

**TITLE XV: LAND USAGE**

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## CHAPTER 150: BUILDINGS

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*Authority of the town to regulate buildings generally, see Char. Art, VIII, § 1*

***Statutory reference:***

*Authority to adopt county unsafe marine structure ordinance, see VA Code § 15.2-909*

*Authority to adopt county unsafe structure ordinance, see VA Code § 15.2-909*

### ***BUILDING OFFICIAL***

#### **§ 150.001 ESTABLISHMENT OF OFFICE; DESIGNATION OF EXECUTIVE OFFICIAL.**

The office of Building Official is hereby created and the executive official in charge shall be known as the Building Official.

(1961 Code, § 5-1)

#### **§ 150.002 APPOINTMENT AND TERM; CODE ENFORCEMENT OFFICER AS BUILDING OFFICIAL.**

The Building Official shall be appointed by the Town Council and his or her appointment shall continue during good behavior and satisfactory service; provided, that until otherwise provided by the Town Council, the Code Enforcement Officer shall be, and act in the capacity of, the Building Official.

(1961 Code, § 5-2)

***Cross-reference:***

*Code Enforcement Officer generally, see § 32.06*

#### **§ 150.003 DUTIES.**

The Building Official shall enforce all laws relating to the construction, alteration, removal and demolition of buildings and structures.

(1961 Code, § 5-3)

**§ 150.004 RIGHT OF ENTRY.**

The Building Official, in the discharge of his or her official duties, and upon proper identification, shall have authority to enter any building, structure or premises at any reasonable hour.  
(1961 Code, § 5-4)

**§ 150.005 DESIGNATION OF ACTING BUILDING OFFICIAL.**

During temporary absence or disability of the Building Official, the Town Council shall designate an acting Building Official.  
(1961 Code, § 5-5)

***BUILDING CODE***

**§ 150.020 ADOPTION.**

For the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and other structures, that Code known as the Virginia Uniform Statewide Building Code (USBC) is hereby adopted by reference and incorporated in this chapter as fully as if set out at length in this chapter.  
(1961 Code, § 5-6)

**§ 150.021 MODIFICATIONS AND THE LIKE.**

(A) Wherever the term “building official” is used in the National Building Code, Abbreviated Edition, adopted as provided in § 150.20, it shall be taken to mean the Building Official for the Town of Irvington, Virginia.

(B) Wherever the term “corporation counsel” is used in the National Building Code, Abbreviated Edition, so adopted, it shall be held to mean the Town Attorney for the Town of Irvington, Virginia.

(C) Wherever the word “municipality” is used in the National Building Code, Abbreviated Edition, so adopted, it shall be held to mean the Town of Irvington, Virginia.

(D) Subsection 7.1, § 7, of the National Building Code, Abbreviated Edition, so adopted, shall be amended to read as follows:

**7.1. NONCOMPLIANCE.**

Any person who shall violate a provision of this Building Code or fails to comply therewith or with any of the requirements thereof, or who shall erect, construct, alter or repair, or has erected, constructed, altered or repaired a building or structure or portion thereon, in violation of a detailed statement or plan submitted and approved thereunder, or of a permit or certificate issued thereunder, shall be guilty of a misdemeanor punishable by a fine of not more than \$500 or by imprisonment not exceeding 12 months, or by both such fine and imprisonment. Also the owner of a building or structure or portion thereof, or of the premises where anything in violation of this Building Code shall be placed or shall exist, and an architect, engineer, builder, contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of such violation shall each be guilty of a separate offense and, upon conviction thereof, shall be punishable by a fine of not more than \$500 or by imprisonment not exceeding 12 months, or by both such fine and imprisonment.

(1961 Code, § 5-7)

**§ 150.022 WHEN AND WHERE COPIES MAY BE OBTAINED; FILING OF COPIES.**

(A) Copies of the National Building Code, Abbreviated Edition, adopted as provided in § 150.020, may be obtained at the office of the Town Clerk during regular business hours.

(B) Three certified copies of such National Building Code, Abbreviated Edition so adopted, and a reasonable number of additional copies thereof shall be kept in the office of the Code Enforcement Officer.

(1961 Code, § 5-8)

***BUILDING MAINTENANCE CODE*****§ 150.035 OFFICIAL ACTION.**

(A) The Town Council ordains that the office of the Building Inspector for the county is hereby designated to act as the enforcing agency for the enforcement of the Virginia Uniform Statewide Building Code, (USBC), being 13 VAC 5-63, Part III, Maintenance of Exiting Structures.

(B) Enforcement shall be according to the terms of this subchapter.  
(Ord. passed 6-11-2009)

**§ 150.036 ENFORCEMENT.**

The enforcement procedures shall be instituted by the code official who is designated to be the Building Inspector for the county, and administered in accordance with the provisions set forth in § 150.038 when a written complaint is received by the Zoning Administrator for the town and forwarded to the County Building Inspector.

(Ord. passed 6-11-2009)

**§ 150.037 APPEALS.**

The Local Board of Building Code Appeals is hereby designated as the appeals board to hear appeals arising from the application of the provisions of the Code.

(Ord. passed 6-11-2009)

**§ 150.038 ADMINISTRATIVE PRACTICES.**

(A) The code official shall establish such procedures or requirements as may be necessary for administration and enforcement of this subchapter.

(B) The procedures are to be approved by the Town Council.

(C) Duplicate copies of all files generated under this subchapter will be maintained at the town office.

(Ord. passed 6-11-2009)

**§ 150.039 COSTS.**

The costs of enforcement of this subchapter will be assessed to the owner or owners of the structure and will be collectible and shall have the same priority as liens for taxes on real estate within the town, as if such taxes were assessed.

(Ord. passed 6-11-2009)

***UNSAFE STRUCTURES***

**§ 150.050 TITLE.**

This subchapter shall be known and may be cited as the “Town of Irvington Unsafe Structure Ordinance.”

(Ord. passed - -)

**§ 150.051 PURPOSE.**

The purpose of this subchapter shall be to require the removal, repair and the like of hazardous buildings, walls or any other structure within the town.

(Ord. passed - -)

**§ 150.052 ORDER TO REMOVE, REPAIR AND THE LIKE; DUTY OF OWNER TO COMPLY.**

The owners of property herein shall at such time or times as the Town Council may prescribe, remove, repair or secure any building, wall or any other structure that might endanger the public health or safety of other residents of the town.

(Ord. passed - -) Penalty, see § 150.999

**§ 150.053 REMOVAL, REPAIR AND THE LIKE BY TOWN UPON FAILURE OF THE OWNER.**

(A) The Town Council through its own agents or employees may remove, repair or secure any building, wall or any other structure that might endanger the public health or safety of other residents of the town, if the owner or lienholder of such property, after reasonable notice and reasonable time to do so, has failed to remove, repair or secure the building, wall or other structure.

(B) For purposes of this section, repair may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings.

(C) For purposes of this section, reasonable notice includes a written notice:

(1) Mailed by certified or registered mail, return requested, sent to the last known address of the property owner; and/or

(2) Published once a week for two successive weeks in a newspaper having general circulation in the town.

(D) No action shall be taken by the town to remove, repair or secure any building, wall or other structure for at least 30 days following the later of the return of the receipt, or newspaper publication, except that the town may take action to prevent unauthorized access to the building within seven days of such notice if the structure is deemed to pose as significant threat to public safety and such fact is stated in the notice.

(Ord. passed - -)



**§ 150.054 COSTS CHARGED TO OWNERS; MANNER OF COLLECTION.**

If the Town Council through its own agents or employees removes, repairs or secures any building, wall or any other structure after complying with the notice provisions of this subchapter, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and to the extent applicable may be collected by the town as taxes and levies are collected.

(Ord. passed - -)

**§ 150.055 PUBLICATION OF NOTICE WHEN OWNER’S IDENTITY UNKNOWN.**

If the identity or whereabouts of the lawful owner is unknown or not able to be ascertained after a reasonable search and after lawful notice has been made to the last known address of any known owner, the Town Council through its own agents or employees may repair any building, wall or any other structure after giving notice by publication once each week for two weeks in a newspaper of general circulation in the area where such property is located.

(Ord. passed - -)

**§ 150.056 CHARGES CONSTITUTE LIEN AGAINST PROPERTY.**

(A) Every charge authorized by this subchapter with which the owner of any such property shall have been assessed and which remains unpaid, to the extent applicable, shall constitute a lien against the such property ranking on a parity with liens for unpaid real estate taxes and enforceable in the same manner as such taxes may be collected.

(B) The town may waive such liens in order to facilitate the sale of the property.

(C) Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

(Ord. passed - -)

***UNSAFE MARINE STRUCTURES***

**§ 150.070 TITLE.**

This subchapter shall be known and may be cited as the “Town of Irvington Unsafe Marine Structure Ordinance.”

(Ord. passed - -)

**§ 150.071 PURPOSE.**

The purpose of this subchapter shall be to require the removal, repair and the like of hazardous wharves, piers, pilings, bulkheads, vessels and the like of the waterways within the town.

(Ord. passed - -)

**§ 150.072 ORDER TO REMOVE, REPAIR AND THE LIKE; DUTY OF OWNER TO COMPLY.**

(A) The owners of property herein shall at such time or times as the Town Council may prescribe, remove, repair or secure any vessel which has been abandoned or any wharf, pier, piling bulkhead or any other structure or vessel which may endanger the public health or safety of other persons, or which might constitute an obstruction or hazard to the lawful use of the waters within or adjoining the town.

(B) If such property is deemed to be abandoned, the Town Council may designate and empower an official to ascertain the lawful owner of such property and to have the owner repair, remove or secure such property.

(Ord. passed - -) Penalty, see § 150.999

**§ 150.073 REMOVAL, REPAIR AND THE LIKE BY TOWN UPON FAILURE OF THE OWNER.**

The Town Council through its own agents or employees may remove, repair or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead or any other structure or vessel which might endanger the public health or safety of other persons or which might constitute a hazard or obstruction to the lawful use of the waters within or adjoining the town, if the owner of such property after reasonable notice and reasonable time to do so, has failed to remove, repair or secure such wharf, pier, piling, bulkhead or any other structure or vessel.

(Ord. passed - -)

**§ 150.074 COSTS CHARGED TO OWNERS; MANNER OF COLLECTION.**

If the Town Council through its own agents or employees removes, repairs or secures any wharf, pier, piling, bulkhead or other structure or vessel after complying with the notice provisions of this subchapter, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and to the extent applicable may be collected by the town as taxes and levies are collected.

(Ord. passed - -)

**§ 150.075 PUBLICATION OF NOTICE WHEN OWNER'S IDENTITY UNKNOWN.**

If the identity or whereabouts of the lawful owner is unknown or not able to be ascertained after a reasonable search and after lawful notice has been made to the last known address of any known owner,

the Town Council through its own agents or employees may repair such wharf, pier, piling, bulkhead or any other structure or vessel or remove such property after giving notice by publication once each week for two weeks in a newspaper of general circulation in the area where such property is located.  
(Ord. passed - -)

**§ 150.076 CHARGES CONSTITUTE LIEN AGAINST PROPERTY.**

Every charge authorized by this subchapter with which the owner of any such property shall have been assessed and which remains unpaid, to the extent applicable, shall constitute a lien against the owner's real property, and such lien shall be recorded in the Judgment Lien Docket Book in the Circuit Court of the county. Such lien may also be reduced to a personal judgment against the owner.  
(Ord. passed - -)

**§ 150.999 PENALTY.**

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Any violation of §§ 150.050 through 150.056 shall result in a civil penalty against the owner of the property of \$100 per day for each day a violation continues after 30 days following the later of the return receipt or the newspaper publication, provided, however that such civil penalty shall not exceed \$1,000.  
(Ord. passed - -)



## **CHAPTER 151: COMPREHENSIVE PLAN**

### Section

151.01 Adopted by reference

### **§ 151.01 ADOPTED BY REFERENCE.**

The Town of Irvington Comprehensive Plan is hereby adopted by reference and incorporated herein as fully as if set out at length in this code of ordinances.

(Ord. passed 11-29-2006)



## CHAPTER 152: FLOODPLAIN REGULATIONS

### Section

#### *General Provisions*

- 152.01 Statutory authorization and purpose
- 152.02 Applicability
- 152.03 Compliance and liability
- 152.04 Abrogation and greater restrictions
- 152.05 Definitions

#### *Establishment of Zoning Districts*

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- 152.21 District boundary changes
- 152.22 Interpretation of district boundaries
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#### *District Provisions*

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- 152.38 Standards for the Special Floodplain District
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#### *Structures*

- 152.65 Existing structures in floodplain areas

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- 152.82 Use and interpretation of FIRMSs

152.83 Jurisdictional boundary changes

152.84 Letters of map revision

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### ***GENERAL PROVISIONS***

#### **§ 152.01 STATUTORY AUTHORIZATION AND PURPOSE.**

(A) This chapter is adopted pursuant to the authority granted to localities by VA Code § 15.2-2280.

(B) The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

(1) Regulating uses, activities and development which, alone or in combination with other existing or future uses, activities and development, will cause unacceptable increases in flood heights, velocities and frequencies;

(2) Restricting or prohibiting certain uses, activities and development from locating within districts subject to flooding;

(3) Requiring all those uses, activities and developments that do occur in flood prone districts to be protected and/or flood-proofed against flooding and flood damage; and

(4) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(Ord. passed - -; Ord. passed 9-11-2014)

#### **§ 152.02 APPLICABILITY.**

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of the town and identified as being flood prone.

(Ord. passed - -; Ord. passed 9-11-2014)

#### **§ 152.03 COMPLIANCE AND LIABILITY.**

(A) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered except in full compliance with the terms and provisions



of this chapter and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this chapter.

(B) (1) The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection.

(2) Larger floods may occur on rare occasions.

(3) Flood heights may be increased by human-made or natural causes, such as ice jams and bridge openings restricted by debris.

(4) This chapter does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.

(C) Records of actions associated with administering this chapter shall be kept on file and maintained by the Zoning Administrator.

(D) This chapter shall not create liability on the part of the town or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Ord. passed - -; Ord. passed 9-11-2014) Penalty, see § 152.99

**§ 152.04 ABROGATION AND GREATER RESTRICTIONS.**

This chapter supersedes any ordinance currently in effect in flood prone districts. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive. (Ord. passed - -; Ord. passed 9-11-2014)

**§ 152.05 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year. Also referred to as “100-year flood”.

**BASE FLOOD ELEVATION.** The water surface elevation of the base flood in relation to the datum specified on the Federal Emergency Management Agency Flood Insurance Rate Map.

**BASEMENT.** Any area of the building having its floor sub-grade (below ground level) on all sides.

**BOARD OF ZONING APPEALS.** The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this chapter.

**COASTAL A ZONE.** Flood hazard areas that have been delineated as subject to wave heights between one and one-half and three feet.

**DEVELOPMENT.** Any human-made change to improved or unimproved real estate, including, but not limited to, building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**ELEVATED BUILDING.** A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings or columns (posts and piers).

**ENCROACHMENT.** The advance or infringements of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impeded or alter the flow capacity of a floodplain.

**EXISTING CONSTRUCTION.** Structures for which the **START OF CONSTRUCTION** commenced before August 4, 1987. **EXISTING CONSTRUCTION** may also be referred to as “existing structures”.

**FLOOD or FLOODING.**

(1) A general or temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters;

(b) The unusual and rapid accumulation or runoff of surface waters from any source; or

(c) Mudflows which are proximately caused by flooding as defined in division (1)(b) above of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(2) The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or and abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in division (1)(a) above of this definition.

**FLOOD INSURANCE RATE MAP (FIRM).** An official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A **FIRM** that has made available digitally is called a **DIGITAL FLOOD INSURANCE RATE MAP (DFIRM)**.

**FLOOD INSURANCE STUDY (FIS).** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

**FLOOD-PROOFING.** Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**FREEBOARD.** A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. **FREEBOARD** tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings and the hydrological effect of urbanization in the watershed. When a **FREEBOARD** is included in the height of a structure, the flood insurance premiums may be cheaper.

**HIGHEST ADJACENT GRADE.** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE.** Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior; or

(b) Directly by the Secretary of the Interior in states without approved programs.

**LOWEST ADJACENT GRADE.** The lowest natural elevation of the ground surface next to the walls of a structure.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's **LOWEST FLOOR**; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 C.F.R. § 60.3.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term **MANUFACTURED HOME** also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days, but does not include a recreational vehicle.

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**NEW CONSTRUCTION.**

(1) For the purpose of determining insurance rates, structures for which the start of construction commenced on or after August 4, 1987 and includes any subsequent improvements to such structures.

(2) For floodplain management purposes, **NEW CONSTRUCTION** means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**POST-FIRM STRUCTURES.** A structure for which construction or substantial improvement occurred after August 4, 1987.

**PRE-FIRM STRUCTURES.** A structure for which construction or substantial improvement occurred on or before August 4, 1987.

**PRIMARY FRONTAL DUNE.** A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

**RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

**REPETITIVE LOSS STRUCTURE.** A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions, in which the cost of the repair, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

**SEVERE REPETITIVE LOSS STRUCTURE.** A structure that:

- (1) Is covered under a contract for flood insurance made available under the NFIP; and
- (2) Has incurred flood related damage:

(a) For which four or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

(b) For which at least two separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

**SHALLOW FLOODING AREA.**

(1) A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

- (2) Such flooding is characterized by ponding or sheet flow.

**SPECIAL FLOOD HAZARD AREA.** The land in the floodplain subject to 1% or greater chance of being flooded in any given year as determined in § 152.20.

**START OF CONSTRUCTION.**

(1) For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (Pub. L. No. 97-348), being U.S.C. §§ 3501 et seq., means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date.

(2) The **ACTUAL START** means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.

(3) Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(4) For a substantial improvement, the **ACTUAL START OF THE CONSTRUCTION** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as manufactured home.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged conditions would equal or exceed 50% of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.**

(1) Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceed 50% of the market value of the structure before the start of construction of the improvement.

(2) This term includes structures which have incurred repetitive loss or substantial damage regardless of the actual repair work performed.

(3) The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;

(b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure; or

(c) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

***VIOLATION.***

(1) The failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

(2) A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in §§ 152.20 through 152.23 and 152.35 through 152.39 is presumed to be in ***VIOLATION*** until such time as that documentation is provided.

***WATERCOURSE.***

(1) A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically.

(2) ***WATERCOURSE*** includes specifically designed areas in which substantial flood damage may occur.

(Ord. passed - -; Ord. passed 9-11-2014)

***ESTABLISHMENT OF ZONING DISTRICTS***

**§ 152.20 DESCRIPTION OF DISTRICTS.**

***(A) Basic of districts.***

(1) (a) The various floodplain districts shall include special flood hazard areas.

(b) The basis for the delineation of these districts shall be the flood insurance study (FIS) and the flood insurance rate maps (FIRM) for the town prepared by the Federal Emergency Management Agency for the county and incorporated areas dated October 2, 2014, as amended and all subsequent revisions or amendments thereto.

(2) The town may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.

(3) The boundaries of the Special Flood Hazard Area and Floodplain Districts are established as shown on the Flood Insurance Rate Map which is declared to be a part of this chapter and which shall be kept on file at the town offices.

(a) The Floodway District is in an AE Zone and is delineated, for purposes of this chapter, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the

1% annual chance flood without increasing the water surface elevation of that flood more than one foot at any point. No floodways have been designated on the FIRM in the county or the town.

(b) The AE Zone on the FIRM accompanying the FIS shall be those areas for which 1% annual chance flood elevations have been provided and the floodway has not been delineated.

(c) The A Zone on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the 1% annual chance floodplain boundary has been approximated.

(d) The Coastal A Zone shall be those Zone A or Zone AE areas, as defined by the VA USBC, that are subject to wave heights between one and half feet and three feet, and identified on the FIRM by the Limit of Moderate Wave Action (LiMWA) line.

(B) *Overlay concept.*

(1) The floodplain districts described above shall be overlays to the existing underlying districts as shown on the official zoning ordinance map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

(2) If there is any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain district shall apply.

(3) In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

(Ord. passed - -; Ord. passed 9-11-2014)

**§ 152.21 DISTRICT BOUNDARY CHANGES.**

(A) The delineation of any of the floodplain districts may be revised by the town where natural or human-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the United States Army Corps of Engineers or other qualified agency, or an individual documents the need for such change.

(B) However, prior or any such change, approval must be obtained for the Federal Emergency Management Agency.

(Ord. passed - -; Ord. passed 9-11-2014)



**§ 152.22 INTERPRETATION OF DISTRICT BOUNDARIES.**

(A) Initial interpretation of the boundaries of the floodplain districts shall be made by the Zoning Officer.

(B) Should a dispute arise concerning the boundaries of any of the districts, the Board of Zoning Appeals shall make the necessary determination.

(C) The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his or her case to the Board and to submit his or her own technical evidence if he or she so desires.

(Ord. passed - -; Ord. passed 9-11-2014)

**§ 152.23 SUBMITTING TECHNICAL DATA.**

(A) A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions.

(B) As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the change by submitting technical or scientific data.

(C) Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

(Ord. passed - -; Ord. passed 9-11-2014)

***DISTRICT PROVISIONS***

**§ 152.35 PERMIT AND APPLICATION REQUIREMENTS.**

(A) *Permit requirement.*

(1) All uses, activities and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a zoning permit.

(2) Such development shall be undertaken only in strict compliance with the provisions of this chapter and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the town's subdivision regulations.

(3) Prior to the issuance of any such permit, the Floodplain Administrator shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding.

(4) Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels of floodways or any watercourse, drainage ditch or any other drainage facility or system.

(B) *Site plans and permit applications.* All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

(1) The elevation of the base flood at the site;

(2) The elevation of the lowest floor (including basement);

(3) For structures to be flood-proofed (nonresidential only), the elevation to which the structure will be flood-proofed; and

(4) Topographic information showing existing and proposed ground elevations.

(Ord. passed - -; Ord. passed 9-11-2014)

#### § 152.36 GENERAL STANDARDS.

(A) The following provisions shall apply to all permits.

(1) New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.

(2) Manufactured homes shall be anchored to prevent flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.

(3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

(8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(B) In addition to divisions (A)(1) through (A)(8) above, in all special flood hazard areas, the additional provisions shall apply.

(1) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream and the like within this jurisdiction, a permit shall be obtained from the United States Corps of Engineers, the Virginia Department of Environmental Quality and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Emergency Management Agency.

(2) The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(Ord. passed - -; Ord. passed 9-11-2014)

**§ 152.37 SPECIFIC STANDARDS.**

In all special flood hazard areas where base flood elevations have been provided in the Flood Insurance Study or generated according § 152.20, the following provisions shall apply.

(A) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated at least one foot above the base flood level. See § 152.38 for requirements in the Coastal A zones.

(B) *Nonresidential construction.*

(1) New construction or substantial improvement of any commercial, industrial or nonresidential building (or manufactured home) shall have the lowest floor, including basement, elevated at least one foot above the base flood level. See § 152.38 for requirements in the Coastal A zones.

(2) Buildings located in all A1-30, AE and AH zones may be flood-proofed in the lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and are the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this

division (B)(2) are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are flood-proofed, shall be maintained by the Floodplain Administrator.

(C) *Elevated buildings.* Fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

(1) Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking vehicles (garage door) or limited storage of maintenance equipment (standard exterior door) or entry to the living area (stairway or elevator);

(2) Be constructed entirely of flood resistant materials below the regulatory flood protection elevation; and

(3) Include, in Zones A, AO, AE and A1-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

(a) Provide a minimum of two openings on different sides of each enclosed area subject to flooding;

(b) The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding;

(c) If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit;

(d) The bottom of all required openings shall be no higher than one foot above the adjacent grade;

(e) Openings may be equipped with screens, louvers or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

(f) Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

(D) *Standards for manufactured homes and recreational vehicles.*

(1) All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision, must meet all the requirements

for new construction, including the elevation and anchoring requirements in § 152.36(A)(1) and (A)(2) and division (A) above.

(2) All recreational vehicles placed on sites must either:

(a) Be on the site for fewer than 180 consecutive days;

(b) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or

(c) Meet all the requirements for manufactured homes in § 152.36 and this division (D). (Ord. passed - -; Ord. passed 9-11-2014)

**§ 152.38 STANDARDS FOR THE SPECIAL FLOODPLAIN DISTRICT.**

The following provisions shall apply within the Special Floodplain District.

