

ARTICLE IX. LAND USE APPLICATIONS

DIVISION 1. SPECIAL USE PERMITS

Sec. 130-501. Generally.

The City Council has determined to permit certain uses in appropriate districts only if their impacts on the community are adequately mitigated by suitable conditions, regulations, and safeguards. These uses are termed “special exceptions” and the permits allowing them are termed “special use permits”. Before issuing a special use permit, the City Council must find that the use, with all the conditions imposed by City Council, will not be detrimental to the character and development of the adjacent land and will be in harmony with the purposes of the City's plan of land use.

Sec. 130-502. Application requirements.

The City may require a pre-application meeting prior to submission of any application. No application shall be officially accepted for filing until all of the information identified in this section is furnished, unless specific items are waived by the City or approved for later submission in accordance with the requirements of this article. Applications and supplemental information shall be filed on forms provided by the City and shall include the following:

- (a) Two copies of a completed City special use permit application form:
 - (1) The application shall be signed by all owners of the subject property or such owner(s)' agent. However, if the application is signed by their agent, a copy of written authority or power of attorney form from all owners must accompany the application.
 - (2) The completed form shall be printed or typed.
- (b) Two copies of a notarized affidavit regarding disclosure of real parties of interest and in accordance with the requirements of §15.2-2289 of the Code of Virginia.
- (c) A written narrative describing the proposed use, operational conditions, and conditions proposed by the applicant to minimize the impact of the use on surrounding properties.
- (d) Fifteen copies of a generalized development plan in accordance with the requirements of §130-503. Each submission shall also include a reduction of the generalized development plan.
- (e) When construction or alteration of a structure, including signage and screening, is proposed, the applicant shall submit architectural renderings in color of all structures and a list of the color and type of exterior finishes proposed.
- (f) An impact analysis identifying the impacts of the proposed activity or development, prepared at the applicant's expense, together with proposed conditions to mitigate those impacts. The impact analysis must be based on current data and sound methodology, and demonstrate a nexus between the impacts of the proposal and the condition and rough proportionality between the condition and the impact.

- (g) Additional studies prepared at the applicant's expense, as identified during the pre-application meeting or as identified during the review of the application, to appropriately evaluate the proposal.
- (h) Electronic submission of all documents included in the application package.
- (i) A nonrefundable filing fee in accordance with a fee schedule established by an uncodified ordinance enacted by the City Council, as amended.
- (j) Payment of all delinquent taxes and fees as required by §130-64.

Sec. 130-503. Generalized development plans (GDP).

The GDP shall be submitted with all applications for a special use permit. The GDP shall be to a scale no less than one-inch to 50 feet and shall be folded to a size not greater than nine by 12 inches. The GDP shall include:

- (a) Delineation of all area(s) to be used for the proposed special use permit.
- (b) Topography as shown by contour lines with a contour interval not more than five feet.
- (c) A general vicinity map providing information concerning existing street and cross street locations within one-quarter mile.
- (d) The layout, orientation, and information describing buildings and improvements, including but not limited to fencing, signs, and trash enclosures, building use, height, setbacks, and restriction lines.
- (e) Vehicular and pedestrian circulation, including traffic counts, right-of-way improvements, access points, travel ways, parking, loading, stacking, sidewalks, and trails.
- (f) A landscape plan including all proposed open space, screening, landscaping, and the general location and type of significant or specimen trees located within the limits of the proposed special use permit area.
- (g) Tabulations for parking, tree canopy, parking lot landscaping, and other zoning requirements as applicable to the project.

Sec. 130-504. Review procedures.

- (a) Upon submission and acceptance of an application for a special use permit, the City will:
 - (1) Transmit the application to applicable departments and agencies for review, evaluate the responses generated by the reviews, and develop conditions. The City may request that the applicant revise the application as necessary to address review comments and will provide the applicant with its analysis of whether the impacts are adequately mitigated. No agent of the City is authorized to suggest, demand, or accept a condition that is unreasonable under applicable law.

- (2) The City shall forward its report and recommendation with the application to the Planning Commission for public hearing. An application shall not be scheduled for public hearing until all requirements of §130-502 and §130-503 have been satisfied.

(b) Planning Commission.

