Town of Abingdon Zoning & Subdivision Ordinance Update
Planning Commission Worksession #4
February 28, 2022

Overview

The Town of Abingdon is updating, modernizing, and restructuring the zoning and subdivision ordinances into one seamless regulatory document. The revised zoning and subdivision ordinance will:

- Provide streamlined and user-friendly regulations;
- Incorporate best planning practices and current state code requirements;
- Address the goals and strategies identified in the Comprehensive Plan; and,
- Consider citizen needs and issues identified through the public engagement process.

This process is being guided by Town staff, the Planning Commission, and Town Council with opportunities for input from stakeholders and citizens. To review the Zoning and Subdivision Diagnostic and to stay updated on the project, visit: https://abingdon-va.gov/zoning-subdivision-ordinance-update/.

Agenda

The February 28th meeting will focus on reviewing the proposed articles titled In General, Administration, Permits and Applications, Nonconforming Uses, Lots, and Structures, and Subdivisions (**Attachment B**). The following agenda is provided as an outline for discussion:

1. Schedule & Progress to Date – 5 minutes
2. New Business
    a. In General – 5 minutes
    b. Administration – 15 minutes
    c. Permits and Applications – 15 minutes
    d. Nonconforming Uses, Lots, & Structures – 10 minutes
    e. Subdivisions – 15 minutes
3. Next Steps – 10 minutes

1. Schedule & Progress to Date

The project schedule is provided in **Attachment A**. Progress to date, in reverse chronological order, includes:

- **Abingdon Staff Review and Worksessions with Planning Commission** – With recent transitions, Abingdon staff has conducted a full review of the ordinance and reviewed questions with the Planning Commission during the January meeting.
- **Planning Commission Meeting #3** – The Berkley Group held the third worksession with Planning Commission on September 27, 2021. The focus of this meeting was to establish the Use Performance Standards, Community Design Standards, and Flood Hazard Overlay.
- **Planning Commission Meeting #2** – The Berkley Group held the second worksession with Planning Commission on June 28, 2021. The focus of this meeting was to establish the district dimensional standards and by-right and special uses. (See summary memo for discussion notes.)
- **Planning Commission Meeting #1** – The Berkley Group held the first worksession with Planning Commission on April 26, 2021. The focus of this meeting was to receive direction from Planning Commission on key policies for the ordinance update.

- **Public Engagement** – An online public survey was conducted between March 8-April 8. The Berkley Group also held stakeholder interviews and a public workshop on April 1 to collect feedback on priorities for the ordinance update.
- **Council Kickoff** –The Town Council kickoff was held on March 1, 2021. Town Council provided guidance on important land use and zoning issues as well as suggestions to consider during the public input phase and ordinance drafting.

2. Article Reviews

Drafted articles have been provided for staff review and edits have been incorporated based on staff comment. The revised draft articles are provided in **Attachment B**, please consider the editor's footnotes provided to aid in review. The footnotes explain the inclusions, modifications, and deletions of text. Specifically, the PC should consider:

- Article II, Administration: The membership of the BZA can be extended to included alternates that may stand in when regular members will be absent. The Town should consider if they desire adding the measure.
- Article II, Administration: The existing ordinance requires the PC to review Certificates of Appropriateness within the Historic Entrance Corridor Overlay District and the HPRB reviews Certificates of Appropriateness within the Old and Historic District. The PC should consider if all Certificates of Appropriateness should be reviewed by the HPRB.
- Article III, Permits & Applications: The application requirements for rezoning, conditional rezoning and special use permits now include concept plans instead of preliminary site plans. This is a business-friendly method to receive basic plans without being cost prohibitive. Preliminary site plans are required in the OH and EC districts and must have HPRB and/or PC approval. All other site plans are proposed to be administratively approved. The Town should consider if this streamlined process is appropriate.
- Article III, Permits & Applications: The existing ordinance requires that new signs in the Old and Historic District be approved by the HPRB. Abingdon staff has recommended this be an administrative approval. The text has been drafted to exclude signs from requiring a Certificate of Appropriateness and therefore allowing administrative review and approval. The PC should confirm agreement with this change.

3. Article I – In General

This article contains the purpose and applicability sections of the Zoning and Subdivision Ordinance. These are based on Virginia Code. References to the applicable code sections are included where necessary. In addition, this article contains general management items, such as, requiring conformity with the ordinance, addressing conflicting ordinances, and the effective date.

4. Article II – Administration

This article covers the administration of the Zoning and Subdivision Ordinance. The powers and duties of the Zoning Administrator, Subdivision Agent, and Board of Zoning Appeals are specifically as enumerated in Virginia Code. The Planning Commission appointment, powers, and procedures are supplied with reference to Virginia Code and Town Code instead of enumerating them, to prevent conflicting text. The

Historic Preservation Review Board appointment, powers, and duties are also included in this article. References to Virginia Code are included for informational purposes and to streamline the article text.

Enforcement is authorized through Virginia Code. As allowed by Virginia Code, penalties for violations utilize both criminal and civil penalty options. The penalty amounts have been updated to reflect the Virginia Code.

Fees are addressed in this article by reference to a separate fee schedule, which is a recommended best practice. The requirement to pay all applicable taxes and charges is also included in the article, as allowed by Virginia Code.

5. Article III – Permits and Applications

This article outlines the following zoning permit and application requirements and processes:

- Zoning Text Amendments (Rezoning) and Map Amendments
- Conditional Zoning and Proffers
- Special Use Permits
- Variances
- Certificates of Appropriateness and Other Historic Permissions
- Site Plans
- Zoning Permits
- Certificates of Occupancy
- Written Determinations
- Appeals
- Public Notice

Staff was consulted on current requirements and processes, which were then compared for conformance with State Code. Noteworthy changes to this article include:

- Concept plans have been added as a requirement for rezonings, conditional rezoning applications, and special use permits, as opposed to a site plan. This is a recommended best practice supported by town staff. A basic overview of concept plans is attached for reference.
- Sign permits within the Old & Historic District will no longer be subject to a certificate of appropriateness per staff recommendation.
- Final site plans for rezonings, conditional use permits, special use permits, and other developments that require such plans will be administratively approved. This is a business-friendly best practice.
- Other developments requiring site plans are clearly outlined in the article and include a list of exceptions recommended by staff.
- Public notice was included as a separate Division that references Virginia Code and covers all public hearings to streamline the article text.
- The various appeals are grouped together under one Division for ease of use and reference the appropriate Virginia Code section.

6. Article IX – Nonconforming Uses, Lots, and Structures

This article is dictated by Virginia Code and addresses those instances where an existing lot, use, or building does not meet the standards outlined in the Ordinance. For ease of administration, sections are divided to address lots, uses, and buildings separately. A basic overview of zoning nonconformity is also attached for reference.

Time limits and basic restrictions are maintained as provided in the existing ordinance and as allowed by Virginia Code. One change includes increasing the allowable value of repairs from 10% to 20% of the replacement value of the structure. This eases restrictions and allows more improvement of nonconforming structures. Additionally, nonconforming uses will no longer be required to obtain a zoning permit within 60 days of the adoption of the ordinance. This requirement is not provided by the Code of Virginia and is not recommended as a best practice.

7. Article X – Subdivisions

This article will take the place of the Town Subdivision Ordinance. Code of Virginia requires every locality to ensure the orderly division of land. Virginia Code also dictates many subdivision requirements including, but not limited to, when bonds can be required; allowance of partial release of bonds; when preliminary plats can be required; and the length of validity of approved plats. This article has been revised to include Virginia Code requirements and references, as appropriate. The article has been reorganized for readability and enforcement. Major edits based on best practice include:

- The authority on changes to approach angle, right-of-way grading, access, and other street design requirements has changed from the Planning Commission to the Town Council.
- Per Virginia Code, preliminary plats are only required for subdivisions of more than 50 lots. The text has been drafted to comply with Virginia State Code, requiring them for more than 50 lots but allowing them as option for the applicant at other times.
- New text was including allowing administrative approval of single lots and minor subdivisions (3 or less lots). This is a recommended best practice that eases PC and applicant burdens.
- The proposed text provides that the Town Council is the approving authority on major subdivisions (4 or more lots).

8. Next Steps

Article XI – Definitions will be provided will be provided for staff and PC to review. The Berkley Group will review recommendations from this worksession, definitions, and any outstanding items and update the ordinance text. Topics to be discussed at the next meeting (Tentatively April 25, 2022) include:

- Illustratives
- Zoning Map
- Final wrap-up prior to Open House

Project Schedule

The following is a tentative schedule to chart the completion of the project.

2022	Date	Topics/Actions
Jan	-	Abingdon Staff Discuss Staff Changes with PC and Share Text with HPARB
Feb	28	PC Worksession 4 – Administration and Permit Standards, Subdivisions
Mar	22	Town staff reviews definitions & outstanding comments with PC
April	25	PC Worksession 5 – Illustratives, Map, Final Items, Full Draft
May	10	Open House
May	23	Town staff reviews open house comments with PC
Jun	TBD	Worksession 6 – Review Final Draft with PC (or TC dependent upon extent of open house comments)
Jul	TBD	TC Worksession – Review Project Process, Major Changes, Final Comments/Edits
Aug	TBD	Planning Commission Public Hearing
Sept	TBD	TC Public Hearing/Adoption

Pertinent Definitions for Article I

**Editor's note: These definitions are included to aid in understanding the concepts of this article. They will be removed from this article and placed in Article XI. – Definitions following the Planning Commission's review.*

Vested rights. A right belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner. A landowner's rights are vested when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

ARTICLE I. – In General.

Section 1-1. Title.[1]

This chapter, the full title of which is "Zoning and Subdivision Ordinance of the Town of Abingdon, Virginia," shall be permitted, for convenience, to be referred to as the "Zoning and Subdivision Ordinance" or "Ordinance." The accompanying map, titled "Zoning Map of the Town of Abingdon, Virginia," shall be permitted to be referred to as the "Zoning Map."

Section 1-2. Authority.[2]

(a) Pursuant to the Code of Virginia, § 15.2-2280 et seq., the Town of Abingdon, Virginia is given the authority to classify and regulate land development under its jurisdiction.
(b) Pursuant to the Code of Virginia, § 15.2-2240, et seq., the Town of Abingdon, Virginia is authorized to adopt regulations to assure the orderly subdivision of land and its development.

Section 1-3. Purpose.[3]

(a) The purpose of this Ordinance is to implement the Town Abingdon Comprehensive Plan; promote the health, safety, and general welfare of the public and of further accomplishing the objectives of § 15.2-2200, as amended, of the Code of Virginia. This Ordinance has been designed to give reasonable considerations to:
    (1) Provide for adequate light, air, convenience of access and safety from fire, flood, impounding structure failure, crime, and other dangers;
    (2) Reduce or prevent congestion in the public streets;
    (3) Facilitate the creation of a convenient, attractive and harmonious community;

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[1] Editor's Note: Existing ordinance does not supply a standalone section for title of the ordinance or zoning map. Removed from Article 1, Authority and proposed as a separate section.
[2] Editor's Note: Existing ordinance combines authority and purpose into one article without separate sections and uses incorrect references.
[3] Editor's Note: Purpose expanded to include all items supplied in the Code of Virginia for the purpose of Zoning Ordinances and the purpose of Subdivision Ordinances.

(4) Facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;
(5) Protect against destruction of or encroachment upon historic areas and working waterfront development 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 and air, danger and congestion in travel and transportation, or loss of life, health or property from fire, flood, impounding structure failure, panic or other dangers;
(7) Encourage economic development activities that provide desirable employment and enlarge the tax base;
(8) Provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment;
(9) Protect the approach slopes and other safety areas of licensed airports, including United State government and military air facilities;
(10) Promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the town as well as reasonable proportion of the current and future needs of the planning district within which the town is located;
(11) Provide reasonable protection against encroachment upon military bases, military instillations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard;
(12) Provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 or state and federal fair housing laws, as applicable;
(13) Protect surface water and ground water as defined in the Code of Virginia § 62.1-255, as amended;
(14) Establish standards and procedures for the orderly division, subdivision and resubdivision of lots, tracts and parcels of land for residential and commercial purposes pursuant to the Code of Virginia § 15.2-2240 et. seq., as amended;
(15) Ensure proper legal description and proper monumenting of subdivided land;
(16) Ensure the purchasers of lots, tracks and parcels of land purchase a commodity that is suitable for the intended use; and,
(17) Provide standards for development, ensuring appropriate ingress, egress, public facilities, services, and utilities.

Section 1-4. Applicability. [4]

(a) Pursuant to the Code of Virginia, § 15.2-2281, the provisions of this Ordinance shall apply to all property within the incorporated territory of the Town of Abingdon, Virginia, with the exception that any property held in fee simple ownership by the United States of America or the Commonwealth of Virginia shall not be subject to the provisions contained herein.

[4] Editor's Note: The existing ordinance contains a section on Authority which is similar to both Virginia State Code § 15.2-2280 and 15.2-2284. This proposed section and the proposed section on authority, both reference state code and utilize state code text rather than the existing ordinance text.

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(b) Pursuant to the Code of Virginia, § 15.2-2284, the zoning regulations and districts as herein set forth have been drawn with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of properties for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, and the requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public services; and the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agriculture and forestal land, the conservation of properties and their values, and the encouragement of the most appropriate use of land throughout the Town.

Section 1-5. Conformity with Ordinance Required.[5]

Except as otherwise provided in this Ordinance or as modified through a zoning approval, land, buildings, structures or premises shall only be used or occupied, erected, constructed, moved, enlarged or altered, nor shall land be subdivided, unless in conformity with this Ordinance's regulations.

Section 1-6. Interpretation.[6]

(a) The Zoning Administrator shall interpret this Ordinance based upon the following criteria:
  (1) Provisions shall be considered the minimum required to promote the public health, safety, convenience and general welfare;
  (2) Unless otherwise specified, the standards of this Ordinance are the minimum required;
  (3) When regulations of this Ordinance conflict with each other, other Ordinances of the town code, or state or federal law, the more restrictive regulations or standards shall govern;
  (4) This Ordinance does not abolish easements, covenants or other private agreements, however, pursuant to the Code of Virginia, §15.2-2315, where this Ordinance's requirements vary with the requirements of any other lawfully adopted statute, regulation or ordinance, the most restrictive, or the higher standard shall control to the extent necessary to resolve the conflict;
  (5) A building, structure or use which was not legally existing on _____ (date of revised ordinance adoption) shall not be made lawful solely by adoption of this Ordinance;
  (6) Where this Ordinance's requirements are vague or unclear, the Zoning Administrator shall be responsible for their interpretation; and,
  (7) Conditions imposed or accepted as part of a zoning approval prior to _____ (date of revised ordinance adoption) shall remain in effect. However as stated in the Code of Virginia §15.2-2261.1, if there is a conflict between conditions imposed through those land use decisions and this Ordinance, the conditions shall apply. If there is no condition that

[5] Editor's Note: Added as a new section. Section 24-1 of the existing ordinance states that permits issued by public employees that conflict with this ordinance shall be null and void. This is not included in the ordinance because these permits are considered affirmative governmental acts and courts usually do not overturn them, therefore, voiding a permit under these circumstances could create legal ramifications for the Town.
[6] Editor's Note: The zoning map interpretation (Section 25-4) is supplied here along with the interpretation of the ordinance.

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addresses a specific use or development standard of this Ordinance, this Ordinance's requirements shall govern.

(b) The Zoning Map associated with this text and showing the division of the territory into districts shall be interpreted with the following rules when uncertainty exists with respect to the boundaries of any of the districts:
   (1) Where district boundaries are fixed by dimensions or otherwise shown or described there shall be no uncertainty.
   (2) Where district boundaries are indicated as approximately following or being at right angles to the centerlines of streets, highways, alleys or railroad tracks, such centerline or lines at right angles to such centerlines shall be construed to be such boundaries, as the case may be.
   (3) Where a district boundary is indicated to follow a river, creek or branch or other body of water, said boundary shall be construed to follow the centerline at low water or at the limit of the jurisdiction, and in the event of change in shoreline, such boundary shall be construed as moving with the actual shoreline.
   (4) If no distance, angle, curvature description or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the use of the scale shown on said map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals, which shall determine the boundary.

Section 1-7. Vested Rights.[7]

The provisions of this Ordinance shall not impair a vested right of a property owner. The Zoning Administrator shall be authorized to make determinations on whether a property owner's rights are deemed vested in a land use. The Subdivision Agent shall be authorized to make determinations on whether a property owner's rights are deemed vested in a division. Vested rights determinations shall be made in accordance with the Code of Virginia § 15.2-2307.

Section 1-8. Figures and References in Ordinance.[8]

(a) Where figures are contained in this Ordinance, they are provided for demonstrative purposes only and are not a substantive part of this ordinance.
(b) If any section of this Ordinance incorporates by reference any state statute or regulation, then the ordinance incorporates future amendments of the state statute or regulation.

Section 1-9. Severability.[9]

Should any Section or any provision of this ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.

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[7] Editor's Note: Proposed as a section to address all vested rights within the Zoning and Subdivision Ordinance and not just Historic District vested rights. Further updated to reflect the Code of Virginia.
[8] Editor's Note: Proposed as a new section.
[9] Editor's Note: Maintained from existing ordinance, section 25-6.

Section 1-10. Effective Date of Ordinance.[10]

The effective date of the zoning and subdivision ordinance from which this Ordinance is derived shall be from and after the date of its passage, _____ (date of adoption of revised ordinance), and legal application, and its provisions shall be in force thereafter until repealed or amended.

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[10] Editor's Note: Date of adoption will be inserted after formal adoption.

Pertinent Definitions for Article II

**Editor's note: These definitions are included to aid in understanding the concepts of this article. They will be removed from this article and placed in Article XI. – Definitions following the Planning Commission's review.*

(a) *Administrator.* The official, or an authorized agent thereof, responsible for administering and enforcing the Zoning Ordinance of the Town, also referred to in this ordinance as the Zoning Administrator.
(b) *Board of Zoning Appeals.* A quasi-judicial board appointed to review appeals and requests for variances made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance and to authorize, upon appeal, variances from the terms of this ordinance when justified by special conditions.
(c) *Historic Preservation Review Board (HPRB).* A board of the local government consisting of such appointed members whose functions include administration of the regulations for the historic district(s) to the ends of preserving historical and archaeological resources.
(d) *Planning Commission.* A board of the local government consisting of such appointed members whose functions include advisory or nontechnical aspects of planning and may also include such other powers and duties as may be assigned to it by the Town Council.
(e) *Subdivision Agent.* The administrative official, or an authorized agent thereof, responsible for administering and enforcing the Subdivision portion of the Zoning Ordinance of the Town, also referred to in the Subdivision Article, as the Agent.
(f) *Town Council.* The Town's legislative body. Council members are elected by popular vote and are responsible for enacting ordinances, imposing taxes, making appropriations, and establishing Town policy. The Board adopts the comprehensive plan, zoning, and subdivision regulations.
(g) *Zoning Administrator.* See Administrator.

ARTICLE II. – Administration.

Division 1. Zoning Administrator and Subdivision Agent.

Section 2-1-2. Appointment; Powers; and Duties.[1]

(a) This Ordinance, with the exception of the Subdivision Article, and the Zoning Map shall be administered, interpreted, and enforced by the Zoning Administrator (Administrator), who shall be appointed by the Town Council. The Administrator shall serve at the pleasure of the Town Council and shall have such duties as are conferred on them by this Ordinance and the Code of Virginia § 15.2-2286 (4). The Administrator may also hold another office in the Town.
(b) The Subdivision Agent (Agent), who shall be appointed by the Town Council to administer and enforce the subdivision article of this Ordinance.

[1] Editor's Note: Utilizes existing section 25-2 regarding the Administrator but expands to include the Subdivision Agent and other Code of Virginia text.

(c) In the performance of these duties, the Administrator/Agent may call for opinions or decisions, either verbal or written, from other departments or state agencies.
(d) The Administrator/Agent may designate a Deputy Administrator/Agent or other designee to assist in these duties.
(e) In addition to the regulations contained herein, the Administrator/Agent may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this Ordinance.

Division 2. – Planning Commission.[2]

Section 2-2-1. Appointment and Membership.

The Planning Commission shall be created, organized, removed, and compensated pursuant to the Code of Virginia, § 15.2-2210 and § 15.2-2212, as amended and as outlined in Chapter 2 of the Town Code.

Section 2-2-2. Powers and Duties.

The Planning Commission shall perform the duties pursuant to the Code of Virginia, § 15.2-222, § 15.2-2230 et seq, and §15.2-2285 as amended, as outlined in Chapter 2 of the Town Code, and shall approve or deny Certificates of Appropriateness in the Historic District Entrance Corridor Overlay district as outlined in Article III of this ordinance.

Section 2-2-3. Meetings and Procedures.

(a) The Planning Commission shall conduct meetings pursuant to the Code of Virginia § 15.2-2214-2217, as amended and as outlined in Chapter 2 of the Town Code.
(b) Pursuant to the Code of Virginia § 15.2-2287.1, as amended, members are required, prior to or at a hearing on a matter, make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing and shall be ineligible to vote or participate in any way upon the matter.[3]

Division 3. Board of Zoning Appeals.[4]

Section 2-3-1. Appointment; Terms; Membership; Compensation; Removal.

(a) Pursuant to the Code of Virginia, § 15.2-2308, et seq., as amended, a Board of Zoning Appeals (BZA) shall be created and organized as follows:

[2] Editor's Note: Chapter 2 of Town Code supplies authority, powers, duties, officers, meetings, and voting requirements for the Planning Commission. To prevent text conflicts the text references the Code of Virginia and the Town Code instead of enumerating these items.
[3] Editor's Note: This item is not provided in the Town Code but because it is required in the Code of Virginia it is being included here.
[4] Editor's Note: This Division incorporates the existing text sections 22-1, 22-2, and 22-3. Additional existing text in section 22 regarding appeal procedure is proposed in Article III. The membership of the BZA can be extended to included alternates that may stand in when regular members will be absent. The Town should consider if they desire adding the measure.

(1) A BZA consisting of five members shall be appointed by the circuit court.
(2) The term of office shall be for five years; except, that of the first five members appointed, one shall serve for five years, one for four years, one for three years, one for two years and one for one year. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
(3) At least 30 days in advance of the expiration or a term of office, or promptly if a vacancy occurs, the secretary of the BZA shall notify the court. A member whose term expires shall continue to serve until the successor is appointed and qualifies.
(4) Members of the BZA shall hold no other public office in the locality except that one may be a member of the Planning Commission, and any member may be appointed to serve as an officer of election.
(5) The BZA shall receive such compensation and traveling expenses as the Town Council may establish.
(6) Any BZA member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court which appointed them, after a hearing held after at least 15 days' notice.

Section 2-3-2. Powers and Duties.[5]

(a) Pursuant to the Code of Virginia § 15.2-2309, as amended, the BZA shall have the following powers and duties after required notice and hearing as provided in the Code of Virginia § 15.2-2204, as amended:
(1) Appeals. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this Ordinance as outlined in Article III Division 11.
(2) Variance. To authorize upon appeal or original application a variance, as defined in the Code of Virginia § 15.2-2201, as amended, from the terms of this Ordinance when the strict application of the Ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and if the applicant proves through a preponderance of evidence that a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided that the spirit of this Ordinance shall be observed and substantial justice done.
(3) Boundary Interpretations. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by the Code of Virginia § 15.2-2204, as amended, the BZA may interpret the map in such way as to carry out the intent and purpose of this Ordinance for the particular section or district in question.
(b) The provisions of this section shall not be construed as granting the BZA the power to rezone property, substantially change the locations of district boundaries as established by this Ordinance,

[5] Editor's Note: The existing ordinance enumerates the specific terms for award of a variance in section 22-2-2. The proposed text simplifies by providing reference to Code of Virginia §§15.2-2309 and 15.2-2201 instead of listing the terms.

or to base decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

Section 2-3-3. Meetings and Procedures.