(A) Until a regulatory floodway is designated, no new construction, substantial improvements or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE on the flood insurance rate map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the town.

(B) Development activities in Zones A1-30, AE and AH on the town's flood insurance rate map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies, with the town's endorsement, for a conditional flood insurance rate map revision, and receives the approval of the Federal Emergency Management Agency. The requirement in C.F.R. § 60.3(c)(10) only applies along rivers, streams, and other watercourses where FEMA has provided base flood elevations. The requirement does not apply along lakes, bays and estuaries, and the ocean coast.

(C) (1) In A Zones, the base flood elevations and floodway information from federal, state and other acceptable sources shall be used, when available. Where the specific 1% annual chance flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles and the like, then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted non-detailed technical concepts, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations and the like shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. The Floodplain Administrator reserves the right to require a hydrologic

and hydraulic analysis for any development. During the permitting process, the Floodplain Administrator shall obtain:

(a) The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and

(b) If the structure has been flood-proofed in accordance with the requirements of this chapter, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.

(2) Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

(D) In Coastal A zones, buildings and structures within this zone shall have the lowest floor elevated to or above the base flood elevation plus one foot of freeboard, and must comply with the provisions in §§ 152.35 and 152.36.

(Ord. passed - -; Ord. passed 9-11-2014)

#### **§ 152.39 STANDARDS FOR SUBDIVISION PROPOSALS.**

(A) All subdivision proposals shall be consistent with the need to minimize flood damage.

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(D) Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is lesser.

(Ord. passed - -; Ord. passed 9-11-2014)

### ***VARIANCES***

#### **§ 152.50 FACTORS TO BE CONSIDERED.**

(A) Variances shall be issued only upon:

(1) A showing of good and sufficient cause;

(2) After the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant; and

(3) (a) After the Board of Zoning Appeals has determined that the granting of such variance will not result in:

1. Unacceptable or prohibited increases in flood heights;
2. Additional threats to public safety; and
3. Extraordinary public expense.

(b) And will not:

1. Create nuisances;
2. Cause fraud or victimization of the public; or
3. Conflict with local laws or ordinances.

(B) While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

(C) Variances may be issued for the new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(D) In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

(1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development or activity within any floodway district that will cause any increase in the 100-year or 1% chance flood elevation;

(2) The danger that materials may be swept on to other lands or downstream to the injury of others;

(3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions;

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(4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;

(5) The importance of the services provided by the proposed facility to the community;

(6) The requirements of the facility for a waterfront location;

(7) The availability of alternative locations not subject to flooding for the proposed use;

(8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;

(9) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area;

(10) The safety of access by ordinary and emergency vehicles to the property in time of flood;

(11) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;

(12) The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure; and

(13) Such other factors which are relevant to the purposes of this chapter.

(E) The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

(F) (1) Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in:

(a) Unacceptable or prohibited increases in flood heights;

(b) Additional threats to public safety; and

(c) Extraordinary public expense.

(2) And will not:

(a) Create nuisances;



- (b) Cause fraud or victimization of the public; or
- (c) Conflict with local laws or ordinances.

(G) Variances shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief.

(H) The Board of Zoning Appeals shall notify the applicant for a variance, in writing that the issuance of a variance to construct a structure below the 100-year or 1% chance of flood elevation:

- (1) Increases the risks to life and property; and
- (2) Will result in increased premium rates for flood insurance.

(I) (1) A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances.

(2) Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Emergency Management Agency.  
(Ord. passed - -; Ord. passed 9-11-2014)

***STRUCTURES***

**§ 152.65 EXISTING STRUCTURES IN FLOODPLAIN AREAS.**

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions.

(A) Existing structures in the floodway area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.

(B) Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain areas to an extent or amount of less than 50% of its market value shall conform to the VA USBC and the appropriate provisions of this chapter.

(C) The modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of 50% or more of its

market value shall be undertaken only in full compliance with this chapter and shall require the entire structure to conform to the VA USBC.

(Ord. passed - -; Ord. passed 9-11-2014)

### *ADMINISTRATION*

#### **§ 152.80 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.**

(A) The Zoning Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.

(B) The Floodplain Administrator may:

(1) Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the town chief executive officer.

(2) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors and other employees.

(3) Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in 44 C.F.R. § 59.22. (Ord. passed 9-11-2014)

#### **§ 152.81 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

(A) Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA);

(B) Interpret floodplain boundaries and provide available base flood elevation and flood hazard information;

(C) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations;

(D) Review applications to determine whether all necessary permits have been obtained from the federal, state or local agencies from which prior or concurrent approval is required; in particular,

permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the state;

(E) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA;

(F) Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that federal flood insurance is not available on such structures; areas subject to this limitation are shown on flood insurance rate maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA);

(G) Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met;

(H) Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed;

(I) Review elevation certificates and require incomplete or deficient certificates to be corrected;

(J) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the town, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations;

(K) Maintain and permanently keep records that are necessary for the administration of these regulations, including:

(1) Flood insurance studies, flood insurance rate maps (including historic studies and maps and current effective studies and maps) and letters of map change; and

(2) Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations;

(L) Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders and require permit holders to take corrective action;

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(M) Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation;

(N) Administer the requirements related to proposed work on existing buildings:

(1) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged; and

(2) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage;

(O) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for increased cost of compliance coverage under NFIP flood insurance policies;

(P) Notify the Federal Emergency Management Agency when the corporate boundaries of the town have been modified and:

(1) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

(2) If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA;

(Q) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA; and

(R) It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the community, whether or not those hazards have been specifically delineated geographically (such as, via mapping or surveying).

(Ord. passed 9-11-2014)

**§ 152.82 USE AND INTERPRETATION OF FIRMS.**

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

(A) Where field surveyed topography indicates that adjacent ground elevations:

(1) Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations; and

(2) Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the SFHA;

(B) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.

(C) Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.

(D) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.

(E) If a preliminary flood insurance rate map and/or a preliminary flood insurance study has been provided by FEMA:

(1) Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.

(2) Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to § 152.38(C)C and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.

(3) Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

(Ord. passed 9-11-2014)

**§ 152.83 JURISDICTIONAL BOUNDARY CHANGES.**

(A) The county floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

(B) In accordance with the C.F.R. Title 44 Subpart (B), § 59.22(a)(9)(v), all NFIP participating communities must notify the Federal Emergency Management Agency and optionally the Virginia Department of Conservation and Recreation Department of Dam Safety and Floodplain Management in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

(C) In order that all flood insurance rate maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

(Ord. passed 9-11-2014)

**§ 152.84 LETTERS OF MAP REVISION.**

When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a conditional letter of map revision and then a letter of map revision. Example cases:

(A) Any development that causes a rise in the base flood elevations within the floodway;

(B) Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation; and

(C) Alteration or relocation of a stream (including but not limited to installing culverts and bridges)

44 C.F.R. §§ 65.3 and 65.6(a)(12).

(Ord. passed 9-11-2014)

**§ 152.99 PENALTY.**

(A) Any person who fails to comply with any of the requirements or provisions of this chapter or directions of the Director of Planning or any authorized employee of the town shall be guilty of a misdemeanor and upon conviction there of may be fined up to \$250 per day.

(B) The VA USBC addresses building code violations and the associated penalties in VA USBC §§ 104 and 115. Violations and associated penalties of the code of the town are addressed in § 154.999.

(C) In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this chapter. The imposition of a fine or penalty for any violation of or noncompliance with this chapter shall not excuse the violation or noncompliance or permit it to continue and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this chapter may be declared by the town to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this chapter.

(Ord. passed - -; Ord. passed 9-11-2014)





## CHAPTER 153: SUBDIVISIONS

### Section

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**GENERAL PROVISIONS****§ 153.001 PREAMBLE.**

(A) This chapter regulates the subdivision of property into lots, streets, alleys and other public areas, to provide for making and recording of plats of such subdivision and the certification of same and provide for approval of plats.

(B) Whereas, Article 7 of the Virginia Planning Act found in the VA Code §§ 15.2-2240 et seq., as amended, the governing body of the town is authorized to adopt regulations to provide:

(1) For plat details which shall meet the standard for plats as adopted under VA Code § 42.1-82 of the Virginia Public Records Act (VA Code §§ 42.1-76 et seq.);

(2) For the coordination of streets within the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage;

(3) For adequate provisions for drainage and flood control and other public purposes, and for light and air;

(4) For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewers and other utilities or other facilities installed;

(5) (a) For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use, and maintained by the locality, the state or other public agency, and for the provision of other site-related improvements required by local ordinances for vehicular ingress and egress, for public streets, for structures necessary to ensure stability of critical slopes, and for stormwater management facilities, financed or to be financed in whole or in part by private funds only if the owner or developer:

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1. Certifies to the governing body that the construction costs have been paid to the person constructing such facilities;

2. Furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or property bond, with surety satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with the surety, in like amount and so conditioned; or

3. Furnishes to the governing body a bank or savings and loan association's letter of credit on certain designated funds satisfactory to the governing body as to the bank or savings and loan association, the amount and the form.

(b) The amount of such certified check, cash escrow, bond or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation and potential damage to existing roads or utilities.

(c) If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary plat and furnishes to the governing body a certified check, cash escrow, bond or letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the locality, the state or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary plat for a period of five years from the recordation date of the first section, subject to the terms and conditions of this division (B)(5) and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded. In the event a governing body of a county, wherein the highway system is maintained by the Department of Transportation, has accepted the dedication of a road for public use and such road due to factors other than its quality of construction is not acceptable into the secondary system of state highways, then such governing body may, if so provided by its subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and indemnifying bond, with surety satisfactory to the governing body, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body may accept a bank or savings and loan association's letter of credit on certain designated funds satisfactory to the governing body as to the bank of savings and loan association, the amount and the form, or accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways and assume the subdivider's or developer's liability for maintenance of such road. ***MAINTENANCE OF SUCH ROAD*** shall be deemed to mean maintenance of the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably open for public usage.

(6) For monuments of specific types to be installed establishing street and property lines;

(7) That unless a plat is filed for recordation within six months after final approval thereof such longer period as may be approved by the governing body, such approval shall be withdrawn and the plat marked void and returned to the approving official; and

(8) For the administration and enforcement of such ordinance, not inconsistent with provisions contained in this chapter, and specifically for the imposition of reasonable fees and charges for the review of plats and plans, and for the inspection of facilities required by any such ordinance to be installed; such fees and charges shall in no instance exceed an amount commensurate with the services rendered taking into consideration the time, skill and Administrator's expense involved. All such charges heretofore made are hereby validated.

(C) Therefore, be it ordained by the Town Council, and the following regulations are hereby adopted for the subdivision of land within the corporate limits of the town from and after the effective date of this chapter. Every owner or proprietor of any tract of land to which these regulations apply who subdivides such tract as provided in these regulations shall cause a plat of such subdivision developed and prepared in accordance with these regulations, with reference to known or permanent monuments, to be made and recorded in the office of the Clerk of the Court wherein deeds conveying such land are required by law to be recorded.

(Ord. passed 10-12-1990)

#### **§ 153.002 PURPOSE.**

(A) The purpose of this chapter is to establish certain subdivision standards and procedures for the town and such of its environs has come under the jurisdiction of the governing body as provided for by the Code of Virginia, as amended.

(B) These standards and procedures are part of a long-range plan to guide and facilitate the orderly beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity and general welfare. More specifically, the purposes of these standards and procedures are to provide a guide for the change that occurs when lands and acreage become urban in character as a result of development for residential, business or industrial purposes, to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate and efficient manner. Subdivided land sooner or later becomes a public responsibility in that roads and streets must be maintained and numerous public services customary to urban areas must be provided.

(C) This chapter assists the community in meeting these responsibilities by further providing that all land use management and development regulations in the town shall be consistent with the Chesapeake Bay Preservation Act, being VA Code §§ 62.1-44.15:67 et seq. and in Chesapeake Bay Preservation Area Designation and Management Criteria, hereinafter referred to as "Regulations and Standards" for Assessment Impact on Water Quality; Identification and Delineation of Landscape Elements; Plan of Development Process for Environmental Site Assessment, Landscape, Stormwater Management, Erosion

and Sediment Control, Site Plan Review; and Bay Act designations of resource protection areas and resource management areas. Land disturbance shall be limited to the area necessary to provide for the desired use or development. In accordance with and approved site plan, limits of land disturbance shall be strictly defined by a construction footprint not to exceed 60% of the site. Indigenous vegetation shall be preserved to the maximum extent possible consistent with the use and development permitted and in accordance with the *Virginia Erosion and Sediment Control Handbook*. Be it further established that all development in the town shall conform to septic reserve requirements and regulations for off-site, or remote, drainfields and buffer areas established by the county, as well as other existing state development regulations. The county is hereby designated the administrative and enforcement authority for all development of lands identified as Chesapeake Bay Preservation Areas; conformity to all Chesapeake Bay Act Performance Standards; and all other matters defined by the ordinances of the county related to the Chesapeake Bay Preservation Act, being VA Code §§ 62.1-44.15:67 et seq. and future amendments thereto.

(Ord. passed 10-12-1990)

### § 153.003 TITLE.

This chapter is known and may be cited as the “Subdivision Ordinance of Irvington, Virginia.”  
(Ord. passed 10-12-1990)

### § 153.004 DEFINITIONS.

(A) For the purpose of this chapter, certain words and terms used herein shall be interpreted or defined as follows. Words used in the present tense include the future, words in the singular number include the plural, and the plural the singular, unless the natural construction of the word indicates otherwise; the word “lot” includes the word “parcel”; the word “shall” is mandatory and not directory; the word “approve” shall be considered to be followed by the words “or disapproved;” any reference to this chapter includes all ordinances amending or supplementing the same; all distances and areas refer to measurement in a horizontal plane.

(B) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADMINISTRATOR.** The representative of the governing body who has been appointed to serve as the agent of the governing body in approving the subdivision plats. The **ADMINISTRATOR** is and shall be the Town Planning Commission. Approval by the **ADMINISTRATOR** shall be tentative and subject to the final approval by the governing body.

**ALLEY.** A permanent service way providing a secondary means of access to abutting properties.

**BLOCK.** An area enclosed by adjacent and usually by intersecting streets.

***BUFFER AREA.*** An area of natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbances.

***BUILDING LINE.*** The distance which a building is from the front lot line or front boundary line.

***CERTIFICATE OF COMPLIANCE.*** A certificate signed by the Zoning Officer certifying that the conditions of a subdivision or site plan have been completed as approved or modified.

***CHESAPEAKE BAY PRESERVATION AREA*** or ***CBPA.*** Any land designated pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, VR 173-02-01, and VA Code § 62.1-44.15:72. A ***CHESAPEAKE BAY PRESERVATION AREA*** shall consist of a resource protection area and a resource management area.

***COMMISSION.*** The Planning Commission of the town.

***CONCEPT PLANS.*** The optional, initial development plan for subdivisions and/or site plans of sufficient accuracy and detail to be used for the purpose of informal review, evaluation and non-binding comment by the Planning Commission and meeting the requirements of this chapter.

***CUL-DE-SAC.*** A street with only one outlet and having an appropriate turnaround for a safe and convenient reserve traffic movement (of not less than ten feet in diameter).

***DEVELOPER.*** An owner of property being subdivided, whether or not represented by an agent.

***DRAINAGE.*** The removal of surface water or groundwater from land by drains grading or other means and includes control of runoff to minimize erosion and sedimentation during and after construction or development and means necessary for water supply preservation or prevention or alleviation of flooding.

***EASEMENT.*** A grant by a property owner of the use of land for a specific purpose or purposes.

***ENGINEER.*** An engineer licensed by the state.

***ENVIRONMENTAL CONSTRAINTS.*** Natural resources and features or land characteristics which have sensitivity to improvements and may require conservation measures or the application of creative development techniques to prevent degradation of the environment and to promote the public health, safety and general welfare. Such ***ENVIRONMENTAL CONSTRAINTS*** include soils which are unsuitable for land disposal of sewage, slopes in excess of 15%, erosion-prone soils, shallow depths to the layers of bedrock, seasonal shallow water tables, major rock outcroppings, vegetation, watercourses and other land susceptible to flooding, in accordance with this chapter.

**ENVIRONMENTAL EVALUATION MAP.** A plat which, in addition to identification and graphic notations, has indicated thereon legal data, environmental constraints and environmentally controlled areas which may indicate a sensitivity to damage by the process of development.

**GOVERNING BODY.** The Town Council of Irvington, Virginia.

**HEALTH OFFICIAL.** The County Health Director or Sanitarian serving the town.

**HIGHWAY ENGINEER.** The resident engineer employed by the State Department of Transportation.

**JURISDICTION.** The area or territory subject to the legislative control of the governing body.

**LANDSCAPE ELEMENT IDENTIFICATION.** Identification and delineation of all significant plant material, including all trees on site six inches or greater diameter at breast height; description of impact of development or use on existing vegetation, general limits of clearing, replanting schedule for trees and other significant vegetation removed for construction; and demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation.

**LOT.** A numbered and recorded portion of a subdivision intended for transfer or ownership or for building development for a single building and its accessory building.

**LOT, CORNER.** A lot abutting upon two or more streets at their intersection; the shortest side fronting upon a street shall be considered the front of the lot, and the longest side fronting upon a street shall be considered the side of the lot.

**LOT, DEPTH OF.** The mean horizontal distance between the front and the rear lot lines.

**LOT, DOUBLE FRONTAGE.** An interior lot having frontage on two streets.

**LOT, INTERIOR.** A lot other than a corner lot.

**LOT OF RECORD.** A lot which has been recorded in the office of the Clerk of the appropriate court.

**LOT, WIDTH OF.** The mean horizontal distance between the side lot lines.

**PLAN OF DEVELOPMENT.** The process for site plan or subdivision plat review to ensure compliance with VA Code § 62.1-44.15:74 and this chapter prior to any clearing or grading of a site or the issuance of a building permit. Plan of developing process shall include an environmental site assessment, a landscape plan, a stormwater management plan and an erosion and sediment control plan.



**PLAT.** Includes the terms: map, plan, plot, replat or replot; a map or plan of a tract or parcel of land which is to be, or which has been subdivided. When used as a verb **PLAT** is synonymous with **SUBDIVIDE**.

**PROPERTY.** Any tract, lot, parcel or several of the same collected together for the purpose of subdividing.

**RESOURCE MANAGEMENT AREA** or **RMA.** The component of the Chesapeake Bay Preservation Area that is not classified as the resource protection area. **RMAs** include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

**RESOURCE PROTECTION AREA** or **RPA.** The component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

**SITE PLAN.** A plan delineating the overall scheme of development of a tract of land, including but not limited to, grading, engineering design, construction details, survey data for existing and proposed improvements, open space and landscape features.

(a) **FINAL SITE PLANS.** Plans and specifications for the construction of all proposed physical improvements conforming with all applicable requirements, regulations and restrictions of this chapter.

(b) **PRELIMINARY SITE PLANS.** Plans prepared in conformity with this chapter which meet all applicable requirements, regulations and restrictions.

**SITE PLAN REVIEW.** The review by the Planning Commission and Zoning Administrator to determine if site plans and maps of a developer meet the stated purposes and standards of zoning and subdivision ordinances; provide for necessary public facilities such as roads and schools; and protect and preserve topographical features and adjacent properties through appropriate siting of structures, landscaping and buffer areas.

**STREET.** The principal means of access to abutting properties.

**STREET, ALLEY OR PRIVATE ROAD, PUBLIC USE OF.** The unrestricted use of a specified area or right-of-way for ingress and egress to two or more abutting properties.

**STREET, MAJOR.** Any existing or future street designated as a **MAJOR STREET** on the adopted plan of land use and major thoroughfares, or heavily traveled thoroughfare or highway that carries a large volume of through traffic, or anticipated traffic exceeding 500 vehicles per day.

***STREET, MINOR.*** A street that is used primarily as a means of public access to the abutting properties with anticipated traffic less than 500 vehicles per day.

***STREET, PUBLIC.*** An existing street or road within the state highway system dedicated for use of the general public.

***STREET, SERVICE DRIVE.*** A public right-of-way generally parallel and contiguous to major highway, primarily designated to promote safety by eliminating promiscuous ingress and egress to the right-of-way by providing safe and orderly points of access to the highway.

***STREET, WIDTH.*** The total width of the strip of land dedicated or reserved for public travel, including roadway, curbs, gutters, sidewalks and planting strips.

***SUBDIVIDE.***

(a) To divide any tract, parcel or lot of land into two or more parts provided that, for the purpose of this chapter, the following shall be excluded from the above:

1. The division of any parcel of land ordered by a court of competent jurisdiction;
2. The division of land by will or intestate proceedings; or
3. By separation of a parcel of land, regardless of size, for sale to an adjoining landowner wherein the parcel transferred becomes merged with a part of the purchaser's adjoining land.

(b) The word ***SUBDIVIDE*** and any derivative thereof shall have reference to the term ***SUBDIVIDER*** as defined below.

***SUBDIVIDER.*** An individual, firm, corporation, partnership or developer, owning any tract, lot or parcel of land to be subdivided, or a group of two or more persons owning any tract, lot or parcel of land to be subdivided, or any individual who has received power of attorney to act on behalf of the owners in planning, negotiating for, in representing or executing the legal requirements of the subdivision.

***WATER QUALITY IMPACT ASSESSMENT.*** To:

(a) Identify the impacts of proposed development on water quality and lands within RPAs and other environmentally-sensitive lands;

(b) Ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands;

(c) To protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion or vulnerability to flood and storm damage; and

(d) Specify mitigation which will address water quality protection.

**ZONING ADMINISTRATOR.** The designated reviewing agent of the Planning Commission for all preliminary subdivision applications, including site plans, plat preparation procedures, conformity with the Chesapeake Bay Act, the zoning and subdivision laws of the state, the county and the town. The Zoning Administrator, as agent, shall consult with the Planning Commission on all matters contained herein, and recommend the establishment of reasonable administrative procedures deemed necessary for the proper administration of the chapter.

(Ord. passed 10-12-1990)

### ***ADMINISTRATION AND ENFORCEMENT***

#### **§ 153.015 ADMINISTRATOR.**

(A) The Administrator appointed by the governing body, and hereby delegated to administer this subdivision chapter, shall be the Planning Commission of the town.

(B) The Zoning Administrator is hereby designated as the reviewing agent of the Planning Commission and the governing body for all proposed subdivision; preliminary plats; plat preparation procedures as defined herein; and conformity with the Chesapeake Bay Act and regulations and standards established for designated resource protection areas and resource management areas in accordance with this chapter and all ordinances of the county and laws of the state.

(C) In acting on behalf of the Planning Commission, the Zoning Administrator may be granted additional responsibility for: making determinations that a subdivider or developer has or has not complied with the requirements of this chapter; maintaining a vigil on the improvements mandated by provisions stated herein; determining instances of noncompliance; making recommendations to the Commission on preliminary and final subdivision plats and development plans; receiving, reviewing, filing and maintaining records; issuing orders for compliance to subdividers and developers including orders to discontinue work in instances of noncompliance; and, recommending to the governing body initiation of legal proceedings necessary to secure compliance.

(Ord. passed 10-12-1990)

#### **§ 153.016 NOTICE TO ADJOINING PROPERTY OWNERS.**

(A) Persons owning property (whether real or riparian leaseholds) adjoining any proposed subdivision shall be given notice of the filing of the preliminary plat by the subdivider by certified mail

two weeks prior to the regularly scheduled monthly meeting of the Planning Commission. Adjoining property owners shall be construed to include also persons owning property within 300 feet and directly across public and private roads, and waters (500 feet or less) from the proposed subdivision.

(B) The subdivider shall notify all other interested parties by inserting an appropriate notice in the *Rappahannock Record* for two consecutive weeks prior to the regularly scheduled monthly meeting of the Commission with the last such notice being published no more than 15 days before the Commission meeting. All such notifications shall be block ad with a bold, black border with "PUBLIC NOTICE" at the top.

(Ord. passed 10-12-1990)

#### **§ 153.017 TO CONSULT.**

(A) In the performance of its duties, the Administrator will call for options or decisions, either verbal or written, from other departments in considering details of any submitted plat.

(B) This authority by the Administrator shall have particular reference to the Resident Highway Engineer, the Health Officer and such other county and state officials deemed necessary.

(Ord. passed 10-12-1990)

#### **§ 153.018 ADDITIONAL AUTHORITY.**

In addition to the regulations herein contained for the platting of subdivision, the Administrator may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this chapter.

