or proposed addition to an existing Historic District, and the location of all landmarks, sites, buildings, or other structures of particular historic value located within said Historic District.
- (3) A written statement documenting the particular historical attributes of the area to be located within the proposed new Historic District, or proposed addition to an existing Historic District.

**6-1807 Removal from Existing Historic Districts.**

- (A) The removal of a parcel from an existing Historic District shall be treated as an amendment to the Zoning Map and shall be initiated in accordance with Section 6-1200 et seq., and subject to recommendation by the HDRC. No fee shall be required.
- (B) The HDRC shall make a recommendation to approve the removal of the parcel only if all of the following criteria are met:
  - (1) The parcel no longer meets the criteria of Sections 6-1802 and 6-1803;
  - (2) No contributing historic landmark, site, building, or structure is located on the parcel;
  - (3) The removal of the parcel would not have a negative impact on the surrounding streetscape within the Historic District because the parcel is surrounded by other non-contributing structures; and
  - (4) The parcel is located on the edge of the Historic District such the removal of the parcel would not cause a void within the Historic District.

**6-1808 Maintenance of Inventory of Buildings and Structures.** Following the establishment of a new Historic District, the Zoning Administrator, or the Zoning Administrator's designee, shall keep an inventory of the historic landmarks, sites, buildings, and structures of particular historic value located within said Historic District. Following an addition to, or removal of a parcel from, an existing Historic District, the Zoning Administrator, or the Zoning Administrator's designee, shall update the inventory for said Historic District.

**6-1809 Recordation of Resolutions Creating Historic Districts.** Following the establishment of each new Historic District, or an addition to, or removal of a parcel from, an existing Historic District, a copy of the resolution establishing, or authorizing the addition to, or removal of a parcel from, such Historic District,

and a boundary survey and legal description of such Historic District, or the addition to, or removal from, such Historic District, shall be filed by the Zoning Administrator, or the Zoning Administrator's designee, with the Clerk of the Circuit Court for Loudoun County.

**6-1810**

**Appeals.** Any person aggrieved by the final decision of the Board of Supervisors in regard to the establishment of a new Historic District, or the addition to, or removal of a parcel from, an existing Historic District, may appeal such decision to the Circuit Court of the County of Loudoun in accordance with Section 15.2-2306 of the Code of Virginia of 1950, as amended.

## Section 6-1900

## Historic Districts Regulations.

### 6-1901

**Authority.** In order to promote the general welfare through the preservation and protection of historic places and areas of historic interest in the County, Historic Districts shall be regulated in accordance with the provisions of this Section, Section 6-300 et seq., and Section 6-1800 et seq., and Sections 15.2-2306 and 15.2-2283 of the Code of Virginia of 1950, as amended, and the individual Historic District Guidelines for any established Historic District which are hereby incorporated into, and adopted as part of, this Zoning Ordinance. For the purposes of Section 6-1800 et seq. and Section 6-1900 et seq., the term “contributing” shall mean helping, assisting, or adding to the historical integrity, historic architectural qualities, or archaeological qualities of the subject Historic District and/or the said Historic District's historic associations; and the term “non-contributing” shall mean not helping, not assisting, nor adding to the historical integrity, historic architectural qualities, or archaeological qualities of the subject Historic District and/or the said Historic District's historic associations.

### 6-1902

**Certificate of Appropriateness (CAPP).** The Historic District Review Committee (HDRC) shall have the authority to issue Certificates of Appropriateness for the following purposes. Any CAPP approved by the HDRC shall become invalid if the authorized work is not commenced within five (5) years of the date of approval. For the purposes of Section 1902, commencement of the authorized work is defined as the placing of construction materials in a permanent position and fastened in a permanent manner and work carried on diligently, or, where excavation for, or demolition or removal of, an existing building has been substantially begun prior to building or rebuilding, such excavation or demolition or removal shall be deemed to be actual commencement of the work, provided that work shall be carried on diligently.

