MONTGOMERY COUNTY
PLANNING COMMISSION
755 ROANOKE STREET, SUITE 2A, CHRISTIANSBURG, VIRGINIA 24073-3177

MEMORANDUM

TO: Chris Tuck, Chair
Montgomery Co. Board of Supervisors

FROM: Robert Miller, Chair
Montgomery Co. Planning Commission

DATE: September 15, 2016

RE: Zoning Ordinance Amendment- Z-2016-03, Board of Zoning Appeals Administration/Procedures

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The attached amendment was considered by the Planning Commission at their September 14, 2016 meeting. Based on changes in the Code of Virginia, the County Attorney prepared the proposed zoning ordinance amendments regarding the "Board of Zoning Appeals"; "Administration, enforcement and public hearings" and "Procedures before the Board of Zoning Appeals" for public hearing.

The amendments as proposed cover changes required relating to:

1. BZA procedural guidelines regarding meetings and appeals of BZA decisions
2. Response deadlines for decision or determination on zoning matters from the Zoning Administrator
3. Regulations concerning variances
4. Regulations regarding appeals

There were no speakers from the public during the hearing. These changes are required for consistency with State Code.

Upon a motion, duly seconded and carried by a 5-0 vote (Allen, Disney, & Kroll absent and one vacancy), the Planning Commission voted to forward an amended draft ordinance to the Board of Supervisors with a recommendation of approval.

Enclosures: Ordinance Amendment

ORD-FY-17-
AN ORDINANCE AMENDING CHAPTER 10, ENTITLED ZONING OF THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA, BY AMENDING SECTIONS 10-51, 10-52 AND 10-55 RESPECTIVELY REGARDING THE POWERS AND DUTIES OF THE ZONING ADMINISTRATOR AND THE BOARD OF ZONING APPEALS AS REQUIRED BY STATE LAW

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 10, entitled Zoning, Sections 10-51, 10-52 and 10-55 respectively shall be amended and reordained as follows:

Sec. 10-51. - Board of zoning appeals.

(1) Purpose. The board of zoning appeals is established to perform those duties as set forth in Code of Virginia, § 15.2-2309.

(2) Authority and establishment. The board of zoning appeals heretofore established shall continue as the board of zoning appeals for the purpose of this chapter. Such body shall be known by the abbreviation "BZA."

(3) Membership.

(a) The BZA shall consist of five (5) residents of the county, appointed by the Circuit Court of Montgomery County, Virginia.

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

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

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

(e) Members of the BZA shall hold no other public office in the county, except that one (1) member may be a member of the planning commission.

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

(g) Any member of the BZA shall be disqualified to act upon a matter before the BZA with respect to property, pursuant to Code of Virginia, §2.2-3112.

(4) Officers.

(a) The BZA shall elect, from its own membership, a chair and a vice chair who shall each serve an annual term and who may succeed themselves. The vice chair shall act as chair in the absence of the chair.

(b) The zoning administrator shall serve as secretary to the BZA, prepare minutes of meetings, keep all records and conduct official correspondence. A court stenographer may be employed to record such proceedings as the board of zoning appeals may direct. In the absence of the zoning administrator at any meeting, the BZA shall appoint some other person to prepare the minutes thereof.

(5) Meetings and hearings.

(a) The BZA by resolution may fix a schedule of regular meetings and may also fix the day or days to which any meeting shall be continued if the Chairman or Vie-Chairman, if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for each meeting in accordance with 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

(~~a~~b) Meetings or hearings of the BZA shall be held at the call of the chair, or acting chair, or at the request of any two (2) members, provided that notice thereof has been mailed or delivered to each member of the BZA at least seven (7) days before the time set, or that a waiver or notice is obtained from each member.

(~~b~~c) For the conduct of a hearing, the taking of any action, or the transaction of any official business, a quorum shall be necessary. No less than a majority of all members of the BZA shall constitute a quorum. Except for matters governed by section 10-55(2) no action of the BZA shall be valid unless authorized by a majority vote of those present and voting.

(~~c~~d) The zoning administrator may not vote on matters before the BZA.

(~~d~~e) The presiding chair may administer oaths, for the benefit of the BZA, and compel the attendance of witnesses.

(~~e~~f) Every person before the rostrum shall abide by the order and direction of the chair or acting chair. Discourteous or disorderly or contemptuous conduct shall be regarded as a breach of the privileges extended by the BZA and shall be dealt with as the chair deems proper.