(Ord. passed 10-12-1990)

#### **§ 153.019 ENFORCEMENT AND CONFLICT.**

(A) In addition to the administering and enforcing provisions of subdivision regulations provided herein through the Planning Commission and Zoning Administrator, the county is hereby designated as the enforcement authority for all development of lands identified as Chesapeake Bay Preservation Areas; for conformity to all Chesapeake Bay Act Performance Standards; and all other matters defined by the ordinances of the county and future amendments thereto.

(B) In any case where the requirements of this chapter appear in conflict with the zoning ordinance of the town, or existing state or county regulations, whichever imposes the more stringent restrictions shall apply.

(Ord. passed 10-12-1990)

***PROCEDURE FOR MAKING AND RECORDING PLATS*****§ 153.030 PLATTING REQUIRED.**

(A) (1) Any owner or developer of any tract of land situated within the town which 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 appropriate court.

(2) No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved and certified by the Administrator in accordance with the regulations set forth in this chapter.

(3) No lot shall be sold in any such subdivision before the plat shall have been recorded.

(B) In the event a plan for subdivision is disapproved by the Administrator, the subdivider may appeal to the governing body which may then override the recommendation of the Administrator and approve said plat.

(Ord. passed 10-12-1990)

**§ 153.031 DRAW AND CERTIFY.**

(A) Every such plat shall be prepared by a surveyor or engineer duly licensed by the state, who shall endorse upon each plat a certificate signed by him or her setting forth the source of the title of the land subdivided, and the place of record of the last instrument in the chain of title.

(B) 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, within an inset block, or by means of a dotted boundary line upon the plat.

(Ord. passed 10-12-1990)

**§ 153.032 OWNER'S STATEMENT.**

Every such plat, or the deed of dedication to which plat is attached, shall contain in addition to the surveyor's or engineer's certificate a statement to the effect that "the above and foregoing subdivision of (here insert correct description of the land subdivided) as appears in the plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, in any," which shall be signed by the owners, proprietors and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and approved as herein specified shall be filed and recorded in the office of the Clerk of the appropriate court, and indexed under the names of the land owners signing such statement and under the name of the subdivision unless waived by the Administrator.

(Ord. passed 10-12-1990)

**§ 153.033 NO ONE EXEMPT.**

No person shall subdivide any tract of land that is located within the town except in conformity with the provisions of this chapter.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.034 PRIVATE CONTRACTS.**

(A) This chapter bears no relation to any private easement, covenant, agreement or restriction, nor is the responsibility of enforcing such private easement, covenant, agreement or restriction implied herein to any public official.

(B) When this chapter calls for more restrictive standards than are required by private contracts, the provisions of this chapter shall control.

(Ord. passed 10-12-1990)

**§ 153.035 NECESSARY CHANGES.**

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

(Ord. passed 10-12-1990)

**§ 153.036 FEES.**

(A) There shall be a charge for the examination and approval or disapproval of every plat reviewed by the Administrator.

(B) At the time of filing the preliminary plat, the subdivider shall deposit with the town checks payable to the Town Treasurer in the amount set by Council from time to time per plat.

(Ord. passed 10-12-1990)

***REQUIRED CONTENTS OF SUBDIVISION PLATS*****§ 153.050 INTENT.**

(A) All preliminary and final plats shall provide all information necessary to indicate compliance with the Chesapeake Bay Act, regulations of the county and the zoning and subdivision ordinances of the town.

(B) The Planning Commission shall have the authority to waive submittal requirements for plats, if it is determined such information is not necessary for the review and approval of the plat and that not providing the information will in no way affect any public improvements, adversely affect adjoining properties, or conflict with any other requirements herein stated.

(C) Such waivers must be approved prior to submission of the plat.  
(Ord. passed 10-12-1990)

**§ 153.051 PRELIMINARY PLAT CONTENTS.**

Unless a waiver is approved, as authorized above, all applications for preliminary plat approval shall be accompanied by the following information:

(A) *General information.*

- (1) Name of proposed subdivision;
- (2) Proposed use(s) of the property;
- (3) Names and addresses of owner(s) of record and subdivider;
- (4) Names, address, signature and registration of professionals preparing the plat;
- (5) Deed reference, tax map and parcel number;
- (6) Date plan was drawn and date of any revision;
- (7) Vicinity map;
- (8) Existing zoning, including any proffers associated with the property;
- (9) (a) Names and address of all adjoining property owners within 300 feet (see § 153.016), including proof that all such property owners have been notified in writing by the applicant that the subject property is to be subdivided; and  
  
      (b) Notice sent by certified mail to the last known address of such owners as shown on the current real estate tax assessment books shall be deemed adequate compliance with this requirement.
- (10) Proof of any approved special exceptions, variances or waivers necessary for the subdivision.

(B) *Project tabulations.*

- (1) Gross acreage of the subdivision, to the nearest one-tenth of an acre;
- (2) Number of lots;
- (3) Minimum lot area;
- (4) Average lot area;
- (5) Minimum lot width;
- (6) Area in lots;
- (7) Area in common open space; and
- (8) Common open space as percentage of the subdivision.

(C) *Existing site conditions.* The preliminary plat shall illustrate the following conditions:

- (1) Map of survey of the boundary certified by a state certified land surveyor with all existing property lines;
- (2) Existing topography with maximum of five-foot contour intervals;
- (3) Location and full width of existing rights-of-way;
- (4) Location and width of existing roadways;
- (5) Location and explanation of any existing easements;
- (6) Location and dimensions of existing driveways and access point on the property and within 200 feet of the site;
- (7) Location of 100-year floodplain as shown on the most recent Federal Emergency Management Agency (FEMA) maps;
- (8) All overland watercourses and drainage structures within the subdivision or within 100 feet of the subdivision;
- (9) Names of all abutting subdivisions or names of owners of record of abutting property;
- (10) Existing uses and zoning of all adjoining properties;



(11) Indication of areas of tree cover on the property, including areas where tree protection or preservation measures will be taken in conformity with the plan of development of the Chesapeake Bay Act; and

(12) Identification of all existing slopes greater than or equal to 15%, and future delineation of slopes greater than or equal to 25%.

(D) *Graphic requirements.*

(1) All sheets shall be clearly and legibly drawn at a scale not less than 100 feet to the inch, with north arrow, on numbered sheets 24 inches by 36 inches in size, which shall be clearly marked "preliminary plat." If more than one sheet is necessary, a match line and corresponding sheet numbering system shall be provided;

(2) Location, right-of-way width and typical pavement section of all proposed streets, common driveways and parking courts;

(3) The proposed lot and yard requirements with approximate dimensions, lot areas and tentative lot numbers;

(4) Preliminary plans for water, storm and sanitary sewer systems for the subdivision, including any off-site improvements;

(5) All proposed connections to existing water lines, and storm drainage structures;

(6) Preliminary layout of provision for collection and discharging surface drainage;

(7) Preliminary plans for erosion and sedimentation control measures;

(8) An indication of phases of sections within the proposed subdivision and the order of development;

(9) A soil overlay map of scale not less than one inch to 200 feet with accompanying narrative;

(10) Drainage improvements proposed within the subdivision or within 100 feet of the subdivision that shall comply with the storm drainage; erosion and sedimentation control; flood zone management and control sections contained herein below;

(11) Location and size of all parcels of land and easements proposed to be dedicated for public use and conditions of each dedication; and

(12) Any proposed modifications to the 100-year floodplain indicating existing and proposed limits of such floodplain.  
(Ord. passed 10-12-1990)

***GENERAL REGULATIONS AND MINIMUM DESIGN STANDARDS*****§ 153.065 MUTUAL RESPONSIBILITY.**

There is a mutual responsibility between the subdivider and the town to divided the land so as to improve the general use pattern of the land being subdivided.

(Ord. passed 10-12-1990)

**§ 153.066 LAND MUST BE SUITABLE.**

The Administrator 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, or consistent with the areas of applicability for the Chesapeake Bay preservation areas designation and the Chesapeake Bay area performance standards for development.

(Ord. passed 10-12-1990)

**§ 153.067 FLOODING.**

(A) Land subject to flooding and land deemed to be topographically unsuitable shall not be platted for residential occupancy, nor for such other uses as may increase danger of health, life or property, or aggravate erosion or flood hazard, and water pollution.

(B) 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.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.068 BUILDING SITE.**

To ensure that residents will have sufficient land upon to build a house which is flood free, the Administrator may require the subdivider to provide elevation and flood profiles sufficient to demonstrate the land to be completely free of danger of flood waters.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.069 STORM DRAINAGE; FLOOD AND EROSION AND SEDIMENTATION CONTROL.**

(A) The subdivider shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property, including contour intervals, drainage plans and flood control devices.

(B) The subdivider shall also provide plans for all such improvements together with a properly qualified certified engineer's or surveyor's statement that such improvements, when properly installed will be adequate for proper development.

(C) The Highway Engineer shall then approve or disapprove the plans. The subdivider shall install and make provision for disposition of storm, subsurface and surface waters with on-site and off-site underground facilities to carry such waters to the nearest overland stream.

(1) On-site and off-site improvements shall be made so that downstream properties are not harmed by pollution, flooding, erosion or sedimentation resulting from the subdivision or development.

(2) Culverts shall be required where overland streams intersect any street right-of-way.

(3) Existing watercourses entering the subdivision or development shall be received and discharged in the manner as existed prior to the subdivision or development. Means for the retention of stormwaters within subdivision and developments and the controlled release of stormwaters therefrom shall be completed if downstream flood waters increased by the subdivision or development cannot be accommodated without damage to downstream properties.

(4) The design and construction of drainage facilities shall be such that all watercourses traversing the subdivision or development and water emanating from outside or within the subdivision or development will be carried through and off the subdivision or development without creating an adverse drainage condition to roadway or residential sites within the tract and without injury to roadways, residential sites or other lands abutting or in the vicinity of the tract.

(5) Provision for temporary and permanent control or erosion and sedimentation during all phases of clearing, grading and construction shall be made.

(6) Buildings within subdivisions and developments shall not be located within flood zones except as provided for in the zoning regulations.

(7) Storm drainage and erosion and sedimentation controls shall be completed in accordance with plans and profiles prepared for the subdivider or developer by a registered professional engineer or a licensed land surveyor meeting the required specifications for storm drainage and for erosion and sedimentation control.

(Ord. passed 10-12-1990)

**§ 153.070 IMPROVEMENTS.**

(A) All required improvements shall be installed by the subdivider at this cost. In cases where specifications have been established either by the Virginia Department of Highways for streets, curbs and the like or by county and local ordinances and codes, such specifications shall be followed.

(B) The subdivider's bond shall not be released until construction has been inspected and approved by the appropriate engineer.

(C) All improvements shall be in accordance with the following requirements in §§ 153.071 through 153.086.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.071 ALIGNMENT AND LAYOUT.**

(A) The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas and proposed streets as shown on the adopted plan of land use and major thoroughfares.

(B) The street arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access to it.

(C) Where, in the opinion of the Administrator, it is desirable to provide for street access to adjoining property, proposed streets shall be extended to the boundary line of such property.

(D) Half streets along the boundary of land proposed for subdivision may not be permitted.

(E) Wherever possible, streets should intersect at right angles.

(F) In all hillside areas, streets running with contours shall be required to intersect at angles or not less than 60 degrees, unless approved by the Administrator upon recommendation of the Highway Engineer.

(G) T-intersections shall be used wherever possible; four-legged intersections should be avoided unless absolutely necessary.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.072 SERVICE DRIVES.**

(A) Whenever a proposed subdivision contains or is adjacent to a limited access highway or expressway, provision shall be made for a service drive, a marginal street approximately parallel to such

right-of-way at a distance suitable for an appropriate use of the land between such highway and the proposed subdivision.

(B) Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main thoroughfare.

(C) The right-of-way of any major highway or street projected across any railroad, limited access highway or expressway shall be of adequate width to provide for the cuts or fills required for any future separation of grades.

(Ord. passed 10-12-1990) Penalty, see § 153.999

### **§ 153.073 APPROACH ANGLE.**

Major streets shall approach major or minor streets at any angle of not less than 80 degrees, unless the Administrator, upon recommendation of the Highway Engineer, shall approve a lesser angle of approach for reasons of contour, terrain or matching of existing patterns.

(Ord. passed 10-12-1990) Penalty, see § 153.999

### **§ 153.074 CUL-DE-SACS.**

Generally, minor terminal streets (cul-de-sacs), designed to have one end permanently closed, must be terminated by a turn around of not less than 100 feet in diameter.

(Ord. passed 10-12-1990) Penalty, see § 153.999

### **§ 153.075 STREETS AND RESERVE STRIPS.**

(A) (1) All proposed roads, streets and highways located in any subdivision shall be designed and constructed to the requirements of the Virginia Department of Highways, less hard surface.

(2) Said roads, streets and highways shall be maintained in good all-weather condition by the subdivider until 25% of the lots have been sold.

(3) At that time the owners of said lots shall have control of all roads; however, the subdivider shall share in the cost of maintenance on a prorated basis with the owners of said lots.

(4) At such time as a request is made by the owners of the lots in a subdivision for acceptance of all streets, roads and highways into the state system or request public maintenance of all or any streets, roads and highways, they shall be constructed and surfaced in accordance with the specification of the Virginia Department of Highways at no cost to town.

(B) Subdivisions of 25 or more lots; selling more than 25% of the lots per year may be required to construct all roads to the specifications of the Virginia Department of Highways, including hard surfacing.

(C) (1) The Administrator may authorize a private road under the condition that a recordable document be prepared and recorded at the cost of the applicant and that the recordable document be signed by each of the land owners having a vested right in the private road to the effect that they would never ask the road be taken into the public system until such time as they chose to upgrade the road to the specifications of the Virginia Department of Highways.

(2) Such road shall be maintained in good all-weather condition by the subdivider.

(D) There shall be no reserve strip controlling access to streets.  
(Ord. passed 10-12-1990) Penalty, see § 153.999

#### **§ 153.076 UNDERGROUND SYSTEMS REQUIRED.**

All transmission, distribution and customer utility service facilities including gas, electric, telephone, communication and cable television installed within the boundaries of any subdivision shall be placed below the surface of the ground.

(Ord. passed 10-12-1990) Penalty, see § 153.999

#### **§ 153.077 NAMES.**

(A) Proposed streets which are obviously in alignment with other already existing and named streets, shall bear the names of the existing streets.

(B) In no case shall the names of proposed streets duplicate existing street names irrespective of the use of the suffix street, avenue, boulevard, driveway, place, lane or court.

(C) Street names shall be indicated on the preliminary and final plats and shall be approved by the Administrator.

(D) Names of existing streets shall not be changed except by approval of the governing body.  
(Ord. passed 10-12-1990) Penalty, see § 153.999

#### **§ 153.078 IDENTIFICATION SIGNS.**

Street identification signs of a design approved by the Administrator shall be installed at all intersections, readable from either side.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.079 MONUMENTS.**

(A) As required by this chapter, all monuments must be installed by the subdivider and shall meet the minimum specifications.

(B) Upon completion of subdivision streets, sewers and other improvements, the subdivider shall make certain that all monuments required by the Administrator are clearly visible for inspection and use. (Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.080 LOCATION; CONCRETE.**

(A) Concrete monuments four inches in diameter or square, three feet long, with a flat top, shall be set at all street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at the right angle points, and points of curve in each street.

(B) The top of the monument shall have an appropriate mark to identify properly the location and shall be set two inches above the finished grade. (Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.081 LOCATION; IRON PIPE.**

(A) All other lot corners shall be marked with iron pipe not less than three-fourths inch in diameter and 24 inches long and driven so as to be flush with finished grade.

(B) When rock is encountered, a hole shall be drilled four inches deep in the rock, into which shall be cemented a steel rod one-half inch in diameter, the top of which shall be flush with the finished grade line. (Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.082 WATER FACILITIES.**

(A) Where public water is available, the subdivider shall make a supply of water available to each lot within the subdivision and provide for the installation of fire hydrants at locations approved by the Planning Commission.

(B) All costs to extend the public water distribution system to the subdivision shall be borne by the subdivider.

(C) Provisions for a separate central water supply and distribution system shall require waiver of this provision by the Planning Commission and approval of the waiver by the governing body.

(D) Any such system must meet all requirements of the State Water Control Board and State Health Department, including fire hydrants by the subdivider in accordance with the design standards and specifications for water, construction and improvements in the town, and meet the approval of the Administrator.

(Ord. passed 10-12-1990) Penalty, see § 153.999

### **§ 153.083 SEWERAGE FACILITIES.**

(A) When public sewerage facilities are available, the service shall be extended to all lots within a subdivision and septic tanks will not be permitted.

(B) Every subdivision shall be provided by the subdivider with a satisfactory and sanitary means of sewage collection and disposal in accordance with the design standards and specifications of the Health Department.

(C) The Planning Commission shall not approve any subdivision where sanitary sewers are not provided unless the Commission receives in writing from the Health Official, on the proposed plat, that each lot has a valid septic permit for at least three bedroom home and an approved 100% reserve site.

(D) The subdivider may be required by the Health Official to provide the Virginia Department of Health with information on soil studies, percolation tests, topographic studies and other engineering data as evidence that the land is suitable for septic systems, and its 100% reserve site is fully contained within the boundaries of each lot in at least 75% of the total lots within the subdivision.

(E) In the 25% of the lots where pumping is permitted, each drainfield shall be placed in an area that meets the minimum lot area for the appropriate zoning district.

(F) Drainfield and reserve drainfield, none of which shall be within a 100 foot radius of any other adjoining drainfield or reserve drainfield, and well site must be shown on all plats.

(G) Health Department conditional use permits for septic system use during only certain months of the year are not acceptable.

(H) Mound systems, such as the Wisconsin Mound, will not be allowed in the county except as a means to remedy failed existing systems.

(I) The Commission shall not approve any plan of subdivision which includes any sanitation device or system or its 100% reserve site constructed within the ten-year floodplain.

(Ord. passed 10-12-1990) Penalty, see § 153.999



**§ 153.084 PRIVATE WATER AND/OR SEWER.**

Nothing in this regulation shall prevent the installation of privately owned water or sewerage facilities in areas where public water or sewerage facilities cannot be made available; provided, however, that such installations must meet all the requirements of the State Water Control Board, the State Health Department and any other state or local regulation having authority over such installation.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.085 LANDSCAPING AND TREE COVER.**

(A) (1) Existing tree cover within a proposed subdivision shall be retained to the greatest extent possible and taken fully into account in the design of the subdivision lots, street layout and development.

(2) Site plans shall indicate how existing trees over six inches diameter at breast height (DBH) are to be protected; how soil aeration, drainage and moisture are to be preserved; and how screening landscaping and planting for buffer areas shall be executed including a planting plan and schedule of plant materials.

(B) (1) Required specifications for landscaping, street trees and street tree plantings shall also designate the number, location, size, variety and conditions of trees and other plant materials to be planted and planting methods.

(2) The specifications shall take into account the relative hardiness, shape, root growth pattern, beauty and undesirable features of plant materials and shall provide restrictions on plantings in locations likely to damage underground or aerial utility facilities; restrict motorists or pedestrians sight distances; conflict with driveways, sidewalks, bikeways or streets; or damage street, sidewalk, storm sewer, sanitary sewers, curb and gutter or other public facility structures.

(3) All cut and fill slopes shall be landscaped, either seeded and stabilized, or sodded with grass or plants suitable for such slopes as may be required by the Planning Commission.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.086 LOT SIZE.**

The minimum lot size in any area shall be in accordance with the zoning ordinance of the town and, in addition, shall be subject to the following requirements in §§ 153.087 and 153.088.

(Ord. passed 10-12-1990)

**§ 153.087 FRONT FOOTAGE.**

The Administrator may require a minimum front footage on a public street or private road in conformity with the zoning ordinance of the town.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.088 GREATER REQUIREMENTS.**

(A) Greater lot areas may be required where individual septic tanks or individual wells are used if the Health Official determines that there are factors of drainage, soil conditions or other conditions to cause potential health problems.

(B) The Administrator shall require that data from soil studies, and when requested by the County Health Official, percolation tests be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal.

(C) These tests and soil studies shall be performed by or under the supervision of the Health Official.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.089 EASEMENTS.**

(A) The Administrator may require that easements for drainage through adjoining property be provided by the subdivider.

(B) Easements of not less than 20 feet in width shall be provided for drainage, water, sewer, power lines and other utilities in the subdivision when required by the Administrator.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.090 BOND.**

(A) (1) Before any subdivision plat shall be finally approved, the subdivider shall furnish performance surety in the form of a bond with surety approved by the Administrator, irrevocable letter of credit, cash deposit or other form of surety acceptable to the Administrator in an amount equal to the full cost of improvements required by these regulations and providing for the completion of said improvements within a definite time period, which bond shall be payable to and held by the governing body.

(2) The surety shall be a “surety” company licensed to do business in the state.

(B) (1) The period within which required improvements must be completed shall be incorporated in the format of the subdivided performance surety and shall not in any event exceed one year from the date of final plat approval.

(2) The Administrator may, upon proof of difficulty, allow for a maximum period of one additional year as extension of such performance surety.

(3) In those cases where performance surety has been posted and the required improvements have not been installed within the terms of such performance surety, the town may then declare the subdivider to be in default and require that all improvements be installed regardless of the extent of building development, and funds available under the secured form of surety shall be utilized for such installation.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.091 PLANS AND SPECIFICATIONS.**

(A) Five blue or black line prints of the plans and specifications for all required physical improvements to be installed, shall be prepared by an engineer and shall be submitted to the Administrator for approval or disapproval within 60 days.

(B) If approved, one copy bearing certification of such approval shall be returned to the subdivider.

(C) If disapproved, all papers shall be returned to the subdivider with the reason of disapproval in writing.

(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.092 LOTS.**

In addition to the area and width requirements already specified, lots shall be arranged in order that the following considerations in §§ 153.093 through 153.095 are satisfied.

(Ord. passed 10-12-1990)

**§ 153.093 SHAPE.**

(A) The lot arrangement, design and shape shall be such that lots will provide satisfactory and desirable sites for buildings, and be properly related to topography, and conform to requirements of this chapter.

(B) Lots shall not contain peculiarly shaped elongations solely to provide necessary square footage of area which would be unusable for normal purposes.

(C) The Administrator may require minimum number of front feet on a public or private road for all of any such lots in conformity with the zoning ordinance of the town.

(Ord. passed 10-12-1990) Penalty, see § 153.999

#### **§ 153.094 CORNER LOT.**

Corner lots shall have extra width sufficient for maintenance of any required building lines on both streets as determined by the Administrator.

(Ord. passed 10-12-1990) Penalty, see § 153.999

#### **§ 153.095 REMNANTS.**

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

(Ord. passed 10-12-1990) Penalty, see § 153.999

#### **§ 153.096 SEPARATE OWNERSHIP.**

Where the land covered by a subdivision includes two or more parcels in separate ownership, and lot arrangement is such that a property ownership line divides one or more lots, and land in each lot so divided shall be transferred by deed to single ownership, simultaneously with the recording of the final plat, said deed is to be deposited with the Clerk of the Court and held with the final plat until the subdivider is ready to record same, and they both shall then be recorded together.

(Ord. passed 10-12-1990) Penalty, see § 153.999

#### **§ 153.097 OFF-STREET PARKING AND DELIVERY FACILITIES.**

All parcels of land, including those intended for business and industrial uses, shall be designed specifically for such purposes with space set aside for off-street parking and/or delivery facilities, as required by the town zoning ordinance.

(Ord. passed 10-12-1990) Penalty, see § 153.999

#### **§ 153.098 BLOCKS.**

Where created by the subdivision of land, all new blocks shall be of modern design and shall comply with the following general requirements in §§ 153.099 through 153.101.

(Ord. passed 10-12-1990)

**§ 153.099 LENGTH.**

Generally, the maximum length of blocks shall be 1,200 feet, and the minimum length of blocks upon which lots have frontage shall be 500 feet.  
(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.100 WIDTH.**

Blocks shall be wide enough to allow two tiers of lots of minimum depth, consistent with the town zoning ordinance unless prevented by topographical conditions or size of the property, in which case the Administrator may approve a single tier of lots of minimum depth.  
(Ord. passed 10-12-1990) Penalty, see § 153.999

**§ 153.101 ORIENTATION.**

Where a proposed subdivision will adjoin a major road, the Administrator may require that the greater dimension of the block shall front or back upon such major thoroughfare to avoid necessary ingress or egress.  
(Ord. passed 10-12-1990)

***APPROVAL OF PLATS***

**§ 153.115 APPROVAL REQUIRED BEFORE SALE.**

(A) Whenever any subdivision of land is proposed, and before any permit for the erection of a structure shall be granted, the subdivider or his or her representative shall apply in writing to the Administrator for the approval of the subdivision plat.

