

ARTICLE I - GENERAL PROVISIONS

SEC. 30-1 AUTHORITY AND CITATION

The provisions of this ordinance are adopted pursuant to Section 15.2-2280 and 2281 et seq., of the Code of Virginia, as amended. This ordinance, and all provisions contained herein, together with the official zoning map, a copy of which is on file in the department of planning, shall be known as the Bedford County Zoning Ordinance, and may be cited as such, or as the "zoning ordinance."

SEC. 30-2 JURISDICTION

The provisions of this ordinance shall apply to all property within the unincorporated portions of Bedford County, Virginia, including any property within the county that may be assessed in an adjoining jurisdiction.

SEC. 30-3 PURPOSE

(A) The zoning regulations and districts set forth in this ordinance are for the general purpose of implementing the comprehensive plan of Bedford County. They are designed to achieve the general purposes of promoting the health, safety, and general welfare of the public, and of further accomplishing the objectives of Section 15.2-2200 of the Code of Virginia, as amended. To these ends, this ordinance is designed to give reasonable consideration to each of the following purposes:

1. Provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers;
2. Reduce or prevent congestion in the public streets;
3. Facilitate the creation of a convenient, attractive, and harmonious community;
4. Facilitate the provision of adequate police, fire protection, disaster evacuation, civil defense, transportation, water, sewer, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements;
5. Protect against destruction of, or encroachment upon, historic buildings or areas;
6. Protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light or air, hazards and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic, or other hazards;
7. Encourage economic development activities that provide desirable employment and enlarge the tax base;
8. Provide for the preservation of agricultural and forested lands;
9. Protect approach slopes and other safety areas of licensed airports, and;
10. Protect surface and groundwater resources.

SEC. 30-4 APPLICATION OF REGULATIONS

- (A) Uses and activities not provided for or addressed by the terms of this ordinance, shall be considered prohibited uses and activities, unless the zoning administrator shall find that the use or activity is compatible and consistent with the provisions of this ordinance.
- (B) Where the standards imposed by this ordinance are more or less restrictive than any other standard imposed by public regulation, the more restrictive standard shall apply.

SEC. 30-5 ZONING ADMINISTRATOR; POWERS AND DUTIES

- (A) The county administrator, or his designee, shall serve as the zoning administrator. The zoning administrator shall be responsible for the enforcement of this ordinance.
- (B) The zoning administrator, or his designee, shall have the following powers and duties:
 1. Zoning permit. To issue or deny a zoning permit for the erection, construction, reconstruction, moving, adding to or alteration of any structure, or the establishment of any land use. The zoning administrator shall also have the authority to revoke any zoning permit if violations of the provisions of this ordinance occur.
 2. Certificate of zoning compliance. To issue or deny a certificate of zoning compliance.
 3. Collect fees. To collect any fees required or set forth in this ordinance.
 4. Making and keeping records. To make and keep all records required by state law or necessary and appropriate for the administration of this ordinance.
 5. Inspection of buildings or land. To inspect any building or land to determine if violations of this chapter have been committed or exist.
 6. Enforcement. To enforce this ordinance and take all necessary steps to remedy any condition found in violation of the provisions of this ordinance.
 7. Request assistance. To request the assistance of other local and state officials or agencies in the administration and enforcement of this ordinance.
 8. Interpretation. To interpret the official zoning map and provisions of this ordinance, and offer written opinions on their meaning and applicability.
- (C) The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include: (1) ordering in writing the remedying of any condition found in violation of the ordinance; (2) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to Section 15.2-2311 of the Code of Virginia, as amended; and (3) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under Section 15.2-2307 of the Code of Virginia, as amended.
- (D) The zoning administrator may be authorized to grant a variance from any building setback requirement contained in the zoning ordinance if the zoning administrator finds in writing that: (1) the strict application of the ordinance would produce undue hardship; (2) such

hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (3) the authorization of the variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the variance. Prior to the granting of an administrative variance, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for administrative variance, and an opportunity to respond to the request within 21 days of the date of the notice. If any adjoining property owner objects to said request in writing within the time specified above, the request shall be denied. If denied, the applicant may seek a variance from the board of zoning appeals.

(Ord. of 07.08.02)

SEC. 30-6 ESTABLISHMENT OF DISTRICTS

(A) The following are established as Bedford County zoning districts:

Agricultural Districts

- AP Agricultural/Rural Preserve District
- AR Agricultural/Residential District
- AV Agricultural Village Center District

Residential Districts

- R-1 Low Density Residential District
- R-2 Medium Density Residential District
- R-3 Medium Density Multi-Family Residential District
- R-4 High Density Multi-Family Residential District
- PRD Planned Residential Development District
- R-MH Manufactured Home Overlay District
- RCO Residential Cluster Overlay District (Reserved)

Commercial Districts

- NC Neighborhood Commercial District
- C-1 Office District
- C-2 General Commercial District
- INT Interchange District (Reserved)
- PCD Planned Commercial Development District

Industrial Districts

I-1	Low-Intensity Industrial District
I-2	Higher-Intensity Industrial District
PID	Planned Industrial Development District

Special Purpose Districts

HO	Historic Overlay District
PO	Park Overlay District
AO	Airport Overlay District
ECO	Emergency Communications Overlay District
FO	Floodplain Overlay District
RRCO	Roanoke River Conservation Overlay District
WHP	Well-head Protection Overlay District
CO	Corridor Overlay District
WCO	Wireless Communication Overlay District
SMLO/SVO	Smith Mountain Lake Overlay District/Scenic View Overlay District (Reserved)

The location and boundaries of these zoning districts are shown on the official zoning map.

SEC. 30-7 INTERPRETATION OF DISTRICT BOUNDARIES

(A) Where uncertainty exists as to the boundaries of districts shown on the official zoning map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of streets, right-of-ways, or alleys shall be construed to follow such centerlines.
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines, except that the zoning designation of any platted lot shall extend to the center line of any adjacent street, right-of-way or alley.
3. Boundaries indicated as following centerlines of bodies of water shall be construed as following such centerlines. In the event such centerlines move as a result of natural forces, the boundary shall also move.
4. Where there is uncertainty concerning the location of a district boundary not resolved by the application of the above rules, the zoning administrator may interpret the official zoning map in such a way as to carry out the purpose and intent of this ordinance.

SEC. 30-8 PLANNING COMMISSION; POWERS, DUTIES, AND COMPOSITION

- (A) The planning commission shall have the right to exercise all of the powers and duties authorized by Title 15.2, Chapter 22 of the Code of Virginia, as amended. The planning commission shall advise and assist the board of supervisors and the board of zoning appeals in accomplishing the purposes of this ordinance.
- (B) The planning commission shall consist of 7 members, who shall be appointed by the board of supervisors. Composition of the planning commission shall be in accordance with Section 15.2-2212 of the Code of Virginia, as amended. Each of the election districts within the county shall be represented by at least one member of the planning commission. At-large members shall be permitted, if approved by the board of supervisors.
- (C) The planning commission shall develop, adopt, and maintain by-laws that govern its operation.