(~~f~~g) All hearings of the BZA shall be open to the public.

(6) Powers and duties. The BZA shall have the following powers and duties:

(a) To hear and decide appeals as provided in Section 10-55(2), Appeals, of this chapter.

(b) To authorize upon application in specific cases variances from the terms of this chapter as provided in Section 10-55(1), Variances, of this chapter.

(c) To hear and decide appeals from decisions of the zoning administrator regarding interpretation of the official zoning map where there is uncertainty as to the location of a zoning district boundary. After notice to the owners of the property affected by any such interpretation, and after a public hearing thereon, the BZA shall interpret the map in such a way as to carry out the purpose and intent of this chapter for the particular district in

question and shall be guided by the provisions of Section 10-4 of this chapter. The BZA shall not have the power, however, to rezone property or to substantially change the location of zoning district boundaries as established by this chapter.

(d) To hear and decide all other matters referred to and upon which it is required to pass by this chapter.

(e) To make, alter and rescind rules and forms for its procedures, consistent with the ordinances of the county and the general laws of the state.

(f) To prescribe procedures for the conduct of public hearings that it is required to hold.

(7) Records. The BZA shall cause written records and minutes to be kept of all its proceedings, showing evidence presented, findings of fact by the BZA, and the vote of each member upon each question, or if absent or failing to vote, such fact. All such records shall be filed in the office of the zoning administrator.

(8) Periodic report. The BZA shall report to the board of supervisors periodically, at intervals of not greater than twelve (12) months, summarizing all appeals and applications made to it since its last previous report and summarizing its decisions on such appeals and applications. At the same time that each such report is filed with the board, copies thereof shall also be filed with the zoning administrator, the planning commission, the county attorney, and the planning director.

(9) Limitations. All provisions of this chapter relating to the BZA shall be strictly construed. The BZA, as a body of limited jurisdiction, shall act in full conformity with all provisions and definitions in this chapter and in strict compliance with all limitations contained therein.

(10) Decisions subject to judicial review. All decisions and findings of the BZA shall be final decisions, and shall, in all decisions and findings of the instances, be subject to judicial review in the following manner:

(a) Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer or any officer, department, board or bureau of the county, may present to the Circuit Court of Montgomery County a petition that shall be styled "IN RE: [date] Decision of the Board of Zoning Appeals of the County of Montgomery, VA, specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the BZA.

(b) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the BZA and shall prescribe therein the time within which a return thereto must be made and served upon the Secretary of the BZA ~~relator's attorney~~, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the BZA and on due cause shown, grant a restraining order.

(c) Any review of a decision of the BZA shall not be considered an action against the BZA and the BZA shall not be a party to the proceedings; however, the BZA shall participate in the proceedings to the extent required by 15.2-2314. The Board of Supervisors, the landowner and the applicant before the BZA shall be necessary parties to the proceedings in the Circuit Court. The Court may permit intervention of any other person or persons jointly or severally aggrieved by any decision of the BZA.

(~~c~~d) The BZA shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(~~d~~e) ~~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 the commissioner's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. In the case of an appeal from the BZA to the Circuit Court of an order, request, decision or determination of a Zoning Administrator in the administration or enforcement of any ordinance or provision of State Law or any modification of zoning requirements pursuant to 15.2-2286, the finding and conclusions of the BZA or questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the BZA, that the BZA erred in its decision. Any party may introduce evidence in the proceeding in the Court. The Court shall hear any arguments or questions of the law de novo.

In the case of an appeal by a person of any decision of the BZA that denied or granted an application for a variance, the decision of the BZA shall be presumed to be correct. The Petitioner may rebut that presumption by proving by a preponderance of the evidence, including the record before the BZA that the BZA erred in its decision.

In the case of an appeal by a person or any decision of the BZA that denied or granted application for a special exception, the decision of the BZA shall be presumed to be correct. The Petitioner may rebut that presumption by showing to the satisfaction of the Court that the BZA applied erroneous principals of law, or where the discretion of the BZA is involved, the decision of the BZA was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the BZA to the Circuit Court of a decision of the BZA, any party may introduce evidence in the proceedings in the Court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

(~~e~~f) Costs shall not be allowed against the County ~~BZA~~, unless it shall appear to the court that the County~~BZA~~ acted in bad faith or with malice ~~in making the decision appealed from~~. In the event the decision of the BZA is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the Court hear the matter on the question of whether the appeal was frivolous.