(B) No lot shall be sold until a final plat for the subdivision shall have been approved and recorded in the following manner in §§ 153.116 through 153.122.  
(Ord. passed 10-12-1990)

**§ 153.116 PRELIMINARY SKETCH.**

(A) The subdivider may, if he or she so chooses, submit to the Administrator two copies of a preliminary sketch of the proposed subdivision prior to this preparation of engineered preliminary and final plats.

(B) The purpose of such preliminary sketch is to permit the Administrator to advise the subdivider whether his or her plans in general are in accordance with the requirements of this chapter.

(C) The Administrator upon submission of any preliminary sketch shall study it and advise the subdivider wherein it appears that changes would be necessary.

(D) The Administrator may mark the preliminary sketch indicating the necessary changes and any such marked sketch shall be returned to the subdivider.

(E) The preliminary sketch shall be as follows.

(1) *Generally.*

(a) It shall be drawn on white paper, or on a print of a topographic map of the property. It shall be drawn to a scale of 100 feet to the inch.

(b) It shall show the name, location and dimensions of all streets entering the property, adjacent to the property, or terminating at the boundary of the property to be subdivided.

(c) It shall show the location of all proposed streets, lots, parks, playgrounds and other proposed uses of the land to be subdivided and shall include the approximate dimensions.

(2) *Part of tract.*

(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 with the preliminary plat.

(b) This sketch is merely for informational purposes and is not binding on the subdivider or the governing body.

(Ord. passed 10-12-1990)

**§ 153.117 PRELIMINARY PLAT.**

(A) The subdivider shall present to the Administrator five prints of a preliminary layout at a scale of 100 feet to the inch as a preliminary plat. The preliminary plat shall include all items information detailed heretofore in § 153.051 unless specific information is waived by the Planning Commission.

(B) All preliminary plats shall include the following information for which waiver shall not be authorized by the Planning Commission or governing body:

(1) Name of subdivision, owner, subdivider, surveyor or engineer, date of drawing, number of sheets, north point and scale. If true north is used, method of determination must be shown;

(2) Location of proposed subdivision by an inset map at a scale of not less than two inches equal one mile showing adjoining roads, their names and numbers, towns, subdivisions and other landmarks;

(3) The boundary survey or existing survey of record provided such survey shows a closure with an accuracy of not less than one in 2,500; total acreage, acreage of subdivided area, number and approximate area and frontage of all building sites, existing buildings within the boundaries of the tract, names of owners and their property lines within the boundaries of the tract and adjoining such boundaries;

(4) All existing, platted and proposed streets, their names, numbers and widths; existing utility or other easements, public areas and parking spaces; culverts, drains and watercourses, their names and other pertinent data;

(5) The complete storm drainage layout, including all pipe sizes, types, drainage easements and means of transporting the drainage to a well defined open stream which is considered natural drainage and as detailed in § 153.069 herein;

(6) Proposed connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply. The location, type, profile, percentage of slope, pipe size and location of manholes for all sewers shall be shown. The distance between manholes shall not exceed 300 feet. The location, type and sizes of all water lines shall be shown as well as the location of valves and fire hydrants. Necessary control valves shall be installed in each water line;

(7) A cross section showing the proposed street construction, depth and type of base, type of surface and the like;

(8) A profile or contour map showing the proposed grades for the streets and drainage facilities including elevations of existing and proposed ground surface at all street intersections and at points of major grade change along the centerline of streets together with proposed grade lines connecting therewith;

(9) A location map tying the subdivision into the present road system, either by aerial photographs or topographic maps of the United States Department of Interior; and

(10) All parcels of land to be dedicated for public use and the condition of such dedication.  
(Ord. passed 10-12-1990)

**§ 153.118 PROCEDURE.**

(A) The Administrator or its appointed representative shall discuss the preliminary plat with the subdivider in order to determine whether or not his or her preliminary plat generally conforms to the requirements of the subdivision regulations and of the zoning ordinance.

(B) The subdivider shall then be advised in writing within 45 days, which may be by formal letter or by legible markings on his or her copy of the preliminary plat, concerning any additional data that may be required, the character and extent of public improvements that will have to be made, and an estimate of the cost of construction or improvements and the amount of the performance bond which will be required as a prerequisite to approval of the final subdivision plat.

(C) In determining the cost of required improvements and the amount of the performance bond, the Administrator may consult with a duly licensed engineer who shall prepare this data for the Administrator, or preferably may require a bona fide estimate of the cost of improvements to be furnished by the subdivider.

(Ord. passed 10-12-1990)

#### **§ 153.119 NO GUARANTEE.**

Approval by the Administrator of the preliminary plat does not constitute a guarantee of approval of the final plat.

(Ord. passed 10-12-1990)

#### **§ 153.120 SIX MONTH LIMIT.**

(A) The subdivider shall have not more than six months after receiving official notification concerning the preliminary plat to file with the Administrator a final subdivision plat in accordance with this chapter.

(B) Failure to do so shall make preliminary approval null and void.

(C) The Administrator may for good cause, on written request by the subdivider, grant an extension of this time limit.

(Ord. passed 10-12-1990)

#### **§ 153.121 FINAL PLAT.**

(A) The subdivision plats submitted for final approval by the governing body and subsequent recording shall be clearly and legibly drawn in ink upon appropriate material at a scale of 100 feet to the inch on sheets having a size of not more than 24 inches by 36 inches.

(B) In addition to the requirements of the preliminary plat, the final plat shall include the following:

(1) A blank space three inches by five inches shall be reserved for the use of the approving authority;



(2) Certificates signed by surveyor or engineer 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;

(3) A statement to the effect that the subdivision as it appears on this plat is with the free consent and in accordance with the desires of the owners, proprietors and trustees, if any, which shall be signed by the owners, proprietors and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds;

(4) 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;

(5) 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 said boundaries;

(6) Distances and bearings must balance and close with an accuracy of not less than one in 10,000; and

(7) The data of all curves along the street frontage shall be shown in detail at the curve data table containing the following: delta, radius, arc, tangent, chord and chord bearings.  
(Ord. passed 10-12-1990)

**§ 153.122 CONDITIONS AND PERIOD OF VALIDITY.**

(A) (1) The plat shall not be approved until the subdivider has complied with the general requirements and minimum standards of design in accordance with this chapter, and has made satisfactory arrangements for performance bond, cash or cash bond to cover the cost of necessary improvements, in lieu of construction, to the satisfaction of the Administrator.

(2) Approval of the final plat shall be written on the face of the plat by the Administrator.

(B) (1) The completed plat shall be submitted to the Council for approval.

(2) Upon the approval by the Council, the plat will be signed by the Council of its designated representative, marked approved and returned to the property owner, who will cause the plat to be recorded in the County Clerk's office.

(3) If not approved, the Council will return the plat to the owner, with corrections to be made indicated thereon.

(4) No plat will be recorded until such Council approval has been made.

(5) Any plat not recorded within 90 days after final approval shall be considered void and such approval withdrawn, and plat shall be returned to the approving officer.

(6) The final plan shall also become null and void if no significant work, construction or development has begun on the site within six months after approval of the final plan and/or acquisition of building permits.

(7) The Planning Commission may grant a single one year extension upon written request of the applicant.  
(Ord. passed 10-12-1990)

### ***EFFECTUAL CLAUSES***

#### **§ 153.135 EXCEPTION.**

(A) Where the subdivider can show that a provision of these standards would cause unnecessary hardship if strictly adhered to, and where, because of topographical or other peculiar or unusual conditions, in the opinion of the Administrator, a departure may be made without destroying the intent of such provisions, the Administrator may authorize an exception and set forth the conditions upon which said exceptions are granted.

(B) The Administrator may also waive any or all of the requirements of this chapter when:

(1) A parcel of land recorded before January 1, 1982 is to be subdivided into only one additional parcel; and

(2) As long as such waiver does not destroy the meaning or intent of this chapter.

(C) Any exception thus authorized is to be stated in writing in the report of the Administrator with the reasoning on which this departure was justified set forth.

(D) No such exception may be granted by this chapter which is opposed in writing by the Highway Engineer or Health Official.  
(Ord. passed 10-12-1990)

#### **§ 153.136 AMENDMENTS.**

(A) This chapter 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,

and further provided that no such amendment shall be adopted without a public hearing having been held by the governing body.

(B) Notice of the time and place of the hearing shall have been given at least one week for two weeks, and the last notice at least five days but not more than 21 days, prior to hearing.  
(Ord. passed 10-12-1990)

**§ 153.137 EFFECTIVE DATE.**

This chapter was duly considered, following a required public hearing held on October 11, 1990, and was adopted by the Town Council at its regular meeting held on October 11, 1990.  
(Ord. passed 10-12-1990)

**§ 153.999 PENALTY.**

Any person violating the foregoing provisions of this chapter shall be subject to a fine of not more than \$100 for each lot or parcel of land so subdivided or transferred or sold; 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 penalty or from the remedies herein provided.  
(Ord. passed 10-12-1990)



**APPENDIX A: SUBDIVISION PERMIT AND ADMINISTRATIVE FEE SCHEDULE**

<i>Administrative Permits</i>	<i>Fee</i>
Raffle	\$25
Tennis court	\$10
Vehicle license tag	\$20
<i>Zoning Related Permits</i>	<i>Fee</i>
Conditional use	\$35
Rezoning	\$50
Sign	\$20
Subdivision	\$200 + \$30/lot
Zoning amendment	\$50
Zoning and fencing	\$35
Zoning appeal	\$50
Note: Any after the fact permit fees for zoning related permits will be double the original fee.	

(Ord. passed 3-10-2005)



## CHAPTER 154: ZONING

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**GENERAL PROVISIONS****§ 154.001 PREAMBLE.**

(A) Whereas as provided in VA Code Title 15.2, Chapter 22 and amendments thereto, the governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this chapter, and in each district it may regulate, restrict, permit, prohibit and determine the following:

(1) The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, floodplain and other specific uses;

(2) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing or removal of structures;

(3) The areas and dimensions of land, water and air space to be occupied by buildings, structures and uses, and of courts, yards and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; and

(4) The excavation or mining of soil or other natural resources.

(B) For the purpose of zoning, the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

(VA Code § 15.2-2281)

(C) Therefore, be it ordained by the Town Council, for the purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of applicable state law, that the following be adopted as the zoning ordinance of the town, together with a map of the existing zoning districts, and shall supersede the zoning ordinance of the town dated December 13, 1984 and all amendments thereafter.

(D) All development in the town shall conform to septic reserve requirements and regulations for off-site, or remote, drain fields and buffer areas established by the State Health Department.

(Ord. passed 9-12-2013)

**§ 154.002 PURPOSE.**

The purpose of this chapter is to establish certain zoning standards and procedures for the town, and such of its environs as come under the jurisdiction of the governing body as provided for by the Code of Virginia, as amended.

(Ord. passed 9-12-2013)

**§ 154.003 TITLE.**

This chapter is known and may be cited as the “Zoning Ordinance of Irvington, Virginia.”

(Ord. passed 9-12-2013)

**§ 154.004 DEFINITIONS.**

(A) For the purpose of this chapter, certain words and terms used herein shall be interpreted or defined as follows. Words used in the present tense include the future, words in the singular number include the plural, and the plural, the singular, unless the natural construction of the word indicates otherwise; the word “lot” includes the “parcel;” the word “shall” is mandatory and not directory; the word “approve” shall be considered to be followed by the words “or disapproved;” any reference to this chapter includes all ordinances amending or supplementing the same; all distance and areas refer to measurement in a vertical or horizontal plane.

(B) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ACCESSORY STRUCTURE, PERMANENT.*** A structure attached to a base, bottom or foundation. Zoning permit required.

***ACCESSORY STRUCTURE, PORTABLE OR TEMPORARY.*** A structure placed on a site, lot or property for housing of chattels (personal property) not to exceed 60 days. Zoning permit required.

***ACCESSORY USE OR STRUCTURE.*** A subordinate use or structure including, but not by way of limitation, tool and storage sheds, garages, bulkheads, piers, swimming pools, tennis courts and other customarily incidental to, but separate from, the main use of building and located upon the same lot occupied by the main use or building. No ***ACCESSORY STRUCTURE OR BUILDING*** may be fitted with a kitchen or sleeping accommodations.

***ACREAGE.*** A parcel of land, regardless of area, described by metes and bounds.

***ADMINISTRATOR.*** The official or officials charged with the enforcement of the zoning ordinance. He or she may be any appointed or elected official who is by formal resolution designated to the position by the Town Council. He or she may serve with or without compensation as determined by Council.

***AGRICULTURE.*** The tilling of the soil, the raising of crops, horticulture, forestry, the keeping of animals and fowl, and any agricultural industry or business, such as fruit packing plants, dairies or similar use.

***AGRICULTURE LANDS.*** Those lands used for the planting and harvesting of crops or plant growth of any kind; pasture; horticulture; dairying; horticulture; or raising of poultry and/or livestock.

***ALTERATION.*** Any changes in the total floor area, use, adaptability or external appearance of an existing structure.

***APARTMENT HOUSE.*** A building used or intended to be used as the residence of three or more families living independently of each other.

***AUTOMOBILE GRAVEYARD.*** Any lot or place which is exposed to the weather upon which one or more motor vehicles of any kind, incapable of being operated are placed for a period of more than three months. (See §§ 91.01 through 91.03 of this code of ordinances for additional information.)

***BASEMENT.*** A story having part but not more than one-half of its height below grade. A ***BASEMENT*** shall be counted as a story for the purposes of height regulations if it is used for business purposes, or for dwelling purposes.

***BEST MANAGEMENT PRACTICES (BMPs).*** A practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with environmental quality goals.

**BOARDING HOUSE.** A building where, for compensation, lodging and meals are provided for at least five and up to 14 persons.

**BOAT DOCK.** A dock, six feet wide or less, with or without a “L” or “T” head not to exceed eight feet wide and 25 feet long, for private use, to which a boathouse, finger pier or other structure is not attached. Boat lifts are exempt. (See drawing, § 154.215.)

**BOAT SALES AND SERVICE.** Boat sales and sales of equipment, parts, supplies and other marine items; and the repair of service thereof. Such a business is not necessarily located upon the water.

**BUFFER AREA.** An area of natural or established vegetation managed to protect other environmental resources and state waters from significant degradation.

**BUILDING.** Any structure having a roof supported by columns or walls.

**BUILDING, ACCESSORY.** A subordinate structure, including, but not by way of limitation, garages, carports, tool and storage sheds, and pens, customarily incidental to and located upon the same lot occupied by the main structure.

**BUILDING, HEIGHT OF.** The vertical distance measured from the average elevation of the ground surface or the established curb grade opposite the middle of the front of the structure to the highest point of the roof if a flat roof; to the deck line of a mansard roof; or to the mean height level between the eaves and the ridge of a gable, hip or gambrel roof. For a building set back from the street line, the **HEIGHT** shall be measured from the average elevation of the ground surface along the front of the building.

**BUILDING LINE.** The distance which a building is from the front lot line or front boundary line.

**BUILDING, MAIN.** The principal structure or one of the principal buildings on a lot, or the building or one of the principal buildings housing the principal use on the lot.

**CELLAR.** A story having more than one-half of its height below grade and which may not be occupied for dwelling purposes.

**CERTIFICATE OF OCCUPANCY.** A certificate issued by the County Building Official to occupy or permit the use of any building or structure. It shall be unlawful to use or occupy or permit the use of any building structure, in whole or in part, for reconstructing, altering, adding to or moving the same without first obtaining a certificate of occupancy for the premises or building, and the use thereof, complying with the ordinances and requirements of the town and the county.

**CHESAPEAKE BAY PRESERVATION AREA or CBPA.** Any land designated pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, VR 173-02-01, and VA Code § 62.1-44.15:72. A **CHESAPEAKE BAY PRESERVATION AREA** shall consist of a resource protection area and a resource management area.

**CHURCH.** Building or structure used for worship and normal church functions including a parsonage if located in vicinity of the church.

**COMMISSION.** The Planning Commission of Irvington, Virginia.

**CONDITIONAL USE PERMIT.** A zoning permit application submitted requesting approval for a reconstructed, enlarged, altered, new or expanded use. The purpose of the **CONDITIONAL USE PERMIT** is to provide for certain uses which may not be compatible with certain surrounding uses or which may be compatible with surrounding uses only if the use in question is established in conformance with certain limiting conditions.

**CONSTRUCTION FOOTPRINT.** The area of all impervious surface, including, but not limited to, buildings, roads and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

**CONVENTIONAL ROOM.** A room with a roof, floor, foundation and solid or glass walls, including, without limitation, garages, but excluding breezeways, decks, carports and covered walkways.

**DAIRY.** A commercial establishment for the manufacture and sale of dairy products.

**DEVELOPMENT.** The construction, or substantial alteration, of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures.

**DEVELOPMENT PLAN.** The process for site plans, or subdivisions, plat review to ensure compliance with VA Code § 62.1-44.15:74 and this chapter prior to any clearing or grading of a site or the issuance of a building permit. Plan of development process shall include an environmental site assessment, a landscape plan, a stormwater management plan and an erosion and sediment control plan.

**DIAMETER AT BREAST HEIGHT (DBH).** The diameter of a tree measured outside the bark at a point four and one-half feet above ground.

**DISTRICT.** Districts as referred to in the applicable state law.

**DRAINAGE.** The removal of surface water or groundwater from land by drains, grading or other means and include control of runoff to minimize erosion and sedimentation during and after construction or development and means necessary for water supply preservation or prevention or alleviation of flooding.

**DRIPLINE.** A vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy or a structure's overhang.

**DUMP HEAP (TRASH PILE or JUNK YARD).** Any area of 100 square feet or more lying within 1,000 feet of a state highway, a residence, a dairy barn or food handling establishment where trash, garbage or other waste or scrap material is dumped or deposited.

**DWELLING.** Any structure which is designed for use for residential purposes, except hotels, boarding houses, lodging houses, tourist cabins, apartments, automobiles, trailers and mobile homes. The minimum square footage of a dwelling structure will be 1,200 square feet in R-1 and 1,800 square feet in R-2.

**DWELLING, MULTIPLE-FAMILY.** A structure arranged or designed to be occupied by more than one family.

**DWELLING, SINGLE-FAMILY.** A structure arranged or designed to be occupied by one family, the structure having only one dwelling unit.

**DWELLING, TWO-FAMILY.** A structure arranged or designed to be occupied by two families, the structure having only two dwelling units.

**DWELLING UNIT.** One or more rooms in a dwelling designed for living or sleeping purposes, and having at least one kitchen and one bathroom.

**EASEMENT.** An agreement between property owners regarding the use of land for a specific purpose recorded at the Lancaster County Court House.

**ENGINEER.** A professional engineer (PE) licensed by the state.

**FAMILY.** One or more persons occupying a premises and living in a single dwelling unit, as distinguished from a group occupying a boarding house, lodging house, tourist home or hotel.

**FARM WINERY.** An establishment with a producing vineyard, orchard or similar growing area and may include facilities for fermenting and bottling wine on the premises:

(a) Where the owner or lessee manufactures wine that contains not more than 18% alcohol by volume: or

(b) With a producing vineyard, orchard or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers in accordance with state regulations, and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18% alcohol by volume.

**FLOODPLAIN.** See Chapter 152 of this code of ordinances.

**FLOOR SPACE.** Total square footage inside walls of buildings.

**FRONTAGE.** The minimum width of a lot measured from one side lot line to the other along a straight line on which no point shall be farther away from the street upon which the lot fronts than the building setback line as defined and required herein.

**GARAGE, PRIVATE.** Accessory building designed or used for the storage of not more than three automobiles owned and used by the occupants of the building to which it is accessory. On a lot occupied by a multiple-unit dwelling, the **PRIVATE GARAGE** may be designed and used for the storage of one and one-half times as many automobiles as there are dwelling units. A **PRIVATE GARAGE** separate from the dwelling will not be constructed prior to the construction of the dwelling.

**GARAGE, PUBLIC.** A building or portion thereof, other than a private garage, designed or used for servicing, repairing, equipping, renting, selling or storing motor driven vehicles.

**GENERAL STORE, COUNTRY.** A single store, the ground floor area of which is 4,000 square feet or less and which offers for sale primarily, most of the following articles: bread, milk, cheese, canned and bottled foods and drinks, tobacco products, candy, papers and magazines, and general hardware items. Gasoline may also be offered for sale but only as a secondary activity of a **COUNTRY GENERAL STORE**.

**GOLF COURSE.** Any **GOLF COURSE**, publicly or privately owned, on which the game of golf is played, including accessory uses and buildings customary thereto, but excluding golf driving ranges as defined herein.

**GOLF DRIVING RANGE.** A limited area on which golf players do not walk, but onto which they drive golf balls from a central driving tee.

**GOVERNING BODY.** The Town Council of Irvington, Virginia.

**HEALTH OFFICIAL.** The County Health Director or Sanitarian serving the town.

**HIGHWAY ENGINEER.** The resident engineer employed by the Virginia Department of Transportation.

**HISTORICAL AREA.** As defined on the zoning map in which the provisions of the ordinance apply for protection of a historical heritage. (This **HISTORICAL AREA** is included in the area of the town designated as the historic district by the National Register of Historic Places and Virginia Landmarks Register.)

**HOG FARM.** A farm where hogs are kept and fed.

**HOME GARDEN.** A garden in a residential district for the production of vegetables, fruits and flowers generally for use and/or consumption by the occupants of the premises.

**HOME OCCUPATION.** An occupation carried on by the occupant of a dwelling as a secondary use in connection with which there is no display, and no one is employed other than members of the family residing on the premises, such as the preparation of food products for sale and similar activities; professional offices such as medical, dental, legal, engineering and architectural offices conducted within a dwelling by the occupant. **HOME OCCUPATION** shall not exceed 20% of the inhabitable square footage of a residence.



**HOTEL.** A building designed or occupied as the more or less temporary abiding place for individuals who are, for compensation, lodged with or without meals.

**IMPERVIOUS COVER.** A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

**JURISDICTION.** The area or territory subject to the legislative control of the governing body.

**LIGHTS.** Any exterior lights.

**LOT.** A parcel of land occupied or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open spaces, lot width and lot areas as are required by this chapter, and having frontage upon a public street or private road either shown on a plat of record or considered as a unit or property and described by metes and bounds.

**LOT, CORNER.** A lot abutting on two or more public streets at their intersection. Of the two sides of a **CORNER LOT**, the front shall be deemed to be the shorter of the two sides fronting on streets.

**LOT, DEPTH OF.** The horizontal distance between the front and rear lot lines.

**LOT, DOUBLE FRONTAGE.** An interior lot having frontage on two streets.

**LOT OF RECORD.** A lot which has been recorded in the Clerk's office of the Circuit Court of Lancaster County.

**LOT, INTERIOR.** Any lot other than a corner lot.

**LOT, WIDTH OF.** The horizontal distance between side lot lines.

**MANUFACTURE AND/OR MANUFACTURING.** The processing and/or converting of raw, unfinished materials or products, or either of them, into articles or substances of different character, or for use for a different purpose.

**MANUFACTURED HOME.** A home (the parts of which) are cut, fitted, installed in a factory and transported to a lot and erected up on a permanent foundation. Also includes a modular home.

**MARINA.** A boating establishment operated for profit or for use by a club or similar organization located on a tidal waterway which provides wet or dry, covered or uncovered boat slips, dock space or dry boat storage; provided; however, that an establishment having docks or slips used exclusively for commercial seafood harvesting or processing, or for boat and engine repairs or service shall not be deemed a **MARINA**.

**MOBILE HOME.** A structure designed for transportation, after fabrication, on streets and highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a structure complete and ready for occupancy; except for minor and incidental unpacking and assembly operation, location on jacks or permanent foundations, connection to utilities and the like.

**NONCONFORMING LOT.** An otherwise legally platted lot that does not conform to the minimum area or width requirements of this chapter for the district in which it is located.

**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 chapter, or is designed or intended for a use that does not conform to the use regulations of this chapter for the district in which it is located.