- (1) The Planning Commission shall not recommend any request for a special use permit unless the application has been advertised and public hearings have been held in accordance with the requirements of this article and State Code.
- (2) The Planning Commission shall hold at least one public hearing and make its recommendation to the City Council within 100 calendar days of the public hearing date, 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.

(c) City Council.

- (1) The City Council shall not act upon any request for a special use permit unless the application has been advertised and public hearings have been held in accordance with the requirements of this article and State Code.
- (2) The City Council shall hold at least one public hearing after receiving the recommendation of the Planning Commission and shall take final action to approve or deny the request.
- (3) If the City Council approves the special use permit request, it may impose reasonable conditions to mitigate the impacts of the proposed use, as permitted by applicable law. All such conditions shall be reasonably related both in nature and extent to the impact of the proposed development. At least one week prior to the City Council public hearing, the City shall provide in writing to the applicant the proposed conditions. The applicant shall advise the City, in writing prior to the public hearing, that (i) the applicant agrees to the conditions and stipulates that they are reasonable under applicable law, including a statement that each condition is reasonably related both in nature and extent to the impact of the proposed development, or (ii) that the applicant objects to one or more proposed condition and the reason for said objection.

Sec. 130-505. Withdrawal of application.

An application for a special use permit may be withdrawn voluntarily by the applicant at any time; however, there shall be no refund of special use permit fees.

Sec. 130-506. Expiration of permit approval.

Subject to applicable state law, a special use permit shall expire upon the first to occur of the following:

- (a) If the applicant does not obtain final site plan approval or commence the use granted by the special use permit within two years (or such longer time as the City Council may approve) from the date of the approval;
- (b) If an activity operating under an approved special use permit ceases for a period greater than two years; or
- (c) Upon expiration of a final site plan for the use granted by the special use permit.

Sec. 130-507. Revocation of special use permits.

A special use permit may be revoked at any time by the City Council, subject to the following requirements:

- (a) The Zoning Administrator shall notify the holder of such permit and/or the owner(s) of the property in writing that the conditions of such permit have not been met and advise them of the violations of the permits.
- (b) A certified letter shall be mailed to the address of record advising the permit holder and/or property owner(s) of the date and time of a public hearing to be held before the City Council on the consideration of revocation of the permit.
- (c) After the City Council holds a public hearing on the matter, the City Council may, based on evidence provided and the nature of the violations, revoke the special use permit.

Sec. 130-508. Refiling following denial.

If an application for special use permit is denied, no new application for the same use shall be filed within one year of the denial on the same parcel of land.

Secs. 130-509 – 130-520. Reserved.

DIVISION 2. BOARD OF ZONING APPEALS

Sec. 130-521. Creation and authority.

The Board of Zoning Appeals (BZA), created pursuant to authority contained in the Code of Virginia, §15.2-2308 through §15.2-2314, as amended, is appointed by the Circuit Court and is not an arm of the City. The BZA shall have all powers and duties as enumerated in the Code of Virginia, except for the issuance and revocation of special exceptions. The City does not authorize any member of the BZA to suggest, demand, or accept a variance condition that is unreasonable under applicable law, and no agent of the City is authorized to suggest, demand, or endorse such a condition.

Sec. 130-522. Membership.

- (a) The BZA shall consist of five regular members and two alternate members, who are residents of the city.
- (b) Alternate members shall serve on the BZA only when there is an absence of or abstention by a regular member and shall rotate in accordance with the adopted schedule as established by the BZA.

Sec. 130-523. Organization.

Unless the BZA or the Circuit Court which appoints it orders otherwise, the following organization rules apply to the BZA.

- (a) The BZA shall conduct an annual organizational meeting in the month of January, or as soon thereafter as practicable, to elect its officers.
- (b) Any officer vacancy on the BZA may be filled by the BZA through a special board election.
- (c) The BZA shall adopt in December or January the official BZA calendar for the next calendar year identifying scheduled meetings and submission deadlines for applications.
- (d) The BZA may, by resolution, fix certain days on its calendar to which meetings shall be continued, if the Chairperson or Vice Chairperson finds and declares that weather conditions are such that it is hazardous for members to attend the meeting. Such findings shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required, provided the resolution setting the schedule is inserted in a newspaper having general circulation in the locality at least seven calendar days prior to the first meeting held pursuant to the adopted schedule.
- (e) Meetings of the BZA shall be held in accordance with the official calendar unless canceled by the Chairperson due to lack of business.
- (f) Special meetings of the BZA shall be held at the call of its Chairperson, or Vice Chairperson, and at such times as the majority of the BZA may determine.