Sec. 10-52. - Administration, enforcement and public hearings.

(1) Administration.

(a) Zoning administrator. It shall be the responsibility of the zoning administrator to administer, interpret and enforce the provisions of this chapter. The zoning administrator shall be guided in all of his actions pursuant to this chapter by the terms, purposes, intent and spirit of this chapter. The zoning administrator may be assisted in the enforcement of this chapter by the health officer, sheriff and all other officials of Montgomery County, Virginia, pursuant to their respective fields. Specifically, the duties and powers shall include:

1. To receive and/or review:
    a. Applications for variances.
    b. Notices of appeal to the BZA.
    c. Applications for certificates of occupancy.
    d. Applications for zoning permits.
    e. Applications for commission permits.
    f. All other applications, certifications, or materials required by this chapter to be submitted to the zoning administrator.
2. To issue zoning permits where the requirements of this chapter have been met.
3. To issue interpretations of this chapter upon proper application. Such interpretations shall be binding as to the applicant and as to the specific facts presented in the application for interpretation after the completion of the thirty-day appeal period. In administering this chapter and rendering determinations as to the uses permitted or allowed by special use permit in the various zoning districts, the zoning administrator shall have the power and authority to render decisions as to whether a specific proposed use, although not listed as permitted or allowed by special use permit, is so substantially similar in substance and effect to a permitted use or a use allowed by special use permit, that it should be allowed as if expressly permitted or allowed by special use permit. Such interpretations shall include notification of appeal procedures and timelines.
4. To conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this chapter.
5. To maintain accurate records of proffered conditions as required by section 10-54(1)(i) of this chapter.
6. To enforce the provisions of this chapter, the decisions of the BZA and conditions and proffers subject to which approvals of the BZA, planning commission and board of supervisors were made.
7. To perform such other duties and functions as may be required by this chapter and the board of supervisors.
8. To maintain and make available for public inspection and copying the official zoning map, the zoning ordinance, and the minimum submission requirements adopted by board of supervisors resolution.

9. To maintain a compilation of the interpretations and opinions of the zoning administrator for public review.

10. The zoning administrator shall respond within ninety (90) days of a request for a decision or determination on zoning matters within the scope of his or her authority unless the requestor has agreed to a longer period.

(b) Fees. The county administrator shall recommend and the board of supervisors shall adopt a schedule of fees to be paid upon the filing of each application specified in this chapter. Application fees are hereby waived for the following:

1. Applications for requested amendment from any district to a C-1 district.

2. Applications for amendment, special use permit, or commission permit sought by the following governmental agencies:

   a. Montgomery County School Board.

   b. Public Service Authority (PSA).

   c. Fire and rescue companies serving Montgomery County.

   d. Any agency, board or division acting in the name of the Board of Supervisors of Montgomery County.

(c) Submission requirements. The board of supervisors shall adopt by resolution regulations enumerating those materials required to be included with each application provided for in this chapter, which materials shall constitute the minimum submission requirements for such application and be consistent with the requirements of this chapter. Such submission requirements shall include a letter signed by the applicant and by the owner of the property granting the right of entry upon the property to the zoning administrator, law enforcement agents, and county inspectors for the purpose of inspecting, and bringing law enforcement to the property, during the term of any permit which may be issued. In addition to the materials requested by the board of supervisors by resolution the submission requirements shall include in the case of any application for a zoning map amendment, zoning concept development plan amendment, special use permit or site plan, a traffic impact statement when the proposed zoning map amendment, zoning concept development plan amendment, special use permit or site plan substantially affects transportation on State controlled highways as defined by the Virginia Department of Transportation Traffic Impact Analysis Regulations Chapter 155, 24 VAC 30-155, et seq. The data and analysis contained in the traffic impact statement shall be acceptable to VDOT and comply with VDOT Traffic Impact Analysis Regulations 24 VAC 30-155-60 and this Ordinance. The applicant shall submit three (3) copies of the traffic impact statement. The zoning administrator shall forward the traffic impact statement to VDOT within ten (10) business days of receipt of a complete application. Such submission requirements shall also include, in the case of any application for a zoning map amendment, zoning ordinance modification, zoning concept development plan amendment, special use permit, variance, site plan or zoning permit, the provision of satisfactory evidence from the treasurer's office that any real estate taxes due and owed to the county which have been properly assessed against the property have been paid and that the property shall be in compliance with all county ordinances upon submission of such application. Revisions to the list of those materials required necessitated by an

amendment to this chapter shall be attached to such amendment for concurrent consideration and adoption by resolution of the board of supervisors. If the application is a reclassification to a non-planned unit development district, a rezoning plat shall be required.