(a) The BZA shall adopt such rules and regulations as it may consider necessary.
(b) Meetings of the BZA shall be held at the call of its Chairman or at such time as a quorum of the BZA may determine.
(c) A quorum shall be at least three members. A favorable vote of three members of the BZA shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter on which the BZA is required to pass.
(d) The BZA shall choose annually its own chairperson and vice-chairperson. The vice-chairperson shall act in the absence of the chairperson and may administer oaths and compel the attendance of witnesses.
(e) The BZA shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the BZA and shall be public record.
(f) All meetings of the BZA shall be open to the public.
(g) The BZA may adopt policies regarding ex parte communication that are in accordance with the Code of Virginia § 15.2-2308.1.
(h) Pursuant to the Code of Virginia § 15.2-2287.1, members are required, prior to or at a hearing on a matter, make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing and shall be ineligible to vote or participate in any way upon the matter.

Division 4. Historic Preservation Review Board.[6]

Section 2-4-1. Creation.

For the purpose of making effective the provisions of the Old and Historic (OH) District, a Historic Preservation Review Board (HPRB) is hereby established and empowered to consider and review all alterations, additions and changes within the boundaries of the OH District as defined by this Ordinance, whether or not brought before it by an application for a Certificate of Appropriateness or other permit.

Section 2-4-2. Appointment; Terms; and Membership.

(a) The HPRB shall consist of five members appointed by the Town Council, one of whom shall be a resident of the OH District and all of whom shall have a demonstrated interest, competence, or knowledge in historic preservation. All members must be residents and qualified voters of the town; provided, the Town Council may in its discretion appoint any non-resident of the town

[6] Editor's Note: The proposed text is drafted utilizing existing text sections 8-6 through 8-9. The text has been rearranged and revised for clarity. Existing text detailing application requirements, procedure for meetings and decisions, and appeals are proposed in Article III.

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who is otherwise qualified under this section and holds or is employed by a person or firm holding a current business license issued by the town.

(b) At least one HPRB member shall be either a registered architect with a demonstrated interest in historic preservation or an architectural historian meeting the professional qualifications standards of Appendix A of 36 CFR 61. Similarly, at least one additional HPRB member shall have professional training or equivalent experience in any one of the following disciplines: architecture, history, architectural history, American studies, archaeology, or planning.

(c) The HPRB members shall be appointed for three-year terms and serve until their respective successors are appointed. If at any time hereafter all five positions on the HPRB are vacant, the HPRB members shall be appointed for three-year staggered terms, one member to serve for one year, two members to serve for two years, two members to serve for three years and all members to serve three-year terms thereafter.

(d) The Town Council shall have the discretion to appoint members to serve consecutive terms. Members may serve any number of terms but not more than two terms consecutively.

(e) Vacancies caused by death, resignation or otherwise shall be filled (i) promptly and in any event not more than 90 days following the date on which the vacancy occurs; and (ii) for the unexpired term in the same manner original appointments are made.

(f) The Town Council shall have the discretion to remove members for habitual failure to attend meetings.

Section 2-4-3. Powers and Duties.[7]

(a) The HPRB shall approve, approve with modifications, or deny applications for Certificates of Appropriateness for the construction, reconstruction, exterior alteration, demolition, or relocation of Historic Landmarks or structures within the OH District, except as waived under Article III, Division 6. The HPRB shall have the following duties, which it may exercise in its discretion but shall exercise upon direction from Town Council:

(1) Hear and decide on each project brought before it, to the end that buildings, structures or other resources of historic, architectural, or cultural significance are preserved insofar as they are appropriate and incongruous projects are prohibited.

(2) See to the enforcement of its decisions through the administrator and the town's inspection department.

(3) In reviewing each project, the HPRB must follow the suggestions and requirements of the design review guidelines, as such document now exists and may hereafter be revised and amended by the HPRB.

(4) Periodically review the design review guidelines in the context of the experience gained since the last review of that kind and make all such revisions that seem, in their judgment, to be necessary or advisable provided that such guidelines shall be consistent with the Secretary of the Interior Standards for Historic Preservation, the purposes intent of the OH District, and with such standards, rules, regulations, and procedures as Town Council may establish. Procedure to modify the design review guidelines includes:

[7] Editor's Note: Powers and duties as outlined in existing ordinance Article 8 are utilized and additional duties (items 5 through 9) and procedure for guideline modification are provided as best practice from similar localities.

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a. The Town shall circulate the proposed or modified design review guidelines to interested parties and post them on its web page for a 60-day public comment period.
b. If the HPRB makes any policy changes to the design review guidelines after receiving public comment, a new 60-day period for public comment shall commence.
c. The HPRB may vote to develop or modify design review guidelines only after the 60-day period for public comment.
d. After the HPRB adopts or modifies the design review guidelines, the Town shall cause them to be published on the Town's website and by other means in its discretion.

(5) Assist and advise the Town Council, the Planning Commission, other Town departments and agencies, property owners and individuals in matters involving historic resources.
(6) Review and propose additional areas or structures to be included in or removed from the OH District, Historic District Entrance Corridor Overlay District, or designated as a Historic Landmark.
(7) From time-to-time conduct, or cause to be conducted, a survey of historic resources.
(8) Upon request of the Town Council, conduct studies deemed necessary to consider additional historic districts or subdistricts, and means of preservation and utilization of historic assets in the Town.
(9) Cooperate with, and enlist assistance from, 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 sites, landmarks, buildings, and structures within the Town.

Section 2-4-4. Meetings and Procedures.

(a) The HPRB shall adopt and make available for public inspection written bylaws for procedural matters, written notice of public meetings and other matters not covered by this Article that include at a minimum:
(1) Provision for regularly scheduled meetings at least four times a year;
(2) A requirement that a quorum be present to conduct business;
(3) Rules of procedure for considering applications;
(4) A requirement for written minutes for all meetings;
(5) Minimum attendance requirements for all board members; and
(6) Requirements that board members attend training sessions.

(b) The HPRB shall elect its chairman and vice-chairman from its membership. In the absence of the chairman the vice chairman shall preside.
(c) The chairman shall conduct the meetings in accordance with its written bylaws and all applicable provisions of the Code of Virginia, 1950, as amended.
(d) The Administrator, or designee, shall serve as secretary and shall keep and make available for public inspection the minutes of the meetings and a permanent record of all resolutions, motions, transactions, and decisions, including exemptions from review by the HPRB.
(e) Each member is required to attend at least one informational or educational meeting per year which has been approved by the state department of historic resources as pertaining to the work and functions of the board or historic preservation.
(f) A quorum of three members present is required before the HPRB may take any official action.

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(g) Each member of the HPRB shall have the right to one vote on each issue, to be exercised in person at a meeting and not by proxy, and the decision of the majority shall be final, subject only to the rights of appeal set out in this Ordinance.
(h) Each meeting shall be open to the public and an agenda shall be made available to the public prior to the meeting.
(i) The administrator shall serve as advisor to the board. In addition, when adequate review of any proposed action would normally involve a professional discipline not represented on the board, the board must seek and secure appropriate professional advice before rendering its decision on the particular action.

Division 5. Enforcement.[8]

Section 2-5-1. Authority.

(a) As authorized by the Code of Virginia § 15.2-2286(A)(4), as amended, the Administrator or designee shall be responsible for enforcing the provisions of this Ordinance. As provided in Article 1, conformity with the Ordinance is required.
(b) Failure to comply with the requirements of the Ordinance constitutes a violation thereof and is declared to be unlawful.
(c) Any person who knowingly makes any false statements, representations or certifications in any record, report, or other document, either filed or requested pursuant to this Ordinance, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the Administrator under this Ordinance in monitoring discharges, shall be guilty or liable of this Article.

Section 2-5-2. Complaints and Inspection.

(a) Any person who alleges that violation of the Ordinance has occurred may file a complaint with the Administrator or designee. Such complaint shall stipulate the cause and basis thereof and the location of the alleged violation.
(b) The Administrator or designee shall properly record the complaint, investigate the facts thereof, and take action thereon as provided by the Ordinance.
    (1) An Investigation letter to identify if a violation exists, including specific dates by which the potential violator must respond, shall be issued. The Administrator may enter upon or inspect any land or structure to ensure compliance with the provisions of this Ordinance, after requesting and receiving approval of the landowner to enter upon land for these purposes. If consent is not given by the landowner, the Administrator may enter upon land in accordance with the Code of Virginia § 15-2.2286(A)16, as amended.

[8] Editor's Note: Existing ordinance section 24-2 regarding penalties and violation of the ordinance have been incorporated in this Division but are rearranged for clarity and updated with current Code of Virginia standards and references.

Section 2-5-3. Correction Letter, Notice of Violation, and Stop Work Order.

(a) Upon completion of investigation and becoming aware of any violation of the provisions of this Ordinance, the Administrator may issue a written correction letter, notice of such violation and/or a stop work order to the person committing or permitting the violations.

(b) A correction letter, if a violation exists, including potential remedies shall be provided to the violator within a reasonable time. The letter shall also provide the basis by which the defects shall be corrected and respected.

(c) A notice of violation shall be issued to the violator (owner or tenant) for any uncorrected violation remaining from a correction notice.

(1) Notice of violation shall be mailed by registered or certified mail or hand delivered.

(2) The notice of violation shall state:

a. The nature of the violation;

b. Date that the violation was observed;

c. The remedy or remedies necessary to correct the violation;

d. A reasonable time period for the correction of the violation;

e. A statement informing the recipient that they may have a right to appeal the notice of zoning violation or written order within 30 days in accordance with the Code of Virginia § 15.2-2311, as amended;

f. The applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal; and,

g. That the decision shall be final and unappealable if not appealed within 30 days.

(d) Further action may not be required for corrected violations. However, the Administrator may request legal proceedings be instituted for prosecution when a responsible party is served with three or more separate notices of violation for the same property within 5 consecutive years.

(e) Stop work orders may be issued and posted at the property when any work subject to a certificate of appropriateness is started without authorization by either the HPRB or the administrator as provided in Article III of this ordinance. Any such stop work order shall remain in effect until the party proposing to do the work secures appropriate authorization. The party subject to the stop work order may appeal the action of the administrator to the HPRB.

(f) Appeals of notice of violation shall be heard by the Board of Zoning Appeals in accordance with the procedures set forth in Article III, Division 11.

Section 2-5-4. Remedies and Penalties for Violation.[9]

(a) Upon becoming aware of any violation and making a determination of validity of any of the provisions of this Ordinance, the Administrator may institute appropriate action or proceedings if the violation is not corrected as permitted by law, including injunction, abatement to restrain, correction, or abatement.

(b) The remedies provided in the penalties sections below are cumulative and not exclusive except to the extent expressly provided therein.

(1) Criminal Penalties.

[9] Editor's Note: Both criminal and civil penalties are referenced in the existing ordinance; the penalty amounts, and other text have been updated to reflect the Code of Virginia limits.

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a. With the exception of the subdivision code in Article X, any violation of the requirements of this chapter resulting in injury to a person or persons or where such civil penalties exceed $5,000, shall be a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not less than $10 and not more than $1,000.
b. 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. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than $10 nor more than $1,000, 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 nor more than $1,500.

(2) Civil Penalties. Any violation other than as provided in section (1) above for criminal penalties shall be subject to the following civil penalties, as provided in Virginia Code § 15.2-2209, as amended, and subject to the following:
a. Procedure. Proceedings seeking civil penalties for violations of this Ordinance shall commence either by filing a civil summons in the general district court or by the Administrator or Agent issuing a ticket.
b. Civil summons or ticket. A civil summons or ticket shall contain, at a minimum, the following information:
1. Name and address of the person charged;
2. Nature of the violation and the Ordinance provisions being allegedly violated;
3. Location, date and time violation occurred or was observed;
4. Amount of the civil penalty for the violation; and
5. Right of the recipient to elect to either pay the penalty or stand trial for the violation and the date of such trial. The summons shall state that if the person elects to pay the penalty, the person must do so by making an appearance in person or in writing by mail to the town treasurer at least 72 hours prior to the time and date fixed for trial and, by such appearance, enters a waiver of trial and admits liability for the offence changed. The summons shall provide that a signature is an admission of liability that shall have the same force and effect as a judgement of the court. However, such admission shall not be deemed a criminal conviction for any purpose.
c. Failure to Enter Waiver. 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 or equity and it shall be the town's burden to provide the violator's liability by a preponderance of the evidence. A finding of liability shall not be deemed a criminal conviction for any purpose.
d. Fines.
1. Amount of Civil Penalty. A civil violation shall be subject to a civil penalty of $200 for the initial summons, and a civil penalty of $500 for each additional summons arising from the same set of operative facts.
2. Daily Offense. Each day during which a violation exists shall constitute a separate violation. However, in no event shall a violation arising from the same set of operative facts be charged more frequently than once in any 10-day period.

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3. Maximum Aggregate Penalty. The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed $5,000. If the violations exceed the $5,000 limit, the violation may be prosecuted as a criminal misdemeanor as outlined above.

Division 6. Fees and Taxes.

Section 2-6-1. Fees and Expenses.[10]

(a) The Town Council shall establish, by ordinance, a schedule of fees, charges and expenses, and collection procedures for zoning permits, special use permits, variances, appeals, amendments, site plan reviews, and other matters pertaining to this Ordinance.

(b) The schedule of fees shall be available for inspection in the office of the Administrator and may be altered or amended by the Town Council by ordinance amendment.

Section 2-6-2. Delinquent Taxes and Charges.[11]

Pursuant to the Code of Virginia § 15.2-2286 (B), as amended, prior to the initiation of an application or appeal, the applicant shall produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the Town have been paid in full, unless otherwise authorized by the treasurer.

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[10] Editor's Note: The existing ordinance outlines in section 25-1-5 and 25-1-6 that fees for ordinance amendments and map amendments will be authorized by the Town Council. These as well as all fees associated with the ordinance should be enumerated in a schedule of fees and adopted by ordinance as outlined here.

[11] Editor's Note: This is a new item provided according to the Code of Virginia.

Pertinent Definitions for Article III

**Editor's note: These definitions are included to aid in understanding the concepts of this article. They will be removed from this article and placed in Article XI. – Definitions following the Planning Commission's review.*

(a) *Historic Review Preservation Board Certificate of appropriateness*. A permit issued by the Historic Preservation Review Board granting an applicant approval for the erection, reconstruction, alteration, restoration, change, demolition, relocation, or excavation, of a site or structure in a historic district, visible from a public right of way.

(b) *Planning Commission Certificate of appropriateness*. A permit issued by the Planning Commission granting an applicant approval for the erection, reconstruction, alteration, restoration, change, demolition, relocation, or excavation, of a site or structure in the entrance corridor overlay.

(c) *Certificate of occupancy.* The permit issued by the building code official that is required under the Uniform Statewide Building Code prior to the use or occupancy of certain buildings and structures.

(d) *Concept plan.* A generalized plan indicating the boundaries of a tract or tracts of land, and presenting the general arrangement of proposed facilities, uses, structures, and improvements.

(e) *Conditional zoning*. A method for rezoning that permits the reasonable and orderly development and use of land with special restrictions in those situations in which unique, specific circumstances indicate that the existing zoning district regulations are not adequate.

(f) *Proffer*. A voluntary offer that addresses an impact or impacts from use of property or development, tendered by an applicant for conditional rezoning.

(g) *Public hearing*. A meeting announced and advertised for soliciting formal public comment on matters under consideration.

(h) *Site plan*. A plan prepared by a professional engineer or land surveyor licensed by the state showing all proposed improvements to the site in accordance with this Ordinance.

(i) *Special use permit.* An approval for a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, requires special consideration and restrictions relating to its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings.

(j) *Variance.* A reasonable deviation from the provisions of this Ordinance regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would result in unnecessary and undue hardship which is not created by the owner, relief or remedy is not available through this ordinance, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of this Ordinance.

(k) *Zoning map*. A legally adopted map depicting the location of each zoning district of the town and all amendments thereto.

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ARTICLE III. – Permits and Applications.

Division 1. In General.[1]

Section 3-1-1. Preapplication Meeting.

Prior to the submittal of any application, a preapplication meeting must be held between the applicant and the Administrator, unless otherwise waived by the Administrator. During this meeting, the applicant may submit concept plans for preliminary review, comment, and recommendation by the Administrator.

Section 3-1-2. Minimum Submission Standards for Applications.[2]

(a) The Administrator shall establish minimum standards for submission requirements of all applications associated with the Zoning Ordinance. Applications shall contain all information required to meet the minimum standards.

(b) Upon written request by an applicant, the Administrator or their agent may waive or modify a submission requirement or requirements upon a determination that the information is not necessary to evaluate the merits of the application.

(c) Additional information may be required as deemed reasonably necessary by the Administrator.

Section 3-1-3. Forms.

Petitions or applications for amendments (to the Ordinance or Official Zoning Map), variances, special uses, or zoning permits, and any other request requiring action shall be made on forms provided by the Town.

Section 3-1-4. Ownership Disclosure.

An applicant must disclose all equitable ownership of the real estate included in an application. In the case of corporate ownership, the name of stockholders, officers and directors shall be provided, and in any case the names and addresses of all of the real parties of interest in accordance with the Code of Virginia § 15.2-2289, as amended.

Section 3-1-5. Oath Required.

Petitions or applications for amendments (to the Zoning Ordinance or Official Zoning Map), variances, or special use, shall be sworn to under oath before a notary public, or other official before whom oaths may be taken.

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[1] Editor's Note: This Division pulls together several sections from the existing ordinance for better organization of items that are required with all permits. Code of Virginia references and best practice items are added.

[2] Editor's Note: Zoning Text Amendment and Rezoning application requirements have been edited to allow submission of Concept Plans. This option is less cost prohibitive for applicants. Detailed site plans are still required later in the process.

Division 2. Zoning Text and Map Amendments.[3]

Section 3-2-1. In General.

Pursuant to the Code of Virginia § 15.2-2286 (7), as amended, whenever public necessity, convenience, general welfare, or good zoning practice requires, the Town Council may, from time to time, amend, supplement or change, by Ordinance, the boundaries of the districts or the regulations established in this Ordinance. Such change shall require a majority vote of the Town Council.

Section 3-2-2. Standards and Procedures.

(a) Initiation of change.

(1) Pursuant to the Code of Virginia § 15.2-2286 (7), as amended, any amendment to this Ordinance or the Zoning Map may be initiated by:

a. Resolution of the Town Council.
b. Resolution of the Planning Commission; or
c. Petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed Zoning Ordinance amendment or Zoning Map amendment (rezoning), addressed to the Town Council or the local Planning Commission, who shall forward such petition to the Town Council.

(2) Applications for Zoning Map Amendment, including Conditional Zoning requests, shall be accompanied by 15 copies of a Concept Plan[4]. The concept plan may be general and schematic and shall show:

a. A certified plat of the subject property showing metes and bounds of all property lines, existing streets, and subdivisions.
b. Topography as shown by contour lines with a contour interval not more than five feet.
c. Proposed land uses to be developed.
d. The general layout, orientation, and information describing buildings and improvements, including but not limited to parking, landscaping, fencing, signs, and trash enclosures, height, setbacks, and restriction lines.
e. If any, the approximate total number, density, type, and price range of dwelling units and the range of lot sizes for the various dwelling types.
f. If any, the general location of proposed open space and recreational areas.
g. If any, the general location and type of commercial uses to be developed.
h. The general location and character of the proposed roads, pedestrian circulation, trails, public utility and storm drainage systems.
i. A statement on the proposed development schedule.
j. A written analysis of the public facilities, roadway improvements, and public utilities that will be required to serve the development.
k. Any additional information as deemed reasonably necessary by the Administrator.

[3] Editor's Note: Most of the text in this Division is new but is based on the Code of Virginia.
[4] Editor's Note: Abingdon staff has recommended a Concept Plan in lieu of site plans as part of the zoning map amendment application; this is a common and recommended best practice.

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(3) In lieu of a Concept Plan the applicant, at their risk, may submit a Site Plan and through written request ask for concurrent approval of the application and Site Plan.

(4) The application for a Zoning Text Amendment, shall be accompanied by proposed language changes.

a. Identify the specific section(s) number(s) of the Zoning Ordinance sought to be amended.
b. Provide the text requested to be repealed or added.
c. State the reason for the proposed text change.
d. Provided evidence if the proposed change corrects an error or inappropriate standard or is required due to a higher law.
e. If the application proposes a change in a zoning classification or map boundaries, there shall be attached the items required in Section 3-2-2 (a)(2) above.
f. Any additional information as deemed reasonably necessary by the Administrator.

(b) Standards for Review.

(1) Once the application is submitted in accordance with Division 1 of this Article and has been determined to be complete, the Town shall evaluate the application and may request that the applicant make revisions, as necessary.

(2) The application for a Zoning Map or Zoning Ordinance amendment shall be referred to the Planning Commission for public hearing and recommendation.

(3) The Planning Commission shall advise the Town Council within 100 days. If after 100 days no recommendation has been made, the governing body shall assume that the Planning Commission concurs with the applicant and supports amending this Ordinance, and the Town Council shall thereafter take any action it deems appropriate, unless the applicant requests an extension and the Planning Commission votes to grant such an extension for a defined period not to exceed a total of 180 calendar days from the date of the public hearing.

(4) All motions, resolutions, or petitions for amendment to the Zoning Ordinance and/or Zoning Map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution, or petition for amendment to the Zoning Ordinance or map, or both; otherwise, the amendment shall be deemed approved.

(5) In determining what, if any, amendments to this Ordinance or the zoning district map are to be adopted, the governing body shall:

a. Consider the proper relationship of such amendment to the entire zoning plan.
b. Consider the integrity and validity of the zoning districts described in this Ordinance.
c. Avoid isolated, unplanned spot-zoning changes in the zoning district map.
d. Recognize that a certain element of stability is desirable in land use controls, but conditions and standards will change.
e. Consider the right of all citizens to be treated reasonably.
f. Evaluate all changes based on the Comprehensive Plan and a comprehensive analysis of community conditions.

(c) The Administrator shall cause the Zoning Map to be updated as frequently as necessary to ensure that zoning data shown thereon are both accurate and current. Accordingly, all changes affecting the Zoning Map that are approved by the Town Council shall be entered onto the official Zoning

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Map within 60 days following the approval of such changes. After updating sections of the Zoning Map, working prints of any updated section thereof upon which modifications have been made shall be inserted into all sets of the Zoning Maps that are used for public viewing and administration, including those in the Office of the Clerk.

Division 3. Conditional Zoning and Proffers.[5]

Section 3-3-1. Purpose and Intent.

The purpose of conditional zoning is to provide a method for permitting the reasonable and orderly development of land with reasonable conditions governing the use and development of such property. As authorized under the Code of Virginia §§ 15.2-2296 through 15.2-2303, reasonable conditions may voluntarily be proffered by the owner of the property to which the proffered conditions will be applicable for the protection of the community when combined with existing Zoning Ordinance district regulations. The exercise of authority shall not be construed to limit or restrict powers otherwise granted nor to affect the validity of any Ordinance adopted by the locality which would be valid without regard to this division. In addition, the provisions of this Article shall not be used for the purpose of discrimination in housing.

Section 3-3-2. Standards and Procedures.

(a) Proffer of conditions; standards of consideration.

(1) Any owner of property or their agent making application for a change in zoning or an amendment to the Zoning Map may, as part of the application, voluntarily proffer in writing reasonable conditions which shall apply to the subject property in addition to the regulations provided for in the zoning district sought in the rezoning application. Any such proffered conditions must be made prior to any public hearing before the Town Council (including joint public hearings with the Planning Commission), may be amended once the public hearing has begun, and must be in accord with the procedures and standards contained in the Code of Virginia § 15.2-2297.

(2) Proffered conditions shall be subject to the following limitations:

a. The rezoning itself must give rise to the need for the conditions;
b. The conditions shall have a reasonable relation to the rezoning;
c. The conditions shall not include a cash contribution to the Town;
d. The conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in Code of Virginia § 15.2-2241;
e. The conditions shall not include a requirement that the applicant create a property owners' association under the Property Owners' Association Act (§ 55.1-1800 et seq.) that includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments and other public facilities not otherwise provided for in the Code of Virginia § 15.2-2241; however, such facilities shall

[5] Editor's Note: Most of the text in this Division is new but is based from the Code of Virginia.

not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation;

f. The conditions must not include payment for, or construction of, off-site improvements except those provided for in the Code of Virginia § 15.2-2241 and § 15.2-2303.4;
g. No condition shall be proffered that is not related to the physical development or physical operation of the property; and,
h. All such conditions shall be in accordance with the Comprehensive Plan.