**NONCONFORMING USE OR ACTIVITY.** 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 chapter or the district in which it is located.

**NON-POINT SOURCE POLLUTION.** Pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diverse sources, such as runoff from agriculture and urban land development and use.

**NON-TIDAL WETLANDS.** Those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the United States Environmental Protection Agency pursuant to § 404 of the Federal Clean Water Act, in 33 C.F.R. § 328.3b, dated November 13, 1986.

**NOXIOUS WEEDS.** Weeds that are difficult to control effectively, such as Johnson grass, kudzu and multiflora rose.

**OFF-STREET PARKING AREA.** Public space provided for parking vehicles outside the dedicated street right-of-way. Parking spaces shall be no less than ten feet by 20 feet. Space for vehicle parking for handicapped persons shall be no less than 12 feet by 24 feet.

**PEN.** A small enclosure used for the concentrated confinement and housing of animals or poultry; a place for feeding and fattening animals or poultry; a coop. Enclosed pasture or range with an area in excess of 100 square feet for each hog or small animal or 200 square feet for each larger animal shall not be regarded as a **PEN**.

**PLAT.** A map of a tract or parcel of land which is to be, or which has been subdivided; includes the terms; map, plan, plot, replat or replot.

**PUBLIC ROAD.** A road owned or maintained by the state and/or local government and designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated

pursuant to: the Erosion and Sediment Control Law (VA Code §§ 62.1-44.15:52 et seq.). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design and construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

***PUBLIC WATER AND SEWER SYSTEMS.*** A water or sewer system owned and operated by a municipality or county, or owned and operated by a private individual or a corporation approved by the governing body and properly licensed by the State Corporation Commission.

***REDEVELOPMENT.*** The process of developing land that is or has been previously developed.

***REQUIRED OPEN SPACE.*** Any space required in any front, side or rear yard.

***RESOURCE MANAGEMENT AREA*** or ***RMA.*** The component of the Chesapeake Bay Preservation Area that is not classified as the resource protection area. ***RMAs*** include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

***RESOURCE PROTECTION AREA*** or ***RPA.*** The component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of the state waters.

***RESTAURANT.*** Any building in which for compensation, food or beverages are dispensed for consumption including, among other establishments, cafés, tea rooms, confectionery shops or refreshment stands.

***RETAIL STORES AND SHOPS.*** Buildings for display and sale of merchandise at retail or for the rendering of personal services.

***SAWMILL.*** A temporary portable sawmill located on a private property for the processing of timber cut only from that property or from property immediately contiguous and adjacent thereto.

***SETBACK.*** The minimum distance by which any building or structure must be separated from a property or road.

***SIGN.*** See §§ 154.190 through 154.202.

***SITE PLAN.*** A complete plan delineating the overall scheme of development of land, including but not limited to, grading, engineering design, construction details, septic field, Virginia Department of Transportation entrance and exit details, survey data for existing and proposed improvements, open space and landscape features.

(a) **FINAL SITE PLANS.** Plans and specifications for the construction of all proposed physical improvements conforming with all applicable requirements, regulations and restrictions of this chapter, submitted as part of the approval process.

(b) **PRELIMINARY SITE PLANS.** Plans prepared in conformity with this chapter which meet all applicable requirements, regulations and restrictions, but not submitted for approval.

**SITE PLAN REVIEW.** The review by the Zoning Administrator, and Planning Commission where herein required by the ordinance, to determine if site plans meet the stated purposes and standards of ordinances of the town.

**STORE.** See **RETAIL STORES AND SHOPS.**

**STORY.** The portion of a building, other than the basement, included between the surface of any floor and the surface of the floor above it. If there is no floor above it, the space between the floor and the ceiling next above it.

**STREET LINE.** The center dividing line of a street or road right-of-way and the contiguous property.

**STREET, PUBLIC.** A state maintained thoroughfare which affords principal means of access to abutting property.

**STRUCTURE.** Anything constructed or erected, the use of which requires permanent location on the ground or into subaqueous bottom, or attachment to something having a permanent location on the ground on subaqueous bottom. This includes, but is not limited to, dwellings, buildings, signs, piers, bulkheads, boat houses and slips and boat basins.

**STRUCTURE, MAIN.** The principal structure on a lot or the structure housing the principal use of the lot.

**TIDAL SHORE.** Land contiguous to a tidal body of water between mean low water level and mean high water level.

**TIDAL WETLANDS.** Vegetated and nonvegetated wetlands as defined in VA Code § 28.2-1300.

**USE, ACCESSORY.** A subordinate use located upon the same lot occupied by the main house.

**VARIANCE.** A relaxation of the terms of the zoning ordinance granted by the Board of Zoning Appeals where such **VARIANCE** will not to contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this chapter, a **VARIANCE** is authorized only for height, area and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by **VARIANCE**, nor shall a **VARIANCE**

be granted because of the presence of nonconformities in the zoning division or district or adjoining zoning divisions or districts. The Virginia Supreme Court has made it clear (*Cochran v. Fairfax County Board of Zoning Appeals*, 594 S.E. 2d 571) that for a locality's Board of Zoning Appeals to grant a **VARIANCE** from the zoning ordinance, the landowner applying for the **VARIANCE** must prove that not granting the variance would deprive him or her of an use of the property. Therefore, the Court has made it clear that unless the ordinance would deny the use of the property, the BZA lacks any jurisdiction to grant a **VARIANCE**.

***WATER-DEPENDENT FACILITY.***

(a) A development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation.

(b) These facilities include, but are not limited to:

1. Ports;
2. The intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers;
3. Marinas and other boat docking structures;
4. Beaches and other public water-oriented recreation areas; and
5. Fisheries or other marine resources facilities.

***WATER QUALITY IMPACT ASSESSMENT. To:***

(a) Identify the impacts of proposed development on water quality and lands within RPAs and other environmentally-sensitive lands:

(b) Ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands;

(c) To protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion or vulnerability to flood and storm damage: and

(d) Specify mitigation which will address water quality protection.

***WAYSIDE STAND, ROADSIDE STAND, WAYSIDE MARKET.*** Any structure or land used for the sale of agricultural or horticultural produce.

***WETLANDS.*** Tidal and non-tidal wetlands.

**YARD.** An open space on a lot other than a court, unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

**YARD, FRONT.** An open space on the same lot as a building between the front line of the building (exclusive of steps) and the front lot or street line, and extending across the full width of the lot.

**YARD, REAR.** An open space on the same lot as a building between the rear line of the building (exclusive of steps) and the rear line of the lot, and extending the full width of the lot.

**YARD, SIDE.** An open space on the same lot as a building between the side line of the building (exclusive of steps) and the side line of the lot, and extending from the front yard line to the rear yard line.

**ZONING.** The division of a city by legislative regulation into districts and the prescription and application in each district of regulations having to do with structural and architectural designs of buildings and of regulations prescribing use to which buildings within designated districts may be put.

**ZONING ADMINISTRATOR.** The designated reviewing agent of the governing body and Planning Commission for all preliminary application, including site plans, plat preparation procedures, conformity with the Chesapeake Bay Act, the zoning laws of the state, the county and the town. The **ZONING ADMINISTRATOR**, as agent, shall consult on all matters contained herein, and recommend the establishment of reasonable administrative procedures deemed necessary for the proper administration of this chapter.

**ZONING PERMIT.** A permit issued by the Zoning Administrator to the applicant before the applicant can obtain a building permit from the county and proceed with any work affected by any provision of this chapter. A permit is invalid if the work is not commenced within two years of issuance of the permit.

(Ord. passed 9-12-2013)

## **GENERAL REGULATIONS**

### **§ 154.015 ZONING PERMITS.**

(A) Buildings or structures, as defined in § 154.004, shall not be started, reconstructed, enlarged or altered, or a new or expanded use shall not be commenced until a zoning permit has been obtained from the Administrator and a building permit has been obtained from the county.

(B) (1) The Town Council may request a review of the zoning permits approved by the Zoning Administrator.

(2) Any decision made by the Zoning Administrator may be appealed to the Board of Zoning Appeals by any aggrieved permit applicant.

(C) (1) Each application for a zoning permit shall be accompanied by three copies of a scale drawing. The drawing shall show the size and shape of the parcel of land on which the proposed building is to be constructed, the nature of the proposed use of the building or land and the location of such building or use with respect to the property lines of said parcel of land to the right-of-way of any street or highway adjoining said parcel of land.

(2) Any other information which the Zoning Administrator may deem necessary for consideration of the application may be required. If the proposed building or use is in conformity with the provisions of this chapter, a permit shall be issued to the applicant by the Administrator. One copy of the drawing shall be returned to the applicant with the permit.

(3) Each application for a zoning permit shall be accompanied by a check made payable to the Town Treasurer, in the amount of \$35; provided, however, that as to development within the Chesapeake Bay Preservation Area Overlay District established pursuant to §§ 154.145 through 154.158, each application will comply with the requirements of the plan of development process set forth in § 154.155.

(D) A zoning permit shall be granted by the Zoning Administrator only upon such time as the requirements of § 154.155 are met by the applicant. An approved plan shall be filed with the Zoning Administrator.

(Ord. passed 9-12-2013)

#### **§ 154.016 CERTIFICATE OF OCCUPANCY.**

(A) Land may be used or occupied or changed in use, and buildings that are structurally altered or erected may be used only after a certificate of occupancy has been issued by the County Building Official.

(B) Such a permit shall state that the building or the proposed used or the use of the land complies with the provisions of this chapter.

(C) A similar certificate shall be issued for the purpose of maintaining, renewing, changing or extending a nonconforming use.

(D) A certificate of occupancy either for the whole or part of a building shall be issued within ten days upon validation to the Zoning Administrator that construction of the premises or building, and use thereof, comply with the ordinances and requirements of the town and the county. (See § 154.004.)

(Ord. passed 9-12-2013)

**§ 154.017 CONDITIONAL USE PERMIT.**

(A) Where permitted by this chapter, the location of certain uses as stated in the district regulations shall require, in addition to the zoning permit and certificate of occupancy, a conditional use permit.

(B) The purpose of the conditional use permit is to provide for certain uses which may not be compatible with certain surrounding uses or which may be compatible with surrounding uses only if the use in question is established in conformance with certain limiting conditions.

(C) In granting such a permit, the governing body and Planning Commission shall consider the relationship of the use and location in question with the Comprehensive Plan and shall consider the impact of said use upon surrounding properties.

(D) A conditional use shall be approved only if it is permitted as a conditional use in the district regulations on and only if it is found that the location is appropriate and not in conflict with the Comprehensive Plan.

(E) Such a permit shall only be granted if it is shown that the use in question will not adversely affect the public health, safety, morals and general welfare and is in compliance with the Chesapeake Bay Act.

(F) In granting a conditional use permit, the governing body may impose such reasonable conditions as it believes necessary to accomplish the objectives of this chapter, to protect the environment and to protect surrounding properties, persons and neighborhood values.

(G) Such conditions may include requirements that adequate utilities and off-street parking be provide, that soil erosion and sedimentation be avoided, that proper landscape designs detailing plantings, screening for sight and sound and proper buffers be provided, that businesses and other operations be carried out only at appropriate times, that only certain appropriate activities shall occur, along with other requirements that the governing body deems necessary to accomplish the objectives of this chapter.

(H) Unless otherwise specified as a condition of approval, the height, area, yard and sign limitations shall be the same as for other uses in the district.

(I) Applications for a conditional use permit shall be accompanied by a scale drawing as described in other subchapters herein. In addition, the applicant shall be required to provide written notice of the application to all property owners within 300 feet of the property for which the application is being made, two weeks prior to the public hearing to be held by the Planning Commission as hereinafter set forth.

(J) The governing body shall approve or deny the application after it has been reviewed by the Planning Commission and after the Planning Commission has made its recommendation concerning the application.



(K) The publication requirements and public hearing requirements of VA Code, § 15.2-2204, as amended, are incorporated herein by this reference.  
(Ord. passed 9-12-2013)

#### **§ 154.018 USES NOT PROVIDED.**

(A) If in any district established under this chapter a use is not specifically permitted and on application is made by a property owner to the Planning Commission for such use, the Planning Commission, in consultation with, and study by, the Zoning Administrator, shall make its recommendations to the governing body within 100 days.

(B) If the recommendation of the Planning Commission is approved by the governing body, the chapter shall be amended to list the use as a permitted use in that district in accordance with the provisions contained herein.  
(Ord. passed 9-12-2013)

#### **§ 154.019 WIDENING OF HIGHWAYS AND STREETS.**

Whenever there shall be plans in existence approved by either the State Department of Highways or by the governing body for the widening of any street or highway, the Administrator may recommend additional front yard setbacks for any new construction or for any structures remodeled adjacent to the future planned right-of-way for such proposed street or highway widening.  
(Ord. passed 9-12-2013)

#### **§ 154.020 MINIMUM OFF-STREET PARKING.**

There shall be provided at the time of erection of any main building or structure or at the time any main building or structure is enlarged or new or expanded use commenced, minimum off-street parking space with adequate provision for entrance and exit by standard sized automobiles as follows.

(A) In all residential districts there shall be provided either in a private garage or on the lot, space for the parking of two automobiles for each dwelling unit in a new building, or each dwelling unit added in the case of the enlargement of any existing building.

(B) Bed and breakfasts, inns and hotels shall provide on the lot parking space for one automobile for each accommodation.

(C) For church and school auditoriums, theaters and other similar places of assembly, at least one parking space for every five fixed seats provided in said building.

(D) For medical and dental clinics, at least five parking spaces shall be furnished for each doctor or dentist having offices in such clinic.

(E) For retail stores selling direct to the public, one parking space for each 500 square feet of floor in the building.

(F) Any commercial building not listed above hereafter erected, converted or structurally altered or any new or expanded use commenced shall provide one parking space for each 100 square feet of floor space in the building.

(G) Parking space as required in the foregoing shall be on the same lot with the main building, except that in case of buildings other than dwelling, spaces may be located as far away as 600 feet. Every parcel of land hereafter used as public parking area shall be surfaced with gravel, stone, asphalt, concrete, grid or modular pavements or other surfaces as approved by the Zoning Administrator. It shall have appropriate guards where needed as determined by the Administrator. Any lights used to illuminate said parking areas shall be so arranged as to reflect the light away from adjoining premises in the residential district.

(Ord. passed 9-12-2013)

**§ 154.021 UNDERGROUND SYSTEMS REQUIRED.**

Whenever possible all transmission, distribution and customer utility service facilities including, but not limited to, gas, telephone communications, cable television and public street lights installed within the town should be placed below the surface of the ground.

(Ord. passed 9-12-2013)

***ZONING DISTRICTS***

**§ 154.035 GENERALLY.**

(A) For the purpose of this chapter, the incorporated area of the town is hereby divided into the following zoning districts:

Residential	R-1
Residential	R-2
Business	B-1
Business	B-2
Industrial	M-1

(B) Although the state has designed a Historic District within the town, it is not a separate zoning district and a floodplain overlay does exist (see Chapter 152 of this code of ordinances for details). (Ord. passed 9-12-2013)

### ***RESIDENTIAL DISTRICTS R-1 AND R-2***

#### **§ 154.050 STATEMENT OF INTENT.**

(A) The Residential Districts of R-1 (one acre) and R-2 (two acre) are composed of certain low to medium concentrations of residential uses, plus certain open areas where similar development appears likely to occur.

(B) The regulations for these districts are designed to regulate family dwelling and as well as the other structures as set forth in the use regulations of the districts in order to stabilize and protect the essential characteristics of the districts, to promote and encourage, insofar as compatible with the intensity of land use, a suitable environment for family life composed of an adult population with children, and to permit certain commercial uses of a character unlikely to develop general concentration of traffic, crowds of customers and general outdoor advertising.

(C) To these ends, retail activity is sharply limited and this district is protected against encroachment of general, commercial and industrial uses.

(D) The residential districts are not completely residential as they include public and semi-public, institutional and other related uses.

(E) However, it is basically residential in character and, as such, should not be spotted with commercial and industrial uses without specific Town Council enabling action. (Ord. passed 9-12-2013)

#### **§ 154.051 USE REGULATIONS.**

(A) In Residential Districts R-1 and R-2, structures to be erected on land to be used shall be for one or more of the following uses the major difference being acreage requirements (see § 154.052).

(B) A zoning permit has been obtained from the Zoning Administrator.

(C) Off-street parking in Residential Districts R-1 and R-2 is required.

(D) Sewage/disposal/wastewater treatment systems which incorporate a drainfield as an integral part of the system requires Health Department approval.

## (E) Permitted uses:

- (1) One single-family dwelling per lot as defined in § 154.004;
- (2) In Residential District R-1, one two-family dwelling per lot, the part of which must be joined by a conventional room whose width is at least two-thirds of its length. Two-family dwellings are prohibited in Residential District R-2;
- (3) Agricultural with conditional use permits, but not to include the raising of animals, including horses, pigs, cattle, fowl or the like;
- (4) Schools;
- (5) Churches;
- (6) Swimming pools with conditional use permits;
- (7) Parks and playgrounds;
- (8) Home occupations as defined, conducted by the occupants with conditional use permits;
- (9) Off-street parking as required by this chapter;
- (10) Accessory buildings and structures and uses permitted as defined hereafter, however garages or other accessory structures such as carports, porches and stops attached to the main building should be considered part of the main building. No accessory building or structures may be closer than ten feet to any property line or private right-of-way or 100 feet from mean high water line of a lot on a creek except docks and bulkheads. Accessory building, other than carports or garages shall not exceed 300 square feet nor 15 feet in height. Total square footage of all accessory buildings other than swimming pools, and tennis courts, shall not exceed 25% of the rear yard area. Accessory buildings or structures may not be used for rental, or similar purposes. No accessory building or structure may be fitted with kitchen and sleeping accommodations;
- (11) Boat docks for private use provided all structures, including mooring pilings, are landward of the United States Army Corps of Engineers navigation line as depicted on the Department of the Army Guidelines for General Permit Program for Carters Creek, dated April 2, 1980. Any boat dock to be constructed where there is no navigation line depicted requires a conditional use permit; and
- (12) Farm winery. See § 154.070 for special requirements.  
(Ord. passed 9-12-2013)

**§ 154.052 AREA REGULATIONS.**

(A) For lots containing or intended to contain a single-family dwelling the minimum lot areas shall be one and two acres as designated by the R-1 and R-2 Residential Districts, zoning map. The Administrator may require a greater area if considered necessary by the Health Official.

(B) For lots containing or intended to contain a two-family dwelling, the minimum lot area shall be one and one-half acres. All lots of record prior to March 9, 1989, shall be exempt from this requirement. The Administrator may require a greater area if considered necessary by the Health Official.

(Ord. passed 9-12-2013)

**§ 154.053 SETBACK REGULATIONS.**

(A) These regulations may be appealed to the Board of Zoning Appeals if the application of the chapter produces an undo hardship or restricts the use of the property.

(B) Structures shall be located 75 feet or more from the centerline of any street or road right-of-way, but in no event less than 50 feet from the edge of the right-of-way. This shall be known as the **SETBACK LINE**.

(C) The Administrator may require a different setback to keep said structure more in line with existing houses or structures.

(Ord. passed 9-12-2013)

**§ 154.054 FRONTAGE REGULATIONS.**

(A) For permitted uses, the minimum lot width at the setback line shall be 100 feet or more.

(B) Where because of topological features or where lots front on cul-de-sacs or on another type of turnarounds, the Administrator may waive the minimum width requirements under such conditions as he or she may require.

(Ord. passed 9-12-2013)

**§ 154.055 YARD REGULATIONS.**

(A) *Side*. The minimum side yard for each main structure shall be 25 feet as measured from the closest point of the main structure to the nearest property line or to the edge of any private right-of-way.

(B) *Rear*.

(1) Each main structure shall have a rear yard of not less than 35 feet.

(2) The mean high water line of a lot on a creek shall be the rear line.

(3) Each main structure located on a creek shall have a rear yard setback of not less than 100 feet except those structures to be located on lots of record prior to March 9, 1990. See CBPA modifications, § 154.149.

(C) *Church a permitted use with zoning permit.*

(1) For nonresidential church structures or other nonresidential places of worship, the minimum side yard or rear yard adjoining or adjacent to a residential district shall be located ten feet or more as measured from the closest point of a structure to the nearest property line or to the edge of any private right-of-way.

(2) Such church structures do not include church schools or day care centers, other than Sunday schools.

(3) At such time as the structure is no longer used as a church or a place of worship, then a conditional use permit will be required for any subsequent use.  
(Ord. passed 9-12-2013)

#### **§ 154.056 HEIGHT REGULATIONS.**

(A) The height limit for structures may be increased up to 45 feet and up to three stories provided each side yard is 45 feet plus one foot of side yard for each additional foot of building height over 35 feet.

(B) A public or semi-public building such as a school, church or library, may be erected to a height of 60 feet from grade provided that required front, side and rear yards shall be increased one foot for each foot in height over 35 feet.

(C) Church spires, belfries, cupolas, monuments, municipal water towers, chimneys, flues, flag poles, television antennas and radio aerials are exempt. Parapet walls may be up to four feet above the height of the building on which the walls rest.  
(Ord. passed 9-12-2013)

#### **§ 154.057 SPECIAL PROVISIONS FOR CORNER LOTS ON PUBLIC STREETS.**

(A) Of the two sides of a corner lot, the front shall be deemed to the shortest of the two sides fronting on the streets.

(B) The side yard on the side facing the side street shall be 35 feet or more for both main and accessory building.

(Ord. passed 9-12-2013)

**§ 154.058 REQUIREMENTS FOR PERMITTED USES.**

(A) (1) Before a zoning permit shall be issued or construction commenced on any permitted use in this district, or a permit issued for a new or expanded use, a complete site plan shall be submitted to the Zoning Administrator for study.

(2) Modification of the plans may be required.

(B) A house, home or residence must exist or be under construction before a zoning permit will be issued for the construction or installation of a garage, carport or other accessory structure on a lot, parcel or property in the town.

(Ord. passed 9-12-2013)

**§ 154.059 EROSION AND SEDIMENT CONTROL.**

(A) No person, firm or corporation, during construction of a house, building or any other structure, or during any grading or excavation, shall permit erosion or runoff of sediment, mud, dirt or other debris into creeks, streams or on streets, roads or abutting property.

(B) Grading and seeding or other preventive measure or control thereof shall be taken to prevent any such erosion or runoff as determined by the Administrator and in accordance with the county erosion and sediment control ordinance.

(Ord. passed 9-12-2013)

***FARM WINERY; SPECIAL REQUIREMENTS***

**§ 154.070 USE REGULATIONS.**

(A) (1) In Residential District R-2 in addition to the uses set forth in §§ 154.050 through 154.059, farm wineries are authorized with a conditional use permit and a site plan.

(2) (a) Prior to approval of the site plan, the owner shall obtain from the State Department of Transportation approval of a commercial entrance to the farm winery, and any required approval from the local office of the State Department of Health.

(b) In addition, provision shall be made for safe and convenient access, parking, outdoor lighting, signs and potential adverse impacts to adjoining property.

(B) Each farm winery shall be subject to the following.

(1) (a) The owner shall obtain a farm winery license from the State Alcoholic Beverage Control Board.

(b) At least 51% of the fresh fruits or agricultural products used by the owner to manufacture the wine shall be grown or produced on the farm, unless the State Alcoholic Beverage Control Board waives such requirements.

(2) Facilities for fermenting and/or bottling wine shall not be established until the vineyard, orchard or other growing area has been established and is in production.  
(Ord. passed 9-12-2013)

### ***BUSINESS DISTRICT B-1***

#### **§ 154.085 STATEMENT OF INTENT.**

(A) Generally, this district covers that portion of the community intended for the conduct of general business to which the public requires direct and frequent access.

(B) This includes such uses as retail stores, banks, theaters, business offices, newspaper offices, restaurants and public buildings.  
(Ord. passed 9-12-2013)

#### **§ 154.086 USE REGULATIONS.**

(A) All uses allowed in R-1 and R-2 Districts are permitted.