- (A) **Erection, Reconstruction, Alteration, Moving, or Restoration.** No building or structure, including signs, shall be erected, reconstructed, altered, moved, or restored within a Historic District unless and until a CAPP has been approved by the HDRC, except as otherwise provided below. In addition, within all Historic Roadway Districts, fences and walls cannot be altered, erected, reconstructed, moved or restored unless and until a CAPP has been approved by the HDRC.
- (1) **Exemption.** Ordinary repairs and/or maintenance of an exterior feature which do not involve a significant change in design, material, or outer appearance thereof.
  - (2) **Exceptions.** The following uses and activities shall not require a CAPP approval by the HDRC, unless otherwise so required by the Zoning Administrator, or the Zoning Administrator's designee.
    - (a) **Farm Building or Structure.** The work to be done is to a bona fide farm building or structure and the Zoning Administrator, or the Zoning Administrator's designee, determines, in conjunction with the application for a zoning permit, that the proposed work would not have a clear and substantial detrimental impact on the character of

the Historic District. For the purposes of Section 6-1902, a “bona fide farm building or structure” shall mean a building or structure primarily used for agricultural, horticultural, or animal husbandry purposes as defined in this Zoning Ordinance, and that is located on a parcel that is subject to a farm plan approved by the Loudoun County Soil and Water Conservation District; or that is classified by the Office of the County Assessor under the land use tax assessment program as Agriculture.

- (b) **Certificate of Appropriateness-Administrative for Minor Actions (CAPA).** The following minor actions shall require review by only the Zoning Administrator, or the Zoning Administrator’s designee, and shall be approved if in conformance with the Historic District Guidelines.
- (i) Minor amendments to a previously approved CAPP where the work authorized by the previously approved CAPP has not been completed and the proposed modification is in substantial conformance with the previously approved CAPP.
  - (ii) Fences and gates.
  - (iii) Signs, pursuant to Section 5-1200.
  - (iv) Removal of non-contributing material.
  - (v) Minor alteration of non-contributing structures.
  - (vi) Construction of accessory structures of 250 square feet or less.
  - (vii) Window and door replacement.
  - (viii) Storm window and storm door installation.
  - (ix) Replacement of siding.
  - (x) Roof replacement.
  - (xi) Minor alteration to small architectural details, to include, without limitation, shutters, lighting fixtures, gutters, and downspouts.
  - (xii) Screening of utilities, trash cans, and dumpsters.
  - (xiii) Demolition of non-contributing accessory structures.

- (B) **Razing or Demolition.** No permit to raze or demolish a building or structure within a Historic District shall be approved without a CAPP being approved by the HDRC, except as otherwise provided in Sections 6-1902, 6-1906, or 6-1907. Further, no fences, walls or signs located within HR Districts shall be razed or demolished without a CAPP being approved by the HDRC, except as otherwise provided in Sections 6-1902, 6-1906, or 6-1907.

**6-1903 Applications and Procedures.**

- (A) All applications for Certificates of Appropriateness shall be made to the Zoning Administrator, or the Zoning Administrator's designee, and shall be referred to the HDRC.
- (B) The HDRC shall hold at least one public meeting before approving or denying a CAPP, at which time any interested party, including, without limitation, the applicant or the applicant's representative, shall be heard.
- (C) All approvals by the HDRC shall include findings stating those aspects of the application which are in conformance with the Historic District Guidelines. All denials by the HDRC shall include findings stating those aspects of the application which are not in conformance with the Historic District Guidelines and recommendations whereby the application could be brought into conformance with the Historic District Guidelines.
- (D) No reapplication for essentially the same purpose shall be reviewed by the HDRC within one (1) year of denial of any applications hereunder except in cases where the application has been brought into compliance with the Historic District Guidelines pursuant to the recommendations set forth by the HDRC in an earlier denial of said application.

**6-1904 Criteria for Certificate of Appropriateness.** The HDRC shall base its decision to approve or deny a CAPP on whether the proposals therein are architecturally compatible with the other buildings, structures, sites, or landmark located within the subject Historic District. In applying such standard, the HDRC shall not consider interior arrangement, but shall consider factors to include, without limitation, the following:

- (A) Exterior architectural features, including all signs.
- (B) General design, scale, and arrangement.
- (C) Texture and material.
- (D) The relationship of (A), (B), and (C), above, to other structures and features of the subject Historic District.
- (E) The purposes for which the subject Historic District was created.
- (F) The relationship of the size, design, and siting of any erected, reconstructed, altered, moved, or restored structure to the landscape of the subject Historic District.