Sec. 30-8-1 Comprehensive Plan

- (A) The planning commission shall prepare and recommend a comprehensive plan for the physical development of the county in accordance with the requirements of Section 15.2-2223 of the Code of Virginia, as amended. The plan may also include any other policy areas deemed by the planning commission and board of supervisors to be important to the long-term development of the county. The board of supervisors shall adopt the plan in accordance with the requirements of Title 15.2 Chapter 22, Article 3 of the Code of Virginia, as amended. Once adopted, the planning commission shall have the responsibility to continuously review and recommend updates to the plan to ensure that the plan remains a current statement of county development goals, objectives, and policies.
- (B) The comprehensive plan shall be used by the planning commission and board of supervisors as one basis upon which to evaluate amendments to, and approvals required by, this ordinance in accordance with provisions contained herein.

SEC. 30-9 ZONING PERMITS

- (A) A zoning permit shall be required for the erection, construction, reconstruction, moving, adding to, or alteration of any structure, or the establishment of any land use, except as listed below:
 - 1. Patios at grade.
 - 2. Fences, provided their location and design conform to Article V of this ordinance.
 - 3. Satellite dishes.
- (B) It shall be the responsibility of the applicant to provide any information necessary for the zoning administrator to determine that the proposed use, building, or structure complies with all provisions of this ordinance.
- (C) For any use, building, or structure requiring an approved site development plan, no zoning permit shall be issued until such time as a site development plan is submitted, reviewed, and approved in accordance with Article V of this ordinance.

- (D) For uses or structures not requiring an approved site development plan, the zoning administrator shall determine, in accordance with this ordinance, the type of information necessary to review the permit. At a minimum, a plot plan shall be required meeting the standards contained in Article V of this ordinance.
- (E) All zoning permits issued shall be valid for a period of 6 months, unless the structure, use, or activity for which the permit was issued has commenced. The zoning administrator may reissue any expired permit provided the structure, use, and or activity complies with all applicable provisions of the ordinance at the time of reissuance.
- (F) The zoning administrator shall have the authority to approve the form and content of zoning permit applications.

Sec. 30-9-1 Building Permits; Relation to Zoning

No building permit for the extension, erection, or alteration of any building or structure shall be issued before an application has been made and a zoning permit issued. No building or structure shall be occupied or used until a certificate of zoning compliance has been issued.

SEC. 30-10 CERTIFICATES OF ZONING COMPLIANCE

- (A) A certificate of zoning compliance shall be required for any of the following:
 1. Occupancy or use of a building hereafter erected, enlarged, or structurally altered.
 2. Change in the use or occupancy of an existing building.
 3. Occupancy or change in the use of vacant land except for the raising of crops and other agricultural uses not involving structures. Forestry operations shall not require a certificate if such operations comply with the provisions of Article IV of this ordinance.
 4. Any change in use of a nonconforming use, or any alteration of a nonconforming building or structure.
- (B) No such occupancy, use, or change in use shall take place until a certificate of zoning compliance has been issued by the county. Such certificate shall certify that the building or the proposed use, or the use of the land, complies with the provisions of this ordinance. Upon application of the owner or an authorized agent, the county shall issue the certificate of zoning compliance for any building, structure, or lot, provided, that the county finds such building, structure, or lot is in conformity with all applicable provisions of this ordinance and all other applicable county laws.
- (C) The county shall issue or deny any application for a certificate of zoning compliance within 7 days of an application being filed. If denied, the county shall advise the owner or owner's agent the reasons for the denial, and the specific actions required on the part of the owner before the certificate of zoning compliance can be issued. If the county does not respond within the 7 day time period, the applicant may assume that the certificate of zoning compliance has been approved.

Sec. 30-10-1 Temporary or Partial Certificates of Zoning Compliance

- (A) In situations where a building, structure, or property must be occupied or used prior to completion of all improvements required by county law, the county may issue a temporary or partial certificate of zoning compliance for the property upon application by the owner or authorized agent. Temporary or partial certificates of zoning compliance shall be valid for a period not to exceed 8 months, during which time all improvements required by county law must be made.
- (B) The county shall not issue any temporary or partial certificate of zoning compliance unless:
 - 1. The site and building is in a safe and usable condition, free from conditions that might endanger the health, safety, or welfare of persons using the site; and
 - 2. The owner or authorized agent provides to the county a performance guarantee, requiring corrective action. This guarantee shall be payable to the county, in an amount determined by the county to be sufficient to insure satisfactory completion of all improvements required and related to the development. The performance guarantee may be in the form of a corporate surety bond, cashiers check, or irrevocable letter of credit. The county attorney shall approve the form and language of any instrument submitted.
 - 3. The zoning administrator shall have the authority to waive the performance guarantee if the unfinished improvements have an estimated value of less than \$500.00
 - 4. The zoning administrator shall have the authority to grant an extension to the temporary certificate of zoning compliance, provided all performance guarantees remain in effect.

(Ord. of 06.14.99)

SEC. 30-11 ... 30-13 (RESERVED)

SEC. 30-14 AMENDMENTS TO ORDINANCE

- (A) Whenever the public necessity, convenience, general welfare, or good zoning practice require, the board of supervisors may, by ordinance, amend, supplement, or change these regulations, district boundaries, or classifications of property. Any such amendments may be initiated by:
 - 1. Resolution of the board of supervisors;
 - 2. Motion of the planning commission;
 - 3. Petition of the owner, contract purchaser with the owner's written consent, or the owner's agent thereof, of the property which is the subject of the proposed zoning map amendment.

Any petition submitted shall be in writing and shall be addressed to the zoning administrator, board of supervisors, or planning commission.

- (B) The zoning administrator shall establish and maintain the amendment application materials. These application materials shall, at a minimum, include any information the zoning administrator deems necessary for the planning commission and board of supervisors to evaluate adequately the amendment request. A concept plan shall accompany all map amendment requests. A concept plan shall include at a minimum what is required of site development plans in Article V.
- (C) The zoning administrator shall not accept any amendment application for a lot or parcel that does not comply with the minimum lot area, width, or frontage requirements of the requested zoning district. In such situations, the applicant shall first seek a variance from the board of zoning appeals. If a variance is granted, the zoning administrator shall thereafter accept the amendment application for the consideration of the planning commission and board of supervisors.
- (D) If any amendment application is withdrawn at the written request of the applicant to the zoning administrator subsequent to the planning commission's recommendation on the application, or if the board of supervisors denies any amendment application submitted for its review, the county shall not consider substantially the same application for the same property within one year of the application's withdrawal or the board of supervisors' action. The zoning administrator shall have the authority to determine whether new applications submitted within this one-year period are substantially the same. In making any such determination the zoning administrator shall have the authority to consider any items pertaining to the proposed use or development of the site such as, but not limited to, the uses proposed, densities, access, building locations, and overall site design.
- (E) An amendment application may be put on hold upon written request of the applicant at any time. This hold shall not exceed 6 months. The zoning administrator shall have the authority to grant one 3-month extension upon written request by the applicant. This request shall state reasons for said extension. The applicant shall make a written request to the zoning administrator to reactivate the amendment application. Should the application not be reactivated, it shall be considered withdrawn and subject to the requirements of (D) above. Any remaining fees would be due at said time.