(3) At the time each proffer is submitted to the Town, it shall be accompanied by a statement signed by the applicant and the owner or their agents which states:
"Each proffer made in connection with this application for rezoning was made voluntarily and complies with applicable law. No agent of the Town has suggested or demanded a proffer that is unreasonable under applicable law."

(4) Each application for rezoning which proposes proffered conditions to be applied to the property shall be accompanied by the following items beyond those required by conventional rezoning requests:
a. An impact analysis demonstrating justification of proposed proffers.
b. A statement by the applicant certifying there has not been a request to supply unreasonable proffers.
c. A statement describing the nature of the proposed development and explaining the relationship of the development to the Comprehensive Plan.
d. A statement setting forth a maximum number of dwelling units or lots proposed, including density and open space calculations where applicable to any residential development, or a statement describing the types of uses proposed and the approximate square footage for each nonresidential development.
e. A statement detailing any special amenities that are proposed.
f. A statement of the public improvements both on and off site that are proposed for dedication and/or construction and an estimate of the date for providing such improvements.
g. A Concept Plan listing and detailing the nature and location of any proffered conditions and those proposed circumstances which prompted the proffering of such conditions.
h. A statement setting forth the proposed approximate development schedule.
i. A signed statement by both the applicant and owner in the following form: "I hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission."

Section 3-3-3. Amendments and Variations Prior to Final Decision.

The Town Council may accept amended proffers once the public hearing has begun provided the amended proffers do not materially affect the overall proposal. If the Town Council determines that the amendment materially affects the overall proposal, the application with the amended proffers shall be remanded back to the Planning Commission for a public hearing and recommendation.

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Section 3-3-4. Effect of Condition; Period of Validity.

Upon the approval of any such rezoning, all conditions proffered and accepted by the governing body shall be deemed a part thereof and non-severable therefrom and shall remain in force and effect until amended or varied by the Town Council. All such conditions shall be in addition to the regulations provided for in the zoning district to which the land is rezoned.

Section 3-3-5. Record of Conditional Zoning.

Each conditional rezoning shall be designated on the Zoning Map by an appropriate symbol designed by the Administrator. In addition, the Administrator shall keep and maintain a conditional zoning index which shall provide ready access to the ordinance creating such conditions in addition to the regulations provided for in the particular zoning district and which shall be available for public inspection. The Administrator shall update the Index annually and no later than November 30 of each year.

Division 4. Special Use Permits.[6]

Section 3-4-1. Purpose and Intent.

A use requiring a Special Use Permit is a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, requires special consideration of its location, design, extent and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings. The purpose of this division is to establish procedures and standards for review and approval of Special Use Permits that provide for such special consideration.

Section 3-4-2. Applicability.

A Special Use Permit is required for development of any use designated in Article VI Table X: Zoning Use Matrix, as a use requiring a Special Use Permit in accordance with this section, and pursuant to the Code of Virginia § 15.2-2286.

Section 3-4-3. Standards and Procedures.

(a) In addition to the general application requirements supplied in Division 1 of this Article the applicant must provide information and data to:
   (1) Demonstrate that the proposed use, when complemented with additional measures, if any, will be in harmony with the purposes of the specific district in which it will be placed.
   (2) Demonstrate that there will be no undue adverse impact on the surrounding neighborhood in terms of public health, safety or general welfare and show measures to be taken to achieve such goals.
   (3) Show that the proposal meets the applicable specific and general standards required by this Article.

[6] Editor's Note: Existing ordinance sections 17-3-2, 17-3-3, and 17-3-4 regarding application, review, and expiration have been incorporated here in Standards and Procedures and Effect of Decision; Period of Validity. Additional text added for clarity and best practice.

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(4) Special Use Permits within the OH district or EC district must accompanied by 15 copies of a Preliminary Site Plan and supporting documents for review and approval by the HPRB and PC. Special Use Permits in all other districts shall be accompanied by 15 copies of a Concept Plan and / or supporting documentation. The concept plan and / or supporting documents may be general and shall include:

a. A certified plat of the subject property showing metes and bounds of all property lines, existing streets, and subdivisions.
b. Topography as shown by contour lines with a contour interval not more than five feet.
c. Proposed land uses to be developed.
d. The general layout, orientation, and information describing buildings and improvements, including but not limited to parking, landscaping, fencing, signs, and trash enclosures, height, setbacks, and restriction lines.
e. If any, the approximate total number, density, type, and price range of dwelling units and the range of lot sizes for the various dwelling types.
f. If any, the general location of proposed open space and recreational areas.
g. If any, the general location and type of commercial uses to be developed.
h. The general location and character of the proposed roads, pedestrian circulation, trails, public utility and storm drainage systems.
i. A statement on the proposed development schedule.
j. A written analysis of the public facilities, roadway improvements, and public utilities that will be required to serve the development.
k. A written analysis of the public facilities, roadway improvements, and public utilities that will be required to serve the development.
j. A written analysis of Conformity with Comprehensive Plan and policies. The proposal as submitted or as modified shall conform to the Comprehensive Plan of the town or to specific elements of such plan and to official policies adopted in relation thereto, including the purposes of this Ordinance.
k. A written analysis of impact on neighborhood. The proposal as submitted or as modified shall not have undue adverse impact on the surrounding neighborhood. Among matters to be considered in this connection are traffic congestion, noise, lights, dust, odor, fumes and vibration with due regard for timing of operation, screening or other matters which might be regulated to mitigate adverse impact.
l. Any additional information as deemed reasonably necessary by the Administrator.

(5) In lieu of a Concept Plan the applicant, at their risk, may submit a Site Plan and through written request ask for concurrent approval of the application and Site Plan.

(b) Standards for Review.

(1) The community development department of the Town shall review any application requesting a Special Use Permit in the light of the standards set forth in this Ordinance and shall make a report of its findings and recommendations to the Planning Commission.

(2) All Special Use Permits shall be referred to the Planning Commission for study and recommendations. The Planning Commission shall review and make recommendations to the Town Council concerning approval or disapproval of the application of a Special Use Permit based upon the review of the Concept Plan for the proposed development and upon the

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criteria set forth in this Ordinance. The Planning Commission will determine whether all conditions necessary to meet the requirements of such special use exist and state these conditions in its recommendations.

(3) The Town Council may grant an applicant a Special Use Permit after notice is given as noted in Division 12 of this Article and in accordance with the Code of Virginia § 15.2-2204, as amended. Additionally, the Town Council may attach such conditions to its approval as it deems necessary to bring the plan of development into conformance with the purposes and standards of this Ordinance.

(4) The Administrator may concurrently approve the Site Plan subject to the Town Council's approval of a Special Use Permit and subject to the necessary amendments to the Site Plan as a result of the Town Council action.

Section 3-4-4. Effect of Decision; Period of Validity.

(a) A Special Use Permit authorizes only the particular use(s) and associated development that is approved and shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary applications for permit or development approval. A Special Use Permit, including any approved plans and conditions, shall run with the land and shall not be affected by a change in ownership.

(b) Unless otherwise specified in this Ordinance or specified as a condition of approval, the height limits, yard spaces, lot area, sign requirements, and other specified standards shall be the same as for other uses in the district in which the special use is located.

(c) Special use permits granted by the Town Council pursuant to the terms of this Ordinance shall expire 18 months from the date of permit approval in the event the construction of improvements necessary to the use for which the permit was granted has not commenced to a degree that, in the opinion of the 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) Should the use approved by the Special Use Permit cease for any twenty-four-month period during the life of the permit, the Special Use Permit shall become void.

Section 3-4-5. Revocation.

A previously granted Special Use Permit may be revoked if the Town Council determines there has not been compliance with the conditions of the permit. No permit shall be revoked except after notice and hearing as provided in this Article.

Division 5. Variances.[7]

Section 3-5-1. Purpose and Intent.

Pursuant to the Code of Virginia § 15.2-2309, the purpose of a variance is to allow for a reasonable deviation from the provisions of this Ordinance regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would unreasonably restrict the utilization of the property, other

[7] Editor's Note: This is a new Division to address variances holistically. Variances were previously only addressed for floodplain and entrance corridor overlay.

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relief or remedy is not available, such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the Ordinance.

Section 3-5-2. Standards and Procedure.

(a) Authority.

(1) Pursuant to the Code or Virginia § 15.2-2309 (2) and (6), the Board of Zoning Appeals is authorized to review petitions for a variance, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standard for a variance and the criteria set out in this Ordinance.

(2) The Board of Zoning Appeals may approve, approve with conditions deemed necessary in the public interest, including limiting the duration of a permit, requiring a guarantee or bond to ensure the conditions will be complied with, or deny an application for a variance permit in accordance with the procedures and standards of this Article.

(3) Applications for a Variance shall be accompanied by 15 copies of a Concept Plan. The concept plan may be general and schematic and shall show:

a. A certified plat of the subject property showing metes and bounds of all property lines, existing streets, and subdivisions.

b. Topography as shown by contour lines with a contour interval not more than five feet.

c. Proposed land uses to be developed.

d. The general layout, orientation, and information describing buildings and improvements, including but not limited to parking, landscaping, fencing, signs, and trash enclosures, height, setbacks, and restriction lines.

e. If any, the approximate total number, density, type, and price range of dwelling units and the range of lot sizes for the various dwelling types.

f. If any, the general location of proposed open space and recreational areas.

g. If any, the general location and type of commercial uses to be developed.

h. The general location and character of the proposed roads, pedestrian circulation, trails, public utility and storm drainage systems.

i. A statement on the proposed development schedule.

j. A written analysis of the public facilities, roadway improvements, and public utilities that will be required to serve the development.

k. Any additional information as deemed reasonably necessary by the Administrator.

(b) After application is made as required in Division 1 of this Article, the Administrator shall also transmit a copy of the application to the local Planning Commission, which may send a recommendation to the Board of Zoning Appeals or appear as a party at the hearing.

(c) Standards for Review.

(1) Pursuant to the Code of Virginia §15.2-2309 (2), a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance, and:

a. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;

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b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
c. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to the Ordinance;
d. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;
e. The relief or remedy sought by the variance application is not available through the process for modification of a Zoning Ordinance pursuant to subdivision A 4 of the Code of Virginia §15.2-2286 at the time of the filing of the variance application.

Section 3-5-3. Effect of Decision; Period of Validity.

(a) Issuance of a variance or special exception shall authorize only the particular variance that is approved. A variance, including any conditions, shall run with the land and not be affected by a change in ownership.
(b) Use or development authorized by the variance shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable Ordinances and regulations of the Town. A variance, in itself, shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary applications for permit or development approval.
(c) After the BZA has granted a variance, the variance so granted shall lapse after the expiration of one year if no substantial construction or change of use has taken place in accordance with the plans for which such variance was granted, or if the BZA does not specify some longer period than one year for good cause shown.

Division 6. Certificates of Appropriateness and Other Historic Permissions.[8]

Section 3-6-1. Purpose and Intent.

To protect designated historic properties and historic districts from insensitive alterations and demolition, and to ensure that new buildings are compatible with the existing character of the district.

Section 3-6-2. Applicability.[9]

(a) In accordance with Code of Virginia § 15.2-2306, as amended, and unless exempted by this section, no building or structure, Historic Landmark, or Historic Structure within the Old and Historic (OH) district, excluding signs, shall be erected, reconstructed, altered, restored, razed, demolished,

[8] Editor's Note: The existing ordinance scatters the Certificate of Appropriateness (COA) requirements in multiple Articles of the ordinance. The text has been consolidated into one Division and updated as appropriate.
[9] Editor's Note: Existing section 18-9-7 states that COA in the EC district were granted by the PC. This has been maintained but could be a duty of the HPRB. The existing text allowed all signs in the EC district to be administratively approved and signs in the OH district required HPRB approval. The proposed text allows all signs to be administratively approved.

or moved unless a Certificate of Appropriateness has been issued by the HPRB or, on appeal, by the Town Council in accordance with this Article.

(b) In accordance with Code of Virginia § 15.2-2306, as amended, and unless exempted by this section, no building or structure, Historic Landmark, or Historic Structure within the Historic District Entrance Corridor Overlay (EC) district, excluding signs, shall be erected, reconstructed, altered, restored, razed, demolished, or moved unless a Certificate of Appropriateness has been issued by the Planning Commission or, on appeal, by the Town Council in accordance with this Article.

(c) No architectural feature of a building or structure within the OH district or EC district which are subject to public view from any public street, right-of-way or place shall be altered in any way that affects the external appearance of the building or structure, including such items as roofs, chimneys, fences and color changes, unless a Certificate of Appropriateness has been issued by the HPRB/Planning Commission or, on appeal, by the Town Council in accordance with this Article.

(d) Upon written application, the Administrator may determine that certain minor actions involving buildings and structures within the OH district or EC district will have no permanent effect on the character of the district, and, by written waivers issued to the parties wishing to take the minor actions, exempt them from review by the HPRB/Planning Commission as outlined in section 3-6-5.

Section 3-6-3. Standards and Procedure.[10]

(a) Applications for such Certificates of Appropriateness shall be made in writing upon the form provided by the office of the Administrator. Each application must be submitted to the Administrator at least ten calendar days in advance of the date of the meeting at which the HPRB or Planning Commission is requested to issue a Certificate of Appropriateness. Provided:

(1) If the applicant demonstrates unavoidable hardship because of either availability or standby costs of materials, labor or other goods and services, the HPRB or Planning Commission may in its sole discretion consider the particular application at either a regular or special meeting;

(2) In no event shall the members of the HPRB or Planning Commission consider at any regular or special meeting any matter with respect to which they have been provided with less than 48 hours advance notice exclusive of weekends and holidays, with full documentation as required in this ordinance.

(b) In the case of new construction, extensive exterior alterations or building additions in the OH district or EC district, the applicant shall provide drawings containing sufficient detail to depict the exterior architectural design of the building or structure, list proposed materials, textures and colors and include samples of such materials and colors. The applicant may be requested to provide photographs of the existing structures and any building or structure to be altered, repaired or added to. In addition to any other documentation the reviewing body may request, the applicant must provide at a minimum, scale drawings depicting the following:

(1) A design of the proposed improvements detailing distances from any new building or improvement to lot lines, streets, alleys, and sidewalks; and,

[10] Editor's Note: Existing sections 8-8-4, 8-9-3, and 8-10-1 regarding standards for COA in the OH district and sections of Article 18 regarding the EC district are included. Text from 18-9-11 regarding guidelines for architecture and design are included except lighting, landscaping, and signs have specific requirements in Article VIII.

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(2) A design of the proposed improvements in relation to existing structures which are located within the same block.

(c) In the case of an owner of a landmark, building or structure within the OH district or EC district who wishes to demolish or move the same, the HPRB or Planning Commission may require the applicant to provide post-demolition or moving plans for the affected site and consider whether such plans would be appropriate to the historic and architectural character of the adjoining properties and the district as a whole.

(d) The requirement of a Special Use Permit for a building or use does not negate the need for a Certificate of Appropriateness.

(e) Standards for HPRB review within the OH District.

(1) The HPRB shall not consider interior arrangement of the building or structure or features not subject to view from a public street, right of way or place. In addition to those specified in the design review guidelines, the HPRB shall consider the following matters in passing on the appropriateness of a particular project:

a. Exterior architectural features, including but not limited to the type and style of all windows, doors, signs and other appurtenant architectural features or elements which are visible to public view from a public street, right-of-way or place.

b. The architectural style, general design and arrangement of the building or structure.

c. Texture, material and color of the building materials employed.

d. The relationship of the factors in a., b. and c. above to similar features of buildings and structures and uses in the immediate surroundings.

e. The extent to which the building, structure or use would be harmonious with or obviously incongruous to the old and historic aspect of the surroundings.

f. In case of a building or structure to be demolished, a primary consideration will be the extent to which its continued existence would tend to protect irreplaceable historic places and preserve the general historic atmosphere of the town.

g. The extent to which the building or structure or the use will promote the general welfare of the town and all citizens by the preservation and protection of historic places and areas.

h. The extent to which said preservation and protection will promote the general welfare by maintaining and increasing real estate values; generating business; creating new positions; attracting tourists, students, writers, historians, artists and artisans and new residents; encouraging study and interest in American history; stimulating interest and study in architecture and design; educating citizens in American culture and heritage; and, making the town a more attractive and desirable place in which to live.

i. The extent to which either existing or proposed landscaping, including but not limited to trees, shrubbery or other vegetation associated with the building, structure or use, are harmonious with or incongruous to the old and historic aspects of the particular site.

(2) The HPRB may by a four-to-one or a unanimous vote, elect to disregard any guideline it considers unimportant or inappropriate to a particular project.

(f) Standards for Planning Commission review within the EC overlay district.

(1) The Planning Commission shall not consider interior arrangement of the building or structure or features not subject to view from a public street, right of way or place. In addition to those

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specified in the design review guidelines, the Planning Commission shall consider the following matters in passing on the appropriateness of a particular project:

a. The following recommendations are provided for architectural styles and general building characteristics:
   1. Materials, colors and general style of buildings within a development should be coordinated.
   2. Heating and air conditioning units, ventilation units, and mechanical equipment shall be screened from view from public streets.
   3. Loading docks, trash containers, mechanical equipment and any sites for storage facilities shall be screened from view from public streets.
   4. The effective visual mass of large buildings should be reduced by variations in roof line, building angles, dimension, relief, color, architectural detailing and landscaping.

b. Design review guidelines. New buildings or exterior alterations to existing structures should include one or a combination of the following materials/methods of construction:
   1. Wood frame, (or fiber cement board), with brick, stone, or concrete foundations; brick construction or brick facing; finished concrete block; roof materials of standing seam metal, asphalt shingle, and rubber membrane/parapet for flat roof forms.
   2. Windows should be used to provide interest and surface variations on building elevations. Blank building walls are discouraged for most commercial applications.
   3. The design of gas station canopies, building canopies and other accessory structures should be compatible with the scale, color, materials, and detail of the buildings they serve.
   4. Site walls and retaining walls should be comprised of brick, or concrete; brick facing on a concrete or concrete masonry unit wall. The use of segmental/modular concrete block is discouraged. Site walls should be considered as part of site terracing in increments; site walls out of proportion with building foundations or the human figure are discouraged.
   5. Roof forms may be single gable, cross gable, gambrel, hip, parapet, or flat forms. Mansard roof forms are not recommended on modern-styled buildings.
   6. Site materials shall be limited to local stone, asphalt, concrete, and exposed aggregate concrete.
   7. Façade colors preferably shall be of low reflectance white, earth tone, muted, subtle, or neutral colors. Building trim may feature brighter colors as an accent material. The use of high-intensity, metallic, fluorescent, day glow, or neon colors are discouraged.
   8. Trademark buildings and related features including signs shall be modified to meet these design standards.
   9. Parking lots will be interconnected on adjacent parcels whenever possible.
   10. Small, landscaped and interconnected parking lots, rather than large, central parking lots shall be encouraged.
   11. Parking lots shall not dominate the image of a site.
   12. Where sidewalks exist adjacent to individual project sites pedestrian access from the sidewalk into individual project sites as well as within sites and between sites shall be provided.

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13. Lighting, Landscaping, Parking, and Sign requirements of Article VIII shall be followed.
14. The Planning Commission is permitted to reduce the parking space requirement when the interests of the town are better served.

(g) If any application is disapproved, the reviewing body shall furnish the applicant with its written decision stating the reasons for disapproval and make recommendations with respect to the appropriateness of design, arrangement, texture, material, color, location, and any other factor on which the disapproval was based.

(h) If any application is approved to erect, construct, reconstruct, alter, restore, move or demolish a building or structure, a Certificate of Appropriateness signed by the chairman of the reviewing body shall be issued to the applicant and made available to the Building Official.

(1) After issuing any building permit pertinent to the particular work, the Building Official shall see to it that the work performed and materials employed comply with the terms of the Certificate of Appropriateness and notify the Administrator upon completion of the authorized work. Provided, (i) no building permit may be issued in the case of any work requiring a Certificate of Appropriateness until such certificate is issued; but (ii) the Certificate of Appropriateness will in no way affect the requirement to comply with other provisions necessary to obtain a building permit.

(i) Procedure to demolish or move via sale in the OH district.

(1) If the HPRB disapproves any application to demolish or move, the owner may appeal the HPRB's decision as specified in Division 11 of this Article. However, in addition to such right of appeal, the owner of an historic landmark, building or structure, the razing or demolition of which is subject to the provisions of this Division, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure, provided (i) the owner has applied to the Town Council for such right; and (ii) the owner has, for the period of time set forth below, made and continuously maintained in effect at a price reasonably related to its fair market value, a bona fide offer to sell the landmark, building or structure and the land pertaining thereto to the town or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto; and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of such landmark, building or structure and the land pertaining thereto prior to the expiration of the applicable time period set forth in item c., below. Provided:

a. Notwithstanding the provisions of Division 11 of this Article that stay decisions of the Town Council pending appeal, no appeal to the Circuit Court of Washington County, Virginia, by the owner or any other proper party shall affect the owner's right to make a bona fide offer under this section.
b. Any offer to sell must be made within one year after the date the Town Council renders its final decision as provided in section 3-6-3(f)(2) below, but thereafter the owner may renew his request to such governing body to approve the razing or demolition of the historic landmark, building or structure.
c. The time schedule for offers to sell shall be as set forth in Code of Virginia, § 15.2-2306, as amended.

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(2) Before making a bona fide effort to sell as provided in section 3-6-3(f), the owner shall first file an application with the Town Council that contains a statement identifying the property and stating:
   a. The source and amount of the proposed offering price;
   b. The date the offer of sale is proposed to begin;
   c. The name and address of any real estate agents or brokers listing or to list the property;
   d. The exact terms and provisions of the deed to be used in the sale, including a legally sufficient description of the land to be offered and the covenants relating to renovation and restoration of the building or structure situated on the property; and
   e. The proposed advertising measures and measures to assure preservation and renovation by a buyer. Provided:
      1. The proposed offering price shall be established by an appraisal prepared at the owner's expense by a licensed real estate appraiser. If the Town Council is uncertain that such price accurately reflects fair market value of the property, the town may, at its sole expense, hire another licensed real estate appraiser within five working days after receipt of the owner's statement. Within the 30-day period commencing on the date the town hires the second appraiser, the appraiser selected by the owner and the appraiser selected by the town shall:
         i. Select a third licensed real estate appraiser, whose services shall be paid in equal shares by the owner and the town; and
         ii. A majority of two of the three appraisers shall establish a price to be recommended to the owner.
   f. If in the Town Council's judgment the advertising measures proposed by the owner are inadequate to assure that the offering will reach the maximum possible number of qualified buyers and provide them with a reasonable opportunity to examine the property, the Town Council shall provide the owner with a written response that specifically describes the deficiencies and suggests means whereby they may be corrected. Similarly, if in its judgment the proposed deed fails to comply with the requirements of section 3-6-3(f), the Town Council may provide the owner with a written response which specifically describes the deficiencies and suggests means whereby they can be corrected.

(3) Within one year following the date the Town Council approves the application to sell under section 3-6-3(f), the owner shall cause the property concerned to be advertised for sale in accordance with the plans, specifications and procedures specified in the application (as it may have been revised by reason of suggestions under section 3-6-3(f)(2)b above) and thereafter continue the advertising in the same manner and to the same extent, with no interruption, until the sooner occurring of the signing of a bona fide contract binding on all parties thereto or expiration of the appropriate time period. If a bona fide contract binding on all parties is signed and closed in accordance with the original application as approved by the Town Council, no further action under this section will be required.
   a. If the appropriate time period expires without the signing of a binding contract, the owner shall file with the HPRB an application for Certificate of Appropriateness which includes full and complete documentation of the unsuccessful sales effort, including but not limited to:

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1. Formats of all advertisements;
2. Schedules showing when, where and how the advertisements were employed;
3. Any listings with real estate agents or brokers and offers received; and
4. Any fliers or other descriptions of the property prepared pursuant to such listings.

b. Upon receipt of the owner's application the HPRB shall place the matter on the agenda for its next regularly scheduled meeting and thereafter approve the application if in its judgment the requirements of section 3-6-3(f) for a bona fide offer and sale have been met. Otherwise, the HPRB shall follow the procedure for a rehearing set out in section 3-6-3(f)(2) of this ordinance pending such approval. In any event, the owner shall, have a right of appeal to the Town Council and from the Town Council to the circuit court as supplied in Division 11 of this Article.