Sec. 130-524. Administration.

The following legal requirements are set out here as a convenience to the public.

- (a) All meetings of the BZA shall be open to the public and shall otherwise conform to the Virginia Freedom of Information Act.
- (b) The BZA shall keep minutes of its proceedings, which shall reflect the vote of each member upon each question, noting if absent, or failing to vote.
- (c) In addition to minute books, the BZA shall keep records of its examinations, public hearings, public advertising, and other official actions, all of which will be immediately filed in the office of the BZA. BZA records constitute a public record.
- (d) An appeal shall be made by filing an application with the Zoning Administrator and the Board of Zoning Appeals. An appeal shall specify the grounds thereof, together with the filing fee in the sum set forth by uncodified ordinance of the City Council. The application shall include two copies of a notarized affidavit regarding disclosure of real parties of interest and in accordance with the requirements of §15.2-2289 of the Code of Virginia.
- (e) The application and accompanying maps, plans, and other documentation constituting the record upon which the action appealed was taken from shall be scheduled for the next available docket as set forth in the adopted calendar.
- (f) All advertisements for public hearings and other notices shall conform to the requirements of the Code of Virginia and this chapter.
- (g) Upon final action to approve an appeal, the BZA shall record an order with the land records of the City and shall send a copy to the applicant, to the Zoning Administrator, and to such other parties as necessary.

Sec. 130-525. Records and reports.

In addition to records required by §130-524, the BZA shall submit an annual report of the previous fiscal year's activities to the City Council within 30 calendar days of its annual organizational meeting.

Secs. 130-526 – 130-540. Reserved.

DIVISION 3. REZONINGS AND TEXT AMENDMENTS

Sec. 130-541. Generally.

The text of this chapter and any zoning district boundary shown on the Zoning Map may be amended, changed, modified, or repealed by the City Council pursuant to the requirements of this Division.

Sec. 130-542. Initiation of amendments.

Proceedings for any amendment of the Zoning Map or zoning text shall be initiated in the following manner:

- (a) By the adoption by the Planning Commission of a resolution of intention to propose an amendment;
- (b) By the adoption by the City Council of a resolution of intention to amend, which resolution, upon adoption, shall be referred to the Planning Commission; or
- (c) By the filing of a petition with the City by the property owners or their agents of the land proposed to be rezoned.

Sec. 130-543. Application requirements.

The City may require a pre-application meeting prior to submission of any application. No application shall be officially accepted for filing until all of the information identified in this section is furnished, unless specific items are waived by the City or approved for later submission in accordance with the requirements of this article. Applications and supplemental information shall be filed on forms provided by the City and shall include the following:

- (a) Two copies of a completed City rezoning application form:
 - (1) The application shall be signed by all owners of the subject property or such owner(s)' agent. However, if the application is signed by their agent, then a copy of written authority or power of attorney form from all owners must accompany the application.
 - (2) The completed form shall be printed or typed.
- (b) Two copies of a notarized affidavit regarding disclosure of real parties of interest and in accordance with the requirements of §15.2-2289 of the Code of Virginia.
- (c) Two copies of an accurate plat and written boundary description (conforming to the plat) of the property proposed for rezoning, prepared by a certified land surveyor. The plat shall show:
 - (1) Bearings and distances for all property lines and existing and proposed division lines.
 - (2) Area of proposed zoning changes in square feet or acres.
 - (3) Scale and north arrow.
 - (4) Names of boundary roads or streets and widths of existing rights-of-way.