SEC. 30-14-1 Neighborhood Informational Meeting

- (A) All proposals for development activities which constitute amendments to the ordinance pertaining to the reclassification of a specific parcel(s) shall be the subject of a neighborhood informational meeting.
- (B) Within 10 working days of the monthly filing deadline for a proposed site under Article I herein, or the determination that the site is presently developed, the zoning administrator shall notify the following parties of the date, time, and place of the neighborhood informational meeting. All parties shall be given a minimum of 7 calendar days and a maximum of 14 calendar days notice of this meeting.
1. All affected property owners within 1,500 feet of the property line of the proposed site shall be informed of the meeting by mail.
 2. All other persons shall be informed of the meeting by a conspicuously placed standardized on-site sign with a minimum dimension of 2 feet by 3 feet and by a legal notice of the meeting in a newspaper published or having general circulation in the locality. Sign shall be placed in accordance with Section 30-14-4 herein.

3. The developer shall be informed of the meeting by mail. Failure of the developer, or his authorized agent, to attend this meeting shall lead to an automatic annulment of the application; no refunds of any fees shall be made.
- (C) During the neighborhood informational meeting, at which the zoning administrator or his designee shall preside, hereinafter referred to as the presiding officer, the developer shall explain to the affected property owners the proposed use for the site. The presentation shall include the developer's position on the compatibility of the project. It shall always be the developer's responsibility to propose a compatible project.
- (D) Following the presentation, the affected property owners shall be permitted time to question the developer about points which remain unclear. Questioning shall center on the proposal's compatibility as presented, not the question of whether the site should be developed or its use changed. The following criteria are relevant topics for consideration during this exchange.
1. Will the proposed project increase traffic or parking in the area to an unsafe level?
 2. Will the proposed project increase pedestrian traffic in the area to an unsafe level?
 3. Will the proposed project create an unsightly view for affected property owners?
 4. Will the proposed project create a noise nuisance for affected property owners?
 5. Will the proposed project create artificial lighting glare on affected property owners' property?
 6. Will the proposed project create water runoff and/or flooding problems?
 7. Will the proposed project create an odor nuisance for affected property owners?
 8. Will the proposed project create air or water pollution?
 9. Will the proposed project lead to the loss of privacy for affected property owners?
 10. Will the proposed project lead to an undesirable change in the character of the area, such as, but not limited to, taking open space, removing the natural vegetation, or altering historically valuable sites for development?
 11. Will the proposed project increase the need for government services?
 12. Will the proposed project increase the need for utilities?
 13. Will the proposed project be compatible with the county's comprehensive plan?
- (E) In the event that any of the criteria listed in (D) above pose a problem, thus putting compatibility in question, a solution shall be discussed. The following are among the possible solutions to the problems listed above.
1. Increase in traffic: upgrade the road design; control access to the road; upgrade the intersection design.
 2. Increase in pedestrian traffic: construct facilities to handle it.

3. Creation of an unsightly view: screen the view using natural or man-made materials; provide greater distance between the proposed building and existing development.
4. Creation of noise: provide or construct barriers; construct earthen berms; provide greater distance between the noise generator and existing development; screen the noise generator using natural or man-made materials.
5. Creation of glare: revise plans to utilize fixtures and bulbs which minimize glare; screen the lights using natural or man-made materials.
6. Creation of water run off problems: revise the water drainage system; construct water retention pools; screen the retention ponds with natural or man-made materials.
7. Creation of odor nuisances: enclose and filter the odors; provide greater distance between the odor generator and existing development.
8. Creation of pollution: filter and lessen the problem; provide greater distance between the generator and existing development.
9. Loss of privacy: screen the new development with natural or man-made materials; dedicate part of the site to public use.
10. Change in the community character: dedicate land to public use; screen or landscape the proposed development with natural or man-made materials.

(Ord. of 07.08.02)

Sec. 30-14-2 Planning Commission Study and Action

- (A) All proposed amendments to the zoning ordinance shall be referred by the board of supervisors to the planning commission for study and recommendation. The planning commission shall study proposals to determine:
1. The need and justification for the change.
 2. When pertaining to a change in the district classification of property, the effect of the change, if any, on the property, surrounding property, and on public services and facilities. In addition, the planning commission shall consider the appropriateness of the property for the proposed change as related to the purposes set forth at the beginning of each district classification.
 3. The relationship of the proposed amendment to the purposes of the general planning program of the county, with appropriate consideration as to whether the change will further the purposes of this ordinance and the general welfare of the entire community.
 4. Whether the proposed amendment conforms to the general guidelines and policies contained in the county comprehensive plan.
- (B) Prior to making any recommendation to the board of supervisors on a proposed amendment to the zoning ordinance, the planning commission shall advertise and hold a public hearing in accordance with the provisions of Section 15.2-2204 of the Code of Virginia, as amended.

The cost of all public advertisements shall be the responsibility of the applicant. This hearing may be held jointly with the board of supervisors.

- (C) The planning commission shall review the proposed amendment and report its findings and recommendations to the board of supervisors along with any appropriate explanatory materials within 90 days from the date that the proposed zoning ordinance amendment is referred to the planning commission. Failure of the planning commission to report to the board of supervisors within 90 days shall be deemed a recommendation of approval. If the planning commission does not report within 90 days, the board of supervisors may act on the amendment without the recommendation of the planning commission.
- (D) Any recommendation of the planning commission shall be deemed advisory, and shall not be binding on the board of supervisors.

Sec. 30-14-3 Board of Supervisors Study and Action

- (A) Before enacting any proposed amendment to the zoning ordinance, the board of supervisors shall hold a public hearing as required by Section 15.2-2204 of the Code of Virginia, as amended. The cost of all public advertisements shall be the responsibility of the applicant. After holding this hearing, the board of supervisors may make appropriate changes to the proposed amendment; provided however that no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public notice as required by Section 15.2-2204. Amendment to the zoning ordinance shall be by ordinance of the board of supervisors. The board of supervisors may take action on the proposed amendment within 12 months from the date of application.
- (B) The clerk of the board of supervisors shall transmit to the zoning administrator official notice of any board of supervisors' action modifying the zoning ordinance. The zoning administrator shall thereafter have the responsibility to make any necessary and appropriate changes to the zoning ordinance text or map.