- (G) The extent to which the denial of the Certificate of Appropriateness would constitute a deprivation to the owner of a reasonable use of his property.
- (H) The extent to which the proposal adheres to the Historic District Guidelines for the subject Historic District

**6-1905 Required Maintenance and Demolition by Neglect.**

- (A) The owner or the person in charge of any building or structure located within a Historic District shall:
  - (1) Maintain such building or structure in accordance with Chapter 1410 of the Codified Ordinances of Loudoun County, as amended; and
  - (2) Prevent any deterioration to such building or structure that may result in a loss of its structural integrity, cause any unsafe or hazardous condition, or produce a detrimental effect upon the character of the Historic District or the life and character of the building or structure, such deterioration to include, without limitation, the following:
    - (a) Deterioration of any exterior appurtenance or architectural feature.
    - (b) Deterioration of exterior walls or other structural supports.
    - (c) Deterioration of roofs or elements of the roof support system.
    - (d) Deterioration of chimneys.
    - (e) Deterioration or crumbling of exterior stucco, plaster, or mortar.
    - (f) Ineffective waterproofing of, or lack of a protective coating on, exterior walls, roofs, and foundations, to include, without limitation, broken windows and doors.
    - (g) Poorly maintained landscaping or plant overgrowth, to include, without limitation, dead overhanging trees or limbs, or roots, or invasive tendrilled climbing vines, causing, or which may cause, damage or deterioration.
- (B) The owner or the person in charge of any fence, wall, or sign within a HR District shall maintain such fence, wall, or sign in good condition, and reasonably protected against decay and deterioration.
- (C) The County may institute appropriate procedures for the acquisition of any building or structure which remains in a substantially deteriorated or

deteriorating condition following notice to the owner thereof that he is in violation of Section 6-1905(A) of this Ordinance.

**6-1906 Right to Raze or Demolish.**

(A) **Conditions and Procedures.** The owner of any historic landmark, building, or structure located within a Historic District shall, as a matter of right, be entitled to raze or demolish such historic landmark, building, or structure provided that:

- (1) The owner has submitted an application for a CAPP to raze or demolish such historic landmark, building, or structure;
- (2) The owner has, for a period of time set forth in the time schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell such historic landmark, building, or structure and the land pertaining thereto to any person, firm, corporation, government, or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it will preserve and restore the historic landmark, building, or structure and the land pertaining thereto.
- (3) No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such historic landmark, building, or structure, and the land pertaining thereto, prior to the expiration of the applicable time period as set forth in the time schedule below. Any appeal which may be taken to the Court, in accordance with Section 6-1909 of this Zoning Ordinance shall not affect the right of the owner to make a bona fide offer to sell. No offers to sell shall be made more than one year after a final decision by the HDRC, but thereafter the owner may renew their request to the HDRC to approve the razing or demolition of the historic landmark, building, or structure. The time schedule for offers to sell shall be as follows:

<b>Offering Price</b>	<b>To Sell Period</b>
Less than \$25,000	3 months
\$25,000 or more but less than \$40,000	4 months
\$40,000 or more but less than \$55,000	5 months
\$55,000 or more but less than \$75,000	6 months
\$75,000 or more but less than \$90,000	7 months
\$90,000 or more	12 months

(B) **Bona Fide Offer to Sell; Procedures for Filing Notice of Offer and Questioning Price.** Before making a bona fide offer to sell as provided for in this Section, an owner shall first file a notice with the Zoning Administrator, or the Zoning Administrator's designee. The notice shall identify the property, state the offering price, the date the offer of sale is

to begin and name and address of the listing real estate agent, if any. The notice shall provide reasonable assurances that the historic landmark, building, or structure shall be preserved. No time period set forth in the time schedule contained in this Section shall begin to run until said notice has been filed. Within five days of receipt of a notice, copies of the notice shall be delivered to the HDRC.

- (C) **Question as to Price.** The fact that a historic landmark, building, or structure has been offered for sale at a price reasonably related to its fair market value may be questioned, provided there is filed with the HDRC on or before 15 days after the offer of sale has begun, a petition in writing signed by at least five persons owning real estate in the vicinity of property offered for sale. Alternatively the HDRC may question said price on its own motion. Upon receipt of such petition, or upon its own motion, the HDRC shall, at the expense of the County, appoint three disinterested real estate appraisers, familiar with property values in Loudoun County, who shall forthwith make an appraisal of the historic landmark, building, or structure in question and file a written report with the HDRC stating whether or not the offer to sell the historic landmark, building, or structure is at a price reasonably related to its fair market value. The concurring opinion of any two of the three appraisers shall be final and binding. In the event the opinion is to the effect that the offer to sell the historic landmark, building, or structure is at a price reasonably related to its fair market value, the owner may continue to offer the property for sale pursuant to this Section. In the event the opinion is to the effect that the offer to sell the historic landmark, building, or structure is not at a price reasonably related to its fair market value, the date of the offer to sell first established pursuant to this Section shall be void and the owner, if he wishes to take advantage of the right provided in said Section, must re-file the notice provided for above.