Section 3-6-4. Period of Validity.[11]

(a) Certificates of Appropriateness granted pursuant to the terms of this Ordinance shall expire one year from the date of approval in the event the construction of improvements necessary for which the permit was granted has not commenced to a degree that, in the opinion of the Administrator, clearly establishes the intent to utilize the granted certificate in a period of time deemed reasonable for the type and scope of improvements involved.

(b) Should work cease for more than 90 days (subject to extension for good cause demonstrated to the Administrator and excluding any time the use of the Certificate of Appropriateness is stayed pursuant to appeal or court action) a Certificate of Appropriateness shall become void.

Section 3-6-5. Waiver of Requirements.[12]

(a) Notwithstanding any contrary requirement of this Article, the Administrator may review and administratively approve applications for the following exterior changes:

(1) Repainting in a paint scheme that duplicates the existing paint colors.
(2) Replacement of windows that duplicate the existing windows.
(3) Addition, deletion, or relocation of heating and cooling systems, antennas, skylights, or solar panels on the property provided they be screened per the Design Guidelines or in locations not visible from a street right-of-way.
(4) Addition or deletion of awnings, temporary canopies, window air conditioners or similar appurtenances.
(5) Exterior alterations to existing structures not visible from a public street, right of way or determined by the Administrator to have no permanent effect on the character of the district.
(6) Replacement of roof or fence materials that replicate existing materials and/or create uniformity.

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[11] Editor's Note: The existing ordinance time limits were maintained; however, the text was modified for clarity and is similar to the text utilized for special use permit validity.

[12] Editor's Note: This section uses existing text from 18-9-6 and 18-9-11 regarding routine maintenance and waivers. Item (a)(6) is modified to include fences and to allow uniformity. Items (a)(7) and (8) are new items added as best practice.

(7) The construction of accessory buildings and structures on properties where none of the structures are Historic Structures and where the construction would be in keeping with the character of the principal structure and surrounding area.
(8) Reconstruction performed to restore or replace the same as, or nearly the same as practical, a structure to its original documented historical design.

(b) Each application for waiver must be on the form provided by the office of the Administrator and documented by appropriate samples of the materials and colors to be used in taking the minor actions.

(c) With respect to each waiver issued hereunder, the Administrator shall see to it through the town's inspection department that the work performed and materials employed comply with the terms of the particular waiver. Provided, however:
(1) If the Administrator is uncertain about his authority to grant a waiver or if the Administrator and the applicant cannot agree on changes in any application for waiver, the application shall be referred to the reviewing body at its next regularly scheduled meeting for a decision on the question, which decision shall be final;
(2) If the Administrator denies an application for a waiver, the applicant may appeal the Administrator's decision to the reviewing body, in which case the reviewing body's decision shall be final; and
(3) If a waiver is issued and the work is commenced but in the opinion of the Administrator the work does not qualify for a waiver the Administrator shall order that the work be stopped until the applicant secures a Certificate of Appropriateness pursuant to Division 6 of this Article. In any such case the applicant may appeal to the commission, whose decision on the question shall be final.

(d) The Administrator shall provide the reviewing body with a copy of any approved waiver at the next regularly scheduled meeting following the date the application was received.

Division 7. Site Plans.[13]

Section 3-7-1. Purpose and Intent.

(a) The purpose of this section is to promote the orderly development of certain activities in the Town and to ensure that such activities are developed in compliance with this Ordinance and other applicable regulations and in a manner harmonious with surrounding properties and in the interest of the general public welfare. More specifically, the Site Plan shall be used to review:
(1) The project's compatibility with its environment and with other land uses and buildings existing in the area;

[13] Editor's Note: Existing ordinance section 18-4 regarding preliminary site plan contents, section 17-2-3 allowing occupancy with surety for other site measures, and sections of Article 14 regarding site plans for Planned Technology Districts (PTD), and sections of Article 20 regarding site plans for Planned Unit Developments (PUD) have been incorporated in this Division to reduce redundancy. Additional text is added and the process for review of final site plans has been streamlined with administrative approval as a best practice. The PC and HPRB will approve preliminary site plans with SUP applications. All other site plans will be approved administratively based on development standards and the approved Concept Plan.

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(2) To review the ability of the project's traffic circulation system to provide for the convenient and safe internal and external movement of vehicles and pedestrians;
(3) To review the quantity, quality, utility and type of the project's required community facilities; and
(4) To review the location and adequacy of the project's landscape improvements and provision for drainage and utilities.

Section 3-7-2. Applicability.[14]

(a) Pursuant to Code of Virginia, § 15.2-2286. A.8, as amended, no building permit or zoning permit shall be issued involving construction or exterior modifications to a structure until a Final Site Plan has been issued in accordance with the procedures established herein, with the following exceptions:
  (1) Individually developed single-family detached dwellings.
  (2) Individually developed Two-family dwellings.
  (3) Accessory structures or improvements less than 256 square feet in area.
  (4) Bona fide agricultural operations and the customary accessory uses and structures associated with bona fide agricultural operations.
  (5) Filling and grading operations where the area of land disturbance is less than 10,000 square feet where no impervious structures, surfaces or improvements will be installed and no clearing undertaken.
  (6) Repairs of a general nature to existing buildings with no land disturbance.
(b) When a change of use is proposed that requires additional off-street parking or other requirements applicable to the new use, a Site Plan shall be submitted for review to ensure that the change of use can be accomplished within the regulations of this ordinance, except when such requirement is waived as provided in 3-7-9 below.

Section 3-7-3. Preliminary Site Plan Specifications and Contents.[15]

(a) The Preliminary Site Plan shall include the following:
  (1) The proposed title of the project, the names of the engineer, architect, landscape architect or surveyor, and the name of the developer; and a signature panel for the Director of Community Development, the Town Manager (if required) and the chairman of the Planning Commission (if required)
  (2) The north point, scale, date, and vicinity map.
  (3) Existing zoning and zoning district boundaries on the property to be developed and on immediately adjacent properties.
  (4) The boundaries of the property or properties involved, all existing property lines, setback lines, existing streets, buildings, watercourses, waterways or lakes, and other existing physical features in or adjoining the project. Those physical features such as watercourses, waterways or lakes on adjoining properties need only be shown in approximate scale and proportion.

[14] Editor's Note: Added items (a)(3)-(6) which seem to be occurring in practice but not supplied in the existing ordinance.
[15] Editor's Note: Added items (a)(19)&(20) to capture Code of Virginia text and items (a)(21)&(22) added as best practice.

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(5) Topography of the project area with contour intervals of five feet or less.
(6) The location and size of sanitary and storm sewers, water, gas, telephone, electric and other utility lines, culverts, and other underground structures in or affecting the project, including existing and proposed facilities and easements for these facilities. In the case of town-owned utilities, such information shall be provided to the applicant by the town director of public works.
(7) The location, dimensions, and character of construction of proposed streets, alleys, loading area (including numbers of parking and loading spaces), outdoor lighting systems, storm drainage and sanitary facilities, sidewalks, curbs and gutters, and all curb cuts. Where necessary to meet the purposes and intent of this Article, such information shall be provided for the site itself and for an area within 50 feet of any property line of the site, except that additional area may be required to be shown to indicate connections or proposed connections to major utilities.
(8) The location of all proposed buildings and structures, accessory and main, showing the number of stories and height, dwelling type, major excavations, and the total square footage of the floor area by proposed use.
(9) The location, height, type and material of all fences, walls, screen planting and landscape details of all buildings and grounds.
(10) The location of all trees existing on the site prior to construction with a caliper of eight inches or greater. The Site Plan shall show wooded areas which shall be designated by symbols coincident with the area of trees and an indication of which trees are to be retained and which are to be removed.
(11) The proposed location and character of nonresidential uses, commercial and industrial uses, accessory and main.
(12) The location, character, size, height, and orientation of proposed signs as proposed to be erected in accordance with Article VIII of this ordinance; and elevations of buildings showing signs to be placed on exterior walls. Signs which are approved in accordance with this section shall be considered a part of the approved Site Plan. Thereafter, signs shall not be erected, painted, constructed, structurally altered, hung, rehung or replaced except in conformity with the approved Site Plan. Any changes in signs from the approved Site Plan, or any additions to the number of signs as shown on the Site Plan, shall be allowed only after amendment of the Site Plan by the Director of Community Development and/or the Planning Commission.
(13) The proposed nature and manner of grading the site, including proposed treatment of slopes in excess of ten percent to prevent soil erosion and excessive runoff. In cases where an erosion and sedimentation control permit is required, the necessary plans and data shall be submitted as required in the Town of Abingdon erosion and sedimentation control ordinance. In all other cases, soil erosion control measures shall be shown on the Site Plan.
(14) The location and screening materials for dumpsters or other outdoor trash receptacles.
(15) The location and dimensions of proposed recreation areas, open spaces and other required amenities and improvements.
(16) A tabulation of the total number of acres in the project and the percentage and acreage thereof proposed to be allocated to the several dwelling types, any nonresidential uses, off-street parking, green areas, streets, parks, schools and other reservations.

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(17) A tabulation of the total number of dwelling, commercial or industrial units of various types in the project and the overall project density in dwelling, commercial or industrial units per gross acre.
(18) The proposed and required off-street parking and loading areas, including parking and access for the handicapped as specified in the Virginia Uniform Statewide Building Code, as amended.
(19) The location of any grave, object or structure marking a place of burial.
(20) The approximate limit of the 100-year floodplain, any drainage district, mapped dam break inundation zone.
(21) A plan or report indicating the extent, timing and estimated cost of all off-site improvements, such as roads, sewer, and drainage facilities deemed necessary to construct the proposed development, and the extent, timing and estimated cost of all facilities deemed necessary to serve the development such as schools, libraries and police substations. This plan or report shall relate to the sequence of the development schedule if the development is to be constructed in stages or units.
(22) Any additional information as required by the Administrator necessary to evaluate the character and impact of the proposed project.

(b) In addition, a Site Plan for a Planned Technology District (PTD) or Planned Unit Development (PUD) shall include:
(1) A general statement of planning objectives to be achieved by the PTD district, including a description of the character of the proposed development, the existing and proposed ownership of the site, the market for which the development is oriented and intentions with regards to any specific human-made and natural characteristics located on the site.
(2) General information on the trip generation, ownership, maintenance and construction standards for proposed streets should be included. The Administrator or the director of public works may require a traffic impact analysis.
(3) Proposed deed covenants, restrictions or other constraints to be imposed upon the purchasers of such properties.
(4) A plat as required for preliminary plat approval by the Town of Abingdon subdivision ordinance.
(5) Phasing of the project if approved as such.

Section 3-7-4. Final Site Plan Specifications and Contents.[16]

(a) General specifications.
(1) Separate Final Site Plans shall be submitted for each development stage or unit as planned or set forth in the approved Preliminary Site Plan.
(2) A Final Site Plan for a particular development stage or unit other than the first, shall not be approved until the Final Site Plan has been approved for the immediately preceding stage or unit.
(3) Six copies of the Final Site Plan shall be provided to the Administrator.

(b) Contents. The Final Site Plan shall comply with the Preliminary Site Plan specifications in section 3-7-3 above; and shall in addition show the following, unless the Administrator may determine that

[16] Editor's Note: New text addressing phased developments and additional items to be included in the final plan.

some of the following information is unnecessary due to the scope and nature of the development proposed:

(1) Included with the Site Plan shall be documentation of all existing permits and applications relevant to the parcel, including, but not limited to: Health Department permits for all wells and septic drain fields; all existing zoning permits and zoning applications; applications for rezoning, Special Use Permits, and zoning variances and evidence of all wetlands permits required by Federal, State, and local laws and regulations applicable to the site, lot or parcel.

(2) All of the features required on the preliminary plan with sufficiently accurate dimensions, construction specifications and computations to support the issuance of zoning and construction permits.

(3) When the development is to be constructed in stages or units, a final sequence of development schedule showing the order of construction of such stages or units, an approximate completion date for the construction of each stage or unit, and a final cost estimate of all improvements within each stage or unit.

(4) A copy of all covenants, restrictions, and conditions pertaining to the use, maintenance and operation of all open space areas.

(5) Any additional requirements as determined by the Administrator.

Section 3-7-5. Site Plan Review Process.[17]

(a) Site plan submission. Unless otherwise provided in another Article of this Ordinance, every Site Plan required by this Article shall be submitted to the Administrator who shall take the following actions:

(1) Determine if the plan may be administratively approved or approved by Planning Commission and HPRB. If not administratively approved, the plan and application must be placed on the agenda of the Planning Commission and the HPRB and arrange for public notices as outlined in Division 12 of this Article.

a. Preliminary Plans for Special Use Permits within the OH district or EC district must be approved by HPRB and Planning Commission respectfully. Site Plan approval does not negate the need for a Certificate of Appropriateness as outlined in Division 6 of this Article.

b. All final plans required under section 3-7-2, are approved by the Administrator.

(2) Review the plans for conformity with applicable development regulations supplied in this Ordinance, approved Concept Plans for the site, and the Code of Virginia.

(3) Plans which may be administratively approved will be provided to the director of public works and other relevant town departments for written comment.

(4) The Administrator shall notify the applicant of the action taken with respect to the Site Plan, which may include approval, approval subject to conditions or disapproval.

(b) Pursuant to Code of Virginia, § 15.2-2259, the Site Plan shall be approved or disapproved within 60 days after it has been officially submitted for approval. If disapproved the reasons for disapproval shall be identified by reference to specific duly adopted Ordinances, regulations, or policies and

[17] Editor's Note: Utilized existing text from section 18-7, procedures. Process is changed, as a best practice, to allow final site plans to be administratively approved. This process is business friendly while still ensuring compliance.

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shall identify, to the greatest extent practicable, modifications or corrections that will permit approval of the plan.

(c) Pursuant to Code of Virginia, § 15.2-2259, the Site Plan that is previously disapproved but has been modified, corrected, and resubmitted shall be acted on within 45 days of resubmission.

Section 3-7-6. Amendment of Site Plans.[18]

(a) If it becomes necessary for an approved Site Plan to be changed, the Administrator may, at the applicant's request, administratively approve an amendment to the Site Plan if the change or amendment does not:
   (1) Alter a recorded plat;
   (2) Conflict with specific requirements of this Ordinance;
   (3) Change the general character or content of an approved development plan or use;
   (4) Have an appreciable effect on adjoining or surrounding property;
   (5) Result in any substantial change of external access points;
   (6) Decrease the minimum specified yard and open spaces;
   (7) Substantially change architectural or site design features; and
   (8) Amendments such as but not limited to, the elimination of any use shown or the addition of any use not shown on the Preliminary Site Plan or any increase or decrease in the density of the development, shall require resubmission of the Preliminary Site Plan.

(b) If amendments to a Site Plan do not comply with administrative approval, then the amendment request and a new Site Plan must be drawn and submitted for review and action in accordance with this Division.

(c) If the Administrator fails to act on a request for a minor amendment to the Site Plan within 15 calendar days, it shall be considered approved.

Section 3-7-7. Compliance with Approved Site Plan Required.[19]

(a) It shall be unlawful for any person to construct, erect or substantially alter any building or structure, or develop, change, or improve land for which a Site Plan is required, except in accordance with an approved Site Plan. Deviation from an approved Site Plan without the written approval of the Administrator shall void the Site Plan and require submission of a new Site Plan for approval.

(b) No permit shall be issued for any structure in any area covered by the Site Plan that is required under the provisions of this Article except in conformity with such Site Plan which has been duly approved.

(c) The Building Official shall be responsible for enforcing the requirements as set forth in the final approved Site Plan, before issuance of a certificate of occupancy, and shall give written notice to the Administrator that the Site Plan has been completed before issuing the certificate of occupancy.

(d) Where structures are completed and ready for occupancy prior to the completion of all improvements required by the Site Plan, the owner may provide bond with surety adequate to

[18] Editor's Note: Items (1) through (8) are based from existing section 14-8 but are reorganized and expanded for specificity and clarity.

[19] Editor's Note: This section includes general compliance language and the existing text of section 17-2-3, allowing a certificate of occupancy without completion of improvements *IF* a surety is provided for the remaining improvements.

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guarantee the completion of Site Plan and upon providing of such bond with surety as agreed upon by the Town Manager, a permit may be issued for the occupancy of those structures already completed.

(1) The Town Manager is authorized to accept, instead of corporate surety, letter of credit, joint savings account or other like surety. In any case in which any other escrow agent (such as an attorney for a mortgage lender) is holding funds to ensure compliance with the terms or other regulations or agreements and such funds are in an amount sufficient to ensure compliance with the terms of other regulations and agreements, the Town Manager shall become a party to such other escrow agreement as escrow agent for the town; provided that such other escrow agreement contains provisions satisfactory to the Town Manager to ensure compliance with the requirements of such Site Plan and this ordinance.

(2) A formal development agreement may be required to allow for occupancy. The development agreements should include:
   a. Improvements not complete;
   b. Type of surety;
   c. Copies of all sureties;
   d. Timeline for completion; and
   e. Penalty for not abiding by the agreed upon terms.
   f.

Section 3-7-8. Period of Validity.[20]

(a) If no Final Site Plan is submitted within twelve (12) months of the approved Preliminary Site Plan and construction has not begun within the time period approved by the Town Council, the Preliminary Site Plan approved shall lapse and be of no further effect. In its discretion and for good cause, the Town Council may, upon receipt of written request, extend the period required to submit a final plan.

(b) In accordance with Code of Virginia, § 15.2-2261, as amended, approval of a Final Site Plan submitted under the provisions of this Article shall expire five years after the date of such approval unless building permits have been obtained for construction in accordance therewith.

(c) The application for and approval of minor modifications to an approved Site Plan shall not extend the period of validity of such plan and the original approval date shall remain the controlling date for purposes of determining validity.

Section 3-7-9. Waiver of Requirements

The Director of Community Development or the Town Manager may waive the requirements for the Site Plan review for additions to existing buildings, structures or uses, if, in their opinion, such addition does not substantially affect the requirements of this ordinance.

[20] Editor's Note: Existing section 18-7-4 states that final site plans expire within one year and section 14-10 states that failure to submit plans for a at least one portion of a PTD within 36 months shall result in application to rezone to the previous designation, however, this is in violation of the Code of Virginia. Text has been updated to match the Code of Virginia.

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Division 8. Zoning Permits.[21]

Section 3-8-1. Applicability.

(a) No building or other structure shall be erected, moved, expanded, structurally altered, nor shall any building, structure, or land be established or changed in use without the owner or owners first obtaining a permit issued by the Administrator verifying that the building, structure or use complies with the requirements of this Ordinance.

(b) No such permit shall be issued for a building, structure or use unless such complies with the provisions of this Ordinance, or a Special Use Permit authorizing an exception, variance, or written order from an appeal has been approved as provided by this Ordinance.

Section 3-8-2. Procedure and Standards.

(a) Zoning permit applications shall be reviewed using the procedures and minimum submission requirements established by the Administrator.

(b) Each application for a zoning permit shall be accompanied by two (2) copies of a scale drawing or plan as required by the Administrator showing, with dimensions, the lot lines, the building or buildings, the location of buildings on the lot including setback measurements from each property boundary, and such other information as may be necessary to provide for the enforcement of these regulations. The drawing or plans shall contain suitable notations indicating the proposed use of all land and buildings. If determined necessary by the Administrator in a specific case, a boundary survey and a staking of the lot by a competent surveyor and complete construction plans shall be required.

(c) If the proposed building or use is in conformity with the provisions of this Ordinance, a permit shall be issued to the applicant by the Administrator. One (1) copy of the drawing shall be returned to the applicant with the permit. One (1) copy shall be kept in the offices of the Administrator as record of the decision.

(d) A zoning permit, in itself, shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary permits or development approvals as otherwise required.

Section 3-8-3. Period of Validity.

(a) Expiration of Zoning Permit. An approved zoning permit shall become null and void if the work described in the zoning permit has not begun within one (1) year from the date of issuance thereof. Written notice of the revocation shall be provided by the Administrator to the permit applicant. If the work described in any zoning permit has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire and be revoked by the Administrator. Written notice of the permit expiration shall be given to the permit applicant, together with notice that further work as described in the expired permit shall not proceed unless and until a new zoning permit has been obtained or extension granted, as provided in section 3-8-3(b) below.

(b) Extension. Prior to expiration of an approved zoning permit, if the applicant requests extension, the Administrator may grant extensions for additional periods as determined to be reasonable,

[21] Editor's Note: This Division follows existing text except it does not include section 17-1-2 which allows the planning commission to request review of approved zoning permits to determine compliance.

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taking into consideration, although not exclusively, the size and nature of the development, due diligence of the applicant to proceed, and other applicable laws in effect at the time of the extension request.

Division 9. Certificate of Occupancy and Other Use Permissions.[22]

Section 3-9-1. Applicability.

(a) No person shall occupy or change the occupancy of a building or structure, or part thereof, hereafter created, erected, changed, converted, altered, or enlarged, wholly or partly, until a certificate of occupancy has been issued. Except:
  (1) A certificate of occupancy is not required for an accessory structure as defined in the IRC.
  (2) A new certificate of occupancy is not required for an addition to an existing Group R-5 building that already has a certificate of occupancy.

(b) A change of use of any building shall require a change of use permit.

(c) The conduct of a home occupation or other permitted use in conjunction with a residence shall require a home occupation permit and shall be subject to all licensing requirements in the Town Code.

Section 3-9-2. Procedure and Standards.

(a) Certificates of occupancy are approved in accordance with the Virginia Uniform Statewide Building Code and the Code of Abingdon.

(b) Change of use, home occupation, and other use permissions which are not satisfied through a Special Use Permit or Zoning Permit shall be reviewed and approved/denied by the Administrator.

(c) An approval, in itself, shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary permits or development approvals as otherwise required.

Division 10. Written Determinations.[23]

Section 3-10-1. Purpose and Intent.

In administering, interpreting and enforcing this Ordinance, the Administrator shall provide a written response to persons who have filed a specific request in writing for a decision or determination on zoning matters within the scope of the Administrator's authority.

Section 3-10-2. Procedure and Standards.

(a) The Administrator's response shall be provided within ninety (90) days of the date of the request, unless the requestor agrees to a longer period of time.

(b) When the requestor is not the owner or the owner's agent of the property subject to the request, the Administrator in accordance with the Code of Virginia § 15.2-2204 (H), as amended, shall

[22] Editor's Note: The text of 3-9-1 is maintained from the existing ordinance and 3-9-2 is added for reference.
[23] Editor's Note: This is a new Division. The existing ordinance mentions various determinations but does not provide procedures.

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provide written notice within ten (10) days of receipt of the request to the owner of the property at the owner's last known address as shown on the Town's real estate assessment records.

(c) The Administrator's written decision or determination shall include a statement informing the recipient of the right to appeal the decision as provided in Division 11 of this Article.

Division 11. Appeals.[24]

Section 3-11-1. Appeals of Zoning Administrator Determinations and Decisions.

(a) Pursuant to the Code of Virginia § 15.2-2311, an appeal to the BZA may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town affected by any decision of the Administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of this Ordinance.

(b) Such appeal shall be taken within 30 days after the decision appealed from by filing with the Administrator, and with the BZA, a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the BZA all the papers constituting the record upon which the action appealed from was taken.

(c) A decision or interpretation of the Administrator shall be presumed correct and may not be reversed or modified unless there is evidence in the record that the decision is not correct, based on the relevant procedures and review standards of this Ordinance.

(d) The BZA shall fix a reasonable time for a public hearing of an appeal, provide due notice thereof as provided in Division 12 of this Article, and decide the same within 90 days of the filing of the appeal, unless a longer period of time is consented to by the applicant.

Section 3-11-2. Appeals to Board of Zoning Appeals Procedure.

(a) Pursuant to the Code of Virginia § 15.2-2312, procedures for submitting an appeal shall be as follows:

(1) Mailing Procedure. Appeals shall be mailed from the applicant seeking appeal to the BZA in care of the Administrator, and a copy of the appeal shall be mailed to the secretary of the Planning Commission. A third copy should be mailed to the individual, official, department, or agency concerned, if any.

(2) Hearing. The BZA shall fix a reasonable time for the hearing of an appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within 90 days of the filing of the appeal.

(3) Decisions. In exercising its powers, the BZA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. In any appeal, if a BZA's attempt to reach a decision, results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

Section 3-11-3. Appeals Concerning Certificates of Appropriateness.