(d) Inactive applications. Any zoning map amendment application, zoning modification application, or concept development plan amendment application officially accepted by the county for processing but which has had processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of twelve (12) months or any special use permit application officially accepted by the county for processing but which has had such processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of six (6) months shall be deemed inactive. An application may remain inactive for up to three (3) years at the end of which period it will be processed to a final decision. If an applicant wishes to reactivate their application prior to the end of this three-year period, the applicant must notify the county in writing of intent to proceed with the application, grant the county an appropriate timeline extension and pay a reactivation fee as established by the board of supervisors.

(2) Enforcement and penalties.

(a) Zoning administrator. The zoning administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this chapter.

(b) General provisions.

1. Any building or structure erected contrary to any of the provisions of this chapter and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this chapter or the provisions of any approval granted by the county under this chapter shall be a violation of this chapter and the same is hereby declared to be unlawful.

2. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this chapter or the provisions of any approval granted by the county under this chapter shall be subject to the enforcement provisions of this section.

3. In addition to the remedies provided in this section, the zoning administrator may initiate injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove any unlawful building, structure or use.

4. Upon becoming aware of any violation, the zoning administrator shall serve notice of such violation on the person committing or permitting the same, and the land owner. The administrator shall, in the notice of violation, state the nature of the violation, the date that it was observed, and the remedy or remedies necessary to correct the violation. The administrator may establish a reasonable time period for the correction of the violation, however in no case shall such time period exceed thirty (30) days from the date of written notification, except that the administrator

may allow a longer time period to correct the violation if the correction would require the structural alteration of a building or structure. If the violation is not corrected within the time period specified in the first notification, a second written notice shall be sent. The second notification shall request compliance with these provisions within a period not to exceed seven (7) days. If such violation has not ceased within such reasonable time as the zoning administrator has specified in such notice the zoning administrator shall institute such action as may be necessary to terminate the violation.

5. If the person responsible for the alleged violation denies that a violation exists, that person may appeal the decision of the zoning administrator pursuant to the provisions of section 10-55 of this article.

6. Whenever a violation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the zoning administrator. The zoning administrator shall record such complaint, investigate, and take action thereon as provided by this chapter.

(c) Criminal violations.

1. Any violation of the provisions of this chapter shall be deemed a Class 2 criminal misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than ten dollars ($10.00) nor more than one thousand dollars ($1,000.00) for each separate offense. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with this ordinance, within a time period established by the court. Failure to remove or abate the zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars ($10.00) or more than one thousand dollars ($1,000.00) and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine not less than one hundred dollars ($100.00) nor more than one thousand five hundred dollars ($1,500.00). Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation, including without limitation, pursuing injunctive relief. Each day during which the violation is found to have existed shall constitute a separate offense.

2. Any conviction resulting from a violation or provision regulating the number of unrelated persons in single family residential dwellings shall be punishable by a fine of up to Two Thousand Dollars ($2,000). Failure to abate the violation within the specified time period shall be punishable by a fine of up to Five Thousand Dollars ($5,000) and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period permissible by a fine of up to Seven Thousand, Five Hundred Dollars ($7,500). A conviction resulting from a violation or provision regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

~~2~~3. The designation of a particular violation of this chapter as a civil violation shall preclude criminal prosecution of sanctions, except when such violation results in injury to any person.

(d) Civil violations.

1. Any violation of the provisions shall be deemed a civil violation and, upon an admission of liability, shall be punishable by a fine of one hundred dollars ($100.00) for each individual charge. The civil penalties set forth herein shall be in lieu of criminal penalties. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten-day period, and in no event shall a series of specified civil violations rising from the same operative set of facts result in civil penalties which exceed a total of three thousand dollars ($3,000.00). Nothing in this subsection shall be construed as to prohibit the zoning administrator from initiating civil injunction procedures in cases of repeat offenses.