Sec. 30-14-4 Posting of Property

- (A) Notwithstanding any advertising requirements imposed by Section 15.2-2204 of the Code of Virginia, as amended, any applicant for a proposed map amendment, special use permit, variance, or any other type of review as elsewhere specified in this ordinance shall have the additional responsibility of placing public notice on the property proposed for review.
- (B) At least 14 days prior to the planning commission's public hearing, and at least 7 days prior to the Neighborhood Informational meeting on the pending application, the applicant shall erect on the subject property signs indicating the change proposed and the date, time, and place of the public hearing/informational meeting. The wording and size of the sign shall be approved by the zoning administrator. The applicant shall notify the zoning administrator of the sign's installation so that it may be inspected to insure compliance with these requirements. Failure to do so shall result in the cancellation or continuation of the scheduled public hearing/informational meeting. The applicant shall be responsible for all advertising costs associated with rescheduling the public hearing/informational meeting.
- (C) The zoning administrator shall determine the number of signs required; however, there shall be at least one sign posted along each public right-of-way abutting the property. At least one sign shall be posted every 300 feet along any single right-of-way. For properties that lack any public right-of-way, all required signs shall be posted along at least 2 property lines, as determined by the zoning administrator.

- (D) The applicant shall have the responsibility to determine and provide the structural elements necessary to erect the sign on the property. All signs erected must be posted within 10 feet of the adjacent right-of-way, and must be clearly visible from same.
- (E) The applicant shall have the responsibility of protecting the signs from the elements to ensure that the sign is in place and legible through the date of the public hearing/informational meeting. If any sign is damaged due to the elements, such that the pertinent information on the sign is unreadable, the public hearing/informational meeting may be rescheduled or continued. The applicant shall be responsible for all advertising costs associated with rescheduling the public hearing/informational meeting.
- (F) All public hearing/informational meeting signs posted shall be removed from the property by the applicant within 14 days after the planning commission's public hearing or the informational meeting.

Sec. 30-14-5 Posting of Property; Exemptions

- (A) The following exemptions shall apply to the provisions of Section 30-14-4:
 1. The posting of property shall not be required for any action initiated by a resolution of the board of supervisors, if the action encompasses more than 26 parcels of land.
 2. Vandalism or unauthorized removal of the signs prior to the planning commission hearing or neighborhood informational meeting shall not violate the public notice intent of Section 30-14-4. The zoning administrator shall have the responsibility for determining whether or not the signs have been vandalized.

SEC. 30-15 CONDITIONAL ZONING; GENERALLY

- (A) In accordance with the authority granted to Bedford County per 15.2-2297(B) of the Code of Virginia, as amended, the owner of property for which an amendment is requested may voluntarily proffer in writing reasonable conditions, in addition to the applicable regulations for the requested zoning district. All proffered conditions must be signed by the owner of the property.
- (B) Bedford County's acceptance of proffers pursuant to this authority shall be in accordance with the procedures and standards contained in 15.2-2298 of the Code of Virginia, as amended.
- (C) All conditions proffered by the owner shall meet the following standards:
 1. The rezoning itself must give rise for the need for the conditions.
 2. The conditions shall have a reasonable relation to the rezoning.
 3. The conditions shall be in conformity with the comprehensive plan.
 4. The conditions must be clearly understood and enforceable.
 5. The conditions must not require or allow a design or standard that is less restrictive than the general provisions of this ordinance.

- (D) Any such conditions should be submitted prior to the start of the planning commission's public hearing on the amendment. All conditions shall be submitted prior to the start of the board of supervisors' public hearing, and shall also be submitted in accordance with any adopted board of supervisors' policy pertaining to the submittal of proffers. If proffered conditions which substantially modify the nature or impact of the proposed use are made by the owner after the planning commission's recommendation on the amendment, the zoning administrator shall recommend to the board of supervisors that the amendment be referred back to the planning commission for further review and action. The planning commission shall have the authority to schedule a new public hearing for any request so referred. The applicant shall be responsible for all advertising costs associated with the new public hearing.
- (E) The planning commission and the board of supervisors shall not be obligated to accept any or all of the conditions made by the property owner.

Sec. 30-15-1 Enforcement of Conditions

- (A) The zoning administrator shall be vested with all necessary authority on behalf of the board of supervisors to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including:
 1. The ordering in writing of the remedy of any noncompliance with such conditions.
 2. The bringing of legal action to insure compliance with such conditions.
 3. Requiring a guarantee satisfactory to the zoning administrator in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions; or a contract for the construction of such improvements, and the contractor's guarantee, in like amount and so conditioned; which guarantee shall be reduced or released by the zoning administrator upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part.
- (B) Failure of a property owner to meet all conditions accepted by the board of supervisors shall constitute cause to deny approval of a site development plan, or deny issuance of a zoning permit, building permit, or certificate of zoning compliance, as may be appropriate.

Sec. 30-15-2 Records of Conditions

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

Sec. 30-15-3 Review of Zoning Administrator's Decisions

Any zoning applicant, or any other person aggrieved by a decision of the zoning administrator made pursuant to the provisions of Section 30-15, may petition the board of supervisors for the review of the decision of the zoning administrator. All such petitions for review shall be filed with the zoning administrator and clerk of the board of supervisors within 30 days from the date of the decision for which review is sought. All such petitions shall specify the grounds upon which the petitioner is aggrieved.

Sec. 30-15-4 Amendments and Variations of Conditions

- (A) Any request by an applicant to amend conditions that were voluntarily proffered and accepted by the board of supervisors shall be considered an amendment to the zoning ordinance, and shall be reviewed pursuant to the provisions contained in Section 30-14.
- (B) There shall be no amendment or variation of conditions created pursuant to the provisions of this ordinance until after a public hearing by the planning commission and board of supervisors advertised pursuant to the provisions of Section 15.2-2204 of the Code of Virginia, as amended. The cost of all public advertisements shall be the responsibility of the applicant.

SEC. 30-16 ... SEC. 30-18 (RESERVED)

SEC. 30-19 SPECIAL USE PERMITS; APPLICABILITY AND PURPOSE

- (A) The procedures and standards contained in this section shall apply to all uses specifically permitted as special uses in the district regulations found elsewhere in this ordinance.
- (B) This category of uses known as special uses is established in recognition that in addition to uses permitted by right, certain uses may, depending upon their scale, design, location, and conditions imposed by the board of supervisors be compatible with existing and future uses in a district.
- (C) The review and subsequent approval or disapproval of a special use permit by the board of supervisors shall be considered a legislative act, and shall be governed by the procedures thereof.