(B) In addition, all of the following are allowed with a conditional use permit:

- (1) Retail food stores that sell gasoline;
- (2) Bakeries;
- (3) Dry cleaners;



- (4) Laundries;
- (5) Wearing apparel stores;
- (6) Drug stores;
- (7) Post offices, county offices, town offices and other similar public uses;
- (8) Barber and beauty shops;
- (9) Theaters, assembly halls;
- (10) Hotels, motels, inns, rooming and boarding houses, tourist homes;
- (11) Office buildings, newspaper offices and banks;
- (12) Churches;
- (13) Libraries;
- (14) Marina, boat and yacht sales and service agencies;
- (15) Service stations (with major repair under cover);
- (16) Clubs and lodges;
- (17) Plumbing and electrical supply (with storage under cover);
- (18) Furniture stores; and

(19) Restaurants whether serving or not serving alcoholic beverages. Off-street parking as required by this chapter.  
(Ord. passed 9-12-2013)

**§ 154.087 AREA REGULATIONS.**

None, except as required by the County Health Official.  
(Ord. passed 9-12-2013)

**§ 154.088 FRONTAGE AND YARD REGULATIONS.**

(A) Structures shall be located 25 feet or more from any public street right-of-way.

(B) Structures shall be located ten feet or more as measured from the closest point of a structure to the nearest side or rear property line or to the edge of any private right-of-way.

(C) (1) For permitted uses, the minimum side yard or rear yard adjoining or adjacent to a residential district shall be 35 feet and off-street parking shall be in accordance with the provisions contained herein.

(2) The Planning Commission and Town Council may increase side and rear yard requirements and impose landscape design requirements as needed for buffer area screening for adjacent residential properties.

(Ord. passed 9-12-2013)

#### **§ 154.089 HEIGHT REGULATIONS.**

(A) Buildings may be erected no more than 45 feet in height from local median grade.

(B) (1) Church spires, belfries, monuments, cooling towers, municipal water towers, chimneys, flues, flag poles, television antennas and radio aerials are exempt.

(2) Parapet walls may be up to four feet above the height of the building on which the walls rest.

(Ord. passed 9-12-2013)

#### **§ 154.090 REQUIREMENTS FOR PERMITTED USES.**

(A) (1) Before a zoning permit shall be issued or construction commenced on any permitted issued for a new or expanded use, detailed site plans in sufficient detail to show the operations and processes including nonconforming uses and aspects shall be submitted to the Zoning Administrator for study.

(2) Modification of the plans may be required.

(B) (1) Landscaping may be required within any established or required front setback area.

(2) The plans and execution must take into consideration traffic hazards and shall be approved by the Zoning Administrator.

(C) (1) Sufficient area shall be provided:

(a) To adequately screen permitted uses from adjacent business and residential districts;

and

(b) For off-street parking of vehicles incidental to the business, its employees and clients.

(2) Other buffer area and landscaping requirements deemed necessary by the Zoning Administrator, Planning Commission and governing body of the town may be required. (See also §§ 154.015 through 154.021.)  
(Ord. passed 9-12-2013)

**§ 154.091 EROSION AND SEDIMENT CONTROL.**

(A) No person, firm or corporation, during construction of a house, building or any other structure or during any grading or excavation, shall permit erosion or runoff of sediment, mud, dirt or other debris into creeks, streams or on streets, roads or abutting property.

(B) Grading and seeding or other preventative measures or control thereof shall be taken to prevent any such erosion or runoff as determined by the Administrator and in accordance with the county erosion and sediment control ordinance.  
(Ord. passed 9-12-2013)

**§ 154.092 LIGHTING REGULATIONS.**

Any exterior light or lights, except street and public lights, shall be so arranged to reflect light away from the adjoining premises in residential districts.  
(Ord. passed 9-12-2013)

***BUSINESS DISTRICT B-2***

**§ 154.105 STATEMENT OF INTENT.**

(A) A Limited Business District (B-2) is intended to provide a business district that will act as a transitional area between General Business (B-1) and the abutting residential area.

(B) It is the intent of this zoning district to allow on each site one business activity only of limited floor size which would not produce excessive or offensive dust, noise or odor.

(C) Businesses permitted within this district are required to conduct all aspects to their operation enclosed under roof and having no outside storage.

(D) Congestion resulting from traffic and parking lot is to be held to a minimum to protect and preserve the residential quality of the neighborhood.  
(Ord. passed 9-12-2013)

#### **§ 154.106 USE REGULATIONS.**

In Limited District B-2, structures to be erected, not to exceed 1,500 square feet of floor area, first and second floor total, can be used for one or more of the following uses with a conditional use permit:

(A) Town offices and other similar public uses;

(B) Bed and breakfast establishments;

(C) Office buildings;

(D) Professional offices;

(E) Antique shops and galleries;

(F) Catering;

(G) Bakeries;

(H) Florists shops;

(I) Barbershops and beauty shops; and

(J) Hobby and craft shops.

(Ord. passed 9-12-2013)

#### **§ 154.107 AREA REGULATIONS.**

There are no area regulations, except for permitted uses utilizing individual sewage disposal systems; the required area for any such use shall be approved by the County Health Official.  
(Ord. passed 9-12-2013)

#### **§ 154.108 FRONTAGE AND YARD REGULATIONS.**

(A) Structures shall be located 25 feet or more from any public street or road right-of-way.

(B) Structures shall be located ten feet or more as measured from the closest point of a structure to the nearest side or rear property line or to the edge of any private right-of-way.  
(Ord. passed 9-12-2013)

**§ 154.109 HEIGHT REGULATIONS.**

(A) The height limit for structures is 35 feet from grade, including cupolas.

(B) Chimneys, flues, flag poles and radio and television antennas not exceeding 18 feet in height are exempt.  
(Ord. passed 9-12-2013)

**§ 154.110 PARKING.**

Off-street parking as required by this chapter.  
(Ord. passed 9-12-2013)

**§ 154.111 REQUIREMENTS FOR PERMITTED USES.**

(A) (1) Before a zoning permit shall be issued or construction commenced on any permitted use in this district, or a permit issued for a new or expanded use, detailed site plans in sufficient detail to show the operation and processes including nonconforming uses and aspects, shall be submitted to the Zoning Administrator for study.

(2) Modifications of the plans may be required.

(B) (1) Landscaping may be required within any established or required front setback areas.

(2) The plans and execution must take into consideration traffic hazards and shall be approved by the Zoning Administrator.

(C) (1) Sufficient area shall be provided:

(a) To adequately screen permitted uses from adjacent business and residential districts;  
and

(b) For off-street parking of vehicles incidental to the business, its employees and clients.

(2) Other buffer areas and landscaping requirements deemed necessary by the Zoning Administrator, Planning Commission and governing body of the town may be required. (See also §§ 154.015 through 154.021.)  
(Ord. passed 9-12-2013)

***INDUSTRIAL LIMITED DISTRICT M-1*****§ 154.125 STATEMENT OF INTENT.**

(A) The primary purpose of this district is to permit certain industries, which do not in any way detract from the residential desirability, to locate in designated areas adjacent to residential uses.

(B) The Planning Commission and governing body may impose front, side and rear yard landscape design requirements as needed for buffer area screening for adjacent residential and business property.

(C) The limitations on (or provisions related to) height of building, horsepower, heating, flammable liquids or explosives, controlling emission of fumes, odors and/or noise, landscaping and the number of persons employed are imposed to protect foster adjacent residential desirability while permitting industries to locate near a labor supply.

(Ord. passed 9-12-2013)

**§ 154.126 USE REGULATIONS.**

In Industrial District M-1, any structure to be erected or land to be used shall be for all permitted uses in Residential District R-1 and R-2 and Business District B-1 and B-2 or one or more of the following uses, all of which require a conditional use permit:

(A) Assembly of electrical appliances and electronic instruments and devices;

(B) Automobile painting, upholstering, repairing, rebuilding, reconditioning, body and fender work, truck repairing or overhauling;

(C) Blacksmith shop, welding or machine shop;

(D) Laboratories; pharmaceuticals and/or medical;

(E) Manufacturing, packaging or treatment of products such as seafood, bakery goods, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries and food products;

(F) Contractor's equipment storage yards or plants, or rental of equipment commonly used by contractors;

(G) Cabinets, furniture, upholstery and canvas shops;

(H) Boat building, repairing, servicing storage and marine services; and

(I) Marinas with docks, piers, electrical service, water and waste pump out services. See § 154.004 for the definition of nonconforming lot.

(Ord. passed 9-12-2013)

#### **§ 154.127 REQUIREMENTS FOR PERMITTED USE.**

(A) (1) Permitted uses, excluding fishing and boating industries, shall be conducted wholly within a completely enclosed building.

(2) Public utilities and signs requiring natural air circulation, unobstructed view or other technical consideration necessary for proper operation may be exempt from the provision.

(3) This exception does not include storing of any materials.

(B) (1) Landscaping may be required within any established or required front setback area.

(2) The plans and execution must take into consideration traffic hazards and shall be approved by the Zoning Administrator.

(C) Sufficient area shall be provided:

(1) To adequately screen permitted uses from adjacent business and residential districts; and

(2) For off-street parking of vehicles incidental to the industry and its employees and clients.

(D) (1) Before a zoning or building permit shall be issued or construction commenced on any permitted used in this district, or a permit issued for a new or expanded use, detailed site plans in sufficient detail to show the operations and processes, including nonconforming uses and aspects, shall be submitted to the Zoning Administrator for study.

(2) Modifications of the plans maybe required.

(E) (1) Fences shall not exceed a height of six feet forward of the setback line and shall not exceed a height of eight feet back of the setback line in the industrial zones.

(2) The Zoning Administrator may permit a higher fence with conditional use permit.

(3) The Administrator may, for safety reasons, require a lower height or may not permit any fence or hedge, and may require the removal of any existing fence or hedge for safety reasons.

(Ord. passed 9-12-2013)

**§ 154.128 AREA REGULATIONS.**

(A) For permitted uses utilizing sewage disposal systems, the required area for any such use shall be approved by the Health Official.

(B) The Administrator may require a greater area if considered necessary by the Health Official.  
(Ord. passed 9-12-2013)

**§ 154.129 SETBACK REGULATIONS.**

(A) Structures shall be located 75 feet or more from the centerline of any street or road right-of-way, but in no event less than 50 feet from the edge of the right-of-way. This shall be known as the setback line.

(B) The Administrator may require a different setback to keep said structure more in line with existing houses or structures.  
(Ord. passed 9-12-2013)

**§ 154.130 FRONTAGE AND YARD REGULATIONS.**

(A) For permitted uses, the minimum side and rear yard adjoining or adjacent to a residential district shall be 35 feet.

(B) The side yard of corner lots shall be 40 feet or more.

(C) Off-street parking shall be in accordance with the provisions contained herein.  
(Ord. passed 9-12-2013)

**§ 154.131 HEIGHT REGULATIONS.**

(A) Buildings and structure may be erected up to a height of 35 feet.

(B) For buildings over 35 feet in height, approval shall be obtained from the Administrator.

(C) Chimneys, flues, cooling towers, flag poles, radio or communication towers or their accessory facilities not normally occupied by workers are excluded from the limitation.

(D) Parapet walls are permitted up to four feet above the limited height of the building on which the walls rest.  
(Ord. passed 9-12-2013)



**§ 154.132 COVERAGE REGULATIONS.**

Buildings or groups of buildings with their accessory building may cover up to 70% of the area of the lot not to conflict with other provision of this chapter.

(Ord. passed 9-12-2013)

**§ 154.133 EROSION AND SEDIMENTATION CONTROL.**

(A) No person, firm or corporation, during construction of a house, building or any other structure, or during any grading or excavation, shall permit erosion or runoff of sediment, mud, dirt, or other debris into creeks, streams or on streets, roads or abutting property.

(B) Grading and seeding or other preventative measures or control thereof shall be taken to prevent any such erosion or runoff as determined by the Administrator and in accordance with the county erosion and sediment control ordinance.

(Ord. passed 9-12-2013)

***CHESAPEAKE BAY PRESERVATION AREA OVERLAY DISTRICT*****§ 154.145 TITLE.**

This subchapter shall be known and referenced as the “Chesapeake Bay Preservation Area Overlay District” of the town.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.146 FINDINGS OF FACT.**

(A) (1) The Chesapeake Bay and its tributaries constitute one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of the town and the state.

(2) The health of the Bay is vital to maintaining the town’s economy and the welfare of its citizens.

(B) (1) The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including, non-point source pollution from land uses and development.

(2) Existing high quality waters are worthy of protection from degradation to guard against further pollution.

(3) Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform.

(4) Other lands have severe development constraints from flooding, erosion and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline and shoreline erosion control.

(5) These lands together, designated by the Town Council as Chesapeake Bay Preservation Areas ("CBPAs"), shall be protected from destruction and damage in order to protect the quality of water in the Bay and consequently the quality of life in the town and the state.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.147 PURPOSE AND INTENT.**

(A) (1) This subchapter is enacted to implement the requirements of VA Code §§ 62.1-44.15:67 et seq. (the Chesapeake Bay Preservation Act: sometimes hereinafter referred to as the "Act").

(2) The intent of Town Council and the purpose of the Overlay District is to support the goals of the Act and the town's Comprehensive Plan by protecting and improving the quality of the Chesapeake's Bay's waters, its tributaries, buffer areas and other sensitive environmental lands by minimizing the potential adverse effects of human activity upon these areas by:

(a) Protecting existing high quality state waters;

(b) Restoring all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;

(c) Safeguarding the clean waters of the state from pollution;

(d) Preventing any increase in pollution;

(e) Reducing existing pollution; and

(f) Promoting water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the town.

(B) This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the zoning regulations. Unless otherwise stated in the Overlay District, the review and approval procedures provided for, hereinafter shall be followed in reviewing and approving development, redevelopment and uses governed by the subchapter.

(C) This subchapter is enacted under the authority of VA Code §§ 62.1-44.15:52 et seq. (the Chesapeake Bay Preservation Act) and VA Code § 15.2-2283. VA Code § 15.2-2283 states that zoning ordinances may “also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in VA Code § 62.1-255.”

(D) The following definitions are supplementary to those set forth in § 154.004. For the purpose of this subchapter, certain words and terms are defined as follows. Words used in the present tense include the future. Words in the singular include plural, and the plural includes the singular.

**ACCESSORY USE OR STRUCTURE.** A subordinate use or structure customarily incidental to and located upon the same or adjacent lot occupied by the main use or building, including private water and sewage facilities.

**BEST MANAGEMENT PRACTICES (BMPS).** A practice, or combination of practices, that is determined by a state or designated areawide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals.

**BUFFER AREA.** An area of natural or established vegetation managed to protect other components of the resource protection area and state waters from significant degradation due to land disturbance.

**BUILDING.** Any combination of materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by person, or property. The word **BUILDING** shall be construed as though followed by the words “or part thereof.”

**BUILDING ACCESSORY.** A subordinated structure customarily incidental to and located upon the same lot occupied by the main structure.

**CALIPER.** The diameter in inches of a tree trunk measured six inches above ground level.

**CHESAPEAKE BAY PRESERVATION AREA (CBPA).** Any land designate by town pursuant to §§ 154.145 through 154.158, (9 VAC §§ 10-20-70 et seq.) of this chapter and VA Code § 62.1-44.15:72 of the Act. A **CHESAPEAKE BAY PRESERVATION AREA** shall consist of a resource protection area and a resource management area.

**CONSTRUCTION FOOTPRINT.** The area of all impervious surface, including, but not limited to, buildings, roads and drives, parking areas, sidewalks and the area necessary for construction of such improvements.

**DEVELOPMENT.** The construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportational or utility facilities or structure.

**DIAMETER AT BREAST HEIGHT (DBH).** The diameter of a tree measured outside the bark at a point four and one-half feet above the ground.

**DRIPLINE.** A vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

**GOVERNING BODY.** The Town Council of Irvington, Virginia.

**HEALTH OFFICIAL.** The legally designated health authority of the State Board of Health for Lancaster County or its authorized representative.

**HIGHLY ERODIBLE SOILS.** Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The **ERODIBILITY INDEX** for any soil is defined as the product of the formula  $RKLS/T$ , where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effect of slope length and steepness; and T is the soil loss tolerance.

**HIGHLY PERMEABLE SOILS.** Soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid" as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service).

**HYDRIC SOILS.** Soils that are saturated, flooded or ponded long enough during the growing seasons to develop anaerobic conditions in the upper part, which are saturated for usually one week or more in the growing period and have the capacity to support hydrophytic vegetation.

**IMPERVIOUS COVER.** A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas and any concrete, asphalt or compacted gravel surface.

**LAND DISTURBANCE/LAND DISTURBING ACTIVITY.** Any activity as described in Part III, § 10-3 of the Lancaster County erosion and sediment control ordinance.

**LOT.** A parcel of land occupied or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, lot width and lot areas as are required by this subchapter, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

**MITIGATION.** Refers to activities that lessen the potential for future damage.

**NON-POINT SOURCE POLLUTION.** Pollution consisting of constituents such as sediment, nutrients and organic and toxic substance from diffuse sources such as runoff from agriculture and urban land development and use.

**NON-TIDAL WETLANDS.** Those wetlands other than tidal wetland that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adopted for life in saturated soil conditions, as defined by the United States Environmental Protection Agency pursuant to § 404 of the Federal Clean Water Act, in 33 C.F.R. § 32.3b.

**OVERLAY ZONES.** Zoning requirements that are described in the ordinance text and related maps and imposed in addition to those of an underlying district. Developments within the **OVERLAY ZONE** must conform to the requirements of both zones or the more restrictive of the two.

**PUBLIC ROAD.** A publicly owned road designed and constructed in accordance with water quality protection criteria at least stringent as requirements applicable to the State Department of Transportation, including regulations promulgated pursuant to the Erosion and Sediment Control Law (VA Code §§ 62.1-44.15:52 et seq.). This definition includes those roads where the State Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by the town, in accordance with its ordinance and standards.

**REDEVELOPMENT.** The process of developing land that is or has been previously developed.

**RESOURCE MANAGEMENT AREA (RMA).** That component of the Chesapeake Bay Preservation Area that is not classified as the resource protection area. **RMAs** include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

**RESOURCE PROTECTION AREA (RPA).** At a minimum, resource protection (a 100-foot wide vegetated area) shall consist of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts that may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and potential harmful toxic substances in runoff entering the Bay and its tributaries and minimize the adverse effects of human activities on state waters and aquatic resources. The Zoning Administrator will not issue a permit for any land disturbance in the **RPA**.

**RESOURCE PROTECTION AREA BUFFER.** An area of existing or established vegetation within the RPA that protects other components of the RPA and state waters from significant degradation associated with land disturbance.

**RESOURCE PROTECTION AREA DELINEATOR.** A person trained in wetland ecology, botany, agronomy, hydrology and/or other related fields with experience delineating tidal and non-tidal wetlands.

**REVIEWING AUTHORITY.** The Town Planning Commission.

**SETBACK, WATERSIDE.** The minimum distance by which any building or structure must be separated from any tidal shore, tidal wetlands or non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow. This does not apply to any boat dock, launch ramp or shoreline erosion control device.

**SILVICULTURAL ACTIVITIES.** Forest management activities, including, but not limited to, the harvesting of timber, the construction of roads and trails for forest management purposes and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to VA Code § 10.1-1126.1 and are located on property defined as real estate devoted to forest use under VA Code § 58.1-3230.

**SITE PLAN.** A plan delineating the overall scheme of development of a tract of land, including, but not limited to, grading, engineering design, improvement details, erosion and sediment control measures and survey data.

**STRUCTURE.** Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, except utility poles.

**SUBSTANTIAL ALTERATION.** Expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the resource management area only.

**TIDAL SHORE or SHORE.** Land contiguous to a tidal body of water between the mean low water level and the mean high water level.

**TIDAL WETLANDS.** Vegetated and non-vegetated wetlands as defined in VA Code § 28.2-1300.

**WATER-DEPENDENT FACILITY.** A development of land that cannot exist outside of the RPA and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to, port; intake and outfall structures of power plants, water treatment plants, sewage treatment plants, storm sewers; marinas and other boat docking structures, beaches and other public water-oriented recreation areas; and fisheries or other marine resource facilities.

**WETLANDS, NON-TIDAL WETLANDS.** Those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and, that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**ZONING ADMINISTRATOR.** The designated reviewing agent of the governing body and the Planning Commission charged with the enforcement of this chapter, consistent with his or her authority as set forth in § 154.004.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.148 AREAS OF APPLICABILITY.**

(A) (1) The Chesapeake Bay Preservation Area (CBPA) Overlay District shall apply to all lands identified as CBPAs as designated by the town and as shown on the adopted CBPA map.

(2) The CBPA map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this subchapter.

(a) The resource protection area includes:

1. Tidal wetlands;
2. Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
3. Tidal shores; and
4. A 100-foot wide vegetated buffer area measured from mean high water (MHW) and located adjacent to and landward of the components listed in divisions (A)(2)(a)1. through (A)(2)(a)3. above, and along both sides of any water body with perennial flow.

(b) The resource management area (RMA) consists of all lands within the town that are not classified as resource protection area.

(B) The CBPA map show the general location of CBPAs and should be consulted by persons contemplating activities within the town prior to engaging in a regulated activity. The specific location of RPAs on a lot or parcel shall be delineated on each site or parcel as required under § 154.152 through the review and approval of the plan of development process or a required under § 154.154 through the review and approval of a water quality impact assessment.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.149 USE REGULATION.**

Permitted uses, special permit uses, accessory uses and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.150 CONFLICT WITH OTHER REGULATIONS.**

In any case where the requirements of this subchapter conflict with any other provisions of the town code of ordinances, or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.151 REQUIRED CONDITIONS.**

(A) Land development in RPAs is limited to new water dependent facilities; expansion of existing water dependent facilities; or redevelopment within a designated intensely developed area; or a road or driveway crossing satisfying the conditions set forth in division (A)(3) below.

(1) A new or expanded water dependent facility may be allowed provided that the following criteria are met:

- (a) It does not conflict with the Comprehensive Plan;
- (b) It complies with the performance criteria set forth in § 154.154(C);
- (c) Any nonwater-dependent component is located outside of the RPAs; and

(d) Access to a water-dependent facility including utility service and all necessary land disturbance, shall be kept to minimum with a single point of access where practical.

(2) Redevelopment outside locally designated intensely developed areas shall be permitted in the RPAs only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA, and it shall conform to applicable erosion and sediment control requirements outlined under § 154.153(B)(4) herein and to the stormwater management requirements outlined in § 154.153(B)(7).

(3) Roads and driveways not exempt under § 154.157 may be constructed in or across resource protection areas if each of the following conditions is met:

(a) The Zoning Administrator makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the resource protection area;

(b) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize:

- 1. Encroachment in the resource protection area; and
- 2. Adverse effects on water quality.

(c) The design and construction of the road or driveway satisfy all applicable criteria of this subchapter, including submission of a water quality impact assessment; and

(d) The Zoning Administrator reviews the plans for the road or driveway proposed in or across the resource protection area in coordination with site plan, subdivision and plan of development approvals.



(B) A water quality impact assessment shall be required for any proposed land disturbance or development or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development, in accordance with the provisions of § 154.154.

(C) Lot size shall be subject to the requirements of the underlying zoning district(s); provided that any such lot shall have sufficient area outside the resource protection area to accommodate the intended development and it is in accordance with the performance standards in § 154.153, when such development is not otherwise allowed in the resource protection area.

(D) Silvicultural activities are exempt from the requirements of this subchapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the State Department of Forestry in the most recent edition of “Virginia’s Forestry Best Management Practices for Water Quality.”

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.152 INTERPRETATION OF RESOURCE PROTECTION AREA BOUNDARIES.**

*(A) Delineation by the applicant.*

(1) The site-specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental site assessment, conducted by an RPA delineator.

(2) The RPA delineator shall use an accurate plat or site map as a guide to the general locations of the RPA.

(3) The RPA delineator shall examine lands adjacent to the subject property to the extent necessary to determine if any part of the full 100 feet landward vegetated buffer must be delineated on the subject property.

*(B) Delineation by the Zoning Administrator.*

(1) The Zoning Administrator, when requested by an applicant wishing to construct a single-family residence, may waive the requirements for an environmental site assessment and for a fee, perform the RPA delineation.

(2) The Zoning Administrator may use remote sensing, hydrology, soils, plant species and other data, and consult other appropriate resources as needed to perform the delineation.

*(C) Where conflict arises over delineation.*

(1) Where the applicant has provided a site-specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation.

(2) In determining the site specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation, in accordance with § 154.155, site plans and the town subdivision ordinance.

(3) In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of § 154.155(H).

(D) *Resource protection area signs.*

(1) When development occurs adjacent to an RPA boundary, the applicant shall install or mount signs indicating the location of the RPA limits.