2. After having served a notice of violation on any person committing or permitting a violation of the zoning ordinance provisions and if such violation has not ceased within such reasonable time as is specified in such notice, the zoning administrator shall cause two (2) copies of a summons to be personally served upon such person. If a person complies in writing to a notice of violation, and agrees to cease said violation, no further fines shall be levied after the date of such agreement, provided such agreement is complied with.

3. The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the county treasurer's office at least seventy-two (72) hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court, however, an admission shall not be deemed a criminal conviction for any purpose.

4. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

5. Reserved.

(3) Public hearings, notice required. Each public hearing involving planning and zoning matters before the planning commission, the board of supervisors and the board of zoning appeals, requires notice as set forth in section 15.2-2204 of the Virginia Code and below.

(a) Written notice.

1. Contents. All required written notices shall contain:

a. The time, date and place of hearing.

b. A brief description of the matter being heard.

c. Identification of the land subject of the application including the tax map number of the property and complete street address of the property.

2. Second notice remailed if hearing continued. If a public hearing is continued, or if a planning and zoning matter is deferred or tabled by the board of supervisors for a period more than ninety (90) days after the board's public hearing, then the second notice required in such case shall be remailed.

3. Notice by county. Notwithstanding any other provision of this section, whenever the notices required under this section are sent on behalf of an agency, department or division of the county, such notice shall be sent by the zoning administrator and may be sent by first class mail; however, the zoning administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

4. Certification. At least five (5) calendar days prior to the hearing, an affidavit, prepared by the person or persons, or their representative providing notice, shall be filed with the director of planning certifying that first and second notices have been sent and such affidavit shall include a list of names of those to whom notice was sent. A counterpart of such affidavit shall be presented at the beginning of the public hearing on the application.

5. Failure to receive notice. Failure to receive any notice of a hearing required by this section, in and of itself, shall not invalidate any action taken at or subsequent to the hearing.

6. Condominium ownership. In the case of a condominium, written notice may be sent to the unit owner's association instead of to each individual unit owner.

(b) Placard notice. Each application shall be posted by county staff, using a form of placard provided by the zoning administrator, no less than five (5) days prior to the first public hearing. County staff shall document initial installation of the placard with a digital photograph. No further observation of the placard will be conducted until removal of the placard by staff no later than fifteen (15) calendar days following a decision regarding the application. Placard shall be reinstalled by County staff if notified of a damaged or missing placard. County-initiated amendments involving more than ten (10) parcels shall be exempt from placard requirements.

1. Location of placards. Placards shall be affixed to a pole, post, fence or other structure to be clearly visible from each public road abutting the property. If no public roads abut the property, then the placard shall be posted so as to be clearly visible from at least two (2) abutting properties and at the access points to said property.

2. Maintenance and removal of placards. County staff shall attempt to reinstall placards if notified of a damaged or missing placard and shall remove all posted placards no later than fifteen (15) calendar days following a decision regarding the application. Public hearing(s) may proceed even if placards are missing, damaged or vandalized.

3. Penalties. It shall be unlawful for any person to destroy, deface or remove such placard notice. Any person taking such action shall be subject to the penalties set forth in subsection (2)(c) of this section.

(c) Newspaper notice. The county shall give newspaper notice prior to each public hearing in accord with section 15.2-2204A of the Virginia Code.

1. Contents of newspaper notice. The notice shall contain:

a. The time, date and place of the hearing;

b. A brief description of the matter being heard;

c. If the matter is one for which an additional public hearing is necessary and has been scheduled before the BZA or board of supervisors, the time, date and place of the scheduled BZA or board of supervisors hearing; and

d. Identification of the land that is the subject of the application including the tax map number and complete address of the property.

e. In the case of a zoning map amendment, including an amendment to an approved concept development plan, or a modification of ordinance regulations, the general usage and density range of the proposed zoning amendment, and the general usage and density range, if any, set forth in the comprehensive plan shall be included within the notice.

(d) Notice requirements for particular hearings. The following particular hearings require the following form of notice:

1. Appeals to board of supervisors. Public hearings on appeals to the board of supervisors require that the county provide newspaper notice of the hearing.

2. Appeals to board of zoning appeals. Public hearings on appeals to the BZA require that the county provide newspaper notice of the hearing.

(e) Additional notice required.