(a) An appeal from the HPRB or Planning Commission decision on a Certificate of Appropriateness to the Town Council may be filed:

[24] Editor's Note: According to the Code of Virginia, all permits and actions have a right of appeal. The various appeal procedures are supplied in this Division with corresponding Code of Virginia references.

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(1) Whenever an application for a Certificate of Appropriateness has been disapproved any person shall have the right to appeal and be heard before the Town Council, which may affirm, reverse or modify the decision, in whole or in part. Provided, any person wishing to appeal must file with the Town Manager within 30 calendar days after the final decision a written notice of intention to appeal which states the reasons for appeal. Upon receipt of such notice the town shall schedule, advertise, and hold a public hearing as required by the Code of Virginia § 15.2-2204, as amended.

(2) Whenever the HPRB or Planning Commission shall approve an application for a Certificate of Appropriateness any opponents shall have the right to appeal and be heard before the Town Council, which may affirm, reverse or modify the decision, in whole or in part. Provided, any person wishing to appeal must file with the Town Manager within 30 calendar days after the final decision a written notice of intention to appeal which states the reasons for appeal and a written petition, signed by at least 10 individuals registered to vote in the town. Upon receipt of such notice and petition the town shall schedule, advertise, and hold a public hearing as required by the Code of Virginia § 15.2-2204, as amended. Any person to whom a Certificate of Appropriateness has been issued may commence work within the 30-day period provided for notice of appeal, but at that person's sole risk.

Section 3-11-4. Appeals of Board of Zoning Appeals, Planning Commission, or Town Council.

(a) Pursuant to the Code of Virginia § 15.2-2314, and §15.2-2285, as amended, any person jointly or severally aggrieved by any decision of the BZA, Planning Commission, or Town Council or any taxpayer or any officer, department, board or bureau of the Town may appeal the decision to the circuit court of Washington County.

(b) A petition specifying the grounds on which the applicant is aggrieved must be submitted 30 days after the filing of the decision in the office of the BZA.

Section 3-11-5. Construction in Violation of Ordinance without Appeal to the Board of Zoning Appeals.

(a) Pursuant to the Code of Virginia § 15.2-2313, construction of a building with a valid building permit deemed in violation of this Ordinance may be prevented, restrained, corrected, or abated 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.

(b) The court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the Administrator to the BZA.

Section 3-11-6. Stay of Proceedings.

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Administrator certifies to the council that by reason of facts stated in the certificate a stay would in their opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the council or by a court of record, on application and on notice to the Administrator and for good cause shown.

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Division 12. Public Hearings and Notifications.[25]

Section 3-12-1. Public Hearing Required.

(a) In accordance with the Code of Virginia § 15.2-2204, as amended, the Planning Commission shall not recommend, nor shall the Town Council adopt or approve any plan, ordinance, amendment, or Special Use Permit, nor shall the BZA approve any variance, nor shall the until it has held a duly-advertised public hearing. Advertising and notice procedures shall be conducted according to the procedures under the Code of Virginia § 15.2-2204, as amended, as outlined in the sections for this Division.

(b) The Planning Commission and Town Council may hold a joint public hearing after public notice as set forth herein, and if such joint hearing is held, public notice as set forth above need be given only by the Town Council.

(c) No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice pursuant to the Code of Virginia § 15.2-2204, as amended.

Section 3-12-2. Advertisement and Mailings.

(a) The notice for each proposal shall provide:
  (1) A descriptive summary of the application;
    a. In the case of a proposed amendment to the Zoning Map (rezoning), the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the Comprehensive Plan.
  (2) The location of the property, if applicable;
  (3) Where copies of the proposal may be examined; and
  (4) The time and place of any hearing at which persons affected may appear and present their views.

(b) Newspaper advertisement. Notice of public hearings shall be published once a week for two successive weeks in some newspaper published or having general circulation in the Town. The term "two successive weeks," as used in this subsection, shall mean that such notice shall be published at least twice in such newspaper, with not less than six days elapsing between the first and second publications. The hearing shall be held not less than five days nor more than 21 days after the second advertisement shall appear in such newspaper.

(c) Property owner notification shall be sent by the Administrator a minimum of five (5) days prior to the hearing, except where a longer minimum timing is required below, to:
  (1) The owner, owners, or their agent of the subject property;
  (2) Persons owning any adjacent property, including property across any road, railroad right-of-way or body of water;
  (3) A locality's chief administrative officer or their designee when the subject property is located within 0.5 mile of the boundary of the adjoining locality at least 10 days prior to the hearing;

[25] Editor's Note: The Code of Virginia has explicit requirements for public hearings and notifications to landowners, those items are supplied in this Division with Code of Virginia references.

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(4) The commander of the applicable military operation when the subject property is located within 3,000 feet of the boundary of a military base, installation or airport, excluding armories operation by the Virginia National Guard, at least 30 days prior to the hearing;
(5) The owner of a public use airport when the subject property is located within 3,000 feet of such airport;
(6) The incorporated property owners' association within a planned unit development where the subject property is located within the planned unit development and the association's members also own property in the planned unit development that is located within 2,000 feet of any portion of the subject property; and
(7) In lieu of each individual unit owner, the unit owners' association or proprietary lessee's association when the property adjacent to the subject property is a condominium or cooperative, respectively.

(d) Notifications to adjacent property owners, as outlined in this section, shall not be required when a public hearing involves: an application for zoning approval for twenty-six (26) or more lots initiated by resolution or motion of the Planning Commission or Town Council; or, an appeal to the decision of the Administrator to the BZA is concerning twenty-six (26) or more lots or no specific property.

(e) Notice, as required above, sent by registered or certified mail to the last known address of such property owner(s) as shown on the current real estate tax assessment records shall be deemed adequate notification. Notice may be sent by first class mail; however, a representative of the Town shall sign an affidavit that such mailings have been made and file such affidavit with the papers in the case.

(f) The cost of all notice requirements shall be paid by the applicant in addition to any other fees involved in the application. The Town shall bill the applicant for such costs.

Section 3-12-3. Posting Notice on Property.[26]

The applicant shall also be required to place a sign(s) provided by the Town on the subject property which indicates that Zoning action is pending. The notice shall be posted at reasonable intervals along roads abutting the subject property, or if there is no abutting road, at the proposed road or entrance into the property, in locations reasonably visible from existing roads. The holding of a public hearing or the validity of action on an application shall not be affected by the unauthorized removal of a notice which has been posted in accordance with this section.

Section 3-12-4. Waiver of Notice.

Actual notice of, or active participation in, the proceedings for which the written notice is provide shall waive the right of that party to challenge the validity of the proceedings due to failure of notice as required by this section.

[26] Editor's Note: This is a new requirement added for additional notice to the public. This is optional under Code of Virginia and does not have to be included if not appropriate for Abingdon.

Division 13. Amendment of Conditions.[27]

Section 3-13-1. Effect of Amendment of Conditions.

The procedure for amendment of a Conditional Zoning, Special Use Permit, or Variance which is already approved shall be the same as for a new application except that where the Administrator determines the change to be minor relative to the original approval, he may transmit the same to the permitting body with the original record without requiring that a new application be filed. Written notice, public hearing, and enforcement shall comply with the Code of Virginia § 15.2-2302.

Division 14. Reconsiderations.[28]

Section 3-14-1. Timeframe for Reapplication.

(a) Whenever a petition requesting an amendment, supplement, change to the Zoning Ordinance or Zoning Map or petition for a special use has been denied by the Town Council, or petition for a variance has been denied by the BZA, then such petition, or one substantially similar, shall not be reconsidered sooner than 12 months after the previous denial.

(b) The HPRB shall rehear an application if within the 90-day period following the date of denial the applicant submits an amended application that complies with all recommendations of the HPRB.

(c) Whenever a petition requesting an amendment or Special Use Permit has been withdrawn, such petition, or one substantially the same, shall not be reconsidered within 12 months of the first publication notice of a public hearing with the Planning Commission.

(d) The limits on reconsideration shall not impair the right of either the Planning Commission or the Town Council to propose any amendment to this Ordinance on their motion at any time.

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[27] Editor's Note: New text that streamlines the process.

[28] Editor's Note: Existing text is reorganized for one Division devoted to all reconsiderations.

Pertinent Definitions for Article IX

**Editor's note: These definitions are included to aid in understanding the concepts of this article. They will be removed from this article and placed in Article XI. – Definitions following the Planning Commission's review.*

(a) *Nonconforming lot.* An otherwise legally platted lot that does not conform to the minimum area, width, or lot frontage requirements of this Ordinance for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

(b) *Nonconforming structure.* An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this Ordinance, or is designed or intended for use that does not conform to the use regulations for this Ordinance, for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

(c) *Nonconforming use.* The otherwise legal use of a building or structure or of a tract of land that does not conform to the use regulations of this Ordinance for the district in which it is located, either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance. Any use that was unlawful on the Date of Adoption of this Ordinance shall remain unlawful and shall not be a nonconforming use.

ARTICLE IX. – Nonconforming Uses, Lots, and Structures.[1]

Section 9-1. Intent.[2]

With the adoption of this Ordinance or subsequent amendments, there exists lots, structures, and use of land and structures in combination which were lawful before this Ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue as established prior to Ordinance adoption and in accordance with the Code of Virginia § 15.2-2307, as amended.

Section 9-2. Generally.[3]

(a) Except as otherwise provided in this Ordinance, any lawful use, building, or structure existing at the time of an amendment to this Ordinance may be continued even though such use, building, or structure may not conform to this Ordinance's provisions and shall be deemed nonconforming.

[1] Editor's Note: Existing text section 16-2-1 that requires nonconforming uses obtain a zoning permit within 60 days of adoption and section 16-4 outlining that district boundary changes that create nonconformities shall comply with the article, are not included in the proposed text. The Code of Virginia does not require that nonconforming uses obtain permits for nonconforming status nor that nonconformities due to district boundary changes must comply with article for the district, instead this article focuses on the types of nonconformity and related allowances and restrictions.

[2] Editor's Note: New text to introduce the article.

[3] Editor's Note: Existing text 16-1-1 and 16-1-2 are reframed and supplied in this section. However, text requiring the relocation of signs which are nonconforming due to rezoning, is removed. Sign nonconformity is located in Article VIII Division 4; nonconformities from Zoning Text Amendments and Zoning Map Amendments should be treated equally.

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(b) A change in occupancy or ownership shall not affect the right for the nonconforming use to continue or the nonconforming building or structure to remain.

Section 9-3. Nonconforming Lots of Record.[4]

(a) Any lot of record at the time of the adoption or amendment of this Ordinance which is less in area or in width than the minimum required by the zoning district may be used or built upon, provided that if yard and/or setback requirements cannot be met, a variance shall be obtained through the variance processes outlined in Article III of this Ordinance.

(b) A developed nonconforming lot may continue in existence but may not be altered except in accordance with this article, to becoming conforming. Nonconforming lots may not become less conforming.

(c) A nonconforming lot may become a conforming lot by meeting the current minimum lot size, lot width, and lot frontage requirements of the zoning district in which the lot is located through the following actions:

(1) A consolidation of the nonconforming lot with an adjacent lot;

(2) A boundary adjustment between two contiguous lots, one being nonconforming and the other being conforming, provided such adjustment does not make the conforming lot nonconforming, does not create an additional lot, and does not increase the nonconforming lot's nonconformity; or

(3) Rezoning to a different zoning district to meet the lot size, lot width, and lot frontage requirements of that district.

Section 9-4. Nonconforming Use. [5]

(a) A nonconforming use for which a zoning permit was issued legally prior to the adoption of this Ordinance, and for which the permit is still active but the use is not established, may proceed provided the use is established within 30 days after the adoption of this Ordinance.

(b) A nonconforming use for which a special use permit was lawfully granted prior to the adoption of this Ordinance may proceed in compliance with the issued permit and any limiting time for establishment. However, if the special use permit does not conditionally limit a time period for establishment, then the use must be established within 30 days after the adoption of this Ordinance.

(c) A legal nonconforming use may continue as it existed when it became nonconforming. A nonconforming use shall not be reconstructed, relocated, altered, or expanded in any manner, including the addition of new accessory uses, except as provided for in this section.

(1) A nonconforming use may change to a conforming use.

(2) The nonconforming use may be extended throughout those parts of a building which are lawfully and manifestly arranged or designed for such use at the time of enactment of this

[4] Editor's Note: Existing text section 16-6 is utilized with additional text for clarity and information purposes.

[5] Editor's Note: Existing text sections 16-1-3 through 16-1-5 are utilized here with modifications for clarity and additional text for specificity and to match the Code of Virginia. Used related text of 16-2-2 with modification to clarify only active permits of non-established uses; additionally, required that special use permits follow the time limits that are granted during approval.

Ordinance provided there are no structural alterations, expansion, or enlargement except those required by law or lawful order.

(3) A nonconforming use may be changed to another nonconforming use of the same or of a more restricted classification. Whenever a nonconforming use of land or buildings has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

(4) A nonconforming dwelling unit may have a home occupation subject to the requirements of Article V1and V11.

(5) A nonconforming use shall lose its nonconforming status, and any further use shall conform to the requirements of this Ordinance when:

a. The nonconforming use is discontinued for a period of two (2) years, regardless of whether or not equipment or fixtures are removed, and shall be deemed abandoned.

1. However, on application made to the Administrator by the owner or any party in interest, the Administrator may extend the aforesaid two-year period up to an additional two (2) years for good cause.

b. The nonconforming use is intentionally abandoned, regardless of the length of time that has passed.

(6) The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

(7) When evidence available to the Administrator is deemed to be inconclusive, whether a nonconforming use exists shall be a question of fact and shall be decided by the Board of Zoning Appeals after public notice and hearing and in accordance with the rules of the Board.

Section 9-5. Nonconforming Structures, Buildings, and Improvements.[6]

(a) The construction of a nonconforming building for which a permit was issued legally prior to the adoption of this Ordinance may proceed, provided such building is completed within one (1) year after the adoption of this Ordinance.

(b) A nonconforming structure or nonconforming improvement may continue as it existed when it became nonconforming. A nonconforming structure or nonconforming improvement shall not be reconstructed, altered, or expanded in any manner, except as provided in this Section.

(c) A nonconforming building or structure shall include those circumstances where the Town has:

(1) Issued a building permit or other permit authorizing construction and the building or structure was constructed in accordance with the building permit, and upon completion, the Town issued a certificate of occupancy; or

(2) The owner of the building or structure has paid real estate taxes to the Town for such building or structure for a period of more than the previous 15 years.

(d) Additionally, a nonconforming building or structure shall include those circumstances where:

[6] Editor's Note: Includes new text to specify what qualifies as a nonconforming building or structure and the ability to meet building code without affecting nonconforming status. Existing text sections 16-5 and 16-7-1 through 16-7-4 are updated to meet the Code of Virginia and for readability.

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(1) A permit was not required and an authorized governmental official informed the property owner that the structure would comply with the zoning ordinance; and
(2) The improvements were then constructed accordingly.
(3) However, in any proceeding when the authorized town official is deceased or unavailable to testify, uncorroborated testimony of the oral statement of such official shall not be sufficient evidence to prove that the authorized town official made such statement.

(e) A nonconforming structure may be changed to make it a conforming structure.
(f) A building or structure nonconforming only as to height, area, or bulk requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect.
(g) Any nonconforming building or structure may be brought into compliance with the Uniform Statewide Building Code without affecting the nonconforming status of the building or structure.
(h) If a nonconforming structure is demolished or removed, no nonconforming structure shall be reestablished, except as provided under Section 9-6.
(i) If a nonconforming structure is removed for any reason to another parcel of land, regardless of distance, or the lot lines of the parcel on which it is located change, the structure shall thereafter conform to the requirements of the district in which it is located.

Section 9-6. Repairs and Maintenance.[7]

(a) On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done if:
(1) Such repair constitutes routine maintenance necessary to keep the structure or improvement in the same general condition it was in when it originally became nonconforming; or
(2) On ordinary repairs or on repairs or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 20 percent of the current replacement value of the structure; provided, that the cubic content of the structure as it existed at the time of passage or amendment of this Ordinance, shall not be increased.

(b) Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, on order of such official.
(c) If a nonconforming building or structure is damaged or destroyed, even if 50% or greater, by fire, natural disaster or other act of God, such building or structure may be repaired, rebuilt or replaced provided that:
(1) The nonconforming features are eliminated or reduced to the extent possible, without the need to obtain a variance;
(2) The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code;
(3) The requirements of the floodplain management regulations in the Town Code are met; and

[7] Editor's Note: Existing text section 16-3 is modified as a best practice to allow repairs not to exceed 20 percent of replacement value of the structure instead of 10 percent. Added text to meet the Code of Virginia related to replacement of mobile homes.

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(4) The work is done within two years unless the building is in an area under a federal disaster declaration and was damaged or destroyed as a direct result of the disaster, in which case the time period shall be extended to four years.

(d) Owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson and obtain vested rights under this section.

(e) If a nonconforming mobile home is removed other than by natural disaster or public action, it may not be replaced except as provided for below unless it complies with regulations within the Ordinance.

(1) Nothing in this section shall be construed to prevent the landowner or homeowner 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.

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Pertinent Definitions for Article X

**Editor's note: These definitions are included to aid in understanding the concepts of this article. They will be removed from this article and placed in Article XI. – Definitions following the Planning Commission's review.*

(a) *Agent, Subdivision*. The administrative official, or an authorized agent thereof, responsible for administering and enforcing the Subdivision portion of the Zoning Ordinance of the Town, also referred to in the Subdivision Article, as the Agent.
(b) *Alley.* A permanent service way providing a secondary means of access to abutting properties and not intended for general traffic circulation.
(c) *Block.* An area of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways or boundary lines of the Town of Abingdon.
(d) *Commission.* The Planning Commission of the Town of Abingdon.
(e) *Comprehensive plan*. That document as required by the Code of Virginia (§ 15.2-2223 et seq.) and as approved and adopted by the Town Council.
(f) *County*. The County of Washington, Virginia.
(g) *Cul-de-sac.* A local street with only one (1) outlet and having a turnaround for reverse traffic movement.
(h) *Developer.* Any person, group or persons, corporation, or other legal entity who, having an interest in land directly or indirectly sells, leases, or develops or offers to sell, lease, or develop, or advertises for sale, lease, or development any lot, tract, parcel, site, unit, or interest for residential, commercial, or industrial development as defined herein.
(i) *Easement.* A right expressed in a recorded writing, given by the owner of land to another party for specific limited use of that land.
(j) *Engineer, professional.* A person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested, through licensure, as a professional engineer by the Commonwealth of Virginia.
(k) *Engineer, town.* An employee of the Town of Abingdon who reviews subdivision plans and site plans for new developments or upgrades to existing developments as well as reviews all infrastructure plans of the Town to ensure that such plans are in compliance with town ordinances and other applicable regulations.
(l) *Governing Body*. The Town Council of the Town of Abingdon, Virginia.
(m) *Health official*. The health director or sanitarian of Washington County, Virginia, or the director's duly authorized representative.
(n) *Highway Engineer.* The resident engineer employed by the Virginia Department of Transportation.
(o) *Jurisdiction.* The area of territory subject to the legislative control of the Town Council.
(p) *Lot, Depth* of. The mean horizontal distance between the front and rear lot lines.
(q) *Performance bond.* A surety bond, cash deposit, or letter of credit approved by the Town Attorney and made out to the Town of Abingdon in an amount equal to the full cost of the improvements required by these regulations, said cost being estimated by the developer's engineer and approved

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by the Town Engineer. Performance bond may also be referenced as "Performance Guarantee" or "Guarantee".

(r) *Lot, flag.* Any lot, except a lot fronting on a cul-de-sac, that has a street frontage that is less than the minimum lot width required for the zoning district.

(s) *Plans, improvement.* The maps or drawings accompanying a subdivision plat and showing the specific location and design of public improvements to be installed in the subdivision in accordance with the requirements of the Subdivision Article as a condition of approval of the plat.

(t) Physical improvements. Any structure such as drainage structures, central water system, central sewage disposal systems, bridges, lines, culverts, etc., and such other improvements as the Agent may designate.

(u) Plat. A map or plan of a tract or parcel of land which is to be, or which has been subdivided. Includes the term map, plot, replat, or replot. When used as a verb, "plat" is synonymous with "subdivide".

(v) *Plat, final.* The map of a subdivision submitted and approved by the Town of Abingdon, and subsequently recorded in the Office of the Clerk of the Circuit Court of Washington County, Virginia.

(w) *Plat, preliminary*. The preliminary drawing or drawings, including the elements required by this Ordinance, indicating the proposed manner or layout of a subdivision.

(x) Right-of-way, public. A legally established area or strip of land on which an irrevocable public right of passage has been recorded, and which is occupied or intended to be occupied by a street, utility service, water main, sanitary or storm sewer main, or other similar use.

(y) Right-of-way width. The total width of the strip of land dedicated or reserved for public travel within which roadway, curbs, gutters, sidewalks, planting strips and undeveloped land may be located.

(z) Roadway. That paved portion of the street available for vehicular traffic, and where curbs are laid, the portion from face to face of curbs.

(aa) Sidewalk. A paved walk, located in a right-of-way, adjacent to the public street.

(bb) Street. A public way which affords the principal means of access to abutting properties. The term "street" includes all property dedicated or intended for public or private use for access to abutting lands or subject to public easements therefore, and whether designated as a street, highway, thoroughfare, parkway, throughway, expressway, road, drive, court, avenue, boulevard, lane, place, circle, or however otherwise designated.

(cc) *Streets, arterial or thoroughfare.* Streets designated as thoroughfares on the Town of Abingdon Long Range Transportation Plan as such plan may be amended and updated from time to time.

(dd) Streets, local. Streets which are used primarily for access to the abutting properties, provide service to travel over relatively short distances, and may be designed to discourage their use by through traffic.

(ee) *Streets, collector.* Streets which carry traffic from local streets to the arterial or thoroughfare streets. They provide the principal means for the collection of traffic within or between major subdivisions or sections of Town. These streets are longer in length; have higher speed limits; are spaced at greater intervals; and have higher average traffic volumes.

(ff) *Street width.* The total width of the strip of land, dedicated or reserved, for public travel, including roadways, curbs, gutters, sidewalks, and planting strips.

(gg) *Subdivide*. The process of splitting land so as to establish a subdivision as defined herein.

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(hh) *Subdivider*. Any individual, firm, partnership, association, corporation owning any parcel of land to be subdivided.

(ii) *Subdivision.* The division of a parcel of land into two (2) or more lots or parcels of land, including the residual lot, for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purpose. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots shall be exempt from Subdivision Agent approval. Subdivisions are classified as:

(1) *Major Subdivision.* The division of any tract or parcel of land into four (4) or more lots.

(2) *Minor Subdivision.* The division of any tract or parcel of land into three (3) lots or less.

(3) *Single Lot Subdivision.* The division of any tract or parcel of land into two (2) lots.

(jj) *Surveyor.* A person who, by reason of his knowledge of the several sciences and of the principles of land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, and whose competence has been attested through licensure as a land surveyor to do business in the State of Virginia.

(kk) *Vicinity Map*. The vicinity or location map shall show the relationship of the proposed subdivision to existing community facilities which serve or influence it. The map shall include subdivision name and location, main traffic arteries, schools, parks and playgrounds, scale, north arrow, and date.

ARTICLE X. – Subdivision.

Division 1. In General.[1]

Section 10-1-1. Title.

This Article is a portion of the Zoning and Subdivision Ordinance of the Town of Abingdon, Virginia. It shall be permitted, for convenience, to be referred to as the "Subdivision Ordinance of the Town of Abingdon, Virginia" or "Ordinance."

Section 10-1-2. Recording of Ordinance.

In accord with the Code of Virginia § 15.2-2252, as amended, a certified copy of the adopted Subdivision Ordinance of the Town of Abingdon, Virginia and any and all amendments thereto shall be filed in the office of the Subdivision Agent (Agent) and in the Clerk's Office of the Circuit Court of Washington County, Virginia.

Section 10-1-3. Amendments.

Per the Code of Virginia, §§ 15.2-2251 and 2253, as amended, this Article may be amended in whole or in part by the governing body; provided, that any such amendment shall either originate with or be submitted to the Planning Commission for recommendation; further provided, that no such amendment shall be adopted without a public hearing having been held by the governing

[1] Editor's Note: Existing Ordinance sections 1.1 and 12.1-12.3 are included with text changes and Code of Virginia references for clarity. Portions of existing Ordinance sections 3.1 and 3.2 are included under Applicability.