Sec. 30-19-1 General Standards

- (A) The zoning administrator shall not accept a Special Use Permit application for a lot or parcel that does not comply with the minimum requirements contained in the Use and Design Standards for that use. In such situations, the applicant shall first seek a variance from the board of zoning appeals. If a variance is granted, the zoning administrator shall thereafter accept the Special Use Permit application for the consideration of the planning commission and board of supervisors.
- (B) No special use permit shall be issued except upon a finding of the board of supervisors that in addition to conformity with any standards set forth in Article IV, Use and Design Standards, the proposed special use conforms with the following general standards. These standards shall be met either by the proposal made in the original special use permit application, or by the proposal as modified or amended as part of the review of the application by the planning commission and the board of supervisors:
 1. The proposal as submitted or modified shall conform to the comprehensive plan of the county, or to specific elements of the plan, and to official county policies adopted in relation thereto, including the purposes of the zoning ordinance.

2. The proposal as submitted or modified shall have a minimum adverse impact on the surrounding neighborhood or community. Adverse impact shall be evaluated with consideration to items such as, but not limited to, traffic congestion, noise, lights, dust, drainage, water quality, air quality, odor, fumes and vibrations. In considering impacts, due regard shall be given to the timing of the operation, site design, access, screening, or other matters which might be regulated to mitigate adverse impacts.

Sec. 30-19-2 Application Requirements

- (A) An application for a special use permit may be initiated by:
 1. Resolution of the board of supervisors, or;
 2. Motion of the planning commission, or;
 3. Petition of the owner, contract purchaser with the owner's written consent, or the owner's agent, of the property for which a special use permit is requested.
- (B) The applicant for a special use permit shall provide, at the time of application, information and or data to demonstrate that the proposed use will be in harmony with the purposes of the specific zoning district in which it will be located. Further, the applicant shall have the responsibility to demonstrate that the proposed use will have minimum adverse impact on adjoining property and the surrounding neighborhood in terms of public health, safety, or general welfare.
- (C) All applications submitted for special use permits shall show the nature and extent of the proposed use and development. If the proposed development is to be constructed in phases, all phases shall be shown at the time of the original application. The applicant shall have the responsibility to show that the proposal meets all of the applicable specific and general standards for the use.
- (D) The zoning administrator shall establish and maintain the special use permit application materials. At a minimum these materials shall require the submittal of a concept plan.

Sec. 30-19-3 Review and Action

- (A) The department of planning shall review all special use permit applications submitted. This review shall evaluate the proposal against the comprehensive plan and the specific and general standards for the requested use. The department of planning shall make a report of its findings to the planning commission. This report shall contain all information pertinent to the evaluation of the request.
- (B) The planning commission shall review and make recommendations to the board of supervisors concerning the approval or disapproval of any special use permit. No such recommendation shall be made until after a public hearing is held in accordance with Section 15.2-2204 of the Code of Virginia, as amended. This hearing may be held jointly with the board of supervisors. Posting of the property shall be in accordance with Section 30-14-4 of this ordinance. The planning commission shall base its recommendation upon the review of the submitted application materials, the specific and general criteria for the special use, public comment received at the hearing, and the information and evaluation of the department of planning. In making a recommendation to the board of supervisors, the planning commission may recommend any conditions necessary to insure that the proposal meets the specific and general standards for the proposed use. Any such conditions shall be

related to the design, scale, use, or operation of the proposed special use. Where warranted, for the purpose of compliance with the general standards for special uses, such conditions may exceed the specific standards for the use found elsewhere in this ordinance.

- (C) The board of supervisors may grant or deny any applicant a special use permit after notice is given and a public hearing is held in accordance with Section 15.2-2204 of the Code of Virginia, as amended. No action on any special use permit shall be taken until the board of supervisors has received the recommendation of the planning commission. In granting a special use permit, the board of supervisors may attach any conditions necessary to insure that the proposal meets the specific and general standards for the proposed use. Any such conditions shall be related to the design, scale, use, or operation of the proposed special use. Where warranted, for the purpose of compliance with the general standards for special uses, such conditions may exceed the specific standards for the use found elsewhere in this ordinance.

Sec. 30-19-4 Time Limitations

- (A) Within 90 days from the date that the proposed special use permit application is referred to the planning commission, unless a longer period shall have been established by mutual agreement between the board of supervisors and the planning commission in a particular case, the planning commission shall review the proposed application and report its findings and recommendation to the board of supervisors along with any appropriate explanatory materials. Failure of the planning commission to report to the board of supervisors within 90 days shall be deemed a recommendation of approval. If the planning commission does not report within 90 days, the board of supervisors may act on the application without the recommendation of the planning commission.
- (B) The board of supervisors shall hold a public hearing and approve or deny any special use permit application within 12 months after receiving the planning commission's recommendation. Failure to act on any permit within this 12-month period shall be deemed denial of the permit.
- (C) Any special use permit granted shall be null and void 2 years after approval by the board of supervisors if the use or development authorized by the permit is not commenced to a degree that, in the opinion of the zoning administrator, clearly establishes the intent to utilize the granted special use permit in a period of time deemed reasonable for the type and scope of improvements involved.
- (D) Special uses which are approved by the board of supervisors shall run with the land, except that:
1. Activities or uses approved by a special use permit which are discontinued for a period of more than 2 consecutive years shall not be reestablished on the same property unless a new special use permit is issued in accordance with this ordinance.
 2. A special use permit shall be void, if at the time of the commencement of the authorized use, activity, or structure, the site for which the permit has been granted contains other uses or activities not in place at the time of the issuance of the special use permit.
- (E) If any special use permit application is withdrawn at the request of the applicant subsequent to the planning commission's recommendation on the permit, or if the board of supervisors denies any application submitted for its review, the county shall not consider any application

for the same special use, on the same property, within one year of the permit withdrawal or the board of supervisors' action.

- (F) The zoning administrator shall not accept any special use permit application for a lot or parcel that does not comply with the minimum lot area, width, or frontage requirements of the requested zoning district. In such situations, the applicant shall first seek a variance from the board of zoning appeals. If a variance is granted, the zoning administrator shall thereafter accept the special use permit application for the consideration of the planning commission and board of supervisors.
- (G) A special use permit application may be put on hold upon written request of the applicant at any time. This hold shall not exceed 6 months. The zoning administrator shall have the authority to grant one 3-month extension upon written request by the applicant. This request shall state reasons for said extension. The applicant shall make a written request to the zoning administrator to reactivate the special use permit application. Should the application not be reactivated, it shall be considered withdrawn and subject to the requirements of (E) above. Any remaining fees would be due at said time.

SEC. 30-20 FEES

Administrative review fees for permits and procedures specified by this ordinance shall be established by the board. A schedule of these fees is available in the department of planning.