1. Deferral. If an item is not heard at the time for which it was noticed but is deferred at that time to another date, all notice required by this section shall be given of the deferred public hearing.

2. Recessed public hearings. If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the dates for completion of the public hearing agenda is announced at the hearing which has been recessed.

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

<u>Sec. 10-55. - Procedures before the board of zoning appeals.</u>

(1) *Variances.*

(a) *Jurisdiction and authority*. Upon application, the board of zoning appeals (BZA) shall exercise the jurisdiction and authority to grant a variance from the literal terms of this chapter in accordance with the procedures, standards, and limitations contained in this section. This authorization shall not be construed to grant the BZA the power to rezone property.

(b) <u>*Variance*</u>~~Authorized variances~~. Variance~~s~~, <u>is</u> defined as a reasonable deviation~~s~~ from the regulations and restrictions contained in this chapter <u>regulating the shape, size or area of lot or parcel of land, or the size, height, area, bulk or location of a building or structure</u>

when the strict application of the zoning ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties and provided such variance is not contrary to the purpose of the zoning ordinance. A variance shall not include a change in use or density of land, buildings or structures or for any use or activity within the flooding portion of the flood plain overlay district if any increase in the hundred year flood elevation would result. ~~may be granted by the board of zoning appeals only in the following instances and in no others:~~

~~1. A variance from those provisions regulating the size or area of a lot or parcel of land.~~

~~2. A variance from those provisions regulating the size, height, area, bulk, setback, open space, yards, or location of a building or structure.~~

~~(c) *Unauthorized variance*. The BZA shall not be empowered to grant a variance from any of the provisions of this chapter relating to the use or density of land, buildings or structures. Nor shall the BZA grant a variance for any use or activity within the floodway portion of the floodplain overlay district if any increase in the hundred-year flood elevations would result.~~

(~~d~~c) *Application for variance*. Any person owning property, or having a possessory or contract interest in property and the consent of the owner, may file an application for variance in regard to such property with the zoning administrator ~~for one (1) or more of the variances authorized above~~. The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his or her application meets the standard for a variance as defined in this Section. The application shall contain the following information and such additional information as the board of zoning appeals may, by rule, require or as may be required by Section 10-52(1)(c):

1. The particular provisions or requirements of this chapter which prevent the proposed construction on, or use of, the property.
2. The existing zoning of the property, including any previously approved modifications, conditions, or proffers.
3. The special conditions, circumstances or characteristics of the land, building or structure that prevent the use of the land in compliance with the requirements of this chapter.
4. The particular hardship which would result if the specified provisions or requirements of this chapter were to be applied to the subject property.
5. The extent to which it would be necessary to vary the requirements of this chapter in order to permit the proposed construction on, or use of, the property.
6. An explanation of how the requested variance conforms to each of the applicable standards set out in subsection (g), below.

(~~e~~d) *Decision on variance application*. Upon receipt of a complete application for a variance, the zoning administrator shall notify the BZA which shall, within ninety (90) days, hold a duly noticed public hearing thereon. Such public hearing shall be advertised in the manner provided by Section 15.2-2204 of the Code of Virginia, and in addition, the property shall be posted in conformity with Section 10-52(3). The BZA shall, after such hearing, either approve, deny or approve with conditions the application for a variance.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant of the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned 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 ordinance; (iv) the granting of the variance does not result in a use that is not otherwise prohibited on such property or change in the zoning classification of the property; (v) the relief or remedy sought by the variance application is not available through the granting of a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application. ~~Its decision shall be supported by findings of fact and conclusions with respect to the standards of subsection (g), below. No such variance shall be granted by the BZA unless it makes all of the following required findings:~~

~~1. The strict application of this chapter would produce undue hardship to the property owner.~~

~~2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.~~

~~3. Such variance is not contrary to the public interest nor to the intended spirit and purpose of this chapter.~~

~~4. The granting of such variance will not be substantial detriment to adjacent property nor change the character of the zoning district in which the property is located.~~

~~5. Such variance would result in substantial justice being done.~~

~~6. The condition or situation of the property which gives rise to the need for such variance is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.~~

~~(f) *Planning commission recommendation*. The zoning administrator may transmit a copy of the application to the planning commission which may send a recommendation to the BZA or appear as a party at the hearing.~~

~~(g) *Standards for variances*. The board of zoning appeals shall base its required findings upon the particular evidence presented to it in each specific case where the property owner can show that:~~