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body in accordance with the Code of Virginia § 15.2-2204, as amended. In no instance shall an amendment be adopted by the governing body of the locality without first seeking the recommendation of the Commission. If no recommendation is made by the Commission, the governing body may take action 60 days from their inquiry.

Section 10-1-4. Repeal.

Upon the adoption of this Ordinance, all Subdivision Ordinances heretofore adopted by the Town Council of the Town of Abingdon are hereby repealed.

Section 10-1-5. Applicability.

(a) No person shall subdivide any tract of land that is located within the Town of Abingdon except in conformity with the provisions of this Article, the Zoning and Subdivision Ordinance, and the provisions of Virginia law relating to land subdivision and development.

(b) Any owner or developer, of any tract of land situated within the corporate limits of the Town of Abingdon who subdivides the same shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the Office of the Clerk of the Circuit Court of Washington County, Virginia. No such plat of a subdivision shall be submitted for recordation unless and until it shall have been approved and certified in accordance with the regulations set forth in this Ordinance.

Section 10-1-6. Circumvention.

Development of two or more single-lot subdivisions or two or more adjoining minor subdivisions, for the purpose of circumventing subdivision requirements shall not be permitted.

Section 10-1-7. Exemptions.

"Subdivision" shall not apply to:

(1) Adjoining Properties. The sale or exchange of parcels of land between owners of adjoining properties for the purpose of adjustments in boundaries; provided that such sale or exchange shall not create a parcel of land less than the minimum requirements or increase a non-conformity stipulated by Town Ordinance.

(2) Utility Rights-of -Way; Public, Private Rights-of -Way. A bona fide division of a tract of land in order that one (1) or more of the resulting parcels may be used as part of a public or private right-of-way. If a parcel resulting from such division is ever to be used as a building site for other than a hereinabove described right-of-way, then before a building permit may be issued for such other use, the minimum requirements of this Ordinance shall be observed.

(3) Wills, Court Action. The partition of lands by will, by partition deed of intestate land, by the descendants of the deceased former owner or through action of a court of competent jurisdiction.

(4) Lot divisions of two (2). These divisions will be reviewed for suitability and lot standards through an administrative plat review process.

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Division 2. Design Requirements.[2]

Section 10-2-1. Suitability of Land.[3]

(a) The Agent shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed.

(b) Land subject to flooding and land deemed to be topographically unsuitable, having unsuitable soils, or inadequate light and air shall not be platted for residential occupancy nor for such other uses as may increase danger of health, life, or property or may aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as shall not be endangered by periodic or occasional inundation or shall not produce conditions contrary to public welfare.

(1) To ensure that owners will have sufficient land upon which to construct a structure that is flood free, compliance with floodway widths and the 100-year flood elevations, contained within the Town's Flood Insurance Study (FIS), is mandatory. The Town Engineer may require the applicant to provide elevation and flood profiles, based on a 100-year flood plain, sufficient to demonstrate the land to be completely free of the danger of flood water at an elevation of at least one foot below any probable floor level of any structure for human occupancy.

(2) Except as provided herein the Town Engineer shall not approve streets subject to inundation or flooding by water. All streets must be adequately located above the line of flood elevation to prevent isolation of areas by flood. Drainage facilities in local, collector, and cul-de-sac streets shall be designed to handle a storm with an expected return period of once in every ten years. Drainage facilities in arterial streets shall be designed to handle a storm with a 25-year return period.

Section 10-2-2. Lots.[4]

(a) Lot Size. Lot area and dimensions shall be in accordance with the provisions of the Zoning Ordinance for the zone in which the subdivision is located.

(b) Lot Shape. The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, be properly related to topography, and conform to requirements set forth herein. Lots shall not contain peculiarly shaped elongations which would be substantially unusable for normal purposes solely to satisfy necessary square footage or frontage requirements or to provide access to any lot that would otherwise not have road frontage.

(c) Abut on a public street. Each lot shall abut on a street dedicated by the subdivision plat or an existing publicly dedicated and maintained street, or on a street which has become public by right

[2] Editor's Note: Does not include existing section 5.21 which allows the Planning Commission to require land for public uses but places limits and purchase requirements. Town staff, including the Town Attorney, should review this existing text and determine if incorporation is still applicable.

[3] Editor's Note: Item (a) is included as new text. Existing Ordinance sections 5.4 and 5.5 are included as items (b)(1) and (b)(2).

[4] Editor's Note: Existing Ordinance section 5.20 is included with the exception of item (g) related to ownership; this item is moved to section 10-5-3 as part of general platting requirements. Item (b) prevents reserve strips and flag lots and therefore additional text on these topics is eliminated.

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of use. Interior lots having frontage on two streets shall be avoided except where unusual conditions make this design necessary.

(d) Corner lots. Corner lots shall have extra width sufficient for maintenance of required setbacks on both streets as required by the Zoning Ordinance.

(e) Lot lines. Side lines of lots shall be approximately at right angles, or radial to the street line.

Section 10-2-3. Remnants.

All remnants of lots below minimum size left over after subdividing of a tract must be added to adjacent lots, rather than be allowed to remain as unmarketable or nonconforming parcels.

Section 10-2-4. Streets.[5]

(a) Generally.

(1) All streets in the proposed subdivision shall be designed and constructed by the subdivider in accordance with the minimum requirements of the Ordinance, at no cost to the locality.

(2) Unless otherwise provided herein or in the Zoning Ordinance, there shall be no private streets platted in any subdivision. Every subdivided property shall be served from a publicly dedicated street constructed to the standards of this code and accepted and maintained by the Town of Abingdon.

(3) Street improvements shall be made in compliance with the latest edition of Road and Bridge Specifications of the Virginia Department of Transportation, where applicable.

(4) No development shall be approved if such development, at ultimate build out, will result in or increase traffic on the arterial or collector street to which it is connected, so that the street does not function at an average daily traffic level of service C or better, or a peak traffic level D, as described in "A Policy on Geometric Design of Highways and Streets", latest edition, published by the American Association of State Highway and Transportation Officials. The applicant may propose and construct approved traffic mitigation measures to provide adequate roadway capacity for the proposed development.

(b) Approach angle and intersections.

(1) Local streets shall approach the major or collector streets at an angle of not less than 80 degrees, unless the Town Council upon recommendation of the Town Engineer, shall approve a lesser angle of approach for reasons of contour, terrain, or matching of existing patterns. Whenever possible, streets should intersect at a right angle. Where a deflection angle of more than two degrees in the alignment of a street occurs, a curve of reasonably long radius shall be introduced.

(2) On streets 60 feet or more in width the centerline radius of curvature shall not be less than 300 feet, on other streets not less than 100 feet.

(3) Face of curb radii at intersections shall generally be not less than 30 feet for collector streets nor less than 20 feet for local streets. Face of curb radii at arterial street intersections shall be as determined by the Town Engineer.

[5] Editor's Note: New text ensures that the cost of construction of minimum requirements will not be borne by the Town of Abingdon. Existing Ordinance sections 5.8, 5.9, 5.11, 5.12, 5.13, 5.15, 5.16, 5.17, 5.18, 6.3, 6.4, 6.6, 6.7, and 6.12 are utilized and reorganized for clarity. Text changed from allowing Commission to approve approach angle and right-of-way grading changes to Town Council approval.

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(c) Minimum widths.
  (1) The minimum width of existing and proposed streets, measured from lot line to lot line, shall be as shown on the street designation map incorporated in Addendum A.[6] The minimum width of streets, which do not appear on said map, shall be classified according to potential traffic load determined by the public works department as follows:
    a. Arterial or thoroughfare streets: not less than 80 feet, or as shown on the current state transportation plan.
    b. Collector streets: not less than 60 feet.
    c. Local service streets which cannot be extended in the future: not less than 50 feet.
    d. Alleys, if permitted: not less than 20 feet.
  (2) Whenever subdivided property abuts an existing half street the remainder of the street shall be dedicated to make the right-of-way on the half-street abutting the subdivision comply with Section 10-2-6 (c)(1) above.
  (3) Streets shall be graded to the cross section and profile approved by the Town Council.
  (4) Streets shall be surfaced to the following minimum pavement widths:
    a. Collector streets: 40 feet (face of curb to face of curb).
    b. Local service streets: 34 feet (including gutter pans).
    c. Alleys: 16 feet.

(d) Street grades.
  (1) On streets that are required to have a right-of-way width of 60 feet or more, grades shall not exceed six percent.
  (2) On streets and alleys permitted to have a right-of-way width of less than 60 feet, grades shall not exceed 12 percent.
  (3) All streets and alleys, including those within platted areas which are dedicated for public uses, shall be graded to the full right-of-way width unless the Town Council permits a lesser graded width. In all cases the centerline of the roadway shall coincide with the centerline of the dedicated right-of-way.

(e) Cul-de-sacs.
  (1) Local terminal streets (cul-de-sac), designed to have one end permanently closed, shall not be longer than 1,000 feet, to the beginning of the turn-around.
  (2) Each cul-de-sac must be terminated by a turn-around having a property line diameter of at least 100 feet.
  (3) If surface water drains into the turn-around, due to the grade of the street, necessary storm drainage facilities, and drainage easements shall be provided.
  (4) The minimum face of curb radius shall be 42 feet.

(f) Alleys.
  (1) Alleys shall be provided in business and industrial districts, except that the Town Council may waive this requirement where other definite and assured provision is made for service access, such as off-street loading and unloading, and parking consistent with and adequate for the uses proposed.
  (2) While not required, the Town Council may recommend alleys be provided to serve residential properties where such alleys are considered necessary. In any case, dead end alleys should be

[6] Editor's Note: This text should be updated based on the availability and relevancy of Addendum A.

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avoided where possible, but, if unavoidable, shall be provided with adequate turn-around facilities as recommended by the Town Council.

(g) Construction requirements.
  (1) All roadways shall be paved with bituminous material, in accordance with the requirements of the Town of Abingdon, Department of Public Works for acceptance by that department and as approved by the Town Council after receiving the report and recommendation of the Town Manager. The subdivider shall be responsible for bringing roadways up to standard for initial acceptance by the Abingdon Department of Public Works.
  (2) Curb and gutter shall be installed on both sides of all streets and shall conform to the Virginia Department of Highways and Transportation standard CG-6. When in the opinion of the Town Engineer curbing alone will satisfy the needs of the subdivision, curbs conforming to standard CG-2 shall be constructed on both sides of all streets. Curb depth below surface of pavement may be modified if so recommended by the Director of Public Works.
  (3) Sidewalks of concrete or other approved material with a minimum width of five feet and a minimum thickness of four inches shall be installed on both sides of all streets when the adjacent property has an existing sidewalk or when in compliance with the Comprehensive Plan; provided, however, that where warranted, the Town Council may waive these requirements.
  (4) Where sidewalks and/or curbs and gutters are installed, drive entrances shall be constructed conforming to Virginia Department of Transportation Standard CG-9B or CG-9D as determined by the Town of Abingdon prior to construction. Where no sidewalk is constructed, an apron two feet wide shall be constructed conforming to section C-C of CG-9B and section A-A of CG-9D.

(h) Names.
  (1) Unless the Town Council allows an exception, proposed streets which are obviously in alignment with others already existing and named, shall bear the names of the existing streets.
  (2) In no case shall the name of the proposed streets duplicate existing street names regardless of the use of the suffix street, avenue, boulevard, drive, way, place, or court.
  (3) Street names shall be indicated on the preliminary and final plats and shall be approved by the Town Council.
  (4) Names of existing streets shall not be changed except by the approval of the Town Council. House numbers (911 addresses) shall be assigned by the Town of Abingdon.

(i) Signs. Street name signs shall be installed at all street intersections at locations approved by the Director of Public Works. Sign plates shall be of metal, black letters on a white background with letters and backgrounds fully reflectorized, attached to a post.

Section 10-2-5. Access.[7]

(a) Future access.
  (1) Whenever an area is divided into lots and cannot be further divided, and the Town Council requires provisions for street access to adjoining property, proposed streets shall be extended

[7] Editor's Note: Existing Ordinance sections 5.2, 5.7, 5.10, and 5.14 utilized with edits to resolve conflicting text, arbitrary terms, and provides the Town Council as the authority on requirements instead of the Planning Commission.

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by dedication and construction to the boundary of such property. Such dead-end streets shall be provided with a temporary turn-around.

(2) Whenever an area is divided into lots, containing one or more acres, and such lots can be resubdivided into smaller building lots, consideration must be given to the highway, street and lot arrangement of the original subdivision so that additional local streets can be opened which will permit a logical arrangement of smaller lots. Easements, providing for the future opening and extension of such streets may, at the discretion of the Town Council, be made a requirement of the plat.

(3) Half streets along the boundary of land proposed for subdivision are not permitted.

(b) The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas where streets already exist. Collector and local streets shall be respectively extended as such. The street arrangement must be such as to cause no unnecessary hardship to owners of adjoining property.

(c) When the area to be subdivided adjoins a railroad right-of-way, the intersection of the centerline of any street or highway paralleling the railroad with that of any street that crosses the railroad shall be a minimum of 150 feet from the line of the railroad right-of-way.

Section 10-2-6. Blocks.[8]

(a) Length. Blocks shall not exceed 1,200 feet in length, and they shall not be less than 400 feet in length.

(b) Width. Blocks shall be wide enough to allow for two tiers of lots at minimum depth except where prevented by topographical conditions or width of property, in which case the Town Council may alter the width.

(c) Crosswalks. In blocks over 800 feet in length, the Town Council may require one or more public crosswalks, of not less than ten feet in width, to extend entirely across the block and at locations deemed necessary.

(d) Block orientations. Where a subdivision adjoins a major road, the Town Council may require that the greater dimension of the block shall front or back upon such major thoroughfare to avoid unnecessary ingress or egress.

(e) Business or industrial blocks. Blocks intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities.

Section 10-2-7. Other Improvements.[9]

(a) Water lines. The water distribution system in the subdivision shall be as required and approved by the Washington County Service Authority. Mains shall be sized for adequate fire protection and fire hydrants shall be installed not more than 1,000 feet apart in a business district and not more than 2,000 feet apart in a residential district, as traveled by improved streets from the fire hydrant to the property.

(b) Sewer. All sewer installations shall conform to the requirements of the Town Ordinance pertaining to utilities (chapter 74). Based on distance to existing public sewer, gravity, and

[8] Editor's Note: Existing Ordinance section 5.19.

[9] Editor's Note: Existing Ordinance sections 6.8-6.11 are included with some reorganization for clarity.

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availability, the subdivider shall connect to the public sanitary sewer system or provide private septic. The sewer system connecting to public utility shall be approved by the Town of Abingdon, and construction shall be in compliance with the technical specifications for sanitary sewer construction for the Town of Abingdon and the State Department of Environmental Quality. Private septic facilities shall be approved by the Health Official and/or the Town of Abingdon for the adequate disposal of sanitary waste.

(c) Stormwater. Adequate facilities shall be provided for the disposal of stormwater. The storm drainage system shall be approved by the Town of Abingdon Department of Public Works. All stormwater facilities shall be constructed in accordance with the requirements as set forth in the Town's erosion and sediment control ordinance. Additionally, the use of low impact development practices should be considered and is encouraged wherever practical.

(d) Streetlights.

(1) Streetlights shall be provided on all collector, arterial, and local streets within or contiguous to a subdivision. The streetlight layout shall be in accordance with the VDOT Subdivision Street Guide (24VAC-30-91-160). The installation cost shall be paid by the subdivider. Each street light shall:

a. Consist of a uniform style within the subdivision and to adjacent streetlights.

b. Be full cutoff luminaires and aimed and controlled such that light is directed and confined to the object intended to be illuminated.

Section 10-2-8. Easements.[10]

(a) In accordance with the Code of Virginia § 15.2-2241 (2), as amended, the Town of Abingdon or it's Agent shall require that easements for drainage through adjoining property be provided by the subdivider when needed to adequately provide for drainage or flood control.

(b) In accordance with the Code of Virginia § 15.2-2241 (6), as amended, once a developer conveys an easement that will permit electric, cable or telephone service to be furnished to a subdivision and a request is made to use the easement for said purpose, the developer shall grant the easement within 30 days or mutually agree on an alternate location for an easement.

(c) Where alleys are not provided in the plat, public utility easements of not less than ten feet in width shall be granted to the Town of Abingdon by the owner on each side of all rear lot lines and, where necessary, along side lot lines. Easements of greater width may be required along lot lines or across lots when necessary for the extensions of main sewers or other utilities. Easements 20 feet in width shall be required for all public sanitary sewer lines, centered on existing or proposed sanitary sewer lines, within the area platted.

(d) No buildings or structures shall be permitted on easements.

(e) Wherever any stream or surface watercourse is located in an area that is being subdivided, the subdivider shall at his own expense, make adequate provisions for the proper drainage of surface water.

[10] Editor's Note: Item (a) is provided as new text allowed by the Code of Virginia. Existing Ordinance section 5.21 (5) and 5.21 (6) are included in this section.

Section 10-2-9. Monuments.[11]

(a) Upon completion of subdivision streets, sewers, and other improvements, the subdivider shall make certain that all monuments required by the Town of Abingdon are clearly visible for inspection and use. Such monuments shall be inspected and approved by the Director of Public Works before any improvements are accepted by the Town Council.

(b) As allowed by the Code of Virginia § 15.2-2241 (7), as amended, at least two concrete monuments shall be set in each subdivision block. Such monuments shall be four inches in diameter or square, two feet long, with a flat top, or other standard acceptable to the public works department. The top of the monument shall have an indented cross to identify properly the location and shall be set flush with the finished grade. A minimum of two monuments in each subdivision shall be tied to the Global Positioning System (GPS).

(c) The replacement of any monuments removed or destroyed during the development of the subdivision shall be the responsibility of the subdivider.

Section 10-2-10. Exceptions.[12]

(a) Planned large-scale developments. Whenever a subdivision is developed as a planned unit development or other large-scale development under appropriate provisions of the Zoning Ordinance, the Town Council may vary the requirements of lots, streets, access, and blocks as outlined in this Division in order to allow the subdivider more flexibility in the arrangements of the streets, blocks, and lots. Any such exception shall provide for the convenience, health, and safety of the probable future residents of the subdivision as well as the general welfare of the surrounding area.

(b) A planned unit development, including the large-scale construction of housing units together with necessary drives and access may be approved by the Town Council although the design of the project does not include standard lot and subdivision arrangements, if departure from the foregoing standard can be made without destroying the intent of the subdivision regulations.

(c) All other exceptions shall go before the Board of Zoning Appeals as outlined in Section 10-7-7 of this Article.

Division 3. Improvement Plans, Obligations, and Procedures.[13]

Section 10-3-1. Improvement Plans.[14]

(a) With, or prior to, the submittal of the final plat, the subdivider shall submit the following plans, profiles and cross sections, and specifications for the construction of the improvements for the subdivision as required in these regulations:

(1) Drainage plans

[11] Editor's Note: Follows the text of existing ordinance section 5.22 with incorporation of Code of Virginia reference and item (c) as best practice.

[12] Editor's Note: Existing Ordinance sections 5.25 and 5.26 included with Commission approvals and variations changed to Town Council. Additionally, due to the structural reorganization of Street Design Requirements, construction requirements for sidewalks are now included as an item the Town Council may vary.

[13] Editor's Note: All improvement plan requirements organized in this Division for ease of use.

[14] Editor's Note: Existing Ordinance section 9.1 and 8.3 item (13) are combined for one list of required plans.

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(2) Soil erosion and sediment control plans
(3) Street plans including width of roadways, cross sections and profiles with present and proposed grades and street intersection elevations and all drainage and utility features required, and other necessary data. The cross sections shall be taken and withdrawn at intervals of not more than 50 feet along the centerline, unless otherwise required by the Town of Abingdon, and shall extend out to the sides to that point where the proposed grade intersects the existing grade. In no case shall these cross sections be extended less than the full width of the right-of-way.
(4) Natural gas, water supply, and sewage disposal plans including drainage courses, existing sewers, water and gas mains and culverts, and other underground structures, showing pipe sizes, invert elevations, and grades.
(5) The plan and profile of proposed utility mains, sanitary sewers, and storm water drains, with location, grades, and pipe sizes indicated, and a plan of the proposed water distribution system showing pipe sizes and location of valves and fire hydrants.

(b) Improvement plans shall be drawn to a horizontal scale of at least one inch to 30 feet and a vertical scale of one inch to five feet or less. Elevations shall be referred to mean sea level with one or more benchmarks described on the plans.
(c) Improvement plans shall be prepared by a professional engineer or land surveyor, who shall endorse the plan.
(d) Standards, specifications and special provisions, approved by the Department of Public Works, may be required.
(e) The improvements plans shall include any information and notes, as set forth in the improvement plan submittal requirements, as published and revised, from time to time, by the Town of Abingdon Department of Public Works.

Section 10-3-2. Obligation of Improvements.[15]

(a) All improvements and facilities required by this Article shall be installed by the subdivider at their cost and are not the responsibility of the Town of Abingdon, as outlined in the Code of Virginia § 15.2-2268, as amended. No bond or other performance guarantee posted by the subdivider shall be released until construction has been completed, inspected, and approved by the Town of Abingdon. Periodic partial release is allowed as outlined in the Code of Virginia § 15.2-2245, as amended, and Section 10-4-4 of this Article.
(b) As allowed by the Code of Virginia, § 15.2-2243 and § 15.2-2242(5), as amended, the Town of Abingdon shall require a subdivider or developer of land to pay his pro rata share of the cost of providing reasonable and necessary road improvements, sewerage, water, and drainage facilities, located outside the property limits of the land owned or controlled by them but necessitated or required, at least in part, by the construction or improvement of his subdivision or development as per Town of Abingdon water and sewer regulations.
(c) Any improvements, which are installed and constructed as part of a subdivision or development, which are not required but will come under control of the Town of Abingdon, shall be installed

[15] Editor's Note: New text and Code of Virginia references added to ensure state code compliance and allow for pro rata share of the cost of road and other improvements. Existing Ordinance sections 6.1 and 6.2 also included.

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and constructed in accordance with good engineering practices and approved by the Town Engineer.

(d) Inspection during and after installation of improvements will be made by representatives of the Town of Abingdon and approving agencies to ensure conformity with approved plans and specifications. The subdivider shall notify the Town of Abingdon in writing at least three days before commencing construction or installation on any item of improvement and of each phase of street construction. The subdivider shall also notify the Town of Abingdon upon completion of each improvement item or phase of street construction. The subdivider shall provide adequate competent supervision on the project site during construction of the required improvements and shall keep one set of approved plans, profiles, and specifications on the project site at all times when work is being performed.

Section 10-3-3. Procedure for Plan Approval and Revisions.[16]

(a) Improvement plans for the design and construction of required public facilities shall be submitted and approved prior to or with the final plat. The Town Engineer shall approve or disapprove plans within 30 days of their submission. The Town Engineer shall provide plans and specifications for installation or modification of the water system to the Washington County Service Authority for approval. In the event of the failure of the Town Engineer to act within such period, the plans may be submitted, after 10 days notice to the Town of Abingdon, to the Circuit Court for its approval or disapproval.

(b) Prior to final approval by the Town of Abingdon, improvement plans shall be signed by the owner of the land proposed for subdivision. The signature shall certify that the owner is aware of the design requirements imposed by the plan and other applicable town codes and shall further certify that the owner agrees to comply with these requirements, unless modified in accordance with the Town Code.

(c) The Town of Abingdon must approve, in writing, by written change order format, any significant deviation from previously approved plans and specifications. Requests for such deviations, accompanied by revised plans, shall be made by a licensed professional and presented to the Director of Public Works, who will implement the review and approval process.

Division 4. Guarantees.

Section 10-4-1. Required to be Guaranteed.[17]

(a) Guarantees for Improvements Shown on Plat. Before any subdivision plat will be finally approved the subdivider shall, in lieu of completed construction, furnish a bond in an amount approved by the Agent to guarantee completion of the public and other site-related improvements in accordance with specifications and construction schedules established. The guarantee shall be payable to and held by the governing body. However, in accordance with the Code of Virginia §15.2-2241(B), as amended, any certified check, cash escrow, bond, letter of credit or other performance guarantee furnished pursuant to this Article shall only apply to, or include the cost

[16] Editor's Note: Existing Ordinance sections 9.2 and 9.3 utilized.