SEC. 30-21 ENFORCEMENT

- (A) The zoning administrator may, as necessary, solicit the assistance of other local and state officials and agencies to assist with enforcement of this ordinance.
- (B) Upon becoming aware of any violation of any provisions of this ordinance, the zoning administrator shall serve notice of such violation on the person committing or permitting the same, and if such violation has not ceased within such reasonable time as the zoning administrator has specified in such notice, the zoning administrator shall institute such action as may be necessary to terminate the violation.
- (C) If the zoning administrator is not able to obtain compliance within such reasonable time as set forth in the written notice of violation, civil and/or criminal procedures may be initiated in accordance with county law.

SEC. 30-22 PENALTIES

Sec. 30-22-1 Criminal Penalties

Any violation of any provision of this ordinance shall be a misdemeanor punishable by a fine of not less than \$10.00 dollars nor more than \$1,000.00 dollars. If the violation is uncorrected at the time of the 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 a fine of not less than \$10.00 dollars nor more than \$1,000.00 dollars, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine of not less than \$100.00 dollars nor more than \$1,500.00 dollars.

(Ord. of 09.08.03)

Sec. 30-22-2 Civil Penalties

- (A) Any violation of any provision of this ordinance, excluding any zoning violation resulting in injury to any persons, shall be deemed an infraction and may be punishable by a civil penalty of no less than \$25.00 dollars and not more than \$250.00 dollars for the initial summons or not less than \$50.00 dollars or more than \$250.00 dollars for each additional summons.
- (B) Each day during which any violation of the provisions scheduled above is found to have existed shall constitute a separate offense. However, in no event shall any such violation arising from the same set of operative facts be charged more frequently than once in any 10 day period, nor shall any such violation arising from the same set of operative facts result in civil penalties which exceed a total of \$3,000.00 dollars.
- (C) The designation of a particular violation of this ordinance as an infraction under this section shall preclude the prosecution of such as a criminal misdemeanor, except for any violation resulting in injury to any person or persons, which may be so prosecuted as well.
- (D) The provisions of this section shall supplement the provisions of Section 30-24 et seq. of this ordinance dealing with the board of zoning appeals. Use of these provisions shall stay any proceeding under this section.

(Ord. of 09.08.03)

SEC. 30-23 NONCONFORMING USES AND STRUCTURES; GENERALLY

- (A) Within the zoning districts established by this ordinance, or by future amendments which may later be adopted, there exist, or may exist lots, parcels, structures, uses of land and structures, and characteristics of site design and/or use which were lawful before this ordinance was adopted or amended, but which would be prohibited under the terms of this ordinance or future amendment. Such structures, uses, and characteristics, or any combination thereof, are considered nonconformities, and are hereby declared by the board of supervisors to be inconsistent with the character of the districts in which they occur.
- (B) Nonconformities are permitted to remain until removed, discontinued, or changed to conform to the provisions of this ordinance. It is the intent of this ordinance that the continuance of nonconformities should not be indefinite, and that the nonconforming uses, structures, or characteristics should gradually be removed.
- (C) Nothing shall be construed to grant conforming status to uses or structures that existed as legal nonconforming uses prior to the adoption of this section or amendment thereto, unless such uses and structures now conform to all applicable provisions of this ordinance.

Sec. 30-23-1 Nonconforming Uses of Buildings, Structures or Land

- (A) Where, at the effective date of this ordinance or amendment thereto, lawful use exists of buildings, structures, or land, individually or in combination, which use is no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued provided:
 1. The use is not discontinued for more than 2 years; however, if the use has been discontinued for more than 2 years, but the site has been actively marketed in the interim, then that particular use or building shall be considered grandfathered and

allowed to continue. Sufficient documentation of the marketing effort throughout the entire time period must be provided to the zoning administrator.

2. The use is not converted or replaced, in whole or in part, by a use permitted in the district regulations;
 3. The buildings or structures containing the nonconforming use are maintained in their then structural condition.
- (B) A nonconforming use shall be allowed a 50 percent increase (either one time or cumulative) in the square footage of the use or structure in existence at the time of the initial adoption of this ordinance except where, at the effective date of this ordinance or amendment thereto, a lawful use exists through a special use permit under LUGS of buildings, structures, or land, individually or in combination, which is planned for modification, such modification must adhere to the following procedure:
1. All applications for modifications must be presented to the planning department. All applications must be accompanied by maps, plans, surrounding property owner information, or other materials which will further detail the proposed modification.
 2. Adjoining property owners shall be given written notice and an opportunity to respond to the proposed modification within 21 days of the date of the notice. If any adjoining property owner objects to said proposal in writing within the time specified above, the request shall be transferred to the planning commission and original approving board for public hearing and action.
- (C) No nonconforming use shall be moved in whole or in part to any portion of the lot or parcel unoccupied by such use at the time of the adoption or subsequent amendment of this ordinance.
- (D) No building or structure not conforming to the requirements of this ordinance shall be erected in connection with the nonconforming use of land.
- (E) Any building or structure, containing a nonconforming use, which is damaged shall be reconstructed in kind only in conformity with all applicable regulations.
- (F) Any legally established use which existed prior to the adoption of this ordinance or any subsequent amendments shall not be considered a nonconforming use where a special use permit is now required for establishment of such use. The use shall be allowed to continue operation, as well as reconstruct or structurally alter the building or structure without the necessity of obtaining a special use permit. However, approval of a special use permit shall be required, in accordance with Section 30-19, when either of the conditions below are present, in the opinion of the zoning administrator.
1. There is a 50 percent or greater net increase (either one time or cumulative) in the square footage of the use or structure proposed for expansion or enlargement; OR,
 2. The expansion or enlargement will substantially alter the site design and layout as it relates to circulation, parking, or other site characteristics so as to adversely effect surrounding properties.
- (G) A manufactured home park legally established prior to June 1, 1986 that is not designated with the R-MH overlay district shall be allowed to continue operation in conformance with

the provisions contained in Article IV (L) provided the use as a park has not been discontinued for a period of more than 2 years.

- (H) Notwithstanding (A) through (G) above, nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.
- (I) Any legal nonconforming use which was established prior to the adoption of LUGS (October 1989) may be allowed a greater than 50 percent net increase (either one time or cumulative) in the square footage of the use or structure proposed for expansion or enlargement provided a special use permit is approved in accordance with Section 30-19.

(Ord. of 11.15.06)

Sec. 30-23-2 Permitted Uses of Nonconforming Buildings, Land or Facilities

Determination of the permitted use of an existing building, structure or land shall be based upon the last legal use of the building, structure or land. To be a permitted use, such use must be in the same general use category (such as commercial or industrial, defined herein) as the existing building, structure or site. Where the proposed use is not in the same three digit classification under the Standard Industrial Classification Code as the existing use, it shall be subject to approval as a special use in accordance with Sec. 30-19 herein. Documentation as to the last legal use of the structure or site shall be provided to the zoning administrator.