~~1. The strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the utilization of the property because of:~~

~~a. The exceptional narrowness, shallowness, size, or shape of the property at the time of the effective date of this chapter, or~~

~~b. The exceptional topographic conditions or other extraordinary situations or conditions of the property, or~~

~~c. The condition, situation, or development of property immediately adjacent thereto.~~

~~2. The granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant.~~

~~3. The property was acquired in good faith.~~

~~4. Satisfactory evidence exists to support all of the required findings of subsection (e), hereinabove.~~

~~(h) Burden of applicant. The applicant for a variance shall bear the burden of producing evidence to support the required findings of subsection (e), above, and to establish that the requested variance satisfies the standards for a variance of subsection (g), above.~~

(e) *Notice*. No variance shall be considered except after notice and hearing as required by Virginia Code 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the BZA may give such notice by first-class mail, rather than by registered or certified mail.

(~~i~~f) *Conditions and restrictions*. In granting a variance,~~T~~the BZA may impose such conditions and restrictions regarding ~~upon~~ the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Failure to comply with any such conditions and restrictions shall constitute a violation of this chapter. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

(~~j~~g) *Withdrawal of application*. A variance may be withdrawn by the applicant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the application by providing written notice to the Zoning Administrator. After said deadline, an application may be withdrawn only by providing written notice to the BZA ~~with the permission of the BZA~~.

(~~k~~h) *Re-application*. If a variance is denied by the BZA on the merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the BZA within twelve (12) months after the date of such denial.

(2) *Appeals.*

(a) *Appeals from administrative ruling*. The board of zoning appeals is authorized to hear appeals from any order, requirement, decision or determination made by the zoning administrator in the administration or enforcement of this chapter. In this capacity the

board exercises appellate jurisdiction as a quasi-judicial body, and its task is to determine what the ordinance means and how the ordinance applies to a particular fact situation.

(b) *When appeals may be taken*. Appeals to the BZA may be taken by any person aggrieved by an officer, department, board or agency of the county or affected by a decision or from any order, requirement, decision or determination of the zoning administrator. Any written notice of a zoning violation or a written order of the Zoning Administrator shall include a statement informing the recipient that he or she may have a right to appeal the notice of a zoning violation or written order within thirty (30) days. Appeals shall be taken within thirty (30) days after the decision that includes the right to appeal statement ~~has been rendered~~ by filing with the zoning administrator from whom the appeal is taken and with the chair of the BZA a notice of appeal specifying the grounds of the appeal. The zoning administrator shall forthwith forward to the chair of the BZA all the papers constituting the record upon which the action appealed from was taken. The determination of the zoning administrator is presumed correct. The Appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the ordinance.

(c) *When appeals to stay proceedings*. A notice of appeal properly filed as herein provided shall stay all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the BZA that by reason of facts stated in the certificate a stay would, in the zoning administrator's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order which may be granted by the BZA or by a proper court order on notice to the zoning administrator and for good cause shown.

(d) *Decisions on appeal*. Within ninety (90) days after the notice of appeal has been filed, the BZA shall hold a public hearing, give public notice thereof required by ~~Code of~~ Virginia~~,~~ Code §15.2-2204 as well as due notice to the parties in interest, decide the appeal, and file with the zoning administrator its findings of fact and conclusions with respect to the appeal. However, when giving any required notice to the Owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the BZA may give such notice by first-class mail rather than by registered or certified mail. The zoning administrator shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing. In exercising its powers, the BZA may reverse or affirm, wholly or partly, or may modify the decision appealed from. The concurring vote of a majority of the membership of the BZA shall be necessary to reverse a decision. If the BZA's attempt to reach a decision results in a tie vote the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

(e) *Withdrawal of application*. An appeal may be withdrawn by the appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the application. After said deadline, an appeal may be withdrawn only with the permission of the BZA.

(f) *Proceedings to prevent construction of a building*. Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the

zoning ordinance by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the zoning administrator to the board of zoning appeals.

(3) *Special use permits*. Upon application, the board of zoning appeals shall exercise the jurisdiction and authority to grant use permits as authorized in this chapter. The special use permits shall be processed in accordance with the procedures, standard and limitations contained in Section 10-54(3) and other applicable law. No special use shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code of Virginia, 1950, as amended.