[17] Editor's Note: Existing Ordinance section 6.14 incorporated with text modifications to add additional detail, more closely follow the Code of Virginia, and include Code of Virginia references.

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of, any facility or improvement shown or described on the approved plat or plan of the project for which such guarantee is being furnished.

(b) Guarantees for Dedicated Public Uses. In accordance with the Code of Virginia § 15.2-2241.1, as amended, provided the developer and the governing body have agreed on the delineation of sections within a proposed development, the developer shall be required to furnish a bond for construction of public facilities only when construction plans are submitted for the section in which such facilities are to be located.

(c) Other improvements requiring a guarantee include, but are not limited to:
   (1) Structures necessary to ensure stability of critical slopes;
   (2) Stormwater management facilities;
   (3) Erosion and sediment control measures required as a condition to grading, building, or other permits; and
   (4) Any privately-owned site-related improvements, including but not limited to fencing, landscaping, buffering, internal sidewalks, lighting, paving, private recreational facilities, and pavement marking, required by this Article but not completed prior to issuance of occupancy certificate.

Section 10-4-2. Types of Guarantees.

The subdivider shall furnish a performance bond or other approved guarantee, made payable to the Town of Abingdon, by a surety company authorized to do business in the Commonwealth of Virginia and approved by the Town Attorney

Section 10-4-3. Amount.[18]

In determining the cost of required improvements and the amount of the guarantee, the Town of Abingdon shall require the developer's engineer to prepare the data for review by the Town Engineer. The amount shall be calculated to secure the installation of the required improvements in a workmanlike manner and in accordance with the plans and specifications plus, an additional 10% of the total estimated cost of construction to cover administrative costs, inflation, and potential damage to existing roads or facilities, as permitted by the Code of Virginia § 15.2-2241, as amended.

Section 10-4-4. Release.[19]

(a) As outlined in the Code of Virginia § 15.2-2245, as amended, the subdivider may apply for the periodic partial and final complete release of any bond required under this Article.
   (1) Periodic Partial Release.
      a. Upon the completion of at least 30% of the improvements covered by a performance guarantee, the applicant may file a written request with the Agent for a partial release of such guarantee.

[18] Editor's Note: Added text requiring that 10% be added to the total construction cost estimate. This is a best practice that will help cover inflation and potential unforeseen costs.
[19] Editor's Note: Existing Ordinance section 6.15 incorporated with additional detail and reference to the Code of Virginia.

b. The Agent may inspect the facilities for conformance with the terms and conditions of the approved plan and specifications for the facilities for which the guarantee is applicable. The Agent shall not refuse to make a periodic partial or final release of guarantee for any reason not directly related to the specified defects or deficiencies in construction of the facilities covered by such bond, escrow, letter of credit or other guarantee.
c. The Agent shall act upon the written request for a partial release within 30 days of receipt.
d. If no action is taken by the Agent within the 30-day time period, the request for partial release shall be approved, and a partial release shall be granted to the subdivider or developer.
e. If the Agent notifies the subdivider or developer in writing of any specified defects or deficiencies in construction and/or any defects or deficiencies in any suggested corrected measures prior to the expiration of the 30-day notice above, the performance guarantee shall remain in full force and effect, until such time as any and all defects or deficiencies have been corrected and the appropriate agencies have agreed that the deficiencies have been corrected.
f. Up to 90% of the original amount of the performance guarantee may be released through periodic partial releases, based upon the percentage of public facilities completed and approved by the Town of Abingdon or other agency having jurisdiction.

(2) Final Release.
a. Upon final completion of the facilities, the subdivider or developer may file a written request for final release of the guarantee. Along with the request for final release, the subdivider shall submit one set of paper prints and one digital copy of as-built plans presented to the Director of Public Works, prior to acceptance by the Town of Abingdon. The as-builts should include, but are not limited to, the sanitary sewer, water distribution system, street lighting, street(s), and drainage.[20]
b. The Agent and/or Director of Public Works may inspect the facilities for conformance with the terms and conditions of the approved plan and specifications for the facilities for which the guarantee is applicable.
c. The Agent shall either accept the facilities and release the remaining guarantee or notify the applicant that the facilities are not accepted and that there are specific defects or deficiencies in construction.[21]
d. If the Agent fails to act within the 30-day time period, then the applicant may make an additional request in writing for final release, sent by certified mail to the Town Manager. The Town Manager shall act within 10 working days of the request. If no action is taken, the request shall be deemed approved and final release granted to the applicant.

(b) For the purposes of this Section, a certificate of partial or final completion of such facilities from either a duly licensed professional engineer or land surveyor, as defined in and limited to Code of

[20] Editor's Note: Previously staff noted that this is required but not utilized in practice. Requiring as-builts is a best practice, but this can be removed if not beneficial for Abingdon. Additionally, if the requirement is maintained the type of submittal documents can be updated as desired.
[21] Editor's Note: Existing Ordinance section 6.15 includes text stating that public facilities are not officially accepted until 12 months after notice of completion. This text has not been included. It is assumed the Town utilizes some agreement for warranty of facilities when taking over ownership and therefore this text would not be needed.

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Virginia, § 54.1-400, as amended, or from a department or agency designated by the Town of Abingdon may be accepted without requiring further inspection of such facilities.

(c) For the purposes of this Section and as defined in the Code of Virginia § 15.2-2245, as amended, the term "acceptance" means: when the public facility is accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority which is responsible for maintaining and operating such public facility upon acceptance.

Section 10-4-5. Extensions for Completion. [22]

If guaranteed facilities are not timely completed in a manner acceptable to the Town of Abingdon, with consideration given to the size and nature of the facilities and due diligence of the developer to complete, the Town Council shall direct the Agent to proceed via the provisions for default or allow an extension of time for the completion of facilities, not to exceed one year, provided that:

(1) All surety consents have been acquired and approved by the Town of Abingdon;
(2) The owner has submitted an acceptable revised schedule for completion; and
(3) Inspection of existing physical improvements is found to be satisfactory.

Section 10-4-6. Default.[23]

In the event of default in the construction of guaranteed facilities, the Agent is authorized to take such action as may be required to protect the Town of Abingdon including, but not limited to:

(1) Draw or make demand on the owner or developer's security;
(2) Contract for the completion of the work, following the rules for public procurement; and
(3) Bring an action at law against the owner, developer, financial institution, or surety.

Division 5. Platting Requirements, Generally.[24]

Section 10-5-1. Approval Required Before Sale.

Whenever any subdivision of land is proposed, and before any permit for the erection of a structure shall be granted, the subdivider or their representative shall apply in writing to the Agent for the approval of the subdivision plat. No lot shall be sold until a final plat for the subdivision shall have been approved and recorded in the manner provided in this Article.

Section 10-5-2. Changes to Plats.

No change, erasure or revision shall be made on any preliminary or final plat, nor on accompanying data sheets, after approval has been endorsed, in writing, on the plat or sheets, unless authorization for such change has been granted in writing by the Agent.

Section 10-5-3. Separate Ownership.

Where the land covered by a subdivision includes two or more parcels in separate ownership and the lot arrangement is such that a property ownership line divides one or more lots, the land in

[22] Editor's Note: This is new text provided as a best practice. However, other localities allow the Agent to grant extensions, but based on previous staff comment this has been modified with Town Council direction.
[23] Editor's Note: This is new text that supports the previous section.
[24] Editor's Note: Existing Ordinance sections 3.2, 4.10, and 5.20 (g).

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each lot so divided shall be transferred by deed to single ownership before approval of the final plat, and such transfer certified to the Town Council by the Clerk of the Circuit Court of Washington County, Virginia.

Section 10-5-4. Recording.[25]

(a) As required by the Code of Virginia, §15.2-2254, as amended, any owner or developer of any tract of land situated within the Town of Abingdon who subdivides the same shall cause a plat of subdivision to be made and recorded in the Office of the Clerk of Circuit Court of Washington County. No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved, and certified by the Agent in accordance with the regulations set forth in this Article.

(b) As directed by the Code of Virginia § 15.2-2241 (8), as amended, after the Agent has approved the final plat, the subdivider shall file such plat for recordation in the Clerk's Office of the Circuit Court within 6 months after approval thereof; otherwise, such approval shall become null and void. However, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the Town Council or Agent, or where the developer has furnished a guarantee to the Town Council or Agent by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the approved guarantee agreement, whichever is greater.

(c) To entitle a final plat to be entered in the proper books in the Office of the Clerk of Circuit Court of Washington County, the certificate of consent as outlined in the Code of Virginia, § 15.2-2264, as amended, together with the certificates of approval of the Agent, shall accompany it. These certificates shall be lettered or printed legibly on the face of the final plat. After the final plat shall have been approved by the Agent, the Clerk of Circuit Court shall sign the plat and cause a certified copy of the resolution approving such plat to be attached to the plat and returned to the Subdivider.

(d) A recorded plat or final site plan shall be valid for a period of not less than five years from the date of approval of said plat or plan, as required by the Code of Virginia §15.2-2261, as amended.

(e) If the provisions of a recorded plat or final site plan, which was specifically determined by the Town Council and not its Agent, to be in accordance with the zoning conditions previously approved pursuant to the Code of Virginia §§ 15.2-2296 through 15.2-2303, as amended, conflict with any underlying zoning conditions of such previous rezoning approval, the provisions of the recorded plat or final site plan shall control, and the zoning amendment notice requirements of the Code of Virginia § 15.2-2204, as amended, shall be deemed to have been satisfied.

(f) Recordation of plats shall act as transfer of streets, termination of easements and rights-of-way as outlined in the Code of Virginia § 15.2-2265, as amended.

[25] Editor's Note: Additional text with state code references are added to ensure compliance with the Code of Virginia.

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Section 10-5-5. Variations and Exceptions. [26]

(a) Where the Board of Zoning Appeals finds that extraordinary hardships, or that these conditions would result in inhibiting the achievement of the objectives of these regulations, they may approve variations or exceptions to the regulations, provided that such variations or exceptions shall not have the effect of nullifying the intent and purpose of this Ordinance; and further provided the Board of Zoning Appeals shall act in accordance with Article III, Division 5 of this Ordinance and not approve variations or exceptions to the regulations of this Ordinance unless it shall make findings based upon the evidence presented to it and in compliance with the Code of Virginia §15.2-2309, as amended.

(b) Any such variation or exception, authorized under the provisions of this Section, shall be printed on the plat with the reasoning set forth on which the variation or exception was justified.

Division 6. Single and Minor Subdivision Approval.[27]

Section 10-6-1. Preliminary Plat, Single or Minor Subdivision .

Prior to submission of a final plat for a single or minor subdivision (3 lots or less), the Subdivider may have a preliminary conference and provide a sketch plan as outlined in Section 10-7-1 (a)(3)b below.

Section 10-6-2. Final Plat, Single or Minor Subdivision.

(a) The subdivision plat submitted for final approval and subsequent recording shall be digitally provided along with one paper copy clearly and legibly drawn with a scale of not more than 100 feet to the inch on sheets not larger than 18″ × 34″ or the largest size acceptable by the Circuit Court of Washington County nor smaller than 11″ × 17″ in size with a one-inch clear margin on the left edge and a one-half-inch margin on all other edges.[28]

(b) In addition to the requirements of the preliminary plat, the final plat shall, as required by the Code of Virginia §15.2-2241, as amended, meet the standards for plats under § 42.1-82 of the Virginia Public Records act and include the following:

(4) Two (2) signature lines shall be drawn and labeled "Subdivision Agent" and "Chairperson of Town Council". [29]

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[26] Editor's Note: Existing Ordinance sections 10.1 and 10.2 are edited to meet the Code of Virginia. Additionally, approval of variations and exceptions is changed from Town Council to the BZA to align with other variance processes.

[27] Editor's Note: Two significant process changes are included with platting. The existing Ordinance requires preliminary plats; however, the Code of Virginia only allows mandatory preliminary plats for subdivisions with more than 50 lots, otherwise preliminary plats are optional. The text has been revised to conform with the Code of Virginia. Additionally, the existing Ordinance allowed administrative approval of subdivisions if the lots were greater than 5 acres and did not include a new street, but it did not allow administrative approval of single lots or subdivisions with few lots. The text has been revised to allow administrative approval of single lots and minor subdivisions (3 or less lots). The text no longer identifies by lot size or the construction of a street.

[28] Editor's Note: The Town should review this requirement and provide edits based on current need for review and recording.

[29] Editor's Note: The Town should review this requirement and provide edits based on desired process and approval.

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(5) Certificates signed by surveyor or other duly authorized professional recognized under the Code of Virginia § 54.1-400, as amended, setting forth the source of title of the owners of the land subdivided and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat.

(6) As outlined in the Code of Virginia § 15.2-2264, as amended, it shall contain in addition to the surveyor's certificate, a statement to the effect that, "the platting or dedication of the following described land (here insert correct description of the land subdivided) as appears in this plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any, "which shall be signed by the owners, proprietors and trustee, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and acknowledged upon approval as herein specified, shall be filed and recorded in the Office of the Clerk of the Circuit Court of Washington County, Virginia, and indexed under the names of the owners of the land signing such statement and under the name of the said subdivision.

(7) Names of subdivision, town, magisterial district, county, state, owner, and subdivider; addresses of owner of record and subdivider; north point; the scale, date of drawing and any revisions; number of sheets; and the name of the licensed professional making the survey. If shown on more than one sheet, match lines shall clearly indicate where the several sheets join.

(8) Any other applicable certificates as required for approval as shown in Addendum B.[30]

(9) Boundary survey with an error of closure within the limit of one in 10,000.

(10) When the subdivision consists of land acquired from more than one source of title, the outlines of the various tracts shall be indicated by dash lines, and identification of the respective tracts shall be placed on the plat. Replats shall indicate original data.

(11) The accurate location and dimensions by bearings and distances, with all curve data of all lot and street lines and center lines of streets; boundaries of all easements, parks, school sites, or other public areas; the number and area of all building lots; the total area of subdivision; the delineation of flood plains; the identification of graves, objects or structures, marking a place of burial; all existing and platted streets, their names, numbers and widths; names of owners and their property lines, both within the boundaries of the subdivision and adjoining such boundaries.

(12) All dimensions shown in feet and decimals of a foot to the closest 1/100 th of a foot; all bearings in degrees, minutes, and the nearest ten seconds.

(13) The data for all curves along street right-of-way lines shall be shown in detail at the curve or at a curve data table showing the following: delta, radius, arc, tangent, chord and chord bearing.

(14) All survey monuments and bench marks, together with their description.

(15) Private restrictive covenants and their period of existence. Should these restrictions be of such length as to make their lettering on the plat impracticable and thus necessitate the preparation of a separate instrument, reference shall be made thereto on the plat.

[30] Editor's Note: This text should be updated based on the availability and relevancy of Addendum B. It may no longer be necessary if all items are contained in the proposed ordinance text.

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(16) The accurate outline, dimensions and purposes of all property which is offered for dedication, is to be reserved for acquisition for public use, or is to be reserved by deed covenant for the common use of the property owners in the subdivision.
(17) Temporary turnarounds where required. When one or more temporary turnarounds are shown, the following note shall be included on the plat: "The area on this plat designated as temporary turnaround will be constructed and used as other streets in the subdivision until [name of street] is extended to [end point], at which time the land in the temporary turnaround areas will be abandoned for street purposes and will revert to adjoining lot owners".
(18) The location of all minimum building setback lines, side yards and rear yards.
(19) The accurate location and dimensions by bearings and distances with all curve data on all lots and street lines and centerlines of streets, boundaries of all proposed or existing easements, parks, school sites, all existing public and private streets, their names, numbers and widths, existing utilities, and those to be provided such as sanitary sewers, storm drains, water mains, manholes and underground conduits, including their size and type, watercourses and their names, names of owners and their property lines, both within the boundary of the subdivision and adjoining the boundaries.
(20) In accordance with the Code of Virginia § 15.2-2258, as amended, the location of any drainage district, mapped dam break inundation zone, grave, object or structure marking a place of burial shall be identified.
(21) Written and signed statements explaining how and when the subdivider proposes to provide and install all required sewers or other disposal of sanitary wastes, pavement, sidewalks, drainage structures, curb and gutters, and water lines.
(22) Written and signed statements of the appropriate officials of the availability of gas, electricity and water to the proposed subdivision.

Section 10-6-3. Final Approval Procedure for Single and Minor Subdivisions.[31]

(a) Review. Prior to recordation, all plats of a single or minor subdivision shall be reviewed by the Agent. The Agent shall examine the proposed plat with the subdivider and shall determine the following:
  (1) Conformity to this Ordinance, and all other ordinances and regulations in force which affect divisions. Parameters for review include but are not limited to:
    a. The proposed lot for size, shape, configuration.
    b. The existing or proposed right-of-way for compliance with this ordinance.
    c. Verification of number of lots divided from tract.
    d. Compliance with the minimum standards of design.
    e. Submission and approval of any required Improvement Plans and has made satisfactory arrangements for performance bonds to cover the cost of necessary improvements.
  (2) The Town Engineer has certified that the proper plans for drainage and flood control have been made, as demonstrated by a contour map of the proposed area, with contour intervals of two feet and drainage plans with flood control devices.

[31] Editor's Note: New text outlining the new administrative process for single and minor subdivision (3 or less lots) approval.

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(3) The plat is sufficient to accomplish a proper development and to provide adequately for the health, safety, and convenience of the proposed residents therein and for adequate access. Including but not limited to:
   a. Existing physical features such as natural drainageways, swamps, and wooded areas.
   b. Existing easements and covenants affecting the property.
   c. Surrounding land uses, streets, and existing buildings.

(b) Action by the Agent. Upon receipt the Agent shall examine the final plat and all necessary certificates to determine conformance with this Article and shall within 30 days of its submission, unless the time is extended by the Agent in agreement with the Subdivider, either approve or disapprove said final plat. After the Agent reviews the final plat, such review and the date thereof shall be noted on the plat.

Division 7. Major Subdivision Approval.[32]

Section 10-7-1. Preliminary Plat, Major Subdivision

(a) Preliminary Phase.
   (1) All proposed major subdivisions involving more than 50 lots shall submit a preliminary plat for approval.
   (2) When the subdivision is less than 50 lots, such preliminary plat or a sketch plan may be submitted voluntarily by the subdivider.
   (3) Prior to the submission of a preliminary plat within the jurisdiction of the Town of Abingdon, the Subdivider shall make known their intentions to the Agent. During this preliminary phase, the following actions shall be taken:
      a. Application. The Subdivider or their representative shall file an application to subdivide with the Agent. The application shall establish the Subdivider's intention as to subdivision.
      b. Preliminary Conference.[33] The Subdivider, or their representative shall meet informally with the Agent for the purpose of presenting a general sketch plan of their proposal, including, but not limited to:
         1. Existing physical features such as natural drainageways, swamps, and wooded areas.
         2. Existing easements and covenants affecting the property.
         3. Surrounding land uses, streets, and existing buildings.
         4. Sketch plans and a written description regarding future land use, street and lot arrangement, number of lots, and tentative lot sizes; preliminary proposals regarding water supply, sewage disposal, surface drainage, street improvement, and land to be dedicated for public streets and other public uses.
         5. Evidence of consultation with, and tentative approval of, public utility companies concerned.
      c. The Agent shall discuss the proposed subdivision with the Subdivider and advise them of procedural steps, design and improvement standards and general plat requirements. The

[32] Editor's Note: Existing Ordinance sections 4.9, 5.3, and 8.3 are incorporated with information added for signatures and certificates and references to the Code of Virginia.
[33] Editor's Note: Similar to existing Ordinance section 4.1 with additional detail added.

Agent may also consult with the Director of Public Works and Town Engineer for assistance. The Agent shall then proceed with the following investigations:

1. Advise the Subdivider of existing town plans which might affect the proposed subdivision.
2. Check the existing zoning of the tract and make recommendations if a zoning change is necessary or desirable.
3. Inspect the site or otherwise determine its relationship to existing and proposed streets, utility systems and adjacent land uses and determine any known problems.
4. Upon completion of investigations described above, the Agent shall advise the Subdivider in writing of any necessary changes in their sketch plan. The Agent's comments shall not constitute a formal approval or disapproval of the subdivision.

(b) Preliminary Plat.

(1) Filing of the Preliminary Plat. The preliminary plat shall show graphically all facts needed to enable the Agent and other public bodies to determine whether the proposed layout of the land in question is satisfactory from the standpoint of the public interest. The submission shall include the following:

a. Application for Approval. Written application by the owner or their representative for subdivision plat approval, on forms furnished by the Agent.

b. Preliminary Plat. The preliminary plat shall be clearly and legibly drawn to a scale of one inch equals 100 feet or less and shall be plainly marked "preliminary plat." The preliminary plat may be prepared by the owner of the land, urban planners, land planners, architects or others having training or experience in subdivision planning or design. The plat shall contain the following information:[34]

1. The proposed subdivision name or identifying title.
2. Name and address of record owner, subdivider and preparer of the preliminary layout.
3. Date, magnetic north point, scale, and key map showing the general location of the proposed subdivision in relation to surrounding developments and landmarks.
4. The zoning classifications and proposed use for the area being subdivided.
5. Total acreage of the subdivision, deed reference, and map of survey of the tract boundary made and certified by a land surveyor.
6. Tax map designation or geographic parcel identification number, if available, for the subject and surrounding properties.
7. The metes and bounds descriptions of the proposed lots and lot areas in acres and square feet. The frontage of each lot and the frontage at the setback line.
8. Location of property lines, existing easements, buildings, watercourses, areas subject to flooding, including delineation of flood plain districts, existing and proposed utilities, culverts, and other essential features.
9. The names of all subdivisions, immediately adjacent, and the names of owners of record of adjacent property.

[34] Editor's Note: Existing Ordinance section 7.2 is utilized with changes in organization and additional items added based on Code of Virginia.

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10. Location, names and present width of existing and proposed streets, highways, easements, building lines, alleys, location of existing and proposed utilities, parks and other public open spaces.
11. All parcels of land proposed to be dedicated for public use, the conditions of such dedication, and percentage of land to be subdivided as common open spaces, park or public lands.
12. Connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply.
13. Provisions for collecting and discharging surface drainage and preliminary plans for any bridges or culverts which may be required.
14. Location and identification of graves, objects, or structures making a place of human burial.

(2) Review.[35] In addition to the below, the Town Council, Planning Commission, and Agent will act accordingly with regards to timeframes of resubmittals and other agency reviews, as outlined in the Code of Virginia § 15.2-2259, as amended.

a. Upon receipt of all necessary data, recommendations and applications, a preliminary plat shall be reviewed by the Agent to determine its conformity to this Ordinance, and all other ordinances and regulations in force which affect subdivisions.
b. The Agent shall transmit copies of the preliminary plat, or appropriate portions thereof, to the Town Manager, Town Engineer, Director of Public Works, appropriate utility companies, Health Department, Washington County Service Authority, and other pertinent Town and State Officials and agencies as deemed necessary by the Agent for recommendations. State agencies and other public authorities shall complete their review within 45 days of receipt of the plat.
c. The Agent shall transmit copies of the preliminary plat for any major subdivision to the Planning Commission for review and recommendation and then to the Town Council for approval. [36]
d. The Agent shall, within 60 days of receipt of a completed application for the approval of a preliminary plat or within 45 days after it has been officially resubmitted after a previous disapproval or within 35 days of receipt of any agency response, approve or disapprove the plat, or approve it with modifications, noting thereon any changes that will be required. The Agent will approve or disapprove a preliminary plat for a major subdivision as directed by the Town Council. If agreed to by the Subdivider, the time may be extended for no more than 30 days after which one copy shall be returned to the Subdivider with the date of the approval or disapproval, and the reason therefor in letter form, accompanying the plat.
e. Approval of a preliminary plat shall not constitute approval of the final plat or authorization to proceed on construction improvements. It shall be deemed as an

[35] Editor's Note: Existing Ordinance sections 4.2, 4.4, and 4.5 utilized with modifications to streamline text and add Code of Virginia references. Text also states the Agent will provide the written recommendation to align with existing process.