(2) Signs, which are available from the Zoning Administrator, shall be positioned within 300 feet of each other and/or where a RPA boundary line crosses a property line.

(3) A minimum of two signs shall be posted per lot where applicable.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.153 PERFORMANCE STANDARDS.**

(A) *Purpose and intent.*

(1) The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

(2) The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in non-point source pollution from new development; achieve a 10% reduction in non-point source pollution from redevelopment; and achieve a 40% reduction in non-point source pollution from agricultural uses.

(B) *General performance standards for development and redevelopment.* All development and redevelopment in the CBPAs exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process in accordance with the requirements of § 154.155 and shall also be subject to the applicable provisions of the town subdivision ordinance and its zoning regulations, the erosion and sediment control ordinance of the county and the county wetlands ordinance.

(1) Land disturbance shall be limited to the area necessary to provide for proposed use or development.

(a) In accordance with an approved site plan, the limits of land disturbance, including clearing or grading shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.

(b) No more land shall be disturbed than is necessary to provide for proposed use or development. The construction footprint shall not exceed the limits for such as designated by the zoning district of the lot or parcel.

(c) Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Zoning Administrator.

(2) Indigenous vegetation shall be preserved to the maximum extent practical consistent with the use or development proposed and in accordance with the *Virginia Erosion and Sediment Control Handbook*.

(a) Existing trees over six inches in diameter at breast height (DBH) shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire or other injury may be removed when approved by the Zoning Administrator.

(b) Clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs and the installation of utilities, as approved by the Zoning Administrator.

(c) Prior to cleaning or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris or fill shall not be allowed within the area protected by the barrier.

(3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.

(a) Gravel, stone, grid or modular pavements or other surfaces as approved by the Zoning Administrator that promote infiltration, shall be used for any required parking area, alley or other low traffic driveway, unless otherwise approved by the Zoning Administrator.

(b) Parking space size shall be 162 square feet. Parking space width shall be nine feet; parking space length shall be 18 feet. Two-way drives shall be a minimum of 22 feet in width.

(4) Notwithstanding any other provisions of this subchapter or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of any single-family houses, septic tanks and drainfields, shall comply with the requirements of the county erosion and sediment control ordinance.

(5) (a) All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years, in accordance with the provisions of the County Health Code.

(b) In lieu of pump-out, one of the following alternatives way be used:

1. In the outflow of the pipe a plastic filter may be installed on the septic tank as long as the filter satisfies the standards established in the sewage handling and disposal regulations under 12 VAC §§ 5-610 et seq. as administered by the State Department of Health; or

2. An owner of on-site sewage treatment system may submit, every five years, documentation that the system has been inspected by a certified sewage handler permitted by the State Department of Health and that such system is functioning properly and does not need to be pumped out.

(6) A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided, in accordance with the County Health Code. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health Department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board, until the structure is served by the public sewer.

(7) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that are consistent with the water quality provisions of the Virginia Stormwater Management Regulations (4 VAC §§ 62.1-44.15:24 et seq.) and that achieve the following:

(a) For development, the post-development non-point source pollution runoff load shall not exceed the pre-development load, based on the calculated average land cover for Virginia Chesapeake Bay watershed;

(b) Best management practices for stormwater runoff quality control, provided the following provisions are satisfied:

1. In no case may the post-development non-point source pollution runoff load exceed the pre-development load;

2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution;

3. If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this subchapter; and

4. For redevelopment, both the pre-and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.

(c) For single-family dwellings on lots of one acre or greater in size, stormwater runoff calculations are not required, provided the post development impervious coverage for all structures, buildings and other impervious surfaces does not exceed 16% of the area.

(8) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator in accordance with § 154.149, site plans and the town subdivision ordinance.

(9) Land upon which agricultural activities are being conducted, including, but not limited to, crop production, pasture and dairy and feed operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this subchapter.

(C) *Buffer area requirements.*

(1) To minimize the adverse effects of human activities on the other components of resource protection areas, state waters and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion and filtering non-point source pollution from runoff shall be retained if present and established where it does not exist.

(2) The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any with perennial flow. The full 100-foot wide buffer area shall be designated as the landward component of the RPA.

(3) The 100-foot wide buffer area shall be the landward component of the resource protection area as set forth in 9 VAC § 25-830-80(B)(5). Notwithstanding permitted uses, encroachments and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. The 100-foot buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

(4) The buffer area shall be maintained to meet the following additional performance standards.

(a) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, access paths, general woodlot management and best management practices, including those that prevent upland erosion when authorized by the Zoning Administrator, on a case-by-case basis, upon presentation of documentation that the RPA buffer will continue to function in a manner that protects water quality. Such vegetation shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and filtering non-point source pollution from runoff. The following guidelines shall be observed:

1. Trees may be pruned only as necessary to provide for sight lines and vistas;
2. Any path shall be constructed and surfaced so as to effectively control erosion;
3. Dead, diseased or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practices incorporated into the town's regulations and in accordance with adopted standards and approved practices; and
4. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and subject to the issuance of all required permits.

(b) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process before the Town Planning Commission, in accordance with the following criteria:

1. Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principle structure and necessary utilities;
2. Where practical, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on a lot or parcel; and
3. In no case shall the encroachment extend into the seaward 50 feet of the buffer area.

(c) On agricultural lands, the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer areas as follows.

1. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the Northern Neck Soil and Water Conservation District Board, addresses the more predominant water quality issue on the adjacent land (erosion control or nutrient management) is being implemented on the adjacent land; provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC §§ 50-85 et seq.) administered by the State Department of Conservation and Recreation.

2. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T,” as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the United States Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulation (4 VAC §§ 5-15 et seq.) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

3. The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices, at least one best management practice as considered by the Northern Neck Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land, i.e., either erosion control or nutrient management.

(d) When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.154 WATER QUALITY IMPACT ASSESSMENT.**

(A) *Purpose and intent.* The purpose of the water quality impact assessment is to:

(1) Identify the impacts of proposed land disturbance, development or redevelopment on water quality and land within RPAs and other environmentally-sensitive lands;

(2) Ensure that, where land disturbance, development or redevelopment does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands;

(3) To protect individuals from investing funds for improvements proposed for a location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and

(4) Specify mitigation which will address water quality protection.

(B) *Water quality impact assessment required.*

(1) A water quality impact assessment is required for:

(a) Any proposed land disturbance, development or redevelopment within a RPA including any buffer area encroachment as provided for in § 154.153; and

(b) Any proposed land disturbance, development, or redevelopment in an RMA deemed necessary by the Zoning Administrator due to the unique characteristics of the site (such as the topography, soils, ground cover, location of wetlands and tidal shores) or the intensity of the proposed use.

(2) There shall be two levels of water quality impact assessments; a minor assessment and a major assessment.

*(C) Minor water quality impact assessment.*

(1) A minor water quality impact assessment pertains only to land disturbance, development or redevelopment within the CBPAs that causes no more than 5,000 square feet of land disturbance and proposes to encroach into the landward 50 feet of the 100-foot buffer area. A minor assessment must demonstrate through acceptable calculations that the undisturbed buffer area together with necessary best management practices will result in removal of no less than 75% of sediments and 40% of nutrients from post-development stormwater runoff and that will retard runoff, prevent erosion and filter non-point source pollution and so achieve the equivalent of the full undisturbed 100-foot wide buffer area.

(2) A minor assessment shall include a site drawing to scale that shows the following:

(a) Location of the components of the RPA, on site or within a 100-foot wide area abutting the site, including the 100-foot wide buffer area and any water body with perennial flow:

(b) Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;

(c) Type and location of proposed best management practices to mitigate the proposed encroachment; and

(d) Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification and a revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

*(D) Major water quality impact assessment.*

(1) A major water quality impact assessment shall be required for any land disturbance development, or redevelopment that:

(a) Exceeds 5,000 square fee of land disturbance within the CBPAs and proposes to encroach into the landward 50 feet of the 100-foot wide buffer area;



(b) Proposes to disturb any portion of the seaward 50 feet of the 100-foot wide buffer area or any other component of an RPA; or

(c) Is located solely in an RMA and is deemed necessary by the Zoning Administrator.

(2) The information required in this section shall be considered a minimum, unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

(3) The following elements shall be included in the preparation and submission of a major water quality assessment that accompanies a site plan or subdivision application:

(a) All of the information required in a minor water quality impact assessment, as specified in division (C) above;

(b) A hydrogeological element that:

1. Describes the existing topography, soils, hydrology and geology of the site and adjacent lands;

2. Describes the impact and evaluates the proposed development on topography, soils, hydrology and geology on the site and adjacent lands;

3. Indicates the following:

a. Disturbance or destruction of wetlands and justification for such action;

b. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;

c. Disruptions to existing hydrology including wetlands and stream circulation patterns;

d. Source location and description of proposed fill material;

e. Location of dredge material and location of dumping area for such material;

f. Location of and impacts on shellfish beds, submerged aquatic vegetation and fish spawning areas;

g. Estimation of pre- and post-development pollutant loads in runoff;

h. Estimation of percent increase in impervious surface on site and types of surfacing materials used;

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- i. Percent of site to be cleared for project;
- j. Anticipated duration and phasing schedule of construction project; and
- k. Listing of all requisite permits from all applicable agencies necessary to develop project.

4. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:

- a. Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
- b. Proposed stormwater management system;
- c. Creation of wetlands to replace those lost; and
- d. Minimizing cut and fill.

(c) A landscape element that:

1. Identifies and delineates the location of all significant plant material, including all trees on site six inches or greater in diameter at breast height. Where there are groups of trees, stands may be outlined;

2. Describes the impact the development or use will have on the existing vegetation. Information should include:

- a. General limits of clearing, based on all anticipated improvements, including buildings, drives and utilities;
- b. Clear delineation of all trees and other woody vegetation that will be removed; and
- c. Description of plant species to be disturbed or removed.

3. Describes the potential measures for mitigation. Possible mitigation measures include:

- a. Replanting schedule for trees and other significant vegetation removed for construction, including a list of proposed plants and trees to be used;

b. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation;

c. Demonstration that the re-vegetation plan supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control; and

d. Demonstration that indigenous plants are to be used to the greatest extent possible.

(E) *Submission and review requirements.*

(1) Three copies of all site drawings and other applicable information as required by divisions (C) and (D) above shall be submitted to the Zoning Administrator.

(2) All information required in this section shall be certified as completed and accurate by a professional engineer or a certified land surveyor.

(3) A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in the conjunction with § 154.155.

(4) A major water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with a request for rezoning, conditional use permit or in conjunction with § 154.155, as deemed necessary by the Zoning Administrator.

(5) As part of any major water quality impact assessment submittal, the Zoning Administrator can require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the Zoning Administrator determines if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the Zoning Administrator provided that such comments are provided by CBLAD within 90 days of the request.

(F) *Evaluation procedure.*

(1) Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this subchapter and make a finding based upon the following criteria in conjunction with § 154.155:

(a) The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;

(b) Impervious surface is minimized;

(c) Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;

(d) The development, as proposed, meets the purpose and intent of this subchapter; and

(e) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(2) Upon the completed review of a major water quality assessment, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this subchapter and make a finding based upon the following criteria in conjunction with § 154.155:

(a) Within any RPA, the proposed development is water-dependent or constitutes redevelopment of is a road or driveway that satisfies the criteria in § 154.151;

(b) The disturbance of wetlands will be minimized;

(c) The development will not result in significant disruption of they hydrology of the site;

(d) The development will not result in significant degradation to aquatic vegetation or life;

(e) The development will not result in unnecessary destruction of plant materials on site;

(f) Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;

(g) Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required standard for pollutant control;

(h) Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits as well as runoff control and pollutant removal equivalent of the full 100-foot wide undisturbed buffer;

(i) The design and location of any proposed drainfield will be in accordance with the requirements of § 154.153;

(j) The development, as proposed, is consistent with the purpose and intent of the Overlay District; and

(k) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(3) The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on water quality.

(4) The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this subchapter when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria herein.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.155 PLAN OF DEVELOPMENT PROCESS.**

Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any zoning permit, to assure compliance with all applicable requirements of this subchapter.

(A) *Required information.*

(1) In addition to the requirements of the site plan section of this subchapter or the requirements of the subdivision ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

(2) The following plans or studies shall be submitted, unless otherwise provided for:

(a) A site plan in accordance with the provisions of this subchapter; or a subdivision plat in accordance with the provisions of the subdivision ordinance;

(b) An environmental site assessment;

(c) A landscape plan;

(d) A stormwater management plan; and

(e) An erosion and sediment control plan in accordance with the provisions of the county erosion and sediment control ordinance.

(B) *Environmental site assessment.* An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

(1) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:

- (a) Tidal wetlands;
  - (b) Tidal shores;
  - (c) Non-tidal wetlands in the RPA connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
  - (d) A 100-foot wide buffer area located adjacent to and landward of the components listed in subsections a. through c. above, and along both sides of any body with perennial flow;
  - (e) Non-tidal wetlands in the RMA;
  - (f) Hydric soils; and
  - (g) Other sensitive environmental features as determined by the Zoning Administrator.
- (2) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.
- (3) The environmental site assessment shall delineate the site-specific geographic extent of the RPA.
- (4) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plan/plat, and shall be certified as complete and accurate by a RPA delineator competent to make the inventory. This certification requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than 5,000 square feet of disturbed area.

(C) *Landscape plan.*

(1) *Generally.* A landscape plan shall be submitted in conjunction with a site plan or preliminary subdivision plan/plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscape plan. Landscape plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

(2) *Contents of the plan.*

(a) The landscape plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site six inches or greater in diameter at breast height (DBH) shall be shown on the landscape plan. Where there are groups of trees, stands may be outlined instead. The specific number of trees six inches or greater DBH to be preserved outside of the construction footprint and outside the groups of trees shall be indicated on the plan. Trees and other woody vegetation to be removed and woodlines to be changed to create a necessary construction footprint shall be clearly delineated on the landscape plan.

(b) Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this subchapter, shall be shown on the landscape plan.

(c) Within the buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths and best management practices, as provided for in this subchapter, shall be shown on the plan. Vegetation required by this subchapter to replace any existing trees within the buffer area shall also be shown on the landscape plan.

(d) Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this subchapter shall be shown on the landscape plan.

(e) The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage and aeration would be maintained around trees to be preserved.

(f) The landscape plan will include specifications for the protection of existing trees during clearing, grading and all phases of construction.

(g) If the proposed development is a change in use from agricultural or silvicultural to some other use, the plan must demonstrate the re-establishment of vegetation in the buffer area.

(3) *Plant specifications.*

(a) All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.

(b) All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the *American Standard for Nursery Stock*, published by the American Association of Nurserymen.

(c) Where areas to be preserved, as designated on an approved landscape plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of two planted trees to one removed. Replacement trees shall be a minimum two and one-half inches DBH at the time of planting.

(4) *Maintenance.*

(a) The applicant shall be responsible for the maintenance, repair and replacement of all vegetation as may be required by the provisions of this subchapter.

(b) In buffer areas and areas outside the construction footprint, plant material shall be ended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying

or dead plant materials shall be replaced during the next planting season, as required by the provisions in this subchapter.

(D) *Stormwater management plan.*

(1) *Generally.* A stormwater management plan shall be submitted as part of the plan of development process required by this subchapter and in conjunction with site plan or subdivision plan approval. When site impervious cover is 16% or less of total site area, no stormwater management plan is required.

(2) *Contents of the plan.*

(a) The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations and citations to supporting references as appropriate to communicate the information required by this subchapter.

(b) At a minimum, the stormwater management plan must contain the following:

1. Location and design of all planned stormwater control devices and BMPs;
2. Procedures for implementing non-structural stormwater control practices and techniques;
3. Pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and
4. For facilities, verification of structural soundness, including a professional engineer or Class III B surveyor certification.

(3) *Site specific facilities.* Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans or other similar planning documents.

(4) *Schedule.* The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the town, than a maintenance agreement shall be executed between the responsible party and the town.

(E) *Erosion and sediment control plan.* An erosion and sediment control plan shall be submitted that satisfies the requirements of this subchapter and in accordance with county erosion and sediment control ordinance.

(F) *Final plan.* Final plans for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required by this subchapter.



(1) *Contents.* Final plans for all lands within CBPAs shall include the following additional information:

(a) The delineation of the resource protection area boundary;

(b) The delineation of required buffer areas;

(c) All wetlands permits required by law;

(d) A maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure maintenance of best management practices in order to continue their functions; and

(e) Plat or plan note stating that no land disturbance is allowed in the buffer area without review and approval by the Zoning Administrator.

(2) *Installation and bonding requirements.*

(a) Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.

(b) When the occupancy of a structure is desired prior to completion of the required landscaping, stormwater management facilities or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the town a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials and installation costs for any of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities during the construction period.

(c) All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the town.

(d) All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to the town. The town may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.

(e) After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of

the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a professional engineer of Class III B surveyor before making a final inspection.

(G) *Administrative responsibility.*

(1) Administrative responsibility of the plan of development process shall be in accordance with this subchapter and/or the subdivision ordinance.

(2) The Zoning Administrator shall approve, approve subject to conditions or disapprove the plans in accordance with the reviewing authorities' recommendations.

(3) The Zoning Administrator shall return notification of plan review results to the applicant, including recommended conditions, or modifications.

(4) In the event that the results and/or recommended conditions or modifications are acceptable to the applicant, the plan shall be modifications are acceptable to the applicant; the plan shall be modified, if required, and approved.

(H) *Denial of plan, appeal of conditions or modifications.*

(1) In the event that the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Board of Zoning Appeals.

(2) In granting an appeal, the Board of Zoning Appeals must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this subchapter.

(3) If the Board of Zoning Appeals finds that the applicant's plan does not meet the above stated criteria, it shall deny approval of the plan.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

**§ 154.156 NONCONFORMING USES AND NONCOMPLYING STRUCTURES.**

(A) (1) The lawful use of a building or structure that existed on the date of adoption of this subchapter may continue as a permitted use.

(2) The Planning Commission in accordance with this subchapter, may review the criteria of this section and waive or modify the regulation for structures on legal nonconforming lots or parcels provided that:

(a) There will no net increase in non-point source pollutant load; and

(b) Any development or land disturbance exceeding an area of 2, 500 square feet complies with all erosion and sediment control requirements of this subchapter.

(3) This chapter shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by this subchapter.

(B) Notwithstanding the provisions of this subchapter, additions or expansions to existing legal principal structures may be processed through an administrative review process before the Planning Commission, provided that the following findings are met:

(1) The request for the waiver is the minimum necessary to afford relief;

(2) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this subchapter to other property owners who are subject to its provisions in similar situations;

(3) The waiver is in harmony with the purpose and intent of this subchapter and does not result in substantial water quality degradation;

(4) The waiver is not based on conditions or circumstances that are self-created or self-imposed;

(5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;

(6) Other findings, as appropriate and required by the town are met; and

(7) In no case shall this provision apply to necessary structures.

(C) A nonconforming use and development waiver shall become null and void 12 months from the date issued if no substantial work has commenced, or if there is no progress towards completion. (Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.157 EXEMPTIONS.**

(A) *Public utilities, public roads, railroads and facilities.*

(1) Construction, installation, operation and maintenance of electric, natural gas and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with:

(a) Regulations promulgated pursuant to the Erosion and Sediment Control Law (VA Code §§ 62.1-44.15:52 et seq.) and the Stormwater Management Act (VA Code §§ 62.1-44.15:27 et seq.);

(b) An erosion and sediment control plan and a stormwater management plan approved by the State Department of Conservation and Recreation; or

(c) 1. Town water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this chapter.

2. The exemption of public roads is further conditional on the following:

a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize:

i. Encroachment in the resource protection area; and

ii. Adverse effects on water quality.

b. The town may choose to exempt:

i. All public roads as defined in 9 VAC § 25-130-700.5; or

ii. Only those public roads constructed by the State Department of Transportation.

(2) Construction, installation and maintenance of water, underground telecommunications, cable television lines and sewer lines owned, permitted or authorized by the town or regional service authority, shall be exempt from this chapter, provided that:

(a) To the degree possible, the location of such utilities and facilities should be outside resource protection areas;

(b) No more shall be disturbed than is necessary to provide for the proposed utility installation;

(c) All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state, federal and local permits and designed and constructed in a manner that protects water quality; and

(d) Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control ordinance of the county.

(B) *Exemptions in resource protection area.* The following land disturbances in resource protection areas may be exempted from the criteria of this subchapter provided that there is compliance with the below requirements pertaining to:

- (1) Water wells;
- (2) Passive recreation facilities such as boardwalks, trails and pathways; and
- (3) Historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Zoning Administrator that:
  - (a) The Town Planning Commission shall review all exemptions as set forth in this subchapter; and
  - (b) Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control ordinance of the county.  
(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

#### **§ 154.158 EXCEPTIONS.**

(A) A request for an exception to the requirements of §§154.151 and 154.153 of this Overlay District shall be made in writing to the Town Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands within the resource protection area through the performance of a water quality impact assessment which complies with the provisions of § 154.154.

(B) The town shall notify the affected public of any such exception request and shall consider the request in a public hearing in accordance with VA Code § 15.2-2204, except that only one hearing is required.

(C) The Planning Commission shall review the request for an exception request and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this subchapter if the Planning Commission finds:

- (1) Granting the exception will not confer upon the applicant any special privileges that are denied by this subchapter to other property owners who are subject to its provisions and who are similarly situated;
- (2) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
- (3) The exception request is the minimum necessary to afford relief;
- (4) The exception request will be consistent with the purpose and intent of the Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare; and is not of substantial detriment to water quality; and

(5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality, i.e., there can be no increase in non-point source pollutant load.

(D) If the Planning Commission cannot make the required finding or refuses to grant the exception, the Planning Commission shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant, with a copy to the Board of Zoning Appeals. The applicant may then apply to the Board of Zoning Appeals for a variance as provided in §§ 154.170 through 154.176.

(E) The Board of Zoning Appeals shall consider the water quality impact assessment and the findings and rationale of the Planning Commission in determining consistency with the purpose and intent of this subchapter.

(F) (1) A request for an exception to the requirements of provisions of this subchapter other than §§154.151 and 154.153 shall be made in writing to the Zoning Administrator.

(2) The Zoning Administrator may grant these exceptions provided that:

(a) Exceptions to the requirements are the minimum necessary to afford relief; and

(b) Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this subchapter is preserved.

(3) Exceptions to § 154.153(B) may be made provided that the findings noted in division (C) above are made.

(Ord. passed 3-10-2005; Ord. passed 9-12-2013)

### ***NONCONFORMING USES***

#### **§ 154.170 CONTINUATION OF.**

(A) If at the time of enactment of this chapter, any legal activity which is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this chapter, such manner of use or purpose may be continued as herein provided, except that advertising structures that become nonconforming because of a rezoning have six months within which to relocate in a permitted area.

(B) If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.

(C) If any nonconforming use (structure or activity) is discontinued for a period exceeding two years after the enactment of this chapter, it shall be deemed abandoned and any subsequent shall conform to the requirements of this chapter.

(D) Whenever a nonconforming structure, lot or activity has been changed to a more limited nonconforming use, such existing use may only be changed to an even more limited use.

(E) Temporary seasonal nonconforming uses that have been in continual operation for a period of two years or more prior to the effective date of this chapter are excluded.

(Ord. passed 9-12-2013)

#### **§ 154.171 PERMITS.**

The construction or use of a nonconforming building or land area for which a permit was issued legally prior to the adoption of this chapter may proceed, provided such building is completed within one year, or such use of land is established within 30 days after the effective date of this chapter.

(Ord. passed 9-12-2013)

#### **§ 154.172 REPAIRS AND MAINTENANCE.**

On any building or structure devoted in whole or in part to any nonconforming use, routine maintenance, repairs, replacement of nonbearing walls, pilings, fixtures, wiring or plumbing shall be allowed; however the structure footprint (length, width and cubit) shall not be increased.

(Ord. passed 9-12-2013)

#### **§ 154.173 CHANGES IN DISTRICT BOUNDARIES.**

Whenever the boundaries of a district are changed, any uses of land or buildings which become nonconforming as a result of such change shall become subject to the provisions of this subchapter.

(Ord. passed 9-12-2013)

#### **§ 154.174 EXPANSION AND ENLARGEMENT.**

(A) A nonconforming structure to be extended or enlarged shall conform with the provisions of this chapter.

(B) A nonconforming activity may be extended throughout any part of a structure which was arranged or designed for such activity at the time of enactment of this chapter.