- (d) A written narrative describing the proposed development and including the following information:
- (1) The relationship of the proposed development to the adopted comprehensive plan.
 - (2) A statement or visual presentation of how adjacent and neighboring properties shall be protected from any adverse effects prompted by the proposed development. This includes vehicular access plans, proposed screening and buffering, and any additional setbacks for the periphery of the development.
 - (3) A statement of the projected impact, if any, of the proposed development, and voluntary proffers, if any, being made to mitigate that impact.
 - (4) A statement setting forth the maximum number of dwelling units that are proposed.
 - (5) A statement of any special amenities that are proposed within the development.
 - (6) A statement of any new anticipated off-site improvements that will serve the development, such as roads, water and sewer, and drainage facilities, and a statement of how, when, where, and by whom those improvements will be made.
 - (7) A statement setting forth the proposed approximate phasing plan, if any, and the projected wastewater flows for each phase.
 - (8) A statement identifying any surrounding areas that have scenic assets or natural features deserving of protection and preservation, with a statement of how protection and maintenance will be accomplished.
- (e) When construction or alteration of a structure, including signage and screening, is proposed, the applicant shall submit architectural renderings in color of all structures and a list of the color and type of exterior finishes proposed.
- (f) Fifteen copies of a generalized development plan in accordance with the requirements of §130-544. Each submission shall also include a reduction of the generalized development plan.
- (g) An impact analysis, prepared at the applicant's expense, identifying the impacts of the proposed development, and prepared utilizing a method that is based on current data and sound methodology. The applicant may, but is not required to, offer proffers to mitigate the impacts of the development. The applicant shall, upon submission of any proffer, provide an analysis demonstrating that such proffer complies with the requirements of §15.2-2303.4 of the Code of Virginia, where applicable, and is reasonably related both in nature and extent to the impact of the proposed development.
- (h) Additional studies prepared at the applicant's expense, as identified during the pre-application meeting or as identified during the review of the application to appropriately evaluate the proposal.
- (i) Electronic submission of all documents included in the application package.

- (j) A nonrefundable filing fee in accordance with a fee schedule established by an uncodified ordinance enacted by the City Council, as amended.
- (k) Payment of all delinquent taxes and fees as required by §130-64.

Sec. 130-544. Generalized development plans (GDP).

The GDP shall be submitted with all applications for a rezoning and shall become part of the record of the hearing on the application. The GDP shall be to a scale no less than one-inch to 50 feet and shall be folded to a size not greater than nine by 12 inches. The GDP shall include:

- (a) Delineation of all area(s) to be included in the proposed rezoning.
- (b) Topography as shown by contour lines with a contour interval not more than five feet.
- (c) A general vicinity map providing information concerning existing street and cross street locations within one-quarter mile.
- (d) The layout, orientation, and information describing buildings and/or improvements, including but not limited to fencing, signs, and trash enclosures, building use, height, setbacks, and restriction lines.
- (e) Vehicular and pedestrian circulation, including traffic counts, right-of-way improvements, access points, travel ways, parking, loading, stacking, sidewalks, and trails.
- (f) A landscape plan including all proposed open space, screening, landscaping, and the general location and type of significant or specimen trees located within the limits of the proposed special use permit area.
- (g) Tabulations for parking, tree canopy, parking lot landscaping, and other zoning requirements as applicable to the project.

Sec. 130-545. Review procedures.

- (a) Upon submission and acceptance of an application for a rezoning, the City will:
 - (1) Transmit the application to applicable departments and agencies for review and evaluate the responses generated by the reviews. The City may request that the applicant revise the application as necessary to address review comments. No agent of the City is authorized to suggest, demand, or accept a proffer that is unreasonable under applicable law.
 - (2) The City shall forward its report and recommendation with the application to the Planning Commission for public hearing. An application shall not be scheduled for public hearing until all requirements of §130-543 and §130-544 have been satisfied.
- (b) Planning Commission.
 - (1) The Planning Commission shall not recommend any request for a rezoning unless the application has been advertised and public hearings have been held in accordance with the requirements of this article and State Code.

(2) The Planning Commission shall hold at least one public hearing and make its recommendation to the City Council within 100 calendar days of the public hearing date, 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.

(c) City Council.

(1) The City Council shall not act upon any request for a rezoning unless the application has been advertised and public hearings have been held in accordance with the requirements of this article and State Code.

(2) The City Council shall hold at least one public hearing after receiving the recommendation of the Planning Commission and shall take final action to approve or deny the request.

(3) If the City Council approves the rezoning request, it may accept any or all of the proffers proposed by the applicant that are permitted by applicable law to mitigate the impacts of the proposed rezoning. Each such proffer shall be reasonably related both in nature and extent to the impact of the proposed development.

Sec. 130-546. Proffer declaration.