[36] Editor's Note: The Town Council is added as the approving authority. Submission of preliminary plats will most likely be for major subdivisions and Town Council should be aware of and provide feedback for these projects.

expression of approval of the layout submitted on the preliminary plat, and as a guide to the preparation of the final plat.

f. As dictated by the Code of Virginia §15.2-2260 (F), as amended, an approved preliminary subdivision plat shall be valid for a period of five years, provided the subdivider (i) submits a final plat for all or a portion of the property within three years of such approval, and (ii) thereafter diligently pursues approval of the final plat which shall include that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted final plat or modifications thereto.

g. Once an approved final plat for all or a portion of the property is recorded, the underlying preliminary plat shall remain valid for a period of five years from the date of the latest recorded final plat of subdivision for the property.

Section 10-7-2. Final Plat, Major Subdivision.

(a) Whenever part of a tract is proposed for platting and it is intended to subdivide additional parts in the future, a sketch plan for the entire tract shall be submitted.

(b) The subdivision plat submitted for final approval and subsequent recording shall be digitally provided as well as one paper copy clearly and legibly drawn on with a scale of not more than 100 feet to the inch on sheets not larger than 18″ × 34″ or the largest size acceptable by the Circuit Court of Washington County nor smaller than 11″ × 17″ in size with a one-inch clear margin on the left edge and a one-half-inch margin on all other edges.[37]

(c) In addition to the requirements of the preliminary plat, the final plat shall, as required by the Code of Virginia §15.2-2241, as amended, meet the standards for plats under § 42.1-82 of the Virginia Public Records act and include the following:

(1) Two (2) signature lines shall be drawn and labeled "Subdivision Agent" and "Chairperson of Town Council". [38]

(2) Certificates signed by surveyor or other duly authorized professional recognized under the Code of Virginia § 54.1-400, as amended, setting forth the source of title of the owners of the land subdivided and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat.

(3) As outlined in the Code of Virginia § 15.2-2264, as amended, it shall contain in addition to the surveyor's certificate, a statement to the effect that, "the platting or dedication of the following described land (here insert correct description of the land subdivided) as appears in this plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any, "which shall be signed by the owners, proprietors and trustee, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and acknowledged upon approval as herein specified, shall be filed and recorded in the Office of the Clerk of the Circuit Court of

[37] Editor's Note: The Town should review this requirement and provide edits based on current need for review and recording.

[38] Editor's Note: The Town should review this requirement and provide edits based on desired process and approval.

Washington County, Virginia, and indexed under the names of the owners of the land signing such statement and under the name of the said subdivision.

(4) Names of subdivision, town, magisterial district, county, state, owner, and subdivider; addresses of owner of record and subdivider; north point; the scale, date of drawing and any revisions; number of sheets; and the name of the licensed professional making the survey. If shown on more than one sheet, match lines shall clearly indicate where the several sheets join.

(5) Any other applicable certificates as required for approval as shown in Addendum B.[39]

(6) Boundary survey with an error of closure within the limit of one in 10,000.

(7) When the subdivision consists of land acquired from more than one source of title, the outlines of the various tracts shall be indicated by dash lines, and identification of the respective tracts shall be placed on the plat. Replats shall indicate original data.

(8) The accurate location and dimensions by bearings and distances, with all curve data of all lot and street lines and center lines of streets; boundaries of all easements, parks, school sites, or other public areas; the number and area of all building lots; the total area of subdivision; the delineation of flood plains; the identification of graves, objects or structures, marking a place of burial; all existing and platted streets, their names, numbers and widths; names of owners and their property lines, both within the boundaries of the subdivision and adjoining such boundaries.

(9) All dimensions shown in feet and decimals of a foot to the closest 1/100 th of a foot; all bearings in degrees, minutes, and the nearest ten seconds.

(10) The data for all curves along street right-of-way lines shall be shown in detail at the curve or at a curve data table showing the following: delta, radius, arc, tangent, chord and chord bearing.

(11) All survey monuments and bench marks, together with their description.

(12) Private restrictive covenants and their period of existence. Should these restrictions be of such length as to make their lettering on the plat impracticable and thus necessitate the preparation of a separate instrument, reference shall be made thereto on the plat.

(13) The accurate outline, dimensions and purposes of all property which is offered for dedication, is to be reserved for acquisition for public use, or is to be reserved by deed covenant for the common use of the property owners in the subdivision.

(14) Temporary turnarounds where required. When one or more temporary turnarounds are shown, the following note shall be included on the plat: "The area on this plat designated as temporary turnaround will be constructed and used as other streets in the subdivision until [name of street] is extended to [end point], at which time the land in the temporary turnaround areas will be abandoned for street purposes and will revert to adjoining lot owners".

(15) The location of all minimum building setback lines, side yards and rear yards.

(16) The accurate location and dimensions by bearings and distances with all curve data on all lots and street lines and centerlines of streets, boundaries of all proposed or existing easements, parks, school sites, all existing public and private streets, their names, numbers and widths,

[39] Editor's Note: This text should be updated based on the availability and relevancy of Addendum B. It may no longer be necessary if all items are contained in the proposed ordinance text.

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existing utilities, and those to be provided such as sanitary sewers, storm drains, water mains, manholes and underground conduits, including their size and type, watercourses and their names, names of owners and their property lines, both within the boundary of the subdivision and adjoining the boundaries.

(17) In accordance with the Code of Virginia § 15.2-2258, as amended, the location of any drainage district, mapped dam break inundation zone, grave, object or structure marking a place of burial shall be identified.

(18) Written and signed statements explaining how and when the subdivider proposes to provide and install all required sewers or other disposal of sanitary wastes, pavement, sidewalks, drainage structures, curb and gutters, and water lines.

(19) Written and signed statements of the appropriate officials of the availability of gas, electricity and water to the proposed subdivision.

(b) The applicant for any major subdivision development shall also provide a traffic impact analysis which, at a minimum, includes the following information:

(1) Peak hour trip ends generated by the development as described in "Trip Generation", latest edition, published by the Institute of Transportation Engineers.

(2) Information on the street in which the connection is being made: peak hour traffic along with its directional distribution, lane and shoulder widths, the type of terrain, and the percentage of trucks, buses, and RV's on the connection street. The development engineer shall use this information to conduct a traffic capacity analysis as described in "The Highway Capacity Manual", latest edition, published by the transportation research board. Additionally, the engineer shall determine if a left or right turn lane is necessary utilizing the "Minimum Standards of State Entrances" document, latest edition, published by the Virginia Department of Transportation. All or part of the traffic analysis may be waived by the Director of Public Works depending upon the type and size of development, the condition of the connection street, or an interpretation of the minimum information given above.

Section 10-7-3. Final Approval Procedure for Major Subdivisions. [40]

(a) The plat shall not be approved until the subdivider has complied with the general requirements and minimum standards of design in accordance with this Ordinance, and has made satisfactory arrangements, as hereinbefore provided, to cover the cost of necessary improvements.

(b) The final plat shall not be approved until the Town Engineer shall certify that the proper plans for drainage and flood control have been made, as demonstrated by a contour map of the proposed area, with contour intervals of two feet and drainage plans with flood control devices.

(c) Final Plat. During the final plat stage, the following actions shall be taken:

(1) Filing of Final Plat. The Subdivider shall file with the Agent the final plat which shall conform to the requirements of this Article.

a. Final Plat May Constitute All or a Portion of the Approved Preliminary Plat. A final plat may constitute only a portion of the area contained in the approved preliminary plat provided that the public improvements constructed in the area covered by the plat are sufficient by and of themselves to accomplish a proper development and to provide

[40] Editor's Note: This proposed section references approval by the Town Council Chairperson and Agent, but this text should be edited to reflect the desired process.

adequately for the health, safety, and convenience of the proposed residents therein and for adequate access to contiguous areas.

b. The Plat. Each plat shall, as required by the Code of Virginia §15.2-2241, as amended, meet the standards for plats under § 42.1-82 of the Virginia Public Records Act and show correctly on its face sufficient engineering data to reproduce any line on the ground, as well as include the items expressed in Section 10-6-2 and 10-7-1 above.

(2) Action by the Agent.

a. The Agent shall transmit copies of the plat, or appropriate portions thereof, to the Town Manager, Town Engineer, Director of Public Works, appropriate utility companies, Health Department, Washington County Service Authority, and other pertinent Town of Abingdon and State Officials and agencies as deemed necessary by the Agent for recommendations. State agencies and other public authorities shall complete their review within 45 days of receipt of the plat. Upon receipt of approval from all state agencies and authorities, the Agent shall act upon the plat within 35 days.

b. The Agent shall transmit copies of the final plat for any major subdivision to the Planning Commission for review and recommendation and then to the Town Council for approval.

1. The Planning Commission and Town Council shall ensure that the plat is in conformance with any approved preliminary plat, and all requirements of this Ordinance and other ordinances of the Town of Abingdon are met.

2. The Town Council shall communicate the result of its review of the Final Plat to the Applicant no later than 60 days after the plat submittal or within 45 days after it has been officially resubmitted after a previous disapproval or within 35 days of receipt of any agency response.

i. Specific reasons for disapproval shall be contained either in a separate document or on the plat itself. The reasons for disapproval shall identify deficiencies in the plat that cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify modifications or corrections as will permit approval of the plat.

ii. If the review is favorable, the Town Council shall authorize the Chairperson and Agent to approve, sign, and date the final plat.

(3) The passage of the resolution accepting the plat shall constitute final approval of the platting of the area shown on the final plat, but the owner shall cause such plat to be recorded in the Office of the Clerk of the Circuit Court of Washington County and shall file satisfactory evidence of such recording with the Town Engineer before the Town of Abingdon shall recognize the plat as being in full force and effect.

(4) Approval of the final plat shall not be deemed the acceptance by the Town of Abingdon of any street, alley or other public space shown on the plat for maintenance, repair or operation thereof.

(5) When the final plat has been approved by the Town Council, the performance bond accepted, and the final plat has been signed and certified, one copy shall be delivered to the Town Engineer and one original to the subdivider for filing and recording.

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Division 8. Vacation of Plats.[41]

Section 10-8-1. Vacation.

(a) Pursuant to Code of Virginia, § 15.2-2278, as amended, any recorded plat of subdivision may be vacated as outlined in the Sections below, taken from the Code of Virginia, § 15.2-2270 et seq, as amended. The effects of such vacations are outlined in the Code of Virginia, § 15.2-2274, as amended.

(b) Boundary Lines. As allowed by the Code of Virginia, § 15.2-2275, as amended, the Agent may approve the boundary lines of any lot or parcel of land to be vacated, relocated, or altered as part of an otherwise valid and properly recorded plat of subdivision or resubdivision approved as provided in this Article or properly recorded prior to the applicability of this Article, and executed by the owner or owners of the land. The action shall not involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas. No easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest therein.

(c) Interest to the Town of Abingdon. Any interest in streets, alleys, easements for public rights of passage, easements for drainage, and easements for a public utility granted to the Town of Abingdon as a condition of the approval of a site plan may be vacated by the Town Council according to the two methods listed in the Code of Virginia, § 15.2-2270, as amended.

(d) Before Sale of Lot.
   (1) Single or Minor Subdivision. An approved and recorded plat of subdivision, or part thereof, may be vacated prior to the sale of any lot therein by the Agent utilizing the procedures set forth in the Code of Virginia, § 15.2-2271, as amended.
   (2) Major Subdivision. An approved and recorded plat of subdivision, or part thereof, may be vacated prior to the sale of any lot therein by the Town Council utilizing the procedures set forth in the Code of Virginia, § 15.2-2271, as amended.

(e) After Sale of Lot.
   (1) Single or Minor Subdivision. An approved and recorded plat of subdivision, or part thereof, may be vacated after the sale of any lot by the Agent utilizing one of the two methods specified in the Code of Virginia, § 15.2-2272, as amended.
   (2) Major Subdivision. An approved and recorded plat of subdivision, or part thereof, may be vacated after the sale of any lot by the Town Council utilizing one of the two methods specified in the Code of Virginia, § 15.2-2272, as amended.

(f) Duties of the Clerk. According to the Code of Virginia, § 15.2-2276, as amended, the Clerk in whose office any plat so vacated has been recorded shall write in plain legible letters across such plat, or the part thereof so vacated, the word "vacated," and also make a reference on the plat to the volume and page in which the instrument of vacation is recorded.

[41] Editor's Note: Existing Ordinance Article XI references Code of Virginia §§ 15.2-2271 through 15.2-2278 but does not supply any processes. Proposed text has been edited to include Code of Virginia references and text and to include processes.

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Division 9. Enforcement, Violations, and Fees.[42]

Section 10-9-1. Enforcement.

As provided in the Code of Virginia § 15.2-2254, as amended, the following applies:

(1) No person shall subdivide land without making and recording a plat of the subdivision and without fully complying with the provisions of the Code of Virginia and this Article.

(2) No plat of any subdivision shall be recorded unless and until it has been submitted and approved in accordance with this Ordinance.

(3) No person shall sell or transfer any land of a subdivision, before a plat has been duly approved and recorded as provided herein, unless the subdivision was lawfully created prior to the adoption of this Article. However, nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.

(4) No clerk of any court shall file or record a plat of a subdivision required by this Article to be recorded until the plat has been approved as required herein. The penalties provided by Code of Virginia § 17.1-223, as amended, shall apply to any failure to comply with the provisions of this subsection.

(5) No building permit shall be issued nor shall construction be authorized by the Town of Abingdon on lands where a subdivision plat is required to be approved and recorded as provided in this Article and no Certificate of Occupancy shall be issued until the compliance with this Article and other applicable provisions regarding the use of any structure or land where a subdivision plat is required to be approved and recorded as provided in this Article has been approved by the Agent and recorded in the office of the Clerk of the Circuit Court.

Section 10-9-2. Violation and Penalty.

(a) As allowed by the Code of Virginia, § 15.2-2254, as amended, any person violating any provision of this chapter shall be subject to a fine of not more than five hundred dollars ($500.00) for each lot or parcel of land subdivided, transferred or sold in violation of this chapter and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided.

(b) In addition to a fine, the Town Attorney may take such other legal action as may be necessary to enforce the provisions of this Ordinance, including suit for injunction, for abatement or other appropriate proceeding.

Section 10-9-3. Fees.

As allowed by the Code of Virginia, §§ 15.2-2241 and 15.2-2273, as amended, there shall be a charge to compensate the Town of Abingdon for the costs incurred during the examination and approval or disapproval of every subdivision plat or lot required to be reviewed by the Agent and/or Town Council. This fee shall be payable to "Treasurer, Town of Abingdon," in such amount as set by schedule adopted ordinance of the Town Council.

[42] Editor's Note: Portions of existing Ordinance sections 13.1, 13.2, and 4.3 are incorporated in this Division.

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DEVELOPMENT REVIEW GUIDE
Concept Plans

What is a Concept Plan?

A concept plan is a generalized plan indicating the boundaries of proposed development and presenting the general arrangement of proposed buildings, uses, structures, and improvements. Concept plans are also sometimes referred to as general plans or generalized development plans.

Concept Plan Typical Requirements:

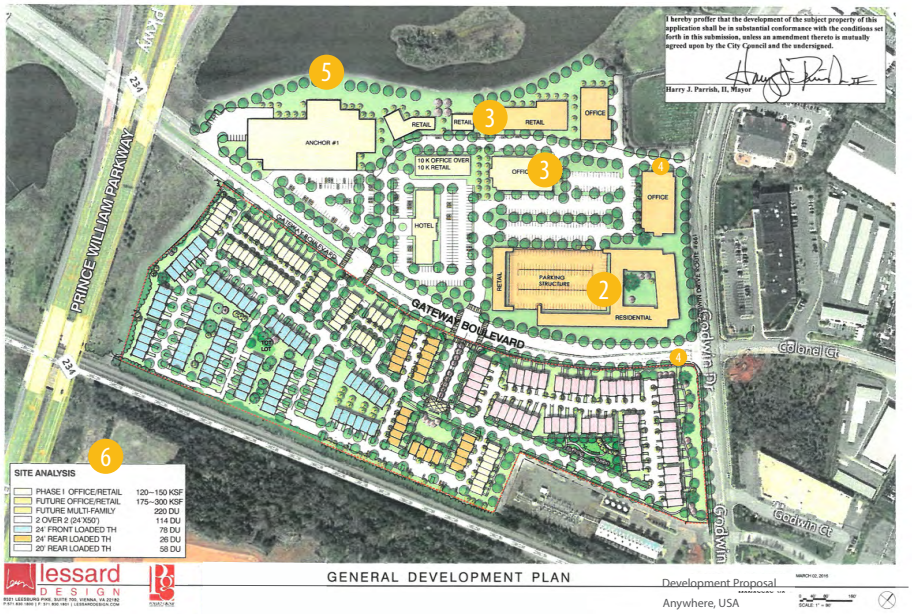
Mapped Plan:

1. A plan of the property showing all property lines, existing streets, and subdivisions
2. General location and type of proposed uses
3. Layout, character, and orientation of proposed buildings and improvements
4. General location and information on proposed roads, parking, pedestrian and bike amenities, public utilities, and storm drainage systems
5. General location of natural areas, steep slopes, proposed open space, recreation amenities, and landscaping

Accompanying Narrative:

6. Relationship of the proposal to the Comprehensive Plan and nearby areas
7. Total number, density, lot size, and type of proposed dwelling units
8. Proposed amenities serving the development
9. Proposed development schedule
10. Written analysis of public facilities and infrastructure required to serve the proposed development
11. Any other narrative specified in the application requirements or by the Zoning Administrator

Concept Plan Example:



Purpose of Concept Plans

Concept plans are typically required during the rezoning and/or conditional use permit process. Because they are general in nature, concept plans represent a lower level of investment than engineered site plans. This reduces the property owner's risk associated with land use applications that require legislative action, thereby lowering a potential barrier to development.

Concept plans:

- Allow flexibility in final development and use types
- Are adaptable to changes in market conditions
- Encourage comprehensive planned development
- Allow site plan costs to be incurred by individual developers/users within a planned development
- Are not subject to approval time frames required by site plans
- If proffered during rezoning, becomes part of the zoning regulations in perpetuity, unless altered through another rezoning process

GUIDE TO NONCONFORMITIES

What Are Legally Nonconforming Lots, Structures, and Uses?

Legally nonconforming lots, structures, and uses are those which were **legally established** according to applicable zoning laws at the time that the structure, lot, or use began, but which **do not meet current zoning regulations**. Often, these situations are referred to as "grandfathered" lots, structures, or uses.

State Code Section § 15.2-2307 allows localities to permit nonconforming lots, structures, and uses to continue, provided they are not enlarged, extended, reconstructed, or structurally altered unless such changes comply with current zoning regulations. State Code provides for special considerations where a locality has issued permits and/or all local taxes have been paid for the previous fifteen years.

How Do Lots, Structures, or Uses Become Nonconforming?

When a locality amends its zoning ordinance and the new zoning regulations are **more restrictive,** some existing lots, structures, or uses may not be in conformance with the new regulations.

Examples of more-restrictive regulations:

- Increase minimum lot area
- Increase minimum lot frontage
- Decrease maximum height
- Increase minimum setbacks
- Change of district uses

Lots

Some communities require a variance to develop a vacant nonconforming lot. Others may allow development without a variance if setback or other requirements are met.

Reconstruction, alteration, or expansion of an existing building on a nonconforming lot should not increase the nonconformity.

Example of a nonconforming lot:

If a lot was legally divided and recorded at 2 acres, but due to zoning amendments, the minimum lot size is increased to 3 acres, the lot becomes a nonconforming lot. The lot is allowed to be used and built on if other regulations are met.

Structures

State Code requires that if a nonconforming structure is damaged or destroyed by fire, natural disaster or other act of God, such structure may be repaired, rebuilt or replaced in a manner which would eliminate or reduce nonconforming features without the need for a variance.

If the damage is greater than 50 percent, a structure may be repaired, rebuilt or replaced even if the reconstruction is to its original nonconforming condition without the need for a variance. Any reconstruction must be in compliance with building and floodplain regulations.

See page 2 for an example of a nonconforming structure.

Uses

State Code requires for a locality to permit the continuation of a nonconforming use if the use is not discontinued for longer than two years and structures are maintained. When a nonconforming use is discontinued for more than two years, its nonconforming status is lost and the use can not then be resumed.

Example of a nonconforming use:

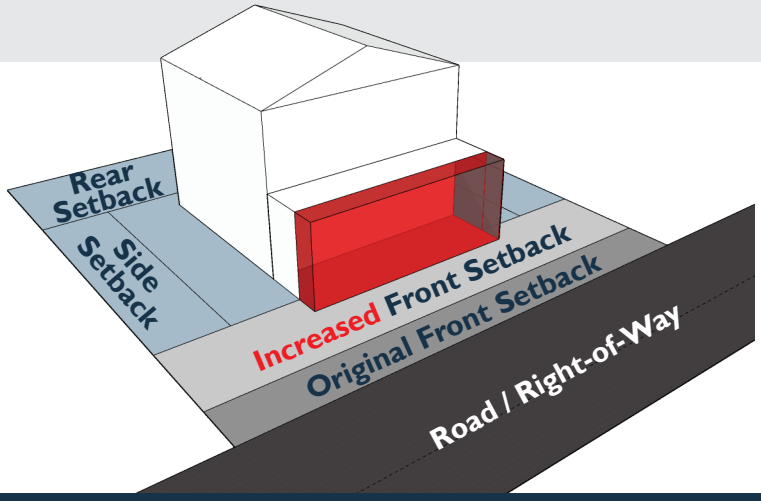
If a store is located in a district that once allowed commercial uses, but due to zoning amendments, commercial uses are no longer permitted, the store will become a nonconforming use. The store is allowed to remain operable, so long as the store is not closed for business for longer than a two year period.

GUIDE TO NONCONFORMITIES

How Does a Structure Become Nonconforming?

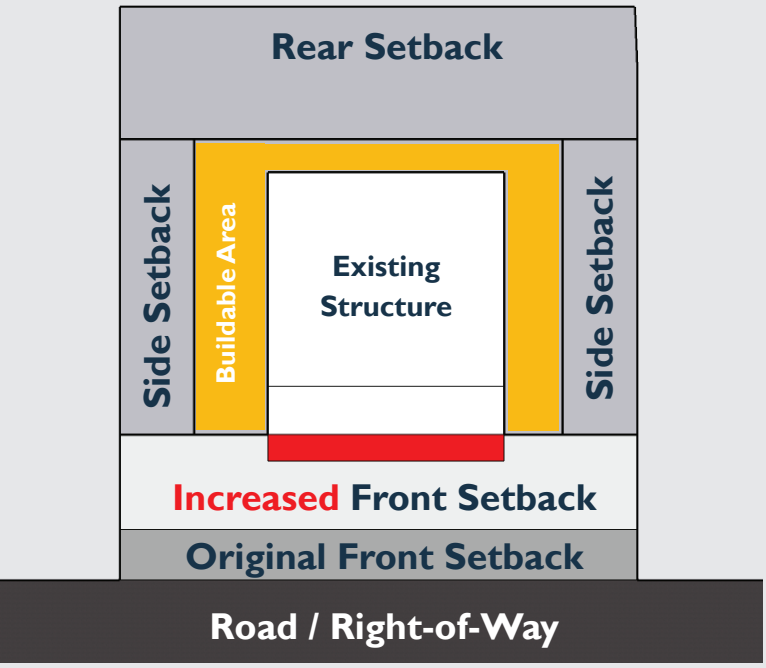
In this example, a citizen owns property in a residential district. When the home was built, it complied with the existing setbacks. When the zoning ordinance was amended, some setback regulations became **more restrictive.** The **front setback was increased** an additional fifteen feet, resulting in a more restrictive setback.

As a result, the house no longer meets the setback and becomes a nonconforming structure.



Original Front Setback:
30' Minimum
Side Setback:
15' Minimum
Rear Setback:
15' Minimum

Increased Front Setback:
45' Minimum



How Do I Expand My Nonconforming Structure?

Where there is interest in expanding a nonconforming structure, a lot may be enlarged to provide more space. Otherwise, additions would need to fit outside of the remaining setback boundaries.

In this diagram, the portion of the structure shown in red extends into the increased front setback. Areas where an expansion is permitted are identified in yellow.

Note:
This is a generalized example. Specific requirements vary from community to community. Requirements may include square footage caps on expansions or the need for a variance.