Notwithstanding an adverse opinion by the appraisers if an owner has entered into a binding bona fide contract as provided in this Section 6-1906 prior to the date the appraisers have filed their report with the HDRC, the price shall be deemed reasonably related to the fair market value.

## 6-1907 **Hazardous Conditions**

- (A) **Landmarks, Buildings, or Structures.** Nothing in this section shall prevent the razing or demolition of any historic landmark, building, or structure within a Historic District which is in such an unsafe condition that it would endanger life or property as determined, in writing verifying the conditions necessitating such action, by the Building Official, in accordance with Chapter 1410 of the Codified Ordinances of Loudoun County, as amended.
- (B) **Walls, Fences, and Signs.** Walls, fences, and signs within a Historic District may be razed or demolished without approval by the HDRC, if it is in such unsafe condition that it would endanger life or property as



determined by the Zoning Administrator, or the Zoning Administrator's designee.

**6-1908 Enforcement.** In addition to the remedies provided in Section 6-500 et seq. of the Zoning Ordinance, the Zoning Administrator, or the Zoning Administrator's designee, shall have the authority to order that work be stopped, and that all CAPPs, CAPAs, or other permits for the work being performed on a building or structure located within a Historic District be revoked, or if no CAPP, CAPA, or other permit has been approved, to require the approval of the necessary CAPP or CAPA prior to the continuation of work on said building or structure.

**6-1909 Appeals.**

**(A) Appeal from Zoning Administrator to HDRC.**

- (1) In lieu of any appeal pursuant to Section 6-1700 et seq., any person aggrieved by any decision of the Zoning Administrator, or the Zoning Administrator's designee, in the administration or enforcement of Section 6-1900 et seq., may appeal such decision to the HDRC. Appeals shall be taken within thirty (30) days from the date of the decision by filing with the Zoning Administrator, or the Zoning Administrator's designee, a notice of appeal specifying the grounds of the appeal, submitted in accordance with Section 6-1707 of the Zoning Ordinance. The Zoning Administrator, or the Zoning Administrator's designee, shall forthwith forward to the chairman of the HDRC all materials constituting the record upon which the decision appealed was taken.
- (2) In considering an appeal of a decision of the Zoning Administrator, or the Zoning Administrator's designee, the HDRC shall review the decision as if the decision had come before it in the first instance. In an appeal, the HDRC may consider any information or opinions relevant to the application, including, without limitation, those provided by the Zoning Administrator, or the Zoning Administrator's designee.

**(B) Appeals from HDRC to Board of Supervisors.**

- (1) Appeals to the Board of Supervisors may be taken by any person aggrieved by any final decision of the HDRC in the administration or enforcement of Section 6-1900 et seq. Appeals shall be taken within thirty (30) days from the date of the decision by filing with the Zoning Administrator, or the Zoning Administrator's designee, a notice of appeal specifying the grounds of the appeal, in accordance with Section 6-1707 of the Zoning Ordinance. The Zoning Administrator, or the Zoning Administrator's designee, shall forthwith forward to the Clerk of the Board of Supervisors all the materials constituting the record upon which the action appealed from was taken.

- (2) A notice of appeal properly filed as herein provided shall stay the final decision of the HDRC; provided, however, that the appellant shall be prohibited from taking any action for which approval is sought pending the outcome of the appeal to the Board of Supervisors.
- (3) Within ninety (90) days after the notice of appeal has been filed, the Board of Supervisors shall hold a public hearing, give public notice thereof as required by Section 15.2-2204 of the Code of Virginia, as amended, as well as due notice to the parties in interest. In exercising its powers, the Board of Supervisors shall give due consideration to the decision of the HDRC and Sections 6-1800 et seq. and 6-1900 et seq. of the Zoning Ordinance, and may reverse or affirm, wholly or partly, or may modify the decision appealed from. The Zoning Administrator, or the Zoning Administrator's designee, shall provide a copy of the decision to the appellant and upon each other person who was a party of record at the hearing.

#### **6-1910**

**Appeals from Board of Supervisors to Circuit Court.** Any person aggrieved by any final decision of the Board of Supervisors made pursuant to Section 6-1909(B) of the Zoning Ordinance, may appeal to the Circuit Court for the County of Loudoun, in accordance with Section 15.2-2306 of the Code of Virginia of 1950, as amended. The filing of a petition of appeal with the Circuit Court shall stay the decision of the Board pending the outcome of the appeal to the Court, except that the filing of such petition shall not stay the decision of the Board if such decision denies the right to raze or demolish a historic landmark, building, or structure.

**Section 6-2000      RESERVED**