(a) At the time each proffer is submitted to the City, it shall be accompanied by a statement signed by the applicant and the owner or their agents which states either (i) "Each proffer made in connection with this application for rezoning was made voluntarily and complies with applicable law. Each proffer is reasonably related both in nature and extent to the impacts of the proposed development. No agent of the City has suggested or demanded a proffer that is unreasonable under applicable law." or (ii) that the applicant or the owner or both disagree with the statement in (i) above and all the facts and reasons which led to that disagreement.

(b) All statements, plans, profiles elevations, and other demonstrative material submitted with an application for rezoning shall be annotated with one of the following statements. Each statement shall be signed by the applicant; however the applicant is not restricted to use the same statement on every submitted document. The applicant may vary statements as necessary to proffer certain statements, plans, profiles, and elevations, and not proffer other information or pieces of demonstrative material related to the same application:

(1) *Commitment to proffer.* "I hereby proffer that the development of the subject property of this application shall be in substantial conformity with the conditions set forth in this submission, unless an amendment thereto is mutually agreed upon by the City Council and the undersigned."

(2) *Noncommitment to proffer.* "The conditions set forth in this submission are not to be construed as to be binding on the development of the subject property of this application."

(c) The City Council may accept amended proffers once the public hearing has begun provided the amended proffers do not materially affect the overall proposal. If 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.

Sec. 130-547. Validity and conformity with proffers.

- (a) If an amendment to the Zoning Map is adopted subject to the conditions proffered by the applicant, the property in question shall be appropriately annotated on the Zoning Map and all other land records referencing the conditions as adopted.
- (b) Such proffered conditions shall become a part of the zoning requirements applicable to the property in question unless subsequently changed by an amendment to the Zoning Map, and such conditions shall be in addition to the specific requirements set forth in this chapter for the zoning district in question.
- (c) Upon approval, any site plan, subdivision plat, building permit, or zoning certification submitted for the development of the property in question shall be in substantial conformity with all proffered statements, plans, profiles, elevations, or other demonstrative materials. No development shall be approved by the City in the absence of substantial conformity.
- (d) For the purpose of this section, substantial conformity shall mean that conformity which leaves a reasonable margin for adjustment due to final engineering data, but conforms to the general nature of the development, the specific uses, the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented by the applicant.

Sec. 130-548. Withdrawal of application.

An application for a rezoning may be withdrawn voluntarily by the applicant at any time; however, there shall be no refund of rezoning fees.

Sec. 130-549. Refiling following denial.

If an application for rezoning is denied, no new application for the same use shall be filed within one year of the denial on the same parcel of land.

Secs. 130-550 – 130-560. Reserved.

DIVISION 4. PUBLIC HEARING REQUIREMENTS

Sec. 130-561. Generally.

- (a) Advertisements of all public hearings required by State Code or this chapter shall be in accordance with §15.2-2204 of the Code of Virginia and the requirements of §130-562.
- (b) For written notifications required by §15.2-2204(b) of the Code of Virginia, in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.
- (c) The cost of all notice requirements shall be paid by the applicant in addition to any other fees involved in the application. The City shall bill the applicant for such costs.

Sec. 130-562. Public hearing sign posting.

- (a) Notice shall be given of a rezoning, special use permit, or any other land application requiring a public hearing by the chapter or State Code, by the posting of at least one sign on the property involved at least 14 calendar days prior to the date of the public hearing. Additional signs shall be required for properties with more than one street frontage, or properties with 200 feet or more of a single street frontage.
- (b) Public notice signs shall be supplied by the City and shall be posted by the applicant, who shall make affidavit that posting in accordance with these requirements was done, and shall file such affidavit within three calendar days after posting of the property.
- (c) Public notice signs shall be posted between four and six feet in height in the following manner:
 - (1) All signs shall be posted so as to be visible from the street right-of-way.
 - (2) Signs shall be posted adjacent to the street right-of-way abutting the site, no more than ten feet from the edge of such right-of-way.
 - (3) If more than one street abuts the site, at least one sign shall be posted along each abutting street.
 - (4) If no street abuts the site, at least one sign shall be posted along the closest public streets, with a note added to locate the property in direction and distance from the sign.
 - (5) If more than one sign is posted along the same road frontage, such signs may be required to be posted at least 100 feet apart.
- (d) The applicant shall be responsible for maintaining the signs in good condition until the public hearing and shall replace damaged or remove signs as soon as practical.

Secs. 130-563 – 130-600. Reserved.