(Ord. of 06.14.99; Ord. of 03.07.05)

Sec. 30-23-3 Nonconforming Buildings and Structures

- (A) Where a lawful building or structure exists at the time of passage or amendment of this ordinance, which could not be built under the terms of this ordinance by reason of restrictions on area, bulk, lot coverage, height, yards, or other characteristics of the building or structure, or its location on a lot, such building or structure may be continued so long as it remains otherwise lawful provided:
 1. No building or structure shall be enlarged in any way which increases or extends its nonconformity.
 2. Any building or structure which is moved for any reason or for any distance shall thereafter conform to the regulations for the district in which it is located after it is moved.
 3. Any building or structure which is destroyed or damaged by a fire, vandalism, or similar abnormal and identifiable event, and the cost of restoring the structure to its condition immediately prior to the event exceeds 50 percent of the current assessed value of the entire structure, then the structure shall be removed unless the restored

or new structure shall, to the extent practical, meet all applicable regulations. The zoning administrator may waive certain provisions of the zoning ordinance associated with the reconstruction if the strict application of the ordinance would produce an undue hardship. The reconstruction must take place within two years of the original structure being destroyed or damaged. Any reconstruction must comply with all applicable building codes and flood plain regulations.

4. If a nonconforming structure is destroyed or damaged by a natural disaster or act of God and the cost of restoring the structure to its condition immediately prior to the event exceeds 50 percent of the current assessed value of the entire structure, and such building cannot be reconstructed in any manner other than to restore it to its original nonconforming condition, the structure may be reconstructed without the need to acquire any variance, provided that:

(i) Where the destructive event results in conditions which give rise to a federal disaster declaration and the structure is located within the area covered by the declaration, the reconstruction must be completed within four years of the destructive event.

(ii) Where subparagraph (i) does not apply, the reconstruction shall be completed within two years of the destructive event.

(iii) Any reconstruction must comply with all applicable building codes and flood plain regulations.

5. This section does not apply to nonconforming signs.

(Ord. of 11.15.06)

Sec. 30-23-4 Nonconforming Site Designs

If a zoning permit is requested for any type of modification to an existing structure or site, no legal non-conforming site design plan that has been approved and/or constructed prior to the adoption of this ordinance shall be required to comply in full with the provisions of this ordinance. Only those site improvements directly related to or affected by the modified use, structure, or activity shall be required to comply in full with the provisions of this ordinance.

Sec. 30-23-5 Nonconforming Lots of Record

(A) A lot of record that is nonconforming due to lack of adequate frontage, width, depth, or area may be developed, provided the development proposed on the lot is in accordance with the applicable use and design standards contained in the district regulations.

(B) Any lot of record that is nonconforming because it has no public street frontage may be developed, or an existing structure on the lot may be expanded, provided the county reviews and grants a special use permit for the proposed development, expansion, and use in accordance with the standards and procedures contained in Section 30-19 of this ordinance. This provision shall not apply to the use and development of such parcels for any agricultural and forestry use type, or for single family or two family dwellings.

SEC. 30-24 BOARD OF ZONING APPEALS

- (A) The board of zoning appeals shall consist of 7 who are residents of Bedford County who shall be appointed by the Circuit Court. Each member shall be appointed for a 5-year term. Members may be reappointed to succeed themselves. Composition of the board of zoning appeals shall be in accordance with Acts of Assembly 1989, Chapter 119, as amended. The board of zoning appeals has the right, as provided for in this ordinance, to exercise all of the powers and duties authorized by Bedford County.
- (B) No member shall hold any public office; however 1 member may be a member of the planning commission.
- (C) A member whose term expires shall continue to serve until his successor qualifies and is appointed.
- (D) The secretary of the board of zoning appeals shall notify the circuit court at least 30 days in advance of the expiration of any term of office and shall also notify the circuit court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.
- (E) Any member may be removed for malfeasance or nonfeasance in office, or for other just cause, by the circuit court hearing to be held after at least 15 days notice.

Sec. 30-24-1 Rules of Procedure

- (A) The board of zoning appeals shall develop, adopt, and maintain by-laws that govern its operation.
- (B) The board of zoning appeals shall elect a chairman and vice-chairman from its own membership who shall serve annual terms and may succeed themselves. The board of zoning appeals may elect as its secretary either one of its members or a qualified individual who is not a member of the board of zoning appeals. A secretary who is not a member of the board of zoning appeals shall not be entitled to vote on matters before the board of zoning appeals.
- (C) The board of zoning appeals shall keep a full public record of its proceedings and shall submit a report of its activities to the board of supervisors at least once each year.
- (D) All meetings of the board of zoning appeals shall be open to the public.
- (E) Any member of the board of zoning appeals shall be disqualified to act upon a matter before the board of zoning appeals with respect to property in which the member has an interest.
- (F) The meetings of the board of zoning appeals shall be held at the call of the chairman and at such other times as a quorum of the board of zoning appeals may determine.
- (G) The chairman, or in his absence, the vice-chairman or acting chairman, may administer oaths and compel the attendance of witnesses.
- (H) A quorum shall be at least 4 members.
- (I) A favorable vote of at least 4 members of the board of zoning appeals shall be necessary to reverse any order, requirement, decision, determination of any administrative official, or to decide in favor of the applicant on any matter upon which the board of zoning appeals is required to pass.

Sec. 30-24-2 Powers and Duties

- (A) The board of zoning appeals shall have the power and duty to hear and decide appeals from any written order, requirement, decision, or determination made by any administrative officer in the administration or enforcement of this ordinance. No such appeal shall be heard except after notice and hearing as provided by Section 15.2-2204 of the Code of Virginia, as amended.

- (B) The board of zoning appeals shall have the power and duty to authorize upon appeal or original application in specific cases a variance from the terms of this ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of this ordinance will result in unnecessary hardship. No such variance shall be granted unless the spirit of the ordinance shall be observed and substantial justice done. To legally grant a variance, the board of zoning appeals must be presented evidence and make a finding that:
 - 1. A property owner acquired the property in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of the property at the time of the adoption of this ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the property, the strict application of this ordinance would effectively prohibit or unreasonably restrict the use of the property.
 - 2. Due to the condition, situation, or development of immediately adjacent property, the strict application of this ordinance would effectively prohibit or unreasonably restrict the use of the property.
 - 3. That the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.
 - 4. All variances granted must be in harmony with the intended spirit and purpose of this ordinance. Specifically, the board of zoning appeals must find that the strict application of the ordinance would produce undue hardship. This hardship must not be shared generally by other properties in the same zoning district and in the same vicinity. The board of zoning appeals must find that the granting of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance. Finally, the board of zoning appeals must not grant a variance unless it finds that the condition or situation of the property is not so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to this ordinance.
 - 5. No variance request shall be evaluated by the board of zoning appeals until after notice and hearing as provided by Section 15.2-2204 of the Code of Virginia, as amended. In addition, posting of the property shall be required as provided for in Section 30-14-4 of this ordinance.
 - 6. In granting a variance, the board of zoning appeals may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