(Ord. passed 9-12-2013)

**§ 154.175 NONCONFORMING LOTS.**

Any lot of record at the time of the adoption of this chapter which is less in area or width than the minimum required by this chapter may be used when the requirements of the governing body regarding setback, side and rear yards are met.

(Ord. passed 9-12-2013)

**§ 154.176 RESTORATION OR REPLACEMENT.**

(A) If a nonconforming activity is destroyed or damaged in any matter to the extent that the cost of restoration to its condition before the occurrence shall exceed 75% of the cost of reconstructing the entire activity or structure, it shall be restored only if such use compiles with the requirements of this chapter.

(B) Where a conforming structure devoted to a nonconforming activity is damaged less than 75% of the cost of reconstructing the entire structure, or where a nonconforming structure is damaged less than 75% of the cost of reconstructing the entire structure, either may be repaired or restored; provided any such repair or restoration is started within 12 months and completed within 18 months from the date of partial destruction.

(C) The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure or activity devoted to a nonconforming use.

(Ord. passed 9-12-2013)

***SIGNS*****§ 154.190 PURPOSE AND INTENT.**

The purpose of this subchapter is to regulate the size, design and use of signs in keeping with the culture, history, architecture, character and environment of the town, with the intention of promoting the safety, aesthetics, general welfare and adequate vision within the town.

(Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.191 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.



**AREA OF SIGN.** The area of the largest single face of the sign within a perimeter which forms the outside shape, including any frame, or forms an integral part of the display, including the supporting or accompanying sign structure; if the sign consists of more than one section or module, all areas will be totaled; for a sign in a window, the **AREA** shall be the perimeter which forms the outside shape of the sign in the window.

**SIGN.** A name, identification, description, emblem, display or device which is affixed to, printed on or represented directly or indirectly upon a building, structure, residence or parcel of land; which is illuminated or non-illuminated; visible or intended to be visible from a public place; and, which directs or calls attention to a person, place, residence, product, institution, business, organization, activity or service. Certain categories of signs are defined as follows.

(1) **“A” FRAME or SANDWICH.** Signs (one- or two-sided) which are designed to be placed on sidewalks, parking lots or worn by a person to call attention to an event, product or service.

(2) **ABANDONED.** A sign which for a period of 90 consecutive days has not correctly directed or exhorted any person, advertised a bona fide business, lessor, owner, product or activity conducted or product available on the premises where such sign is displayed.

(3) **ARCHITECTURALLY-INCORPORATED.** Lettering or symbols which are parts of the architecture of the building.

(4) **BANNER.** A canvas or vinyl cloth or otherwise flexible sign.

(5) **BILLBOARD.** Any outdoor advertising board, junior board advertising medium, structure or device which advertises, directs or calls attention to an business, article, substance, service or anything which is painted, printed, pasted or affixed to any building, structure, wall, fence, pole, railing, natural object or structure of any kind on real property or upon the ground itself and which advertises services, products or commodities not available on the premises on which the **BILLBOARD** is located.

(6) **BUSINESS.** A lighted or unlighted sign which directs attention to a product, commodity, or service available on the premises.

(7) **DIRECTIONAL and IDENTIFYING.** A sign is giving the name only of the business responsible for the erection of same, but may also indicate the direction toward said business.

(8) **FLASHING LIGHTS, LETTERS OR SYMBOLS.** A sign that calls attention to an event, product or service by radiant energy acting on the retina of the eye.

(9) **HISTORIC.** A sign located in the town’s historic district identifying an historic landmark, building, structure or area.

(10) **HOME OCCUPATION.** A sign directing attention to a product or service available on the premises, but which product, commodity, or service is clearly a secondary use of the dwelling. The sign shall be unlighted and not to exceed four feet above grade.

(11) **MOTION or ROTATION.** A sign which involves motion or rotation of any part of the structure or display (such as a flag) or a sign containing intermittent lights or animation, except a time and temperature unit which is part of a sign permitted in the business and commercial district.

(12) **PORTABLE SIGNS WHICH ARE TRAILER-MOUNTED.** Signs which are designed to be relocated or are constructed on a chassis or a carriage with permanent or removable wheels.

(13) **REAL ESTATE.** Temporary for sale, rent or lease sign by realtor or owner.

(14) **REAL ESTATE SUBDIVISION.** A sign advertising a parcel of land divided into individual home sites.

(15) **ROOF.** A sign attached to the outside top covering of a house or building.

(16) **RESIDENTIAL.** A sign located in R-1 or R-2 District, which is lawfully positioned on or within private property.

(17) **SNIPE.** A small sign made of a scrap of wood, metal or plastic.

(18) **STRUCTURE.** Includes the supports, uprights, bracing and framework of any structure, be it single-faced, double-face, V-type or otherwise, exhibiting a sign.

(19) **TEMPORARY.** A sign applying to a seasonal or other brief activity such as, but not limited to, summer camps, auctions or bazaars, vacation bible schools, election poll locations, farmers' markets, car washes, yard sales or anything not classified as permanent.

(20) **VEHICLES.** Signs with lettering, symbols or graphics affixed to, or painted on a vehicle. (Ord. passed 9-12-2013; Ord. passed - -)

#### § 154.192 PROHIBITED SIGNS AND SIGN STRUCTURES.

(A) It shall be unlawful for any person to erect, place or use any of the following within the town:

(1) Billboards;

(2) A sign which involves motion or rotation of any part of the structure or display or a sign containing intermittent lights or animation, such as prism, bow flag or feather flags or the like, except in B-1 or B-2 District;

(3) Roof signs;

(4) Flashing lights or flashing signs of any type;

(5) Portable signs which are trailer-mounted or otherwise designated to be relocated or are constructed on a chassis or carriage with permanent or removable wheels;

(6) Long-term parked vehicles with signs erected upon or applied are not allowed if parked for greater than two weeks duration per occurrence;

(7) Signs placed or erected on property not owned by the sign owner, without written consent of the property owner;

(8) Signs painted directly on a building without written approval from the building owner and the Town Council; and

(9) Any other type or kind of sign except those permitted by special written exemption by the Town Council.

(B) Signs that come into existence after the enactment of this subchapter that are not in conformity with this subchapter must be removed unless their existence and use is approved by the Town Council. (Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.193 EXEMPT SIGNS.**

The following temporary signs shall require permits, but shall not require permit fees, and must conform to the requirements set forth in this subchapter:

(A) Signs erected by a church on the church's property;

(B) Signs erected by a governmental agency regarding information concerning its services at the location;

(C) Signs erected by a school on the school's property; and

(D) Signs erected by a nonprofit organization on the nonprofit organization's property. (Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.194 ILLEGAL SIGNS.**

(A) The following signs are deemed illegal signs and in violation of this subchapter:

(1) Abandoned signs;

(2) Any sign erected for which no sign permit was issued by the town or which has had its permit revoked; and

(3) Any sign not properly maintained, such as, but not limited to, signs that are structurally unsound or are hazardous or unsafe.

(B) (1) The Zoning Administrator shall cause a notice of such violation to be served on the owner of the building, structure or lot where said sign is located or the lessee or tenant of the part of or the entire building, structure or lot where said sign is located, requiring the owner or lessee or tenant to remove the illegal sign within ten business days.

(2) The notice may be served personally or by certified mail, return receipt requested.

(3) Upon failure of said owner or lessee or tenant to remove the sign within ten business days after notice is provided, the Zoning Administrator shall be authorized to enter upon said property and remove from there any said illegal sign at costs to the owner, lessee or tenant.

(4) No liability shall attach to the town or any officers, employees or agents of the town, except for acts of willful negligence in connection with the removal of any such illegal sign.

(C) In cases of emergency, the Zoning Administrator may cause the immediate removal of a dangerous or defective sign without notice, at the direction of the Town Council.

(Ord. passed 9-12-2013; Ord. passed - -)

#### **§ 154.195 PERMITS.**

(A) (1) It shall be unlawful for any person to post, display, change or erect a permanent sign or structure in the town without having first obtained a permit and paying said permit fee, except that temporary signs with 30-day limit shall pay no fee.

(2) All applications for sign permits shall be filed and the fee paid by the owner, or his or her agent, with the Administrator, upon forms furnished by the Zoning Administrator.

(B) Said permit applications shall describe and set forth the following:

(1) Type of sign detailing design and architecture in keeping with the intent of this subchapter;

(2) (a) Street address of the property upon which said sign is to be located and the proposed location of said sign on said property; and

(b) In the absence of a street address, a method of location acceptable to the Administrator shall be used.

(3) Square foot area per sign face and the aggregate square foot area of the sign in conformity with this subchapter;

(4) Name, address and signature of the owner or lessee in control or possession of the real property upon which said sign is to be located; and

(5) Sketch, blueprint, blueline print or similar presentation drawn to scale, showing all pertinent structural details and display materials in accordance with the requirements of the County Building Code. The design is to be approved by the Town Council.

(C) Provided that provisions of this subchapter have first been complied with, and the signs do not violate any of the terms, conditions or provisions of this subchapter, or of any other law or ordinance, within ten business days after receipt by the Zoning Administrator, a permit for such sign and structure shall be issued and the Zoning Administrator shall retain a copy thereof for his or her records.

(D) If a sign authorized by a permit is not completed and in place within six months after the date the permit was issued, said permit shall become null and void, except that the Zoning Administrator may grant one extension for a period not to exceed six months.

(E) Design, size, construction and placement of a sign shall not deviate from the plans approved for issuance of the permit.

(F) After the issuance of any permit for a sign under this subchapter and within ten days after the installation of such sign, the applicant shall submit a photograph of the sign as completely installed, which shall be filed with the original application, along with written certification from the owner, applicant or designer whose name appears on the approved plans, that the sign has been constructed according to the approved plans.

(Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.196 ADMINISTRATION AND ENFORCEMENT.**

(A) The provisions of this subchapter shall be administered and enforced by the Zoning Administrator, who shall have the power to make necessary inspections.

(B) No sign permit shall be approved by the Zoning Administrator except in compliance with the provisions of this subchapter.

(Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.197 SIZE, TIME AND DURATION.**

<i>Type</i>	<i>Dimensions</i>	<i>Duration of Display</i>
"A" frame or sandwich signs in areas zoned B-1 and B-2	8 sq. ft.	During business hours
Architecturally incorporated signs	By special permit only	No limit
Contractor signs during new construction or renovation projects	6 sq. ft.	Until completion of work
Directional	2 sq. ft.	As authorized by Town Council
Event, special	16 sq. ft.	30 days per event
Exempt signs (see § 154.193)	16 sq. ft.	120 days
Fixed business signs, professional, business, store	8 sq. ft.	No limit
Flags in areas zoned B-1 and B-2 that announce the business is open	8 sq. ft.	During business hours
For sale or for lease signs by owner or agent	6 sq. ft.	Until sold or leased
Historical, residential	14 in. by 10 in. or 2 sq. ft.	No limit
Home occupations or residence, owners' or property name	6 sq. ft.	No limit
Legal notices	1 sq. ft.	As needed
No trespassing	1 sq. ft.	No limit
Private property	1 sq. ft.	No limit
Temporary	1 sq. ft.	14 days
Window, business	30% of window area	No limit

(Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.198 OTHER LIMITATIONS.**

(A) Overall heights of signs shall not exceed 96 inches for business signs and 48 inches for residential signs.

(B) Temporary real estate signs are limited to two per lot.

(C) Real estate signs must be removed no later than two weeks after property sale or lease.

(D) No sign shall have PVC pipe framing.

(E) No sign shall have day-glo or fluorescent colors.

(F) Any sign not specifically authorized in this subchapter must be approved by the Town Council.  
(Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.199 NONCONFORMING SIGNS.**

(A) Legal signs in existence prior to enactment of this subchapter that are not in compliance with this subchapter are considered to be a nonconforming sign and may be continued and maintained.

(B) Any change in design, size or color of an existing nonconforming sign or structure requires a special exception by the Town Council for continued use.  
(Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.200 EXCEPTIONS.**

Exceptions to the criteria stated herein must be by approved by the Town Council.  
(Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.201 REINSPECTION OF ALL SIGNS.**

(A) The Zoning Administrator shall inspect, or cause to be inspected, all permanent signs located within the town at least once a year and, upon such inspection, shall require the owner of any sign found to be in defective condition, or which does not comply with the terms, conditions and provisions of this subchapter, to be repaired or removed within 30 days from the date of notice of such defect; provided, however, that if the Zoning Administrator shall ascertain and determine that the maintenance or use of such sign shall adversely affect the public safety, he or she may require immediate removal at the owner's expense or prohibit the use of said sign until such defects have been remedied.

(B) The right to inspect on the part of the town shall in no way relieve or release the owner or person responsible for such sign to inspect and properly maintain it and the duties, obligations and liability of such other person or persons responsible for such sign shall in no way be reduced or diminished by the actions or failure to act on the part of the town.  
(Ord. passed 9-12-2013; Ord. passed - -)

**§ 154.202 VIOLATION PROCEDURES.**

(A) (1) If the Zoning Administrator shall find that any of the provisions of this subchapter are being violated, he or she shall give written notice to the person responsible for such violation, and/or the owner

of said premises on which the sign is displayed, indicating the nature of the violation, ordering the action necessary to correct it and the time limit for correction of the violation.

(2) The Administrator shall order discontinuance or alteration, including removal at the owners' expense, or take any other action necessary to correct violation to insure compliance with all provisions of this subchapter.

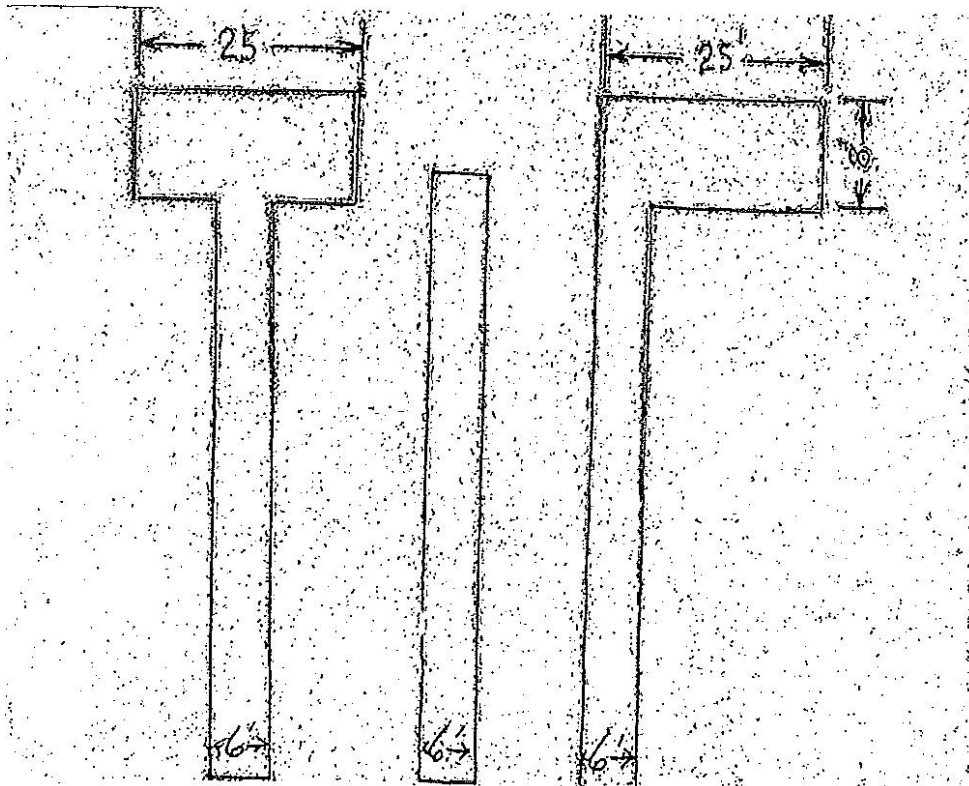
(B) The issuance of a permit upon plans and specifications shall not prevent the Zoning Administrator from thereafter requiring the correction of errors in said plans and specifications or preventing the erection of any sign thereunder when in violation of this subchapter.

(Ord. passed 9-12-2013; Ord. passed - -)

### ***BOAT DOCKS/PIERS***

#### **§ 154.215 GENERALLY.**

(A) This subchapter pertains to any dock or pier, six feet wide or less, with or without a "L" or "T" head not to exceed eight feet and 25 feet long, for private use, a finger pier or boat house (fixed or floating) is not allowed. See drawing shown below.





(B) Docks or piers shall not be built or constructed or rebuilt or reconstructed until a zoning permit is obtained from the Zoning Administrator for the town.

(C) (1) Docks/piers require a conditional use permit for all structures, including mooring pilings landward of the United States Army Corps of Engineers navigation line as depicted on the Department of the Army guidelines for general permit program on Carters Creek, dated April 2, 1980.

(2) Any boat dock/pier extending channelward of the navigation line requires a conditional use permit.

(3) Any boat dock/pier to be built or constructed where there is no navigation line depicted requires a conditional use permit.

(a) An application must be submitted to the State Marine Resources Commission requesting authorization before a dock/pier can be built or constructed.

(b) A permit must be obtained from the United States Army Corps of Engineers before a dock/pier can be built/constructed in cases where the proposed dock/pier will encroach beyond one-fourth the waterway width (as determined by the measuring mean high water to mean high water or ordinary high water mark to ordinary high water high) or extends channelward beyond the GP line. (Ord. passed 9-12-2013)

*APPEALS*

**§ 154.230 BOARD OF ZONING APPEAL.**

(A) (1) A Board consisting of five members shall be appointed by the Circuit Court of the county.

(2) The Board shall serve without pay other than for traveling expenses, and members shall be removable for cause upon written charges and after a public hearing.

(3) Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

(B) (1) 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.

(2) One of the five appointed members shall be an active member of the Planning Commission.

(C) Members may be removed for cause by the appointing authority upon written charges and after a public hearing.

(D) Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.

(E) The Board shall choose annually its own Chairperson and Vice-Chairperson who shall act in the absence of the Chairperson.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -)

### **§ 154.231 POWERS OF THE BOARD OF ZONING APPEALS.**

Board of Zoning Appeals shall have the following powers and duties:

(A) To hear and decide appeals from any order, requirements, decision or determination made by an administrative officer in the administration or enforcement of this chapter or of any ordinance adopted pursuant thereto; and

(B) To authorize upon appeal in specific cases such variance from the terms of the chapter as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the chapter shall be observed and substantial justice done as follows:

(1) When a property owner can show that his or her property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the chapter would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter;

(2) No such variance shall be authorized by the Board unless it finds:

(a) The strict application of the chapter would produce undue hardship;

(b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

(c) The authorization of such variance will not be of substantial detriment to the adjacent property and that the character of the district will not be changed by the granting of the variance.

(3) No such variance shall be authorized except after notice and hearing as required by VA Code § 15.2-2204, as amended;

(4) No variance shall be authorized unless, the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the chapter; and

(5) In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -)

#### **§ 154.232 RULES AND REGULATIONS.**

(A) The Board of Zoning Appeals shall adopt rules and regulations as it may consider necessary.

(B) The meeting of the Board shall be held at the call of its Chairperson or at such times as a quorum of the Board may determine.

(C) The Chairperson, or in his or her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

(D) (1) The Board 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.

(2) It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record.

(E) All meetings of the Board shall be open to the public.

(F) A quorum shall be at least three members.

(G) A favorable vote of three members of the Board shall be necessary to reserve any order, requirement, decisions or determinations of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -)

**§ 154.233 APPEAL TO THE BOARD OF ZONING APPEALS.**

(A) An appeal to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the county or municipality affected by any decision of the Zoning Administrator, such appeal shall be taken within 30 days after the decisions appealed from by filing with the Zoning Administrator, and with the Board a notice of appeal specifying the grounds thereof.

(B) The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken.

(C) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his or her 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 Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -)

**§ 154.234 APPEAL PROCEDURE.**

(A) (1) Appeals shall be mailed to the Board of Zoning Appeals in care of the Zoning Administrator and a copy of the appeal mailed to the Secretary of the Planning Commission.

(2) A third copy should be mailed to the individual, official, department or agency concerned, if any.

(B) Appeals requiring an advertised public hearing shall be accompanied by a certified check for an amount set by Council from time to time payable to the Town Treasurer.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -)

**§ 154.235 PUBLIC HEARING.**

(A) The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within 60 days.

(B) In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from.

(C) The concurring vote of three members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant or any matter upon which it is required to pass under the chapter or to effect any variance from the chapter.

(D) The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the Board and shall be public record.

(E) The Chairperson of the Board, or in his or her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -)

### **§ 154.236 DECISION OF BOARD OF ZONING APPEALS.**

(A) Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau may present to the Circuit Court of the county a petition specifying the grounds on which aggrieved within 30 days after filing of the decision in the office of the Board.

(B) (1) Upon presentation of such petition, the Court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten days and may be extended by the Court.

(2) The allowance of the writ shall not stay proceedings upon the decision appealed from but the Court may, on application on notice to the Board and on due cause shown, grant a restraining order.

(C) (1) The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ.

(2) The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(D) (1) If, upon the hearing, it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the Court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made.

(2) The Court may reserve or affirm, wholly or partly, or may modify the decisions brought up for review.

(E) Costs shall not be allowed against the Board unless it shall appear to the Court that it acted in bad faith or with malice in making the decision appealed from.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -)

*AMENDMENTS***§ 154.250 AMENDMENTS.**

The regulations, restrictions and boundaries established in this chapter may, from time to time be amended, supplemented, changed, modified or repealed by a favorable majority of votes of the governing body; provided:

(A) The Planning Commission shall hold at least one public hearing on such proposed amendment after notice as required by VA Code § 15.2-2204, and may make appropriate changes in the proposed amendment as a result of such hearing. Upon the completion of its work, the Commission shall present the proposed amendment to the governing body together with its recommendations and appropriate explanatory materials; and

(B) Before approving and adopting any amendment, the governing body shall hold at least one public hearing thereon, pursuant to public notice as required by VA Code § 15.2-2204, after which the governing body may make appropriate changes or corrections in the proposed amendment; provided, however, that no additional land may be zoned to a different classification than was contained in the public notice without an additional hearing after notice required by said VA Code § 15.2-2204. An affirmative vote of at least a majority of the members of the governing body shall be required to amend the zoning ordinance.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -)

*ADMINISTRATION AND ENFORCEMENT***§ 154.265 GENERALLY.**

(A) (1) This chapter shall be enforced by the Zoning Administrator who shall be appointed by the governing body.

(2) The Administrator shall serve at the pleasure of that body.

(3) Compensation for such shall be fixed by resolution of the governing body.

(B) (1) Nothing contained herein shall require any change in the plans or construction of any building or structure for which a permit was granted prior to the effective date of this chapter.

(2) However, such construction must commence within 30 days after this chapter becomes effective.

(3) If construction is discontinued for a period of six months or more, further construction shall be in conformity with the provisions of this chapter for the district in which the operation is located. (Ord. passed 12-10-1992)

#### **§ 154.266 INTERPRETATION.**

Unless district boundary lines are fixed by dimensions or otherwise clearly shown or described, and where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply.

(A) Where district boundaries are indicated as approximately following or being at right angles to the centerlines of streets, highways, alleys or railroad main tracks, such centerlines or lines at right angles to such centerlines shall be construed to be such boundaries as the case may be.

(B) 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 the shoreline, such boundary shall be construed as moving with the actual shoreline.

(C) 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 down on said zoning map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals which shall determine the boundary. (Ord. passed 12-10-1992)

#### **§ 154.999 PENALTY.**

(A) Any person found guilty of violating any of the provisions of §§ 154.190 through 154.202 shall be guilty of a misdemeanor subject to a fine not to exceed \$100. Each day during which such violation shall continue shall constitute a separate violation and shall be subject to a separate \$100 fine for each and every day that the violation shall continue and may be sued by the town to force compliance.

(B) (1) All departments, officials and public employees of this jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits for uses, structures or purposes only when they are in harmony with the provisions of this chapter. Any such permit, if issued in conflict with the provisions of this chapter, shall be null and void.

(2) Any person, firm or corporation, whether as principal, agent employed or otherwise, violating, causing, or permitting the violation of any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof may be fined in an amount set by Council from time to time.

Such person, firm or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this chapter is committed, continued or permitted by such person, firm or corporation, and shall be punishable as herein provided.

(Ord. eff. 1-18-1996; Ord. passed 8-10-2005; Ord. passed - -; Ord. passed 9-12-2013; Ord. passed - -)