- (C) The board of zoning appeals shall have the power and duty to hear and decide applications for interpretation of the official zoning map where the zoning administrator believes there is uncertainty as to the location of a district boundary. No such determination shall be made except after notice and hearing as provided by Section 15.2-2204 of the Code of Virginia, as amended. Any property owner affected by a determination of the location of the boundary must be notified by first class mail prior to any such determination. After notice and hearing the board of zoning appeals may interpret the map in such a way as to carry out the intent and purpose of this ordinance; however the board of zoning appeals shall not have the power to change substantially the locations of the district boundaries as established by this ordinance. This authority of the board of zoning appeals to determine the location of district boundaries shall not be construed as the power to rezone property.

Sec. 30-24-3 Applications for Variances

Applications for variances may be made by any property owner, tenant, government official, department, board or bureau of the county. All applications shall be submitted to the zoning administrator in accordance with rules adopted by the board of zoning appeals. All applications and accompanying maps, plans, or other information shall be transmitted promptly to the secretary of the board of zoning appeals who shall place the application on the agenda to be acted upon by the board of zoning appeals within 90 days of the filing of the application. No such application shall be heard except after notice and hearing as provided by Section 15.2-2204 of the Code of Virginia, as amended. The zoning administrator may, and at the direction of the planning commission shall, transmit notice of the variance application to the planning commission, which may send a recommendation to the board of zoning appeals, or appear as a party at the hearing.

Sec. 30-24-4 Applications for Appeals

Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board, or bureau 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 must be made within 30 days after the entry of the decision appealed by filing with the zoning administrator and with the board of zoning appeals a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board of zoning appeals all of the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board of zoning appeals that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such cases, proceedings shall not be stayed unless a restraining order is granted by the board of zoning appeals, or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

Sec. 30-24-5 Procedures for Variances and Appeal

- (A) The board of zoning appeals shall fix a reasonable time for the hearing of an appeal, give public notice thereof, as well as due notice to all parties of interest, and decide the same within 90 days of the filing of the appeal. In exercising its power, the board of zoning appeals may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from.

- (B) The concurring vote of the majority of the entire board of zoning appeals shall be necessary to reverse any order, decision, requirement, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which the board of zoning appeals is required to pass under the terms of this ordinance, or to effect any variance from this ordinance.
- (C) The board of zoning appeals shall keep minutes of its proceedings and other official actions which shall be filed in the department of planning. All records shall be public records. The chairman of the board of zoning appeals, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.

Sec. 30-24-6 Certiorari to Review Decision of Board of Zoning Appeals

- (A) Any person jointly or separately 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 the county a petition specifying the grounds on which aggrieved. This petition must be filed within 30 days of the board of zoning appeals' decision.
- (B) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than 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 board of zoning appeals, and on due cause shown, grant a restraining order.
- (C) The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of 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 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 the determination of the court shall be made. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review.
- (E) Costs shall not be allowed against the board of zoning appeals unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the board of zoning appeals 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.

SEC. 30-25 PROCEDURE FOR SPECIAL REVIEW OF PUBLIC SERVICE PROJECTS

In accordance with Section 15.2-2232 of the Code of Virginia, (1950), as amended, any project consisting of a 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 railroad facility, whether publicly or privately owned to be constructed, established or authorized shall be subject to a special review by the planning commission to determine if such project is in accordance with the county's comprehensive plan. Widening, narrowing,

extension, enlargement, vacation, or change of use of streets or public areas shall likewise 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. Any such project subject to other provisions of this ordinance is exempted from this special review.

SEC. 30-25-1 Submittal of Application

If a project is subject to the special review as determined in Section 30-25 herein, an application shall be submitted in writing to the zoning administrator and shall be accompanied by 2 copies of the application of the proposed project and with such other reasonable information shown thereon as shall be required by the zoning administrator. The zoning administrator shall submit said application to the planning commission. No fee shall be required for a special review of public service projects.

SEC. 30-25-2 Planning Commission Action

After review of the application, the planning commission shall recommend approval or disapproval of the proposed project. Prior to its decision, the planning commission may hold a public hearing in accordance with Section 15.2-2204 of the Code of Virginia, (1950), as amended, if such public hearing would be in the best interest of the county. The planning commission shall communicate its findings to the board of supervisors including written reasons for said action. Failure of the planning commission to act within 60 days of the submission of the application shall be deemed approval.

SEC. 30-25-3 Board of Supervisors Action

The board of supervisors may overrule the action of the planning commission by a vote of a majority of the membership thereof.

SEC. 30-25-4 Appeals

The owner or owners, or their agents, may appeal the decision of the planning commission to the board of supervisors within 10 days after the decision of the planning commission. The appeal shall be by written petition to the board of supervisors setting forth the reasons for the appeal. The appeal shall be heard and determined within 60 days from its filing. A majority vote of the board of supervisors shall overrule the planning commission.

SEC. 30-26 ESTABLISHMENT OF VESTED RIGHTS

- (A) As provided in section 15.2-2307, Code of Virginia, as amended, nothing in this ordinance shall be construed to discontinue any vested right except as described section 30-23 of this article.
- (B) Nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of this ordinance or amendments thereto, and upon which actual building construction was carried out diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has begun in preparation for rebuilding, such activities shall be deemed actual construction provided the work has been carried out diligently.

- (C) A landowner’s rights shall be deemed vested in a land use and shall not be affected by an amendment to this Ordinance when the landowner:
 - 1. Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project.
 - 2. Relies in good faith on the significant affirmative governmental act.
 - 3. Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

- (D) For purposes of this section, the following are deemed to be significant affirmative governmental acts allowing development of a specific project:
 - 1. The governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment.
 - 2. The governing body has approved an application for a rezoning for a specific use or density.
 - 3. The governing body has granted a special exception or use permit with conditions.
 - 4. The board of zoning appeals has approved a variance.
 - 5. The governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner’s property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances.
 - 6. The governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner’s property.

- (E) In conjunction with the request for approval of a site plan, subdivision or building permit, the Zoning Administrator may make findings of facts, and, with concurrence of the County Attorney, conclusions of law regarding determinations of vested rights accruing under Va. Code §2307.

(Ord. of 11.15.06)

Effective Date

The amendments to §30-28 and §30-23 are effective upon adoption. The provisions of the amendment to the vesting definition (§30-26) shall apply to all applications filed with the County after the 9th day of October 2006.

SEC. 30-27 (RESERVED)